

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CORY C. BEWLEY

Petitioner,

vs.

FRED BRITTEN, THE ATTORNEY
GENERAL OF THE STATE OF
NEBRASKA

Respondents.

8:17CV20

**MEMORANDUM
AND ORDER**

Petitioner filed a Petition for Writ of Habeas Corpus ([Filing No. 1](#)) and a Motion for Leave to Proceed in Forma Pauperis ([Filing No. 2](#)). Habeas corpus cases attacking the legality of a person's confinement require the payment of a \$5.00 filing fee. 28 U.S.C. § 1914(a). However, after considering Petitioner's financial status as shown in the records of this court (see inmate trust account statement at [Filing No. 3](#)), provisional leave to proceed in forma pauperis will be granted and Petitioner is relieved from paying the filing fee at this time. See 28 U.S.C. § 1915(a)(1).

Petitioner has filed a Motion to Appoint Counsel. ([Filing No. 4](#).) “[T]here is neither a constitutional nor statutory right to counsel in habeas proceedings; instead, [appointment] is committed to the discretion of the trial court.” *McCall v. Benson*, 114 F.3d 754, 756 (8th Cir. 1997). As a general rule, counsel will not be appointed unless the case is unusually complex or the petitioner's ability to investigate and articulate the claims is unusually impaired or an evidentiary hearing is required. See, e.g., *Morris v. Dormire*, 217 F.3d 556, 558-59 (8th Cir. 2000), cert. denied, 531 U.S. 984 (2000); *Hoggard v. Purkett*, 29 F.3d 469, 471 (8th Cir. 1994). See also Rule 8(c) of the *Rules Governing Section 2254 Cases in the United States District Courts* (requiring appointment of counsel if an

evidentiary hearing is warranted). The court has carefully reviewed the record and finds there is no need for the appointment of counsel at this time.

IT IS THEREFORE ORDERED that:

1. Petitioner's Motion for Leave to Proceed in Forma Pauperis ([Filing No. 2](#)) is granted. The next step in this case is for the court to conduct a preliminary review of the habeas corpus petition in accordance with Rule 4 of the Rules Governing Section 2254 cases. The court will conduct this review in its normal course of business.

2. Petitioner's Motion to Appoint Counsel ([Filing No. 4](#)) is denied without prejudice to reassertion.

Dated this 30th day of January, 2017.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge