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6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

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8 CHRISTOPHER ANDREW BISTRYSKI,

9 Plaintiff,

10 v.

11 DEPARTMENT OF CORRECTIONS  
HEALTH SERVICES, et al.,

12 Defendants.

CASE NO. 3:17-cv-5369 RJB-TLF

ORDER DENYING MOTION FOR  
COUNSEL

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14 Before the Court is Plaintiff Christopher Bistryski's motion for the appointment of  
15 counsel. Dkt. 7. Mr. Bistryski states that he requires appointment of counsel as he has been  
16 unable to obtain counsel on his own and he is indigent. *Id.*

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18 **DISCUSSION**

19 There is no right to have counsel appointed in cases brought under 42 U.S.C. § 1983.  
20 Although the court, under 28 U.S.C. § 1915(d), can request counsel to represent a party  
21 proceeding *in forma pauperis*, the court may do so only in exceptional circumstances. *Wilborn v.*  
22 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th  
23 Cir. 1984); *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional  
24 circumstances requires an evaluation of both the likelihood of success on the merits and the  
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 many  
7 pro se litigants. Plaintiff has also not shown a likelihood of success on the merits. *See, e.g.,*  
8 *Wilborn*, 789 F.2d at 1331.

9 Accordingly, it is **ORDERED**:

10 (1) Plaintiff's motion for the appointment of counsel (Dkt. 7) is **DENIED**.

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

13 Dated this 30th day of August, 2017.

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16 Theresa L. Fricke  
17 Theresa L. Fricke  
18 United States Magistrate Judge  
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