**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF KENTUCKY**

FILED
MARCH 31, 2014

**GENERAL ORDER NO. 14-3**

**ADMINISTRATIVE ORDER**
**REGARDING DEATH PENALTY CASES**

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The judges of this Court have unanimously agreed to the following policies and procedures designed to facilitate the prompt and efficient processing of habeas corpus petitions and civil actions filed by persons upon whom a sentence of death has been imposed which challenge their conviction, sentence, or the manner or method of execution. Accordingly, it is hereby

**ORDERED** as follows:

1. **Scope**. This Order applies to "Death Penalty Cases," which shall include
   (a) Any habeas corpus petition filed pursuant to 28 U.S.C. §2254 by a petitioner under a sentence of death, regardless of whether an execution date has been set; and
   (b) Any civil action filed by a plaintiff under a sentence of death challenging the manner or method of execution, regardless of whether an execution date has been set.
2. **Assignment**.
   (a) All Death Penalty Cases shall be assigned by the Clerk of the Court under a separate blind random draw from the pool of active judges, with the exceptions of Judge William O. Bertelsman, Judge Henry Wilhoit, Jr., and Judge Joseph M. Hood regardless of the division in which they are filed.

No judge shall receive a second assignment until all judges eligible to receive an assignment have received one assignment.

(b) Once a given petitioner files a habeas corpus Death Penalty Case of the type described in Section 1(a) above, all subsequent petitions, cases, writs, appeals, or other filings by the same person challenging the same conviction or sentence shall be assigned by the Clerk of the Court to the same judge assigned to the original petition, provided that judge remains in the assignment pool for Death Penalty Cases at the time the subsequent pleading is filed.

(c) Once a given civil Death Penalty Case of the type described in Section 1(b) above is filed challenging a particular manner or method of executing a sentence of death, all subsequent petitions, cases, writs, appeals, or other filings challenging the same manner or method of executing a sentence of death shall be assigned by the Clerk of the Court to the same judge assigned to the original case, provided that judge remains in the assignment pool for Death Penalty Cases at the time the subsequent pleading is filed.

(d) If a judge recuses from a Death Penalty Case at any time, the case shall be reassigned to another judge in the Death Penalty Case assignment pool. Should all judges in the assignment pool recuse, the case will be referred to the Chief Judge for the United States Court of appeals for the Sixth Circuit for reassignment.

3. **Clerk's Office Procedures Upon Filing**.

   (a) When a Death Penalty Case is filed, the Deputy Clerk shall assign the case to a judge using the separate blind random draw for Death Penalty Cases.

   (b) The Deputy Clerk shall notify the Clerk of the Court and the Operations Manager.

   (c) The Clerk of the Court, the Operations Manager, or the Clerk's designee shall personally notify the judge of the assignment and inquire whether he or she wants the case referred to a Magistrate Judge or the Pro Se Office.

   (d) The Clerk of the Court, the Operations Manager, or the Clerk's designee shall also notify the following persons of the filing of the Death Penalty Case: (1) any person designed by the Court of Appeals for the Sixth Circuit to receive such notice; (2) the Pro Se Office or Magistrate Judge, if the assigned judge makes such a referral; (3) the Office of the Attorney General of Kentucky; and (4) the Kentucky Department of Corrections.

4. **Inquiries from the Press**. The following is for the benefit of the public and the press to understand the Court's policy with respect to comment on cases pending before the Court.

   (a) A Court addresses all aspects of a case pending before it ***only through its Opinions and Orders***. No person in the Clerk's Office is authorized or permitted to speak for the Court, to comment upon the merits of any case, to explain any action or inaction by any party or the Court, or to predict the outcome of any case or proceeding. Neither the Clerk of the Court nor any members of the Clerk's Office shall make any extraneous comments

about a case or attempt to explain an Order or Memorandum Opinion entered by the Court, and any such comment should not be attributed to the Court.

(b) The Clerk's Office is an administrative office designed to serve the Court, the public, and attorneys. Accordingly, while the Clerk's Office may give information concerning filing, rules, and administrative procedures approved by the Court, it cannot give legal advice.

(c) Any inquiry from the press regarding a Death Penalty Case pending before the Court will be referred to the Clerk of the Court or the Operations Manager for response. If the Clerk of the Court or the Operations Manager is uncertain of the propriety of responding to the inquiry or the substance of the response, he or she will confer with the presiding judge or the Chief Judge of the Court before responding to the inquiry.

(d) Any Order in a Death Penalty Case, including any Order regarding a stay of execution, will be entered into the Court's electronic filing system, PACER, and will be available to the public and the media through that system unless otherwise ordered by the Court.

(e) Questions regarding this Order, the Court's policies regarding contact with the press, or their implementation should be directed to the Chief Judge.

5. **Clerk's Office Procedures when a Motion to Stay Execution has been Filed**. If a motion to stay execution is filed, the Clerk of the Court, the Operations Manager, or the Clerk's designee shall immediately:

(a) Notify the presiding judge;

(b) Notify:

(1) Any person designated by the Court of Appeals for the Sixth Circuit to receive such notice;

(2) The Pro Se Office or Magistrate Judge, if the assigned judge makes such a referral;

(3) The Office of the Attorney General of Kentucky;

(4) The Warden at the Kentucky State Penitentiary;

(5) The General Counsel for the Kentucky Department of Corrections;

(6) The General Counsel for Kentucky Governor; and

(7) The Chief Justice of the Supreme Court of Kentucky.

(c) Notify all persons identified in (b) above when the Court enters an Order which may affect the execution date.

(d) Notify the Court of Appeals for the Sixth Circuit at any time (1) if it appears that a stay of execution will not be entered, or (2) an appealable Order is entered.

(e) Remind all counsel of record of Sixth Circuit Rule 22(c), Death Penalty Cases, which "applies to all applications for relief under §2254 or §2255 by persons under sentence of death." 6 Cir.R. 22(c)(1).

6. **Clerk's Office Procedures Immediately Before the Date of Execution**. On the calendar day before an execution is set to take place, the Court and the Clerk's Office will observe the following procedures:

(a) The Clerk's Office shall remain open to receive filings in the Death Penalty Case until either the execution is carried out or a stay of execution is issued. The Clerk's Office will have a minimum of two (2) experienced

personnel on duty, one of which will be the Clerk of the Court, the Operations Manager, or the Clerk's designee.

(b) The presiding judge will be available to address emergency matters in the Death Penalty Case at the courthouse, at home, or at a place where he or she can be reached without delay by telephone, e-mail, or fax, along with such staff as the judge deems necessary, including an official court reporter.

(c) If an emergency situation arises which involves the grant or denial of a stay of execution and requires the Clerk's Office to remain open after normal working hours, the Clerk of the Court, the Operations manager, or the Clerk's designee will remain on duty to supervise the work to be done until it is completed and entered into the record.

This Order supersedes General Order 13-2.

**IT IS SO ORDERED**.

Dated this 31st day of March, 2014.

KAREN K. CALDWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY