

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS**



**A STEP-BY-STEP GUIDE TO FILING A CIVIL LAWSUIT
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

ACKNOWLEDGMENT

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San Antonio Chapter of the Federal Bar Association
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NOTICE

This Guide is not intended to, and does not, confer any rights. Rather, the Guide is intended to offer some procedural information, collected in one place, for the possible assistance to the non-prisoner¹ *pro se* plaintiff who seeks to initiate a civil lawsuit in this Court. Once the lawsuit is filed, the civil case is assigned to a judge or judges who will enter Orders to govern the disposition of the case. The Court’s Orders may supercede any matter addressed in this Guide. Further, the progression of a civil lawsuit is controlled by the Federal Rules of Civil Procedure and the Local Civil Rules of this Court, copies of which may be found at the Court’s website located at www.txwd.uscourts.gov.

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Incarcerated individuals who file civil lawsuits in this Court are governed by the Prison Litigation Reform Act of 1995 (“PLRA”), Pub. L. 104-134, 110 Stat. 1321 (1996), which imposes separate requirements and responsibilities. Prison and jail facilities in the State of Texas have information available on the PLRA and should be able to provide a copy of the proper form complaint (there are several) to be used to file a complaint in a particular type of case or such forms are available from the Clerk’s Office of this Court.

INTRODUCTION

In federal court, civil lawsuits are commenced by filing civil complaints. Although an individual may file a complaint without the assistance of an attorney, appearing “*pro se*” (by or for yourself), it is strongly recommended that you secure the assistance of an attorney in the preparation, filing and prosecution of your complaint.² Experience has shown that an attorney can make the complex process of federal litigation much simpler. Organizations such as the State Bar of Texas Lawyer Referral Program (Telephone: 1-800-252-9690) may be able to assist you in obtaining an attorney at little cost. Although some courts show some leniency to *pro se* parties in applying the applicable rules governing lawsuits, you should be aware that failure to comply with a court’s order or applicable rules may result in dismissal of all or part of your case for that reason even if the court has not yet considered the merits of your case and claims.

Lawsuits in federal court go through a number of steps from the time they are filed until they are ultimately resolved by a judge, a jury, or through alternative dispute resolution (such as settlement negotiations). This Guide summarizes some of the procedures concerning: how and where to file necessary legal papers; the exchange of information between opposing parties; trial preparation; and certain other legal procedures which you and your opponent may need to use before your case is resolved. When applicable, this Guide may cite actual rules governing procedure in any United States District Court (primarily, the Federal Rules of Civil Procedure) as well as procedural rules that apply only in this District (primarily, the Local Rules for the United States District Court

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Individuals who are named as defendants in a lawsuit also may proceed *pro se* (corporations generally may not proceed *pro se*, either as a plaintiff or defendant). This Guide focuses on an individual who is proceeding *pro se* and on questions that may arise at or about the time the civil action is first filed.

for the Western District of Texas).

The Guide was developed to help *pro se* litigants understand some of the procedural requirements associated with filing a civil suit in United States District Court for the Western District of Texas. The Guide is not an all-inclusive set of instructions designed to answer every question, address every issue, guarantee success in any particular lawsuit, or substitute for legal representation by an attorney. Because any Guide cannot provide all information that may be relevant to any one specific case, *pro se* litigants must understand they cannot rely solely upon the information provided in the Guide to answer all their questions as they may file and prosecute a case. Furthermore, because the Guide is provided by the Clerk's Office, rather than the court, *pro se* litigants must understand that the information contained in this Guide is not legal advice and can always be superceded by any specific order or instruction of a judge in a specific case. Clerk's Office personnel are prohibited from providing legal advice of any kind. Therefore, please understand that members of the Clerk's Office staff may not help you evaluate your complaint or give advice on possible methods of prosecuting your civil action.

BEGINNING A LAWSUIT

Jurisdiction of the United States District Court

For a United States District Court to hear a case, the court must have jurisdiction over the particular claims as well as the parties to the action. Original federal court jurisdiction is typically based on either: (1) presenting a "federal question" for decision by the court; or (2) "diversity of citizenship" among/between all parties. A federal question case is generally one that alleges the violation of a federal law, such as a statute or federal constitutional provision. A diversity case is generally based on the parties residing in different states or countries.

Where to File

The United States District Court for the Western District of Texas is comprised of seven divisions located in the following cities: Austin, Del Rio, El Paso, Midland, Pecos, San Antonio, and Waco. Generally, a case is filed in the division where the claim arose or where the defendant resides. In cases based on diversity of citizenship (for example, when plaintiff and defendant are residents of different states), suit may be brought in the division where the plaintiff resides.

Basics

The complaint and other pleadings related to your suit must be delivered or mailed to the Clerk's Office in the appropriate division at the addresses available from the Clerk's Office. In certain circumstances, an individual who is not an attorney can receive permission to file documents electronically, as provided in the Administrative Policies and Procedures for Electronic Filing in Civil and Criminal Cases, ("Electronic Filing Procedures") posted on the court's web site (*see* www.txwd.uscourts.gov) and available through the Clerk's Office. A case-initiating document, such as a complaint, may not be e-filed and must be filed in the traditional manner, by delivering or mailing an original and one copy of the complaint, *and* tendering either the required fee or filing an original and one copy of a motion for leave to proceed *in forma pauperis*. Other than the complaint (and, if you have permission to e-file, other documents that the Electronic Filing Procedures require to be filed in the traditional manner), you must tender to the Clerk's Office an original and one copy of any document you wish to file with the Court. Further, as discussed below, after your complaint has been served on opposing counsel, you also generally must serve an additional copy of any document filed on each opposing party, by mailing the copy to the attorney of record for that party (or by mailing the copy to the party directly if no attorney has entered an appearance). The

requirements for service of the complaint are discussed further below. Any document you prepare for filing with the Court must be typewritten or neatly and legibly hand-printed/written. Type, print, or write on only one side of the paper. If the document is typed, it must be double-spaced and with a minimum font size of “12.”

Time Involved in Litigation

Pro se litigants should be aware of both the complexity of federal court litigation and the time often necessary to resolve an individual case. In addition to thousands of civil actions, the judges in the Western District of Texas are charged with resolving thousands of criminal cases. Among other reasons, because of the high importance of resolving matters involving personal liberty interests of those criminally accused, the law grants criminal cases a priority over civil cases in terms of the timing of the case’s resolution. Just as your case is important to you, the remaining hundreds of individual cases on any federal judge’s docket are important to those parties. Although inherent delays in litigation can be frustrating for all involved, be assured that thoughtful consideration of each individual case is given by the judge and such consideration necessarily often requires considerable lengths of time to resolve an individual case.

STEP 1 - GETTING STARTED

A federal civil case begins when a plaintiff files a complaint with the Clerk of Court that states a claim(s) against a person or entity, that is, a defendant, whom the filer asserts has committed an actionable, wrongful act. The lawsuit must be based upon a legal duty owed by the defendant to a plaintiff personally. A lawsuit must not be based upon any improper purpose, such as only to harass an individual or entity. If a lawsuit is filed for an improper purpose, in addition to dismissing the case, a court may impose penalties or sanctions, including awarding of an opposing party’s legal

fees. The filing of a lawsuit is a serious matter that should only be undertaken after careful consideration.

First, there are two terms to remember and understand:

1. The person who files the complaint is known as the “plaintiff.”
2. The person who is being sued is known as the “defendant.”

You, the plaintiff, are representing yourself without benefit of an attorney. For this reason you are known as a *pro se* litigant. *Pro se* is a Latin term meaning “for himself” or “for herself.”

After you have read this Guide, any questions you may have should be directed to the Intake Deputies in the United States District Clerk’s Office. Please keep in mind that any document you file with the Court must comply with the “Privacy Policy and Public Access to Electronic Files.” (*See* Attachment 11).

Filing a Complaint

The first pleading written and filed in a lawsuit is called a “Complaint.” (*See* Attachment 1). The text of the complaint should be double-spaced, whether typed or hand-printed and, if typed, should use a minimum font size of 12. The Clerk’s Office has form complaints available to address certain types of cases. The most common of these forms are discussed below. Complaints often include the following six main parts:

1. The CAPTION. The caption of the complaint appears at the top of the first page of the complaint. It states the court in which the case is filed and the names of the parties. Every document you file with the court should have a caption at the top of the first page. The complaint and all other pleadings filed with the court should be on 8 ½ inch by 11 inch paper. You should list the names of all the defendants you

wish to sue in the caption. Do not use phrases like “*et al.*” or “etc.” in your case caption to avoid listing all plaintiffs or all defendants. You will describe the defendants more fully in another part of your complaint. It is your obligation, as *pro se* plaintiff, to identify the people who allegedly injured you.

2. The NAME and ADDRESS of the plaintiff and the defendant. These are sometimes listed in the first and second paragraphs respectively. If there is more than one defendant, list each defendant’s name and address in separate additional paragraphs.
3. A JURISDICTIONAL PLEA. You should state why you believe the court has jurisdiction over your case. A jurisdictional plea is a statement of the power and authority of the court to hear your case. If the court does not have jurisdiction, it cannot decide your case. *See* 28 U.S.C. § 1330 *et seq.*
4. The ALLEGATIONS are the claims that you are making against the defendant. Each allegation should be set forth in a separate, short, clearly written paragraph. This should be a short and plain statement of the claim showing why you, the *pro se* plaintiff, are entitled to the relief you request. Generally, each claim should be stated in a separately numbered paragraph, with each paragraph limited, so far as possible, to a statement of a single set of factual circumstances. In short, clear, numbered paragraphs, describe the acts or omissions of each defendant(s) (and separately for each defendant) that you believe violated your rights or caused you injury, identifying your right and describing your injury.
5. The RELIEF you are seeking from the court. This paragraph describes what you want the court to do in response to your complaint. This information is usually

written in the last paragraph of the complaint. Usually each paragraph of a complaint is numbered, except for the paragraph that asks the court for relief. This last paragraph can bear the caption: “Relief Requested.”

6. SIGNATURE LINE. You must sign and date the original complaint. Also, include your address and telephone number below your signature and the date you signed.

Filing a Complaint Alleging Employment Discrimination

If you are filing an employment discrimination suit pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 *et seq.*, the Americans with Disabilities Act (“ADA”), the Age Discrimination in Employment Act (“ADEA”), the Equal Pay Act, or the Rehabilitation Act, please use the complaint form provided as Attachment 2 and review EEOC Checklist included as Attachment 3.

Filing Fees

Your next step usually is to file the complaint with the court. You will be required to complete and submit a CIVIL COVER SHEET (*see* Attachment 6) along with your complaint. You will also be required to pay a FILING FEE. *See* 28 U.S.C. § 1914. Please contact the Intake Deputy Clerk in the United States District Clerk’s Office to obtain current filing fee information. Fee information is also available on the internet website for the United States District Court, Western District of Texas at www.txwd.uscourts.gov. All checks and money orders should be made payable to: “Clerk, U.S. District Court.”

Filing a Request that the Court Waive Payment of Filing Fees

If you cannot afford to pay the filing fee, you may qualify to have the filing fee waived by filling out a motion to proceed *in forma pauperis*. (*See* Attachment 4). If you wish to ask the court

for permission to have the filing fee waived, you will file an original and one copy of a sworn motion to proceed *in forma pauperis* at the same time you tender for filing the original and one copy of your original complaint, and the Civil Cover Sheet.

The Complaint, Civil Cover Sheet, and motion to proceed *in forma pauperis* will be considered by the court. *See* 28 U.S.C. § 1915(d). If your motion to proceed *in forma pauperis* is granted by the court, part or all of the filing fee can be waived. If your motion to proceed *in forma pauperis* is denied, you must pay the filing fee to proceed with your case.

Filing a Motion to Ask the Court to Appoint an Attorney to Represent You

If you cannot afford an attorney, you may file a written motion asking the court to appoint an attorney for you. This written motion is called a “Motion for Appointment of Counsel.” (*See* Attachment 5). This motion will provide the court information about your financial status, your attempts to find a lawyer, and any other information you would like the court to consider in determining whether a lawyer should be appointed for you. Unlike most criminal cases and criminal defendants, Congress has not appropriated funds to pay for attorneys to represent civil litigants. In the civil area, the court is usually not required to appoint an attorney to represent a *pro se* civil litigant. But, the court may ask an attorney who has indicated a willingness to accept such appointments to represent you. *See* 28 U.S.C. § 1915. These appointments are *pro bono* appointments. That is, unless you prevail on a claim, you and/or your attorney will not be able to recover costs. Further, unless there is a statute authorizing an award of attorney’s fees, the court will not be able to consider your appointed lawyer’s request to be awarded any amount of attorney’s fees.

Service of Process (notifying each defendant that a complaint has been filed)

The Summons

Each defendant must be informed that he/she is being sued and must receive a copy of the complaint. A Summons is the document used to notify a defendant that he/she has been sued. You must prepare a summons for each defendant and submit the summons forms and a copy of your complaint to the Clerk of Court. A summons is an official court document, signed by the Clerk or Deputy Clerk, directing a defendant to respond to a complaint. Summons forms are available in the United States District Clerk's Office or on the internet site at www.txwd.uscourts.gov. (See Attachment 7).

Instructions for Completing the Summons Form

- ▶ Write your name above the "v." as plaintiff;
- ▶ Write the name of each person or entity you are suing as defendants below the "v."
- ▶ Write the name and address of one defendant after the word "To." You must prepare a separate summons for each defendant.
- ▶ Because you are representing yourself, in the space after "plaintiff's attorney" fill in your own name and address. Cross out "Plaintiff's Attorney" and write "*Pro Se*" after your name.
- ▶ Put the proper number in the space before "days after service of this summons" Defendants generally have twenty (20) calendar days to file an answer (or other responsive pleading) after they are served with the complaint. If the United States or any of its agencies or employees is a defendant, the United States has sixty (60) calendar days to file an answer (or other responsive pleading). Defendants in cases

seeking review of decisions under the Social Security Act have ninety (90) calendar days to answer to the complaint.

When you have completely filled out the summons form, provide it to the Clerk's Office; the Clerk will sign and seal each summons form and return it to you so you can attach one copy of your complaint to each summons so that they each may be served on each defendant. One completed summons form and one copy of your complaint must be provided to the Clerk's Office for each defendant required to be served.

Service of Summons

Service of summons, also called service of process, is the actual delivery of the summons and complaint to each defendant in your case. Service of process in federal court is governed by Rule 4 of the Federal Rules of Civil Procedure. You are responsible for arranging for the service of the summons and a copy of the complaint on each defendant, and for ensuring that proof of that service is returned to the Clerk's Office for filing. The summons and complaint must be served within 120 days of filing the complaint or the case may be dismissed for failure to timely prosecute.

Federal Rule of Civil Procedure 4 states that process may be served upon a defendant who is an individual within a federal judicial district by having a person who is not a party and who is at least 18 years of age deliver a copy of the summons and complaint to each such individual personally or by leaving a copy of the summons and complaint at the individual's dwelling or usual place of abode with some person of suitable age and discretion then residing there. *See* Federal Rule of Civil Procedure 4(c) & (e). Under this method of service, the server fills out the back of the **original** summons and returns it to the court. **You should read Rule 4 of the Federal Rules of Civil Procedure in its entirety to determine the appropriate method of serving each defendant in**

your case.

If you have filed a motion to proceed *in forma pauperis*, and the motion was granted by the court, the court may order the United States Marshals Service to serve each defendant with the summons a copy of your complaint, without cost to you. For each defendant named in the complaint, you are responsible for completing (1) a summons form (providing the full name and complete address for each defendant) and (2) a USM-285 form, captioned “Process Receipt and Return,” which may be mailed to you with your copy of the court order granting you leave to proceed *in forma pauperis*. (See Attachment 8.) You are responsible for making a copy of your complaint and summons form for each defendant. You will give the completed summons form for each defendant named in your complaint, as well as a copy of your complaint for each defendant, to a Civil Intake Deputy Clerk in the Clerk’s Office. The Clerk will forward these documents to the Marshals Service.

Answer to Complaint by Defendant

The answer is a defendant’s written response to the plaintiff’s complaint in which the defendant sets forth his response and defense to all or part of the allegations in the complaint. As with the complaint and all other pleadings, a defendant must file the answer with the Clerk of Court and serve a copy of the answer on each plaintiff. Failure to answer or otherwise defend in a timely fashion can be a ground for judgment by default against the defendant. (See Federal Rule of Civil Procedure 55).

A Defendant's Removal of a Pro Se Plaintiff's State Case

If all defendants in a State action agree and there is a basis for federal subject matter jurisdiction over one of plaintiff’s claims, then defendant(s) may remove a pro se plaintiff’s State

petition for decision in this Court. Defendant(s) must file a petition to remove the case to this Court within certain time limits and in compliance with other federal procedural requirements. See Title 28, United States Code, §§ 1441 - 1453.

If you are a pro se plaintiff and defendants have removed your State case to this Court, you may move for remand of the State case within certain time limits and in compliance with other federal procedural requirements. See Title 28, United States Code, § 1447.

Once a State case is removed to this Court, all other rules and procedures of this Court apply regarding the pretrial management and ultimate resolution of the case.

Motions filed Challenging the Complaint

Although most defenses filed by a defendant to a complaint are stated in the answer, a defendant has the option of asserting certain defenses before filing the answer. A motion is an application to the court asking that the court take some particular action in the case. A motion to dismiss the complaint is a motion a defendant may file to challenge the complaint, on certain specified grounds, even before the defendant files an answer. Motions to dismiss the complaint may contain the following arguments: (1) the court lacks jurisdiction over the subject matter, that is, the court lacks the power to decide the subject matter of the case; (2) the court lacks jurisdiction over the person, that is, the court lacks the power to compel a defendant to appear; (3) venue is not proper, that is, plaintiff's case should not be handled in the District in which it was filed; (4) process was not sufficient; (5) service of process was not sufficient; (6) the complaint fails to state a claim which the law will recognize as enforceable; and/or (7) plaintiff has failed to join a needed party. If such a motion is filed by a defendant in your case, you will have 11 days after the motion is served on you in which to file your response to the motion. *It is very important to respond to a motion to dismiss,*

as any other motion; otherwise, the relief requested in the motion may be granted as unopposed or your case may be dismissed even though you have not presented an argument to the court.

Because one type of motion is often filed by a defendant, whether before or after that defendant has filed an answer, the Guide includes a brief discussion of motions to dismiss for failure to state a claim upon which relief may be granted. You may wish to consider the general procedures that apply to motions to dismiss when writing your complaint so that you have provided sufficient information about your claim in the complaint. As with all other parts of the Guide, this is not a discussion of substantive law to determine the outcome of any case, but a discussion of the general procedures and standards that may apply to the consideration of any motion to dismiss the *pro se* complaint you may file.

Motions to Dismiss Pursuant to FED. R. CIV. P. 12(b)(6)

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, a plaintiff must state a claim upon which relief can be granted or the complaint may be dismissed with prejudice as a matter of law. Rule 12(b)(6) motions to dismiss may be filed before or after defendant has filed an answer.

When considering a motion to dismiss for failure to state a claim, the “court accepts ‘all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff.’”³ To withstand a Rule 12(b)(6) motion, “the plaintiff must plead ‘enough facts to state a claim to relief that is plausible on its face.’”⁴

Rule 8(a) of the Federal Rules of Civil Procedure requires only “a short plain statement of

³ In re Katrina Canal Breaches Litig., 495 F.3d 191, 205 (5th Cir. 2007) (citations omitted).

⁴ Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1974 (2007).

the claim” showing the pleader is entitled to relief. Although “heightened fact pleading of specifics”⁵ may not be adopted when not authorized by the Federal Rules of Civil Procedure,⁶ a complaint “must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory”⁷ and a plaintiff’s pleading obligation includes the twin requirements of fact-based pleading and plausibility. More specifically, “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.”⁸ “Factual allegations must be enough to raise a right to relief above the speculative level . . . on the assumption that all of the allegations in the complaint are true (even if doubtful in fact).”⁹ The mere possibility of relief does not satisfy the threshold requirement of Rule 8(a)(2) that the “plain statement” of a claim include factual “allegations plausibly suggesting (not merely consistent with)” an entitlement to relief.¹⁰

When ruling on a motion to dismiss under Rule 12(b)(6), a court must accept as true all of the factual allegations contained in the complaint.¹¹ But, a court need not accept as true “conclusory

⁵ Twombly, 127 S.Ct. at 1974.

⁶ Swierkiewicz v. Sorema, N.A., 534 U.S. 506, 508, 122 S.Ct. 992 (2002).

⁷ Twombly, 127 S.Ct. at 1969 (quoting Car Carriers, Inc. v. Ford Motor Co., 745 F.2d 1101, 1106 (7th Cir. 1984) (internal quotation marks omitted; emphasis and omission in original)).

⁸ 127 S.Ct. at 1964-65 (citing Papasan v. Allain, 478 U.S. 265, 286, 106 S.Ct. 2932, 2944 (2007)).

⁹ 127 S.Ct. at 1965 (as quoted in Katrina Canal Breaches, 495 F.3d at 205).

¹⁰ 127 S.Ct. at 1966.

