

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

OTIS R. ELION,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 3:17-cv-01349-JPG

Criminal No. 16-40046-JPG

MEMORANDUM & ORDER

J. PHIL GILBERT, DISTRICT JUDGE

This matter comes before the Court on the Government’s Motion for Order Authorizing Criminal Defense Attorney to Provide Written Response. (Doc. 5.) Previously, this Court found that petitioner’s § 2255 motion raised allegations of ineffective assistance of counsel and ordered the Government to respond. Petitioner was represented by Assistant Federal Public Defender Judith A. Kuenneke with respect to the allegations in the §2255 motion.

In light of the Seventh Circuit’s decision in *United States v. Evans*, 113 F.3d 1457 (7th Cir. 1997), an order from the Court specifically finding that petitioner’s allegations have waived the otherwise applicable attorney/client privilege and authorizing Mrs. Day to respond is necessary. In *Evans*, the Seventh Circuit noted that the “most prudent course” for a defense attorney to take before disclosing confidential communications and other information—even if they attorney believed that a waiver of the privilege had clearly occurred—is to secure an administrative or judicial determination that the disclosure would not violate the attorney client privilege. *Id.* at 1468.

IT IS ORDERED that the Government’s motion be and is hereby **GRANTED**. The

Court **FINDS** that petitioner's allegations of ineffective assistance of counsel on the part of Attorney Kuenneke operate as a waiver of the attorney/client privilege as to those allegations.

IT IS FURTHER ORDERED that Attorney Kuenneke is authorized to provide a response addressing petitioner's allegations of ineffective assistance of counsel raised in petitioner's § 2255 motion.

IT IS SO ORDERED.

DATE: MARCH 20, 2018

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE