

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

EDMUND ASBURY,
Petitioner,

No. C 08-01946 SBA

ORDER TO RESPOND

v.

BEN CURRY, Warden,
Respondent.

Petitioner Edmund Asbury has filed a petition and brief of points and authorities for the issuance of a writ of habeas corpus pursuant to 28 U.S.C. § 2254. *See* Docket Nos. 1, 3. On a preliminary examination of the application for a writ of habeas corpus, the Court has decided not to dismiss it summarily. Accordingly, the Court ORDERS as follows:

1. The Clerk of the Court shall serve by certified mail a copy of this Order and the petition, brief, and all attachments thereto upon the Respondent and the Respondent’s attorney, the Attorney General of the State of California. The Clerk shall also serve a copy of this Order on the Petitioner at his or her most current address.
2. Respondent shall file with this Court and serve upon the Petitioner, within sixty (60) days of the entry of this Order, an Answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued. The Respondent shall file with the Answer a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.
3. Respondent may file a motion to dismiss on procedural grounds in lieu of an Answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court and serve on Respondent an opposition or statement of non-opposition to the motion within 30 days of

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

receipt of the motion, and Respondent shall file with the court and serve on Petitioner a reply within 15 days of receipt of any opposition.

4. If Petitioner wishes to file a Traverse in response to the Answer he or she may do so and serve a copy upon Respondent within thirty (30) days of Petitioner's receipt of the Answer. Should Petitioner fail to do so, the petition will be deemed submitted and ready for decision thirty days after the date Petitioner is served with Respondent's Answer.
5. It is Petitioner's responsibility to prosecute this case. Petitioner must keep the Court and Respondent informed of any change of address and must comply with the Court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).
6. Petitioner is reminded that all communications with the Court, whether by way of formal legal motions or informal letters, must be served on Respondent by mailing a true copy of the document to Respondent's counsel. All communications must be delivered to the Clerk of Court with a full caption and with copies sent to the other party. *See* Fed. R. Civ. P. 5(a), 11.
7. Extensions of time are disfavored, though reasonable extensions will be granted. However, a party making a motion for an extension of time is not relieved from his or her duty to comply with the deadlines set by the Court merely by having made a motion for an extension of time. The party making the motion must still meet the deadlines set by the Court until an order addressing the motion for an extension of time is issued. Any motion for an extension of time must be filed no later than 15 days prior to the deadline sought to be extended.
8. Having reviewed Petitioner's pleadings filed to date, Petitioner's counsel is directed to familiarize himself with the Northern District's Civil Local Rules, including Rule 3-4(a) which requires no cover for pleadings, and 3-4(c)(2) addressing the number of lines per page and the font size for footnotes.

1 IT IS SO ORDERED.

2
3 9/2/08

Sandra B. Armstrong

Sandra Brown Armstrong
United States District Judge

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28