¹¹ 127 S.Ct. at 1965 (citing Swierkiewicz, 534 U.S. at 508 n.1, 122 S.Ct. at 996 n. 1; Neitzke v. Williams, 490 U.S. 319, 326-37, 109 S.Ct. 1827, 1832 (1989); Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S.Ct. 1683, 1686 (1974)).

allegations, unwarranted factual inferences, or legal conclusions,” which will not defeat a Rule 12(b)(6) motion to dismiss.¹²

After defendant’s answer has been filed, then the issues have been joined and, typically, the Court will enter a scheduling order to set other pretrial deadlines.

STEP 2 - PRETRIAL/DISCOVERY

Scheduling Order

After a defendant has filed an answer to your complaint, the court then may enter a scheduling order. Pursuant to the Local Civil Rules of this Court and the Federal Rules of Civil Procedure, the parties should confer to discuss: the nature and basis of their claims and defenses; initial discovery disclosures; and a plan for discovery. *See* Local Civil Rule CV- 16 (c) and Federal Rules of Civil Procedure 16 (b) and 26 (f). Within 60 days of the first appearance of any defendant (*see* Local Civil Rule CV - 16 (c)), that is, within 60 days of the date on which any defendant has entered an appearance (by, for example, filing a motion or an answer), plaintiff must submit a proposed agreed scheduling order that sets out the parties’ agreement as to scheduling, noting any areas of non-agreement, as to each deadline set out in the form scheduling order included in Appendix B to the Local Civil Rules. Some deadlines that may be included in the scheduling order entered by the court are deadlines to: amend the complaint, add or correct allegations or theories of recovery, join new parties, complete discovery, file motions, file pretrial submissions; the court’s scheduling order also may provide a date and time for the trial.

The court may ask the parties to consider having their case handled and decided by a United

¹² Plotkin v. IP Axess, Inc., 407 F.3d 690, 696 (5th Cir. 2005) (citing Southland Sec. Corp. v. INSpire Ins. Solutions, Inc., 365 F.3d 353, 361 (5th Cir. 2004)).

States Magistrate Judge as opposed to a U. S. District Judge. If both parties consent, the case proceeds under the same rules and in the same manner as it would if the District Judge was handling the case.

During the pretrial stage, you, as *pro se* plaintiff, and defendant's or defendants' counsel determine what issues are in dispute and what issues are not in dispute concerning your complaint. Both you and all defense counsel determine who each side intends to call as witnesses, and, generally, what evidence will be introduced at trial. Each side is required to furnish the other side with information about potential witnesses and exhibits. Through a process called "discovery," both you and defendant(s) learn as much as possible about each other's case by exchanging information and material.

Filing Motions

A motion is a document that contains a request by a litigant to the judge asking for a decision on an issue relating to the case. Unless a motion is made orally during a hearing or trial, all motions should be in writing. (*See* Attachment 9). Motions are the primary way for litigants to ask the court to take action in a case. The motion document should:

- ▶ Contain the case caption, the case number and the title of the motion at the top of the first page of the motion;
- ▶ Set forth the facts and legal authority supporting the motion;
- ▶ Contain a Certificate of Service. (*See* Attachment 10). A Certificate of Service states that the opposing party has received a copy of the motion and states the means by which the motion was delivered to the opposing party.

The original motion and a copy of the motion, along with a proposed order for the Judge to

sign, must be filed with the Clerk of Court. Do not forward motions or any other document you wish to file in your case directly to the judge. A copy of your motion must be served on the opposing party. Plaintiff should comply with Rule 7, Federal Rules of Civil Procedure, and Rule CV - 7, Local Rules for the Western District of Texas, when preparing and submitting motion documents. Unless otherwise ordered by the court, motions are limited to ten (10) pages in length and responses to motions generally must be filed within eleven (11) calendar days of service of the motion. Local Rule CV-7(d). An additional three calendar days for filing a response is allowed if the motion was served upon you by mail. Fed.R.Civ.P. 6(e). Failure to file a timely response to a motion may result in the court entering an Order granting the motion as un-opposed or dismissing plaintiff's case for failure to prosecute. *See* Fed.R.Civ.P. 41. Also, Local Rule CV - 7 contains a limit on the number of responses that may be filed.

Discovery

Discovery is the exchange of information between opposing parties. Rules 26 through 37, Federal Rules of Civil Procedure, provide for pretrial discovery. Local Rules CV- 26, CV - 30, CV - 33, and CV - 36 set forth discovery procedures followed in this court. Local Rule CV-16(b) contains certain definitions of common discovery terms.

Rule 26(a) states that – except in certain proceedings exempted under Rule 26(a)(1)(E) (such as a case filed by a *pro se* prisoner), stipulated to by the parties, or ordered by the court – a party must, without awaiting a discovery request, provide the other parties with information, set out in Rule 26, such as: the names of individuals likely to have discoverable information, a copy or description of the contents and location of all relevant documents and tangible things, computation of damages, and a copy of any insurance agreement that could satisfy any part of any judgment.

Federal Rule 26(b) states that the discovery matter sought must be “relevant to the subject matter involved in the pending action.” Discovery is also limited by the right of any person from whom discovery is sought to seek a court order protecting him/her from “annoyance, embarrassment, oppression, or undue burden or expense.” (*See* Federal Rule 26(c); a draft protective order is attached as Appendix H to the Local Civil Rules). If a party fails to cooperate with discovery, the party requesting discovery may file a motion to compel discovery, or to seek sanctions for the failure to cooperate with good faith discovery efforts.

It is possible that during the pretrial/discovery stage the court may order your case to mediation/alternate dispute resolution.

Mediation/Alternate Dispute Resolution

Alternate Dispute Resolution is a resource courts may use to resolve disputes between litigants through means other than a trial. The court may refer a case to Alternate Dispute Resolution on the motion of a party, on the agreement of the parties, or on the court’s own motion.

Rule CV-88 (a), Local Rules of the United States District Court for the Western District of Texas, states that the court recognizes the following Alternative Dispute Resolution methods: early neutral evaluation, mediation, mini-trial, moderated settlement conference, summary jury trial, and arbitration. The court may also approve other alternative dispute resolution methods the parties suggest or the court believes is suited to the litigation.

Ending the Case Without a Trial

A trial is necessary only when there are disputed issues of fact. After the discovery period has ended, it may become apparent that the facts in the case are not in dispute, and one or more parties may file a motion for summary judgment. A motion for summary judgment can be filed at

any time after the answer is filed. By filing a motion for summary judgment, the moving party asks the court to enter judgment as a matter of law for that party because there are no genuine issues of material fact; that is, under the agreed or uncontested or established facts, the law directs judgment for the moving party. If a motion for summary judgment is filed by an opposing party, you should respond to that motion within eleven (11) calendar days from the date the motion was served as discussed above, setting out your arguments and submitting any relevant evidence, such as documents supporting your position.

After the motion for summary judgment and response have been filed, the court will decide whether or not to grant the motion. If the court grants the motion in whole, the case will be over and judgment will be entered in favor of the party who moved for summary judgment. If the court grants the motion in part, the issues that are disputed will be tried and those issues on which summary judgment was granted will not be tried. If the court denies the motion, the case will be set for trial.

STEP 3 - TRIAL/JUDGMENT

If a case is not resolved by summary judgment or dismissed by the court, and if the parties to an action do not agree to settle a case, the case will proceed to trial. The purpose of a trial is to find out whether or not the defendants failed to fulfill a legal duty to the plaintiff as the plaintiff states in the complaint.

Many trials are presented to the court (called a “bench trial”), although parties may request a trial before a jury. During a trial, the following may occur:

- ▶ All parties, witnesses, court reporters, and court personnel assemble in the courtroom. The judge enters the courtroom and takes a seat at the bench. Your case then will be called for trial.
- ▶ Opening statements are presented, first by plaintiff, and then by each defendant.

- ▶ You, as plaintiff, present your case.
- ▶ Each defendant, or each defendant's counsel, presents his/her/their case.
- ▶ You, as plaintiff, have the opportunity to rebut defense testimony.
- ▶ Each party is permitted to give a closing argument to the court. Closing arguments summarize what the testimony presented at trial reflects or proves and provide each party with an opportunity to say why judgment should be entered for that party.
- ▶ A decision/verdict will be made by the court or the jury.
- ▶ A formal, written judgment is entered based upon either the court decision or jury verdict.

STEP 4 - POST-TRIAL

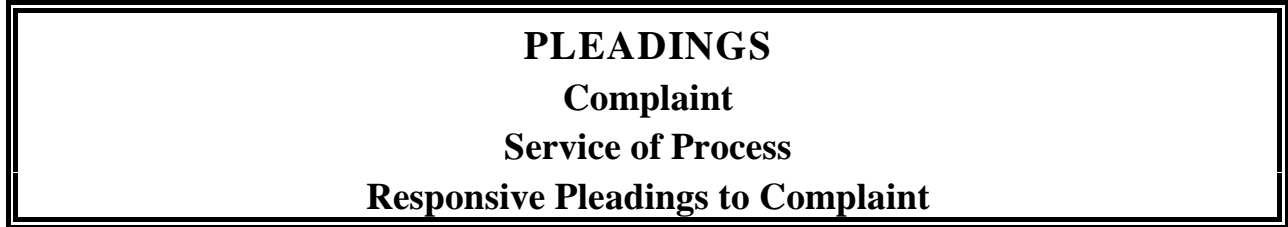
This stage of the legal action allows parties the opportunity to seek either the enforcement or the reconsideration of the final judgment rendered by the court. For example, the losing party may file a motion asking the court to require a new trial, reconsider its decision, or set aside any jury verdict. The successful party may file a motion asking the court to award attorney's fees and costs for successfully prosecuting/defending the lawsuit. As discussed above, if you proceeded *pro se* and you prevail, you may be entitled to have your costs reimbursed. If the court appointed a lawyer for you and you prevail, you and/or your attorney may qualify for reimbursement of costs and also fees. If you do not prevail, any defendant may be able to obtain a court order requiring you to reimburse their fees and/or certain costs.

A party to the lawsuit who wishes to challenge the final judgment and/or other rulings by the court may file a notice of appeal within time limits set out in Rule 4 of the Federal Rules of Appellate Procedure. The notice of appeal is filed in the Clerk's Office of this Court which will forward the notice to the United States Court of Appeals for the Fifth Circuit or other court where the case will be reviewed. The appeals court will then either affirm (agree with) the lower court's

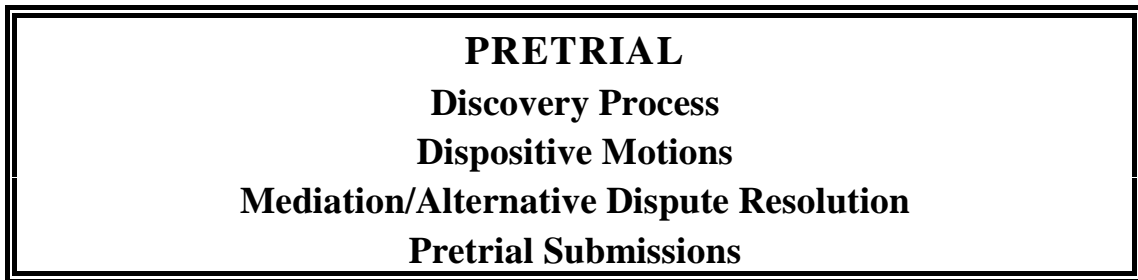
judgment or will reverse and remand (return) the case to the trial court for further action. The Clerk's Office of this court can give you current filing fee information on the docketing fee required to be paid to appeal. Again, you may be able to file a motion for leave to proceed on appeal *in forma pauperis*, to ask the court to allow you to proceed with appellate review without paying the required fees due to your lack of financial assets.

CIVIL CASE FLOW CHART

STAGE 1



STAGE 2



STAGE 3



STAGE 4



Attachment 1 - Civil Complaint

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
_____ DIVISION**

(Enter your full name)

Plaintiff(s)

CASE NUMBER: _____
(To be supplied by Intake Deputy)

(Enter full name of each Defendant)

Defendant(s)

COMPLAINT

- ▶ First Paragraph (Name and Address of Plaintiff)
- ▶ Second Paragraph (Name and Address(es) of Defendant(s))
- ▶ Third Paragraph (Jurisdiction Plea).
- ▶ Fourth Paragraph
- ▶ Fifth Paragraph ...

The final paragraph should contain a statement of the relief you are seeking. This paragraph should not be numbered.

Signature
Name (Typed or Printed)
Address
Telephone Number

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DIVISION

(Name of plaintiff or plaintiffs)

Civil Action Number:

v.

(Case Number to be supplied
by the Intake Clerk)

(Name of defendant or defendants)

COMPLAINT

1. This action is brought by _____, Plaintiff, pursuant to the following selected jurisdiction:

(Please select the applicable jurisdiction)

- Title VII of the Civil Rights Act of 1964 (42 USC §§ 2000e et seq.) Employment Discrimination on the basis of race, color, sex (gender, pregnancy and sexual harassment), religion or national origin.
- The Age Discrimination in Employment Act (29 USC §§ 621 et seq.) (**ADEA**).
- The Americans With Disabilities Act (42 USC §§ 12102 et seq.) (**ADA**).
- The Equal Pay Act (29 USC § 206(d)) (**EPA**).
- The Rehabilitation Act of 1973 (29 USC §791 et seq.) (Applicable to federal employees only).

2. Defendant _____ (Defendant's name) lives at, or its business is located at _____ (street address), _____ (city), _____ (state), _____ (zip).

3a. Plaintiff sought employment from the defendant or was employed by the defendant at _____ (street address), _____ (city), _____ (state), _____ (zip).

- 3b. At all relevant times of claim of discrimination, Defendant employed _____ (#) employees. If defendant is a union, at all relevant times of claim of discrimination, Defendant had _____ (#) members.
4. Defendant discriminated against plaintiff in the manner indicated in paragraph 8 of this complaint on or about _____(month) _____(day) _____(year). If incidents of discrimination occurred more than one day, please indicate the beginning and ending dates of such acts: _____
_____.
5. Plaintiff filed charges against the defendant with the Equal Employment Opportunity Commission (E.E.O.C.) charging defendant with the acts of discrimination indicated in paragraph 7 of this complaint on or about _____(month) _____(day) _____(year). (Not applicable to federal civil service employees).
- 6a. The E.E.O.C. issued a **Notice of Right to Sue** which was received by plaintiff on _____(month) _____(day) _____(year). (Not applicable to ADEA and EPA claims or federal civil service employees).

VERY IMPORTANT NOTE: PLEASE ATTACH A COPY OF YOUR NOTICE OF RIGHT TO SUE AND THE ENVELOPE IN WHICH IT WAS RECEIVED TO THIS COMPLAINT.

- 6b. Please indicate below if the E.E.O.C issued a **Determination** in your case:

- Yes
 No

VERY IMPORTANT NOTE: IF YOU CHECKED "YES", PLEASE ATTACH A COPY OF THE E.E.O.C.'S DETERMINATION TO THIS COMPLAINT

7. Because of plaintiff's:

(Please select the applicable allegation(s))

- Race (If applicable, state race) _____
- Color (If applicable, state color) _____
- Sex (gender, pregnancy or sexual harassment) (If applicable, state sex and claim)

- Religion (If applicable, state religion) _____
- National Origin (If applicable, state national origin) _____
- Age (If applicable, state date of birth) _____

- Disability (If applicable, state disability) _____
- Prior complaint of discrimination or opposition to acts of discrimination.
(Retaliation) (If applicable, explain events of retaliation) _____

_____.

The defendant: **(please select all that apply)**

- failed to employ plaintiff.
- terminated plaintiff's employment.
- failed to promote plaintiff.
- harassed plaintiff.
- other (specify) _____

_____.

- 8a. State **specifically** the circumstances under which defendant, its agent, or employees discriminated against plaintiff **PERSONALLY**:

**VERY IMPORTANT NOTE: INCLUDE SPECIFIC DATES, SPECIFIC EVENTS,
AND ANY SPECIFIC COMMENTS MADE BY
DEFENDANT PERTAINING TO THE
DISCRIMINATION CLAIM ALLEGED ABOVE.**

_____.

- 8b. List any **witnesses** who would testify for plaintiff to support plaintiff's allegations and the substance of their testimony:

_____.

- 8c. List any **documentation** that would support plaintiff's allegations and explain what the documents will prove:

_____.

EEOC SUIT CHECKLIST

The following items are essential for processing your case. Please use this checklist to make sure you have included all necessary items which are applicable to your claim.

- Did you fill out the complaint form **legibly and completely**?
- Did you attach one copy of the Right to Sue Letter from the E.E.O.C. and the envelope in which it was received to your complaint? (Not applicable to ADEA and EPA claims or federal civil service employees).
- If a determination was made by the E.E.O.C. in your case, did you attach one copy of that determination to your complaint?
- Did you attempt to contact any attorneys? Did you utilize the reference lists provided at the end of the complaint package in your attempt to retain an attorney?
- If you are not being represented by an attorney and want to be represented by a court appointed attorney, did you complete the Request for Appointment of Counsel form?
- Did you complete the Application to Proceed In Forma Pauperis Form? (Applicable to those who wish to have appointed counsel and/or those who wish to represent themselves but cannot afford filing and service of process fees).
- Did you complete the USM-285 and summons forms for each defendant? (These forms are for service of process).
- Did you file with the court the original and one copy of the above forms which are applicable to your case?
- Did you provide corresponding additional copies of your complaint and right to sue letter for each of the defendants you are suing? (Copies are needed for service of process).
- Did you pay the \$350.00 filing fee? (Not applicable to those applying to proceed in forma pauperis). **Note:** The court may either grant or deny the Application to Proceed In Forma Pauperis. If the court denies the application, you must pay the filing fee and the service of process costs or your complaint will not proceed through the court.

It is very important that you print legibly throughout these forms so that the judge reviewing your case can read your claim and make proper decisions concerning your claim. If writing space is insufficient for complete answers on any question, you may attach additional pages.

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff

v.

Defendant

)
)
)
)
)

Civil Action No.

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

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.

In support of this application, I answer the following questions under penalty of perjury:

1. If incarcerated. I am being held at:

If employed there, or have an account in the institution, I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for any institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. If not incarcerated. If I am employed, my employer's name and address are:

My take-home pay or wages are: \$ _____ per (specify pay period)

3. Other Income. In the past 12 months, I have received income from the following sources (check all that apply):

- (a) Business, profession, or other self-employment
(b) Rent payments, interest, or dividends
(c) Pension, annuity, or life insurance payments
(d) Disability, or worker's compensation payments
(e) Gifts, or inheritances
(f) Any other sources

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
_____ DIVISION

(Name of plaintiff or plaintiffs)

Civil Action Number:

v.

(Name of defendant or defendants)

(Case Number to be supplied
by the Intake Clerk)

MOTION FOR APPOINTMENT OF COUNSEL

Comes now, _____, Plaintiff in the above-styled and numbered matter, and respectfully requests appointment of counsel as provided by in 42 U.S.C. §2000(e)5. In support thereof, Plaintiff will show the following:

I. That Plaintiff has made a diligent effort to employ counsel.

[] CONTACTED PRIVATE ATTORNEYS. (List all attorneys **who specialize in labor law, employment discrimination or civil rights** complaints you contacted and state why each would not represent you.)

[] CONTACTED LEGAL AID ASSOCIATION. (Texas RioGrande Legal Aid Inc.: (800) 988-9996 (State when this association was contacted and why it could not assist you.)

CONTACTED LOCAL LAWYER REFERRAL SERVICE. (San Antonio Bar Association Lawyer Referral Service: (210) 227-1853). (List the lawyers to whom you were referred, the attorneys you contacted, and why they could not assist you.)

II. Please state your level of education:

Did not graduate from high school. (Specify highest grade completed) _____

G.E.D. (Date acquired) _____

High School Graduate. (Year graduated) _____

Some College. (Specify field of study) _____

College Graduate. (Specify field of study) _____

Graduate Level Education (Specify level and field of study) _____

III. Please state your employment for the last five years beginning with your most current employment:

Employer: _____

Salary/Wages per Month: _____

Position: _____

Dates of Employment: _____

Employer: _____

Salary/Wages per Month: _____

Position: _____

Dates of Employment: _____

Employer: _____

Salary/Wages per Month: _____

Position: _____

Dates of Employment: _____

Employer: _____

Salary/Wages per Month: _____

Position: _____

Dates of Employment: _____

Employer: _____
Salary/Wages per Month: _____
Position: _____
Dates of Employment: _____

- IV. Plaintiff is financially unable to hire counsel for the reasons stated in the attached Application to Proceed In Forma Pauperis. **(Please complete the attached Application to Proceed In Forma Pauperis)**

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Date

Signature of Plaintiff

CIVIL COVER SHEET

JS 44 (Rev. 12/07)

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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

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

(c) Attorney's (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 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)

- | | | | | | | |
|---|----------------------------|----------------------------|------------|--|----------------------------|----------------------------|
| | | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | | Incorporated <i>or</i> 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 <i>and</i> 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	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	PROPERTY RIGHTS	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	LABOR	SOCIAL SECURITY	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
			<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	IMMIGRATION	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other			<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 555 Prison Condition			
	<input type="checkbox"/> 440 Other Civil Rights				

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
- 7 Appeal to District Judge from Magistrate Judgment

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 F.R.C.P. 23 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.C.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; 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 clerks 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 seven 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.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge’s decision.

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 dollar amount (in thousands of dollars) 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 _____

Plaintiff

v.

Defendant

)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)*
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)*
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)*
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)*
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date:

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

U.S. Department of Justice
United States Marshals Service

PROCESS RECEIPT AND RETURN
See "[Instructions for Service of Process by U.S. Marshal](#)"

PLAINTIFF	COURT CASE NUMBER
DEFENDANT	TYPE OF PROCESS

SERVE AT { NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN

ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW _____ _____	Number of process to be served with this Form 285	
	Number of parties to be served in this case	
	Check for service on U.S.A.	

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available for Service):

Fold

Fold

Signature of Attorney other Originator requesting service on behalf of:	<input type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT	TELEPHONE NUMBER	DATE
---	--	------------------	------

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY-- DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of process indicated. <i>(Sign only for USM 285 if more than one USM 285 is submitted)</i>	Total Process _____	District of Origin No. _____	District to Serve No. _____	Signature of Authorized USMS Deputy or Clerk _____	Date _____
--	------------------------	---------------------------------	--------------------------------	---	---------------

I hereby certify and return that I have personally served, have legal evidence of service, have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above on the on the individual, company, corporation, etc. shown at the address inserted below.

I hereby certify and return that I am unable to locate the individual, company, corporation, etc. named above (*See remarks below*)

Name and title of individual served (<i>if not shown above</i>)	<input type="checkbox"/> A person of suitable age and discretion then residing in defendant's usual place of abode	
Address (<i>complete only different than shown above</i>)	Date	Time <input type="checkbox"/> am <input type="checkbox"/> pm
Signature of U.S. Marshal or Deputy _____		

Service Fee	Total Mileage Charges including endeavors	Forwarding Fee	Total Charges	Advance Deposits	Amount owed to U.S. Marshal* or (Amount of Refund*)
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REMARKS:

PRINT 5 COPIES:

1. CLERK OF THE COURT
2. USMS RECORD
3. NOTICE OF SERVICE
4. BILLING STATEMENT*: To be returned to the U.S. Marshal with payment, if any amount is owed. Please remit promptly payable to U.S. Marshal.
5. ACKNOWLEDGMENT OF RECEIPT

PRIOR EDITIONS MAY BE USED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
_____ DIVISION

PLAINTIFF

v.

CASE NUMBER

DEFENDANT(S)

MOTION FOR _____

Now comes _____, Plaintiff *pro se*, and requests

the Court to:

Date: _____

Signature

Address: _____

Phone: _____

CERTIFICATE OF SERVICE

I, _____, Plaintiff pro se, do here by certify that on the _____ Day of _____, 20 ____, a true and correct copy of the foregoing pleading was forwarded to _____, the attorney for (Defendant) by (State the manner of delivery - eg. U.S. Mail; Hand Delivery; Certified Mail) at the following address: (give address of Attorney for the Defendant).

Dated: _____

Signature of Plaintiff

Attachment 11 - Privacy Policy and Public Access to Electronic Files

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

§

§

Re: Privacy Policy and Public Access to Electronic Files

The Office of the Clerk will soon image pleadings on a district-wide basis in advance of implementing a full electronic filing system. When the Court converts to a new case management system within the next 12 to 18 months, subscribers to that system will then be able to read, download, store and print the full content of civil case documents which have been previously imaged and converted to portable document format (PDF) format. At that time, criminal case documents will be made available to the United States Attorney and the defendant's attorney of record in that case, with the possibility of access to all subscribers at some future point in time. Documents that have been sealed or otherwise restricted by Court order will not be made available electronically.

To promote electronic access to case files, while also protecting personal privacy and other legitimate interests, **effective upon entry of this order**, parties shall refrain from including or shall partially redact, where inclusion is necessary and relevant, the following **personal data identifiers** from all pleadings filed with this Court, including exhibits, whether filed electronically or in paper, unless otherwise ordered by the Court:

- a. **Social Security Numbers.** If an individual's Social Security Number must be included in a pleading, only the last four digits of that number should be used.
- b. **Names of Miner Children.** If the involvement of a minor child must be mentioned, only the initials of the child should be used.
- c. **Dates of Birth.** If an individual's date of birth must be included in a pleading, only the year should be used.
- d. **Financial Account Numbers.** If financial account numbers are relevant in a pleading, only the last four digits of these numbers should be used.
- e. **Home Addresses.** The home address of any individual (e.g., victim) in the pleading should not be included. (Perhaps city and state only would suffice.)

In compliance with the provisions of the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above may file an unredacted document under seal. The following heading must be contained in the document: "SEALED DOCUMENT PURSUANT TO E-GOVERNMENT ACT OF 2002". This document shall be retained by the Court as part of the record until further order of the Court. The party must also submit a redacted copy of this document for filing in the public file.

In addition, counsel should exercise caution when filing documents containing the following information:

1. Personal identifying numbers (e.g., driver's license numbers);

2. Medical records, treatment, diagnosis;
3. Employment history;
4. Individual financial information; and
5. Proprietary or trade secret information.

The responsibility for redacting personal information rests solely with counsel, the parties or any other person preparing or filing the pertinent document. The Clerk of Court will not review each pleading for compliance with this policy. Counsel is strongly encouraged to share this notice with all clients so that an informed decision about the inclusion of certain materials or personal information may be made.

It is further ordered that Social Security cases shall be excluded from electronic public access except for judiciary employees, the United States Attorney or his/her representatives, and litigants in said cases. Access to these cases through the Internet will only be allowed through a login and password system when it becomes available in this district.

In order to further comply with the Judicial Conference Policy, in addition to the items listed in paragraphs a. through e. above, the Court shall not provide public access to the following documents under any circumstances: unexecuted warrants of any kind; pretrial bail or presentence investigation reports; statement of reasons in the Judgements in criminal cases, juvenile records and sealed documents.

SIGNED and **ENTERED** this 18th day of May, 2004.

