



UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

PRO SE GUIDEBOOK

FOR

MOTIONS FILED UNDER 28 U.S.C. § 2255

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 DO NOT CITE THIS GUIDEBOOK AS AUTHORITY.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 (§) 2255; 28 U.S.C. §§ 2242, 2244, & 2253; the Rules Governing Section 2255 Proceedings for the United States District Courts; the Federal Rules of Civil Procedure; the Federal Rules of Criminal 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 and Criminal Procedure appear at the end of Title 28 of the United States Code. The Rules Governing § 2255 Proceedings appear after 28 U.S.C. § 2255 in the United States Code. If the prison law library does not have the most recent version of this Court's Local Rules, you can obtain a copy from the Clerk's Office by request.

The Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure apply to a proceeding under § 2255 to the extent those rules are not inconsistent with any statutory provisions or the Rules Governing § 2255 Proceedings in the United States District Courts. *See* Rule 12, Rules Governing § 2255 Proceedings.



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

This Guidebook is generally organized in the order that a motion under § 2255 proceeds through the Court. It is set up in a question and answer format, so you may skip to the particular question you have. The Table of Contents includes each question that this Guidebook addresses. 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 allows you a way to check and make sure that the Court has your papers.

Filing your motion 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. The Clerk's Office maintains a "docket sheet" for each case, which is a chronological list of all papers that have been filed in the case. Following the filing rules is important, because most of what happens in your case will be based on the papers that you file. After submitting your motion under 28 U.S.C. § 2255, you must send copies of documents you file with the Court to the



opposing party. See Rule 5(b) of the Federal Rules of Civil Procedure for information on how to serve pleadings and other papers.

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

CHAPTER TWO: PRELIMINARY CONSIDERATIONS

What is a motion under § 2255?

A motion under 28 U.S.C. § 2255 is a post-conviction remedy for prisoners in federal custody. A motion under § 2255 is filed in the prisoner’s criminal case where the challenged judgment was entered. See Rule 3(b), Rules Governing § 2255 Proceedings.

Who can file a § 2255 motion?

Generally, a prisoner whose conviction and sentence have been upheld on direct appeal can seek further “post-conviction” relief by filing a § 2255 motion in the district court where the conviction was entered. The § 2255 motion should be filed in the district where prisoner was convicted, regardless of where the prisoner is currently confined. See Rule 1, Rules Governing § 2255 Proceedings.

Do you meet the “in custody” requirement?



A § 2255 motion may be brought only by a person who is “in custody,” which means that, when you file your motion, you must be incarcerated or on probation, parole, or supervised release. In addition, you must be “in custody” because of the particular conviction or sentence that you are challenging in your motion.

What issues can be raised in a § 2255 motion?

28 U.S.C. § 2255 provides that a federal prisoner may seek release “upon the ground that the sentence was imposed in violation of the Constitution, or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack. . .” An example of a claim typically brought under § 2255 is ineffective assistance of counsel in violation of the Sixth Amendment. Remember, a § 2255 motion is a post-conviction remedy, which means that it should be used only after a prisoner has completed a direct appeal.

Are there any issues that cannot be raised in a § 2255 motion?

A § 2255 motion cannot be used to raise a claim that was either (a) raised and decided on direct appeal, or (b) could have been raised on direct appeal. Ineffective assistance of counsel claims normally will not be addressed on direct appeal, so such claims can be raised in a § 2255 motion.

A § 2255 motion cannot be used to challenge a decision made by the Bureau Of Prisons (“BOP”) that affects the execution or implementation of a sentence. In other words, the motion must challenge the conviction or sentence itself – not the BOP’s execution of the sentence. Challenges to the BOP’s execution of a sentence, which affect



the duration of a prisoner's confinement, can be brought in a § 2241 habeas corpus petition. The Court has a separate Guidebook for § 2241 petitions.

Please note that a § 2255 motion cannot be used to challenge the conditions of a prisoner's confinement. Such claims must be brought pursuant to *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971) which is addressed in the Court's separate Guidebook for prisoner civil rights cases.

Generally, a refusal to give a downward departure is unreviewable. See *U.S. v. Chapman*, 356 F.3d 843, 847 (8th Cir. 2004).

What type of relief is available if a § 2255 motion is granted?

A motion under § 2255 is a request that the sentencing court vacate, set aside, or correct your sentence. If you are in custody under a judgment of this Court, you may seek a determination under a § 2255 motion that:

1. The judgment violates the Constitution or laws of the United States;
2. The court lacked jurisdiction to enter the judgment;
3. The sentence exceeded the maximum allowed by law; or
4. The judgment or sentence is otherwise subject to collateral review.

See 28 U.S.C. § 2255(a), and Rule 1, Rules Governing § 2255 Proceedings.

Is your motion timely?

To be timely, your motion must be filed within the time period set by the statute of limitations. Once that time limit has passed, it is too late. If you file a proceeding



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

28 U.S.C. § 2255(f) provides for a one-year limitations period for § 2255 motions. To determine when your § 2255 limitations period expires, you must determine when the statute of limitation began running. The statute of limitations begins to run from the latest of the following:

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court and made retroactively applicable on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2255(f).

A § 2255 motion filed by a pro se prisoner is deemed to be 'filed' on the date when it is given to prison officials for mailing, and the motion 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 § 2255 Proceedings.



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 § 2255 motion before the statute of limitations expired.

Does your claim include all federal claims related to your judgment?

You should be aware that if you do not bring all federal claims related to a particular judgment in a single motion under § 2255, you will not be able to bring a second motion under § 2255 without first obtaining permission to do so from the Eighth Circuit Court of Appeals. *See* 28 U.S.C. § 2255(h). Prisoners normally get only one opportunity to file a § 2255 motion, so you must make sure that you clearly present all of your claims in your first § 2255 motion.

Can I amend my § 2255 motion after I file it?

Maybe. After the Government has filed an answer or other response to your motion, you must obtain permission from the Court before amending your § 2255 motion. *See* 28 U.S.C. § 2242; Federal Rule of Civil Procedure 15(a), and Local Rule 15.1. When amending your motion to assert a new claim, you should determine whether the claim relates back to the original claim for purposes of the statute of limitations. *See Mayle v. Felix*, 545 U.S. 644, 654-64 (2005). If it does not, your claim may be barred. If you do amend your § 2255 motion, you must follow the procedures in Federal Rule of Civil Procedure 15 and Local Rule 15.1.

Can I bring a second or successive motion under § 2255?



In order to bring a second or successive motion under § 2255 in this Court, it must be certified, as provided in 28 U.S.C. § 2244, by a panel of the Eighth Circuit Court of Appeals to contain:

(1) newly discovered evidence, that if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact finder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h)(1) and (2).

In summary, prisoners are rarely allowed to file more than one § 2255 motion, and they must get pre-approval from the Court of Appeals before filing a second or successive motion, so it is very important that all post-conviction claims be clearly stated in the original § 2255 motion.

CHAPTER THREE: HOW TO START A § 2255 PROCEEDING

What are the requirements to start a § 2255 proceeding?

To start a § 2255 proceeding in the District of Minnesota, you must do the following:

- Complete the Motion Under 28 U.S.C. § 2255 form (AO243);
- Mail the original of the above document to the Clerk's Office at the address provided in Chapter One.

Keep a copy of the motion for your own records.



There is no filing fee for a § 2255 motion, because it is a motion in an existing criminal case and does not initiate a new case. There is no need to file an IFP application with a § 2255 motion.

How do I complete the § 2255 form?

Use the Court's form, entitled "Motion under 28 USC § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody," which is included in the appendix to this Guidebook. This form is also known as AO243. Be sure to fill out the form completely and truthfully. It 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 the judgment under attack, the appeals, if any, that you took from that judgment, and other motions you may have made. Question 12 addresses the grounds on which you are bringing your present petition. The next two questions below address specific sections of the form.

Can I challenge the judgments from multiple courts in one § 2255 proceeding?

No. A person who seeks relief from judgments entered in more than one court must file a separate motion covering the judgment(s) of each court. *See* Rule 2(d) of the Rules Governing § 2255 Proceedings.

How should I answer Question 12 on the Motion Under 28 USC § 2255 form?

Question 12 asks you about your claims and the facts supporting those claims. Your motion must (1) clearly identify each individual claim for relief; (2) briefly



describe the factual and legal basis for each claim for relief (3) and state the relief requested. *See* Rule 2(b), Rules Governing § 2255 Proceedings.

Can I file attachments with my motion?

If you have documents that support your motion, you can, *but do not have to*, attach copies of them to the motion as exhibits. The purpose of an exhibit generally is to present proof or clarification of an allegation in your motion. If you decide to attach exhibits to your motion, then you must refer to that exhibit in your motion or otherwise explain why you are attaching the exhibit to the motion. 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 you do not discuss in your motion.

