

IN THE SUPREME COURT OF OHIO
2008

STATE OF OHIO,

Case No. 03-346

Plaintiff-Appellee,

-vs-

MICHAEL TURNER,

DEATH PENALTY CASE

Defendant-Appellant.

**MEMORANDUM OF PLAINTIFF-APPELLEE OPPOSING MOTION FOR
APPOINTED COUNSEL FEES**

RON O'BRIEN 0017245
Franklin County Prosecuting Attorney
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E-mail: sltaylor@franklincountyohio.gov

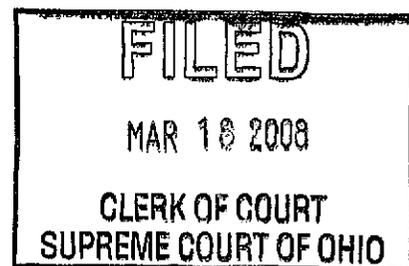
and

STEVEN L. TAYLOR 0043876
(Counsel of Record)
Assistant Prosecuting Attorney

COUNSEL FOR PLAINTIFF-APPELLEE

DAVID C. STEBBINS 0005839
400 South Fifth Street, Suite 301
Columbus, Ohio 43215
Phone: 614-228-9058

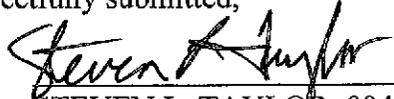
COUNSEL FOR DEFENDANT-
APPELLANT



**MEMORANDUM OF PLAINTIFF-APPELLEE OPPOSING MOTION FOR
APPOINTED COUNSEL FEES**

For the reasons stated in the attached memorandum, the State opposes the motion for appointed counsel fees filed by the defense on March 12, 2008.

Respectfully submitted,



STEVEN L. TAYLOR 0043876

(Counsel of Record)

Assistant Prosecuting Attorney

Counsel for Plaintiff-Appellee

MEMORANDUM IN SUPPORT

The State respectfully opposes the motion for attorney fees filed by attorney David Stebbins on March 12, 2008. The State has reason to believe that the 28.5 hours of out-of-court time submitted in the motion for fees is excessive in this case.

This Court affirmed defendant Michael Turner's convictions and death sentence on May 11, 2005. *State v. Turner*, 105 Ohio St.3d 331, 2005-Ohio-1938 ("*Turner I*"). Over two years later, on September 7, 2007, defendant filed an application for reopening. The application itself was 9+ pages in length. But it was accompanied by an affidavit, over 21 pages in length, with 110 paragraphs of single-spaced type, authored by attorney David Stebbins, who is one of defendant's current counsel.

On October 2, 2007, the State filed a memorandum opposing the application for reopening. The State contended, inter alia, that the defense could not show good cause for filing the application two years late. The State also contended, as follows:

The application for reopening and accompanying affidavit are largely a "cut" and "paste" exercise from a petition for habeas corpus relief filed by attorney Stebbins in federal court. Indeed, much of the affidavit consists of large-scale repetition of some of the issues being raised in

the federal habeas petition, see Excerpts of Amended Habeas petition, and much of this language was a substantial repetition of Claims 1, 2, 3, 4, 11, 15, 16, and 17 from the post-conviction petition filed by the Ohio Public Defender in October 2003. See Excerpts of Original and Amended PCR Petition, attached. See, e.g., Stebbins affidavit, at ¶ 50 ("it is an understatement to say ***"), and Amended Habeas Pet., at ¶ 122 (same), and PCR Pet., at ¶ 38 (same).

Given this chain of events, the defense knows that it is raising a number of claims that are improper here. For example, the suppression issues and accompanying IAC claims related to the suppression issues are based on transcripts of police interviews that only entered the case as part of the post-conviction litigation. Yet, despite knowing that these were documents only offered in post-conviction proceedings, the defense presents them here as if they were part of the original trial-court proceedings and as if they were available as potential claims of error to the direct-appeal appellate counsel. "[A] bedrock principle of appellate practice in Ohio is that an appeals court is limited to the record of the proceedings at trial." *Morgan v. Eads*, 104 Ohio St.3d 142, 2004-Ohio-6110, ¶ 13, citing *State v. Ishmail (1978)*, 54 Ohio St.2d 402. Defendant's direct-appeal appellate counsel cannot be faulted for having failed to argue matters that were not in the original trial-court record. *State v. Burke*, 97 Ohio St.3d 55, 2002-Ohio-5310, ¶¶ 10, 11.

The defense's effort to pass off post-conviction materials as original trial-record materials deserves condemnation. The State hastens to add that Ohio courts have already rejected defendant's post-conviction claims, with the common pleas court denying the post-conviction petition on September 22, 2004, with the Tenth District affirming that denial on February 21, 2006, see *State v. Turner*, 10th Dist. No. 04AP-1143, 2006-Ohio-761 ("*Turner II*"), and with this Court declining review on August 2, 2006. *State v. Turner*, 110 Ohio St.3d 1439, 2006-Ohio-3862. If the defense could not succeed on postconviction review even when such materials were in the record, one wonders how defendant's direct-appeal counsel could be expected to succeed when such materials were not in the original trial-court record available on appeal.

In missing the 90-day deadline by over two years, and then by filing a reopening application that is largely a redux of outside-record post-conviction claims already rejected elsewhere, the defense is wasting the time of this Court and the prosecution.

See State's 10-2-07 Memorandum Opposing Application for Reopening, at pp. 1-2. The State attached to its October 2nd memorandum substantial excerpts from the habeas petition and post-conviction petition, both of which served to demonstrate how the application for reopening and accompanying affidavit were largely a cut-and-paste exercise from those earlier documents. The State incorporates those earlier attached excerpts by reference here.

On November 21, 2007, this Court denied the application for reopening because defendant failed to comply with the 90-day filing deadline in S.Ct.Prac.R. XI(6)(A).

Now, attorney Stebbins has filed a motion for appointed counsel fees, claiming 28.5 hours of out-of-court time. The State has reason to believe such billing is excessive.

Initially, the motion for fees is flawed because it seeks compensation for 7.7 hours related to researching, preparing, and filing a "reply brief" regarding the application for reopening. The motion indicates that such work was performed on October 3, 8, and 9, 2007, and that the "reply brief" was filed on October 9, 2007. But this Court's Rules of Practice do not provide for reply briefing regarding an application for reopening, and, in fact, no such "reply brief" was filed by the defense.

A perusal of the docket in the federal habeas action indicates that attorney Stebbins *did* file a reply memorandum on October 9, 2007, but that memorandum was filed *in the federal habeas action*. See federal docket and 10-9-07 memorandum, both attached.

Attorney Stebbins should seek compensation for such 7.7 hours of work from the federal

district court, not this Court.

The remainder of the motion for appointed counsel fees claims 20.7 hours for researching, preparing, and filing the application for reopening. But there is reason to question how attorney Stebbins generated this large number of hours working on the application and the accompanying affidavit. As stated above, the application and affidavit were largely based on the earlier habeas and post-conviction petitions, and the affidavit consisted largely of attorney Stebbins having “cut and pasted” from those earlier documents. The final cut-and-pasted work product submitted to this Court on September 7, 2007, simply does not support the view that it took 20.7 hours to generate that work product. The frivolous nature of that work product only adds to the concerns about a bill for 20.7 hours of work for that work product.

In the end, the State respectfully submits that it has reason to believe that the 28.5 hours of time billed by the defense here is excessive. The work performed on October 3, 8, and 9, 2007, was not work performed on this Supreme Court case but rather on the federal habeas case. And, given the uncertainties and doubts surrounding the remainder of the 20.7 hours of billed time, this Court cannot be certain how many hours of work were reasonable and necessary.

The State notes that this Court limited the fee for attorney Stebbins to \$500 in *State v. Monroe*, Case No. 02-2241, when he billed 39 hours for work related to an application for reopening in a capital case that was largely cut and pasted from an earlier post-conviction petition. However, the limitation of the fee in that case apparently has not deterred attorney Stebbins, who has now filed the current questionable motion for appointed counsel fees. The State defers to this Court as to how much of a fee, if any,

should be awarded for the 20.7 hours claimed by attorney Stebbins for researching, preparing, and filing the application for reopening.

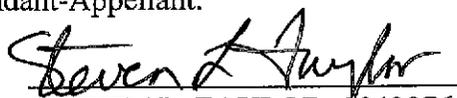
Respectfully submitted,



STEVEN L. TAYLOR 0043876
(Counsel of Record)
Assistant Prosecuting Attorney
Counsel for Plaintiff-Appellee

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was sent by regular U.S. Mail, this 18th day of Mar., 2008, to David C. Stebbins, 400 South Fifth Street, Suite 301, Columbus, Ohio 43215, Counsel for Defendant-Appellant.



STEVEN L. TAYLOR 0043876
Assistant Prosecuting Attorney


The Supreme Court of Ohio

Clerk's Office
 65 South Front Street, 8th Floor
 Columbus, Ohio 43215-3431
 614.387.9000
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Kristina D. Frost
 Clerk of Court

Search Results: Case Number 2003-0346

The Supreme Court of Ohio

CASE INFORMATION

GENERAL INFORMATION

Case: 2003-0346 Death Penalty Case (offense committed on or after 1/1/95)

Filed: 02/19/03

Status: Case Is Disposed

State of Ohio v. Michael R. Turner

PARTIES and ATTORNEYS

Turner, Michael R. (Appellant)

Represented by:

Wright, Carol (29782) , Counsel of Record

Barstow, Todd (55834)

Edwards, William (30048)

Lazarow, William (14625)

State of Ohio (Appellee)

Represented by:

Taylor, Steven (43876) , Counsel of Record

Gilbert, Seth (72929)

O'Brien, Ronald (17245)

Saling, Heather (64976)

PRIOR JURISDICTION

Jurisdiction Information	Prior Decision Date	Case Number(s)
Franklin County, 10th District	01/15/2003	01CR063615

DOCKET ITEMS

A1

- Most documents that were filed in Supreme Court cases after December 1, 2006, are scanned. They are available for viewing via the online dockets, generally within one business day from their date of filing.
- Supreme Court orders that were issued after January 1, 2007, are also available via the online docket as PDFs. Although original orders issued by the Court bear the signature of the Chief Justice, the signature usually will not appear in the online versions. In all other respects, the online versions will be identical to the original signed orders on file with the Clerk's Office.
- A  symbol in an online docket denotes a scanned filing or an electronic version of a Supreme Court order. Clicking the icon opens an image of the filing or order.

Date Filed	Description
02/19/03	Notice of appeal of Michael R. Turner <i>Filed by:</i> Turner, Michael
02/19/03	Copy of entry of appointment of counsel <i>Filed by:</i> Turner, Michael
02/19/03	Copy of praecipe to court reporter <i>Filed by:</i> Turner, Michael
02/20/03	Copy of notice of appeal sent to clerk of court of common pleas
02/20/03	Order to clerk of court/custodian to certify record
04/21/03	Record
04/21/03	Clerk's notice of filing of record
07/10/03	Stipulation to extension of time to file merit brief to 08/11/03 <i>Filed by:</i> Turner, Michael
07/14/03	Motion for stay of execution set for January 15, 2004 <i>Filed by:</i> Turner, Michael
	07/24/03: Granted
07/21/03	Designation of counsel of record Steven L. Taylor; Heather R. Saling will remain as co-counsel <i>Filed by:</i> State of Ohio
08/11/03	Appellant's merit brief <i>Filed by:</i> Turner, Michael
09/19/03	Stipulation to extension of time to file merit brief to 10/30/03 <i>Filed by:</i> State of Ohio
10/30/03	Motion for return of items improvidently transmitted in the appellate record <i>Filed by:</i> State of Ohio
	12/24/03: Granted; Clerk shall return items to Clerk of the Franklin County Common Pleas Court
10/30/03	Appellee's merit brief <i>Filed by:</i> State of Ohio
12/31/03	Return of portions of record to clerk of court/custodian
10/06/04	Application for interim attorney fees filed by W. Joseph Edwards
	12/10/04: Granted in the amount of \$3,575.00.

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11/16/04	Notice of oral argument to be held January 18, 2005
01/07/05	List of additional authorities <i>Filed by:</i> State of Ohio
01/18/05	Oral Argument Held
05/11/05	DECISION: Affirmed: sentence to be carried into execution 8/9/05. See opinion at 2005-Ohio-1938. 
05/11/05	Motion for stay of execution pending disposition of available state remedies <i>Filed by:</i> Turner, Michael
	06/06/05: Granted
05/13/05	Return receipt received by Steven Taylor
05/13/05	Return receipt received by William Edwards, Esq.
05/27/05	Certified copy of judgment entry/mandate sent to clerk
06/01/05	Return receipt received by Clerk of Courts
06/02/05	Return receipt received by John Barron
06/02/05	Return receipt received by Sandra Shaffer
06/08/05	Return receipt received by Clerk of Courts
06/08/05	Return receipt received by William Edwards, Esq.
06/09/05	Return receipt received by John Barron
06/09/05	Return receipt received by Sandra Shaffer
06/10/05	Return receipt received by Steven Taylor
06/13/05	Return receipt received by Warden
07/11/05	Application for attorney fees by Todd Barstow
	10/03/05: Granted in the amount of \$2,953.23
08/08/05	Return of record to clerk of court/custodian
08/07/06	Motion to set execution date <i>Filed by:</i> State of Ohio
	10/04/06: Denied
08/15/06	Notice of substitution of Carol A. Wright and William Lazarow for David Bodiker and Richard Vickers as counsel for appellant <i>Filed by:</i> Turner, Michael
08/15/06	And designation of Carol A. Wright as counsel of record <i>Filed by:</i> Turner, Michael
08/15/06	Memo opposing motion to set execution date <i>Filed by:</i> Turner, Michael
07/30/07	Motion for appointment of counsel for application to reopen <i>Filed by:</i> Turner, Michael
 View	08/13/07: Granted; David C. Stebbins and William S. Lazarow of Columbus, Ohio are appointed to represent appellant in this case

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08/08/07  View	Memo opposing motion for appointment of counsel for application to reopen <i>Filed by:</i> State of Ohio
09/07/07  View	Application for reopening under S.Ct.Prac.R. XI(6) <i>Filed by:</i> Turner, Michael
 View	11/21/07: Denied because appellant failed to comply with the 90-day filing deadline in S.Ct.Prac.R. XI(6)(A)
10/02/07  View	Opposition to application for reopening <i>Filed by:</i> State of Ohio
03/12/08	Application for attorney fees of David C. Stebbins



[Supreme Court | State of Ohio](#)

[Question or Comments?](#)

