



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA

**INSTRUCTIONS FOR FILING A PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. SECTION 2241**

This packet is to be used by *pro se* prisoners being held in federal or state custody who wish to challenge the manner in which his or her sentence is being executed. Do NOT use this form for anything other than a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Separate forms are available for other actions. The Clerk of Court can send you a copy upon request, or one should be available in the law library of your institution.

Do NOT use this packet to file a 28 U.S.C. Section 2254 petition If your claim relates to the legality or length of confinement due to a sentence imposed by the **State** court system, a separate packet is available for that purpose. The Clerk of Court can send you a copy upon request (see address listed on page two), or one should be available in the law library of your institution.

Do NOT use this packet to file a 28 U.S.C. Section 2255 petition. If your claim relates to the legality or length of confinement due to a sentence imposed by the **Federal** court system, a separate packet is available for that purpose. The Clerk of Court can send you a copy upon request (see address listed on page two), or one should be available in the law library of your institution.

GENERAL INFORMATION

THE RIGHT COURT

You may file your **2241 petition** in the United States District Court for the Northern District of West Virginia **only** if you are confined in a prison located within this District.

BASIC GUIDELINES

When filing forms and documents with the Court, you must follow these guidelines:

- Complete all forms as thoroughly as possible
- Use letter size paper only (8 ½ x 11)
- Sign all documents
- Send the original
- Do not use pencil. Either type or print neatly using black or blue pens only
- Do not bind or staple documents
- Write only on the fronts of documents, do not write on the backs of documents
- Number all additional pages

FORMS AND INSTRUCTIONS FOR FILING DOCUMENTS

To file a 2241 petition, you must use the forms provided by the Court and submit either: (a) the Petition and filing fee of \$5.00 to be paid by money order or U.S. Treasury check, OR (b) the Petition and *in forma pauperis* forms, which include: Application and Affidavit to Proceed Without Prepayment of Fees (Attachment B) and the Prisoner Trust Account Report (Attachment C). **FAILURE TO SUBMIT ALL OF THE REQUIRED FORMS WILL RESULT IN DISMISSAL OF YOUR PETITION BY THE COURT**

Directions for filing a petition are listed below and all necessary forms are included. Please read all of the following instructions carefully before completing ANY of the attached forms. **PLEASE ALSO READ THE LOCAL RULES OF PRISONER LITIGATION.**

THE PETITION (Attachment A). *Instructions for Completing the Petition Form:*

- a. Submit one original petition to the Court. Keep one exact copy of the petition for your records. If you do not keep a copy of your petition and later request a copy from the Court, you will be required to pay a copying fee of \$0.50 per page.
- b. Forms from other districts are not permitted.

- c. Do not write on the back of the petition forms. If you need more space, use additional sheets of paper not to exceed a total of five (5) typed pages or ten (10) neatly printed pages unless accompanied by a Motion for Leave to file excess pages. (LR PL 3.4.4). Additional pages must be numbered. Your petition and all other pleadings/documents must be in English and must be neatly printed or typed. (LR PL 3.4.1).
- d. **FOUNDATIONS:** You are required to give facts regarding your petition. When your petition involves more than one incident, each incident should be identified as a separate ground. Each incident must include appropriate supporting facts and must be clearly described, including the relevant times, dates and locations.
- e. **RELIEF REQUESTED:** State what you want the Court to do for you. Do not make legal arguments.
- f. **VERIFICATION:** You should make sure that all answers are true and correct. You must declare under “Penalty of Perjury” that the information contained in your petition is true and accurate. This is done by signing the petition form on p. 14.
- g. Note: under RULE 11, Federal Rules of Civil Procedure: only the signature of a *pro se* party on pleadings will be acceptable to the Court.
- h. **INSTRUCTIONS FOR A PETITION WITH MORE THAN ONE PETITIONER:** If you and any other petitioner(s) have the same claims and events to be stated in your petition, each petitioner should file a separate petition.

IN FORMA PAUPERIS FORMS (Attachments B and C)

To file an application to proceed without prepayment of fees, you must complete and submit the following forms: Application and Affidavit to Proceed Without Prepayment of Fees (Attachment B) and the Prisoner Trust Account Report (Attachment C) with ledger sheets from your prisoner trust account which reflect your account’s activity for the past six months.

