

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

RICHARD CUSHING DONOVAN
CLERK

JOHN JOSEPH MOAKLEY
UNITED STATES COURTHOUSE
1 COURTHOUSE WAY, SUITE 2500
BOSTON, MA 02210
(617) 748-9057

NOTICE OF ADOPTION OF AMENDMENTS TO LOCAL RULE 48 AND
INTERNAL OPERATING PROCEDURE VII

On December 16, 2003, this court adopted certain changes, on an immediate basis, to Local Rule 48 (governing capital cases). At the same time, the court adopted on an immediate basis a new section (e) of Internal Operating Procedure VII which establishes a procedure by which a capital case is assigned at the very outset to a panel of three judges. Although the court solicited comments on the changes, no comments were received.

On June 23, 2004, the court issued proposed notice of additional amendments to Local Rule 48. The comment period has expired, and the court did not receive any comments.

The court hereby provides notice of the final adoption of the amendments made on December 16, 2003. The court also provides notice of the adoption, effective immediately, of the additional proposed amendments submitted for comment on June 23, 2004. The full text of Local Rule 48, incorporating both rounds of amendments, and Internal Operating Procedure VII(e) immediately follow.

October 6, 2004

Richard Cushing Donovan

Local Rule 48. Capital Cases

(a) Applicability of Rule. This rule shall govern all matters in which this Court is requested to rule in any case where the death penalty has been imposed, including, but not limited to, the following:

- (1) direct criminal appeals;
- (2) appeals from District Court rulings, such as on motions to vacate a sentence, petitions for a writ of habeas corpus, and requests for a stay or other injunction;
- (3) original petitions for a writ of habeas corpus;
- (4) motions for second or successive habeas corpus applications;
- (5) any related civil proceedings challenging the conviction or sentence of death, or the time, place or manner of execution, as being in violation of federal law, whether filed by the prisoner or by someone else on his or her behalf.

Such cases shall be referred to herein as "capital cases" and shall be governed by this rule, except where otherwise specified in a written order by the Court. To the extent that any local rule of this Court is inconsistent with this rule, this rule shall govern. All local rules of this Court, including interim local rules, are otherwise as applicable to capital cases as they would have been absent this rule.

(b) Certificate of Death Penalty Case. A special docket shall be maintained by the Clerk of this Court for all cases filed pursuant to this rule.

- (1) Filing. Upon the filing of any proceeding in any District Court in this Circuit challenging a sentence of death imposed pursuant to a federal or a state court judgment, each party to such proceeding shall file a Certificate of Death Penalty Case with the Clerk of this Court. The U.S. Attorney shall file a Certificate of Death Penalty Case with the Clerk of this Court immediately upon notifying the District Court of intent to seek the death penalty in a federal criminal case. The U.S. Attorney shall also update the Certificate immediately upon return of a verdict imposing a sentence of death.
- (2) Content of the Certificate. The Certificate shall set forth the names, telephone numbers and addresses of the parties and counsel, the proposed date and place of implementation of the sentence of death, if set, and the emergency nature of the proceedings, if appropriate. It shall be the responsibility of counsel for all parties to apprise the Clerk of this Court of any changes in the information provided on the Certificate as expeditiously as possible.

c) Certificates of Appealability and Stays.

- (1) Certificates of Appealability and Motions for Stays. Certificates of appealability for all habeas matters are addressed in Fed. R. App. P. 22. If no express request for a certificate of appealability has been filed in the district or appellate court, a motion for stay of execution or a notice of appeal shall be deemed to constitute such a request.
- (2) Stays of Execution.
 - (A) Except where otherwise prohibited by 28 U.S.C. § 2262, a sentence of death shall automatically be stayed upon the filing of a notice of appeal. In cases where the petitioner is seeking leave to file a second or successive application under 28 U.S.C. § 2254 or § 2255, a stay of execution shall automatically be issued upon approval by the Court of Appeals of the filing of a second or successive application under 28 U.S.C. § 2244(b). The Clerk shall immediately notify all parties and the state or federal authorities responsible for implementing the defendant's sentence of death of the stay of execution. If notification is oral, it shall be followed as expeditiously as possible by written notice.
 - (B) Except where otherwise required by law or specified in a written order by the Court, an automatic stay of execution shall remain in effect until the Court issues its mandate, at which time the automatic stay shall expire. In the event that a motion requesting a stay of mandate is filed, the motion should also be accompanied by a motion requesting a case-specific stay of execution.
 - (C) The assigned panel may grant or modify or vacate any stay of execution at any time and will consider upon request motions for a case-specific stay of execution. All motions for a case specific stay of execution must be accompanied by a memorandum of law, which must include at a minimum the prevailing standards of review and any relevant facts to advise the Court's decision.
 - (D) Upon making the necessary findings, the Court may enter a case-specific stay of execution which shall clearly specify the duration of the stay.
 - (E) The Clerk shall send notice to all the parties and state or federal authorities responsible for implementing the defendant's sentence of death when a stay imposed by this provision, be it automatic or case-specific, is no longer in effect.

Internal Operating Procedure VII. Screening and Calendaring

E. Judges and Case Assignment in Capital Cases.

- 1) Capital Case Panel. Capital cases, as defined in Local Rule 48, shall be randomly assigned to a panel of three judges, of whom at least one is an active judge of this Court, from the capital case pool. The capital case pool of judges shall consist of all active judges of this Court and those senior judges who have filed with the Clerk a statement of willingness to serve on capital case panels.

- 2) Duties of Capital Case Panel. Notwithstanding the practices identified in Internal Operating Procedure V, the assigned capital case panel handles all matters relating to the case, including but not limited to, the merits of a direct appeal, all case management, all petitions for collateral review, motions for stay of execution, motions to vacate a stay of execution, applications for a certificate of appealability, motions for an order authorizing the district court to consider a second or successive application for habeas corpus, appeals from subsequent petitions, and remands from the United States Supreme Court.