

LAWRENCE K. BAERMAN
CLERK



SYRACUSE OFFICE

FROM: LAWRENCE K. BAERMAN, CLERK OF COURT

SUBJECT: INSTRUCTIONS FOR FILING HABEAS CORPUS PETITIONS
UNDER 28 USC SECTION 2254 AND INVOLVING A **DEATH
PENALTY SENTENCE**

Counsel shall promptly serve written notice upon the Clerk of Court and Attorney General of counsel's intention to file a petition. The notice shall list the following:

1. State the name of the petitioner and DIN number
2. The district in which the petitioner was convicted
3. The place of petitioner's incarceration
4. The status of petitioner's state court proceedings, and
5. The scheduled date of execution (if known)

The notice is for the information of the court only, and the failure to file this notice will not preclude the filing of the petition.

Federal habeas corpus petitions cannot ordinarily be entertained unless and until all state court remedies, including appeals, have been exhausted. No ground will be considered unless it has been presented to and decided by a state court. See 28 U.S.C. Section 2254 (b) and (c).

An original petition and three (3) copies of the petition shall be filed by counsel for petitioner. A pro se petitioner need file only the original, legibly handwritten or typewritten on forms prescribed by Court rules and provided by the Clerk's Office. In the alternative, the petition may be in a legible typewritten or handwritten form and contain all of the information required by that form. These forms may be obtained from the Office of the Clerk of Court and on Northern District of New York's Web page. All petitions shall (1) state whether petitioner has previously sought relief arising out of the same matter from this court or any other federal court, together with the ruling and reasons given for denial of relief; (2) set forth any scheduled execution date; and (3) contain the wording in full capital letters and underscored "**Death Penalty Case.**"

The petition must be submitted for filing to the office of the Clerk of Court. The petition must be accompanied by the filing fee of \$5.00 **or** an Application to Proceed in Forma Pauperis (AO Form 240), with the certification portion completed by an authorized official of the institution.

Emergency motions or applications shall be filed with the Clerk of Court. If time does not permit the filing of a motion or application in person or by mail, counsel may communicate with the clerk and obtain the clerk's permission to file the motion or application by facsimile. Counsel should communicate with the clerk by telephone as soon as it becomes evident that emergency relief will be sought from this court. The motion or application shall contain a brief account of the prior actions, if any, of this court and the name of the judge or judges involved.

Procedure for appointment of counsel, Local Rule 72.5 (d) Northern District of New York reads as follows:

(1) Appointment of Counsel

Each indigent petitioner shall be represented by counsel unless petitioner has clearly elected to proceed pro se and the court is satisfied, after hearing, that petitioner's election is intelligent, competent, and voluntary. Where counsel is to be appointed, such appointment shall be made at the earliest practicable time. A panel of attorneys qualified for appointment in death penalty cases ("qualified panel") will be certified by the active judges of the Northern District of New York.

If state appellate counsel is available to continue representation into the federal courts, and counsel is deemed qualified to do so by the assigned District Judge, there is a presumption in favor of continued representation except when state appellate counsel was also counsel at trial. In light of this presumption, it is expected that appointed counsel who is willing to continue representation and who has been certified by the assigned District Judge as qualified to do so, would ordinarily file a motion for appointment of counsel on behalf of his or her client together with the client's federal habeas corpus petition. If, however, counsel for any reason wishes to confirm appointment before preparing the petition, counsel may move for appointment as described above, before filing the petition.

If state appellate counsel is not available to represent petitioner on a federal habeas corpus or if appointment of state appellate counsel would be inappropriate for any reason, the court may appoint counsel upon application of petitioner. The clerk shall have available forms for such application. Counsel may be appointed from the qualified panel. The assigned District Judge may suggest one or more counsel for appointment. If application for appointed counsel is made before a petition is filed, the application shall be assigned to a District Judge and Magistrate Judge in the same manner that a non-capital petition would be assigned. The Judge and Magistrate Judge so assigned shall be the Judge and Magistrate Judge assigned when counsel files a petition for writ of habeas corpus.

(2) Second Counsel

Appointment and compensation of second counsel shall be governed by the Guide to Judiciary Policies and Procedures, Appointment of Counsel in Criminal Cases.