

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

STEVEN DAVID CATLIN,
Petitioner,
v.
KEVIN CHAPPEL, Warden of San
Quentin State Prison,
Respondent.

Case No. 1:07-cv-01466-LJO-SAB
DEATH PENALTY CASE
ORDER GRANTING IN PART
RESPONDENT'S UNOPPOSED MOTION TO
MODIFY BRIEFING SCHEDULE

Before the Court is a motion by respondent, through counsel Stephen Herndon, and filed February 24, 2016, to extend the deadline for filing his merits brief and opposition to petitioner's motion for evidentiary development from the current February 29, 2016 to August 1, 2016. (*See* Doc. Nos. 80, 85.)

Mr. Herndon states the extension of time is necessary due to responsibilities in other matters and the voluminous nature of the petition and record. Mr. Herndon represents that he has

1 devoted significant time to this matter over the last 6 months, but has yet to draft a merits
2 response to 30 of the 68 claims and opposition to petitioner's motion for evidentiary
3 development.

4 Petitioner, through appointed CJA counsel Saor Stetler and Richard Novak, filed a
5 statement of non-opposition to respondent's motion. (*See* Doc. No. 86.)

6 The court finds good cause to extend time to reasonably allow completion of respondent's
7 merits brief and opposition to the evidentiary development motion, but not for the length of time
8 requested. Respondent's counsel has had ample opportunity to become familiar with the claims
9 and the record. The petition was filed and answered in 2008. The claims are no more numerous
10 and the record is no more voluminous now than then.

11 Similarly, respondent's counsel has had ample notice of the need to accommodate this
12 matter in his workload. The current deadline was set 11 months ago. Petitioner filed the motion
13 for evidentiary development 8 months ago. The court expects its deadlines to be met absent truly
14 unforeseeable and exigent circumstance.

15 Counsel for respondent is admonished regarding untimely advisement of matters germane
16 to scheduling. Such matters should be noticed earlier rather than later so as to not delay the
17 progression of the case. Last minute extension requests can detrimentally impact the court's
18 calendar and case management. Earlier submissions of requests should be made when it is
19 apparent that deadlines cannot be met and with a showing of good cause. Request for extension
20 on the eve of a deadline where the justification for the extension is not newly created will be met
21 with caution and may be denied in the future, whether in this case or a subsequent case in which
22 all counsel are involved. However, since this is respondent's first request for extension of time
23 and he has provided some justification and the request is unopposed, the Court will grant the
24 request in part.

25 Accordingly, for good cause shown, it is **HEREBY ORDERED** that respondent's motion
26 to modify the briefing schedule (*see* Doc. No. 85) is granted in part, such that respondent shall
27 file his merits brief, and opposition to petitioner's motion for evidentiary development, by not
28 later than **June 1, 2016**; petitioner's reply to respondent's merits brief, and opposition to motion,

1 shall be filed by not later than November 30, 2016. The previously scheduling order (*see* Doc.
2 No. 80) is modified consistent with the foregoing. All counsel are directed to conform their
3 schedules to meet the deadlines provided in this order.

4

5

6

IT IS SO ORDERED.

7

Dated: March 1, 2016



UNITED STATES MAGISTRATE JUDGE

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28