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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

IN RE: POLICIES and PROCEDURES FOR CAPITAL HABEAS CORPUS PETITIONS AND RELATED CASES)) Administrative Order No. 158-1)

ADMINISTRATIVE ORDER

There being a need for uniform policies and procedures for the filing and processing of capital habeas corpus petitions, and related cases, the Court hereby adopts the following policies and procedures:

(a) Assignment of cases. (i) All capital habeas corpus petitions (death penalty cases) shall be assigned under a separate case rotation/tracking system maintained in the Clerk's Office in a confidential binder entitled, "Death Penalty Habeas Corpus Petitions."

1. A "death penalty case" is defined as a case wherein a habeas corpus petition has been filed by a Petitioner who is under a sentence of death regardless of whether an execution date has been set.

2. The rotation of assigning such cases shall be among the active District Judges.

3. No Judge shall receive a second assignment until all active District Judges have each received one assignment of a death penalty case.

4. If the assigned Judge is outside of Nashville or incapacitated because of injury or illness for forty-eight (48) hours or more, the next Judge in the rotating assignment list may act temporarily on matters needing immediate attention. The case will then be returned to the assigned Judge for all further matters.

5. A Judge shall receive assignment credit for a death penalty case whenever that Judge issues a final ORDER on the merits of the habeas corpus petition itself; i.e., no credit would be granted if the Judge did no more than summarily dismiss the case without prejudice to exhaust state remedies, transfer the case to another district court, grant a stay of execution, or schedule further hearings in the case.

(ii) All cases filed pursuant to 42 U.S.C. §1983 (Section 1983) related to a capital habeas corpus petition in another District Court shall be assigned under a separate case rotation/tracking system maintained in the Clerk's Office in a confidential binder entitled, "Section 1983 Death Penalty Cases." The policies and procedures for case assignments set forth above in

subsections (a)(i)(2)-(5), and the other provisions of this Administrative Order 158, shall apply to such Section 1983 cases to the extent applicable.

(b) Recusal. In the event that the assigned Judge must recuse himself or herself at any time during the proceedings in a death penalty case, the matter shall immediately be assigned to the Judge who is to receive the next death penalty case. The recusing Judge shall receive the next new case filed in accordance with section (a)(3) above, unless, in the opinion of the Chief Judge, the recusing Judge did a significant amount of work on the merits of the case prior to his or her recusal.

(c) One Judge. After the filing of a death penalty case, or a Section 1983 case related to a capital habeas corpus petition in another District Court, and its assignment to a particular Judge, any subsequently filed cases, petitions, appeals or filings of any kind relating to the Petitioner in the original death penalty case, shall be directly assigned to that Judge so long as that Judge remains on active status, retains the original case, or, for any reason, remains in the rotation for the assignment of death penalty cases.

(d) Filings. All pleadings in death penalty cases shall be filed with the Clerk's Office before being presented to the Judge presiding over the death penalty case.

(e) Clerk's Office procedures. The following procedures shall be followed by the Clerk's Office with respect to death penalty cases:

1. When a death penalty case is filed, the Deputy Clerk shall immediately notify the Clerk and the Operations Manager.

2. The Clerk or the Operations Manager shall assign the case to the next Judge in the rotation for death penalty case assignments and shall immediately notify the assigned Judge personally of the assignment.

3. After notifying the assigned Judge, the case shall be opened provided the filing fee is paid or there is an In Forma Pauperis petition pending.

4. The entire file shall then be personally delivered to the assigned Judge or his/her designee. The date of execution, if any, shall be prominently displayed on the outside front cover of the file.

5. As soon as practicable after the case is opened, the name of the assigned Judge and copies of the pleadings shall be made available to the media and other interested parties.

(f) Procedures immediately before the date of execution. On the day before an execution is to take place, the following procedures shall be observed by the Court and the Clerk's Office:

1. The Clerk's Office shall remain open for filings until the execution is carried out or until there is a stay issued. The Clerk's Office will have a minimum of two (2) experienced personnel on duty, one of which will be the Clerk or in his/her absence, the Operations Manager.

2. In order to be able to rule on any filings made immediately before a scheduled execution, or respond to requests or directives from another court, the Judge handling the death penalty case shall be available for emergency matters at the courthouse, at home, or at a place where he or she can be reached by telephone and email or fax, along with such staff as the Judge deems necessary, including an official court reporter.

3. The next Judge in the case assignment rotation shall be on standby should the Judge presiding over the case be disqualified for any reason. The Clerk shall promptly advise the standby Judge personally of the Judge's standby status.

4. The order of rotation of death penalty assignments to the Judges shall not be communicated to any person other than the active District Judges of this Court and those members of the Clerk's Office or chambers with a need to know.

(g) Media access in death penalty cases. The following policy shall be followed with respect to contact by the media with Court employees:

1. The Court speaks **only** through its ORDERS. No one in the Clerk's Office is authorized to speak for the Court or comment upon the merits or interpretation of any action or inaction by the Court, or to predict the outcome of any case or proceeding.

2. As an administrative office designed to serve the Court, the public and attorneys, the Clerk's Office may give information concerning filing, rules and administrative procedures approved by the Court. However, no legal advice shall be given.

3. In the event a media representative contacts the Clerk's Office concerning a death penalty case, the representative shall be referred to the Clerk of Court or the Operations Manager. The Clerk or Operations Manager should seek the advice of the Judge presiding over the death penalty case or the Chief Judge in the event an issue arises concerning the propriety of responding to certain questions.

4. If any emergency situation arises which requires the Clerk's Office to remain open after normal working hours, the Clerk of Court, the Operations Manager, or the Clerk's designee shall remain on duty to supervise the work to be done until it is completed.

5. If an Order and Memorandum of the Court is entered by the Clerk's Office after normal duty hours during any emergency situation, the Clerk, Operations Manager, or Clerk's designee may post the filing on the Court's web site and/or call or email a media organization or representative of same if said media organization or representative has specifically requested notification of such filing. After such notification, if specifically requested, the Clerk's employee may email a copy of the Order and Memorandum to the media organization or representative.

6. No extraneous comments or attempts to explain the Court's Order and Memorandum shall be given by the Clerk or member of the Clerk's Office.

7. Questions concerning this media policy or its implementation shall be directed to the Chief Judge.

It is so ORDERED.

Todd J. Campbell

TODD J. CAMPBELL
Chief United States District Judge

Aleta A. Trauger

ALETA A. TRAUGER
United States District Judge

William J. Haynes, Jr.

WILLIAM J. HAYNES, JR.
United States District Judge