



UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

# PRISONER CIVIL RIGHTS FEDERAL LITIGATION GUIDEBOOK

February 2015

This Guidebook is intended to be an informative and practical resource for understanding the basic procedures of the Court. The statements in this Guidebook do not constitute legal advice. DO NOT CITE THIS GUIDEBOOK AS AUTHORITY. This Guidebook does not take the place of the [Federal Rules](#), this Court's [Local Rules](#), or the individual practices of the Judges of this Court. All parties using this Guidebook remain responsible for complying with all applicable rules of procedure. If there is any conflict between this Guidebook and the applicable rules, the rules govern.



## **INTRODUCTION**

This Guidebook is intended as a starting point for legal research for convicted state and federal prisoners who might have a civil rights claim. If your status is different – for example, you are civilly committed, a pretrial detainee, or on supervised release – different procedural rules may apply to you. The Court encourages you to carefully review this Guidebook together with the Federal Rules of Civil Procedure and the Court’s Local Rules as you proceed with your case. The Federal Rules of Civil Procedure appear at the end of Title 28 of the United States Code. If the prison law library does not have the most recent version of this Court’s Local Rules, it may be obtained from the Clerk’s Office by request.

This Guidebook is generally organized in the order that a civil rights case proceeds through the Court. It is set up in a question and answer format, so you may skip to the particular question you have. The Table of Contents includes each question that this Guidebook addresses. It may be helpful to start by reviewing the Table of Contents.

Please remember that meeting the deadlines set by the judge in your case is very important. To understand how to count the number of days to determine when something is due, you should refer to Federal Rule of Civil Procedure 6.



## TABLE OF CONTENTS

**CHAPTER ONE: GENERAL INFORMATION .....3**

What rules do I have to follow in this Court? ..... 3

What is the Clerk’s Office? ..... 3

What does it mean to file documents with the Clerk’s Office? ..... 4

How do I contact the Clerk’s Office?..... 4

Are there requirements for filing documents with the Court? ..... 4

What is a magistrate judge?..... 5

**CHAPTER TWO: PRELIMINARY CONSIDERATIONS .....6**

What should I consider before filing a prisoner civil rights case? ..... 6

What is a prisoner civil rights claim? ..... 6

Can I seek reversal of my conviction and release from prison in a civil rights case? 7

Can I recover money damages in a civil rights case? ..... 7

What are the exhaustion requirements? ..... 8

What is immunity, and who is immune from a civil rights lawsuit?..... 9

Immunity of the State, its agencies and officials. .... 9

Immunity of the United States of America. .... 10

Judicial immunity. .... 10

Prosecutorial immunity. .... 10

Immunity of other state actors. .... 11

What is a statute of limitations?..... 11

What is jurisdiction, and how do I know which court has jurisdiction over my case?  
..... 12

**CHAPTER THREE: STARTING A CIVIL RIGHTS LAWSUIT.....13**

How do I begin a civil rights lawsuit in federal court? ..... 13

How do I write a complaint?..... 13

Does it matter whether I name defendants in their official or individual capacities?  
..... 13

How do I organize the facts in my complaint?..... 14

How much detail should I include in the complaint? ..... 15

What types of claims are commonly alleged in prisoner civil rights actions? ..... 15

What is a request for relief? ..... 16

Can I file attachments with my complaint? ..... 16

Why do I have to sign the complaint? ..... 17

What are the consequences if something in the complaint is not true?..... 17

What is a civil cover sheet?..... 18

How can I file the lawsuit if I cannot afford the filing fee? ..... 18

Will the Court appoint counsel to represent me?..... 20



**CHAPTER FOUR: WHAT HAPPENS AFTER THE COMPLAINT IS FILED.....21**

What does the Court do with my case after I file my complaint? ..... 21

Under what circumstances will the Court dismiss my complaint before defendants are served with the summons and complaint?..... 21

How do I serve my summons and complaint if I am proceeding IFP?..... 22

How do I serve my summons and complaint if I am not proceeding IFP?..... 22

How do I get the defendant to waive service of the summons and complaint? ..... 23

How and when can I amend my complaint? ..... 24

**CHAPTER FIVE: MOTION PRACTICE AND DISCOVERY .....26**

What will the defendants do after the defendants have been served? ..... 26

What is a motion, and how do I write or respond to one? ..... 26

What are the requirements for motion papers?..... 27

Are there different kinds of motions? ..... 28

What is a motion to dismiss? ..... 29

What is a motion for summary judgment? ..... 29

What is a memorandum of law?..... 30

What if I need more time to respond to a motion? ..... 31

How do I serve motions, briefs and supporting documents? ..... 31

What is discovery? ..... 32

What happens if a party does not comply with a proper request for discovery, or if some other discovery dispute arises? ..... 33

What is a protective order?..... 33

What is a motion to compel? ..... 34

Are there any special procedures for bringing a motion to compel? ..... 34

What kinds of things will a judge do as a discovery sanction?..... 35

**CHAPTER SIX: POST-JUDGMENT MOTIONS AND APPEALS.....35**

How do I file a post-judgment motion?..... 35

How and when do I file an appeal with the Eighth Circuit Court of Appeals? ..... 36

Is there a filing fee on appeal, and what if I cannot afford it?..... 37

What if I want the court to appoint counsel to represent me on appeal? ..... 38

**APPENDIX OF FORMS .....39**



## CHAPTER ONE: GENERAL INFORMATION

### **What rules do I have to follow in this Court?**

Most of the procedural rules that will govern your case are set forth in the Federal Rules of Civil Procedure or the Local Rules of the District Court for the District of Minnesota. If your case goes to trial, the Federal Rules of Evidence will apply. The Federal Rules of Civil Procedure are available in most law libraries. A copy of the Local Rules for the District of Minnesota can be obtained from the Clerk of Court upon request. You will be responsible for following all of the procedural rules that may be applicable to your case. You can be sanctioned for violating rules of procedure.

To bring a case in this Court, you also need to know the “substantive law” that applies to your case, which means the federal statutes and federal court decisions that establish your legal rights. Civil rights cases brought by state prisoners are governed by 42 U.S.C. § 1983, and civil rights cases brought by federal prisoners are governed by *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

### **What is the Clerk’s Office?**

The Clerk’s Office is the administrative part of the Court that maintains the Court’s records. Most of your interaction with the Court will be through the Clerk’s Office. This is where you will file your documents and where you should direct your questions about how to proceed through the court system. The Clerk’s Office can tell you whether a particular document has been filed and can provide copies of documents in the court record at a cost of \$.50 per page (payable in advance). However, the Clerk’s



Office cannot give you legal advice or tell you when a judge might make a ruling in your case.

### **What does it mean to file documents with the Clerk's Office?**

In a court case, the Clerk's Office must keep track of everything that the parties want the judges to receive. Filing your papers with the Clerk's Office allows the judges to be sure that they have all the case papers and allows you a way to check and make sure that the Court has your papers.

Filing your pleadings, motions, briefs, and supporting documents means mailing them to the Clerk's Office. After receiving your documents, the Clerk's Office will docket your papers and send them to the judge assigned to your case. The Clerk's Office maintains a "docket sheet" for each case, which is a chronological list of all papers that have been filed in the case. Following the filing rules is important, because most of what happens in your case will be based on the papers you file.

### **How do I contact the Clerk's Office?**

You may contact the Clerk's Office at the following address and phone number:

United States District Court for the District of Minnesota  
Clerk's Office  
300 South Fourth Street, Suite 202  
Minneapolis, MN 55415

(612) 664-5000

### **Are there requirements for filing documents with the Court?**



Federal Rule of Civil Procedure 11 applies to all documents you file with the Clerk's Office. Rule 11 states that you must (1) sign every pleading (for example, the complaint), motion, and other paper you file with the Clerk's Office; and (2) provide your address and telephone number on each filing. Rule 11 also states that by presenting a pleading, written motion, or other paper to the Court, you are certifying that:

- It is not being presented for an improper purpose;
- The legal contentions are supported by existing law or a nonfrivolous argument for extending, modifying or reversing existing law;
- Denials of factual allegations are warranted on the evidence, or upon reasonable belief, or lack of information.

If the presiding judge determines that you have violated Rule 11, the judge can impose sanctions. Therefore, it is very important to review Rule 11 before filing any document with the Clerk's Office.

### **What is a magistrate judge?**

A federal magistrate judge is a judicial officer that has some, but not all, of the powers of a district judge appointed under Article III of the United States Constitution. Local Rules 72.1 and 72.2 explain more about magistrate judges.

In general, a magistrate judge handles nondispositive motions. Nondispositive motions generally consist of pre-trial matters, such as amending complaints and discovery. A district judge will handle dispositive matters, meaning matters that may



end the case or result in dismissal of a claim. Examples of dispositive motions are motions to dismiss or motions for summary judgment.

A district judge may also refer dispositive matters to a magistrate judge for a Report and Recommendation. If you disagree with the magistrate judge's finding in a Report and Recommendation, you can file an objection with the district judge.

## **CHAPTER TWO: PRELIMINARY CONSIDERATIONS**

### **What should I consider before filing a prisoner civil rights case?**

You should consider the following before filing a prisoner civil rights case in federal court. These considerations will be discussed more fully in the questions below.

- Whether you have a civil rights claim?
- Whether you have met the exhaustion requirements?
- Whether the persons you claim violated your civil rights have immunity?
- Whether your claim will be timely, or is filed before the statute of limitations expired?

### **What is a prisoner civil rights claim?**

A prisoner whose civil rights have been violated can seek relief by filing a claim in federal court (after exhausting administrative remedies, which is also addressed below). To bring a civil rights case in federal court, a prisoner must file a complaint that alleges a violation of a right protected by the United States Constitution or created by federal statute, and caused by the conduct of a person acting under color of state law – for example, a state prison employee. Under 42 U.S.C. § 1983, a person who acts under



color of state law to violate another's constitutional rights may be liable for damages and/or injunctive relief.

There is no federal statute that allows a prisoner to seek relief for violation of his or her constitutional rights caused by a person acting under color of federal law – for example, a federal prison employee. For this reason, the Supreme Court in *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), determined there is an implied cause of action for violation of constitutional rights by a federal actor. *Bivens* is similar, but not identical, in scope to § 1983.

### **Can I seek reversal of my conviction and release from prison in a civil rights case?**

Probably not. Prisoners often bring § 1983 lawsuits seeking reversal of their convictions and release from prison, but this is almost always inappropriate. In *Preiser v. Rodriguez*, 411 U.S. 475 (1973), the Supreme Court held that habeas corpus was the sole remedy for a prisoner seeking a release from punishment. Therefore, asking for such relief in a § 1983 action is improper.

### **Can I recover money damages in a civil rights case?**

Yes -- unless your claim actually challenges the validity of your conviction or sentence. Generally speaking, habeas corpus is the only federal court remedy for a prisoner who wants to challenge his conviction or sentence. Under *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994), even if a prisoner is seeking only money damages, he cannot bring a civil rights claim that would, in effect, challenge the validity of his conviction or



sentence. If a judgment in the prisoner's favor would imply that his conviction or sentence is invalid, then he cannot bring the claim in federal court (unless the conviction or sentence has already been overturned in a prior state court proceeding or a prior habeas corpus proceeding). Thus, for example, if you believe you were convicted based on false testimony by a police officer, you cannot sue the police officer for damages, unless your conviction has already been overturned in a prior proceeding. The Supreme Court has similarly held that prisoners are barred from challenging the denial of good time credits in a § 1983 action, because it would imply the invalidity of a punishment. *Edwards v. Balisok*, 520 U.S. 641, 648 (1997).

### **What are the exhaustion requirements?**

Prisoners are required by law to attempt to settle their disputes about prison conditions using the prison's grievance system before filing a federal lawsuit. 42 U.S.C. § 1997e(a) provides that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." Where an inmate seeks money damages for a claim regarding conditions in prison, he must complete the prison administrative remedy process for the claims, even if the process does not provide for money damages. *Booth v. Churner*, 532 U.S. 731, 734 (2001). The exhaustion requirement applies to all inmate suits about prison life. *Porter v. Nussle*, 534 U.S. 516, 532 (2002). Furthermore, "proper" exhaustion is required. *Woodford v. Ngo*, 548 U.S. 81, 92 (2006). Proper exhaustion is completion of



the prison administrative review process in accordance with its applicable procedural rules, including deadlines, before bringing suit in federal court. *Id.* at 90-91. It is the prison's requirements that define the boundaries of proper exhaustion. *Jones v. Bock*, 549 U.S. 199, 218 (2007).

As early as possible (so that you will not miss a deadline), you should find out what your prison's procedures are for exhausting your administrative remedies. In other words, you should seek relief at every level available within the prison's own system for handling grievances. Failure to first exhaust administrative remedies is a basis for dismissal of your complaint in federal court. *Johnson v. Jones*, 340 F.3d 624, 627 (8th Cir. 2003) ("dismissal is mandatory" if exhaustion is not completed at the time of filing).

### **What is immunity, and who is immune from a civil rights lawsuit?**

Prisoners often name defendants in the lawsuit who are immune from liability. When this happens, the defendants are dismissed from the lawsuit.

### **Immunity of the State, its agencies and officials.**

The Eleventh Amendment to the United States Constitution provides, "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by citizens or subjects of any Foreign State." The Eleventh Amendment generally prohibits litigants from bringing suits against states, state agencies, and state officials acting in their official capacity. *Puerto Rico Aqueduct & Sewer*



*Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139 (1993). An exception to this rule is a request for prospective injunctive relief against a government official. *Ex Parte Young*, 209 U.S. 123 (1908). If you seek prospective injunctive relief but do not claim continuing violation of federal law, a federal court may not issue declaratory or injunctive relief. *Green v. Mansour*, 474 U.S. 64, 71 (1985).

### **Immunity of the United States of America.**

The United States Government and its agencies are immune from lawsuits unless it specifically consented to be sued. *United States v. Sherwood*, 312 U.S. 584, 586 (1941). A waiver of sovereign immunity must be unequivocally expressed by Congress. *Lane v. Pena*, 518 U.S. 187, 192 (1996).

### **Judicial immunity.**

Under the doctrine of absolute judicial immunity, a judge is not liable for money damages for acts performed in the exercise of his or her judicial functions. *Stump v. Sparkman*, 435 U.S. 349, 360-63 (1978).

### **Prosecutorial immunity.**

Prosecutors have absolute immunity from liability in § 1983 suits when their prosecutorial actions were “intimately associated with the judicial phase of the criminal process.” *Van de Camp v. Goldstein*, 555 U.S. 335, 340-41 (2009) (internal citation omitted). Absolute immunity may not apply when the prosecutor is engaged in



investigative or administrative tasks, or other tasks that are not part of the prosecutor's role as an officer of the court. *Id.* at 861.

### **Immunity of other state actors.**

Qualified immunity can provide a defense against money damages for certain other defendants. In § 1983 actions against state actors or *Bivens* actions against federal actors, the doctrine of qualified immunity protects officials from personal liability for on-the-job conduct so long as the conduct is objectively reasonable and does not violate an inmate's clearly established federal rights. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) (citations omitted). An official may be held personally liable, however, in a civil rights action if he knew or should have known that he was violating a prisoner's clearly-established federal rights. *Id.* A right is clearly established if "it would be clear to a reasonable [defendant] that his conduct was unlawful in the situation he confronted." *Saucier v. Katz*, 533 U.S. 194, 202 (2001) *overruled in part by Pearson v. Callahan*, 55 U.S. 223 (2009). The immunity extends only to money damages against defendants, and not to requests for injunctive relief.

### **What is a statute of limitations?**

A statute of limitations is a law that sets a particular period of time within which a particular claim must be filed. It begins to run when the injury occurs or the constitutional right is violated. The statute of limitations for § 1983 and *Bivens* actions in Minnesota is six years. Minn. Stat. § 541.05, Subd. 1(10) (six-year statute of limitations period for personal injury actions in Minnesota). Your complaint must set



forth the dates on which the constitutional rights violations occurred. The Court will determine whether the alleged violations occurred within the limitations period; if not, the case will be dismissed.

**What is jurisdiction, and how do I know which court has jurisdiction over my case?**

Jurisdiction means the authority of a court to hear and decide certain cases. The Court must have jurisdiction both over the subject matter of your lawsuit and over the persons or entities involved. Section 1983 and *Bivens* lawsuits fall within the federal court's jurisdiction to hear matters arising under the United States Constitution and federal laws or treaties.

The Court must also have jurisdiction over the persons or entities being sued. The basic requirement for personal jurisdiction in this Court is whether the defendant has minimum contacts with the State of Minnesota. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). The prisoner bears the burden of proving that the Court has personal jurisdiction over the defendants. *Epps v. Stewart Information Seros. Corp.*, 327 F.3d 642, 647 (8th Cir. 2003).

Supplemental jurisdiction allows the Court to hear state law claims when they are "so related" to the federal claims "that they form part of the same case or controversy under Article III of the United States Constitution. . . ." 28 U.S.C. § 1367. However, if a plaintiff's federal claims are dismissed, the Court may, and usually will, decline to exercise supplemental jurisdiction over a plaintiff's state law claims. 28 U.S.C. § 1367(c)(3).



## CHAPTER THREE: STARTING A CIVIL RIGHTS LAWSUIT

### How do I begin a civil rights lawsuit in federal court?

To begin a lawsuit, you must submit the following to the Court:

1. The original (signed) Civil Rights Complaint;
2. A completed Civil Cover Sheet (form JS-44); and
3. **Either** pay \$400.00 (\$350.00 filing fee and \$50.00 administrative fee) **OR** submit a fully completed Application to Proceed In Forma Pauperis (form AO 240 “IFP Application”) **and** the initial partial filing fee, prescribed by 28 U.S.C. § 1915(b)(1).

Copies of the forms identified above are available in the appendix to this Guidebook.

Checks are payable to “Clerk, U.S. District Court.”

Mail your submissions to the address provided in Chapter One of this Guidebook.

### How do I write a complaint?

Local Rule 9.3 requires you to use the Court’s complaint form for your civil rights lawsuit. A copy of the form is available in the appendix to this Guidebook. To complete the form, simply follow the instructions on the form to fill in the blanks. Below are some additional tips for writing your complaint.

### Does it matter whether I name defendants in their official or individual capacities?

Lawsuits against state officials in their official capacities are treated as suits against the state. *Hafer v. Malo*, 502 U.S. 21, 27 (1991). Lawsuits against state actors “acting in their official capacities” are barred by the Eleventh Amendment of the United



States Constitution. However, state officials can be sued in their official capacities for injunctive relief, pursuant to *Ex Parte Young*, 209 U.S. 123 (1908).

On the other hand, individual capacity suits “seek to impose personal liability upon a governmental official for actions he takes under color of state law.” *Kentucky v. Graham*, 473 U.S. 159, 165 (1985). Individual capacity lawsuits against state actors are not barred by the Eleventh Amendment.

When a plaintiff seeks damages against a state official and does not identify whether the official is sued in his or her individual or official capacity, the Court construes the complaint as against the official in his or her official capacity only, and the claim (for money damages) will be barred by the Eleventh Amendment. See *Johnson v. Outboard Marine Corp.*, 172 F.3d 531, 535 (8th Cir. 1999). If a prisoner wants to sue an individual in his or her individual capacity, he or she must expressly and unambiguously say so in the complaint. *Id.*

### **How do I organize the facts in my complaint?**

It is very important to present the facts that support your legal claims in a manner that the judge can easily follow. The facts should be stated in simple complete sentences that are easy to read. Normally, a paragraph in the Statement of Claim section of a complaint consists of one sentence that states an important fact that supports your claim. You should number each paragraph of the complaint, so it can easily be referred to in later court documents. You must state the facts regarding each



defendant's conduct that you allege violated your rights, and describe, as best you can, which law or rights were violated.

### **How much detail should I include in the complaint?**

Rule 8(a) of the Federal Rules of Civil Procedure states that a complaint only needs to contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Therefore, you should include enough detail so the judge and the defendants can clearly understand what happened, how you were injured, and why you believe that you are entitled to a remedy. You do not need to state every bit of detail that you can remember, but you must provide some description of how each defendant violated the law.

You must include facts to support your legal conclusions. Legal conclusions alone will not suffice. For example, "I sold the defendant my car and he never paid me what he promised" is a factual allegation, but "the defendant breached a contract with me" is a legal conclusion.

### **What types of claims are commonly alleged in prisoner civil rights actions?**

To bring a civil rights claim, you need to understand your rights. The following is a list of the types of claims typically brought in civil rights actions, and some of the important Supreme Court and Eighth Circuit Court of Appeals cases regarding those rights:

- claims regarding prison conditions that cause harm to health or safety, brought under the Eighth Amendment ban against cruel and unusual punishment:



*Farmer v. Brennan*, 511 U.S. 825, 834 (1994); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976);

- excessive force claims brought under the Eighth Amendment ban against cruel and unusual punishment: *Farmer v. Brennan*, 511 U.S. 825, 834 (1994); *Hudson v. McMillian*, 503 U.S. 1 (1992); *Wilkins v. Gaddy*, 559 U.S. 34 (2010);
- claims regarding denial of access to the courts, brought under the First Amendment right to petition the Government for a redress of grievances: *Bounds v. Smith*, 430 U.S. 817, 821, 828 (1977); *Lewis v. Casey*, 518 U.S. 343, (1996);
- claims regarding the right to free exercise of religion, brought under the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc-1(a); *Van Wyhe v. Reisch*, 581 F.3d 639, 648-49 (8th Cir. 2009);
- discrimination claims brought under Title II of the Americans with Disabilities Act; 42 U.S.C. § 12112(a); 42 U.S.C. § 12131(2); *Pennsylvania Dept. of Corrections v. Yeskey*, 524 U.S. 206, 211 (1998); *Mason v. Correctional Medical Servs., Inc.*, 559 F.3d 880, 886 (8th Cir. 2009); *see also Alsbrook v. Maumelle*, 184 F.3d 999, 1010-11 (8th Cir. 1999).

This list is not exhaustive.

### **What is a request for relief?**

In the “Relief” section of the complaint, you tell the Court what you want it to award to you if you win your lawsuit. For example, you can request that the judge enter judgment in your favor ordering the defendant to pay you money, or require the defendant to do something (or stop doing something).

### **Can I file attachments with my complaint?**

If you have documents that support your complaint, you can, *but do not have to*, attach copies of them to the complaint as exhibits. The purpose of an exhibit generally is to present proof or clarification of an allegation in your complaint. If you decide to



attach exhibits to your complaint, then you must refer to that exhibit or otherwise explain why you are attaching the exhibit to the complaint. You should label each separate exhibit, and number the pages of each exhibit, so they can easily be referred to in future proceedings. Do not attach copies of any documents that you do not discuss in your complaint.

### **Why do I have to sign the complaint?**

Rule 11(a) of the Federal Rules of Civil Procedure requires that every document filed in a lawsuit be signed by the plaintiff(s) if he is not represented by a lawyer. At the very end of the complaint, the plaintiff(s) must sign his name and provide his mailing address and telephone number. The purpose of including the address and telephone number is to ensure that the Court and the defendants have a way to contact you. You must promptly notify the Clerk's Office and all parties if your address changes while your lawsuit is pending.

### **What are the consequences if something in the complaint is not true?**

Rule 11(b) of the Federal Rules of Civil Procedure states that, by signing the complaint, you are promising to the Court that:

- You are not filing the complaint for any improper purpose, such as to harass the defendant or to force the defendant to spend unnecessary legal fees;
- The legal arguments you make in the complaint are justified by existing law, or you are making an argument in good faith to extend or change existing law; and
- You have evidence to support the facts stated in your complaint or you are likely to have that evidence after a reasonable opportunity for further investigation or discovery.



If the presiding judge later finds that any of these representations was not true – for instance, that you filed the complaint to harass the defendant or that you had no evidence to support the facts you alleged in the complaint – it can impose sanctions on you. For example, the judge might order you to pay a fine or the defendant’s attorney’s fees. It can also dismiss your complaint or impose any other sanction that it finds necessary. *See* Federal Rule of Civil Procedure 11(c) for more information about sanctions. Given the risk of Rule 11 sanctions, it is very important that you investigate the facts and the law *before* you file your complaint.

### **What is a civil cover sheet?**

The civil cover sheet is a form provided by the Clerk’s Office and used to gather information about the nature of your lawsuit. The civil cover sheet is included in the appendix to this Guidebook. You must file a civil cover sheet when you file an original complaint.

### **How can I file the lawsuit if I cannot afford the filing fee?**

There is a \$400.00 fee to file a civil action in a federal district court (\$350.00 filing fee and \$50.00 administrative fee). If you cannot afford to pay this fee in its entirety at the outset of your case, you can apply to proceed without prepaying the entire amount (which is called proceeding in forma pauperis) by completing the AO239 form “Application to Proceed in District Court Without Prepaying Fees or Costs” (also called “IFP Application”). This form is included in the appendix to this Guidebook. The last



page of the form must be completed by an authorized prison official, who must provide certified trust account information, which the Court will use to determine your initial partial filing fee and subsequent payments. 28 U.S.C. § 1915(b). If your application is granted, you will have “IFP” status. Being granted IFP status allows you to pay the \$350.00 filing fee over time, waives the \$50.00 administrative fee, and, if your case is not summarily dismissed upon initial review as described below, requires the U.S. Marshals Service to serve your summons and complaint on the defendants at no cost to you. You may also be able to receive free copies of certain transcripts, but they are not routinely provided. Be aware that you will not be provided free copies of other documents in your case. *See* 28 U.S.C. § 1915(c). Always keep copies for yourself of everything you send to the Court and other parties in the litigation.

Under 28 U.S.C. § 1915(b)(1), a prisoner who files a civil action or an appeal and is granted IFP status is still required to pay the entire filing fee (\$350.00) in partial payments. The Court must assess and collect, as an initial partial payment, 20 percent of the greater of: (A) the average monthly deposits to the prisoner’s account; or (B) the average monthly balance in the prisoner’s account for the 6-month period immediately preceding the filing of the complaint or notice of appeal. After the initial partial filing fee is paid, the prison will be directed to make monthly payments to the Court from the prisoner’s trust fund account in the amount of 20 percent of the preceding month’s income credited to the prisoner’s account. The agency having custody of the prisoner must make these monthly payments each time the amount in the account exceeds \$10, until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2).



Even if you pay the full \$400.00 fee at the outset of your case, your complaint will be screened pursuant to 28 U.S.C. § 1915A, and your case will be dismissed if the Court finds that your complaint does not state a proper claim. See Chapter 5 below for information on what to do after the defendants have been served.

### **Will the Court appoint counsel to represent me?**

Unlike criminal defendants, prisoners have no constitutional right to counsel in a civil action. *Lassiter v. Dept. of Social Servs.*, 452 U.S. 18, 25 (1981). Whether a court appoints counsel for indigent litigants is within the court's discretion. *Rayes v. Johnson*, 969 F.2d 700, 702 (8th Cir. 1992). If you believe there are special circumstances warranting appointment of counsel in your case, you can file a motion for appointment of counsel.

The federal court has no authority to require attorneys to represent indigent litigants in civil cases, but may request that an attorney do so. See 28 U.S.C. § 1915(e)(1); *Mallard v. U.S. Dist. Ct. for Southern Dist. of Iowa*, 490 U.S. 296, 298 (1989). In other words, when a court appoints an attorney, it can only do so if the attorney voluntarily accepts the assignment. *Mallard*, 490 U.S. at 298. The court has no funds to pay for attorney's fees in civil matters. Therefore, it is often difficult to find attorneys willing to work on a case without payment, especially in prisoner cases, where contact with the client is especially difficult. For these reasons, prisoners should attempt to procure their own counsel on a contingency or other basis, if at all possible. Prisoners should not expect court-appointed counsel; they must be prepared to represent themselves.



## **CHAPTER FOUR: WHAT HAPPENS AFTER THE COMPLAINT IS FILED**

### **What does the Court do with my case after I file my complaint?**

After your complaint is filed, a magistrate judge will review your case pursuant to 28 U.S.C. § 1915A, in order to determine whether the case, or certain of the claims or defendants, should be dismissed. If your case, or part of your case, is allowed to go forward, the defendants must be served with a summons and the complaint. If the court dismisses your case in its entirety, the case is over and the defendants will not be served. More information on service of process is provided below.

### **Under what circumstances will the Court dismiss my complaint before defendants are served with the summons and complaint?**

When a prisoner asks for IFP status or seeks relief against a governmental entity or employee, the Court must authorize the lawsuit to proceed before defendants can be served. Under the Prison Litigation Reform Act of 1995, the Court reviews each complaint brought against a governmental entity or employee to determine whether summary dismissal is appropriate. 28 U.S.C. § 1915A. The Court is required to dismiss a complaint or any portion thereof which states a claim that is frivolous or malicious, that fails to state a claim upon which relief can be granted, or that seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A. Therefore, it is important to consider the validity of your claims prior to filing a civil rights complaint. If your complaint is dismissed pursuant to § 1915A, you will still be liable for the unpaid balance of the \$400.00 filing fee. Also, in the event the Court determines that



three or more of a prisoner's lawsuits are malicious or fail to state legally cognizable claims, the prisoner will not be allowed to file a new civil action or appeal a judgment in a civil action in forma pauperis (without paying the full filing fee upfront). 28 U.S.C. § 1915(g). The only exception to this is if the prisoner can show that he is in "imminent danger of serious physical injury." *Id.*

Due to the number of cases filed with the Court, the review process may take several weeks. Prisoners cannot serve defendants, pursue discovery, or request entry of a default judgment before their complaint has been reviewed. The magistrate judge may issue an order allowing the lawsuit to proceed and the defendants to be served but still has the authority to dismiss claims at a later time.

### **How do I serve my summons and complaint if I am proceeding IFP?**

As discussed above, proceeding IFP means filing a case as a person who cannot afford to pay the full \$400.00 filing fee when the case is filed. If the magistrate judge approves your application to proceed IFP, the Clerk's Office will send you a summons and U.S. Marshals Service forms to complete. The Court cannot provide you assistance in obtaining the defendants' addresses for service of process, which you will need to complete the U.S. Marshals Service form. Once you complete the forms and return them to the Clerk's Office, the U.S. Marshals Service will serve the summons and complaint on the defendant(s) at no cost to you.

### **How do I serve my summons and complaint if I am not proceeding IFP?**



If you did not apply for IFP status or were not financially eligible to proceed IFP but your complaint survived preliminary review, the Clerk's Office will send you a summons, and you must make your own arrangements to effect proper service of a summons and the complaint on all defendants in accordance with Rule 4 of the Federal Rules of Civil Procedure.

### **How do I get the defendant to waive service of the summons and complaint?**

If a defendant waives service, it means that he or she agrees to give up the right to insist on formal service by hand and will accept informal service by mail. Even with a waiver of service, you still must prove that the defendant actually received the complaint and other required documents. So, you need the defendant to sign and send back to you a form saying that the defendant waived formal service and received a copy of the documents in the mail. If you did not apply for IFP status or were not financially eligible to proceed IFP, but your complaint survived preliminary review, the Clerk's Office will send you a waiver of service form upon request.

Read Rule 4 of the Federal Rules of Civil Procedure very carefully when sending a waiver of service to a defendant. Rule 4(d) of the Federal Rules of Civil Procedure sets forth the requirements for requesting a waiver of service. Rule 4(i) and (j) explain that the United States government, its agencies, corporations, officers or employees, and a state or local government cannot waive service and must be served in accordance with those provisions in Rule 4.



You should send the waiver of service form to the defendant(s) by first-class mail or other reliable means, along with a copy of the complaint and summons, plus an extra copy of the request to waive service and a self-addressed, stamped envelope with sufficient postage to return the waiver of service to you. In specifying a due date on the form, you must give the defendant a reasonable amount of time to return the waiver of service to you, which must be at least 30 days from the date the request is sent (or 60 days if the defendant is outside the United States).

If a defendant returns the signed waiver of service to you, service on that defendant is complete. However, you must file the defendant's signed waiver of service with the Clerk's Office. Be sure to save a copy for your own files.

If the defendant does not return the waiver of service to you, you need to serve that defendant in the manner explained in Rule 4 of the Federal Rules of Civil Procedure.

### **How and when can I amend my complaint?**

Under [Rule 15\(a\)\(1\)\(A\) of the Federal Rules of Civil Procedure](#), you can amend your complaint one time within 21 days after serving the complaint on the defendant. [Under Rule 15\(a\)\(1\)\(B\) of the Federal Rules of Civil Procedure](#), if you have not already amended your complaint, you may do so within 21 days after the defendant files an answer, or the defendant files a Rule 12(b), (e) or (f) motion to dismiss, whichever is earlier. You do not need permission from the presiding judge or from the defendant to amend the complaint once under either Rule 15(a)(1)(A) or 15(a)(1)(B).



If you want to amend your complaint more than 21 days after the defendant answers or files a motion to dismiss or amend it a second time, Rule 15(a)(2) lets you do this in one of two ways. First, you can file the amended complaint if you get written permission from the defendant(s). When you file the amended complaint, you must also file the document showing that you have written permission from the defendant(s) to amend your complaint.

Second, if the defendant(s) will not agree to let you amend your complaint, you must file a motion in compliance with [Local Rule 15.1](#) to get the presiding judge's permission to amend your complaint. More information about making and filing motions can be found under the heading "What is a motion, and how do I write or respond to one?"

In the motion to amend your complaint, you must explain why you need to amend your complaint. Under Local Rule 15.1, you must include: (1) a copy of the amended complaint you want to file; and (2) a redline copy comparing your proposed amended complaint to the original complaint. A redline is simply a document that shows how the original complaint was changed by lining through deleted language and underlining the new language. If the Court grants your motion, you will need to serve a copy of the amended complaint on each defendant, which you should do by mailing a copy to each defendant's attorney. You will also have to complete, file, and serve a certificate of service by mail form, which is included in the appendix of this Guidebook.

When you file an amended complaint, Local Rule 15.1 requires you to file an entirely new complaint, because an amended complaint completely replaces the



original complaint. The caption of your amended complaint should say "FIRST AMENDED COMPLAINT." If you make a motion to amend your complaint a second time, the caption should say "SECOND AMENDED COMPLAINT," and so forth.

## **CHAPTER FIVE: MOTION PRACTICE AND DISCOVERY**

### **What will the defendants do after the defendants have been served?**

After the defendants have been served with the summons and complaint, the defendants will file either a motion to dismiss the complaint under Federal Rule of Civil Procedure 12, or they will answer the complaint. Do not file a motion for default judgment under Federal Rule of Civil Procedure 55 if a defendant files a motion to dismiss instead of an answer; they are permitted to do so by the rules. If the Court denies the Rule 12 motion to dismiss, it will advise the defendant(s) when the answer is due. If the defendants in your lawsuit claim they are entitled to qualified immunity against your claims, then discovery normally will not proceed until the threshold issue of qualified immunity is determined by the Court. *Harlow v. Fitzgerald*, 457 U.S. 800, 817-818 (1982). Discovery may otherwise begin after the defendants file an answer or motion to dismiss, unless the judge has set a different discovery schedule. Once the defendant(s) has filed an answer, the Court will usually issue a pretrial scheduling order. You should pay close attention to this order, because it will contain the deadlines for discovery and for filing and responding to motions.

### **What is a motion, and how do I write or respond to one?**



Filing and serving a complaint is the first step in a lawsuit. After that, whenever you want the Court to do something, you need to file a motion. Basically, a motion is a formal request made to the presiding judge. Rule 7(b) of the Federal Rules of Civil Procedure requires all motions to be made in writing, except for motions made during a hearing or trial.

Usually the following things occur when a motion is filed. First, one party files a motion explaining what it wants the presiding judge to do and why the judge should do it. The party who files a motion is referred to as the “moving party.” Next, the opposing party files an opposition brief explaining why it believes the judge should not grant the motion. Then, for motions seeking dismissal or summary judgment, the moving party may file a reply brief in which it responds to the arguments made in the opposition brief. At that point, neither party can file any more documents about the motion without first getting permission from the presiding judge. Once all of the papers relating to the motion are filed, the judge can decide the motion based solely on the arguments in the papers. For more information about dispositive motions, see “What is a dispositive motion?” below.

### **What are the requirements for motion papers?**

Both the Federal Rules of Civil Procedure and this Court’s Local Rules have requirements for filing motion papers. In addition to requiring most motions to be in writing, Rule 7(b) of the Federal Rules of Civil Procedure states that all of the Court’s rules about captions and the format of documents apply to motions. *See* Local Rule 5.2.



Rule 11 of the Federal Rules of Civil Procedure requires parties to sign their motions. Rule 11 also requires parties not to file any motions that are based on facts that they know to be false or which they did not fairly investigate, or motions that have no reasonable legal basis. You should read Rule 11 before signing and filing any motion.

Local Rule 7.1 gives a detailed set of requirements for serving, filing, and responding to motions. Typically, in prisoner litigation, the magistrate judge will issue an order telling the parties when responses and replies to motions are due. Most motions in prisoner civil rights cases are decided without a hearing. If the Court has not issued an order containing the deadlines for making and responding to motions, you will need to contact the judge's chambers to obtain a hearing date or filing instructions. Local Rule 7.1 states how many days after the motion is filed, the responses to the motion are due – 7 days for nondispositive motion responses, and 21 days for dispositive motion responses. The Court will likely not hold the hearing, but the hearing date will be used to calculate the filing deadlines. Federal Rule of Civil Procedure 6 provides directions on how to count the days when something is due.

Under Local Rule 7.1 (b)-(c), all motions – whether dispositive or non-dispositive – must be accompanied by (1) notice of hearing; (2) motion; (3) memorandum of law; (4) affidavits and exhibits, if any; and (5) proposed order. Some of these requirements are explained in more detail below. In the appendix to this Guidebook, you will find notice of hearing, motion, and memorandum of law forms.

### **Are there different kinds of motions?**



Yes. Motions are broken into two types: “nondispositive” motions and “dispositive” motions. A dispositive motion seeks to end the case or a part of the case, and a district judge may refer such a motion to a magistrate judge to issue a Report and Recommendation. Section 1983 and *Bivens* lawsuits are often resolved by dispositive motions. Two common dispositive motions are motions to dismiss and motions for summary judgment. Post-trial or post-judgment motions are also treated as dispositive motions for purposes of Local Rule 7.1.

A nondispositive motion does not end the case or any part of the case. Typical nondispositive motions include motions to amend and motions to compel discovery.

### **What is a motion to dismiss?**

A motion to dismiss is brought under Rule 12 of the Federal Rules of Civil Procedure. For example, a motion to dismiss may be brought if the complaint does not state a claim upon which relief may be granted.

### **What is a motion for summary judgment?**

A motion for summary judgment is brought under Rule 56 of the Federal Rules of Civil Procedure. This motion is used to assert that there are no genuine issues of material fact for the court to resolve and that the Court may decide the undisputed issues as a matter of law.

To oppose a motion for summary judgment that challenges the merits of your claims, you should file a response outlining the important facts which support your opposition and cite any applicable law. You will need to support these facts by



submitting documentary evidence or affidavits; otherwise, summary judgment may be granted for the defendants.

### **What is a memorandum of law?**

A memorandum of law, sometimes called a brief, is a document where you provide legal arguments and authorities for whatever you are requesting that the Court do. A memorandum of law, either in support of or in opposition to a motion, should always apply the law to the particular facts of your case. A memorandum of law form is included in the appendix of this Guidebook.

Under Local Rule 7.1(f), all memoranda of law are limited to 12,000 words. If a reply memorandum of law is filed, the total number of words of both the original memorandum and the reply cannot exceed 12,000. A party may request additional words by writing a letter to the presiding judge. This letter, and any response to the letter, are limited to two pages and must be filed and served on the parties. Requests for permission to exceed the 12,000 word limit are not granted automatically. If you make such a request, you must clearly explain why your request should be granted. Pro se litigants may write their memoranda legibly by hand, or type their memoranda double-spaced, on 8 1/2 x 11 inch paper. See Local Rules 5.2 and 7.1(f), (h) for additional requirements concerning titles, captions, exhibits, footnotes, quotations, page numbering and margins.

When any memorandum of law is filed and served, it must be accompanied by a certification of compliance with the word count requirement of Local Rule 7.1(f). A



Word Count Certificate form is included in the forms appendix of this Guidebook. Additionally, each set of motion papers, or responses to motion papers, must be accompanied by a certificate of service. The certificate of service form is included in the appendix of this Guidebook.

### **What if I need more time to respond to a motion?**

Rule 6(b) of the Federal Rules of Civil Procedure allows the presiding judge to give a party extra time to respond to a motion if there is good reason. Under Rule 6(b), the presiding judge can grant extra time with or without a motion or notice to the other parties, if you make the request *before* the original deadline passes. If you wait until *after* the original deadline passes before asking for extra time, you must make a motion and show that excusable neglect caused you to miss the deadline. The presiding judge cannot extend the time for taking any action under Federal Rules of Civil Procedure 50(b) and (d), 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in each of those rules.

### **How do I serve motions, briefs and supporting documents?**

After the summons and complaint have been served, every time you file a document with the Court, you must mail a copy of that document to the lawyers for the defendants (or the defendants themselves if they are not represented). You also must file a "certificate of service," which shows the Court that you mailed the document to the defendants' lawyers (or the defendants themselves if they are not represented). A



certificate of service form is included in the appendix to this Guidebook. *See* Rule 5 of the Federal Rules of Civil Procedure for more information.

### **What is discovery?**

The purpose of discovery is to enable parties to obtain the evidence necessary to evaluate and resolve the case. All relevant, non-privileged evidence is subject to discovery. The Court has broad discretion to limit the frequency and extent of any discovery method. Fed. R. Civ. P. 16(b) and 26(b)(2).

The main discovery methods utilized in prisoner litigation are written interrogatories (*see* Fed. R. Civ. P. 33), production of documents (*see* Fed. R. Civ. P. 34), and requests for admission (*see* Fed. R. Civ. P. 36). An interrogatory is a written question served by one party to another party, who must answer under oath and in writing. Interrogatories are limited to no more than 25, including subparts. A written document request is used to compel the other party to produce documents, without the necessity of serving a subpoena. A request for admission is the procedure whereby one party can request that the other party admit or deny the truth of any relevant fact or the genuineness of any relevant document.

Interrogatories, documents requests, and requests for admission can only be served on the parties to the lawsuit, namely the plaintiff and defendants. If evidence is held by a non-party, prisoners may request the items from the third party by informal request or by subpoena duces tecum. *See* Federal Rule of Civil Procedure 45 for more information on subpoena duces tecum.



There is a certain format that should be used to respond to discovery requests. When you (or the other parties) respond to interrogatories, document requests, and requests for admission, you should first write out the request you are responding to, then write your objection or answer to the request.

**What happens if a party does not comply with a proper request for discovery, or if some other discovery dispute arises?**

First, you should try to resolve the dispute on your own. You can attempt to resolve the discovery dispute by calling or writing to the defendant's attorney and proposing a solution to the dispute. If you are unable to resolve the dispute between the parties, you may bring a discovery motion.

**What is a protective order?**

A protective order is a Court order which protects a person or party from having to produce evidence that it should not have to produce. For example, a protective order may say that you do not have to respond to a particular discovery request that is overbroad or burdensome. If you receive a discovery request and believe the discovery sought is inappropriate, you may file a motion for a protective order. Likewise, if you make a discovery request that the other party believes is too broad or asks for confidential information, your opponent may make a motion for a protective order. The Federal Rules of Civil Procedure provide for protective orders under Rule 26(c).

A motion for a protective order must include:



- A certification that you have tried to confer in good faith with the other parties to resolve the dispute without help from the judge or that you met together but were still unable to resolve it;
- An explanation of the dispute and what you want the judge to do; and
- An explanation of the facts and/or law that make it appropriate for the judge to grant your motion.

### **What is a motion to compel?**

A motion to compel is a motion asking the judge to order a person to make disclosures, or respond to a discovery request, or provide more detailed disclosures or a more detailed response to a discovery request. Rule 37 of the Federal Rules of Civil Procedure explains the requirements for motions to compel. Local Rule 37.1 requires you to attach a certification to any discovery motion, stating that you attempted to resolve the dispute with the other parties in good faith before bringing a discovery motion.

### **Are there any special procedures for bringing a motion to compel?**

Under Federal Rule of Civil Procedure 37(a)(1), a motion to compel a *party* to make disclosures or to respond to discovery must be filed in the court where the lawsuit is pending. A motion to compel a *non-party* to respond to discovery must be filed in the court in the district where the discovery is being taken, which is uncommon in prisoner litigation.

**Content:** A motion to compel must include:

- A certification that you have conferred in good faith, or tried to confer in good faith, with the other parties to resolve the dispute without help from the judge;



- An explanation of the dispute and what you want the judge to do;
- If the dispute involves discovery requests, you must include the complete text of each disputed discovery request immediately followed by the complete text of the objections or disputed responses to that request; and
- An explanation of the facts and/or law that make it appropriate for the judge to grant your motion.

### **What kinds of things will a judge do as a discovery sanction?**

If the judge determines that a party has violated a rule or order governing discovery, the judge may impose sanctions that are appropriate to address the problem. Federal Rule of Civil Procedure 37(b)(2) lists some of the types of sanctions that may be appropriate:

- An order resolving certain issues or facts in favor of the party who made the motion;
- An order refusing to allow the disobedient person to support certain claims or defenses or prohibiting that party from introducing certain evidence;
- An order striking certain documents or parts of documents from the case, staying the lawsuit until the order is obeyed, dismissing the lawsuit or any part of the lawsuit, or rendering a default judgment against the disobedient party; or
- An order holding the disobedient party in contempt of court for failing to obey an order, except an order to submit to a physical or mental examination.

## **CHAPTER SIX: POST-JUDGMENT MOTIONS AND APPEALS**

### **How do I file a post-judgment motion?**

Motions to alter or amend the judgment in your case must be filed within 28 days after entry of the judgment. *See* Federal Rule of Civil Procedure 59(e). Therefore, in order to file a timely motion under this rule, you must deliver the motion to the



prison or jail officials within 28 days of the date the judgment is entered. A motion seeking relief from a judgment or order may also be filed under Federal Rule of Civil Procedure 60 within a reasonable time or not more than one year from the entry of judgment. Typically, these motions are not granted unless the district court is presented with newly discovered evidence or committed clear error, or there is an intervening change in the controlling law. *See generally Jones v. Swanson*, 512 F.3d 1045, 1047-48 (8th Cir. 2008).

### **How and when do I file an appeal with the Eighth Circuit Court of Appeals?**

An appeal of your § 1983 action or *Bivens* claim must be filed within thirty (30) days of entry of the judgment, unless the United States or one of its agencies or officials is a party in the case, in which case the deadline is sixty (60) days.

The notice of appeal is timely if you deposit the notice in the prison legal mail system on or before the last day for filing. *See* Federal Rule of Appellate Procedure 4(c)(1). You can show that you made a timely filing by making a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must provide the date of deposit in the prison's mailing system and state that first-class postage has been prepaid. If there has been a motion filed in the district court after judgment was entered, this may affect the timing of the notice of appeal. In that case, you must review Federal Rule of Appellate Procedure 4 to determine the proper deadline. It is your duty to order transcripts of proceedings from the court reporter when the transcripts are not yet on file if needed for your appeal. Alternatively, you



should file a certificate stating that no transcript will be ordered. *See* Federal Rule of Appellate Procedure 10(b). The district court will file, process, and transmit your notice of appeal to the Eighth Circuit Court of Appeals. *See* Federal Rule of Appellate Procedure 11.

### **Is there a filing fee on appeal, and what if I cannot afford it?**

There is a filing fee of \$505.00 for an appeal. As with the filing fee in the district court, if you cannot afford to pay this fee in its entirety at the outset of your appeal, you can apply to proceed without prepaying the entire amount (which is called proceeding in forma pauperis or “IFP”) by completing the AO239 form “Application to Proceed in District Court Without Prepaying Fees or Costs.” The last page of the form must be completed by an authorized prison official, who must provide certified trust account information, which the Court will use to determine your initial partial filing fee and subsequent payments. *See* 28 U.S.C. § 1915(b). Even though you are seeking IFP status on appeal, you should file this application in the district court. If your application is granted, you will have IFP status on appeal. This means you will not be required to pay the full \$505.00 filing fee at the outset of the appeal. *See* 28 U.S.C. § 1915.

Under Federal Rule of Appellate Procedure 24(a)(5), if the district judge denies your motion to proceed IFP on appeal, you may file a motion to proceed IFP in the Eighth Circuit Court of Appeals within 30 days after service of this Court’s notice that it denied your application to proceed IFP on appeal.



**What if I want the court to appoint counsel to represent me on appeal?**

Requests for appointment of counsel on appeal should be filed directly with the Eighth Circuit Court of Appeals. Any other questions you have about your appeal should be directed to the Eighth Circuit Court of Appeals.



## **APPENDIX OF FORMS**

The following forms appear in the appendix of this Guidebook:

- ❖ Civil Rights Complaint under 42 U.S.C. § 1983
- ❖ Civil Cover Sheet
- ❖ Application to Proceed in District Court Without Prepaying Fees or Costs (AO 239)
- ❖ Motion
- ❖ Memorandum of law
- ❖ LR 7.1 Word Count Certificate
- ❖ Certificate of Service by Mail
- ❖ Notice of Appeal



## Prisoner Civil Rights Complaint

### Instructions

The following instructions are offered to assist prisoners who intend to file an action in federal court. Failure to comply with these instructions will cause delays in handling your case and could even cause the case to be dismissed.

1. The complaint must be legible – printed or typewritten – and all documents must be signed by all the plaintiffs. Answer each question in the complaint form.
2. The complaint should clearly identify each individual defendant who is being sued and include a brief description of the facts giving rise to the claim(s) against each individual defendant. All of the claims described in the complaint should arise out of the same set of facts. (Claims arising out of different sets of facts should be presented in separate actions.)
3. The event(s) giving rise to the claim(s) must have occurred in Minnesota and/or the named defendant(s) must reside in Minnesota.
4. The complaint should clearly describe the relief that is requested.
  - a. Injunctive relief and/or money damages may be available under 42 U.S.C. § 1983 for state prisoners who have been deprived of a federal constitutional right by a person acting under color of state law.
  - b. Similar relief may be available under *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971) for federal prisoners who have been deprived of a federal constitutional right by a person acting under color of federal law.
  - c. A prisoner CANNOT challenge the fact or duration of his or her confinement in a civil rights action. A prisoner can challenge a conviction, an original sentence, or any action extending the time that must be served in prison ONLY in a habeas corpus proceeding.
5. The complaint must be signed by the prisoner making the claim, under penalty of perjury. Any false statement of a material fact may result in criminal prosecution for perjury.
6. To start a prisoner civil rights action, a prisoner must submit the following documents:
  - (a) Complete the Court's Civil Rights Complaint form;
  - (b) Complete the Civil Cover Sheet; and
  - (c) Pay **EITHER** the \$400.00 filing fee **OR** submit a completed Application to Proceed in District Court without Prepaying Fees or Costs (IFP application) form **AND** the initial partial filing fee required by 28 U.S.C. § 1915(b)(1).

7. When you have completed the form, send the signed original to the following address:

United States District Court, District of Minnesota Clerk's Office  
U.S. Courthouse  
300 South Fourth Street, Suite 202  
Minneapolis, MN 55415

(612) 664-5000

8. If you are paying the full \$400.00 filing fee you must:
  - a. Complete the summons you receive from the Clerk's Office after your case is opened; and
  - b. Make your own arrangements for serving a copy of the summons and complaint on each defendant. See Rule 4 of the Federal Rules of Procedure for more information.
9. For more information on how to proceed in Court in a prisoner civil rights case, consult the Court's Prisoner Civil Rights Litigation Guide. You can obtain a copy of this Guide by contacting the Clerk's Office at the contact information provided above.

---

---

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Plaintiff(s),

(Enter the full name(s) of ALL plaintiff(s)  
and prisoner number(s) in this action.)

vs.

Case No. \_\_\_\_\_  
(To be assigned by Clerk of District Court)

DEMAND FOR JURY TRIAL

YES\_\_\_\_ NO\_\_\_\_

Defendant(s).

(Enter the full name(s) of ALL defendants in  
this action. Please attach additional sheets  
if necessary).

**COMPLAINT FOR VIOLATION OF CIVIL RIGHTS UNDER**  
**42 U.S.C. § 1983**

I. PREVIOUS LAWSUITS

A. Have you begun other lawsuits in state or federal court dealing with the same facts involved

in this action or otherwise relating to your imprisonment in the last three years?

Yes

No

B. If you answer to (a) is “yes”, describe each lawsuit in the space below.

1. Parties to the previous lawsuit:

Plaintiffs:

Defendants:

2. Court (If federal court, name the district. If state court, name the state and county.):

3. Case Number:

4. Name of judge assigned to the case:

5. Cause of action (Cite the statute under which you filed and write a brief statement of the case):

6. Disposition or final determination of the case (for example, dismissed or appealed).

7. Approximate date of filing the lawsuit:

8. Approximate date of disposition or final determination of the lawsuit:

\*\*\*Attach a copy of the disposition or final determination of the lawsuit if it was filed in a court other than the U.S. District Court for the District of Minnesota.\*\*\*

**If there was more than one lawsuit, describe the additional lawsuits on a separate sheet of paper answering the same questions in the same order as above in Question 1(b). Label this information as Question 1(b).**

**Check here if additional sheets of paper are attached.**

## II. PRESENT PLACE OF CONFINEMENT

A. Is there a prisoner grievance procedure in the institution?

Yes

No

B. Did you present the facts relating to your complaint in the prisoner grievance procedure?

Yes

No

C. If you answered “yes” to question II.B.:

1. What steps did you take:

2. What was the result?

\*\*\*Attach a copy of the decision or disposition received from the prisoner grievance procedure.\*\*\*

D. If you answered “no” to question II.B., explain why you did not present the facts relating to your complaint in a prisoner grievance procedure.

## III. PARTIES

List your name, prisoner number, address and telephone number. Do the same for any additional plaintiffs. Attach an additional sheet of paper, if necessary.

A. Name of Plaintiff:

Prisoner Number

Address

Additional Plaintiffs:

Provide each defendant's full name, official position, and place of employment. Attach additional sheets of paper, if necessary.

B. Name:

Official Position:

Employer's Address:

Additional Defendants:

**NOTE: IF THERE ARE ADDITIONAL PLAINTIFFS OR DEFENDANTS, PLEASE PROVIDE THEIR NAMES AND ADDRESSES ON A SEPARATE SHEET OF PAPER.**

**Check here if additional sheets of paper are attached:**

**Please label the attached sheets of paper as II.A. for Plaintiffs and II.B. for Defendants.**

#### IV. STATEMENT OF THE CLAIM

Describe in the space provided below the basic facts of your claim. Describe how each individual defendant is personally involved, including dates, places and specific wrongful acts or omissions by each defendant. Each factual allegation should be provided in separately lettered paragraphs, beginning with letter A. Do not make any legal arguments or cite any cases or statutes.

A.

**Attach additional sheets of paper as necessary.**

**Check here if additional sheets of paper are attached:**

**Please label the attached sheets of paper to as Additional Facts and continue to letter the paragraphs consecutively.**

**V. REQUEST FOR RELIEF**

State briefly exactly what you want the Court to do for you. Do not make any legal arguments or cite any cases or statutes.

I (We) hereby certify under penalty of perjury that the above complaint is true to the best of my (our) information, knowledge, and belief.

Signed this                    day of                    , 20

Signature(s) of Plaintiff(s) \_\_\_\_\_  
\_\_\_\_\_

---

Note: All plaintiffs named in the caption of the complaint must date and sign the complaint and provide his/her mailing address and telephone number. Attach additional sheets of paper as necessary.

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

## DEFENDANTS

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | <b>PTF</b>                 | <b>DEF</b>                 |   | <b>PTF</b>                 | <b>DEF</b>                 |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

SIGNATURE OF ATTORNEY OF RECORD

### FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_

AMOUNT \_\_\_\_\_

APPLYING IFP \_\_\_\_\_

JUDGE \_\_\_\_\_

MAG. JUDGE \_\_\_\_\_

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

**UNITED STATES DISTRICT COURT**  
for the  
District of Minnesota

<i>Plaintiff/Petitioner</i> v.	)	
v.	)	Civil Action No.
<i>Defendant/Respondent</i>	)	

**APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS  
(Long Form)**

<b>Affidavit in Support of the Application</b>	<b>Instructions</b>
<p>I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested. I declare under penalty of perjury that the information below is true and understand that a false statement may result in a dismissal of my claims.</p> <p>Signed: _____</p>	<p>Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.</p> <p>Date: _____</p>

- For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly income amount during the past 12 months		Income amount expected next month	
	You	Spouse	You	Spouse
Employment	\$	\$	\$	\$
Self-employment	\$	\$	\$	\$
Income from real property <i>(such as rental income)</i>	\$	\$	\$	\$
Interest and dividends	\$	\$	\$	\$
Gifts	\$	\$	\$	\$
Alimony	\$	\$	\$	\$
Child support	\$	\$	\$	\$

AO 239 (01/09; Minn. Dist. Ct. MODIFIED 10/09) Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form)

Retirement (such as social security, pensions, annuities, insurance)	\$	\$	\$	\$
Disability (such as social security, insurance payments)	\$	\$	\$	\$
Unemployment payments	\$	\$	\$	\$
Public-assistance (such as welfare)	\$	\$	\$	\$
Other (specify):	\$	\$	\$	\$
<b>Total monthly income:</b>	\$	\$	\$	\$

2. List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$
			\$

4. How much cash do you and your spouse have? \$ \_\_\_\_\_

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
		\$	\$
		\$	\$
		\$	\$

If you are a prisoner, you must have an authorized prison official complete the Certificate of Authorized Prison Official provided on Page 6 of this application. The certificate must be filed with this application.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

