

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION**

TONY A. HICKMAN,	)	
ADC # 090793	)	
Petitioner,	)	<b>Case No. 5:12-CV-00309 SWW-JTK</b>
v.	)	
	)	
RAY HOBBS, Director,	)	
Arkansas Department of Correction	)	
Respondent.	)	

**ORDER FOR SUBMISSION OF MATERIAL AND BRIEFING**

The Court orders the parties to submit any materials,<sup>1</sup> along with any briefing, that would assist in determining whether a second Rule 37 petition was filed in July of 2011 and what the effects of such a filing would be on the statute of limitations. Recommendations regarding what further actions may be necessary to investigate the matter should also be included.

The Court also requests briefing describing the effect, if any, this would have on whether Petitioner's claims are procedurally defaulted. This should include, but is not limited to the following issues:

1. Assuming a second petition was filed and lost, did Petitioner have any duty to seek a ruling on that petition?
2. Was he obligated to make an appeal or file a writ of mandamus?
3. Was he required to have notified the circuit court and Arkansas Supreme Court of this alleged second petition's existence during the prosecution of his 2012 motion to correct error, which was treated as an untimely Rule 37 petition?

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<sup>1</sup> For example, an affidavit from Hayden Shurgar explaining the September 1, 2011 Rule 37 response could prove helpful.

Finally, the Court instructs Petitioner that any such submissions must conform with Local Rule 5.5(a) because the previous submissions have been difficult to read. They must not be handwritten.

The parties shall submit these materials no later than February 21, 2014.

SO ORDERED this 19<sup>th</sup> day of December, 2013.

A handwritten signature in black ink, consisting of a large, stylized 'O' followed by a series of loops and a long horizontal stroke extending to the right.

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United States Magistrate Judge