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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

[NAME],
Petitioner,
vs.
Dora Schriro, et al.,
Respondents.

No. CV XX-XXXX-XXX-CKJ
DEATH PENALTY CASE

**ORDER OF APPOINTMENT
AND GENERAL PROCEDURES**

IT IS ORDERED that Petitioner’s Motion for Appointment of Counsel (Dkt. X) is **GRANTED**. [NAME, ADDRESS, PHONE] is appointed as Lead Counsel and [NAME, ADDRESS, PHONE] is appointed as Co-Counsel for Petitioner in this federal habeas corpus proceeding. Lead Counsel shall be compensated at the rate of \$_____ per hour and Co-Counsel shall be compensated at the rate of \$_____ per hour for legal representation of Petitioner before this Court. Without express authorization of the Court, counsel shall not be compensated under the Criminal Justice Act (CJA) for representation of Petitioner in state forums. Appointment is made pursuant to 18 U.S.C. § 3599(a)(2), and the fee is established pursuant to General Order No. 08-08 of this Court.

IT IS FURTHER ORDERED that Petitioner’s application to proceed *in forma pauperis* (Dkt. X) is **GRANTED**.

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

1 **IT IS FURTHER ORDERED** that, in an effort to achieve greater uniformity in the
2 treatment of federal capital habeas corpus cases in this District and to inform counsel in
3 advance of the Court’s expectations, the following procedures shall govern the briefing and
4 resolution of this matter:

5 I. Case Management Conference (CMC)

6 A case management conference will be held on **[DATE/TIME]** in **[COURTHOUSE**
7 **& COURTROOM #]**. Non-local counsel may, if requested, appear by telephone. Any
8 request to appear by telephone must be filed at least ten (10) days prior to the scheduled
9 conference. Prior to the conference, Petitioner’s counsel is expected to personally meet with
10 Petitioner and to review any published court rulings in Petitioner’s case. Counsel is further
11 expected to contact Petitioner’s state court counsel to obtain preliminary information about
12 the case and to begin assembly of prior counsel’s files and records from the state
13 proceedings. Absent a motion detailing significant delays, problems, or obstacles
14 encountered in obtaining copies of pertinent files and records, the Court will not assist
15 directly in obtaining such materials.

16 At the conference, Petitioner’s counsel will be expected to discuss the status of file
17 and record assembly and any problems encountered in that regard, whether assistance
18 regarding the record is needed from Respondents or the Court, and the estimated time needed
19 to complete review of the file and record. Both parties should be prepared to articulate their
20 positions regarding the statute of limitations and to discuss any other issues which may affect
21 the filing of the Petition or efficient resolution of this matter. After case management issues
22 are addressed, the Court will meet separately with Petitioner’s counsel to discuss case
23 complexity and budgeting. This *ex parte* aspect of the hearing will be sealed.

24 Following the conference, the Court will issue a Case Management Order scheduling
25 CMC #2. At CMC #2, the Court will set **firm deadlines** for the filing of the Petition,
26 responsive pleadings, motions for evidentiary development, and other pleadings as the Court
27 may deem necessary. Absent extraordinary circumstances justifying a continuance, the
28 parties are expected to adhere to the deadlines set at CMC #2.

1 II. Petition

2 Pursuant to 28 U.S.C. § 2244, a second or successive petition may not be filed in this
3 Court without prior authorization from the Ninth Circuit. Under § 2244(b)(3)(C), the
4 grounds for obtaining such authorization are extremely limited. Consequently, it is
5 incumbent upon Petitioner to raise in his first petition all known claims of constitutional error
6 or deprivation, setting forth “the facts supporting each ground” for habeas relief. *See* Rule
7 2(c), 28 U.S.C. foll. § 2254. In addition to the requirement of Local Rule Civil 7.1, the
8 Petition shall:

- 9 (1) separately enumerate in a sequential manner *every* claim for federal habeas
10 corpus relief (including each individual claim of ineffective assistance of
 counsel);
- 11 (2) set forth, in a clear and concise manner, including full citations to the
12 appropriate portions of the record and application of the appropriate standards
 of review under 28 U.S.C. § 2254(d), the legal and factual basis for each claim
 for relief; and
- 13 (3) state with specificity when and where each claim for relief was presented to
14 or considered by the Arizona Supreme Court.

