



UNITED STATES DISTRICT COURT Southern District of Indiana

Laura A. Briggs, Clerk
Alison M. Chestovich, Chief Deputy Clerk

Birch Bayh Federal Building
& U.S. Courthouse
46 East Ohio Street, Room 105
Indianapolis, IN 46204
(317) 229-3700

104 U.S. Courthouse
921 Ohio Street
Terre Haute, IN 47807
(812) 231-1840

304 U. S. Courthouse
101 NW Martin Luther King Blvd.
Evansville, IN 47708
(812) 434-6410

Lee H. Hamilton Federal Building
& U.S. Courthouse
121 West Spring Street
New Albany, IN 47150
(812) 542-4510

September 16, 2019

NOTICE

TO: THE PUBLIC AND MEMBERS OF THE PRACTICING BAR FOR THE SOUTHERN DISTRICT OF INDIANA

Pursuant to 28 U.S.C. § 2071(e) and Rule 57 of the Federal Rules of Criminal Procedure, the United States District Court for the Southern District of Indiana hereby gives public notice of the following:

The United States District Court for the Southern District of Indiana has determined there is an immediate need to delete Local Criminal Rule 6-1 – Petitions Under 28 U.S.C. Section 2254 or 2255 in Cases Involving a Sentence of Capital Punishment and adopt Local Criminal Rule 38-2 - Cases Challenging the Conviction and/or Sentence Where a Sentence of Death Has Been Imposed. Unless otherwise indicated, as seen in this Notice **redline** text is added and ~~struck~~ text is deleted. The amendment detailed below is effective as of September 16, 2019.

- A. Local Criminal Rule 6-1 Petitions Under 28 U.S.C. Section 2254 or 2255 in Cases Involving a Sentence of Capital Punishment shall be deleted in its entirety.**

~~**Local Criminal Rule 6-1 – Petitions Under 28 U.S.C. Section 2254 or 2255 in Cases Involving a Sentence of Capital Punishment**~~

~~—(a) Applicability. This Rule governs the procedures for a petition filed pursuant to 28 U.S.C. §§ 2254 or 2255, in which a prisoner seeks relief from a judgment imposing a sentence of death. The provisions of this Rule may, where appropriate, be determined to be applicable in any~~

collateral challenge not authorized by §§ 2254 or 2255. The application of this Rule may be modified by the Judge to whom the petition is assigned.

~~———(b) **Clerk to Maintain the Records of status of cases; Request to Attorney General of Indiana.** The clerk will request from the Indiana Attorney General, insofar as reasonably available, information pertaining to the movement of cases through the Indiana courts in which a prisoner is under sentence of death from an Indiana Court and as to which the judgment of conviction and sentence have been affirmed by the Supreme Court of Indiana. This information should include the following: defendant's name, court imposing sentence, date of affirmance on direct appeal by the Supreme Court of Indiana, date that denial of postconviction relief petition was affirmed by the Supreme Court of Indiana, and the execution date, if any.~~

~~———(c) **Clerk to Maintain the Records of status of cases; Request to United States Attorney.** The clerk will request from the United States Attorney, insofar as reasonably available, information pertaining to the movement of cases through the federal courts in which a prisoner within the district is under sentence of death from a federal court and as to which the judgment of conviction and sentence are final. This information should include the following: defendant's name, court imposing sentence, date of affirmance on direct appeal by a Court of Appeals and the United States Supreme Court, date that denial of any postconviction relief petition was affirmed by a Court of Appeals or Supreme Court, and the execution date, if any.~~

~~———(d) **Notice of Intention to File Initial Petition.** Whenever it is determined that a prisoner under sentence of death will file an initial petition for relief in this court, either counsel or the prisoner may file with the clerk a "Notice of Intention to File Initial Petition for a Writ of Habeas Corpus." Each such Notice will be on the form set out in Appendix A-Criminal to this Rule or in substantially similar terms. Forms will be available from the clerk. The failure to submit such a Notice will not preclude the filing of a petition.~~

~~———(e) **Action by Court Upon Filing of Notice.** The clerk will forward copies of the Notice, together with copies of any motions or requests submitted therewith, and any rulings thereon, to the following: (i) the Indiana Attorney General if the prisoner is in state custody or the United States Attorney if the prisoner is in federal custody; (ii) the United States Marshal for the Southern District of Indiana; and (iii) the Warden or Superintendent of the institution where the prisoner is confined.~~

~~——(f) **Appointment of Counsel.** Motions or requests for the appointment of counsel will be presented to, and counsel appointed by, the Judge to whom such action is assigned.~~

~~——(g) **Additional Required Materials.** Within 14 days of filing the notice or petition, Petitioner or Movant must file a legible copy of the materials listed below. If a required document is not filed, the petitioner or movant must state the reason for the omission. The required documents are:~~

~~(1) listing of prior petitions, with docket numbers, filed in any state or federal court challenging the conviction and sentence challenged in the current petition; and~~

~~(2) 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.~~

~~**(h) Motions for Stay of Execution.**~~

~~(1) The movant must attach to the motion for stay a legible copy of the documents listed in section (g) of this Rule, 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 must deliver to the clerk a legible copy of the listed documents as soon as possible. If a required document is not filed, the movant must state the reason for the omission.~~

~~(2) Parties must file motions with the clerk during the normal business hours of the clerk's office. The motion must 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.~~

~~(3) The clerk will adopt procedures for filing of emergency motions or applications pursuant to this Rule when the clerk's office is closed.~~

~~(4) The clerk will maintain a separate list of all cases within the scope of this Rule.~~

~~-Note: December 1, 2009, stylistic amendment. Technical amendment to (g) to achieve consistency in time counting format with the Federal Rules of Civil~~

~~Procedure. Current Rule was formerly numbered 6.2, and was significantly amended effective January 1, 2007. Former rule 6.1 was eliminated January 1, 2007.~~

B. Local Criminal Rule 38-2 – Cases Challenging the Conviction and/or Sentence Where a Sentence of Death Has Been Imposed is adopted.

Local Criminal Rule 38-2 - Cases Challenging the Conviction and/or Sentence Where a Sentence of Death Has Been Imposed

(a) Applicability. This Rule applies to any case challenging the conviction and/or sentence where a sentence of death has been imposed including, but not limited to:

(1) a petition filed pursuant to 28 U.S.C. §§ 2241, 2254 or 2255; or

(2) a complaint brought pursuant to 42 U.S.C. § 1983, *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), or the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*

(b) Caption. The caption of the initiating document for any case filed pursuant to subdivision (a) must include the following language immediately below the case number:

DEATH PENALTY CASE
[if applicable] EXECUTION SCHEDULED [insert DATE]

(c) Contents of Petition or Complaint. Any petition or complaint filed pursuant to subdivision (a) must:

(1) identify by cause number and jurisdiction all other legal actions challenging the conviction or sentence challenged in the current complaint, petition, or motion; and

(2) cite every relevant judicial opinion, memorandum decision, order, and/or transcript from legal actions referenced in subdivision (1).

If the cited documents are not accessible through PACER or Odyssey, the documents must be provided to the clerk on paper.

(d) Action by Court Upon Filing of Petition or Complaint. Upon receipt of a petition or complaint under subdivision (a), the clerk will

electronically forward the case initiating document, together with copies of any motions or requests submitted therewith to the following: (i) the Indiana Attorney General if the prisoner is in state custody or the United States Attorney for the Southern District of Indiana if the prisoner is in federal custody; (ii) the United States Marshal for the Southern District of Indiana; and (iii) the Warden or Superintendent of the institution where the prisoner is confined.

(e) Accessibility of the Clerk's Office. The clerk will adopt procedures for filing of emergency motions or applications pursuant to this Rule when the clerk's office is closed. These procedures will be made available by the clerk to counsel of record in any case described in subdivision (a) in which a motion for stay of execution is filed.

Note: Effective ***, 2019, former Local Criminal Rule 6-1 was deleted in its entirety and replaced with the text above. The revised rule no longer references "the form set out in Appendix A" - Criminal - Notice of Intention to File First Petition for Writ of Habeas Corpus by Person in State Custody Under Sentence of Death," which has been rendered obsolete due to the other revisions to this rule.

C. **Appendix A-Criminal** shall be **deleted** in its entirety.

~~APPENDIX A-Criminal~~

~~Notice of Intention to File First Petition for Writ of Habeas Corpus by Person in State Custody under Sentence of Death~~

~~_____The undersigned, being either counsel in the Indiana courts for a person under a sentence of death imposed by an Indiana court or such a person, hereby gives notice to the Clerk of the United States District Court for the Southern District of Indiana that such person will in the near future file a petition attacking such sentence or the underlying conviction or both.~~

~~The name of the person under sentence of death is _____, his inmate number within the Department of Correction is _____ and he is presently confined at the _____ (insert name of the institution where confined). In connection with this Notice the following representations are made:~~

_____ 1. The sentence of death was imposed by the
(insert name of court) in cause number _____;

_____ 2. The sentence and the underlying conviction have been appealed
to the Indiana Supreme Court and the appeal and postconviction
proceedings were concluded in that court on
(insert dates of decision of the Indiana Supreme Court on direct appeal
and, if applicable, on the denial of postconviction relief);

_____ 3. The person under sentence of death will/will not (select one) be
represented by counsel when a petition for relief is presented to the
United States District Court;

_____ 4. There is presently no date of execution set; or an execution date
of _____(insert date);

_____ 5. The person under sentence of death will/will not (select one)
seek a stay of execution before/upon (select one) the filing of the petition
for relief referred to in this Notice and will/will not (select one) be seeking
the appointment of counsel to represent him in the proceeding.

_____ 6. This Notice is accompanied by the \$30.00 docketing fee
prescribed by 28 U.S.C. § 1914(a) or submitted by or on behalf of a person
without sufficient funds to prepay the \$20.00 docketing fee.

Date: _____

(Signature)

Comments concerning the proposed rule amendments are welcome. Comments must be submitted in writing or via email on or before **October 16, 2019**, and should be sent to:

Laura A. Briggs, Clerk of Court
United States District Court
Birch Bayh Federal Building and U.S. Courthouse
46 East Ohio Street, Room 105
Indianapolis, IN 46204
or via email: LocalRules@insd.uscourts.gov