

Sharon Bush Ellison  
Prose  
1301 Constitution Road, S.E.,  
Atlanta Georgia 30316  
DA124B

09-CR-C

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Washington D.C.

Honorable Lee H. Rosenthal  
Chairman, Committee on  
Rules of Practice and  
Procedure.

Dear Mr Chairman: This is to offer my suggestions and recommendation as a pro-se litigant affecting rules and Practice or Statutes that are in the interest of Habeas Corpus Proceedings.

I would greatly appreciate your assistance in any way to establish by law this formulation of proposed rules upon your most earliest of convenience.

The proposed bill would amend Rule 1 of the Section 2254 Federal Habeas Corpus Rules to give ease meaningfully to the federal courts in their duty of nonstop entertainment of applications for Writ of Habeas Corpus by persons in custody pursuant to a judgment of a state court on a federal level and would thus accomplish a goal the court has yet to reach.

A judicial study has shown that the office of the State Attorney General's increasing workload and limited sums of money allocated require such greater assistance from the worry imposed by its role as respondent's counsel in all habeas corpus actions filed by persons in custody pursuant to a judgment of a state court.

The bill would also amend Rule 1 to permit a petition for writ of habeas corpus by persons in custody pursuant to all other situations except a judgment of a state or federal court. The amendments proposed would permit an exclusive jurisdiction of the federal court over all questions which concern the legality of detention by state or federal mental institutions and/or hospitals because of mental incompetency except those involving a subject of state or federal criminal defense as these will be proportioned within the proper state or federal criminal procedure as already promulgated.

No defensive plea of not guilty by reason of temporary insanity, or guilty but mentally ill and retarded, will be derived from the definition of mental incompetency as will be provided by the new amended Rule 1. Moreover, this proposal would permit the instant transfer of a application that contained the name of a local, state or federal criminal institution as the Petitioner's current place of detention to the appropriate state court.

Secondly, The proposed bill would amend Rule 2. of the Section 2254 Federal Habeas Corpus Rules to also give ease to the clerks of the federal court, in their duty of nonstop maintenance of Habeas Corpus Forms for their availability to petitioners.

This would increase the budget as allocated for the use of office expenses within the Court. The bill would also amend Rule 3. to permit all petitions for a

Writ of habeas corpus, submitted by persons in custody under a federal court judgment to substantially follow the form as appended to Section 2255 proceedings entitled "motion attacking sentence". The clerk need not make these forms available as they are appended to Title 28 U.S.C.A. and can be printed or handwritten therefrom. (However the providing of such motion may be within the discretion of Clerk.)

Thirdly, the proposed bill would amend Rule 4. of the section 2254 Federal Habeas Corpus Rules to relieve the clerk and Court's from their unnecessary duty to receive, forward and assign or examine unnecessary petitions for writ of habeas corpus. The amendment would permit a pre-review by the clerk. If it plainly appears from the addressed envelope of the petition that the petitioner is not entitled to habeas relief in that he pled guilty, the petition will not be accepted and the Clerk will be relieved of a duty to notify the Petitioner. (please see footnote 1) Pg. 6)

Fourthly, the proposed bill would amend Rule 5. of the section 2254 Federal Habeas Corpus Rules to permit mandatory answer by respondent in matters where the question of unlawful detention involves a issue of incompetency.

There may be a need to expedite the review of this proposed amendment to Rule 1, 2, 4, and 5 of the section 2254 Federal Habeas Corpus Rules, given the need to provide prompt relief for the office of the State attorney General, clerks and their appropriate courts in their role as respondent counsel and officer of the court and for more aggressive judicial legislative and executive control, scrutiny and supervision in the matter of habeas abuse.

I trust that you will consult with other members of the appropriate Committee who may voice their concern about these proposed amendments.

I am simultaneously sending a copy of this letter and its attachments to the United States Department of Justice - Office of Legislative Affairs.

I hope that a prompt consideration of the proposals will be given by the Committee.

In addition to amending Rule 1, 2, 4, and 5 of the section 2254 Federal Habeas Corpus Rules, I am recommending (a) amendments to Rule 3. of the Section 2254 Federal Habeas Corpus Rules to relieve the Clerk from a duty to mandatorily file all petitions for a writ of habeas corpus. The amendment will permit a pre-review in matters where the detention is based on criminal conviction and a mandatory filing of other petitions where the detention is based on questions of incompetency.

Lastly I am recommending amendments to 28 U.S.C. 2241 changing the manner in which the writ of habeas corpus will be granted also 28 U.S.C. 2254 changing the level of remedy in federal court available to persons in state custody.

Again I urge prompt consideration of these proposals by the appropriate committees.

Sincerely,

Sharon Bush Ellison Folse #613883

cc: United States Department of Justice  
Office of Legislative Affairs / w/ Enclosures.

ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURT

Sharon Bush Ellison - Probe Source  
v.

Re: Rules 1, 2, 3, 4 and 5

Proposed amendments to Section  
2254 of the Federal Rules of  
Habeas Corpus.

also 28 U.S.C. 2241;  
28 U.S.C. 2254.

## PROPOSAL

1. The proposed amendment will change Rule 1(a) in the following respects:  
In the first clause the amendment substituted the words "a State Court judgment who seeks a determination that the custody violates the Constitution, laws, or treaties of the United States and" for the words "the detention of a state or federal mental hospital and/or institution because of alleged mental incompetency"; in the second clause of subdivision (a) the amendment substitute the words "a state court or federal court judgment who seeks a determination that future custody under a state court judgment would violate the Constitution, laws or treatise of the United States" for the words "any other situation of detention except under judgment of a state or federal court"; in the first clause of subdivision (b) the amendment delete the words "other cases. The district court may apply any or all of these rules to a habeas corpus petition not covered by Rule 1(a)."
2. The proposed amendment will change Rule 2(a) in the following respects:  
In the subdivision (d) clause the amendment will insert in between the words "rule and The" the words "except in matters where the writ of habeas corpus is submitted by a person in custody pursuant to a federal court judgment where the petition must substantially follow the form appended to section 2255 entitled "Motion to Attack Sentence form" prescribed by Title 28 of the United States Code."

3. The proposed amendment will change Rule 3 in the following respects:  
In subdivision (b) the amendment will insert between the words "filing and the" the words "except in matters requiring pre-review";  
[in the first line of Rule 4's paragraph]

4. The proposed amendment will change Rule 4 in the following respects:  
In the caption of Rule 4, insert in front of "preliminary" the words "pre-review"; in the first line of the Rule 4 paragraph, insert before "the" the words "after the petition has passed pre-review";  
the amendment will change line 11 of the Rule 4, paragraph by substituting the words "every case" for the words "cases which pass preliminary review".

5. The proposed amendment will change Rule 5 in the following respect:  
The amendment will insert between the words "required" and "the" of subdivision (a) the words "except in matters where the question of detention involves mental incompetency".  
In subdivision (b) of the 2nd line, the amendment will insert in front of the word "must" the word "solely".

6. The proposed amendment will change 28 U.S.C 2241 in the following respects:

1. In subdivision (b) the amendment will insert in front of "habeas Corpus" the words "which shows on its face a local, state or federal criminal institution as the current place of detention for the petitioner"; also substitute the words "district court" for the words "state court".

In subdivision (c) the amendment will insert behind "prisoner" the words "state" and in the first clause the amendment substitutes the words "He is in custody under or by color of the authority of the U.S or is committed for trial before some court thereof; or" for the words "firstly, the application is filed in the state court".

Clauses (2), (3), (4) and (5) will all be deleted from 28 U.S.C 2241  
Clause (d) subdivision will be deleted in its entirety and a new subdivision (d) will be inserted.

Under subdivision (d) clause (1) will be inserted. In the [first] clause of subdivision (d) the amendment will insert the word "The writ of habeas Corpus shall not extend to a Federal prisoner unless —"; under subdivision (d) clause (1) the amendment will insert after the number "(1)" the words "solely, the application is submitted in the form of a Motion attacking Sentence, as provided in 28 U.S.C Appendix of Forms."

In subdivision (e) (1) and clause (2) of subdivision (e), the words will remain the same until further notice of necessary amendment.

The proposed amendment will change 28 U.S.C 2254 (a) in the following respect: [In s]

In subdivision (a) the amendment will insert in front of "on" the words "appellate jurisdiction and the ground that he Pled not guilty and is"; in subdivision (b) (1) the amendment will substitute the word "granted" for the word "accepted for filing"; and inserting in front of "—" the words "he has pled not guilty in the trial courts".

The proposed amendment will change 28 U.S.C 2254 in the following respects:

In the subdivision (b) (1) clause (B) (i) (ii) will all be deleted in its entirety.

(legislation concerning State corrective process also processes which are ineffective to protect the rights of the applicant will be proposed as closely herein the near future.)

In the subdivision (b) clause (2) and (3) will be deleted in their entirety while in subdivision (c) the amendment will insert in the front of "available" the word "appellate"; in subdivision (d) the amendment will delete the word "not" and insert after the word "proceeding" the words "and brought up for appellate review" and delete the remaining words "unless the adjudication of the claim—";

Also in [subc] clause 1 and 2 of subdivision (d) the amendment will delete all words.

In subdivision (e) (1) the amendment will substitute the words "in Custody Pursuant to the judgment of a state court" for the words "who has Pled not guilty"

In clause (a) (A) (i) (ii) (B) (f) (g) (h) (i) the words will all remain the same until further notice of necessary amendment.

Footnote 1. I am expecting critics of the pre-review by clerk to argue that pre-review is not an effective method of eliminating the acceptance of unnecessary petitions because there is no way in which it can [be] plainly appear from the addressed envelope of the petition that the petitioner is not entitled to habeas relief in that he pled guilty without the opening of such contents by the clerk.

"Thus in my preparation I am simultaneously studying a proposal for new legislation and or amendment of Title 42 of the Georgia Code which would require the defendant to provide information as to whether he pled guilty or not guilty during the trial of the conviction in question - to state officials during the intake orientation questioning process of the Georgia Department of Corrections. The information violates no privacy laws of the Defendant as most criminal trials are public record. And the information is pertinent to eliminate excessive abuse of the Habeas Corpus by persons in custody pursuant to a State court judgment. The new legislation and or amendment of Title 42 would further provide that the information as received by the State official be placed in a numerical category. (i.e - if [of] the defendant pled guilty the numerical category would be "1", "0"; not guilty would be "0" and any other pleas - i.e - nolo contendere or mental health defenses would fall within the numerical category of "1." The state official would then have a duty to assign such number to the GDC number of the defendant (i.e - if the GDC # assigned is 000000, then the numerical category would be placed at the end of such assigned # (i.e 0000000 if not guilty and 0000001 if the offender pled guilty. Upon the assigning of the defendant's Offender's/Georgia Department of Corrections identification card such numerical category shall be included in the visible numbers of the GDC # as shown on the face of the identification card. The Clerk of State and or Federal court will in their pre-review of the envelopes in which the Application is contained will readily be informed if such GDC # of the offender as listed in the return address is information of guilty or not guilty (i.e if any such GDC of any offender ends in "1" the clerks will automatically be informed that such addressee / defendant / offender has pled guilty and the envelope containing the application will not be accepted. It will plainly appear from such plea that the defendant/offender is not unlawfully detained".

Sincerely, Sharon Bush Ellison  
# 613083 Probe