

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RODERICK SPEARS,

Petitioner,

v.

CAROL HOWES,

Respondent,

Case No. 10-CV-11488

HON. MARK A. GOLDSMITH

**ORDER GRANTING RESPONDENT'S
MOTION FOR LEAVE TO FILE ANSWER INSTANTER (Dkt. 24)**

Before the Court is Respondent's motion for leave to file answer instanter, in which Respondent requests permission to file its out-of-time answer. Petitioner has not opposed the motion. "Rule 4, which contains no fixed time requirement, gives the court the discretion to take into account various factors such as the respondent's workload and the availability of transcripts before determining a time within which an answer must be made." Advisory Committee Note to Rule 4 of the Rules Governing Section 2254; see also Kramer v. Jenkins, 108 F.R.D. 429, 432 (N.D. Ill. 1985) ("Rule 4 of the 2254 Rules allows the district court to set this time limit in its discretion."). In the motion for instanter, Respondent's attorney indicates that he failed to file a timely answer to the amended habeas petition through administrative error. There is no indication of purposeful delay on the part of Respondent in answering the petition. Clutchette v. Rushen, 770 F.2d 1469, 1474-1475 (9th Cir. 1985).

Accordingly, the Court grants Respondent's motion.

SO ORDERED.

Dated: June 9, 2014
Flint, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on June 9, 2014.

s/Deborah J. Goltz
DEBORAH J. GOLTZ
Case Manager