

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

3
4 JEFFREY RYNHARD,

No. C 08-05614 CW (PR)

5 Petitioner,

ORDER DENYING SECOND MOTION FOR
APPOINTMENT OF COUNSEL; AND
GRANTING SECOND EXTENSION OF
TIME TO FILE TRAVERSE

6 v.

7 M. S. EVANS, et al.,

8 Respondents.
9 _____/

10 Petitioner has filed a second motion for appointment of
11 counsel in this action. Petitioner has also requested a second
12 extension of time to file his traverse.

13 The Sixth Amendment right to counsel does not apply in habeas
14 corpus actions. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th
15 Cir. 1986). Title 18 U.S.C. § 3006A(a)(2)(B), however, authorizes
16 a district court to appoint counsel to represent a habeas
17 petitioner whenever "the court determines that the interests of
18 justice so require" and such person is financially unable to obtain
19 representation. The decision to appoint counsel is within the
20 discretion of the district court. See Chaney v. Lewis, 801 F.2d
21 1191, 1196 (9th Cir. 1986); Knaubert, 791 F.2d at 728; Bashor v.
22 Risley, 730 F.2d 1228, 1234 (9th Cir. 1984). The courts have made
23 appointment of counsel the exception rather than the rule by
24 limiting it to: (1) capital cases; (2) cases that turn on
25 substantial and complex procedural, legal or mixed legal and
26 factual questions; (3) cases involving uneducated or mentally or
27 physically impaired petitioners; (4) cases likely to require the
28 assistance of experts either in framing or in trying the claims;

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

9 The Court finds that appointment of counsel is not warranted
10 in this case. Petitioner's claims are typical claims that arise in
11 criminal appeals and are not especially complex. This is not an
12 exceptional case that would warrant representation on federal
13 habeas review. Therefore, Petitioner's second motion for
14 appointment of counsel is DENIED. This denial is without prejudice
15 to reconsideration should the Court on its own motion find an
16 evidentiary hearing necessary following consideration of the merits
17 of Petitioner's claims.

18 Petitioner's request for a second extension of time to file a
19 traverse is GRANTED. Petitioner's traverse is due thirty (30) days
20 from the date this Order is signed. If no traverse is received on
21 that date, the matter will be deemed submitted and ready for
22 decision.

23 IT IS SO ORDERED.

24 Dated: 3/17/2010



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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

4 JEFFREY RYNHARD,
5 Plaintiff,

Case Number: CV08-05614 CW

CERTIFICATE OF SERVICE

6 v.

7 M.S. EVANS et al,
8 Defendant.

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 March 17, 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
13 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
14 receptacle located in the Clerk's office.

15 Jeffery A. Rynhard F-20916
16 C2, 236-L
17 California State Prison
18 Los Angeles County
19 P.O. Box 4610
20 Lancaster, CA 93539

Dated: March 17, 2010

Richard W. Wiekling, Clerk
By: Sheilah Cahill, Deputy Clerk