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

ROMAN SUNDAY,

No. C 07-05308 SBA (PR)

Petitioner,

**ORDER DENYING REQUEST FOR
APPOINTMENT OF COUNSEL**

v.

D. K. SISTO, Warden,

Respondent.

Petitioner has filed a motion for appointment of counsel in this action. He has also filed a renewed request for appointment of counsel.

The Sixth Amendment right to counsel does not apply in habeas corpus actions. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). Title 18 U.S.C. § 3006A(a)(2)(B), however, authorizes a district court to appoint counsel to represent a habeas petitioner whenever "the court determines that the interests of justice so require" and such person is financially unable to obtain representation. The decision to appoint counsel is within the discretion of the district court. See Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986); Knaubert, 791 F.2d at 728; Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984). The courts have made appointment of counsel the exception rather than the rule by limiting it to: (1) capital cases; (2) cases that turn on substantial and complex procedural, legal or mixed legal and factual questions; (3) cases involving uneducated or mentally or physically impaired petitioners; (4) cases likely to require the assistance of experts either

1 in framing or in trying the claims; (5) cases in which petitioner is in no position to investigate crucial
2 facts; and (6) factually complex cases. See generally 1 J. Liebman & R. Hertz, Federal Habeas
3 Corpus Practice and Procedure § 12.3b at 383-86 (2d ed. 1994). Appointment is mandatory only
4 when the circumstances of a particular case indicate that appointed counsel is necessary to prevent
5 due process violations. See Chaney, 801 F.2d at 1196; Eskridge v. Rhay, 345 F.2d 778, 782 (9th
6 Cir. 1965).

7 At this time, the Court is unable to determine whether the appointment of counsel is
8 mandated for Petitioner. Accordingly, the interests of justice do not require appointment of counsel,
9 and Petitioner's request is DENIED. This denial is without prejudice to the Court's sua sponte
10 reconsideration should the Court find an evidentiary hearing necessary following consideration of
11 the merits of Petitioner's claims.

12 This Order terminates Docket nos. 20 and 24.

13 IT IS SO ORDERED.

14 Dated: 1/15/10


SAUNDRA BROWN ARMSTRONG
UNITED STATES DISTRICT JUDGE

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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 ROMAN SUNDAY,

5 Plaintiff,

6 v.

7 D.K. SISTO et al,

8 Defendant.

Case Number: CV07-05308 SBA

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
10 Court, Northern District of California.

11 That on January 19, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
14 in the Clerk's office.

15 Roman Sunday
16 California State Prison - Solano
17 V-11338
18 P.O. Box 4000
19 Vacaville, CA 95696-4000

20 Dated: January 19, 2010

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk