

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FRANK MACIAS,

Petitioner,

vs.

RENEE BAKER, *et al.*,

Respondents.

Case No. 3:15-cv-00461-RCJ-VPC

ORDER

Petitioner Frank Macias has submitted a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court shall grant his application to proceed *in forma pauperis* (ECF No. 1). The court has reviewed the petition pursuant to Habeas Rule 4, and the petition shall be docketed and served.

A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. *See* 28 U.S.C. § 2254(b) (successive petitions). If petitioner is aware of any claim not included in his petition, he should notify the court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

Also before the court is petitioner's motion for the appointment of counsel (ECF No. 1-2). There is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir.1993). The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th

1 Cir.1986), cert. denied, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), cert.
2 denied, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities of the case are
3 such that denial of counsel would amount to a denial of due process, and where the petitioner is a person
4 of such limited education as to be incapable of fairly presenting his claims. *See Chaney*, 801 F.2d at
5 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir.1970). The petition on file in this action
6 appears sufficiently clear in presenting the issues that petitioner wishes to raise, and the legal issues do
7 not appear to be particularly complex; therefore, counsel is not justified. Petitioner's motion is denied.

8 **IT THEREFORE IS ORDERED** that petitioner's application to proceed *in forma pauperis*
9 (ECF No. 1) is **GRANTED**.

10 **IT FURTHER IS ORDERED** that the Clerk shall file and **ELECTRONICALLY SERVE** the
11 petition (ECF No. 1-1) on the respondents.

12 **IT FURTHER IS ORDERED** that respondents shall file a response to the petition, including
13 potentially by motion to dismiss, within **ninety (90) days** of service of the petition, with any requests
14 for relief by petitioner by motion otherwise being subject to the normal briefing schedule under the local
15 rules. **Any response filed shall comply with the remaining provisions below, which are entered**
16 **pursuant to Habeas Rule 5.**

17 **IT FURTHER IS ORDERED** that any procedural defenses raised by respondents in this case
18 shall be raised together in a single consolidated motion to dismiss. In other words, the court does not
19 wish to address any procedural defenses raised herein either in *seriatum* fashion in multiple successive
20 motions to dismiss or embedded in the answer. Procedural defenses omitted from such motion to
21 dismiss will be subject to potential waiver. Respondents shall not file a response in this case that
22 consolidates their procedural defenses, if any, with their response on the merits, except pursuant to 28
23 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If respondents do seek dismissal
24 of unexhausted claims under § 2254(b)(2): (a) they shall do so within the single motion to dismiss **not**
25 in the answer; and (b) they shall specifically direct their argument to the standard for dismissal under §
26 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural
27 defenses, including exhaustion, shall be included with the merits in an answer. All procedural defenses,
28 including exhaustion, instead must be raised by motion to dismiss.

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

IT FURTHER IS ORDERED that petitioner shall have **thirty (30) days** from service of the answer, motion to dismiss, or other response to file a reply or opposition, with any other requests for relief by respondents by motion otherwise subject to the normal briefing schedule under the local rules.

IT FURTHER IS ORDERED that any additional state court record exhibits filed herein by either petitioner or respondents shall be filed with a separate index of exhibits identifying the exhibits by number. The CM/ECF attachments that are filed further shall be identified by the number or numbers of the exhibits in the attachment.

IT FURTHER IS ORDERED that the parties **SHALL SEND** courtesy copies of all exhibits to the **Reno** Division of this court. **While the Local Rules provide that parties should send paper courtesy copies of filings over fifty pages, in this instance, courtesy copies may be in paper form or as PDF documents saved to a CD—so long as each PDF is clearly identified by exhibit number.** Courtesy copies shall be mailed to the Clerk of Court, 400 S. Virginia St., Reno, NV, 89501, and directed to the attention of “Staff Attorney” on the outside of the mailing address label. Additionally, in the future, all parties shall provide courtesy copies of any additional exhibits submitted to the court in this case, in the manner described above.

IT FURTHER IS ORDERED that the Clerk shall detach and file petitioner's motion for appointment of counsel (ECF No. 1-2). The motion for appointment of counsel is **DENIED**.

IT FURTHER IS ORDERED that petitioner's motions for extension of time to file his application to proceed *in forma pauperis* (ECF No. 3) and motion to withdraw motion for extension of time (ECF No. 4) are both **DENIED** as moot.

DATED: This 6th day of May, 2016.

UNITED STATES DISTRICT JUDGE