FILING THE PETITION

After completing the petition and all applicable forms, proofread them to ensure compliance with all instructions. Return the completed forms to the appropriate point of holding court where you are incarcerated. The West Virginia counties for each point of holding court are listed below.

Clerk, U.S. District Court
PO Box 2857
Clarksburg, WV 26302
Attn: Inmate Litigation Clerk
Pleasants, Ritchie, Calhoun, Gilmer,
Braxton, Doddridge, Harrison,
Marion, Monongalia, Taylor and
Preston Counties

Clerk, U.S. District Court
PO Box 471
Wheeling, WV 26003
Attn: Inmate Litigation Clerk
Hancock, Brooke, Ohio,
Marshall, Wetzel and
Tyler Counties

Clerk, U.S. District Court
217 W. King St., Room 102
Martinsburg, WV 25401
Attn: Inmate Litigation Clerk
Mineral, Hampshire, Morgan,
Berkeley and Jefferson Counties

Clerk, U.S. District Court
PO Box 1518
Elkins, WV 26241
Attn: Inmate Litigation Clerk
Lewis, Upshur, Webster,
Pocahontas, Randolph,
Pendleton, Barbour, Tucker,
Grant and Hardy Counties

FILING DOCUMENTS AFTER THE RESPONDENT HAS BEEN ORDERED TO ANSWER

Documents filed with the Clerk of Court after the respondent has been ordered to answer must be filed with the Court in writing in the form of a pleading, for example: motion, notice, memorandum, etc.

You must serve respondent's counsel with a copy of every pleading, letter, or other document submitted for consideration by the Court. The original of all documents filed with the Clerk must have a "Certificate of Service" (Attachment D).

The Court may return any document submitted to the Clerk of Court for filing that does not bear a proper Certificate of Service. You must sign all papers (pleadings, letters, motions, or other documents) relating to your case and must state the case number. All documents and correspondence submitted to the Clerk of Court should be on letter-size paper (8 ½ x 11 inches). Do not use legal-size (8 ½ x 14 inches) paper.

IMPORTANT ADDITIONAL INFORMATION

1. IF YOU DO NOT KEEP THE COURT ADVISED OF YOUR CURRENT ADDRESS, YOUR CASE WILL BE DISMISSED BY THE COURT.
2. It is improper to communicate directly with Judges or Magistrate Judges concerning matters that may become a subject in their Court.
3. The Clerk, Judges, Laws Clerks, and Magistrate Judges are prohibited from giving legal advice to litigants.

Thank you in advance for your cooperation regarding these instructions.

AT THE DIRECTION OF THE COURT

Cheryl Dean Riley, Clerk

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

2. Are you represented by counsel? Yes No

If you answered yes, list your counsel's name and address: _____

3. List the name and location of the court which imposed your sentence:

4. List the case number, if known: _____

5. List the nature of the offense for which the sentence was imposed:

6. List the date each sentence was imposed and the terms of the sentence:

7. What was your plea to each count? (Check one)

- Guilty
- Not Guilty
- Nolo Contendere

8. If you were found guilty after a plea of not guilty, how was that finding made?

- A jury
- A Judge without a jury
- A Magistrate Judge without a jury

9. Did you appeal from the judgment of conviction or imposition of the sentence?

- Yes No

10. If you did appeal, give the following information for each appeal:

- A. Name of Court: _____
- B. Result: _____
- C. Date of Result: _____
- D. Grounds raised (List each one): _____

Note: if you filed an appeal in more than one court, attach an additional sheet of paper of the same size and give all of the information requested in Question 10, A through D.

11. 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? This is called a post-conviction pleading.

- Yes No

If your answer was yes, complete the following sections:

- A. First post-conviction proceeding:
 - 1. Name of Court: _____

- 2. Nature of Proceeding: _____
- 3. Grounds Raised: _____
- 4. Did you receive an evidentiary hearing ? Yes No
- 5. Result: _____
- 6. Date of Result: _____

B. Second post-conviction proceeding:

- 1. Name of Court: _____
- 2. Nature of Proceeding: _____
- 3. Grounds Raised: _____
- 4. Did you receive an evidentiary hearing ? Yes No
- 5. Result: _____
- 6. Date of Result: _____

C. Did you appeal to the result of the post conviction proceeding(s) to the highest court having jurisdiction?

- 1. First proceeding: Yes No Result: _____
- 2. Second proceeding: Yes No Result: _____

D. If you did not appeal the adverse result of the post-conviction proceeding(s), explain briefly why not: _____

12. For your information, the following is a list of the most frequently raised grounds for relief in applications for habeas corpus pursuant to 28 U.S.C. §2241. You may raise any grounds which you may have other than those listed. However, in this application, you should raise all available grounds on which you base your petition. **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 one or more of the grounds:**

- A. U.S. Parole Commission unlawfully revoked my parole.
- B. Federal Bureau of Prisons unlawfully computed my sentence.

- C. Federal Bureau of Prisons unlawfully denied me credit for time served in state or federal prison.
- D. Federal Bureau of Prisons or State prison system unlawfully revoked my good time credits.
- E. There is an unlawful detainer lodged against me.
- F. I am a citizen and resident of a foreign country and I am in custody for an act which I had a right to commit under the laws of my country.
- G. The act for which I was convicted is no longer considered to be a crime, and I cannot raise this issue in a §2254 petition or a §2255 motion.

CAUTION: if you fail to set forth all of the grounds in this petition at this time, you may be barred from presenting additional grounds at a later date.

State clearly every ground on which you are seeking relief. Summarize briefly the facts supporting each ground. If necessary, attach a total of five (5) typed or ten (10) neatly printed pages maximum for all grounds and all attachments.

A. Ground one:

Supporting facts: tell your story briefly without citing cases or law. You are cautioned that you must state facts, not conclusion, in support of your grounds. A “rule of thumb” to follow is this: who did exactly what to violate your rights at what time and place).

B. Ground two:

Supporting facts:

C. Ground three:

Supporting facts:

D. Ground four:

Supporting facts:

13. Were all of the above grounds presented to another court, state or federal? If not, state which grounds were not presented. If yes, state the name of the court, date of decision, and the nature of the outcome:

14. If this petition concerns prison disciplinary proceedings, a parole problem, computation of sentence, or other case under 28 U.S.C. § 2241, answer the following questions:

- A. Did you present the facts in relation to your present petition in the prison's internal grievance procedure?

Yes No

1. If your answer to "A" above was yes, what was the result:

2. If your answer to "A" above was no, explain:

B. If you are a federal prisoner, did you present your claim to the Bureau of Prisons or other federal agency for administrative action?

Yes No

1. If your answer to "B" above was yes, what was the result:

2. If your answer to "B" above was no, explain:

15. Relief: State here, as briefly as possible, exactly what you want the court to do for you:

- 1. Make **no** legal arguments.
- 2. Cite **no** cases or statutes.

16. If a previous motion to vacate or modify a prisoner's sentence, pursuant to Section 2255, was not filed, or if such a motion was filed and denied, the reasons why Petitioner's remedy by way of Section 2255 is inadequate or ineffective to test the legality of the detention.

Signed this _____ day of _____, _____.
(day) (month) (year)

Your Signature

Signature of Attorney (if any)

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

Date of Signature: _____
Your Signature

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

Your full name

v.

APPLICATION AND AFFIDAVIT
TO PROCEED WITHOUT
PREPAYMENT OF FEES

Civil Action No: _____
(To be assigned by the Clerk of Court)

Enter above the full name of respondent(s) in this action

I, _____ declare that I am the (check appropriate box)
 Plaintiff/petitioner/movant Appellant (on appeal to the Fourth Circuit)
 other
in this case.

In support of my request to proceed without prepayment of fees or costs under 28 U.S.C. § 1915, I declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief sought in the complaint/petition/motion/notice of appeal. **I agree that, if I am granted this application, a portion of any recovery, as directed by the Court, will be paid to the Clerk of Court for reimbursement of all unpaid fees and costs incurred by me in this case.**

In support of this application, I answer the following questions under penalty of perjury:

1. I am currently incarcerated at _____.

IMPORTANT: HAVE THE INSTITUTION FILL OUT THE PRISONER TRUST ACCOUNT REPORT PORTION OF THIS APPLICATION AND ATTACH A CERTIFIED COPY OF YOUR PRISON TRUST ACCOUNT STATEMENT SHOWING TRANSACTIONS FOR THE PAST SIX MONTHS.

2. Are you employed at the Institution? Yes No

If the answer is "YES," state the amount of your pay: _____

3. In the past twelve (12) months have you received any money from any of the following sources?

- a. Business, profession or other self-employment Yes No
- b. Rent payments, interest, or dividends Yes No
- c. Pensions, annuities, or life insurance payments Yes No
- d. Disability or workers compensation payments Yes No
- e. Gifts or inheritances Yes No
- f. Any other sources Yes No

If you answered "YES" to any portion of question #3, describe each source of money and state the amount received and what you expect you will continue to receive. _____

4. Do you have any cash, checking, or savings accounts, other than your prisoner trust account, or are there any such accounts where your name is listed in addition to other individuals as an account holder?

- Yes No

If you answered "YES" above, list the name(s) and address(es) of the institutions

where your accounts are located, the type of account, and the present balance of each account. _____

5. Do you have any IRA/money market/ or CDs separate from the accounts listed above? Yes No

If you answered “YES” above, list the name(s) and address(es) of the institutions where your accounts are located, the type of account, and the present balance of each account. _____

6. Do you own an automobile(s), or does your name appear with any other individuals on the title of any automobile(s)? Yes No

If you answered “YES” above, for each such automobile please state:

Make _____ Model _____ Year _____

Is it financed? Yes No

If you answered “YES,” what is the amount owed? _____

7. Do you own any real estate, stocks, bonds, securities, other financial instruments, or any other thing of value? Yes No

If you answered “YES,” describe the property and state its value.

8. Do you have any assets or personal property other than clothing?
 Yes No

If you answered “YES,” describe each such asset and state its value.

9. Have you placed any property, assets, or cash in the name(s) or custody of anyone else in the last two (2) years? Yes No

If you answered “Yes,” describe each type of property, asset and/or money, give the name(s) of the person(s) given custody, and the reason(s) for the transfer.

Petitioner’s Declaration

I understand that if I am released or transferred, it is my responsibility to keep the Court informed of my whereabouts and failure to do so will result in this action being dismissed by the Court.

Executed at _____ on _____.
(Location) (Date)

Your Signature

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
OFFICE OF THE CLERK
P.O. Box 1518
ELKINS, WV 26241-1518**

PRISONER TRUST ACCOUNT REPORT

Name: _____

Inmate #: _____

TO: Trust Officer

FROM: Cheryl Dean Riley, Clerk, U. S. District Court,
Northern District of West Virginia

RE: Civil Action No. _____

Under the Prison Litigation Reform Act, a prisoner initiating a civil action must obtain from the Trust Officer of each institution in which the prisoner was confined during the preceding six months, a certified copy of the prisoner's trust account statement for the six months prior to the filing of his or her petition.

Please complete this form, attach the supporting ledger sheets, and return these documents to the prisoner for mailing to the Clerk of Court. **The ledger sheets MUST be attached for the Court to process this form.**

Date petition to be filed: _____

Account Balance at time of filing petition: _____

AVERAGE MONTHLY DEPOSITS during the six months prior to the filing of the civil action: _____

AVERAGE MONTHLY BALANCE during the six months prior to the filing of the civil

Attachment C

action: _____

I certify that the above information accurately states the deposits and balances in the applicant's trust account for the period shown and that the attached ledger sheets are true copies of the account records maintained in the ordinary course of business.

Date

Authorized Signature

Title

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

Your full name

v.

Civil Action No.: _____

Enter above the full name of respondent in this action

Certificate of Service

I, _____ (your name here), appearing *pro se*, hereby certify that

I have served the foregoing _____ (title of document

being sent) upon the respondent by depositing true copies of the same in the United States

mail, postage prepaid, upon the following counsel of record for the respondent on

_____ (insert date here):

(List name and address of counsel for respondent)

(sign your name)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA

v.

Case Number: _____

NOTICE OF CHANGE OF ADDRESS AND/OR CONTACT INFORMATION FOR PRO SE LITIGANTS

(Note: You must keep your contact information (address and phone number) current with the Court. The Court and opposing counsel will send orders, correspondence, motions, pleadings, notices, etc., to the last address filed with the Court in writing. Please file a separate Notice of Change of Address form for each case in which you are involved.)

I hereby notify the Court that my address has changed as follows:

Your name: _____

Old Address: _____

New address: _____

My current telephone number is: _____

I hereby request that copies of any future orders, correspondence, motions, pleadings, notices, etc., be provided to me at this new address.

I will notify the Clerk of Court in writing by filing a new Notice form if my address or telephone number changes.

Date: _____

Signature _____