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12
 13 UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

14 Cary Williams,
 15 Petitioner,
 16 v.
 17 William Gittere, *et al.*,
 18 Respondents.

Case No. 2:98-cv-00056-APG-VCF
**Stipulation and Proposed
 Scheduling Order to Continue
 Proceedings 90 days**
 DEATH PENALTY CASE.

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1 In January of this year, the parties filed a Joint Notice Re Evidentiary
2 Hearing Scheduling, pursuant to this Court's Order instructing the parties to confer
3 regarding a number of issues related to the evidentiary hearing in this case.¹ In
4 light of that joint notice, this Court scheduled the hearing for January 24, 2022, and
5 also scheduled deadlines to correspond with that hearing date.²

6 IT IS HEREBY STIPULATE AND AGREED that:

7 1. Last week, the parties conferred because counsel for Cary Williams
8 needed to request an additional two weeks for the First Expert Disclosure.³ During
9 that conference, counsel for Mr. Williams also made the State aware of ongoing
10 concerns related to witness safety and the pandemic. As the Court is undoubtedly
11 aware, the COVID-19 pandemic continues to pose challenges, and this summer has
12 presented a spike in new cases.⁴ A number of Mr. Williams's witnesses are older or
13 have medical conditions.

14 2. At the time the parties conferred and asked for a late-2021 hearing
15 date, the parties believed the pandemic would be mostly under control (as reported
16 by news organizations) and, thus, travel, lodging, and participating in the hearing
17 would be safe for all. However, the parties are concerned about the risk posed to
18 witnesses (both lay and expert) as well as court staff and attorneys, in holding the
19 hearing in January.

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22 ¹ See ECF Nos. 287, 286.

² ECF No. 288.

³ See ECF No. 288 at 1 (parties to disclose experts on Oct. 5, 2021).

23 ⁴ See *Coronavirues in Nevada: Latest COVID-19 case counts, maps and
graphs*, The Nev. Independent (last updated Sept. 29, 2021).

1 3. The parties wish to emphasize that, in the time since this Court issued
2 the scheduling order in this case, the parties have been active in preparing for the
3 hearing. However, the pandemic has posed challenges. For example, one of Mr.
4 Williams’s experts had to delay a trip to see Mr. Williams because Ely State Prison
5 had a COVID-related lockdown. Though meeting with witnesses has been possible,
6 precautions related to the pandemic have made it more difficult to schedule these
7 meetings and to conduct travel for them.

8 4. In addition to pandemic-related concerns, counsel for Respondents
9 experienced increased workloads over the past year due to division changes,
10 internal transfers, and related training responsibilities, as well as increased
11 coverage responsibilities due to multiple colleagues’ planned and unplanned
12 medical leave. Unfortunately, Respondents’ counsel were unable to anticipate these
13 changes when the parties entered into the original agreement. Circumstances have
14 since stabilized, but the impact on time has been significant, and Respondents’
15 counsel support the 90-day continuance.

16 5. Additionally, Ms. Fraley and Mr. Finlayson will have oral argument
17 before the Ninth Circuit in February of 2021.

18 6. The parties hope that 90-days will be sufficient because the number of
19 vaccinated individuals and mandates continue to rise, and hopefully will correlate
20 with a downward trend in COVID-19 infections. The parties agree that 90-days will
21 be sufficient to address any non-pandemic related concerns. Thus the parties agreed
22 to request a continuance of the hearing—and the related deadlines—for ninety (90)
23 days.

1 7. The parties ask this Court to modify its previous order and adopt the
2 following schedule for this evidentiary hearing.⁵

3 (a) The evidentiary hearing will take place in May 2022.⁶

4 (b) The first disclosure of experts will occur on January 3, 2022.

5 (c) The second disclosure of experts will occur on January 17, 2022.

6 (d) Mr. Williams's pre-hearing brief will be due on February 14, 2022.

7 The State's responsive pre-hearing brief will be due on February 28,
8 2022. Mr. Williams's reply will be due on March 7, 2022.

9 (e) The witness lists and exhibits list will be due on March 10, 2022.

10 (f) Pre-hearing motions will be due on March 17, 2022. Any
11 oppositions or replies will be governed by LR 7-2(b).

12 (g) No later than five days before the hearing begins, the parties will
13 mark and submit exhibits.

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19 ⁵ If this Court declines to adopt this stipulated schedule, counsel for Mr.
20 Williams requests a 2-week extension for the First Disclosure of Experts, and the
21 adjustments necessary to the scheduling order to accommodate that 2-week
22 extension. The State does not oppose this request. If this Court denies the request
23 for a 90-day continuance, the parties can confer and propose a new scheduling order
to accommodate the 2-week extension for the First Disclosure of Experts, while
maintaining the January 25, 2022 hearing date.

⁶ Ninety days from January 25, 2022 is April 25, 2022. However, counsel for
Mr. Williams has determined that there are too many scheduling conflicts with
witnesses for that week.

1 (h) The parties will continue to file status reports at three-month
2 intervals, consistent with the January 14, 2021 order.

3 Dated this 30th day of September, 2021.

4 Rene L. Valladares
5 Federal Public Defender

Aaron Ford
Attorney General of Nevada

6 /s/ Randolph M. Fiedler
7 Randolph M. Fiedler
8 Assistant Federal Public Defender

/s/ Jessica Perlick
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9 /s/ Heather Fraley
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/s/ Charles L. Finlayson
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11 /s/ Brad Levenson
12 Brad Levenson
13 Assistant Federal Public Defender

1 **ORDER**

2 The parties have submitted a stipulation requesting this Court extend by 90
3 days all deadlines in this case and re-scheduling the hearing to May 2022. Based on
4 this stipulation and for good cause shown, it is hereby ordered that the following
5 schedule will govern the evidentiary hearing.

6 The Evidentiary Hearing

7 The evidentiary hearing will commence on May 16, 2022, at 9:00 a.m., in
8 Las Vegas courtroom 6C.

9 First Disclosure of Experts

10 By **January 3, 2022**, the parties will disclose to each other the names of any
11 experts who will testify, accompanied by a written report for each expert in
12 compliance with Fed. R. Civ. P. 26(a)(2)(B). Such disclosure will be made by email
13 or other informal means. The parties need not file formal notices.

14 Second Disclosure of Experts

15 By **January 17, 2022**, the parties will disclose to each other the names of
16 any rebuttal experts, accompanied by a written report for each expert in compliance
17 with Fed. R. Civ. P. 26(a)(2)(B). Such disclosure will be made by email or other
18 informal means. The parties need not file formal notices.

19 Pre-Hearing Briefs

20 Williams will submit a pre-hearing brief by **February 14, 2022**. The
21 respondents will file a responsive pre-hearing brief by **February 28, 2022**.
22 Williams may file a reply to the respondents' brief by **Mar. 7, 2022**.

