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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

STEVEN C CEARLEY,  
  
Petitioner,  
  
v.  
  
RON HAYNES,  
  
Respondent.

CASE NO. 3:17-CV-05416-BHS-DWC  
  
ORDER DENYING MOTION

The District Court has referred this action filed under 28 U.S.C. § 2254 to United States Magistrate Judge David W. Christel. Currently pending in this action is Petitioner Steven C. Cearley’s Motion to Permit Counsel to Withdraw and to Appoint New Counsel. Dkt. 4.

Petitioner’s counsel, Jeffrey Erwin Ellis, represented Petitioner during his state personal restraint petition (“PRP”). Dkt. 4. Mr. Ellis has reviewed the state court proceedings and determined the federal Petition is likely untimely filed. *Id.* Mr Ellis states he is a witness on the issue of equitable tolling and the dual roles of counsel and witness creates a conflict of interest. *Id.*

1 Under Local Rule 83.2, an attorney ordinarily cannot withdraw an appearance in any  
2 case, civil or criminal, except by leave of court.

3 If a withdrawal will leave a party unrepresented, the motion to withdraw must  
4 include the party's address and telephone number. The attorney will ordinarily be  
5 permitted to withdraw until sixty days before the discovery cut off date in a civil  
6 case[.]

7 Local Rule 83.2(b). The motion to withdraw shall also include a certification that the motion was  
8 served on the client and opposing counsel. *Id.*

9 Here, discovery has not been permitted at this time. *See* Docket. Further, Mr. Ellis has  
10 articulated a potential conflict of interest. *See* Dkt. 4. Mr. Ellis, however, did not provide  
11 Petitioner's address and telephone number in the Motion and did not include a certification that  
12 the motion was served on Petitioner. *See id.* Accordingly, Petitioner's Motion is denied without  
13 prejudice. Mr. Ellis may file a renewed motion that complies with the Local Rules. As Mr. Ellis  
14 is still Petitioner's counsel of record, the Court will not consider whether new counsel shall be  
15 appointed at this time.

16 Dated this 25th day of July, 2017.

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19 David W. Christel  
20 United States Magistrate Judge  
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