

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Chad Evans

v.

Civil No. 08-cv-105-JD

Warden, New Hampshire
State Prison

O R D E R

Chad Evans seeks relief pursuant to 28 U.S.C. § 2254 from his sentence, which Evans contends was based on an ex post facto application of state law. Instead of filing an answer, the Warden filed a motion for summary judgment. When the deadline for filing an answer expired and was noted in the docket, the Warden filed a motion for clarification, arguing that the motion for summary judgment satisfied the court's order that the Warden "answer or [] otherwise plead within thirty days of this Order."

The Warden is mistaken. A motion for summary judgment under Federal Rule of Civil Procedure 56 is not an answer or a pleading. See Fed. R. Civ. P. 8 & 12. The Warden, apparently, was confused by an out-of-date version of Rule 56(b), which provided that a party could move for summary judgment "at any time."

Conclusion

For the foregoing reasons, the Warden's motion for clarification (document no. 18) is granted in that the court states that the Warden has not complied with the court's order issued on January 20, 2010. The Warden shall file his answer, or otherwise plead as allowed under Rules 8 and 12, **on or before March 10, 2010.**

SO ORDERED.


Joseph A. DiClerico, Jr.
United States District Judge

March 3, 2010

cc: David M. Rothstein, Esquire
Elizabeth C. Woodcock, Esquire