



UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

GUIDEBOOK

FOR

MOTIONS FILED UNDER 28 U.S.C. § 2255

March 2025

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 DO NOT CITE THIS GUIDEBOOK AS AUTHORITY.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

This Guidebook is intended to help you understand the procedures that you must follow if you represent yourself in this Court. **This Guidebook, however, is not legal advice.** Furthermore, you cannot rely on this Guidebook alone, because it does not address every situation that might arise in your case, and it does not offer any information about the specific issues in your case.

The Court encourages you to review this Guidebook together with Title 28 of the United States Code Section 2255 (28 U.S.C. § 2255); 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. If you are a prisoner, the United States Code should be available in your prison law library. The Federal Rules of Civil and Criminal Procedure appear at the end of Title 28 of the United States Code. The Rules Governing Section 2255 Proceedings appear immediately after 28 U.S.C. § 2255 in the United States Code. If your 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. Each of these resources is also available online.

This Guidebook is organized in the sequence that a motion under § 2255 proceeds through the Court and is written in a question-and-answer format. The Table of Contents below identifies each question that is addressed by this Guidebook.



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CHAPTER ONE: GENERAL INFORMATION

What is the Clerk's Office?

The Clerk's Office maintains the Court's records. Most of your interactions with the Court will be through the Clerk's Office, where you will file the documents that will be reviewed by the judge. The Clerk's Office cannot give you legal advice or tell you when a judge might make a decision in your case, but 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).

How do I contact the Clerk's Office?

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

Diana E. Murphy United States Courthouse
300 South Fourth Street, Suite 202
Minneapolis, MN 55415

(612) 664-5000

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

The Clerk's Office receives documents on behalf of the Court and maintains a record of the documents received. By filing a document with the Clerk's Office, you ensure that the document becomes part of the official record in your case. This record allows you and the other parties and the judges to be certain of what documents have been presented in a case.



You may file any document either by mailing the document to the Clerk's Office at the address provided above or by having the documents personally delivered to the Clerk's Office at any of the District of Minnesota's four federal courthouses during business hours. After receiving your documents, the Clerk's Office will record (or "docket") your papers and send them to the judge assigned to your case.

Your motion for relief under 28 U.S.C. § 2255 and all other documents that you file as part of the § 2255 proceedings should be clearly labeled with the case number from your criminal case. Clearly labeling your documents will help ensure that those documents are added to the docket correctly.



CHAPTER TWO: THE BASICS

What is a motion under § 2255?

A motion under 28 U.S.C. § 2255 is a request by a prisoner convicted of a criminal offense in federal court to vacate, set aside, or correct his sentence.

Where should a motion under § 2255 be filed?

A motion under § 2255 must be filed in the federal prisoner's criminal case in which the challenged sentencing judgment was entered. Put another way, a prisoner should file his § 2255 motion in the district where he was sentenced, not the district in which he is currently incarcerated (if those districts differ).

Do I meet the "in custody" requirement?

A prisoner cannot secure relief under § 2255 unless he is being held "in custody" at the time that the motion is filed. The "in custody" requirement sometimes, though not always, is met if the prisoner is on probation, parole, or supervised release. Detention at a jail or prison may also constitute being "in custody" for purposes of § 2255.

What issues can be raised in a § 2255 motion?

A federal prisoner may seek relief under § 2255 "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" Examples of claims that may be raised in a § 2255 proceeding include claims of



constitutional violations at the plea stage, at trial, or at sentencing; claims that the sentencing court was without jurisdiction to conduct the criminal proceedings; or claims that the court imposed a sentence longer than the maximum permitted by law.

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

Yes. A motion under § 2255 is used to challenge the legality of a conviction or sentence, not a decision of the Federal Bureau of Prisons concerning how that sentence should be carried out. Claims regarding the calculation of release dates, retraction of good-time credits, or placement decisions by the Federal Bureau of Prisons should be raised in a habeas petition filed in the district of incarceration, not a motion under § 2255 filed in the prisoner's criminal case.

A motion under § 2255 also cannot be used to challenge the conditions of a prisoner's confinement. Claims challenging the conditions of confinement must be brought in a traditional civil lawsuit, not a motion under § 2255 in the criminal case.

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

A motion under § 2255 is appropriate for challenging a conviction or sentence imposed in a federal court. If the motion is granted, the conviction or sentence at issue will be vacated to the extent that the conviction or sentence is found to be unlawful. Depending upon the circumstances of your case, you may be resentenced following the conclusion of your § 2255 proceedings. Monetary damages, however, are not available under § 2255.



Is there a limitations period for filing a motion under § 2255?

Yes. Motions under § 2255 are subject to a one-year limitations period, which can be found at 28 U.S.C. § 2255(f). After that limitations period has passed, it is too late to seek relief under § 2255. If you file a motion under § 2255 after that deadline, your motion may be summarily dismissed without consideration of the merits of your claims.

In most cases, the one-year limitation period will begin to run after the judgment you seek to challenge becomes final. Judgment will become final upon denial of a writ of certiorari by the Supreme Court of the United States or, if you do not file a petition for a writ of certiorari, on the date on which you became unable to seek further review on direct appeal. If your claim depends upon a new rule of constitutional law that applies retroactively, or if you were impeded by governmental action from filing a motion under § 2255 earlier, or if your motion relies upon a factual predicate that could not with due diligence have been discovered earlier, the limitations window for that claim may begin at a different date. If you are a prisoner representing yourself, your motion is deemed to be “filed” as of the date that it is properly placed in the prison mail system.

The rules governing the timeliness of motions under § 2255 are both strict and technical. Failure to timely file your motion will likely result in summary denial of your motion.

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

Maybe. If you want to amend your motion, you will need to follow the procedures for amendments found in Federal Rule of Civil Procedure 15(a) and Local Rule 15.1. Any



claims added to an amended motion, like those in the original motion, must be raised within the limitations period.

May I file a second motion under § 2255?

If your motion under § 2255 is deemed to be “second or successive,” you must receive authorization from the United States Court of Appeals for the Eighth Circuit before proceeding in this Court. If you received a ruling on the merits of an initial motion under § 2255, any subsequent motion attacking the same conviction will likely be found to be a second or successive motion under § 2255 requiring authorization of the Eighth Circuit. Please note that the Eighth Circuit is permitted to authorize only certain kinds of claims for review in a second or successive motion.



CHAPTER THREE: STARTING 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 itself, either by using the Court's form "Motion Under 28 U.S.C. § 2255" (AO243), or by writing your own document. You may also submit any exhibits you believe to be relevant; and
- Mail the documents to the Clerk's Office at the address provided above.

Keep a copy of the motion and any other documents for your own records. There is no filing fee for a motion § 2255.

How do I write a motion for relief under § 2255?

Your motion, and all other documents prepared by you for the Court, should be typed or legibly handwritten, preferably in black ink. The motion should specify all the grounds for relief that you believe to be available to you, the facts supporting each ground, and the relief that you are requesting. Your motion should also include the case number of the judgment that you are challenging; the motion will be filed in that criminal case.

Available on the District of Minnesota's website is a standard form for § 2255 motions that you may use. You are not required to use the Court's standard form, but that document will assist you in providing the information needed for your motion. Failure to include the necessary information could result in delay or dismissal of your § 2255 proceedings.



Can I challenge the judgments from separate criminal cases in a single § 2255 proceeding?

No. A person who seeks relief from judgments in separate criminal cases must file a separate motion for relief under § 2255 in each criminal case. But if you were convicted on more than one count in a single criminal case and you seek to challenge all of those counts, you must do so in a single motion under § 2255 rather than separate motions attacking each count.

How should I identify the facts supporting my claims?

You are required to identify in your motion for relief under § 2255 the facts supporting your claims. This description of the facts need not be long or detailed, but the motion should provide enough information that both the Court and the prosecutors can understand why you believe that you are entitled to relief. Each claim should include a separate recitation of facts supporting that claim for relief.

May I file attachments with my motion?

If you have documents that support your motion, you may attach copies of the documents to the motion as exhibits. The purpose of an exhibit is to present proof or clarification of an allegation in your motion. If you decide to attach exhibits to your motion, then you should explain or otherwise make clear why you are attaching each exhibit to the motion. You should label each separate exhibit and, if possible, number the pages of each exhibit. That said, you are not required to submit exhibits in support of your motion unless ordered to do so by the Court.



May I file a memorandum of law with my motion?

Yes. A memorandum of law, sometimes called a brief, is a document in which you explain your legal arguments supporting the claims raised in your motion. Litigants who are not represented by an attorney may write a memorandum legibly by hand or type a memorandum on standard paper. The memorandum should include page numbers. The Court's Local Rules limits memoranda to 12,000 words unless advance permission to file a longer memorandum is sought and received from the judge. You are not required to submit a memorandum supporting your motion for relief under § 2255, but doing so may help the Court understand why you believe you are entitled to relief.

Do I need to notarize the motion?

No, notarization of court documents is almost always unnecessary. That said, if you are not represented by an attorney, you are required to sign all documents (except exhibits) that you file with the Court, including your § 2255 motion. By signing a document, you are attesting that the statements in your document are true to the best of your knowledge. Knowingly making a false material declaration under oath can be punished by fine or imprisonment.

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

No. You do not need to serve the respondent a copy of your motion. The prosecutors will be notified of your motion when it is received and docketed by the Court.



May I request appointment of counsel?

Yes. Be aware, though, that there is no statutory or constitutional right to counsel in § 2255 proceedings. If you file a motion to appoint counsel, you should explain the particular reasons that you believe appointment of counsel is necessary or appropriate in your case.

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

You may request in writing that the Clerk notify you when your motion was received and docketed.



CHAPTER FOUR: INITIAL REVIEW

What is initial review?

Your motion under § 2255 will be reviewed by a judge after it is filed. The judge will deny the motion if it is clear from the motion itself that you are not entitled to relief. This initial review process may take several weeks. The Court's initial review is limited to the motion itself, any attached exhibits, and other materials already part of the judicial record.

How will I know the results of the initial review?

If your motion is permitted to go forward, an order will be entered requiring the prosecutor to respond to the motion. If your motion is deficient and cannot be corrected, an order denying the motion will be entered. You will receive a copy of any order entered during the § 2255 proceedings.



CHAPTER FIVE: THE § 2255 PROCEEDINGS

Will the government respond to the motion?

If the motion is not summarily denied at initial review, the Court will order the prosecutor to file a response to the motion within a specific amount of time. The prosecutor may, however, request additional time in which to respond if more time is needed.

May I reply to the government's response?

Yes. The Court's scheduling order will set a deadline for the filing of a reply brief. You may request additional time in which to file a reply if more time is needed, but any request for more time should include an explanation as to why you will be unable to prepare your reply in the time initially allotted by the Court.

Is discovery allowed?

Sometimes, but you must request permission from the Court before conducting discovery. Motions under § 2255 are often resolved without formal discovery because the documents needed for deciding the motion are already part of the criminal proceedings in which the § 2255 proceedings are conducted.

Will there be an evidentiary hearing?

Maybe, but only if an evidentiary hearing is necessary for resolving a factual issue that cannot be settled from the paper record alone. If an evidentiary hearing is necessary



and you cannot afford an attorney, an attorney will be appointed to represent you at the hearing.

Will there be oral arguments before the judge decides my motion?

Perhaps. Whether further oral argument of the parties is necessary in a case for further development of legal arguments is left to the judge presiding over that case.



CHAPTER SIX: JUDGMENT AND APPEAL

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

Judgment will be entered after your motion has been resolved. You will receive a copy of the judgment after it is entered, along with instructions on how to pursue an appeal with the United States Circuit Court for the Eighth Circuit. An appeal may only be made after judgment has been entered in your case. The time for filing an appeal starts from the date that the judgment is entered on the docket.

Prisoners proceeding under § 2255 also must receive a certificate of appealability in order to pursue their claims before the appellate court. The district court will grant or deny a certificate of appealability when it enters the final order in your case that is adverse to you. If the district court grants you a certificate of appealability, then you may proceed and file a notice of appeal. If the district court judge denies you a certificate of appealability, then you may still file a notice of appeal, but the claims that you seek to raise on appeal will not be heard and decided unless the Eighth Circuit grants you a certificate of appealability after your notice of appeal has been filed. The Court will specify the claims to which any certificate of appealability applies.

How do I file an appeal?

First, you must file a notice of appeal identifying the order and judgment that you are challenging. That notice of appeal must be filed with the district court, not the court of appeals. Second, you must pay the \$605.00 filing fee for the appeal, unless during your criminal proceeding you were found unable financially to hire your own attorney. If you



were appointed an attorney during the criminal case, then you may file a notice of appeal without paying the filing fee unless the Court states that your appeal is not taken in good faith.

If you are not able to pay the \$605.00 appellate filing fee, then you may apply for *in forma pauperis* status on appeal. Any application to proceed *in forma pauperis* on appeal should, like the notice of appeal, be filed in the district court. If your application is granted, then you will not be required to pay the \$605.00 filing fee. If the district judge denies your motion to proceed *in forma pauperis* on appeal, then you may then request *in forma pauperis* status from the Eighth Circuit.

How much time do I have to begin my appeal?

You must file your notice of appeal in this Court within 60 days after the judgment is entered. For additional information regarding the time for filing a notice of appeal, review Rule 4(a) of the Federal Rules of Appellate Procedure.

May I request appointment of counsel on appeal?

Yes, but your request should be filed with the Eighth Circuit. Be warned that there is no statutory or constitutional right to counsel on appeal in § 2255 proceedings.