

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

JOHN DANIEL JOHNSTON,
Petitioner,

vs.

CASE NO.: 3:10cv538/LAC/MD

WALTER MCNEIL, et al.,
Respondents.

ORDER

This cause is before the court on petitioner's petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. Petitioner failed to use the court form for filing his petition. Local Rule 5.1(J) for the Northern District of Florida states that the court will not accept for consideration a petition under § 2254 unless the appropriate form is completed. Therefore, petitioner will be required to file an amended petition. To amend his petition, petitioner should completely fill out the § 2254 form, marking it "**Amended Petition.**" Petitioner is advised that the amended petition must contain all of his grounds for relief, and it should not in any way refer to the previously filed materials. Once an amended petition is filed, all earlier petitions are disregarded. N. D. Fla. Loc. R. 15.1.

Additionally, petitioner has neither paid the \$5.00 filing fee nor applied for leave to proceed *in forma pauperis*. Petitioner's case cannot proceed until he either pays the filing fee or files a complete application for leave to proceed *in forma pauperis*. A complete application includes a motion with supporting affidavit, a prisoner consent form and a financial certificate with account attachments (a printout of the transactions in petitioner's inmate trust account for the six-month period immediately preceding the filing of his petition).

Accordingly, it is ORDERED:

1. The clerk shall forward to the petitioner the form for use in § 2254 cases. This case number and the words "Amended Petition" should be written on the form.
2. Within **twenty-eight (28) days** from the date of this order, petitioner shall file his amended petition, which shall be typed or clearly written and submitted on the court form.
3. The clerk shall also forward to the petitioner a form application to proceed *in forma pauperis*. This case number should be written on the form.
4. Within **twenty-eight (28) days** from the date of this order, petitioner shall either pay the \$5.00 filing fee in full, or submit a complete application for leave to proceed *in forma pauperis*.
5. Petitioner's failure to respond to this order as instructed will result in a recommendation of dismissal of this action for failure to comply with a court order.

DONE AND ORDERED this 22nd day of December, 2010.

/s/ *Miles Davis*

**MILES DAVIS
UNITED STATES MAGISTRATE JUDGE**