

UNITED STATES DISTRICT & BANKRUPTCY COURT
DISTRICT OF IDAHO

STEPHEN W. KENYON
CLERK OF COURT
208.334.1976



L. JEFF SEVERSON
CHIEF DEPUTY
208.334.9464

April 6, 2026

NOTICE FOR PUBLIC COMMENT

The United States District Court's Local Rules Committee invites the public to review and provide comment on the amendments to the District Court's Local Rules of Civil Procedure 9.1, 9.2 and 16.4. A copy of the amended rules are attached to this notice.

There will also be a paper copy provided for reference at the United States Courthouses in Boise, Coeur d'Alene, and Pocatello. If you are unable to access the website, or not able to travel to a courthouse location, please call Lauri Thompson, Law Clerk, at (208) 334-9403.

All public comments are due by May 6, 2026, at 5 p.m. (MST). Please send your comments by email to local_rulesDC@id.uscourts.gov, or by mail at the following address:

United States District Court, District of Idaho
Attn: Lauri Thompson, Law Clerk
550 West Fort Street
Boise, ID 83724

If you have any question, you can send your question to local_rulesDC@id.uscourts.gov, or please call (208) 334-9403. Thank you.

District of Idaho Local Civil Rule 9.1

NON-CAPITAL CASE HABEAS PETITIONS (STATE CUSTODY)

(a) ~~All petitions~~ This rule governs the procedures for a petition for a writ of habeas corpus filed under 28 U.S.C. §§ 2241 and 2254 (“petition”) in a non-capital cases filed pursuant to 28 U.S.C. § 2254 must be subject to the provisions of this rule unless otherwise ordered by the Court. ~~These rules supplement the Rules Governing Section 2254 Cases and do not alter or supersede those rules.~~

(b) The petition must be presented in writing, ~~and if presented pro se, the petition must be upon the~~ accompanied by the filing fee or an in forma pauperis request. The Court will supply a blank copy of a habeas corpus form and in accordance with the instructions approved by the ~~to a~~ petitioner upon request.

~~(c) The Court. Copies of the forms and instructions will be supplied by the Clerk of Court upon request.~~

~~(e) All petitions for writ of habeas corpus will be subject to perform~~ an initial review by the Court of a § 2241 or § 2254 petition pursuant to Rule 4 of the Rules Governing § 2254 Cases. Petitions accompanied by an application to proceed θ are also subject to the initial review provisions of 28 U.S.C. § 1915.

(d) Upon completion of the initial review of the petition, the ~~Court~~ court may summarily dismiss the petition, ~~or it may direct the Clerk of Court to serve the appropriate respondent with the petition or motion, together with a copy of the Court’s order requiring in whole or in part; require amendment; stay the case to permit the petitioner to exhaust state court remedies; or require~~ the respondent to file an answer, pre-answer motion, or other briefing in response to the initial review order, and to ~~file those~~ file those ~~necessary~~ necessary portions of the records ~~as may be ordered by~~ with the ~~Court, within a time period fixed by the~~ Clerk of Court.

(e) If the ~~petitioner had previously filed a~~ Court authorizes the petition for relief or for a stay of enforcement to proceed in the same matter whole or in this Court, then, where practicable ~~part, the new petition must be assigned to the judge who considered~~ court will direct the Clerk of Court to serve the ~~prior matter.~~

~~(f) If relief is granted on~~ respondent with a copy of the petition of and the court order.

~~(f) If the Court grants relief on a state~~ prisoner ~~prisoner’s~~ petition, the Clerk of Court must forthwith notify the state authority having jurisdiction over the prisoner respondent immediately by forwarding an electronic copy of the action taken ~~order granting relief to counsel for the respondent at counsel’s designated ECF address.~~

RELATED AUTHORITY

28 U.S.C. §§ [1915](#), 2241-2254
Rules Governing Section 2254
_Cases in U.S. District Courts

District of Idaho Local Civil Rule 9.2

~~SPECIAL REQUIREMENTS FOR CAPITAL CASE~~ HABEAS ~~CORPUS~~ PETITIONS
INVOLVING THE ~~DEATH PENALTY~~ (STATE CUSTODY)

(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 that~~ seeks relief from a final state court judgment ~~imposing the~~ capital (death penalty of death.) case.

The presiding judge may modify 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~~ supersede 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 (b) **Initiation of Proceedings.**~~

~~(1) Preliminary Steps. Before filing a habeas petition, a petitioner may take the following steps preliminary to filing a habeas petition by filing an original and a copy of the following steps; however, none of the following takes the place of or, nor constitutes the filing of, an actual habeas petition:~~

- ~~(A)~~ (A) Application for a stay of execution;
- ~~(B)~~ (B) Application to proceed *in forma pauperis* with supporting affidavit, if applicable;
- ~~(C)~~ (C) Application for the appointment of counsel or to proceed pro se, if applicable;
- ~~(D)~~ (D) Statement of issues re: habeas petition including:

(i) information about whether this or any other federal court has ever issued a ruling decision regarding the same judgment of conviction and the reasons for denial of relief;

(ii) information about when the ~~petitioner~~ petitioner intends to ~~file~~ 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- and assign it 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; and (5) set a deadline for the parties' scheduling order proposals.~~

~~However, if respondent identifies the new filing as a second or successive filing, respondent may file an answer or pre-answer motion before any initial review order is issued.~~

~~(d)- **Appointment of Counsel.**~~

~~(A) Requirement of Counsel. Each capital case petitioner must be represented by counsel unless the court finds, after a hearing, that a petitioner's election to proceed pro se is knowing, intelligent, and voluntary. If the petitioner has not retained counsel, the court must appoint counsel in every case at the earliest practicable time.~~

~~(B) Qualifications of Appointed Counsel. Upon application by petitioner for appointment of counsel, the court will appoint the Capital Habeas Unit (CHU) of the Federal Defender Services of Idaho as lead counsel. Upon request of the CHU, the court will appoint an attorney from the Criminal Justice Act (CJA) Capital Habeas Panel as second counsel. In the event the CHU is unable to provide representation or for other reasons necessitating appointment of other counsel, the Court will appoint other qualified attorneys.~~

~~(e) **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/custodian of the petitioner; 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 they or a designated deputy attorney general can be reached 24 hours a day.~~

~~(f) **Case Management Conferences; CJA Budgeting.** After a capital habeas corpus proceeding has been assigned to a judge and counsel has been appointed, the assigned presiding judge may conduct an initial case management conference conferences to discuss anticipated proceedings in the case.~~

~~(g) **CJA Budgeting.** In all cases where payment for attorneys' attorney fees and investigative and expert expenses are will be requested under the CJA, the petitioner's counsel will be required to prepare phased budgets for submission to the court must coordinate with the capital case budgeting attorney for the United States Court of~~

~~Appeals for the Ninth Circuit and the district 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 the appointment for case budgeting process and voucher approval.~~

~~(e) Procedures for Considering the Petition for Writ of Habeas Corpus.~~ (h) Habeas Pleadings, Motions, and Lodging the State Court Record. 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~~

~~(A) No~~ later than ~~when the respondent files~~ deadline for the filing of 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)-(i)~~ Transcripts of the state court proceedings.

~~(B)-(ii)~~ State clerk's ~~records to~~ record of the state court proceedings.

~~(C)-(iii)~~ Briefs filed ~~on consolidated appeal to~~ in all related appellate matters in the Idaho Supreme Court ~~and on any petition for rehearing.~~

~~(D)-(iv)~~ All motions, briefs and orders in any post-conviction relief proceeding.

~~(E)-(v)~~ An index to all materials described in paragraphs ~~(A)i~~ through ~~(D)iv~~ above.

(B) If any items required to be filed in paragraphs (A_i) through (D_{iv}) 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)(3) Pre-Answer Motion. Respondent may file a pre-answer motion for summary dismissal or partial summary dismissal addressing procedural issues.~~

~~(4) Answer. If no pre-answer motion is filed, or if some claims survive a pre-answer motion, Respondent must file an answer to the Petition.~~

~~(5) Reply. Petitioner may file a reply in support of the petition, and, if Petitioner believes any claims qualify for further record development through discovery or an evidentiary hearing, any such motion must be filed with the reply.~~

~~(6) Sur-Reply. Respondent may file a sur-reply, and, if a motion for further record development has been filed, Respondent's response must be filed with the sur-reply.~~

~~(7) Petitioner may file a reply in support of any motion for further record development.~~

(i) Scheduling Order Proposals. After counsel for Petitioner has been appointed, the parties shall confer and file a joint or separate proposed schedule of deadlines for the foregoing filings. The parties may also address any of the following:

(1) Whether the properly-exhausted claims on the merits should be decided first;

~~(B)(2)~~ Whether certain procedural defenses should be heard via a pre-answer motion;

~~(C)(3)~~ Whether, instead of filing a pre-answer motion followed by an answer, Respondent should file an omnibus answer addressing all procedural issues and the merits of all claims;

(4) Whether discovery on procedural issues is warranted;

~~(D)-(5)~~ Whether the entire case should be stayed pending ongoing state proceedings; and

~~(E)-(6)~~ 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.** After the Court reviews the parties' proposals, it may adopt or modify a proposed schedule or hold an initial case management conference, after which a scheduling order will be issued.~~

~~(o) 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~~ or paper filed in a capital habeas case. ~~The~~ must contain the notation "CAPITAL CASE" ~~must appear~~ in bold, capital letters to the right of the case ~~entitlement~~caption and directly beneath the ~~Case Number~~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
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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
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(2)- Motion Practice. Unless this rule or ancourt ~~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~~, but the court may alter the parties' stipulated changes with adequate notice to the parties. 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)~~(B) Briefs in support of and in opposition to a motion for summary dismissal or partial summary dismissal based on procedural issues may be no longer than 100 pages; reply briefs may be no longer than 50 pages.

(C) 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~~200 pages; reply briefs may be no longer than ~~50~~100 pages.

~~(C)~~(D) 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.~~

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

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(1) The Clerk of Court will immediately notify the petitioner's counsel, the Idaho Attorney General, the warden/custodian of the petitioner, and the Clerk of the Idaho Supreme Court of the court's final decision on the petition.

(2) 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:

(A) any final order denying or dismissing a petition without a certificate of appealability; and/or

(B) any order denying or dissolving a stay of execution.

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

(4) 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.

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RELATED AUTHORITY

28 U.S.C. § 2254
Rules Governing Section 2254 Cases in U.S. District Courts
Idaho ~~Code~~ Appellate Rule [\(I.A.R.\) 25\(a\)\(7\) \(1987e\) \(2017\)](#)

District of Idaho Local Civil Rule 9.1

NON-CAPITAL CASE HABEAS PETITIONS (STATE CUSTODY)

(a) This rule governs the procedures for a petition for a writ of habeas corpus filed under 28 U.S.C. §§ 2241 and 2254 (“petition”) in a non-capital case. These rules supplement the Rules Governing Section 2254 Cases and do not alter or supersede those rules.

(b) The petition must be presented in writing, accompanied by the filing fee or an in forma pauperis request. The Court will supply a blank copy of a habeas corpus form and instructions to a petitioner upon request.

(c) The Court will perform an initial review of a § 2241 or § 2254 petition pursuant to Rule 4 of the Rules Governing § 2254 Cases.

(d) Upon completion of the initial review of the petition, the court may summarily dismiss the petition in whole or in part; require amendment; stay the case to permit the petitioner to exhaust state court remedies; or require the respondent to file an answer, pre-answer motion, or other briefing in response to the initial review order, and to lodge necessary portions of the records with the Clerk of Court.

(e) If the Court authorizes the petition to proceed in whole or in part, the court will direct the Clerk of Court to serve the respondent with a copy of the petition and the court order.

(f) If the Court grants relief on a state prisoner’s petition, the Clerk of Court must notify the respondent immediately by forwarding an electronic copy of the order granting relief to counsel for the respondent at counsel’s designated ECF address.

RELATED AUTHORITY

28 U.S.C. §§ 2241-2254
Rules Governing Section 2254 Cases in U.S. District Courts

District of Idaho Local Civil Rule 9.2
CAPITAL CASE HABEAS PETITIONS (STATE CUSTODY)

(a) **Applicability.** This rule governs the procedures for a petition for a writ of habeas corpus filed under 28 U.S.C. § 2254 (“habeas petition”) that seeks relief from a final state court judgment in a capital (death penalty) case.

The presiding judge may modify application of this rule. These rules supplement the Rules Governing Section 2254 Cases and do not alter or supersede those rules.

(b) **Initiation of Proceedings.**

(1) Preliminary Steps. Before filing a habeas petition, a petitioner may take the following preliminary steps; however, none takes the place of, nor 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 decision regarding the same judgment of conviction and the reasons for denial of relief;

(ii) information about when the petitioner 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.

(c) **Initial Review of Preliminary Filings by Court.** Upon receipt of preliminary filings, the Clerk of Court will immediately assign the matter to a district judge and assign it a civil case number. As soon as reasonably practicable, the district judge will review the 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; (4) grant or deny an application for the appointment of counsel; and (5) set a deadline for the parties’ scheduling order proposals.

However, if respondent identifies the new filing as a second or successive filing, respondent may file an answer or pre-answer motion before any initial review order is issued.

(d) Appointment of Counsel.

(A) Requirement of Counsel. Each capital case petitioner must be represented by counsel unless the court finds, after a hearing, that a petitioner's election to proceed pro se is knowing, intelligent, and voluntary. If the petitioner has not retained counsel, the court must appoint counsel in every case at the earliest practicable time.

(B) Qualifications of Appointed Counsel. Upon application by petitioner for appointment of counsel, the court will appoint the Capital Habeas Unit (CHU) of the Federal Defender Services of Idaho as lead counsel. Upon request of the CHU, the court will appoint an attorney from the Criminal Justice Act (CJA) Capital Habeas Panel as second counsel. In the event the CHU is unable to provide representation or for other reasons necessitating appointment of other counsel, the Court will appoint other qualified attorneys.

(e) **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/custodian of the petitioner; 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 they or a designated deputy attorney general can be reached 24 hours a day.

(f) **Case Management Conferences.** After counsel has been appointed, the presiding judge may conduct case management conferences to discuss anticipated proceedings in the case.

(g) **CJA Budgeting.** In all cases where payment for attorney fees and investigative and expert expenses will be requested under the CJA, the petitioner's counsel must coordinate with the capital case budgeting attorney for the United States Court of Appeals for the Ninth Circuit and the district court at the beginning of the appointment for case budgeting and voucher approval.

(h) **Habeas Pleadings, Motions, and Lodging the State Court Record.** The following procedures apply:

(1) Petition for Writ of Habeas Corpus. Petitioner must file a habeas petition.

(2) State Court Record.

(A) No later than the deadline for the filing of 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):

(i) Transcripts of the state court proceedings.

- (ii) State clerk's record of the state court proceedings.
- (iii) Briefs filed in all related appellate matters in the Idaho Supreme Court.
- (iv) All motions, briefs and orders in any post-conviction relief proceeding.
- (v) An index to all materials described in paragraphs (i) through (iv) above.

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

(3) Pre-Answer Motion. Respondent may file a pre-answer motion for summary dismissal or partial summary dismissal addressing procedural issues.

(4) Answer. If no pre-answer motion is filed, or if some claims survive a pre-answer motion, Respondent must file an answer to the Petition.

(5) Reply. Petitioner may file a reply in support of the petition, and, if Petitioner believes any claims qualify for further record development through discovery or an evidentiary hearing, any such motion must be filed with the reply.

(6) Sur-Reply. Respondent may file a sur-reply, and, if a motion for further record development has been filed, Respondent's response must be filed with the sur-reply.

(7) Petitioner may file a reply in support of any motion for further record development.

(i) **Scheduling Order Proposals.** After counsel for Petitioner has been appointed, the parties shall confer and file a joint or separate proposed schedule of deadlines for the foregoing filings. The parties may also address any of the following:

- (1) Whether the properly-exhausted claims on the merits should be decided first;
- (2) Whether certain procedural defenses should be heard via a pre-answer motion;
- (3) Whether, instead of filing a pre-answer motion followed by an answer, Respondent should file an omnibus answer addressing all procedural issues and the merits of all claims;
- (4) Whether discovery on procedural issues is warranted;
- (5) Whether the entire case should be stayed pending ongoing state proceedings; and
- (6) Whether the petitioner should be required to proceed on the properly-exhausted claims while exhausting other claims in state court.

After the Court reviews the parties' proposals, it may adopt or modify a proposed schedule or hold an initial case management conference, after which a scheduling order will be issued.

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

(1) Caption. Every pleading or paper filed in a capital habeas case must contain the notation "CAPITAL CASE" in bold, capital letters to the right of the case caption and directly beneath the case number.

The following is provided as an example:

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO	
JOHNDOE, Petitioner,	Case No.: _____
vs.	CAPITAL CASE
A.M. ARAVE, Respondent	APPLICATION FOR STAY OF EXECUTION

(2) Motion Practice. Unless this rule or court order 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, but the court may alter the parties' stipulated changes with adequate notice to the parties. 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) Briefs in support of and in opposition to a motion for summary dismissal or partial summary dismissal based on procedural issues may be no longer than 100 pages; reply briefs may be no longer than 50 pages.

(C) 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 200 pages; reply briefs may be no longer than 100 pages.

(D) No brief may be filed unless permitted by 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 orders oral argument.

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

(1) The Clerk of Court will immediately notify the petitioner's counsel, the Idaho Attorney General, the warden/custodian of the petitioner, and the Clerk of the Idaho Supreme Court of the court's final decision on the petition.

(2) 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:

(A) any final order denying or dismissing a petition without a certificate of appealability; and/or

(B) any order denying or dissolving a stay of execution.

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

(4) 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.

RELATED AUTHORITY

28 U.S.C. § 2254

Rules Governing Section 2254 Cases in U.S. District Courts
Idaho Appellate Rule (I.A.R.) 25(e) (2017)

NON-CAPITAL CASE HABEAS PETITIONS (STATE CUSTODY)

- (a) All petitions for a writ of habeas corpus in non-capital cases filed pursuant to 28 U.S.C. § 2254 must be subject to the provisions of this rule unless otherwise ordered by the Court.
- (b) The petition must be in writing, and if presented pro se, the petition must be upon the form and in accordance with the instructions approved by the Court. Copies of the forms and instructions will be supplied by the Clerk of Court upon request.
- (c) All petitions for writ of habeas corpus will be subject to an initial review by the Court pursuant to Rule 4 of the Rules Governing § 2254 Cases. Petitions accompanied by an application to proceed *0* are also subject to the initial review provisions of 28 U.S.C. § 1915.
- (d) Upon completion of the initial review of the petition, the Court may summarily dismiss the petition, or it may direct the Clerk of Court to serve the appropriate respondent with the petition or motion, together with a copy of the Court's order requiring the respondent to file an answer, pre-answer motion, or other briefing in response to the initial review order and to file those portions of the records as may be ordered by the Court, within a time period fixed by the Court.
- (e) If the petitioner had previously filed a petition for relief or for a stay of enforcement in the same matter in this Court, then, where practicable the new petition must be assigned to the judge who considered the prior matter.
- (f) If relief is granted on the petition of a state prisoner, the Clerk of Court must forthwith notify the state authority having jurisdiction over the prisoner of the action taken.

RELATED AUTHORITY

28 U.S.C. §§ 1915, 2241-2254
Rules Governing Section 2254
Cases in U.S. District Courts

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)

(a) Purpose and Scope.

1) Purpose. Pursuant to the findings and directives of Congress in 28 U.S.C. § 651 et seq., the primary purpose of this local rule is to provide parties to civil cases and proceedings in bankruptcy in this district with an opportunity to use Alternative Dispute Resolution (ADR) procedures. This rule is intended to improve parties' access to the dispute resolution process that best serves their needs and fits their circumstances, to reduce the financial and emotional burdens of litigation, and to enhance the Courts' ability to timely provide traditional litigation services. Through this rule, the Courts authorize the use of judicial settlement conference, mediation and arbitration.

2) Scope.

(A) Cases Pending Before a District Judge or Magistrate Judge. This local rule applies to all civil cases pending before any district judge or magistrate judge in this district.

(B) Proceedings Pending Before a Bankruptcy Judge. Under 28 U.S.C. § 651 et seq., and the Courts' inherent authority, proceedings pending before any bankruptcy judge in this district also may be afforded an opportunity to participate in judicial settlement conference, mediation and arbitration.

3) Authority of the Courts. The referral of a civil action and bankruptcy adversary proceeding to judicial settlement conference, mediation or arbitration does not divest the Court of the authority to exercise management and control of the case during such proceedings.

(b) ADR Procedures and Rules.

1) Matters subject to ADR. All civil cases are eligible for referral to ADR as provided for under this subsection. At the Rule 16 Scheduling Conference, or at any other time determined by the presiding judge, any civil case may be referred to ADR. Bankruptcy adversary proceedings and contested cases may be referred to ADR at the discretion of the bankruptcy judge.

2) Judicial Settlement Conference.

(A) Definition. A judicial settlement conference is a process in which a settlement conference judge (magistrate judge or other judge designated by the presiding judge) is made available to facilitate communication between the parties and assist them in their negotiations, e.g., by clarifying underlying interests, as they attempt to reach an agreed settlement of their dispute. Whether a settlement results from a judicial settlement conference and the nature and extent of the settlement are within the sole control of the parties.

(B) Initiation of a Judicial Settlement Conference. At any time after an action or proceeding is commenced, any party may request, or the presiding judge on his or her own initiative may order, a judicial settlement conference. As a general rule, the presiding judge assigned to the matter, or any judge previously assigned to the matter, will not conduct the judicial settlement conference.

(C) Procedure for Judicial Settlement Conference. After the initiation of the judicial settlement conference process, the settlement conference judge will issue an order governing the process and procedure utilized by that judge for the settlement conference.

(D) Attendance at a Judicial Settlement Conference. All parties and their counsel must participate in the settlement conference process fully, reasonably, and in good faith. The attorney(s) who will be primarily responsible for handling the actual trial of the matter, all parties, and insurers, if applicable, with authority to settle, must attend the session(s), unless otherwise excused by the settlement conference judge upon a showing of good cause.

(E) Report of Settlement Conference Judge. At the conclusion of a judicial settlement conference, a docket entry order in the docket will reflect only whether settlement was or was not achieved, unless the parties specifically agree otherwise.

(F) Confidentiality. None of the matters or information discussed during the settlement conference will be communicated to the presiding judge assigned to the matter, unless all parties expressly stipulate to such communications.

3) Mediation.

(A) Definition. Mediation is a process by which a neutral third party (the “mediator”) appointed by the Court or agreed to by the parties to assist the parties in an attempt to reach a mutually acceptable agreement. The role of the mediator is to aid the parties in identifying the issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options and finding points of agreement. Whether a settlement results from a mediation and the nature and extent of the settlement are within the sole control of the parties.

(B) Initiation of a Mediation. At any time after an action or proceeding is at issue, any party may request, or the presiding judge on his or her own initiative may order, mediation. None of the matters or information discussed during the mediation will be communicated to any judge assigned to the matter, unless all parties expressly stipulate to such communications or one of the exceptions in Federal Rule of Evidence 408(b) applies.

(C) Selection of a Mediator. The parties should select a mediator through mutual agreement or as otherwise ordered by the presiding judge.

(D) Procedures of Mediation. Once selected or appointed, the mediator will determine the place of the mediation session, the materials to be submitted in advance of the mediation or at the time of the mediation, who must attend the mediation session for the parties, and how the mediation session will be conducted. However, mediators will have no authority to order parties or counsel to take any action outside the mediation session, to compel parties to produce information, or, except as allowed by these rules, to rule on disputed matters. Mediators will be subject to sanctions if the mediator fails to assume the responsibilities provided herein.

(E) Attendance at the Mediation Session(s). All parties and their counsel must participate in the mediation process fully, reasonably, and in good faith. The attorney(s) who will be primarily responsible for handling the actual trial of the matter, and all parties, and insurers, if applicable, with authority to settle, must attend the session(s), unless otherwise excused by the mediator upon showing of good cause.

(F) Report of Mediator. Within seven (7) days following the last mediation session, the mediator will file a report with the Courts’ ADR Administrator, with a copy to the parties, indicating when mediation occurred and whether the case has, in whole or in part, settled. The mediator must not report any of the substantive matters discussed during the mediation unless the parties specifically agree otherwise. Following this report, a docket entry order in the docket will reflect only whether settlement was or was not achieved, unless the parties specifically agree otherwise.

(G) Confidentiality. The mediator must abide by the confidentiality rules agreed to by the parties. Confidentiality protections of F.R.E. 408 will extend to mediations under this Rule.

(H) Impartiality. The mediator has a duty to be impartial, and has a continuing duty to advise all parties of any circumstances bearing on possible bias, prejudice or partiality.

(I) Compensation to Mediators. Mediators will be compensated at their regular fees and expenses, which will be clearly set forth in the information and materials provided to the parties by the mediator. Unless other arrangements are made among the parties or ordered by the Court, the interested parties will be responsible for a pro rata share of the mediator’s fees and expenses. If a mediator is not paid, the Court, upon motion of the mediator, may order payment.

4) Arbitration.

(A) Definition. Arbitration is a process whereby an impartial third party (the “arbitrator”) is hired or retained by the parties to hear and consider the evidence and testimony of the disputants and others with relevant knowledge and issues a decision on the merits of the dispute. The arbitrator makes an award on the issue(s) presented for decision. The

arbitrator's award is binding or non-binding as the parties may agree in writing.

(B) Cases Eligible for Arbitration. No civil action, or proceeding in bankruptcy, will be referred to arbitration as the parties' ADR method, except upon written consent of all parties. Additionally, no matter will be referred to arbitration if the Court finds that:

- (i) The action is based upon an alleged violation of a right secured by the Constitution of the United States;
- (ii) Jurisdiction is based in whole or in part on 28 U.S.C. § 1343;
- (iii) The relief sought includes money damages in an amount greater than \$150,000.00; or
- (iv) The objectives of arbitration would not be realized for any other reason.

(C) Initiation of an Arbitration. At any time after an action or proceeding is at issue, any party may request an arbitration. All parties must consent in a writing, signed by all parties and their counsel, before an arbitration will be ordered by the judge assigned to the matter.

(D) Selection of an Arbitrator. The parties may select an arbitrator with consent of the presiding judge.

(E) Procedure for Arbitration. After the initiation of arbitration, the arbitrator will issue to the parties a document setting forth the process and procedure utilized and to be followed.

(F) Award. At the conclusion of an arbitration, the arbitrator will issue to the parties a written award. The arbitrator's award is binding or non-binding as the parties may agree in writing.

(c) Selection of ADR Procedure.

1) Mandated Early ADR Selection Process.

(A) The Parties' Duty to Consider ADR, and Confer. No later than five (5) days prior to the Rule 16 scheduling conference, unless otherwise ordered, in every case to which this rule applies, the parties must meet and confer about (i) whether they might benefit from participating in some ADR process; (ii) which type of ADR process is best suited to the specific circumstances in their case; and (iii) when the most appropriate time would be for the ADR session to be held.

(B) Designation of Process. After considering the parties' submissions, the Court may order the parties, on appropriate terms and in conformity with this rule, to participate in ADR. The Court may refer the case to judicial settlement conference, mediation, arbitration or, with written consent of all parties, to an ADR procedure which, by stipulation of all parties, has been tailored to meet the specific needs of the parties and the case.

2) Referral to ADR during Pretrial Period. Notwithstanding the provisions of paragraph (c)(1) above regarding the early selection process, at any time before entry of final judgment, the Court may, on its own motion or at the request of any party, order the parties to participate in a judicial settlement conference or mediation or, with the written consent of all parties, arbitration. Presiding judges will take appropriate steps to assure that no referral to ADR results in an imposition on any party of an unfair or unreasonable economic burden.

3) Right to Secure ADR Services Outside the Programs Sponsored by the Court. Nothing in this rule precludes the parties from agreeing to seek ADR services outside the Courts' program. To the extent resources permit and consistent with this rule, parties remain free to use any form of ADR and any neutral they choose.

(d) ADR Administration.

1) ADR Administrator. The ADR Administrator is responsible for implementing, administering, overseeing and evaluating, along with the Board of Judges, the ADR program and procedures covered by this local rule. The ADR Administrator may be contacted through the Courts' website, www.id.uscourts.gov, or as follows:

U.S. District Court ADR Administrator

550 West Fort St. #400
Boise, ID 83724
(208) 334-1976 (telephone)

2) ADR Resources. The ADR Administrator maintains the information regarding the ADR process and procedures set forth in this rule.

RELATED AUTHORITY

28 U.S.C. § 651 through 658
Fed. R. Evid. 408;
Fed R. Civ. P. 16(c)(2)(I)
