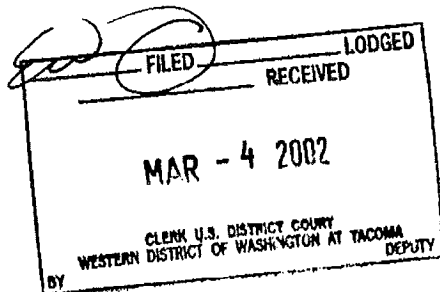


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ENTERED  
ON DOCKET

MAR 04 2002

By Deputy



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

PAUL GOYETTE,

Plaintiff,

v.

MICHAEL ROZELLE, et al.,

Defendants.

Case No. C01-5616RJB

ORDER OVERRULING  
PLAINTIFF'S OBJECTIONS  
UNDER FED.R.CIV.P. 72(a),  
ADOPTING REPORT AND  
RECOMMENDATION, AND  
DISMISSING CASE PURSUANT  
TO 28 U.S.C. § 1915(e)(2)(B)

This matter comes before the Court on consideration of the Report and Recommendation of the Magistrate Judge (Dkt. 15) and on plaintiff's objections to the ruling of the magistrate judge denying his motion for appointment of counsel (Dkt. 19). The court has considered the Report and Recommendation, plaintiff's objections, and the remainder of the file herein.

1. On January 2, 2002, U.S. Magistrate Judge J. Kelley Arnold denied plaintiff's motion for appointment of counsel, finding that plaintiff had demonstrated an adequate ability to articulate his claims and that the case did not involve exceptional circumstances. Dkt. 14. In the objections he filed to the subsequent Report and Recommendation, plaintiff has requested that the court review the order denying his motion for appointment of counsel. Dkt. 19.

Under Fed.R.Civ.P. 72(a), upon objection by a party to a pretrial order of a magistrate judge, the district judge shall consider the objections and shall modify or set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law.

Plaintiff contends that he has a meritorious case and that he is unable to pursue the claims without

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1 legal assistance. The court has carefully reviewed the record. Plaintiff is able to articulate his claims and  
2 raise issues in a manner that is understandable. Further, plaintiff has not shown that he is likely to succeed  
3 on the merits of his claims. Plaintiff has not shown that the order of the magistrate judge is clearly  
4 erroneous or contrary to law. The court should overrule plaintiff's objections and affirm the order of the  
5 magistrate judge denying his motion for appointment of counsel.

6 2. On January 2, 2002, the magistrate judge issued a Report and Recommendation, recommending  
7 that the court dismiss the case as frivolous. Dkt. 15. Plaintiff has filed objections, which the court has  
8 carefully reviewed. For the reasons stated in the Report and Recommendation, plaintiff's complaint  
9 should be dismissed for failure to state a claim and as frivolous. The court notes that plaintiff claims that  
10 he was denied access to the court and that as a result, he missed a court deadline to file a reply brief with  
11 the Washington Supreme Court. However, plaintiff has supplied a copy of the Washington Supreme  
12 Court's order granting him an extension of time to file a reply brief. Dkt. 9, Exh. E. Accordingly,  
13 plaintiff has not shown actual injury sufficient to state a claim for denial of access to the court. The court  
14 should adopt the Report and Recommendation and dismiss the case for failure to state a claim and as  
15 frivolous under 28 U.S.C. § 1915(e)(2)(B).

16 Therefore, it is hereby

17 **ORDERED** that plaintiff's objections under Fed.R.Civ.P. 72(a) to the order of the magistrate  
18 judge denying his motion for appointment of counsel (Dkt. 19) are **OVERRULED**, and the order of the  
19 magistrate judge is **AFFIRMED**. The Report and Recommendation of the Magistrate Judge (Dkt. 15) is  
20 **ADOPTED**. The complaint and plaintiff's causes of action are **DISMISSED** for failure to state a claim  
21 and as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B).

22 The Clerk of the Court is directed to send uncertified copies of this Order to all counsel of record  
23 and to any part appearing *pro se* at said party's last known address. The Clerk is further directed to  
24 dismiss this action pursuant to 28 U.S.C. § 1915(e)(2)(B).

25 DATED this 4 day of March, 2002.

26  
27  
28  
  
ROBERT J. BRYAN  
United States District Judge