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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DOUGLAS RAY STANKEWITZ,)	Case No. 1:91-cv-616-AWI
)	
Petitioner,)	
)	<u>DEATH PENALTY CASE</u>
vs.)	
)	
ROBERT WONG, Acting Warden)	Order Granting Respondent's
of San Quentin State Prison,)	Request for Stay of Judgment
)	Pending Appeal
Respondent.)	

This matter is before the Court pursuant to a Request, filed by Respondent Robert Wong ("the Warden"), seeking a stay of the judgment in this case pending appeal, under Federal Rules of Appellate Procedure Rule 8. The petition for writ of habeas corpus filed by Petitioner Douglas Ray Stankewitz ("Stankewitz") was granted September 22, 2009, and the Warden's motion for reconsideration was denied October 15, 2009. The Warden filed a Notice of Appeal January 8, 2010, concurrently with the request for stay of the judgment pending resolution of appeal. The Warden asserts that under Rule 8 of the Federal Rules of Appellate Procedure, this Court may stay execution of a judgment. The Warden contends a stay will allow for the orderly consideration of the appeal and states that counsel for Stankewitz does not oppose the stay.

Although the filing of a notice of appeal generally vests jurisdiction over

1 the cause appealed in the Court of Appeals, *United States v. El-O-Pathic Pharmacy*,
2 192 F.2d 62, 79 (9th Cir. 1951), it has long been recognized that a lower court
3 reserves the power to make orders appropriate to preserve the status quo while
4 the appeal is pending. *Newton v. Consolidated Gas Co.*, 258 U.S. 165, 177 (1922); *In*
5 *re Federal Facilities Realty Trust*, 227 F.2d 651, 654 (7th Cir. 1955). Consistent with
6 this principle, Rule 8(a) of the Federal Rules of Appellate Procedure requires that
7 a motion for a stay pending appeal be presented initially in the district court.

8 The Warden's request for a stay of judgment pending appeal is
9 GRANTED.

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11 IT IS SO ORDERED.

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13 DATED: January 12, 2010

14 /s/ Anthony W. Ishii

15 Chief United States District Judge
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