RECEIVED
AND FILED

APR 23 4 08 PM '79

CAROL A. FITZGERALD
CLERK
BY _____
DEPUTY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

* * * * *

IN THE MATTER OF PRISONERS')
PETITIONS, MOTIONS AND)
CIVIL RIGHTS COMPLAINTS)
_____)

SPECIAL ORDER NO. 21

It appearing to this Court that it is necessary to adopt a uniform local rule for the processing of:

1) Petitions for Writs of Habeas Corpus pursuant to 28 U.S.C. 2241 and 2254;

2) Motions pursuant to 28 U.S.C. 2255;

3) Motions pursuant to Rule 35, Fed.R.Crim.P.;

4) Civil rights complaints pursuant to 42 U.S.C. 1983;

and this Court being fully advised in the premises,

IT IS ORDERED that the attached Uniform Local Rule is hereby approved and adopted.

Dated this 23rd day of April, 1979.

Chief, U. S. District Judge

U. S. District Judge

FPI-Sandstone
5-1-74—100M—1073

UNIFORM LOCAL RULE FOR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA RE:

PETITIONS FOR WRITS OF HABEAS CORPUS PURSUANT TO 28 U.S.C. 2241 and 2254, MOTIONS PURSUANT TO 28 U.S.C. 2255, MOTIONS PURSUANT TO RULE 35 FED.R.CRIM.P. AND CIVIL RIGHTS COMPLAINTS PURSUANT TO 42 U.S.C. 1983*

1) Petitions for writs of habeas corpus, motions to vacate sentence pursuant to 28 U.S.C. 2255 and motions to correct or reduce sentence pursuant to Rule 35 Fed.R.Crim.P. by persons in custody pursuant to process issued by a court in a criminal proceeding shall be in writing, signed, and verified. Such petitions and motions, and civil rights complaints under 42 U.S.C. 1983, shall be on forms approved by this court and supplied without charge by the clerk of this court upon request.

2) Every petition, motion or complaint filed under this rule shall contain certain required information. The following information shall be supplied by every petitioner seeking post-conviction relief:

a) Petitioner's full name and prison number (if any);

b) name of the respondent;

c) place of petitioner's detention;

d) name and location of the court which imposed sentence;

*Approved and adopted by the District Judges of the District of Nevada on April 23, 1979.

e) case number and the offense or offenses for which sentence was imposed;

f) date on which sentence was imposed and the terms of the sentence;

g) whether a finding of guilty was made after a plea of (1) guilty, (2) not guilty, or (3) nolo contendere;

h) in the case of a petitioner who has been found guilty following a plea of not guilty, whether that finding was made by a jury or a judge without a jury;

i) whether petitioner appealed from his conviction or the imposition of sentence, and if so the name of each court to which he appealed, the results of such appeals, and the date of such results;

j) whether petitioner was represented by an attorney at any time during the course of his arraignment and plea, his trial (if any), his sentencing, his appeal (if any), or during the preparation, presentation or consideration of any petitions, motions or applications which he filed with respect to this conviction; if so, the name and address of such attorney(s) and the proceedings in which petitioner was so represented; whether said attorney was one of petitioner's own choosing or whether he was appointed by the court;

k) whether a plea of guilty was entered pursuant to a plea bargain and if so what were the terms and conditions of the agreement;

l) whether petitioner testified at trial (if any); and

m) whether petitioner has any petition, application, motion or appeal currently pending in any court and if so the name of the court and the nature of the proceeding.

3) The following additional information shall be supplied by a petitioner in challenging a state conviction:

a) if petitioner did not appeal from the judgment of conviction or imposition of sentence, the reasons why he did not do so;

b) in concise form, the grounds upon which petitioner bases his allegation that he is being held in custody unlawfully, the facts which support each of these grounds, and whether any such grounds have been previously presented to any court, state or federal, by way of any petition, motion or application; if so, which grounds have been previously presented and in what proceedings; if any grounds have not been previously presented, which grounds have not been so presented and the reasons for not presenting them; and

c) whether petitioner has filed in any court, state or federal, previous petitions, applications or motions

with respect to this conviction; if so, the name and location of each such court, the specific nature of the proceedings therein, the disposition thereof, the date of each disposition and citations (if known) of any written opinions or orders.

4) The following additional information shall be supplied by a petitioner in federal custody seeking a writ of habeas corpus or correction or reduction of his sentence pursuant to Rule 35 of the Fed.R.Crim.P.:

a) whether petitioner has filed in any court, state or federal, previous petitions for habeas corpus, motions to vacate sentence (pursuant to 28 U.S.C. 2255), or any other petitions, motions or applications with respect to this conviction; if so, the name and location of any and all such courts, the specific nature of the proceedings therein, the disposition thereof, the date of each such disposition and citations (if known) of any written opinions or orders entered therein or copies (if available) of such opinions or orders.

b) in concise form, state the grounds upon which petitioner bases his allegations that he is being held in custody unlawfully or that this sentence is illegal, imposed in an illegal manner or should be reduced, the facts which support each of these grounds; whether any such grounds have been previously presented to any federal court by way of petition for writ of habeas corpus, motion pursuant to 28 U.S.C. 2255,

or any other petition, motion or application; if so, which grounds have been previously presented and in what proceedings; if any grounds have not been previously presented, which grounds have not been so presented and the reasons for not presenting them; and

c) if a previous motion pursuant to 28 U.S.C. 2255 was not filed or if such a motion was filed and denied the reasons petitioner's remedy by way of such motion is inadequate or ineffective to test the legality of his detention.

5) The following additional information shall be supplied by a petitioner in federal custody who is seeking relief by motion pursuant to 28 U.S.C. 2255:

a) name of the judge who imposed sentence;

b) in concise form, the grounds on which petitioner bases his allegation that the sentence imposed upon him is invalid, the facts which support each of these grounds; whether any such grounds have been presented to any federal court by way of petition for writ of habeas corpus, motion pursuant to 28 U.S.C. 2255, or any other petition, motion or application; if so, which grounds have been previously presented and in which proceedings; if any grounds have not been previously presented, which grounds have not been so presented and the reasons for not presenting them; and

(c) whether petitioner has filed in any court, petitions for habeas corpus, motions pursuant to 28 U.S.C. 2255 or any other petitions, motions or applications with respect to this conviction; if so, the name and location of each such court, the specific nature of the proceedings therein, the disposition and citations (if known) of any written opinion or order entered therein or copies (if available) of such opinions or orders.

6) Petitions and motions for post-conviction relief submitted pursuant to this Rule shall specify all grounds for relief which are available to the petitioner or movant and of which he has or, by the exercise of reasonable diligence, should have knowledge.

A sucessive petition or motion may be dismissed if the court finds that it fails to allege new or different grounds for relief or, if new or different grounds are alleged, the court finds that the failure of the petitioner or movant to assert those grounds in a prior petition or motion was not excusable.

If it appears to the court that a petition or motion for post-conviction relief may be subject to dismissal under this section or Rule 9 of the Supreme Court Rules Governing Section 2254 Cases or Section 2255 Proceedings For the United States District Courts, the court may direct the clerk to send appropriate notice of the defect(s) by certified mail to the petitioner or movant. Following such notification, petitioner or movant shall have an opportunity to explain any such defect(s). Failure

to do so within the time prescribed by the court shall subject the petition or motion to dismissal.

7) The following information shall be supplied by a plaintiff under this rule who is seeking relief by a civil rights action pursuant to 42 U.S.C. 1983:

a) plaintiff's full name;

b) place of plaintiff's residence;

c) full name(s) and address(es) of defendant(s) for purposes of service of process;

d) title and position of (each) defendant;

e) whether the defendant(s) was (were) acting under color of state law at the time the claim alleged in the complaint arose;

f) brief statement of the facts;

g) grounds upon which plaintiff bases his allegations that his constitutional rights, privileges or immunities have been violated, together with the facts which support each of these grounds; and

h) a statement of prior judicial and administrative relief sought; and

i) a statement of the relief requested.

8) Where a petition, motion or complaint is tendered for

filing in forma pauperis, a pro se petitioner, movant or plaintiff shall complete the motion for leave to proceed in forma pauperis and supporting affidavit on the forms supplied by the clerk and shall set forth information regarding his ability to prepay the costs and fees of the proceeding or give security therefore. In all cases in which petitioner, movant or plaintiff is an inmate of a penal institution and desires to proceed in forma pauperis, in addition to the affidavit of poverty required by 28 U.S.C. 1915, he shall submit a certificate executed by an authorized officer of the institution in which he is confined stating the amount of money or securities on deposit to his credit in any account in the institution. The certificate may be considered by the court in acting on the motion for leave to proceed in forma pauperis. In the absence of exceptional circumstances, leave to proceed in forma pauperis may be denied if the value of the money and securities in petitioner's, movant's or plaintiff's institutional account exceeds Seventy-five Dollars (75.00).

9) Petitioners or movants seeking post-conviction relief shall send or deliver to the clerk the original and two copies of the petition or motion. Plaintiffs submitting complaints for civil rights relief must submit the original and one copy for each of the persons named as defendants in the complaint. If tendered for filing by mail, petitions, motions or complaints shall be addressed to the Clerk of the court at an address designated by the Clerk.

10) A petition, motion or complaint tendered to the clerk for filing which does not comply with this rule shall be returned

by the clerk together with a copy of this rule and a statement of the reason or reasons for its return. The clerk shall retain one copy of each noncomplying petition, motion or complaint returned, together with a copy of the statement of the reason or reasons for its return.

11) If the clerk is in doubt as to whether such petition, motion or complaint complies with this rule, he shall refer the same to a judge of this court, who shall determine this matter or assign it for determination.

12) Upon filing of a petition or motion for post-conviction relief contemplated by this Rule, the clerk shall serve by mail a copy of the petition or motion, together with a notice of its filing, on the attorney general of the state involved or the United States attorney for the district in which the judgment under attack was entered. The filing of such petition or motion shall not require an answer or other responsive pleading unless the court orders otherwise.

13) A United States magistrate, when directed by a judge of this court, may perform those duties authorized by Rules 10 of the Supreme Court Rules Governing Section 2254 Cases or Section 2255 Proceedings for the United States District Courts and such other duties as are permitted by law.