

United States District Court
For the Northern District of California

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

SUSAN HJELTNESS,

Petitioner,

v.

TINA HORNBECK, Warden

Respondent.

No. C 10-01858 SBA (PR)

**ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL**

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

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

11 This Order terminates Docket no. 7.

12 IT IS SO ORDERED.

13 Dated: 8/9/10


SAUNDRA BROWN ARMSTRONG
UNITED STATES DISTRICT JUDGE

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

5 SUSAN HJELTNESS,
6
7 Plaintiff,

Case Number: CV10-01858 SBA

CERTIFICATE OF SERVICE

8 v.

9 TINA HORNBECK et al,
10 Defendant.

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 August 9, 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
15 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
16 receptacle located in the Clerk's office.

17 Susan M. Hjeltness X26775
18 Valley State Prison for Women
19 P.O Box 96
20 Chowchilla, CA 93610

21 Dated: August 9, 2010

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