

**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 Walter Herbert Rice
Magistrate Judge Michael R. Merz

:

**DECISION AND ORDER GRANTING PARTIAL RELIEF ON NON-PARTY
CHRISTOPHER CICERO'S MOTION TO QUASH**

This capital habeas corpus case is before the Court on Motion to Quash Subpoena of Non-Party Christopher T. Cicero (Doc. No. 39). The Court heard oral argument on the Motion by telephone at 4:45 p.m. on January 27, 2010. John Ferron participated on behalf of the Movant, James Fleischer and Marc Triplett participated on behalf of the Petitioner; and Justin Lovett participated on behalf of the Respondent.

The Court finds the Movant has not shown good cause to quash the subpoena. It was issued on January 13, 2010, and is returnable at 10:00 a.m. on January 28, 2010, in Columbus, Ohio. No party made any representation to the Court about when it was served, but assuming service relatively promptly after issuance, a motion to quash filed less than eighteen hours before it is returnable is not timely.

Nevertheless, in an effort to accommodate the interests of all the parties and attorneys involved, the Subpoena is modified to require Mr. Cicero's appearance for deposition at 10:00 A.M.

on Friday, February 5, 2010, at the place set forth in the Subpoena. The witness' counsel has agreed he will be available at that time and place.

The discovery cut-off in this case is extended to and including February 5, 2010, for the sole purpose of permitting Mr. Cicero's deposition.

January 27, 2010.

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