

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

ROBERT BETHEL,

Petitioner,

: Case No. 2:10-cv-391

- vs -

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

DAVID BOBBY, Warden,

Respondent.

**DECISION AND ORDER DENYING PETITIONER'S RENEWED
MOTION TO PROCEED *PRO SE* ON HIS MOTION TO STAY**

This capital habeas corpus case is before the Court on Petitioner's renewed Motion for Leave to Proceed *pro se* on a motion to stay these habeas corpus proceedings pending the outcome of his currently-pending successive petition for post-conviction relief in the Franklin County Court of Common Pleas (ECF No. 175).

The Magistrate Judge has previously denied Bethel leave to proceed *pro se* on a motion to stay on the ground that he is represented in this capital habeas corpus case by counsel and allowing him to file the motion *pro se* would condone hybrid representation (ECF Nos. 168, 171). Bethel has objected to that decision and his Objections (ECF Nos. 169, 172) are pending before District Judge Barrett for decision.

As a general matter, a party represented by counsel may not file papers *pro se*. 28 U.S.C. § 1654 provides that "parties may plead and conduct their own cases personally or by counsel." The disjunctive "or" in the statute means that a litigant must choose between proceeding *pro se*

and proceeding with the assistance of counsel. *United States v. Jimenez-Zalapa*, 2007 WL 2815563 (W.D. Tenn. 2007)(Breen, D.J.); see also *United States v. Mosely*, 910 F.2d 93, 97-98 (6th Cir. 1987); *United States v. Vampire Nation*, 451 F.3d 189 (3rd Cir. 2006); see also *McKaskle v. Wiggins*, 465 U.S. 168 (1984), holding there is no constitutional right to hybrid representation.

Bethel argues allowing him to proceed *pro se* on a motion to stay would not be condoning hybrid representation because he is not represented by his counsel in this case on his successive post-conviction petition in Franklin County. That does not solve the hybrid representation issue. The hybrid representation doctrine applies to **cases**, not to **claims within cases**. Because his counsel in this case have decided, for whatever reason¹, not to file a motion to stay, that decision is binding on Bethel.

The renewed Motion is DENIED.

July 13, 2021.

s/ Michael R. Merz
United States Magistrate Judge

¹ In prior decisions, the Magistrate Judge had hypothesized various reasons why counsel may have made that decision. Counsel have not disclosed their reasons, but those reasons are protected from disclosure by attorney work product doctrine and/or client confidentiality and loyalty requirements which the Court will not undermine by asking for reasons.