



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS

GUIDEBOOK

FOR PETITIONS FOR WRITS OF HABEAS

CORPUS GOVERNED BY 28 U.S.C. § 2254

July 2024

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 DO NOT CITE THIS GUIDEBOOK AS AUTHORITY.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 (“U.S.C.”) Sections 2241-2254 (28 U.S.C. §§ 2241-2254); the Rules Governing Section 2254 Cases in the United States District Courts; the Federal Rules of Civil Procedure; and the 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 Procedure appear at the end of Title 28 of the United States Code. The Rules Governing Section 2254 Cases appear immediately after 28 U.S.C. § 2254 in the United States Code. Each of these resources is also available online.

This Guidebook is organized in the sequence that a habeas petition 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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Map of the District at the end of the Guidebook



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 addresses and phone numbers:

Fort Smith and Hot Springs Divisions:

United States District Court Clerk's Office
30 South 6th Street, Rm. 1038
Fort Smith, AR 72901-2437
479-783-6833

Fayetteville and Harrison Divisions:

United States District Clerk's Office
35 E. Mountain, Rm. 510
Fayetteville, AR 72701-5354
479-521-6980

Texarkana and El Dorado Divisions:

United States District Clerk's Office
500 North State Line Avenue, Rm. 302
Texarkana, AR 71854-5961
870-773-3381



The Court's website is located at <https://www.arwd.uscourts.gov> and will be referred to throughout this Guidebook.

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, including a habeas petition, either by mailing the document to the Clerk's Office or by having the document personally delivered to the Clerk's Office 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.

What is a district judge?

A federal district judge is a judicial officer appointed under Article III of the United States Constitution. District judges are authorized to make any decision in your case. Some decisions, such as whether a claim should be dismissed, may only be made by the district judge unless all of the parties have consented to those decisions being made by a magistrate judge.

What is a magistrate judge?



A federal magistrate judge is a judicial officer who has some, but not all, of the powers of a district judge appointed under Article III of the United States Constitution. Magistrate judges may (among other things) set deadlines, enter orders on scheduling, and issue Reports and Recommendations regarding whether your habeas petition should be granted or denied. You may object to any order or any portion of a Report and Recommendation entered by a magistrate judge in your case, and your objection will be reviewed by a district judge. Local Rule 72.1 explains more about the role of magistrate judges.

What is consent to the jurisdiction of a magistrate judge?

If all parties consent to the jurisdiction of the magistrate judge, the magistrate judge may make all decisions in the case including determining whether your petition should be granted or denied. The decision of the magistrate judge may be appealed to the United States Court of Appeals for the Eighth Circuit.



CHAPTER TWO: THE BASICS

What is a petition for a writ of habeas corpus?

A petition for a writ of habeas corpus is a request by a person in custody for the Court to review the legality of their detention. Under 28 U.S.C. § 2241, the Court may issue a writ of habeas corpus where a prisoner establishes that he is in custody in violation of the Constitution or laws or treaties of the United States. Habeas corpus petitions filed by state prisoners held pursuant to a state-court judgment are subject to several restrictions, many of which may be found in 28 U.S.C. § 2244 and 28 U.S.C. § 2254. Because of the importance of these restrictions, habeas petitions filed by state prisoners held pursuant to a state-court judgment are often referred to as habeas petitions governed by § 2254, or as “§ 2254 petitions.”

Where should a habeas petition be filed?

The State of Arkansas is divided into two judicial districts—the Western District of Arkansas and the Eastern District of Arkansas. If you are in custody under the judgment and sentence of a **state court**, section 28 U.S.C. 2241(d) provides that your habeas petition may be filed in one of two districts. Either in the federal judicial district in which you are detained or in the federal judicial district in which you were convicted **if those districts are different.**



Prisoners being detained outside the State of Arkansas generally must seek habeas relief in a venue other than the Arkansas Federal District Courts. At the end of this Guidebook, is a map of Arkansas showing how the districts are divided.

Do I meet the “in custody” requirement?

A petitioner cannot seek a writ of habeas corpus unless he is being held “in custody” at the time that the habeas corpus petition is filed. The “in custody” requirement sometimes, though not always, is met if the petitioner is on probation, parole, or supervised release. Detention at a jail or prison also constitutes being “in custody” for purposes of § 2241 and § 2254.

Am I required to exhaust alternative remedies before filing my petition governed by § 2254?

A petitioner generally must exhaust alternative remedies before filing a habeas petition. For state prisoners, this will likely mean first presenting your claims to the state courts, including the Arkansas Supreme Court, before seeking federal habeas relief.

What type of relief is available if a habeas petition is granted?

A habeas petition is appropriate for challenging the fact that you are in custody, or for challenging the length of time for which you have been committed to custody. If your habeas petition is granted, your term in custody will be invalidated to the extent that the custody is found to be unlawful. Monetary damages, however, are not available in a habeas corpus action.



Is there a limitations period for filing a habeas petition governed by § 2254?

Yes, habeas corpus petitions governed by § 2254 are subject to a one-year limitations period, which can be found at 28 U.S.C. § 2244(d). After that limitations period has passed, it is too late to seek habeas corpus relief from a conviction or sentence. If you file a habeas petition after that deadline, your petition 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, ninety days after the final ruling on direct appeal by the Arkansas Supreme Court. If your claim depends upon a new rule of constitutional law that applies retroactively, or if you were impeded by state action from filing a habeas petition, or if your habeas petition 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 habeas petition is deemed to be “filed” as of the date that it is properly placed in the prison mail system.

If you file a petition for post-conviction relief in the state courts, the federal limitations period will be paused, or “tolled,” during the time that the petition remains pending in the state courts. Your federal limitations window will then begin to run again after you have exhausted all appeals within the state courts or after the time for filing an appeal in the state courts has expired.



The rules governing the timeliness of habeas petitions governed by § 2254 are both strict and technical. Failure to timely file your habeas petition will likely result in summary denial of your petition.

May I amend my habeas petition after I file it?

Maybe. If you want to amend your petition, you will need to follow the procedures for amendments found in Federal Rule of Civil Procedure 15(a). Note that any claims added to an amended petition, like those in the original petition, must be raised within the limitations period and must be fully exhausted in the state courts.

May I file a second habeas petition challenging my state-court conviction?

If your § 2254 petition is deemed to be “second or successive,” you must receive authorization from the United States Court of Appeals for the Eighth Circuit before proceeding with your habeas claims in this Court. If you received a ruling on the merits of an initial habeas petition attacking a conviction in state court, any subsequent habeas petition attacking the same conviction will likely be found to be a second or successive petition 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 petition.

That said, not all habeas petitions filed second in time are “second or successive” within the meaning of the relevant statute. For example, if your first habeas petition was denied without prejudice for failure to exhaust available state-court remedies, you may



file a new habeas petition again raising those claims after those claims have become exhausted in state court without first receiving authorization from the Eighth Circuit.



CHAPTER THREE: STARTING A § 2254 PROCEEDING

What are the requirements to start a § 2254 proceeding?

To start a § 2254 proceeding in the Western District of Arkansas, you must do the following:

- Complete the habeas petition itself by using the Court's form "Petition for Relief from a Conviction or Sentence by a Person in State Custody." You may also submit any exhibits you believe to be relevant.
- Complete a civil cover sheet (if available).
- Pay the \$5.00 filing fee or, if you cannot pay the fee, complete an application to proceed *in forma pauperis*; and
- Mail the documents and fee to the Clerk's Office at the address provided above.

Keep a copy of the habeas petition and all other documents filed with the Court for your own records.

How do I write a petition for a writ of habeas corpus governed by § 2254?

Your habeas petition, and all other documents prepared by you for the Court, should be typed or legibly handwritten, preferably in black ink. The petition 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.

Available on the Western District of Arkansas's website or from any of the Clerk's offices is a standard form for habeas petitions governed by § 2254 that you must use. The form is designed to assist you in providing the information needed for your petition.



Failure to include the necessary information could result in delay or dismissal of your habeas proceedings.

Can I file one habeas 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 of each court. But if you were convicted on more than one count in a single criminal case and you seek to challenge all those counts, you must do so in a single habeas petition rather than separate petitions attacking each count.

Whom should I name as the respondent on the habeas corpus petition?

The proper respondent in a habeas proceeding is usually the warden or the custodian of the facility where you are held.

How should I identify the facts supporting my claims?

You are required to identify in your habeas petition the facts supporting your claims. This description of the facts need not be long or detailed, but the petition should provide enough information that both the Court and the respondent 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 habeas petition?

If you have documents that support your petition, you may attach copies of the documents to the petition as exhibits. The purpose of an exhibit is to present proof or



clarification of an allegation in your petition. If you decide to attach exhibits to your petition, then you should explain or otherwise make clear why you are attaching each exhibit to the petition. 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 petition unless ordered to do so by the Court.

