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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

FERRILL JOSEPH VOLPICELLI,

*Petitioner,*

vs.

JACK PALMER, *et al.*

*Respondents.*

3:10-cv-00005-LRH-VPC

ORDER

This habeas matter under 28 U.S.C. § 2254 comes before the Court on petitioner’s motion (#8) for appointment of counsel and his motion (#9) to file copies only of the state court written decisions. The latter motion follows upon a screening order directing petitioner to file copies of the state court decisions along with copies of state court filings reflecting the pertinent writ history.

Following review of the 143-page petition, the motion for appointment of counsel will be denied. The Sixth Amendment right to counsel does not apply in habeas corpus actions. *See Knaubert v. Goldsmith*, 791 F.2d 722, 728 (9th Cir.), *cert. denied*, 479 U.S. 867 (1986). However, 18 U.S.C. § 3006A(a)(2)(B) authorizes a district court to appoint counsel to represent a financially eligible habeas petitioner whenever "the court determines that the interests of justice so require." The decision to appoint counsel lies within the discretion of the court; and, absent an order for an evidentiary hearing, appointment is mandatory only when the circumstances of a particular case indicate that appointed counsel is necessary to prevent a due process violation. *See, e.g., Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.1986); *Eskridge v. Rhay*, 345 F.2d 778, 782 (9th Cir.1965). Petitioner, an experienced frequent litigator in this Court, has demonstrated herein an adequate ability to present his claims.

1 The motion to file copies only of the state court written decisions will be granted to the extent  
2 that the Court will direct respondents to file a limited records-only response including the additional  
3 state court record materials needed to complete screening review.

4 IT THEREFORE IS ORDERED that petitioner's motion (#8) for appointment of counsel is  
5 DENIED.

6 IT FURTHER IS ORDERED that the Clerk of Court shall add Attorney General Catherine  
7 Cortez Masto as counsel for respondents and shall make informal electronic service of this order  
8 (together with an attachment with copies of ## 7 & 9) upon respondents by directing a notice of  
9 electronic filing to her. Counsel shall enter a notice of appearance within twenty (20) days thereafter.

10 IT FURTHER IS ORDERED that, within sixty (60) days of entry of this order, respondents  
11 shall file -- and serve upon petitioner -- an indexed set of exhibits with copies of the following, in  
12 chronological order:<sup>1</sup>

- 13 (a) the judgment of conviction and any amendments thereto;
- 14 (b) the briefing and/or fast track statements on direct appeal;
- 15 (c) the order of affirmance and remittitur on direct appeal;
- 16 (d) all papers filed by or on behalf of petitioner presenting  
17 state post-conviction claims in the state district court;
- 18 (e) the written decisions of the state district court on state  
19 post-conviction review, including the interlocutory  
20 decision ruling on certain claims without an evidentiary  
21 hearing;
- 22 (f) all papers accepted for filing by or on behalf of petitioner  
23 presenting claims to the Supreme Court of Nevada on the  
24 post-conviction appeal; and
- 25 (g) the order of affirmance and remittitur on said appeal.

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28 <sup>1</sup>While there is some duplication of the incomplete materials filed by petitioner, the Court is seeking to have one set of the pertinent state record exhibits available in one location in the record for this and any reviewing courts.

1 IT FURTHER IS ORDERED that the exhibits shall be filed with a separate index of exhibits  
2 identifying the exhibits by number or letter. The CM/ECF attachments that are filed further shall be  
3 identified by the number(s) or letter(s) of the exhibits in the attachment. Cf. No.  
4 3:06-cv-00129-LRH-VPC, ## 20-27. The purpose of this provision is so that the Court and any  
5 reviewing court thereafter will be able to determine from the face of the electronic docket sheet which  
6 exhibits are filed in which attachments. **Given the anticipated small volume of the exhibits, there**  
7 **is no need to send a hard copy courtesy copy of the exhibits directed to the staff attorney in Las**  
8 **Vegas for this filing.**

9 **No further response – other than the above – is required from respondents at this time,**  
10 **as the matter remains under screening review.**

11 IT FURTHER IS ORDERED that, following service of respondents' counsel's notice of  
12 appearance, petitioner thereafter shall serve a copy of all papers submitted to the Court upon the  
13 individual attorney named in the notice of appearance (or successor thereto) and shall attach with all  
14 such papers submitted a certificate of service upon that attorney. Papers submitted to the Court without  
15 a certificate of service upon the individual attorney named in the notice of appearance (or successor  
16 thereto) may be stricken and/or any requests for relief therein may be denied.

17 DATED this 5th day of February, 2011.



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21 LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE

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