

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

JEFFREY HAVARD

Petitioner

V.

CIVIL ACTION No. 5:08-CV-00275-KS

**CHRISTOPHER EPPS,
COMMISSIONER, MISSISSIPPI
DEPARTMENT OF CORRECTIONS
and JIM HOOD, ATTORNEY
GENERAL, STATE OF MISSISSIPPI**

Respondents

**RESPONSE TO MOTION FOR STAY
AND MOTION TO AMEND/CORRECT
PETITION FOR WRIT OF HABEAS CORPUS**

Respondents submit this response to Petitioner, Havard's, motion for stay [Doc. 49] and motion to amend/correct petition for writ of habeas corpus [Doc. 50]. Respondent submits to this Court that the matter should be stayed and abeyed pending resolution of the motion to vacate and/or motion for leave to file a successive petition for post-conviction relief that is currently before the Mississippi Supreme Court. In support, the Respondents would show to the Court:

This Court has authority to issue a stay and abeyance under *Rhines v. Weber*, 544 U.S. 269 (2005).¹ As the Court in *Rhines* makes clear, a stay should be limited by a district court

¹Respondents deny that there is any merit to Havard's claims of a *Brady* violation, or his claims of ineffective assistance of counsel.

to avoid dilatory tactics by a petitioner. *Id.* at 277-78. Respondents would note to this Court that there are time-bar issues under the Antiterrorism Effective Death Penalty Act of 1996 (“AEDPA”), 28 U.S.C. § 2244, as set forth in *Mayle v. Felix*, 545 U.S. 644 (2005) and issues regarding exhaustion of state remedies as set forth under 28 U.S.C. 2254 and *Rhines*, at 277.

This stay is appropriate because there are a number of factual issues which Respondents are addressing in their response to Havard’s state-court motion to vacate and for leave to file a successive petition. Respondents have requested an extension of time from the Mississippi Supreme Court due to the thoroughness required to fully brief the factual issues raised by Havard. The answer Respondents will file in this habeas action are, of necessity, connected with the pending motion and response in state court. For those reasons, Respondents respectfully urge this Court to issue a stay and abey order.

Respectfully submitted,

**JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI**

**MARVIN L. WHITE, JR.
ASSISTANT ATTORNEY GENERAL**

**LISA COLONIAS McGOVERN
SPECIAL ASSISTANT ATTORNEY GENERAL
MSB NO. 102929
*Counsel of Record***

BY: */s/ Lisa Colonias McGovern*

Office of the Attorney General
P.O. Box 220
Jackson, MS 39205
Telephone: (601) 359-3680
Facsimile: (601) 359-3796
lcolo@ago.state.ms.us

CERTIFICATE OF SERVICE

This is to certify that I, Lisa Colonias McGovern, Special Assistant Attorney General for the State of Mississippi, have electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

Mark D. Jicka, Esq.
Watkins & Eager PLLC
P.O. Box 650
400 E. Capitol Street
Jackson, MS 39205-0650
mjicka@watkinseager.com

Graham P. Carner, Esq.
Graham P. Carner, PLLC
771 N. Congress Street
Jackson, MS 39202
graham.carner@gmail.com

Glenn S. Swartzfager, Esq.
Office of Capital Post-Conviction Counsel
239 N. Lamar Street, Suite 404
Jackson, MS 39201
gswartzfager@pcc.state.ms.us

This the 13th day of June, 2011.

/s/ Lisa Colonias McGovern