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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 GRANTING MOTION FOR  
APPOINTMENT OF COUNSEL  
(ECF NO. 1)  
ORDER REGARDING PETITIONER'S  
APPLICATION TO PROCEED WITHOUT  
PREPAYMENT OF FEES – DECEMBER 23,  
2014 DEADLINE  
(ECF NO. 4)

On November 21, 2014, Daniel Lee Whalen (“Petitioner”), a state prisoner facing capital punishment, commenced this action pursuant to 28 U.S.C. § 2254 by filing an application for appointment of attorney A. Richard Ellis to represent him. In addition, attorney Ellis filed on Petitioner’s behalf an application to proceed in forma pauperis. In Petitioner’s declaration, appended to his in forma pauperis application, he includes a statement of his indigence. The in forma pauperis application reports that arrangements to obtain a statement of funds on deposit in Petitioner’s prison account have been made and that the statement will be filed with the Court upon receipt.

1 **REQUEST FOR APPOINTMENT OF COUNSEL**

2 Section 3599(a)(2) of Title 18 of the United States Code provides for the appointment  
3 of one of more attorneys to represent an indigent person proceeding under 28 U.S.C. § 2254 to  
4 vacate a death sentence. Rule 191(c) of the Local Rules of the United States District Court for  
5 the Eastern District of California also provides for the appointment of counsel for indigent  
6 capital habeas petitioners. Under this rule, selection of counsel is made from a panel of  
7 attorneys qualified for appointment in death penalty cases and certified by a selection board  
8 appointed by the Chief Judge. As noted, Petitioner requests that A. Richard Ellis be appointed  
9 to represent him in these federal proceedings. Based on the Petitioner’s submissions, he is  
10 entitled to appointment of counsel under 18 U.S.C. § 3599(a)(2).

11 **II.**

12 **APPLICATION TO PROCEED IN FORMA PAUPERIS**

13 Rule 3(a) of the Rules Governing § 2254 Cases in the United States District Courts  
14 provides that a petitioner seeking in forma pauperis status shall file an affidavit of assets as  
15 required by 28 U.S.C. § 1915. Rule 3(a) also requires a certificate from the prison stating the  
16 amount on deposit in the petitioner’s accounts. The Court has Petitioner’s affidavit in  
17 compliance with 28 U.S.C. § 1915. However, Petitioner asserts that the certificate from the  
18 prison stating the amount on deposit in his prison accounts is not currently available. The  
19 Court will hold its decision on the application to proceed in forma pauperis until the Petitioner  
20 files with the Court the certificate from the prison stating the amount on deposit in his  
21 accounts. The Petitioner shall file the certificate by December 23, 2014. If not provided by that  
22 time, the application will be denied without prejudice.

23 **III.**

24 **ORDER**

25 Good cause appearing, it is **HEREBY ORDERED** that:

- 26 1. Petitioner’s motion for appointment of counsel is granted. The matter is referred  
27 to the Selection Board for the Eastern District of California for consideration of  
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Petitioner's request that A. Richard Ellis be appointed to represent him and for the recommendation of either Mr. Ellis or another suitable counsel.

2. Petitioner's application to proceed in forma pauperis is held under submission until Petitioner files with the Court the certificate from the prison stating the amount on deposit in his accounts. The Petitioner shall file the certificate by December 23, 2014. If not filed by that time, the application will be denied without prejudice.

IT IS SO ORDERED.

Dated: December 3, 2014

  
UNITED STATES MAGISTRATE JUDGE