

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01969-BNB

MICHAEL R. O'CONNOR,

Applicant,

v.

ANGEL MEDINA, Warden Limon Correctional Facility, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

DEC 30 2009

GREGORY C. LANGHAM
CLERK

ORDER TO FILE SECOND PRE-ANSWER RESPONSE

Applicant, Michael R. O'Connor, is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the Limon, Colorado, correctional facility. On August 28, 2009, he filed an Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. On October 21, 2009, in response to the Court's September 2, 2009, order, Respondents filed a Pre-Answer Response indicating that Applicant failed to make clear each claim he intended to assert in the instant action. Therefore, on December 3, 2009, the Court ordered Applicant to file an amended application. On December 29, 2009, he filed an amended application. He has paid the \$5.00 filing fee for this habeas corpus action.

As part of the preliminary consideration of the Amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 filed in this action and pursuant to ***Denson v. Abbott***, 554 F. Supp. 2d 1206 (D. Colo. 2008), 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 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 one (21) 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 one (21) 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 December 30, 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-01969-BNB

Michael R. O'Connor
Reg No. 99450
Limon Correctional Facility
49030 State Hwy. 71
Limon, CO 80826

John J. Fuerst III
Senior Assistant Attorney General
DELIVERED ELECTRONICALLY

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 12/30/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk