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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAN REED)	1:06-CV-01757 OWW JMD HC
)	
Petitioner,)	
)	ORDER AUTHORIZING ISSUANCE OF
v.)	SUBPOENAS AND PAYMENT OF
)	WITNESSES [Doc. 44]
LYDIA HENSE,)	
)	
Respondent.)	

Petitioner is State prisoner proceeding with a petition for writ of habeas corpus under 28 U.S.C. § 2254.

The Court has scheduled an evidentiary hearing to be conducted on September 10 and 11, 2009 at 8:45 a.m.

On August 28, 2009, Petitioner filed a request for the Court, pursuant to Rule 17(b) of the Federal Rules of Criminal Procedure, to authorize subpoenas and the payment of statutory witness fees and mileage by the United States Marshall Service for five witnesses: Hendrika Anderson, Kathleen Kennedy, Jerry Reed, Kenneth Ballard, and George Ruiz. Petitioner states that service of the subpoenas is not required by the United States Marshal's Office. Petitioner contends the five witnesses are necessary for the evidentiary hearing scheduled for September 10 and 11.

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1 The Court notes that the payment of witness fees and mileage is governed by 28 U.S.C. §
2 1825(b), which provides that:

3 In proceedings *in forma pauperis* for a writ of habeas corpus, and in
4 proceedings in forma pauperis under section 2255 of this title, the United States
5 marshal for the district shall pay, on the certificate of the district judge, all fees of
6 witnesses for the party authorized to proceed in forma pauperis, except that any fees
of witnesses for such party, other than experts, appearing pursuant to subpoenas
issued upon approval of the court, shall be paid by the United States marshal for the
district--

- 7 (1) on the certificate of a Federal public defender or assistant Federal public
defender, in any such proceedings in which a party is represented by such
Federal public defender or assistant Federal public defender, and
8 (2) on the certificate of the clerk of the court upon the affidavit of such
witnesses' attendance given by other counsel appointed pursuant to section
9 3006A of title 18, in any such proceedings in which a party is represented by
such other counsel.

10 Accordingly, it is hereby ordered that Petitioner is deemed to be proceeding *in forma*
11 *pauperis* for the purposes of the evidentiary hearings. The Court authorizes the issuance of
12 subpoenas for the above named witnesses. Pursuant to 28 U.S.C. § 1821, the Court authorizes the
13 payment of the statutory witness fees and mileage by the United States Marshal's Office for the
14 above named five witnesses as follows:

- 15 1. Hendrika Anderson: Statutory witness fee of \$40.00 per day plus mileage fee of
16 \$43.22, consisting of 78.58 miles round trip from the witness' residence to the Court
17 at .55 cents per mile, for a total cost of \$83.22;
18 2. Kathleen Kennedy: Statutory witness fee of \$40.00 per day plus mileage fee of
19 \$38.96, consisting of 70.84 miles round trip from the witness' residence to the Court
20 at .55 cents per mile, for a total cost of \$78.96;
21 3. Jerry Reed: Statutory witness fee of \$40.00 per day plus mileage fee of \$54.56,
22 consisting of 99.2 miles round trip from the witness' residence to the Court at .55
23 cents per mile, for a total cost of \$94.56;
24 4. Kenneth Ballard: Statutory witness fee of \$40.00 per day plus mileage fee of \$62.08,
25 consisting of 112.87 miles round trip from the witness' residence to the Court at .55
26 cents per mile, for a total cost of \$102.08; and
27 5. George Ruiz: Statutory witness fee of \$40.00 per day plus mileage fee of \$59.15,
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consisting of 107.54 miles round trip from the witness' residence to the Court at .55 cents per mile, for a total cost of \$99.15.

IT IS SO ORDERED.

Dated: September 2, 2009 /s/ John M. Dixon
UNITED STATES MAGISTRATE JUDGE