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A-4

2:07-cv-00595-MRB-MRM Turner v. Warden

Michael R. Barrett, presiding

Michael R Merz, referral

Date filed: 01/23/2007**Date of last filing:** 03/14/2008**History**

Doc. No.	Dates	Description
<u>1</u>	<i>Filed & Entered:</i> 01/23/2007	☉ Remark
<u>2</u>	<i>Filed & Entered:</i> 01/23/2007 <i>Terminated:</i> 01/25/2007	☉ Motion for Leave to Proceed in forma pauperis
<u>3</u>	<i>Filed & Entered:</i> 01/23/2007	☉ Notice of Intent (Death Penalty Cases)
<u>4</u>	<i>Filed & Entered:</i> 01/23/2007 <i>Terminated:</i> 01/25/2007	☉ Motion to Appoint Counsel
<u>5</u>	<i>Filed & Entered:</i> 01/24/2007	☉ Order Referring Case to Magistrate Judge
--	<i>Filed & Entered:</i> 01/25/2007	☉ Order on Motion for Leave to Proceed in forma pauperis
<u>6</u>	<i>Filed & Entered:</i> 01/25/2007	☉ Order on Motion to Appoint Counsel
--	<i>Filed & Entered:</i> 01/29/2007	☉ Order on Motion for Miscellaneous Relief
<u>7</u>	<i>Filed & Entered:</i> 01/29/2007 <i>Terminated:</i> 01/29/2007	☉ Motion for Miscellaneous Relief
<u>8</u>	<i>Filed & Entered:</i> 02/01/2007	☉ Notice of Appearance
<u>9</u>	<i>Filed & Entered:</i> 02/01/2007	☉ Notice of Appearance
--	<i>Filed & Entered:</i> 02/02/2007	☉ Notice of Corrective Docket Entry
<u>10</u>	<i>Filed & Entered:</i> 02/02/2007	☉ Set Hearings
<u>11</u>	<i>Filed & Entered:</i> 02/24/2007 <i>Terminated:</i> 02/25/2007	☉ Motion to Continue
--	<i>Filed & Entered:</i> 02/25/2007	☉ Order on Motion to Continue
<u>12</u>	<i>Filed & Entered:</i> 02/26/2007	☉ Rule 26(f) Report
--	<i>Filed & Entered:</i> 03/07/2007	☉ Pretrial Conference - Initial
<u>15</u>	<i>Filed & Entered:</i> 03/07/2007	☉ Scheduling Order
<u>16</u>	<i>Filed & Entered:</i> 04/02/2007 <i>Terminated:</i> 04/03/2007	☉ Motion to Substitute Attorney
--	<i>Filed & Entered:</i> 04/03/2007	☉ Order on Motion to Substitute Attorney
--	<i>Filed & Entered:</i> 04/19/2007	☉ CJA 30 - Authorization to Pay
<u>17</u>	<i>Filed & Entered:</i> 06/15/2007	☉ Petition for Writ of Habeas Corpus
<u>18</u>	<i>Filed & Entered:</i> 06/16/2007 <i>Terminated:</i> 06/19/2007	☉ Motion for Leave to File

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<u>19</u>	<i>Filed & Entered:</i> 06/16/2007	Ⓢ Petition for Writ of Habeas Corpus
--	<i>Filed & Entered:</i> 06/19/2007	Ⓢ Order on Motion for Leave to File
<u>20</u>	<i>Filed & Entered:</i> 07/31/2007	Ⓢ Petition for Writ of Habeas Corpus
--	<i>Filed:</i> 08/08/2007 <i>Entered:</i> 08/28/2007	Ⓢ CJA 30 - Authorization to Pay
<u>21</u>	<i>Filed & Entered:</i> 10/04/2007 <i>Terminated:</i> 10/10/2007	Ⓢ Motion for Order to
<u>22</u>	<i>Filed & Entered:</i> 10/09/2007	Ⓢ Response in Opposition to Motion
<u>23</u>	<i>Filed & Entered:</i> 10/10/2007	Ⓢ Order on Motion for Order to
<u>24</u>	<i>Filed & Entered:</i> 11/01/2007	Ⓢ Notice (Other)
<u>25</u>	<i>Filed & Entered:</i> 11/01/2007	Ⓢ Return of Writ (Answer)
<u>26</u>	<i>Filed & Entered:</i> 12/20/2007	Ⓢ Notice (Other)
<u>27</u>	<i>Filed & Entered:</i> 12/20/2007	Ⓢ Notice (Other)
<u>28</u>	<i>Filed & Entered:</i> 01/03/2008 <i>Terminated:</i> 02/11/2008	Ⓢ Motion for Discovery
<u>29</u>	<i>Filed & Entered:</i> 01/23/2008	Ⓢ Response in Opposition to Motion
--	<i>Filed & Entered:</i> 01/29/2008	Ⓢ Order on Motion for Extension of Time to File
<u>30</u>	<i>Filed & Entered:</i> 01/29/2008 <i>Terminated:</i> 01/29/2008	Ⓢ Motion for Extension of Time to File
<u>31</u>	<i>Filed & Entered:</i> 02/08/2008	Ⓢ Reply to Response to Motion
<u>32</u>	<i>Filed & Entered:</i> 02/08/2008	Ⓢ Reply to Respondent's Answer
<u>33</u>	<i>Filed & Entered:</i> 02/11/2008	Ⓢ Order on Motion for Discovery
<u>34</u>	<i>Filed & Entered:</i> 02/19/2008 <i>Terminated:</i> 03/05/2008	Ⓢ Motion for Discovery
<u>35</u>	<i>Filed & Entered:</i> 02/28/2008	Ⓢ Order
<u>36</u>	<i>Filed & Entered:</i> 02/29/2008	Ⓢ Motion for Hearing
<u>37</u>	<i>Filed & Entered:</i> 03/04/2008	Ⓢ Response in Opposition to Motion
<u>38</u>	<i>Filed & Entered:</i> 03/04/2008	Ⓢ Response to Motion
<u>39</u>	<i>Filed & Entered:</i> 03/05/2008	Ⓢ Motion for Discovery
<u>40</u>	<i>Filed & Entered:</i> 03/05/2008	Ⓢ Order on Motion for Discovery
<u>41</u>	<i>Filed & Entered:</i> 03/14/2008	Ⓢ Reply to Response to Motion

