



United States District Court for the Western District of Arkansas

Section 1983 Prisoner Litigation Guide

You are receiving this guide because you are filing a lawsuit while you are a prisoner, and without a lawyer to represent you—proceeding *pro se*. The purpose of this guide is to assist you regarding Court procedures and requirements. The guide is not intended to take the place of the Federal Rules of Civil Procedure (Fed. R. Civ. P.) or the Local Rules for the Western District of Arkansas. All parties using this guide remain responsible for complying with both procedural and substantive law.

I. OPENING A CASE

1. **First Step:** A case begins with the filing of a complaint, **using the court-approved complaint form**, and the filing of an application to proceed without the prepayment of the full filing fee (*in forma pauperis* (IFP)) **or** with payment of the \$405.00 filing fee consisting of the \$350 filing fee and a \$55 administrative fee. There is more in paragraph #3 about the IFP application. Do not attach exhibits or other documents to your complaint.

2. **Warning:** You cannot sue a jail, a police department, or sheriff's department. These are buildings and may not be sued. If you name a building as a defendant, the Court will dismiss that defendant. Instead, you must name those individuals who you believe were personally involved in violating your federal constitutional rights.

3. **IFP Applications:** If you submit a complete application to proceed IFP, the Magistrate Judge assigned to your case will determine whether you qualify for IFP status.

- If you do qualify for IFP status, an Order will be entered, and the filing fee assessed to be collected in installments from your prison account. In prisoner cases, the \$350 filing fee can never be waived by the Court.
- If your application is incomplete for any reason, you will be ordered to submit further information to the Court.
- If you do not qualify for IFP status, in addition to the filing fee you are responsible for other costs such as service of the complaint, witness fees, etc.
- If you are released from custody, you will be asked to complete a new IFP application.

4. **Second Step:** The Magistrate Judge will review your Complaint and determine if it has been filed in the correct court, if it states constitutional claims, and if it should be served on the Defendants.

5. **Service:** If the Magistrate Judge decides to serve the complaint **and** you are proceeding IFP, the Magistrate Judge will issue a service order directing the United States Marshal Service to serve the complaint. Then you will receive a notice with the date of service.

6. **Response/Answer:** Defendants have **twenty-one (21) days** from the **date of service** to respond to the complaint by either filing a motion to dismiss or an answer.

7. **Judges:** The case will be assigned to both a Magistrate Judge and a District Judge.

8. **Consent to Magistrate:** You will receive a form advising you that you have the option of having the Magistrate Judge hear your entire case. Completing and returning the Magistrate Consent form means that you consent to having only the Magistrate Judge assigned to your case. The Magistrate Judge will make all decisions in your case, conduct the trial, and enter judgment. The defendants will also need to consent. There is no consequence if you do not consent.

9. **Address Changes:** If your address changes, you are required to immediately notify the Court of your new address. If you fail to do this and thirty (30) days have passed without you providing a new address, your case will be dismissed. **Your mail will not be forwarded between facilities.**

II. FILING DOCUMENTS

1. **General Requirements:** You are required to file the **original** pleading with the Clerk. All pleadings, motions, and other papers **must** be:

- Legible—the Court must be able to read the documents;
- on letter (8 ½ x 11) size paper; and
- the writing must be only on one side of the paper.

2. **First Page Requirements:** The first page of **all documents** filed with the Court **must** contain:

- The case number that is assigned by the Clerk when your case is opened;
- The names of the parties; and
- The title of the pleading, for example, amended complaint, motion for appointment of counsel, response to summary judgment motion. The Clerk is not responsible for determining how to file your documents.

3. **Last Page Requirements:**

- Your signature along with your printed name at the end of the document;
- Your current address at the end of the document. If you are incarcerated, you **must** use the facility address;
- If you are no longer incarcerated, your telephone number; and
- Date of signature.

4. **Multiple Cases:** If you have more than one pending case, you must file a separate document in each case. **Do not** file one document with multiple case numbers on it. If you do, the document will only be filed in the first case number listed. It will not be considered in the other case or cases.

5. **Letters:** Letters addressed to the Judge or the Judge’s staff are **strictly prohibited**. The Court will not file or return your letter(s).

III. COPIES

1. **Court-Provided:** You will be provided with one copy of your Complaint, Amended Complaint, and your response to dispositive motions such as motions to dismiss or motions for summary judgment.

2. **Notice of an Electronically filed Document (NEFs):** You will **not** be provided with copies of other documents you file in the case by the Court Clerk. However, you will receive a copy of the NEF indicating your document has been filed. It is your responsibility to create and maintain copies of your own documents for your records. Defendants will provide you with a copy of any documents they file.

3. **Court-Generated:** You will be provided with **one** copy of any Court generated documents such as orders, reports and recommendations, and opinions.

IV. AMENDING YOUR COMPLAINT

1. **Without a Motion:** Under Rule 15 of the Federal Rules of Civil Procedure you are allowed to Amend your complaint **one time** without filing a motion with the Court. However, the Amended Complaint must be filed no later than **twenty-one (21) days** after the defendants have either answered or filed a motion to dismiss the original complaint.

2. **Motion Required:** If you want to amend your complaint at any other time, you must file a motion asking for the Court's permission. You should explain in your motion why you want to amend your complaint. For example, to add additional defendants involved in the same facts or circumstances, to identify a John or Jane Doe defendant, to add facts to your existing claims, to add claims involving the same time frame, etc. In your motion, you may request an additional § 1983 complaint form.

3. **Exhibits:** Do not submit exhibits with your amended complaint. If you do, the exhibits will be returned to you and the exhibits will not be filed in your case.

4. **Supersedes Original:** An amended complaint replaces the original complaint. This means you must include **all** claims you are asserting and list **each** defendant you are claiming violated your federal constitutional rights in the amended complaint. The Court will no longer consider the original complaint.

V. SERVICE OF DOCUMENTS ON DEFENDANTS

6. **Requirement:** After the defendants have answered or filed a motion to dismiss, you are required by the Federal Rules of Civil Procedure to serve the Defendants with a copy of all documents you file.

7. **Represented Defendants:** If the defendant is represented by counsel, the filing of the document with the Court in Case Management/Electronic Case Filing (CM/ECF) is considered service of the document on the defendants. You do not need to mail them a copy.

8. **Unrepresented Defendants:** If the any defendant is not represented by counsel (proceeding *pro se*), you must mail that defendant a copy of each document you file.

VI. MOTIONS

1. **Definition:** A motion is a formal written request for the Court to act.

2. **Titles:** The first page **must** include the name of the motion, for example, motion for appointment of counsel. The motion **must** also explain in detail what action you want the court to take and why.

3. **Response Times:** A party has **fourteen (14) days** to respond to a motion filed by another party. If you do not respond to a defendant's motion, the Court will assume you agree the defendants are entitled to the relief requested.

4. **Court-Ordered Response Time:** The Court may enter an Order directing you to respond to a motion by a specific date, such as a motion to dismiss or a motion for summary judgment.

5. **Extensions of Time:** If you need additional time to respond to a motion, you must file a motion requesting additional time. You must file this motion within the **fourteen (14) day** response time or by the date specified in an Order directing your response. If you fail to request an extension of time and do not file a timely response, your case will be dismissed by the Court.

VII. EXHIBITS

1. **Limitations on Submitting Exhibits:** Exhibits or other evidence **may only** be submitted along with:

- a motion for summary judgment or response to a motion for summary judgment;
- a motion for a restraining order or response to such motion;
- a motion to compel or a response to a motion to compel;
- a motion for sanctions;
- at a hearing or trial; or
- as directed by the Court

2. Do not mail exhibits to the Court for filing if they are not attached to a motion or a response to a motion or directed by the Court. Documents that do not comply with these rules will not be filed, or considered by the Court.

VII. DISCOVERY

1. **Beginning:** Discovery begins after the Court enters an Initial Scheduling Order.

2. **Bench Exhaustion Order:** If your claims concern incidents or conditions at a correctional facility, the Magistrate Judge will enter a Bench Order. The Bench Order temporarily halts discovery. If defendants intend to argue that you did not exhaust your administrative remedies by following the facilities grievance procedure, the bench order will direct them to file a motion for summary judgment by a specific date. If they do not intend to argue exhaustion, the bench order directs them to advise the Court by filing a notice.

3. **Initial Scheduling Order:** After the Court addresses the administrative exhaustion issue, the Magistrate Judge will enter an Initial Scheduling Order.

- This order sets deadlines for adding parties, amending complaints, discovery, and motions for summary judgment.
- This order also directs the defendants to make initial disclosures to you by a specific date.
 - The initial disclosures include reports documenting incidents referred to in your complaint, including any color photographs or video footage of the same, and copies of

all medical requests, grievances, and photographs in your jail file, as well as any written policies which relate to the facts set forth in your complaint.

- This Order also gives the Defendants the right to take your deposition—questions under oath.

4. **Scope of Discovery:** During the discovery process, parties are allowed to obtain relevant information/evidence from one another that is necessary to support a claim or defense. **You are required to participate in discovery.**

5. **Discovery Requests:** You may also request information from the defendants: you may submit written questions known as interrogatories, requests for the production of documents, and requests for admissions. If defendants are represented by counsel, send the discovery requests directly to their counsel. If defendants are acting *pro se*, mail the discovery requests directly to them. **Do not send your discovery requests to the Court.** Discovery requests are not filed with the Court.

6. **Responses to Discovery:** The responding party must serve his/her answers and any objections within **thirty (30) days after being served** with the requests. For example, if you are served with a discovery request, you must respond within 30 days after you receive the discovery requests. Likewise, if you serve requests on the defendants, they must respond within 30 days of their receipt of the discovery requests.

7. **Requests for Subpoenas from Third Parties:** You may file a motion requesting the issuance of a subpoena pursuant to Rule 45 of the Federal Rules of Civil Procedure if you need documents from a non-party. For example, you may need medical records from a hospital. You must state in your motion the efforts you made to obtain these documents on your own including asking the defendants for them.

8. **Motions to Compel:** In the event any party has failed to adequately respond to discovery requests, the party requesting discovery may file a motion to compel discovery. A motion to compel asks the Court to order the other party to respond.

9. **Good Faith Effort:** Before a motion to compel is filed, the party requesting discovery must make a good faith attempt to work out any discovery disputes. This is typically done through written correspondence, **specifically stating** how the discovery responses are insufficient, and asking for additional information.

- **Do not file a motion to compel unless your good faith efforts have failed to resolve the issue.**

10. **Required Exhibits:** The discovery requests, discovery responses, and evidence of good faith effort.

11. **Resources:** Federal Rules of Civil Procedure Rules 26, 30, 33, 34, 36, 37, and 45. Local Rule 7.2(g).

IX. SUMMARY JUDGMENT MOTIONS

1. **Defendants' Requirement:** In the Initial Scheduling Order, the Magistrate Judge will direct the defendants to **either** file a motion for summary judgment **or** file a notice that defendants believe there are genuine issues of material fact that require the case go to trial. The purpose of this provision in the Initial Scheduling Order is to determine which claims, if any, should continue to trial.

2. **Response:** If defendants file a motion for summary judgment, an Order will be entered directing you to file a response to the motion for summary judgment by a specific date. The Order will give you explicit directions as to what Rule 56 of the Federal Rules of Civil Procedure and Rule 56.1 of the Local Rules for the Eastern and Western District of Arkansas require you to include in your response, how to submit affidavits, etc. Your response must include:

- a separate statement of disputed facts **sworn to under penalty of perjury**;
- a brief; and
- evidence supporting your motion.

3. **Statement of Disputed Facts:** For this statement, you should respond to each of the defendants' statements of undisputed facts using the same sentence or paragraph numbering as used by defendants. It is not necessary to repeat what the defendants said in your statement of facts, but you may do so if it helps organize your thoughts. A brief example is below at number 8.

4. **Failure to Dispute the Facts:** If you fail to dispute the facts contained in defendants' statement of undisputed facts, the Court will assume you have **admitted those statements are true**.

5. **Brief:** The brief should contain your arguments and references to any of the exhibits in support of your arguments. You may refer the Court to case law but are not required to do so.

6. **Exhibits:** If you refer to documents or exhibits **you must** provide the Court with the necessary information to locate the document. You may refer to a document in one of three ways:

- by its Exhibit number or letter and page (for example, defendants' exhibit 1 at page 4), or
- by the ECF number and page (for example, ECF No. 10 at page 2),
- or by its title (for example, the Amended Complaint at page 8).

The Court must be able to locate the document you rely on. **If you do not refer to the specific document, the Court will not go through the entire case file looking for the document you say supports your claim.**

7. **Court Ruling:** The Magistrate Judge will enter a memorandum opinion in a consent case or a report and recommendation in a non-consent case. If a report and recommendation is filed, you will be given a period of **fourteen (14) days** to file any objections you may have.

8. **Example of Statement of Disputed Fact:** This example is meant only to give you a concrete idea of what you are required to do. Remember you are not required to repeat defendants' statements but must respond to each statement by the same number used by defendants.

Defendant's Statement of Undisputed Facts	Plaintiff's Statement of Disputed Facts
1. On October 1, 2023, Plaintiff filed a complaint alleging he was denied adequate medical care while in the detention center.	1. Undisputed
2. Plaintiff is a diabetic and prescribed insulin injections.	2. Undisputed
3. Plaintiff was provided his prescribed insulin every day of his confinement.	3. Disputed. Plaintiff did not receive his insulin on July 12th through July 14th, August 1st through August 5th, and August 30th.

X. DOCUMENT FILING RESTRICTIONS

1. Do Not File:

- a response to defendant's answer;
- discovery documents unless attached to a motion to compel, motion for sanctions, or a motion for summary judgment;
- multiple filings raising the same issue;
- multiple responses to the same motion;
- a reply to a reply brief filed by defendants;
- letters; and
- trial exhibits.

XI. APPEAL

1. **Time Limit:** An appeal must generally be filed within **thirty (30) days** after entry of the judgment or order appealed from. See Rule 4 of the Federal Rules of Appellate Procedure.
2. **Notice:** To appeal, you must file a notice of appeal stating what order or judgment you are appealing from. See Rule 3 of the Federal Rules of Appellate Procedure.
3. **Fee or IFP:** You must either pay the \$605 filing fee or apply to proceed IFP. If you do not have an IFP application form, you may request one from the Clerk. In prisoner cases the \$605.00 filing fee can never be waived by the court.

XII. Limitations of the Clerk's Office

1. Clerks are prohibited from:

- Calculating deadlines;
- Providing legal advice;
- Conducting legal research on your behalf;
- Other than those specifically mentioned in section III or ordered by Judge, the Clerk may not provide free copies of filed or unfiled documents received by the Clerk;
- Forwarding documents on your behalf;
- Telling you when a Judge will rule on a motion or decide in your case;

- Interpreting or providing a copy of the Constitution, the Federal Rules of Civil Procedure, the Local Rules, or multiple copies of Court Orders;
- Identifying witnesses;
- Telling you what to include with your documents;
- Providing state court forms or documents; or
- Allowing you to speak directly to a Judge.

REMEMBER NO ONE WHO WORKS FOR THE COURT CAN GIVE LEGAL ADVICE. No one can tell you what documents to file, interpret documents that have been filed, or in any way give you legal advice.