

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

JOSEPH PATRICK BROWN

PETITIONER

VS.

CIVIL ACTION NO.: 5:12CV91HSO

**CHRISTOPHER EPPS, Commissioner,
Mississippi of Corrections; EARNEST LEE,
Superintendent, Mississippi State Penitentiary
at Parchman, Mississippi**

RESPONDENTS

ORDER SETTING DEADLINES FOR APPOINTING NEW COUNSEL

This matter came before the Court *sua sponte* after a review of the file indicated that two previous deadlines for filing a motion to appoint counsel have long expired. This matter began as Case No. 5:97cv97 with the filing of an Application for Stay of Execution and a Motion for Appointment of Counsel. Judge Bramlette granted both Motions and appointed Max Ruttger and James Craig as counsel. Because Brown wished to pursue claims that were unexhausted in state court, and before a Petition for Writ of Habeas Corpus was filed, the Court vacated its stay of execution and dismissed the case. On February 29, 2012, James Craig filed an Amended Petition for Writ of Habeas Corpus. By that time, Judge Bramlette had taken senior status, and the case was reassigned.

After a review of the Amended Petition, the Court determined that a new case should be opened for this matter, preserving, however, the original filing date and construing the Petition as a new pleading. Craig having expressed a desire to continue to represent Brown, the Court's death penalty law clerk advised him to file a motion for appointment of counsel with his suggestion for a second attorney. A second attorney was identified, and counsel began working a proposed budget to present to the Court. On August 13, 2012, the Court entered an Order setting a deadline of

September 10, 2012, for the submission of the motion for appointment and an application to proceed in forma pauperis. After that deadline had expired, counsel asked for a two-week extension. That request was granted by an Order entered on September 20, 2012, extending the deadline for the motion for appointment and the application to proceed IFP to October 5, 2012. That deadline also passed, and counsel advised that they continued to work on the budget. Since mid-October, however, counsel has neither submitted a motion for appointment, submitted a budget, or asked for an extension of time.

The Court is of the opinion that new counsel should be appointed to this matter so that it continues to progress on the Court's docket. To that end, it has contacted Mark Jicka, an attorney on the Court's Capital Habeas CJA Panel, and asked him to take the appointment. Jicka has agreed and has suggested that Graham Carner, another attorney on the Court's Panel, be appointed as co-counsel. The Court is of the opinion that Jicka and Carner should be appointed to represent Joseph Patrick Brown in this case, upon submission of the appropriate pleadings.

IT IS, THEREFORE, ORDERED that Petitioner submit his Application to Proceed *in forma pauperis* and his Motion for Appointment of Counsel on or before March 20, 2013.

IT IS SO ORDERED, this the 19th day of February, 2013.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE