

STATE PRISONER SELF-HELP PACKET

FEDERAL HABEAS CORPUS PETITION - 28 U.S.C. § 2254

INSTRUCTIONS

(Persons in State Custody under a State Court Conviction filing in Federal Court)

WHAT YOU WILL NEED:

1. These instructions for filing a Petition for Writ of Habeas Corpus.
2. Petition for Writ of Habeas Corpus form.
3. Application for in Forma Pauperis Status form.
4. Statement of Trust Fund Account form. Send this to your institution's accounting office as soon as possible, so it can be completed and returned to you.

LEGAL RESOURCES:

28 U.S.C. §§ 2241--2254

Rules Governing Section 2254 Cases

Federal Rules of Civil Procedure

Local Rules for the United States District Court for the District of Idaho

I. Preliminary Considerations before Filing a Habeas Corpus Petition

Please read the following brief summary of legal standards to determine whether a federal habeas corpus action is the proper way to bring your claims and how to proceed in federal court. The purpose of this packet is to provide general guidance about your habeas corpus case.

A federal petition for writ of habeas corpus under 28 U.S.C. § 2254 is used by a **(1)** state prisoner **(2)** being held in state custody **(3)** to challenge the validity of a state criminal conviction or sentence **(4)** for the purpose of obtaining release from custody. When the Anti-Terrorism and Effective Death Penalty Act (AEDPA) became effective on April 24, 1996, many changes occurred to the habeas corpus statutes, such as the addition of a statute of limitations and a strict standard for relief. Those changes apply to any petition filed after 1996 (even if the conviction occurred before 1996) and are reflected in these instructions. In addition to these instructions, you should consult any legal resources available to you that are relevant to your case.

In a habeas corpus action, the federal court is authorized to perform a limited review of the state court action surrounding the state criminal conviction and sentence by reviewing the pleadings, papers, transcripts, and evidence that were presented to or occurred in the state courts. It is not a new jury or judge (bench) trial. In most cases, evidentiary hearings are not held, and, in most cases, the federal court cannot review any claim or evidence that was not presented to the state court. *See* 28 U.S.C. § 2241, *et seq.*

Case law interpreting the habeas corpus statute is constantly changing. This packet is not intended to be an exhaustive recitation of the law governing habeas corpus, but it is a starting point. This packet should not be construed as legal advice.

It is best to consult an attorney to determine the best course of action under your particular facts, and to determine whether any subsequent changes to the law have occurred. It is also best to consult an attorney for help in preparation and pursuit of your federal habeas corpus petition. The prison or jail resource center has a list of all attorneys whose phone numbers are programmed into the institutional telephone system. These calls are not monitored. If your attorney is not on the list, you may request that his or her phone number be added to the non-monitored list.

A. Federal Claim

The petition must allege that the conviction or sentence violates the United States Constitution, a federal law, or a United States treaty. 28 U.S.C. § 2254(a). The federal court does not have jurisdiction to consider claims that are based solely on state law or on the state constitution. You should explain the federal basis for each claim clearly in your petition. If you do not know the particular numeric citation to the Constitution, you may explain the legal basis in words, such as “the right to remain silent,” or “the right to effective assistance of counsel.”

B. Habeas Petitions Should Not Contain Prison Conditions Claims

Do not use this habeas corpus packet if you want to challenge conditions of confinement or obtain money damages. For example, claims for improper medical care or retaliation for assertion of First Amendment rights should be brought in a civil rights lawsuit under 42 U.S.C. § 1983, and a different self-help packet is available for that purpose. Idaho inmates should also be aware that *federal* habeas corpus proceedings are different from *state* habeas corpus proceedings.

C. Proper Respondent

The proper respondent (the person you are suing) is your current custodian. If you are incarcerated, that is the warden of the facility where you are held. Do **not** name the “State of Idaho” or the Governor. If you are held out of state on an Idaho conviction, you can name the Idaho Attorney General or the Director of the Idaho Department of Correction as the respondent.

