

## INFORMATION AND INSTRUCTIONS

### APPLICATION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. §2254 (Persons in State Custody)

1) The attached forms are to assist you in preparation of a petition for *habeas corpus* relief. In order for your petition to be considered by the District Court, it must be typewritten or legibly handwritten. All questions must be answered concisely in the appropriate spaces on the form. The petition must be signed and include a declaration under penalty of perjury. You are cautioned that any false statement of material fact may serve as basis for prosecution and conviction for perjury. You should therefore exercise care to assure that all answers are true, correct, and complete.

#### A. The Application

2) Extra pages are not permitted, except that up to two (2) additional pages (8 1/2 " x 11") may be attached if necessary to complete your answers to question #1. Citation of legal authority is not necessary and no briefs or arguments are to be submitted unless specifically requested by an order of the court.

3) The law governing applications for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 has changed dramatically. You should consult these statutory changes in 28 U.S.C. §§ 2244, 2253, and 2254, *as amended by*, Title I of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, §§ 101-106, 110 Stat. 1214 (Apr. 24, 1996).

4) In your petition, you should raise all available grounds for relief, If you fail to do so, you may be barred from presenting additional grounds at a later date. Rule 9 of the Supreme Court Rules governing §2254 cases provides that a second or successive petition may be dismissed if the judge finds that it fails to allege new and different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the judge finds the failure of the petitioner to assert those grounds in a prior petition constitutes an abuse of the writ.

5) The following list of the most frequently raised grounds for relief in post-conviction proceedings is furnished for your information only. This list is not complete, and you may raise any other grounds for relief you may have:

- a) denial of effective assistance of counsel;
- b) denial of right of appeal;
- c) conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge or the consequences of the plea;
- d) conviction obtained by use of coerced confession;
- e) conviction obtained by use of evidence obtained pursuant to an unlawful search and seizure;
- f) conviction obtained by use of evidence obtained pursuant to an unlawful arrest;
- g) conviction obtained by a violation of the privilege against self-incrimination;
- h) conviction obtained by the unconstitutional failure of the prosecution to disclose evidence favorable to the defendant;
- i) conviction obtained by a violation of the protection against double jeopardy;
- j) conviction obtained by the action of a grand or petit jury which was unconstitutionally selected and impaneled;
- k) conviction was obtained by the knowing use of perjured testimony;
- l) denial of compulsory process to obtain witnesses favorable to the defendant;
- m) sentence imposed is cruel and unusual punishment;
- n) conviction obtained by the use of evidence obtained pursuant to an unlawful lineup or identification procedure;
- o) denial of a speedy trial;
- p) conviction was obtained as a result of a plea of guilty or trial while the defendant was mentally incompetent.

6) On a single petition, you may challenge the judgments of only one court. If you seek to challenge several judgments entered by different courts, either in the same state or in different states, you must file separate petitions as to each court.

**7) Your attention is directed to the requirement that you first exhaust available state judicial remedies on all grounds before presenting them to the Federal Court.**

8) You must name as Respondent the person who has custody over you, i.e. the Warden of the institution where you are currently incarcerated.

### **B. The Filing Fee and 28 U.S.C. § 1915**

9) The application for a writ of habeas corpus must be accompanied by the full \$5.00 filing fee. If you want to commence an action without prepayment of fees or security therefor, you must file a motion for leave to proceed pursuant to 28 U.S. C. § 1915. Under § 1915, you also must submit an affidavit and a certified copy of your trust fund account statement (or institutional equivalent) for the six-month period immediately preceding the filing of the habeas corpus application. The certified copy of the trust fund account statement (or institutional equivalent) must be obtained from the appropriate official of each penal institution at which you are or were confined during the six-month period. The court will not consider the merits of the claims

asserted in any habeas corpus petition filed without either the \$5.00 filing fee or a properly completed motion, affidavit and certified copy of your trust fund account statement (or institutional equivalent) as required by § 1915.

10) The motion and affidavit for leave to proceed pursuant to 28 U.S.C. § 1915 must be typewritten or legibly handwritten. All questions must be answered clearly and concisely in the appropriate space on the form. You must sign the motion and affidavit. You should exercise care to assure that all answers are true, correct and complete.

11) If you are proceeding pursuant to 28 U.S. C. § 1915 and the motion, affidavit and certified copy of your trust fund account statement (or institutional equivalent) are in proper form, you will be ordered to pay within thirty days an initial partial filing fee in an amount to be determined by the court pursuant to § 1915(b)(1). The court will not review the merits of your habeas corpus application until the initial partial filing fee is paid. If you fail to pay the initial partial filing fee within thirty days or fail to show that you have no assets and no means by which to pay the initial partial filing fee, the habeas corpus application will be dismissed without prejudice. If the initial partial filing fee is paid within thirty days, the court will review the application pursuant to § 1915(e)(2)(B) to determine if it is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief.

12) You are reminded that, even if you are allowed to proceed pursuant to 28 U.S.C. § 1915, you must pay the full filing fee as required by law, i.e., \$5.00. It is your responsibility to ensure that monthly payments are sent to the court as required by § 1915(b)(2) until the filing fee is paid in full. It is your responsibility to have the institution where you are confined forward the payments from your trust fund account to the clerk of the court each time the amount in your account exceeds \$10.00. **The habeas corpus application may be dismissed at any point if you fail to make the required monthly payments.**

13) When your petition is fully completed in proper order, the original and two (2) copies together with the required filing fee of \$5.00, or motion to proceed pursuant to 28 U.S.C. § 1915 and financial certificate, must be mailed to the Clerk of the United States District Court whose address is:

**MATTHEW J. DYKMAN, CLERK**  
**U.S. District Court**  
**333 Lomas Blvd. NW**  
Albuquerque, NM 87102

14) You must furnish an original and one copy of all papers, correspondence or other documents (except the original petition which requires an original and two (2) copies) submitted to the court for filing and consideration. In addition, after the respondent has been served with the petition, you must furnish the respondent or his/her attorney with a copy of all such

documents submitted to the court. Each original document (except the original petition) must include a certificate stating the date a copy of the document was mailed to the respondent or his/her attorney and the address to which it was mailed. A certificate of service may be in the following form:

*I hereby certify that a copy of the foregoing pleading/document was mailed to*  
\_\_\_\_\_ *at* \_\_\_\_\_  
*(opposing party or counsel)* \_\_\_\_\_ *(Address)*  
  
on \_\_\_\_\_, 20\_\_.  
*(Date)*  
  
\_\_\_\_\_  
*(Signature)*

14) United States District Judges, United States Magistrate Judge, law clerks, the Clerk of the Court and deputy clerks are officers of the court and **are prohibited from giving legal advice.** Questions of this nature should be directed to an attorney.