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6	UNITED STATES DISTRICT COURT	
7	EASTERN DISTRICT OF CALIFORNIA	
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9	DENNIS HAROLD LAWLEY,) Case No. 1:08-cv-01425-LJO
10	Petitioner,	DEATH PENALTY CASE
11	VS.	ORDER APPOINTING COUNSEL AND
12	ROBERT WONG, as Acting Warden of California State Prison at San Quentin,) INITIATING CASE MANAGEMENT) PROCEDURES
13		
14	Respondent.)
15	This matter is before the Court on the request of Petitioner Dennis Harold Lawley ("Lawley")	
16	for appointment of counsel and the ensuing recommendation of the Selection Board for the Eastern	
17	District of California regarding Lawley's request. The Court's decision as to the appointment of counsel	
18	is informed by the December 23, 2008 letter from the Selection Board over the signature of Assistant	
19	Federal Defender Joseph Schlesinger, together with two attachments, namely, a November 25, 2008	
20	letter from California Appellate Project Staff Attorney Scott Kauffman, and a December 1, 2008 email	
21	from Mr. Kauffman to Michael G. Millman, the Executive Director of the California Appellate Project.	
22	The decision also is informed by a telephonic hearing at which the Court asked Mr. Schlesinger to clarify	
23	certain statements in his letter on behalf of the S	Selection Board. That hearing was conducted
24	confidentially on January 7, 2009. The transcript of	the January 7, 2009 hearing is sealed.
25	The Selection Board has recommended joint representation of Lawley by the Capital Habeas Unit	
26	of the Federal Defender's Office and private attorney Wesley A. Van Winkle. The information provided	
27	by Mr. Schlesinger also shows that Mr. Kauffman, who represented Lawley on direct appeal and	
28	currently represents him on state habeas before the California Supreme Court would like to be appointed	
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co-counsel along with the Federal Defender in these federal proceedings. After reviewing the above-referenced correspondence, the Court declines to appoint Mr. Kauffman due a number potential conflicts which possibly could disrupt the litigation Lawley's federal habeas claims as the case progresses. The Court adopts the recommendation of the Selection Board, appointing the Capital Habeas Unit of the Federal Defender's Office and private attorney Wesley A. Van Winkle. Assistant Federal Defender Lissa J. Gardner is designated as the attorney from the Federal Defender's Office assigned to the case along with Mr. Van Winkle

Counsel for the parties (including for Respondent Robert Wong, as Acting Warden of San Quentin State Prison) shall familiarize themselves with the Guide to Case Management and Budgeting in Capital Habeas Cases, Eastern District of California, Fresno Division (hereafter the "Attorney Guide"), most recently updated in December 2008, and posted on the Court's web-page (under Fresno, "Attorney Info," "Forms"). Both parties are asked to complete the Confidential Case Evaluation Form (Appendix B to the Attorney Guide). *See* Attorney Guide, ¶ 47. The Court will maintain each Confidential Case Evaluation Form under seal, unless the party filing the Form elects to file it publicly.

Mr. Van Winkle and Ms. Gardner are directed to prepare a case management plan and budget for Phase I of the litigation in accordance with the Attorney Guide. The proposed case management plan and budget shall be supported by properly subscribed declarations. *See* Attorney Guide, ¶14. Although only Mr. Van Winkle's services will be budgeted, in order to evaluate the reasonableness of services he proposes to provide, resources to be allocated by the Federal Defender's Office also must be disclosed. In submitting the proposed budget, Mr. Van Winkle shall also complete the Rate Justification Worksheet (Appendix A to the Attorney Guide) so the Court can establish a reimbursement rate for his professional services. The Phase I case management plan and budget shall be filed under seal by Friday January 16, 2009.

The Court will conduct a telephonic case management and budget conference at 8:00 a.m. on January 22, 2009 with counsel for Lawley initiating the call. All counsel shall participate in the case management portion of the call. Counsel shall be prepared to discuss a the statute of limitations, a timetable for the filing of the petition, and a protective petition, if necessary, the time necessary to

1	assemble the record, and a date for the Warden to lodge the state record. Counsel for the Warden will
2	then be excused so that confidential matters pertaining to a proposed budget for Phase I can be resolved.
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4	IT IS SO ORDERED.
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6	Dated: January 7, 2009 /s/ Lawrence L O'Neill
7	/s/ Lawrence J. O'Neill Lawrence J. O'Neill United States District Judge
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