

FILED
DISTRICT COURT OF GUAM

NOV 19 2013

CBW

JEANNE G. GUINATA
CLERK OF COURT

In Re:
Adoption of Updated Local Rules
of Habeas Corpus Practice

GENERAL ORDER

No. 13-0011

Pursuant 28 U.S.C. § 2071, and after appropriate public notice and an opportunity for comment, the District Court of Guam hereby adopts the attached updated Local Rules of Habeas Corpus Practice, effective December 1, 2013.

SO ORDERED this 19th day of November, 2013.

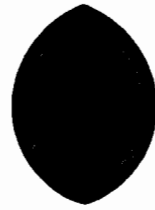


Frances Tydingco-Gatewood
Chief District Judge



District Court of Guam

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July 5, 2013

The Honorable Frances Tydingco-Gatewood,
Chief Judge
District Court of Guam
4th Floor, U.S. Courthouse
520 West Soledad Avenue
Hagatna, Guam 96910

Re: Proposed Habeas Corpus Local Rules

Your Honor,

The Committee on Habeas Corpus Local Rules of Practice for the District Court of Guam is pleased to present the attached proposed Habeas Corpus Local Rules for your consideration and adoption. These proposed rules are based on input from the committee members and examples from other jurisdictions. The committee members welcome and appreciate any comments to the proposed rules.

Rosetta L. San Nicolas
Assistant U.S. Attorney

Marianne Woloschuk
Assistant Attorney General

Jane Lee

Virginia T. Kilgore

Cathleen L.G. Moylan

**HABEAS CORPUS LOCAL RULES
DISTRICT COURT OF GUAM**

HCLR 1. Scope

(a) **Scope.** These rules supplement the Rules Governing Section 2254 Cases in the United States District Courts (“Section 2254 Rules”) and the Rules Governing Section 2255 Proceedings for the United States District Courts (“Section 2255 Rules”) promulgated by the United States Supreme Court.

(b) **Title and Citation.** These rules constitute the Habeas Corpus Local Rules for the District Court of Guam and may be cited as “HCLR ____.”

(c) **Applicability.** These rules are effective December 1, 2013 and shall govern the procedures for applications under 28 U.S.C. §§ 2254, 2255, and 2241 where applicable, pending or commenced after that date.

(d) **Definitions.**

(1) **Clerk.** Except where the context otherwise requires, “clerk” means the Clerk of Court for the District Court of Guam and the deputy clerks.

(2) **Court.** Except where the context otherwise requires, the word “court” refers to the District Court of Guam and to a judge or magistrate judge acting on behalf of that court with respect to a matter within the court’s jurisdiction.

(3) **Ex parte.** “Without other party.” “Ex parte” means contact with the court without the advance knowledge or contemporaneous participation of all other parties.

(4) **File.** The delivery to and acceptance by the clerk of a document which will be noted in the civil or criminal docket.

(5) **Petitioner.** For convenience in these rules, the term “petitioner” includes the moving party under 28 U.S.C. § 2255 where the context requires.

(6) **Pro se.** “For oneself.” “Pro se” means to represent oneself in court without a lawyer.

HCLR 2. The Petition/Motion

(a) **Form.** Petitions under 28 U.S.C. § 2241 and 2254 and motions under 28 U.S.C. § 2255 must be in the form approved by the court and in accordance with the form instructions, unless the assigned judge, in his or her discretion, determines that the petition contains all the information required by the court’s form and instructions. The form and instructions shall be provided by the clerk upon request and are available without charge.

(b) **Exclusion, Deportation, and Removal Cases.** A next friend petition for a writ of habeas corpus in exclusion, deportation, and removal cases must allege that the petitioner has been authorized by the applicant for admission or respondent in deportation proceedings to file the petition. If the petition is filed by a relative who is the father, mother, husband, wife, brother, sister, uncle or aunt of the applicant for admission or respondent in deportation proceedings, that fact shall be alleged and authorization to file the petition need not be shown.

**HABEAS CORPUS LOCAL RULES
DISTRICT COURT OF GUAM**

HCLR 3. Filing the Petition/Motion

(a) **Proceeding Pro Se.** A petition or motion filed by a person appearing pro se shall be filed in conformity with the forms and instructions approved by the court. The forms, instructions and the Habeas Corpus Local Rules shall be provided to pro se petitioners by the clerk upon request or upon the filing of papers which appear to be a request by a person appearing pro se for relief which should be presented by a petition under 28 U.S.C. § 2254 or a motion under 28 U.S.C. § 2255.

(b) **Proceeding In Forma Pauperis.** Petitioners unable to pay the filing fees may seek leave of court to proceed in forma pauperis. Petitioners must file an application to proceed in forma pauperis on a form approved by the court and in accordance with the form instructions, unless the assigned judge, in his or her discretion, determines that the application contains all the information required by the court's form and instructions. The forms and instructions shall be provided by the clerk upon request or upon the filing of papers which appear to be a request by a person to proceed in forma pauperis.

(c) **Summary Dismissal of Petition/Motion.** The assigned judge may strike or dismiss petitions, motions or applications which do not conform substantively or procedurally with federal and local requirements for such actions.

(d) **Ex Parte Communications.** A prisoner should limit letters and avoid informal attempts to communicate directly with the district or magistrate judge presiding over the prisoner action. Documents sent to a judge will be shared with all parties in the case. Requests for action should be brought in the form of a motion subject to response by the opposing party, not in a letter. The court in its discretion may construe a letter or other request as a motion that shall be docketed and treated as such by all parties.

(e) **Communications When Represented by an Attorney.** Absent exceptional circumstances, when a prisoner is represented by an attorney, the prisoner shall not communicate directly with the court or judge by sending the court or judge letters, requests, or motions, or calling or faxing the judge. All communication shall be through the prisoner's attorney. Any communication sent directly to the court or judge by a represented prisoner may, in the court's sole discretion, be disregarded and stricken from the record.

(f) **Copies.** An original and two copies of a petition for a writ of habeas corpus or a motion under to 28 U.S.C. § 2255 shall be filed. However, failure to provide copies will not result in dismissal.

HCLR 4. Service of Copy

An attorney representing a person filing a petition or motion shall serve a copy of the petition or motion on the United States Attorney or appropriate territorial officer. When a petition or motion is filed by a person who is not represented by an attorney, the clerk shall serve a copy of the petition or motion on the United States Attorney or appropriate territorial officer.

**HABEAS CORPUS LOCAL RULES
DISTRICT COURT OF GUAM**

HCLR 5.

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HCLR 6.

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HCLR 7.

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HCLR 8. Evidentiary Hearing

(a) **Request for Hearing.** The court may hold an evidentiary hearing on its own motion or the motion of any party. A request for an evidentiary hearing shall include a specification of which factual issues require a hearing and a summary of what evidence the party proposes to offer. An opposition to the request for an evidentiary hearing shall be filed no later than thirty (30) days from the filing of the request.

(b) **Pretrial Conference and Order.** If a hearing, in which petitioner will be represented by counsel, is granted by the court, a pretrial conference of court and counsel shall be held and a pretrial order filed. The pretrial order should list all grounds for upsetting the conviction or sentence which appear relevant, whether or not raised in the petition or motion, as issues of fact to be tried at the hearing, along with related issues of law.

(c) **Transcript.** The court may order the preparation of a transcript of the evidentiary hearing.

(d) **Magistrate Judge's Report and Recommendation.** If a magistrate judge is designated by the court to conduct the hearing, the magistrate judge shall file proposed findings of fact and recommendations ("report and recommendations") for disposition and a copy shall be provided to all parties. Within the time period set forth in the report and recommendations, but no less than fourteen (14) days after being served the report and recommendation, any party may serve and file written objections. The party objecting shall file a proof of service showing the objections were served on the opposing party.

HCLR 9.

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HCLR 10.

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**HABEAS CORPUS LOCAL RULES
DISTRICT COURT OF GUAM**

HCLR 11.

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HCLR 12.

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HCLR 13. Rulings

(a) **Form of Rulings.** The court's rulings shall be in the form of a written decision and order which will be filed. The clerk shall serve a copy of the ruling on all parties.

(b) **Relief Granted.** If relief is granted on a petition of a territorial prisoner, or if any stay of execution is issued by the court, the clerk shall forthwith notify the territorial authority having jurisdiction over the prisoner of the action taken.

(c) **Relief Denied.** If relief is denied such territorial prisoner, and a certificate of probable cause is issued, the court will also grant a stay of execution to continue in effect until such time as the Ninth Circuit Court of Appeals acts in the matter; and the clerk shall forthwith notify the Clerk of the Ninth Circuit Court of Appeals of the action taken.