UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LAFAYETTE D. HOLMES, JR.,

Petitioner,

v.

JO GENTRY, et al.,

Respondents.

Case No. 2:17-cv-01980-RFB-GWF

ORDER

Following upon petitioner's filing of the second amended petition (ECF No. 30);[1]

IT THEREFORE IS ORDERED that respondents shall file a response to the second amended petition, including potentially by motion to dismiss, within sixty (60) days of service of an amended petition and that petitioner may file a reply within thirty (30) days of service of an answer. The response and reply time to any motion filed by either party, including a motion filed in lieu of a pleading, shall be governed instead by Local Rule LR 7-2(b).

IT FURTHER IS ORDERED that any procedural defenses raised by respondents to the counseled amended petition shall be raised together in a single consolidated motion to dismiss. In other words, the Court will not address procedural defenses raised either in serial fashion by way of multiple motions to dismiss or in the answer. Procedural defenses omitted from such motion to

[1] The court is using the corrected image of the second amended petition, not the original filing of the second amended petition (ECF No. 28).

dismiss will be subject to potential waiver. Respondents shall not file a response in this case that consolidates their procedural defenses, if any, with their response on the merits, except pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall do so within the single motion to dismiss not in the answer; and (b) they shall specifically direct their argument to the standard for dismissal under § 2254(b)(2) set forth in Cassett v. Stewart, 406 F.3d 614, 623-24 (9th Cir. 2005). No procedural defenses, including exhaustion, shall be included with the merits in an answer. All procedural defenses, including exhaustion, instead must be raised by a single motion to dismiss.

IT FURTHER IS ORDERED that, in any answer filed on the merits, respondents shall specifically cite to and address the applicable state court written decision and state court record materials, if any, regarding each claim within the response as to that claim.

IT FURTHER IS ORDERED that, notwithstanding Local Rule LR IC 2-2(g), paper copies of any electronically filed exhibits need not be provided to chambers or to the staff attorney, unless later directed by the court.

DATED: August 13, 2019.

RICHARD F. BOULWARE, II
United States District Judge