

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DONALD DELONEY,

Case No. 3:16-cv-00108-MMD-VPC

Petitioner,

ORDER

WICKHAM, et al.,

Respondents.

This *pro se* petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254 is before the Court on petitioner Donald Deloney's second and third motions for appointment of counsel. (ECF Nos. 11, 20.) He also filed a motion to supplement the third motion for counsel. (ECF No. 22.)

As the Court previously stated in this case, 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 Cir.1986), cert. denied, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), cert. denied, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities of the case are such that denial of counsel would amount to a denial of due process, and where the petitioner is a person of such limited education as to be incapable of fairly presenting his claims. See *Chaney*, 801 F.2d at 1196; see also *Hawkins v. Bennett*, 423 F.2d 948 (8th Cir.1970). The court denied Deloney's first motion for appointment of counsel because the petition appears sufficiently clear in presenting the

1 issues that he wishes to raise, and the legal issues are not particularly complex. Deloney
2 now argues that Warm Springs Correctional Center does not provide physical access to
3 the law library in order that he might consult case law and that the prison law clerks have
4 little understanding of the law. Again, Deloney has fairly presented his claims and does
5 not present new arguments here to persuade the Court that due process requires counsel
6 in this case. Therefore, Deloney's motions for counsel are denied.

7 It is therefore ordered that the following motions filed by petitioner: motion to grant
8 attorney (ECF No. 11); motion for appointment of counsel (ECF No. 20); motion to
9 suspend case until motion for counsel is heard (ECF No. 21); and motion to amend motion
10 for counsel (ECF No. 22) are all denied.

11 It is further ordered that respondents' motion for extension of time to file a
12 responsive pleading (ECF No. 9) is granted *nunc pro tunc*.

13 It is further ordered that petitioner's motion to squash/not grant respondents'
14 motion for extension of time (ECF No. 10) is denied.

15 It is further ordered that petitioner must file his opposition to the motion to dismiss,
16 if any, within thirty (30) days of the date of this order.

17 DATED THIS 17th day of April 2017.



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20 MIRANDA M. DU
21 UNITED STATES DISTRICT JUDGE
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