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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE DISTRICT OF ARIZONA
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8 Frank Jarvis Atwood,
9 Petitioner,
10 vs.
11 Charles L. Ryan, et al.,
12 Respondents.

No. CV-98-116-TUC-JCC
DEATH PENALTY CASE

ORDER

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14 **IT IS HEREBY ORDERED** that the Joint Motion to Continue Discovery
15 Deadlines and Hearing (Doc. 412) is **GRANTED**.

16 **IT IS FURTHER ORDERED:**

17 1. An evidentiary hearing to determine whether Petitioner has set forth a
18 substantial claim of ineffective assistance of counsel at sentencing will commence on
19 **October 7, 2013**, beginning at 9:00 a.m. in the Evo A. DeConcini U.S. Courthouse in
20 Tucson. The courtroom will be identified by separate order prior to the hearing.

21 2. Disclosure. The name and contact information for any potential witness
22 shall be disclosed no later than **August 19, 2013**. All discovery, including depositions,
23 shall be completed by **September 9, 2013**.

24 3. Discovery Requests. Any motions for discovery pursuant to Rule 6(a) of
25 the Rules Governing Section 2254 Cases and the Federal Rules of Civil Procedure,
26 except for the deposition of witnesses, shall be filed no later than **August 21, 2013**.
27 Opposition, if any, shall be filed by **August 28, 2013**. An optional reply may be filed by
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1 **September 4, 2013.**

2 4. Depositions. Any motion to conduct a deposition pursuant to Rule 6(a) of
3 the Rules Governing Section 2254 Cases shall be filed no later than **August 9, 2013.**
4 Opposition, if any, shall be filed by **August 16, 2013.** An optional reply may be filed by
5 **August 23, 2013.** Depositions, if authorized, shall be completed by **September 9, 2013.**

6 5. Mental Health Expert Disclosures.

7 a. Respondents shall provide expert disclosure as required by Rule
8 26(a)(2)(B) of the Federal Rules of Civil Procedure no later than **August 1, 2013.**

9 b. Petitioner shall provide any supplemental expert disclosure no later
10 than **August 21, 2013.**

11 6. Legal Expert Disclosures. The Court does not favor the use of *Strickland*
12 experts and is not inclined to permit either depositions or live testimony from such
13 experts. In the event the parties nonetheless consult with *Strickland* experts, each shall
14 provide expert disclosure as required by Rule 26(a)(2)(B) no later than 15 days after the
15 deposition of sentencing counsel, Stanton Bloom.

16 7. Petitioner's Presence. Any request for Petitioner to attend the evidentiary
17 hearing in person or to participate via videoconference shall be filed no later than **August**
18 **1, 2013.**

19 8. Prehearing Statement. On or before **September 23, 2013,** the parties shall
20 file a joint prehearing statement, which shall:

- 21 a. Identify counsel who will appear at the hearing;
22 b. Identify any stipulated and uncontested facts;
23 c. Identify the contested issues of fact and law;
24 d. Identify the witnesses to be called at the hearing, including a brief
25 description of their anticipated testimony; and
26 e. Identify the exhibits to be presented at the evidentiary hearing,
27 noting any objection by the party against whom the exhibit is to be offered.
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9. Proposed Findings. Proposed Findings of Fact and Conclusions of Law shall be filed separately by each party on the same date as the Joint Prehearing Statement.

10. Exhibit/Witness Lists. The parties shall prepare exhibit and witness lists as provided in the “Instructions for Marking and Submitting Exhibits, Exhibit Lists, and Witness Lists for Trial/Evidentiary Hearing,” available at www.azd.uscourts.gov, under “Judges & Courtrooms,” “Orders, Forms & Procedures,” and “Standard Forms Used by All Tucson Judges,” except that the Court’s paper copy of document exhibits, assembled in three-ring binders, shall be provided to the Court on the same date as the Joint Prehearing Statement.

IT IS FURTHER ORDERED that no later than **July 22, 2013**, Petitioner’s appointed CJA counsel shall file *ex parte* and under seal a proposed budget for the period June 4, 2013, through October 9, 2013. An automated form to assist in preparation of the proposed budget shall be sent by the Court’s Capital Case Staff Attorney to Petitioner’s counsel via electronic mail.

DATED this 9th day of July, 2013.



John C. Coughenour
UNITED STATES DISTRICT JUDGE