UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GEORGE EDWARD CLARK,

      Petitioner,   Civil No. 2:16-CV-11959
                                 HONORABLE VICTORIA A. ROBERTS
v.   UNITED STATES DISTRICT JUDGE

BONITA HOFFNER,

      Respondent,

_____/

OPINION AND ORDER: (1) GRANTING MOTION TO LIFT THE STAY OF
PROCEEDINGS, (2) GRANTING THE MOTION TO AMEND PETITION FOR WRIT
OF HABEAS CORPUS, (3) DIRECTING THAT THE ORIGINAL AND THE AMENDED
PETITIONS (Dkts. # 1, # 11) BE SERVED UPON THE RESPONDENT AND THE
MICHIGAN ATTORNEY GENERAL, AND (4) DIRECTING RESPONDENT TO FILE
AN ANSWER AND THE RULE 5 MATERIALS IN THIS CASE

Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, which

was held in abeyance to permit Petitioner to return to the state courts to exhaust his claim.

Petitioner filed a motion to lift the stay of proceedings. Petitioner also filed an amended

habeas petition, which is construed as a motion to amend the habeas petition. The motions are

GRANTED. The Clerk of the Court shall serve a copy of the original and amended petitions for

writ of habeas corpus corpus upon respondent and the Michigan Attorney General's Office by

first class mail. Respondent shall file an answer and the Rule 5 materials within **one hundred**

and eighty (180) days of the Court's order.

Federal courts have the power to order that a habeas petition be reinstated upon timely

request by a habeas petitioner, following the exhaustion of state court remedies. *See e.g.*

Rodriguez v. Jones, 625 F. Supp. 2d 552, 559 (E.D. Mich. 2009). Petitioner alleges in his

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amended petition that his claim was exhausted with the state courts. The case is reopened.

The Court grants petitioner's motion to amend his habeas petition. Notice and substantial prejudice to the opposing party are the critical factors in determining whether an amendment to a habeas petition should be granted. *Coe v. Bell*, 161 F.3d 320, 341-342 (6th Cir. 1998). The motion to amend the petition is granted; there is no evidence of bad faith on Petitioner's part in bringing the motion to amend or prejudice to respondent if the motion is granted. *See Gillette v. Tansy*, 17 F.3d 308, 313 (10th Cir. 1994).

The Clerk of the Court shall serve a copy of the habeas petition [Dkt. # 1], a copy of the amended petition for writ of habeas corpus [Dkt. # 11], and a copy of this Order on Respondent and on the Attorney General for the State of Michigan by first class mail as provided in Rule 4 of the Rules Governing § 2254 Cases, Rule 4. *See Coffee v. Harry,* No. 04-71209, 2005 WL 1861943, * 2 (E.D. Mich. Aug. 2, 2005). Respondent shall file an answer within one hundred and eighty days of the Court's order. See *Erwin v. Elo,* 130 F. Supp. 2d 887, 891 (E.D. Mich. 2001); 28 U.S.C. § 2243. Respondent shall provide the Rule 5 materials with the answer. See *Griffin v. Rogers,* 308 F.3d 647, 653 (6th Cir. 2002); Rules Governing § 2254 Cases, Rule 5, 28 U.S.C. foll. § 2254.

Petitioner has forty five days from the receipt of the answer to file a reply brief, if he so chooses. *See* Rule 5(e) of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254.

ORDER

IT IS ORDERED THAT:

(1) The motion to lift the stay of habeas corpus proceedings [Dkt. # 10] is **GRANTED.** The Clerk of the Court shall reopen the habeas petition to the Court's active docket**.**
(2) The motion to amend the petition for writ of habeas corpus is **GRANTED.**

(3) The Clerk of the Court shall serve a copy of the petition for writ of habeas corpus [Dkt. # 1], a copy of the amended petition for writ of habeas corpus [Dkt. # 11], and a copy of this Order on Respondent and the Attorney General by first class mail.

(4) Respondent shall file an answer and produce the Rule 5 materials within **one hundred and eighty (180) days** of the date of this order or show cause why they are unable to comply with the order.

(5) Petitioner shall have **forty five days** from the date that he receives the answer to file a reply brief.

S/Victoria A. Roberts
HON. VICTORIA A. ROBERTS
UNITED STATES DISTRICT COURT

DATED: December 13, 2017