

# United States District Court Middle District of Tennessee



## Pro Se Handbook For Actions Filed Under 28 U.S.C. § 2254

Use this Handbook if:

- You are in jail or prison or on probation, parole, or supervised release as the result of a conviction in state court and
- You want the federal district court to set aside your **state court** conviction or sentence because you think your conviction or sentence violates the United States Constitution or laws of the United States.



## INTRODUCTION

The United States District Court for the Middle District of Tennessee (“the Court”) has prepared this Handbook for prisoners without attorneys who want to represent themselves in this Court. Individuals who are representing themselves in court are called “**pro se**” litigants.

This Handbook is a resource for you if you are in jail or prison or otherwise “in custody” as a result of a conviction in a state court, and you want the federal district court to set aside your state court conviction or sentence because you think your conviction or sentence violates the Constitution or laws of the United States. This type of lawsuit is brought as a petition for writ of habeas corpus under 28 U.S.C. § 2254 (“Section 2254”).

On the other hand, if you think that a federal or state actor has violated your federal rights and you want to sue that individual or entity, you may want to file a civil rights action under 42 U.S.C. § 1983 or *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971). Some examples of **allegations** raised in federal civil rights actions are medical care claims, excessive force claims, and retaliation claims. Refer to the Court’s Pro Se Prisoner Civil Rights Handbook for assistance with filing a federal civil rights action.

This Handbook does not cover all actions that can be filed in federal court. You should not cite this Handbook as legal authority in any court **pleadings** or documents.

The Court may take actions contrary to information contained in this Handbook.

This Handbook is not intended for people who want to defend themselves in a **criminal** case without an attorney.

If you are representing yourself but you are not a prisoner, refer to the Court’s Pro Se Nonprisoner Handbook that is available on the Court’s website and upon request from the Clerk’s Office.

Throughout this Handbook, words that appear in **bold** the first time they appear are defined in the Glossary, which you can find at the end of the Handbook. The Glossary contains definitions of the common legal terms related to a lawsuit.

For those persons with access to the Internet, the Court’s website is <https://www.tnmd.uscourts.gov/>. The website has links to the Federal Rules of Civil Procedure, the Local Rules of this Court, and other legal resources. All of the district court forms mentioned in this Handbook can be found under the Pro Se/Self Representation



section of the website. In addition, if you are viewing this Handbook on the Internet, you can use the hyperlinks to view forms, Local Rules, and other useful information.

If you do not have access to the Internet, you may call the Clerk's Office to ask general questions about filing cases in the Middle District of Tennessee. You can reach the Clerk's Office at (615) 736-5498. Select Option 1 for case information. The toll-free number is (866) 720-8663.

You also may contact the Clerk's Office by mail. The address for the Clerk's Office is Clerk's Office, U.S. District Court, Middle District of Tennessee, 801 Broadway, Nashville TN 37203.

The Clerk's Office staff and other employees of the Court cannot give you legal advice of any kind in person, over the telephone, by mail, or by e-mail.



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## GENERAL INFORMATION

### Organization of the Federal Courts

It will be helpful for you to understand the organization of the federal courts. The federal court system is comprised of courts on three different levels: the district courts, the circuit courts of appeal, and the United States Supreme Court.

The first level is the district courts. District court is where your **action** will begin and where it will be decided first. Congress has divided the country into ninety-four judicial districts. Tennessee has three districts: the Eastern District of Tennessee, the Middle District of Tennessee, and the Western District of Tennessee. This Handbook covers actions in the Middle District of Tennessee. The rules of procedures of other federal district courts may be different. The Middle District of Tennessee is divided into three divisions: Nashville, Columbia, and Cookeville. A **civil** action, or **case**, may be **filed** in any **division** based on where the events addressed in the action took place.

The second level, the federal appeals courts, are referred to as circuit courts. There are thirteen United States Courts of Appeals. The United States **Court of Appeals** for the Sixth Circuit considers **appeals** from the federal district courts in Tennessee, Kentucky, Michigan, and Ohio. The Sixth Circuit Court of Appeals can be contacted at:

Office of the Clerk  
United States Court of Appeals for the Sixth Circuit  
540 Potter Stewart U.S. Courthouse  
100 E. Fifth Street  
Cincinnati, Ohio 45202-3988  
Telephone: (513) 564-7000

The third and final level is the United States Supreme Court. It has the authority to choose which cases it considers. The Supreme Court considers only a small percentage of the cases it is asked to review. The United States Supreme Court can be contacted at:

Supreme Court of the United States  
One First Street N.E.  
Washington, DC 20543

Remember, the federal courts are different than the state courts. Be careful to not send papers to the federal courts than you mean to send to the state courts, and vice versa.



## **What the Clerk's Office Can and Cannot Do for You**

If you file a case in federal court, you will interact with the Clerk's Office of the Court. The Clerk's Office maintains a record, or **docket**, for every case that is filed. The docket is a chronological summary of all events in a case.

### **The Clerk's Office can:**

- Mail you a copy of your docket sheet
- Send you copies of forms
- Check on the status of your action
- Make copies of requested Court documents upon receipt of copying fees
- Confirm that your filings have been received by the Court

### **The Clerk's Office cannot:**

- Recommend a legal course of action
- Suggest ways to help you win your case
- Give you "inside information" about judges or other Court personnel
- Explain the result of taking or not taking an action in a case
- Tell you the proper court in which to file your complaint
- Tell you which form to use
- Tell you who to name as **defendants**
- Look up case law for you
- Interpret statutes, case law, or rulings for you
- Provide you with the reasons for a judge's decision
- Calculate response times or deadlines
- Tell you when a judge will respond to a **motion** or enter a ruling in a case

Remember: employees of the Clerk's Office **cannot** give legal advice.



## **What Does It Mean to File Papers with the Court?**

Throughout this Handbook, you will find references to the act of “filing” papers. Filing your petition and other papers means getting those items to the Clerk’s Office. After receiving your papers, the Clerk’s Office will record your papers on the docket and send them to the judge assigned to your case. The Clerk’s Office keeps track of everything that is filed in a case.

## **How Do I File Papers With The Court?**

You can **file** papers in four different ways:

### **1. Filing By Mail**

You may mail a signed original document to the Court for filing. To obtain a file-stamped copy by return mail, you must include in your mailing an extra copy of your document with a self-addressed, stamped envelope.

### **2. In-Person Filing**

Because you are incarcerated, you may ask a trusted family member or friend to bring a signed original document to the Clerk’s Office to file in person for you.

The Clerk’s Office of the United States District Court for the Middle District of Tennessee is located in the Estes Kefauver Federal Building and U.S. Courthouse. It is open from 8:00 a.m. to 5:00 p.m., Monday through Friday, except for Federal and other Court holidays. For a list of holidays observed by the Court, visit: <https://www.tnmd.uscourts.gov/hours-and-holidays>

The Estes Kefauver Federal Building and U.S. Courthouse is located at:

801 Broadway  
Nashville, TN 37203

The Clerk’s Office is located in Room 800, which is on the 8th floor. There is no free parking for Court visitors. A limited number of metered parking spots are available on 9th Avenue between the Estes Kefauver Federal Building and U.S. Courthouse and the Frist Art Museum. Paid parking is available in nearby surface lots.

All visitors to the Estes Kefauver Federal Building and U.S. Courthouse, including children, must pass through security checkpoints. As part of this



process, persons may be asked to remove their belts or jewelry. Personal belongings will be scanned through a metal detector. No weapons are permitted in the building. Pocket knives also are not allowed.

**3. Filing In Person After Hours Using the Drop Box**

You may ask a trusted family member or friend to file your signed original documents in person even if that person cannot get to the Clerk's Office between 8:00 a.m. and 5:00 p.m. The Clerk's Office maintains an outside depository, or **drop box**, that can be used to file most documents before and after regular business hours. Documents in the drop box will be retrieved at 8:00 a.m. each working day and stamped "filed" with the date of the last preceding business day. For example, documents retrieved on Monday morning are considered filed on the preceding Friday.

**4. E-Filing**

**E-filing** is the process of using the Internet to file documents from your computer. Although some federal district courts permit e-filing by prisoners, the Court is not aware of any e-filing programs at any local jail or prison.

**Serving Every Filing**

For every document that you **file** with the Court, you must also **serve** a copy on every other party in the action. Your filing must include a **certificate of service** as the last page of everything you file. The certificate of service must state that you served every other party, how you served each party, and on what date you served that party. If you fail to follow these instructions, your filing may be rejected and your case may be dismissed. See Local Rule 5.01 and Federal Rule of Procedure 5 for more information.





## **Researching The Law**

Once you have decided to represent yourself in this Court, you must be prepared to do your own legal research beyond the assistance provided in this Handbook.

You will want to review 28 U.S.C. § 2254; 28 U.S.C. §§ 2242 through 53; the Rules Governing Section 2254 Cases in the United States District Courts; the Federal Rules of Civil Procedure; this Court's Local Rules; and the Judges' Standing Orders. Be sure you use the current editions of these rules, if possible.

**United States Code:** U.S.C. stands for United States Code. You will want to focus on Title 28 of the United States Code Section 2254 and Sections 2242 through 2253. If your facility's **law library** does not contain a copy of the United States Code, you may access it here:

- <https://uscode.house.gov/>

**The Rules Governing Section 2254 Cases in the United States District Courts:** These rules appear after 28 U.S.C. § 2254 in the United States Code. You can find these rules at a law library or online at:

- <https://www.uscourts.gov/rules-policies/current-rules-practice-procedure>

**Federal Rules of Civil Procedure:** These rules govern the filing of lawsuits in federal court. They apply in every federal court in the country. These rules can be found at most law libraries or online at:

- <http://www.uscourts.gov/rules-policies/current-rules-practice-procedure>

**Local Rules of the United States District Court for the Middle District of Tennessee:** These rules apply only in this Court and are in addition to the Federal Rules of Civil Procedure. These rules are available from the Clerk's Office, or online at:

- <https://www.tnmd.uscourts.gov/court-info/local-rules-and-orders/local-rules>

**Judges' Standing Orders:** These Orders are individual judges' special rules that apply in all cases assigned to that judge. The Clerk's Office can provide you with a copy of these standing orders upon request. You can also find a judge's standing orders on the Court's website under each judge's name at:

Chief Judge Waverly D. Crenshaw, Jr.:

<https://www.tnmd.uscourts.gov/content/chief-district-judge-crenshaw>



Judge Aleta. A. Trauger:

[https://www.tnmd.uscourts.gov/judge\\_trauger](https://www.tnmd.uscourts.gov/judge_trauger)

Judge William L. Campbell, Jr.:

<https://www.tnmd.uscourts.gov/content/district-judge-campbell>

Judge Eli Richardson:

<http://www.tnmd.uscourts.gov/content/district-judge-richardson>

Magistrate Judge Joe B. Brown:

<https://www.tnmd.uscourts.gov/content/magistrate-judge-brown>

Magistrate Judge Chip Frensley:

<https://www.tnmd.uscourts.gov/content/magistrate-judge-frensley>

Magistrate Judge Barbara D. Holmes:

<https://www.tnmd.uscourts.gov/content/magistrate-judge-holmes>

Magistrate Judge Alistair E. Newbern:

<https://www.tnmd.uscourts.gov/content/magistrate-judge-newbern>

Your case may be assigned to a visiting judge. Information for all visiting judges in the Middle District of Tennessee can be found on the Court's website under "Judges" or you can contact the Clerk's Office and ask for the information.



**Substantive law**, or authority, is the law used by a party to persuade a Court to find in favor of that party. Each **claim** you may present has a particular set of laws that you need to apply. For example, different laws apply to an ineffective assistance of counsel claim than to a sufficiency of **evidence** claim. To find the substantive law that applies to your case, you will need to visit a law library or conduct online legal research.

**Primary authority** is the most accepted form of authority **cited**. You should use it before any other authority. There are two sources of primary authority: statutory authority and case authority.



- Statutory authority consists of constitutions, codes, statutes, and ordinances of either the United States, individual states, counties, or municipalities.
- Case authority consists of court decisions. You should try to cite court decisions from the United States Supreme Court or the same **jurisdiction** where your case is filed (here, that is the United States Court of Appeals for the Sixth Circuit and district court cases from the Middle District of Tennessee). When a judge decides a particular case, that decision becomes **precedent**, which means that it becomes an example or authority to be used at a later time for identical or similar cases.

**Secondary authority** is found in legal encyclopedias, legal texts, treatises, and law review articles. You can use secondary authority to get a broad overview of the area of law you need to know and as a tool for finding primary authority. This type of authority generally does not control the Court's decision.

To look up unfamiliar legal terms, use:

- The Glossary at the back of this Handbook;
- A legal dictionary, such as *Black's Law Dictionary*;
- Free online resources, such as [dictionary.law.com](http://dictionary.law.com).

### **Internet Legal Resources**

If your facility provides Internet access, there are many free resources available on the Internet that contain legal materials relevant to your case. Some of the fee-based sites offer free trials. Below is a table of some Internet resources along with a brief description of what each site offers as of the publication date of this Handbook. The Court does not endorse any legal research website or database.

Name	Website	Description	Cost
American Law Sources Online	<a href="http://www.lawsource.com/also">www.lawsource.com/also</a>	Database of primary authority searchable by citation and links to	Free



		secondary authority	
Bloomberg Law	<a href="http://www.bloomberglaw.com">www.bloomberglaw.com</a>	Large database of primary and secondary authority	Paid subscription (free trial available)
Fastcase	<a href="http://www.fastcase.com">www.fastcase.com</a>	Large database of primary authority	Paid subscription (free trial available)
Findlaw	<a href="http://www.findlaw.com">www.findlaw.com</a>	Links to online legal resources; includes state and federal primary authority	Free (with some forms available for purchase)
Google Scholar	<a href="http://Scholar.google.com">Scholar.google.com</a>	Searchable versions of published state and federal court opinions and some secondary authority	Free (some secondary sources are hosted on fee-based websites)
Legal Information Institute	<a href="http://www.law.cornell.edu/lii/get_the_law">www.law.cornell.edu/lii/get_the_law</a> (Note the use of underscore characters in place of spaces in “get_the_law”)	Searchable text versions of the U.S. Constitution, the Federal Rules, U.S. Code, select Supreme	Free (note the option of fee-based “Ask A Legal Question” service)



		Court decisions, and links to many other sources of primary resources	
Loislaw	<a href="http://www.fastcase.com/loislaw/">www.fastcase.com/loislaw/</a>	Large database of primary and secondary authority	Paid subscription (free trial available)
Public Library of Law	<a href="http://www.plol.org">www.plol.org</a>	Searchable database of select Supreme Court cases, Circuit Courts of Appeals cases, state cases (from 1997 to present), along with some state and federal statutory authority; also tutorials on “Finding a Case” and “Searching Statutes”	Free (with links to fee-based sponsor, Fastcase)
The Supreme Court	<a href="http://www.supremecourt.gov">www.supremecourt.gov</a>	Searchable versions of United States Supreme	Free



		Court opinions published since 1991, as well as all recent opinions that have not been published yet	
THOMAS	<a href="http://www.congress.gov//">www.congress.gov//</a>	Searchable database of modern federal legislative history and bill text	Free
Tennessee Bar Association	<a href="http://www.tba.org/info/legal-links">www.tba.org/info/legal-links</a>	Links to many Tennessee-specific resources, including the Tennessee Code	Free

### **Citing Authority**

Every reference to a law, rule, or case is called a **citation**. There are standards for **citing** authority in your legal documents. These standards exist so that the Court can find the authority on which the parties rely. The most common source for these standards is *The Bluebook: A Uniform System of Citation* (Twentieth Edition), published and distributed by The Harvard Law Review Association. It is commonly referred to as *The Bluebook*. You can find all of the information required for proper citation format in *The Bluebook*.

The Court will not dismiss your case if you are unable to obtain a copy of *The Bluebook* or because you do not cite authority according to *The Bluebook* format. You should do your best to the Court where the look for the authority on which you rely. Local Rule 7.01(d) contains instructions for citing legal sources in your legal **brief**.



Here are some examples of frequently cited sources using correct *Bluebook* format:

United States Supreme Court decision:

*Strickland v. Washington*, 466 U.S. 668 (1984).

Sixth Circuit decision:

*Tucker v. Palmer*, 541 F.3d 652 (6th Cir. 2008).

Tennessee Supreme Court decision:

*State v. White*, 114 S.W.3d 469 (Tenn. 2003).

Tennessee Court of Criminal Appeals decision:

*State v. Watkins*, No. M2013-0212-CCA-R3-CD, 2014 WL 2547710 (Tenn. Crim. App. June 4, 2014), *perm. app. denied* (Tenn. Aug. 18, 2016).

United States Constitution:

U.S. Const. amend. VIII.

United States Code:

42 U.S.C. § 1983.

Tennessee Statute:

Tenn. Code Ann. § 39–13–202.



### **Tips for Pro Se Prisoner Litigants**

1. Read all papers you get from the Court and from the other parties without delay. It is important that you know what is going on in your case and what deadlines have been set. If you receive certified mail from the Court, be sure you pick it up. You will not be excused for missing a deadline because you did not pick up or open mail from the Court.
2. Meet every deadline. If you cannot meet a deadline, you must file a motion for an extension of time before the deadline passes. If you do not meet a deadline, the Court may rule against you or even dismiss your case.
3. Use your own words and be as clear as possible in everything you file. Be straightforward and specific about your claims.

**You do not need to “sound like a lawyer.”**

4. Keep a record of everything related to your lawsuit. Keep paper or electronic copies of everything you file with the Court. You also should keep copies of everything you receive from the Court and from the opposing parties.
5. If possible, have someone else read your papers before you file them. Make sure the other person understands what you are saying in your papers; if he or she does not understand, try to explain yourself more clearly. Often, the Court decides cases only **on the papers** that are filed, without the parties appearing in court. You want to present your best case in everything that you file.
6. Be sure the Court always has your correct address and telephone number. If your contact information changes, it is your responsibility to contact the Clerk’s Office immediately. The Court may dismiss your case if you fail to keep the Court and other parties informed of any changes. Do not expect the Court to locate you. It is always a good idea to notify the Court if you think you are going to be in transit for a period of time. As soon as you reach a more permanent location, you should contact the Clerk’s Office to check on the status of your case and update the Clerk’s Office with your new address.
7. Always include identifying information about your case on any paperwork you submit to the Court. This includes the case number, the case name, and the names of the judges, once you receive that information.





8. Remove certain sensitive information from documents submitted to the Court for filing. Everything you file with the Court will be included in the electronic docket of your case and will be available to the public. For that reason, you should consult Federal Rule of Civil Procedure 5.2, which addresses privacy concerns. Protect your privacy by leaving out Social Security and taxpayer identification numbers, names of minor children, dates of birth, and complete financial account numbers. The Clerk's Office will not remove such information for you.

If you want the judge to respond to you, don't send a letter. File a motion and say exactly what you want the Court to do and why.

9. Do not contact the judge. The judge will not respond to or act on your letters. If you want the judge to take action in your case, you need to file a motion. Likewise, you are not permitted to speak with the judge or the judge's law clerks by telephone. Any questions about the status of your case should go to the Clerk's Office.
10. The Court's rules for counting time are very specific. To determine how to count the number of days until something is due in your case, you should refer to Federal Rule of Civil Procedure 6 and Local Rule 6.01.
11. Prisoners are entitled to the **Prison Mailbox Rule**. That means once a prisoner places a legal paper in the prison's internal mail system, the paper is considered **filed**. To be sure you get the benefit of the mailbox rule, you should sign your papers and state that you are delivering your papers to your facility's internal mail system on a particular date.



## **“NEED TO KNOW” INFORMATION ABOUT 28 U.S.C. § 2254 PETITIONS**

### **Who would want to file a habeas action under 28 U.S.C. § 2254?**

If you are in jail or prison, or otherwise “in custody” as a result of a conviction in a state court, you may ask the federal district court to set aside your state court conviction if you believe it violates the Constitution or laws of the United States. You also may ask the court to reduce the length of your sentence. This type of lawsuit is brought as a petition for writ of habeas corpus under 28 U.S.C. § 2254, otherwise known as a Section 2254 petition.

A person who files a petition under Section 2254 is called the **petitioner**. The **respondent** is the person or entity the petitioner is suing. The petitioner must name the person who has custody of the petitioner as the respondent. For example, a petitioner held at a prison is in the custody of the warden of that prison.

### **How does the Court review a Section 2254 petition?**

Judges decide Section 2254 petitions by reviewing the written state court record. But Section 2254 petitions are not an opportunity to re-litigate, or re-try, your **criminal** case. As a petitioner, you bear the burden of proof to show that your conviction or sentence violates the United States Constitution, federal law, a treaty of the United States, or United States Supreme Court case law.

When a habeas petitioner’s claim has been decided on the merits in a state court proceeding, a federal habeas court cannot grant relief unless the state court’s adjudication of the claim:

- Resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States; or
- Resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. 28 U.S.C. § 2254(d).

In a habeas proceeding, a federal court is required to accept the state court’s determination of the facts as correct unless the petitioner rebuts the presumption of correctness by clear and convincing evidence. 28 U.S.C. § 2254(e)(1).



## Are there restrictions on what I can raise in a habeas petition under Section 2254?

Yes. In a Section 2254 habeas petition, you can only challenge the validity of your conviction or the length of your sentence.

You cannot ask for money, and you cannot ask for any other relief related to the conditions of your confinement. If you want to file a lawsuit regarding the conditions of your confinement (such as a medical care claim), see the Court's Pro Se Prisoner Civil Rights Handbook.

Federal courts do not have jurisdiction to consider claims that are based solely on state law or a state constitution. You must pursue in state court any post-conviction claims based solely on state law or a state constitution.

With very rare exceptions, you only get one opportunity to file a Section 2254 petition. Be sure to include all of your claims in your petition and file your petition on time.

## Am I allowed to file more than one Section 2254 petition?

In most cases, no. You should include all of your claims in your habeas petition because you are allowed only to file one Section 2254 petition.

However, if your first habeas petition was dismissed **without prejudice**, you are allowed to file another petition.

In order to file a second or successive habeas petition, you must seek and obtain authorization from the Sixth Circuit Court of Appeals. See 28 U.S.C. § 2244(b)(1), (2), (3).

## Is there a form for filing a Section 2254 petition?

Yes. The Clerk's Office can provide you with a form for filing a habeas corpus petition under Section 2254 or you can find the form here:

<https://www.uscourts.gov/forms/civil-forms/petition-writ-habeas-corpus-under-28-usc-ss-2254>

## Is there a fee for filing a Section 2254 petition?

Yes. The **filing fee** for a habeas petition is \$5.00. If you cannot afford to pay the filing fee, you can file a prisoner application to proceed without prepayment of fees and costs, or an **IFP application** as it is often called. You can get an IFP application from the Clerk's Office or online at:



<https://www.uscourts.gov/forms/fee-waiver-application-forms/application-proceed-district-court-without-prepaying-fees-or-0>

## **What things should I consider before filing a Section 2254 petition?**

You should consider the following questions before filing a petition for habeas corpus relief under Section 2254.

### **1. Do I meet the “in custody” requirement?**

A habeas proceeding under 28 U.S.C. § 2254 must be brought by a person “in custody pursuant to the judgment of a State court.” The “in custody” requirement must be met at the time the petition is filed in federal court.

A petitioner who is incarcerated or on probation, parole, or supervised release satisfies the “in custody” requirement. There are other limited circumstances that also may meet this requirement.

### **2. Have I exhausted my state court remedies?**

Incarcerated persons are required to **exhaust** their state court remedies before seeking a federal writ of habeas corpus. To “exhaust” means to raise the same constitutional claim before all levels of the state courts.

If your petition includes claims that have not been exhausted in the state courts, the Court may dismiss your entire petition or, in its discretion, stay its consideration of any exhausted claims and order you to return to the state court to exhaust your unexhausted claims.

To “exhaust state remedies,” you must give the state courts the first opportunity to decide all the claims you want to raise in your habeas petition. This means that you must litigate your claims through all of the levels of the state-court direct appeal process if your claims can be raised in a direct appeal, or you must raise the claims in a state-court post-conviction action and litigate those claims through all available levels of appeal.

### **3. Will my claims be timely if I file a lawsuit now?**

The statute of limitation tells you the amount of time you have to file a particular claim. Once that time limit has passed—even if it is just one day past the deadline—it is too late to file that claim. If you file a Section 2254 petition after the statute of limitation deadline, the Court may dismiss your case immediately.

Section 2254 habeas corpus petitions are subject to a one-year statute of limitation. That means prisoners have one year to file a petition for habeas corpus relief, and this year runs from the latest of four circumstances:

- (1) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;



- (2) the date on which the impediment to filing an application created by State action in violation of the Constitution or the laws of the United States is removed, or if the applicant was prevented from filing by such Action;
- (3) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence. See 28 U.S.C. § 2244(d)(1).

Once the limitation period begins, each day that passes is deducted from the one-year period. However, the one-year limitation period is tolled (or it stops running) while a properly-filed state post-conviction proceeding is pending in the state court. See 28 U.S.C. § 2244(d)(2).

When the state proceeding that tolled the one-year limitation period ends, the limitations period begins to run again at the point where it was tolled rather than starting at the beginning. That means the tolling of the statute of limitation does not give you a new one-year limitation period after your state post-conviction proceedings are complete.

For example, if five months of your one-year statute of limitation period passed before you filed a petition for post-conviction relief in state court, you only have seven months left to timely file your Section 2254 petition once your state post-conviction proceedings have concluded.

If the one-year federal statute of limitation already has expired before you file a state post-conviction motion, the post-conviction motion has no tolling effect. That is because filing a post-conviction motion does not “restart” the one-year limitation period.

There are many other factors that can affect the application of the statute of limitation that are beyond the scope of this Handbook. See 28 U.S.C. § 2244(d)(1) for more information. The Clerk’s Office cannot tell you the deadline for filing your Section 2254 petition.

Under very limited circumstances, the Court may extend the one-year statute of limitation period under a legal doctrine called equitable tolling. Equitable tolling will apply only if the prisoner shows that some extraordinary external circumstance made it



impossible to file the Section 2254 petition before the statute of limitation expired. This doctrine is used sparingly, so don't rely on it to save your petition if you file late.

#### **4. Is federal court the appropriate place to file my lawsuit?**

If you want to file a direct appeal of your state criminal conviction and/or sentence, you need to file in state court.

If you want to file a petition for post-conviction relief, you need to file that petition in state court.

If you want to file an appeal of the denial of your petition for post-conviction relief, you need to file in state court.

If you want to file a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, you should file in federal court.

#### **5. Is the Middle District of Tennessee the appropriate federal court in which to file my lawsuit?**

Under 28 U.S.C. § 2241(d), a prisoner seeking habeas relief under 28 U.S.C. § 2254 may file in either the judicial district where a petitioner was convicted or the judicial district where he or she is currently incarcerated. Sometimes venue may be proper in more than one district. It has been the consistent practice in the federal courts of Tennessee to transfer habeas petitions to the judicial district where the convicting court is located.

There are three United States District Courts in Tennessee: Eastern, Middle, and Western. If your case needs to be filed in any other court, you should contact the Clerk's Office of that court for information regarding local rules and procedures for filing your case.

If you start your case in the wrong district, the Court may transfer your case to the correct district.

#### **6. Who is the proper respondent for my case?**

Under Habeas Rule 2, if the petitioner is currently in custody under a state court judgment, the petition must name as respondent the state officer who has custody. For example, if a state court prisoner is an inmate of a state prison, the proper respondent for his case would be the warden of that facility.



If you have considered these six things and still want to file a Section 2254 petition, you may be wondering if you are entitled to an attorney to help you.

### **Will the Court appoint an attorney for me if I file a Section 2254 petition?**

You may ask the Court to appoint **counsel** for you. But, be aware that there is an important difference between criminal and civil cases. A defendant in a criminal prosecution is entitled to legal counsel under the United States Constitution; therefore, the Court must provide an attorney to a criminal defendant if he or she is unable to afford an attorney.

A defendant in a criminal prosecution is entitled to an attorney by the U.S. Constitution. Therefore, if a defendant cannot afford an attorney, the Court must appoint one for the defendant. However, a party in a civil case is **not** entitled to an attorney, even if he or she cannot afford an attorney.

However, a party to a civil case is not entitled to an attorney, even if the party is unable to afford an attorney. A habeas action is a civil action, even though it relates to your criminal conviction or sentence. The appointment of counsel in a civil case is a matter within the discretion of the district judge and only occurs in exceptional circumstances. If you file a motion asking the Court to appoint counsel for you, the Court will consider factors such as whether your case has merit, whether you seem to be able to handle the case yourself without an attorney, how complex your case is, and what legal resources are available to you.

### **What if I want to change my petition after I file it?**

The Court may allow you to change, or **amend**, your petition. After the respondent has filed an **answer** to your petition, you must get permission from the Court before amending your petition. The Court will not allow you to make changes that are prejudicial to the respondent, added after the statute of limitations expired, or add claims that were not previously decided in the state courts. See 28 U.S.C. § 2242, Federal Rule of Civil Procedure 15(a), and Local Rule 15.01.





## HOW TO BEGIN A SECTION 2254 ACTION

### How do I begin a Section 2254 action?

To begin a Section 2254 habeas corpus action in the Middle District of Tennessee, you must do the following:

- Complete a petition under 28 U.S.C. § 2254;
- Complete the Civil Cover Sheet form;
- Pay the \$5.00 filing fee or complete an Application to Proceed in District Court Without Prepaying Fees or Costs (“IFP Application”); and
- File these documents with the Clerk’s Office.

Keep a copy of your petition for your records, if possible.

### What is a civil cover sheet?

The civil cover sheet is a form provided by the Clerk’s Office and is used to gather information about the nature of your lawsuit. You must file a civil cover sheet when you file your petition. If you have Internet access, you can find it here:

<https://www.uscourts.gov/forms/civil-forms/civil-cover-sheet>

### What if I cannot afford the \$5.00 filing fee?

If you cannot afford the filing fee, you can apply to proceed without prepaying the filing fee by completing the AO 239 form “Application to Proceed in District Court Without Prepaying Fees or Cost,” which also is called an in forma pauperis or IFP application. You can obtain the form from the Clerk’s Office or here:

<https://www.uscourts.gov/forms/fee-waiver-application-forms/application-proceed-district-court-without-prepaying-fees-or-0>

If the Court grants your IFP application, you do not have to pay the filing fee. See 28 U.S.C. § 1915(b)(1).

The Court will review your IFP application, and you will be notified of the judge’s decision by mail.

### Can I file a petition challenging more than one conviction or sentence?

No. A petitioner who seeks relief from more than one conviction and/or sentence must file a separate petition for each conviction and/or sentence. See Rule 2 of the Rules Governing 2254 Cases.





## **How do I complete a Section 2254 form?**

First, be sure you have the correct form: “Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody.” This form also is known as AO 241.

Next, fill out the form completely and truthfully. If possible, type your answers. If you do not have access to a typewriter, write neatly and try to use a pen instead of pencil.

The form asks you to provide basic information about the state court judgment you are attacking, your appeals, and your post-conviction process. If you don’t know the specific dates, state your best approximation. You are not required to use the AO 241 form.

For each claim you raise in your petition, you should state the federal legal ground under which your claim arises, such as a constitutional provision, United States Supreme Court case, federal law, or treaty of the United States. The claim must be the same claim you raised in the Tennessee state court system. You should describe the factual circumstances that are relevant to each claim.

## **Can I file attachments or exhibits with my petition?**

Yes, but you are not required to do so. The purpose of an exhibit is to support or clarify an allegation in your petition. If you have documents that support your petition, and you decide to attach them to your petition, then you must refer to them or otherwise explain why you are attaching them to the petition. Do not attach copies of any documents that you do not discuss in your petition.

## **Do I need to notarize the petition?**

No, but you must sign the petition and state the date you placed the petition in your facility’s mailing system. By signing the petition, you are declaring under penalty of **perjury** that the statements made in the petition are true and correct. Knowingly making a false material declaration under oath can be punished by a fine or imprisonment. See 18 U.S.C. § 1623.

## **Do I need to serve a copy of my petition?**

No. You are not required to serve a copy of your petition on the respondent. The Court will serve a copy of your petition on the respondent if the Court authorizes your petition to proceed.

## **How can I be sure the Court received my petition?**

You may call the Clerk’s Office or request in writing that the Clerk notify you when your petition was received and filed.



## WHAT HAPPENS AFTER I FILE MY SECTION 2254 PETITION?

### 1. You will receive a case number.

Your case will be given a civil action number and assigned to a particular judge. After you receive your case number, you should write it on all documents you send to the Court. Do not expect the Court to know in which action you want your papers filed. It is your responsibility to write your case number on your filings.

### 2. The Court will review your petition for any deficiencies.

If you receive a deficiency order from the Court, you must respond to it or the Court might dismiss your case. A deficiency order means that something is missing that the Court needs, or something you submitted is not quite right. Be sure to follow the directions in the deficiency order by the deadline the Court gives you or ask the Court for an extension of time, ideally before the deadline passes.

The judge to whom your case is assigned will review your petition to make sure you have properly submitted it to the Court. For example, the Court will make sure you signed your petition and that you paid the filing fee or submitted an IFP application.

If you did not properly submit your petition, the Court may enter a **deficiency order**. This order will tell you what is wrong with your petition and tell you how long you have to fix what is wrong. Failure to respond to a deficiency order within the time specified in the Court's order could lead to the dismissal of your case.

### 3. If you are seeking permission to proceed without prepayment of the filing fee, the Court will rule on your application.

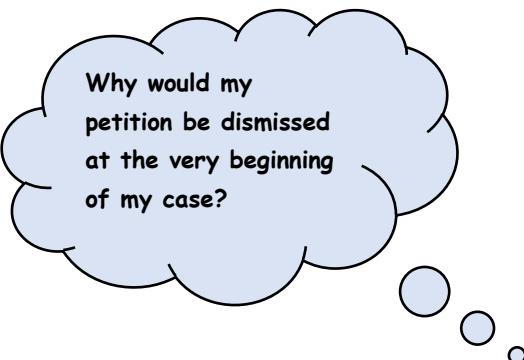
If the Court grants your IFP application, you do not have to pay the \$5.00 filing fee.

If the Court denies your IFP application, the Court will give you a deadline by which you must pay the filing fee in order to continue with your action. If you fail to pay the \$5.00 filing fee within the time provided, the Court may dismiss your action.



#### **4. The Court must conduct a preliminary review of your petition.**

Under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, after a habeas petition has been filed, the Court must review the petition and determine whether “it plainly appears from the petition and any attached **exhibits** that the petitioner is not entitled to relief in the district court.”



Why would my petition be dismissed at the very beginning of my case?

For example, at the preliminary review stage, the Court may dismiss a petition if it seeks relief that is not available, if the petition is late, or if the petitioner has not exhausted his or her state court remedies.

Remember, if you already have filed a Section 2254 petition attacking the same state conviction or sentence, the Court will not be able to issue a decision on your petition until you seek and receive permission from the Sixth Circuit Court of Appeals to file a second or successive petition.

There is no set amount of time that it takes the Court to complete a preliminary review.

#### **5. If the Court does not dismiss your petition on preliminary review, the Court will order service on the respondent.**

You will receive a written ruling from the Court explaining the results of the preliminary review.

If your case is not dismissed on preliminary review, the Court will direct the respondent to answer your petition. Under Rule 5 of the Rules Governing Section 2254 Cases, “[t]he answer must address the allegations in the petition. In addition, it must state whether any claim in the petition is barred by failure to exhaust state remedies, a procedural bar, non-retroactivity, or a statute of limitations.”

The Court also will direct the respondent to file the complete state court record relevant to your petition, including the complete trial court record, the complete record on direct appeal, and the complete trial and appellate court record in connection with any



state petition for collateral relief including, but not limited to, transcripts for all proceedings and rulings on any state petition.

If the respondent does not file all portions of the state court record that you believe are important to your claims, you can file a motion to expand the record under Rule 7 of the Rules Governing Section 2254 cases.

The Court's order will set a deadline by which the respondent must file an answer and may permit you to file a **reply** to that answer.

#### **6. Discovery is not automatic.**

Neither party is entitled to **discovery** in a habeas action. Generally, discovery is not permitted in a habeas corpus action. You must request permission from the Court before conducting discovery. A party requesting discovery must provide the reasons for the request and identify the discovery sought. See Rule 6 of the Rules Governing Section 2254 Cases.

#### **7. The Court will decide whether to hold an evidentiary hearing.**

Under Rule 8 of the Rules Governing Section 2254 Cases in the United States District Courts, the Court must review the answer, any transcripts and records of state court proceedings, and any materials submitted under Rule 7 to determine whether to hold an evidentiary **hearing**. See Rule 8 of the Rules Governing Section 2254 Cases.

Often, the Court determines that an evidentiary hearing is not needed. In most cases, the written state court record is sufficient for the Court to determine the outcome of a case. You may not hear anything from the Court until you receive a written ruling on your petition.



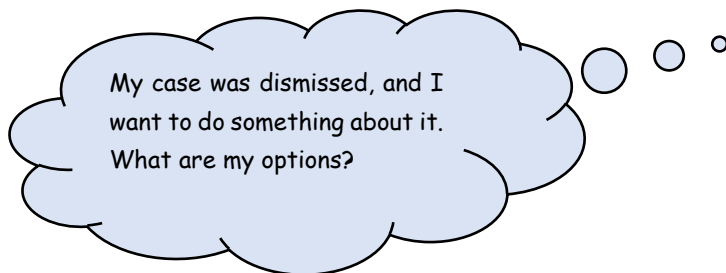
**8. If the Court grants an evidentiary hearing, the Court will appoint counsel for qualified petitioners.**

In the rare circumstance that the Court decides that an evidentiary hearing is needed in a case, the Court will appoint an attorney to represent a petitioner who qualifies under 18 U.S.C. § 3006A. See Rule 8 of the Rules Governing Section 2254 Cases in the United States District Courts.

**9. The Court will enter a final decision granting or denying relief to the petitioner.**

Ultimately, you will receive a written ruling from the Court either granting, denying, or granting in part and denying in part your petition.

**10. If you do not like the result in your case, you may have the option of filing an appeal.**



If the Court's decision is unfavorable to you, you may wish to appeal. Appeals from cases in the Middle District of Tennessee are considered by the United States Court of Appeals for the Sixth Circuit.

However, there is not an automatic right to appeal the denial of a Section 2254 petition. If you want to appeal, you will need a Certificate of Appealability. A Certificate of Appealability is a court order authorizing an appeal.

By law, if the district court enters a decision adverse, or unfavorable, to a petitioner, the Court must grant or deny a Certificate of Appealability. The standard for granting a Certificate of Appealability is whether the applicant has made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). See Rule 11, Rules Governing Section 2254 Cases.



If the Court issues a Certificate of Appealability in its final order, then you may file an appeal.

If the Court denies a Certificate of Appealability, you may seek a Certificate from the Sixth Circuit Court of Appeals under Federal Rule of Appellate Procedure 22.

Just as the Federal Rules of Civil Procedure set forth the procedures for litigating a lawsuit in this Court, the Federal Rules of Appellate Procedure set forth the procedures for litigating an appeal in the Sixth Circuit. See Rules 3 through 6 of the Federal Rules of Appellate Procedure. You can access the Federal Rules of Appellate Procedure and the Sixth Circuit Rules here:

<http://www.ca6.uscourts.gov/rules-and-procedures>

### **Is there a time frame within which I must file my appeal?**

Yes. If the Court denied your petition, you have 30 days from the date that the final order or judgment was entered to file a notice of appeal. The deadline is jurisdictional, meaning there are only a few limited circumstances in which the court can grant an extension. See Federal Rule of Appellate Procedure 4(a). If you miss the deadline, you can file a motion for an extension. However, there is no guarantee your motion will be granted so you should make every effort to meet the deadline.

### **How do I file my appeal?**

A notice of appeal is a one page document containing your name, a description of the final order or judgment being appealed, and the name of the court to which the appeal is taken (here, the Sixth Circuit Court of Appeals). You can get a blank notice of appeal form from the Clerk's Office or online at:

<http://www.ca6.uscourts.gov/court-forms>

You must file the notice of appeal in the district court where the judgment you are appealing was entered.

### **How much does it cost to appeal?**

The fee for filing a notice of appeal is \$505.00.

If you were permitted to proceed in forma pauperis (IFP) in the district court, and if you cannot afford to pay the appellate filing fee, you are allowed to proceed without prepayment of the fees in the appeals court—without submitting another IFP application—unless the district court finds that your appeal is not in good faith.



If were not permitted to proceed without prepayment of fees in the district court, and if you cannot afford to pay the appellate filing fee, you can apply to proceed without prepaying the appellate filing fee by completing an IFP application. You must file this application in the district court. If the Court grants your application, you will not be required to pay the \$505.00 filing fee. See 28 U.S.C. § 1915.

You can get an application to proceed without prepayment of the fee from the Clerk's Office or online at:

<https://www.uscourts.gov/forms/fee-waiver-application-forms/application-proceed-district-court-without-prepaying-fees-or-0>

### **What if the district court denies my IFP application?**

Under Federal Rule of Appellate Procedure 24(a)(5), if the district judge denies your application to proceed IFP on appeal, you may file a "Motion and Affidavit for Permission to Appeal In Forma Pauperis" form in the Sixth Circuit Court of Appeals. You must apply within 30 days after service of the Court's notice that it denied your application.

