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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SCOTT S. SCILAGYI,)	1:11-cv-01309-SKO-HC
)	
Petitioner,)	ORDER DEEMING PETITIONER'S
)	PETITION FILED ON AUGUST 25,
v.)	2011, TO BE A SUPPLEMENT TO THE
)	INITIALLY FILED PETITION
)	
B. M. CASH,)	ORDER EXTENDING RESPONDENT'S TIME
)	TO FILE A RESPONSE TO THE
Respondent.)	PETITION TO NO LATER THAN
)	NOVEMBER 2, 2011
)	

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 303. Pending before the Court is a document filed on a petition form by Petitioner on August 25, 2011, which was docketed as a first amended petition for writ of habeas corpus. (Doc. 10.)

I. No Requirement of Leave to Amend

A petition for a writ of habeas corpus may be amended or supplemented as provided in the rules of procedure applicable to civil actions to the extent that the civil rules are not inconsistent with any statutory provisions or the rules governing

1 section 2254 cases. 28 U.S.C. § 2242; Rule 12 of the Rules
2 Governing Section 2254 Cases in the United States District Courts
3 (Habeas Rules). Fed. R. Civ. P. 15(a) may be used to permit the
4 petitioner to amend the petition. Withrow v. Williams, 507 U.S.
5 680, 696 n.7 (1993). Fed. R. Civ. P. 15(a) provides with respect
6 to amendments before trial that a party may amend its pleading
7 once as a matter of course within twenty-one days after service
8 of either the pleading, a required responsive pleading, or a
9 motion under Rule 12(b), (e), or (f), whichever is earlier. In
10 all other cases, a party may amend its pleading only with the
11 opposing party's written consent or the Court's leave. Further,
12 the Court should freely give leave when justice so requires.

13 Because Petitioner's amendment was filed before any response
14 to the petition was filed, Petitioner did not need to obtain
15 leave of court in order to file a first amended petition.

16 II. Deeming Petitioner's Document to Be a Supplement

17 In the petition filed on August 8, 2011, Petitioner
18 challenged a conviction suffered in 2010 in the Superior Court of
19 the State of California, County of Tulare, alleging that due to
20 serious mental illness, Petitioner lacked the mental capacity to
21 enter a voluntary plea of guilty or nolo contendere and thus
22 suffered a violation of due process. Petitioner further contends
23 that his counsel at the trial level rendered ineffective
24 assistance in violation of Petitioner's rights under the Sixth
25 Amendment for failure to 1) give adequate advice concerning the
26 consequences of the plea, including the possibility of a
27 violation of his federal probation; 2) challenge Petitioner's
28 mental capacity, 3) seek review of Petitioner's competence by a

1 mental health professional, 4) recuse the sentencing judge, 5)
2 attempt to obtain a benefit in connection with Petitioner's
3 federal proceedings, and 6) file a notice of appeal.

4 Petitioner did not entitle the short, seven-page document
5 filed here on August 25, 2011, as a first amended petition;
6 however, it does appear on a petition form, and it is signed and
7 dated by Petitioner. The document does not set forth claims or
8 grounds upon which Petitioner purports to seek relief. It
9 instead appears that the only new information set forth in the
10 document relates to proceedings in federal court.

11 If a party amends a pleading, the general rule is that the
12 new pleading supersedes the original pleading, so the newly filed
13 pleading must be complete and stand on its own. Absent prior
14 court approval, Local Rule 220 requires that an amended pleading
15 be complete in itself without reference to any prior pleading.
16 This is because, as a general rule, an amended complaint
17 supersedes the original complaint, which no longer serves any
18 function in the case. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
19 1967). Therefore, in an amended pleading, as in an original
20 pleading, each claim or ground must be sufficiently alleged.

21 A court has inherent power to control its docket and the
22 disposition of its cases with economy of time and effort for both
23 the court and the parties. Landis v. North American Co., 299
24 U.S. 248, 254-255 (1936); Ferdik v. Bonzelet, 963 F.2d 1258, 1260
25 (9th Cir. 1992).

26 In this case, the Court DEEMS Petitioner's amendment filed
27 on August 25, 2011, to be a supplement to the initially filed
28 petition, and not a free-standing first amended petition in

1 itself. The Court exercises its discretion in this manner to
2 avoid delay and unnecessary multiplicity of proceedings.

3 Petitioner is INFORMED, however, that additional supplements
4 will not necessarily be so construed, and that Petitioner must
5 comply with Local Rule 2000 with respect to any further amendment
6 of the petition.

7 III. Extension of Time to Respond to the Petition

8 In view of the supplementation of the petition, the Court on
9 its own motion will consider an extension of time for the filing
10 of a response to the petition. Respondent's time to file a
11 response to the petition, which now includes the initially filed
12 petition and the supplement filed on August 25, 2011, is EXTENDED
13 to no later than November 2, 2011.

14
15 IT IS SO ORDERED.

16 **Dated: September 5, 2011**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE