

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

WILLIAM C. BREWER,

Petitioner,

-vs-

STATE OF OHIO,

Respondent.

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Case No. 3:09-cv-462

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District Judge Thomas M. Rose  
Magistrate Judge Michael R. Merz

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**ORDER ON MOTION REGARDING POSSIBLE EVIDENTIARY HEARING**

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This habeas corpus case is before the Court on Petitioner’s response to the Magistrate Judge’s suggestion of consent under 28 U.S.C. § 636(c) (Doc. No. 14). Petitioner advises that he will consent to plenary magistrate judge jurisdiction “if Ohio Attorney [General] Richard Cortray [sic] would participate at this hearing.” *Id.* at PageID 147.

If what Petitioner means is that he will consent if the Attorney General’s Office, which represents the Respondent, will also consent, then the Court hereby advises that the Attorney General has consented. If what Mr. Brewer means is that he will consent only if the Ohio Attorney General personally participates in the hearing, the Court cannot accept that as consent. Whether or not an evidentiary hearing is held in a habeas corpus case and which witnesses are called is controlled by 28 U.S.C. § 2254(e) which the Court must follow in setting any such hearing. Mr. Brewer should let the Court know whether he will consent without this condition of personal participation by Attorney General Cordray. Consent must, of course, be unanimous and voluntary;

there are no adverse substantive consequences of refusing to consent.

With respect to Petitioner's recommendation that Judge Mark Painter participate as a judge on this case, that also is not possible. While Judge Painter has had a distinguished career as a Hamilton County Municipal Court judge, a judge of the Ohio First District Court of Appeals, and now as a judge of the United Nations Appeal Tribunal, he is not a judge of this Court.

April 28, 2010.

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