

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

STANTON Q. SHELTON,)	
)	
Petitioner,)	
)	
v.)	Case No. 4:13-CV-1050 SNLJ-NAB
)	
GERARD NESTER,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION¹

This matter is before the Court on Petitioner’s motion requesting reassignment to Judge David D. Noce and Motion for Summary Judgment. [Docs. 6, 17.] First, the Court will deny Petitioner’s motion to reassign the case to Judge David D. Noce. Petitioner has not presented any reasons why Judge Stephen N. Limbaugh, Jr. should not preside in this case. Further, Petitioner cannot request a particular judge rule in this case, as cases are randomly assigned. E.D. Mo. L.R. 2.08(A). Next, Petitioner has filed a motion for summary judgment. [Doc. 17.] In the motion for summary judgment, Petitioner presents a detailed response to Respondent’s response to the Court’s Order to Show Cause and it can substantially can be construed as a reply to the Respondent’s pleading. Although a party may technically file a motion for summary judgment in a habeas proceeding, *see* Rule 12 of the Rules Governing § 2254 Cases, the undersigned finds that Petitioner’s Motion for Summary Judgment should be construed as a reply memorandum and not as a motion for summary judgment. Moreover, Petitioner has not complied with the requirements for the filing of a summary judgment motion. *See* Fed. R. Civ. P. 56. Therefore, the undersigned recommends that Petitioner’s Motion for Summary Judgment

¹ This matter was referred to the undersigned United States Magistrate Judge for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1).

be denied and construed as a reply memorandum to Respondent's response to the Court's Order to Show Cause.

Nothing in this order shall be construed as addressing the merits of the underlying petition for writ of habeas corpus. The undersigned will address the merits of the petition in due course.

Accordingly,

IT IS HEREBY RECOMMENDED that Petitioner's Motion for Summary Judgment be **DENIED** and construed as a reply memorandum in support of the petition for writ of habeas corpus. [Doc. 17.]

IT IS FURTHER ORDERED that Petitioner's Motion requesting reassignment of this case to Judge David D. Noce and not Judge Stephen N. Limbaugh, Jr. is **DENIED**. [Doc. 6.]

The parties are advised that they have fourteen (14) days in which to file written objections to these recommendations pursuant to 28 U.S.C. § 636(b)(1), unless an extension of time for good cause is obtained, and that failure to file timely objections may result in a waiver of the right to appeal questions of fact. *See Thompson v. Nix*, 897 F.2d 356 (8th Cir. 1990).

Dated this 13th day of February, 2014.

/s/ Nannette A. Baker
NANNETTE A. BAKER
UNITED STATES MAGISTRATE JUDGE