A-6

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

MICHAEL R. TURNER,)	Case No. 2:07-cv 595-MRB-MRM
)	
Petitioner,)	District Judge Michael R. Barrett
)	
vs.)	Magistrate Judge Michael R. Merz
)	
STUART HUDSON, WARDEN,)	<u>PETITIONER IS UNDER A</u>
)	<u>SENTENCE OF DEATH</u>
)	
Respondent.)	
)	

**TURNER’S MEMORANDUM IN OPPOSITION
TO WARDEN “HABEAS RULE 2(d) MOTION**

On October 4, 2007, the Warden moved this Court to issue an Order “directing Petitioner, Michael R. Turner, to conform his habeas petition to the requirements of Rule 2(d)...”

The Warden’s Motion should be denied because A) it is untimely, and B) it fails to clearly state what relief it seeks or to state relief that is required under Rule 2 of the Rules Governing §2254 Petitions.

A. The Motion is Untimely

On January 23, 2007, counsel for Turner filed preliminary documents to invoke the jurisdiction of this Court, to request the appointment of counsel, and to

proceed *in forma pauperis*. (ECF 2, 3, 4) Attached to Turner's Motion to Appoint Counsel was an affidavit from Michael R. Turner, stating that he had met with attorneys Carol A. Wright and William S. Lazarow and "I request that Attorneys Carol Wright and William Lazarow be appointed as counsel to represent me on my Petition for Habeas Corpus in the United States District Court." (ECF 4) Presumably if Turner requested that counsel be appointed to represent him, he desired to have counsel represent him and act on his behalf. The Warden has not suggested otherwise, but only relied on a non-existent technicality.

On January 25, 2007, this Court entered an Order appointing Carol Wright and William Lazarow as counsel to represent Turner. (ECF 6 at 2-3)¹ A copy of the Order Appointing Counsel was caused to be served on James Canepa of the Capital Crimes Section of the Office of the Ohio Attorney General. (ECF 6 at 6)

On February 1, 2007, Assistant Attorneys General Sarah Hadacek and Thomas Madden entered their appearance as counsel for the Warden. (ECF 8, 9)

A pretrial telephone conference was conducted on March 7, 2007 and a Scheduling Order issued requiring Turner to file his initial Petition for Writ of Habeas Corpus by June 15, 2007 and his Amended Petition by August 1, 2007. (ECF 15)

¹ Subsequently, Turner's Motion to substitute David Stebbins for attorney Carol Wright was granted by this Court, due to Ms. Wright's acceptance of employment out of state. (ECF 16 and Notation Entry 04/03/07)

Turner filed his Petition for Writ of Habeas Corpus on June 15, 2006 (ECF 17) and his Substitute Petition on June 16, 2007. (ECF 19) Turner likewise filed his First Amended Petition for Writ of Habeas Corpus on July 31, 2007. (ECF 20)

On October 4, 2007, the Warden filed his Rule 2(d) Motion. At no time, in the eight plus months since Turner filed his initial pleadings and since counsel for the Warden appeared on the case, and the three and a half months since Turner's Petition was filed, has the Warden questioned the right of undersigned counsel to act on behalf of Mr. Turner. The Warden has presented nothing in his Motion to suggest that counsel is not so authorized.

Michael Turner requested the appointment of counsel. Turner has not indicated that he is presently unhappy with this representation. Were there a legitimate question about counsel's authorization to act on behalf of Michael Turner, the time for raising it has long since passed.

The Warden's Motion should be denied as untimely.

