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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CLIFTON PERRY	)	Case No. 1:11-cv-01367 AWI
	)	
Petitioner,	)	<u>DEATH PENALTY CASE</u>
	)	
v.	)	ORDER GRANTING APPLICATION FOR
	)	APPOINTMENT OF COUNSEL AND
MICHAEL MARTEL, as Acting Warden of	)	APPLICATION TO PROCEED <i>IN FORMA</i>
California State Prison at San Quentin,	)	<i>PAUPERIS</i> ; DENYING WITHOUT PREJUDICE
	)	REQUEST FOR STAY OF EXECUTION
Respondent.	)	
	)	
_____	)	

On August 16, 2011, Petitioner Clifton Perry (“Perry”) a state prisoner facing capital punishment, commenced this action pursuant to 28 U.S.C. § 2254 by filing an application for appointment of counsel and request for a stay of execution. In Perry’s declaration, appended to this application, he includes a statement of his indigence, a Certificate of Funds over the signature of a prison official, and a certified Inmate Statement Report from the prison stating the amount on deposit in his prison account. A separate application for Perry to proceed *in forma pauperis* also was filed on August 16, 2011 and corrected on August 17, 2011, over the signature of Assistant Federal Defender Joseph Schlesinger. The *forma pauperis* application is supported by Perry’s declaration appended to the request for stay and appointment of counsel.

**I. Request for Appointment of Counsel**

Section 3599(a)(2) of Title 18 of the United States Code provides for the appointment of one or more attorneys to represent an indigent person proceeding under 28 U.S.C. § 2254 to vacate a death sentence. Rule 191(c) of the Local Rules of the United States District Court for the Eastern District of California also provides for the appointment of counsel for indigent capital habeas petitioners. Under this rule, selection of counsel is made from a panel of attorneys qualified for appointment in death penalty cases and certified by

1 a selection board appointed by the Chief Judge. Based on the Perry's submissions, he is entitled to  
2 appointment of counsel under 18 U.S.C. § 3599(a)(2).

3 **II. Application for Leave to Proceed in Forma Pauperis**

4 Rule 3(a) of the Rules Governing § 2254 Cases in the United States District Courts provides that a  
5 petitioner seeking *in forma pauperis* status shall file an affidavit of assets as required by 28 U.S.C. § 1915.  
6 Rule 3(a) also requires a certificate from the prison stating the amount on deposit in the petitioner's accounts.  
7 Perry's declaration, Certificate of Funds over the signature of a prison official, and certified Inmate Statement  
8 Report appended to his request for a stay of execution and appointment of counsel satisfy these requirements.

9 **III. Request for Stay of Execution**

10 Local Rule 191(g)(1) provides that when an indigent, condemned habeas petitioner submits an  
11 application for appointment of counsel and a temporary stay of execution, the Court may issue a temporary  
12 stay of execution for a period of 90 days, while counsel is located. Perry has presented no facts or  
13 circumstances to warrant the exercise of discretion to issue a temporary stay of execution in this case.

14 Good cause appearing therefor,

15 1. Perry's application for appointment of counsel is granted. The matter is referred to the  
16 Selection Board for the Eastern District of California to certify an attorney or attorneys qualified and available  
17 to represent Danks before this Court.

18 2. Perry's application to proceed *in forma pauperis* is granted.

19 3.. Perry's application for a temporary stay of execution is denied without prejudice.

20 IT IS SO ORDERED

21  
22 Dated: August 18, 2011

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