D. Exhaustion of State Remedies Requirement

Generally, a federal court cannot grant relief on habeas corpus claims unless the Idaho Supreme first had an opportunity to rule on the *same federal* claims. This is called exhaustion of state court remedies. 28 U.S.C. § 2254(b)(1)(A). The United States Supreme Court explained the exhaustion requirement in *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999):

Because the exhaustion doctrine is designed to give the state courts a full and fair opportunity to resolve federal constitutional claims before those claims are presented to the federal courts, we conclude that state prisoners must give the state courts one full opportunity to resolve any constitutional issues by invoking *one complete round* of the State's established appellate review process (emphasis added).

Your state court remedies can be exhausted (meaning you have no further remedy in state court) either properly or improperly. Proper exhaustion means you have fairly presented your claims to the Idaho Supreme Court in a procedurally proper manner, as required by that Court. Proper exhaustion allows your claims to proceed in a federal habeas corpus action.

Improper exhaustion means that you have not properly presented your federal claims to the Idaho Supreme Court, but you no longer have any procedurally correct avenues open for presenting your claims. For example, claims are improperly exhausted, and deemed *procedurally defaulted* (1) when a petitioner has *completely failed* to raise a particular claim before the Idaho courts; (2) when a petitioner has raised a claim, but has failed to fully and fairly present it as a *federal* claim to the Idaho courts (like raising only a state-law abuse-of-discretion claim); or (3) when the Idaho courts have rejected a claim on an independent and adequate state procedural ground (like a state statute of limitations). If a claim is improperly exhausted and procedurally defaulted, the federal court cannot hear the merits of the claim unless the petitioner makes a showing that (1) there was a legitimate cause for the default and prejudice resulted, or (2) that the petitioner is actually innocent of the conviction or sentence.

There are two **rare** exceptions to exhaustion: first, when there is an absence of available State corrective process; and, second, when circumstances exist that render such process ineffective to protect the rights of the applicant. 28 U.S.C. § 2254(b)(1)(B).

E. Statute of Limitations Considerations

28 U.S.C. § 2244(d)(1) provides for a one-year statute of limitations (deadline) for filing federal habeas corpus petitions. To determine your statute of limitations, you must determine three factors: (1) when your statute of limitations began running; (2) when it was statutorily tolled (or stopped) during the pendency of properly-filed state court post-conviction actions under 28 U.S.C. § 2244(d)(2); and (3) when it ends, by subtracting any time the statute was so tolled (suspended).

1. When Did My Statute of Limitations Begin?

Title 28 U.S.C. § 2244(d)(1) provides for four possible starting dates:

A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of--

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

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) 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

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

The most commonly-used starting date is Subsection (A): “the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.” If **no** direct appeal was filed, the one-year statute of limitation begins running 42 days after the judgment of conviction was entered. *State v. Repici*, 835 P.2d 1349, 1350 (Idaho Ct. App. 1992) (citing I.A.R. 14(a)). If a direct appeal was filed and pursued through the Idaho Supreme Court, the one-year statute of limitation does not start until expiration of the additional 90-day period “within which [a petitioner] could have filed a petition for a writ of certiorari from the United States Supreme Court” following direct appeal, whether or not one was filed. *Bowen v. Roe*, 188 F.3d 1157, 1159 (9th Cir.1999). Please note that the additional 90-day certiorari period, however, does **not** apply to post-conviction relief actions, and so do not count that time period into your federal statute of limitations calculation.

2. When Is My Statute of Limitations Statutorily Tolled?

Tolling means that a statute of limitation stops running for a certain period of time. “Statutory” tolling means that the tolling is governed by statute, as opposed to “equitable” tolling, discussed below, which is governed by case law only. The habeas corpus statute provides tolling for a state prisoner while he or she completes state court proceedings on a “properly filed

application for State post-conviction or other collateral review with respect to the pertinent judgment or claim.” 28 U.S.C. § 2244(d)(2).

Unlike many other statutes of limitation, the one-year federal habeas corpus statute of limitations can start and stop several times, depending on whether state court collateral filings are pending or concluded. However, when it starts again, it does not start over with a full year remaining. It is important to note that the days that go by (1) between the final judgment and a collateral filing, and (2) between final disposition of a collateral filing and the federal habeas corpus filing, count against the year. *Nino v. Galaza*, 183 F.3d 1003, 1006-07 (9th Cir. 1999).

For example, if John Doe’s direct appeal becomes final by an opinion or remittitur from the Idaho Supreme Court, and John Doe waits 355 days after the date of finality to file a state collateral review application, such as a post-conviction application, then he has used up 355 days of his federal habeas corpus statute of limitations under 28 U.S.C. § 2244(d)(1). The filing of the state collateral review application will statutorily toll or stop John Doe’s federal habeas corpus statute of limitations while the state collateral review application is pending, through appeal of that action to the Idaho Supreme Court. When that action is final, John Doe’s one-year federal habeas corpus statute of limitations will start running again, **but the “clock” is not reset at one year, it starts at the number of days left.** In this example, John Doe would have only 10 days in which to file his federal habeas corpus petition because he used 355 days between the direct appeal and the first state collateral challenge.

It is important to know that only “properly-filed” state court post-conviction or other collateral review applications will toll the federal habeas corpus statute of limitations. In *Artuz v. Bennett*, 531 U.S. 4 (2000), the United States Supreme Court determined that a properly filed application that tolls the statute of limitation is defined as follows:

An application is “filed,” as that term is commonly understood, when it is delivered to, and accepted by, the appropriate court officer for placement into the official record And an application is “properly filed” when its delivery and acceptance are in compliance with the applicable laws and rules governing filings. These usually prescribe, for example, the form of the document, the time limits upon its delivery, the court and office in which it must be lodged, and the requisite filing fee.

531 U.S. at 8-9 (citations omitted). A post-conviction petition that has been dismissed by the state court as untimely under state law is not a properly-filed one for purposes of § 2244(d)(2). *Pace v. Diguglielmo*, 544 U.S. 408, 417 (2005). If the federal court finds that a prior state court action was improperly filed, that state court action will not be deemed to have tolled or stopped the statute of limitations, and the federal court may deem the federal petition untimely, as a result. Moreover, prior federal habeas corpus petitions dismissed without prejudice do not toll or stop the statute of limitation for a later petition. *Duncan v. Walker*, 533 U.S. 167, 182 (2001).

3. Can Equitable Tolling be Applied to Make My Petition Timely?

If you think you missed your statute of limitations deadline, you may ask the Court to toll the limitations period for fairness reasons, a concept known as “equitable tolling.” However, “the threshold necessary to trigger equitable tolling [under AEDPA] is very high, lest the exceptions swallow the rule.” *Miranda v. Castro*, 292 F.3d 1063, 1066 (9th Cir. 2002).

To qualify for equitable tolling, the petitioner bears the burden of proving two elements: (1) that he was pursuing his rights diligently during the entire time that he seeks to have tolled, and (2) that some extraordinary circumstance stood in his or her way, preventing him from filing a habeas petition in a timely manner. *Holland v. Florida*, 130 S. Ct. 2549, 2562 (2010). If you wish to make an argument for equitable tolling, you should provide all of the facts necessary for the Court to make this determination, including affidavits and any written documentation you have that supports your argument that you were diligently pursuing your rights during the statute of limitations period, but that an extraordinary circumstance actually prevented you from filing your habeas petition on time.

F. Successive Petition Considerations

You must bring all federal claims related to a particular conviction or sentence in a single federal habeas corpus action. There are strict limitations on filing second or successive habeas petitions, and you cannot later bring a second action without first obtaining permission to do so from the United States Court of Appeals for the Ninth Circuit. *See* 28 U.S.C. § 2244(b). (Note: you do not need to obtain Ninth Circuit permission if your prior federal petition was dismissed *without prejudice*.) Your facility should have a Ninth Circuit Application to File a Second or Successive Petition form if you need one.

II. Completing the Habeas Corpus Petition

Complete the habeas corpus petition according to the directions on the form that is enclosed in this packet. Your petition should be legibly handwritten in black ink or typed. If you do not have a black pen, request one from staff.

For each claim, it is important that you 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 each level of the Idaho state court system. Stating the federal ground for your claim should be done very briefly. You should not make extensive legal arguments on the petition form, but you may choose to file a legal memorandum or brief either (1) with your petition or (2) as your reply to the respondent’s motion for summary dismissal or answer. (The Court is aware that prisoners do not have access to legal research; therefore, the Court performs a review of the law in every case, independent of the legal arguments and citations provided by the respondent.) Importantly, your petition should include all of the facts that support your claim.

You must sign the petition, indicate how you mailed your petition, and complete the declaration under penalty of perjury. Notarization is not required. You must be sure to send a "Notice of Change of Address" to the Clerk of Court each time you change addresses in order to be sure that you receive all Court orders and correspondence in this matter.

III. Payment of Filing Fee or Request to Proceed In Forma Pauperis

Your petition for writ of habeas corpus must be accompanied by a payment of the \$5.00 filing fee, or an "Application for In Forma Pauperis Status." If you wish to proceed in forma pauperis, you must file the following: (1) "Application for In Forma Pauperis Status"; and (2) prison trust account statement showing the current status of your prison trust account. You will need to send the prison trust account statement form to your institution's accounting office as soon as possible, so it can be completed and returned to you.

IV. Requests for Appointment of Counsel

There is no constitutional right to counsel in a habeas corpus action, though a petitioner under a sentence of death has a statutory right to the assistance of counsel.

If you wish to have the assistance of counsel and are unable to afford one, you may request one at the appropriate place in your petition, or file a motion seeking the appointment of counsel at public expense. Include all of the facts and any written documentation showing your particular need for counsel. The Court does not appoint counsel in non-capital habeas corpus matters except under extraordinary circumstances.

V. Filing Your Action

To file your action, you will need to send the following to the Clerk of Court, U.S. District Court for the District of Idaho, 550 West Fort Street, Boise, Idaho 83724:

1. the signed original habeas corpus petition;
2. either the \$5.00 filing fee or the "Application for In Forma Pauperis Status" and trust account statement.

You do not need to serve the respondent or send respondent or the attorney general a copy of your petition when it is filed. If you would like to have a *conformed copy* of filed documents, which is a copy that bears the Clerk's filing date stamp to let you know the exact date a document was filed, then you must include a copy of each document, along with a note and a self-addressed envelope requesting that the Clerk return a conformed copy to you. You should always keep a copy of the petition and other documents you have filed for your own records.

VI. Initial Review

After you file your federal habeas corpus petition, a federal judge reviews the petition to determine whether it is subject to summary dismissal. *See* 28 U.S.C. § 2243. Summary dismissal is appropriate where “it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court.” Rule 4 of the Rules Governing § 2254 Cases. Summary dismissal is also appropriate where the allegations in the petition are vague, conclusory, palpably incredible, patently frivolous, or false. Summary dismissal is also appropriate where it is evident from the petition that the claims have been procedurally defaulted.

The Court’s initial review order will determine whether you can proceed. Your case cannot proceed until this order is issued. Do not file a motion for default judgment; default judgment is not granted in habeas corpus cases. Some habeas cases are not allowed to proceed after the initial review order; your case may be dismissed if it is clear that amendment could not cure the deficiencies. You may be given an opportunity to amend the petition to correct any deficiencies. Or, your petition may be served upon the Idaho Attorney General on behalf of the respondent, allowing the case to proceed in part or in full. If your case is authorized to proceed, the initial review order will include a disposition schedule for your case.

