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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TIMMY JOHN WEBER,

Petitioner,

3:11-cv-0104-PMP-RAM

vs.

ORDER

E.K. McDANIEL, *et al.*,

Respondents.

_____ /

This action is a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 by Timmy John Weber, a Nevada prisoner under sentence of death. Weber filed a *pro se* habeas corpus petition (docket #1) on February 11, 2011. Petitioner paid the \$5 filing fee for this action.

Despite the fact that he paid the \$5 filing fee, petitioner also filed an Application to Proceed *in Forma Pauperis* (docket #2). In view of the information provided in that application, regarding his financial status, the court will grant Weber’s motion in part and deny it in part. The court will not waive payment of the \$5 filing fee, but will grant Weber leave to proceed *in forma pauperis* with respect to subsequent fees and costs.

In addition, Weber filed a motion for appointment of counsel (docket #3). Weber’s application for leave to proceed *in forma pauperis* shows that he lacks the resources necessary to employ counsel for this capital habeas corpus action. Therefore, pursuant to 18 U.S.C. § 3599, and in the interests of justice, the Federal Public Defender for the District of Nevada (FPD) shall be

1 appointed to represent Weber. If the FPD is unable to represent Weber, due to a conflict of interest
2 or other reason, then alternate counsel will be located and appointed by the court. Weber's
3 appointed counsel will represent him in all subsequent proceedings, pursuant to 18 U.S.C. § 3599(e),
4 unless and until allowed to withdraw.

5 **IT IS THEREFORE ORDERED** that petitioner's Application to Proceed *in Forma*
6 *Pauperis* (docket #2) is **GRANTED IN PART AND DENIED IN PART**. The Application to
7 Proceed *in Forma Pauperis* is **DENIED** with respect to waiver of payment of the filing fee, but
8 **GRANTED** with respect to subsequent fees and costs.

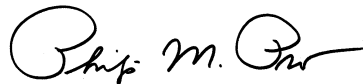
9 **IT IS FURTHER ORDERED** that petitioner's Motion for Appointment of Counsel
10 (docket #3) is **GRANTED**. The Federal Public Defender for the District of Nevada is appointed to
11 represent petitioner. The Federal Public Defender shall have **30 days** from the date of entry of this
12 order to undertake representation of petitioner or to indicate to the court its inability to represent
13 petitioner in these proceedings.

14 **IT IS FURTHER ORDERED** that the Clerk of the Court shall **SERVE** a copy of this order
15 on Michael Pescetta, Capital Habeas Division, Office of the Federal Public Defender, 411 East
16 Bonneville Ave., Ste. 250, Las Vegas, NV 89101.

17 **IT IS FURTHER ORDERED** that the Clerk of the Court shall **SERVE** the respondents,
18 by certified mail, with a copy of this order and a copy of the petition for writ of habeas corpus
19 (docket #1).

20 **IT IS FURTHER ORDERED** that respondents' counsel shall file a notice of appearance of
21 counsel within **30 days** from the date of entry of this order. Respondents need not respond to the
22 habeas corpus petition unless and until the court orders otherwise.

23
24 DATED: February 16, 2011.

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PHILIP M. PRO
United States District Judge