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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SCOTT CHRISTOPHER ANZALONE,
Petitioner,

v.

LARRY SMALL, Warden,
Respondent.

Civil No. 08-cv-1496-JM (JMA)

**ORDER DENYING PETITIONER'S
MOTION FOR THE APPOINTMENT OF
COUNSEL WITHOUT PREJUDICE**

[Doc. 28]

Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 on August 14, 2009 [Doc. 1] and filed a First Amended Petition on October 21, 2008 [Doc. 4], along with a motion for leave to proceed in forma pauperis [Doc. 5], which was granted on October 24, 2008 [Doc. 7]. On January 12 2009, Petitioner filed a request for a page extension for his traverse [Doc. 10] which was granted the same day [Doc. 11]. After Respondent's Answer was filed on March 2, 2009 [Doc. 16], Petitioner moved for an extension of time to file his Traverse [Doc. 17] which was granted on March 23, 2009 [Doc. 18], and Petitioner filed his Traverse on May 7, 2009 [Doc. 20]. On May 13, 2009, Petitioner filed a motion to expand the record [Doc. 22] which was denied as moot on May 14, 2009 [Doc. 23]. The Court now

1 considers Petitioner's Motion for the Appointment of Counsel filed August 28, 2009 [Doc. 28]
2 and denies the motion without prejudice.

3 The Sixth Amendment right to counsel does not extend to federal habeas corpus
4 actions by state prisoners. *McCleskey v. Zant*, 499 U.S. 467, 495 (1991); *Chaney v. Lewis*,
5 801 F.2d 1191, 1196 (9th Cir. 1986); *Knaubert v. Goldsmith*, 791 F.2d 722, 728 (9th Cir. 1986).
6 However, financially eligible habeas petitioners seeking relief pursuant to 28 U.S.C. § 2254
7 may obtain representation whenever the Court "determines that the interests of justice so
8 require." 18 U.S.C. § 3006A(a)(2)(B) (West Supp. 1995); *Terrovona v. Kincheloe*, 912 F.2d
9 1176, 1181 (9th Cir. 1990); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir. 1984); *Hoggard*
10 *v. Purkett*, 29 F.3d 469, 471 (8th Cir. 1994).

11 The interests of justice require appointment of counsel when the Court conducts an
12 evidentiary hearing on the Petition. *Terrovona*, 912 F.2d at 1177; *Knaubert*, 791 F.2d at 728;
13 *Abdullah v. Norris*, 18 F.3d 571, 573 (8th Cir. 1994); Rule 8(c), 28 U.S.C. § 2254. The
14 appointment of counsel is discretionary when no evidentiary hearing is necessary. *Terrovona*,
15 912 F.2d at 1177; *Knaubert*, 791 F.2d at 728; *Abdullah*, 18 F.3d at 573. If the Court later
16 determines that an evidentiary hearing is necessary as to one or more issues, the Court will
17 require appointment of counsel for those issues at that time.

18 In the Ninth Circuit, "[i]ndigent state prisoners applying for habeas relief are not entitled
19 to appointed counsel unless the circumstances of a particular case indicate that appointed
20 counsel is necessary to prevent due process violations." *Chaney*, 801 F.2d at 1196; *Knaubert*,
21 791 F.2d at 728-29. A due process violation may occur in the absence of counsel if the issues
22 involved are too complex for the petitioner. In addition, the appointment of counsel may be
23 necessary if the petitioner has such limited education that he or she is incapable of presenting
24 his or her claims. *Hawkins v. Bennett*, 423 F.2d 948, 950 (8th Cir. 1970).


25 At this stage of the proceedings, there is no indication that appointment of counsel is
26 required to prevent a due process violation. Neither is there an indication that the issues are
27 too complex or that Petitioner is incapable of presenting his claims. Thus, at this time, the
28 Court finds that the interests of justice do not require the appointment of counsel.

1 Plaintiff has demonstrated an ability to articulate the factual and legal bases of his claim
2 with sufficient clarity. Indeed, Petitioner has been successful in getting a Complaint on file,
3 successfully filing a motion for leave to proceed *in forma pauperis*, successfully filing a motion
4 for an extension of time to file his traverse, successfully moving for a page extension for his
5 traverse, and filing additional motions (denied as moot). Based on the information currently
6 before the Court, it appears that Petitioner has the competence and ability to pursue his case.
7 Without more, this Court cannot conclude that there are “exceptional circumstances” which
8 would warrant the appointment of counsel in Petitioner’s case.

9 Accordingly, Petitioner’s Motion for the Appointment of Counsel is **DENIED** without
10 prejudice.

11 **IT IS SO ORDERED.**

12 DATED: September 1, 2009

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15 Jan M. Adler
16 U.S. Magistrate Judge
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