

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

SCOTT A. DANIELS,
Petitioner,

vs.

Case No. 5:09cv328/RS/EMT

WALTER A. McNEIL,
Respondent.

ORDER

This cause is before the court upon Petitioner's filing a motion for leave to amend his section 2254 petition, and an amended petition (Docs. 10, 11).

Rule 15(a) of the Federal Rules of Civil Procedure provides, "a party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served" In the instant case, although service of the petition on Respondent has been directed (*see* Doc. 7), Respondent has not yet served a responsive pleading; therefore, Petitioner is entitled to amend the petition.

Petitioner has provided two service copies of his amended petition. Therefore, Respondent will now be required to file an answer to the amended petition in accordance with the provisions set forth in this court's October 28, 2009, order directing service of the original petition (*see* Doc. 7). The answer shall be filed within ninety (90) days from the date this order is docketed. Upon receipt of the answer, Petitioner will be given the opportunity to reply.

Upon receipt of the answer and Petitioner's reply, the court will review the file to determine whether an evidentiary hearing is required. An evidentiary hearing will not be required unless consideration of disputed evidence outside the state court record appears necessary to the court. If it is determined that an evidentiary hearing is not required, the court will make such disposition of the petition as justice requires pursuant to § 2254 Rule 8(a).

Accordingly, it is **ORDERED**:

1. Petitioner's motion for leave to amend his petition (Doc. 10) is **GRANTED**.
2. The Clerk is directed to furnish copies of the amended petition with a copy of this order to Respondent and the Attorney General of the State of Florida.
3. Respondent shall have **NINETY (90) DAYS** from the date this order is entered on the docket in which to file an answer as directed by this order and the court's October 28, 2009, order.

DONE AND ORDERED this 6th day of November 2009.

/s/ Elizabeth M. Timothy

ELIZABETH M. TIMOTHY
UNITED STATES MAGISTRATE JUDGE