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CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

IN RE: AMENDMENTS TO LOCAL CIVIL RULES ("CRs")	GENERAL ORDER

The Local Civil Rules (CRs) of this court are hereby amended as follows:

Rule CR 104 is added as follows:

SUPPLEMENTAL REQUIREMENTS FOR FIRST HABEAS CORPUS PETITIONS IN CAPITAL CASES

(a) Applicability.

This Rule shall govern the procedures for a first petition for a writ of habeas corpus filed pursuant to 28 U.S.C. §2254 in which petitioner seeks relief from a judgment imposing a penalty of death. A subsequent filing may be deemed a first petition under this Rule if the original filing was not dismissed on the merits. This Rule is intended to supplement the Rules Governing §2254 Cases and is not intended to alter or amend those rules. The application of this Rule to a particular petition may be modified by the district judge to whom the petition is assigned.

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AO 72
(Rev. 8/82)

(b) Notices from Washington Attorney General.

The Washington Attorney General shall send to the Clerk of this Court a monthly report summarizing the status of each case wherein a Washington court has imposed the sentence of death.

(c) Notice from Petitioner's Counsel.

Whenever counsel determines that a petition will be filed in this Court, he or she shall promptly file with the Clerk of this Court and send to the Washington Attorney General's Corrections Division a written notice of intention to file a petition. The notice shall state the name of the petitioner, the district in which petitioner was convicted, the place of petitioner's incarceration, and the status of petitioner's state court proceedings. The notice is for the information of the Court only, and failure to file the notice shall not preclude the filing of the petition.

(d) Counsel.

(1) Appointment of Counsel. Each petitioner shall be represented by counsel, unless petitioner has clearly elected to proceed pro se and the Court is satisfied, after a hearing, that petitioner's election is intelligent and voluntary.

Unless petitioner is proceeding pro se or is represented by retained counsel, counsel shall be appointed in every such case at the earliest practicable time. A panel of attorneys qualified for appointment in death penalty cases will be recruited and maintained by the Federal Public Defender. The Federal Public Defender will accept and review referrals to this panel from interested associations and bar groups.

When a death judgment is affirmed by the Washington Supreme Court and subsequent proceedings in the state courts have been concluded, if counsel is willing to continue representation in the federal habeas corpus proceedings, the Federal Public Defender shall review counsel's performance in the state courts and make a recommendation of whether that counsel should be appointed in federal court.

If state post-conviction counsel is available to continue representation in the federal court, and if he or she is deemed qualified to do so by the Federal Public Defender, there is a presumption in favor of continued representation except where state post-conviction counsel was also counsel at trial.

In light of this presumption, it is expected that appointed counsel who is willing to continue representation and who has been determined by the Federal Public Defender to be qualified to do so would ordinarily file a motion for appointment of counsel on behalf of his or her client together with the client's federal habeas corpus petition. If, however, counsel for any reason wishes to confirm his or her appointment before preparing the petition, counsel may move for appointment before filing the petition.

If state appellate counsel is not available to represent petitioner in the federal habeas corpus proceedings, or if appointment of state appellate counsel would be inappropriate for any reason, the Court shall appoint counsel upon application of petitioner. The Clerk of Court shall have forms available for such application. A model form for such application is annexed to this

Rule. Counsel shall be appointed from the panel of qualified attorneys maintained by the Federal Public Defender, who may suggest one or more specific counsel for appointment. If application for appointment of counsel is made before a finalized petition has been filed, the application shall be assigned to a district judge in the same manner that a finalized petition would be assigned, and counsel shall be appointed by the assigned judge. The judge so assigned shall continue to preside over the proceedings through their conclusion.

(2) Second Counsel. Appointment and compensation of second counsel shall be governed by §2.11 of Volume VII of the Guide to Judiciary Policies and Procedures, Appointment of Counsel in Criminal Cases, and by 21 U.S.C. §848(q).

(e) Filing.

Petitions as to which venue lies in this district shall be filed in Seattle.

Petitions shall be completed in conformance with Local Rule CR 100. All petitions (a) shall state whether petitioner has previously sought relief arising out of the same matter from this court or any other federal court, together with the ruling and reasons of such court, and (b) shall set forth any scheduled execution date. The above requirements do not apply to preliminary petitions filed under Section (h)(2), below.

An original and three copies of the petition shall be filed by counsel for the petitioner. A pro se petitioner need only file the original. No filing fee is required.

The Clerk of the Court will immediately notify the Washington Attorney General's Corrections Division when a petition is filed.

When a petition is filed by a petitioner who was convicted outside this district, the Clerk of the Court will immediately advise the Clerk of the Court of the district in which the petitioner was convicted.

(f) Assignment to District Judges.

Notwithstanding the general assignment plan of this Court, petitions shall be assigned to the district judges of the court as follows:

(1) The Clerk of the Court shall establish a separate category for these petitions, to be designated with the title "Capital Case."

(2) All active district judges of this Court shall participate in the assignments without regard to intradistrict venue.

(3) Until each active district judge has one capital case, petitions in the Capital Case category shall be assigned blindly and randomly by the Clerk of the Court to each of the active district judges of the court. At such time as each active district judge has one capital case, the blind assignment process will start again until each active district judge has two capital cases, and so on.

(4) If the assigned district judge has filed a Certificate of Unavailability with the Clerk of the Court which is in effect on the date of the assignment, a new random assignment will be made to another judge immediately.

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AO 72
(Rev. 8/82)

(5) If the petitioner has previously sought relief in this Court with respect to the same conviction, the petition will be assigned to the district judge, if he or she is still sitting, who was assigned to the prior proceeding unless such district judge has taken senior status and has elected not to hear capital habeas corpus petitions.

(6) Pursuant to 28 U.S.C. §636(b)(1)(B), and not inconsistent with law, United States Magistrate Judges may be designated by the Court to perform all duties under this Rule, including evidentiary hearings.

(g) Transfer of Venue.

Subject to the provisions of 28 U.S.C. §2241(d), it is the policy of this Court that a petition should be heard in the district in which the petitioner was convicted, rather than in the district of petitioner's present confinement.

If an order for the transfer of venue is made, the district judge will order a stay of execution which shall continue until such time as the transferee court acts upon the petition or the order of stay.

(h) Stays of Execution.

(1) Stay Pending Final Disposition. Upon the filing of a first petition, unless the petition is patently frivolous, the judge will order a stay of execution pending final disposition of the petition in this Court.

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AO 72
(Rev. 8/82)

(2) Temporary Stay for Appointment of Counsel. Where counsel in the state court proceedings withdraws at the conclusion of the state court proceedings or is otherwise not available or qualified to proceed, the Federal Public Defender will designate an attorney from the panel who will assist an indigent petitioner in filing pro se applications for appointment of counsel and for temporary stay of execution. This application shall be substantially in the form annexed hereto and shall be accompanied by a statement, describing one or more federal grounds for relief, which shall be deemed to be a petition for writ of habeas corpus with leave granted *a priori* to amend the petition upon appointment of counsel. Upon the filing of this application and statement, the district court shall issue a temporary stay of execution and appoint counsel from the panel of attorneys certified for appointment. The temporary stay will remain in effect for forty-five (45) days unless extended by the Court.

(3) Temporary Stay for Preparation of the Petition. Where counsel new to the case is appointed, upon counsel's application for a temporary stay of execution accompanied by a specification of nonfrivolous issues to be raised in the petition, the district court shall issue a temporary stay of execution unless only frivolous issues are presented. If no filing was made under paragraph (h)(2) above, the specification of nonfrivolous issues required under this paragraph shall be deemed to be a petition for writ of habeas corpus with leave having been granted to amend the petition. The temporary stay will remain in effect for one hundred twenty (120) days to allow newly appointed counsel to prepare and file the finalized petition.

The temporary stay may be extended by the Court upon a subsequent showing of good cause.

(4) Temporary Stay for Transfer of Venue. See paragraph (g) of this Rule.

(5) Stay Pending Appeal. If the petition is denied and a certificate of probable cause for appeal is issued, the Court will grant a stay of execution which will continue in effect until the court of appeals acts upon the appeal of the order of stay.

(6) Notice of Stay. Upon the granting of any stay of execution, the Clerk of the Court will immediately notify the Superintendent of the Washington State Penitentiary, the Washington Attorney General, and the prosecuting attorney of the county in which the conviction was obtained. The Washington Attorney General shall ensure that the Clerk of the Court has a twenty-four hour telephone number to the Superintendent.

(i) Procedures for Considering the Petition.

Unless the district judge dismisses the petition under Rule 4 of the Rules Governing §2254 Cases, the following schedule and procedure shall apply subject to modification by the district judge for good cause shown. Requests for enlargement of any time period in this Rule shall comply with Local Rule CR 6.

(1) Respondent shall as soon as practicable, but in any event on or before twenty (20) days from the date of service of the finalized petition, lodge with the court and serve petitioner's lead counsel with the following:

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(A) Transcripts of all state trial court proceedings;

(B) Appellant's and respondent's briefs on direct appeal to the Washington Supreme Court, and the opinion or orders of that court;

(C) Petitioner's and respondent's briefs in any state court post-conviction proceedings, and all opinions, orders, and transcripts of such proceedings;

(D) Copies of all pleadings, opinions, and orders in any previous federal habeas corpus proceeding filed by petitioner, or on petitioner's behalf, which arose from the same conviction;

(E) An index of all materials described in items (a) through (d) above. Such materials are to be marked and numbered so that they can be uniformly cited.

If any items identified in paragraphs (A) through (D) above are not available, respondent shall state when, if at all, such missing material can be lodged.

(2) If counsel for petitioner claims that respondent has not complied with the requirements of paragraph (1), counsel for petitioner shall immediately notify the court in writing, with a copy to respondent.

(3) As soon as practicable after the filing of the record, the court shall set a status conference to determine a schedule for further proceedings.

(j) Evidentiary Hearing.

If an evidentiary hearing is held, the court will order the preparation of a transcript of the hearing, which is to be immediately provided to petitioner and respondent for use in briefing

and argument. Upon the preparation of the transcript, the court may establish a reasonable schedule for further briefing and argument of the issues considered at the hearing.

(k) Rulings.

The court's rulings may be in the form of a written opinion which will be filed, or in the form of an oral opinion on the record in open court, which will be promptly transcribed and filed.

The Clerk of the Court will immediately notify the Superintendent of the Washington State Penitentiary, the Washington Attorney General, and the prosecutor of the county of conviction whenever relief is granted on a petition.

The Clerk of the Court will immediately notify the clerk of the United States Court of Appeals for the Ninth Circuit by telephone of (i) the issuance of a final order denying or dismissing a petition without a certificate of probable cause, or (ii) the denial of a stay of execution.

When a notice of appeal is filed, the Clerk of the Court will transmit the available records to the Court of Appeals immediately.

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This amendment shall be effective immediately upon the filing of this order.

Dated this 18th day of September, 1991.

BARBARA J. ROTHSTEIN
Chief United States District Judge

JOHN C. COUGHENOUR
United States District Judge

CAROLYN R. DIMMICK
United States District Judge

ROBERT J. BRYAN
United States District Judge

WILLIAM L. DWYER
United States District Judge

THOMAS S. ZILLY
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

_____, Petitioner, v. _____, Superintendent of Washington State Penitentiary, Respondent.	CASE NO. _____ PETITION FOR WRIT OF HABEAS CORPUS; APPLICATION FOR APPOINTMENT OF COUNSEL; REQUEST FOR STAY OF EXECUTION

My name is _____. I am a prisoner in state custody under sentence of death. I was convicted and sentenced in the _____ County Superior Court. My death sentence was affirmed by the Washington Supreme Court on _____, 19____. My scheduled execution date is _____, 19____.

I was tried and I am being held in violation of my federal constitutional rights, including the following:

(1) _____

(2) _____

(3) _____

(Include at least one federal ground for relief.)

AO 72
(Rev.3/82)

The attorney who represented me in my most recent state court proceedings in connection with my conviction and death sentence has informed me that he/she is unable to represent me in federal habeas corpus proceedings. I am indigent and have substantially no assets. I hereby request that the Court appoint an attorney to represent me in my petition for writ of habeas corpus in this court.

I also request that the Court stay my execution at this time until counsel has been appointed and permit me leave to amend this petition after counsel has had opportunity to assist me. I declare under penalty of perjury that the foregoing is true and correction.

DATED: _____

_____
Signature of Prisoner

AO 72
(Rev. 8/82)