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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 DIRECTING THE UNITED STATES
MARSHAL TO PAY DEPOSITION FEES
AND EXPENSES
(Doc. No. 53)

Before the Court is the application of Petitioner’s appointed counsel, Assistant Federal Defenders Jennifer Mann and Brian Abbington, for payment of fees and expenses relating to the upcoming oral deposition of fact (mitigation) witness Judy Evans (Petitioner’s sister), pursuant to 28 U.S.C. sections 3006A and 1825. *See* Guide to Judiciary Policy, Volume 7A §§ 320.40.10, 320.40.20; Guide to Case Management and Budgeting in Capital Habeas Cases Eastern District of California-Fresno Division, ¶ 65.

On February 3, 2017, the Court issued an order granting the parties’ joint request to temporarily lift the exhaustion stay in effect in these proceedings for the limited purpose of preservation of Ms. Evans’s testimony by oral deposition including Petitioner’s issuance of notice of deposition and deposition subpoena. Therein, the Court determined that Ms. Evans’s expected testimony is material to Petitioner’s unexhausted allegations of ineffective assistance of counsel at the penalty phase, included in his federal petition.

1 Petitioner states that pursuant to agreement of the parties, Ms. Evans's deposition is
2 scheduled for March 15, 2017 in Sacramento, California. Petitioner states his intention that
3 Ms. Evans fly from her home in Michigan to Sacramento on March, 12, 2017 with a return
4 flight on March 17, 2017, in order that Ms. Evans have sufficient time to recover from the
5 exertions of travel and the deposition. Petitioner states that consistent with the instruction of
6 Ms. Evans's doctor that she travel with a companion in case her illness manifests, Petitioner
7 intends that Federal Defender Investigator Carlos Escobedo accompany her on both legs of her
8 journey.¹

9 Accordingly, the United States Marshal is DIRECTED to pay fees and expenses
10 including airfare, lodging and meals under 28 U.S.C. § 1825 for the appearance of Judy Evans
11 at oral deposition and for Federal Defender Investigator Carlos Escobedo to accompany her
12 from Michigan to Sacramento and back to Michigan.

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14 IT IS SO ORDERED.

15 Dated: February 28, 2017

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

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28 ¹ The Federal Defender's Office has agreed to arrange for and pay the cost of Mr. Escobedo's flight from
Sacramento to Michigan on March 11, 2017 and from Michigan to Sacramento on March 18, 2017.