

Court of Appeals, State of Michigan

ORDER

In re Tevin Spencer

Docket No. 280474

LC No. 07-051918-DL

David H. Sawyer
Presiding Judge

Richard A. Bandstra

Jane E. Markey
Judges

The Court orders that the September 11, 2007, stay issued by this Court is LIFTED.

Pursuant to MCR 7.205(D)(2), in lieu of granting the application for leave to appeal, the Court orders that that portion of the September 4, 2007, order directing respondent to supply a copy of his investigator's report to petitioner is VACATED. The order language is so broad as to impermissibly infringe upon the protection afforded the report under the work-product doctrine. *United States v Nobles*, 422 US 225, 238-241; 95 S Ct 2160; 45 L Ed 2d 141 (1975); MCR 2.302(B)(3)(a); *People v Holtzman*, 234 Mich App 166, 167-169, 174-185; 593 NW2d 617 (1999). This matter is REMANDED to the trial court to reconsider petitioner's discovery request for the report. The trial court shall not grant the discovery request unless the court determines that the report contains witness statements as defined by MCR 2.302(B)(3)(c), i.e., the statement must be either a written statement signed or otherwise adopted or approved by the person making it or a stenographic, mechanical, electrical or other recording, or a transcription of it, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded, *Holtzman, supra*, unless petitioner demonstrates both substantial need and undue hardship, and even upon that showing the petitioner may discover only factual, not deliberative, work product. *Messenger v Ingham Co Prosecutor*, 232 Mich App 633, 644; 591 NW2d 393 (1998); see also *People v Gilmore*, 222 Mich App 442, 450; 564 NW2d 158 (1997).

This order has immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

SEP 12 2007

Date

Sandra Schultz Mengel
Chief Clerk