

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
GAINESVILLE DIVISION

TED SMITH,

Petitioner,

v.

CASE NO. 1:11-cv-265-MP-GRJ

WILLIAM S. BAXTER,  
NFETC Administrator,  
and FRANK E. SHEFFIELD,  
Circuit Judge, Gadsden County,

Respondents.

\_\_\_\_\_ /

**ORDER**

This matter is before the Court on Doc. 4, Petitioner's first amended petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has paid the filing fee and, therefore, the Respondents will now be directed to file a response to the Petition.

The Respondents shall file a response to the Petition as directed in this order. The response shall be styled as an answer unless a motion to dismiss the petition, in whole or in part, due to a failure to exhaust state remedies, a procedural bar, non-retroactivity, or a statute of limitations is appropriate, in which case such ground shall be asserted by motion. See § 2254 Rule 4 and Advisory Committee Notes (Court may authorize Respondent to address procedural bars by way of a motion to dismiss, "which may avoid burdening the Respondent with the necessity of filing an answer on the substantive merits of the petition."); § 2254 Rule 5(b). If a motion to dismiss some or all of the claims on a procedural ground is filed, Respondents need not also file an answer *as to the merits of those claims only* until the Court rules on the motion asserting the procedural ground. See *id.* Respondents may respond to the merits of the Petition

without waiving the exhaustion requirement. See § 2254(b)(2) and § 2254(b)(3).

Petitioner may file a reply to any of the Respondents' arguments, including a motion to dismiss, within the time set by this order, but is not required to do so. § 2254 Rule 5(e).

The Court will review the record after the answer (or other motion) and Petitioner's reply (if any) are filed. If it does not appear that a hearing or additional argument is warranted, then the undersigned will make appropriate disposition of the motion or petition. If an evidentiary hearing is warranted and permitted, counsel will be appointed. § 2254 Rule 8. Accordingly, it is

**ORDERED AND ADJUDGED:**

1. The Clerk shall serve a copy of the amended petition, Doc. 4, along with this order, on Respondents and the Attorney General of the State of Florida **via regular first-class mail.**
2. Respondents shall file an answer or other pleading on or before **February 2, 2012.** If voluminous exhibits or records (such as transcripts) are submitted in support of the answer, **paper copies shall be provided to the court.**
3. Petitioner shall have until **March 2, 2012,** to file a reply, if desired.

**DONE AND ORDERED** this 3<sup>rd</sup> day of January 2012.

*s/ Gary R. Jones*  
GARY R. JONES  
United States Magistrate Judge