

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

FILED

MAR -2 1992

JOHN M. WATERS, Clerk
U. S. DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

ORDER ON DISPOSITION OF HABEAS CORPUS PETITIONS IN CAPITAL CASES

It is ordered by the Judges of this District that the District Court Rules for the Disposition of Petitions for Habeas Corpus pursuant to 28 U.S.C. §2254 and §2255 in Cases Involving Capital Punishment, as promulgated and amended by the Judicial Council of the Seventh Circuit Court of Appeals, and as set forth below, are hereby adopted by this District Court.

A. Operation and Scope

1. These rules shall apply to habeas corpus petitions filed in United States District Courts within the Seventh Circuit brought pursuant to 28 U.S.C. § 2254 and § 2255 by petitioners under a sentence of capital punishment.

2. To the extent that these rules are inconsistent with the local rules of any of the United States District Courts within the Seventh Circuit, these rules shall apply.

3. The district judge to whom a case is assigned shall handle all matters pertaining to the case, including application for certificate of probable cause, motion for stay of execution, consideration of the merits, second or successive petitions,

remands from the Supreme Court of the United States or the United States Court of Appeals, and all incidental or collateral matters. This rule does not limit a district judge's discretion to designate a magistrate judge, pursuant to 28 U.S.C. § 636, to perform such duties as the district judge deems appropriate or for an emergency judge to act in the absence of the assigned district judge.

4. If a second or successive petition is filed in another district court within the circuit, the judge to whom the second or successive petition is assigned ("second judge") shall communicate with the judge to whom earlier petitions were assigned ("first judge") and with the chief judge of the circuit. The chief judge shall, unless there is good reason not to do so, temporarily assign the first judge to serve as a district judge in the other district for the assignment of the second or successive petitions.

5. Pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A and 21 U.S.C. § 848(a), counsel shall be appointed for all prisoners in cases within the scope of these rules if the prisoner is not already represented by counsel, is financially unable to obtain representation, and requests that counsel be appointed.

6. If the district court grants or denies a stay of execution, it shall set forth the reasons for the decision.

7. The district judge to whom a case is assigned under these rules may make changes in procedures in any case when justice so requires.

B. Filing of a Petition

8. Upon the filing of a petition within the scope of these rules, it shall be immediately assigned to a district judge under the usual practices of the court. The clerk shall immediately notify the judge of his or her assignment and shall thereafter promptly notify, by telephone, the designated representatives of the Attorney General of the state in which the petition is filed. The Attorneys General of Illinois and Indiana have the obligation to keep the court informed as to the office and home telephone numbers of their designated representatives.

9. In all petitions within the scope of this rule, the petitioner or movant shall file, within 10 days of the day of filing of the petition or motion, a legible copy of the documents listed below. If a required document is not filed, the petitioner or movant shall state the reason for the omission. The required documents are:

a. Prior petitions, with docket numbers, filed by petitioner in federal district court challenging the conviction and sentence challenged in the current petition;

b. a copy of, or a citation to, each state or federal court opinion, memorandum decision, order, transcript of oral statement of reasons, or judgment involving an issue presented in the petition; and

c. such other documents as the district court may request.

10. A petitioner shall include in his or her petition all possible grounds for relief and the scheduled execution date. If an issue is raised in a second or successive petition that was not raised in a prior petition, the petitioner shall state the reasons why the issue was not raised and why relief should nonetheless be granted.

11. If an issue is raised that has not been exhausted in state court, was never raised in state court or was not raised on direct appeal in state court, the petitioner shall state the reasons why the issue was not raised and why relief should nonetheless be granted.

12. Upon the filing of a petition within the scope of these rules, the district court clerk shall immediately provide the petitioner with a copy of these rules and a copy of Circuit Rule 22 adopted by the United States Court of Appeals for the Seventh Circuit.

13. The district court clerk shall notify the clerk of the Court of Appeals of the filing of a petition within the scope of these rules, of significant events and the progress of the case, and of any subsequent appeal of such case. The district court clerk shall send a copy of the final decision and any notice of appeal to the clerk of the state supreme court.

C. Preliminary Consideration by Judge

14. The district judge shall promptly examine a petition within the scope of these rules and, if appropriate, order the respondent to file an answer or other pleading or take such other action as the judge deems appropriate.

15. If the district judge determines, after examination of the petition, that the petition is a second or successive petition raising issues previously decided by a federal court, the district judge shall enter an appropriate order with a written finding so stating.

D. Priority

16. The district judge shall give priority on his or her calendar to scheduling and deciding cases within the scope of these rules.

E. Motions for Immediate Stay of Execution

17. No motion for a stay of execution shall be filed unless accompanied by a petition for relief under 28 U.S.C. § 2254 or § 2255 which comports with these rules. The movant shall immediately notify opposing counsel by telephone of the filing.

18. The movant shall attach to the motion for stay a legible copy of the documents listed in Rule 9, unless the documents have already been filed with the court. If the movant asserts that time does not permit the filing of a written motion, he or she shall deliver to the clerk a legible copy of the listed documents as soon

as possible. If a required document is not filed, the movant shall state the reason for the omission.

19. If the state has no objection to the motion for stay, the district court shall enter an order staying the execution.

20. If the district court determines that the petition or motion is not frivolous and a stay is requested, it shall enter an order staying the execution.

21. Following a decision on the merits, if the district court issues a certificate of probable cause, it shall enter an order staying the execution pending appeal. If the district court denies a certificate of probable cause, it shall not enter an order staying the execution pending appeal and it shall dissolve any stay of execution previously granted to petitioner by the district court.

22. Parties shall file motions with the district court clerk during the normal business hours of the clerk's office. The motion shall contain a brief account of the prior actions of any court or judge to which the motion or a substantially similar or related petition for relief has been submitted.

23. The district court shall adopt local rules setting forth the procedures for filing of emergency motions or applications when the district court clerk's office is closed.

F. Clerk's List of Cases

24. The district court clerk shall maintain a separate list of all cases within the scope of these rules.

In accordance with Paragraph 23 above, the Judges of this District order that emergency motions or applications may be received by any District Judge of this District during times when the Clerk's Office is closed.

ENTERED this 2nd day of March, 1992.


s/ Michael M. Mihm


MICHAEL M. MIHM, CHIEF
United States District Judge


s/ Harold A. Baker


HAROLD A. BAKER
United States District Judge


s/ Richard Mills
RICHARD MILLS
United States District Judge

s/ Joe B. McDade
JOE BILLY MCDADE
United States District Judge