

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

STEPHEN RUSSELL FEGAN,

Case No. 1:23-cv-01520-SKO (HC)

Petitioner,

ORDER DENYING MOTIONS FOR
APPOINTMENT OF COUNSEL AND
EXTENSION OF TIME

GISELLE MATTERSON,

[Docs. 12, 13]

Respondent.

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

On October 27, 2023, the Court dismissed the petition with leave to file an amended petition. (Doc. 7.) On October 30, 2023, Petitioner filed a notice of interlocutory appeal. (Doc. 8.) The appeal was then processed to the Ninth Circuit Court of Appeals. (Doc. 9.) On November 9, 2023, Petitioner filed a motion for appointment of counsel and a motion for extension of time to file an amended petition. (Docs. 12, 13.)

There currently exists no absolute right to appointment of counsel in habeas proceedings.

See, e.g., Anderson v. Heinze, 258 F.2d 479, 481 (9th Cir. 1958); Mitchell v. Wyrick, 727 F.2d 773, 774 (8th Cir. 1984). However, Title 18 U.S.C. § 3006A(a)(2)(B) authorizes the appointment of counsel at any stage of the case if "the interests of justice so require." See Rule 8(c), Rules Governing Section 2254 Cases. In the present case, the Court does not find that the

1 interests of justice require the appointment of counsel at the present time.

2 Petitioner requests an extension of time to file an amended petition. Generally, the filing
3 of a notice of appeal divests the district court of jurisdiction with respect to all matters involved
4 in the appeal. Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982) (*per curiam*);
5 Bermudez v. Duenas, 936 F.2d 1064, 1068 (9th Cir. 1991). Petitioner is advised that his
6 interlocutory appeal divested this Court of jurisdiction to proceed in this matter until such time as
7 the Ninth Circuit Court of Appeals resolves the appeal and remands the action to this Court for
8 further proceedings. Thus, Petitioner's motion is dismissed with leave to renew once the case is
9 remanded to this Court.

10 Accordingly, IT IS HEREBY ORDERED that Petitioner's motions for appointment of
11 counsel and extension of time are DENIED.

12 IT IS SO ORDERED.
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14 Dated: November 13, 2023

/s/ Sheila K. Oberto

15 UNITED STATES MAGISTRATE JUDGE

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