

**FILED**  
February 8, 2011  
CLERK, US DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
Y. Williams  
DEPUTY CLERK


**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

**IN RE:** )  
 )  
**ADOPTION OF AMENDED LOCAL** )  
**RULES 133 (Fed. R. Civ. P. 5) and** ) **GENERAL ORDER NO. 504**  
**191 (Fed. R. Civ. P. 81)** )  
\_\_\_\_\_ )

IT IS HEREBY ORDERED that the Judges of the Eastern District of California, after the notice and comment period provided by 28 U.S.C. §2071(b), adopt the attached Local Rule 133 (Fed. R. Civ. P. 5) Filing and Contents of Documents, and Local Rule 191 (Fed. R. Civ. P. 81) Special Requirements for Habeas Corpus Petitions Involving the Death Penalty. These amended local rules shall take effect upon the filing of this general order.

DATED: February 8, 2011

FOR THE COURT:

  
\_\_\_\_\_  
ANTHONY W. ISHII  
Chief United States District Judge

## RULE 133 (Fed. R. Civ. P. 5)

### FILING AND CONTENTS OF DOCUMENTS

**(a) Electronic Filing.** The Eastern District of California is an electronic case management/filing district (CM/ECF). Unless excused by the Court or by the electronic filing procedures set forth in these Rules, attorneys shall file all documents electronically pursuant to those Rules. All complaints, and subsequent motions, pleadings, briefs, exhibits, and all other documents in an action shall be electronically filed except as otherwise provided by these Rules. Pro se parties shall file and serve paper documents as provided in these Rules. After a pro se party files a paper document, the Clerk will transform the paper filing into an electronic record and ultimately discard the paper filing.

#### **(b) Exceptions**

**(1) Attorney Exceptions.** In exceptional circumstances and for specific documents, an attorney may apply for permission to file documents in paper format. See L.R. 133(b)(3). The decision to permit paper filing is in the sole discretion of the assigned Judge or Magistrate Judge. Any request to file paper documents must be made no less than seven (7) days before the date the documents would otherwise be due to be filed. Permission to file paper documents may be revoked at any time. Paper filings will be scanned, and the electronic format will become the official court record unless otherwise ordered by the assigned Judge or Magistrate Judge. The paper filing will ultimately be discarded.

**(2) Pro Se Party Exception.** Any person appearing pro se may **not** utilize electronic filing except with the permission of the assigned Judge or Magistrate Judge. See L.R. 133(b)(3). All pro se parties shall file and serve paper documents as required by applicable Federal Rules of Civil or Criminal Procedure or by these Rules.

**(3) Form of Requests.** Requests to use paper or electronic filing as exceptions from these Rules shall be submitted as stipulations as provided in L.R. 143 or, if a stipulation cannot be had, as written motions setting out an explanation of reasons for the exception. Points and authorities are not required, and no argument or hearing will normally be held. Requests may also be made in scheduling conference and pretrial conference statements when the need can be foreseen.

**(4) Grand Jury Exception.** Grand jury proceedings shall be submitted for filing by the United States Attorney in paper format. These documents will be scanned into .pdf format by the Clerk and, unless authorized to be publicly available, shall be kept under seal. All paper documents shall be returned to the United States Attorney.

**(5) Exception for Certain Other Criminal Documents.** See L.R. 131(h).

**(c) Controlling Procedures.** Whenever, in these Rules, reference is made to filing or service of a document, the reference shall include filing and serving documents electronically in conformity with these Rules. If these Rules require paper filings or service for certain persons or circumstances, then conventional filing and service procedures shall control to that extent.

**(d) Paper Documents**

**(1) Delivery of Paper Documents to the Clerk.** Except as expressly authorized in advance by the Court, all paper documents presented for filing or lodging shall be delivered to the Clerk who will, when appropriate, deliver the documents to the Judge or Magistrate Judge after docketing. Original documents to be filed or lodged shall not be mailed to chambers. If a particular document is to be brought to the immediate attention of the Judge or Magistrate Judge assigned to the action, a copy may be mailed or otherwise delivered to the chambers, but the original shall be presented to the Clerk. See Fed. R. Civ. P. 5; L.R. 121(b). All documents delivered to the Clerk for filing or lodging in a pending action must be presented to the Clerk at the office where the action is pending. Documents submitted for filing in a pending action at an incorrect office will not be accepted. See L.R. 120, 121.

**(2) Filing of Multiple Copies of Paper Documents.** One additional legible conformed copy of all paper documents to be filed or lodged shall be delivered to the Clerk, for the Court's use, except that in actions to be heard by a District Court composed of three Judges, three additional legible conformed copies of each brief and supporting documents shall be delivered to the Clerk.

**(3) Handling of Improper Paper Documents.** The Clerk will not refuse to file a paper document that is submitted for filing in a pending action at the correct office. The Clerk will scan it and, if improperly filed, notify the Court that the document was filed in an improper format. An order to show cause (OSC) may be issued in appropriate actions regarding an attorney's disregard for the requirement to utilize electronic filing or other violations of these electronic filing procedures. See L.R. 110.

**(e) Facsimile Documents.**

**(1) Facsimile as Original Document.** For purposes of this Rule, the image of the original manual signature appearing on a facsimile (fax) copy filed pursuant to this Rule shall constitute an original signature for all court purposes. The document, which itself may be in whole or in part a fax copy, must be marked "original" before submission to the Clerk for filing.

**(2) Retention of Actual Original.** The originator of the document, or in the case of an affidavit or certification, the presenting attorney or party, must maintain the document containing the original manual signature until the conclusion of the action, including any appeal and remand after appeal. In the event there are multiple signatories to a document, the filing party or attorney shall retain the originally signed document(s).

**(3) Filing of Actual Original.** The Court may require that the document containing the original manual signature be filed.

**(4) No Direct Fax to Clerk or Chambers.** This Rule does not provide for documents to be transmitted via fax directly to the Clerk. Documents directly faxed to the Clerk or to a chambers of the Court will not be filed, lodged, received, returned, or acknowledged, absent an express order of the Court.

**(f) Chambers Courtesy Paper Copies.** A person who electronically files any document (excluding attachments or exhibits) in excess of 25 pages must also provide a courtesy paper copy of the document to the appropriate chambers. A person who electronically files attachments or exhibits that total in excess of 50 pages must also provide a paper courtesy copy of those attachments or exhibits to chambers by delivering it to the Clerk. The courtesy copy must be mailed or otherwise sent to the pertinent courtroom deputy clerk no later than the next business day following the electronic filing. *All courtesy copies shall be prominently labeled as such in capital letters on the face sheet of the courtesy copy.* Chambers have no obligation to retain the courtesy copies. See also L.R. 130(b).

**(g) Caption and Title.** Following the counsel identification and commencing on the eighth line of the initial page of each document (except where additional space is required for identification), there shall appear: (1) the title of the Court, (2) the title of the action, (3) the file number of the action, followed by the initials of the Judge and Magistrate Judge to whom it is currently assigned, (4) a title describing the document, (5) immediately below the case number and title of the document, a statement of the date, time, and name of the Judge or Magistrate Judge for any scheduled hearing, and (6) any other matter required by these Rules.

**(h) Reference to Parties.** If there are more than two parties, including intervenors or amici, references to all parties shall include the name (which may be abbreviated) of the particular party or parties to whom reference is made.

**(i) Citations.**

**(1) Federal Citations.** Citations to federal decisions shall be to the United States Supreme Court Reports, Federal Reports, Federal Supplement, or Federal Rules Decisions, if so reported, and shall indicate the court and year of

decision. Citations to federal statutes shall be to the United States Code, if so codified. Citations to federal administrative rules shall be to the Code of Federal Regulations, if so codified, or to the Federal Register, if published therein.

**(2) State Citations.** Citations to California decisions shall be to the official California Reports. Citations to other state cases shall be to the National Reporter System, showing state and year of decision. Other parallel citations may be added.

**(3) Unreported, Uncodified Citations.**

**(i) General Requirement.** If case, statutory, or regulatory authority is relied upon that has not been reported, published or codified in any of the foregoing references, and that is not available through Westlaw/Lexis, a copy of that authority shall be appended to the brief or other document in which the authority is cited. This requirement shall include, but not be limited to, the Statutes at Large, the Public Laws of the United States, the California Administrative Code, administrative regulations not contained in the Code of Federal Regulations or the Federal Register, and decisions and other matters published in specialized reporter services.

**(ii) Incarcerated Pro Se Parties.** In any action wherein a party is incarcerated and appearing pro se, that party shall be served with a paper copy of the case, statutory, or regulatory authority cited by the filing party that has not been reported as set forth in (1) and (2) above, regardless of its availability in Westlaw/Lexis, as well as a paper copy of that authority otherwise required to be appended in 3(i) above. No copy of the authority available in Westlaw/Lexis shall be filed with the court.

**(j) Depositions.** Depositions shall not be filed through CM/ECF. Before or upon the filing of a document making reference to a deposition, counsel relying on the deposition shall ensure that a courtesy hard copy of the entire deposition so relied upon has been submitted to the Clerk for use in chambers. Alternatively, counsel relying on a deposition may submit an electronic copy of the deposition in lieu of the courtesy paper copy to the mailbox of the Judge or Magistrate Judge and concurrently email or otherwise transmit the deposition to all other parties. Neither hard copy nor electronic copy of the entire deposition will become part of the official record of the action absent order of the Court. Pertinent portions of the deposition intended to become part of the official record shall be submitted as exhibits in support of a motion or otherwise. See L.R. 250.1(a).

**(k) Tables.** Briefs exceeding fifteen (15) pages in length shall be accompanied by an indexed table of contents related to the headings or subheadings and by an indexed table of statutes, rules, ordinances, cases, and other authorities cited.

## RULE 191 (Fed. R. Civ. P. 81)

### SPECIAL REQUIREMENTS FOR HABEAS CORPUS PETITIONS INVOLVING THE DEATH PENALTY

**(a) Applicability.** This Rule shall govern the procedures for a first petition for a writ of habeas corpus filed pursuant to 28 U. S.C. § 2254 in which a petitioner seeks relief from a judgment imposing the penalty of death. A subsequent filing relating to a particular petition may be deemed a first petition under these Rules if the original filing was not dismissed on the merits. The application of this Rule may be modified by the Judge or Magistrate Judge to whom the petition is assigned. See Rule 102(d), *supra*.

**(b) Notices from California Attorney General.** The California Attorney General is requested to notify the Chief Judge and Clerk, within seven (7) days, whenever an execution date is set. The Chief Judge, or a designate, will request a semi-annual report from the Attorney General's Office that includes the following categories: (1) all scheduled executions in California; (2) all capital cases pending on direct appeal before the California Supreme Court; (3) all capital cases pending before the California Supreme Court on habeas corpus; (4) all capital cases affirmed by the California Supreme Court on direct appeal since the last report; (5) all capital cases denied by the California Supreme Court on habeas corpus since the last report; and (6) until December 31, 2010, all capital cases affirmed on direct appeal by the California Supreme Court.

**(c) Attorney Representation.** Each indigent petitioner shall be represented by an attorney unless petitioner has clearly elected to proceed pro se. In the event a petitioner seeks to proceed pro se, the Court will conduct a hearing to determine whether the petitioner's election is appropriate under applicable legal standards. Unless petitioner is represented by a retained attorney, an attorney shall be appointed in every case as soon as possible. A Selection Board appointed by the Chief Judge will certify attorneys qualified for appointment in death penalty cases. The Selection Board consists of a lawyer representative from: (1) The Capital Habeas Unit of the Office of the Federal Defender; (2) the California Appellate Project; (3) the Habeas Corpus Resource Center; (4) the State Public Defender; and (5) a member of the State Bar. If the Selection Board agrees, preference will be given to counsel who represented petitioner on state habeas corpus, except when state habeas counsel also actively represented petitioner on direct appeal. Appointment and compensation of a second attorney shall be governed by Section 2.11 of Volume VII of the Guide to Judiciary Policies and Procedures, Appointment of Counsel in Criminal Cases. Having appointed counsel to represent the petitioner, the Court generally will not consider pro se documents about the presentation of his or her case. However, the Court generally will consider pro se motions concerning petitioner's representation by appointed counsel.

**(d) Budgeting and Case Management.** The Judicial Council of the Ninth Circuit has mandated up-front budgeting in all pending capital habeas cases in which CJA counsel have been appointed. To assist in the budgeting and case management process, the Judicial Council routinely publishes updates of a CJA Capital Habeas Costs Policy. The Costs Policy is posted on the public internet site for the Eastern District of California, both the Sacramento and Fresno Divisions.

**(e) Filing.** Petitions shall be filed in accordance with Local Rule 190. All initial filings, whether a petition, request for stay and appointment of counsel, or other document, (1) shall state whether 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 given for denial of relief; and (2) shall set forth any scheduled execution date. All filings shall contain the wording in full caps and underscored "DEATH PENALTY CASE" directly under the case number. No filing fee is required.

**(f) Transfer of Venue.** Subject to the provisions of 28 U.S.C. § 2241(d), it is the policy of this Court that a petition should be heard in the District in which petitioner was convicted rather than in the District of petitioner's present confinement. If an order for the transfer of venue is made, the Judge may order a stay of execution to continue until such time as the transferee court acts upon the petition or the order of stay. All actions shall be commenced in accordance with Local Rule 120.

**(g) Stays of Execution**

**(1) Temporary Stay for Appointment of an Attorney.** When the attorney in state court proceedings withdraws at the conclusion of the state court proceedings or is otherwise not available or qualified to proceed, an indigent petitioner acting pro se, or a member of the Selection Board acting on petitioner's behalf, may file an application for appointment of an attorney and for a temporary stay of execution. Upon the filing of this application, the Court may, in its discretion, issue a temporary stay of execution and refer the case to the Selection Board for recommendation of counsel. The temporary stay will remain in effect until ninety (90) days after counsel is appointed.

**(2) Stay Pending Final Disposition.** Upon the filing of a habeas corpus petition, unless the petition is patently frivolous, the Court may, in its discretion, issue a stay of execution pending final disposition of the matter. When an execution date is set and a non-frivolous petition is pending, the Court will issue a stay of execution.

**(3) Stay Pending Appeal.** If the petition is denied, the Court will consider an application for a stay of execution to continue in effect until the Court of Appeals has the opportunity to issue a stay.

**(h) Procedures for Considering the Petition.** Absent summary dismissal of the petition under Rule 4 of the Rules Governing § 2254 cases, the following schedule and procedures shall apply subject to modification by the Court. Requests for enlargement of any time period in this Rule shall comply with the applicable Local Rules of the Court. See L.R. 144.

(1) Respondent shall as soon as possible, but in any event on or before forty-five (45) days from the date of service of the order appointing counsel, lodge with the Clerk the following: (A) transcripts of the state trial court proceedings; (B) appellant's and respondent's briefs on direct appeal to the California Supreme Court, and the opinion or orders of that Court; and (C) petitioner's and respondent's briefs in any state court habeas corpus proceedings, and all opinions, orders and transcripts of such proceedings. Lodged materials are to be marked and numbered so that they can be uniformly cited. Respondent shall file an index of the lodged materials listed above. If any items identified in paragraphs (A) through (C) above are not available, respondent shall state when, if at all, such missing material can be filed.

(2) If counsel for petitioner claims that respondent has not complied with paragraph (1), or if counsel for petitioner does not have copies of all the documents identified in the filed index of lodged documents, counsel for petitioner shall file a notice to that effect with the Court. Copies of any missing documents will be provided to counsel for petitioner by the Court.

(3) These state court records will be returned to the respondent when all federal proceedings are complete, or if the respondent and the Court agree, the records will be discarded by the Court.

(4) The petition shall conform to the requirements of Rule 2 of the Rules Governing § 2254 Cases. The answer and any traverse shall conform to the requirements of Rule 5 of the Rules Governing § 2254 Cases.

(5) Formal discovery requires leave of the Court. See Rule 6 of the Rules Governing § 2254 Cases. Investigation, or informal discovery between the parties by agreement, does not require leave of the Court.

(6) The Court will order an answer, merits briefing, and briefing of a motion for an evidentiary hearing according to a case management plan developed for each individual case.

**(i) Evidentiary Hearing.** If an evidentiary hearing is held, the parties may request the preparation of a transcript of the hearing, to be provided to petitioner and respondent for use in briefing and post-hearing argument.

**(j) Final Dispositive Orders.** Consistent with Rule 11 of the Rules Governing § 2254 Cases, and unless further input is solicited from the parties, the Court



will issue or deny a certificate of appealability (COA) when it enters its final order adverse to the petitioner. See 28 U.S.C. § 2253(c)(2). If the petitioner moves for reconsideration of the denial of a COA, the motion does not extend the time within which to appeal.