

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 September 16, 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.