

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

JONATHON D. MONROE,

Petitioner,

-vs-

WARDEN, Ohio State Penitentiary,

Respondent.

:

Case No. 2:07-cv-258

:

District Judge Michael H. Watson
Magistrate Judge Michael R. Merz

:

ORDER APPOINTING NEW COUNSEL

This capital habeas corpus case is before the Court on Petitioner’s *pro se* Motion to Stay and to Substitute Counsel (Doc. No. 42).

Petitioner is under a sentence of death and has exhausted available state court remedies. He is therefore entitled to appointment of counsel pursuant to 18 U.S.C. § 3599. *McFarland v. Scott*, 510 U.S. 989 (1993).

The Court hereby appoints Attorney Jennifer Kinsley of the Court’s Criminal Justice Act Death Penalty Panel as counsel to Petitioner and designates her as his trial attorney under S. D. Ohio Civ. R. 83.4 The Court accepts the recommendation of the Judicial Conference of the United States that at least two counsel should be appointed in federal death penalty habeas corpus cases. *Guidelines* §6.01(A)(2). The Court further finds that Attorney Lawrence Komp, also a member of the Court’s Criminal Justice Act Death Penalty Panel, is qualified to act as co-counsel in this case and he is hereby appointed to that position. Counsel are directed to counsel with predecessor

counsel to obtain their files related to the case.

Counsel are directed to prepare a budget for the litigation of this matter in consultation with the Sixth Circuit's CJA Case Budgeting Attorney, Robert Ranz. Following said consultation, counsel shall submit a budget to this Court, *ex parte* and under seal, not later than August 15, 2010.

The case is presently subject of an October 9, 2009, scheduling order (Doc. No. 36) in which future dates in the case are triggered by the Court's decision, yet to be rendered, on Petitioner's Motion for Reconsideration of the Court's prior Order on Motion to Dismiss Procedurally Defaulted Claims (Doc. No. 37). That Motion has been ripe for decision since November 25, 2009, but consideration has been postponed because of Petitioner's requests, beginning in December, 2009, for replacement counsel. The Magistrate Judge will consider that Motion again ready for decision unless it is withdrawn not later than August 1, 2010.

Attention of newly-appointed counsel is directed to the Court's Order of July 7, 2010, which denied Petitioner's motion to stay this case pending exhaustion of his newly-filed *pro se* successive petition for post-conviction relief and successive *Murnahan* application¹. The denial was without prejudice to renewal on certain conditions required by *Rhines v. Weber*, 544 U.S. 269 (2005). Newly-appointed counsel should consider whether to re-file a similar motion.

Attorneys Steven Nolder, David Stebbins, David Graeff. and Eric Allen are relieved of all further responsibility to represent Petitioner in this case as of the time and date of filing.

The parties are hereby ORDERED to include in any pleadings, the joint appendix (if one is prepared), and any amendments to same, indices for the document filed detailing the grounds for

¹The Court has not seen these documents and merely repeats the characterization given to them by Petitioner at Doc. No. 42.

relief, or responses to same, and their respective page numbers within the document. The index to the Joint Appendix must include the title of each exhibit and a logical indication of where the exhibit can be found in the Joint Appendix (e.g., identified by exhibit number, Bates number, etc.). The Court calls the attention of counsel to S.D. Ohio Crim. R. 57.2 (d) and (e). To the maximum extent possible, pages in filed documents should be referred to by the PageID number generated by the Court's electronic filing system by citation in the following format: (Order Appointing Counsel, Doc. No. ____, PageID ____.)

For the Petitioner's information, the Magistrate Judge notes that neither Ms. Kinsley nor Mr. Komp is a member of the Capital Habeas Unit of the Federal Defender's Office for the Southern District of Ohio and neither of them regularly maintains an office for the practice of law in Columbus, Ohio. Petitioner should not infer from this that he has the privilege of determining who the Court will appoint to represent him or that he will be afforded the privilege of changing attorneys again should he become dissatisfied with newly-appointed counsel. Finally, the fact that new counsel has been appointed should not be read as any criticism on the Court's part of the performance of prior counsel. .

July 9, 2010.

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