

STAY OF EXECUTION IN CAPITAL CASES

(a) An application for stay of execution will be decided by the en banc court, except that a commissioner or the clerk may decide an application for a stay of execution in connection with a first petition for relief from restraint. No stay will be granted until after a death warrant has been issued. When any stay is granted, a commissioner or the clerk will immediately notify, in addition to the parties, the Superintendent of the Washington State Penitentiary and the Attorney General.

(b) The petitioner or his or her lawyer may file an application for a stay of execution in connection with a first petition for relief from restraint. This application shall be accompanied by a statement, describing one or more grounds for relief, which shall be deemed to be a petition for relief from restraint with leave granted to amend the petition upon appointment of counsel.

(c) Upon the filing of this application for stay of execution in connection with a first petition for relief from restraint and statement, a commissioner or the clerk shall issue a stay of execution, if the statement identified any ground for relief that is not patently frivolous.

(d) A stay of execution pending a final disposition of a second or subsequent petition shall not be granted unless the petition makes a substantial showing that the petition is not barred by RCW 10.73 or RAP 16.4(d).

(e) A stay of execution will dissolve when a certificate of finality is issued unless otherwise ordered by the court.

Comment

The date the statement of grounds for relief that accompanies an application for a stay of execution in connection with a first petition for relief from restraint is filed shall be deemed under Washington law to be “the date on which the first petition for post-conviction review or other collateral relief is filed,” 1996 Antiterrorism and Effective Death Penalty Act, Chapter 154, sec. 2263(b)(2).

A stay will be granted “if the statement identifies any ground for relief that is not patently frivolous.” In general, a claim could be considered “patently frivolous” only if (1) it was rejected on its merits on direct appeal, (2) it is clearly contrary to binding precedent, or (3) it is clearly contrary to the established record. A claim of ineffective assistance of counsel that was not raised on direct appeal will generally not be considered “patently frivolous.”

[Adopted effective December 30, 1997; Amended effective March 6, 1999.]