You can get the required form from the Sixth Circuit Court of Appeals or online at:

<https://www.ca6.uscourts.gov/sites/ca6/files/documents/forms/lfpForm4.pdf>

### **Am I entitled to an attorney if I file an appeal?**

No. There is no statutory or constitutional right to counsel on appeal in a habeas case. However, you are permitted to file a motion seeking the appointment of counsel. This motion must be filed in the Sixth Circuit Court of Appeals, not in the district court.

### **What happens after I file a notice of appeal?**

After a notice of appeal has been filed, the Clerk's Office transmits the appeal and the case file to the Court of Appeals, which opens a new file with a new case number. Once you file a notice of appeal, the district court no longer has jurisdiction over your case. Going forward, you should address all questions regarding your appeal to the Clerk of the Sixth Circuit. The Clerk's Office for the Sixth Circuit is located at:

United States Court of Appeals for the Sixth Circuit  
540 Potter Stewart U.S. Courthouse  
100 E. Fifth Street  
Cincinnati, Ohio 45202-3988  
Telephone: (513) 564-7000



## GLOSSARY

Term	Definition
Action	Another term for lawsuit or case.
Admissible Evidence	Evidence that can be introduced properly at trial for the judge or jury to consider in reaching a decision. The Federal Rules of Evidence govern the admissibility of evidence in federal court.
ADR (Alternative Dispute Resolution)	A process by which a neutral third party, such as a judge or mediator, helps the parties try to reach an agreement and settle their case outside of court.
Adjourn	To bring a court proceeding to an end.
Affidavit	A statement of fact written by a witness, which the witness affirms to be true before a notary public.
Affirmative Defenses	Allegations included in the answer that, under legal rules, defeat all or a portion of the plaintiff's claim.
Allegation	An assertion of fact in a complaint or other pleading.
Amend	To alter or change a document that has been filed with the Court such as a complaint or answer by filing and serving a revised version of that document.
Amended Pleading	A revised version of the original complaint or answer that has been filed with the Court.
Amount In Controversy	The dollar value of how much the plaintiff is seeking in the complaint.
Answer	A defendant's written response to the complaint. An answer "on the merits" challenges the complaint's factual accuracy.
Appeal	To seek formal review of a district court judgment by the Court of Appeals.
Application to Proceed In Forma Pauperis (IFP)	A form filed by the plaintiff asking permission to file a complaint or appeal without paying the filing fee; sometimes called "an application to proceed without prepaying fees or costs."
Application to proceed without prepaying fees or costs	See Application to Proceed In Forma Pauperis.
Bench	The large desk where the judge sits in front of the courtroom.





Bill of Costs	A document filed by the prevailing party in a civil case listing the costs the prevailing party intends to recover against the losing party pursuant to Federal Rule of Civil Procedure 54.
Breach	The failure to perform a legal obligation.
Brief	A document filed with the Court arguing for or against a motion; also called a “memorandum of law.”
Burden of Proof	The obligation of a party to prove or disprove a fact or facts in dispute on an issue raised by a party in a case.
Caption	A formatted heading on the first page of every document filed with the Court that lists the parties, the case number, the court, and the judges.
Case	Another term for lawsuit or action.
Case Administrator	A court staff member who enters documents and case information into the court docket.
Case File	A file in which the original of every document manually filed with the Court is kept.
Case Management Conference	A court proceeding in which the judge, with the help of the parties, sets a schedule for various events in the case.
Case Management Order	The Court’s written order scheduling certain events in the case.
Certificate of Service	A statement showing that a copy of a particular document has been mailed or otherwise provided to (“served on”) all of the other parties in the lawsuit.
Challenge for Cause	A request by a party that the Court excuse a juror whom the party believes is too biased to be fair and impartial or is unable to perform his or her duties as a juror for other reasons.
Chambers	The private offices of an individual judge and the judge’s staff.
Citation, Cite, Citing	A reference to a law, rule, or case.
Civil Action	An action brought to enforce, redress, or protect a private right; compare to criminal action. This Handbook is intended for pro se litigants in federal civil actions only.
Claim	A legal cause of action.
Closing Arguments	An oral statement at trial by each party summarizing the evidence and arguing how the jury (or, in a bench trial, the judge) should decide the case.



Complaint	The document that a plaintiff files to begin a lawsuit; it tells the Court and the defendant the reason the plaintiff filed the lawsuit and what relief is desired.
Compulsory Counterclaim	A claim by a defendant against the plaintiff that is based on the same events or transactions as the plaintiff's claims against the defendant.
Contempt of Court	Acts found by the Court to be committed in willful violation of the Court's authority or dignity, or to interfere with or obstruct the administration of justice.
Contingency Basis	A fee arrangement between a client and attorney where the attorney will receive a fee based on the percentage of the plaintiff's recovery if the plaintiff wins the case; the attorney gets nothing if the plaintiff does not win.
Continuance	An extension of time ordered by the Court.
Counsel	Attorney; lawyer.
Counterclaim	A defendant's claim against the plaintiff filed in the plaintiff's case.
Court of Appeals	A court that hears appeals from the district courts located within its circuit as well as appeals from decisions of federal administrative agencies. This Court's decisions are appealed to the Sixth Circuit Court of Appeals.
Court Reporter	The person seated in front of and below the bench typing on a special machine. The court reporter makes a record of everything that is said during court proceedings.
Courtroom Deputy	A court employee who assists the judge in the courtroom and usually sits at a desk in front of the judge.
Criminal Action or Case	A proceeding by which a person charged with a crime is brought to trial and either found not guilty or guilty and sentenced; compare to civil action. This Handbook is not intended for people who want to defend themselves in a criminal case without an attorney.
Crossclaim	A claim that brings a new party into the case and essentially blames that third party for any harm the plaintiff has suffered. A crossclaim also can be used by a plaintiff against a co-plaintiff or by a defendant against a co-defendant.
Cross-Examination	During trial, the opposing party's questioning of a witness following direct examination, generally limited to topics covered during the direct examination.
Damages	The money that a plaintiff can recover in court for the plaintiff's loss or injury caused by the defendant.
Declaration	A written statement signed under the penalty of perjury by a person who has personal knowledge that what he or she states is true. Declarations may contain only facts and may not contain law or argument.



Default	A defendant's failure to file an answer or other response within the required amount of time, after being properly served with the complaint.
Default Judgment	A judgment entered against a defendant who fails to respond to the complaint; the plaintiff wins the case without ever having the court consider the claims in the complaint.
Defendant	The person, company, or government agency against whom the plaintiff makes claims in the complaint; the person or entity being sued.
Defenses	Reasons given by the defendant why the plaintiff's claims should be dismissed.
Deficiency Order	An order from the Court telling a party that something is wrong with a court filing and how long the party has to fix it.
Deliberate	The process in which the jury discusses the case in private and makes a decision about the verdict. See also jury deliberations.
De Novo Review	A court's complete review and re-determination of the matter before the court from the beginning.
Deponent	The person who answers questions during a deposition.
Deposition	A question-and-answer session that takes place before the trial outside of the courtroom in which one party to the lawsuit asks another person, who is under oath, questions about the events and issues in the lawsuit. The process of taking a deposition is called deposing.
Deposition Notice	A notice served on a deponent stating the time and place of the deposition.
Deposition Subpoena	The type of subpoena required if you want to depose someone who is not a party to a lawsuit.
Direct Examination	The process during a trial in which a party calls witnesses to the witness stand and asks them questions.
Disclosures	Information that each party must give the other party in a lawsuit.
Dispositive Motion	A motion that seeks a court order disposing of, or resolving, all or part of the claims in favor of the moving party without the need for further court proceedings.
Discovery	The process by which the parties exchange information about the issues in the case before the trial.



District Judge	A federal trial judge who was appointed by the President and confirmed by the Senate pursuant to Article III of the Constitution. District judges are appointed for life and cannot be removed unless impeached.
Diversity Jurisdiction	A basis for federal court jurisdiction where none of the plaintiffs lives in the same state as any of the defendants and the amount in controversy exceeds \$75,000.
Division	The Middle District of Tennessee has three divisions among which the Court's caseload is divided: Nashville, Columbia, and Cookeville.
Docket	A computer file maintained by the Court that includes a chronological summary of everything that has happened in a case.
Drop Box	An outside secure depository maintained by the Court where documents can be left for filing by the Clerk of Court when the Clerk's Office is closed to the public.
Electronic Case Filing (ECF), E-Filing	The process of submitting documents to the Court for filing and serving them on other parties electronically through the Internet. The United States Courts use an e-filing system called "Electronic Case Filing" or "ECF."
Element	An essential component of a legal claim or defense.
Entry of Default	A formal action taken by the Clerk of Court in response to a plaintiff's request when a defendant has not responded to a properly-served complaint. The Clerk must enter default against the defendant before the plaintiff may file a motion for default judgment.
Evidence	Testimony, documents, recordings, photographs, and physical objects that tend to establish the truth of important facts in a case.
Exhaust, Exhaustion	In federal habeas actions, the requirement that a prisoner pursue all available and required state judicial and administrative remedies before seeking relief in federal court. To "exhaust state remedies," a prisoner must give the state courts the first opportunity to decide all the claims he or she wants to raise in a habeas petition. This means that the prisoner must litigate his or her claims through all of the levels of the state-court direct appeal process if the claim can be raised in a direct appeal, or the prisoner must raise the claims in a state-court post-conviction action and litigate those claims through all available levels of appeal.
Exhibits	Documents or other materials that are presented as evidence at trial or as attachments to motions or declarations.
Expert Witness	A person who has scientific, technical, or other specialized knowledge that can help the court or the jury understand the evidence.



Federal Question Jurisdiction	A basis for federal court jurisdiction where at least one of the plaintiff's claims arises under federal law (the Constitution, laws, or treaties of the United States).
Federal Rules of Civil Procedure	The procedural rules that apply to every federal district court in the United States.
Federal Rules of Evidence	The rules defining the type of evidence that a federal court can consider.
File, Filing	The process by which documents are submitted to the Court and entered into the case docket.
Filing Fee	The amount of money the Court charges the plaintiff to file a new federal civil lawsuit.
Findings of Fact and Conclusions of Law	In a bench trial, a statement issued by the judge that explains what facts he or she found to be true and what the legal consequences of those facts are.
Fraud	The act of making a false representation of a past or present fact on which another person relies, resulting in injury.
Good Faith	Having an honesty of intentions. For example, negotiating in good faith means to come to the table with an open mind and a sincere desire to reach an agreement.
Grounds	The reason or reasons for requesting action by the Court.
Hearsay	"Second-hand" evidence or a witness's statement about a fact that is based on something the witness heard from someone else and not on personal knowledge.
Hearing	A formal proceeding before a judge for the purpose of resolving one or more issues.
Immunity	Protection from being held liable for actions taken while performing the duties of specific jobs or for other reasons.
Impeach	To call into question a witness's truthfulness or credibility.
In Forma Pauperis (IFP)	See application to proceed in forma pauperis.
Initial Case Management Conference	A conference at the outset of a case to set a schedule for the litigation.



Initial Disclosures	Disclosures of basic information that the parties are required to serve within 14 days of their Initial Case Management Conference.
Interrogatories	Formal written questions sent by one party to another party to the lawsuit which must be answered (or objected to) in writing and under oath.
Issue Summons	The act of the Clerk of Court before a summons is valid for service on a defendant.
Judges' Standing Orders	Individual judges' special rules that apply in all cases assigned to that judge. The Clerk's Office can provide you with a copy of standing orders upon request or they can be found on the Court's website.
Jurisdiction	A court's power to decide a particular case.
Jury Box	Rows of seats, usually located against the wall at one side of the courtroom, where the jurors sit during a trial.
Jury Deliberations	The process by which the jury, after having heard all the evidence and closing arguments from the parties and instructions from the judge, meets in private to decide the case.
Jury Instructions	The judge's directions to the jury about the jury's duties, the law that applies to the lawsuit, and how the jury should evaluate the evidence.
Jury Selection	The process by which the members of a jury are chosen.
Jury Trial	A trial in which a jury weighs the evidence and determines what happened. The Court instructs the jury on the law and the jury applies the facts and determines who wins the lawsuit.
Law Library	A special library containing legal materials, usually staffed by a specially trained librarian.
Litigants	The parties to a lawsuit.
Local Rules	Specific federal court rules that set forth additional requirements to the Federal Rules of Civil Procedure; for example, the Local Rules of the United States District Court for the Middle District of Tennessee explain procedures that apply only in that Court.
Magistrate Judge	A judge who is appointed by the Court for an 8-year, renewable term and has some, but not all, of the powers of a district judge. A magistrate judge may handle civil cases from start to finish if all parties consent. In non-consent cases, a magistrate judge may hear motions and other pretrial matters assigned by a district judge.



Manual Filing	A filing of a paper document at the Clerk's Office instead of by electronic filing/e-filing.
Material Fact	A fact that must be proven to establish an element of a claim or defense in the lawsuit.
Mediation	An ADR process in which a trained mediator helps the parties talk through the issues in the case to seek a negotiated resolution of all or part of the dispute.
Meet and Confer	A meeting between parties to work together to resolve dispute during litigation.
Mistrial	When the jury is unable to reach a verdict; the case must be tried again before a new jury. A jury which cannot reach a verdict is usually referred to as a "hung jury."
Motion	A formal application to the court asking for a specific ruling or order.
Motion for a More Definite Statement	A motion filed by the defendant arguing that the complaint is so vague, ambiguous, or confusing that the defendant is unable to answer it, and asking for additional details.
Motion for a New Trial	After the trial ends, a motion asking the Court for a complete re-do of the trial because the first trial was flawed.
Motion for a Protective Order	A motion that asks the Court to relieve a party of the obligation to respond to a discovery request or grant more time to respond.
Motion for Default Judgment	A motion by the plaintiff asking the Court to grant judgment in the plaintiff's favor because the defendant failed to file an answer to the complaint; if the court grants the motion, the plaintiff wins the case.
Motion for Judgment As A Matter Of Law	A motion asking the judge to determine the outcome of the case without a jury because the opposing party's evidence is so legally deficient that no reasonable jury could decide the case in favor of that party.
Motion For Relief From Judgment Or Order	A motion asking the Court to rule that a judgment or order should not be given effect or should be changed for one of the reasons permitted by Rule 60(b) of the Federal Rules of Civil Procedure.
Motion For Sanctions	A motion asking the Court to punish a person for failing to make the required disclosures, refusing to respond to a discovery request, or refusing to obey a court order to respond to a discovery request.
Motion for Summary Judgment	A motion asking the Court to decide a lawsuit without going to trial because there is no dispute about key facts of the case.
Motion In Limine	A motion asking the Court to settle an issue relating to admissibility of evidence made shortly before the beginning of trial.



Motion To Amend or Alter The Judgment	A motion asking the Court to change something in the final judgment because of errors during the trial.
Motion to Compel	A motion asking the Court to order a person to make disclosures or to respond to a discovery request, or to provide more detailed disclosures.
Motion To Dismiss	A motion asking the Court to deny some or all claims in the complaint due to legal or procedural defects.
Motion To Extend Time	A motion asking the Court for more time to file a brief or to comply with a court order; also called a “continuance.”
Motion To Set Aside Default/Default Judgment	A motion by a defendant against whom default or default judgment has been entered asking the Court if he or she may be allowed to appear in the suit and respond to the complaint.
Motion To Strike	A motion asking the Court to order certain parts of the complaint or other pleadings deleted because they are redundant, immaterial, impertinent, or scandalous.
Moving Party	The person who files a motion.
Non-Dispositive Motion	A motion that seeks a ruling to a question that comes up during litigation, the answer to which will not resolve any or all claims.
Non-Moving Party	Any party who is not bringing a motion.
Non-Party Deponent	A deponent who is not a party to the lawsuit.
Non-Party Witness	A person who is not a party to the lawsuit but who has relevant information.
Notice Of Electronic Filing	An email generated by the ECF system that is sent to every registered attorney, party, and interested person associated with a case every time a time document is filed.
Notice Of Deposition	A notice that gives all of the information required under Rules 30(b) and 26(g)(1) of the Federal Rules of Civil Procedure and must be served on opposing parties to a lawsuit.
Notary Public	A public officer who is authorized by the state or federal government to administer oaths and to attest to the authenticity of signatures.
Objection	The formal means of challenging evidence on the ground that it is not admissible.
On The Papers	A decision made based on filings without a hearing in the courtroom.
Opening Statements	A speech made at the beginning of trial in which parties can describe the issues in the case and state what they expect to prove during the trial.