<b>Assets owned by you or your spouse</b>	
Home ( <i>Value</i> )	\$
Other real estate ( <i>Value</i> )	\$
Motor vehicle #1 ( <i>Value</i> )	\$
Make and year:	
Model:	
Registration #:	
Motor vehicle #2 ( <i>Value</i> )	\$
Make and year:	
Model:	
Registration #:	
Other assets ( <i>Value</i> )	\$
Other assets ( <i>Value</i> )	\$

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

<b>Person owing you or your spouse money</b>	<b>Amount owed to you</b>	<b>Amount owed to your spouse</b>
	\$	\$
	\$	\$
	\$	\$

7. State the persons who rely on you or your spouse for support.

<b>Name (or, if under 18, initials only)</b>	<b>Relationship</b>	<b>Age</b>

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment <i>(including lot rented for mobile home)</i> Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No	\$	\$
Utilities <i>(electricity, heating fuel, water, sewer, and telephone)</i>	\$	\$
Home maintenance <i>(repairs and upkeep)</i>	\$	\$
Food	\$	\$
Clothing	\$	\$
Laundry and dry-cleaning	\$	\$
Medical and dental expenses	\$	\$
Transportation <i>(not including motor vehicle payments)</i>	\$	\$
Recreation, entertainment, newspapers, magazines, etc.	\$	\$
Insurance <i>(not deducted from wages or included in mortgage payments)</i>		
Homeowner's or renter's:	\$	\$
Life:	\$	\$
Health:	\$	\$
Motor vehicle:	\$	\$
Other:	\$	\$
Taxes <i>(not deducted from wages or included in mortgage payments) (specify):</i>	\$	\$
Installment payments		
Motor vehicle:	\$	\$
Credit card <i>(name):</i>	\$	\$
Department store <i>(name):</i>	\$	\$
Other:	\$	\$
Alimony, maintenance, and support paid to others	\$	\$

Regular expenses for operation of business, profession, or farm ( <i>attach detailed statement</i> )	\$	\$
Other ( <i>specify</i> ):	\$	\$
<b>Total monthly expenses:</b>	\$	\$

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes     No    If yes, describe on an attached sheet.

10. Have you paid — or will you be paying — an attorney any money for services in connection with this case, including the completion of this form?  Yes     No

If yes, how much? \$ \_\_\_\_\_

If yes, state the attorney's name, address, and telephone number:

11. Have you paid — or will you be paying — anyone other than an attorney (*such as a paralegal or a typist*) any money for services in connection with this case, including the completion of this form?  Yes     No

If yes, how much? \$ \_\_\_\_\_

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of these proceedings.

13. Identify the city and state of your legal residence.

Your daytime phone number: \_\_\_\_\_

Your age: \_\_\_\_\_ Your years of schooling: \_\_\_\_\_

\_\_\_\_\_

**Prisoners:** The following Certificate page *must* be completed by an authorized prison official and provided with this application.

The following Certificate of Authorized Prison Official must be completed and filed with a prisoner's Application to Proceed without Prepayment of Fees and Affidavit for all incarcerated applicants. See 28 U.S.C. § 1915(a)(2) (a prisoner who applies to proceed without prepayment of fees must provide a certified copy of the trust fund account statement "obtained from the appropriate official of each prison at which the prisoner is or was confined"). The information provided below will be used by the Court in determining the proper initial partial filing fee as defined under 28 U.S.C. § 1915(b).

**CERTIFICATE of AUTHORIZED PRISON OFFICIAL**

I, \_\_\_\_\_, certify that the incarcerated applicant  
\_\_\_\_\_ (name of applicant) has the sum of \$ \_\_\_\_\_ on account to  
his/her credit at \_\_\_\_\_ (name of institution). I further certify that the  
applicant named herein has the following securities to his/her credit:

\_\_\_\_\_  
\_\_\_\_\_.

I further certify that in the 6-month period immediately preceding the filing of the complaint/petition/motion or notice of appeal, the average monthly deposits to the applicant's trust fund prison account was \$ \_\_\_\_\_, and the average monthly balance in the prisoner's account was \$ \_\_\_\_\_.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF AUTHORIZED OFFICIAL

---

---

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Plaintiff(s),

vs.

Case No.

Defendant(s).

**MOTION TO/FOR**

---

The following party/parties:

in the above-named case hereby move(s) the United States District Court, District of Minnesota  
for an Order to:

because:

1.

2.

Said motion is based upon the attached Memorandum of Law,

and all of the files, records, and proceedings herein.

Signed this                    day of

Signature of Party \_\_\_\_\_

Mailing Address

Telephone Number

Note: All parties filing the motion must date and sign the Motion and provide his/her mailing address and telephone number. Attach additional sheets of paper as necessary. The motion must be served on each party, together with the notice of hearing, and any memorandum of law and accompanying documents.

---

---

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Plaintiff(s),

vs.

Case No.

Defendant(s).

**Memorandum of Law**

**In Support of or In Opposition to**

(Check "In Support of" if you are filing the motion and "In Opposition to" if you are opposing the Motion that was filed.)

---

(Name of Motion filed)

Provide below an explanation of why the Motion should be granted or denied. Your explanation should be provided in consecutively numbered paragraphs. If you run out of space, you may attach additional sheets of paper and continue to number your paragraphs.

1.

2.

Signed this                    day of

Signature of Party \_\_\_\_\_

Mailing Address

Telephone Number

Note: All parties filing the Memorandum of Law must date and sign the Memorandum and provide his/her mailing address and telephone number. Attach additional sheets of paper as necessary. The Memorandum of Law must be served on each party, together with the Notice of Hearing, Motion and other accompanying documents, if any.

---

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

**LR 7.1(f) & LR 72.2(d)  
CERTIFICATE OF COMPLIANCE**

Plaintiff(s)

v.

Case Number:

Defendant(s)

---

I, *[name of filer]*, certify that the

Memorandum titled: \_\_\_\_\_  
complies with Local Rule 7.1(f).

or

Objection or Response to the Magistrate Judge's Ruling complies with Local Rule 72.2(d).

I further certify that, in preparation of the above document, I:

Used the following word processing program and version: \_\_\_\_\_  
and that this word processing program has been applied specifically to include all text,  
including headings, footnotes, and quotations in the following word count.

or

Counted the words in the document.

I further certify that the above document contains the following number of words: \_\_\_\_\_

Date: \_\_\_\_\_

*s/* \_\_\_\_\_  
*Name*

*Address 1*

*Address 2*

*Phone*

*Email*

*Bar ID*

---

---

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Plaintiff(s),

**CERTIFICATE OF  
SERVICE FOR  
SERVICE BY MAIL**

vs.

Case No.

Defendant(s).

(Enter the full name(s) of ALL plaintiffs  
and defendants in this lawsuit. Please  
attach additional pages, if necessary.)

I hereby certify that on \_\_\_\_\_ (mm/dd/yyyy), I caused the following  
documents: *[List the documents you are going to file and serve.]*

*[Check the box, below, that applies to how you served the above documents.]*

- to be filed electronically with the Clerk of Court through ECF and/or
- that I caused a copy of the foregoing documents (and the notice of electronic filing, if filed electronically) to be mailed by first class mail, postage paid, to the following: *[List names and addresses of those served by U.S. Mail.]*

Date:

s/

---

**Signature of filing party**

---

Filer's Typed Name

---

---

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Plaintiff(s),

vs.

Case No.

Defendant(s).

**NOTICE OF APPEAL**

Pursuant to Fed. R. App. P. 3(c)(1) and 4(a), notice is hereby given that the following parties  
(provide the names of all parties who are filing an appeal):

in the above-named case appeal to the United States Court of Appeals for the Eighth Circuit.

The above-named parties appeal from the \_\_\_\_\_ (indicate whether the  
appeal is from a *judgment* or an *order* of the District Court) of the U.S. District Court for the  
District of Minnesota that was entered on \_\_\_\_\_ (date judgment or order was  
entered) that:

(If the appeal is from an *order*, provide brief explanation, below, of the District Court's decision in the order. If you are appealing only a portion of the judgment or order, indicate below which part of the judgment or order you are appealing).

Signed this                      day of

Signature of Party \_\_\_\_\_

Mailing Address

Telephone Number

Note: All parties filing the appeal must date and sign the Notice of Appeal and provide his/her mailing address and telephone number, EXCEPT that a signer of a pro se notice of appeal may sign for his/her spouse and minor children if they are parties to the case. Fed. R. App. P. 3(c)(2). Attach additional sheets of paper as necessary.