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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 STEVEN TAFOYA,

11 Plaintiff,

12 v.

13 ROBERT FERGUSON,

14 Defendant.

CASE NO. 3:18-cv-05261-BHS-JRC

ORDER EXTENDING DEADLINE
TO SHOW CAUSE AND DENYING
APPOINTMENT OF COUNSEL

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16 The District Court has referred this 42 U.S.C. § 1983 action to United State Magistrate
17 Judge J. Richard Creatura. Currently pending in this action is plaintiff Steven Tafoya's motion
18 for appointment of counsel. Dkt. 8.

19 No constitutional right to appointed counsel exists in a § 1983 action. *Storseth v.*
20 *Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981); *see United States v. \$292,888.04 in U.S.*
21 *Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is
22 discretionary, not mandatory”). However, in “exceptional circumstances,” a district court may
23 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1). *Rand v. Roland*,

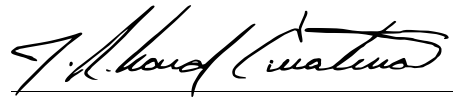
1 113F.3d 1520, 1525 (9th Cir. 1997), *overruled on other grounds*, 154 F.3d 952 (9th Cir. 1998).
2 To decide whether exceptional circumstances exist, the Court must evaluate both “the likelihood
3 of success on the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in light
4 of the complexity of the legal issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th
5 Cir. 1986) (quoting *Weyandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead
6 facts showing he has an insufficient grasp of his case or the legal issues involved and an
7 inadequate ability to articulate the factual basis of his claims. *Agyeman v. Corrections Corp. of*
8 *America*, 390 F.3d 1101, 1103 (9th Cir. 2004).

9 Plaintiff argues that, because he is indigent and has attempted to retain pro bono counsel
10 without success, he is entitled to counsel appointed by the Court. Dkt. 8. However, as noted
11 above, appointment of counsel is only appropriate under exceptional circumstances. In his
12 complaint, plaintiff alleged that his constitutional rights were violated when he was housed in
13 segregation because of his mental health issues. Dkt. 6, p. 5. Plaintiff’s claim is a relatively
14 straight forward allegation that he was unlawfully placed in segregation, presumably in violation
15 of the Eighth Amendment. Dkt. 6. He has shown he can adequately advocate for himself at this
16 stage in the proceedings. Plaintiff has not shown the exceptional circumstances necessary to
17 appoint counsel and the Court denies his motion (Dkt. 8) without prejudice.

18 The Court notes that plaintiff still has not cured the deficiencies identified in the Court’s
19 initial order to show cause. Plaintiff failed to allege personal participation by the named
20 defendant. Dkt. 7. However, the Court interprets plaintiff’s motion to appoint counsel as intent
21 to continue prosecuting his case. Therefore, the Court extends plaintiff’s deadline to file an
22 amended complaint or otherwise address the deficiencies identified in the Court’s previous order
23 to show cause or amend (Dkt. 7) to **July 27, 2018**.

1 The Clerk is directed to note the above date on the docket. The Clerk is also directed to
2 provide plaintiff with a copy of this order, a copy of the Court's previous order to show cause or
3 amend (Dkt. 7), and provide plaintiff with the forms necessary for filing a 42 U.S.C. § 1983 civil
4 rights complaint and for service. The Clerk is also directed to provide plaintiff with a copy of the
5 Pro Se Instruction Sheet.

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7 Dated this 26th day of June, 2018.

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9 J. Richard Creatura
10 United States Magistrate Judge