

1
2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 JEROME CEASAR ALVERTO,

7 Plaintiff,

8 v.

9 DEPARTMENT OF CORRECTIONS, C/O
10 FINCH, C/O PERCIFIELD, C/O
11 GRIJALVA, SGT. C. ROOP, HERBERT C.
12 PENROSE, MICHAEL ESTES, KRISTI
13 ENTROP, DR. JUGUILON, STEPHEN
14 SINCLAIR, RAYMOND BUCHMANN, C/O
15 ADAMIRE, RON FRAKER, ROB
16 JACKSON, COUNSELOR WALKER,
KURT GRUBB, C/O DELEON, C/O
PALMER, JASON ROMERO, ADELE
WILLIAMS, BRYAN MCGARVIE,
DARREN HEAWARD, DENISE LARSON,
LT. TOM TABER, JASON ULRICH, and
STATE OF WASHINGTON,

17 Defendants.

No. C11-5572 RJB/KLS

ORDER DENYING PLAINTIFF'S
SECOND MOTION TO APPOINT
COUNSEL

18 This civil rights action has been referred to United States Magistrate Judge Karen L.
19 Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Before the Court is
20 Plaintiff's second motion for the appointment of counsel. ECF No. 64. Having carefully
21 reviewed Plaintiff's motion, Defendants' opposition (ECF No. 68), and balance of the record, the
22 Court finds, for the reasons stated below, that Plaintiff's motion should be denied.
23

24 **DISCUSSION**

25 As Plaintiff has previously been advised, no constitutional right exists to appointed
26 counsel in a § 1983 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). *See also*

1 *United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment
2 of counsel under this section is discretionary, not mandatory.”) However, in “exceptional
3 circumstances,” a district court may appoint counsel for indigent civil litigants pursuant to 28
4 U.S.C. § 1915(e)(1) (formerly 28 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th
5 Cir. 1997), *overruled on other grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.) To
6 decide whether exceptional circumstances exist, the court must evaluate both “the likelihood of
7 success on the merits [and] the ability of the petitioner to articulate his claims *pro se* in light of
8 the complexity of the legal issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th
9 Cir. 1986) (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must
10 plead facts that show he has an insufficient grasp of his case or the legal issue involved and an
11 inadequate ability to articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of*
12 *America*, 390 F.3d 1101, 1103 (9th Cir. 2004).

13
14
15 That a *pro se* litigant may be better served with the assistance of counsel is not the test.
16 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the issues
17 involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development of further
18 facts during litigation. But, if all that was required to establish the complexity of the relevant
19 issues was a demonstration of the need for development of further facts, then practically all cases
20 would involve complex legal issues. *Id.*

21
22 Plaintiff states that he requires the appointment of counsel because he is incarcerated,
23 indigent, has limited access to law materials, the case will require litigation, and he is not an
24 attorney. ECF No. 64. Plaintiff filed his complaint *pro se* and has clearly demonstrated an
25 ability to articulate his claims *pro se* in a clear fashion understandable to this Court. The
26 pleadings on file demonstrate that Plaintiff is familiar with the court rules as well as the law

1 pertaining to his claims. Plaintiff has also filed various motions and has conducted discovery.
2 This is also not a complex case. Plaintiff claims that he was physically and sexually assaulted
3 and retaliated against. This case does not involve complex facts or law.

4 Finally, Plaintiff present no evidence to show that he is likely to succeed on the merits of
5 his case. While Plaintiff may not have vast resources or legal training, he meets the threshold for
6 a pro se litigant. Concerns regarding investigation, access to legal resources or examination of
7 witnesses are not exceptional factors, but are the type of difficulties encountered by many pro se
8 litigants. Plaintiff has failed in his burden to demonstrate an inability to present his claims to this
9 Court without counsel.
10

11 Accordingly, Plaintiff's second motion to appoint counsel (ECF No. 64) is **DENIED**. The
12 Clerk is directed to send copies of this Order to Plaintiff.

13
14 **DATED** this 27th day of January, 2012.

15
16 
17 Karen L. Strombom
18 United States Magistrate Judge
19
20
21
22
23
24
25
26