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01/16/2008 11 26 AM

To <Rules_Comments@ao uscourts gov>
cc
Subject comment on the proposed change to Section 2254 Rule 11

07-CR-005

Good morning,

I am a criminal appellate practitioner A portion of my practice is devoted to handling of 2254 appeals by appointment of the 9th Circuit

I have concerns about the proposal to change the Certificate of Appealability (COA) requirement by requiring COA issuance at the time of district court judgment The existing rule, which gives the appellant an opportunity to do so post-judgment, is better, for several reasons From the court's perspective, it gives the judge an opportunity to step away from the case for a few days and perhaps look at it with a fresh eye Also, from the habeas petitioner's perspective, particularly those who are incarcerated, it gave them an opportunity to get to the law library and prepare a more effective argument as to why COA should be granted. It also gave them an opportunity to secure counsel. It would be unfair to ignore the realities of incarcerations and the burdens they place on pro se litigants.

In addition, as a practical matter, the proposed rule would create a rather awkward procedure When the district court issues a judgment, it does not always adopt the magistrate's report and recommendation completely Thus, under the new procedure, when the habeas petitioner files his or her objections to the R&R, he or she would have to make an anticipatory request for the COA even though R&R may not be fully adopted by the district court This procedure would, at best, be ineffective, and, at worst, effectively eliminate the petitioner's opportunity to request a COA

Finally, there seems to be no reason to change the existing rule - it works just fine

Thank you for your time

Gene Vorobyov
Attorney at Law