

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF ARKANSAS



MANUAL FOR PRO SE LITIGANTS

(Revised 10/12)

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INTRODUCTION

This manual was written and compiled for litigants who proceed on their own before the United States District Court for the Western District of Arkansas. The term, "pro se", means proceeding or appearing in court on your own, without an attorney. Some people appear pro se by choice, and others do so because they either cannot afford an attorney or cannot find one willing to represent them.

This manual CANNOT take the place of an attorney's legal advice. It is intended to be a procedural guide to assist you in your litigation. It is by no means comprehensive and should only be viewed as an aid to assist you in understanding the basic terms and procedures in the court. You are advised that even though you are proceeding "pro se" you are still responsible for complying with the Federal Rules of Civil Procedure, The Local Rules for the Eastern and Western Districts of Arkansas, and the orders of the court.

The manual is divided into 6 sections, with information on those topics which most often need explanation, as well as copies of forms for your reference.

TERMS USED IN FEDERAL COURT

1. **ANSWER:** Papers filed by the defendant in response to the complaint. This represents the defendant's side of what happened. It is not necessary to respond to the defendant's answer unless the defendant files a counterclaim or cross-claim.
2. **CERTIFICATE OF SERVICE:** A document stating the date on which an exact copy of the filed document was mailed to a party or counsel. This document must be signed by the person mailing the paper. (See page 23)
3. **COMPLAINT:** Legal document that begins a civil action. It states the facts, identifies the defendants, and the action the court is asked to take.
4. **COUNTERCLAIM:** Claim made by the defendant against the plaintiff.
5. **CROSS-CLAIM:** Claim made between codefendants or coplaintiffs.
6. **DEFENDANT:** The one/ones being sued.
7. **DISCOVERY:** This term refers to the information relevant to the case which is exchanged between the parties. Rules 26 through 37 of the Federal Rules of Civil Procedure govern discovery methods and process. These rules will help you understand whether certain discovery documents must be filed with the clerk's office.
8. **FILE:** To file a paper or other document is to place it in the official custody of the Clerk, in person or by mail. The date a document is filed is the date it is stamped "FILED" by the Clerk.
9. **MOTION:** An application or request made to a court or judge for the purpose of obtaining a ruling or Order directing some act to be done in favor of the applicant, or movant. A motion can be made by the plaintiff or the defendant. The court may either hold a hearing on the motion, requiring the parties to appear, OR the judge may decide the motion looking only at the papers. A copy of Local Rule 7.2 is attached for your reference. (See pages 27-28) If the motion is **GRANTED** the relief asked for in the motion is given to the one making the motion. If the motion is **DENIED** you do not get what you asked for.
10. **ORDER:** An Order is issued by a judge or magistrate judge and usually directs the plaintiff or the defendant to do something. An Order may also be issued to deny or grant a motion.
11. **PARTIES:** Plaintiff and defendant are parties to the lawsuit. They are called opposing parties or adversaries because they are claiming against each other. Parties are sometimes referred to as LITIGANTS and the proceedings in court, LITIGATION.

12. **PERSONAL SERVICE:** Personal service is made by physically handing the summons and complaint to the individual defendant or his authorized representative, and the filing of an affidavit with the court showing how and when personal service was made. Personal service must be made by a non-party who is at least 18 years of age. Service of the summons and complaint may also be obtained by certified mail, return receipt requested, and the filing of an affidavit with the court showing when service was obtained and attaching the return receipt.
13. **PLAINTIFF:** The person who is filing the complaint against someone or a company or agency.
14. **PRO SE:** Means you are filing a lawsuit on your own and will represent yourself in court. If you cannot afford an attorney or you prefer to represent yourself, you may file a complaint or answer pro se.
15. **RESPONSE TO MOTION:** Within 11 days from the date copies of a motion and supporting papers have been served upon him, any party opposing a motion shall serve and file with the Clerk a concise statement in opposition to the motion with supporting authorities. The failure to timely respond to any nondispositive motion may be adequate basis for granting the relief sought in the motion.
16. **SUMMONS:** This is a formal command of the court, directed to the defendant, which lets the defendant know that an action has been filed and an answer is expected. Rule 12 of the Federal Rules of Civil Procedure provides that the defendant shall file an answer within 20 days after being served with the summons and complaint, or if the defendant is the United States, an agency of the United States, or an officer or employee of the United States, 60 days. (See page 15-16) Rule 4 of the Federal Rules of Civil Procedure requires that the summons and complaint be served on the defendants within 120 days from the date of the filing of the complaint.
17. **TIME EXTENSIONS:** Any party can make a request that they be given extra time to file papers or answer a motion or complaint. Reasons for the time extension should be included with the request. The fact that an extension is requested is no assurance that one will be granted.
18. **TRIAL:** A trial can be held before the judge with or without a jury. You may also consent to proceed before a United States Magistrate Judge with or without a jury. IF YOU WANT A JURY YOU MUST REQUEST A JURY TRIAL IN YOUR COMPLAINT OR ANSWER. If a jury trial has not been demanded or the case is not triable by jury, the judge will try the case and make the final decision.

INSTRUCTIONS FOR FILING A CIVIL SUIT PRO SE

1. You must write your complaint yourself. We cannot help you do this. You may write or type the complaint, or you may use the form complaint (if applicable) provided by the Clerk's office. A sample complaint form for employment discrimination actions can be found at page 12. If you do not use the form, your complaint should be double-spaced, on 8½ x 11 inch paper and typed, if possible. You should be as brief as possible. Handwritten complaints must be legibly written. You must sign the complaint and include your complete address and telephone number. Be certain to state what relief you are seeking.

FORMS NEEDED:

Summons: (this is to be filled out and returned to the Clerk's office to be signed and sealed and then returned to you for service upon defendant.) You must supply the Clerk's Office with the original summons and a copy for each defendant to be served. (See pages 15-16) If the United States government or one of its agencies is the defendant, you must also serve the United States Attorney General and the United States Attorney for the Western District of Arkansas.

If you have been granted in forma pauperis status (filing fee waived) the district judge or magistrate judge may order service on the defendant(s) by the United States Marshal's Service.

JS-44 (CIVIL COVER SHEET): The original of this form needs to be submitted with the complaint. (See pages 17-18.)

2. **FILING FEE:** The filing fee is \$350.00
3. Filing the suit "in forma pauperis" means that you have shown the court you cannot pay the filing fee and the court certifies that you do not have to pay the filing fee. If you want to file your suit in forma pauperis, you must:
 - A. Fill out Form AO 240 (Application to Proceed In Forma Pauperis) and sign it. (A copy of this form is included in this manual at page 19-20.)
 - B. Supply the court with one original and a copy of the complaint for each defendant and the judge.
4. If you do not file the complaint in forma pauperis or the court denies you that status, it is up to you to pay the filing fee and obtain service on the defendants. You must also file a proper return of service with the court, showing that the defendants have been served. (A form Affidavit of Service is included in this manual at page 22.)

5. Any documents filed with the court after the filing of the complaint must also be served on the defendants. You can do this by mailing a copy of the document to be filed to each of the defendants or their attorney, and submitting to the court, with your original documents, a certificate of service. (See page 23.) This lets the court know that the defendants have been served a copy of the same document you are filing. Even if you have been granted in forma pauperis status, the clerk's office or the U.S. Marshal will not serve any papers after the filing and service of the complaint. Be certain to keep copies of all your documents. The clerk's office is not obligated to provide copies of documents free of charge.
6. You are required to advise the clerk's office of any change of address in order that you may be advised of any developments in your case.
7. Once an answer is filed, each party will receive a scheduling order setting a schedule for discovery and motions.
8. You must furnish the original and one copy of all pleadings filed with the court. If you want a filemarked copy returned to you, you must furnish the original and two copies.

MOTIONS

A motion is an application or request made to a court or judge for the purpose of obtaining a ruling or an Order directing some act to be done in favor of the applicant, or movant. It needs to specifically set out the reason for the motion and what relief or order is being sought. A motion can be made by the plaintiff or the defendant, and must contain a statement (certificate of service) that a copy has been furnished to the opposing side. The court may either hold a hearing on the motion, requiring the parties to appear, OR the judge may decide the motion looking only at the papers. A copy of Local Rule 7.2 is attached for your reference. (See pages 27-28) If the motion is **GRANTED** the relief asked for in the motion is given to the one making the motion. If the motion is **DENIED** you do not get what you asked for.

Motions require a great deal of time and effort from the court. For this reason, motions should be made only when necessary and generally not while a similar motion is pending before the court in your case. Multiple or frivolous motions can result in sanctions from the court.

MOTIONS FOR SUMMARY JUDGMENT

One special type of motion that pro se litigants should be aware of is the “motion for summary judgment.” This procedure is described in some detail within Local Rule 56.1 and Rule 56 of the Federal Rules of Civil Procedure.

A party moving for summary judgment is asking the court to grant judgment in its favor based upon the undisputed facts in the record and without proceeding to a trial. Essentially, the movant claims that there are no genuine issues of material fact that need to be tried, and the court should go ahead and grant judgment in its favor.

A written response in opposition to a motion for summary judgment should clearly set forth the genuine issues of material fact that warrant a trial on the claim. A fact is material only when its resolution affects the outcome of the case. A dispute is genuine if the evidence is such that it could cause a reasonable jury to return a verdict for either party. The court may accept the moving party’s factual arguments as true unless the non-moving party presents competent evidence to the contrary.

If a motion for summary judgment is filed against you (the non-moving party), you should file a written opposition to the motion. The written opposition consists of three separate documents: a response in opposition; a short and concise statement of the material facts as to which you contend a genuine issue exists to be tried; and a brief in support of the opposition.

Admissible evidence that disproves the movant’s statements of fact should be attached as exhibits to the response in opposition. Generally, the evidence will be in the form of declarations of witnesses that support your interpretation of the facts. All evidence should be attached to the

written opposition, because once a motion for summary judgment has been ruled upon, the Court will not permit either party to file supplemental evidence.

The short and concise statement of material facts as to which you contend a genuine issue exists to be tried should be structured to respond to the facts set forth in the same order that they appear in the moving papers. Respond to each statement, and, if any statement made by movant is untrue or inaccurate, deny the statement being sure to point out where the inaccuracies or contradictory facts are shown in your own declarations or evidence. (For example: The statement that Ms. Smith did not show up for work on Saturday is disputed. Ms. Smith did report to work on Saturday and worked a full shift. See Declaration of Jane Doe, defendant's Exhibit 1 at page 3.)

The brief in support of the opposition should be structured to respond to each point made in the moving papers in the same order that they appear. You should set forth the reasons why the motion for summary judgment should be denied, including citations to any cases or statutes that support your arguments.

APPOINTMENT OF COUNSEL

A litigant who has been granted in forma pauperis status may apply to the court for appointment of an attorney. There is no automatic entitlement to legal representation in a civil action. The court has the discretion, however, to appoint counsel pro bono (free of charge) for those persons who have been granted leave to proceed in forma pauperis and have been found by the court to have special need for an attorney. If your financial situation is such that you can afford to pay a partial fee, you may be required to do so.

The court will consider requests in light of a number of factors including whether or not the party has tried to get an attorney on his/her own. Any application for the appointment of counsel by a party appearing pro se should include a document stating the party's efforts (if any) to obtain counsel by means other than appointment. In making such a request, it is helpful to the court if you include letters received from attorneys that you have written to or contacted.

You may ask the court to appoint an attorney at any time. You must serve a copy of the request on the other party or counsel, as is the case with all documents filed with the court. Your request should be clearly identified and on a separate piece of paper.

The Western District of Arkansas has a limited program which uses pro bono attorneys to assist pro se litigants (non-prisoner) in evaluating their case, advising them on the merits of their claims and of the advisability of settlement. If your case is selected for this program you will be notified by the Court.

CONSENT TO PROCEED BEFORE THE MAGISTRATE JUDGE IN A CIVIL CASE

When your civil complaint is filed in the U.S. District Court, it is assigned to a district judge and he will preside over your case. At any time you may choose to have a U.S. Magistrate Judge preside over your case instead of the assigned judge. If you choose this option, you must have the written consent of all the parties or their attorneys. Once all are in agreement and the assigned judge gives his approval, your case is officially assigned to the U.S. Magistrate Judge for disposition. When ready, the magistrate judge presides over the trial, whether jury or non-jury, and orders the entry of a final judgment. If you are not satisfied with the final judgment, you have the option to appeal to the Eighth Circuit Court of Appeals.

The opportunity to consent to proceed before the magistrate judge in a civil case is in accordance with the provisions of Title 28 United States Code (U.S.C.) Section (§) 636(c)(3 & 4) and Rule 73(a-c) of the Federal Rules of Civil Procedure. Many litigants see this as a quicker avenue of getting their case to trial. Due to heavy caseloads and speedy trial requirements for criminal actions, civil cases are not reached as quickly as many litigants would like. You should know, however, whether before the magistrate judge or a district judge, your case has to go through the same preliminary stages of preparation as all civil cases before trial.

Steps to take for the referral: (To be done by you if you're representing yourself (pro se) or by your attorney if you've obtained one.)

1. Read the Notice and Consent form. (See page 21.)
2. Within 20 days of filing your case, have all parties sign it. If a party is representing him or herself, their signature is acceptable. Otherwise the attorney for the party signs it.
3. Once all parties have signed the form, return it to the Clerk's office for the judge's consideration.
4. When the district judge approves the consent form, you or your attorney will be notified by the magistrate judge as to further proceedings.

APPEALS

There are two types of orders or rulings from the court in an action. There is the FINAL order or JUDGMENT and also INTERLOCUTORY orders. See 28 U.S.C. §§ 1291, 1292 and Federal Rules of Appellate Procedure. If you believe there was an error made by the court in a ruling you may appeal that ruling to the Eighth Circuit Court of Appeals in St. Louis, Missouri. The steps to take are as follows:

1. Prepare a Notice of Appeal. (See sample at page 24.)
2. File the Notice of Appeal with the district clerk's office within 30 days after the date of the entry of the order or judgment you are appealing. If the United States or one of its agencies is a party to the case, you have 60 days to file the notice of appeal. Tender enough copies to the clerk's office for service on all the defendants and the judge.
3. Pay the filing fee of \$455.00. The fee is not required if you have been granted in forma pauperis status by a district judge.

The district clerk's office will then serve copies of the notice of appeal on the other parties in the case and forward certified copies of the necessary papers from your case file to the Eighth Circuit Court of Appeals in St. Louis, Missouri. You will receive notice from the Eighth Circuit Clerk's Office of the case number assigned and further instructions as to filing additional pleadings with that office.

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**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
_____ DIVISION**

(Plaintiff)

(Your name, address, telephone number)

vs.

Civil Action No. _____
(To be supplied by clerk)

(Defendant(s))

(Names(s), address(es), telephone number(s))

COMPLAINT FOR EMPLOYMENT DISCRIMINATION

1. This action is brought pursuant to:

_____ Age Discrimination in Employment Act

_____ Americans With Disabilities Act

_____ Title VII of the Civil Rights Act

2. Plaintiff filed charges against the defendant(s) with the Equal Employment Opportunity Commission on _____, _____ charging defendant(s) with acts
(Month/Day) (Year)
- of discrimination based on (1) _____ age, (2) _____ disability, (3) _____ race, (4) _____ color,
(5) _____ sex, (6) _____ religion, (7) _____ national origin. A copy of the charges filed with the EEOC is attached to this complaint.

3. The Equal Employment Opportunity Commission issued a Determination and/or Notice of Right to Sue which was received by plaintiff on _____, 20____, a copy of which is attached to this complaint.

4. Defendant(s) discriminated against plaintiff by:

(a) _____ failing to employ plaintiff,

(b) _____ terminating plaintiff's employment,

(c) _____ failing to promote plaintiff,

(d) _____

5. The act(s) of discrimination complained of occurred on or about _____, 20____. Briefly describe: _____

6. The defendant(s):

- (a) _____ is/are still committing
- (b) _____ is/are no longer committing
- (c) _____ may still be committing

the acts set forth in the above paragraph.

7. WHEREFORE, Plaintiff prays for the following relief:

- (a) _____ Defendant(s) be directed to employ plaintiff.
 - (b) _____ Defendant(s) be directed to re-employ plaintiff.
 - (c) _____ Defendant(s) be directed to promote plaintiff.
 - (d) _____ Defendant(s) be directed to _____
-
-

and for such other relief as may be appropriate, including injunctive orders, damages, costs and attorneys fees.

8. **Jury Demand:** I hereby _____ a trial by jury of any issue triable
(Demand/Waive)
of right by a jury.

(Signature of Plaintiff)

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 21 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:

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

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

DEFENDANTS

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

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

Attorneys (If Known)

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

☐ 1 U.S. Government Plaintiff

☐ 2 U.S. Government Defendant

☐ 3 Federal Question (U.S. Government Not a Party)

☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

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

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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<div>PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice</div> <div>PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</div> <div>PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability</div>	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

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

☐ 1 Original Proceeding

☐ 2 Removed from State Court

☐ 3 Remanded from Appellate Court

☐ 4 Reinstated or Reopened

☐ 5 Transferred from another district (specify)

☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

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

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER 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/Petitioner

v.

Defendant/Respondent

)
)
)
)
)

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 gross pay or wages are: \$ _____, and 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 | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (b) Rent payments, interest, or dividends | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (c) Pension, annuity, or life insurance payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (d) Disability, or worker's compensation payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (e) Gifts, or inheritances | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (f) Any other sources | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

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.

4. Amount of money that I have in cash or in a checking or savings account: .

5. Any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value that I own, including any item of value held in someone else's name *(describe the property and its approximate value)*:

6. Any housing, transportation, utilities, or loan payments, or other regular monthly expenses *(describe and provide the amount of the monthly expense)*:

7. Names (or, if under 18, initials only) of all persons who are dependent on me for support, my relationship with each person, and how much I contribute to their support:

8. Any debts or financial obligations *(describe the amounts owed and to whom they are payable)*:

Declaration: I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

Date:

Applicant's signature

Printed name

CERTIFICATE OF INMATE ACCOUNT AND ASSETS

(To be Completed by the Institution of Incarceration)

I certify that the applicant, _____, has the sum of \$ _____ in his/her prisoner account at the institution where he/she is confined. I further certify that the applicant likewise has the following securities to his/her credit according to the records of this institution: _____.

I further certify that in the applicant's prisoner account: (a) The average monthly deposit was \$ _____; and (b) The average balance for the last six months was \$ _____. Based on the above prisoner account information, I calculate that 20 percent of the greater of (a) or (b) above is \$ _____.

Signed this _____ day of _____, 20_____.

Authorized Officer of Institution

Name of Institution

UNITED STATES DISTRICT COURT

WESTERN

District of

ARKANSAS

Plaintiff
V.

Defendant

NOTICE, CONSENT, AND ORDER OF REFERENCE —
EXERCISE OF JURISDICTION BY A UNITED STATES
MAGISTRATE JUDGE

Case Number:

**NOTICE OF AVAILABILITY OF A UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION**

In accordance with the provisions of 28 U.S.C. §636(c), and Fed.R.Civ.P. 73, you are notified that a United States magistrate judge of this district court is available to conduct any or all proceedings in this case including a jury or nonjury trial, and to order the entry of a final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

An appeal from a judgment entered by a magistrate judge shall be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of this district court.

CONSENT TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE

In accordance with provisions of 28 U.S.C. §636(c) and Fed.R.Civ.P. 73, the parties in this case consent to have a United States magistrate judge conduct any and all proceedings in this case, including the trial, order the entry of a final judgment, and conduct all post-judgment proceedings.

Party Represented

Signatures

Date

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS

DIVISION

(Plaintiff)

v.

CIVIL ACTION NO. _____

(Defendant)

AFFIDAVIT OF SERVICE

I, _____, plaintiff, do hereby
certify that the defendant was served with summons and a copy
of the complaint by certified mail on _____,
as reflected by Return Receipt No. _____,
a copy of which is attached hereto and made a part hereof.

PLAINTIFF

CERTIFICATE OF SERVICE

I, _____, state that I have, on this _____ day of _____, 200__, mailed a true and correct copy of the above and foregoing to the following:

(Name and addresses of persons served)

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
_____ DIVISION

PLAINTIFF(S)

V.

Case No.

DEFENDANT(S)

NOTICE OF APPEAL

Notice is hereby given that here name all parties taking the appeal,
(plaintiffs)(defendants) in the above named case, hereby appeal(s) to the United States
Court of Appeals for the Eighth Circuit from the (Order)(Judgment) entered in this
action on the _____ day of _____, 20____.

(Signature)

Rule 8. General Rules of Pleading

(a) **Claim for Relief.** A pleading that states a claim for relief must contain:

- (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
- (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
- (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(b) **Defenses; Admissions and Denials.**

- (1) *In General.* In responding to a pleading, a party must:
 - (A) state in short and plain terms its defenses to each claim asserted against it; and
 - (B) admit or deny the allegations asserted against it by an opposing party.
- (2) *Denials—Responding to the Substance.* A denial must fairly respond to the substance of the allegation.
- (3) *General and Specific Denials.* A party that intends in good faith to deny all the allegations of a pleading—including the jurisdictional grounds—may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.
- (4) *Denying Part of an Allegation.* A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.
- (5) *Lacking Knowledge or Information.* A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.
- (6) *Effect of Failing to Deny.* An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(c) **Affirmative Defenses.**

(1) *In General.* In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

- accord and satisfaction;
- arbitration and award;
- assumption of risk;
- contributory negligence;
- discharge in bankruptcy;
- duress;
- estoppel;
- failure of consideration;
- fraud;
- illegality;
- injury by fellow servant;
- laches;
- license;
- payment;
- release;
- res judicata;
- statute of frauds;
- statute of limitations; and
- waiver.

