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UNITED STATES DISTRICT COURT
FOR CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

Ernest Dewayne Jones,
Petitioner,

v.

Vincent Cullen, Warden of California
State Prison at San Quentin,
Respondent.

Case No. CV-09-2158-CJC

DEATH PENALTY CASE

NOTICE OF MOTION AND MOTION
FOR MORE DEFINITE STATEMENT
AND MEMORANDUM IN SUPPORT

Date: May 24, 2010
Time: 1:30 p.m.
Courtroom: 9B

PLEASE TAKE NOTICE THAT on May 24, 2010, at 1:30 p.m., in the courtroom of the Honorable Cormac J. Carney, United States District Judge, petitioner Ernest Dewayne Jones will move the Court for an order compelling respondent to provide a more definite statement of respondent's averments in response to the Petition for Writ of Habeas Corpus by a Prisoner in State Custody (28 U.S.C. § 2254) ("Petition"), Doc. 26, filed Mar. 10, 2010. This motion is brought pursuant to Rule 12(e) of the Federal Rules of Civil Procedure and Rule 12 of the Rules Governing Section 2254 Cases in the United States District Courts.¹

¹ Rule 12 provides that the Federal Rules of Civil Procedure may be applied to proceedings under 28 U.S.C. Section 2254 to the extent that they are not inconsistent

1 As more fully set forth in the accompanying Memorandum in Support,
2 respondent's Answer to Petition for Writ of Habeas Corpus ("Answer"), Doc. 28, filed
3 Apr. 6, 2010, fails to address the allegations in the Petition as required by Rule 5 of the
4 Rules Governing Section 2254 Cases in the United States District Courts, and is so
5 vague and ambiguous that petitioner cannot reasonably compose a responsive
6 pleading.

7 Petitioner seeks an order compelling respondent to provide petitioner with a
8 more definite statement of his averments and that petitioner be permitted to file a
9 Traverse thirty (30) days from this Court's ruling on the instant motion or thirty (30)
10 days from the filing of an amended Answer, whichever is later.

11 This motion is based on this notice of motion, the attached memorandum of
12 points and authorities, all pleadings and files in this case and any further argument that
13 may be made at the hearing on this motion.

14 Dated: April 23, 2010

Respectfully submitted,

HABEAS CORPUS RESOURCE CENTER

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18 By: /s/ Michael Laurence
19 MICHAEL LAURENCE
20 Attorneys for Petitioner Ernest Dewayne Jones
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with any statutory provisions or the rules governing section 2254 cases.

1 **MEMORANDUM IN SUPPORT OF MOTION FOR MORE DEFINITE**
2 **STATEMENT**

3 **A. FACTUAL BACKGROUND**

4 On March 10, 2010, petitioner filed a four hundred and thirty-two page Petition
5 containing thirty claims for relief with detailed factual allegations supporting each
6 claim, and incorporating by reference approximately 3,414 pages of exhibits, including
7 seventy-three witness declarations signed under penalty of perjury. In all respects, the
8 Petition comports with Rule 2 of the Rules Governing Section 2254 Cases in the
9 United States District Courts (“2254 Rules”) in that it sets forth the factual predicates
10 for each ground for relief. Respondent filed a seventy-four page Answer on April 6,
11 2010. Respondent submitted no exhibits in support of his positions or defenses. Most
12 importantly, the Answer constitutes a general denial of all allegations contained in the
13 Petition. (*See, e.g.*, Answer at 1 (“specifically and generally denies each and every
14 allegation”).)

15 **B. RESPONDENT’S ANSWER FAILS TO RESPOND TO THE**
16 **ALLEGATIONS OF THE PETITION AND FAILS TO PERMIT THE**
17 **PARTIES AND THE COURT TO IDENTIFY DISPUTED ISSUES**

18 Rule 5(b) provides that “The answer must address the allegations in the petition.
19 In addition, the answer must state whether any claim in the petition is barred by failure
20 to exhaust state remedies, a procedural bar, non-retroactivity, or a statute of
21 limitations.” 2254 Rule 5(b), 28 U.S.C. foll. §2254. Although respondent concedes in
22 his Answer that petitioner appears to have exhausted his state remedies, and identifies
23 which affirmative defenses upon which he will be relying, the Answer does not fully
24 comply with Rule 5 because it fails to “address the allegations in the petition.” *Id.*; *see*
25 *also* Local Civil Rules, Integrated with Titles of Federal Rules of Civil Procedure 83-
26 17.7(d) (“Respondent shall include in the answer the matters defined in Rule 5 of the
27 Rules Governing § 2254 Cases and shall attach any other relevant documents not
28 already lodged or filed.”).

1 One of the functions of the answer is to “permit the court and the parties to
2 uncover quickly the disputed issues.” *See* Advisory Committee Notes to 2254 Rule 5.
3 In *Williams v. Calderon*, 52 F.3d 1465, 1483 (9th Cir. 1995), the Ninth Circuit
4 specifically recognized that the purpose of the answer is “to frame the issues in
5 dispute, as well as to ferret out unmeritorious petitions.” Indeed, “[a] proper return by
6 the state will contain ‘factual allegations of the kind which show cause that the
7 procedure was designed to elicit, responding directly to those of the petition.’”
8 *Peterson v. Wilson*, 373 F.2d 737, 738 (9th Cir. 1967) (quoting *Gladden v. Gidley*, 337
9 F.2d 575, 578 (9th Cir. 1964).) The identification of undisputed facts is “intended to
10 avoid a useless trial of facts and issues over which there was really never any
11 controversy and which would tend to confuse and complicate a lawsuit.” *Lies v.*
12 *Farrell Lines*, 641 F.2d 765, 769 n.3 (9th Cir. 1981) (internal quotation omitted).
13 “Before a court can identify the existence of a material, factual dispute, however, each
14 party must properly place its portrayal of that fact before the court.” *United States v.*
15 *Moran-Garcia*, 783 F. Supp. 1266, 1269 (S.D. Cal. 1991). Early identification of the
16 facts in dispute is particularly critical in habeas corpus proceedings in which resources
17 are limited, the parties should avoid litigating facts that respondent does not have good
18 faith bases for disputing, and respondent was aware of the factual allegations in the
19 state court proceedings. *See, e.g., United States v. Vancol*, 916 F. Supp. 372, 377 (D.
20 Del. 1996) (recognizing that habeas corpus jurisprudence “attempts to reconcile the
21 competing interests of vindication of prisoners’ rights with the interests of finality in
22 criminal proceedings” and the wise use of scarce “judicial resources”).

