

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. Any applicant ~~petitioner~~ 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 28 U.S.C. § 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 Appellate ECF. No filing fee is required. (*Rev. 7/1/16*)

If a ~~second or successive petition or motion~~, or an application for authorization to file a second or successive section 2254 petition or section 2255 motion ~~such a petition or motion~~, is mistakenly submitted to the district court, the district court shall refer it to the court of appeals. (*Rev. 7/1/16*)

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*)

The applicant ~~application~~ must:

(1) include Form 12 if submitted by an applicant not represented by counsel;

(2) ~~(1)~~ include the proposed section 2254 petition or section 2255 motion ~~a copy of the second or successive 2254 petition or 2255 motion which~~ that the applicant seeks to file in the district court; ~~and~~

(3) ~~(2)~~ 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) ~~(3)~~ state how the requirements of sections 2244(b) or 2255 have been satisfied.

(b) Attachments. If reasonably available to the applicant ~~petitioner~~, the application must include copies of all relevant state court orders and decisions ~~and all dispositive district court orders in prior federal proceedings.~~ If attachments filed by ~~petitioner~~ are incomplete, respondent may file supplemental attachments. *(Rev. 12/1/09; Rev. 7/1/16)*

(c) Service.

(1) Capital cases: In capital cases, Tthe applicant ~~petitioner~~ must serve a copy of the application, ~~and all 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. *(Rev. 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; Rev. 7/1/16)*

(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 as soon as practicable. If the Court grants leave to file a second or successive application, the Court shall stay applicant's ~~petitioner's~~ execution pending disposition of the second or successive petition by the district court. *(Rev. 7/1/16)*

Cross Reference:

- Circuit Rule 25-5. Electronic Filing on page 83, specifically Circuit Rule 25-5(c), Documents that may be submitted either electronically or in paper format (*Rev. 12/1/09; Rev. 7/1/13; Rev. 7/1/16*)

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 upon 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 interest 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 this Court with the proposed petition or motion. Pro se applicants are encouraged to use the form petition or motion adopted by the district court where applicant anticipates filing the document.
(New 7/1/16)

CIRCUIT RULE 27-10 MOTIONS FOR RECONSIDERATION

(a) Filing for Reconsideration

(1) Time limit for orders that terminate the case

A party seeking further consideration of an order that disposes of the entire case on the merits, terminates a case, or otherwise concludes the proceedings in this Court must comply with the time limits ~~and other requirements~~ of FRAP 40(a)(1) and ~~Circuit Rule 40-1~~. (Rev. 7/1/16)

(2) Time limit for all other orders

Unless the time is shortened or expanded ~~enlarged~~ by order of this Court, a motion for clarification, modification or reconsideration of a court order that does not dispose of the entire case on the merits, terminate a case, or otherwise conclude proceedings in this Court must be filed within 14 days after entry ~~the date~~ of the order. (Rev. 12/1/09; Rev. 7/1/16)

(3) Required showing

A party seeking relief under this rule shall state with particularity the points of law or fact which, in the opinion of the movant, the Court has overlooked or misunderstood. Changes in legal or factual circumstances which may entitle the movant to relief also shall be stated with particularity.

(b) Court Processing

Motions Panel Orders: A timely motion for clarification, modification or reconsideration of an order issued by a motions panel shall be decided by that panel. If the case subsequently has been assigned to a merits panel, the motions panel shall contact the merits panel before disposing of the motion. A party may file only one motion for clarification, modification or reconsideration of a motions panel order. No answer to ~~such~~ a motion for clarification, modification or reconsideration of a motions panel's order is permitted unless requested by the Court, but ordinarily the Court will not grant such a motion without requesting an answer and, if warranted, a reply. The rule applies to any motion seeking clarification, modification or reconsideration ~~review~~ of a motions panel order,

either by the motions panel or by the Court sitting en banc, and ~~supersedes the time limits set forth in FRAP 40(a)(1) with respect to such motions.~~ (Rev. 7/1/16)

Orders Issued under Circuit Rule 27-7: A motion to reconsider, clarify or modify an order issued pursuant to Circuit Rule 27-7 by a deputy clerk, staff attorney, circuit mediator or the appellate commissioner is initially directed to the individual who issued the order or, if appropriate, to his/her successor. The time to respond to such a motion is governed by FRAP 27(a)(3)(A). If that individual or his/her successor is disinclined to grant the requested relief, the motion for reconsideration, clarification or modification shall be processed as follows:

....

