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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

MICHAEL DUANE WILSON,

3:14-cv-00071-RCJ-VPC

*Petitioner,*

ORDER

vs.

ROBERT LEGRAND, *et al.*,

*Respondents.*

This habeas matter comes before the Court following upon the notice (#9) of appearance by petitioner’s counsel. The filing fee has been paid .

IT IS THEREFORE ORDERED that the Federal Public Defender’s Office is appointed as counsel for petitioner pursuant to 18 U.S.C. § 3006A(a)(2)(B), with Jason F. Carr, Esq., appearing as petitioner’s counsel of record.

IT IS FURTHER ORDERED that petitioner shall have until up to and including **one hundred twenty (120) days** from entry of this order within which to file an amended petition and/or seek other appropriate relief. Neither the foregoing deadline nor any extension thereof signifies or will signify any implied finding as to the expiration of the federal limitation period and/or of a basis for tolling during the time period established. Petitioner at all times remains responsible for calculating the running of the federal limitation period and timely asserting claims, without regard to any deadlines established or extensions granted herein. That is, by setting a deadline to amend the petition and/or by granting any extension thereof, the Court makes no finding or representation that the petition, any amendments thereto, and/or any

1 claims contained therein are not subject to dismissal as untimely. See *Sossa v. Diaz*, 729  
2 F.3d 1225, 1235 (9<sup>th</sup> Cir. 2013).

3 IT IS FURTHER ORDERED that respondents shall file a response to the amended  
4 petition, including potentially by motion to dismiss, within **sixty (60) days** of service of the  
5 amended petition, with any requests for relief by petitioner by motion otherwise being subject  
6 to the normal briefing schedule under the local rules. **Any response filed shall comply with**  
7 **the remaining provisions below, which are entered pursuant to Habeas Rule 4.**

8 IT IS FURTHER ORDERED that any procedural defenses raised by respondents to  
9 the counseled amended petition shall be raised together in a single consolidated motion to  
10 dismiss. In other words, the Court does not wish to address any procedural defenses raised  
11 herein either in *seriatum* fashion in multiple successive motions to dismiss or embedded in  
12 the answer. Procedural defenses omitted from such motion to dismiss will be subject to  
13 potential waiver. Respondents shall not file a response in this case that consolidates their  
14 procedural defenses, if any, with their response on the merits, except pursuant to 28 U.S.C.  
15 § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If respondents do seek  
16 dismissal of unexhausted claims under § 2254(b)(2): (a) they shall do so within the single  
17 motion to dismiss **not** in the answer; and (b) they shall specifically direct their argument to the  
18 standard for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d 614,  
19 623-24 (9<sup>th</sup> Cir. 2005). In short, no procedural defenses, including exhaustion, shall be  
20 included with the merits in an answer. All procedural defenses, including exhaustion, instead  
21 must be raised by motion to dismiss.

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

25 IT IS FURTHER ORDERED that petitioner shall have **thirty (30) days** from service of  
26 the answer, motion to dismiss, or other response to file a reply or opposition, with any other  
27 requests for relief by the parties by motion otherwise being subject to the normal briefing  
28 schedule under the local rules.

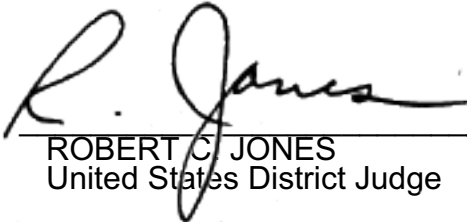
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IT IS FURTHER ORDERED that any additional state court record exhibits filed herein by either petitioner or respondents shall be filed with a separate index of exhibits identifying the exhibits by number. The CM/ECF attachments that are filed further shall be identified by the number or numbers of the exhibits in the attachment.

**The hard copy of any exhibits filed by either counsel shall be delivered – for this case – to the Clerk's Office in Reno.**

The Clerk shall SEND a copy of this order to the CJA Coordinator for this division.

DATED: June 3, 2014



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ROBERT C. JONES  
United States District Judge