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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

ELMAR K. SCOTT,

Petitioner,

v.

GARY SWARTHOUT, WARDEN,

Respondent.

Case No. 1:13-CV-01804-LJO-SMS HC

ORDER DENYING PETITIONER'S  
MOTION FOR APPOINTMENT OF  
COUNSEL AND AN INVESTIGATOR

(Doc. 2)

On November 1, 2013, Petitioner, a state prisoner proceeding *pro se* and *in forma pauperis*, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. At the same time, Petitioner moved for appointment of counsel and an investigator.

No absolute right to appointment of counsel exists in habeas corpus proceedings. *See, e.g., Anderson v. Heinze*, 258 F.2d 479, 481 (9<sup>th</sup> Cir.), *cert. denied*, 358 U.S. 889 (1958). This is because the Sixth Amendment does not apply in habeas corpus actions, which are civil in nature. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9<sup>th</sup> Cir. 1986); *Anderson*, 258 F.2d at 481. The Court need only appoint counsel "if the interests of justice so require." 18 U.S.C. § 3006A.

Even though no constitutional right to counsel applies in habeas actions, habeas petitioners retain a right to due process. *Bonin v. Vasquez*, 999 F.2d 425, 429 (9<sup>th</sup> Cir. 1993). A district court only abuses its discretion by denying appointment of counsel if the case is so complex that due

1 process violations will occur without counsel. *See Bonin*, 999 F.2d at 429; *Chaney*, 801 F.2d at  
2 1196.

3 That Petitioner has capably prepared a detailed position setting forth his six claims is  
4 abundant evidence that the case is not so complex as to require counsel. Petitioner does not  
5 disagree, contending only that if an evidentiary hearing were to be ordered, appointment of counsel  
6 and an investigator could expedite the matter. Since the Court denies Petitioner's motion without  
7 prejudice to his renewing it if future developments, such as the need for an evidentiary hearing,  
8 occur, no due process violation arises from denying Petitioner's motion now  
9

10 Accordingly, the Court hereby DENIES without prejudice Petitioner's motion for  
11 appointment of counsel and an investigator.

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15 IT IS SO ORDERED.

16  
17 Dated: December 11, 2013

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE