

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**  
EASTERN DISTRICT OF CALIFORNIA

KEITH ZON DOOLIN,  
Petitioner,

v.

KEVIN CHAPPELL, as Warden of San  
Quentin State Prison,  
Respondent.

Case No. 1:09-cv-01453-AWI-SAB

DEATH PENALTY CASE

ORDER APPOINTING REPLACEMENT CJA  
COUNSEL

The Selection Board has recommended appointment of counsel to replace CJA attorney Michael Levine, Petitioner's federal counsel of record. (ECF No. 167.) Good cause appearing,

IT IS HEREBY ORDERED as follows:

1. Robert R. Bryan, 2107 Van Ness Ave., Suite 203, San Francisco, CA 94109 and Pamala Sayasane, 660 4th Street # 341, San Francisco, CA 94107 are appointed lead and second counsel, respectively, to represent Petitioner pursuant to 18 U.S.C. § 3599. See Local Rule 191(c).

2. Because this federal proceeding is in abeyance pending exhaustion of state

1 remedies before the California Supreme Court, (see ECF No. 134), absent a request by the  
2 parties supported by good cause, the Court sees no present need for case management  
3 conference. However, no reimbursement rate has been established for Mr. Bryan and Ms.  
4 Sayasane. To assist the Court in this matter, Mr. Bryan and Ms. Sayasane shall complete as  
5 much or all of the Case Evaluation Form (attached as Appendix A) as is possible at this stage of  
6 the proceeding, and each of them shall complete the Rate Justification Worksheet (attached as  
7 Appendix B). These documents shall be submitted to the Court confidentially, filed under seal  
8 within thirty (30) days of filing of this order. Following establishment of reimbursement rates,  
9 which rates shall automatically adjust for changes in the Ninth Circuit Cost Policies, appropriate  
10 budget forms will be electronically available to Petitioner's counsel.

11 3. Petitioner's counsel are reminded of their obligation to file quarterly status reports  
12 during abeyance and to promptly notify the Court of any ruling on the state exhaustion petition.

13 4. Counsel appointed pursuant to 18 U.S.C. § 3599 and Local Rule 191 to represent  
14 a condemned prisoner seeking relief under 28 U.S.C. § 2254 will be required to propose budgets  
15 for their time and expenses anticipated during each phase of the proceedings. The process for  
16 proposing budgets and submitting vouchers for reimbursement follows:

17 Budget Procedures

- 18 i. Under 18 U.S.C. § 3599(f), ex parte consideration of funding applications  
19 requires petitioner to make a showing of the need for confidentiality. Since  
20 budget applications require disclosure of matters protected by the  
21 attorney-client or work-product privileges, the need for confidentiality is  
22 inherent in the budgeting process. See Fed. R. Civ. P. 26(b)(1) and (3).  
23 Accordingly, budget forms and supporting documentation will be filed  
24 under seal and not served on counsel for respondent. Counsel shall submit  
25 budget-related filings by e-mailing them to the court's Approved Sealed@  
26 e-mail address, ApprovedSealed@caed.uscourts.gov. The provisions of  
27 Local Rule 141 regarding the process for filing documents under seal are  
28 suspended with respect to budgeting in capital habeas cases. Any ex parte  
court proceeding regarding funding will be reported and maintained under  
seal.
- ii. A proposed budget should reflect the total attorney time required,  
including time for budget preparation, as well as the time for paralegals,  
investigators and experts, if applicable, and any anticipated travel or other  
expenses. Voucher preparation, however, is considered part of overhead  
and not reimbursable. In preparing a budget, counsel shall refer to the  
Ninth Circuit Judicial Council's costs policies for capital habeas cases.  
Current cost policies are available on this court's website at

1 www.caed.uscourts.gov, under Forms, CJA Capital Habeas Forms.

- 2 iii. In support of the proposed budget for each phase, counsel shall file  
3 informative declaration(s) which explain and/or justify the hours, tasks,  
4 and expenses sought. Counsel shall include any information that will assist  
5 the court in determining the reasonableness of the budget request. If  
6 petitioner is represented by two attorneys, counsel shall explain how the  
7 work will be divided between them. The supporting documentation should  
8 be captioned and filed under seal in a complete application, including  
9 explanatory remarks, declarations, and exhibits. All supporting  
10 declarations must be properly subscribed pursuant to 28 U.S.C. § 1746.
- 11 iv. Counsel are expected to utilize all reasonable means to minimize costs, to  
12 tier staff responsibilities to lower-rate personnel whenever practical, and to  
13 utilize paralegals and law clerks to complete tasks for which attorney  
14 expertise is not required.
- 15 v. Requests in the budget for investigative and/or expert assistance should be  
16 detailed and present the factual basis to support the request. Prior to  
17 approval, the court must find that the requested expert or investigative  
18 assistance is “reasonably necessary for the representation of the  
19 defendant.” 18 U.S.C. § 3599(f). Information which should be included in  
20 the supporting declaration to assist the court includes, but is not limited to,  
21 a specification of: (1) the evidence sought to be uncovered; (2) facts  
22 suggesting that such investigation, expert service, or other assistance is  
23 warranted; (3) whether the evidence existed at the time of the state trial;  
24 (4) whether similar assistance was provided or requested in state court; (5)  
25 the purpose of the evidence on federal habeas, that is, the connection of  
26 the evidence sought to be uncovered to a prospective claim or contention  
27 that will be raised in the federal petition; (6) the name of the expert or  
28 investigator; and (7) the proposed billing rate and the reasonableness of  
the rate. Presumptive rates contained in the Ninth Circuit Capital Habeas  
Costs Policy, as adjusted from time to time, will apply to all experts,  
investigators, and paralegals.
- vi. The approved budget for each phase will be one sum for attorney time and  
one sum for expenses. In addition, each expert and investigator’s time will  
be a separate budget figure. Counsel will not be allowed to exceed the  
authorized budget during any phase without first seeking prior approval,  
or amendment to the budget, and explaining why additional funds are  
required. Failing to obtain approval to amend the budget could result in  
the denial of unauthorized or excessive expenditures.
- vii. The budget for each phase will be closed out when the work for that phase  
is completed. Hours and expenditures will not be carried over to the next  
phase. Rather, a new budget for each succeeding phase must be proposed  
by counsel and approved by the court. As the case progresses through each  
case management phase, counsel are responsible for ensuring that the case  
is litigated within the established budget.
- viii. Any budget approved by the district court must also be approved by the  
Capital Case Committee and Judicial Council of the Ninth Circuit.  
Counsel are authorized to proceed based upon the initial budget approved  
by the district court and will be contacted should any further clarification,  
information, or action be requested by the Capital Case Committee and

1 Judicial Council.

2 Approved Compensation

- 3 i. Work inherently necessary to practice and remain current in the area of  
4 federal habeas law, which is not directly attributable to a particular case,  
5 including the review and analysis of new cases, is considered general  
6 overhead, and is not reimbursable.
- 7 ii. The court will not approve compensation for administrative services, such  
8 as secretarial services, preparation of payment vouchers, or  
9 communications with court staff.
- 10 iii. Unless a contrary need is demonstrated, the court will compensate only  
11 one attorney for physical attendance at court hearings. Upon sufficient  
12 justification, the court may authorize compensation for up to two members  
13 of counsel's legal staff at a time for visits to petitioner and witness  
14 interviews. Counsel who reside outside the Fresno area will typically  
15 make court appearances by telephone unless they have requested, and  
16 been approved, for travel to Fresno.
- 17 iv. The court will not approve compensation for work performed on appellate  
18 proceedings (whether from interlocutory orders or final judgments).  
19 Counsel shall seek compensation for work performed at the appellate level  
20 from the Court of Appeals after having obtained an appointment from that  
21 court.
- 22 v. The court will compensate counsel for professional time spent in airport  
23 (or other common carrier) terminals and as a passenger on common  
24 carriers only when counsel is performing substantive tasks on the case that  
25 can be billed to a professional time category. Terminal processing time as  
26 well as driving time will be compensated at the maximum rate of \$100 per  
27 hour. In light of the public service nature of CJA appointments together  
28 with the fact that public rather than private funds are being utilized, the  
travel reimbursement set forth in this paragraph will be applied.

Approved Expenses

- 19 i. The court will authorize payment for miscellaneous expenses reasonably  
20 incurred and subject to national and district policies and procedures.  
21 Copies of all bills and receipts must be submitted for reimbursement  
22 approval.
- 23 ii. Mileage for case-related travel by privately owned (not rented) automobile  
24 may be claimed at the rate in effect for federal judicial employees,  
25 available from the CJA Administrator. Case-related parking fees and  
26 bridge/road tolls also are reimbursable. Counsel should assess whether  
27 case-related travel would be more cost effective by privately owned  
28 automobile or rented automobile.
- iii. Ground transportation other than by privately owned automobile will be  
reimbursed on an actual expense basis. Counsel should make every effort  
to obtain the lowest possible fares or rates.
- iv. Though travel expenses may be authorized in the budget, each time a  
member of petitioner's litigation team intends to travel by air, a Travel

1 Request and Authorization Form must be authorized by the CJA  
2 Administrator and approved by the court, unless counsel can procure more  
3 economical travel arrangements on his or her own. Approval of a travel  
4 authorization form is the procedure by which government rates for travel  
5 are obtained; the form does not function as approval of travel expenses in  
6 excess of the budget. Should the authorized budget be insufficient for the  
7 anticipated costs of travel, counsel must seek modification of the budget  
8 from the court in addition to obtaining a travel authorization form from the  
9 CJA Administrator.

- 6 v. The Travel Request and Authorization Form enables CJA counsel to  
7 receive air travel at government rates paid directly from CJA funds.  
8 Counsel are expected to request authorization for air travel through the  
9 CJA Administrator in sufficient time to obtain low cost advance fare for  
10 air travel or to provide justification why an advance fare could not be  
11 obtained. In no case will counsel be reimbursed for first-class travel  
12 expenses. Counsel may make their own reservations for air travel and seek  
13 reimbursement on a CJA voucher, but reimbursement will be limited to  
14 the available government rates.
- 11 vi. The court will approve reimbursement for actual food and lodging  
12 expenses for out of town travel on case-related business, subject to the  
13 maximum established area per diem rate. Current travel and subsistence  
14 allowances are available on the GSA website, [www.gsa.gov](http://www.gsa.gov), under Per  
15 Diem rates, or from the CJA Administrator.
- 14 vii. Counsel will be reimbursed for the actual cost of case-related long-  
15 distance telephone calls. The court will not authorize payment for any  
16 surcharges or for general telephone service. Facsimile transmissions are  
17 reimbursable for the actual amount of the telephone charge.
- 17 viii. Counsel will be reimbursed for the actual out-of-pocket expenses incurred  
18 in photocopying, up to a maximum of 10 cents per page. Counsel will be  
19 expected to send large photocopying projects, including those involving  
20 documents over 100 pages in length, to an outside copying service where  
21 the cost for outside photocopying is less than the in-house photocopying  
22 expense.
- 20 ix. The court will authorize reimbursement for the actual cost of case-related  
21 regular U.S. postage. The court will approve reimbursement for the actual  
22 cost of other postal services or the use of non-federal carriers (such as  
23 overnight or two-day delivery) only if circumstances require the use of  
24 such services. If counsel utilize expedited delivery services, a statement  
25 detailing the necessity of such delivery must be submitted with the  
26 itemized bill. Counsel are to make every effort to use regular U.S. mail  
27 and e-mail via the Internet whenever possible. The court may modify this  
28 rule if counsel make excessive use of costly overnight carriers.
- 25 x. The court will not reimburse counsel for the following expenditures:
- 26 1) General office overhead; including cellular telephone maintenance  
27 fees;
  - 27 2) Books or other publications;
  - 28 3) Flat-fee computer research plans or computer software programs.
  - 28 4) General law office supplies and equipment;



1 the preparation and submission of all payment vouchers.

