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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

LEE MAX BARNETT,

No. CIV S-99-2416-RRB-CMK

Petitioner,

DEATH PENALTY CASE

vs.

ORDER

ROBERT L. AYERS, JR.,

Respondent.

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Petitioner, a state prisoner proceeding with appointed counsel, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On December 10, 2007, and December 13, 2007, two documents (Docs. 241 and 242) were submitted by petitioner pro se, without the advice or assistance of appointed counsel.

These documents purported to be motions to relieve appointed counsel, proceed pro se, and abandon the instant habeas corpus action. On January 4, 2008, the court issued an order directing appointed counsel to respond to petitioner’s pro se submissions. In particular, the court cited Comer v. Schriro, 480 F.3d 960 (9th Cir. 2007), in which the Ninth Circuit recently addressed a death row inmate’s request to abandon his appeals in favor of immediate execution.

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1 Appointed counsel have submitted a response, which they request be filed under  
2 seal (see Doc. 245).<sup>1</sup> Without revealing confidential information contained in counsel's  
3 response, the court finds that counsel make it clear that petitioner's pro se submissions do not  
4 reflect a sincere desire to relieve appointed counsel and abandon this case. Counsel's  
5 representations to the court are based on their recent communications with petitioner and are  
6 consistent with prior pro se submissions. Therefore, the court concludes that there is no need to  
7 address petitioner's pro se filings in light of the standards set forth in Comer. They will be  
8 disregarded (see e.g. Doc. 203).

9 Accordingly, IT IS HEREBY ORDERED that:

10 1. Counsel's motion (Doc. 245) requesting that their January 30, 2008,  
11 response be filed under seal is granted;

12 2. The Clerk of the Court is directed to file the January 30, 2008, response  
13 under seal; and

14 3. Petitioner's pro se submissions (Docs. 241 and 242) are disregarded and  
15 the Clerk of the Court is directed to terminate them as pending motions on the court's docket.

16  
17 DATED: February 1, 2008

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19 **CRAIG M. KELLISON**  
20 UNITED STATES MAGISTRATE JUDGE

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26 <sup>1</sup> This request will be granted. The Clerk of the Court will be directed to file the  
response submitted by counsel on January 30, 2008, under seal.