

# **UNITED STATES DISTRICT COURT WESTERN DISTRICT OF ARKANSAS**



## **MANUAL FOR PRO SE LITIGANTS**

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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 Local Rules are available at <http://www.arwd.uscourts.gov/>.

Federal Rules of Civil Procedure are available at <http://www.uscourts.gov/>. (Look for Rules and Policies)

## Privacy Notice of Electronic Availability of Case File Information

The following privacy policies relate to civil and criminal case file information in the United States District Court for the Western District of Arkansas. (**Fed. R. Civ. P. 5.2**)

- **Documents in civil and criminal cases are available electronically as they are available at the courthouse, with the following exceptions:**
  - Documents sealed or otherwise restricted by court order or policy of the Judicial Conference of the United States; and
  - Documents in Social Security cases will be excluded from electronic access.
- **SENSITIVE INFORMATION SHOULD NOT BE INCLUDED IN ANY DOCUMENT SUBMITTED TO THE COURT.** If sensitive information *must* be included, the following personal data identifiers must be partially redacted from the pleading, including exhibits, unless otherwise ordered by the court.
  - **Social Security numbers** to the last four digits;
  - **Names of minor children** to the initials
  - **Dates of birth** to the year
  - **Financial account numbers** to the last four digits; and
  - **Home addresses** to the city and state (criminal cases only)
- In compliance with the E-Government Act of 2002, a party filing a document containing the personal data identifiers specified above may:
  - File an unredacted version of the document under seal to be held in the clerk's office as part of the record.
  - File a reference list under seal. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its place in the filing. All references in the case to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete identifier. The reference list must be filed under seal, and may be amended as of right. It shall be retained by the court as part of the record.
- The court may require the party to file a redacted copy for the public file.
- Parties should exercise caution when filing documents that contain information implicating not only privacy but also personal security concerns such as:
  - A personal identifying number, such as a driver's license number
  - Medical records, treatment and diagnosis
  - Employment history
  - Individual financial information
  - Proprietary or trade secret information
  - Information regarding an individual's cooperation with the government
  - Information regarding the victim of any criminal activity
  - National security information; and
  - Sensitive security information as described in 49 U.S.C. §114(s).

**THE RESPONSIBILITY FOR REDACTING THESE PERSONAL IDENTIFIERS RESTS SOLELY WITH THE PARTIES. THE CLERK WILL NOT REVIEW EACH PLEADING FOR COMPLIANCE WITH THIS RULE.**

## Terms Used in Federal Court

**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 (see page numbers 11 and 28).

**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 and is attached to the last page of the document (see page number 37).

**COMPLAINT:** Legal document that begins a civil action. It states the facts, identifies the plaintiff(s) and defendant(s), and the action the court is asked to take (see page numbers 10 and 15).

**COUNTERCLAIM:** Claim made by the defendant against the plaintiff.

**CROSS-CLAIM:** Claim made between co-defendants or co-plaintiffs.

**DEFENDANT:** The individual(s) and/or corporation/company being sued.

**DISCOVERY:** This term refers to the information relevant to the case which is exchanged between the parties (see page numbers 12 and 45).

**FILE:** To file a paper or other document is to place it in the official custody of the clerk, in person or by any delivery service. The date a document is filed is the date it is stamped "FILED" by the clerk.

**FILE MARK:** It is the file-stamp the clerk places on documents that are to be placed in the official case record to indicate the court and the date of the filing.

**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. If the motion is **GRANTED** the requested relief is given to the one making the motion. If the motion is **DENIED** the requested relief is not given to the one making the motion.

**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.

**PARTIES:** Plaintiff and defendant are parties to the lawsuit. They are called opposing parties or adversaries because they are making claims against each other. Parties are sometimes referred to as LITIGANTS and the proceedings in court, LITIGATION.

**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.

**PLAINTIFF:** The person who is filing the complaint against someone or a company or an agency.

**PRO SE:** Means you are participating in 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.

**RESPONSE TO MOTION:** Within 14 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 non-dispositive motion may be adequate basis for granting the relief sought in the motion.

**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 21 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 21). The summons and complaint must be served on the defendants within 90 days from the date of the filing of the complaint (**Fed. R. Civ. P. 4(m)**).

**TIME EXTENSIONS:** Any party can make a request that they be given extra time to file papers, respond to a motion, or answer a 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.

**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 (**Fed. R. Civ. P. 38**).

## Clerk's Role

The Clerk's Office is open during regular business hours to accept documents and fees; however, the Clerk's Office can only provide limited information.

The Clerk's Office **can**:

- Explain and answer questions about court procedures.
- Give you general information regarding court rules and practices.
- Provide you with information regarding your case.
- Provide you with available court forms and instructions.

The Clerk's Office **cannot**:

- Provide legal advice such as interpreting the law, etc.
- Talk to the judge on your behalf or allow you to talk to the judge outside of court.
- Compute deadlines in your case.
- Conduct legal research or any other research.
- Explain the result of taking or not taking an action in a case.
- Provide free copies of filed or unfiled documents received by the Clerk.
- Provide advice on the best procedure to accomplish a particular objective.

## Filing a Case in Federal Court

### Cases in Federal Court

The federal court system has limited jurisdiction over three types of cases. The following cases may be filed in federal courts:

- Cases where the United States government is a party
  - The federal courts have jurisdiction over cases against the Social Security Administration Commissioner, Veterans Affairs and other federal government agencies.
- Federal Question cases or cases brought under federal law
  - The federal courts have jurisdiction over all civil actions that arise under the Constitution and laws specifically provided by Congress.
- Diversity of Citizenship
  - The federal courts have jurisdiction over cases involving lawsuits between parties residing in different states. Diversity cases must satisfy the minimum amount-in-controversy valued in excess of \$75,000.

### Rules to Follow

The pro se litigant is responsible for following the *Federal Rules of Civil Procedure* and the United States District Court's *Local Rules*. The ***Federal Rules of Civil Procedure (Fed. R. Civ. P.)*** are available at the clerk's office and can be found on the United States Courts' website [www.uscourts.gov](http://www.uscourts.gov) under the Rules and Policies link. The ***Local Rules (L.R.)*** for the United States District Court for the Western District of Arkansas are also available in the clerk's office



and can be found on the Western District of Arkansas' website [www.arwd.uscourts.gov](http://www.arwd.uscourts.gov) . References to the **Fed. R. Civ. P.** and the **L.R.** are found throughout the pro se manual for your convenience.

## Opening a Case

### How to File Your Case

You can file your complaint by bringing it into the appropriate district court's divisional office with summons(es) and paying the \$405.00 filing fee. You can also mail your complaint with summons(es) and a \$405.00 check or money order to the appropriate district court's divisional office (see complaint form on page number 15).

Your complaint, and all other documents filed with the court, must be typewritten or legibly handwritten, on 8 ½ x 11 inch paper using only one side of the page. Your full name, current address, and phone number should be included on the complaint (**L.R. 5.5**).

### Pro Se Filer Paid

If you pay the \$405.00 filing fee, the clerk will:

- File-mark your complaint
- Assign a case number and judge to your case
- Sign, seal and issue your summons(es), and
- Create a receipt for the \$405.00 filing fee

### Pro Se Filer Proceeding Without Prepayment of Fees

If you are unable to pay the \$405.00 filing fee, you must complete an *Application to Proceed Without Prepayment of Fees and Affidavit* (application) and file the application with your complaint (see page number 25).

The clerk will:

- File-mark your complaint and application, and
- Assign a case number and judge to your case.

If the judge grants your application and allows you to proceed without paying the filing fee, you may proceed with your case. If the judge denies your application and does not allow you to proceed without paying the filing fee, you must pay the filing fee.

## Service of Summons and Complaint

### Service

You are required to notify the defendant(s) that you have filed a case against them in federal court. To serve a defendant, you must have the clerk sign, seal and issue your summons(es). You must serve the defendant a copy of the complaint and the issued summons. (see page number 21).

According to Rule 4(m) of the **Fed. R. Civ. P.**, you have 90 days from the date you filed the complaint to serve the defendants.

### Service of Process

There are several service of process options available if you pay the \$405.00 filing fee.

- You can hire a private process server.
- You can have someone personally deliver the summons.
  - According to Rule 4(c) of the **Fed. R. Civ. P.**, a summons can be served by anyone who is not a “party” and is at least 18 years of age.
- You can send the summons to the defendant(s) by certified mail, return receipt.

If you filed an application to proceed without prepayment of fees and the judge allows you to proceed without paying the \$405.00 filing fee, the court will serve the complaint and summons(es) upon the defendants on your behalf.

### Service on a Federal Agency

If you are suing the United States Government, Rule 4(i) of the **Fed. R. Civ. P.** requires service upon the following parties.

- The officer of the federal agency
- The United States Attorney in the Western District of Arkansas
- The United States Attorney General in Washington, D.C.

## After the Case is Opened

### Judge Assignment

The clerk will assign a district court judge to your case. The district judge may refer your case to the magistrate judge to handle different stages of your case.

Both parties may consent to have the magistrate judge handle the entire case. A magistrate consent notice is located on page number 27. The clerk will attach a magistrate consent notice to the summons. The defendant(s) will receive the magistrate consent notice when served with the summons and complaint.

### Proof of Service

Once you have received a return of service from a private process server, a non-party who is at least 18 years of age, or the return receipt from delivery of certified mail, you must file the return with the clerk’s office. A sample affidavit of service is located on page number 36.

Upon receipt of the proof of service, the clerk will enter the service date on the record, which begins the time the defendant(s) will have to file an answer.

### Answer

After a complaint has been served, the defendant has 21 days to file an answer. The U.S. Government has 60 days to file an answer after it has been served. If the defendant files an answer within the required time period, the case continues to the pretrial stage (**Fed. R. Civ. P. 12**).

If the defendant fails to file an answer or appear to contest the case within the required time, he/she is in default. The clerk or the judge may enter a default judgment in favor of the plaintiff and against the defendant (**Fed. R. Civ. P. 55**).

### Pro Se Defendant

If you are served with a summons and complaint, and you are unable to pay for an attorney to respond on your behalf, then you may file your answer as a pro se defendant (see page number 28). You must file your answer with the court within twenty-one (21) days after being served (**Fed. R. Civ. P. 12**). If you do not file your answer within the required time, a default judgment may be entered against you (**Fed. R. Civ. P. 55**).

### Pretrial Stage

The case moves into the pretrial stage after all defendants have entered their appearance by filing an answer or a motion.

The judge will enter an order setting a scheduling conference to be held in the courthouse or by a telephone conference call (**FED. R. CIV. P. 16**).

The parties, plaintiffs and defendants, are required to meet to prepare a report for the court. The report will include a proposed schedule for the case. The attorney(s) for the defendant(s) or plaintiff(s) will prepare the report and submit it to the appropriate judge. If there are no attorneys participating in the case, the pro se parties will be responsible for preparing and submitting the report to the court (**L.R. 26.1**).

At the scheduling conference, the judge will review the report with the parties and/or their attorneys and will prepare and file a scheduling order. The scheduling order will set deadlines for the case, such as discovery deadlines, filing motions, settlement conferences, and the trial date.

### Discovery

During the discovery process, both parties exchange information about the case. The court will accept and file some discovery documents, but there are certain discovery documents that are not filed with the court. See the discovery guidelines provided on page number 45.

### Final Pretrial Conference

The final pretrial conference is scheduled during the scheduling conference. The final pretrial conference occurs after discovery is completed. You will work with the opposing counsel in preparing a proposed pretrial order to be submitted to the judge. The conference will usually be conducted by telephone with the magistrate judge.

### Dispositive Motions

Dispositive motions are motions that ask the court to decide claims or the case without a complete trial. Dispositive motions are used when there are no factual disputes between the parties and the court can decide a case or claim as a matter of law. Two common

types of dispositive motions are motions to dismiss (**Fed. R. Civ. P. 12 (b)**), and motions for summary judgment (**Fed. R. Civ. P. 56**).

### **Trial**

There are two types of trials, a bench trial and a jury trial. During a bench trial, you will present your evidence in front of a judge and he will consider all the evidence and make a ruling. During a jury trial, you will present your evidence to jurors who will deliberate and decide which party prevails in the case.

### **Judgment**

A Memorandum Opinion and Order, and/or Judgment will be entered after a jury returns a general verdict or the court terminates all case claims based on the testimony given before the court.

A Memorandum Opinion and Order, and/or Judgment may also be entered based on court filed documents, such as Orders on Motions for Summary Judgment or Motions to Dismiss.

This Final Judgment is appealable to the Eighth Circuit Court of Appeals.

### **Notice of Appeal**

You may appeal a final decision of this court to the United States Court of Appeals for the Eighth Circuit in St. Louis, Missouri. You may also be able to appeal certain decisions before your case has been finally resolved, if allowed by 28 U.S.C. § 1292. You should consult the Federal Rules of Appellate Procedure for the time limits.

The filing fee for an appeal is \$605.00. If you filed a motion to proceed without prepayment of fees when you filed your complaint and the judge granted that motion, you do not need to pay the \$605.00 appeal filing fee. If you paid the filing fee for your original case but you are unable to pay the \$605.00 appeal filing fee, you may file a Motion to Proceed on Appeal Without Prepayment of Fees.

To file an appeal, you must file a notice of appeal with the clerk of the district court (see page number 38).

Information about the Eighth Circuit of Court of Appeals can be found at [www.ca8.uscourts.gov](http://www.ca8.uscourts.gov).

## Forms

### About These Forms

1. **In General.** This and the other pleading forms available from the [www.uscourts.gov](http://www.uscourts.gov) website illustrate some types of information that are useful to have in complaints and some other pleadings. The forms do not try to cover every type of case. They are limited to types of cases often filed in federal courts by those who represent themselves or who may not have much experience in federal courts.
2. **Not Legal Advice.** No form provides legal advice. No form substitutes for having or consulting a lawyer. If you are not a lawyer and are suing or have been sued, it is best to have or consult a lawyer if possible.
3. **No Guarantee.** Following a form does not guarantee that any pleading is legally or factually correct or sufficient.
4. **Variations Possible.** A form may call for more or less information than a particular court requires. The fact that a form asks for certain information does not mean that every court or a particular court requires it. And if the form does not ask for certain information, a particular court might still require it. Consult the rules and caselaw that govern in the court where you are filing the pleading.
5. **Examples Only.** The forms do not try to address or cover all the different types of claims or defenses, or how specific facts might affect a particular claim or defense. Some of the forms, such as the form for a generic complaint, apply to different types of cases. Others apply only to specific types of cases. Be careful to use the form that fits your case and the type of pleading you want to file. Be careful to change the information the form asks for to fit the facts and circumstances of your case.
6. **No Guidance on Timing or Parties.** The forms do not give any guidance on when certain kinds of pleadings or claims or defenses have to be raised, or who has to be sued. Some pleadings, claims, or defenses have to be raised at a certain point in the case or within a certain period of time. And there are limits on who can be named as a party in a case and when they have to be added. Lawyers and people representing themselves must know the Federal Rules of Civil Procedure and the caselaw setting out these and other requirements. The current Federal Rules of Civil Procedure are available, for free, at [www.uscourts.gov](http://www.uscourts.gov).
7. **Privacy Requirements.** Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns over public access to electronic court files. Under this rule, papers filed with the court should not contain anyone's full social-security number or full birth date; the name of a person known to be a minor; or a complete financial-account number. A filing may include only the last four digits of a social-security number and taxpayer identification number; the year of someone's birth; a minor's initials; and the last four digits of a financial-account number.