2 5. In addition to serving this order upon counsel, the Clerk is directed to serve it  
3 upon Connie Garcia, CJA Panel Administrator, Federal Defender's Office, 2300 Tulare Street,  
4 Suite 330, Fresno, CA 93721.

5  
6 IT IS SO ORDERED.

7 Dated: January 28, 2015

8   
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
UNITED STATES MAGISTRATE JUDGE

1 **APPENDIX A**

2 **CONFIDENTIAL CASE EVALUATION FORM**

3 *The answers to these questions are for case management and budgeting purposes only and*  
4 *will not be binding in any respect on substantive issues to be raised in the course of litigation.*

5 **NAME OF ATTORNEY(S)**

6 **Lead Counsel:**

7 **Co-Counsel:**

8 **STATE LEVEL PROCEEDINGS**

9 1. Did (or does) either lawyer represent the petitioner during any part of the state proceedings?

10  No -- proceed to question 2.

11  Yes (indicate which lawyer) \_\_\_\_\_.

12 If yes, in what aspects of the case? \_\_\_\_\_.

13 2. Was a state habeas petition involving the same judgment and sentence filed?

14  No

15  Yes Date: \_\_\_\_\_ Disposition & Date: \_\_\_\_\_.

16 3. Were funds requested at the state level for state post-conviction investigation?

17  No

18  Yes

19 Purpose Amount Requested: \_\_\_\_\_.

20 Amount Authorized: \_\_\_\_\_.

21 4. Was post-conviction discovery requested at the state level?

22  No

23  Yes

24 Nature of Discovery Requested: \_\_\_\_\_.

25 Was it: Granted? \_\_\_\_\_. Denied? \_\_\_\_\_.

26 5. Was an evidentiary hearing held at the state level?  Yes  No

27 **STATUTE OF LIMITATIONS**

28 Based on current information, what is the date required by the statute of limitations for filing of  
the petition? \_\_\_\_\_.



1 **THE RECORD**

2 1. Has the record been assembled?  Yes  No:

3 Location of state post-conviction record: \_\_\_\_\_.

4 2. Have the files of prior counsel been obtained?  Yes  No

5 3. As accurately as possible (recognizing that it may be an estimate at this point), provide  
6 information about the size of the record:

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

TYPE OF RECORD:	NO. OF PAGES:
Clerk's Transcript	[_____]
Reporter's Transcript	[_____]
Trial Exhibits	[_____]
Appellate Pleadings	[_____]
Post-Conviction Record (including pleadings & transcripts)	[_____]
Ancillary Files and Records (including prior counsel's case files, investigative reports, etc.)	[_____]

1 **APPENDIX B**

2 **RATE JUSTIFICATION WORKSHEET**

3 1. Attorney Name and Address: \_\_\_\_\_  
4 \_\_\_\_\_.

5 2. Experience and Qualifications:

6 Admitted to practice: \_\_\_\_ years.

7 Member of the bar of a federal district court or court of appeals: \_\_\_\_ years.

8 Primary area of practice: \_\_\_\_\_.

9 Has previously represented a client in (check all that apply):

10  Direct appeal of a death sentence,

11  State capital post-conviction proceeding,

12  Direct appeal of a non-capital homicide conviction,

13  Capital trial,

14  Non-capital homicide trial,

15  Other felony trial,

16  Non-capital federal habeas corpus,

17  Federal capital habeas proceeding.

18 Number of clients previously represented in federal habeas actions: \_\_\_\_\_.

19 Most recently authorized hourly rate in such a case: \$\_\_\_\_.

20 Approximate hours spent in training programs on death penalty litigation and/or post-  
21 conviction representation: \_\_\_\_\_.

22 3. Other Relevant Information: \_\_\_\_\_  
23 \_\_\_\_\_  
24 \_\_\_\_\_.

25 4. Rate Sought: \$\_\_\_\_\_.

26 For maximum allowable rates, counsel shall refer to the Ninth Circuit Judicial Council's  
27 costs policies for capital habeas cases. Current cost policies are available on this court's website  
28 at [www.caed.uscourts.gov](http://www.caed.uscourts.gov), under Forms, CJA Capital Habeas Forms.