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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

TACUMA J. M'WANZA,

*Petitioner,*

vs.

RENE BAKER, *et al.*,

*Respondents.*

3:14-cv-00096-LRH-VPC

ORDER

This habeas matter comes before the Court on petitioner's application (#1) to proceed *in forma pauperis* and motion (#1-2) for counsel as well as for initial review of the petition under Rule 4 of the Rules Governing Section 2254 Cases. The Court finds that petitioner is unable to pay the filing fee, and the pauper application therefore will be granted.

On petitioner's motion for appointment of counsel, the Sixth Amendment right to counsel does not apply in habeas corpus actions. *See Knaubert v. Goldsmith*, 791 F.2d 722, 728 (9th Cir. 1986). However, 18 U.S.C. § 3006A(a)(2)(B) authorizes a district court to appoint counsel to represent a financially eligible 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).

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1 IT FURTHER IS ORDERED that any procedural defenses raised by respondents in this case  
2 shall be raised together in a single consolidated motion to dismiss. In other words, the Court does not  
3 wish to address any procedural defenses raised herein either in *seriatum* fashion in multiple successive  
4 motions to dismiss or embedded in the answer. Procedural defenses omitted from such motion to  
5 dismiss will be subject to potential waiver. Respondents shall not file a response in this case that  
6 consolidates their procedural defenses, if any, with their response on the merits, except pursuant to 28  
7 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If respondents do seek  
8 dismissal of unexhausted claims under § 2254(b)(2): (a) they shall do so within the single motion to  
9 dismiss not in the answer; and (b) they shall specifically direct their argument to the standard for  
10 dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In  
11 short, no procedural defenses, including exhaustion, shall be included with the merits in an answer. All  
12 procedural defenses, including exhaustion, instead must be raised by motion to dismiss.

13 IT IS FURTHER ORDERED that, in any answer filed on the merits, respondents shall  
14 specifically cite to and address the applicable state court written decision and state court record  
15 materials, if any, regarding each claim within the response as to that claim.

16 IT IS FURTHER ORDERED that respondents shall file a set of state court record exhibits  
17 relevant to the response filed to the petition, in chronological order and indexed as discussed, *infra*.

18 IT IS FURTHER ORDERED that all state court record exhibits filed herein shall be filed with  
19 a separate index of exhibits identifying the exhibits by number. The CM/ECF attachments that are filed  
20 further shall be identified by the number or numbers of the exhibits in the attachment, in the same  
21 manner as in No. 3:06-cv-00087-ECR-VPC, ## 25-71. The purpose of this provision is so that the  
22 Court and any reviewing court thereafter will be able to quickly determine from the face of the  
23 electronic docket sheet which numbered exhibits are filed in which attachments.

24 IT IS FURTHER ORDERED that counsel additionally shall send a hard copy of all exhibits  
25 filed to, for this case, the **Reno Clerk's Office**.

26 IT IS FURTHER ORDERED that petitioner shall have **thirty (30) days** from service of the  
27 answer, motion to dismiss, or other response to mail a reply or response to the Clerk of Court for filing.  
28 This deadline shall override any shorter deadline pursuant to a notice under the *Klinge* decision.

1 IT IS FURTHER ORDERED that, henceforth, petitioner shall serve upon respondents or, if an  
2 appearance has been entered by counsel, upon the individual deputy attorney general identified in the  
3 notice of appearance, at the address stated therein, a copy of every pleading, motion or other document  
4 submitted for consideration by the Court. Petitioner shall include with the original paper submitted for  
5 filing a certificate stating the date that a true and correct copy of the document was mailed to  
6 respondents or counsel for respondents. The Court may disregard any paper received by a district judge  
7 or magistrate judge which has not been filed with the Clerk, and any paper received by a district judge,  
8 magistrate judge or the Clerk that fails to include an appropriate certificate of service.

9 IT IS FURTHER ORDERED that all requests for relief must be presented by a motion satisfying  
10 the requirements of Rule 7(b) of the Federal Rules of Civil Procedure. The Court and the Clerk do not  
11 respond to letters and do not take action based upon letters, other than a request for a status check on  
12 a matter submitted for more than sixty days. Further, neither the Court nor the Clerk can provide legal  
13 advice or instruction.

14 DATED this 4th day of August, 2014.

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17 LARRY R. HICKS  
18 UNITED STATES DISTRICT JUDGE  
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