FOR THE COURT:

/s/ Walter S. Smith, Jr.
WALTER S. SMITH, JR.
Chief Judge

GLOSSARY

affidavit

A written statement of facts confirmed by the oath of the party making it, before a notary or officer having authority to administer oaths. *See* declaration.

affirmed

In the practice of the court of appeals, it means that the court of appeals has concluded that the lower court decision is correct and will stand as rendered by the lower court.

answer

The formal written statement by a defendant responding to a civil complaint and setting forth the grounds for his/her defense.

appeal

A request made after a trial by a party who has lost on one or more issues asking a higher court (appellate court) to review the trial court's decision on the issue(s) in question to determine if it was correct. To make such a request is "to appeal" or "to take an appeal."

appellate

About appeals; an appellate court has the power to review the judgment of a lower court (trial court) or tribunal. For example, United States Circuit Courts of Appeal review the decisions of United States District Courts.

bench trial

Trial without a jury before a judge who decides the outcome.

brief

A written statement submitted by each party in a case that explains why the court should decide the case, or particular issues in a case, in that party's favor.

chambers

A judge's office, typically including work space for the judge's law clerks and judicial assistant.

case law

The law as reflected in the written decisions of the courts.

chief judge

The judge who has primary responsibility for the administration of a court; chief judges are determined by seniority.

clerk of court

An officer appointed by the judges of the court to assist in managing the flow of cases through the court, maintaining court records, handling financial matters and providing other administrative support to the court.

common law

The legal system that originated in England and is now in use in the United States that relies on the articulation of legal principles in a historical succession of judicial decisions. Common law principles can be changed by legislation.

complaint

A written statement filed by the plaintiff that initiates a civil case, stating the wrongs alleged committed by the defendant and requesting relief from the court.

contract

An agreement between two or more persons that creates an obligation to do or not to do a particular thing.

counsel

Legal advice; a term also used to refer to the lawyers in a case

court

Government entity authorized to resolve legal disputes.

court reporter

A person who makes a word-for-word record of what is said in court, generally by using a stenographic machine, shorthand or audio recording and then produces a transcript of the proceedings upon request.

damages

Money paid by defendants to successful plaintiffs in civil cases to compensate the plaintiffs for their injuries.

declaration

Whenever a matter is required or permitted to be supported by a sworn affidavit, such matter also may be established, with the same force and effect, by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him as true under the penalty of perjury and dated in substantially the following form: "I declare under penalty of perjury that the foregoing is true and correct. Executed on (date) and (signed)."

default judgment

A judgment rendered in favor of the plaintiff because of the defendant's failure to answer or appear to contest the plaintiff's claim.

defendant

In a civil case, the person, company, or organization against whom the plaintiff brings suit.

deposition

An oral statement made before an officer authorized by law to administer oaths. Such statements are often taken to examine potential witnesses, to obtain discovery, or to be used later in trial. *See* discovery.

discovery

The process by which lawyers learn about their opponent's case in preparation for trial. Typical tools of discovery include depositions, interrogatories, requests for admissions, and requests for documents. All of these devices help the parties learn the relevant facts and collect and examine any relevant documents or other materials.

dispositive motion

A dispositive motion is a motion that completely resolves a claim, either dismissing the claim and not granting relief or awarding relief based on a claim.

docket

A log containing the complete history of each case in the form of brief chronological entries summarizing the court proceedings.

evidence

Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case in favor of one side or the other.

federal question jurisdiction

Jurisdiction given to federal courts in cases involving the interpretation and application of the U.S. Constitution, acts of Congress and treaties.

file

To place a paper in the official custody of the clerk of court to enter into the files or records of a case.

in forma pauperis

“In the manner of a pauper.” Permission given by the court to a person to file a case without payment of the required court fees because the person cannot pay them.

interrogatories

Written questions sent by one party in a lawsuit to an opposing party as part of pretrial discovery in civil cases. The party receiving the interrogatories is required to answer them in writing under oath.

issue

1. The disputed point between parties in a lawsuit; 2. To send out officially, as in a court issuing an order.

judge

An official of the judicial branch with authority to decide lawsuits brought before courts.

judgment

The official decision of a court finally resolving the dispute between the parties to the lawsuit.

jurisdiction

1. The legal authority of a court to hear and decide a case; 2. The geographic area over which the court has authority to decide cases.

jury

The group of persons selected to hear the evidence in a trial and render a verdict on matters of fact.

jury instructions

A judge’s directions to the jury before it begins deliberations regarding the factual questions it must answer and the legal rules that it must apply.

jurisprudence

The study of law and the structure of the legal system.

lawsuit

A legal action started by a plaintiff against a defendant based on complaint that the defendant failed to perform a legal duty which resulted in harm to the plaintiff.

litigation

A case, controversy, or lawsuit. Participants (plaintiffs and defendants) in lawsuits are called “litigants.”

magistrate judge

A judicial officer of a district court who may conduct many pretrial civil matters on behalf of district judges, and who, with the consent of the parties, may decide civil cases.

mediation

A formal process by which the parties and their attorneys, if any, meet with a mediator in order to discuss settling the case under mutually agreeable terms and conditions.

mistrial

An invalid trial, caused by fundamental error. When a mistrial is declared, the trial must begin again with the selection of a new jury.

motion

A request by a litigant to a judge for a decision on an issue relating to the case.

opinion

A judge's written explanation of the decision of the court.

oral argument

An opportunity for lawyers to summarize their position before the court and also to answer the judge's questions.

party

One of the litigants. At the trial level, the parties are typically referred to as the plaintiff and defendant.

plaintiff

The person who files the complaint in a civil lawsuit.

pleadings

Written statements filed with the court which describe a party's legal or factual assertions about the case.

pretrial conference

A meeting of the judge and lawyers (or *pro se* litigants) to plan the trial, to discuss which matters should be presented to the jury, to review proposed evidence and witnesses, and to set a trial schedule.

pretrial submissions

The information required by Local Rule CV-16(e) to be submitted to the Court and exchanged with each opposing party no later than 10 days before trial.

procedure

The rules for conducting a lawsuit.

pro se

A Latin term meaning "on one's own behalf;" in courts, it refers to persons who present their own cases without lawyers.

record

A written account of the proceedings in a case, including all pleadings, evidence, and exhibits submitted in the course of the case.

service of process

The delivery of summonses to the appropriate party.

settlement

Parties to a lawsuit resolve their dispute without having a trial.

statute

A law passed by a legislature.

subpoena

A command, issued under authority of a court or other authorized government entity, to a witness to appear and give testimony.

subpoena *duces tecum*

A command to a witness to appear and produce documents; decision made on the basis of statements and evidence presented for the record without a trial. It is used when it is not necessary to resolve any factual disputes in the case. Summary judgment is granted when – on the undisputed facts in the record – one party is entitled to judgment as a matter of law.

testimony

Evidence presented orally by witnesses during trials.

transcript

A written, word-for-word record of what was said, either in a proceeding such as a trial, or during some other formal conversation, such as a hearing or oral deposition.

verdict

The decision of a trial jury or a judge that determines the outcome of a civil case.

witness

A person called upon by either side in a lawsuit to give testimony before the court or jury.

LIST OF AVAILABLE FORMS / EXAMPLE DOCUMENTS

The forms and example documents listed below are available individually from our [public web site](#). You can download the forms either directly from our site or by using the links provided below:

[Attachment 1 - Civil Complaint](#)

[Attachment 2 - Equal Employment Opportunity Commission \(EEOC\) Complaint](#)

[Attachment 3 - Equal Employment Opportunity Commission \(EEOC\) Checklist](#)

[Attachment 4 - Application to Proceed in District Court Without Prepaying Fees or Costs \(AO 240\)](#)
(also referred to as “Motion to Proceed *in Forma Pauperis*”)

[Attachment 5 - Motion for Appointment of Counsel](#)

[Attachment 6 - Civil Cover Sheet & Instructions \(JS 44\)](#)

[Attachment 7 - Summons in a Civil Action \(AO 440\)](#)

[Attachment 9 - Motion](#)

[Attachment 10 - Certificate of Service](#)

[Attachment 11 - Privacy Policy and Public Access to Electronic Files](#)