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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11 JOHN DOE,	}	CASE NO. CV XX-xxxx xxx
12 Petitioner,		DEATH PENALTY CASE
13 v.		SAMPLE ORDER SETTING
14 JEANNE WOODFORD, Warden of		PROCEDURES FOR
15 California State Prison at		MAINTAINING LITIGATION
16 San Quentin,	}	BUDGET IN WRIT OF HABEAS
17 Respondent.		CORPUS CAPITAL CASE
	}	Status Conference: TBA

18 In an effort to manage these cases in a cost-effective manner, the Central
19 District of California has adopted its Plan for Budgeting and Case Management in
20 Capital Habeas Cases ("Plan"), as required by the Judicial Council of the Ninth
21 Circuit. This case shall be governed by the Plan.

22 The parties shall appear for a status conference on _____, _____,
23 2004, at 3:00 p.m., to discuss implementation of a case management plan and
24 budget for this case.

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1 **A. Overview**

2 1. For the purposes of case management and budgeting, the
3 Central District’s Budgeting Plan divides the litigation of capital habeas cases into
4 four phases: Phase I (appointment of counsel, record review and preliminary
5 investigation), Phase II (preparation of petition), Phase III (exhaustion, procedural
6 bar, motion for evidentiary hearing and briefing of claims), and Phase IV
7 (discovery, evidentiary hearing and final briefing). This case is currently in Phase
8 xx. A copy of the Central District’s Guide to Case Management and Budgeting in
9 Capital Habeas Cases is available on the Central District’s website.

10 2. Petitioner’s counsel will be required to file a proposed case
11 management plan and budget for each phase of this case. After in camera review,
12 the Court will approve or reject the budget, in whole or in part.

13 3. The Court’s review of interim payment requests for attorneys,
14 paralegals, experts, investigators, and any other expenses, will be based on the
15 previously-approved budget.

16 **B. Confidentiality of Budgeting Process**

17 4. Because the information required by the Court from counsel to
18 develop a budget may be protected by the attorney-client privilege or the attorney
19 work-product doctrine, all documents relating to case budgeting may be filed ex
20 parte and under seal, without service on the opposing party, unless the Court
21 otherwise orders. It is not necessary to obtain prior permission from the Court to
22 file budget-related documents under seal. Counsel should not file a separate
23 application to have such documents filed under seal. In addition, when necessary
24 to protect confidentiality, and with notice to the opposing party, certain portions of
25 case management conferences related to budgeting may be conducted ex parte and
26 in camera.

27 5. Applications for investigative, expert, or other services
28 pursuant to 21 U.S.C. § 848(q)(9), if filed under seal, must contain “a proper

1 showing . . . concerning the need for confidentiality.” Id. This showing may be
2 included within the funding request itself; counsel should not file a separate
3 application to have a funding request filed under seal. However, when petitioner
4 does file a funding request under seal, counsel shall notify respondent and provide
5 a brief summary of the reasons why confidentiality is necessary.

6 6. All documents relating to case budgeting shall be filed together
7 with a conformed copy for the judge as required by Local Rule 11-4.1, and an
8 additional conformed copy designated “Death Penalty Law Clerk.”

9 **C. Case Management Conferences**

10 7. Ten (10) days before the case management conference, each
11 party shall file a completed Confidential Case Evaluation Form. The Court
12 anticipates holding additional case management conferences at the beginning of
13 each subsequent phase/phases of this case. Petitioner’s counsel shall file a revised
14 Confidential Case Evaluation Form, reflecting any additional information
15 acquired, ten (10) days before subsequent case management conferences.

16 8. At initial case management conferences, the parties shall be
17 prepared to discuss all issues relating to the scheduling of future proceedings in
18 the case. In conjunction with the case management conference, the Court
19 proposes to set due dates for the filing of pleadings or motions, and any other
20 deadlines that appear necessary.

21 9. At initial case management conferences, petitioner’s counsel
22 shall be prepared to identify specific individuals who have been, or will be, hired
23 or retained to assist counsel in litigating the case (including associates, paralegals,
24 and investigators); counsel shall be prepared to describe each individual’s
25 qualifications and identify their respective billing rates.

26 10. Five (5) court days before initial case management conferences
27 and all subsequent case management conferences, the parties shall file a joint
28 status report addressing the manner in which they envision the case proceeding in

1 the next phase. The joint status report shall not be filed under seal.

2 **D. Cost Management**

3 11. The Central District's Plan requires the district court and
4 counsel for petitioner to efficiently manage the costs of capital habeas litigation.
5 To achieve this objective, prior to each phase of the case, petitioner's counsel shall
6 prepare a budget for tasks to be performed by attorneys, paralegals, other support
7 staff, and any other expenses.

8 12. At the case management conference, the Court will set a date
9 for the filing of the proposed budget for Phase xx. The budget shall be presented
10 to the Court on the automated "Case Management Plan and Budget Forms" created
11 by the Judicial Council of the Ninth Circuit. Copies of the automated forms may
12 be viewed on the district court's website. However, counsel should wait for the
13 CJA Department to send, via electronic mail, the personalized forms directly to
14 counsel for use in the budgeting process.

15 13. Separate budget forms shall be completed for attorneys,
16 investigators, and experts. Paralegals or legal assistants should be accounted for
17 in the appropriate section of the form for attorneys. Travel must be distinguished
18 from other services, as indicated on the forms. All the forms for a particular phase
19 of the case should be filed together as a single document.

20 14. Together with the budget forms, counsel shall file a supporting
21 declaration explaining the basis for the budget requests. Requests for funding
22 pursuant to 21 U.S.C. § 848(q)(9) shall comply with the provisions of paragraphs
23 36-38 below.

24 15. Following the Court's in camera review of petitioner's
25 proposed case management plan and budget, along with the current Confidential
26 Case Evaluation Forms, and guided by the requirements of 21 U.S.C. § 848(q)(9),
27 the Court will issue an order under seal, approving or rejecting the budget in
28 whole or in part. The Court will issue a separate Case Management Order, not

1 filed under seal, setting future deadlines and any other procedural matters decided
2 by the Court.

3 16. The budget must also be reviewed by the Judicial Council of
4 the Ninth Circuit. Counsel are authorized to proceed based upon the initial budget
5 approved by the Court, and will be contacted should any further clarification,
6 information, or action be requested by the Judicial Council.

7 17. Petitioner's counsel shall make reasonable and diligent efforts
8 to minimize costs, and shall, where appropriate, use paralegals and law clerks for
9 tasks where an attorney's expertise is not required. Billing for associates,
10 paralegals, law clerks, summer associates and law students, along with their hourly
11 billing rates, must be pre-approved in conjunction with the case budget.

12 18. The Judicial Council of the Ninth Circuit has established
13 presumptive maximum billing rates of \$65.00 per hour for associate counsel, and
14 \$35.00 per hour for paralegals and law clerks. Counsel's billing for the services of
15 associate counsel and other support staff shall not exceed counsel's actual cost for
16 providing such services and is subject to the presumptive rates established by the
17 Judicial Council. These limitations on hourly rates do not apply to lawyers or
18 other support staff who have previously been authorized by the Court to provide
19 services in the case.

20 19. To avoid duplication of efforts, counsel shall maintain a
21 reasonable division of labor between the lawyers, if co-counsel is approved by the
22 Court, and between counsel and other staff. The Court will authorize
23 compensation for only one lawyer to attend court hearings and case management
24 conferences absent prior approval. The Court will not authorize compensation for
25 support staff, including law clerks, paralegals and investigators, to attend court
26 hearings without prior approval by the Court.

27 20. Appointed counsel shall maintain the records and files in this
28 case in an organized and accessible fashion so as to minimize any duplication of

1 efforts in the event new counsel is assigned to the case. The Court may withhold
2 final payment until counsel have complied with this requirement.

3 **E. Submission of Vouchers**

4 21. Pursuant to General Order No. 97-2 of this Court, attorneys
5 appointed under the Criminal Justice Act to represent petitioners seeking writs of
6 habeas corpus in cases challenging a death penalty judgment shall submit a request
7 for compensation and reimbursable expenses on a monthly basis. The following
8 procedures for interim payments shall apply during the course of representation:

9 22. Each month, appointed counsel shall submit an interim CJA
10 Form 30, "Death Penalty Proceedings: Appointment of and Authority to Pay
11 Appointed Counsel" to the CJA Supervising Attorney's Office, care of the Clerk's
12 Office, together with an updated copy of the budget showing actual fees earned
13 and expenditures to date. Compensation earned and reimbursable expenses
14 incurred from the first to the last day of every one-month period shall be claimed
15 on an interim voucher submitted no later than the tenth day of the following
16 month, or the first business day thereafter, and shall include all compensation and
17 expenses claimed for the preceding month regardless of the amount requested.
18 Failure to timely submit a monthly CJA interim voucher may be considered a basis
19 for denying the requested compensation.

20 23. Along with a completed CJA Form 30, appointed counsel shall
21 submit an original and one copy of all supporting documents. The Clerk's office
22 will file under seal the supporting documentation, but not the CJA Forms 30.
23 Counsel should not file a separate application to have the billing statement filed
24 under seal.

25 24. All requests for compensation for paralegals and law clerks
26 must be submitted on a CJA Form 31, and not listed as expenses on a CJA Form
27 30. Along with each CJA Form 31, counsel shall include a copy of the order
28 authorizing employment of the person whose services are being billed. These

1 vouchers must be submitted contemporaneously with the attorney vouchers
2 covering the same time period. Documentation of the services actually performed
3 and the rate paid must be attached to the voucher, signed by the individual who
4 performed such services.

5 25. The Court's review of interim payment requests will be guided
6 by the previously-approved budget. Variances from the budget should be pre-
7 approved and will only be authorized for good cause. However, within a
8 particular phase of the case, attorney hours may be transferred from one task to
9 another, or from lead counsel to co-counsel; similarly paralegal/law clerk hours
10 may also be transferred from one task to another. However, hours designated for
11 lead and/or co-counsel may not be transferred to associate counsel or
12 paralegal/law clerk due to the difference in the hourly rates. Similarly, fees and
13 expenses for the services of an expert or investigator may not be reallocated to
14 another expert or investigator, however, without the Court's prior approval. To
15 transfer allocated funds among experts or investigators, counsel must seek
16 permission to amend the budget.

17 26. The Court also will authorize payment for all miscellaneous
18 expenses such as postage, copying, etc., reasonably incurred and subject to
19 national and district policies and procedures.

20 27. At the conclusion of the representation, each counsel shall
21 submit a final voucher seeking payment for representation provided during the
22 final interim period.

23 **F. Supporting Documentation for Vouchers**

24 28. Each interim voucher shall be supported by a detailed and
25 itemized time and expense statement in the form prescribed by the Court. In
26 addition, counsel shall identify all payments previously received. In conjunction
27 with each voucher, counsel shall abide by the applicable provisions of the
28 Guidelines for the Administration of the Criminal Justice Act, Part C, Chapters II,

1 VI (published by the Administrative Office of the United States Courts), and the
2 outline of procedures and rules for claims by CJA attorneys described in the
3 Voucher Review Guidelines for Habeas Death Penalty Cases.

4 29. Counsel shall maintain accurate time records; such records are
5 subject to audit and must be maintained for at least three years after approval of
6 the final voucher for an appointment. Time records must be in a format approved
7 by the Court. Hours billed must be divided into tenths of an hour. Each time entry
8 shall reflect discrete individual tasks and shall not simply list multiple tasks
9 performed in a specified block of time. Information should be provided in
10 sufficient detail as to permit meaningful review, including but not limited to:
11 identification of individual witnesses interviewed; identification, by name or title,
12 of persons involved in telephone conferences; specific topics researched;
13 identification of pleadings drafted or reviewed by title and number of pages; and,
14 if necessary for an understanding of the task, explanation of its relevance to the
15 federal proceedings. Aggregate time blocks or entries which are vague or
16 ambiguous will not be approved for payment. If the level of detail is insufficient
17 for auditing purposes, the vouchers will be returned to counsel for resubmission
18 with adequate detail. The presumptive rate for payment for review of the trial and
19 appellate record is 60 pages per hour.

20 30. The Court will not compensate counsel for administrative,
21 clerical, secretarial, or word processing services, regardless of whether the person
22 performing the function is an attorney, law clerk, paralegal or secretary, even if
23 counsel has no regularly employed secretary.

24 31. The Court will not compensate counsel for excessive staff
25 conferencing.

26 32. The Court will not compensate counsel for services that are
27 directly related to proceedings in state court for exhaustion of state remedies.
28 Counsel should seek compensation for such services from the state court.

1 33. The Court will not compensate counsel for services relating to
2 appeals (whether from interlocutory orders or final judgments) or other work
3 related to the review of proceedings before this Court. Counsel should seek
4 compensation for work done at the appellate level from the Court of Appeals after
5 having obtained an appointment as counsel of record from that court.

6 **G. Funding for Ancillary Services**

7 34. The presumptive maximum billing rate for investigators is
8 \$55.00 per hour.

9 35. The Court will not authorize reimbursement for ancillary
10 services without prior approval by the Court. See 21 U.S.C. § 848(q)(9); United
11 States v. Barger, 672 F.2d 772, 775-77 (9th Cir. 1982). An order approving the
12 budget shall constitute such prior approval.

13 36. A request for funds to provide ancillary services shall
14 document and explain previous expenditures in the case. If any expert or
15 investigative funds have previously been approved by any court, whether state or
16 federal, counsel shall describe the course of the investigation (counsel need not
17 disclose the actual results) and affirm that previously authorized funds have been
18 (or will be) exhausted. Counsel should also explain why the previous budget
19 proved to be inadequate.

20 37. A request for funds to hire an expert witness shall separately
21 identify each type of expert witness counsel seeks to hire. The request shall
22 identify the subject matter to be covered by the expert, briefly explain why an
23 expert is needed, and include an estimate of the amount of time the expert
24 anticipates spending on each portion of the investigation or analysis. In
25 explaining why an expert is needed, counsel should address both the facts
26 indicating that further analysis is warranted and the reason why an *expert* witness
27 is needed to interpret those facts. Counsel shall contact the proposed expert
28 witness before submitting a request so that the application will include the actual

1 billing rate being requested and a description of the proposed expert's credentials
2 and experience.

3 38. Requests for an investigator shall include a specification of the
4 factual issues counsel intends to investigate, the facts suggesting that such an
5 investigation is warranted, and an estimated time budget for each task. The time
6 budget should be broken down into discrete portions of the investigation so that
7 the court may assess the reasonableness of each request.

8 39. If the Court approves investigative services, experts or other
9 services, counsel shall promptly inform the expert, investigator or other approved
10 support staff of the specific terms and limitations of the Court's order.
11 Investigators, experts, or other support staff will not be paid in excess of amounts
12 authorized. See Barger, 672 F.2d at 775-77.

13 40. All requests for compensation for fees and expenses of
14 investigators and experts must be submitted on a CJA Form 31, "Death Penalty
15 Proceedings: Ex Parte Request for Authorization and Voucher for Expert and
16 Other Services." Each CJA Form 31 seeking compensation for expert,
17 investigative, or other ancillary services shall include (1) a copy of the approved
18 budget, (2) the order authorizing interim funding and employment of the person
19 whose services are being billed, and (3) an itemized statement of the individual's
20 time and expenses as described in paragraphs 28 and 29 above. Requests for
21 reimbursement for travel expenses must comply with the provisions of paragraphs
22 41(g) and (h) below.

23 **H. Reimbursable Expenses**

24 41. Counsel will be reimbursed for out-of-pocket expenses
25 reasonably incurred in furtherance of the representation. The following additional
26 guidelines may be helpful to counsel:

27 a. Telephone toll calls, telegrams, photocopying, and
28 photographs are reimbursable expenses if reasonably incurred. However, general

1 office overhead, such as rent, secretarial assistance, telephone service,
2 publications, supplies, costs related to educational seminars, or time expended for
3 the preparation of vouchers are not a reimbursable expense, nor are expenditures
4 for personal items for the client.

5 b. Photocopying will be reimbursed at counsel's actual cost
6 not to exceed \$0.10 per page for in-house copying. Large copy orders should be
7 reproduced by an outside copy service unless in-house photocopying is more
8 economically efficient. Expenses for the service of subpoenas on fact witnesses
9 are governed by 28 U.S.C. § 1825 and Federal Rule of Criminal Procedure 17, and
10 are not reimbursable under the Criminal Justice Act.

11 c. The Court will reimburse for the actual cost of case-
12 related postage. Counsel is to make every effort to use first-class U.S. mail
13 whenever possible. Reimbursement for the actual cost of other postal services
14 (such as overnight or two-day delivery) or for the use of non-federal carriers will
15 be permitted only if there is a genuine necessity for such a service. To obtain
16 reimbursement for extraordinary mail services, counsel shall include a copy of an
17 itemized bill and a statement detailing the requisite necessity for expedited
18 delivery. Fax transmissions will be reimbursed for the actual amount of the
19 telephone charge.

20 d. The Court will not reimburse for messenger or attorney
21 service without valid justification for the use of such services.

22 e. Computerized research fees are considered office
23 overhead, as are other fees for library items. Given the availability of flat-fee
24 subscriptions for computerized research services, the Court will reimburse counsel
25 for the costs of computerized research only upon a showing of good cause, such as
26 that fees imposed are outside the scope of the flat fee subscription plan or an
27 explanation of why a flat fee plan is not feasible.

28 f. In the event that transcripts are required, counsel should

1 arrange with the court reporter(s) to bill the Court directly through use of a CJA
2 Form 24. Counsel shall not include the cost of transcripts as an out-of-pocket
3 expense on a CJA Form 30.

4 g. Case-related travel by privately owned vehicle shall be
5 claimed at the mileage rate established by the Administrator of General Services
6 pursuant to 5 U.S.C. § 5707 (currently 37.5¢ per mile), plus parking fees, ferry
7 fees, and bridge, road and tunnel tolls. Transportation other than by privately
8 owned vehicle will be reimbursed on an actual expense basis.

9 h. For travel outside the district or overnight travel within
10 the district on case-related business, counsel must obtain the Court's approval of a
11 "Travel Request and Authorization" prior to seeking reimbursement for travel
12 expenses such as air fare, mileage, parking fees, and meals and lodging. This must
13 be done in addition to having the travel authorized in the budget. For all travel,
14 counsel and other individuals traveling for a case-related purpose must comply
15 with the "Travel Guidelines for CJA Attorneys and Experts."

16 i. Counsel may be required to provide further
17 documentation substantiating the fees or expenses claimed, or to submit a
18 declaration under penalty of perjury detailing counsel's compliance with the
19 standards and procedures established herein.

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j. Further information regarding services which are compensable under the Criminal Justice Act and the manner of obtaining compensation can generally be found in 18 U.S.C. § 3006A, 21 U.S.C. § 848(q), the CJA Plan of the United States District Court for the Central District of California, the Voucher Review Guidelines for Habeas Death Penalty Cases, and the Guidelines for the Administration of the Criminal Justice Act, published by the Administrative Office of the Courts. These items are available from the Clerk of this Court.

IT IS SO ORDERED.

Dated: xxxxx ____, 2004.

Hon. xxx xxxxxx
United States District Judge