

Public Law 94-426
94th Congress

An Act

Sept. 28, 1976
[H.R. 15319]

To approve in whole or in part, with amendments, certain rules relating to cases and proceedings under sections 2254 and 2255 of title 28 of the United States Code.

Federal Rules of Procedure.
Certain proposed amendments, approval and effective date.
28 USC 2071 note.

Ante, p. 822.

28 USC app.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the rules governing section 2254 cases in the United States district courts and the rules governing section 2255 proceedings for the United States district courts, as proposed by the United States Supreme Court, which were delayed by the Act entitled "An Act to delay the effective date of certain proposed amendments to the Federal Rules of Criminal Procedure and certain other rules promulgated by the United States Supreme Court" (Public Law 94-349), are approved with the amendments set forth in section 2 of this Act and shall take effect as so amended, with respect to petitions under section 2254 and motions under section 2255 of title 28 of the United States Code filed on or after February 1, 1977.

SEC. 2. The amendments referred to in the first section of this Act are as follows:

(1) Rule 2(c) of the rules governing section 2254 cases is amended—

(A) by inserting "substantially" immediately after "The petition shall be in"; and

(B) by striking out the sentence "The petition shall follow the prescribed form."

(2) Rule 2(e) of the rules governing section 2254 cases is amended to read as follows:

"(e) RETURN OF INSUFFICIENT PETITION.—If a petition received by the clerk of a district court does not substantially comply with the requirements of rule 2 or rule 3, it may be returned to the petitioner, if a judge of the court so directs, together with a statement of the reason for its return. The clerk shall retain a copy of the petition."

(3) Rule 2(b) of the rules governing section 2255 proceedings is amended—

(A) by inserting "substantially" immediately after "The motion shall be in"; and

(B) by striking out the sentence "The motion shall follow the prescribed form."

(4) Rule 2(d) of the rules governing section 2255 proceedings is amended to read as follows:

"(d) RETURN OF INSUFFICIENT MOTION.—If a motion received by the clerk of a district court does not substantially comply with the requirements of rule 2 or rule 3, it may be returned to the movant, if a judge of the court so directs, together with a statement of the reason for its return. The clerk shall retain a copy of the motion."

(5) Rule 8(c) of the rules governing section 2254 cases is amended by adding at the end: "These rules do not limit the appointment of counsel under 18 U.S.C. § 3006A at any stage of the case if the interest of justice so requires."

(6) Rule 8(c) of the rules governing section 2255 proceedings is amended by adding at the end the following: "These rules do not limit the appointment of counsel under 18 U.S.C. § 3006A at any stage of the proceeding if the interest of justice so requires." 28 USC app.

(7) Rule 9(a) of the rules governing section 2254 cases is amended by striking out the second and third sentences.

(8) Rule 9(b) is amended by striking out "is not excusable" and inserting in lieu thereof "constituted an abuse of the writ".

(9) Rule 9(a) of the rules governing section 2255 proceedings is amended by striking out the final sentence.

(10) Rule 9(b) of the rules governing section 2255 proceedings is amended by striking out "is not excusable" and inserting in lieu thereof "constituted an abuse of the procedure governed by these rules".

(11) Rule 10 of the rules governing section 2254 cases is amended by inserting ", and to the extent the district court has established standards and criteria for the performance of such duties" immediately after "rule of the district court".

(12) Rule 10 of the rules governing section 2255 proceedings is amended by inserting ", and to the extent the district court has established standards and criteria for the performance of such duties," immediately after "rule of the district court".

Approved September 28, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 94-1471 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 122 (1976):

Sept. 14, considered and passed House.

Sept. 16, considered and passed Senate.