

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHN G. SPIRKO, JR.,

Petitioner-Appellant,

vs.

MARGARET BRADSHAW,
Warden,

Respondent-Appellee.

Case No. 05-4356

(District Court Case No. 3:95CV7209)

Death Penalty Case

**Motion for Expedited Appeal and for
Alteration of Circuit Rule 30 or, in
the Alternative, Motion for a Stay of
Execution**

Pursuant to Federal Rule of Appellate Procedure 2 and Sixth Circuit Rule 2, Petitioner-Appellant John G. Spirko, Jr., who is scheduled to be executed by the State of Ohio on November 15, 2005, hereby requests that this Court set an expedited schedule for briefing and oral argument in this appeal in order to permit the Court to render a ruling on his appeal prior to November 15, 2005. If the proposed expedited schedule cannot accommodate the Court's thorough review of the important issues raised in this capital case, Spirko moves the Court now for a stay of execution pending resolution of his claims on any schedule established by the Court.

Spirko has appealed from the district court's order dated September 6, 2005, in which the district court denied his Rule 60(b) motion his request for an evidentiary hearing. On September 9, 2005, Spirko filed with the district court his

notice of appeal and his request for a certificate of appealability. The district court issued a certificate of appealability on September 13, 2005. On September 22, 2005, this Court remanded the case to the district court to permit Spirko to file a motion to re-open discovery in light of evidence Spirko discovered after filing his notice of appeal.

On October 28, 2005, the district court denied Spirko's motion for supplemental discovery. In its order, the district court found that an appeal from its October 28 decision could be taken in good faith and issued a certificate of appealability. Spirko filed his notice of appeal on October 30, 2005.

In order for Spirko to have any appeal rights whatsoever, it is imperative that this Court consider and rule on his appeal prior to his execution.

Spirko hereby proposes the following schedule:

Appellant's opening brief: November 1, 2005.

Appellee's brief: November 4, 2005

Appellant's reply brief: November 7, 2005.

Oral argument: Spirko believes that the panel would benefit from oral argument in this complex capital case. If the panel determines that oral argument is warranted, Spirko proposes that oral argument be scheduled at the Court's convenience on November 9 or 10, 2005.

Spirko proposes that the Court order that briefs be sent by email to opposing counsel and the Clerk of the Court by 5 p.m. EST on the date due and that hard copies be sent to the Court and opposing counsel by overnight delivery service on the date due, for delivery the next morning.

Spirko also moves this Court to alter Sixth Circuit Rule 30 by requiring that each party file its own Appendix and permitting each party to send its Appendix to the Court and opposing counsel by overnight delivery service on the date due, for delivery the next morning. (This alteration would require the State to send its Appendix on November 4, 2005, for delivery on Saturday, November 5, 2005.)

Counsel for the State has informed Spirko's counsel that the State does not oppose Spirko's motion for an expedited appeal or its motion that each party file its own Appendix. The State, however, proposes the following schedule:

Appellant's opening brief: November 2, 2005.

Appellee's brief: November 7, 2005

Appellant's reply brief: November 9, 2005.

Oral argument: If the panel determines that oral argument is warranted, at the Court's convenience on November 10, 2005

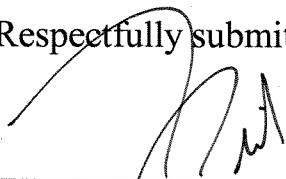
Both parties would abide by any schedule that is established by the Court.

In the alternative, if the Court concludes that it is not able to consider thoroughly this case and decide it on the merits before the scheduled execution

date of November 15, 2005, Spirko respectfully moves this Court for a stay of execution pending resolution of his claims. *See Cooley v. Anderson*, 338 F.3d 615 (2003) (en banc).

DATED: October 31, 2005

Respectfully submitted,



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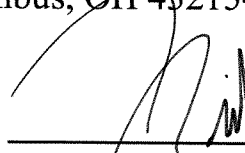
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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 2005, a true and correct copy of the foregoing Request for Expedited Appeal was served email and by FedEx overnight delivery on the following counsel of record:

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