

must carefully examine the possibility of pressing legal claims asserting the right to a fuller and fairer process." ABA *Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases* (rev. ed. 2003), reprinted in 31 Hofstra L. Rev. 913, 937 (2003) (footnote omitted). In order to effectively discharge counsel's duties, the ABA *Guidelines* require counsel to:

- "be familiar with the procedures for and permissible substantive content of a request for clemency;
- to "conduct an investigation in accordance with Guideline 10.7";
- to "ensure that clemency is sought in as timely and persuasive a manner as possible, tailoring the presentation to the characteristics of the particular client, case and jurisdiction"; and
- to "ensure that the process governing consideration of the client's application is substantively and procedurally just, and, if it is not, should seek appropriate redress.

Guideline 10.15.2, 31 Hofstra L. Rev. at 1088.

Additionally, under the recent decision of the United States Supreme Court in *Martinez v. Ryan*, 132 S.Ct. 1309 (2012), Henness may be able to demonstrate that the federal courts improperly refused to consider some of his claims on the merits. As a result, Henness' stay of execution should remain in place while his newly-appointed attorneys determine whether his defaulted claims can be revived in federal court.

The federal courts held that some of Henness' claims for relief had been procedurally defaulted in state court, and as a result the federal courts refused to consider them on the merits. However, under the recent decision of the United States Supreme Court in *Martinez v. Ryan*, 132 S.Ct. 1309 (2012), the ineffective assistance of state post-conviction counsel can establish cause and prejudice in federal court to overcome the procedural default in state court in some circumstances. *Martinez*, 132 S.Ct. at 1320.

Undersigned counsel were only recently appointed to represent Henness. Counsel are in the process of determining whether or not Henness can establish cause and prejudice for any of his otherwise-defaulted claims under *Martinez*. This case has a very lengthy record and undersigned counsel are still in the process of reviewing it. In addition, counsel need time to investigate the performance of Henness' state post-conviction counsel to determine if Henness was denied the effective assistance of post-conviction counsel which could excuse the federally imposed default of some of his federal constitutional claims.. Accordingly, Henness' stay of execution should remain in place.

Henness respectfully requests that this Court deny the State's expedited request and deny the State's Motion to Set and Execution Date.

Respectfully submitted,



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and

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was sent by regular U.S. Mail to Ron O'Brien, Prosecuting Attorney, and Steven Taylor, Jr., Chief Counsel, Appellate Division, 373 South High Street, 14th Floor, Columbus, Ohio 43215, on this 7th day of May, 2012.



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