

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANIEL LEE WHALEN,

 Petitioner,

 v.

WARDEN, San Quentin State Prison,

 Respondent.

No. 1:14-cv-01865-LJO-SAB

DEATH PENALTY CASE

ORDER VACATING HEARING SET FOR
MARCH 16, 2016 AT 10:00 A.M. IN
DEPARTMENT 9

(Doc. No. 42)

ORDER MODIFYING SCHEDULING
ORDER

(Doc. No. 38)

On February 1, 2016, petitioner, through appointed counsel Jennifer Mann and Brian Abbington of the Office of the Federal Defender, filed a motion for stay and abeyance of these proceedings pursuant to *Rhines v. Weber*, 544 U.S. 269 (2005), pending resolution of his second state exhaustion petition filed in the California Supreme Court on January 27, 2016 (Case No. S232115). (*See* Doc. No. 42.)

Petitioner set the motion for hearing on March 16, 2016 at 10:00 a.m. in Department 9 before United States Magistrate Judge Stanley A. Boone. Pursuant to Local Rule, Respondent’s opposition, if any, is due not later than March 2, 2016. *See* Local Rule 230(c). Petitioner’s reply, if any, is due not later than March 9, 2016. *See* Local Rule 230(d).

1 However, on September 14, 2015, the undersigned issued a scheduling order that states
2 respondent shall file any opposition to a stay and abeyance motion on or before April 8, 2016.
3 (*See* Doc. No. 38 at 10:23-24.)

4 The undersigned, to clarify the deadlines in this case and in the interest of judicial
5 economy, having considered the September 14, 2015 order, the Local Rules, and the Rules
6 governing 28 U.S.C. § 2254 cases including Rule 10 thereof, HEREBY ORDERS that

- 7 1. The hearing scheduled for March 16, 2016 at 10:00 a.m. in Department 9
8 before United States Magistrate Judge Stanley A. Boone be vacated;
- 9 2. Respondent's opposition to the motion, if any, shall be filed by not later
10 than March 9, 2016;
- 11 3. Petitioner's reply, if any, shall be filed by not later than March 16, 2016;
- 12 4. The matter shall then be deemed submitted and the parties will be notified
13 by minute order if a hearing is necessary;
- 14 5. The September 14, 2015 scheduling order is modified consistent with the
15 foregoing and otherwise shall continue in full force and effect.

16
17 IT IS SO ORDERED.

18 Dated: February 23, 2016

/s/ Lawrence J. O'Neill
 UNITED STATES DISTRICT JUDGE