Can I file a memorandum of law with my motion?

Yes. You should not make legal arguments or cite cases in your motion, but you may do so by filing a memorandum of law with your motion. A memorandum of law, sometimes called a brief, is a document where you provide legal support for whatever you are requesting that the Court do by citing laws and/or cases that support your position. A memorandum of law should apply the law to the facts of the case and only include arguments that support the claims raised in the motion.

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(d), (f) 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 certification of compliance with the word count requirement of Local Rule 7.1(d). A Word Count Certificate form is included in the forms appendix of this Guidebook. Additionally, the memorandum of law must be accompanied by a certificate of service. The certificate of service form is included in the appendix of this Guidebook.

Do I need to notarize the petition?

No. Notarization is not required. But you must sign the motion and indicate the date you placed the motion in the prison mailing system. By signing the motion, you are declaring under penalty of perjury that the statements made in the motion 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.

Do I need to serve a copy of my motion on anyone?

No. You do not need to serve the motion. When you file the motion with the Court, the Clerk will file the motion and enter it on the criminal docket of the case in which the challenged judgment was entered. The Clerk will then serve a copy of the motion on the United States Attorney in the district, together with a notice of its filing. *See* Rule 3(b), Rules Governing § 2255 Proceedings.

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

You may request in writing that the Clerk's Office notify you when your motion was received and filed.



CHAPTER THREE: INITIAL REVIEW, RESPONSE TO THE PETITION

What happens after my § 2255 motion is filed?

The motion will be presented to the trial court judge from your criminal case. If that judge is not available, the Clerk will assign the motion using the court's assignment procedure. *See* Rule 4(a), Rules Governing § 2255 Proceedings.

The judge will review your motion form promptly. "If it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion and direct the clerk to notify the moving party." *See* Rule 4(b), Rules Governing § 2255 Proceedings. The court will issue an order explaining the results of the initial review.

Will the government respond to the motion?

If the motion is not summarily denied, the trial judge will order the United States Attorney to file a response to the motion within a fixed time.

Can I reply to the government's response?

After the government responds to your motion, by answer or otherwise, you may submit a reply within the time fixed by the judge. *See* Rule 5(d), Rules Governing § 2255 Proceedings.

May I request appointment of counsel?

There is no constitutional right to counsel in a § 2255 proceeding. *Steele v. U.S.*, 518 F.3d 986, 988 (8th Cir. 2008). However, if an evidentiary hearing is held, the judge



will appoint an attorney to a moving party who qualifies under 18 U.S.C. § 3006A. Otherwise, the Court only appoints counsel in § 2255 proceedings in extraordinary circumstances. If you make a motion to appoint counsel under 18 U.S.C. § 3006A, 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 motion, but you may do so if you choose. If you refer to any part of the trial 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 to the government's answer or other response.

The judge may order the parties to expand the record by submitting additional materials relating to the motion. *See* Rule 7(a), Rules Governing § 2255 Proceedings. If additional materials are filed, the judge will give the party against whom the additional materials are offered an opportunity to admit or deny their correctness. *See* Rule 7(c), Rules Governing § 2255 Proceedings.

Is discovery allowed?

Discovery in a § 2255 proceeding is only allowed with permission of the judge. See Rule 6(a), Rules Governing § 2255 Proceedings. If you request permission to conduct discovery, you must provide reasons for the request and include any proposed interrogatories, requests for admission, and specify requested documents. *See* Rule 6(b), Rules Governing § 2255 Proceedings. The judge can authorize a party to conduct discovery either under the Federal Rules of Civil Procedure or the Federal Rules of



Criminal Procedure, “or in accordance with the practices and principles of law.” See Rule 6(a), Rules Governing § 2255 Proceedings.

Will I get an evidentiary hearing?

The judge will determine whether an evidentiary hearing is warranted on your § 2255 motion, but in most cases hearings are not granted. If the judge grants a hearing, he or she may refer the hearing to a magistrate judge, who will file proposed findings of fact and recommendations for disposition, called a “Report and Recommendation.” See Rule 7(b), Rules Governing § 2255 Proceedings. If you disagree with the findings and recommendations, you can file an objection with the district judge, who will conduct a de novo review, which means the district judge will review the case without giving any deference to the magistrate judge’s decision. See Local Rule 72.2(b). Your objection must be filed within 14 days after being served with the Report and Recommendation, or when otherwise directed by the Court. *Id.*

CHAPTER FOUR: JUDGMENT and APPEAL

What do I need to do before I file an appeal?

If your § 2255 motion 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 § 2255 motion. Two requirements must be met before an appeal may 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 § 2255 Proceedings; 28 U.S.C. § 2253.

A certificate of appealability is an order authorizing you to file 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, but may first direct the parties to submit arguments on whether the certificate of appealability should issue. *See* Rule 11, Rules Governing § 2255 Proceedings. If the district court issues you a certificate of appealability in its final order, then you may proceed and file an appeal. If the certificate of appealability is denied, then you must seek a certificate of appealability from the Eighth Circuit Court of Appeals under Rule 22(b) of the Federal Rules of Appellate Procedure.

How do I file an appeal?

After you receive a certificate of appealability, you must file a notice of appeal and indicate you are appealing a final judgment denying § 2255 relief. A notice of appeal is included in the appendix to this Guidebook. There is a filing fee of \$505.00 for an appeal. If you cannot afford to pay this fee, you can apply to proceed without prepaying the fee (which is called proceeding in forma pauperis or IFP) by completing the AO239 form “Application to Proceed in District Court Without Prepaying Fees or Costs.” The last page of the application, regarding prisoner 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 have IFP status on appeal. This means 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 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 the district court within 60 days after the final judgment is entered. *See* Rule 11(b), Rules Governing § 2255 Proceedings; Federal Rule of Appellate Procedure 4(a)(1)(B). 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 of a § 2255 motion. If you apply for appointment of an attorney on appeal, the request must be filed in the Eighth Circuit Court of Appeals, not the district court.



APPENDIX OF FORMS

The following forms appear in the appendix of this Guidebook:

- ❖ Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (AO243)
- ❖ Memorandum of Law
- ❖ LR 7.1 Word Count Compliance Certificate
- ❖ Certificate of Service by Mail
- ❖ Notice of Appeal

Motion to Vacate, Set Aside, or Correct a Sentence By a Person in Federal Custody

(Motion Under 28 U.S.C. § 2255)

Instructions

1. To use this form, you must be a person who is serving a sentence under a judgment against you in a federal court. You are asking for relief from the conviction or the sentence. This form is your motion for relief.
2. You must file the form in the United States district court that entered the judgment that you are challenging. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file the motion in the federal court that entered that judgment.
3. Make sure the form is typed or neatly written.
4. You must tell the truth and sign the form. If you make a 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. If you cannot pay for the costs of this motion (such as costs for an attorney or transcripts), you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you.
7. In this motion, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different judge or division (either in the same district or in a different district), you must file a separate motion.
8. When you have completed the form, send the original and two copies to the Clerk of the United States District Court at this address:

Clerk, United States District Court for _____
Address
City, State Zip Code

9. **CAUTION: You must include in this motion 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 motion, you may be barred from presenting additional grounds at a later date.**
10. **CAPITAL CASES: If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.**

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court	District
Name (under which you were convicted):	Docket or Case No.:
Place of Confinement:	Prisoner No.:
UNITED STATES OF AMERICA	Movant (include name under which you were convicted)
v.	

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

(b) Criminal docket or case number (if you know):

2. (a) Date of the judgment of conviction (if you know):

(b) Date of sentencing:

3. Length of sentence:

4. Nature of crime (all counts):

5. (a) What was your plea? (Check one)

(1) Not guilty (2) Guilty (3) Nolo contendere (no contest)

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

6. 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 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 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):
- (5) Grounds raised:

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

(7) Result:

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

(b) If you filed any second motion, petition, or application, 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 motion, petition, or application? Yes No

(7) Result:

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

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes No

(2) Second petition: Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, 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.

GROUND ONE:

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

(b) 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:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(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, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

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

GROUND TWO:

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

(b) 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:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(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, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(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 (c)(4) or Question (c)(5) is “No,” explain why you did not appeal or raise this issue:

GROUND THREE:

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

(b) 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:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(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, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

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

GROUND FOUR:

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

(b) 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:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(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, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(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 (c)(4) or Question (c)(5) is “No,” explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court 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 issues raised.

15. Give the name and address, if known, 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:

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes No

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 motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No

18. TIMELINESS OF MOTION: 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. § 2255 does not bar your motion.*

* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

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

or any other relief to which movant may be entitled.

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 Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on (month, date, year).

Executed (signed) on _____ (date).

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

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.)

(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.

**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)

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

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/

Signature of filing party

Filer's Typed Name

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.