

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

)	No. CV xx-xxxx-xxx-xxx
)	
Petitioner,)	DEATH PENALTY CASE
)	
vs.)	ORDER OF APPOINTMENT
)	AND GENERAL PROCEDURES
)	
Respondents.)	
)	

IT IS ORDERED granting Petitioner’s Motion for Appointment of Counsel and appointing _____ [NAME, ADDRESS, PHONE] _____, as Counsel for Petitioner in his federal habeas corpus proceedings. Counsel shall be compensated at the rate of \$125.00 per hour for legal representation of Petitioner before this Court. Counsel shall not be compensated under the Criminal Justice Act (CJA) for representation of Petitioner in state forums. Appointment is made pursuant to 21 U.S.C. § 848(q)(4)(B), and the fee is established pursuant to General Order No. 98-46 of this Court.

IT IS FURTHER ORDERED appointing _____ [NAME, ADDRESS, PHONE] _____, as Co-Counsel for Petitioner. Co-Counsel shall be compensated at the rate of \$100.00 per hour. Appointment is made pursuant to 21 U.S.C. § 848(q)(4)(B), and the fee is established pursuant to General Order No. 98-46 of this Court.

IT IS FURTHER ORDERED granting Petitioner’s application to proceed *in forma pauperis*.

IT IS FURTHER ORDERED that the Arizona Attorney General file a notice of appearance with the Court within 10 days from the entry of this Order.

IT IS FURTHER ORDERED that, in addition to the requirement of Local Rule 1.9(f), the parties shall file with the Clerk of Court an additional copy of every pleading or other document filed from this date forward for use by the Capital Case Staff Attorney. The notation “Capital Case Staff Attorney Copy” shall be clearly marked on the first page of such copy.

IT IS FURTHER ORDERED that the following procedures shall govern the briefing and resolution of this matter:

I. Case-Management Conferences (CMC)

A case-management conference will be held on [DATE/TIME] in [COURTHOUSE & COURTROOM #]. Non-local counsel may, if requested, appear by telephone. Any request to appear by telephone must be filed at least ten (10) days prior to the scheduled conference. Prior to the conference, Petitioner’s counsel is expected to meet with Petitioner and to review any published case decisions. Counsel is further expected to contact Petitioner’s state court counsel to obtain preliminary information about the case and to begin assembly of the files and records from the state proceedings. Absent a motion detailing significant delays, problems or obstacles

encountered in obtaining copies of pertinent files and records, the Court will not assist directly in obtaining such materials.

At the conference, Petitioner's counsel will be expected to discuss the status of file and record assembly and any problems encountered in that regard, whether assistance regarding the record is needed from Respondents, and the estimated time needed to complete review of the file and record. Both parties should be prepared to articulate their positions regarding the statute of limitations and to discuss any other issues which may affect the filing of the Amended Petition or efficient resolution of this matter. After case management issues are addressed, the Court may meet separately with Petitioner's counsel regarding case budgeting.

Following the conference, the Court will issue a Case-Management Order scheduling CMC #2. At CMC#2, the Court will set firm deadlines for the filing of the Amended Petition, responsive pleadings, motions for further evidentiary development and other pleadings as the Court may deem necessary.

II. Amended Petition

The Amended Petition shall include and set forth all known claims of constitutional error or deprivation entitling Petitioner to federal habeas relief. *See* Rule 2(c), 28 U.S.C. §2254. In addition to the requirement of Local Rule 1.9, the Amended Petition shall:

- (1) separately enumerate *every* claim for federal habeas relief (related claims such as ineffective assistance of counsel may be separately enumerated as sub-claims);
- (2) include a table of contents;
- (3) state with specificity the facts and legal authority supporting each claim;
- (4) state with specificity whether, when and where each claim was presented to or considered by the state's highest court;
- (5) include, in any appendices, a table of contents and tabs between exhibits; and
- (6) *not* contain, as exhibits or otherwise, significant portions of the state court record (i.e., copies of transcripts).¹

III. Answer

After the Amended Petition is filed, Respondents shall file an Answer. Pursuant to Rule 5 of the Rules Governing Section 2254 Cases, Respondents' Answer shall specifically respond to the allegations of the petition. The Court intends the Answer to be a comprehensive responsive pleading, addressing both the factual allegations and legal contentions raised in the Amended Petition as well as any procedural defenses with respect to individual claims. Accordingly, Respondents shall address the merits of every enumerated claim and sub-claim, regardless of whether Respondents allege the claim is barred from review by the federal court. In addition, Respondents' Answer shall include a table of contents.

