

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

GERALD HAND,

Petitioner,

-vs-

MARC HOUK, Warden,

Respondent.

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Case No. 2:07-cv-846

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District Judge Sandra S. Beckwith  
Magistrate Judge Michael R. Merz

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**ORDER FOR PRE-JUDGMENT BRIEFING ON CERTIFICATE OF APPEALABILITY**

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It has been this Court's practice in the past to postpone consideration of certificate of appealability issues until after District Judge action on the report and recommendations on the merits. However, Rule 11(a) of the Rules Governing § 2254 cases was amended effective December 1, 2009, to provide:

The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

The Court reads this new language to require that any report and recommendation on a certificate of appealability be available for the district judge's consideration along with the report and recommendations on the merits.

Accordingly, it is hereby ordered that Petitioner file, not later than July 15, 2011, a motion for certificate of appealability on those grounds for relief as to which the Magistrate Judge has recommended denial and which the Petitioner intends to appeal if the District Judge adopts the Magistrate Judge's recommendation.

June 3, 2011.

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