

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

**HOW TO FILE YOUR CIVIL RIGHTS CASE UNDER 42 U.S.C. § 1983
(Instructions for Prisoner's Complaint)**

The Western District's web site at www.nywd.uscourts.gov contains copies of many of the Court's forms and other useful information.

IMPORTANT: This packet includes the civil rights complaint forms and additional materials you have requested. Although you are not required to submit your complaint on the complaint form, **you must provide all the information requested on that form.** If you choose not to use the official form, **be sure that you provide all the information that is requested on the official form and that you enclose the proper number of correctly filled out supporting documents.** If your papers are not properly completed, your papers will be returned to you for correction of any deficiencies.

Please be aware that pursuant to the conversion of Federal Courts to electronic filing, all material filed in this Court is available for review via the INTERNET to anyone who has a PACER account. Please take this into consideration in the manner in which you file your case.

Based on the mandates of 28 U.S.C. §§ 1915 and 1915A, the Court will conduct an initial review of any complaint of a prisoner who either is seeking *in forma pauperis* status under § 1915 or who is suing a governmental entity, officer or employee. Because until this review is conducted, it is not certain that all of your claims against all of your defendants will remain when the Court directs service of your complaint, the Court will not send you U.S. Marshal forms and summons forms at this time.

Additionally, based on its review of the complaint, the Court may dismiss the claims in whole or in part and it may also require you to file an amended complaint. Therefore, you should wait until the initial review of the complaint is completed and you know which complaint will be going forward and how many copies of the complaint will be needed before you make more than one set of copies of your papers. (You should keep for your own records one copy of the papers you send to the Court.)

You will be sent the correct number of U.S. Marshal and summons forms when the Court directs service of the complaint. At that time, you should complete the forms and return them to the Court, together with the appropriate number of exact copies of your complaint, so that the U.S. Marshal may serve your summons and complaint on the defendants.

Your new action will be accepted for filing if your papers include the following:

- (1) one completed and signed complaint form,
- (2) one signed Authorization, together with a completed and signed application to proceed *in forma pauperis* (in which the prison certification section has been filled in and signed by the appropriate person in your correctional facility), and
- (3) one completed and signed Civil Cover Sheet.

Follow the instructions below for completing each form and gathering the documents together for filing. Note that these instructions also deal with other issues which will arise in your case.

I. COMPLAINT FORM

1. To start an action, you must file a complaint which contains an original signature. You should also keep an exact copy of the complaint for your records.

After the Court has determined that your case is going forward and against whom it is going forward, you will be required to provide an exact copy of the complaint which is going forward (note that it may be an amended complaint at that point) for each defendant against whom the case is proceeding, and one extra copy. For example, if the case is going forward against two defendants, you must file the original and three copies of the complaint (one original, plus a copy for each of the two defendants plus one extra copy). All copies of the complaint must be identical to the original.

Do not prepare these copies for the defendants until the Court advises you of the form of the complaint which is going forward and the number of copies which will be needed.

2. Your complaint must be legibly handwritten or typewritten, in blue or black ink if possible, preferably on the enclosed forms. If you need additional space to answer a question, you may attach additional pages. However, additional pages should be used only if absolutely necessary; **your complaint should be specific but as brief as possible; you should not include legal argument or case citations in your complaint allegations.** Just tell your story simply and clearly. Please refer to Rules 8(a)(2) and 10(b) of the Federal Rules of Civil Procedure for the requirements governing the format and content of your complaint. Failure to comply with these requirements may lead to a Court order rejecting your complaint until it does comply.
3. **Section 1: Caption** — This section requires you to list your name and prisoner number as the plaintiff and the names of all of the defendants. **Do not use abbreviations such as "etc." or "et al."** Also, note that **only** those defendants whose names are listed in this Section (or in the caption if you do not use the official forms) will be considered by the Court as defendants.
4. **Section 2: Jurisdiction** — This section states that you have brought this action pursuant to the Civil Rights Statute, 42 U.S.C. § 1983, and that the Court has jurisdiction over your claims under 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201. You may add additional jurisdictional statutes, if appropriate.
5. **Section 3: Parties to This Action** — This section requires you to identify the parties to the lawsuit. (You should set out in Section 1: Caption only the parties' names and perhaps their titles (such as Dr. or Sergeant)). In Section 3: Parties, you must provide the parties' official positions and addresses, and you may provide any other information which may assist in identifying or locating the parties. If you are not using the official forms, your complaint must have a section which identifies and locates the parties in this way.
6. **Section 4: Previous Lawsuits** — This section requires you to provide detailed, accurate and thorough information about all previous lawsuits you have filed. If you cannot provide **all** of the details requested, you must provide as much information as you can. **Deliberate misrepresentation or omission of information is perjury and is punishable by law.**
7. **Section 5: Statement of Claim** — This section, which is divided into separate sub-sections for each claim, requires you to tell the Court when each alleged constitutional violation occurred, which defendant(s) did the violation and specifically what each of the defendant(s) did to you. You must provide specific facts

regarding each claim; these facts should demonstrate to the Court how your civil rights were violated and by whom they were violated.

You must give facts only – THIS MEANS JUST TELL THE COURT WHAT HAPPENED TO YOU. Tell your story without legal jargon. Please refer again to Rule 8(a)(2) and 10(b) of the Federal Rules of Civil Procedure regarding how to present your claim. Your complaint must not contain legal arguments or case citations.

You must also state the constitutional basis for each claim (such as the First Amendment, Eighth Amendment, Due Process Clause or Equal Protection Clause), and describe what relief you are seeking for each claim. In addition, note that you may be required to have exhausted your administrative remedies regarding each claim for which there is an administrative process and remedy. *See* 42 U.S.C. § 1997e(a). The legal interpretation of this requirement is still evolving.

8. If you wish a **jury trial**, check "yes" on the complaint form (and check "yes" in the JURY DEMAND box on the Civil Cover Sheet.) If you do not use the official forms, you must state in the body of your complaint that you demand a jury trial.
9. Sign the complaint before a notary public, if one is available to you. If not, your signature at the end of your complaint under penalty of perjury is adequate.
10. **Amended Complaints** — **An amended complaint completely replaces your original complaint** and must therefore include all of the necessary allegations. You may file **one amended complaint as of right** at any time before an answer to the original complaint is served. You may also be instructed by the Court to file an amended complaint. If you wish to amend after an answer has been filed, you may do so either by obtaining permission of all other parties to the action or by bringing a motion asking the Court for permission to amend. Refer to Rule 15(a) of the Federal Rules of Civil Procedure for the requirements for amended complaints.
11. **Supplemental Complaints** — You may file a **supplemental complaint** only if you **request permission of the Court by motion with notice to the opposing parties**. A supplemental complaint may only address events which have occurred since the time the original complaint was filed and which are in some way related to the original allegations. Refer to Rule 15(d) of the Federal Rules of Civil Procedure for the requirements for supplemental complaints.

II. FILING FEES AND "POOR PERSON'S STATUS"

1. In order to file the completed complaint and other necessary papers, you must submit a \$400.00 (\$350.00 filing fee and \$50.00 administrative fee) money order, certified check or official check made out to "Clerk, United States District Court". **Do not send a personal check.** (If your complaint is filed in person, you may pay in cash.)
2. **If you are unable to pay the fee at the time of filing**, you may apply for poor person's status. Because you are a prisoner, this status does **not** relieve you of the obligation to pay the entire \$350.00 filing fee (if you are granted poor person's status, you will not be obligated to pay the \$50.00 administrative fee), *see* 28 U.S.C. § 1915(b), but it will permit you to initiate your action without simultaneous payment of the filing fee, which will instead be taken out of your inmate account over time pursuant to statute.

3. To request poor person's status, you must fill out the Application to Proceed *In Forma Pauperis* and submit **one** original to the Clerk of Court along with your complaint. Be sure to get the prison certification section completed by the appropriate prison officials before you file your papers; failure to do so will result in delay in the initiation of your action.

In addition, you must complete the enclosed Authorization Form and submit the original Authorization to the Clerk of the Court along with your Motion to Proceed *In Forma Pauperis* and Supporting Affidavit. The Authorization permits the facility in which you are incarcerated to encumber an initial partial filing fee based upon your financial status for the past six months; the rest of the fee will be encumbered over time until the full fee has been paid. (**Please Note:** The full fee must be paid whether or not your action is dismissed or goes forward; a dismissal does not cause the encumbrance to be withdrawn.)

III. CIVIL COVER SHEET

Fill out the "Civil Cover Sheet" form according to these instructions:

1. Fill in your name and prisoner number (if applicable) in the "Plaintiff" section;
2. Fill in all of the defendants' names in the "Defendants" section (use a second sheet if necessary);
3. Fill in the name of your county and of the county of one of your defendants in the appropriate "b" sections under Plaintiff and Defendant;
4. In the "Plaintiff's Attorney" section, write "Pro Se" and then add your name, your prisoner number (if applicable), and your address;
5. Leave the "Defendant's Attorney" section blank;
6. In the "Basis of Jurisdiction" section, check "3, Federal Questions";
7. In the "Cause of Action" section, write "42 U.S.C. § 1983, Civil Rights Action";
8. In the "Nature of Suit" section, check box 550: "Prisoner Petitions, Civil Rights";
9. In the "Origin" section, check box 1: "Original Proceeding";
10. Leave the "Citizenship of Principal Parties" section blank;
11. In the "Requested in Complaint" section, write in the amount of money you are suing for and check the appropriate box after "jury demand" (see discussion in Part I(8) above);
12. In the "Related Cases" section, list all your previously-filed cases, together with their docket numbers, the courts in which they were venued, the approximate dates they were filed and their dispositions, using a separate sheet if necessary; and
13. On the last line, date the form and sign your name, followed by "Pro Se" and your prisoner number (if applicable).

IV. FILING YOUR COMPLAINT

Once your papers are complete (meaning that you have a complaint with an original signature, a completed application to proceed *in forma pauperis* and a signed Authorization form, and a completed civil cover sheet), send them to the Clerk's Office at one of the addresses listed below. Upon receipt, your complaint will be assigned a docket number and a judge. Notice of this will be sent to you.

If you are suing a government official (see 28 U.S.C. § 1915A) or if you have applied for permission to proceed *in forma pauperis* (see 28 U.S.C. § 1915), you may not cause copies of your papers to be served on any named defendant, either by yourself or at your request by the United States Marshals Service, until the Court directs service of the complaint (even if you have paid the entire \$350.00 filing fee and \$50.00 administrative fee at the time you filed the complaint).

V. SERVICE OF FORMS

If you apply for permission to proceed *in forma pauperis* and the Court grants your request, the United States Marshal will, at the Court's direction, serve the summons and complaint upon each defendant. When the Court grants your application to proceed *in forma pauperis* and directs service by the U.S. Marshal, you will receive the correct number of Summons and U.S. Marshal Process Receipt and Return forms together with instructions for completing them.

If you do not apply for or receive permission to proceed *in forma pauperis*, you may ask the Court for an order directing service of the complaint by the U.S. Marshals at your expense (the present charge for this is \$8.00 per complaint).

Note that 28 U.S.C. §§ 1915 and 1915A impose certain service limitations on prisoners even if they have paid the filing fee. (These limitations are referenced in Section IV above.)

No matter which method of service you choose, Rule 4(m) of the Federal Rules of Civil Procedure requires that **service of the summons and complaint must be made within 90 days after the filing of the complaint. Failure to comply with this deadline may result in dismissal of your action.** (In certain cases, where delay in service is related to action taken by the Court – such as directing you to amend your complaint before it directs service by the U.S. Marshal – this time may not start running until service is actually directed.)

If the Marshal fails to complete service upon the first attempt, it is your responsibility to require the Marshal to try to serve again, or to move the Court for an order directing the Marshal to make a second attempt.

VI. GENERAL INFORMATION

1. Your complaint can be filed in this Court **only** if one or more of the named defendants is located within the Western District of New York, or if the action occurred in the District pursuant to 28 U.S.C. § 1391. Further, it may be necessary for you to file a separate complaint for each claim that you have unless they are all related to the same incident or issue.
2. After issue is joined (which means that the defendant has filed an answer or a motion to dismiss), **you must first send a copy of every legal paper to the defendant's attorney before you send the original to the Court to be filed in your case.**

This means that each paper you wish to file in the Court must first be served on the defendant's counsel (by mailing it to him). Then attach to the original that you want to file in the Court, as a last page, a signed statement that you have sent a copy of your pleadings to the defendant's attorney. This statement is known as the Affidavit/Affirmation of Service, and is evidence that you have served the papers on your opposition. You may obtain a form for the Affidavit/Affirmation of Service from the Pro Se Staff Attorneys.

Failure to first send a copy to opposing counsel will result in your papers being refused for filing.

Note that the United States Marshal will serve **only** your complaint (and later, certain subpoenas) if you have been granted poor person status. You are responsible for sending all subsequent papers to the defendants or their attorney(s) yourself. The District Court will not make copies for you nor will it send copies to the opposing party for you. If you are unable to make photocopies or carbon copies, you may submit **identical** handwritten copies.

3. Requests for assigned counsel may be made pursuant to 28 U.S.C. § 1915(e)(1). The Court will make every effort to appoint counsel in civil rights cases filed by inmates, but generally only after the plaintiff's allegations have demonstrated some degree of merit to the Court, some need for such representation, and that you have already made some unsuccessful effort to locate an attorney to represent you. Denial of requests for appointment of counsel before such time shall be without prejudice to renewal after the case has progressed closer to trial. You may obtain a form for requesting counsel from the Pro Se Staff Attorneys.
4. You **must** notify the Clerk's Office and all defendants (or their attorneys) **immediately** of any address changes. **Failure to do so may result in dismissal of your action pursuant to Local Rule of Civil Procedure 5.3(d).**
5. The Clerk of Court will not file your complaint unless it conforms to these instructions pursuant to Local Rules of Civil Procedure 5.2 and 5.3.
6. If there is more than one plaintiff, each and every plaintiff **must** sign the complaint individually and must apply separately for permission to proceed *in forma pauperis*, if applicable. After the complaint has been filed, one plaintiff may submit a document to be filed on behalf of all the plaintiffs **only if the other plaintiffs have signed a statement giving that plaintiff the authority to submit documents on all plaintiffs' behalf. Otherwise, each plaintiff must sign every document submitted to the Court.**

VII. MAILING INSTRUCTIONS

Finally, mail or bring all of the papers to one of the following addresses:

United States District Court Clerk
2120 U.S. Courthouse
100 State Street
Rochester, New York 14614-1387
(585) 613-4000

United States District Court Clerk
200 U.S. Courthouse
2 Niagara Square
Buffalo, New York 14202-3498
(716) 551-1700

If you have general questions about procedures, you may contact the Pro Se Staff Attorneys at one of the above addresses for information. **Note:** The Pro Se Staff Attorneys can only provide technical and procedural information and some forms such as for filing motions and the affirmation/affidavit of service; they cannot assist you with the substantive law governing your lawsuit or give you legal advice.