

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

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ERIK SANFORD CHATMAN,

Petitioner,

v.

**KEVIN CHAPPELL, Warden of California
State Prison at San Quentin,**

Respondent.

Case No. C 07-0640 WHA

DEATH PENALTY CASE

**~~PROPOSED~~ ORDER REGARDING
PROCEDURAL MATTERS RELATED TO
THE MIXED FINALIZED PETITION
(DOC. 41)**

Based upon the stipulation of the parties, the Court adopts their proposed schedule for resolving procedural matters related to the mixed finalized petition.

1. Within 30 days of the issuance of this Order, respondent shall file a motion to dismiss the mixed petition. *See O'Bremski v. Maass*, 915 F.2d 418, 420 (9th Cir. 1990); *see also Rose v. Lundy*, 455 U.S. 509, 522 (1982) (holding that for reasons of comity and federalism, district courts may not adjudicate mixed petitions).

2. Within 45 days of the filing of respondent's motion to dismiss the mixed petition, petitioner shall file his response and his motion for a stay so that he may present his unexhausted

1 claims to the state court. *See Rhines v. Weber*, 544 U.S. 269, 273-78 (2005) (affirming the
2 authority of district courts to stay, rather than dismiss, mixed petitions governed by AEDPA
3 deadlines); *see also Kelly v. Small*, 315 F.3d 1063 (9th Cir. 2002).

4 3. Within 14 days of petitioner filing his response to the motion to dismiss and motion for a
5 stay, respondent shall file any reply to the response to the motion to dismiss and his response to
6 the motion for a stay.

7 4. Within 14 days of respondent's reply/response to the motion for a stay, petitioner shall
8 file any reply to the response to the motion for a stay.

9 5. The above motions will be decided on the pleadings.

10
11 IT IS SO ORDERED.

12 DATED: July 23, 2013, 2013.

13
14 

15
16
17
18
19
20
21
22
23
24
25
26
27
28

WILLIAM H. ALSUP
United States District Judge

20704304.doc

CERTIFICATE OF SERVICE

Case Name: **Chatman v. Chappell, Warden**
(Death Penalty Case)

No. **C 07-0640 WHA**

I hereby certify that on July 9, 2013, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- 1. JOINT STATEMENT STIPULATING TO A PROPOSED SCHEDULE; and**
- 2. [PROPOSED] ORDER REGARDING PROCEDURAL MATTERS RELATED TO THE MIXED FINALIZED PETITION (DOC. 41)**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 9, 2013, at San Francisco, California.

E. Rios
Declarant

/s/ E. Rios
Signature