

UNITED STATES DISTRICT COURT

Northern District of California

*HABEAS CORPUS* LOCAL RULES

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**2254-1. Title**

These are the Local Rules of Practice which govern petitions for writs of habeas corpus filed in the United States District Court for the Northern District of California pursuant to 28 U.S.C. § 2254. They should be cited as “Habeas L.R.” These rules are effective December 1, 2009 and shall govern *habeas corpus* actions pending or commenced on or after that date.

These rules are intended to supplement the “Rules Governing Section 2254 Cases in the United States District Courts.” The Civil Local Rules of this Court are also applicable in these proceedings, except to the extent that they are inconsistent with these Habeas Corpus Local Rules. The application of these rules to a particular petition may be modified by the Judge to whom the petition is assigned.

**I. HABEAS CORPUS PETITIONS IN NON-CAPITAL CASES**

**2254-2. Scope**

Habeas L.R. 2254-2 to 2254-10 shall apply to a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in a noncapital case, that is a petition attacking something other than a judgment imposing a penalty of death.

**2254-3. Filing Petition**

- (a) **Venue.** The following noncapital petitions for writs of habeas corpus shall be filed in this District:
  - (1) Petitions challenging the lawfulness of a conviction or sentence for which the petitioner was convicted and sentenced in the following counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz and Sonoma; or
  - (2) Petitions challenging the manner in which the sentence is being executed, such as loss of good time credits, where the petitioner is confined in an institution located in a county listed in Habeas L.R. 2254-3(a)(1) at the time the petition is filed.
- (b) **Transfer of Venue.** If a petition is filed in this District which does not conform to Habeas L.R. 2254-3(a), venue shall be transferred to:
  - (1) The district of conviction or sentencing if the petition is challenging the conviction or sentence; or
  - (2) The district of confinement if the petition is challenging the manner in which the sentence is being executed.
- (c) **Place for Filing.** Noncapital petitions as to which venue lies in this District shall be filed in San Francisco.
- (d) **Form and Content.** Noncapital petitions shall be filed on a form supplied by the Clerk, and shall be filled in by printing or typewriting. In the alternative, the petition may be in a typewritten, word-processed or other legible written form which contains all of the information required by the Court's form.
- (e) **Pro Se Petitions.** Noncapital petitions filed by persons who are appearing *pro se* shall be on a form established for that purpose by the Court and shall be completed in conformity with the instructions approved by the Court. Copies of the forms,

instructions and pertinent provisions of these Habeas Corpus Local Rules shall be supplied to *pro se* petitioners by the Clerk upon request or upon the filing of papers which appear to be a request by a person appearing *pro se* for relief which should be presented by a petition for habeas corpus pursuant to 28 U.S.C. § 2254.

- (f) **Requests to Proceed *In Forma Pauperis*.** Persons seeking leave to proceed *in forma pauperis* must complete the application established for that purpose by the Court. Copies of the application form, instructions and pertinent provisions of the local rules shall be supplied to *in forma pauperis* applicants by the Clerk upon request or upon the filing of papers which appear to be a request by a person to proceed *in forma pauperis*. The Clerk shall refer a completed application to the assigned Judge for determination.
- (g) **Number of Copies.** An original and one copy of the petition shall be filed by a petitioner represented by counsel. A *pro se* petitioner need only file the original.

#### **2254-4. Assignment to Judges**

- (a) **Assignment to District Judge.** The assignment of noncapital habeas corpus petitions to a Judge shall be made in accordance with the provisions of the Assignment Plan of the Court.
- (b) **Assignment to Magistrate Judge.** Pursuant to 28 U.S.C. § 636(b)(1)(B), a Magistrate Judge may be designated by the Court to perform all duties under these rules.

#### **2254-5. Discovery**

No discovery pursuant to Fed. R. Civ. P. 26-37 shall be conducted with respect to a petition for writ of habeas corpus in noncapital cases without leave of the Court.

#### **2254-6. Briefing Schedule**

- (a) **Schedule.** Unless the Judge summarily dismisses the petition under Rule 4 of the Rules Governing § 2254 Cases, the schedule and procedure set forth in this Rule shall apply, subject to modification by the assigned Judge. Requests for enlargement of any time period in this rule shall comply with the applicable Civil Local Rules for enlargement of time.

##### **Cross Reference**

See Civil L.R. 6 “Time.”

- (b) **Answer to Petition.** After the Court orders a response to the petition, within 60 days of service of a noncapital petition, the respondent shall serve and file:
  - (1) An answer to the petition with accompanying points and authorities;
  - (2) The matters defined in Rule 5 of the Rules Governing § 2254 Cases;
  - (3) Portions of the trial and appellate record that are relevant to a determination of the issues presented by the petition which have not been previously filed; and
  - (4) Certificate of service, pursuant to Civil L.R. 5-5.
- (c) **Traverse.** Within 30 days after the respondent has filed the answer, the petitioner may serve and file a traverse.

#### **2254-7. Evidentiary Hearing**

- (a) **Request for Evidentiary Hearing.** A request for an evidentiary hearing by either party shall be made within 14 days from the filing of the traverse, or within 14 days from the expiration of the time for filing the traverse. The request shall include a specification of which factual issues require a hearing and a summary of what evidence the party proposes to offer. An opposition to the request for an evidentiary hearing shall be made within 14 days from the filing of the request. Any reply shall be filed within 7 days from the filing of the opposition. The Court will then give due consideration to whether an evidentiary hearing will be held.
- (b) **Transcript of Evidentiary Hearing.** If an evidentiary hearing is held and any party orders a transcript, the transcript will be prepared and immediately provided to the petitioner and to the respondent for use in such briefing and argument as the Court may order. Upon the preparation of the transcript, the Court may establish a reasonable schedule for further briefing and argument of the issues considered at the hearing.

#### **2254-8. Oral Argument**

- (a) **Request for Oral Argument.** A request for an oral argument by either party shall be made within 14 days from the filing of the traverse, or within 14 days from the expiration of the time for filing the traverse or, if an evidentiary hearing is granted, within 14 days after a decision of the Court with respect to the subject matter of the evidentiary hearing. The request shall include a specification of the issues to be addressed at the argument.
- (b) **Notice of Hearing.** Upon request of a party, the Court, in its discretion, may set the matter down for oral argument. Within 30 days after an evidentiary hearing or within 30 days after the Court has denied a request for an evidentiary hearing, the assigned Judge shall notify the parties whether the Court will hear oral argument and the date of the hearing or whether the matter shall be submitted for decision without oral argument.

#### **2254-9. Rulings**

The Court's rulings shall be in the form of a written opinion which will be filed. The Clerk shall serve the parties with a copy of the ruling pursuant to Fed. R. Civ. P. 77(d).

## II. HABEAS CORPUS PETITIONS IN CAPITAL CASES

### 2254-20. Applicability

Habeas L.R. 2254-20 *et seq.* shall govern the procedures for a first petition for a writ of habeas corpus filed in this District under chapter 153 of Title 28 of the U.S. Code in which the petitioner seeks relief from a judgment imposing a penalty of death. A subsequent filing may be deemed a first petition under this Rule if the original filing was not dismissed on the merits.

### 2254-21. Notices From California Attorney General

The California Attorney General shall send to the Clerk the following reports:

- (a) **Monthly Report.** Monthly, the Attorney General shall send a list of all scheduled executions in California and a list of death penalty cases emanating from state trial courts in the Northern District that have been affirmed on appeal by the California Supreme Court, or that have been orally argued before the California Supreme Court and are awaiting decision.
- (b) **Quarterly Report.** The Attorney General shall send to the Clerk quarterly a list of all death penalty cases in California that have been affirmed on appeal.

### 2254-22. Venue

- (a) **Policy Statement.** Subject to the provisions of 28 U.S.C. § 2241(d), it is the policy of this Court that a petition for writ of habeas corpus in a capital case should be heard in the district in which the petitioner was convicted, rather than in the district of the petitioner's present confinement.
- (b) **Venue in the District.** A capital habeas corpus proceeding is properly commenced in this District if the petitioner challenges the lawfulness of a conviction and death sentence imposed in the following counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz and Sonoma.
- (c) **Transfer of Venue.** If a proceeding is commenced in this District which does not conform to Habeas L.R. 2254-22(a) and (b) the Clerk shall immediately advise the Clerk of the Court of the district of conviction and shall present the matter to the General Duty Judge for an order transferring the matter to the district of conviction. The Clerk shall also prepare a proposed temporary stay order pursuant to Habeas L.R. 2254-24(b).

### 2254-23. Commencement of Proceedings

- (a) **Place of Filing.** The first paper or pleading with respect to relief from a judgment imposing a penalty of death for which venue lies in this district shall be filed in the Office of the Clerk at the San Francisco Courthouse. All subsequent papers or pleadings shall be filed in the Office of the Clerk at the courthouse where the assigned Judge maintains his or her chambers.
- (b) **First Paper or Pleading.** The first paper or pleading may be either an application for appointment of counsel or a petition for writ of habeas corpus. The Clerk will have available forms for the application for appointment of counsel. A sample form is available at [cand.uscourts.gov](http://cand.uscourts.gov). In addition to other matters appropriate to the nature of the first paper or pleading filed pursuant to Habeas L.R. 2254-23(b), the first paper or pleading shall:

- (1) Identify by case number any applications for relief with respect to the same matter which the petitioner has filed in any federal court; and
  - (2) Set forth any scheduled execution date.
- (c) **Service on the Respondent.** An attorney representing a party filing a first paper or pleading in a capital habeas corpus proceeding shall serve a copy of the paper or pleading on the California Attorney General. When a first paper or pleading is filed by a person who is not represented by an attorney, the Clerk shall promptly serve the Attorney General with a copy of that paper or pleading.
- (d) **Filing Fee.** Concurrently with the filing of the initial pleading, or if the filing is made on an emergency basis, then as soon thereafter as reasonably practicable, the petitioner either shall pay the \$5 statutory filing fee or shall submit a completed *in forma pauperis* application. Civil L.R. 3-10 shall govern proceedings with respect to the application.
- (e) **Assignment to a Judge.** After commencement of a proceeding involving a request for a writ of habeas corpus in which it appears that venue is proper in this District, the Clerk shall assign or reassign the matter to a Judge in accordance with the Assignment Plan of the Court.

#### **2254-24. Stays of Execution**

- (a) **Stay Pending Final Disposition.** Upon the filing of a first paper or pleading by a petitioner who was convicted and sentenced to death in this District, unless the pleading is patently frivolous, the Judge will order a stay of execution pending final disposition of the proceedings in this Court.
- (b) **Temporary Stay for Transfer of Venue.** When a first paper or pleading is filed by a petitioner who was convicted and sentenced to death in another district, the Clerk shall include a proposed order staying execution with the order presented to a Judge pursuant Habeas L. R. 2254-22(c). The signed stay of execution shall remain in effect until the transferee court acts on it.
- (c) **Stay Pending Appeal.** If the Court dismisses or denies the petition and issues a certificate of probable cause for appeal or a certificate of appealability, the Court will grant a stay of execution which shall remain in effect until the United States Court of Appeals for the Ninth Circuit acts upon the appeal or the order of stay.
- (d) **Notice of Stay.** Upon the granting of any stay of execution, the Clerk will immediately notify the Warden of San Quentin Prison and the Attorney General. The Attorney General shall ensure that the Clerk has a twenty-four hour telephone number to the Warden.

#### **2254-25. Counsel**

- (a) **In General.** Each petitioner in a proceeding for a writ of habeas corpus in a capital case shall be represented by counsel unless the petitioner has clearly elected to proceed *pro se* and the assigned Judge is satisfied, after a hearing, that the petitioner's election is intelligent and voluntary.
- (b) **Appointment and Compensation.** Unless the petitioner is represented by retained counsel or has been permitted to proceed *pro se*, the Court shall appoint counsel at the earliest appropriate time if it finds that the requirement of 21 U.S.C. §848(q)(4)(B), that the defendant is financially unable to obtain adequate representation, has been satisfied. The assigned Judge, in his or her discretion, will

determine whether more than one attorney is necessary for adequate representation of the petitioner. Appointment and compensation of counsel shall be governed by §6.01(A)(2) of Volume VII of the Guide to Judiciary Policies and Procedures, Appointment of Counsel in Criminal Cases, and by 21 U.S.C. §848(q)(6), (7) & (10)(A). The presumptive rate for compensation of lead counsel or co-lead counsel shall be \$125.00 per hour. The presumptive rate for compensation of second counsel shall be \$100.00 per hour.

- (c) **Selection Board.** A selection board appointed by the Chief Judge of the District will certify a panel of attorneys qualified for appointment in capital habeas cases. The selection board will consist of a representative of the Federal Public Defender for the Northern District, a representative of the California Appellate Project (CAP), a representative of the Habeas Corpus Resource Center (HCRC), a representative of the State Public Defender, and a representative of the private bar. The selection board may suggest one or more counsel for appointment. The Court also may request suggestions from the selection board for one or more counsel.

#### **2254-26. Case Management and Budgeting**

After a capital habeas corpus proceeding has been assigned to a Judge and counsel has been appointed, the assigned Judge shall conduct an initial case management conference to discuss anticipated proceedings in the case. In all cases where attorneys' fees and investigative and expert expenses are reimbursed pursuant to 21 U.S.C. §§848(q)(4) - (10), the petitioner's counsel will be required to prepare phased budgets for submission to the Court. Following the initial case management conference, the assigned Judge may schedule additional case management conferences in advance of each of the budgeting phases. The assigned judge also may schedule one or more *ex parte* conferences with the petitioner's counsel to implement the budgeting process.

#### **2254-27. Lodging of the Record**

- (a) **Material to be Lodged.** As soon as practicable, but in any event within 21 days from the date of the initial case management conference, the respondent shall lodge with the Court the following:
- (1) Transcripts of the state trial court proceedings;
  - (2) The appellant's and respondent's briefs on direct appeal to the California Supreme Court, and the opinion or orders of that Court;
  - (3) The petitioner's and the respondent's pleadings in any state court habeas corpus proceedings, and all opinions, orders and transcripts of such proceedings;
  - (4) Copies of all pleadings, opinions and orders in any previous federal habeas corpus proceeding filed by the petitioner, or on the petitioner's behalf, which arose from the same conviction;
  - (5) An index of all materials described in items (1) through (4) above. The respondent shall mark and number the materials so that they can be uniformly cited. The respondent shall serve the index upon counsel for the petitioner;
  - (6) If any item identified in paragraphs (1) through (4) above does not become available until a later date, the respondent shall provide a supplemental lodging and index within 21 days of its availability.

- (b) **Missing Documents.** If counsel for the petitioner claims that the respondent has not complied with the requirements of paragraph (a) above, or if counsel for the petitioner does not have copies of all the documents the respondent has lodged with the Court, counsel for the petitioner shall notify the Court in writing as soon as practicable, with a copy to the respondent. The respondent will provide copies of the missing documents to the Court and to the petitioner's counsel, as appropriate.

#### **2254-28. Finalized Petition**

- (a) **Form.** The term "finalized petition" shall refer to the petition filed by retained or appointed counsel, or by a petitioner who has expressly waived counsel and elected to proceed *pro se* under Habeas L.R. 2254-25(a). The finalized petition shall comply with the requirements of 28 U.S.C. § 2242 and the Rules Governing Section 2254 Cases in the United States District Courts, Rule 2(c). The finalized petition shall be filed on a form supplied by the Clerk, and shall be filled in by printing or typewriting. In the alternative, the finalized petition may be in a typewritten, word-processed or other legible written form which contains all of the information required by the Court's form.
- (b) **Contents.** All assertions of historical or procedural fact shall be accompanied by citations to the state trial record or other record of proceedings and shall appear in a style comporting with the designations employed in the index of materials prepared in accordance with Habeas L.R. 2254-27(a)(5). The finalized petition shall:
- (1) State whether the 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 of such court;
  - (2) Include a table of contents which sets forth the headings and subheadings in the petition;
  - (3) Set forth each factual allegation or group of related allegations in a separately numbered or lettered paragraph;
  - (4) Identify where in the record each claim was exhausted; and
  - (5) Set forth any scheduled execution date.
- (c) **Filing and Service.** Counsel for the petitioner shall file an original and two copies of the finalized petition and shall serve a copy of the petition on counsel for the respondent. A *pro se* petitioner need only file the original. The Clerk shall serve a copy of a finalized *pro se* petition on the Attorney General.

#### **2254-29. Schedule of Proceedings for Considering the Finalized Petition**

- (a) **Presumptive Schedule.** Unless the Judge summarily dismisses the petition under Rule 4 of the Rules Governing § 2254 Cases, the following schedule and procedure shall apply, subject to modification by the assigned Judge. Requests for enlargement of any time period in this Rule shall comply with the Civil L.R. 7-8.
- (b) **Meet and Confer Regarding Exhaustion.** If the respondent contends that any claims in the petition are unexhausted and declines to waive exhaustion, counsel for the respondent shall make a good faith effort to confer with counsel for the petitioner regarding the exhausted status of each such claim. Unless relieved by written order of the Court upon good cause shown, counsel for the petitioner shall confer with counsel for the respondent within 14 days after service of a letter from the respondent requesting such a conference. The letter shall identify each claim

that respondent contends is unexhausted, specify the basis for asserting that the claim is unexhausted and provide any legal authority that the respondent contends is dispositive of the exhausted status of that claim.

