

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01174-BNB

STEVEN MARK ST. JAMES,

Applicant,

v.

ARISTEDES W. ZAVARAS, and  
JOHN SUTHERS, The Attorney General of the State of Colorado,

Respondents.

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

DEC 04 2009

GREGORY C. LANGHAM  
CLERK

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SECOND ORDER TO FILE PRE-ANSWER RESPONSE

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Pursuant to the Court's October 26, 2009, Order to Amend, Applicant has filed an Amended Application. In the Amended Application, Applicant has raised two new claims, Claims Five and Six, along with Claim Four from the original Application. The Court has determined that Claim Four is timely and is exhausted. As for Claims Five and Six, as part of the preliminary consideration of the Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 in this case, the Court has determined that a limited Second 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 to *Denson v. Abbott*, 554 F.Supp. 2d 1206 (D. Colo. 2008), to file a Second 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) with respect to Claims Five and Six. 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 Second 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 Second 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-one days from the date of this Order** Respondents shall file a Second Pre-Answer Response that complies with this Order. It is

**FURTHER ORDERED that within twenty-one 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, with respect to Claims Five and Six, they must notify the Court of that decision in the Second Pre-Answer Response.

DATED December 4, 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. 09-cv-01174-BNB

Steven Mark St. James  
Reg No. 66258  
Fort Lyon Corr. Facility  
P.O. Box 1000  
Fort Lyon, CO 81038-1000

Christopher Y. Bosch  
Assistant Attorney General  
**DELIVERED ELECTRONICALLY**

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 12/4/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk