

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-02260-BNB

EUGENE DURAN,

Applicant,

v.

RAE TIMME, Warden CTCF, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

ORDER TO FILE SECOND PRE-ANSWER RESPONSE

As part of the preliminary consideration of the Second Amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 filed on May 14, 2012, in this action and pursuant to *Denson v. Abbott*, 554 F. Supp. 2d 1206 (D. Colo. 2008), 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 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). If Respondents do not intend to raise either of these affirmative defenses, they must notify the Court of that decision in the Second Pre-Answer Response. Respondents may not file a dispositive motion as their Second 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. The Second Pre-Answer Response should not refer to the Pre-Answer Response (ECF No. 7) filed on September 29, 2011. The Second Pre-Answer Response must stand on its own. However, the exhibits submitted on September 29 (ECF No. 7) and supplemented on November 28, 2011 (ECF No. 12), need not be resubmitted.

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 (21) 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 the Second Pre-Answer Response should not refer to the Pre-Answer Response (ECF No. 7) filed on September 29, 2011. The Second Pre-Answer Response must stand on its own. However, the exhibits submitted on September 29 (ECF No. 7) and supplemented on November 28, 2011 (ECF No. 12), need not be resubmitted. It is

FURTHER ORDERED that **within twenty one (21) days of the filing of the Second 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 Second Pre-Answer Response.

Dated: May 15, 2012

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge