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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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RICHARD NICHOLSON,

Petitioner,

v.

RENEE BAKER, *et al.*,

Respondents.

Case No. 3:16-cv-00486-MMD-WGC

ORDER

On May 22, 2018, the Court entered an order granting Respondents' unopposed motion to dismiss. (ECF No. 22.) The Court found that Grounds 1(b) and 3 of the Petition are unexhausted and directed Petitioner to advise the Court how he wished to proceed in light of the mixed petition. In response, Petitioner filed a motion that is difficult to interpret, as it cites Federal Rule of Civil Procedure 59(e) without indicating why the Court should reconsider its prior order, and appears to seek both dismissal of the unexhausted claims and a stay. (ECF No. 23.) The motion indicates that Petitioner wants to obtain counsel to advise him how to proceed.

Petitioner has heretofore not requested appointment of counsel in these proceedings. However, the latest motion, the state court proceedings, and the Petition itself all suggest that Petitioner may not be able to adequately represent himself. Because Petitioner's latest motion indicates a desire to obtain counsel, the Court construes the motion, in part, as a motion for appointment of counsel. So construed, the motion will be granted. In light of Petitioner's mental health issues and the difficulties he appears to

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1 face in litigating his Petition, the Court believes that appointment of counsel is in the  
2 interests of justice. See 18 U.S.C. § 3006A.

3 To the extent Petitioner seeks reconsideration of the Court's May 22, 2018 Order,  
4 the motion is denied. To the extent Petitioner seeks dismissal of his unexhausted claims  
5 and/or a stay and abeyance, the motion is denied without prejudice to renew following the  
6 appearance of counsel on Petitioner's behalf.

7 It is therefore ordered that the Federal Public Defender will be provisionally  
8 appointed as counsel and will have thirty (30) days to undertake direct representation of  
9 Petitioner or to indicate to the Court the office's inability to represent Petitioner in these  
10 proceedings. If the Federal Public Defender is unable to represent Petitioner, the Court  
11 then will appoint alternate counsel. The counsel appointed will represent Petitioner in all  
12 federal proceedings related to this matter, including any appeals or certiorari proceedings,  
13 unless allowed to withdraw. The deadline for Petitioner to respond to the Court's May 22,  
14 2018 Order and/or to seek other relief will be reset after counsel has entered an  
15 appearance.

16 It is further ordered that the Clerk send a copy of this Order to the *pro se* Petitioner,  
17 the Nevada Attorney General, the Federal Public Defender, and the CJA Coordinator for  
18 this division.

19 DATED THIS 20<sup>th</sup> day of June 2018.

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23 MIRANDA M. DU  
24 UNITED STATES DISTRICT JUDGE  
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