

PART V - LOCAL RULES OF SPECIAL PROCEEDINGS AND APPEALS

LSR 1-1. MOTIONS FOR LEAVE TO PROCEED IN *FORMA PAUPERIS*; APPLICATION STANDARD FORM.

Any person, who is unable to prepay the fees in a civil case, may apply to the Court for authority to proceed in *forma pauperis*. The application shall be made on the form provided by the Court and shall include a financial affidavit disclosing the applicant's income, assets, expenses and liabilities.

LSR 1-2. INMATES: ADDITIONAL REQUIREMENTS.

An application to proceed in *forma pauperis* received from an incarcerated or institutionalized person shall be accompanied by a certificate from the institution certifying the amount of funds currently held in the applicant's trust account at the institution and the net deposits in the applicant's account for the six (6) months preceding the submission of the application. If the applicant has been at the institution for less than six (6) months, the certificate shall show the account's activity for such period.

LSR 1-3. STANDARD FOR DENIAL OF IN *FORMA PAUPERIS* MOTION.

- (a) A motion to proceed in *forma pauperis* may be denied, in the absence of exceptional circumstances, if the applicant's assets exceed the amount set by order of the Court.
- (b) If the applicant has money or assets in an amount less than the minimum set by the Court pursuant to this Rule, the Court may require the payment of a partial filing fee.
- (c) If a partial filing fee is required, the applicant may, in the discretion of the Court, be granted additional time to pay the filing fee. Installment payments will not be accepted. In a civil rights action the applicant must pay the full partial filing fee before the Court will order service of process. If the case is a petition or motion for post-conviction relief, the applicant shall be allowed to proceed in *forma pauperis* during the interim period before the partial filing fee is paid. The failure of the applicant to pay the fee before the expiration of the time granted shall be cause for dismissal of the case.

LSR 1-4. APPLICANT NEED ONLY FILE ORIGINAL COMPLAINT, PETITION, OR MOTION.

A plaintiff seeking in *forma pauperis* status shall submit to the Clerk only the original of any petition or motion for post-conviction relief or civil rights complaint on forms approved by the Court. Upon filing, the Clerk shall make copies of the petition or motion for post-conviction relief or civil rights complaint, and the motion for leave to proceed in *forma pauperis*, in order to provide a file-stamped copy of each document to the petitioner, movant or plaintiff and all respondents or defendants. No answer or responsive pleading is required unless ordered by the Court.

LSR 1-5. REVOCATION OF LEAVE TO PROCEED IN *FORMA PAUPERIS*.

The Court may, either on the motion of a party or *sua sponte*, after affording an opportunity to be heard, revoke leave to proceed in *forma pauperis* if the party to whom leave was granted becomes

capable of paying the complete filing fee or the applicant has willfully misstated information in the motion and affidavit for leave to proceed in *forma pauperis*.

LSR 1-7. ABUSE OF PRIVILEGE TO PROCEED IN FORMA PAUPERIS.

The Court may limit an applicant's use of in *forma pauperis* if the Court finds that the applicant has abused the privilege to so proceed.

LSR 1-8. EXPENSES OF LITIGATION.

The granting of an application to proceed in *forma pauperis* does not waive the applicant's responsibility to pay the expenses of litigation which are not covered by 28 U.S.C. § 1915.

LSR 2-1. CIVIL RIGHTS COMPLAINT PURSUANT TO 42 U.S.C. § 1983; PRO SE PLAINTIFF TO USE STANDARD FORM.

A civil rights complaint filed by a person who is not represented by counsel shall be on the form provided by this Court.

LSR 2-2. CHANGE OF ADDRESS.

The plaintiff shall immediately file with the Court written notification of any change of address. The notification must include proof of service upon each opposing party or the party's attorney. Failure to comply with this Rule may result in dismissal of the action with prejudice.

LSR 3-1. PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. §§ 2241 AND 2254.

A petition for writ of *habeas corpus*, filed by a person who is not represented by an attorney, shall be on the form provided by this Court. If a petition for writ of *habeas corpus* is filed by an attorney on behalf of a person seeking relief, it shall be on the form supplied by the Court or shall contain all of the information required in the model form for use in applications for *habeas corpus* under 28 U.S.C. § 2254 in the Appendix of Forms to the Rules Governing Section 2254 Cases in the United States District Courts.

LSR 3-2. STATEMENT OF AVAILABLE GROUNDS FOR RELIEF.

A petition for writ of *habeas corpus* must include all grounds for relief which are available to the petitioner. A second or successive petition may be dismissed if the judge finds that:

- (a) It fails to allege new or different grounds for relief and a prior determination was on the merits; or,
- (b) If new and different grounds are alleged and the judge finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ.

LSR 4-1. MOTION ATTACKING SENTENCE PURSUANT TO 28 U.S.C. § 2255; MOTION TO CORRECT OR REDUCE SENTENCE PURSUANT TO Fed. R. Crim. P. 35; PETITION FORM.

A motion to vacate sentence pursuant to 28 U.S.C. § 2255 or a motion to correct or reduce sentence pursuant to Fed. R. Crim. P. 35, filed by a person who is not represented by an attorney, shall be on the form provided by this Court. If the motion for post-conviction relief is filed by an attorney, it shall be on the form supplied by the Court or shall contain all of the information required in the model form for motions under 28 U.S.C. § 2255 in the Appendix of Forms to Rules Governing Section 2255 Proceedings in the United States District Courts.

LSR 4-2. STATEMENT OF ALL AVAILABLE GROUNDS FOR RELIEF.

A motion for post-conviction relief must include all grounds for relief which are available to the movant. A second or successive motion may be dismissed if the judge finds that:

- (a) It fails to allege new or different grounds for relief and a prior determination was on the merits; or,
- (b) If new and different grounds are alleged and the judge finds that the failure of the movant to assert those grounds in a prior motion constituted an abuse of the motion.

LSR 5-1. DEATH PENALTY CASE; CAPTION; FACSIMILE FILING.

- (a) In a death penalty case, the caption to any motion for leave to proceed *in forma pauperis*, petition for writ of *habeas corpus* or motion for post conviction relief must include below the title of the document the following caption: "DEATH PENALTY CASE."
- (b) Papers may be filed with the Clerk by means of telephone facsimile machine ("fax") only in cases involving the death penalty as hereinafter provided:
 - (1) Documents that relate to stays of execution in death penalty cases may be transmitted directly to the fax machines in the Clerk's offices in Reno or Las Vegas for filing by the Clerk when counsel considers this will serve the interests of their clients;
 - (2) Counsel must notify the Clerk before transmitting any document by fax. On receiving the transmitted document, the Clerk shall make the number of copies required and file the photocopies. Any document transmitted directly to the Court by fax must show service on all other parties by fax or hand delivery; and,
 - (3) When a document has been transmitted by fax and filed pursuant to this Rule, counsel must file the original document and accompanying proof of service with the Clerk within seven (7) days of the date of the fax transmission.

LSR 5-2. ADDITIONAL INFORMATION: SCHEDULED EXECUTION DATE.

In a death penalty case, the date of any scheduled execution must be included at the beginning of any motion for leave to proceed *in forma pauperis*, petition for writ of *habeas corpus* or motion for post-conviction relief.

LSR 5-3. EVIDENTIARY HEARING: TRANSCRIPT.

In a death penalty case, the Court shall order a transcript of any evidentiary hearing for purposes of appellate review.

LSR 6-1. APPEAL BOND; NINTH CIRCUIT OR OTHER APPELLATE COURTS.

The appellant will not be required to file a bond or provide other security to ensure payment of costs on appeal in a civil case unless the Court, on a motion or *sua sponte*, orders such bond or security and fixes the amount thereof.

LSR 6-2. DESIGNATION AND PREPARATION OF REPORTER'S AND RECORDER'S TRANSCRIPTS.

It shall be the responsibility of the party filing the notice of appeal to identify by name the court reporter or recorder (or the tape number when proceedings before the magistrate judge are taped without the presence of a reporter or recorder) when designating transcripts on appeal. If more than one (1) court reporter or recorder reported matters designated, a separate transcript designation and ordering form must be completed for each court reporter or recorder and each such form shall specify which portions of the designated transcript a particular court reporter or recorder shall be responsible for transcribing. The Clerk shall arrange for the transcription of any designated tapes of a magistrate judge's proceedings.

LSR 6-3. CLERK'S RECORD ON APPEAL, DESIGNATION AND COSTS OF REPRODUCTION.

- (a) The Court has delegated to the Clerk of Court the authority to determine when the original Clerk's record or any part thereof is required to be kept for use in the District Court. When the Clerk of Court determines that some or all of the record will be retained, the Clerk will provide notice to all parties, and will provide the parties with an opportunity to designate which parts of the record should be reproduced for transmission to the Court of Appeals.
- (b) The appellant will pay the costs of reproducing the designated documents, unless:
 - (1) The appellant is authorized to appeal *in forma pauperis*; or,
 - (2) A cross appeal is filed and the Court transmits a "joint" record. The cross of reproduction shall be borne equally by the appellant(s) and cross appellant(s).

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