23 When viewed in the context of the requirements and purpose of 2254 Rule 5(b),
24 respondent’s Answer is wholly deficient as it fails to set out the areas of factual dispute
25 and places this Court and petitioner in the untenable position of guessing what issues
26 are disputed. With regard to petitioner’s factual allegations in each of his thirty claims
27 in the Petition, respondent repeats the generic phrase “As to the factual allegations
28 made in support of Claim [], Respondent denies or lacks sufficient knowledge to

1 admit or deny, every allegation; alternatively, Respondent denies that the alleged facts,
2 if true, entitle Petitioner to federal habeas relief.” (Answer at 22, 23, 25, 26, 28, 29,
3 31, 33, 35, 37, 38, 41, 42, 45, 47, 48, 50, 51, 53, 54, 56, 58, 60, 61, 63, 65, 67, 69, 71
4 and 72.)

5 Many of the facts respondent denied, or of which he claims to lack sufficient
6 knowledge, are indeed within his knowledge or are contained in the record and,
7 therefore, readily ascertainable by him. For example, respondent denies all facts
8 alleged in the Introduction to the Petition. (Answer at 3-4) One of the facts contained
9 therein is petitioner’s date of birth, a fact which is contained in a number of
10 respondent’s official records (*e.g.* Notice of Lodging (“NOL”), Doc. 29, filed Apr. 6,
11 2010, C2 Ex. 50 at 1095; Ex. 88 at 1717; Ex. 180 at 3159); moreover, petitioner’s birth
12 certificate is an exhibit to his state petition for writ of habeas corpus (NOL C2 Ex. 26
13 at 268). Respondent also denies all facts as alleged by petitioner in the Procedural
14 History to the Petition. (Answer at 4.) Those facts include the superior court case
15 number and the date of petitioner’s conviction and sentence. The Procedural History
16 also chronicles the progress of petitioner’s trial proceedings from pretrial through
17 sentencing, and the course of his automatic appeal and habeas corpus proceedings in
18 state court, all of which respondent denies or states that he lacks the knowledge to
19 admit or deny. These factual allegations are drawn from documents in the record and
20 are either included in the clerk’s transcript of appeal, or are matters of public record
21 and, consequently, within respondent’s knowledge or easily discernible by him.
22 Moreover, a substantial portion of the documentary evidence relied on by petitioner in
23 support of his factual allegations are reports generated by law enforcement agencies
24 and other official police or sheriff’s department reports and documents. (*See, e.g.*,
25 Petition Claim One, subclaim B, Claims Three, Four, Five, and Nine.)

26 Respondent’s boilerplate response leaves both petitioner and this Court
27 completely ignorant of which facts are genuinely in dispute. As currently pled,
28 respondent’s Answer disputes every allegation in support of each ground for relief,

1 thus creating countless material disputed factual issues. Such a position will
2 necessarily entail extensive discovery into numerous factual issues that respondent
3 may at some later time determine are undisputed. In addition, petitioner must craft his
4 requests for investigation and experts' funds, conduct a wide-ranging investigation
5 encompassing every factual allegation in the Petition, and prepare the motion for
6 evidentiary hearing on the assumption that all facts are disputed. Thus, respondent's
7 failure to admit or deny, with specificity, any of petitioner's factual allegations waste
8 judicial resources, including court time and funds.

9 The Rules Governing Section 2254 cases were designed to create procedures for
10 expeditiously identifying and litigating disputed material facts, as evidenced by the
11 requirements for fact specific pleadings, as well as provisions for discovery and
12 evidentiary hearings. A proper answer as required by Rule 5 should respond directly
13 to the factual allegations not disputed, set forth respondent's specific factual assertions
14 which dispute those of petitioner, and plead those affirmative defenses respondent
15 wishes to assert. Although Local Rule 83.17.7(e) permits the filing of a traverse,
16 petitioner cannot meaningfully respond to the Answer because it fails to assist the
17 parties in discovering the genuinely disputed facts in this case. Moreover, petitioner
18 cannot properly frame requests for discovery and request for an evidentiary hearing
19 because of respondent's failure to assist the Court and the parties in narrowing the
20 material disputed facts.

21 **C. CONCLUSION**

22 For the foregoing reasons, petitioner respectfully requests that respondent be
23 required to supplement his Answer with a statement of the material facts in dispute
24 with respect to each claim. Petitioner requests that he be granted 30 days to file a
25 traverse from the date that respondent files an amended answer or in the event that the
26 Court denies petitioner's motion, petitioner requests that he be granted 30 days to file a
27 traverse from the date of the order denying this motion.

1 Dated: April 23, 2010

Respectfully submitted,

2 HABEAS CORPUS RESOURCE CENTER

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5 By: /s/ Michael Laurence
6 MICHAEL LAURENCE
7 Attorneys for Petitioner Ernest Dewayne Jones
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