

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-cv-02655-BNB

MICHAEL GERARD KOPEC,

Applicant,

v.

RON LEYBA, Warden of ACC, and  
THE ATTORNEY GENERAL OF THE STATE OF COLO. JOHN SUTHERS,

Respondents.

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

JAN 12 2009

GREGORY C. LANGHAM  
CLERK

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ORDER TO FILE PRE-ANSWER RESPONSE

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Applicant, Michael Gerard Kopec, is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the Arrowhead Correctional Center in Cañon City, Colorado. He has filed *pro se* a Second Amended Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (docket number 10). He has been granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.

As part of the preliminary consideration of the Second Amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254, the Court has determined that a limited Pre-Answer Response is appropriate. Respondents are directed, pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, and pursuant to *Denson v. Abbott*, 554 F. Supp. 2d 1206 (D. Colo. 2008), to file a Pre-Answer Response limited to addressing the affirmative defenses of timeliness under 28 U.S.C. § 2244(d) and/or exhaustion of state court remedies under 28 U.S.C. § 2254 (b)(1)(A). If Respondents do not intend to raise either of these affirmative defenses,

they must notify the Court of that decision in the Pre-Answer Response. Respondents may not file a dispositive motion as their Pre-Answer Response, or an Answer, or otherwise address the merits of the claims in response to this Order.

In support of the Pre-Answer Response, Respondents should attach as exhibits all relevant portions of the state court record, including but not limited to copies of all documents demonstrating whether this action is filed in a timely manner and/or whether Applicant has exhausted state court remedies.

Applicant may reply to the Pre-Answer Response and provide any information that might be relevant to the one-year limitation period under 28 U.S.C. § 2244(d) and/or the exhaustion of state court remedies. Applicant also should include information relevant to equitable tolling, specifically as to whether he has pursued his claims diligently and whether some extraordinary circumstance prevented him from filing a timely 28 U.S.C. § 2254 action in this Court. Accordingly, it is

ORDERED that **within twenty days from the date of this Order** Respondents shall file a Pre-Answer Response that complies with this Order. It is

FURTHER ORDERED that **within twenty days of the filing of the Pre-Answer Response** Applicant may file a Reply, if he desires. It is

FURTHER ORDERED that if Respondents do not intend to raise either of the affirmative defenses of timeliness or exhaustion of state court remedies, they must

notify the Court of that decision in the Pre-Answer Response.

DATED January 12, 2009, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland  
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

Civil Action No. 08-cv-02655-BNB

Michael Gerard Kopec  
Prisoner No. 58335  
Arrowhead Corr. Center  
PO Box 300  
Cañon City, CO 81215- 0300

Ron Leyba  
c/o Cathie Holst  
Colorado Department of Corrections  
Office of Legal Affairs  
**DELIVERED ELECTRONICALLY**

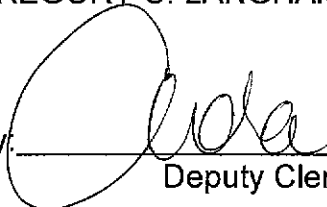
John Suthers, Attorney General  
Office of the Attorney General  
**DELIVERED ELECTRONICALLY**

Paul Sanzo, Asst. Attorney General  
Office of the Attorney General  
**DELIVERED ELECTRONICALLY**  
**COURTESY COPY**

I hereby certify that I have mailed a copy of the ORDER to the above-named individuals, and the following forms to Cathie Holst for service of process on Ron Leyba; and to John Suthers: SECOND AMENDED APPLICATION FOR WRIT OF HABEAS CORPUS FILED 1/09/09 on 1/12/09.

GREGORY C. LANGHAM, CLERK

By: \_\_\_\_\_

  
Deputy Clerk