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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

STEVEN EDWARD RATHBUN,  
Petitioner,  
v.  
K. PROPSER, Warden,  
Respondent.

Case No. CIV S-06-1311 VAP  
[Motion filed on December  
14, 2009]

**ORDER (1) DENYING MOTION FOR  
APPOINTMENT OF COUNSEL; (2)  
ORDERING COPY OF ANSWER BE  
SERVED UPON PETITIONER; and  
(3) EXTENDING TIME FOR  
PETITIONER TO FILE A  
TRAVERSE**

Petitioner is a state prisoner proceeding pro se in a habeas corpus action pursuant to 28 U.S.C. § 2254. The petition was filed on June 29, 2006. On January 5, 2009, the action was transferred to this Court pursuant to an Order of Designation of Judge to Serve in Another District Within the Ninth Circuit.

On October 9, 2007, Petitioner filed a motion seeking (1) the appointment of counsel and (2) leave to file an untimely traverse. Respondent filed no opposition. On October 12, 2007, Magistrate Judge Brennan issued an order denying the appointment of counsel. On December 1,

1 2009, this Court granted Petitioner leave to file an  
2 untimely traverse on the basis that he was never properly  
3 served with a copy of Respondent's answer to his  
4 petition.

5  
6 On December 14, 2009, Petitioner filed the instant  
7 motion, requesting that court appoint counsel in light of  
8 the prejudice caused by (1) the delay in ruling on his  
9 motion to file an untimely traverse and (2) the State's  
10 failure to appropriately serve him with their answer.

11  
12 There is no right to appointment of counsel in habeas  
13 proceedings. *See Nevius v. Sumner*, 105 F.3d 453, 460 (9th  
14 Cir. 1996). The Court may appointment counsel at any  
15 stage of the proceedings "if the interests of justice so  
16 require." *See* 18 U.S.C. § 3006A; *see also*, Rule 8(c),  
17 Rules Governing Section 2254 Cases. The Court does not  
18 find that the interests of justice would be served by the  
19 appointment of counsel at this stage of the proceedings.  
20 Therefore, Petitioner's motion for the appointment of  
21 counsel.

22  
23 However, in light of Petitioner's representation  
24 that he still does not have a complete copy of the  
25 State's answer to his petition, Respondent is hereby  
26 ORDERED to serve Petitioner with a copy of its October  
27 11, 2006 answer within seven (7) days of this Order, and  
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1 file a proof of service indicating such. Petitioner may  
2 file a traverse within thirty (30) days of being served  
3 with Respondent's answer.

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Dated: December 16, 2009

*Virginia A. Phillips*  
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VIRGINIA A. PHILLIPS  
United States District Judge