IN THE UNITED STATES DISTRICT COURT  
FOR THE \_\_\_\_\_ DISTRICT OF \_\_\_\_\_  
\_\_\_\_\_ DIVISION

*(Write the District and Division, if any, of  
the court in which the complaint is filed.)*

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*(Write the full name of each plaintiff who is filing  
this complaint. If the names of all the plaintiffs  
cannot fit in the space above, please write "see  
attached" in the space and attach an additional  
page with the full list of names.)*

**-against-**

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*(Write the full name of each defendant who is  
being sued. If the names of all the defendants  
cannot fit in the space above, please write "see  
attached" in the space and attach an additional  
page with the full list of names.)*

**Complaint for a Civil Case**

Case No. \_\_\_\_\_  
*(to be filled in by the Clerk's Office)*

Jury Trial:    ☐ Yes    ☐ No  
*(check one)*

**I. The Parties to This Complaint****A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	_____
Street Address	_____
City and County	_____
State and Zip Code	_____
Telephone Number	_____
E-mail Address	_____

**B. The Defendant(s)**

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

**Defendant No. 1**

Name	_____
Job or Title (if known)	_____
Street Address	_____
City and County	_____
State and Zip Code	_____
Telephone Number	_____
E-mail Address (if known)	_____

**Defendant No. 2**

Name	_____
Job or Title (if known)	_____
Street Address	_____
City and County	_____

State and Zip Code \_\_\_\_\_  
 Telephone Number \_\_\_\_\_  
 E-mail Address \_\_\_\_\_  
 (if known)

**Defendant No. 3**

Name \_\_\_\_\_  
 Job or Title \_\_\_\_\_  
 (if known)  
 Street Address \_\_\_\_\_  
 City and County \_\_\_\_\_  
 State and Zip Code \_\_\_\_\_  
 Telephone Number \_\_\_\_\_  
 E-mail Address \_\_\_\_\_  
 (if known)

**Defendant No. 4**

Name \_\_\_\_\_  
 Job or Title \_\_\_\_\_  
 (if known)  
 Street Address \_\_\_\_\_  
 City and County \_\_\_\_\_  
 State and Zip Code \_\_\_\_\_  
 Telephone Number \_\_\_\_\_  
 E-mail Address \_\_\_\_\_  
 (if known)

## **II. Basis for Jurisdiction**

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.



What is the basis for federal court jurisdiction? *(check all that apply)*

☐ Federal question

☐ Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

**A. If the Basis for Jurisdiction Is a Federal Question**

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

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**B. If the Basis for Jurisdiction Is Diversity of Citizenship**

1. The Plaintiff(s)

a. If the plaintiff is an individual

The plaintiff, *(name)* \_\_\_\_\_, is a citizen of the State of *(name)* \_\_\_\_\_.

b. If the plaintiff is a corporation

The plaintiff, *(name)* \_\_\_\_\_, is incorporated under the laws of the State of *(name)* \_\_\_\_\_, and has its principal place of business in the State of *(name)* \_\_\_\_\_.

*(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)*

2. The Defendant(s)

a. If the defendant is an individual

The defendant, *(name)* \_\_\_\_\_, is a citizen of the State of *(name)* \_\_\_\_\_. Or is a citizen of *(foreign nation)* \_\_\_\_\_.

b. If the defendant is a corporation

The defendant, *(name)* \_\_\_\_\_, is incorporated under the laws of the State of *(name)* \_\_\_\_\_, and has its principal place of business in the State of *(name)* \_\_\_\_\_. Or is incorporated under the laws of *(foreign nation)* \_\_\_\_\_, and has its principal place of business in *(name)* \_\_\_\_\_.

*(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)*

3. The Amount in Controversy

The amount in controversy—the amount the plaintiff claims the defendant owes or the amount at stake—is more than \$75,000, not counting interest and costs of court, because *(explain)*:

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**III. Statement of Claim**

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

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**IV. Relief**

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

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**V. Certification and Closing**

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing 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 complaint otherwise complies with the requirements of Rule 11.

**A. For Parties Without an Attorney**

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: \_\_\_\_\_, 20\_\_.

Signature of Plaintiff \_\_\_\_\_

Printed Name of Plaintiff \_\_\_\_\_

Address of Plaintiff \_\_\_\_\_

Telephone Number \_\_\_\_\_

# UNITED STATES DISTRICT COURT

for the

Western District of Arkansas

	)	
	)	
	)	
	)	
_____	)	
<i>Plaintiff(s)</i>	)	
v.	)	Civil Action No.
	)	
	)	
	)	
_____	)	
<i>Defendant(s)</i>	)	

## 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 \$ \_\_\_\_\_ 0.00.

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:

JS 44 (Rev. 07/16)

## 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)

CONTRACTS	TORTS	FORFEITURE & Eminent Domain	RECEIPTS & COPIES	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 193 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 138 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROCEEDINGS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1391E) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <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
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

## 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 - Transfer    ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

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

Brief description of cause:

## VII. REQUESTED IN COMPLAINT:

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

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

## FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_



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

## Authority For Civil Cover Sheet

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

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
  - II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
  - III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
  - IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
  - V. **Origin.** Place an "X" in one of the 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
  - VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
  - VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
  - VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

## UNITED STATES DISTRICT COURT

for the

Western District of Arkansas

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

**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*

UNITED STATES DISTRICT COURT  
for the  
Western District of Arkansas

Plaintiff	)	
v.	)	Civil Action No.
Defendant	)	

**NOTICE, CONSENT, AND REFERENCE OF A CIVIL ACTION TO A MAGISTRATE JUDGE**

*Notice of a magistrate judge's availability.* A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States court of appeals like any other judgment of this court. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

*Consent to a magistrate judge's authority.* The following parties consent to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

<i>Parties' printed names</i>	<i>Signatures of parties or attorneys</i>	<i>Dates</i>

IN THE UNITED STATES DISTRICT COURT  
FOR THE \_\_\_\_\_ DISTRICT OF \_\_\_\_\_  
\_\_\_\_\_ DIVISION

*(Write the District and Division, if any, of  
the court in which the complaint is filed.)*

<hr/> <hr/> <hr/> <i>(Write the full name of each plaintiff who filed the complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)</i>  <b>-against-</b>  <hr/> <hr/> <hr/> <i>(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)</i>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**The Defendant's Answer to the Complaint**

Case No. \_\_\_\_\_

Jury Trial:    ☐ Yes    ☐ No  
*(check one)*

**I. The Parties Filing This Answer to the Complaint**

Provide the information below for each defendant filing this answer or other response to the allegations in the plaintiff's complaint. Attach additional pages if needed.

Name	_____
Street Address	_____
City and County	_____
State and Zip Code	_____
Telephone Number	_____
E-mail Address	_____

**II. The Answer and Defenses to the Complaint****A. Answering the Claims for Relief**

On a separate page or pages, write a short and plain statement of the answer to the allegations in the complaint. Number the paragraphs. The answer should correspond to each paragraph in the complaint, with paragraph 1 of the answer corresponding to paragraph 1 of the complaint, etc. For each paragraph in the complaint, state whether: the defendant admits the allegations in that paragraph; denies the allegations; lacks sufficient knowledge to admit or deny the allegations; or admits certain allegations but denies, or lacks sufficient knowledge to admit or deny, the rest.

**B. Presenting Defenses to the Claims for Relief**

Write a short and plain statement identifying the defenses to the claims, using one or more of the following alternatives that apply.

1. The court does not have subject-matter jurisdiction over the claims because *(briefly explain why there is no federal-question jurisdiction or diversity-of-citizenship jurisdiction; see the complaint form for more information)*

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2. The court does not have personal jurisdiction over the defendant because *(briefly explain)*

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
3. The venue where the court is located is improper for this case because  
*(briefly explain)*
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
4. The defendant was served but the process—the form of the summons—  
was insufficient because *(briefly explain)*
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
5. The manner of serving the defendant with the summons and complaint  
was insufficient because *(briefly explain)*
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
6. The complaint fails to state a claim upon which relief can be granted  
because *(briefly explain why the facts alleged, even if true, are not enough  
to show the plaintiff's right to recover)*
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
7. Another party *(name)* \_\_\_\_\_ needs to be joined (added) in  
the case. The reason is *(briefly explain why joining another party is  
required)*
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

- a. If the basis for subject-matter jurisdiction is diversity of citizenship, state the effect of adding the other party:

The other party is a citizen of the State of *(name)* \_\_\_\_\_ . Or is a citizen of *(foreign nation)* \_\_\_\_\_ . The amount of damages sought from this other party is *(specify the amount)* \_\_\_\_\_ .

- b. If the claim by this other party is based on an alleged violation of a federal constitutional or statutory right, state the basis:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**C. Asserting Affirmative Defenses to the Claims for Relief**

Identify an affirmative defense or avoidance that provides a basis for the defendant to avoid liability for one or more of the plaintiff's claims even if the basis for the claim is met. Any affirmative defense or avoidance must be identified in the answer. Include any of the following that apply, as well as any others that may apply.

The plaintiff's claim for *(specify the claim)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

is barred by *(identify one or more of the following that apply)*:

1. Accord and satisfaction *(briefly explain)*

\_\_\_\_\_  
\_\_\_\_\_

2. Arbitration and award *(briefly explain)*

\_\_\_\_\_  
\_\_\_\_\_

3. Assumption of risk *(briefly explain)*

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4. Contributory or comparative negligence of the plaintiff *(briefly explain)*

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5. Duress *(briefly explain)*

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6. Estoppel *(briefly explain)*

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7. Failure of consideration *(briefly explain)*

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8. Fraud *(briefly explain)*

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9. Illegality *(briefly explain)*

---

---

10. Injury by fellow employee *(briefly explain)*

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11. Laches (Delay) *(briefly explain)*

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12. License (*briefly explain*)

---

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13. Payment (*briefly explain*)

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14. Release (*briefly explain*)

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15. Res judicata (*briefly explain*)

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16. Statute of frauds (*briefly explain*)

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17. Statute of limitations (*briefly explain*)

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18. Waiver (*briefly explain*)

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---

19. Other (*briefly explain*)

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**D. Asserting Claims Against the Plaintiff (Counterclaim) or Against Another Defendant (Cross-Claim)**

For either a counterclaim against the plaintiff or a cross-claim against another defendant, state briefly the facts showing why the defendant asserting the counterclaim or cross-claim is entitled to the damages or other relief sought. Do not make legal arguments. State how each opposing party was involved and what each did that caused the defendant harm or violated the defendant's rights, including the dates and places of that involvement or conduct. If more than one counterclaim or cross-claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

1. The defendant has the following claim against the plaintiff (*specify the claim and explain it; include a further statement of jurisdiction, if needed*):

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2. The defendant has the following claim against one or more of the other defendants (*specify the claim and explain it; include a further statement of jurisdiction, if needed*):

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3. State briefly and precisely what damages or other relief the party asserting a counterclaim or cross-claim asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons that are alleged to entitle the party to actual or punitive money damages.

- a. The defendant asserting the counterclaim or cross-claim against (*specify who the claim is against*) \_\_\_\_\_ alleges that the following injury or damages resulted (*specify*):

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**IV. Relief**

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

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**V. Certification and Closing**

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing 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 complaint otherwise complies with the requirements of Rule 11.

**A. For Parties Without an Attorney**

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: \_\_\_\_\_, 20\_\_.

Signature of Plaintiff \_\_\_\_\_

Printed Name of Plaintiff \_\_\_\_\_

Address of Plaintiff \_\_\_\_\_

\_\_\_\_\_

Telephone Number \_\_\_\_\_

**Affidavit of Service**

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

\_\_\_\_\_  
V. Case No. \_\_\_\_\_  
\_\_\_\_\_  
PLAINTIFF(S)  
DEFENDANT(S)

**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 part hereof.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed name)

## Certificate of Service

### CERTIFICATE OF SERVICE

I, \_\_\_\_\_, state that I have, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, mailed a true and correct copy of the above and foregoing to the following.

(Name and addresses of persons served)

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## Notice of Appeal

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

\_\_\_\_\_ **PLAINTIFF(S)**

**V.** Case No. \_\_\_\_\_

\_\_\_\_\_ **DEFENDANT(S)**

**NOTICE OF APPEAL**

Notice is hereby given that (NAME OF PARTIES), \_\_\_\_\_

plaintiffs)(defendant) in the above named case, hereby appeal 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)

\_\_\_\_\_  
(Printed name)

## Select Federal Rules of Civil Procedure and Local Rules

### Rule 8 - General Rules of Pleading (Fed. R. Civ. P. 8)

(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;
- 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 (Fed. R. Civ. P. 10)

- (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 (Fed. R. Civ. P. 11)

- (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 Rules of the United States District Court for the Eastern and Western Districts of Arkansas

### 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

### Guidelines for Filing Discovery Documents in All Pending Civil Cases

- " Initial Disclosures pursuant to FRCvP 26(a)(1) are not to be filed.
- " Expert Disclosures pursuant to FRCvP 26(a)(2) are not to be filed.
- " Pretrial Disclosures pursuant to FRCvP 26(a)(3) are to be filed. (*See Local Rule 26.2*)

Item No.	Discovery Document	File (Yes/No)	Explanation
1.	Witness Lists pursuant to FRCvP 26(a)(3)(A) (See Local Rule 26.2)	Yes	Permits the filing with the Court.
2.	Exhibit Lists pursuant to FRCvP 26(a)(3)(C) (See Local Rule 26.2)	Yes	Permits the filing with the Court.
3.	Objection to Exhibit and, Witness Lists pursuant to FRCvP 26(a)(3)	Yes	<i>Advisory Committee Notes</i> state that materials under (a)(3) and any objections should be filed promptly.
4.	Rule 26(f) Report	Yes	Local Rule 26.1 requires that the FRCvP 26(f) report be filed with the Court. ( <i>See Local Rule 26.1 for details of report</i> ).
5.	Requests for Production of Documents	No	FRCvP 5(d)(iii) restricts filing.
6.	Interrogatories	No	FRCvP 5(d)(ii) restricts filing.
7.	Answer to Interrogatories	No	FRCvP 5(d). As a response to interrogatories, it must not be filed.
8.	Objections to Interrogatories	No	FRCvP 5(d). As a response to interrogatories, it should not be filed.
9.	Requests for Admission	No	FRCvP 5(d)(iv) restricts filing.
10.	Responses to Requests for Admission	No	FRCvP 5(d). As a response to requests for admission, it should not be filed.
11.	Objections to Requests for Admission	No	FRCvP 5(d). As a response to the requests for admission, it should not be filed.
12.	Notice of Deposition	No	FRCvP 5(d). <i>Advisory Committee Notes</i> state that discovery requests include deposition notices...
13.	Depositions	No	FRCvP 5(d)(i) restricts filing.

## Contacts

### United States District Court Western District of Arkansas

[www.arwd.uscourts.gov](http://www.arwd.uscourts.gov)

#### **Fort Smith Office (Main Office)**

Judge Isaac C. Parker Federal Building  
30 South 6<sup>th</sup> Street, Room 1038  
Fort Smith, Arkansas 72901-2437  
(479) 783-6833

#### **Satellite Offices**

##### **Fayetteville**

John Paul Hammerschmidt Federal Building  
35 East Mountain Street, Room 510  
Fayetteville, Arkansas 72701-5354  
(479) 521-6980

##### **El Dorado**

United States Courthouse  
101 South Jackson Avenue, Room 205  
El Dorado, Arkansas 71730-6133  
(870) 862-1201

#### **Satellite Offices, Continued**

##### **Hot Springs (Unstaffed Office)**

United States Courthouse  
100 Reserve Street, Room 347  
Hot Springs, Arkansas 71901-4143  
**Please direct all inquiries to the Fort Smith Division**  
(479) 783-6833

##### **Texarkana**

United States Post Office & Courthouse  
500 North State Line Avenue, Room 302  
Texarkana, Arkansas 71854-5961  
(870) 773-3381

##### **Harrison (No Office)**

**Please direct all inquiries to Fayetteville Division**  
John Paul Hammerschmidt Federal Building  
35 East Mountain Street, Room 510  
Fayetteville, Arkansas 72701-5354  
(479) 521-6980