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

MORGAN JAMES KANE,)
Petitioner,)
v.)
STEVEN MOORE, et al.,)
Respondent.)

CASE NO. 2:08-cv-1268 BJR

ORDER DENYING PETITIONER'S
REQUEST FOR APPOINTMENT OF
COUNSEL, TO PROCEED IN FORMA
PAUPERIS, AND FOR A CERTIFICATE
OF APPEALABILITY

This matter comes before the court on the Petitioner's June 23, 2010 motion in which he seeks the following relief: (1) to proceed *in forma pauperis*; (2) for the appointment of legal counsel; and (3) in the event the court denies his request for a writ of habeas corpus, that the court issue a certification of appealability. Petitioner is a California state prisoner who filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the Eastern District of California. The matter was transferred to this court on June 18, 2010.

Petitioner paid the filing fee for this action on June 4, 2008. Therefore, his request to proceed *in forma pauperis* is moot. Petitioner's request for the appointment of counsel is denied. There currently exists no absolute right to appointment of counsel in habeas proceedings. *See Nevius v. Sumner*, 105 F.3d 453, 460 (9th Cir. 1996). The court may appoint counsel at any stage

1 of the proceeding “if the interests of justice so require.” *See* 18 U.S.C. § 3006A; *see also*, Rule
2 8(c), Rules Governing Section 2254 Cases. The court does not find that the interests of justice
3 would be served by the appointment of counsel at this stage of the proceeding.

4 A certificate of appealability is required to appeal “the final order in a habeas proceeding
5 in which the detention complained of arises out of process issued by a state court.” *See Wilson v.*
6 *Bellequ*, 554 F.3d 816, 824 (9th Cir. 2009). This court has not issued a final ruling on the petition
7 for writ of habeas corpus. Accordingly, a certificate of appealability is not warranted and will not
8 be issued at this time. Petitioner may renew his request for a certificate in the event his petition is
9 denied.
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11 Based on the foregoing, it is HEREBY ORDERED that Petitioner’s application to
12 proceed *in forma pauperis* is DENIED as moot. His request for the appointment of legal counsel
13 is DENIED without prejudice. His request for a certificated of appealability is DENIED.

14 DATED this 2nd day of August, 2010.

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17 /s/ Barbara Jacobs Rothstein

18 Barbara Jacobs Rothstein
19 U.S. District Court Judge
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