May I file a memorandum of law with my petition?

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 petition. 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. You are not required to submit a memorandum supporting your habeas petition, but doing so may help the Court understand why you believe you are entitled to relief.

Do I need to notarize the petition?

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 habeas petition. 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.



What is a civil cover sheet?

The civil cover sheet is a form provided by the Clerk's Office that is used to gather information about the nature of your lawsuit. You must file a civil cover sheet when you file your petition.

How do I pay the filing fee?

The Court charges a \$5.00 filing fee to begin a new habeas proceeding. The Court will accept payment by check or money order. Checks or money orders should be made payable to the "Clerk of Court."

What if I cannot afford the filing fee?

If you cannot afford the \$5.00 filing fee, you must file an *in forma pauperis* ("IFP") application. By completing an IFP application, you represent to the Court that payment of the filing fee would either be impossible or would amount to a substantial hardship. Provide the information requested on the application to the best of your ability. If the Court agrees that you are unable to pay the filing fee, you will be excused from that requirement.

Do I need to serve a copy of my petition?

No. You do not need to effect service of process upon the respondent. The respondent will be notified of your petition when it is received and filed by the Court.



May I request appointment of counsel?

Yes. Be aware, though, that there is no statutory or constitutional right to counsel in habeas corpus 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. A form motion for appointment of counsel may be found on the Court's website or can be obtained from any of the Clerk's offices.

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

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



CHAPTER FOUR: INITIAL REVIEW

What is initial review?

Your habeas petition and IFP application (if one is submitted) will be reviewed by a judge or magistrate judge upon filing. The judge will dismiss the petition if it is clear that you are not entitled to relief. This initial review process may take several weeks.

How will I know the results of the initial review?

If your petition is permitted to go forward, an order will be entered requiring the respondent to answer the petition. If your petition is deficient, either an order of dismissal or a Report and Recommendation recommending dismissal will be entered. You will receive a copy of any order or Report and Recommendation entered during the habeas proceedings.



CHAPTER FIVE: THE HABEAS PROCEEDINGS

How will the Court get the state-court record in my case?

If the 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 that the respondent believes relevant to the petition. For example, if the habeas corpus petition challenges only the legality of the sentencing, then the respondent may 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. The Court may sometimes ask the respondent to supply additional documents from the state court as well.

Will the government respond to the motion?

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

May I reply to the respondent's answer?

Yes. Sometimes the Court will order the filing of a reply brief. If it has not, you may file a motion informing the Court you would like to file a reply brief. You should



do this as soon as possible after the response has been filed. If your motion is granted, the Court's order will set a deadline for the filing of your 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. Habeas petitions are usually resolved without formal discovery.

Will there be an evidentiary hearing?

Probably not. The written record is usually enough for the Court to resolve the habeas petition, and federal courts are greatly restricted from receiving or considering evidence that is not part of the state-court record.

Will there be a hearing before the judge decides my case?

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

How do I object to an adverse Report and Recommendation?

If a magistrate judge issues a Report and Recommendation in your case and you disagree with the recommendation, Local Rule 72.1 section VIII(C) provides that you have 14 days to file an objection. Your objection will be reviewed by the district judge



assigned to the case. Your objection to the Report and Recommendation must be specific and relate to the magistrate judge's proposed findings and recommendations; new arguments are not permitted at this stage. Upon receiving your objection, the district judge assigned to the case will review the record and make a decision.

Report and Recommendation are only filed in cases in which the parties have not consented to the jurisdiction of the Magistrate Judge.



CHAPTER SIX: JUDGMENT AND APPEAL

What do I need to do to file an appeal?

Judgment will be entered after your case has become final. 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.

Habeas corpus petitioners proceeding under § 2254 also must receive a certificate of appealability 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 Court of Appeals grants you a certificate of appealability after your notice of appeal has been filed. The Court will specify the claims to which the certificate of appealability applies.

How do I file an appeal?

First, you must file a notice of appeal. A form notice of appeal may be found on the Court's website or obtained from any of the Clerk's offices. Second, you must pay the \$605.00 filing fee for the appeal. If you are not able to pay the \$605.00 appellate filing fee, then you may apply for IFP status on appeal. Any application to proceed IFP 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 IFP 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 30 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 habeas corpus proceedings.

