

**0.0.08 | MOTIONS FOR CERTIFICATE OF APPEALABILITY**

An applicant's appeal under 28 U.S.C. §§ 2254 & 2255 cannot proceed unless a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c). When a notice of appeal is filed, the district court must send the district court's order granting or denying the certificate along with the notice of appeal to the court of appeals. If the district judge has denied the certificate, the applicant may request a circuit judge to issue it. If no express request for a certificate is filed, the notice of appeal constitutes a request addressed to the judges of the court of appeals. Fed. R. App. P. 22(b).

To assist the court in resolving the certificate of appealability, the clerk issues a preliminary informal briefing order directing the appellant to file an informal opening brief but scheduling no responsive brief. The panel will determine whether the appellant has made a substantial showing of the denial of a constitutional right. If the panel denies a certificate, the appeal will be dismissed. If the panel grants a certificate, the court may direct a responsive brief from the government, or the court may appoint counsel for formal briefing and oral argument. Loc. R. 22(a).

*(4<sup>th</sup> Circuit Court of Appeals // December 2023)*

