

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

GERALD HAND,

Petitioner,

-vs-

MARC HOUK, Warden,

Respondent.

:

Case No. 2:07-cv-846

:

Judge Sandra S. Beckwith  
Magistrate Judge Michael R. Merz

:

---



---

**DECISION AND ORDER CONDITIONALLY DENYING MOTION TO DISCHARGE  
COUNSEL**

---



---

Petitioner Gerald Hand has moved this Court *pro se* to dismiss his appointed counsel (Doc. No. 103).

Petitioner is under a death sentence and was appointed counsel under 18 U.S.C. § 3599. He now seeks to discharge those attorneys (Ralph Kohnen, Jennifer Kinsley, and Jeanne Marie Cors) because he “does not trust them any more to do the work that is needed to get me a new trial . . .” *Id.* PageID 2419.

Petitioner of course has the right to discharge counsel. However, he does not have the right to have these attorneys replaced with other counsel either of his choosing or chosen by the Court. Counsel appointed in this case are very experienced criminal attorneys. In observing their filings in the case and their performance at the evidentiary hearing, the Court has no basis to conclude that they have not performed in accordance with their professional obligations. Therefore if Petitioner chooses to discharge them, the Court will **not** appoint substitute counsel; Petitioner will have the

option of retaining counsel or proceeding *pro se*.

There is no constitutional right to appointed counsel in a habeas corpus case; the right to such counsel in a death penalty case is created by statute, 18 U.S.C. § 3599. The statute does not allow petitioners to discharge appointed counsel at will and then obtain replacement counsel.

Therefore, the Motion to Dismiss Counsel is denied without prejudice to its renewal on the conditions set forth in this Decision and Order.

May 31, 2011.

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