

1 **WO**

RP

2 NOT FOR PUBLICATION

3

4

5

6

7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**

9

10 Bryan L. Booker,)	No. CV 10-1730-PHX-GMS (ECV)
11 Petitioner,)	ORDER
12 vs.)	
13)	
14 Charles L. Ryan,)	
15 Respondent.)	
16 _____		

17 On August 12, 2010, Petitioner Bryan L. Booker, who is confined in the Arizona State
18 Prison Complex-Yuma (ASPC-Yuma), filed a “Motion To Request The Court To Suspend
19 Filing Time Frames” (Doc. 1). Petitioner’s pleading is not accompanied by a petition for writ
20 of habeas corpus.

21 The Court is not able to construe the pleading as a petition for writ of habeas corpus
22 because the pleading is not accompanied by the statutory filing fee or an application to
23 proceed *in forma pauperis*, is not filed on the court-approved form for filing a petition for
24 writ of habeas corpus, does not specify any grounds for habeas corpus relief, does not set
25 forth any facts supporting any grounds, and does not specify the habeas relief requested. See
26 Rule 2(c) of the Rules Governing Section 2254 Cases in the United States District Courts.
27 Also, Petitioner’s pleading only provides limited information about Petitioner’s conviction
28

1 and sentence.

2 In his Motion, Petitioner states that he has “just learned that if he files a habeas corpus
3 petition containing both exhausted and unexhausted claims, the district court must dismiss
4 the petition as ‘mixed’” and that “[i]n order to prevent [him] from filing a mixed petition,
5 Petitioner is revisiting the state court to give them a ‘full and fair’ opportunity to resolve his
6 federal claims.” Petitioner requests that this Court “grant this Motion and [] suspend his time
7 frames for filing a habeas corpus petition.”

8 Essentially, Petitioner appears to be seeking an advisory opinion from this Court
9 regarding the application of the time limits imposed by 28 U.S.C. § 2244(d)(1), which
10 provides in part that “[a] 1-year period of limitation shall apply to an application for a writ
11 of habeas corpus by a person in custody pursuant to the judgment of a State court.”
12 However, a federal court may not issue advisory opinions. See United States v. Cook, 795
13 F.2d 987, 994 (Fed. Cir. 1986) (district court erred in tolling statute of limitations as to future
14 claims by persons not party to the case before the court). Accordingly, the Court lacks
15 jurisdiction to entertain Petitioner’s Motion and the Motion will therefore be denied without
16 prejudice, and this matter will also be dismissed without prejudice.

17 Because this matter is being dismissed without prejudice, Petitioner is in no way
18 prevented by this Order from filing a future petition for writ of habeas corpus in a new case
19 in this Court. Also, Petitioner should note that in Rhines v. Weber, 544 U.S. 269, 277-78
20 (2005), the Supreme Court held that a district court could stay a “mixed petition” in order for
21 a petitioner to present his unexhausted claims to the state court, after which he could return
22 to federal court to prosecute his petition. However, such a stay is only appropriate when
23 (1) the petitioner has good cause for failing to exhaust, (2) his unexhausted claims are
24 potentially meritorious, and (3) there is no indication that the petitioner engaged in
25 intentionally dilatory litigation tactics. Id.

26 **IT IS ORDERED:**

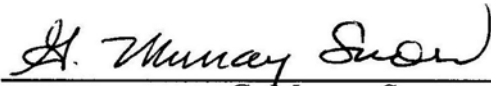
27 (1) Petitioner’s a “Motion To Request The Court To Suspend Filing Time Frames”
28 (Doc. 1) is **denied without prejudice.**

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

(2) This matter is **dismissed without prejudice for lack of jurisdiction** and the Clerk of Court **must enter** judgment accordingly.

(3) Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, in the event Petitioner files an appeal, the Court declines to issue a certificate of appealability because reasonable jurists would not find the Court’s procedural ruling debatable. See Slack v. McDaniel, 529 U.S. 473, 484 (2000).

DATED this 31st day of August, 2010.



G. Murray Snow
United States District Judge