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AT SEATTLE
CLERK OF DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

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

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.

1 (b) Notices from Washington Attorney General.

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

5 (c) Notice from Petitioner's Counsel.

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

15 (d) Counsel.

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

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

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

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

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

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

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

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

14 (e) Filing.

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

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

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

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

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

7 (f) Assignment to District Judges.

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

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

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

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

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

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

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

11 (g) Transfer of Venue.

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

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

20 (h) Stays of Execution.

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

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

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

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

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

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

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

16 (i) Procedures for Considering the Petition.

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

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

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- 1 (A) Transcripts of all state trial court proceedings;
- 2 (B) Appellant's and respondent's briefs on direct appeal to the
3 Washington Supreme Court, and the opinion or orders of that court;
- 4 (C) Petitioner's and respondent's briefs in any state court
5 post-conviction proceedings, and all opinions, orders, and
6 transcripts of such proceedings;
- 7 (D) Copies of all pleadings, opinions, and orders in any
8 previous federal habeas corpus proceeding filed by petitioner, or on
9 petitioner's behalf, which arose from the same conviction;
- 10 (E) An index of all materials described in items (a) through
11 (d) above. Such materials are to be marked and numbered so that they
12 can be uniformly cited.

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

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

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

23 (f) Evidentiary Hearing.

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

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

4 (k) Rulings.

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

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

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

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

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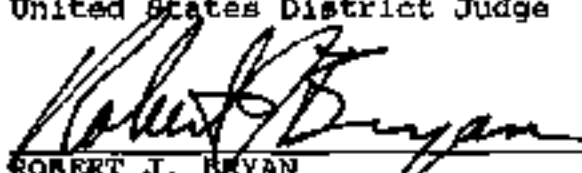
1 This amendment shall be effective immediately upon the filing
2 of this order.

3 Dated this 18th day of September, 1991.

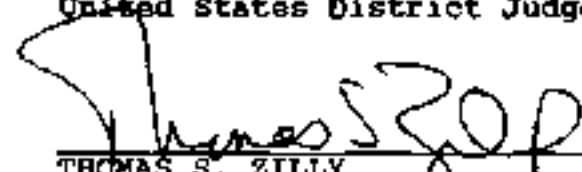
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6 BARBARA J. ROTHSTEIN
Chief United States District Judge

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9 JOHN C. COUGHENOUR
United States District Judge

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12 CAROLYN R. DIMNICK
United States District Judge

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15 ROBERT J. BRYAN
United States District Judge

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18 WILLIAM L. DWYER
United States District Judge

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21 THOMAS S. ZILLY
United States District Judge

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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.)

PETITION OR WRIT OF HABEAS CORPUS;
APPLICATION FOR APPOINTMENT OF COUNSEL;
REQUEST FOR STAY OF EXECUTION - 1

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

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

11 DATED: _____

Signature of Prisoner

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25 PETITION OR WRIT OF HABEAS CORPUS;
26 APPLICATION FOR APPOINTMENT OF COUNSEL;
REQUEST FOR STAY OF EXECUTION - 2