UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

FRANK A. WALLMULLER,

Plaintiff,

v.

SCOTT RUSSELL, DEBORAH WOOFFORD, and PATRICIA FLORES,

Defendants.

CASE NO. C14-5121 RBL-JRC

ORDER DENYING PLAINTIFF'S MOTION FOR APPOINTMENT OF COUNSEL

The District Court has referred this 42 U.S.C. § 1983 civil rights action to the undersigned Magistrate Judge pursuant to 28 U.S.C. §§ 636 (b)(1)(A) and (B), Fed. R. Civ. P. 72, and Local Magistrate Judge Rules MJR 1, MJR 3, and MJR 4.

Plaintiff asks the Court to appoint counsel to represent him (Dkt. 28). Defendants oppose the motion (Dkt. 33). The Court denies the motion because plaintiff does not show any extraordinary circumstances warranting appointment of counsel and he has made no showing of a likelihood of success on the merits.

There is no right to have counsel appointed in cases brought pursuant to 42 U.S.C. § 1983. Although the Court can request counsel to represent a party, 28 U.S.C. § 1915(e)(1), the Court may

do so only in exceptional circumstances. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984); *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional circumstances requires the Court to evaluate both the likelihood of success on the merits and the ability of plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. *Wilborn*, 789 F.2d at 1331.

Plaintiff has articulated his claims. Plaintiff alleges that his First and Fourteenth Amendment rights have been violated because defendant Patricia Flores, a correctional officer, infracted plaintiff after plaintiff threatened to sue her. (Dkt. 1-1, pp.6-8). A motion to dismiss the action on the pleadings is pending (Dkt. 20). Plaintiff fails to show that appointment of counsel is warranted. The Court denies plaintiff's motion for appointment of counsel.

Dated this 21st day of May, 2014.

J. Richard Creatura
United States Magistrate Judge