

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

BRIAN SCOTT WARD,

Petitioner,

v.

CASE NO. 10-3047-RDR

COLONEL ERIC BELCHER,
Commandant, USDB-Fort Leavenworth,

Respondent.

MEMORANDUM AND ORDER

This matter comes before the court on three motions pending in this habeas corpus action: (1) respondent's motion to strike supplement (Doc. 34), (2) respondent's motion for an extension of time to file an answer (Doc. 37), and (3) petitioner's motion for an extension of time to respond to the motion to dismiss (Doc. 40). The court will address these motions in sequence.

Motion to strike

Respondent moves to strike petitioner's supplement to the amended petition (Doc. 34). Petitioner submitted the supplement pro se and without consulting his appointed counsel.

Under 28 U.S.C. § 1654, "[i]n all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." Thus, the statute

contemplates that a party will either with counsel or pro se.

Petitioner has no protected right to proceed both pro se and with the assistance of counsel. "When defendants have the assistance of counsel, courts need not consider any filings made pro se." *United States v. Sandoval-DeLao*, 283 F.App'x 621, 625 (10th Cir. 1995)(citing *United States v. Bennett*, 539 F.2d 45, 49 (10th Cir. 1976). Rather, the court has discretion to allow such a hybrid form of representation and may consider the submissions of a pro se party. *Id.*

In the exercise of its discretion, the court has examined the supplement submitted by the petitioner and will deny the motion to strike. However, in the future, petitioner should consult with counsel concerning any filings to be made in this matter and is advised that the court may strike sua sponte any additional pleadings filed pro se.

Respondent's motion for extension of time

On June 6, 2011, the court granted respondent an extension of time to and including July 5, 2011, to file an answer, and the answer was filed on that date. The present motion to extend the time to and including July 19, 2011, is denied as moot.

Petitioner's motion for extension of time

Petitioner seeks an extension of time to respond to respondent's motion to dismiss this matter as moot. The court finds good cause and will grant the extension.

IT IS, THEREFORE, BY THE COURT ORDERED respondent's motion to strike (Doc. 34) is denied.

IT IS FURTHER ORDERED respondent's motion for an extension of time to file an answer (Doc. 37) is denied as moot.

IT IS FURTHER ORDERED petitioner's motion for an extension of time to file a response to the motion to dismiss (Doc. 40) is granted.

Copies of this order shall be transmitted to the parties.

IT IS SO ORDERED.

DATED: This 28th day of February, 2012, at Topeka, Kansas.

S/ Richard D. Rogers
RICHARD D. ROGERS
United States District Judge