(2) *Mistaken Designation.* If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(d) **Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.**

- (1) *In General.* Each allegation must be simple, concise, and direct. No technical form is required.
 - (2) *Alternative Statements of a Claim or Defense.* A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.
 - (3) *Inconsistent Claims or Defenses.* A party may state as many separate claims or defenses as it has, regardless of consistency.
- (e) **Construing Pleadings.** Pleadings must be construed so as to do justice.

Rule 10. Form of Pleadings

(a) **Caption; Names of Parties.** Every pleading must have a caption with the court's name, a title, a file number, and a Rule 7 (a) designation. The title of the complaint must name all the parties; the title of other pleadings, after naming the first party on each side, may refer generally to other parties.

(b) **Paragraphs; Separate Statements.** A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence—and each defense other than a denial—must be stated in a separate count or defense.

(c) **Adoption by Reference; Exhibits.** A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.

Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

(a) **Signature.** Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) **Representations to the Court.** By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) **Sanctions.**

(1) *In General.* If, after notice and a reasonable opportunity to respond, the court determines that Rule 11 (b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) *Motion for Sanctions.* A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11 (b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) *On the Court's Initiative.* On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11 (b).

(4) *Nature of a Sanction.* A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(5) *Limitations on Monetary Sanctions.* The court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11 (b)(2); or

(B) on its own, unless it issued the show-cause order under Rule 11 (c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) *Requirements for an Order.* An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(d) **Inapplicability to Discovery.** This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.

LOCAL RULE 7.2

MOTIONS

(a) All motions except those mentioned in paragraph (d) shall be accompanied by a brief consisting of a concise statement of relevant facts and applicable law. Both documents shall be filed with the Clerk, and copies shall be served on all other parties affected by the motion.

(b) Within fourteen (14) days from the date of service of copies of a motion and supporting papers, any party opposing a motion shall serve and file with the Clerk a concise statement in opposition to the motion with supporting authorities. A party moving for summary judgment will have seven (7) days to file a reply in further support of the motion. For cause shown, the court may by order shorten or lengthen the time for the filing of responses and replies.

(c) If a motion requires consideration of facts not appearing of record, the parties may serve and file copies of all photographs, documents, or other evidence deemed necessary in support of or in opposition to the motion, in addition to affidavits required or permitted by the Federal Rules of Civil Procedure.

(d) No brief is required from any party, unless otherwise directed by the Court, with respect to the following motions:

- (1) To extend time for the performance of an act required or allowed to be done, provided request is made before the expiration of the period originally prescribed, or as extended by previous order.**
- (2) To obtain leave to file supplemental or amended pleadings.**
- (3) To appoint an attorney or guardian ad litem.**

(4) To permit substitution of parties or attorneys.

(e) Pretrial motions for temporary restraining orders, motions for preliminary injunctions, and motions to dismiss, shall not be taken up and considered unless set forth in a separate pleading accompanied by a separate brief.

(f) The failure to timely respond to any nondispositive motion, as required by the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, or by any local rule, shall be an adequate basis, without more, for granting the relief sought in said motion.

(g) All motions to compel discovery and all other discovery-enforcement motions and all motions for protective orders shall contain a statement by the moving party that the parties have conferred in good faith on the specific issue or issues in dispute and that they are not able to resolve their disagreements without the intervention of the Court. If any such motion lacks such a statement, that motion may be dismissed summarily for failure to comply with this rule. Repeated failures to comply will be considered an adequate basis for the imposition of sanctions.

(a) through (d) Adopted and effective May 1, 1980

(b) Amended to change to eleven days effective July 1, 1988

(e) Adopted and effective July 14, 1986

(f) Adopted and effective July 1, 1988

(g) Effective April 15, 1989

Amended January 2, 1990

Amended November 10, 2009

Amended May 20, 2010

Doug Young
Clerk, United States District Court
Western District of Arkansas
www.arwd.uscourts.gov

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