

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GENERAL ORDER FOR THE RESPONSE TO
HABEAS CORPUS PETITIONS IN THE
WESTERN DISTRICT OF NEW YORK

The following specifications relate to answers to be produced by the respondents pursuant to show cause orders issued by this court regarding petitions for a writ of habeas corpus.

The answer submitted at the time of the return of the show cause order shall respond to the allegations of the petition and state, as to every ground raised by petitioner, whether he has exhausted his state remedies, including any postconviction remedies available to him. The answer shall also state whether a trial or any other pre or post trial evidentiary hearings were held in state court. If a trial or other evidentiary hearing was conducted, the records and the transcript of those proceedings shall be filed by respondent with the answer by the return date. If the transcript cannot be procured by the return date of the order to show cause, it shall be procured and filed as soon thereafter as possible. If the petitioner appealed from the judgment of conviction or from an adverse judgment or order in a postconviction proceeding, a copy of the briefs on appeal and of the opinion of the appellate court, if any, shall be filed by the respondent with the answer.

Within twenty days after receiving the order to show cause, the respondent may file a motion for a more definite statement or a motion to dismiss the petition, accompanied by appropriate exhibits which, in the opinion of the respondent, demonstrate that an answer to the petition is unnecessary. Among the grounds for such a motion to dismiss might be: the failure of petitioner to exhaust available state remedies, a decision on the matter raised by petitioner is pending in state court, petitioner is not in custody within the meaning of 28 U.S.C. §2254, or that the issue has been previously decided on the merits by this or another court. The timely filing of such a motion shall extend the time for filing an answer for fourteen days, but the failure of the court to act upon the motion within that time shall not further extend the time for filing an answer.

So ordered.


JOHN T. CURTIN
United States District Judge

DATED: April 24, 1974