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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Richard Dean Hurles,

10 Petitioner,

11 v.

12 Charles L. Ryan, et al.,

13 Respondents.  
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No. CV-00-118-PHX-DLR

DEATH PENALTY CASE

**ORDER**

15 This matter, remanded from the Ninth Circuit, is set for an evidentiary hearing on  
16 Petitioner's judicial bias claim. Before the Court is Petitioner's motion to compel  
17 disclosure. (Doc. 161.) He seeks the following information: 1) a list of special actions  
18 filed after January 1, 1990, in which the office of the Arizona Attorney General  
19 represented a judge or the court named as the petitioner or respondent, and 2) a list of  
20 special actions in which Colleen French, while employed as an Assistant Attorney  
21 General, represented a party in a special action. (*Id.*) Respondents oppose the motion.  
22 (Doc. 164.)

23 **DISCUSSION**

24 A habeas petitioner is not entitled to discovery "as a matter of ordinary course."  
25 *Bracy v. Gramley*, 520 U.S. 899, 904 (1997); *see Campbell v. Blodgett*, 982 F.2d 1356,  
26 1358 (9th Cir. 1993). Rule 6 of the Rules Governing Section 2254 Cases provides that:

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28 A judge may, for *good cause*, authorize a party to conduct discovery under  
the Federal Rules of Civil Procedure and may limit the extent of discovery.

1 . . . A party requesting discovery must provide reasons for the request. The  
2 request must also include any proposed interrogatories and requests for  
admission, and must specify any requested documents.

3 Rule 6(a) and (b), Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254 (emphasis  
4 added).

5 Whether a petitioner has established “good cause” for discovery under Rule 6(a)  
6 requires a court to determine the essential elements of the petitioner’s substantive claim  
7 and evaluate whether “specific allegations before the court show reason to believe that  
8 the petitioner may, if the facts are fully developed, be able to demonstrate that he is . . .  
9 entitled to relief.” *Bracy*, 520 U.S. at 908–09 (quoting *Harris v. Nelson*, 394 U.S. 286,  
10 300 (1969)).

11 In remanding the case, the Ninth Circuit directed this Court to determine “whether  
12 the probability that Judge Hilliard harbored actual [bias] against Hurles is too high to be  
13 constitutionally tolerable.” *Hurles v. Ryan*, 752 F.3d 768, 792 (9th Cir. 2014) (quoting  
14 *Bracy v. Gramley*, 520 U.S. 899, 904 (1997)). To make the determination, the Court must  
15 ask “whether the average judge, in Judge Hilliard’s position, was likely to sit as a neutral,  
16 unbiased arbiter or whether there existed an unconstitutional risk of bias.” *Id.* The Ninth  
17 Circuit explained that impermissible bias could be shown by “proof that Judge Hilliard  
18 participated in the special action proceedings as more than a nominal party, had contact  
19 with French, commissioned or authorized the responsive pleading or provided any input  
20 on the brief” or became “embroiled in a running, bitter controversy” with Petitioner or  
21 counsel. *Id.*

22 The Court agrees with Respondents that the interview statements made by  
23 Commissioner French, which form the basis for Petitioner’s request for disclosure, do not  
24 suggest that it was unusual for the Attorney General’s Office to respond to a special  
25 action on behalf of a judge or court. French was asked “how many special actions you  
26 think you were involved in?” (Doc. 161-1.) She answered, “I can think of one other one.”  
27 (*Id.*) Even assuming there is some relevance to the frequency of these special actions, the  
28 fact that Commissioner French had been involved in two special actions says nothing

1 about the rarity of cases such as Petitioner's.

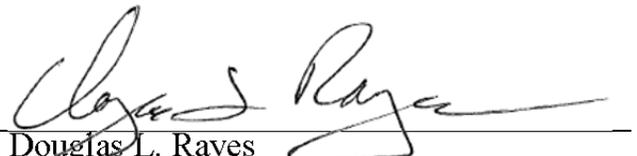
2 In addition, as Respondents note, information about unrelated special actions  
3 where the Attorney General's Office represented a court or a judge are irrelevant to a  
4 determination of whether Judge Hilliard in fact was personally involved in Petitioner's  
5 special action. Even assuming, as Petitioner speculates, that the rarity of such cases might  
6 suggest a higher level of participation on Judge Hilliard's part, such information is not  
7 relevant to the issue of Judge Hilliard's actual level of participation, which can only be  
8 established by the testimony of Commissioner French and Judge Hilliard herself.  
9 Information about other special actions will not answer the question posed by the Ninth  
10 Circuit on remand: whether Judge Hilliard participated in the special action as more than  
11 a nominal party, had contact with French, or commissioned, authorized, or provided input  
12 on the responsive brief. *Hurles*, 752 F.3d at 792.

13 For these reasons, Petitioner has not shown "good cause" for the requested  
14 disclosure.

15 Accordingly,

16 **IT IS ORDERED** denying Petitioner's motion to compel disclosure (Doc. 161).

17 Dated this 4th day of January, 2016.

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22 Douglas L. Rayes  
23 United States District Judge  
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