

SPECIAL REQUIREMENTS FOR HABEAS CORPUS PETITIONS
INVOLVING THE DEATH PENALTY

(a) **Applicability.** This rule governs the procedures for a petition for a writ of habeas corpus filed pursuant to under 28 U.S.C. § 2254 ("habeas petition") in which a petitioner seeks relief from a judgment imposing the penalty of death. The application of this rule may be modified by the judge to whom the petition is assigned. These rules supplement the Rules Governing Section 2254 Cases and do not alter or supplant those rules.

(b) **Initiation of Proceedings; Appointment of Counsel; Request for a Stay of Execution.** After the Idaho Supreme Court has decided the consolidated direct appeal/post-conviction appeal and the United States Supreme Court has acted on any petition for writ of certiorari, a petitioner may seek relief from a state court conviction and capital sentence in this court by filing a habeas petition.

(1) Preliminary Steps. A petitioner may take the following steps preliminary to filing a habeas petition by filing an original and a copy of the following; however, none of the following takes the place of or 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 ruling regarding the same judgment of conviction and the reasons for denial of relief;

(ii) information about when the petition 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.

(2) Appointment of Counsel

(A) Requirement of Counsel. Each capital case petitioner must be represented by counsel unless the petitioner has clearly elected to proceed pro se and the Court is satisfied, after a hearing, that petitioner's election is knowing and voluntary. Unless petitioner is represented by retained counsel, counsel must be appointed in every such case at the earliest practicable time.

(B) Qualifications of Appointed Counsel. Upon application by petitioner for appointment of counsel, the Court must appoint the Capital Habeas Unit of the Federal Defender Services of Idaho as lead counsel. Upon request of the Capital Habeas Unit, the Court must also appoint an attorney from the Criminal Justice Act (CJA) Capital Habeas Panel as second counsel. In the event the Capital Habeas Unit is unable to provide representation because of conflicts, existing workload, or other special factors, it must recommend the attorneys from the CJA Capital Habeas Panel to be appointed. The Court will either accept the recommendation or select other attorneys from the CJA Capital Habeas Panel.

(3) 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 of the Idaho Maximum Security Institution; 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 he or she or a designated deputy attorney general can be reached 24 hours a day.

(c) **Initial Review of Petition or Preliminary Filings by Court.** Upon receipt of the petition or

preliminary filings, the Clerk of Court will immediately assign the matter to a district judge. When a petitioner applies for the appointment of counsel or files other preliminary filings before filing a habeas petition, the matter will be assigned to a district judge in the same manner that a petition would be assigned and will be given a civil case number. As soon as reasonably practicable, the district judge will review the petition or 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; and (4) grant or deny an application for the appointment of counsel.

(d) **Case Management Conferences; CJA Budgeting.** After a capital habeas corpus proceeding has been assigned to a judge and counsel has been appointed, the assigned judge may conduct an initial case management conference to discuss anticipated proceedings in the case. In all cases where payment for attorneys' fees and investigative and expert expenses are requested under the CJA, the petitioner's counsel will be required to prepare phased budgets for submission to the court at the beginning of each of the following applicable phases: Phase I, Appointment of Counsel, Record Review and Preliminary Investigation; Phase II, Petition Preparation or Amendment; Phase III, Procedural Defenses, Discovery related to Procedural Defenses, Motion for Evidentiary Hearing, and Briefing of Claims; and Phase IV, Discovery related to Merits, Evidentiary Hearing, and Final Briefing. These phases may or may not proceed chronologically in the above order, depending on the particular case management order. After 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.

(e) **Procedures for Considering the Petition for Writ of Habeas Corpus.** The following schedule and procedures apply, subject to modification at the discretion of the assigned district judge.

- (1) Petition for Writ of Habeas Corpus. Petitioner must file a habeas petition.
- (2) State Court Record. As soon as practicable and no later than when the respondent files 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):
 - (A) Transcripts of the state court proceedings.
 - (B) State clerk's records to the state court proceedings.
 - (C) Briefs filed on consolidated appeal to the Idaho Supreme Court and on any petition for rehearing.
 - (D) All motions, briefs and orders in any post-conviction relief proceeding.
 - (E) An index to all materials described in paragraphs (A) through (D) above.

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

If counsel for the petitioner finds that the respondent has not complied with these requirements, or if the petitioner does not have copies of all of the documents, the petitioner must immediately file a notice of noncompliance or request for copies. Thereafter, the respondent must provide copies of any missing documents to the petitioner.

- (3) Case Management Order. With or without briefing and after an initial case management conference, the Court will issue an order on the most efficient case management plan, including:
 - (A) Whether the properly-exhausted claims on the merits should be decided first;
 - (B) Whether certain procedural defenses should be heard via a pre-answer motion;
 - (C) Whether discovery on procedural issues is warranted;
 - (D) Whether the entire case should be stayed pending ongoing state proceedings; and
 - (E) Whether the petitioner should be required to proceed on the properly-exhausted

claims while exhausting other claims in state court.

(4) Procedural Defenses. Pre-Answer Motion to Dismiss; Discovery or Evidentiary Hearing on Procedural Issues. The court may authorize the respondent to file a pre-answer motion to dismiss, alleging that some or all of the petitioner's claims are barred by a failure to exhaust, a state procedural bar, the statute of limitations, or *Teague v. Lane*. If authorized, such motions, responses, and replies must be filed within the time frame set by the court.

(A) A party must file any motion for discovery on procedural issues no later than 60 days after a motion to dismiss is filed. Any motion for discovery must briefly outline the particular discovery needed, for which particular claims or defenses, and explain how the discovery will aid the claims or defenses. If the court grants a motion for discovery, it will issue an order modifying the briefing schedule accordingly.

(B) A party must file any motion for an evidentiary hearing on procedural issues within 150 days after the motion to dismiss is filed. The Court will issue a ruling that may set a hearing, deny a hearing, or defer deciding whether to hold a hearing until a later date.

(5) Answer. In the case management order, the court will set a deadline for a response to the habeas petition. If the order authorizes a pre-answer motion to dismiss, the court will set a deadline for the answer when it issues an order on that motion. The answer must contain a brief setting forth the factual and legal basis of the grounds for dismissal or denial of each claim on the merits.

(6) Reply; Merits-Based Motions for Discovery or Evidentiary Hearing. The Court will set a deadline for the petitioner's reply (formerly called a traverse). A party requesting discovery or an evidentiary hearing related to the merits of any claim or defense must file a motion to that effect within 90 days after the answer is filed. Any motion for merits-based discovery must briefly outline any particular discovery needed for each particular claim or defense and explain how the discovery will aid the claim or defense. Any motion for a merits-based evidentiary hearing must specify which factual issues the party believes require an evidentiary hearing. Any motion for merits-based discovery or evidentiary hearing must prove entitlement to the relief requested under 28 U.S.C. § 2254(d) and (e), Rule 6 of the Rules Governing Section 2254 Cases, *Cullen v. Pinholster*, 563 U.S. 170 (2011), or any other applicable standard.

(7) Evidentiary Hearing.

(A) If the court determines that an evidentiary hearing is necessary and permissible, as to procedural issues or as to the merits of the petitioner's claims (or both), it will set a schedule for the hearing, order preparation of the transcript after hearing, and provide copies of the transcript to the parties. In its discretion, the court may order post-hearing briefing and argument.

(B) If the court determines that an evidentiary hearing is not necessary or permissible, as to procedural issues or as to the merits of the petitioner's claims (or both), it may take the matter under advisement on the pleadings or order further briefing.

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

The Clerk of Court will immediately notify the counsel for the petitioner, the Idaho Attorney General, the warden of the Idaho Maximum Security Institution, and the Clerk of the Idaho Supreme Court of the court's decision or ruling on the merits of the petition.

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:

- (1) any final order denying or dismissing a petition without a certificate of appealability; or
- (2) any order denying or dissolving a stay of execution.

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

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.

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

(1) Caption. Every pleading, motion, or other application for an order from the court which is filed in these matters must contain a notation in the caption which indicates that it is a capital case. The notation "CAPITAL CASE" must appear in bold, capital letters to the right of the case entitlement 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,

vs.

A.M. ARAVE,

Respondent

Case No.: _____

CAPITAL CASE

APPLICATION FOR STAY OF
EXECUTION

(2) Motion Practice. Unless this rule or an order of the court 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; 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) 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 100 pages; reply briefs may be no longer than 50 pages.

(C) No brief may be filed unless permitted by an applicable 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, in its discretion, orders oral argument on any issue, claim, or defense.

RELATED AUTHORITY

28 U.S.C. § 2254
Rules Governing Section 2254 Cases in U.S. District Courts
Idaho Code Appellate Rule 25(a)(7) (1987)
