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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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9 CLIFTON PERRY,) Case No. 1:11-cv-01367 AWI
10)
11 Petitioner,) DEATH PENALTY CASE
12 vs.)
13 MICHAEL MARTEL, as Acting Warden of) ORDER FOLLOWING PHASE I CASE
14 California State Prison at San Quentin,) MANAGEMENT CONFERENCE
15)
16 Respondent.) DATE: November 3, 2011
17) TIME: 9:00 a.m.
18) COURTROOM TWO
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21 This matter came on for a telephonic Phase I Case Management Conference (“CMC”) on
22 November 3, 2011 at 9:15 a.m. in the above entitled Court, the Honorable Anthony W. Ishii, presiding.
23 Petitioner Clifton Perry (“Perry”) was represented by CJA panel attorney D. Jay Ritt and Respondent
24 Michael Martel, as Acting Warden of California State Prison at San Quentin, (the “Warden”) was
25 represented by Deputy Attorney General Jennevee H. DeGuzman. Perry’s other appointed attorney, CJA
26 panel attorney, Verna Wefald, was unable to be present for the CMC.

21 The parties and the Court discussed the manner in which the federal petition would be presented,
22 that is, with or without points and authorities, the statute of limitations, the time within which the
23 Warden will be able to lodge the state record, and the duration of this phase of the litigation. Following
24 the discussion of these issues, the Court excused Ms. DeGuzman so the issue of Perry’s Phase I case
25 management plan and budget could be discussed confidentially. A separate order is filed under seal
26 concurrently herewith establishing a budget for Phase I.

27 With respect to the non-confidential matters, the parties agree that the limitations period in this
28 case extends to July 27, 2012. Ms. DeGuzman represents that the Warden will lodge the state record

1 by November 18, 2011. While Perry requested the option of filing the federal petition without points
2 and authorities, this matter has not yet been settled pending further comment from the Warden. In the
3 event the petition is unbriefed, the answer must adequately frame the factual issues by answering the
4 petition paragraph by paragraph, as is the standard in civil cases. In that unbriefed answer, the Warden
5 must refrain from stating a general denial or alleging boiler plate arguments about the *Teague* bar and
6 procedural default, although both of those affirmative defenses should be pleaded (not briefed). The
7 Warden is directed to file a statement regarding his ability to file an unbriefed answer consistent with
8 these guidelines no later than two calendar weeks following the filing of this order.

9 The Court has set November 30, 2011 as the termination of Phase I. In this early stage of the
10 proceedings where Perry's attorneys both are new to the case, much of the work anticipated from his
11 litigation team will be to become familiar with the pleadings, files, and record. By the end of
12 November, Perry's attorneys will have a more concrete concept of what the record contains so the Phase
13 II case management plan and budget will more accurately predict the types of services that will be
14 required to get the federal petition on file within the limitations period.

15 The Court will conduct a telephonic Phase II CMC on Friday, December 9, 2011 at 9:00 a.m.
16 with Perry responsible for initiating the call. Perry shall file his Phase II case management plan and
17 budget no later than December 1, 2011. By that time, the Court will have determined whether the
18 federal petition will be filed with or without points and authorities. Whether the petition is or is not
19 briefed, Phase II will come to a close and Phase III will commence after the Warden has filed his answer
20 and the preliminary issues of exhaustion and the statute of limitations are settled. The Court will not
21 address the procedural defenses of *Teague* bar and procedural default until merits of the petition are
22 considered in Phase III.

23
24 IT IS SO ORDERED.

25 Dated: November 7, 2011

/s/ Anthony W. Ishii
Anthony W. Ishii
United States District Judge