Even if the initial review order grants a petitioner the opportunity to proceed in the case, the respondent can still file a motion for summary dismissal. The Court usually does not have access to the full state court record when it performs its initial review, and the full record may reveal grounds for summary dismissal. The initial review process may take several months due to the Court’s heavy caseload. Do not continue to file additional documents in your case while you are waiting for the Court’s initial review order.

VII. Pleadings, Papers, and Discovery

After your case has been authorized to proceed, the Court will order the respondent to answer or otherwise respond to the petition. The respondent will then file an answer or a pre-answer motion requesting dismissal of part or all of your case. Do not file a motion for default judgment if a pre-answer motion is filed rather than an answer. A pre-answer motion is permitted by the Rules.

Discovery is not permitted without a Court order. Also, do not file pleadings or papers not authorized by the Rules or a Court order. It is also improper to use a letter rather than a motion to ask the Court to take any action in your case.

If the Court orders the respondent to respond to the petition, then each time you file a document thereafter, you must also send the respondent’s attorney a copy of the document. Each original document (except the original habeas corpus petition) must include a certificate stating the date a copy of the document was mailed to the respondent’s attorney and the address to which it was mailed. Any document received which fails to include a certificate of service may be stricken by the court or returned. An example of a certificate of service is:

I hereby certify that on this _____ day of _____, 20____, a copy of the foregoing pleading/ document was mailed to the following (respondent(s) or counsel for respondent(s)) at the following addresses, by _____ delivering it to a prison official for mailing under the indigent policy, or _____ placing it in a United States postal depository unit with postage prepaid (*indicate which form of mailing you used*):

(*write name and address of Respondent's attorney here*)

Original Signature of Applicant

VIII. State Court Record

The respondent will supply the Court with a copy of those portions of the state court record that the respondent deems relevant to the Court's determination of the claims at hand.

If the respondent does not lodge all portions of the state court record that you deem relevant to a determination of the claims, you can file a motion to expand the record under Rule 7 of the Rules Governing Section 2254 Cases.

IX. Standard of Law and Petitioner's Burden of Proof

Habeas corpus claims are usually determined by a federal court's review of the written state court record. The federal habeas corpus action is not an opportunity to re-litigate your criminal case. See 28 U.S.C. § 2241, *et seq.* You bear the burden to show that your conviction or sentence violates the federal Constitution, United States Supreme Court case law, federal law, or a treaty of the United States.

The standard of law you must meet when your claim when the state court decided your claim on the merits is as follows. You must show that the state court's adjudication of the claim:

1. 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,
2. 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.

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

X. Resolving the Action

After the Court has conducted its initial review, the respondent will often file a *motion for summary dismissal*. Such a motion is brought under Rule 12 of the Federal Rules of Civil Procedure or pursuant to the Court's duty to dismiss claims upon which a petitioner is not entitled to proceed under 28 U.S.C. § 2243 or Rule 4 of the Rules Governing § 2254 Cases. For example, a motion for summary dismissal may be brought if, it appears from the state court record, that you have missed your statute of limitation, that you have failed to exhaust your state court remedies, or that you have failed to state a claim upon which habeas corpus relief can be granted.

If the respondent does not file a motion for summary dismissal, or not all claims are dismissed on such a motion, the respondent will then file an *answer* to the petition with supporting briefing addressing the allegations on the merits. See Rule 5 of the Rules Governing Section 2254 Cases. You may then file a *reply* to the respondent's answer that also addresses the merits and any remaining procedural arguments. The respondent may, at his or her option, submit a sur-reply to address anything in your reply. No further briefing is permitted without leave of court.

Oral argument is very rare in habeas cases, and the Court will determine whether a telephonic argument is necessary on a case-by-case basis. After consideration of all of the pleadings, papers, and the state court record, the Court will issue a written "Memorandum Decision and Order" granting or denying the petition for writ of habeas corpus.

XI. Evidentiary Hearings

For any constitutional claim that was adjudicated on the merits in state court, the federal court must determine whether the petitioner is eligible for relief under the standards set forth in 28 U.S.C. § 2254(d), *based on the same record that was before the state courts*. See *Cullen v. Pinholster*, 131 S. Ct. 1388 (2011). In other words, you are not entitled to offer new evidence in federal court without first demonstrating that you are eligible for relief on the same record that the state court reviewed. This means you generally cannot offer new documentary evidence (such through affidavits) or have an evidentiary hearing as a means of developing the evidence.

The habeas statute places many restrictions on new evidentiary development in federal court. Under § 2254(e)(2), the petitioner is not entitled to produce new evidence or have an evidentiary hearing on the merits of *any* claim if he "has failed to develop the factual basis of a claim in State court proceedings," as a result of his or her own fault and lack of diligence. *Williams (Michael) v. Taylor*, 529 U.S. 420 (2000). To receive an evidentiary hearing in those circumstances, then, the petitioner must show that (1) he was diligent in state court but that (2) he was unable to develop all of the facts through no fault of his own. The petitioner must also allege facts that, if proven to be true and credible, would show that he would be entitled to habeas relief on the merits of his claims.

In rare instances, an evidentiary hearing may be required on a preliminary procedural issue, such as determining whether a petitioner is entitled to equitable tolling of the statute of limitations or determining the reason for the petitioner's procedural default. The subject of the hearing would be to determine whether there are facts that show that the case should be able to proceed or be dismissed. The merits of the claims are not reviewed. The only issue to be determined is whether the petitioner can overcome preliminary procedural problems which would otherwise prevent the court from reviewing the merits of the claims at a later date.

XII. Appeal

If your case is unsuccessful, then you may wish to appeal to the United States Court of Appeals for the Ninth Circuit. There is no automatic right to appeal a habeas corpus case in the federal court system. Instead, you must first receive a "certificate of appealability," or "COA," granting you permission to appeal to the Court of Appeals. 28 U.S.C. § 2253(c).

A COA will issue only when a habeas corpus petition presents a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c). To meet this standard, the district court's decision to deny or dismiss the petition must at least be debatable among reasonable jurists. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Ordinarily, the District Court will address whether a COA should issue at the same time that the final judgment is entered, without the need for the petitioner to file a motion or request a COA. See Rule 11 of the Rules Governing Section 2254 Cases. If a COA is denied, you may still seek one in the Court of Appeals, but you **must** file a notice of appeal in District Court no later than 30 days after final judgment was entered. **Even if a COA is granted, you must still file a timely notice of appeal in the District Court.**

If the Court does not address in its final order whether a COA should issue, you may file a motion seeking a COA, together with a notice of appeal, within 30 days after judgment has been entered.

XIII. Requests for In Forma Pauperis Status and Appointment of Counsel on Appeal

If you have been granted in forma pauperis status in the federal district court, you generally do not need to re-apply for in forma pauperis status on appeal. You may apply to the Ninth Circuit Court of Appeals for an attorney on appeal, but such a request should not be filed in the federal district court; rather, it should be filed in the Ninth Circuit Court of Appeals.

XIV. Summary

1. To use the fill-in-the-blank habeas form, you must be a person who is currently serving a sentence under a judgment against you in a state court. You are asking for relief from the conviction or the sentence. This form is your petition for relief.
2. Make sure the form is typed or neatly written.
3. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
4. Answer all the questions. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you may choose to file a legal memorandum or brief either (1) with your petition or (2) as your reply to the respondent's motion for summary dismissal or answer.
5. You must pay a fee of \$5 or file an in forma pauperis application with a certificate signed by a prison officer showing the amount of money in your prison trust account.
6. In this petition, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different court (either in the same state or in different states), you must file a separate petition.
7. When you have completed the form, send the original and two copies to the Clerk of the United States District Court at this address:

Clerk of Court
United States District Court
for the District of Idaho
550 West Fort Street
Boise, ID 83724

9. CAUTION: You must include in this petition all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.
10. CAPITAL CASES: If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.