

**PROPOSED REVISIONS TO  
PART V—SPECIAL PROCEEDINGS AND APPEALS  
LOCAL RULES OF PRACTICE  
UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

2017

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

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

**LSR 1-2. ~~INMATES: ADDITIONAL REQUIREMENTS FOR APPLICATIONS TO  
PROCEED IN FORMA PAUPERIS~~**

When submitting an application to proceed *in forma pauperis*, ~~the an~~ incarcerated or institutionalized person must simultaneously submit 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 months prior to the date of submission of the application. If the applicant has been at the institution for fewer than six months, the certificate must show the account's activity for this shortened period.

**LSR 1-3. ~~STANDARD FOR DENIAL GRANT OR DENIAL OF APPLICATION TO  
PROCEED 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 court order.~~

~~(b) — If the applicant has money or assets in an amount less than the minimum set by the court under this rule, the court may require the payment of a partial filing fee.~~

~~(a) — The court may grant or deny an application to proceed *in forma pauperis*, or it may impose a partial filing fee if the applicant has money or assets.~~

~~(eb) — If a partial filing fee is required, the court may grant additional time to pay it. Installment payments of a partial filing fee 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 must be allowed to proceed *in forma pauperis* during the interim period before the partial filing fee is paid. An applicant's failure to pay the fee before the expiration of the time granted will be cause for dismissal of the case.

**LSR 1-4. APPLICANT FOR FORMA PAUPERIS STATUS NEED ONLY FILE ORIGINAL COMPLAINT, PETITION, OR MOTION**

A person plaintiff seeking applying for forma pauperis status need only must submit to the clerk only the original of any petition or motion for post-conviction relief or civil rights, complaint, or motion under 28 U.S.C. § 2255, along with the application to proceed in forma pauperis, on forms approved by the court. 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 application for leave to proceed in forma pauperis or affidavit, or has otherwise abused the privilege of proceeding in forma pauperis.

**~~LSR 1-6. ABUSE OF PRIVILEGE TO PROCEED *IN FORMA PAUPERIS*~~**

~~—————The court may limit an applicant's use of *in forma pauperis* status if the court finds that the applicant has abused the privilege to proceed in this manner.~~

**LSR ~~1-71-6~~. EXPENSES OF LITIGATION**

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

**LSR 2-1. PRO SE CIVIL-RIGHTS COMPLAINTS; FORM OF COMPLAINT UNDER 42 U.S.C. § 1983; PRO SE PLAINTIFF MUST USE STANDARD FORM**

A civil-rights complaint filed by a person who is not represented by counsel must be submitted on the form provided by this court.

**~~LSR 2-2. CHANGE OF ADDRESS~~**

~~\_\_\_\_\_ The plaintiff must immediately file with the court written notification of any change of address. The notification must include proof of service on 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. PETITIONS FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. §§ 2241 AND 2254; FORM OF PETITION**

A petition for writ of habeas corpus filed by a person who is not represented by an attorney must be on the form provided by this court. If a petition for writ of habeas corpus under 28 U.S.C. § 2254 is filed by an attorney on behalf of a person seeking relief, it must be on the form supplied by the court or ~~must~~ 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. PETITIONS FOR WRIT OF HABEAS CORPUS; PAGE LIMITS**

(a) The page limits imposed by LR 7-3 do not apply in cases in which the petitioner is sentenced to death.

(b) In cases in which the petitioner is not sentenced to death, there is no page limit with respect to habeas corpus petitions, answers, and replies to answers. In such cases, motions, responses to motions, and replies in support of motions are limited to 30 pages, excluding exhibits.

(c) The court looks with disfavor on motions to exceed page limits, so permission to do so will not be routinely granted. A motion to file a document exceeding the page limit in this rule will be granted only upon a showing of good cause. In a habeas corpus case, a motion for leave to file a document exceeding a page limit may be filed concurrently with, but separately from, the subject document. The subject document, exceeding the page limit, must include a table of contents and a table of authorities. If the court denies the motion, it may order the document stricken from the record, and re-filed in compliance with the page limit, or in compliance with an extended page limit set by the court.

### **LSR 3-3. PETITIONS FOR WRIT OF HABEAS CORPUS; EXHIBITS**

(a) The petitioner may refer, in the petition, to documents that he/she reasonably believes the respondents will be required to file under Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts, without the petitioner having to attach those documents to the petition. The petitioner may not, however, state a claim for habeas corpus relief by incorporating language from a document not attached to the petition; if the petitioner intends to state a claim by incorporation of language from a separate document, that document must be filed with the petition as an exhibit.

(b) The cover sheet for each exhibit need only reference the number or letter of the exhibit; the cover sheet need not include a descriptor of the exhibit.

(c) The court disfavors the filing of duplicate exhibits. When amending a petition, the petitioner need not re-file his/her exhibits, but may refer to exhibits filed previously in the case. A party may, at any time, refer to any exhibits filed in the case by that party or any other party.

(d) The petitioner must number or letter his/her exhibits sequentially throughout the course of the action. Likewise, the respondents must, separately, number or letter their exhibits sequentially throughout the course of the action.

(e) In cases in which the petitioner appears pro se, when referring to an exhibit, the respondents must refer to the exhibit both by reference to the document and page numbering in the electronic filing system and by the exhibit number or letter and the page numbering of the exhibit, such that the reference is meaningful to the pro se petitioner, without access to the electronic case filing system.

#### **LSR 3-4. PETITIONS FOR WRIT OF HABEAS CORPUS; CASE MANAGEMENT**

The court will set the schedule for motions, an answer, a reply, and other proceedings in each case, in a scheduling order developed for the individual case.

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

A petition for writ of habeas corpus must include all grounds for relief that 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) New and different grounds are alleged and the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ.

#### **LSR 3-5. SERVICE BY PRO SE PETITIONERS IN HABEAS CORPUS CASES**

In cases in which the petitioner appears pro se, the petitioner need not serve upon the respondents copies of documents filed in the case after the respondents have appeared. A document filed by a pro se petitioner, after the respondents have appeared, will be considered served on the respondents when electronically filed.

#### **LSR 3-6 SUBSTITUTIONS OF COUNSEL IN HABEAS CORPUS CASES**

(a) In cases in which the respondents are represented by one or more attorneys in the office of the Nevada Attorney General, substitutions of counsel from one attorney in the office of the Nevada Attorney General to another attorney

in that office need not be made by motion or stipulation, as is otherwise required by LR IA 11-6, but must be made by the filing of a notice of the substitution.

(b) In cases in which the petitioner is represented by one or more attorneys in a federal public defender's office, substitutions of counsel from one attorney in the federal public defender's office to another attorney in that office need not be made by motion or stipulation, as is otherwise required by LR IA 11-6, but must be made by the filing of a notice of the substitution.

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

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

**LSR 4-2. SERVICE BY PRO SE MOVANT IN PROCEEDINGS REGARDING MOTIONS UNDER 28 U.S.C. § 2255**

In proceedings regarding a motion under 28 U.S.C. § 2255, in which the movant appears pro se, the movant need not serve upon the respondent copies of documents filed in the case after the respondent has appeared. A document filed in such a case by the pro se movant, after the respondent has appeared, will be considered served on the respondent when electronically filed.

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

~~— A motion for post-conviction relief must include all grounds for relief that 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) — New and different grounds are alleged and the failure of the movant to assert those grounds in a prior motion constituted an abuse of the motion.~~

**LSR 5-1. DEATH PENALTY CASES; CAPTION**

In a death penalty cases, the caption ~~toof~~ any ~~motion application for leave~~ to proceed *in forma pauperis*, petition for writ of habeas corpus, or motion for post-conviction relief must include the following ~~caption~~ below the title of the document: "DEATH PENALTY CASE."

**LSR 5-2. DEATH PENALTY CASES; ADDITIONAL INFORMATION; SCHEDULED EXECUTION DATE**

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

(b) In death penalty cases, if, after the case is initiated, and after the respondents have appeared, the execution of the petitioner is scheduled, the respondents must, within seven days after the scheduling of the execution, file a notice stating the scheduled execution date.

**LSR 5-3. DEATH PENALTY CASES; EVIDENTIARY HEARING; TRANSCRIPT OF EVIDENTIARY HEARING**

In a death penalty case~~s~~, the court must order a transcript of any evidentiary hearing for purposes of appellate review.

**LSR 5-4. DEATH PENALTY CASES; BUDGETING OF APPOINTED COUNSEL**

The Judicial Council of the Ninth Circuit has mandated prospective budgeting of petitioners' counsel in all capital habeas corpus cases in which CJA counsel is appointed. CJA counsel appointed in capital habeas corpus cases in this court will be subject to such budgeting.

**LSR 6-1. APPEALS; 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 a cost bond or security and fixes its amount.

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

The party filing the notice of appeal must identify by name the court reporter or recorder (or the recording number when proceedings before the magistrate judge are recorded without the presence of a reporter or recorder) when designating transcripts on appeal. If more than one court reporter or recorder reported matters designated, an ordering form must be completed for

each court reporter or recorder and each form must specify which portions of the designated transcript a particular court reporter or recorder are responsible for transcribing. The clerk must arrange for the transcription of any designated recordings of a magistrate judge's proceedings.

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

(a) The court has delegated to the Clerk of the Court the authority to determine when the original clerk's record or any part of it is required to be kept for use in the district court. When the clerk determines that some or all of the record will be retained, the clerk will provide notice to all parties and give them 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 costs of reproduction must be borne equally by the appellant(s) and cross appellant(s).

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