INSTRUCTIONS FOR FILING COMPLAINT BY PRISONERS UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

This packet includes a Notice to Prisoners re: Filing an Action under 42 U.S.C. § 1983, an Application to Proceed Without Prepayment of Fees (*in forma pauperis* application), a Notice of Electronic Availability of Case File Information, and a complaint form under the Civil Rights Act, 42 U.S.C. § 1983. **To start an action, you must submit the original of your complaint, *in forma pauperis* application, and page 2 of the Notice of Electronic Availability of Case File Information to the address listed below.**

You **MUST** submit the address of each person you name as a defendant. Without this information the U.S. Marshal cannot serve the defendant.

Your complaint will not be filed unless it conforms to these instructions and to these forms.

Your complaint **must be** legibly handwritten or typewritten. The plaintiff must sign and swear to the complaint. If you need additional space to answer a question, you may use additional sheets of paper.

Your complaint can be brought in this court only if one or more of the named defendants is located within this district. Further, it is necessary for you to submit a separate complaint for each claim that you have unless they are all related to the same incident or issue.

In order for this complaint to be filed, it must be accompanied by the filing fee of $400.00. In addition, the U.S. Marshal will require you to pay the costs of serving the complaint on each of the defendants.

If you are unable to pay the filing fee and service costs for this action, you may petition the court to proceed *in forma pauperis*. A blank application for this purpose is included in this packet, and should be submitted with your complaint.

You will note that you are required to give **facts**. This complaint should not contain legal arguments or citations.

Under a local rule of this court, it is your obligation as a *pro se* plaintiff to inform this court at all times of your current mailing address. It is also your duty to prosecute your case diligently and monitor its progress.

Again, you are advised that you must promptly inform the court of any change of address. If you are presently incarcerated, inform the court **immediately** upon your release.

If the court does not receive a response within 30 days to any communication addressed to you at the last address provided by you, the court will assume that you have no further interest in the case and may dismiss same, without prejudice, upon motion of an adverse party or *sua sponte* (*i.e.*, by the court acting on its own initiative).

When these forms are completed, mail them to:

Sherry Gilbertson
Pro Se Law Clerk
35 East Mountain Street, Suite 510
Fayetteville, AR 72701

(Revised 07/2014)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS

NOTICE TO PRISONERS FILING AN ACTION UNDER 42 U.S.C. § 1983

On April 26, 1996, the President signed into law the Prison Litigation Reform Act. This act makes a number of changes affecting § 1983 lawsuits by inmates. You should be aware of the following aspects of the law:

********** **

WHO THE LAW AFFECTS

The law applies to prisoners. Prisoners are persons incarcerated or detained in a facility who have been accused of, convicted of, sentenced for, or adjudicated delinquent for violations of (1) criminal law, or (2) the terms and conditions of parole, probation, pretrial release, or diversionary program.

EXHAUSTION

You may not bring an action challenging prison or jail conditions under § 1983 or any other federal law until you have exhausted available administrative remedies, including any written grievance system.

FILING

When you bring a civil action or file an appeal, **you must pay the full amount of the filing fee ($400.00, including a $50.00 administrative fee, for civil actions and $505.00 for appeals) if you have money to pay it**. If you cannot pay the full fee at the time of filing, you must apply to proceed *in forma pauperis*.

1. To file an application to proceed *in forma pauperis*, you must submit (1) an affidavit that includes a statement of all assets you possess, and (2) a **certified** copy of your prisoner account statement for the past six months, obtained from the appropriate official at your institution. That official must also calculate the initial partial filing fee using the formula described in #2 below, and include the calculation with the certified copy of your prisoner account statement.

2. **If the application to proceed *in forma pauperis* is granted, the $50.00 administrative fee is waived, and the court will assess and collect a filing fee of $350.00.** In addition, the court will assess and collect an initial partial filing fee of the greater of the following:

   (a) 20% of the average monthly deposits to your prisoner account; or

   (b) 20% of the average monthly balance in your prisoner account for the past six months.

   If, however, you have no assets and no means to pay the initial partial fee, you will not be prohibited from bringing an *in forma pauperis* action. See 28 U.S.C. § 1915(b)(4). Any money you later receive will be collected as described in #3 below.

3. After paying this initial partial fee, you must pay 20% of each future month's income received in your prisoner account. The agency having custody of you will send these payments to the clerk of court when your prisoner account has more than $10 in it, until the full filing fee is paid. See 28 U.S.C. § 1915(b).

DISMISSAL

The court must dismiss your case at any time if it determines that:

1. Your allegation of poverty is untrue; or

2. Your case is:
   (a) frivolous, or
   (b) malicious, or
   (c) fails to state a claim on which relief may be granted, or
   (d) seeks money from a defendant who is immune from such relief.

Even if your case is dismissed for one of the above reasons, you are still responsible for paying any unpaid portion of the filing fee. The filing fee debt is not dischargeable in bankruptcy.

THREE-DISMISSAL RULE

If you have, **three or more times in the past**, while incarcerated, brought a civil action or appeal in federal court that was dismissed because it was (a) frivolous, or (b) malicious, or (c) failed to state a claim upon which relief may be granted, or (d) seeks money from a defendant who is immune from such relief, you **cannot bring a new civil action or appeal a judgment in a civil action *in forma pauperis*.** The only exception to this is if you are in "imminent danger of serious physical injury." See 28 U.S.C. § 1915(g).

If you are **not proceeding *in forma pauperis***, you may file a new civil action or appeal even if you have three or more of these dismissals.

COMPENSATORY DAMAGES

If your case is allowed to proceed and you are awarded compensatory damages against any Federal, State, or local jail, prison, or correctional facility or against any official or agent of such jail, prison, or correctional facility, the award will first be paid directly to satisfy any outstanding restitution orders pending against you. The remainder of any such award will be paid to you

ATTORNEY FEES

If you were granted appointment of counsel, a portion of your award (but not more that 25%) will be used to pay attorney fees. Your appointed counsel may also seek an award of attorney fees from the defendant.

(Revised 07/2014)

IMPORTANT NOTICE

RE: AO 240 and Privacy Policy Redaction Requirements

Federal Rule of Civil Procedure 5.2 regarding remote public electronic access to civil case files requires those filing documents to redact certain personal identifiers from documents before they are filed with the court. Social security numbers, taxpayer identification numbers, and financial account numbers are to be redacted to the last four digits. The names of minor children are to be redacted to the initials, and dates of birth are to be redacted to the year. Exemptions to the redaction requirements can be found in Fed.R.Civ.P. § 5.2(b).

Please be aware that this redaction requirement may impact the way in which the Application to Proceed Without Prepayment of Fees or Costs (AO 240) is completed. Question seven of this form requests the following information: (1) persons dependant upon the applicant for support, (2) relationship of this person to the applicant, and (3) amount of support. Most often, minor children will be included in responding to this question. In order to comply with the privacy policy, only the initials of the minor should be on the form. Listing the age of the minor is acceptable; however only the year of birth may be included. Pro se filers are responsible for completing the application in compliance with the privacy policy. **The Clerk will not review each filing to determine if it complies with this redaction requirement.**

UNITED STATES DISTRICT COURT

for the

_____ District of _____

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

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	❒ Yes	❒ No
(b) Rent payments, interest, or dividends	❒ Yes	❒ No
(c) Pension, annuity, or life insurance payments	❒ Yes	❒ No
(d) Disability, or worker's compensation payments	❒ Yes	❒ No
(e) Gifts, or inheritances	❒ Yes	❒ No
(f) Any other sources	❒ Yes	❒ 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

NOTICE OF ELECTRONIC AVAILABILITY OF CASE FILE INFORMATION

(Amended July 2014)

The United States District Court, Western District of Arkansas, implemented the Case Management/Electronic Case Files (CM/ECF) system on August 15, 2005. This system permits public access to the official case documents over the Internet and on the public kiosks located in each divisional office. Any subscriber to PACER, or visitor to the clerk's office, will be able to read and/or print the full content of electronic documents. Additionally, PACER users can download and store electronic documents. Counsel should notify clients of this fact so that an informed decision may be made on what information is to be included in a document filed with the court.

Sealed documents and documents otherwise restricted by court order will **not** be available over the Internet.

In compliance with the Privacy Policy of the Judicial Conference of the United States and the E-Government Act of 2002, sensitive information should not be included in any document filed with the court unless such inclusion is necessary and relevant to the case.

All filers, counsel and pro se, should review the Judicial Conference Policy and applicable court rules, specifically Rule 5.2 of the Federal Rules of Civil Procedure and Rule 49.1 of the Federal Rules of Criminal Procedure. These rules govern mandated redaction, exceptions from the redaction requirements, sealed pleadings and waiver of privacy protections.

*****It is the sole responsibility of counsel and their clients and pro se filers to redact personal identifiers. The clerk will not review documents for compliance with the rules, or redact documents, whether filed electronically or in paper form.*****

Parties will refrain from including, or will partially redact where inclusion is necessary, the following personal data identifiers from all documents filed with the court, including exhibits thereto, whether filed electronically or in paper form, unless otherwise ordered by the court:

- **Minors' names** (redact to initials only);
- **Social Security Numbers** or **Taxpayer Identification Numbers** (redact to the last four digits);
- **Dates of birth** (redact to the year only);
- **Financial Account Numbers** (redact to the last four digits);
- **Homes addresses** (redact to city and state in **criminal** cases only).

Additionally, filers should also exercise caution when filing documents that contain sensitive information, such as:

- **Personal identifying number** (driver's license number);
- **Medical records** identifying diagnosis and/or treatment;
- **Individual Financial Information**; and
- **Proprietary** or **Trade Secret information**.

For more information, please visit

http://www.uscourts.gov/RulesAndPolicies/JudiciaryPrivacyPolicy.aspx

FORM TO BE USED BY PRISONERS IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

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

_____
(Enter above the full name of the plaintiff in this action.)

Prisoner ID No. _____ _____
(Do Not Put Your Social Security Number)

V. **CASE NO. _____**

_____ **Jury Trial: Yes _____ No _____**
(Check One)

_____

_____
(Enter above the full name of the defendant, or defendants, in this action.)

I. Previous Lawsuits

A. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes_____ **No _____**

B. If your answer to A is yes, describe each lawsuit in the space below including the exact plaintiff name or alias used. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

1. Parties to this lawsuit

Plaintiffs: _____

Defendants: _____

_____

2. Court (if federal court, name the district; if state, name the county):

_____

3. Docket number: _____

4. Name of judge to whom case was assigned: _____

5. Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?) _____

6. Approximate date of filing lawsuit: _____

7. Approximate date of disposition: _____

II. Place of Present Confinement: _____

_____

III. There is a written prisoner grievance procedure in the Arkansas Department of Correction and in your county jail. Failure to complete the grievance procedure may affect your case in federal court.

A. Did you present the facts relating to your complaint in the state or county written prisoner grievance procedure?

Yes _____ **No** _____

B. If your answer is YES, Attach copies of the most recent written grievance(s)/response(s) relating to your claims showing completion of the grievance procedure. FAILURE TO ATTACH THE REQUIRED COPIES MAY RESULT IN THE DISMISSAL OF YOUR COMPLAINT. If copies are not available, list the number assigned to the grievance(s) and the approximate date it was presented.

C. If your answer is NO, explain why not: _____

_____

_____

IV. Parties

(In item A below, place your name in the first blank and place your present address in the second blank.)

A. Your Full Name: _____

Address: _____

_____

(In Item B below, place the full name of the defendant in the first blank, his official position in the second blank, his place of employment in the third blank, and his address in the fourth blank.)

Do Not List Witnesses.

You may not name the jail as a Defendant. The jail is a building and cannot be sued.

B. Read carefully and fill out all information sought.

1. Defendant #1.

Full Name: _____

Position: _____

Place of Employment: _____

Address: _____

_____

2. Defendant #2

Full Name: _____

Position: _____

Place of Employment: _____

Address: _____

_____

3. Defendant #3

Full Name: _____

Position: _____

Place of Employment: _____

Address: _____

_____

4. Defendant #4

Full Name: _____

Position: _____

Place of Employment: _____

Address: _____

_____

If you need more space for additional Defendants, list the additional Defendants on another piece of paper, using the same outline.

V. At the time of the alleged incident(s), were you:
(check the appropriate blank)

____ **in jail and still awaiting trial on pending criminal charges**
____ **serving a sentence as a result of a judgment of conviction**
____ **in jail for other reasons (*e.g.,* alleged probation violation, etc.)**

Explain: _____

_____

Please provide the date of your conviction or probation or parole revocation:

_____

VI. Statement of Claim

State every ground on which you claim that one or more of the Defendants violated your federal constitutional rights. For example, if you have an excessive force claim and a denial of medical care claim, you must fill out a separate section for each different claim. This section should be limited to the facts of your claim.

With respect to each claim, briefly describe the actions taken by each Defendant who you believe was involved in violating your rights. Include also the names of other persons involved, dates and places. Do not give any legal arguments or cite any cases or statutes. (Use as much space as you need. Attach extra sheets if necessary.)

Claim Number # 1:

Type of Claim (for example, excessive force, denial of medical care, etc.):

_____

_____

Date of the Occurrence:_____

Name of Each Defendant involved:_____

_____

_____

_____

Describe the acts or omissions of the Defendant(s) that form the basis for Claim #1 and any harm caused by it.

_____

_____

_____

_____

_____

_____

_____

With regard to Claim #1, are you suing Defendant(s) in his or her: (check the appropriate blank)

____ **official capacity only (An official capacity claim is the same as suing the governmental entity this Defendant works for and requires proof that a custom or policy of the governmental entity caused the alleged violation).**

____ **personal capacity only (A personal capacity claim is one that seeks to hold an individual liable for his own actions taken in the course of his duties).**

____ **both official and personal capacity**

<u>If you are asserting an official capacity claim</u>, please describe the custom or policy that you believe caused the violation of your constitutional rights.

_____

_____

_____

_____

_____

_____

_____

<u>Claim Number # 2</u>:

Type of Claim (for example, excessive force, denial of medical care, etc.):

_____

_____

Date of the Occurrence: _____

Name of Each Defendant involved: _____

_____

_____

_____

Describe the acts or omissions of the Defendant(s) that form the basis for Claim #2 and any harm caused by it.

_____

_____

_____

_____

_____

With regard to Claim #2, are you suing Defendant(s) in his or her: (check the appropriate blank)

____ **official capacity only (An official capacity claim is the same as suing the governmental entity this Defendant works for and requires proof that a custom or policy of the governmental entity caused the alleged violation).**

____ **personal capacity only (A personal capacity claim is one that seeks to hold an individual liable for his own actions taken in the course of his duties).**

____ **both official and personal capacity**

<u>If you are asserting an official capacity claim</u>, please describe the custom or policy that you believe caused the violation of your constitutional rights.

_____

_____

_____

_____

_____

_____

<u>Claim Number # 3</u>:

Type of Claim (for example, excessive force, denial of medical care, etc.):

_____

_____

Date of the Occurrence:_____

Name of Each Defendant involved:_____

_____

_____

_____

Describe the acts or omissions of Defendant(s) that form the basis for Claim #3 and any harm caused by it.

_____

_____

_____

_____

_____

_____

With respect to Claim #3, are you suing Defendant(s) in his or her: (check the appropriate blank)

____ **official capacity only (An official capacity claim is the same as suing the governmental entity this Defendant works for and requires proof that a custom or policy of the governmental entity caused the alleged violation).**

____ **personal capacity only (A personal capacity claim is one that seeks to hold an individual liable for his own actions taken in the course of his duties).**

____ **both official and personal capacity**

<u>If you are asserting an official capacity claim</u>, please describe the custom or policy that you believe caused the violation of your constitutional rights.

_____

_____

_____

_____

_____

_____

If you need more space for more claims, list the additional claims on another piece of paper, using the same outline.

VII. Relief

If you are seeking to recover damages from the named Defendants, check the appropriate blank or blanks below for the type or types of damages that you are seeking:

____ Compensatory damages (designed to compensate persons for injuries, such as physical pain and suffering, etc., that are caused by the deprivation of constitutional rights)

____ Punitive damages (designed to punish a defendant for engaging in misconduct and deter a defendant and others from engaging in such misconduct in the future)

State briefly below any other relief you are seeking in this action. Make no legal arguments. Cite no cases or statutes. If you are requesting money damages, include the amounts of any actual damages and/or punitive damages you are claiming. Explain why you believe you are entitled to recover those damages.

_____

_____

_____

_____

_____

_____

I declare under penalty of perjury (18 U.S.C. § 1621) that the foregoing is true and correct.

Executed this _____ day of _____, 20_____.

_____
Printed Name of Plaintiff

_____
Signature of Plaintiff