

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**INSTRUCTIONS for Form 12. Application for Leave to File Second or
Successive Petition under 28 U.S.C. § 2254 or Motion under 28 U.S.C. § 2255**

Read these instructions carefully.

1. The application, whether handwritten or typewritten, must be legible and signed by the applicant under penalty of perjury. An original must be provided to the Clerk of the Ninth Circuit. The application must comply with Circuit Rule 22-3, which is attached to these instructions.
2. All questions must be answered concisely. Add separate sheets if necessary.
3. If this is a capital case, the applicant shall serve a copy of this application and any attachments on respondent and must complete and file the proof of service that accompanies this form. If this is not a capital case, service on the respondent is not required.
4. The proposed 28 U.S.C. § 2254 petition or 28 U.S.C. § 2255 motion that applicant seeks to file in the district court must be included with Form 12.
5. Applicants seeking authorization to file a second or successive section 2254 habeas corpus petition shall include copies of all relevant state court decisions if reasonably available.

Mail Form 12 to the court at:
Clerk, U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Do not file this instruction page

CIRCUIT RULE 22-3. APPLICATIONS FOR AUTHORIZATION TO FILE SECOND OR SUCCESSIVE 28 U.S.C. § 2254 PETITION OR § 2255 MOTION - ALL CASES; STAY OF EXECUTION - CAPITAL CASES

- (a) **Applications.** An applicant seeking authorization to file a second or successive 28 U.S.C. § 2254 petition or 28 U.S.C. § 2255 motion in the district court must file an application in the court of appeals demonstrating entitlement to such leave under sections 2254 or 2255. *See* Form 12. An original in paper format of the application must be filed with the Clerk of the court of appeals unless the application is submitted via the Appellate Electronic Filing System. No filing fee is required. If an application for authorization to file a second or successive section 2254 petition or section 2255 motion is mistakenly submitted to the district court, the district court shall refer it to the court of appeals. If an unauthorized second or successive section 2254 petition or section 2255 motion is submitted to the district court, the district court may, in the interests of justice, refer it to the court of appeals. (*Rev. 12/1/09; Rev. 7/1/13; Rev. 7/1/16; Rev. 12/1/18*)

The applicant must:

- (1) include Form 12 if submitted by an applicant not represented by counsel;
 - (2) include the proposed section 2254 petition or section 2255 motion that the applicant seeks to file in the district court;
 - (3) state as to each claim presented whether it previously has been raised in any state or federal court and, if so, the name of the court and the date of the order disposing of such claim(s); and
 - (4) state how the requirements of sections 2244(b) or 2255 have been satisfied.
- (b) **Attachments.** If reasonably available to the applicant, the application must include copies of all relevant state court orders and decisions. (*Rev. 12/1/09; Rev 7/1/16*)
- (c) **Service.**
- (1) **Capital Cases:** In capital cases, the applicant must serve a copy of the application, attachments, and proposed section 2254 petition/section 2255 motion on the respondent, and must attach a certificate of service to the application filed with the Court. (*Rev. 7/1/16*)
 - (2) **Noncapital Cases:** In noncapital cases, service of the application on the respondent is not required. (*New 7/1/16*)

(d) Response.

- (1) Capital Cases:** In capital cases where an execution date is scheduled and no stay is in place, respondent shall respond to the application and file supplemental attachments as soon as practicable. Otherwise, in capital cases, respondent shall respond and file supplemental attachments within 14 days of the date the application is served. *(Rev. 12/1/09)*
 - (2) Noncapital Cases:** In noncapital cases, no response is required unless ordered by the Court. Respondent may include supplemental attachments with its response. *(Rev. 7/1/16)*
- (e) Decision.** The application will be determined by a three-judge panel. In capital cases where an execution date is scheduled and no stay is in place, the Court will grant or deny the application, and state its reasons therefore, as soon as practicable.
- (f) Stays of Execution.** If an execution date is scheduled and no stay is in place, any judge may, if necessary, enter a stay of execution, *see* Circuit Rule 22-2(e), but the question will be presented to the panel immediately. If the Court grants leave to file a second or successive application, the Court shall stay the applicant's execution pending disposition of the second or successive petition by the district court. *(Rev. 12/1/18)*

Cross Reference:

- Circuit Rule 25-5. Electronic Filing on page 84, specifically, Circuit Rule 25-5(b), Documents that may be submitted either electronically or in paper format

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 22-3

The district court is required to transfer mistakenly filed applications for authorization to file a second or successive section 2254 petition or 2255 motion. If an applicant files a document that appears to be an unauthorized section 2254 petition or 2255 motion and facially alleges a claim based on a new rule of constitutional law or newly discovered evidence of actual innocence, the district court may transfer the filing to the court of appeals in the interests of justice or, in the alternative, the district court may dismiss the filing without prejudice to the applicant seeking authorization from the court of appeals on Ninth Circuit Form 12.

The rule requires applicants to provide the court of appeals with the proposed petition or motion. Pro se applicants are encouraged to use the form petition or motion adopted by the district court where the applicant anticipates filing the document. (New 7/1/16)