

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In the Matter of) GENERAL ORDER NO. 10-09
)
THE ADOPTION OF NEW AND)
REVISED LOCAL RULES 83-17)
et seq., SPECIAL REQUIREMENTS)
FOR HABEAS CORPUS)
PETITIONS INVOLVING THE)
DEATH PENALTY)
_____)

The Court has adopted the attached selected new and revised Local Rules 83-17 et seq., Special Requirements for Habeas Corpus Petitions Involving the Death Penalty, effective November 1, 2010. These rules shall govern in all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

Dated: November 1, 2010

L.R. 83-17.2 Timely Notice of Execution Dates From California Attorney General.

Whenever an execution date is set for a petitioner who was convicted and sentenced in a county within the jurisdiction of the Central District of California, the California Attorney General must send notice to the Clerk of Court and any other recipients designated by the Clerk of Court, within seven (7) days.

L.R. 83-17.4 Appointment of Counsel.

(a) Initial Appointment of Counsel – Upon receipt of the habeas corpus petition or the initial request for appointment of counsel, unless the petition is patently frivolous, or the request for appointment of counsel is clearly premature, the Federal Public Defender’s Office (“FPDO”) will be appointed. If the FPDO has already been assigned the maximum number of cases, as determined by the Defender Services Committee of the United States Judicial Conference, and the FPDO has not agreed to an excess appointment, or otherwise has a conflict or cannot accept the appointment, lead and second counsel must be selected and appointed from a panel of attorneys, qualified for appointment in capital habeas corpus cases. In exceptional circumstances, the Court may appoint an attorney who is not a member of the panel.

(b) Subsequent Appointment of Second Counsel – If second counsel is not appointed at the time lead counsel is appointed, and lead counsel recommends that second counsel be appointed, lead counsel must apply to the assigned judge for appointment of a second counsel.

(c) Substitution of First or Second Counsel – If the assigned judge, in his or her discretion, determines that the substitution of counsel is necessary, section (a) applies.

L.R. 83-17.6 Stays of Execution.

(a) Stay Pending Final Disposition – Upon the filing of a habeas corpus petition, unless the petition is patently frivolous or clearly premature, the Court may issue a stay of execution pending final disposition of the petition in the district court.

(b) Stay for the Request for Appointment of Counsel - Upon the filing of a request for appointment of counsel, unless the request is patently frivolous or clearly premature, the Court must issue a temporary stay of execution. The stay must terminate not later than 90 days after counsel is appointed or the request for appointment of counsel is withdrawn or denied.

(c) Stay Pending Appeal – If the petition is denied and a certificate of appealability is issued, the Court may grant a stay of execution which will continue in effect until the Court of Appeals acts upon the appeal or the order of stay.

(d) Notice of Stay – Upon the granting of any stay of execution, the Clerk of

the Court must immediately notify the Custodian of the prisoner and the California Attorney General. The California Attorney General must assure that the Clerk of the Court has a twenty-four (24) hour telephone number to the Custodian.

L.R. 83-17.7(c) Procedures for Considering the Petition.

(c)(i) In the interest of expediting habeas death penalty cases, it is the policy of the Court to entertain unexhausted claims if the respondent expressly waives the exhaustion issue. However, if the respondent declines to waive the exhaustion issue with respect to any or all claims in the petition, prior to filing a motion, counsel for respondent must make a good faith effort to confer with counsel for petitioner regarding the exhausted status of each such claim. Unless relieved by written order of the Court upon good cause shown, counsel for petitioner must confer with counsel for respondent within seven (7) days after service of a letter requesting such conference. The respondent's letter must identify each claim that respondent contends is unexhausted, specify the basis for asserting that the claim is unexhausted, and provide any legal authority that respondent contends is dispositive of the exhausted status of that claim.

(c)(ii) If, after the meeting, the parties continue to dispute the exhausted status of one or more claims, the respondent must file an appropriate motion no later than twenty-eight (28) days after service of the petition. In connection with any motion relating to exhaustion disputes, the parties must file a joint statement indicating (1) which claims the parties agree have been fairly presented to the state supreme court, (2) which claims the parties agree have not been fairly presented to the state supreme court, and (3) on which claims the parties disagree whether the claim has been fairly presented to the state supreme court. For each claim whose exhaustion status is in dispute, the petitioner must cite the specific pages of the state court record that petitioner contends fairly presented the claim to the state supreme court.

L.R. 83-17.7(d) Procedures for Considering the Petition.

(d) If respondent does not intend to challenge the exhausted status of any claim in the petition, or is willing to expressly waive exhaustion as to all such claims, respondent must file an answer within twenty-eight (28) days from the date of service of the petition. Respondent must include in the answer the matters defined in Rule 5 of the Rules Governing § 2254 Cases and must attach any other relevant documents not already lodged or filed. An answer that exceeds ten (10) pages in length, excluding exhibits, must be accompanied by an indexed table of contents setting forth the headings or subheadings contained in the body thereof.

L.R. 83-17.7(e) Procedures for Considering the Petition.

(e) Unless otherwise ordered by the Court, within twenty-eight (28) days after respondent has filed the answer, petitioner may file a reply to the respondent's answer.

L.R. 83-17.7(g) Procedures for Considering the Petition.

(g) Any request for an evidentiary hearing by either party must be made within twenty-eight (28) days from the filing of the reply to the respondent's answer, or within twenty-eight (28) days from the expiration of the time for filing the reply. The request must include a specification of the factual issues and the legal reasoning that require a hearing and a summary of the evidence of each claim the movant proposes to offer at the hearing. Any opposition must be filed within twenty-one (21) days after the request for an evidentiary hearing was filed. A reply to the opposition must be filed within fourteen (14) days after the opposition was filed.

L.R. 83-17.8 Evidentiary Hearing Transcript.

If an evidentiary hearing is held, the proceedings must be recorded and a transcript of the proceedings must be prepared. The parties must agree to an equitable division of the cost and which party will order the transcript. In the absence of agreement, the parties may apply to the Court for an order allocating the cost.

L.R. 83-17.9 Budgeting Capital Habeas Cases. [NEW]

(a) Budgeting Required – In all cases where attorneys' fees and investigative and expert fees and expenses are reimbursed pursuant to 18 U.S.C. § 3599, petitioner's counsel is required to prepare and submit to the Court a budget for each phase of the proceedings. The Court may schedule one or more ex parte conferences with petitioner's counsel to implement the budgeting process.

(b) Filing of Budget Related Documents – Once the Court orders that a proper showing of the need for confidentiality of budget related documents has been made, the petitioner may file future budget related documents under seal without further approval by the Court. The title page for budget related documents, filed after the Court has so ordered, must contain the following language: "To Be Filed Under Seal Pursuant to Local Rule 79-5.1."

L.R. 83-17.10 Rulings. [RENUMBERED] The Clerk of Court must immediately notify the Custodian of the prisoner and the California Attorney General whenever relief is granted on a petition.

The Clerk of the Court must immediately notify the Clerk of the United States Court of Appeals for the Ninth Circuit by telephone of:

(a) the issuance of a final order denying or dismissing a petition without a certificate of appealability, or

(b) the denial of a stay of execution.

When a notice of appeal is filed, and if the certificate of appealability was denied in full, the Clerk of the Court must immediately transmit the record to the Court of Appeals. In all other instances the record must only be transmitted upon a request from the Court of Appeals.

After the issuance of the mandate of a reviewing court that results in the denial with prejudice of all habeas relief, and if the Court so orders, the respondent must lodge a complete copy of the state court record and all other items identified in L.R. 83-17.7 by the date set by the Court.