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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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11 NATHANIEL L. WHYMS,

No. C 09-02103 SBA (PR)

12 Petitioner,

**ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL**

13 v.

14 EDMUND G. BROWN, JR., et al.,

15 Respondents.  
16 \_\_\_\_\_/

17 Petitioner has filed a motion for appointment of counsel in this action.

18 The Sixth Amendment right to counsel does not apply in habeas corpus actions. See  
19 Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). Title 18 U.S.C. § 3006A(a)(2)(B),  
20 however, authorizes a district court to appoint counsel to represent a habeas petitioner whenever "the  
21 court determines that the interests of justice so require" and such person is financially unable to  
22 obtain representation. The decision to appoint counsel is within the discretion of the district court.  
23 See Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986); Knaubert, 791 F.2d at 728; Bashor v.  
24 Risley, 730 F.2d 1228, 1234 (9th Cir. 1984). The courts have made appointment of counsel the  
25 exception rather than the rule by limiting it to: (1) capital cases; (2) cases that turn on substantial and  
26 complex procedural, legal or mixed legal and factual questions; (3) cases involving uneducated or  
27 mentally or physically impaired petitioners; (4) cases likely to require the assistance of experts either  
28 in framing or in trying the claims; (5) cases in which petitioner is in no position to investigate crucial

1 facts; and (6) factually complex cases. See generally 1 J. Liebman & R. Hertz, Federal Habeas  
2 Corpus Practice and Procedure § 12.3b at 383-86 (2d ed. 1994). Appointment is mandatory only  
3 when the circumstances of a particular case indicate that appointed counsel is necessary to prevent  
4 due process violations. See Chaney, 801 F.2d at 1196; Eskridge v. Rhay, 345 F.2d 778, 782 (9th  
5 Cir. 1965).

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

11 This Order terminates Docket no. 11.

12 IT IS SO ORDERED.

13 Dated: 5/3/10

  
SAUNDRA BROWN ARMSTRONG  
UNITED STATES DISTRICT JUDGE

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

4 NATHANIEL L. WHYMS,

5 Plaintiff,

6 v.

7 EDMUND G. BROWN JR., ATTORNEY  
8 GENERAL et al,

9 Defendant.  
10 \_\_\_\_\_/

Case Number: CV09-02103 SBA

**CERTIFICATE OF SERVICE**

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

13 That on May 5, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said  
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
15 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located  
16 in the Clerk's office.

17 Nathaniel L. Whyms  
18 5145 Edenvue Drive  
19 Apartment BB102  
20 San Jose, CA 95111

21 Dated: May 5, 2010

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