

1

2

3

4

5

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

7

8 MICHAEL A. CLARK,  
9 #95771,

10 *Petitioner,*

10

11 vs.

11

12 DWIGHT NEVEN, *et al.*,

13 *Respondents.*

14

2:10-cv-02025-KJD-LRL

ORDER

15 This habeas action comes before the Court on petitioner's application (#1) to proceed  
16 *in forma pauperis*, motion (#2) for appointment of counsel, and motion (#3) to raise his  
17 institutional copy credit limit. As discussed further below, petitioner submitted these materials  
18 without a petition for a writ of habeas corpus.

19 On the application to proceed *in forma pauperis*, the Court finds that petitioner is  
20 unable to pay the \$5.00 filing fee, and the application therefore will be granted.

21 On the motion for appointment of counsel, petitioner seeks appointment of counsel to  
22 draft a "supplemental brief" to a "*pro se* brief" that he has not yet filed herein. As a general  
23 matter, in noncapital habeas cases, the Court does not appoint counsel to draft a petition,  
24 supplemental petition, or other paper in advance of the filing and screening of a *pro se*  
25 petition. Petitioner himself must file a petition in this matter. The Sixth Amendment right to  
26 counsel does not apply in habeas corpus actions. *See, e.g., Knaubert v. Goldsmith*, 791 F.2d  
27 722, 728 (9th Cir. 1986). Under 18 U.S.C. § 3006A(a)(2)(B), a district court may appoint  
28 counsel to represent a financially eligible habeas petitioner whenever "the court determines

1 that the interests of justice so require." The decision to appoint counsel lies within the  
2 discretion of the court; and, absent an order for an evidentiary hearing, appointment is  
3 mandatory only when the circumstances of a particular case indicate that appointed counsel  
4 is necessary to prevent a due process violation. See, e.g., *Chaney v. Lewis*, 801 F.2d 1191,  
5 1196 (9th Cir.1986; *Eskridge v. Rhay*, 345 F.2d 778, 782 (9th Cir.1965). In the present case,  
6 on the showing made, petitioner has demonstrated a quite adequate ability to articulate and  
7 present his claims and contentions. The Court finds that the interests of justice do not require  
8 that counsel be appointed in this matter, and the motion therefore will be denied.

9 The Court notes in this regard that petitioner attached with the counsel motion fifteen  
10 pages "case statement" containing unsworn unsigned allegations. Out of an abundance of  
11 caution, the Court will give petitioner thirty days within which to mail a petition to the Clerk of  
12 Court for filing. The Court expresses no opinion as to whether any such claims in such a  
13 petition would relate back to the unsworn unsigned "case statement" in the event of any issue  
14 as to the timeliness of a claim or claims in the petition.

15 The Clerk will provide petitioner two copies of a noncapital Section 2254 petition form.  
16 Under Local Rule LSR 3-1, petitioner must use the petition form. He must state his claims  
17 within the body of the petition itself. He thus may not use a *pro se* brief to set forth claims,  
18 allegations, and arguments that are not contained in the petition on the required form. He  
19 further may not cross-reference or incorporate other documents and materials in order to  
20 state his claims. Again, he must set forth his allegations within the body of the petition form.

21 Turning to the motion to raise petitioner's institutional copy credit limit, petitioner  
22 asserts that he has exceeded the \$100.00 maximum credit limit for legal copies with a current  
23 credit balance of \$193.00. He seeks approval of a total of \$700.00 in copy costs at ten cents  
24 per page. He seeks: (a) \$50.00 for copies for two non-habeas, non-civil rights cases filed  
25 against business partners; (b) \$178.00 for extensive copying in connection with a civil rights  
26 complaint against ten defendants; (c) \$137.00 for four copies of a 125-page federal habeas  
27 petition for the present case together with 150 pages of attached transcripts, including a file  
28 copy of his only original, a "conform" copy for filing, and, apparently, two copies for service;

1 (d) \$40.00 to send another copy of his federal petition and attachments to counsel appointed  
2 for him; (e) \$100.00 for copying identified only as “miscellaneous;” and (f) \$195.00 to clear  
3 his current accrued and unpaid copy credit charges from his state habeas proceedings.

