

**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

:

SCHEDULING ORDER

This capital habeas corpus case is before the Court on Petitioner's Motion to Determine Deadline for Filing Traverse, Motion for Evidentiary Hearing, and Motion for Summary Judgment (Doc. No. 71).

On October 12, 2011, the Court ordered the Warden "file his answer to the Petition not later than December 11, 2011." (Order, Doc. No. 62, PageID 566). To begin to bring practice in capital habeas corpus cases into conformity with the general electronic filing regime now prevailing in the federal courts, this Court further ordered that

the Warden refile the trial transcript and state court record electronically. Each document filed must be in .pdf text-searchable format. When the transcripts and state-court record have been filed in that manner, the Court's CM/ECF filing system will apply a PageID number to each page. After filing the record, the Respondent shall furnish the Court with a printed chambers-copy of the record bearing the PageID numbers. Thereafter, all citations to the record in this case must include a PageID reference.

Id. PageID 567. The Warden apparently attempted to comply, but was only partially successful, as explained in the Warden's Response to the Court's Order to Show Cause (Doc. Nos. 68, 70). At the conclusion of the Response, the Warden's counsel wrote:

Optical character recognition software has since been used, on the downloaded copy of the modified version of the appendix, to generate the appendix parts in a text searchable format. These files can immediately be filed electronically, provided on a CD to the Court and counsel, or otherwise as the Honorable Court may direct.

(Response, Doc. No. 70, PageID 5448.)

The Court had not acted on that invitation as of February 2, 2012, when the Warden filed his Notice of Manual Filing (Doc. No. 72), indicating that two CD's with text-searchable files in .pdf format with the PageID numbers would be filed with the Court today and had already been sent to Petitioner's counsel.

The Court deems the Warden's furnishing of the compact discs adequately complies with its Order of October 12, 2011, and the Order to Show Cause is dissolved. Re-filing the downloaded and optical-character-read files would have resulted in the creation of new PageID numbers, creating more confusion rather than less. Absent discovery that the CD's do not adequately copy the filed record, they should be useable to search when preparing filings, so the Court reiterates its order that record citations use the PageID number.

In accordance with the prior scheduling order, Petitioner shall file his reply to the Answer not later than April 1, 2012. Any motion for discovery shall be filed not later than May 1, 2012. Any motion for evidentiary hearing shall be filed not later than thirty days after the discovery cut-off or thirty days from the date when discovery is denied by the Magistrate Judge, whichever occurs later. Neither party may file a motion for summary judgment without prior Court permission.

February 3, 2012.

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