1. Following the filing of the Amended Petition, the Court will, on its own motion, seek a certified copy of the state court record from the Arizona Supreme Court, which includes trial, appeal and post-conviction pleadings as well as transcripts. Accordingly, the parties may cite to appropriate state court documents in their pleadings but should not reproduce such documents as exhibits.

IV. Traverse

Petitioner will be given an opportunity to file a Traverse in reply to Respondents' Answer. The filing of a Traverse is optional. If a Traverse is filed, it shall include a table of contents.

V. Evidentiary Development

Following the filing of the Amended Petition, Answer and Traverse (if any), Petitioner shall file any requests for further evidentiary development of a claim. Such motions include, but are not limited to, requests for Discovery, Expansion of the Record and Evidentiary Hearing under Rules 6, 7 and 8 of the Rules Governing Section 2254 Cases. Any motion for evidentiary development shall:

(1) separately identify which enumerated claim(s) and sub-claim(s) Petitioner contends needs further factual development;

(2) with respect to each claim or sub-claim identified in #1, (i) describe with specificity the facts sought to be developed; (ii) identify the specific exhibit(s) Petitioner contends demonstrate or support the existence of each fact sought to be developed; and (iii) explain why such fact(s) and exhibit(s) are relevant with respect to each claim or sub-claim;

(3) with respect to each exhibit and each fact identified in #2, explain in complete detail why such exhibit(s) and such fact(s) sought to be developed were not developed in state court;

(4) with respect to each exhibit and each fact identified in #2, explain in complete detail why the failure to develop such exhibit(s) and such fact(s) in state court was not the result of lack of diligence, in accordance with the Supreme Court's decision in *Williams v. Taylor*, 529 U.S. 420 (2000);

Any motion for evidentiary hearing shall further address:

(5) with respect to each claim or sub-claim identified in #1, explain how the factual allegations, if proved, would entitle Petitioner to relief; and

(6) with respect to each claim or sub-claim identified in #1, whether the state court trier of fact reliably found the relevant facts after a full and fair hearing. *See Jones v. Wood*, 114 F. 3d 1002, 1010 (9th Cir. 1997).

Any motion for evidentiary development that is filed prior to the filing of Respondents' Answer or that fails to address the above-listed requirements will be summarily denied. If a motion is filed, a response or reply thereto, if any, shall be filed in accordance with Local Rule 1.10(c) and (d), respectively.

VI. Miscellaneous

In addition to the requirements of Local Rule 1.9, the following shall apply to any pleading filed in this matter:

(1) The parties shall *not* include photographs, charts or graphs in the body of any pleading. Any such exhibit must be contained within an appendix to an appropriate pleading (i.e., a motion for evidentiary development).

(2) The parties shall *not* refer to either party by informal first name only. All references to a party shall be by last name, by governmental name (i.e., "State") or by formal title, such as "Petitioner" or "Respondents."

IT IS FURTHER ORDERED that this case is subject to the District's Budgeting and Case Management Plan. To this end, Petitioner's counsel must prepare a budget for tasks to be performed by attorneys and paralegals, and expenses to be incurred for investigative, expert, and other services for each of the four phases of the case: Phase I–Preliminary Review of Record; Phase II–Preparation of Amended Petition; Phase III–Preparation of Traverse and Other Pleadings; and Phase IV–Evidentiary Development (if authorized by the Court). An *ex parte* cost management order explaining the budgeting process to Petitioner's counsel is issued separately this same date. The District's Budgeting and Case Management Plan is also available on the Court's website at www.azd.uscourts.gov. Petitioner's counsel should be prepared to discuss budgeting issues with the Court at the conclusion of CMC#1.

IT IS FURTHER ORDERED that this case, having been randomly reassigned, by lot, to Judge [NAME] , pursuant to Rule 1.2(e) of the Local Rules of Practice, shall be redesignated as No. [NUMBER] .

IT IS FURTHER ORDERED that the Clerk of Court forward a copy of the Petition for Writ of Habeas Corpus, the Order Staying Execution, and this Order to Petitioner's counsel.

IT IS FURTHER ORDERED that a copy of the Petition for Writ of Habeas Corpus and this Order be served by the Clerk of Court upon Respondents [NAME] and [NAME] and upon [NAME] , Assistant Arizona Attorney General, by certified mail pursuant to Rule 4, Rules Governing Section 2254 Cases.

IT IS FURTHER ORDERED that the Clerk of Court forward a copy of this Order to Petitioner.

IT IS FURTHER ORDERED that the Clerk of Court forward a copy of this Order to the CJA Voucher Review Analyst.

DATED this _____ day of [MONTH] , 200 .

United States District Judge