

PREVIEW OF FIRST THREE PAGES
OF CHAPTER EIGHT

DISTRICT COURT PLEADINGS AND PRACTICE [8.00.0]:

A. THE § 2254 PETITION OR § 2255 MOTION [8.10.0]:

1. Form And Substance [8.11.0]:

- a. Section 2254 Petitions – State Prisoners [8.11.1]: Rule 2 of the Rules Governing Section 2254 Cases in the United States District Courts provides:

Rule 2. The Petition

(a) Current Custody; Naming the Respondent. If the petitioner is currently in custody under a state-court judgment, the petition must name as respondent the state officer who has custody.

(b) Future Custody; Naming the Respondents and Specifying the Judgment. If the petitioner is not yet in custody – but may be subject to future custody – under the state-court judgment being contested, the petition must name as respondents both the officer who has current custody and the attorney general of the state where the judgment was entered. The petition must ask for relief from the state-court judgment being contested.

(c) Form. The petition must:

- (1) specify all the grounds for relief available to the petitioner;
- (2) state the facts supporting each ground;
- (3) state the relief requested;
- (4) be printed, typewritten, or legibly handwritten; and

(5) be signed under penalty of perjury by the petitioner or by a person authorized to sign it for the petitioner under 28 U.S.C. § 2242.

(d) Standard Form. The petition must substantially follow either the form appended to the Rules Governing Section 2254 Cases in the United States District Courts or a form prescribed by a local district-court rule. The clerk must make forms available to petitioners without charge.

(e) Separate Petitions for Judgments of Separate Courts. A petitioner who seeks relief from judgments of more than one state court must file a separate petition covering the judgment or judgments of each court.

b. Section 2255 Motions – Federal Prisoners [8.11.2]: Rule 2 of the Rules Governing Section 2255 Proceedings for the United States District Courts provides:

Rule 2. The Motion

(a) Applying for Relief. The application must be in the form of a motion to vacate, set aside, or correct the sentence.

(b) Form. The motion must:

- (1) specify all the grounds for relief available to the moving party;
- (2) state the facts supporting each ground;
- (3) state the relief requested;
- (4) be printed, typewritten, or legibly handwritten; and
- (5) be signed under penalty of perjury by the movant or by a person authorized to sign it for the movant.

(c) Standard Form. The motion must substantially follow either the form appended to these rules or a form prescribed by a local district-court rule. The clerk must make forms available to moving parties without charge.

(d) Separate Motions for Separate Judgments. A moving party who seeks relief from more than one judgment must file a separate motion covering each judgment.

► COMMENT: Some federal judicial districts require the use of court-approved forms, at least when the petitioner is not represented by an attorney.

2. Specificity In Pleadings [8.12.0]: “[N]otice’ pleading is not sufficient, for the petition is expected to state facts that point to a ‘real possibility of constitutional error.’” Adv. Comm. Notes to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts (1976 Adoption) (quoting *Aubut v. State of Maine*, 431 F.2d 688, 689 (1st Cir. 1970)); *Mayle v. Felix*, 545 U.S. 644, 655 (2005) (observing that Rule 2 is “more demanding” than Fed. R. Civ. P. 8(a)’s notice pleading). “A prime purpose of Rule 2(c)’s demand that habeas petitioners plead with particularity is to assist the district court in determining whether the State should be ordered to show cause why the writ should not be granted. *Mayle*, 545 U.S. at 655.

In order to substantially comply with Rule 2(c), a petitioner must state specific, particularized facts which entitle him or her to habeas corpus relief for each ground specified. These facts must consist of sufficient detail to enable the court to determine, from the face of the petition alone, whether the petition merits further habeas review. *Adams v. Armontrout*, 897 F.2d 332, 334 (8th Cir. 1990). Federal courts are not required to review the entire state court record to ascertain whether facts exist which support relief. Courts have “repeatedly expressed their unwillingness to sift through voluminous documents filed by habeas corpus petitioners in order to