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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

David MICHAEL GRAVES,
Petitioner,

No. C 01-3502 SI (pr)

ORDER

v.


THOMAS CAREY, warden,
Respondent.

Petitioner filed a "motion requesting that the district court order respondent supply petitioner with the answer to the prosecutorial misconduct claim alleged at page 40-42 of the third amended petition." The motion borders on the frivolous and therefore is DENIED. (Docket #115.) Before petitioner filed the motion, he had received the court's October 21, 2008 Order Granting In Part And Denying In Part Petitioner's Motion For Leave To File Motion For Reconsideration. That order specifically stated that the prosecutorial misconduct claim had not yet been answered and set a briefing schedule for that one claim, requiring respondent to file his supplemental answer by November 20, 2008, and petitioner to file supplemental traverse by December 3, 2008. Petitioner appears to contend in his motion that respondent should be bound by the fact that respondent did not deny the merits of that prosecutorial misconduct claim in his motion to dismiss filed six years ago. That contention has absolutely no merit. A respondent is not required to address the merits of a claim when he moves to dismiss; indeed, the usual reason for a motion to dismiss is to have the court consider a procedural reason to reject a claim apart from whether the substance of the claim is meritorious. The court also declines to order respondent to send to petitioner another copy of his 2002 motion to dismiss or any portion of it.

1 Petitioner also filed a motion for an extension of time to file his supplemental traverse.
2 Upon due consideration, the court GRANTS the requested extension of time. (Docket # 116.)
3 Petitioner must file and serve his supplemental traverse no later than **January 2, 2009**. No
4 further extensions of this deadline will be permitted. Petitioner is reminded that he must comply
5 with the page limits set by the court for the supplemental briefing.

6 IT IS SO ORDERED.

7 DATED: November 12, 2008



SUSAN ILLSTON
United States District Judge

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