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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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JOHN MICHAEL BEAMES,

) Case No. 1:10-CV-01429-AWI-P

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Petitioner,

) DEATH PENALTY CASE

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vs.

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VINCENT CULLEN, Acting Warden
of San Quentin State Prison,

) Order Appointing Counsel and
) Notice of Initial Case Management
) Conference

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Respondent.

) DATE: October 12, 2010
) TIME: 2:30 p.m.

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On August 9, 2010, Petitioner John Michael Beames (“Beames”), a state prisoner facing capital punishment, filed pro se applications for appointment of counsel, for stay of execution, and to proceed in forma pauperis, in the Eastern District of California pursuant to 28 U.S.C. § 2254. In forma pauperis status was granted, the execution was temporarily stayed, and the case was referred to the Selection Board of the Eastern District of California for recommendation of counsel on August 12, 2010.

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The Selection Board recommends the Capital Habeas Unit of the Federal Defender’s Office of the Eastern District of California, 801 I Street, 3rd Floor, Sacramento, California, 95814, (916) 498-6666, and Timothy Brosnan, Esq., 1116 Guerrero Street, San Francisco, California, 94110, (415) 285-5417, for appointment as co-counsel to represent Beames.

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1 The Guide to Case Management and Budgeting in Capital Habeas Cases,
2 Eastern District of California, Fresno Division¹ (hereafter the “Attorney Guide”)
3 provides an overview of the process for capital habeas corpus cases in this Court.
4 Upon receipt of this order, counsel are directed to familiarize themselves with the
5 Attorney Guide. Mr. Brosnan was recently appointed to another capital habeas
6 case in this division, so the reimbursement rate established for him in that case
7 will be applied to this case.

8 Counsel for both parties shall complete as much or all of the Confidential
9 Case Evaluation Form (Appendix B to the Attorney Guide) as is possible at this
10 stage of the proceedings. The Confidential Case Evaluation Form shall be filed
11 no later than one week prior to the Case Management Conference (“CMC”), and
12 may be submitted to the Court under seal. Appropriate budget forms will be
13 electronically transmitted to counsel concurrently with this order. *See* Attorney
14 Guide, ¶ 10. The proposed budget need only specify the hours and expenses for
15 CJA counsel, but should indicate in the supporting declaration the division of
16 labor and allocation of resources with the Federal Defender, including the hours
17 anticipated to be expended by the Federal Defender in each category. A
18 preliminary budget for Phase I of the litigation must be presented and approved
19 before any reimbursement for professional services will be authorized. *See*
20 Attorney Guide, ¶¶ 46-49. As specified in the Attorney Guide, the proposed
21 budget and application, including supporting declarations and an electronic copy
22 of the Excel file, should be submitted to the Court under seal.²

24 ¹ The Attorney Guide is posted on the Court’s website, under Attorney Info,
25 Fresno, Forms.

26 ² In this Court, documents which are approved for filing under seal are
submitted electronically to [“ApprovedSealed@caed.uscourts.gov”](mailto:ApprovedSealed@caed.uscourts.gov) pursuant to Local
Rule 141. Proposed budgets also should be sent by email to the staff attorney

1 As indicated in the Attorney Guide, automated “Case Management Plan
2 and Budget Forms” are created by the Ninth Circuit Judicial Council for use by
3 counsel in capital habeas cases. The Forms have recently been updated to
4 combine the former first two phases into one phase and to delineate between core
5 and non-core record for purposes of document review. (See Ninth Circuit Costs
6 Policy³ for distinction between, and limitations on, core and non-core records and
7 review.) The new phases are:

- 8 Phase I Appointment, Record Review, Petition Preparation, Answer,
9 and Exhaustion
- 10 Phase II Merits Briefing, Fact Development Discovery, and Motion for
11 Evidentiary Hearing
- 12 Phase III Pre-Evidentiary Hearing Discovery, Evidentiary Hearing, and
13 Final Briefing

14 Since Beames’ counsel are both new to the case, the initial Phase I budget
15 will be limited to the tasks described in paragraphs 47 and 48 of the Attorney
16 Guide. The proposed budget should include all tasks to be completed during the
17 initial Phase I budget, including any time spent on tasks which already have been
18 completed or partially performed. Counsel will not be reimbursed for work
19 performed before the date of appointment without prior approval on a showing
20 of good cause.

21 The initial CMC is set for October 12, 2010, at 2:30 p.m., and will be held
22 telephonically. Beames’ proposed budget for Phase I should be presented to the
23 Court without delay, but should be filed no later than one calendar week prior to
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25 assigned to the case.

26 ³ The Ninth Circuit Judicial Council’s Costs Policy is posted on the Court’s
website, under Attorney Info, Fresno, Forms, CJA.

1 the CMC. The purpose of the initial CMC will be to discuss the status of record
2 assembly and review by Beames' counsel, case complexity, an approximate date
3 counsel for Respondent will be able to lodge the record, the one-year statute of
4 limitations, the scheduling of a second CMC, and any other matters the parties
5 wish to discuss together with the Court. Once case management issues are
6 resolved, counsel for Respondent will be excused from the CMC so the Court can
7 discuss budgeting procedures with Beames' counsel on an ex parte basis.

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9 Good cause appearing,

10 The Federal Defender, Capital Habeas Unit, and Timothy Brosnan, Esq.,
11 are appointed as co-counsel to represent Beames for all purposes in these
12 proceedings.

13 The initial Case Management Conference will be held telephonically at 2:30
14 p.m., on Tuesday, October 12, 2010. Counsel for Beames shall initiate the
15 conference call.

16 Counsel for both parties shall file the Confidential Case Evaluation Form,
17 as indicated above. Counsel for Beames shall concurrently file the proposed
18 budget for Phase I.

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20 IT IS SO ORDERED.

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22 DATED: September 9, 2010

23 /s/ Anthony W. Ishii
24 Chief United States District Judge
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