

CIVIL LITIGATION CONCEPTS OF HABEAS LITIGATION

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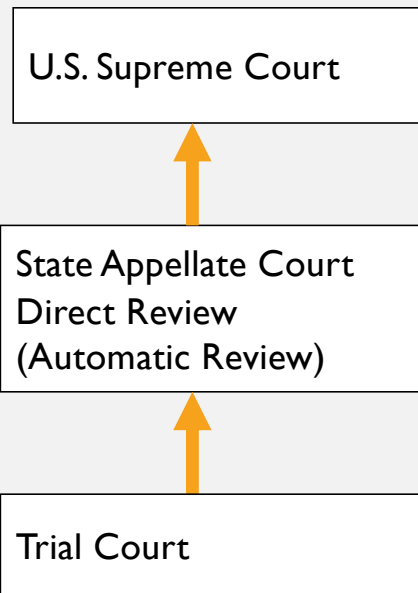
Office of the Federal Public Defender for the District of Puerto Rico

AGENDA

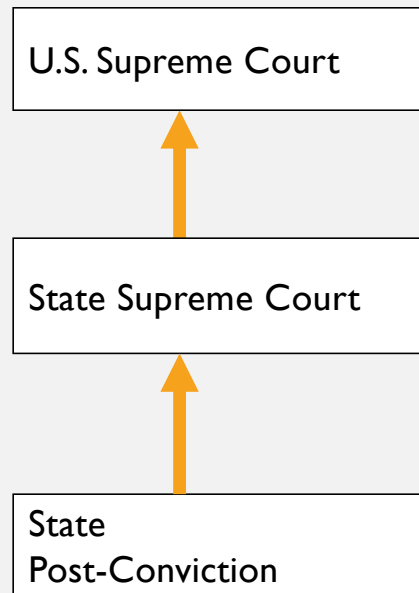
- Rules governing federal habeas proceedings
- Crucial stages of habeas litigation
- Motions following a decision

FEDERAL HABEAS CORPUS

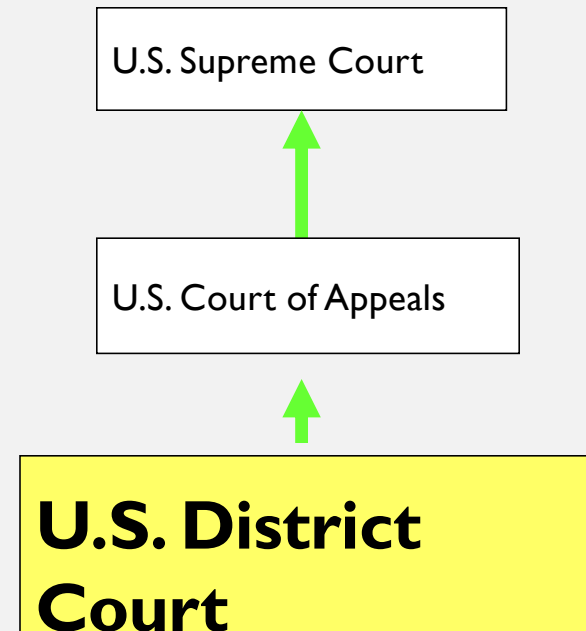
Trial/Direct Appeal



Post-Conviction



Federal Courts



RULES GOVERNING HABEAS PROCEEDINGS

- [Rules Governing 2254 and 2255 Cases](#)
- [Federal Rules of Civil Procedure](#)
- [Local rules for the district](#) and standing orders

**RULES
GOVERNING
2254 AND 2255
CASES**

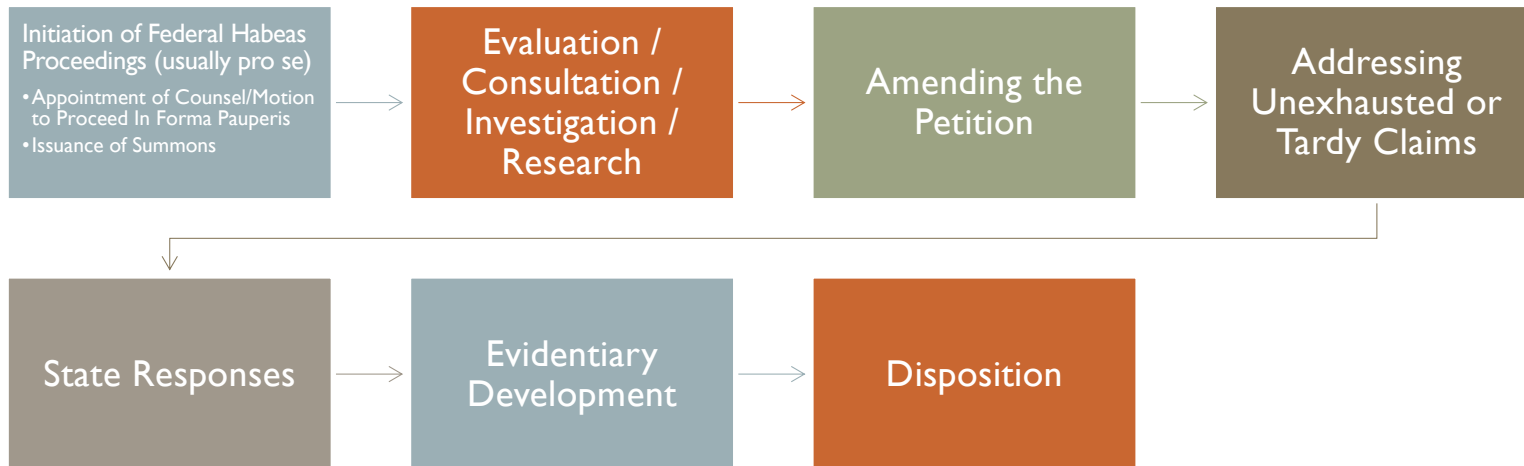
RULES (2254 CASES)

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FEDERAL RULES OF CIVIL PROCEDURE

Rule 12. Applicability of the Federal Rules of Civil Procedure

The Federal Rules of Civil Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules.



CRUCIAL STAGES IN DISTRICT COURT

INITIATING A HABEAS PROCEEDING

- [Form to be Used for Application of Habeas Corpus under 28 U.S.C. 2254](#)

FORMS TO BE USED FOR APPLICATIONS
OF HABEAS CORPUS UNDER 28 U.S.C. § 2254
(Formulario para peticiones de Habeas Corpus
bajo Título 28, § 2254)

NAME (Nombre)

PRISONER NUMBER
(Número de prisionero)

PLACE OF CONFINEMENT
(Lugar de reclusión)

United States District Court for the District of _____
(Tribunal de Distrito de los Estados Unidos para el Distrito de)

CASE NUMBER (Número de caso) Civil No. _____

INITIATING A HABEAS PROCEEDING

- [Instructions to Inmates Applying for Habeas Corpus Review 28 U.S.C. 2254](#)
- [Instrucciones a Confinados para Radicar Petición Habeas Corpus 28 U.S.C. 2254](#)

TRIBUNAL DE LOS ESTADOS UNIDOS
DISTRITO DE PUERTO RICO

INSTRUCCIONES A CONFINADOS PARA RADICAR PETICION DE HABEAS CORPUS 28 U.S.C. § 2254

Para iniciar la acción judicial, deberá radicar la petición original y una copia de ésta por cada uno de los peticionados que usted menciona y una copia para el Tribunal (por ejemplo, si usted menciona a dos peticionados, deberá radicar el formulario de demanda original y tres copias). Deberá guardar una copia adicional del formulario de demanda para tener constancia. Todas las copias de la petición deben ser idénticas al original.

Si usted no puede pre-pagar el arancel de radicación y cargos por emplazamiento, podrá solicitar permiso del Tribunal para proceder como indigente. A tales efectos, deberá completar y radicar los formularios de Moción para Proceder en Forma de Pobre y Afidávit, conjuntamente con su petición. De igual forma, la sección 1915 (a)(2) del Título 28 de las Leyes de Estados Unidos requiere que usted someta "una copia certificada de su estado de cuenta de confinado [trust fund account statement] que refleje su actividad por los pasados 6 meses antes de la radicación de la Demanda a ser emitido por el oficial indicado de su prisión." Si usted no somete el "trust fund account statement," su caso podrá ser desestimado. Debe conservar copia de dichos formularios para su expediente.

SUMMONS

for the
District of Puerto Rico

V.

Civil Action No.

)
)
)
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)
)
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)
)
)
)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

APPOINTMENT OF COUNSEL

- 28 U.S.C. § 2254(h)

“... [I]n all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by [section 3006A of title 18](#).”

- 18 U.S.C. § 3006A(2)

“Whenever the United States magistrate judge or the court determines that the interests of justice so require, representation may be provided for any financially eligible person who— ... (B) is seeking relief under section 2241, **2254**, or 2255 of title 28.”



COUNSELED HABEAS
PROCEEDINGS

AMENDING THE PETITION

- Identifying All Claims Whether Raised Previously or Not
 - Investigation, Review of All Court Records, Witness Interviews, Prior Counsel Interviews, Client Consultation....
- Three Types:
 - Claims Raised in the Pro Se Petition
 - Claims Not Expressly Raised But Relating Back to Raised Claims (Fed. R. Civ. P. 15(c))
 - Those Claims Not in the Pro Se 2254 at All

AMENDING THE PETITION

- Anticipating Affirmative Defenses
- Strategic Approach to Factual Development
 - Timing for submission of evidence/legal analysis
- Citations to a Record That's Not Yet Lodged
- Adequate Level of Detail in Claims

ADDRESSING UNEXHAUSTED/TARDY CLAIMS

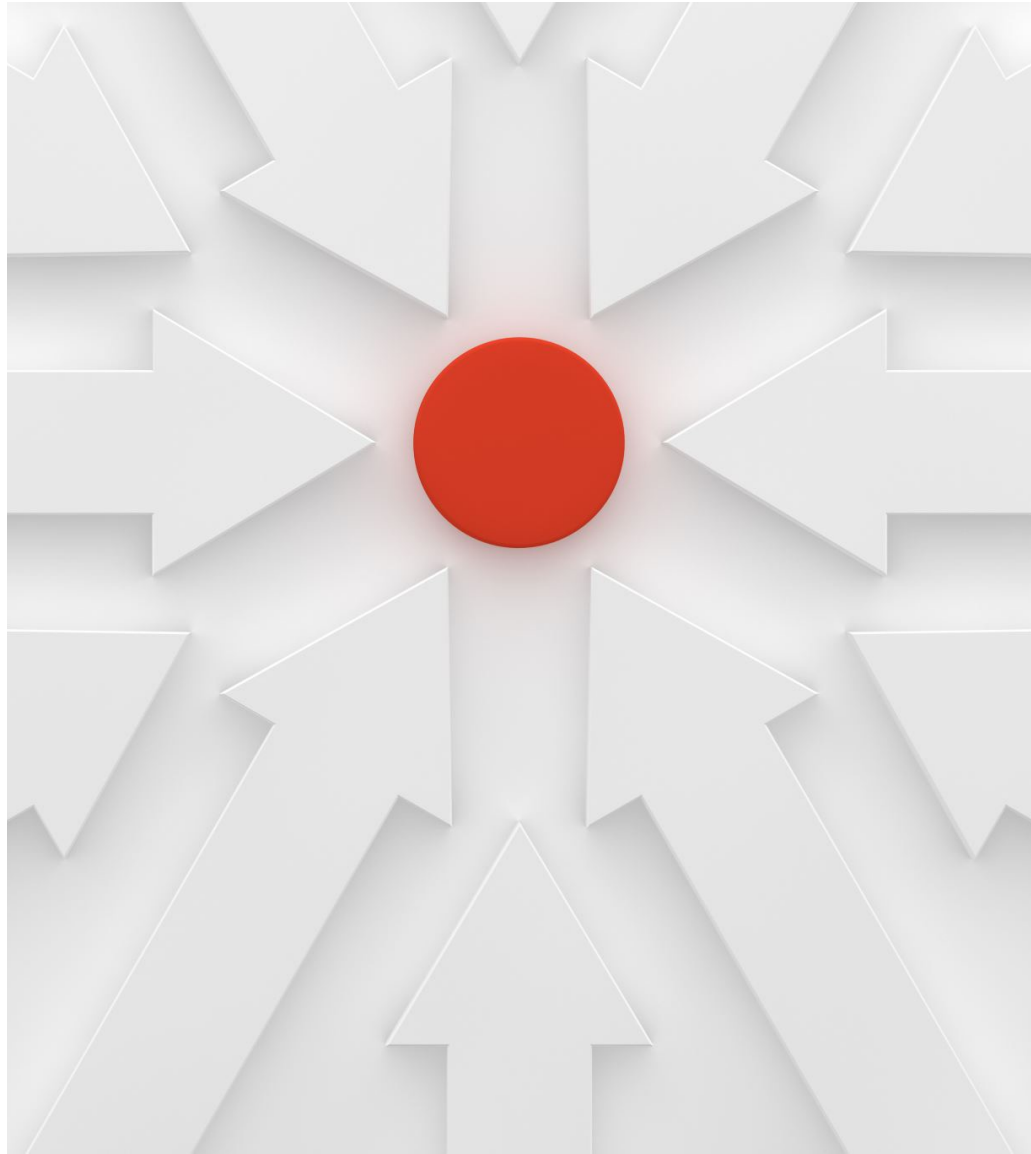
Potential Procedural Barriers

- 28 U.S.C. § 2244(d)(1): 1-year statute of limitations.
- 28 U.S.C. § 2254(b): petitioners must generally exhaust remedies available in state courts.
 - For more on what exhaustion looks like, see: [Randy Hertz & James S. Liebman, Federal Habeas Corpus Practice and Procedure, 7th Edition, § 5.1 \(2025\) \(Matthew Bender\)](#) (“Proceedings that ordinarily should precede habeas corpus”)
- Teague v. Lane, 489 U.S. 288 (1989): petitioner generally cannot seek enforcement of a “new rule” if it was announced after petitioner’s conviction became final

ADDRESSING UNEXHAUSTED/TARDY CLAIMS

Overcoming Procedural Barriers

- Many possible avenues exist to raise such claims since the barriers in 2244 and 2254(b) are waivable, non-jurisdictional, and overcome-able through equitable tolling or the miscarriage-of-justice gateway.
- Unsettled questions of state law that can impact the 2254(b) barrier.
- Returning to state court using mechanisms like a *Rhines* stay.
- Procedural default can be overcome with a showing of “cause and prejudice.”



RESPONSES BY THE COMMONWEALTH

RESPONSES BY THE COMMONWEALTH

- Motion to Dismiss
 - Applicability of Fed. R. Civ. P. 12 Defenses
 - Filing Opposition
- Answer (Record Lodgment)
 - Filing Reply
 - DPR Complexity:
 - Habeas Rule 5 Record Lodgment
 - Compliance with the Jones Act English-Only Rule

(c) Contents: Transcripts. The answer must also indicate what transcripts (of pretrial, trial, sentencing, or post-conviction proceedings) are available, when they can be furnished, and what proceedings have been recorded but not transcribed. The respondent must attach to the answer parts of the transcript that the respondent considers relevant. The judge may order that the respondent furnish other parts of existing transcripts or that parts of untranscribed recordings be transcribed and furnished. If a transcript cannot be obtained, the respondent may submit a narrative summary of the evidence.

(d) Contents: Briefs on Appeal and Opinions. The respondent must also file with the answer a copy of:

- (1) any brief that the petitioner submitted in an appellate court contesting the conviction or sentence, or contesting an adverse judgment or order in a post-conviction proceeding;
- (2) any brief that the prosecution submitted in an appellate court relating to the conviction or sentence; and
- (3) the opinions and dispositive orders of the appellate court relating to the conviction or the sentence.

BRIEFING AFTER SUBMISSION OF RECORD AND EVIDENCE

- The Habeas Rules require fact-based pleadings.
- After submission of Commonwealth records, evidence, etc., counsel should seek leave to file a legal memo or brief:
 - 1) in support of the petition's claims
 - 2) in opposition of defense asserted by respondents
- As the moving party, the petitioner normally files the opening brief.

**Gould v. United States*, 657 F.Supp.2d 321, 326 n.5 (D. Mass. 2009) ("Habeas petitioners are not required to submit memoranda of law, although a petitioner may do so if he feels that his motion may be disposed of summarily.")

EVIDENTIARY DEVELOPMENT

- Barriers to evidentiary development
 - 28 U.S.C. § 2254(e)
 - *Shinn v. Ramirez*, 142 S. Ct. 1718 (2022)
- Governing rules
 - Habeas Rules 6, 7, and 8
 - Federal Rules of Civil Procedure
- Special considerations
 - Equitable tolling
 - Actual innocence
- D.P.R. example: *Cruz-Berrios v. Borrero*, No. 14-cv-1232 (ADC/SCC), 2020 WL 12814753

Rule 6. Discovery

(a) Leave of Court Required. A judge may, for good cause, authorize a party to conduct discovery under the Federal Rules of Civil Procedure and may limit the extent of discovery. If necessary for effective discovery, the judge must appoint an attorney for a petitioner who qualifies to have counsel appointed under 18 U.S.C. § 3006A.

Rule 7. Expanding the Record

(a) In General. If the petition is not dismissed, the judge may direct the parties to expand the record by submitting additional materials relating to the petition. The judge may require that these materials be authenticated.

Rule 8. Evidentiary Hearing

(a) Determining Whether to Hold a Hearing. If the petition is not dismissed, the judge must review the answer, any transcripts and records of state-court proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted.

The background of the slide is a close-up photograph of a dark asphalt road. Several white, hand-painted arrows are visible, all pointing towards the right side of the frame. The arrows are slightly worn and spaced out across the road surface.

POST-DECISION PRACTICE

OBJECTING TO THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS

- Timing: within 14 days
- Standard of review: “The judge must determine de novo any proposed finding or recommendation to which objection is made.” Habeas Rule 8(b).

RULE 59(E)

- Motion to alter or amend the judgment
- Filed within 28 days of the district court's judgment
- Rule 59(e) motions are not second or successive habeas petitions. *Banister v. Davis*, 590 U.S. 504 (2020).
- If a Rule 59(e) motion is timely filed, the clock on filing the notice of appeal starts when the court disposes of the motion (or the last of several types of motions). Fed. R.App. P. 4.

RULE 60(B)

- Motion for relief from the judgment
- Grounds for relief
 - “(1) mistake, inadvertence, surprise, or excusable neglect;
 - (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
 - (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
 - (4) the judgment is void;
 - (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
 - (6) any other reason that justifies relief.”
- 60(b)(1)-(b)(3) motions must be filed within a year of the judgment. All others must be filed within a “reasonable time”.
- Rule 60(b) motions may sometimes be considered second or successive habeas petitions. *Rivers v. Guerrero*, 605 U.S. ---- (2025) (citing *Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005)).
- Rule 60 motions affect the time for filing a notice of appeal like rule 59 motions **IF** they are filed within the deadline for Rule 59 motions. Fed. R.App. P. 4.

REQUESTING A CERTIFICATE OF APPEALABILITY

- “The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.” Habeas Rule 11(a).
- Standard: A judge may issue a certificate of appealability “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253.
- *Tharpe v. Sellers*, 583 U.S. 33 (2018) (vacating Court of Appeals’ denial of COA on 60(b)(6) motion about racial bias of juror).