

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01722-BNB

MARC A. CINOCCO,

Applicant,

v.

RICHARD SMELSER, Warden, Crowley County Correctional Facility, and  
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

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

SEP 02 2010

GREGORY C. LANGHAM  
CLERK

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ORDER TO SUPPLEMENT PRE-ANSWER RESPONSE

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Applicant, Marc A. Cinocco, is a prisoner in the custody of the Colorado Department of Corrections and is currently incarcerated at the Crowley County Correctional Facility. Mr. Cinocco initiated this action by filing a *pro se* Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 on July 21, 2010.

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 determined that a limited pre-answer response was appropriate. Therefore, on August 10, 2010, Respondents were 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). On August 31, 2010, Respondents

submitted their pre-answer response. Applicant has twenty-one days from August 31, 2010, to file a reply, if he desires.

However, the Court has reviewed the Pre-Answer Response and has determined that a supplement is required. Although Respondents were directed to submit with the Pre-Answer Response any relevant state court documents to support the defenses of timeliness and failure to exhaust, Respondents have failed to submit as exhibits all relevant portions of the state court record. In particular, Respondents allege that the Application is time-barred pursuant to 28 U.S.C. § 2244(d)(1). However, Respondents have not attached the State Court Register of Action for Denver County District Court Case Nos. 00-CR-364 and 01-CR-2069. Without documentation to support Respondents' argument, the Court is unable to determine whether the Application is timely.

Therefore, Respondents will be directed to file a supplement to the Pre-Answer Response and to provide the requested documentation as discussed in this order. Accordingly, it is

ORDERED that **on or before September 21, 2010** Respondents shall file a supplement to the pre-answer response that complies with this order.

DATED September 2, 2010, 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. 10-cv-01722-BNB

Marc A. Cinocco  
Prisoner No. 68916  
Crowley County Corr. Facility  
6564 State Hwy. 96  
Olney Springs, CO 81062-8700

Matthew S. Holman  
First Assistant Attorney General  
**DELIVERED ELECTRONICALLY**

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 9/2/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk