

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

LOCAL HABEAS CORPUS RULES

[EFFECTIVE *OCTOBER 1, 2002*]

With Amendments Through *December 1, 2009*

[**TO GO TO DESIRED RULE, CLICK ON RULE NUMBER IN TABLE OF CONTENTS**]

SUMMARY OF DECEMBER 1, 2009, AMENDMENTS

TIME

The amendment to Fed. R. Civ. P. Rule 6(a) eliminated the exclusion of intervening weekends and holidays for short time periods. In general, for times of less than 30 days, the national rules adopted a protocol measuring times in increments of 7 days (7, 14, 21, or 28). For most rules: 5 days becomes 7; 10 and 15 days become 14; 20 days becomes 21; and 25 days becomes 28. The local rules adopted the same protocol.

Local Habeas Corpus Rules affected: 4.1, 7.1, and 8.2

DEVIATIONS

Rule 7.1 "Expansion of Record" – Time in ¶ (b)(1) for petitioner to file a motion for expansion of the record increased from 15 to 21 days. This departure from the protocol that 14 is substituted for 15 eliminates the incongruous disparity between the time allotted to a petitioner and that allotted to the respondent.

TABLE OF CONTENTS

Rule 1.1 Scope. 1
Rule 2.1 Petitions/Motions. 1
Rule 3.1 In *Forma Pauperis*. 1
Rule 4.1 Appointment of Counsel. 1
Rule 7.1 Expansion of Record. 2
Rule 8.1 Evidentiary Hearing. 3
Rule 8.2 Merit Briefs. 3

Rule 1.1 Scope

(a) Scope.

(1) These rules govern the procedure in the United States District Court, District of Alaska, on applications under 28 U.S.C. §§ 2254 and 2255.

(2) 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 Local *Habeas Corpus* Rules of Practice for the District of Alaska and may be cited as “D.Ak.HCR____.”

(c) Effective Date: These rules become effective on October 1, 2002.

Related Provisions:

28 U.S.C. § 2254 State custody; remedies in Federal Courts

28 U.S.C. § 2255 Federal custody; remedies on motion attacking sentence

Rules Governing Section 2254 Cases in the United States District Courts

Rules Governing Section 2255 Proceedings for the United States District Courts

Rule 2.1 Petitions/Motions

(a) Form.

(1) A petition under 28 U.S.C. § 2254 must be in the form provided by the clerk of the court.

(2) A motion under 28 U.S.C. § 2255 must be in the form provided by the clerk of the court.

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

(c) Deficient Form.

(1) Unless the court orders otherwise, a deficient or incomplete petition or motion returned to the petitioner must be corrected and returned to the clerk not more than thirty (30) days after its return by the clerk.

(2) A deficient or incomplete petition or motion that is not corrected and returned to the clerk within the time specified in paragraph (1) will be summarily dismissed.

Related Provisions:

Rule 2, Section 2254 Rules Petition

Rule 2, Section 2255 Rules Motion

Rule 3.1 In Forma Pauperis

A petitioner seeking to proceed without the payment of a filing fee must comply with D.Ak.LR 4.2.

Related Provisions:

Rule 3, Section 2254 Rules Filing Petition

Rule 3, Section 2255 Rules Filing Motion

D.Ak. L.R. 4.2 Payment of Fees by *in Forma Pauperis* Litigants

Rule 4.1 Appointment of Counsel

(a) Upon Filing of Petition/Motion. The court will notify each petitioner appearing without counsel of any right to appointed counsel at the time the petition is filed, and direct the petitioner to file either a request for counsel or a notice of intent to proceed without counsel within thirty (30) days.

(b) **Upon Granting Leave for Discovery.** In the event the court grants leave to invoke the processes of discovery under Rule 6 of the Section 2254 Rules or Rule 6 of the Section 2255 Rules, the court will notify each petitioner or moving party appearing without counsel of any right to appointed counsel, and direct the petitioner to file either a request for counsel or a notice of intent to proceed without counsel within twenty-one (21) days.

(c) **Upon Granting Setting Evidentiary Hearing.** In the event the court determines an evidentiary hearing is required under Rule 8 of the Section 2254 Rules or Rule 8 of the Section 2255 Rules, the court will notify each petitioner or moving party appearing without counsel of any right to appointed counsel, and direct the petitioner to file either a request for counsel or a notice of intent to proceed without counsel within twenty-one (21) days.

(d) **Determination by Court.**

(1) The court will promptly evaluate any request for appointment of counsel by petitioner.

(2) An order appointing counsel for petitioner and a copy of the petition, answer, responsive pleadings, and orders entered, if any, will be immediately forwarded by the clerk to the Federal Defender for the District of Alaska for designation of counsel.

Related Provisions:

Rule 4, Section 2254 Rules	Preliminary Consideration by Judge
Rule 4, Section 2255 Rules	Preliminary Consideration by Judge
Rule 6, Section 2254 Rules	Discovery
Rule 6, Section 2255 Rules	Discovery
Rule 8, Section 2254 Rules	Evidentiary Hearing
Rule 8, Section 2255 Rules	Evidentiary Hearing
D.Ak. HCR 8.1	Evidentiary Hearing

Rule 7.1 Expansion of Record

(a) **General.** The court may order expansion of the record either on its own motion or the motion of a party.

(b) **Request by Party.**

(1) The petitioner must file a motion for expansion of the record not later than twenty-one (21) days after the answer is served and filed by the respondent.

(2) The respondent may file a motion for expansion of the record not later than fourteen (14) days after the petitioner has filed a request for expansion of the record, or twenty-one (21) days after the answer is filed, whichever is later.

(3) A motion for expansion must:

[A] be accompanied by the materials it is requested be included in the record, or

[B] if the materials do not accompany the request,

(i) a description of the material to be added to the record and a statement of its relevance to the issues fairly presented by the petition and the answer, and

(ii) if known, name of the court or agency having the materials or the identity of the custodian of the material.

(4) Unless ordered by the court, no opposition or response to a motion to expand the record may be filed.

Related Provisions:

Rule 7, Section 2254 Rules	Expansion of Record
Rule 7, Section 2255 Rules	Expansion of Record

Rule 8.1 Evidentiary Hearing

(a) **Hearing.** The court may hold an evidentiary hearing on its own motion or the motion of any party.

(b) **Motion of Party.**

(1) A motion to hold an evidentiary hearing must be served and filed not later than thirty (30) days after the date the respondent files an answer.

(2) Any motion for an evidentiary hearing must contain a clear, concise statement of:

[A] the necessity for the evidentiary hearing, including a statement as to why the evidence in the record is insufficient for the court to determine the merits of the petition or motion; and

[B] if the evidentiary hearing is requested by the petitioner and there has been a prior state hearing, that it was not a fair or adequate hearing for one or more of the reasons set forth in 28 U.S.C. § 2254(d).

(3) Unless ordered by the court, no opposition or response to a motion to hold an evidentiary hearing may be filed.

Related Provisions:

Rule 8, Section 2254 Rules Evidentiary Hearing

Rule 8, Section 2255 Rules Evidentiary hearing

D.Ak. HCR 4.1 Appointment of Counsel

Rule 8.2 Merit Briefs

Unless otherwise ordered by the court, briefs addressing the merits of a petition must be served and filed as follows:

(1) Petitioner's/moving party's opening brief not later than thirty (30) days after the date the respondent files an answer;

(2) Respondent's answering brief not later than thirty (30) days after service of the petitioner's opening brief; and

(3) Petitioner's/moving party's reply brief, or a notice that a reply brief will not be filed, not later than twenty-one (21) days after respondent's brief is filed.