- (c) **Motion Regarding Exhaustion.** If, after the conference held pursuant to Habeas L.R. 2254-29(b), the parties continue to dispute the exhausted status of one or more claims, then no later than forty-five (45) days after service of the petition, the respondent shall file a motion asking the Court to determine the status of the claim(s). In connection with any motion relating to exhaustion disputes, the parties shall file a joint statement identifying:
  - (1) The claims the parties agree are exhausted;
  - (2) The claims the parties agree are not exhausted; and
  - (3) The claims as to which the parties disagree on exhaustion.
- (d) **Answer and Request for Case Management Conference.** Within forty-five (45) days from the service of the finalized petition, or, if the respondent has filed a motion pursuant to Habeas L.R. 2254-29(c), then within such time as the Court may order, the respondent shall file an answer to the petition and may file accompanying points and authorities. The answer shall conform to Rule 5 of the Rules Governing § 2254 Cases. Concurrently with the filing of the answer, the respondent shall file a request that a case management conference be held within forty-five (45) days.
- (e) **Meet and Confer Regarding Case Management Conference Statement.** No later than fourteen (14) days prior to the date set by the Court for a case management conference, counsel for the petitioner and the respondent shall meet and confer to prepare a joint statement setting forth the parties' positions regarding:
  - (1) The status of any claims the respondent identifies as procedurally defaulted, and the appropriate procedure for addressing those claims;
  - (2) The scheduling of motions for any evidentiary hearings; and
  - (3) The scheduling of any other pleadings or proceedings necessary for resolving the petition, including motions for summary judgment.
- (f) **Filing of Joint Statement.** No later than seven (7) days prior to the case management conference, counsel for the petitioner and the respondent shall file the joint statement for the Case Management Conference.
- (g) **Case Management Conference.** At the Case Management Conference, the Court shall set a schedule for: (1) resolving any issues of procedural default; (2) motions for evidentiary hearings; and (3) any other pleadings or proceedings necessary for resolving the petition, including motions for summary judgment.
- (h) **Discovery.** No discovery pursuant to Fed. R. Civ. P. 26-37 shall be had without leave of the Court. Any permitted discovery shall comply with the Federal Rules of Civil Procedure and the Local Rules of this Court.
- (i) **Request for Evidentiary Hearing.** A request for an evidentiary hearing shall include:
  - (1) A specification of which issues require a hearing;
  - (2) A discussion of the legal basis for holding a hearing on each issue; and

- (3) A summary of the evidence the party proposes to offer.
- (j) **Evidentiary Hearing.** The Court will determine whether an evidentiary hearing will be held. If an evidentiary hearing is held and any party orders a transcript, the transcript will be prepared and immediately provided to the petitioner and to the respondent for use in such briefing and argument as the Court may order.
- (k) **Oral Argument.** If no evidentiary hearing is held, the Court will determine whether to set the matter for oral argument.

**2254-30. Notification of Rulings**

The Clerk will immediately notify the warden of San Quentin Prison and the Attorney General whenever relief is granted on a petition. The Clerk will immediately notify the Clerk of the United States Court of Appeals for the Ninth Circuit by telephone of (i) the issuance of a final order denying or dismissing a petition without a certificate of probable cause or appealability, or (ii) the denial of a stay of execution.

**2254-31. Transmission of Record**

- (a) **When Petition Denied and Certificate of Appealability Denied.** When the petitioner files a notice of appeal from an order denying habeas relief, and the District Court has denied a certificate of probable cause or appealability and denied a stay of execution, the Clerk will transmit to the Court of Appeals immediately:
  - (1) A copy of the notice of appeal;
  - (2) A copy of the order(s) denying the certificate and stay;
  - (3) A copy of the docket sheet; and
  - (4) The entire record of proceedings in the District Court, including any lodged state court records.
- (b) **When Petition Denied and Certificate of Appealability Granted.** When the petitioner files a notice of appeal from an order denying habeas relief, and the District Court has granted a certificate of probable cause or appealability and granted a stay of execution, the Clerk shall retain the record of proceedings until requested by the Court of Appeals to transmit it. The Clerk will transmit to the Court of Appeals immediately:
  - (1) A copy of the notice of appeal;
  - (2) A copy of the order(s) granting the certificate and stay; and
  - (3) A copy of the docket sheet.
- (c) **When Petition Granted.** When the respondent files a notice of appeal from an order granting habeas relief, the Clerk shall retain the record of proceedings until requested by the Court of Appeals to transmit it. The Clerk shall transmit to the Court of Appeals immediately:
  - (1) A copy of the notice of appeal; and
  - (2) A copy of the docket sheet.