

LR 81 - Habeas Corpus Petitions (See 28 U.S.C. §§ 2241, 2254, and 2255)

LR 81-1 Petitions and Motions Generally

Petitions for a writ of habeas corpus pursuant to 28 U.S.C. §§ 2241 and 2254, and motions pursuant to 28 U.S.C. § 2255 must be legibly written or typewritten on forms supplied by the Court and must be signed under penalty of perjury by the petitioner or by a person authorized to sign for the petitioner. The original of the petition or motion must be sent to the Clerk of Court.

If a prisoner seeking habeas relief moves to proceed *in forma pauperis*, the application must include an affidavit [or declaration](#) setting forth information which establishes that the applicant is unable to pay the fees and costs of the proceedings. ~~State P~~prisoners must include a certificate from the warden or other appropriate officer showing the amount of ~~money or securities~~ [funds](#) that the petitioner has in any account in the institution.

LR 81-2 Procedures in § 2254 Cases and § 2255 Proceedings

The rules governing § 2254 cases and § 2255 proceedings brought in the United States District Courts, as adopted and amended by the Supreme Court of the United States, apply to all such cases filed in this Court.

LR 81-3 Requirements for First Petition in a Capital Case

Applicability

This rule governs the procedures for a first petition for a writ of habeas corpus in which a petitioner seeks relief from a state court's judgment imposing a sentence of death. A subsequent filing will be treated as a first petition under this rule if the original filing was voluntarily dismissed or dismissed for failure to exhaust state remedies. This rule is intended to supplement the Rules Governing § 2254 Cases in the United States District Courts (Rules Governing § 2254 Cases) and is not intended to alter or amend those rules. The application of this rule to a particular petition may be modified by the judge to whom the petition is assigned.

Information on Status of Cases

The Clerk of the Court will periodically request copies of the reports prepared by the State Court Administrator regarding the status of cases in which an Oregon court has imposed the penalty of death.

Notice of Intent to File

The Attorney General must provide the Federal Public Defender with notice of the following: the conclusion of the petitioner's direct appeal, the filing of the state post-conviction petition, the conclusion of the petitioner's state post-conviction proceeding (including the appeal and the

denial of certiorari by the United States Supreme Court). On notice that all of petitioner's state court remedies have concluded, the Federal Public Defender, after consultation with the petitioner, must file a written notice of intention to file a petition and send a copy to the Oregon Attorney General's Office. The notice must identify the petitioner, the county where the petitioner was convicted, the place where the petitioner is incarcerated, and the status of the petitioner's state court proceedings. The notice is used for informational purposes by the Court and failure to file the notice will not preclude the filing of the petition.

Counsel

Representation by Counsel: **Each petitioner will be represented by counsel, unless petitioner has clearly elected to proceed *pro se* and the Court is satisfied, after a hearing, that petitioner's election is intelligent and voluntary.**

Appointment of Counsel: **Unless petitioner is proceeding *pro se* or is represented by retained counsel, the Federal Public Defender must be appointed in every such case on the filing of the written notice of intention to file a habeas corpus petition. A panel of attorneys qualified for appointment in death penalty cases will be recruited and maintained by the Federal Public Defender. The Federal Public Defender will accept and review referrals to this panel from interested associations and bar groups.**

Two Counsel to be Appointed: **Due to the complex, demanding, and protracted nature of death penalty proceedings, at least two counsel must be appointed in every case.**

Filing

Assignment of Case Number: **On the submission of the notice of intention to file a capital habeas petition, the next sequentially numbered civil case file will be opened and that number assigned to the document. Subsequent submissions related to the same petition will bear the same case number.**

Petition Requirements: **Petitions must conform to the Model Form accompanying the Rules Governing § 2254 Cases. All petitions must 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 of such court, and set forth any scheduled execution date.**

Copies: **An original of the petition must be filed by counsel for the petitioner, or *pro se* petitioner. No additional copies are required. If no fee is tendered or waiver sought with the filing of a petition, the Clerk will grant *in forma pauperis* status conditionally, subject to further review by a judge, and will not delay the filing, assignment, or statistical opening of any civil action pending the resolution of *in forma pauperis* status.**

Assignment to District Judges

Consistent with the Court's case assignment procedures, petitions are randomly assigned to the active District Judges of the Court.

Order of General Procedure

As soon as practicable following the assignment of a capital habeas case to a judge, the judge will issue an Order of General Procedure setting an initial case management conference.

Stays of Execution

Stay Pending Final Disposition in District Court: On the filing of a petition, unless the petition is frivolous, the judge will order a stay of execution pending final disposition of the petition in this Court.

Temporary Stay for Preparation of the Petition: **Should petitioner require a temporary stay of execution pending the preparation of a petition, counsel must so move, and the Court will issue a 90 day stay of execution.**

Stay Pending Appeal from District Court: **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 Court of Appeals issues its mandate.**

Notice of Stay: **On the granting of any stay of execution, the Clerk's Office will immediately notify the Oregon Attorney General's Office, which must immediately notify the Superintendent of the Oregon State Penitentiary. The Oregon Attorney General's Office must ensure that the Clerk' Office has a 24-hour telephone number to that office.**

Application of 28 U.S.C. § 2262: **Sections (1) through (4) of LR 81-3 (h) do not apply if the stay provisions of 28 U.S.C. § 2262 apply and the Court of Appeals has not approved the filing of a second or successive application under 28 U.S.C. § 2244(b).**

Procedures for Considering the Petition

Unless the judge dismisses the petition under Rule 4 of the Rules Governing § 2254 Cases, the following schedule and procedure apply, subject to modification by the judge for good cause shown. Requests for enlargement of any time period in the Rule must comply with Local Rules.

Schedule: **Respondent must, as soon as practicable but in any event on or before 60 days from the date of service of the application for appointment of counsel or the petition, whichever occurs first, file with the Court duplicate copies of any and all documents from petitioner's pretrial, trial, sentencing, direct appellate, post-conviction, and state and federal habeas corpus proceedings. If any documents are not available, respondent must state when, if at all, such missing material can be filed. These documents also must be served on petitioner's lead counsel, unless respondent confirms that petitioner's counsel already has a copy of the documents. Should respondent wish to produce fewer documents**

than required by this rule, respondent must first demonstrate good cause as to why he or she should be permitted to do so.

Index: An index of all materials must be prepared reflecting the filing date, title of the document and a reference to the document number for each document submitted. These requirements also apply to any supplements to the state court record.

Assembling the Record:

Both copies of each document submitted under LR 81-3(i) must be individually tabbed and numbered consecutively.

Each document submitted must bear a copy of the state court file stamp. The record must be accompanied by a certification from the clerk of the state court attesting to the authenticity of the documents.

The state court record must be submitted in volumes consisting of no more than 250 pages each. Each paper volume must be two-hole punched at the top center and fastened with a two-prong fastener. Each paper volume must be identified with the case title and case number as required in LR 10-2, e.g.:

Example	Clerk's Record - Multnomah County Circuit Court C86-05-323246 Vol. #1 of 3 Volumes
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Failure to Comply: If counsel for petitioner claims that respondent has not complied with the requirements of LR 81-3(i)(1) and (2), counsel for petitioner must immediately notify the Court in writing, and serve a copy on respondent.

Status Conference: As soon as practicable after the filing of the petition, the Court will set a status conference to determine a schedule for further proceedings.

Procedural Defenses:

Respondent is responsible for raising procedural defenses in the appropriate responsive pleading(s). A failure to plead any such defense, except exhaustion, before the date of the evidentiary hearing, or submission of the case for decision in cases in which no evidentiary hearing is held, will constitute a waiver of the defense.

The respondent may choose to waive a procedural defense in order to address the merits of the claim(s) for which the defense is waived.

Evidentiary Hearing

If an evidentiary hearing is held, the Court will order the preparation of a transcript of the hearing, which is to be provided immediately to petitioner and respondent for use in briefing and

argument. Following the preparation of the transcript, the Court may establish a reasonable schedule for further briefing and argument of the issues considered at the hearing.

Rulings

The Court's rulings may be in the form of a written opinion, which will be filed, or in the form of an oral opinion on the record in open court, which will be transcribed and filed promptly.

The Clerk's Office will notify the Superintendent of the Oregon State Penitentiary and the Oregon Attorney General's Office immediately whenever relief is granted on a petition.

The Clerk's Office will notify the Clerk of the United States Court of Appeals for the Ninth Circuit immediately, by telephone, of (1) the issuance of a final order denying or dismissing a petition without a certificate of appealability, or (2) the denial of a stay of execution.

When a notice of appeal is filed, the Clerk's Office will transmit the records to the Court of Appeals immediately as required by circuit rules.

Return of State Court Record

On conclusion of proceedings at either the district or appellate court level, the Clerk's Office is directed to return one copy of the state court record to the office of the Oregon Attorney General.

Amendment History to LR 81	
June 1, 2002	
LR 81.3(g)	Added reference to Appendix of Forms
June 1, 2006	
Generally	Appendix of Forms number updated
December 1, 2009	
Generally	The word "shall" has been changed to "will", "may" or "must."
LR 81-1(a)	The phrase "and shall be signed and verified by the prisoner" has been deleted. 28 U.S.C. § 2242 and Rule 2(c)(5) of the Rules Governing § 2254 Cases allow lawyers to draft and sign petitions for clients without signing and verification by the parties.
LR 81-1(b)	Added the option for a motion and the second sentence.

LR 81-1(e)(3)	The first sentence was amended to conform to LR 81-1 as to the number of copies to be filed by counsel.
LR 81-3(a)	Typographical error "hr" changed to "he."
LR 81-3(c)	Amended to require the Oregon Attorney General to provide the Federal Public Defender with status reports. This change is intended to allow the FPD's office to carry out its duty to file a written notice of intention to file a capital habeas petition at the appropriate time.
LR 81.3(d)(3)-(5)	Former subsections deleted. Subsequent subsection renumbered.
LR 81-3(h)	Modified for clarity.
LR 81-3(i)(1)	Amended to require the State to provide the Court with all documents (regardless of perceived relevancy) from a petitioner's previous capital trials and appeals and to serve these documents on petitioner's lead counsel.
March 1, 2014	
LR 81-1	In caption, added "and Motions" after "Petitions."
LR 81-1(a)	Changed "Petitions by state prisoners for writs of habeas corpus pursuant to 28 U.S.C. § 2254, and motions pursuant to 28 U.S.C. §§ 2241 or 2255 by federal prisoners who are in custody, must be legibly written or typewritten on forms supplied by the Court and must be signed under penalty of perjury by the petitioner or by a person authorized to sign for the petitioner. The original and two (2) copies of the petition or motion must be sent to the clerk" to "Petitions for a writ of habeas corpus pursuant to 28 U.S.C. §§ 2241 and 2254 and motions pursuant to 28 U.S.C. § 2255 must be legibly written or typewritten on forms supplied by the Court and must be signed under penalty of perjury by the petitioner or by a person authorized to sign for the petitioner. The original of the petition or motion must be sent to the Clerk of Court."
LR 81-1(b)	Changed "If the petition or motion is taken <i>in forma pauperis</i> , it must include an affidavit setting forth information which establishes that the applicant will be unable to pay the fees and costs of the proceedings" to "If a prisoner seeking habeas relief moves to proceed <i>in forma pauperis</i> , the application must include an affidavit setting forth information which establishes that the applicant is unable to pay the fees and costs of the proceedings."
LR 81-2	Changed caption from "Procedure in Habeas Corpus (<i>See</i> 28 U.S.C. §§ 2254 and 2255)" to "Procedures in § 2254 Cases and § 2255 Proceedings." Changed "All

	procedures in habeas corpus proceedings and motions under 28 U.S.C. §§ 2254 and 2255 must follow the rules governing such matters in the United States Courts as adopted and amended by the Supreme Court of the United States” to “The rules governing § 2254 cases and § 2255 proceedings brought in the United States District Courts, as adopted and amended by the Supreme Court of the United States, apply to all such cases filed in this Court.”
LR 81-3(a)	In third sentence, added “in the United States District Courts (Rules Governing § 2254 Cases)” after “Cases.”
LR 81-3(b)	In caption, changed “Case” to “Cases.”
LR 81-3(c)	Changed “petitioner's direct appeal conclusion, the filing of the state post-conviction petition, the denial of the state post-conviction appeal, the denial of petitioner's Petition for Review to the Oregon Supreme Court, and the denial of certiorari. Once all of petitioner's state court remedies have concluded, the Federal Public Defender, after consultation with the petitioner, must file promptly with this Court, and send to the Oregon Attorney General's Office, a written notice of intention to file a petition. The notice must state the name of the petitioner, the county in which petitioner was convicted, the place of petitioner's incarceration, and the status of petitioner's state court proceedings” to “the conclusion of the petitioner's direct appeal, the filing of the state post-conviction petition, the conclusion of the petitioner’s state post-conviction proceeding (including the appeal, and the denial of certiorari by the United States Supreme Court). On notice that all of petitioner's state court remedies have concluded, the Federal Public Defender, after consultation with the petitioner, must file a written notice of intention to file a petition and send a copy to the Oregon Attorney General’s Office. The notice must identify the petitioner, the county where the petitioner was convicted, the place where the petitioner is incarcerated, and the status of the petitioner's state court proceedings.” The last sentence was also modified to clarify that “The notice is used for informational purposes by the Court.”
LR 81-3(d)(2)	In the first sentence, changed "upon" to "on."
LR 81-3(e)(1)	After title, changed "Upon" to "On." Changed "Future submissions relative to the same proceeding will also bear the same civil case number" to "Subsequent submissions related to the same petition will bear the same case number."
LR 81-3(e)(2)	In first sentence, changed "Petitions must be completed in conformance with" to "Petitions must conform to." In second sentence, omitted semicolon and "(a)" after "All petitions" and omitted "(b) must" before "set forth."
LR 81-3(e)(3)	Eliminated the requirement for additional copies of the petition.

LR 81-3(f)	Changed “Notwithstanding the general assignment plan of this Court, petitions will be assigned to the District Judges of the Court as follows:” to “Consistent with the Court’s case assignment procedures, petitions are randomly assigned to the active District Judges of the Court.” Omitted LR 81-3(f)(1)-(3).
LR 81-3(g)	Omitted “judicial” before “assignment” and changed “Capital Case” to “capital habeas case.”
LR 81-3(h)(1)	After the title, changed "Upon" to "On."
LR 81-3(h)(2)	Changed “ninety (90)” to “90-.”
LR 81-3(h)(4)	After the title, changed "Upon" to "On." In both sentences, changed “clerk” to “Clerk’s Office.” Inserted comma after “Attorney General’s Office.”
LR 81-3(h)(5)	Changed “Subsection (1) through (4) of this section (h) apply only if the stay provisions of 28 U.S.C. § 2262 do not apply” to “Sections (1) through (4) of LR 81-3(h) do not apply if the stay provisions of 28 U.S.C. § 2262 apply and the Court of Appeals has not approved the filing of a second or successive application under 28 U.S.C. § 2244(b).”
LR 81-3(i)	Omitted “will” after “procedure.”
LR 81-3(i)(1)	Changed “sixty (60)” to “60” in first sentence. Changed “will not” to “should be permitted to” in fourth sentence.
LR 81-3(i)(3)(C)	Inserted hyphen between “two” and “prong.”
LR 81-3(i)(C)(1)-(3)	Renumbered as LR 81-3(i)(4)-(6). In new LR 81-3(i)(4), comma omitted after “writing” and changed “with a copy served” to “and serve a copy.”
LR 81-3(j)	Changed the beginning of the second sentence from "Upon" to "Following."
LR 81-3(k)(2)-(4)	In each section, changed “clerk” to “Clerk’s Office.”
LR 81-3(l)	Changed "Upon" to "On" and changed "clerk" to "Clerk’s Office."
<u>March 1, 2017</u>	
<u>LR 81-1(b)</u>	<u>In the first sentence, added "or declaration" after "affidavit." In the second sentence, changed "State prisoners" to "Prisoners." Changed "money or securities" to "funds."</u>