B. Failure to State Relief Required under Habeas Rule 2

In his Motion, the Warden claims that Turner's Petition does not conform to the requirements of Habeas Rule 2(d). Rule 2(d) states;

(d) Standard Form.

The petition must *substantially follow* the form appended to these rules or a form prescribed by a local district-court rule. The clerk must make forms available to petitioners without charge. (emphasis supplied)

The Warden has made no allegation that the Amended Petition filed on behalf of Michael Turner does not “substantially follow” the form petition or that it does not contain sufficient information so that the Warden can understand Turner’s claims or so that the Warden can respond to Turner’s claims. The Warden seems to argue that in this capital habeas corpus case, the pre-printed form that is provided for indigent inmates to use when filing such a Petition *pro se* is somehow superior to the legal form prepared and submitted by counsel. The Warden has not suggested that any of the information requested in the form petition has not been included in the Amended Petition filed by Turner. (ECF 20). The Warden’s sole complaint appears to be that the petition is not signed by Turner as is requested on the form petition.

Habeas Rule 2(c)(5) no longer requires the petition to be signed by the Petitioner: “(c) **Form.** The petition must . . . (5) be signed under penalty of perjury by the petitioner *or by a person authorized to sign it for the petitioner under 28 U.S.C. §2242.*” Counsel appointed to represent a habeas corpus petitioner -- at the request of the petitioner -- are authorized to sign the petition on behalf of the petitioner.

The Warden ignores the language of Advisory Committee Notes on the 2004 Amendments to the Habeas Rules:

Revised Rule 2(c)(5) has been *amended by removing the requirement that the petition be signed personally by the petitioner.*

As reflected in 28 U.S.C. §2242, an application for habeas corpus relief may be filed by the person who is seeking relief, or by *someone acting on behalf of that person*. . . . Thus, under the amended rule the petition may be signed by petitioner personally or by someone acting on behalf of the petitioner, assuming that the person is authorized to do so, for example, *an attorney for the petitioner*. . . . (emphasis supplied).

The Warden appears to argue that despite this clear authorization of Rule 2(c)(5) of the *Rules Governing §2254 Cases* for attorneys to sign the petition on behalf of their client, that Turner must also personally sign the petition. The Warden apparently relies on language contained on the form petition that requests an explanation when someone other than the petitioner signs the petition. Mandating such a requirement in light of the language of Rule 2(c)(5), the Advisory Committee Notes, and this court's appointment of counsel to represent Turner would truly elevate form (or forms) over substance.

As there is no requirement that Michael Turner actually sign the Petition, the Warden's Motion should be overruled as it requests that which is not required by the law.

Undersigned counsel have each represented death row inmates seeking federal habeas corpus relief for over twenty years. Counsel are fully cognizant of the need to communicate and seek the approval of their clients to pursue this litigation. Counsel have done so. Counsel likewise signed the Petition as Counsel

for Michael Turner and affixed an attestation that the allegations contained there were true to the best of their knowledge:

Pursuant to 28 U.S.C. § 2242, acting on behalf of Michael R. Turner, the petitioner herein, I hereby verify that the allegations contained herein are true and accurate to the best of my knowledge.

/s/ David C. Stebbins
David C. Stebbins

July 31, 2007

The Warden's suggestion in filing this motion that counsel may be litigating without the approval of Mr. Turner is unfounded and contradicted by the Court's appointment of counsel, by counsel's attestation, and by counsel's signature on the Amended Petition and all previous filings.²

The Warden's Motion borders on being frivolous and should be overruled.

Respectfully submitted,

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Attorney at Law
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Columbus, OH 43215
614.228.9058
614.221.8601 FAX
david@dstebbins.com

and

² Counsel will, however, comply with any additional requirements the Court imposes.

William S. Lazarow (0014625)
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Columbus, OH 43215
614.228.9058
614.221.8601 FAX
BillLazarow@aol.com

By: /s/ David C. Stebbins
David C. Stebbins
Counsel for Michael Turner

CERTIFICATE OF SERVICE

The above document was served on all parties of record through the court's electronic filing system, including:

Sarah Hadacek

shadacek@ag.state.oh.us

and

Thomas E. Madden

tmadden@ag.state.oh.us