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

RUFUS HARTY KELSAW, IV,

Petitioner,

No. CIV S-08-1612 MCE CHS P

vs.

BOB HOREL,

Respondent.

ORDER

_____ /

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus brought pursuant to 28 U.S.C. §2254. On September 14, 2010, findings and recommendations were entered herein, recommending that the petition be denied.

On September 21, 2010, petitioner filed a document titled “Objections to Magistrate Judge’s Findings and Recommendations/ Request for Leave to Amend.” Therein, petitioner gives his “limited objections” to the pending findings and recommendations. Petitioner states that he is currently unable to file his full objections because he has been without access to the law library and without access to his legal documents since his transfer to administrative segregation on September 13, 2010. Petitioner states that expects to be able to access his legal documents on or before October 7, 2010. Accordingly, petitioner’s filing titled “Objections to Magistrate Judge’s Findings and Recommendations/ Request for Leave to

1 Amend” will be construed as a request for an extension of time to file objections to the pending
2 findings and recommendations. Good cause appearing, the request is granted. Petitioner is
3 granted an additional 30 days from the date of this order in which to file additional objections to
4 the findings and recommendations.

5 Petitioner further requests that an evidentiary hearing be held prior to the District
6 Judge’s ruling. The question whether an evidentiary hearing is warranted was considered for
7 purposes of the findings and recommendations which are currently pending. It was
8 recommended, however, that relief be denied without an evidentiary hearing because the factual
9 allegations in the petition were insufficient for habeas corpus relief. Thus, an evidentiary hearing
10 is not warranted at this time. *Estrada v. Scribner*, 512 F.3d 1227, 1235 (9th Cir. 2008).

11 In his “Objections to Magistrate Judge’s Findings and Recommendations/ Request
12 for Leave to Amend,” petitioner also requests the appointment of counsel. There currently exists
13 no absolute right to appointment of counsel in habeas corpus proceedings. *See Nevius v. Sumner*,
14 105 F.3d 453, 460 (9th Cir. 1996). However, 18 U.S.C. § 3006A authorizes the appointment of
15 counsel at any stage of the case “if the interests of justice so require.” *See* Rule 8(c), Fed. R.
16 Governing § 2254 Cases. In this case, because findings and recommendations have been filed
17 and are awaiting review by the District Judge, it does not appear that the interests of justice
18 would be served by the appointment of counsel at this time.

19 Finally, in regard to the second document that petitioner caused to be filed on
20 September 21, 2001, titled “Request for Certificate of Appealability/Request to Appeal...,”
21 petitioner is cautioned that an appeal in a habeas corpus proceeding may only be taken from a
22 “final order.” 28 U.S.C. §2253; *see also Browder v. Ill. Dept. of Corrections*, 434 U.S. 257, 265
23 (1978). Final orders are those that leave nothing to be done but the execution of the judgement.
24 *See Catlin v. United States*, 324 U.S. 229, 233 (1945). In the contest of habeas corpus
25 proceedings, a final order disposes of all claims and either denies or grants habeas corpus relief.
26 *See Blazak v. Ricketts*, 971 F.2d 1408, 1410 (9th Cir. 1992) (per curiam). Thus, in the event that

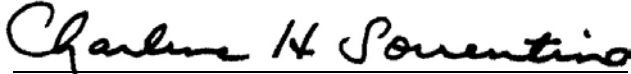
1 the District Judge's final order is adverse to any or all of petitioner's claims, petitioner must still
2 thereafter file a notice of appeal if he wishes to appeal the court's decision.

3 THEREFORE, FOR THE FOREGOING REASONS, IT IS HEREBY ORDERED

4 THAT:

- 5 1. Petitioner is granted an additional 30 days from the date of this order in which to
6 file additional objections to the findings and recommendations entered September
7 14, 2010; and
8 2. Petitioner's request for appointment of counsel is denied.

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10 Dated: September 30, 2010

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12 CHARLENE H. SORRENTINO
13 UNITED STATES MAGISTRATE JUDGE
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