15 III. Answer

16 After the Petition is filed, Respondents shall file an Answer. Pursuant to Rule 5 of the
17 Rules Governing Section 2254 Cases, Respondents’ Answer shall specifically respond to
18 each of the allegations contained in the petition. In lieu of motions for summary judgment
19 and motions to dismiss, the Answer shall be a comprehensive responsive pleading,
20 addressing both the factual allegations and legal contentions raised in the Petition as well as
21 any procedural defenses with respect to individual claims. Accordingly, Respondents shall
22 address the merits of every enumerated claim, regardless of whether Respondents allege a
23 claim is barred from review by the federal court.

24 Respondents are advised that Petitioner is obligated under Rule 2(c) of the Rules
25 Governing Section 2254 Cases to include in his Petition all known claims for relief and facts
26 in support thereof. Accordingly, the Court will not entertain motions to strike any portion
27 of the Petition or exhibits thereto on the basis that such facts were not developed in state
28 court. Rather, Respondents’ arguments concerning factual development should be included

1 in the Answer as well as the response to any motion for evidentiary development filed by
2 Petitioner.

3 IV. Reply

4 Petitioner shall file a Reply to Respondents' Answer. The Reply shall respond to
5 Respondents' allegations regarding both procedural defenses and the merits of each
6 enumerated claim. In addition, Petitioner shall affirmatively raise in the Reply any
7 arguments concerning availability of state remedies, cause and prejudice, fundamental
8 miscarriage of justice, and/or equitable tolling in response to any allegations by Respondents
9 of procedural or timeliness bars. The Reply shall not be used to raise new claims or new
10 material facts in support of existing claims.

11 V. Evidentiary Development

12 Following the filing of the Petition, Answer, and Reply, Petitioner will be provided
13 an opportunity to file a motion for evidentiary development. Such motions include, but are
14 not limited to, requests for Discovery, Expansion of the Record, and Evidentiary Hearing
15 under Rules 6, 7, and 8 of the Rules Governing Section 2254 Cases. A motion for
16 evidentiary development shall not recite legal authority on the merits or present new material
17 facts in support of the claims raised in the petition; nor shall the motion raise new claims for
18 habeas relief. Rather, the motion shall be limited to the identification of the claims for which
19 development is sought, the evidence or facts sought to be developed, and the applicable
20 standards governing evidentiary development. To this end, any motion for evidentiary
21 development shall:

- 22 (1) not exceed sixty (60) pages cumulatively (excluding appendices);¹
- 23 (2) identify the enumerated claim(s) Petitioner contends need further factual
24 development;
- 25 (3) provide an offer of proof (i.e., declarations, documentary evidence, summaries
26 of proposed testimony) setting forth the facts to be developed and the source
of the proffered evidence; and

27 ¹ Responses to motions for evidentiary development shall not exceed sixty (60)
28 pages cumulatively, and replies shall not exceed forty (40) pages cumulatively.

1 (4) apply the applicable standards for obtaining evidentiary development,
2 including an explanation of why the claim was not developed in state court and
3 why the failure to develop the claim in state court was not the result of lack of
4 diligence, in accordance with 28 U.S.C. § 2254(e)(2) and *Williams v. Taylor*,
5 529 U.S. 420 (2000).

6 Any motion for evidentiary development that is filed prior to the filing of
7 Respondents' Answer or that fails to address the above-listed requirements will be summarily
8 denied.

9 VI. State Court Record

10 As has been the custom in this District, following the filing of Respondents' Answer,
11 the Court will *sua sponte* request from the Arizona Supreme Court a certified copy of the
12 state court record. In the ordinary case, this record will include the pretrial, trial, and
13 sentencing transcripts as well as the complete record on appeal from the trial court. It will
14 not include any post-conviction record on appeal, post-conviction hearing transcripts, or
15 filings in proceedings before the Arizona Supreme Court.

16 Accordingly, Respondents are relieved from their obligation under Rule 5(c) of the
17 Rules Governing Section 2254 Cases to provide the Court with trial transcripts. However,
18 pursuant to Rule 5(d), Respondents shall file with their Answer the following parts of the
19 state court record:

- 20 (1) The appellate and post-conviction briefs;
- 21 (2) The opinions and dispositive orders of the post-conviction and appellate courts;
- 22 (3) A complete copy of the post-conviction record on appeal; and
- 23 (4) Any post-conviction hearing transcripts.

24 In addition, the Court encourages the parties to provide in an appendix any additional
25 parts of the state court record that the parties believe are relevant to resolving allegations in
26 the Petition, Answer, Reply, and/or Motions for Evidentiary Development.

27 V. Electronic Case Filing

28 Pursuant to Section II.D.3 of the Electronic Case Filing Administrative Policies and
Procedures Manual, a paper courtesy copy of any electronically-filed document exceeding
ten (10) pages in length that would normally be sent to the assigned judge shall instead be

1 directed to the “Capital Case Staff Attorney Office.” Any filing that exceeds 50 pages in
2 length, including appendices, shall be spiral bound on the left and shall include a table of
3 contents, an exhibits list (if any), and tabs between exhibits (if any).

4 VI. Miscellaneous

5 In addition to the requirements of Local Rule Civil 7.1, the following shall apply to
6 any filing in this matter:

- 7 (1) The parties shall not include photographs, charts, or graphs in the body of any
8 pleading. Any such exhibit must be contained within an appendix to an
9 appropriate pleading.
- 10 (2) The parties shall not refer to either party by informal first name only. All
11 references to a party shall be by last name, by governmental name (i.e.,
12 “State”) or by formal title, such as “Petitioner” or “Respondents.”

13 **IT IS FURTHER ORDERED** that this case is subject to the District’s Budgeting and
14 Case Management Plan. To this end, Petitioner’s counsel must prepare a budget for tasks
15 to be performed by CJA-appointed attorneys and/or paralegals, and expenses to be incurred
16 for investigative, expert, and other services for each of the four phases of the case: Phase
17 I–Review of Record; Phase II–Preparation of Petition; Phase III–Preparation of Reply and
18 Motion for Evidentiary Development; and Phase IV–Evidentiary Development (if authorized
19 by the Court). An *ex parte* cost management order explaining the budgeting process to
20 Petitioner’s counsel is issued separately this same date. The District’s Budgeting and Case
21 Management Plan is also available on the Court’s website at www.azd.uscourts.gov.
22 Petitioner’s counsel should be prepared to discuss budgeting issues with the Court at the
23 conclusion of CMC #1 after counsel for Respondents is excused.

24 **IT IS FURTHER ORDERED** that Petitioner’s Phase I Budget submission shall be
25 filed *ex parte* and under seal no later than [DATE = 7 CALENDAR DAYS BEFORE CMC
26 #1].

27 **IT IS FURTHER ORDERED** that this case, having been randomly reassigned, by
28 lot, to Judge [NAME], pursuant to Local Rule Civil 3.8, shall be redesignated as No.
[NUMBER].

IT IS FURTHER ORDERED that a copy of this Order be served by the Clerk of

1 Court upon Respondents [NAME] and [NAME] and upon Kent Cattani, Assistant Arizona
2 Attorney General, pursuant to Rule 4, Rules Governing Section 2254 Cases.

3 **IT IS FURTHER ORDERED** that the Clerk of Court forward a copy of this Order
4 to Petitioner [NAME], ADOC # [XXXX], P.O. Box 3400, Florence AZ 85232.

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

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