

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

MARK H. KAEDING,

Petitioner,

:

Case No. 1:11-cv-121

:

District Judge Michael R. Barrett
Magistrate Judge Michael R. Merz

-vs-

WARDEN, Lebanon Correctional
Institution,

:

Respondent.

**DECISION AND ORDER DENYING MOTION FOR RELIEF FROM
JUDGMENT AND FOR RE-TRANSFER OF THE CASE**

This habeas corpus case is before the Court upon Petitioner's Motion for Relief from Judgment which seeks to have the Magistrate Judge's Report and Recommendations of September 11, 2012, vacated (Doc. No. 48).

Petitioner brings the Motion under Fed. R. Civ. P. 60(b). Relief under that rule is limited to "judgments." A report and recommendations is not a judgment, but rather a recommendation to a District Judge about the judgment which should be entered in the case. For that reason, Fed. R. Civ. P. 60(b) is not pertinent to a report and recommendations and the Motion is denied on that basis.

For the reasons given in the Magistrate Judge's Order Striking Traverse, Petitioner's objection that the Report and Recommendations were premature is not well taken. Petitioner was granted an extension of time to file "a reply/traverse." Once he filed that document, albeit earlier

than the extension he was granted, the Magistrate Judge understood the case was ripe for decision and indeed spent considerable time preparing the Report and Recommendations, only to be confronted with Petitioner's second Traverse, an 81-page document.

Petitioner again asks that this case be transferred back to Magistrate Judge Litkovitz and questions the Court's truthfulness in telling him that the case was transferred to balance caseloads, asking how many cases other than his have been transferred for this purpose. The answer is hundreds of such cases have been transferred from the Cincinnati Magistrate Judges to the undersigned since January, 2005. The request to transfer this case back to Magistrate Judge Litkovitz is denied. To the extent the Motion constitutes a request to the undersigned to recuse himself in this case, that request is also denied as Petitioner has shown no basis for recusal under 28 U.S.C. § 455.

Petitioner's objections to the pending Report and Recommendations are due to be filed not later than September 28, 2012.

September 21, 2012.

s/ *Michael R. Metz*
United States Magistrate Judge