

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY**

GENERAL ORDER No. 2012-06

IN RE: DEATH PENALTY CASE ASSIGNMENT AND PROCEDURES

The judges of the United States District Court for the Western District of Kentucky have unanimously agreed to the following procedures for the assignment and administration of death penalty cases.

Accordingly, **IT IS HEREBY ORDERED** as follows:

A. Definitions

1) "Death penalty case" as used in this General Order includes: 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.

B. Assignment.

1) All death penalty cases shall be assigned by the Clerk of the Court using a separate death-penalty draw to achieve equitable distribution of such cases. Death penalty cases are assigned on a rotating basis to all active and senior judges of this Court without regard to originating jury division, with the exception of those cases falling within subsection B.7 set forth below.

2) A senior judge may remove his or her name from the death penalty draw upon assuming senior status or at any time thereafter by notifying the Clerk of Court that he or she no longer wishes to accept death penalty case assignments. An active judge may also remove his or her name from the death penalty draw at any time within six (6) months of their retirement date by notifying the Clerk of Court that he or she no longer wishes to accept death penalty case assignments.

3) In the event a new Article III judge is confirmed by the Senate and Commissioned by the President, the Clerk of Court shall place his or her name in the last position of the draw.

4) Magistrate judges shall be assigned by the Clerk of Court using a special death penalty draw to achieve equitable distribution of such cases. Death penalty cases are assigned to magistrate judges on a rotating basis without regard to originating division, with the exception of those cases falling within subsection B.7 set forth below.

5) In the event a new magistrate judge is appointed by the Court, the Clerk of the Court shall place his/her name in the last position of the draw.

6) If a judge or magistrate judge recuses from a death penalty case at any time or reassignment becomes necessary for any other reason, the case shall be reassigned to another judge or magistrate judge by using appropriate the death-penalty draw.

7) Once a petitioner/plaintiff files a death penalty case in this Court, all subsequent death penalty actions filed by that individual shall be assigned to the same judge and magistrate judge assigned to the original action, provided that judge or magistrate judge remains in the assignment pool for death penalty cases. Upon assignment to a subsequent death penalty case, the Clerk of Court shall remove the name of the judge and magistrate judge from their current positions and place them at the to the end of their respective draws.

C. The Period Immediately Preceding a Scheduled Execution

1) These procedures shall apply any time the Commonwealth of Kentucky is scheduled to execute a state inmate regardless of whether the inmate's conviction arose out of this district.

2) Beginning the twelve hours prior to the scheduled execution time, the Clerk's Office shall remain open to receive filings related to the execution until either the execution is carried out or a stay of execution is issued.

a) If the inmate previously filed a death penalty case in this district, the divisional office assigned to the prior case shall remain open in addition to the Paducah Division, the divisional office for Lyon County¹.

b) If the inmate has not previously filed a death penalty case in this district, only the Paducah Division is required to remain open unless the on-call judge requests otherwise.


3) If the inmate previously filed a death penalty case in this district and the judge previously assigned to the case is still part of the death-penalty draw, he or she shall be designated as the on-call judge and shall be assigned any filings related to the execution.

4) If the inmate has not previously filed a death penalty case in this district or the previously assigned judge is not available, no later than three days prior to the scheduled execution date the Clerk of Court shall notify the judge whose name is at the top of the death-penalty draw that he or she is the on-call judge for the purposes of the impending execution. If the judge indicates that he or she is unavailable, the Clerk of Court shall proceed to the next name in the draw. Any filings related to the execution shall be assigned to the on-call judge and his or her name shall be placed at the end of the draw. If nothing is filed, the judge shall remain at the top of the draw.

¹ The Kentucky State Penitentiary, which houses Kentucky's death chamber, is located in Lyon County.

This Order supersedes and vacates General Order No. 97-3.

IT IS SO ORDERED this 5th day of July, 2012.



JOSEPH H. MCKINLEY, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT

ENTERED

JUL 05 2012

VANESSA L. ARMSTRONG
BY 
DEPUTY CLERK