

**RULES GOVERNING SECTION 2254 CASES IN
THE UNITED STATES DISTRICT COURTS**

**(EFFECTIVE FEBRUARY 1, 1977, AS AMENDED TO
FEBRUARY 1, 2010)**

Rule

1. Scope.
2. The Petition.
3. Filing the Petition; Inmate Filing.
4. Preliminary Review; Serving the Petition and Order.
5. The Answer and the Reply.
6. Discovery.
7. Expanding the Record.
8. Evidentiary Hearing.
9. Second or Successive Petitions.
10. Powers of a Magistrate Judge.
11. Certificate of Appealability; Time to Appeal.
12. Applicability of the Federal Rules of Civil Procedure.

Rule 1. Scope

- 1 (a) Cases Involving a Petition under 28 U.S.C. § 2254.
- 2 These rules govern a petition for a writ of habeas corpus filed
- 3 in a United States district court under 28 U.S.C. § 2254 by:
- 4 (1) a person in custody under a state-court
- 5 judgment who seeks a determination that the custody violates
- 6 the Constitution, laws, or treaties of the United States; and

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1 (2) a person in custody under a state-court or
2 federal-court judgment who seeks a determination that future
3 custody under a state-court judgment would violate the
4 Constitution, laws, or treaties of the United States.

5 (b) Other Cases. The district court may apply any or all
6 of these rules to a habeas corpus petition not covered by Rule
7 1(a).

Rule 2. The Petition

1 **(a) Current Custody; Naming the Respondent.** If
2 the petitioner is currently in custody under a state-court
3 judgment, the petition must name as respondent the state
4 officer who has custody.

5 **(b) Future Custody; Naming the Respondents and**
6 **Specifying the Judgment.** If the petitioner is not yet in
7 custody - but may be subject to future custody - under the
8 state-court judgment being contested, the petition must
9 name as respondents both the officer who has current

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1 custody and the attorney general of the state where the
2 judgment was entered. The petition must ask for relief from
3 the state-court judgment being contested.

4 (c) **Form.** The petition must:

5 (1) specify all the grounds for relief available to
6 the petitioner;

7 (2) state the facts supporting each ground;

8 (3) state the relief requested;

9 (4) be printed, typewritten, or legibly
10 handwritten; and

11 (5) be signed under penalty of perjury by the
12 petitioner or by a person authorized to sign it for the
13 petitioner under 28 U.S.C. § 2242.

14 (d) **Standard Form.** The petition must substantially
15 follow either the form appended to these rules or a form
16 prescribed by a local district-court rule. The clerk must
17 make forms available to petitioners without charge.

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1 (e) **Separate Petitions for Judgments of Separate**

2 **Courts.** A petitioner who seeks relief from judgments of

3 more than one state court must file a separate petition

4 covering the judgment or judgments of each court.

Rule 3. Filing the Petition; Inmate Filing

1 (a) **Where to File; Copies; Filing Fee.** An original

2 and two copies of the petition must be filed with the clerk

3 and must be accompanied by:

4 (1) the applicable filing fee, or

5 (2) a motion for leave to proceed in forma

6 pauperis, the affidavit required by 28 U.S.C. § 1915, and a

7 certificate from the warden or other appropriate officer of

8 the place of confinement showing the amount of money or

9 securities that the petitioner has in any account in the

10 institution.

11 (b) **Filing.** The clerk must file the petition and enter it

12 on the docket.

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1 **(c) Time to File.** The time for filing a petition is
2 governed by 28 U.S.C. § 2244(d).

3 **(d) Inmate Filing.** A paper filed by an inmate
4 confined in an institution is timely if deposited in the
5 institution's internal mailing system on or before the last
6 day for filing. If an institution has a system designed for
7 legal mail, the inmate must use that system to receive the
8 benefit of this rule. Timely filing may be shown by a
9 declaration in compliance with 28 U.S.C. § 1746 or by a
10 notarized statement, either of which must set forth the date
11 of deposit and state that first-class postage has been
12 prepaid.

Rule 4. Preliminary Review; Serving the Petition and Order

1 The clerk must promptly forward the petition to a
2 judge under the court's assignment procedure, and the
3 judge must promptly examine it. If it plainly appears from
4 the petition and any attached exhibits that the petitioner is

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1 not entitled to relief in the district court, the judge must
2 dismiss the petition and direct the clerk to notify the
3 petitioner. If the petition is not dismissed, the judge must
4 order the respondent to file an answer, motion, or other
5 response within a fixed time, or to take other action the
6 judge may order. In every case, the clerk must serve a copy
7 of the petition and any order on the respondent and on the
8 attorney general or other appropriate officer of the state
9 involved.

Rule 5. The Answer and the Reply

1 (a) **When Required.** The respondent is not required
2 to answer the petition unless a judge so orders.

3 (b) **Contents: Addressing the Allegations; Stating a**
4 **Bar.** The answer must address the allegations in the
5 petition. In addition, it must state whether any claim in the
6 petition is barred by a failure to exhaust state remedies, a

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1 procedural bar, non- retroactivity, or a statute of
2 limitations.

3 (c) **Contents: Transcripts.** The answer must also
4 indicate what transcripts (of pretrial, trial, sentencing, or
5 post-conviction proceedings) are available, when they can
6 be furnished, and what proceedings have been recorded but
7 not transcribed. The respondent must attach to the answer
8 parts of the transcript that the respondent considers
9 relevant. The judge may order that the respondent furnish
10 other parts of existing transcripts or that parts of
11 untranscribed recordings be transcribed and furnished. If a
12 transcript cannot be obtained, the respondent may submit a
13 narrative summary of the evidence.

14 (d) **Contents: Briefs on Appeal and Opinions.** The
15 respondent must also file with the answer a copy of:

16 (1) any brief that the petitioner submitted in an
17 appellate court contesting the conviction or sentence, or

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1 contesting an adverse judgment or order in a post-
2 conviction proceeding;

3 (2) any brief that the prosecution submitted in an
4 appellate court relating to the conviction or sentence; and

5 (3) the opinions and dispositive orders of the
6 appellate court relating to the conviction or the sentence.

7 (e) **Reply.** The petitioner may submit a reply to the
8 respondent's answer or other pleading within a time fixed
9 by the judge.

Rule 6. Discovery

1 (a) **Leave of Court Required.** A judge may, for good
2 cause, authorize a party to conduct discovery under the
3 Federal Rules of Civil Procedure and may limit the extent
4 of discovery. If necessary for effective discovery, the judge
5 must appoint an attorney for a petitioner who qualifies to
6 have counsel appointed under 18 U.S.C. § 3006A.

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1 **(b) Requesting Discovery.** A party requesting
2 discovery must provide reasons for the request. The request
3 must also include any proposed interrogatories and requests
4 for admission, and must specify any requested documents.

5 **(c) Deposition Expenses.** If the respondent is granted
6 leave to take a deposition, the judge may require the
7 respondent to pay the travel expenses, subsistence
8 expenses, and fees of the petitioner's attorney to attend the
9 deposition.
10

Rule 7. Expanding the Record

1 **(a) In General.** If the petition is not dismissed, the
2 judge may direct the parties to expand the record by
3 submitting additional materials relating to the petition. The
4 judge may require that these materials be authenticated.

5 **(b) Types of Materials.** The materials that may be
6 required include letters predating the filing of the petition,

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1 documents, exhibits, and answers under oath to written
2 interrogatories propounded by the judge. Affidavits may
3 also be submitted and considered as part of the record.

4 (c) **Review by the Opposing Party.** The judge must
5 give the party against whom the additional materials are
6 offered an opportunity to admit or deny their correctness.

Rule 8. Evidentiary Hearing

1 (a) **Determining Whether to Hold a Hearing.** If the
2 petition is not dismissed, the judge must review the answer,
3 any transcripts and records of state-court proceedings, and
4 any materials submitted under Rule 7 to determine whether
5 an evidentiary hearing is warranted.

6 (b) **Reference to a Magistrate Judge.** A judge may,
7 under 28 U.S.C. § 636(b), refer the petition to a magistrate
8 judge to conduct hearings and to file proposed findings of
9 fact and recommendations for disposition. When they are
10 filed, the clerk must promptly serve copies of the proposed

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1 findings and recommendations on all parties. Within 14
2 days after being served, a party may file objections as
3 provided by local court rule. The judge must determine de
4 novo any proposed finding or recommendation to which
5 objection is made. The judge may accept, reject, or modify
6 any proposed finding or recommendation.

7 **(c) Appointing Counsel; Time of Hearing.** If an
8 evidentiary hearing is warranted, the judge must appoint an
9 attorney to represent a petitioner who qualifies to have
10 counsel appointed under 18 U.S.C. § 3006A. The judge
11 must conduct the hearing as soon as practicable after giving
12 the attorneys adequate time to investigate and prepare.
13 These rules do not limit the appointment of counsel under
14 Sec. 3006A at any stage of the proceeding.

Rule 9. Second or Successive Petitions

1 Before presenting a second or successive petition, the
2 petitioner must obtain an order from the appropriate court

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1 of appeals authorizing the district court to consider the
2 petition as required by 28 U.S.C. § 2244(b)(3) and (4).

Rule 10. Powers of a Magistrate Judge

1 A magistrate judge may perform the duties of a
2 district judge under these rules, as authorized under 28
3 U.S.C. § 636.

Rule 11. Certificate of Appealability; Time to Appeal

1 (a) **Certificate of Appealability.** The district court
2 must issue or deny a certificate of appealability when it
3 enters a final order adverse to the applicant. Before
4 entering the final order, the court may direct the parties to
5 submit arguments on whether a certificate should issue. If
6 the court issues a certificate, the court must state the
7 specific issue or issues that satisfy the showing required by
8 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the
9 parties may not appeal the denial but may seek a certificate
10 from the court of appeals under Federal Rule of Appellate

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1 Procedure 22. A motion to reconsider a denial does not
2 extend the time to appeal.

3 **(b) Time to Appeal.** Federal Rule of Appellate
4 Procedure 4(a) governs the time to appeal an order entered
5 under these rules. A timely notice of appeal must be filed
6 even if the district court issues a certificate of appealability.

**Rule 12. Applicability of the Federal Rules of Civil
Procedure**

1 The Federal Rules of Civil Procedure, to the extent
2 that they are not inconsistent with any statutory
3 provisions or these rules, may be applied to a proceeding
4 under these rules.

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**RULES GOVERNING SECTION 2255
PROCEEDINGS FOR THE UNITED STATES
DISTRICT COURTS**

**(EFFECTIVE FEBRUARY 1, 1977, AS AMENDED TO
FEBRUARY 1, 2010)**

Rule

1. Scope.
2. The Motion.
3. Filing the Motion; Inmate Filing.
4. Preliminary Review.
5. The Answer and the Reply.
6. Discovery.
7. Expanding the Record.
8. Evidentiary Hearing.
9. Second or Successive Motions.
10. Powers of a Magistrate Judge.
11. Certificate of Appealability; Time to Appeal.
12. Applicability of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

Rule 1. Scope

- 1 These rules govern a motion filed in a United States
- 2 district court under 28 U.S.C. § 2255 by:
- 3 (a) a person in custody under a judgment of that court
- 4 who seeks a determination that:

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1 (1) the judgment violates the Constitution or
2 laws of the United States;

3 (2) the court lacked jurisdiction to enter the
4 judgment;

5 (3) the sentence exceeded the maximum allowed
6 by law; or

7 (4) the judgment or sentence is otherwise subject
8 to collateral review; and

9 (b) a person in custody under a judgment of a state
10 court or another federal court, and subject to future custody
11 under a judgment of the district court, who seeks a
12 determination that:

13 (1) future custody under a judgment of the
14 district court would violate the Constitution or laws of the
15 United States;

16 (2) the district court lacked jurisdiction to enter
17 the judgment;

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1 (3) the district court's sentence exceeded the
2 maximum allowed by law; or

3 (4) the district court's judgment or sentence is
4 otherwise subject to collateral review.

Rule 2. The Motion

1 **(a) Applying for Relief.** The application must be in
2 the form of a motion to vacate, set aside, or correct the
3 sentence.

4 **(b) Form.** The motion must:

5 (1) specify all the grounds for relief available to
6 the moving party;

7 (2) state the facts supporting each ground;

8 (3) state the relief requested;

9 (4) be printed, typewritten, or legibly
10 handwritten; and

11 (5) be signed under penalty of perjury by the
12 movant or by a person authorized to sign it for the movant.

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1 **(c) Standard Form.** The motion must substantially
2 follow either the form appended to these rules or a form
3 prescribed by a local district-court rule. The clerk must
4 make forms available to moving parties without charge.

5 **(d) Separate Motions for Separate Judgments.** A
6 moving party who seeks relief from more than one
7 judgment must file a separate motion covering each
8 judgment.

Rule 3. Filing the Motion; Inmate Filing

1 **(a) Where to File; Copies.** An original and two
2 copies of the motion must be filed with the clerk.

3 **(b) Filing and Service.** The clerk must file the motion
4 and enter it on the criminal docket of the case in which the
5 challenged judgment was entered. The clerk must then
6 deliver or serve a copy of the motion on the United States
7 attorney in that district, together with a notice of its filing.

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1 (c) **Time to File.** The time for filing a motion is
2 governed by 28 U.S.C. § 2255 para. 6.

3 (d) **Inmate Filing.** A paper filed by an inmate
4 confined in an institution is timely if deposited in the
5 institution's internal mailing system on or before the last
6 day for filing. If an institution has a system designed for
7 legal mail, the inmate must use that system to receive the
8 benefit of this rule. Timely filing may be shown by a
9 declaration in compliance with 28 U.S.C. § 1746 or by a
10 notarized statement, either of which must set forth the date
11 of deposit and state that first-class postage has been
12 prepaid.

(As amended Apr. 26, 2004, eff. Dec. 1, 2004.)

Rule 4. Preliminary Review

1 (a) **Referral to a Judge.** The clerk must promptly
2 forward the motion to the judge who conducted the trial
3 and imposed sentence or, if the judge who imposed

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1 sentence was not the trial judge, to the judge who
2 conducted the proceedings being challenged. If the
3 appropriate judge is not available, the clerk must forward
4 the motion to a judge under the court's assignment
5 procedure.

6 **(b) Initial Consideration by the Judge.** The judge
7 who receives the motion must promptly examine it. If it
8 plainly appears from the motion, any attached exhibits, and
9 the record of prior proceedings that the moving party is not
10 entitled to relief, the judge must dismiss the motion and
11 direct the clerk to notify the moving party. If the motion is
12 not dismissed, the judge must order the United States
13 attorney to file an answer, motion, or other response within
14 a fixed time, or to take other action the judge may order.

Rule 5. The Answer and the Reply

1 **(a) When Required.** The respondent is not required
2 to answer the motion unless a judge so orders.

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1 **(b) Contents.** The answer must address the
2 allegations in the motion. In addition, it must state whether
3 the moving party has used any other federal remedies,
4 including any prior post- conviction motions under these
5 rules or any previous rules, and whether the moving party
6 received an evidentiary hearing.

7 **(c) Records of Prior Proceedings.** If the answer
8 refers to briefs or transcripts of the prior proceedings that
9 are not available in the court's records, the judge must order
10 the government to furnish them within a reasonable time
11 that will not unduly delay the proceedings.

12 **(d) Reply.** The moving party may submit a reply to
13 the respondent's answer or other pleading within a time
14 fixed by the judge.

Rule 6. Discovery

1 **(a) Leave of Court Required.** A judge may, for good
2 cause, authorize a party to conduct discovery under the

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1 Federal Rules of Criminal Procedure or Civil Procedure, or
2 in accordance with the practices and principles of law. If
3 necessary for effective discovery, the judge must appoint
4 an attorney for a moving party who qualifies to have
5 counsel appointed under 18 U.S.C. § 3006A.

6 **(b) Requesting Discovery.** A party requesting
7 discovery must provide reasons for the request. The request
8 must also include any proposed interrogatories and requests
9 for admission, and must specify any requested documents.

10 **(c) Deposition Expenses.** If the government is granted
11 leave to take a deposition, the judge may require the
12 government to pay the travel expenses, subsistence
13 expenses, and fees of the moving party's attorney to attend
14 the deposition.

Rule 7. Expanding the Record

1 **(a) In General.** If the motion is not dismissed, the
2 judge may direct the parties to expand the record by

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1 submitting additional materials relating to the motion. The
2 judge may require that these materials be authenticated.

3 **(b) Types of Materials.** The materials that may be
4 required include letters predating the filing of the motion,
5 documents, exhibits, and answers under oath to written
6 interrogatories propounded by the judge. Affidavits also
7 may be submitted and considered as part of the record.

8 **(c) Review by the Opposing Party.** The judge must
9 give the party against whom the additional materials are
10 offered an opportunity to admit or deny their correctness.

Rule 8. Evidentiary Hearing

1 **(a) Determining Whether to Hold a Hearing.** If the
2 motion is not dismissed, the judge must review the answer,
3 any transcripts and records of prior proceedings, and any
4 materials submitted under Rule 7 to determine whether an
5 evidentiary hearing is warranted.

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1 **(b) Reference to a Magistrate Judge.** A judge may,
2 under 28 U.S.C. § 636(b), refer the motion to a magistrate
3 judge to conduct hearings and to file proposed findings of
4 fact and recommendations for disposition. When they are
5 filed, the clerk must promptly serve copies of the proposed
6 findings and recommendations on all parties. Within 14
7 days after being served, a party may file objections as
8 provided by local court rule. The judge must determine de
9 novo any proposed finding or recommendation to which
10 objection is made. The judge may accept, reject, or modify
11 any proposed finding or
12 recommendation.

13 **(c) Appointing Counsel; Time of Hearing.** If an
14 evidentiary hearing is warranted, the judge must appoint an
15 attorney to represent a moving party who qualifies to have
16 counsel appointed under 18 U.S.C. § 3006A. The judge
17 must conduct the hearing as soon as practicable after giving

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1 the attorneys adequate time to investigate and prepare.

2 These rules do not limit the appointment of counsel under

3 Sec. 3006A at any stage of the proceeding.

4 **(d) Producing a Statement.** Federal Rule of Criminal

5 Procedure 26.2(a)-(d) and (f) applies at a hearing under this

6 rule. If a party does not comply with a Rule 26.2(a) order to

7 produce a witness's statement, the court must not consider

8 that witness's testimony.

Rule 9. Second or Successive Motions

1 Before presenting a second or successive motion, the

2 moving party must obtain an order from the appropriate

3 court of appeals authorizing the district court to consider

4 the motion, as required by 28 U.S.C. § 2255, para. 8.

Rule 10. Powers of a Magistrate Judge

1 A magistrate judge may perform the duties of a

2 district judge under these rules, as authorized by 28 U.S.C.

3 § 636.

Rule 11. Certificate of Appealability; Time to Appeal

1 **(a) Certificate of Appealability.** The district court
2 must issue or deny a certificate of appealability when it
3 enters a final order adverse to the applicant. Before
4 entering the final order, the court may direct the parties to
5 submit arguments on whether a certificate should issue. If
6 the court issues a certificate, the court must state the
7 specific issue or issues that satisfy the showing required by
8 28 U.S.C. § 2253(c)(2). If the court denies a certificate, a
9 party may not appeal the denial but may seek a certificate
10 from the court of appeals under Federal Rule of Appellate
11 Procedure 22. A motion to reconsider a denial does not
12 extend the time to appeal.

13 **(b) Time to Appeal.** Federal Rule of Appellate
14 Procedure 4(a) governs the time to appeal an order entered
15 under these rules. A timely notice of appeal must be filed
16 even if the district court issues a certificate of appealability.

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1 These rules do not extend the time to appeal the original
2 judgment of conviction.

**Rule 12. Applicability of the Federal Rules of Civil
Procedure and the Federal Rules of Criminal Procedure**

1 The Federal Rules of Civil Procedure and the Federal
2 Rules of Criminal Procedure, to the extent that they are not
3 inconsistent with any statutory provisions or these rules,
4 may be applied to a proceeding under these rules.

* * * * *

**This posting of the rules governing Section 2254 and
2255 cases excludes all notes to the rules. The rules and
applicable notes can be found on the Office of Law
Revisions Counsel's website using the following links for
Sections [2254](#) and [2255](#).