

HONORABLE RONALD B. LEIGHTON

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLARENCE HANKINS,
Plaintiff,

v.

LEWIS COUNTY HEALTH
DEPARTRMENT, et al.,
Defendants.

CASE NO. C14-5327 RBL
ORDER DENYING IFP

THIS MATTER is before the Court on Plaintiff Hankins' Application to Proceed *in forma pauperis*. [Dkt. #1] Hankins' proposed complaint alleges that the Lewis County Health Department and its Prosecutor's Office (acting through unnamed individuals) deprived him of various constitutional rights, harassed him, discriminated against him, failed to provide him reasonable accommodations (at his own home), and, because his property was formerly a gold mine, attempted to murder him with a firearm. He primarily asserts claims based on these allegations under the Fair Housing Act.

Hankins also references a prior Lewis County litigation and adverse judgment, and asks the Court to vacate that judgment. He seeks damages, punitive damages, and declaratory and injunctive relief. Finally, Hankins asks the Court to appoint counsel.

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2 A district court may permit indigent litigants to proceed *in forma pauperis* upon
3 completion of a proper affidavit of indigency. See 28 U.S.C. § 1915(a). The court has broad
4 discretion in resolving the application, but “the privilege of proceeding *in forma pauperis* in civil
5 actions for damages should be sparingly granted.” *Weller v. Dickson*, 314 F.2d 598, 600 (9th
6 Cir. 1963), *cert. denied* 375 U.S. 845 (1963). Moreover, a court should “deny leave to proceed
7 *in forma pauperis* at the outset if it appears from the face of the proposed complaint that the
8 action is frivolous or without merit.” *Tripati v. First Nat’l Bank & Trust*, 821 F.2d 1368, 1369
9 (9th Cir. 1987) (citations omitted); *see also* 28 U.S.C. § 1915(e)(2)(B)(i). An *in forma pauperis*
10 complaint is frivolous if “it ha[s] no arguable substance in law or fact.” *Id.* (citing *Rizzo v.*
11 *Dawson*, 778 F.2d 527, 529 (9th Cir. 1985); *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir.
12 1984).

13 Hankins’ proposed complaint is insufficient under this standard. If and to the extent he
14 seeks to assert claims based on the violation of his constitutional rights, he must name the
15 individuals who so deprived him under 42 U.S.C. §1983 (or identify the municipality that
16 deprived him of such a right, and assert a claim based on the allegation “that official policy is
17 responsible for a deprivation of rights protected by the Constitution” *Monell v. New York*
18 *City Dep’t of Soc. Servs.*, 436 U.S. 658, 690 (1978)).

19 Plaintiff’s FHA claims appear to be based on his claim that someone failed to provide
20 reasonable accommodations (for what is not clear) on property that he claims he owns.

21 There is no basis for the claim that a County Housing Department broadly has an
22 obligation to improve a property owner’s property to accommodate his disability or to generally
23 improve that property.

24 Hankins’ “attempted murder” claim is not fully described, but it can be said with
certainty that the facts he has alleged thus far are not sufficient to state such a claim against the
Health Department or the Prosecutor’s office.

1 Finally, to the extent Hankins asks this Court to review and vacate a state court decision,
2 this Court has no jurisdiction to do so. See *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16
3 (1923); *Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 486-87 (1983).

4 For these reasons, the Compliant as drafted is frivolous on its face, and although Hankins
5 is apparently indigent, he has not established that he is entitled to proceed in forma pauperis.

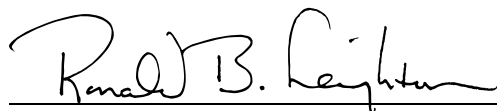
6 No constitutional right to counsel exists for an indigent plaintiff in a civil case unless the
7 plaintiff may lose his physical liberty if he loses the litigation. See *Lassiter v. Dept. of Social*
8 *Servs.*, 452 U.S. 18, 25 (1981). However, pursuant to 28 U.S.C. § 1915(e)(1), the Court has the
9 discretion to appoint counsel for indigent litigants who are proceeding *in forma pauperis*. *United*
10 *States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995). The Court will
11 appoint counsel only under “exceptional circumstances.” *Id.*; *Wilborn v. Escalderon*, 789 F.2d
12 1328, 1331 (9th Cir. 1986). “A finding of exceptional circumstances requires an evaluation of
13 both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims
14 *pro se* in light of the complexity of the legal issues involved.” *Wilborn*, 789 F.2d at 1331
15 (internal quotations omitted). These factors must be viewed together before reaching a decision
16 on whether to appoint counsel under § 1915(e)(1). *Id.*

17 Hankins has not met this even higher standard, and the Court will not appoint an attorney
18 to pursue the claims in the proposed complaint. The Motion for Appointment of Counsel is
19 DENIED.

20 Plaintiff shall file an amended complaint addressing these shortcomings—articulating in
21 plain fashion the “who, what, when, where and why” of his factual allegations, naming the
22 relevant actors, and describing what they did that violated his rights, or pay the filing fee within
23 15 days of the date of this Order. If he does not, the case will be dismissed without further notice.

24 IT IS SO ORDERED.

Dated this 3rd day of June, 2014.



RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE