

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
11-SO-2

FILED

OCT 18 2011

DENNIS P. WARD, CLERK  
US DISTRICT COURT, EDNC  
BY  DEP CLK

Re: Filing of Proposed Budgets for State )  
Clemency Proceedings in Capital Habeas )  
Corpus Cases Involving Attorneys Appointed )  
Pursuant to 18 U.S.C. § 3599(a)(2)<sup>1</sup> )  
 )

**STANDING ORDER**

The Supreme Court of the United States has held that 18 U.S.C. § 3599 “authorizes federally appointed counsel to represent their clients in state clemency proceedings and entitles them to compensation for that representation.” Harbison v. Bell, 556 U.S. 180, \_\_\_, 129 S. Ct. 1481, 1491 (2009). Federal judicial policy requires federally appointed attorneys seeking compensation for their representation in state clemency proceedings to file a CJA Form 30 pertaining to the clemency representation in the district court, regardless of whether the case is on appeal or if federal judicial appeals have concluded. See Guide to Judiciary Policy, Vol. 7A, Ch. 6 § 680.20.20. Appointed counsel are not required to seek re-appointment for purposes of continuing their representation in state clemency proceedings. Id. at § 680.10.10.

It is the policy of this court that any attorney appointed under 18 U.S.C. § 3599 to represent a petitioner in capital habeas corpus proceedings who intends to represent the petitioner in state clemency proceedings shall file for the court’s approval a proposed budget for the anticipated clemency proceedings. Any proposed budget approved by the court will be subject to modification in light of facts and developments that emerge as the case proceeds. If for any reason an attorney

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<sup>1</sup> 18 U.S.C. § 3599(a)(2) provides for the “appointment of one or more attorneys” in capital habeas corpus proceedings under 28 U.S.C. § 2254. Before 2006, this provision for the appointment of counsel was codified at 21 U.S.C. § 848(q)(4)(B). This order applies to counsel appointed under the version of section 3599(a)(2) existing before its re-codification.

that this court appoints under 18 U.S.C. § 3599 does not anticipate representing the petitioner in state clemency proceedings, the attorney shall file a certification with the court explaining why counsel does not anticipate representing the petitioner in state clemency proceedings and shall serve a copy of such certification on the petitioner.

Counsel shall file any proposed clemency budget or certification on or before December 15, 2011. For death penalty cases filed in this court after the date of this Standing Order, the court will address clemency budgeting issues with attorneys appointed under 18 U.S.C. § 3599 as such appointments are authorized.

SO ORDERED. This 18 day of October 2011.

  
JAMES C. DEVER III  
Chief United States District Judge