Opposing Party	A party who does not want a motion to be granted.
Opposition	A filing that consists of a brief, often accompanied by evidence containing facts and legal arguments that explain why the Court should deny a motion.
Overrule An Objection	A judge's denial of an objection made in a hearing.
PACER System	"Public Access to Electronic Court Records." An Internet database where docket information is stored.
Peremptory Challenge	A request that a juror be excused without having to give any reason for the request, so long as the reason is not discriminatory.
Perjury	A false statement made under oath, punishable as a crime.
Permissive Counterclaim	A claim by the defendant against the plaintiff that is not based on the same events or transactions as the plaintiff's claim against the defendant.
Personal Jurisdiction	The Court's power over a person or entity.
Petitioner	The person who files a petition under 28 U.S.C. §§ 2241, 2254, or 2255.
Physical Or Mental Examination	An order by the Court for a party to submit to a physical or mental examination by a medical professional such as a doctor or psychiatrist; unlike other discovery procedures, physical or mental examinations can be obtained only by filing a motion with the Court or by agreement of the parties.
Plaintiff	The person, entity, or company who files a lawsuit.
Pleadings	Formal documents that are filed with the Court, especially initial filings such as complaints and answers.
Prayer For Relief	The last section of the complaint in which the plaintiff tells the Court what the plaintiff wants from the lawsuit, such as money damages, an injunction, or other relief.
Precedent	A case that previously was decided and becomes an example or authority to be used at a later time for identical or similar cases.
Pretrial Conference	A hearing shortly before trial where the judge discusses the requirements for conducting trial and resolves any final issues that have arisen before trial.
Primary Authority	The most accepted form of authority cited; it consists of statutory authority and court decisions.
Privileged Information	Information consisting mostly of confidential communications such as those between a doctor and patient or an attorney and client that is protected by legal rules from disclosure during a trial.



Pro Bono Representation	Legal representation by an attorney that is free to the person being represented.
Pro Se	A Latin term meaning “for himself” or “for herself.” A pro se litigant is a person without a lawyer handling a case in court.
Procedural Rules	The rules parties must follow for bringing and defending against a lawsuit in court.
Process Server	A person authorized by law to serve the complaint and summons on the defendant.
Proof Of Service	A document attached to each document filed with the court (or filed separately at the same time as the document) in which the filer affirms that he or she has served the document on the other parties.
Protective Order	A court order limiting discovery, either as to how discovery may be conducted or what can be discovered.
Quash a Subpoena	An order by the Court that vacates a subpoena so that it has no legal effect; the person served with the subpoena does not have to obey it.
Rebuttal	The final stage of presenting evidence in a trial by the plaintiff in response to the defendant’s proof.
Rebuttal Testimony	Testimony given at trial, after the defendant has completed examining each of his or her witnesses. The plaintiff can call additional witnesses solely to counter or “rebut” testimony given by the defendant’s witnesses.
Re-Direct Examination	An examination during trial, after the opposing party has cross-examined a witness; the party who called the witness may ask the witness questions about topics covered during the cross-examination.
Referring Judge	A federal district judge who refers an issue or motion within a lawsuit to another judge, usually a magistrate judge.
Referral Judge	A United States magistrate judge assigned to handle an issue, proceeding, or motion within a case assigned to a federal district judge.
Remedies	Actions the Court may take in a civil case to redress or compensate a violation of rights under the law.
Renewed Motion For Judgment As A Matter Of Law	A motion arguing that the jury must have made a mistake in its verdict because the evidence was so one-sided that no reasonable jury could have reached that decision.
Reply	The answer to a counterclaim ; also refers to the response to the opposition to a motion.



Reply Brief	A document responding to the opposition to a motion.
Report And Recommendation	A document prepared by a magistrate judge to the district judge containing factual and legal findings.
Request For Admission	A discovery request asking a party to admit a material fact or element of a claim.
Request For Entry Of Default	The first step for a plaintiff to obtain a default judgment by the Court against a defendant; directed to the Clerk of Court, the request must show that the defendant has been served with the complaint and summons but has not filed a written response to the complaint in the required time.
Request For Inspection Of Property	A discovery request served on a party seeking to enter property controlled by that party for the purpose of inspecting, measuring, surveying, photographing, testing, or sampling the property or any object on the property relevant to the lawsuit.
Request For Production of Documents	A discovery request served on a party seeking documents or other items relevant to the lawsuit from another party.
Request For Production Of Tangible Things	A discovery request served on a party seeking to inspect, copy, test, or sample anything relevant to a lawsuit which is in the possession, custody, or control of another party to the lawsuit.
Request For Waiver Of Service	A written request by the plaintiff asking the defendant to accept the summons and the complaint without formal service.
Requests For Admission	A discovery request asking a party to admit a material fact or an element of a claim.
Respondent	The person or entity the petitioner is suing in a habeas action.
Sanctions	A punishment the Court may impose on a party or attorney for violating the Court's rules or orders.
Secondary Authority	Authority found in legal encyclopedias, legal texts, treatises, and law review articles.
Self-Authenticating	Documents that do not need any proof of their genuineness beyond the documents themselves in order for them to be admissible evidence under Rule 902 of the Federal Rules of Evidence.
Serve, Service, Serving	The act of providing a document to a party in accordance with Rules 4 and 5 of the Federal Rules of Civil Procedure.



Service Of Process	The formal delivery of the complaint in a lawsuit to the defendant in accordance with the requirements for service found in Rule 5 of the Federal Rules of Civil Procedure.
Settlement Conference	A proceeding usually held in a magistrate judge's chambers in which the judge works with the parties towards a negotiated resolution of part or all of the case.
Side Bar	A private conference beside the judge's bench between the judge and the lawyers (or pro se persons) to discuss an issue outside of the jury's hearing.
Standing Orders	An individual judge's orders setting out rules and procedures, in addition to those found in the Federal Rules of Civil Procedure and the Local Rules, that apply in all cases before that judge.
Statement of Undisputed Material Facts	A separate document, containing sentences in numbered paragraphs stating the significant facts as to which the moving party contends there is no dispute. Local Rule 56.01(b) requires that a statement of undisputed material facts be filed along with a motion for summary judgment.
Statute Of Limitations	A legal deadline by which a plaintiff must file a complaint; after the deadline, the Court may dismiss the action as time-barred.
Stipulation	A written agreement signed by all the parties to a lawsuit or their attorneys.
Strike	The act of a judge ordering claims or parts of documents "stricken" or deleted so that they cannot be part of the lawsuit or proceeding.
Subject Matter Jurisdiction	The authority of a federal court as defined by Congress over cases arising under the Constitution, treaties, or laws of the United States or when the parties are from different states and the amount in controversy is greater than \$75,000.
Subpoena	A document issued by the Court requiring a non-party to appear for a court proceeding or deposition at a specific time and place or to make certain documents available at a specific time and place.
Subpoena Duces Tecum	A form of subpoena used to require a non-party deponent to bring specified documents to a deposition.
Substantive Law	Authority, or the information used by a party to persuade a court to find in favor of that party.
Summary Judgment	A decision by the Court to enter judgment in favor of one party without a trial because the evidence shows that there is no real dispute about the material facts and the prevailing party is entitled to judgment as a matter of law.
Summons	A document from the Court that a plaintiff must serve on the defendant along with an original complaint to start a lawsuit.



Sustain An Objection	A judge's ruling during trial after a party objects to the evidence being admitted or a question being asked; if the judge sustains the objection, it means the objection is correct, and the evidence will be not be admitted or the question will not be asked.
Telephonic Conference/ Telephonic Hearing	A hearing conducted over the telephone with the parties, their attorneys, and the judge.
Transcript	The written version of what was said during a court proceeding or a deposition as typed by a court reporter.
Trial Subpoena	A type of subpoena that requires a witness to appear to testify at trial on a certain date.
United States Code, U.S.C.	A document that contains the permanent public laws passed by the United States Congress.
Vacate	To set aside a Court order so that the order has no further effect, or to cancel a scheduled hearing or trial.
Venue	The geographic location where a lawsuit is filed.
Verdict	The jury's final decision about the issues in a trial.
Verdict Form	The form the jury fills out to record the verdict in a jury trial.
Voir Dire	Part of the jury selection process in which potential jurors are asked questions designed to reveal biases that would interfere with fair and impartial jury service.
Waiver of Service	A defendant's written, signed statement that he or she agrees to give up the right to service in person and instead accepts service by mail.
With Prejudice	A dismissal where any claim that is dismissed is eliminated permanently from the lawsuit and cannot be brought in a new action.
Without Prejudice	A dismissal where a party is permitted to file an amended complaint or to bring the same claim in a different action; sometimes called a dismissal "with leave to amend."
Witness	A person with personal or expert knowledge of facts relevant to a lawsuit.
Witness Box	The seat next to the bench where witnesses sit when they testify in court.