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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

WILLIAM CECIL THORNTON,  
Petitioner,  
v.  
MICHAEL STRAINER, Warden,  
Respondent.

Case No. 11-cv-190-LAB(JMA)  
**ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL [DOC.  
NO. 39]**

On January 27, 2011, Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. [Doc. No. 1]. On December 19, 2011, Petitioner filed a Motion for the Appointment of Counsel. [Doc. No. 39]. The Court has considered and denies Petitioner’s motion for appointment of counsel without prejudice for the reasons stated below.

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

1 F.2d 1228, 1234 (9th Cir. 1984); Hoggard v. Purkett, 29 F.3d 469, 471 (8th Cir. 1994).

2 The interests of justice require appointment of counsel when the Court conducts  
3 an evidentiary hearing on the Petition. Terrovona, 912 F.2d at 1177; Knaubert, 791 F.2d  
4 at 728; Abdullah v. Norris, 18 F.3d 571, 573 (8th Cir. 1994); Rule 8(c), 28 U.S.C. §  
5 2254. The appointment of counsel is discretionary when no evidentiary hearing is  
6 necessary. Terrovona, 912 F.2d at 1177; Knaubert, 791 F.2d at 728; Abdullah, 18 F.3d  
7 at 573. Here, there is no current indication that an evidentiary hearing is necessary.


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

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

21 Accordingly, Petitioner’s Motion for Appointment of Counsel is **DENIED** without  
22 prejudice.

23 **IT IS SO ORDERED.**

24 DATED: June 15, 2012

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26   
27 Jan M. Adler  
28 U.S. Magistrate Judge