

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

CLIFFORD MCCLAIN,  
Petitioner,  
v.  
BRIAN WILLIAMS, et al.,  
Respondents.

Case No. 2:17-cv-00753-RFB-NJK

ORDER

Clifford McClain's *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is before the court on his motion for leave to file a second-amended petition (ECF No. 23). Respondents opposed, and McClain replied (ECF No. 24, 26).

Rule 15 of the Federal Rules of Civil Procedure governs the amendment of pleadings in a federal habeas corpus action. Local Rule 15-11; see 28 U.S.C. § 2242; see also *Mayle v. Felix*, 545 U.S. 644, 645 (2005). Generally, leave to amend should be freely granted when justice so requires. Fed. R. Civ. Pro. 15(a)(2). As respondents point out, McClain appears to seek to include the claims he raised in his direct appeal and state postconviction petitions. McClain's motion shall be granted. Respondents' motion to dismiss shall be denied without prejudice to the filing of a renewed motion to dismiss claims raised in the second-amended petition.

**IT IS THEREFORE ORDERED** that petitioner's motion for leave to file a second-amended petition (ECF No. 23) is **GRANTED**. The Clerk shall **DETACH AND FILE** the second-amended petition (ECF No. 23-1).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IT IS FURTHER ORDERED** that respondents' motion to dismiss (ECF No. 11) is **DENIED** without prejudice as set forth in this order.

**IT IS FURTHER ORDERED** that respondents shall file a response to the second-amended petition, including potentially by motion to dismiss, within **ninety (90) days** of the date of this order, with any requests for relief by petitioner by motion otherwise being subject to the normal briefing schedule under the local rules. Any response filed shall comply with the remaining provisions below, which are entered pursuant to Habeas Rule 5.

**IT IS FURTHER ORDERED** that petitioner shall have **forty-five (45) days** from service of the answer, motion to dismiss, or other response to file a reply or opposition, with any other requests for relief by respondents by motion otherwise being subject to the normal briefing schedule under the local rules.

DATED: June 22, 2018.



---

RICHARD F. BOULWARE, II  
UNITED STATES DISTRICT JUDGE