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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 WARD FRANCIS WEAVER, JR.,

12 Petitioner,

13 v.

14 KEVIN CHAPPEL, Warden of San Quentin
15 State Prison,

16 Respondent.

Case No. 1:02-cv-05583 AWI-SAB

DEATH PENALTY CASE

ORDER GRANTING IN PART
PETITIONER'S APPLICATION FOR
EXTENSION OF TIME
(ECF No. 191)

ORDER MODIFYING BRIEFING
SCHEDULE FOR INEFFECTIVE
ASSISTANCE OF COUNSEL CLAIMS
(ECF No. 183)

ORDER DIRECTING PARTIES TO SUBMIT
JOINT STATEMENT REGARDING
RECORD CLAIMS

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21 Before the Court is an April 21, 2015 application filed by Petitioner, through counsel, to
22 extend the deadline for filing the opening brief on ineffective assistance of counsel ("IAC")
23 claims from the current June 1, 2015 to August 30, 2015. Counsel cite unavoidable delays
24 arising from locating and hiring qualified investigators, an injury to one of the investigators,
25 witness unavailability, paralegal unavailability, and their significant capital caseload. Counsel
26 state Respondent's non-opposition to the application.

27 The Court finds good cause to extend the deadline for Petitioner's opening brief, but to a
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1 date earlier than that requested in the application. Counsel have not demonstrated unavoidable
2 delay relating to hiring investigators, scheduling paralegal time, and their responsibilities in other
3 capital cases. The need to plan for these matters was readily apparent on September 4, 2014,
4 when the Court set the current briefing schedule. Lack of diligence by counsel impacts the
5 Court's management of its exceedingly heavy caseload. Counsel are advised that no further
6 extensions will be granted.

7 The September 4, 2014 briefing schedule shall be modified in light of the extension
8 granted herein.

9 As to the record claims for which briefing has not been scheduled, the Court is aware that
10 previously cases in the Eastern District proceeded on limited claims with briefing of the
11 remaining claims occurring after resolution of the limited claims. The Court finds that this has
12 resulted in undue delay in addressing the claims of the Petitioner. Upon review of the status and
13 history of this action, the Court determines that the parties shall be required to file a joint
14 statement regarding phase III briefing of the record claims not covered by the Court's March 24,
15 2014 order.

16 Accordingly, for the reasons stated, it is **HEREBY ORDERED** that:

- 17 1. On or before August 3, 2015, the parties are directed to meet and confer and file a
18 joint statement regarding all record claims not covered by the Court's March 24,
19 2014 order, setting forth in detail a proposed schedule for submission of points
20 and authorities addressing 28 U.S.C. § 2254(d) in support of and opposition to
21 these claims; Petitioner's reply; and any motion(s) for factual development. The
22 joint statement shall also address any objections, procedural issues and other
23 matters that need to be discussed before these record claims move to phase III
24 and, if applicable, a timeline for litigating them;
- 25 2. On or before August 3, 2015, Petitioner shall file an opening brief addressing the
26 ineffective assistance of counsel issues raised in the Court's March 24, 2014
27 order;
- 28 3. On or before November 2, 2015, Respondent's opposing brief shall be filed; and

1 4. On or before December 21, 2015, Petitioner's reply brief shall be filed.

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3 IT IS SO ORDERED.

4 Dated: April 23, 2015



UNITED STATES MAGISTRATE JUDGE

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