



UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

**PRO SE GUIDEBOOK**

FOR

**CASES FILED UNDER 28 U.S.C. § 2254**

February 2015

This Guidebook is intended to be an informative and practical resource for understanding the basic procedures of the Court. The statements in this Guidebook do not constitute legal advice. DO NOT CITE THIS GUIDEBOOK AS AUTHORITY. This Guidebook does not take the place of the [Federal Rules](#), this Court's [Local Rules](#), or the individual practices of the Judges of this Court. All parties using this Guidebook remain responsible for complying with all applicable rules of procedure. If there is any conflict between this Guidebook and the applicable rules, the rules govern.



## INTRODUCTION

Once you have decided to represent yourself in this Court, this Guidebook is intended to assist you with the procedures you must follow. However, you cannot rely on this Guidebook alone, because it does not cover every situation which may arise in your case, and this Guidebook does not offer any legal advice or information about the specific issues in your lawsuit. You must be prepared to do your own legal research beyond the assistance offered in this Guidebook.

The Court encourages you to carefully review this Guidebook together with Title 28 of the United States Code (U.S.C.) section (§) 2254; 28 U.S.C. §§ 2242-2253; the Rules Governing § 2254 Cases in the United States District Courts; the Federal Rules of Civil Procedure; and this Court's Local Rules. You can review the United States Code in the prison law library. The Federal Rules of Civil Procedure appear at the end of Title 28 of the United States Code. The Rules Governing § 2254 Cases appear after 28 U.S.C. § 2254 in the United States Code. If the prison law library does not have the most recent version of this Court's Local Rules, they can be obtained from the Clerk's Office by request.

The Federal Rules of Civil Procedure apply to habeas corpus proceedings to the extent that the practice in those proceedings is not specified in a federal statute or the Rules Governing Section 2254. *See* Federal Rule of Civil Procedure 81(a)(4). Therefore, before turning to the Federal Rules of Civil Procedure for guidance, you should first review 28 U.S.C. §§ 2242-2254 and the Rules Governing § 2254 Cases. You should also



carefully read all orders from the Court, which may contain guidance on deadlines or procedures you must follow.

This Guidebook is generally organized in the order that a habeas corpus petition proceeds through the Court. It is set up in a question and answer format. The Table of Contents includes each question addressed in this Guidebook. It may be helpful to start by reviewing the Table of Contents.



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## CHAPTER ONE: GENERAL INFORMATION

### **What is the Clerk's Office?**

The Clerk's Office is the administrative part of the Court that maintains the Court's records. Most of your interaction with the Court will be through the Clerk's Office. This is where you will file your documents. The Clerk's Office can tell you whether a particular document has been filed and can provide copies of documents in the court record at a cost of \$.50 per page (payable in advance). However, the Clerk's Office cannot give you legal advice or tell you when a judge might make a ruling in your case.

### **What does it mean to file documents with the Clerk's Office?**

In a court case, the Clerk's Office must keep track of everything that the parties want the judges to receive. Filing your papers with the Clerk's Office allows the judges to be sure that they have all the case papers and provides you a way to check and make sure that the Court has your papers.

Filing your petition and other documents means mailing them to the Clerk's Office. After receiving your documents, the Clerk's Office will docket your papers and send them to the judge assigned to your case. Following the filing rules is important, because most of what happens in your case will be based on the papers you file. After you file your § 2254 petition and the Court has served it on the respondent, whenever you file documents with the Court, you will also need to send copies of those



documents to the respondent. See Federal Rule of Civil Procedure 5 for more information.

### **How do I contact the Clerk's Office?**

You may contact the Clerk's Office at the following address and phone number:

United States District Court for the District of Minnesota  
Clerk's Office  
300 South Fourth Street, Suite 202  
Minneapolis, MN 55415

(612) 664-5000

### **What is a magistrate judge?**

A federal magistrate judge is a judicial officer that has some but not all of the powers of a district judge appointed under Article III of the United States Constitution. Local Rules 72.1 and 72.2 explain more about magistrate judges. In general, a magistrate judge will preside over your § 2254 action. If you disagree with the magistrate judge's Report and Recommendation, you can make an objection to the district judge.

## **CHAPTER TWO: PRELIMINARY CONSIDERATIONS**

### **What is a habeas corpus petition?**

A petition for a writ of habeas corpus is a request by a prisoner or other detainee for the Court to review the legality of their detention. Persons in custody pursuant to a state court judgment may file a petition for writ of habeas corpus under 28 U.S.C. § 2254



to challenge the validity of that judgment under federal law. The object of a habeas corpus petition is to obtain release from custody.

**Are there any issues that cannot be raised in a habeas petition?**

In a § 2254 habeas corpus action, you can only challenge the validity of your conviction or the length of your sentence. You cannot seek monetary damages, and you cannot ask for any other relief related to the conditions of your confinement. If you think you are entitled to monetary damages, you must file a civil rights action under 28 U.S.C. § 1983 (or under *Bivens*, if the alleged constitutional violations are against federal officials or employees). The Court has a separate Guidebook for Prisoner Civil Rights Litigation.

Federal courts do not have jurisdiction to consider claims that are based solely on state law or on a state constitution. 28 U.S.C. § 2254(a) provides that a habeas petition may be brought only if the state court judgment or sentence was in violation of the United States Constitution, a United States Supreme Court case, a federal law, or a United States Treaty. You must pursue any post-conviction claims based solely on state law or a state constitution in state court.

Finally, if you had a full and fair opportunity to litigate a Fourth Amendment (illegal search and seizure) claim, the Court cannot grant you habeas corpus on that ground. *Stone v. Powell*, 428 U.S. 465, 494 (1976).

**Are there any things I should consider before I file a Section 2254 habeas petition?**



Yes. The following questions identify some preliminary considerations that you should think about before filing a habeas corpus petition.

**Do you meet the “in custody” requirement?**

A habeas corpus proceeding under 28 U.S.C. § 2254 must be brought by a person “in custody pursuant to the judgment of a State court.” The “in custody” requirement must be met at the time the petition is filed in federal court. A petitioner who is incarcerated or on probation, parole, or supervised release satisfies the “in custody” requirement. For other circumstances, you will need to do additional research.

**Did you fully exhaust your state court remedies?**

You cannot raise a federal constitutional claim in a habeas corpus proceeding unless you previously raised the same constitutional claim before the Minnesota Supreme Court. This is called the exhaustion requirement. Furthermore, if the state courts refused, or would now refuse, to decide a constitutional claim on the merits because that claim was not properly presented in accordance with the state’s procedural requirements, then that claim normally will not be considered in a federal habeas corpus case. This is called procedural default.

**Is your claim within the statute of limitations?**

The statute of limitations is the amount of time you have to file a particular claim. Once that time limit has passed, it is too late to file that claim. If you file a § 2254



habeas petition after the statute of limitations deadline, your case may be summarily dismissed without consideration of the merits of your claims.

Section 2254 habeas corpus petitions are subject to a one-year statute of limitations. In most cases, the one-year limitation period begins to run 90 days after a final ruling by the Minnesota Supreme Court; thus, the habeas petition must be filed within one year of the end of that 90-day period. Once the limitation period begins to run, each day that goes by is deducted from the one-year period. However, the statute of limitations is “tolled” (that is, it stops running), while a properly-filed state post-conviction proceeding is pending in state court (including a state appellate court).

It is important to note that tolling the statute of limitations does *not* give a prisoner a fresh one-year limitation period after state post-conviction proceedings are completed. For example, if three months of the habeas limitation period passed before the limitation period was tolled, only nine months remain to timely file the federal habeas petition after the state post-conviction proceedings conclude. Furthermore, if the one-year federal habeas statute of limitations has already expired before a state post-conviction motion is filed, the post-conviction motion has no tolling effect, because filing a post-conviction motion does not “restart” the one-year limitation period. There are many other factors that can affect the application of the statute of limitations which are beyond the scope of this Guidebook. See 28 U.S.C. § 2244(d)(1) for more information.

A § 2254 petition filed by a pro se prisoner is deemed to be ‘filed’ on the date it is given to prison officials for mailing. The petition must be accompanied by a declaration



or notarized statement by the prisoner, affirming the date when the motion was delivered to prison officials for mailing. *See* Rule 3(d) Rules Governing § 2254 Cases.

Rarely, the filing deadline can be extended by application of a legal doctrine known as 'equitable tolling,' but equitable tolling will be applied only if the prisoner shows that some extraordinary external circumstances made it impossible to file the § 2254 motion before the statute of limitations expired.

### **What remedies can I seek in a § 2254 petition?**

Habeas corpus is not the appropriate cause of action if you want to challenge the conditions of confinement or obtain money damages. For example, claims of improper medical care or retaliation for assertion of First Amendment rights should be brought in a civil rights lawsuit under 42 U.S.C. § 1983, if the allegations are against state officials. Habeas corpus is the proper cause of action if you seek release from prison. Minnesota inmates should also be aware that habeas corpus proceedings in federal court are different from habeas corpus proceedings in state court. This Guidebook addresses only habeas corpus proceedings in federal court brought by a person in custody pursuant to a state court judgment.

### **Can I amend my habeas petition after I file it?**

Maybe. After the respondent has filed an answer to your petition, you must get permission from the Court before amending the petition. *See* 28 U.S.C. § 2242; Federal Rule of Civil Procedure 15(a) and Local Rule 15.1. The Court will not permit amendments that are prejudicial, were added after the statute of limitations expired, or



present claims that were not previously decided in the state courts. An amendment that adds an unexhausted claim may create a “mixed petition,” which will subject the entire petition to dismissal.

### **Can I bring a second habeas petition?**

You can proceed on a second habeas petition only if your first habeas petition was dismissed without prejudice. In all other circumstances, you must obtain permission from the Eighth Circuit Court of Appeals before you can file a second habeas petition challenging a conviction or sentence that has already been reviewed in a prior habeas proceeding. “A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application must be dismissed.” 28 U.S.C. § 2244(b)(1). “A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless –

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

28 U.S.C. § 2244(b)(2).



“Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A).

### **How does the Court review a habeas corpus petition?**

Habeas corpus petitions under § 2254 are determined by a federal court’s review of the written state court record. Habeas corpus proceedings are not an opportunity to re-litigate your criminal case. You bear the burden of proof to show that your conviction or sentence violates the United States Constitution, federal law, a treaty of the United States, or United States Supreme Court case law. The law places constraints on the power of federal habeas courts to grant relief. Specifically, when a habeas petitioner’s claim has been adjudicated on the merits in a state court proceeding, a federal habeas court cannot grant relief unless the state court’s adjudication of the claim:

- Resulted in a decision that was contrary to, or involved an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States; OR
- Resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d). In a habeas proceeding, a federal court is required to accept the state court’s determination of factual issues as correct, unless the petitioner rebuts the presumption of correctness by clear and convincing evidence. 28 U.S.C. § 2254(e)(1).

Under § 2254(d)(1), the habeas court reviews whether the state court decision contradicted a holding of the United States Supreme Court or reached a different result



on a set of facts materially indistinguishable from those at issue in a United States Supreme Court decision; or, whether the state court unreasonably applied controlling United States Supreme Court precedent to the facts of the petitioner's case.

## **CHAPTER THREE: HOW TO START A HABEAS CORPUS ACTION**

### **What are the requirements to start a habeas corpus action?**

To start a § 2254 habeas corpus action in the District of Minnesota, you must do the following:

- Complete the § 2254 Habeas Corpus Petition form;
- Complete the Civil Cover Sheet form;
- Pay the \$5.00 filing fee or complete an Application to Proceed in District Court Without Prepaying Fees or Costs ("IFP application"); and
- Mail the original of the above documents to the Clerk's Office at the address provided in Chapter One.

Keep a copy of the petition and other documents you have filed for your own records.

### **How do I complete the habeas corpus petition form?**

Use the Court's form, entitled "Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody," which is included in the appendix to this Guidebook. This form is also known as the AO241. Be sure to fill out the form completely and truthfully. Your petition should be legibly handwritten, preferably in black ink, or typed.



The first set of questions, numbers 1-11, ask you to provide basic information about your state court judgment, the appeals, if any, and other administrative remedies that you may have requested. Question 12 addresses the grounds on which you are bringing your present petition. The next three questions below address specific sections of the form.

### **Can I file a petition for judgments from multiple courts?**

No. A petitioner who seeks relief from judgments entered in more than one court must file a separate petition covering the judgment(s) of each court. *See* Rule 2 of the Rules Governing § 2254 Cases.

### **Who should I name as the Respondent on the habeas corpus petition form?**

The proper respondent (the person or entity you are suing) in a § 2254 habeas corpus case is your current custodian, the warden of the facility where you are held. *See* Rule 2(a) of the Rules Governing § 2254 Cases.

### **How should I answer Question 12 on the habeas corpus petition form?**

For each claim, it is important that you state the federal legal ground under which your claim arises, such as a constitutional provision, United States Supreme Court case, federal law, or treaty of the United States. The claim must be the same claim you raised in each level of the Minnesota state court system. The petition should include a brief description of the factual circumstances that are relevant to the claim. You should not make extensive legal arguments anywhere in your petition.



## **Can I file attachments with my petition?**

If you have documents that support your petition, you can, *but do not have to*, attach copies of them to the petition as exhibits. The purpose of an exhibit generally is to present proof or clarification of an allegation in your petition. If you decide to attach exhibits to your petition, then you must refer to that exhibit or otherwise explain why you are attaching the exhibit to the petition. You should label each separate exhibit, and number the pages of each exhibit, so they can easily be referred to in future proceedings. Do not attach copies of any documents that you do not discuss in your petition.

## **Can I file a memorandum of law with my petition?**

Yes. You should not make legal arguments or cite cases in your petition, but you may do so by filing a memorandum of law with your petition. A memorandum of law, sometimes called a brief, is a document where you apply the law to the facts of your case. You should only include arguments that support the claims raised in the petition.

All memoranda of law are limited to 12,000 words. Pro se litigants may write their memoranda legibly by hand, or type their memoranda double-spaced, on 8 1/2 x 11 inch paper. See Local Rules 5.2 and 7.1(f), (h) for additional requirements concerning titles, captions, exhibits, footnotes, quotations, page numbering, and margins.

When any memorandum of law is filed and served, it must be accompanied by a certificate of compliance with the word count requirement of Local Rule 7.1(f). A Certificate of Compliance form is included in the forms appendix of this Guidebook.



Additionally, the memorandum must be accompanied by a certificate of service. The certificate of service form is also included in the appendix of this Guidebook.

### **Do I need to notarize the petition?**

No, notarization is not required. But you must sign the petition and indicate the date you placed the petition in the prison mailing system. By signing the petition, you are declaring under penalty of perjury that the statements made in the petition are true and correct. Knowingly making a false material declaration under oath (perjury) can be punished by fine or imprisonment. *See* 18 U.S.C. § 1623.

### **What is a civil cover sheet?**

The civil cover sheet is a form provided by the Clerk's Office and is used to gather information about the nature of your lawsuit. This form is included in the appendix to this Guidebook. You must file a civil cover sheet when you file your petition.

### **How do I pay the \$5.00 filing fee?**

You may submit your \$5.00 filing fee by check from your trust account, and mail it to the Clerk's Office address provided above. Checks are payable to "Clerk, U.S. District Court."

### **What if I cannot afford the filing fee?**

If you cannot afford the \$5.00 filing fee, you can apply to proceed without prepaying the fee (which is called proceeding in forma pauperis) by completing the



AO239 form “Application to Proceed in District Court Without Prepaying Fees or Costs” (also called “IFP Application”). This form is included in the appendix to this Guidebook. If your application is granted, you will have “IFP” status. This means you will not be required to pay the \$5.00 filing fee. *See* 28 U.S.C. § 1915(b)(1).

The habeas corpus petition and the IFP application will be reviewed by a magistrate judge. You will be notified of the judge’s decision by mail.

### **Do I need to serve a copy of my petition?**

No. You do not need to serve the respondent a copy of your petition when it is filed. A copy of your petition will be served upon the respondent if the Court later authorizes your petition to proceed. If you filed a memorandum of law at the same time as the petition, it will be served with the petition upon the respondent by the Court, and you will not need to serve it yourself or complete a certificate of service form. However, if you file a memorandum of law after the respondent files a response or motion in your case, you will need to serve a copy by mail to the respondent, and complete and file a certificate of service by mail form.

### **How can I find out when my petition was received by the Clerk’s Office?**

If you wish, you may request in writing that the Clerk notify you when your petition was received and filed.

## **CHAPTER FOUR: INITIAL REVIEW, RESPONSE TO THE PETITION**



When you file your petition, it will be forwarded to a magistrate judge, who will review your completed habeas corpus petition form and your IFP application, if you have filed one. “If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner.” *See* Rule 4, Rules Governing § 2254 Cases.

The Court’s initial review is limited to the petition itself and any attached exhibits. After the respondent files its response, a review of the full state court record may reveal grounds for dismissal that are not plainly apparent from the petition and exhibits. Therefore, even if the Court’s order granted the petitioner an opportunity to proceed in the case, the respondent can still file an answer requesting dismissal.

### **How will I know the results of the initial review?**

The court will issue an order explaining the results of the initial review. At this point, the magistrate judge will either recommend that your case be summarily dismissed; order that you amend the petition to correct any deficiencies; or order the respondent to file a written answer to your petition. If your case is authorized to proceed, the order will include a schedule for your case. You will receive a copy of the magistrate judge’s Report and Recommendation or order by mail when it is entered on the case docket. The initial review process may take several weeks due to the Court’s heavy caseload.



### **Does the respondent have to provide the state court record?**

If the magistrate judge orders the respondent to file an answer, the respondent must supply the Court with a copy of those portions of the state court record which the respondent deems relevant to the Court's determination of the claims at hand or those portions ordered to be submitted by the Court. *See* Rule 5, Rules Governing § 2254 Cases. For example, if the habeas corpus petition challenges only sentencing, then the respondent would usually supply the Court with only the sentencing records, rather than the entire transcript of the trial. The respondent will not supply you with a copy of your state court record.

If the respondent does not lodge all portions of the state court record which you deem relevant to a determination of the claims, you can file a motion to expand the record under Rule 7 of the Rules Governing § 2254 cases. Motions are rarely necessary in § 2254 cases.

### **May I request appointment of counsel?**

There is no constitutional right to counsel in a habeas corpus action. The Court does not appoint counsel in habeas corpus actions except under extraordinary circumstances. If you make a motion to appoint counsel, you should state the particular reasons you believe you are entitled to counsel.

### **What other kinds of documents may I file in my case?**

You do not have to file any documents in support of your petition, but you may do so if you choose. If you refer to any part of the state court record, you should



include a citation that will allow the judge to easily locate the relevant part of the record. You can do this in your reply (also called a “traverse”) to the answer, which you may file within the time fixed by the judge. *See* Rules 5(e) Rules Governing § 2254 Cases; 28 U.S.C. § 2248. Affidavits are permissible when preliminary procedural facts are at issue. For example, if the statute of limitations is at issue, you may want to submit an affidavit to prove when and how you filed your habeas corpus petition. Otherwise, the Court normally will not consider an affidavit if it contains new facts that have not previously been raised in the state courts. In addition to filing your reply with the Court, you should mail a copy of the reply to the respondent and file a certificate of service by mail with the Court (unless otherwise directed by the Court). A certificate of service by mail form is included in the appendix to this Guidebook.

### **Is discovery allowed?**

Discovery is generally not permitted in a habeas corpus case. Exceptions are sometimes made if there is a preliminary procedural issue which has never been resolved by a court. Discovery is not allowed without a prior Court order. Therefore, you must request permission from the Court, by filing a motion, before conducting discovery. *See* Rule 6 of the Rules Governing § 2254 Cases.

### **Will I get an evidentiary hearing?**

Probably not. Evidentiary hearings are held in federal habeas corpus proceedings only very rarely. Generally, the written state court record is sufficient for the Court to determine the outcome of the case. Under 28 U.S.C. § 2254(e)(2), a



petitioner is not entitled to produce new evidence or have an evidentiary hearing in federal court on the merits of his case if he “has failed to develop the factual basis of a claim in State court proceedings” as a result of his own fault and lack of diligence. *Williams v. Taylor*, 529 U.S. 420, 429-430 (2000). A petitioner who is not entitled to present new evidence must rely on facts contained in the state record to show his or her entitlement to relief. In the rare circumstance when the Court grants an evidentiary hearing, the Court will appoint an attorney to represent the petitioner. *See* Rule 8(c), Rules Governing § 2254 Cases.

## **CHAPTER FIVE: OBJECTIONS TO THE REPORT AND RECOMMENDATION, JUDGMENT, and APPEAL**

### **How do I object to a Report and Recommendation?**

If a magistrate judge issues a Report and Recommendation in your case and you disagree with the recommendation, Local Rule 72.2 states that you have 14 days to file an objection. Any objection you file will be reviewed by the district judge assigned to the case. Under Local Rule 72.2(b), your objection to the Report and Recommendation must be specific and relate to the magistrate judge’s proposed findings and recommendations. Your objection may be no more than 3,500 words in length. *See* Local Rule 72.2(c). You must serve a copy of your objection on the respondent, together with a certificate of compliance with the word count requirement and a certificate of service by mail form, which are attached to the appendix of this Guidebook. If you file an objection, the respondent is able to respond to your objection 14 days after your objection is filed.



Upon receiving your objection, the district judge assigned to the case will review the record and make a *de novo* determination, which means the district judge will review the case without giving any deference to the magistrate judge's decision. The district judge will not usually consider evidence that was not in the record before the magistrate judge or conduct any hearing.

### **What do I need to do to file an appeal?**

If your case is unsuccessful, then you may wish to appeal. When judgment is entered in your case, the Clerk's Office will mail a copy to you. An appeal may only be made after judgment has been entered in your case. The time for filing an appeal starts from the date the judgment is entered on the docket.

There is not an automatic right to appeal a § 2254 habeas corpus case in the federal court system. Two requirements must be met before an appeal will be heard: (1) the judge must enter a final order that is adverse to you; and (2) you must receive a certificate of appealability. *See* Rule 11, Rules Governing § 2254 Cases and 28 U.S.C. § 2253.

A certificate of appealability is a court order authorizing an appeal. The district court is required to issue or deny a certificate of appealability when it enters the final order in your case that is adverse to you. *See* Rule 11 of the Rules Governing § 2254 Cases. If the district court issues you a certificate of appealability in its final order and enters judgment, then you may proceed and file a notice of appeal. If the certificate of appealability is denied by the district court judge, you may still file a notice of appeal,



but the claims that you see to raise on appeal will not be heard and decided unless the Court of Appeals grants you a certificate of appealability after your notice of appeal has been filed. *See* Rule 22(b) of the Federal Rules of Appellate Procedure.

### **How do I file an appeal?**

You must file a notice of appeal. A notice of appeal form is included in the appendix to this Guidebook. There is a filing fee of \$505.00 for an appeal. If you were granted IFP status (you were given permission to proceed without paying the filing fee) there is a presumption that your IFP status continues on appeal. Unless otherwise ordered by the Court, you do not have to pay the filing fee on appeal.

If you were not already granted IFP status in the district court, and if you cannot afford to pay the filing fee for appeal, you can apply to proceed without prepaying the fee by completing the “Motion and Affidavit for Permission To Appeal In Forma Pauperis” form. The last page of the form, regarding trust account information, is relevant and should be completed. Even though you are seeking IFP status on appeal, you should file this application in the district court. If your application is granted, you will not be required to pay the \$505.00 filing fee. *See* 28 U.S.C. § 1915.

Under Federal Rule of Appellate Procedure 24(a)(5), if the district judge denies your motion to proceed IFP on appeal, you may file a motion to proceed IFP in the Eighth Circuit Court of Appeals. This must be done within 30 days after service of this Court’s notice that it denied your application to proceed IFP on appeal.



### **When do I have to begin my appeal?**

You must file your notice of appeal in this Court within 30 days after the judgment is entered. For additional information regarding the time for filing a notice of appeal, *see* Federal Rule of Appellate Procedure 4(a). There are many other steps to beginning and proceeding with your appeal, but they are governed by the Eighth Circuit Court of Appeals Local Rules and the Federal Rules of Appellate Procedure, which are beyond the subject of this Guidebook.

### **May I request appointment of counsel on appeal?**

There is no statutory or constitutional right to counsel on appeal in a habeas case. If you apply for appointment of an attorney on appeal, such a request must be filed in the Eighth Circuit Court of Appeals, not the district court.

## APPENDIX OF FORMS

The following forms are provided in the appendix of this Guidebook.

- ❖ Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody
- ❖ Civil Cover Sheet
- ❖ Application to Proceed in District Court Without Prepaying Fees or Costs
- ❖ Motion (DO NOT file a motion seeking the same relief requested in the habeas petition. Motions are rarely necessary in habeas cases, and are used to ask for something other than release from prison)
- ❖ Memorandum of Law
- ❖ LR 7.1 Word Count Compliance Certificate
- ❖ Certificate of Service by Mail
- ❖ Notice of Appeal

**Petition for Relief From a Conviction or Sentence  
By a Person in State Custody**

**(Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus)**

**Instructions**

1. To use this form, you must be a person who is currently serving a sentence under a judgment against you in a state court. You are asking for relief from the conviction or the sentence. This form is your petition for relief.
2. You may also use this form to challenge a state judgment that imposed a sentence to be served in the future, but you must fill in the name of the state where the judgment was entered. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file a motion under 28 U.S.C. § 2255 in the federal court that entered the judgment.
3. Make sure the form is typed or neatly written.
4. You must tell the truth and sign the form. If you make false statement of a material fact, you may be prosecuted for perjury.
5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.
6. To start your § 2254 action, you must pay the \$5.00 filing fee or submit a completed Application to Proceed in District Court without Prepaying Fees or Costs form, including the certificate signed by an officer at the institution where you are confined. You may obtain the Application to Proceed in District Court without Prepaying Fees or Costs form by contacting the Clerk's Office.
7. In this petition, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different court (either in the same state or in different states), you must file a separate petition.
8. When you have completed the form, send the signed original to the following address:

United States District Court, District of Minnesota Clerk's Office  
U.S. Courthouse  
300 South Fourth Street, Suite 202  
Minneapolis, MN 55415

(612) 664-5000

9. **CAUTION:** You must include in this petition all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred presenting additional grounds at a later date.



(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury     Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes     No

8. Did you appeal from the judgment of conviction?

Yes     No

9. If you did appeal, answer the following:

(a) Name of court:

(b) Docket or case number (if you know):

(c) Result:

(d) Date of result (if you know):

(e) Citation to the case (if you know):

(f) Grounds raised:

(g) Did you seek further review by a higher state court?     Yes     No

If yes, answer the following:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Result:

(4) Date of result (if you know):

(5) Citation to the case (if you know):

(6) Grounds raised:

(h) Did you file a petition for certiorari in the United States Supreme Court?  Yes  No

If yes, answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?  Yes  No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes  No

(7) Result:

(8) Date of result (if you know):

(b) If you filed any second petition, application, or motion, give the same information:

- (1) Name of court:
- (2) Docket or case number (if you know):
- (3) Date of filing (if you know):
- (4) Nature of the proceeding:
- (5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes     No

(7) Result:

(8) Date of result (if you know):

(c) If you filed any third petition, application, or motion, give the same information:

- (1) Name of court:
- (2) Docket or case number (if you know):
- (3) Date of filing (if you know):
- (4) Nature of the proceeding:
- (5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes     No

(7) Result:

(8) Date of result (if you know):

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition:     Yes     No

(2) Second petition:     Yes     No

(3) Third petition:     Yes     No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

**GROUND ONE:**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground One, explain why:

(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?  Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?  Yes  No

(4) Did you appeal from the denial of your motion or petition?  Yes  No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?  Yes  No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

**GROUND TWO:**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Two, explain why:

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?  Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?  Yes  No

(4) Did you appeal from the denial of your motion or petition?  Yes  No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?  Yes  No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you :  
have used to exhaust your state remedies on Ground Two

### **GROUND THREE:**

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Three, explain why?

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?  Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?  Yes  No

(4) Did you appeal from the denial of your motion or petition?  Yes  No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?  Yes  No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

**GROUND FOUR:**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Four, explain why:

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?  Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?  Yes  No

(4) Did you appeal from the denial of your motion or petition?  Yes  No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?  Yes  No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction?  Yes  No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, ground or grounds have not been presented, and state your reasons for not presenting them:

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition?  Yes  No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging?  Yes  No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the raised.

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:
- (a) At preliminary hearing:
  
  - (b) At arraignment and plea:
  
  - (c) At trial:
  
  - (d) At sentencing:
  
  - (e) On appeal:
  
  - (f) In any post-conviction proceeding:
  
  - (g) On appeal from any ruling against you in a post-conviction proceeding:
17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging?       Yes       No
- (a) If so, give name and location of court that imposed the other sentence you will serve in the future:
  
  - (b) Give the date the other sentence was imposed:
  - (c) Give the length of the other sentence:
  - (d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future?       Yes       No
18. **TIMELINESS OF PETITION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.\*

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\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
  - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

or any other relief to which petitioner may be entitled.

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Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on \_\_\_\_\_ (month, date, year).

Executed (signed) on \_\_\_\_\_ (date).

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Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

## DEFENDANTS

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | <b>PTF</b>                 | <b>DEF</b>                 |   | <b>PTF</b>                 | <b>DEF</b>                 |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

## V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:  Yes  No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

SIGNATURE OF ATTORNEY OF RECORD

### FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_

AMOUNT \_\_\_\_\_

APPLYING IFP \_\_\_\_\_

JUDGE \_\_\_\_\_

MAG. JUDGE \_\_\_\_\_

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

**UNITED STATES DISTRICT COURT**  
for the  
District of Minnesota

<i>Plaintiff/Petitioner</i> v.	)	
v.	)	Civil Action No.
<i>Defendant/Respondent</i>	)	

**APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS  
(Long Form)**

<b>Affidavit in Support of the Application</b>	<b>Instructions</b>
<p>I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested. I declare under penalty of perjury that the information below is true and understand that a false statement may result in a dismissal of my claims.</p> <p>Signed: _____</p>	<p>Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.</p> <p>Date: _____</p>

- For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly income amount during the past 12 months		Income amount expected next month	
	You	Spouse	You	Spouse
Employment	\$	\$	\$	\$
Self-employment	\$	\$	\$	\$
Income from real property <i>(such as rental income)</i>	\$	\$	\$	\$
Interest and dividends	\$	\$	\$	\$
Gifts	\$	\$	\$	\$
Alimony	\$	\$	\$	\$
Child support	\$	\$	\$	\$

AO 239 (01/09; Minn. Dist. Ct. MODIFIED 10/09) Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form)

Retirement (such as social security, pensions, annuities, insurance)	\$	\$	\$	\$
Disability (such as social security, insurance payments)	\$	\$	\$	\$
Unemployment payments	\$	\$	\$	\$
Public-assistance (such as welfare)	\$	\$	\$	\$
Other (specify):	\$	\$	\$	\$
<b>Total monthly income:</b>	\$	\$	\$	\$

2. List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$
			\$

4. How much cash do you and your spouse have? \$ \_\_\_\_\_

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
		\$	\$
		\$	\$
		\$	\$

If you are a prisoner, you must have an authorized prison official complete the Certificate of Authorized Prison Official provided on Page 6 of this application. The certificate must be filed with this application.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

<b>Assets owned by you or your spouse</b>	
Home ( <i>Value</i> )	\$
Other real estate ( <i>Value</i> )	\$
Motor vehicle #1 ( <i>Value</i> )	\$
Make and year:	
Model:	
Registration #:	
Motor vehicle #2 ( <i>Value</i> )	\$
Make and year:	
Model:	
Registration #:	
Other assets ( <i>Value</i> )	\$
Other assets ( <i>Value</i> )	\$

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

<b>Person owing you or your spouse money</b>	<b>Amount owed to you</b>	<b>Amount owed to your spouse</b>
	\$	\$
	\$	\$
	\$	\$

7. State the persons who rely on you or your spouse for support.

<b>Name (or, if under 18, initials only)</b>	<b>Relationship</b>	<b>Age</b>

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment <i>(including lot rented for mobile home)</i> Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No	\$	\$
Utilities <i>(electricity, heating fuel, water, sewer, and telephone)</i>	\$	\$
Home maintenance <i>(repairs and upkeep)</i>	\$	\$
Food	\$	\$
Clothing	\$	\$
Laundry and dry-cleaning	\$	\$
Medical and dental expenses	\$	\$
Transportation <i>(not including motor vehicle payments)</i>	\$	\$
Recreation, entertainment, newspapers, magazines, etc.	\$	\$
Insurance <i>(not deducted from wages or included in mortgage payments)</i>		
Homeowner's or renter's:	\$	\$
Life:	\$	\$
Health:	\$	\$
Motor vehicle:	\$	\$
Other:	\$	\$
Taxes <i>(not deducted from wages or included in mortgage payments) (specify):</i>	\$	\$
Installment payments		
Motor vehicle:	\$	\$
Credit card <i>(name):</i>	\$	\$
Department store <i>(name):</i>	\$	\$
Other:	\$	\$
Alimony, maintenance, and support paid to others	\$	\$

Regular expenses for operation of business, profession, or farm ( <i>attach detailed statement</i> )	\$	\$
Other ( <i>specify</i> ):	\$	\$
<b>Total monthly expenses:</b>	\$	\$

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes     No    If yes, describe on an attached sheet.

10. Have you paid — or will you be paying — an attorney any money for services in connection with this case, including the completion of this form?  Yes     No

If yes, how much? \$ \_\_\_\_\_

If yes, state the attorney's name, address, and telephone number:

11. Have you paid — or will you be paying — anyone other than an attorney (*such as a paralegal or a typist*) any money for services in connection with this case, including the completion of this form?  Yes     No

If yes, how much? \$ \_\_\_\_\_

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of these proceedings.

13. Identify the city and state of your legal residence.

Your daytime phone number: \_\_\_\_\_

Your age: \_\_\_\_\_ Your years of schooling: \_\_\_\_\_

\_\_\_\_\_

**Prisoners:** The following Certificate page *must* be completed by an authorized prison official and provided with this application.

The following Certificate of Authorized Prison Official must be completed and filed with a prisoner's Application to Proceed without Prepayment of Fees and Affidavit for all incarcerated applicants. See 28 U.S.C. § 1915(a)(2) (a prisoner who applies to proceed without prepayment of fees must provide a certified copy of the trust fund account statement "obtained from the appropriate official of each prison at which the prisoner is or was confined"). The information provided below will be used by the Court in determining the proper initial partial filing fee as defined under 28 U.S.C. § 1915(b).

**CERTIFICATE of AUTHORIZED PRISON OFFICIAL**

I, \_\_\_\_\_, certify that the incarcerated applicant  
\_\_\_\_\_ (name of applicant) has the sum of \$ \_\_\_\_\_ on account to  
his/her credit at \_\_\_\_\_ (name of institution). I further certify that the  
applicant named herein has the following securities to his/her credit:

\_\_\_\_\_  
\_\_\_\_\_.

I further certify that in the 6-month period immediately preceding the filing of the complaint/petition/motion or notice of appeal, the average monthly deposits to the applicant's trust fund prison account was \$ \_\_\_\_\_, and the average monthly balance in the prisoner's account was \$ \_\_\_\_\_.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF AUTHORIZED OFFICIAL

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UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Plaintiff(s),

vs.

Case No.

Defendant(s).

**MOTION TO/FOR**

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The following party/parties:

in the above-named case hereby move(s) the United States District Court, District of Minnesota  
for an Order to:

because:

1.

2.

Said motion is based upon the attached Memorandum of Law,

and all of the files, records, and proceedings herein.

Signed this                    day of

Signature of Party \_\_\_\_\_

Mailing Address

Telephone Number

Note: All parties filing the motion must date and sign the Motion and provide his/her mailing address and telephone number. Attach additional sheets of paper as necessary. The motion must be served on each party, together with the notice of hearing, and any memorandum of law and accompanying documents.

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UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Plaintiff(s),

vs.

Case No.

Defendant(s).

**Memorandum of Law**

**In Support of or In Opposition to**

(Check "In Support of" if you are filing the motion and "In Opposition to" if you are opposing the Motion that was filed.)

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(Name of Motion filed)

Provide below an explanation of why the Motion should be granted or denied. Your explanation should be provided in consecutively numbered paragraphs. If you run out of space, you may attach additional sheets of paper and continue to number your paragraphs.

1.

2.

Signed this                    day of

Signature of Party \_\_\_\_\_

Mailing Address

Telephone Number

Note: All parties filing the Memorandum of Law must date and sign the Memorandum and provide his/her mailing address and telephone number. Attach additional sheets of paper as necessary. The Memorandum of Law must be served on each party, together with the Notice of Hearing, Motion and other accompanying documents, if any.

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**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

**LR 7.1(f) & LR 72.2(d)  
CERTIFICATE OF COMPLIANCE**

Plaintiff(s)

v.

Case Number:

Defendant(s)

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I, *[name of filer]*, certify that the

Memorandum titled: \_\_\_\_\_  
complies with Local Rule 7.1(f).

or

Objection or Response to the Magistrate Judge's Ruling complies with Local Rule 72.2(d).

I further certify that, in preparation of the above document, I:

Used the following word processing program and version: \_\_\_\_\_  
and that this word processing program has been applied specifically to include all text,  
including headings, footnotes, and quotations in the following word count.

or

Counted the words in the document.

I further certify that the above document contains the following number of words: \_\_\_\_\_

Date: \_\_\_\_\_

*s/* \_\_\_\_\_  
*Name*

*Address 1*

*Address 2*

*Phone*

*Email*

*Bar ID*

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UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Plaintiff(s),

**CERTIFICATE OF  
SERVICE FOR  
SERVICE BY MAIL**

vs.

Case No.

Defendant(s).

(Enter the full name(s) of ALL plaintiffs  
and defendants in this lawsuit. Please  
attach additional pages, if necessary.)

I hereby certify that on \_\_\_\_\_ (mm/dd/yyyy), I caused the following  
documents: *[List the documents you are going to file and serve.]*

*[Check the box, below, that applies to how you served the above documents.]*

- to be filed electronically with the Clerk of Court through ECF and/or
- that I caused a copy of the foregoing documents (and the notice of electronic filing, if filed electronically) to be mailed by first class mail, postage paid, to the following: *[List names and addresses of those served by U.S. Mail.]*

Date:

s/

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**Signature of filing party**

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Filer's Typed Name

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UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Plaintiff(s),

vs.

Case No.

Defendant(s).

**NOTICE OF APPEAL**

Pursuant to Fed. R. App. P. 3(c)(1) and 4(a), notice is hereby given that the following parties  
(provide the names of all parties who are filing an appeal):

in the above-named case appeal to the United States Court of Appeals for the Eighth Circuit.

The above-named parties appeal from the \_\_\_\_\_ (indicate whether the  
appeal is from a *judgment* or an *order* of the District Court) of the U.S. District Court for the  
District of Minnesota that was entered on \_\_\_\_\_ (date judgment or order was  
entered) that:

(If the appeal is from an *order*, provide brief explanation, below, of the District Court's decision in the order. If you are appealing only a portion of the judgment or order, indicate below which part of the judgment or order you are appealing).

Signed this                    day of

Signature of Party \_\_\_\_\_

Mailing Address

Telephone Number

Note: All parties filing the appeal must date and sign the Notice of Appeal and provide his/her mailing address and telephone number, EXCEPT that a signer of a pro se notice of appeal may sign for his/her spouse and minor children if they are parties to the case. Fed. R. App. P. 3(c)(2). Attach additional sheets of paper as necessary.