

**PRISONER'S GUIDE TO FILING A HABEAS CORPUS PETITION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

TYPES OF CASES MOST COMMONLY FILED:

Habeas Corpus Petitions: Action filed when relief sought would release petitioner from custody or shorten his confinement. Example: Cases which challenge a state conviction or sentence or which seek good-time restoration, jail time credit, parole, or dismissal of a detainer.

28 U.S.C. § 2254- Action filed by a state prisoner who claims his conviction or sentence were imposed in violation of the U.S. Constitution. Generally, petitioner must exhaust all available state remedies before filing this petition.

28 U.S.C. § 2255- Motion to Vacate, Set Aside, or Correct a federal sentence. This motion must be filed in the sentencing court.

28 U.S.C. § 2241- All other Habeas Corpus petitions by state and federal prisoners challenging matters affecting the duration of confinement, and Habeas Corpus petitions by pretrial detainees.

Mandamus Petition

28 U.S.C. § 1361- Action to compel an officer of the United States to perform his duty.

HOW TO FILE AN ACTION:

28 U.S.C. § 2254- Must be filed on special § 2254 forms available from the Office of the Clerk of Court.

28 U.S.C. § 2255- Must be filed in the sentencing court on special § 2255 forms available from the Office of the Clerk of Court.

28 U.S.C. § 2241- No forms available. Petitioner must draft his/her own petition, which must include:

- (1) name and address of the petitioner;
- (2) name and address of the respondent (the warden or other custodian of the Petitioner's institution);
- (3) brief statement of claims (LEGAL AUTHORITIES AND CITATIONS ARE DISCOURAGED); and
- (4) statement of relief being sought.

IMPORTANT NOTE REGARDING HABEAS CORPUS ACTIONS:

Civil actions filed by prisoners challenging their conviction(s) or sentence(s) are subject to the following restrictions:

- (a) A one-year statute of limitations on state prisoners filing a Habeas Corpus petition in federal court under § 2254 and federal prisoners filing a motion to vacate under § 2255. See the following provisions for more information regarding the statute of limitations: 28 U.S.C. § 2244(d)(1) and 28 U.S.C. § 2255.
- (b) A state or federal prisoner seeking to file a second or successive §2254 or §2255 petition must first file a motion in the United States Court of Appeals for the Eleventh Circuit, for an order authorizing the district court to consider the petition. 28 U.S.C. § 2244(b)(3)(a); 28 U.S.C. § 2255.

FILING FEES:

Habeas Corpus petitions: \$5.00
(Except cases filed pursuant to 28 U.S.C. § 2255 for which there is no filing fee)

Mandamus petition: \$400.00

IN FORMA PAUPERIS:

If you cannot afford to pay the required filing fee, you must request to proceed in forma pauperis. To do so, you must include an Affidavit in Support of Request to Proceed In Forma Pauperis.

All prisoners must use only the financial affidavit forms available from the Office of the Clerk of this Court. Every question on the affidavit must be answered.

In order to be complete, the affidavit form must include:

1. A completed certificate, signed by an authorized officer at the Plaintiff's institution, which sets forth the current balance in the Plaintiff's inmate account and the average balance for the past six months;
2. A copy of the Plaintiff's inmate account statement for the six-month period immediately preceding the filing of the complaint which has been obtained from and certified by an authorized officer at the Plaintiff's institution, including any institutions in which the Plaintiff was incarcerated during the previous six months; and
3. A signed authorization allowing the Plaintiff's custodian to withdraw funds from his inmate account. 28 U.S.C. § 1915(a)(2).

DRAFTING PLEADINGS:

All pleadings must be typed or legibly hand-printed with no less than 2 spaces between lines. No single spacing is allowed. All pleadings must be on standard 8 ½ x 11 inch letter-sized paper. Any document, including attachments, submitted on paper exceeding this size will be returned. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

NUMBER OF COPIES REQUIRED:

Any document or civil action submitted to the Clerk's office that is not accompanied by the correct number of duplicate copies will not be accepted for filing by this Court. These copies may be photocopies, carbon copies, or handwritten copies provided they are an exact duplicate of the original and are legible.

Section 2241 Habeas Corpus Petitions and Section 2254 Habeas Corpus Petitions challenging State convictions:

The original for the Court, one copy for the respondent, plus one additional copy for the Attorney General.

Section 2255 Motions challenging Federal convictions:

The original for the Court and one copy for the U.S. Attorney.

AFTER YOUR CASE IS FILED AND DOCKETED:

Habeas Corpus petitions are forwarded to a Magistrate Judge for consideration. If the petition is not frivolous on its face or not otherwise subject to dismissal, the Magistrate Judge will issue an order directing the respondents to show cause why the relief sought should not be granted. After the response is filed the petitioner may desire to file a reply or traverse. Evidentiary hearings will be held only if certain criteria are met. The Magistrate Judge will then issue a report and recommendation which will be submitted with any objections to a District Judge, who will approve or disapprove the report and recommendation.

WHERE TO FILE YOUR PLEADINGS:

The complaint and other pleadings must be delivered or mailed to:

United States District Court
Northern District of Georgia
Atlanta Division
Office of the Clerk
2211 U.S. Courthouse
75 Spring Street SW
Atlanta, GA 30303-3361

Do NOT send papers concerning your case directly to the judge.

"This information is provided as a service to the public. While the information deals with legal issues, it does not constitute legal advice. Due to the rapidly changing nature of the law and court procedures, we rely on some information provided by outside sources. Although we make every effort to ensure the information is correct, the Clerk's Office does not warranty or guarantee the accuracy of the information provided. If you have specific legal questions or concerns, we encourage you to consult an attorney who can address and advise you on the particular circumstances of your situation. In no event will the Clerk's Office be liable to any party in any way relating to the availability, use, reliance on or inability to use the provided information or forms, or for any claim attributable to errors, omissions or other inaccuracies in any information provided."