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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL ALLEN YOCOM,)	1:09-cv-01150 YNP DLB (HC)
)	
Petitioner,)	ORDER GRANTING PETITIONER'S
)	MOTION TO AMEND EXHIBITS
v.)	[Doc. #6]
)	
BEN CURRY, Warden,)	ORDER DENYING PETITIONER'S
)	MOTION TO APPOINT COUNSEL
Respondent.)	[Doc. #7]

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Motion to Amend Exhibits (Doc. #6)

On July 20, 2009, Petitioner filed a motion to amend exhibits. In this motion, Petitioner seeks to submit further evidence to support his claims. Petitioner also appears to seek to add new claims to his petition.

Exhibits

The Court grants Petitioner leave to file exhibits in support of the claims that are presented in the current petition pursuant to 28 U.S.C. § 2246 and Rule 7 of the Rules Governing Section 2254 Cases. However, should Petitioner wish to add new claims to his petition, he will have to file a entirely new petition of writ of habeas corpus as discussed below.

Amended Petition

Federal Rule of Civil Procedure 15(a)(1) allows a party leave to amend its pleading once as a matter of right "before being served with a responsive pleading..." Thereafter, "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should

1 freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). It is important to note that,
2 should a petitioner wish to amend the petition, he must do so by submitting a document entitled
3 “Amended Petition,” which must be a complete petition for writ of habeas corpus which will replace
4 the previously-filed petition. Local Rule 15-220. The Court cannot add, remove, or replace pages of
5 a petition that is already filed. Furthermore, Petitioner should note that any new claims are subject to
6 the one-year limitation period and must also be fully exhausted.

7 No responsive pleading has yet been ordered in this case and the motion to amend is the first
8 filed by Petitioner so petitioner is allowed to amend his petition as a matter of right. Accordingly,
9 Petitioner is hereby GRANTED leave to file a first amended petition for writ of habeas corpus and
10 the clerk of the court is ORDERED to send Petitioner a blank § 2254 petition.

11 Motion to Appoint Counsel (Doc. #7)

12 Petitioner has requested the appointment of counsel. There currently exists no absolute right
13 to appointment of counsel in habeas proceedings. See e.g., Anderson v. Heinze, 258 F.2d 479, 481
14 (9th Cir.), cert. denied, 358 U.S. 889 (1958); Mitchell v. Wyrick, 727 F.2d 773 (8th Cir.), cert.
15 denied, 469 U.S. 823 (1984). However, Title 18 U.S.C. § 3006A authorizes the appointment of
16 counsel at any stage of the case "if the interests of justice so require." See Rule 8(c), Rules
17 Governing Section 2254 Cases. In the present case, the court does not find that the interests of
18 justice would be served by the appointment of counsel at the present time. Accordingly, Petitioner's
19 request for appointment of counsel is denied.

20 **ORDER**

21 Accordingly, it is hereby ORDERED that:

- 22 1) Petitioner is granted leave to supplement exhibits to his petition;
23 2) Petitioner is granted leave to amend his petition for writ of habeas corpus. An amended
24 petition must be filed no later than thirty (30) days from the date of this order; and
25 3) Petitioner’s motion to appoint counsel is hereby DENIED.

26 IT IS SO ORDERED.

27 **Dated: February 27, 2010**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE