

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DANIEL WINN,

Plaintiff,

v.

GRAND JURY SPECIAL PROSECUTOR,

Defendant.

No. 13-cv-5551-RBL

Order Denying IFP Status and Motion to  
Appoint Counsel

[Dkts. #1, 2]

**I. INTRODUCTION**

Before the Court is Plaintiff Daniel Winn’s application to proceed *in forma pauperis*. [Dkt. #1] and application for appointment of counsel [Dkt. #2]. For the reasons set forth below, the Court denies the applications.

**II. DISCUSSION**

**A. Application to Proceed *In Forma Pauperis*.**

A district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). The court has broad discretion in resolving the application, but “the privilege of proceeding *in forma pauperis* in civil actions for damages should be sparingly granted.” *Weller v. Dickson*, 314 F.2d 598, 600 (9th Cir. 1963), *cert. denied* 375 U.S. 845 (1963). Moreover, a court should “deny leave to proceed

1 *in forma pauperis* at the outset if it appears from the face of the proposed complaint that the  
2 action is frivolous or without merit.” *Tripathi v. First Nat’l Bank & Trust*, 821 F.2d 1368, 1369  
3 (9th Cir. 1987) (citations omitted); *see also* 28 U.S.C. § 1915(e)(2)(B)(i). An *in forma pauperis*  
4 complaint is frivolous if “it ha[s] no arguable substance in law or fact.” *Id.* (citing *Rizzo v.*  
5 *Dawson*, 778 F.2d 527, 529 (9th Cir. 1985); *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir.  
6 1984).

7 Here, the Court must deny Plaintiff’s application because the Complaint, barely legible,  
8 appears frivolous on its face. The nature of the claim is entirely unclear, and it appears likely  
9 that any attempt to sue Plaintiff’s prosecutor in his personal capacity would be barred by  
10 prosecutorial immunity.

#### 11 **B. Application for Appointment of Counsel.**

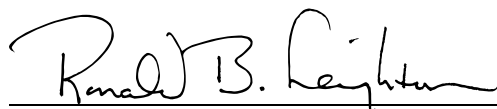
12 Pursuant to 28 U.S.C. § 1915(e)(1), a court may request an attorney to represent any  
13 person unable to afford counsel. Under § 1915, the Court may appoint counsel in exceptional  
14 circumstances. *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984). To find exceptional  
15 circumstances, the court must evaluate the likelihood of success on the merits and the ability of  
16 the petitioner to articulate the claims pro se in light of the complexity of the legal issues  
17 involved. *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983).

18 As noted above, Plaintiff is unlikely to succeed on the merits at this time. Thus, the  
19 Court must decline to appoint counsel.

### 20 **III. ORDER**

21 For the reasons stated above, the Court **DENIES** the application to proceed *in forma*  
22 *pauperis* [Dkt. #1] and the application to appoint counsel [Dkt. #2]. Plaintiff has **15 days** to pay  
23 the filing fees or the case may be dismissed.

24 Dated this 22<sup>nd</sup> day of July 2013.

25 

26 RONALD B. LEIGHTON  
27 UNITED STATES DISTRICT JUDGE  
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