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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DANIEL LEE WHALEN,
Petitioner,
v.
WARDEN, California State Prison at San
Quentin,
Respondent.

Case No. 1:14-cv-01865-LJO-SAB
DEATH PENALTY CASE
ORDER APPOINTING COUNSEL AND
INITIATING CASE MANAGEMENT
PROCEDURES

The Selection Board has recommended that the Office of the Federal Defender, Capital Habeas Unit, be appointed as counsel to represent Petitioner. The Selection Board recommended against the present appointment of A. Richard Ellis, whom Petitioner requested, due to potential conflict of interest.

Good cause appearing, IT IS HEREBY ORDERED as follows:

1. The Office of the Federal Defender, Capital Habeas Unit, shall represent Petitioner in this habeas corpus proceeding.

1 2. Counsel for both parties are directed to complete and file the Confidential Case
2 Evaluation Form (attached as Appendix A). This document shall be submitted to the Court
3 confidentially, filed under seal by e-mailing to the court's Approved Sealed@ e-mail address,
4 ApprovedSealed@caed.uscourts.gov, within thirty (30) days of filing of this order.

5 3. The initial Case Management Conference ("CMC") is set for May 11, 2015 at
6 10:30, and will be held telephonically. Counsel are directed to contact the Court's Courtroom
7 Deputy Clerk, Ms. Mamie Hernandez, to obtain the teleconference code. The purpose of the
8 initial CMC will be to discuss the status of record assembly and review by Petitioner's counsel,
9 case complexity, an approximate date for the Warden to lodge the state record, the one-year
10 statute of limitations, the scheduling of a second CMC, and any other matters the parties wish
11 to discuss together with the Court.

12 4. The Clerk of the Court is directed to serve copies of this order on A. Richard
13 Ellis, 75 Magee Avenue, Mill Valley, CA 94941; Joseph Schlesinger, Federal Defender,
14 Capital Habeas Unit, 801 I Street, 3rd Floor, Sacramento, California, 95814; Ron Davis,
15 Acting Warden of San Quentin State Prison, San Quentin, CA 94964; Catherine Tennant
16 Nieto, Deputy Attorney General, 1300 I Street, Suite 1101, Sacramento, CA 94244-2550; and
17 Connie Garcia, CJA Administrator, Office of the Federal Defender, 2300 Tulare Street, Suite
18 330, Fresno, CA 93721. The Clerk of the Court is also directed to terminate A. Richard Ellis
19 as counsel for Petitioner.

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22 IT IS SO ORDERED.

23 Dated: February 12, 2015


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*
5 *litigation.*

6 **NAME OF ATTORNEY(S)**

7 **Lead Counsel:**

8 **Co-Counsel:**

9 **STATE LEVEL PROCEEDINGS**

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

11 No -- proceed to question 2.

12 Yes (indicate which lawyer) _____.

13 If yes, in what aspects of the case? _____.

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

15 No

16 Yes Date: _____ Disposition & Date: _____.

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

18 No

19 Yes

20 Purpose Amount Requested: _____.

21 Amount Authorized: _____.

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

23 No

24 Yes

25 Nature of Discovery Requested: _____.

26 Was it: Granted? _____. Denied? _____.

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

28

1 **STATUTE OF LIMITATIONS**

2 Based on current information, what is the date required by the statute of limitations for filing of
3 the petition? _____.

4 **THE RECORD**

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

6 Location of state post-conviction record: _____.

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

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

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.)	[_____]

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