

CAPITAL CASE HABEAS PETITIONS (STATE CUSTODY)

(a) **Applicability.** This rule governs the procedures for a petition for a writ of habeas corpus filed under 28 U.S.C. § 2254 ("habeas petition") that seeks relief from a final state court judgment in a capital (death penalty) case.

The presiding judge may modify application of this rule. These rules supplement the Rules Governing Section 2254 Cases and do not alter or supersede those rules.

(b) Initiation of Proceedings.

(1) Preliminary Steps. Before filing a habeas petition, a petitioner may take the following preliminary steps; however, none takes the place of, nor constitutes the filing of, an actual habeas petition:

- (A) Application for a stay of execution;
- (B) Application to proceed *in forma pauperis* with supporting affidavit, if applicable;
- (C) Application for the appointment of counsel or to proceed pro se, if applicable;
- (D) Statement of issues re: habeas petition including:
 - (i) information about whether this or any other federal court has ever issued a decision regarding the same judgment of conviction and the reasons for denial of relief;
 - (ii) information about when the petitioner intends to file a habeas petition;
 - (iii) a list of issues to be presented in the habeas petition; and
 - (iv) a certification that the issues outlined raise substantial questions of constitutional law, are not frivolous, and are not being raised simply for the purpose of delay.

(c) **Initial Review of Preliminary Filings by Court.** Upon receipt of preliminary filings, the Clerk of Court will immediately assign the matter to a district judge and assign it a civil case number. As soon as reasonably practicable, the district judge will review the preliminary filings. If the matter is found to be properly before the court, the court will issue an initial review order. The initial review order may (1) stay the execution for the duration of the proceedings in this court; (2) set an initial case management conference; (3) grant or deny an application to proceed in forma pauperis; (4) grant or deny an application for the appointment of counsel; and (5) set a deadline for the parties' scheduling order proposals.

However, if respondent identifies the new filing as a second or successive filing, respondent may file an answer or pre-answer motion before any initial review order is issued.

(d) Appointment of Counsel.

- (A) Requirement of Counsel. Each capital case petitioner must be represented by counsel unless the court finds, after a hearing, that a petitioner's election to proceed pro se is knowing, intelligent, and voluntary. If the petitioner has not retained counsel, the court must appoint counsel in every case at the earliest practicable time.
- (B) Qualifications of Appointed Counsel. Upon application by petitioner for appointment of counsel, the court will appoint the Capital Habeas Unit (CHU) of the Federal Defender Services of Idaho as lead counsel. Upon request of the CHU, the court will appoint an attorney from the Criminal Justice Act (CJA) Capital Habeas Panel as second counsel. In the event the CHU is unable to provide representation or for other reasons necessitating appointment of other counsel, the Court will appoint other qualified attorneys.

(e) **Notice of Stay of Execution.** Upon the granting of any stay of execution, the Clerk of Court will immediately notify the following: counsel for the petitioner; the Idaho Attorney General; the

warden/custodian of the petitioner; and, when applicable, the clerks of the Idaho Supreme Court and the Ninth Circuit Court of Appeals. The Idaho Attorney General is responsible for providing the Clerk of Court with a telephone number where they or a designated deputy attorney general can be reached 24 hours a day.

(f) **Case Management Conferences.** After counsel has been appointed, the presiding judge may conduct case management conferences to discuss anticipated proceedings in the case.

(g) **CJA Budgeting.** In all cases where payment for attorney fees and investigative and expert expenses will be requested under the CJA, the petitioner's counsel must coordinate with the capital case budgeting attorney for the United States Court of Appeals for the Ninth Circuit and the district court at the beginning of the appointment for case budgeting and voucher approval.

(h) **Habeas Pleadings, Motions, and Lodging the State Court Record.** The following procedures apply:

(1) Petition for Writ of Habeas Corpus. Petitioner must file a habeas petition.

(2) State Court Record.

(A) No later than the deadline for the filing of an answer or pre-answer motion in response to the petition, the respondent must lodge with the court one copy of the following (electronic format preferred, but not required):

(i) Transcripts of the state court proceedings.

(ii) State clerk's record of the state court proceedings.

(iii) Briefs filed in all related appellate matters in the Idaho Supreme Court.

(iv) All motions, briefs and orders in any post-conviction relief proceeding.

(v) An index to all materials described in paragraphs (i) through (iv) above.

(B) If any items required to be filed in paragraphs (i) through (iv) above are not available, the respondent must so state and indicate when, if at all, such missing materials will be lodged.

(3) Pre-Answer Motion. Respondent may file a pre-answer motion for summary dismissal or partial summary dismissal addressing procedural issues.

(4) Answer. If no pre-answer motion is filed, or if some claims survive a pre-answer motion, Respondent must file an answer to the Petition.

(5) Reply. Petitioner may file a reply in support of the petition, and, if Petitioner believes any claims qualify for further record development through discovery or an evidentiary hearing, any such motion must be filed with the reply.

(6) Sur-Reply. Respondent may file a sur-reply, and, if a motion for further record development has been filed, Respondent's response must be filed with the sur-reply.

(7) Petitioner may file a reply in support of any motion for further record development.

(i) **Scheduling Order Proposals.** After counsel for Petitioner has been appointed, the parties shall confer and file a joint or separate proposed schedule of deadlines for the foregoing filings. The parties may also address any of the following:

(1) Whether the properly-exhausted claims on the merits should be decided first;

(2) Whether certain procedural defenses should be heard via a pre-answer motion;

(3) Whether, instead of filing a pre-answer motion followed by an answer, Respondent should file an omnibus answer addressing all procedural issues and the merits of all claims;

(4) Whether discovery on procedural issues is warranted;

(5) Whether the entire case should be stayed pending ongoing state proceedings; and

(6) Whether the petitioner should be required to proceed on the properly-exhausted claims while

exhausting other claims in state court.

After the Court reviews the parties' proposals, it may adopt or modify a proposed schedule or hold an initial case management conference, after which a scheduling order will be issued.

(o) Pleadings, Motions, Briefs, and Oral Argument.

(1) Caption. Every pleading or paper filed in a capital habeas case must contain the notation "CAPITAL CASE" in bold, capital letters to the right of the case caption and directly beneath the case number.

The following is provided as an example:

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

JOHN DOE,

Petitioner, Case No.: _____

vs.

CAPITAL CASE

A.M. ARAVE, APPLICATION FOR STAY OF EXECUTION

Respondent

(2) Motion Practice. Unless this rule or court order provides otherwise, motion practice must comply with the applicable local rules of the court. The parties may agree to routine changes such as requests for extensions of time or requests to file overlength briefs. If the parties so agree, they may file a stipulation to that effect, but the court may alter the parties' stipulated changes with adequate notice to the parties. Formal motions seeking extensions of time or of page limits are required only if the parties cannot agree.

(3) Briefs.

(A) Briefs in support of and in opposition to motions for discovery and motions for evidentiary hearing may be no longer than 60 pages; reply briefs may be no longer than 30 pages.

(B) Briefs in support of and in opposition to a motion for summary dismissal or partial summary dismissal based on procedural issues may be no longer than 100 pages; reply briefs may be no longer than 50 pages.

(C) Principal briefs on the merits of the claims set forth in the petition and principal briefs on a pre-answer motion to dismiss may be no longer than 200 pages; reply briefs may be no longer than 100 pages.

(D) No brief may be filed unless permitted by rule or leave of court.

(4) Oral argument. Motions and petitions will be deemed submitted, and will be determined, upon the written pleadings, briefs, and record, unless the court orders oral argument.

(p) Court's Final Decision. The court will issue a written decision granting or denying the petition.

(1) The Clerk of Court will immediately notify the petitioner's counsel, the Idaho Attorney General, the warden/custodian of the petitioner, and the Clerk of the Idaho Supreme Court of the court's final decision on the petition.

(2) The Clerk of Court will immediately notify the Clerk of the United States Court of Appeals for the Ninth Circuit, and if applicable, the Clerk of the United States Supreme Court, by telephone of:

(A) any final order denying or dismissing a petition without a certificate of appealability; and/or

(B) any order denying or dissolving a stay of execution.

(3) If the petition is denied and a certificate of appealability is issued, the court will grant a stay of execution that will continue in effect until the Ninth Circuit Court of Appeals acts upon the appeal or the order of stay.

(4) When a notice of appeal is filed, the Clerk of Court must immediately transmit the record to the Clerk of the United States Court of Appeals for the Ninth Circuit.

RELATED AUTHORITY

28 U.S.C. § 2254
Rules Governing Section 2254 Cases in U.S. District Courts
Idaho Appellate Rule (I.A.R.) 25(e) (2017)