4 The Court will grant a copy credit increase of only \$20.00, which is more than sufficient  
5 for petitioner to file a federal petition herein.

6 First, with respect to the present action, petitioner need only preserve a file copy of  
7 what he mails to the Clerk. Following screening, the Court will direct that the Clerk send a  
8 copy of the petition filed to petitioner. He thus need not send a conform copy in this case.  
9 If service is ordered following screening, the Court will direct that the Clerk send a copy of the  
10 petition to respondents. He thus does not need service copies of the petition. Counsel has  
11 not been appointed, so petitioner does not need an additional copy for counsel. If counsel  
12 were appointed, the Court would direct that the Clerk send a copy of the petition to counsel.

13 In this same vein, petitioner does not need to send 150 pages of transcripts with his  
14 petition. He instead must attach only copies of the written state court decisions regarding his  
15 conviction and sentence. If, following screening, the Court needed to review state court  
16 record materials, the Court would enter an appropriate order in this regard.

17 A copy credit increase of \$20.00 thus is more than sufficient to enable petitioner to file  
18 a federal habeas petition.

19 Second, petitioner has no right to state or federal governmental assistance to pursue  
20 general civil litigation other than habeas matters or civil rights matters regarding the conditions  
21 of his confinement. *Lewis v. Casey*, 518 U.S. 343, 354-55, 116 S.Ct. 2174, 2181-82, 135  
22 L.Ed.2d (1996). If petitioner pursues other general civil litigation against other parties, he will  
23 have to bear that expense and will have to do so with other than governmentally-provided  
24 resources. That may mean that petitioner may have to make a judgment as to which litigation  
25 he wishes or needs to pursue the most. Not every person in the free world is able to pursue  
26 every litigation matter that they otherwise might pursue if they had more resources to bring  
27 to bear. Being in prison does not give rise to petitioner having a right to pursue general civil  
28 litigation with the use of governmentally-provided resources. *Lewis, supra*.

1 Third, the Court will not enter any order in this action regarding copying charges  
2 incurred or to be incurred in other state or federal actions. Such charges do not pertain to the  
3 present action, which is the only matter considered here.

4 IT THEREFORE IS ORDERED that the application (#1) to proceed *in forma pauperis*  
5 is GRANTED such that petitioner will not be required to pay the \$5.00 filing fee.

6 IT FURTHER IS ORDERED that the motion (#2) for counsel is DENIED.

7 IT FURTHER IS ORDERED that the motion (#3) to raise petitioner's copy credit limit  
8 is GRANTED IN PART and DENIED IN PART, such that the Nevada Department of  
9 Corrections shall increase petitioner's copy credit limit by \$20.00. **If petitioner exhausts this**  
10 **amount on other copying rather than for the filing of a federal habeas petition, the copy**  
11 **limit will not be raised again.**

12 IT FURTHER IS ORDERED that, within thirty (30) days of entry of this order, petitioner  
13 shall mail a federal habeas petition to the Clerk of Court for filing that is on the Court's  
14 required Section 2254 petition form, together with copies of all state court written decisions  
15 and remittiturs regarding his conviction and sentence. **Petitioner shall place the docket**  
16 **number for this action on the petition in the appropriate space.**

17 This action will be dismissed without further advance notice if petitioner fails to both  
18 fully and timely comply with this order.

19 The Clerk of Court shall send petitioner two copies of a noncapital Section 2254  
20 petition form along with one copy of the instructions for same.

21 The Clerk further shall send a copy of this order to the attention of the **Chief of Inmate**  
22 **Services for the Nevada Department of Corrections, P.O. Box 7011, Carson City, NV**  
23 **89702.**

24 DATED: November 22, 2010



25  
26  
27 

---

KENT J. DAWSON  
United States District Judge