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

KEVIN CLAIBORNE,

Petitioner,

No. CIV S-08-1626 EFB P

vs.

D. K. SISTO, et al.,

Respondents.

ORDER

_____/

Petitioner is a state prisoner without counsel seeking a writ of habeas corpus. *See* 28 U.S.C. § 2254. He seeks leave to proceed *in forma pauperis*. *See* 28 U.S.C. § 1915(a).

Petitioner also requests the appointment of counsel. For the reasons explained, the court grants the application for leave to proceed *in forma pauperis* and directs that the petition be served, but denies the request for counsel.

Examination of the *in forma pauperis* affidavit reveals that petitioner is unable to afford the costs of suit.

A judge “entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243. It is not apparent from the face of the application that the petitioner is not entitled to relief.

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1 Petitioner has also requested the appointment of counsel. Petitioner’s request for counsel
2 must be denied. There currently exists no absolute right to appointment of counsel in habeas
3 proceedings. *See Nevius v. Sumner*, 105 F.3d 453, 460 (9th Cir. 1996). The court may
4 appointment counsel at any stage of the proceedings “if the interests of justice so require.” *See*
5 18 U.S.C. § 3006A; *see also*, Rule 8(c), Rules Governing Section 2254 Cases. The court does
6 not find that the interests of justice would be served by the appointment of counsel at this stage
7 of the proceedings.

8 Accordingly, it is hereby ordered that:

9 1. Petitioner’s request for leave to proceed *in forma pauperis* is granted.

10 2. Petitioner’s July 15, 2008, request for appointment of counsel is denied without
11 prejudice.

12 3. Respondent shall file and serve either an answer or a motion in response to
13 petitioner’s application within 60 days from the date of this order. *See* Rule 4, Fed. R.
14 Governing § 2254 Cases. Any response shall be accompanied by any and all transcripts or other
15 documents relevant to the determination of the issues presented in the application. *See* Rules 4,
16 5, Fed. R. Governing § 2254 Cases.

17 4. Petitioner’s reply, if any, shall be filed and served within 30 days of service of an
18 answer.

19 5. If the response to petitioner’s application is a motion, petitioner’s opposition or
20 statement of non-opposition shall be filed and served within 30 days of service of the motion,
21 and respondents’ reply, if any, shall be filed within 15 days thereafter.

22 6. The Clerk of the Court shall serve a copy of this order together with a copy of
23 petitioner’s July 15, 2008, petition for a writ of habeas corpus with any and all attachments on
24 Michael Patrick Farrell, Senior Assistant Attorney General for the State of California. The Clerk

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1 of the Court also shall serve on the Senior Assistant Attorney General the consent form used in
2 this court.

3 DATED: January 5, 2009.


4 EDMUND F. BRENNAN
5 UNITED STATES MAGISTRATE JUDGE
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