

MODEL FORM FOR USE IN APPLICATIONS FOR
HABEAS CORPUS UNDER 28 U. S. C. § 2254

Name _____

Prison number _____

Place of confinement _____

United States District Court _____ District of _____

Case No. _____

(To be supplied by Clerk of U. S. District Court)

_____, PETITIONER
(Full name)

v.

_____, RESPONDENT
(Name of Warden, Superintendent, Jailor, or authorized person having
custody of petitioner)

and

THE ATTORNEY GENERAL OF THE STATE OF _____
_____, ADDITIONAL RESPONDENT.

(If petitioner is attacking a judgment which imposed a sentence to be served in the *future*, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the *future* under a federal judgment which he wishes to attack, he should file a motion under 28 U. S. C. § 2255, in the federal court which entered the judgment.)

PETITION FOR WRIT OF HABEAS CORPUS BY A
PERSON IN STATE CUSTODY

Instructions.—Read Carefully

- (1) This petition must be legibly handwritten or typewritten, and signed by the petitioner under penalty of perjury. 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.
- (2) Additional pages are not permitted except with respect to the *facts* which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.

- (4) If you do not have the necessary filing fee, you may request permission to proceed *in forma pauperis*, in which event you must execute the declaration on the last page, setting forth information establishing your inability to prepay the fees and costs or give security therefor. If you wish to proceed *in forma pauperis*, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution. If your prison account exceeds \$_____, you must pay the filing fee as required by the rule of the district court.
- (5) Only judgments entered by one court may be challenged in a single petition. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, *the original and two copies* must be mailed to the Clerk of the United States District Court whose address is _____
- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

PETITION

1. Name and location of court which entered the judgment of conviction under attack _____
2. Date of judgment of conviction _____
3. Length of sentence _____
4. Nature of offense involved (all counts) _____

5. What was your plea? (Check one)
 - (a) Not guilty
 - (b) Guilty
 - (c) Nolo contendere

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. Kind of trial: (Check one)
- (a) Jury
- (b) Judge only
7. Did you testify at the trial?
- Yes No
8. Did you appeal from the judgment of conviction?
- Yes No
9. If you did appeal, answer the following:
- (a) Name of court _____
- (b) Result _____
- (c) Date of result _____
10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?
- Yes No
11. If your answer to 10 was "yes," give the following information:
- (a) (1) Name of court _____
- (2) Nature of proceeding _____
- (3) Grounds raised _____
- _____
- _____
- _____
- (4) Did you receive an evidentiary hearing on your petition, application or motion?
- Yes No
- (5) Result _____
- (6) Date of result _____
- (b) As to any second petition, application or motion give the same information:
- (1) Name of court _____
- (2) Nature of proceeding _____
- (3) Grounds raised _____
- _____
- _____
- _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(5) Result _____

(6) Date of result _____

(c) As to any third petition, application or motion, give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(5) Result _____

(6) Date of result _____

(d) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes No

(2) Second petition, etc. Yes No

(3) Third petition, etc. Yes No

(e) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

Caution: In order to proceed in the federal court, you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: _____

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

B. Ground two: _____

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

C. Ground three: _____

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

D. Ground four: _____

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
 Yes No
15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:
- (a) At preliminary hearing _____

- (b) At arraignment and plea _____

- (c) At trial _____

- (d) At sentencing _____

- (e) On appeal _____

- (f) In any post-conviction proceeding _____

- (g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?
 Yes No
17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
 Yes No
- (a) If so, give name and location of court which imposed sentence to be served in the future: _____

- (b) And give date and length of sentence to be served in the future: _____

- (c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes No

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on _____ .
(date)

Signature of Petitioner

IN FORMA PAUPERIS DECLARATION

 [Insert appropriate court]

 (Petitioner)

v.

 (Respondent(s))

DECLARATION IN SUPPORT
 OF REQUEST
 TO PROCEED
 IN FORMA PAUPERIS

I, _____, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? Yes No
 - a. If the answer is "yes," state the amount of your salary or wages per month, and give the name and address of your employer.

 - b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any money from any of the following sources?
 - a. Business, profession or form of self-employment? Yes No
 - b. Rent payments, interest or dividends Yes No
 - c. Pensions, annuities or life insurance payments? Yes No
 - d. Gifts or inheritances? Yes No
 - e. Any other sources? Yes No

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months. _____

3. Do you own cash, or do you have money in checking or savings account?

Yes No (Include any funds in prison accounts.)

If the answer is "yes," state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes No

If the answer is "yes," describe the property and state its approximate value. _____

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support. _____

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on _____ (date)

Signature of Petitioner

Certificate

I hereby certify that the petitioner herein has the sum of \$ _____ on account to his credit at the _____ institution where he is confined. I further certify that petitioner likewise has the following securities to his credit according to the records of said _____ institution: _____

Authorized Officer of
Institution

MODEL FORM FOR USE IN 28 U. S. C. § 2254 CASES
INVOLVING A RULE 9 ISSUE

Form No. 9

United States District Court,

District of _____

Case No. _____

_____, PETITIONER

v.

_____, RESPONDENT

and

_____, ADDITIONAL RESPONDENT

Petitioner's Response as to Why His Petition Should
Not Be Barred Under Rule 9

Explanation and Instructions—Read Carefully

(I) Rule 9. Delayed or successive petitions.

(a) Delayed petitions. A petition may be dismissed if it appears that the state of which the respondent is an officer has been prejudiced in its ability to respond to the petition by delay in its filing unless the petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred.

(b) Successive Petitions. A second or successive petition may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the judge finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ.

(II) Your petition for habeas corpus has been found to be subject to dismissal under rule 9() for the following reason(s):

(III) This form has been sent so that you may explain why your petition contains the defect(s) noted in (II) above. It is required that you fill out this form and send it back to the court within _____ days. Failure to do so will result in the automatic dismissal of your petition.

(IV) When you have fully completed this form, the original and two copies must be mailed to the Clerk of the United States District Court whose address is _____

- (V) This response must be legibly handwritten or typewritten, and signed by the petitioner under penalty of perjury. 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.
- (VI) Additional pages are not permitted except with respect to the *facts* which you rely upon in item 4 or 5 in the response. Any citation of authorities should be kept to an absolute minimum and is only appropriate if there has been a change in the law since the judgment you are attacking was rendered.
- (VII) Respond to 4 or 5 below, not to both, unless (II) above indicates that you must answer both sections.

RESPONSE

1. Have you had the assistance of an attorney, other law-trained personnel, or writ writers since the conviction your petition is attacking was entered?
Yes No
2. If you checked "yes" above, specify as precisely as you can the period(s) of time during which you received such assistance, up to and including the present. _____

3. Describe the nature of the assistance, including the names of those who rendered it to you. _____

4. If your petition is in jeopardy because of delay prejudicial to the state under rule 9(a), explain why you feel the delay has not been prejudicial and/or why the delay is excusable under the terms of 9(a). This should be done by relying upon FACTS, not your opinions or conclusions.

5. If your petition is in jeopardy under rule 9(b) because it asserts the same grounds as a previous petition, explain why you feel it deserves a reconsideration. If its fault under rule 9(b) is that it asserts new

grounds which should have been included in a prior petition, explain why you are raising these grounds now rather than previously. Your explanation should rely on FACTS, not your opinions or conclusions. _____

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on _____ .
(date)

Signature of Petitioner