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

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Lezmond Mitchell,)

No. CV-09-8089-PCT-MHM

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Petitioner,)

DEATH PENALTY CASE

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vs.)

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United States of America,)

**ORDER RE: MOTION TO DECLARE
ATTORNEY-CLIENT PRIVILEGE
WAIVED**

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Respondent.)

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Respondent has filed a motion requesting that the Court declare Petitioner’s attorney-client privilege waived. (Dkt. 29.) The motion asserts that Petitioner’s trial counsel will not consent to an informal interview by Respondent – for the purpose of investigating Petitioner’s allegations of counsel ineffectiveness – without a written waiver from Petitioner or order of the Court. (*Id.* at 2.) The motion further states that Petitioner will not provide a written waiver. (*Id.*)

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Courts have uniformly held that a claim alleging ineffective assistance of counsel waives the attorney-client privilege, at least within the scope of the issues raised by the claim. *See In re Lott*, 424 F.3d 446, 452-53 (6th Cir. 2005); *Bittaker v. Woodford*, 331 F.3d 715, 718-19 (9th Cir. 2003); *Johnson v. Alabama*, 256 F.3d 1156, 1178 (11th Cir. 2001); *United States v. Ballard*, 779 F.2d 287, 292 (5th Cir. 1986). The inquiry required by *Strickland v. Washington*, 466 U.S. 668, 669 (1984), presupposes that the Government will be given a fair opportunity to defend against Petitioner’s claims alleging ineffective assistance of counsel.

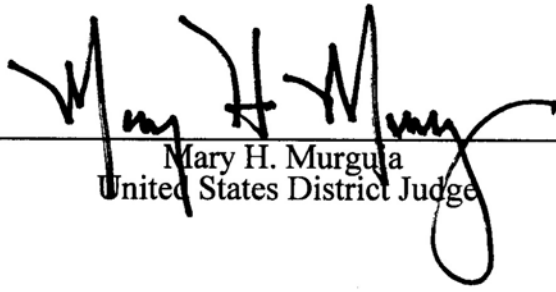
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1 *Bittaker*, 331 F.3d at 720. Therefore, if any of Petitioner's prior attorneys are unwilling to
2 participate in informal interviews with the Government or the Government would prefer to
3 depose these individuals, the Court finds good cause under Rule 6 of the Rules Governing
4 Section 2255 Cases for such depositions.

5 Based on the foregoing,

6 **IT IS ORDERED** that Respondent's Motion to Declare Attorney-Client Privilege
7 Waived (Dkt. 29) is **GRANTED**.

8 DATED this 3rd day of December, 2009.

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13 Mary H. Murgula
14 United States District Judge
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