(Rev. 7/1/16)

~~CIRCUIT RULE 28-4~~ ~~EXTENSIONS OF TIME AND ENLARGEMENTS OF SIZE FOR~~ ~~CONSOLIDATED AND JOINT BRIEFING~~

Abrogated 7/1/16

Cross Reference: Circuit Rule 32-2(b).

~~In a case or consolidated cases involving multiple separately represented appellants or appellees, all parties on a side are encouraged to join in a single brief to the greatest extent practicable. As set forth below, the Court will grant a reasonable extension of time and enlargement of size for filing such a joint brief or for filing a brief responding to a joint brief or to multiple briefs.~~

~~**Notice Procedure.** If no previous extension of the filing deadline or enlargement of brief size has been obtained and the case has not been expedited, the Court will grant a 21-day extension of time and an enlargement of five (5) pages, 1,400 words or 130 lines of monospaced text for a joint brief upon the filing of the notice at Appendix of Forms, No. 7 to these rules. (Rev. 7/1/00)~~

~~If no previous extension of the filing deadline or enlargement of brief size has been obtained and the case has not been expedited, the Court will grant a 21-day extension of time and an enlargement of five (5) pages, 1,400 words or 130 lines of monospaced text to a party filing a single response to a joint brief or multiple briefs upon the filing of the notice at Appendix of Forms, No. 7.~~

Upon receipt of such a notice, a corresponding adjustment to the responsive brief's due date will be recorded on the docket. (Rev. 7/1/00)

All notices described in this rule must be filed at least 7 days prior to the brief's due date and signed by counsel for all parties on that side. If the parties on a side have different due dates for their briefs, the notice must be filed at least 7 days before the earliest due date and the extended due date shall be calculated from the latest due date. (Rev. 12/1/09)

Motion Procedure. If parties filing a joint brief or responding to multiple briefs or joint briefs wish to obtain a lengthier extension of time or greater enlargement of brief size than described above, or if the case has been previously expedited, the extension or enlargement request must be made by written motion. Motions for extensions of time must be filed at least 7 days prior to the brief's due date; joint motions for extensions of time and/or to enlarge brief size must be signed by all counsel filing the motion. If the parties on a side have different due dates for their briefs, the motion must be filed at least 7 days prior to the earliest due date. (Rev. 12/1/02; 12/1/09)

The previous grant of an extension of time under Circuit Rule 31-2.2(a) precludes a request for relief under this rule absent a showing of extraordinary and compelling circumstances. (Rev. 7/97)

Cross Reference:

- Circuit Rule 31-2. Time for Service and Filing on page 127, specifically, 31-2.2. Extensions of Time for Filing Briefs on page 127
- Circuit Rule 32-1. Form of Briefs: Certificate of Compliance on page 132
- Circuit Advisory Committee Note to Rule 33-1 on page 137

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 28-4

Rule 28-4 encourages separately represented parties to file a joint brief to avoid burdening the Court with repetitive presentations of common facts and issues. Such joint briefing may require additional time and size. Accordingly, upon written notice, the Court will grant a 21-day extension of time for filing a joint brief or a brief responding to multiple briefs. Similarly, upon written notice, the Court will grant five (5) additional, double-spaced pages, 1,400 additional words, or 130 lines of monospaced text for filing a joint brief or a brief responding to a joint brief or to multiple briefs. A further enlargement of time or size may be granted upon written motion supported by a showing of good cause. (Rev. 7/1/00)

In exceptionally complex, multi-party criminal cases, the parties may request a case conference before the appellate commissioner. See Circuit Advisory Committee Note to Rule 33-1, Section B. (Eff. 7/1/97)



NINTH CIRCUIT RULE 32-2
MOTIONS REQUESTS TO EXCEED THE PAGE OR TYPE-
VOLUME LIMITS LIMITATIONS

(a) Motions

The Court looks with disfavor on motions to exceed the applicable page or type-volume limits limitations. Such motions will be granted only upon a showing of diligence and substantial need. A motion for permission to exceed the applicable page or type-volume limits limitations must be filed on or before the brief's due date and must be accompanied by a declaration stating in detail the reasons for the motion.

(Rev. 7/1/16)

Any such motions shall be accompanied by a single copy of the brief that the applicant proposed to file and a Form 8 certification as required by Circuit Rule 32-1 as to the word count. The cost of preparing and revising the brief will not be considered by the Court in ruling on the motion.

(b) When Longer Briefs are Allowed Automatically

If no order lengthening the page or type-volume limit has been obtained previously, the Court will allow an extra 5 pages or 1,400 words to separately represented parties that are filing a joint brief. That same longer limit also will be provided to a party or parties that file a single brief answering or replying to either (1) multiple briefs or (2) a longer joint brief filed pursuant to this subsection. Briefs submitted under this subsection must be accompanied by Form 8. (Rev. 7/1/16)

Circuit Advisory Committee Note to Rule 32-2

Motions: If the Court does not grant a motion for leave to file a longer brief ~~the requested relief~~ or grants the motion ~~requested relief~~ only in part, the Court ordinarily will provide the party or parties a reasonable interval after the entry of the order to file a brief as directed by the Court. Any order that decides a motion will make adjustments to the due date(s) for any further briefing.

Notices: Rule 32-2(b) encourages separately represented parties to file a joint brief to avoid burdening the Court with repetitive presentations of common facts and issues. The routine lengthening of page or type-volume provided by the rule is intended to accommodate the additional length that may be necessary to permit preparation of a joint brief. A litigant responding to the opposing party's brief as well as an amicus curiae brief filed under FRAP 29(a) is also eligible to file a longer brief automatically.

If a brief that exceeds the usual length limits is submitted by a party or parties ineligible for relief under Rule 32-2(b), the Clerk will provide the parties with an interval within which to file a motion under Rule 32-2(a). (New 7/1/16)

CIRCUIT RULE 39-1.9, REFERRAL TO APPELLATE COMMISSIONER

When the Court has awarded attorneys fees on appeal or on application for extraordinary writ, and a party opposes the amount of attorneys fees requested by the prevailing party, the Court may refer to the Appellate Commissioner the determination of an appropriate amount of attorneys fees. ~~The Court may direct the Appellate Commissioner to make a recommendation to the Court or to issue an order awarding attorneys fees. Any such order issued by the Appellate Commissioner is subject to reconsideration by the Court.~~

Within 14 days after the **entry date** of an Appellate Commissioner's order awarding or denying attorneys fees, a party may file a motion for reconsideration. The motion is directed initially to the Appellate Commissioner. If the Appellate Commissioner is disinclined to grant reconsideration, the Appellate Commissioner will refer the motion to the Court.

No response to a motion for reconsideration of a fee order is permitted unless requested by the Appellate Commissioner or the Court, but ordinarily neither the Appellate Commissioner nor the Court will grant reconsideration without requesting a response. (Rev. 7/1/16)

Cross reference:

- Ninth Circuit Rule 27-10, Motions for Reconsideration

Form 7

Notice of Joint Brief Under Ninth Circuit Rule 28-4

(Abrogated 7/1/16)

9th Cir. No. Case Name:

We certify the following Appellants Appellants/cross-appellees
 Appellees Appellees/cross-appellants

Party names

1. Are separately represented and will file a joint
- | | |
|--|--|
| <input type="checkbox"/> Opening brief | <input type="checkbox"/> Opening brief on cross appeal |
| <input type="checkbox"/> Answering brief | <input type="checkbox"/> Answering/opening brief on cross appeal |
| <input type="checkbox"/> Reply brief | <input type="checkbox"/> Reply/answering brief on cross appeal |
| | <input type="checkbox"/> Cross appeal reply brief |

2. Are responding to a joint or multiple brief

We certify that no previous extensions of time to file this brief have been requested, the case has not been expedited and we are eligible for an extension of time under Circuit Rule 28-4.

Pursuant to Circuit Rule 28-4, the brief's due date will be extended for 21 days and the size enlarged by 5 monotype pages or 1,400 words.

Subsequent briefing will proceed as follows:

- The answering brief will be due 30 days from service of the joint opening brief.
- The reply brief will be due 14 days from service of the joint answering brief.
- The answering/opening brief will be due 40 days from service of the joint opening brief on cross appeal.
- The reply/answering brief will be due 30 days from service of the joint answering/opening brief on cross appeal.
- The cross appeal reply brief will be due 14 days from service of the joint reply/answering brief.

Signature Signature

Additional sheets may be attached for the signatures of additional counsel. "s/" plus the attorney name may be used in lieu of a manual signature on electronically filed documents.

THIS NOTICE MUST BE FILED WITH THE COURT AND SERVED ON OPPOSING COUNSEL AND ACCOMPANIED BY PROOF OF SUCH SERVICE.

Form 8
Certificate of Compliance Pursuant to 9th Circuit Rules ~~28-4~~, 29-2(c)(2) and
(3), 32-2 or 32-4¹ for Case Number _____
(Rev. 7/1/16)

Note: This form must be signed by the attorney or unrepresented litigant *and attached to the end of the brief.*

I certify that (check appropriate option):

This brief complies with the **length limits** ~~enlargement of brief size~~ permitted by Ninth Circuit Rule ~~28-4~~ **32-2(b)**. **The brief is _____ words, _____ lines of text or _____ pages excluding the portions exempted by Fed. R. App. P. 32(a)(7)(B)(iii), if applicable, and is filed by (1) _____ separately represented parties; (2) _____ a party or parties filing a single brief in response to multiple briefs; or (3) _____ a party or parties filing a single brief in response to a longer joint brief filed under Rule 32-2(b).** The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6). ~~This brief is _____ words, _____ lines of text or _____ pages, excluding the portions exempted by Fed. R. App. P. 32(a)(7)(B)(iii), if applicable.~~

This brief complies with the **longer length limit** ~~enlargement of brief size~~ ~~granted~~ by court order dated _____. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6). This brief is _____ words, _____ lines of text or _____ pages, excluding the portions exempted by Fed. R. App. P. 32(a)(7)(B)(iii), if applicable.

This brief is accompanied by a motion for leave to file an **longer** ~~oversize~~ brief pursuant to Circuit Rule 32-2(a) and is _____ words, _____ lines of text or _____ pages, excluding the portions exempted by Fed. R. App. P. 32(a)(7)(B)(iii), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

This brief is accompanied by a motion for leave to file an **longer** ~~oversize~~ brief pursuant to Circuit Rule 29-2(c)(2) or (3) and is _____ words, _____ lines of text or _____ pages, excluding the portions exempted by Fed. R. App. P. 32(a)(7)(B)(iii), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

This brief complies with the length limits set forth at Ninth Circuit Rule 32-4. **The brief is _____ words, _____ lines of text or _____ pages, excluding the portions exempted by Fed. R. App. P. 32(a)(7)(B)(iii), if applicable.** The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

Signature of Attorney or Unrepresented Litigant
("s/" plus typed name is acceptable for electronically-filed documents)

Date

¹ If filing a brief that falls within the length ~~limits~~ ~~limitations~~ set forth at Fed. R. App. P. 32(a)(7)(B), use Form 6, Federal Rules of Appellate Procedure

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

(New, 7/1/02; Rev. 7/1/16)

UNITED STATES COURT of APPEALS
for the NINTH CIRCUIT
~~95 Seventh Street~~ P.O. Box 193939
San Francisco, California ~~94103~~ 94119-3939

Docket Number _____
(to be provided by court)
Applicant's ~~Petitioner's~~ name _____
Prisoner registration number _____
Address _____
Name of respondent _____

Instructions - Read Carefully

- (1) This application, whether handwritten or typewritten, must be legible and signed by the applicant ~~petitioner~~ under penalty of perjury. An original ~~and five (5) copies~~ must be provided to the Clerk of the Ninth Circuit. The application must comply with 9th Circuit Rule 22-3, which is attached to this form.
- (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 a the proof of service that accompanies this form with this application. ~~If this is not a capital case, service on the respondent is not required.~~
- (4) ~~The petitioner shall attach to this application copies of the magistrate judge's report and recommendation and the district court's opinion in any prior federal habeas proceeding under 28 U.S.C. § 2254 or § 2255 or state why such documents are unavailable to petitioner.~~ 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 this form.
- (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.

You *Must* Answer the Following Questions:

(1) What conviction(s) are you challenging?

(2) In what court(s) were you convicted of these crime(s)?

(3) What was the date of each of your conviction(s) and what is the length of each sentence?

For questions (4) through (10), provide information separately for each of your previous §§ 2254 or 2255 proceedings. Use additional pages if necessary.

(4) Has the judgment of your conviction or sentence been modified or amended? If yes, when and by what court?

~~(4)~~ (5) With respect to **each** conviction and sentence, have you ever filed a petition or motion for habeas corpus relief in federal court under **28 U.S.C. § 2254** or **§ 2255**?

Yes No

(a) In which federal district court did you file a petition or motion?

(b) What was the docket number? _____

(c) On what date did you file the petition/motion? _____

~~(5)~~ (6) What grounds were raised in your previous habeas proceeding?
(list all grounds and issues previously raised in that petition/ motion)

~~(6)~~ (7) Did the district court hold an evidentiary hearing? Yes No

~~(7)~~ (8) How did the district court rule on your petition/motion?

District court **dismissed** petition/motion? If yes, on what grounds?

District court **denied** petition/motion;

District court **granted** relief;

if yes, on what claims and what was the relief?

~~(Attach copies of all reports and orders issued by the district court.)~~

~~(8)~~ (9) On what date did the district court decide your petition/motion?

~~(9)~~ (10) Did you file an appeal from that disposition? Yes No

(a) What was the docket number of your appeal? _____

(b) How did the court of appeals decide your appeal? _____

~~(10)~~ (11) State concisely each and every ground or issue you wish to raise in your current petition or motion for habeas relief. Summarize briefly the facts supporting each ground or issue.

~~(11)~~ (12) For each ground raised, was it raised in the state courts? If so, what did the state courts rule and when?

(Attach a copy of all relevant state court decisions, if available)

~~(12)~~ (13) For each ground/issue raised, was this claim raised in any prior federal petition/motion? (list each ground separately)

~~(13)~~ (14) For each ground/issue raised, does this claim rely on a new rule of constitutional law? (list each ground separately and give case name and citation for each new rule of law)

~~(14)~~ (15) For each ground/issue raised, does this claim rely on newly discovered evidence? What is the evidence and when did you discover it? Why has this newly discovered evidence not been previously available to you? (list each ground separately)

~~(15)~~ (16) For each ground/issue raised, does the newly discovered evidence establish your innocence?
How?

~~(16)~~ (17) For each ground/issue raised, does the newly discovered evidence establish a federal constitutional error? Which provision of the Constitution was violated and how?

~~(17)~~ (18) Provide any other basis for your application not previously stated.

Date: _____ Signature: _____

In capital cases only, proof of service on respondent MUST be attached. A sample proof of service is attached to this form.

Attach proposed section 2254 petition or section 2255 motion to this application.

CERTIFICATE OF SERVICE

**APPLICATIONS FOR LEAVE TO FILE
SECOND OR SUCCESSIVE
28 U.S.C. §§ 2254/2255 PETITIONS/MOTIONS**

DEATH PENALTY CASES ONLY

Case Name: _____ v. _____

I certify that a copy of the application for leave to file a second or successive 28 U.S.C. § 2254 petition or § 2255 motion with any attachments was served, either in person or by mail, on the person listed below.

Signature

Notary NOT required

Name

Address

Date of Service

Attachment to Form 12

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. Any applicant ~~petitioner~~ 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 28 U.S.C. § 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 Appellate ECF. No filing fee is required. (*Rev. 7/1/16*)

If a ~~second or successive petition or motion~~, or an application for authorization to file a second or successive section 2254 petition or section 2255 motion such a ~~petition or motion~~, is mistakenly submitted to the district court, the district court shall refer it to the court of appeals. (*Rev. 7/1/16*)

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*)

The applicant ~~application~~ must:

(2) include Form 12 if submitted by an applicant not represented by counsel;

(2)(1) include the proposed section 2254 petition or section 2255 motion a copy of the second or successive 2254 petition or 2255 motion which that the applicant seeks to file in the district court; and

(3) (2) 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)~~(3) state how the requirements of sections 2244(b) or 2255 have been satisfied.

(b) Attachments. If reasonably available to the applicant petitioner, the application must include copies of all relevant state court orders and decisions ~~and all dispositive district court orders in prior federal proceedings.~~ ~~If attachments filed by petitioner are incomplete, respondent may file supplemental attachments.~~ (Rev. 12/1/09; Rev. 7/1/16)

(c) Service.

(1) Capital cases: In capital cases, the applicant petitioner must serve a copy of the application, and all 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. (Rev. 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; Rev. 7/1/16)

(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 as soon as practicable. If the Court grants leave to file a second or successive application, the Court shall stay applicant's petitioner's execution pending disposition of the second or successive petition by the district court. (Rev. 7/1/16)

Cross Reference:

- Circuit Rule 25-5. Electronic Filing on page 83, specifically Circuit Rule 25-5(c), Documents that may be submitted either electronically or in paper format (*Rev. 12/1/09; Rev. 7/1/13; Rev. 7/1/16*)