



## How to Start a Habeas Corpus Case

### For prisoners who are in custody pursuant to a state court judgment

A petition for a writ of habeas corpus under 28 U.S.C. § 2254 can be brought by persons in custody pursuant to a state court judgment to challenge the validity of the judgment that caused him or her to be confined. The Court has a Pro Se Guidebook for Cases Filed Under 28 U.S.C. § 2254 that you may consult for additional information. You may obtain a copy of this Guidebook by contacting the Clerk's Office at the contact information provided at the end of this document.

### For persons in custody under other circumstances:

If you are in federal custody seeking post-conviction relief from a federal court judgment, you should file a motion under 28 U.S.C. § 2255. The Court has an information sheet and a Pro Se Guidebook for Motions Filed Under 28 U.S.C. § 2255 that you may consult for additional information. If you are a state pre-trial detainee challenging your custody, or a federal prisoner or other person in federal custody challenging the fact of or duration of your confinement not directly caused by a judgment in a federal criminal case, you should file a petition under 28 U.S.C. § 2241. The Court also has an information sheet and a Pro Se Guidebook for Cases Filed Under 28 U.S.C. § 2241 that you may consult for additional information.

### How do I file a § 2254 Petition?

To start a case under 28 U.S.C. § 2254, you must submit the following to the Clerk's Office:

1. A completed Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody form.
2. A completed Civil Cover Sheet.
3. The \$5.00 filing fee **OR** request to waive the filing fee by submitting a completed Application to Proceed in District Court without Prepaying Fees or Costs form.

Copies of all necessary forms may be obtained by contacting the Clerk's Office at the contact information provided at the end of this document.

### What are the requirements related to the filing fee?

In order to initiate a § 2254 habeas corpus case, the Clerk's Office must collect the \$5.00 filing fee. If you are unable to pay that amount, you must submit a completed



Application to Proceed in District Court without Prepaying Fees or Costs form with your complaint. A magistrate judge will review the completed form and you will be notified of the judge's decision. If the judge grants your request, you will be considered as proceeding In Forma Pauperis or IFP. Permission to proceed IFP entitles a § 2254 petitioner to start a habeas case without paying the filing fee, but it does not automatically entitle the petitioner to any other benefits, such as appointment of counsel, free copies of documents, etc.

**What happens after the Court receives my documents?**

A magistrate judge will conduct an initial review of your case. See Rule 4 of the Rules Governing § 2254 Proceedings in the U.S. District Courts. Based on the review, the Court will then either dismiss your petition or authorize it to proceed, and notify you of the decision. It may take several weeks for the Court to conduct the initial review.

**Do I need to serve the petition on the respondent?**

No. You do not need to serve a copy of your petition when it is filed. The copy of your petition will be served upon the respondent if the Court authorizes your petition to proceed.

**May I amend my petition?**

Yes, but permission from the Court is required under certain circumstances, and the complaint must be amended by following the procedures in Federal Rule of Civil Procedure 15(a) and Local Rule 15.1.

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

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