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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CLIFTON PERRY,)	Case No. 1:11-cv-01367 AWI
)	
Petitioner,)	<u>DEATH PENALTY CASE</u>
vs.)	
KEVIN CHAPPELL, as Acting Warden of San)	ORDER SETTING PHASE II BRIEFING
Quentin State Prison,)	SCHEDULE
)	
Respondent.)	

On June 27, 2012, the Court granted the motion of Petitioner Clifton Perry (“Perry”) for equitable tolling of the statute of limitations for 39 days, up to and including September 4, 2012. On that date, Perry timely filed his Petition (doc. 40), accompanied by a separate Memorandum of Points and Authorities (doc. 41). In his preliminary statement of the Petition, Perry alleges that each of the claims presented therein are exhausted. He notes, however, that Exhibits 1 through 4 accompanying the Petition were not previously presented to the California Supreme Court.

In light of Perry’s allegation that the Petition is exhausted, the next step in the litigation process is for Respondent Kevin Chappell, as Acting Warden of San Quentin State Prison (the “Warden”) to file an Answer. In accordance with the Court’s procedures set forth in the Fresno Attorney Guide (available on the Court’s website), the Warden’s Answer shall address the allegations in the petition, consistent with Rule 5 of the Rules Governing § 2254 Cases, shall include legal points and authorities with the Answer, address all substantive and procedural affirmative defenses the Warden intends to pursue, including lack of exhaustion, failure to meet the statute of limitations, procedural default and the non-retroactivity bar. Given the length of the Petition (29 pages, alleging 14 substantive claims) and the

1 length of the supporting points and authorities (160 pages, not including exhibits), the Court sets January
2 18, 2013, by 4 p.m. as the due date for the briefed Answer. Perry then will have up to and including
3 March 21, 2013, by 4 p.m. to file his Traverse. Thereafter, the Court will take of the matters of
4 exhaustion and statute of limitations issues, as briefed by the parties.

5 FOR GOOD CAUSE APPEARING

- 6 1. On or before January 18, 2013, at 4 p.m., the Warden shall his Answer, accompanied by points
7 and authorities, in which he shall frame the factual issues and address the merits of the claims
8 pleaded in the Petition in addition to setting forth his substantive and procedural affirmative
9 defenses.
- 10 2. On or before March 21, 2013, at 4 p.m., Perry shall file his Traverse to the Answer.
- 11 3. Any further briefing on issues raised in the pleadings will be requested by the Court.
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13 IT IS SO ORDERED.

14 Dated: October 10, 2012

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

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