

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

JAMES T. CONWAY, III,

Petitioner,

-vs-

MARC C. HOUK, Warden,

Respondent.

:

Case No. 3:07-cv-345

:

District Judge Timothy S. Black
Magistrate Judge Michael R. Merz

:

DECISION AND ORDER DENYING MOTION TO STRIKE

This capital habeas corpus case is before the Court on Petitioner’s Notice of Continuation of State Litigation (ECF No. 224) and Respondent’s Motion to Strike that Notice (ECF No. 225).

Respondent appears to rely on language in Fed. R. Civ. P. 12(f) permitting a court to strike “impertinent . . .matter.” (Motion, ECF No. 225, PageID 15684). The Court declines to find that the Notice is in any way impertinent within the meaning of Fed. R. Civ. P. 12(f) and the Motion to Strike is therefore DENIED.

Petitioner’s Notice does not seek any action by the Court. To clarify the status of the Court’s Order of September 17, 2015 (ECF No. 223) in light of the Respondent’s Motion, however, the Court notes that

(1) Petitioner’s filing of a motion for reconsideration in the Supreme Court of Ohio does not operate to keep that litigation pending. If the Ohio Supreme Court grants the motion, this Court will again stay these proceedings pending the outcome of that case.

(2) This case was never stayed pending the outcome of Conway's third post-conviction proceeding. In expanding the scope of counsel's representation to cover those proceedings, the Court noted that no stay had been requested for these most recent proceedings (ECF No. 219).

Accordingly, the Court's Order for a proposed schedule to complete these proceedings (ECf No. 223), remains in full force and effect.

September 28, 2015.

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