

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DANIEL JAY PEREZ,

Plaintiff,

V.

DICK MORGAN, et al.,

Defendants.

CASE NO. C16-6023 RBL-TLF

**ORDER DENYING MOTION FOR
COUNSEL**

Before the Court is Plaintiff Daniel Jay Perez's motion for appointment of counsel. Dkt.

14 55. Mr. Perez states that he is indigent, the issues are complex, and he has limited access to the
15 law library and limited knowledge of the law. *Id.* On June 28, 2017, plaintiff filed a motion to
16 supplement his motion for appointment of counsel with a declaration and attachments. Dkt. 65.

DISCUSSION

There is no right to have counsel appointed in cases brought under 42 U.S.C. § 1983.

19 Although the court, under 28 U.S.C. § 1915(d), can request counsel to represent a party
20 proceeding *in forma pauperis*, the court may do so only in exceptional circumstances. *Wilborn*
21 *v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *Franklin v. Murphy*, 745 F.2d 1221, 1236
22 (9th Cir. 1984); *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional
23 circumstances requires an evaluation of both the likelihood of success on the merits and the
24 ability of the plaintiff to articulate his claims *pro se* in light of the complexity of the legal issues

1 involved. *Wilborn*, 789 F.2d at 1331. Neither of these factors is dispositive and both must be
2 viewed together before reaching a decision on request of counsel under Section 1915(d). *Id.*

3 Plaintiff has demonstrated an adequate ability to articulate his claims *pro se* but has not
4 demonstrated that the issues involved in this case are complex. Plaintiff's incarceration and
5 limited legal training are not exceptional factors constituting exceptional circumstances that
6 warrant the appointment of counsel. Rather, they are the type of difficulties encountered by
7 many pro se litigants. In his supplemental declaration, plaintiff states that he will not be allowed
8 access to the law library every day. Dkt. 66. However, plaintiff has shown an ability to litigate
9 this matter pro se. He appropriately moved to amend his complaint to substitute John Doe
10 defendants with individually named defendants, successfully responded to a motion to dismiss,
11 and has engaged in discovery and conferences with counsel for defendants. *See, e.g.*, Dkt. 61. In
12 addition, plaintiff has not missed any deadlines. Plaintiff has also not shown a likelihood of
13 success on the merits but merely restates the allegations of his complaint. *See, e.g.*, *Wilborn*, 789
14 F.2d at 1331.

15 Accordingly, it is **ORDERED**:

16 (1) Plaintiff's motion for the appointment of counsel (Dkt. 55) is **DENIED** and
17 plaintiff's motion to supplement the motion for counsel (Dkt. 65) is **GRANTED**.

18 (2) The Clerk of Court is directed to send a copy of this Order to plaintiff and to
19 counsel for defendants.

20 Dated this 5th day of July, 2017.

21 
22 Theresa L. Fricke
23 United States Magistrate Judge
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