

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

) Case No.
)
) SECOND
Petitioner,) SCHEDULING ORDER IN A
) NON-SUCCESSIVE DEATH
) PENALTY ACTION PURSUANT TO
v.) 28 U.S.C. § 2254
)
Respondents.)
)

The clerk shall issue this Second Scheduling Order pursuant to the court’s instructions at the conclusion of the First Status Conference.

IT IS THEREFORE ORDERED:

1. Time for Record Review and Completion of Authorized Discovery: The parties shall have to and including (approximately 6 months from the date of the First Status Conference) in which to review the record and complete discovery, if authorized. Such discovery would be limited to whether the conviction and/or sentence have been imposed in violation of petitioner’s federal constitutional rights or the laws or treaties of the United States. All motions for leave of court to conduct discovery shall be based on a showing of good cause and filed no later than ninety (90) days after the date of this order.

(a) Except for good cause shown, any ex parte requests for investigative funds or funds for other ancillary services pursuant to 21 U.S.C. § 848(q) must be filed with the court not later than (approximately 60 days after the date of this order). Petitioner must be able to show that there is reasonable cause to believe that discoverable facts exist which will support a claim of constitutional magnitude.

(b) Petitioner shall file status reports with the court on or before [give specific dates [reports at 60 day intervals equals 2 reports if given 6 months in #1 above to review record and conduct discovery]].

(c) A Second Status Conference shall be held on [give specific date, usually at the end of the time in #1 to review the record and conduct discovery].

2. Extension of Time to Review the Record and Conduct Discovery: An extension of the deadline in which to review the record and conduct discovery will not be allowed without a showing of good cause. Any motion or stipulation to extend the time to review the record and conduct discovery shall be filed at least **twenty (20) days** prior to the date fixed for the Second Status Conference, or other date specified by court order. Any opposition to the extension of the said deadline shall be filed within **ten (10) days** thereafter, and any reply thereto shall be filed within **five (5) days** thereafter. The motion or stipulation shall be addressed during the Second Status Conference. The motion or stipulation must include: (1) a statement specifying the discovery completed by the parties as of the date of the motion or stipulation; (2) a specific description of the additional records which must be reviewed or discovery which remains to be

completed; (3) the reasons such additional records were not reviewed or remaining discovery was not completed within the time limit of the existing deadline; and (4) a proposed schedule for the time necessary to finish reviewing the additional records or completion of all remaining discovery.

3. Amended Petition: If necessary, petitioner shall file an amended petition on or before (usually 60 days after the Second Status Conference, if the time to review the record and conduct discovery is not extended). Said amended petition shall contain all known grounds for relief, both exhausted and unexhausted grounds. Petitioner is advised that said amended petition will be construed as his final petition. The amended petition shall specifically state how, when, and where each ground for relief was exhausted in the state courts. Any points and authorities in support of the amended petition shall be filed separately from but concurrently with the amended petition. If an amended petition is not going to be filed, then when the amended petition would otherwise be due counsel for petitioner shall file a declaration stating that there are no grounds for relief in addition to those asserted in the original petition.

4. Response to Amended Petition: Respondents shall thereafter have **sixty (60) days** in which to file an answer (points and authorities addressing the merits of the grounds asserted in the amended petition) or otherwise respond to the amended petition, or the original petition if no amended petition is filed.

Traverse: When an Answer is filed, petitioner shall thereafter file a traverse (points and authorities addressing the merits of the grounds asserted in the amended/original petition and in response to the answer) within **forty-five (45) days** and respondents shall thereafter file a reply or waiver thereof within **thirty (30) days**.

Opposition to Motion to Dismiss: When a motion to dismiss is filed instead of an answer, petitioner shall file an opposition thereto within **thirty (30) days**, and respondents shall thereafter file a reply or waiver thereof within **fifteen (15) days**.

5. Evidentiary Hearing: Petitioner shall file a motion for an evidentiary hearing, if desired, separate from but concurrently with the opposition to the motion to dismiss or traverse. The motion must specifically address why an evidentiary hearing is required and meet the requirements of 28 U.S.C. §2254(e). The motion shall identify whether an evidentiary hearing was held in the state court and where the transcript is located within the exhibits attached to the Answer, if it is so included. If a motion for an evidentiary hearing is filed, respondents shall file a response concurrently with but separate from their reply or waiver to the Traverse. The court will then determine whether to conduct an evidentiary hearing.

6. Oral Argument: The court will determine when oral arguments will be held.

DATED this _____ day of _____, 200_.

United States District Judge