

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DARNELL MISSOURI,

Petitioner,

v.

Case Number: 08-CV-11660

THOMAS BIRKETT,

Respondent.

**OPINION AND ORDER GRANTING PETITIONER'S MOTION FOR LEAVE TO
AMEND BRIEF IN SUPPORT OF WRIT OF HABEAS CORPUS PETITION**

On April 18, 2008, Petitioner Darnell Missouri, a state inmate, presently incarcerated at the Bellamy Creek Correctional Facility in Ionia, Michigan, filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter is before the court on Petitioner's "Motion to Amend Petition for Writ Habeas [of] Corpus." (Dkt. # 15.)

In response to Petitioner's petition, on April 25, 2008, the court ordered that Respondent file his response to the petition by October 31, 2008. (Dkt. # 3.) Respondent complied with the court's order, and, on October 31, 2008, Respondent filed his response. (Dkt. # 9.) The necessary Rule 5 materials were filed on November 6, 2008. (Dkt. # 10.) Petitioner filed a reply to Respondent's response on December 22, 2008, along with this motion. Petitioner is now asking the court for permission to amend his petition because issue number ten may not have been properly exhausted.

Petitioner can amend his petition to delete the unexhausted claim rather than returning to state court to exhaust all of his claims. *Rose v. Lundry*, 455 U.S. 509, 520

(1982). Additionally, a party may amend his pleading “once as a matter of course before being served with a responsive pleading.” Fed. R. Civ. P. 15(a)(1)(A). “In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave.” Fed. R. Civ. P. 15(a)(2).

Although Respondent has filed his answer to the habeas petition, the court finds that he will not be prejudiced if the court allows Petitioner to amend his petition by deleting issue ten from the petition. Therefore, with the court’s permission, Petitioner may amend his habeas petition. Fed.R.Civ.P. 15(a)(2). Leave to amend should be freely given when justice so requires. *Id.*

Accordingly, IT IS ORDERED that Petitioner’s motion to amend his brief in support of his petition for writ of habeas corpus is GRANTED, and the proposed amended petition, which is attached to the motion to amend, is accepted as filed. (Dkt. # 15.) If Respondent wishes to file a supplemental brief to the amended petition, he may do so within thirty (30) days from the date of this order.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: January 9, 2009

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, January 9, 2009, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522