

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JOY MAJOR HOOP,

Petitioner,

-vs-

PAT ANDREWS, Warden,

Respondent.

:

Case No. 1:06-cv-603

:

Chief Judge Susan J. Dlott
Magistrate Judge Michael R. Merz

:

ORDER REGARDING SEALED DEPOSITION

On December 29, 2008, the Magistrate Judge filed a Decision and Order ruling on the privilege objections made during the deposition of Lawrence Handorf (Doc. No. 57). Intervenor Carl Lindsey appealed (Doc. No. 58), the Magistrate Judge filed a Supplemental Decision (Doc. No. 61), Lindsey appealed again (Doc. No. 62), and Chief Judge Dlott has now overruled Lindsey's objections, request for an order for interlocutory appeal under 28 U.S.C. § 1292(b), and request for a stay pending application for interlocutory appeal (Order, Doc. No. 66, at 2.)

The Magistrate Judge recognizes that the Sixth Circuit has in the past granted mandamus review of a district court order overruling an attorney-client privilege claim in a capital habeas corpus case and stayed discovery pending decision. *In re Lott*, 424 F.3d 446 (6th Cir. 2005). To protect Intervenor Lindsey's ability to seek such relief (and the Sixth Circuit's ability to grant it), this Court will delay the release of the sealed portion of the Lawrence Handorf deposition to Petitioner's counsel to and including May 1, 2009.

In setting this date, the Magistrate Judge is attempting to accommodate both Petitioner's interest in expedition and Intervenor's interest in preventing the discovery. This Order is not in conflict with Chief Judge Dlott's denial of a stay pending interlocutory appeal and the Magistrate Judge obviously will not grant any such stay. There can be no appeal under § 1292(b) without an order from Chief Judge Dlott and the Sixth Circuit indicated in *Lott* its doubt whether an interlocutory appeal would lie under the collateral order doctrine.

April 17, 2009.

s/ **Michael R. Merz**

United States Magistrate Judge