



Section 1983 Prisoner Litigation Guide

The purpose of this guide is to inform prisoners representing themselves (also known as proceeding *pro se*) of Court rules and procedures. The guide is not intended to replace the Federal Rules of Civil Procedure or the Local Rules for the Eastern and Western Districts of Arkansas. All parties remain responsible for complying with both procedural and substantive law.

I. OPENING A CASE

1. **Beginning:** A plaintiff initiates a case by filing of a complaint, **on the court-approved complaint form, and** either submitting an application to proceed *in forma pauperis* (IFP) **or** paying the \$ 405 filing fee--consisting of the \$350 filing fee and a \$55 administrative fee. The case will be directly assigned to a Magistrate Judge.

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

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

- If you qualify for IFP status, and you are a prisoner, you remain responsible for paying the entire statutory filing fee of \$350. But the Court will enter an Order allowing you to pay that statutory filing fee in installments. The Clerk's Office will be directed to collect the filing fee in installments from the institution where you are incarcerated. In prisoner cases, the \$350 filing fee may never be waived by the Court.

- If the Court determines that you financially qualify for IFP status, but you are no longer incarcerated when you initiate your action, the Court may enter an order authorizing you to proceed IFP without paying any portion of the filing fee.
- If your IFP application is incomplete for any reason, you will be ordered to submit further information to the Court.
- If you do not qualify for IFP status, you will be required to pay the \$405. You will also be responsible for other costs such as service of the complaint, witness fees, etc.

4. Review of Complaint: The Magistrate Judge will review your complaint and determine whether it has been filed in the correct court, whether it has asserted plausible constitutional claims, and whether it should be served on the Defendants. If it has been filed in the wrong federal court, it will be transferred. If you have not stated sufficient facts to assert a plausible constitutional violation, you may be allowed to file an amended complaint. Upon review (of the complaint or amended complaint), the Court may enter a report and recommendation recommending that certain claims be dismissed. You will receive a copy of any report and recommendation that is entered in your case and will have an opportunity to file any objections within a specific time period. If a report and recommendation is filed, your case will have both a District Judge and a Magistrate Judge assigned to it.

5. Service: If the Magistrate Judge decides the complaint should be served **and** you are proceeding IFP, the United States Marshal will be asked to serve the complaint. Defendants will have 21 days from the date **they are actually served** to respond to the complaint.

6. Direct Assignment to the Magistrate Judge: Your case will be assigned to a Magistrate Judge. The Clerk's Office will send you a form that includes a notice informing you that your case has been directly assigned to a magistrate judge and providing you with the option of either (1) consenting to the jurisdiction of the magistrate judge or (2) requesting that your case is assigned to a district judge. You **must** return the form indicating whether you choose option one (1) or two (2).

If you chose option (1) and consent to the jurisdiction of the magistrate judge, the case will remain assigned to the Magistrate Judge as presiding judge. The Magistrate Judge will make all decisions in the case, conduct any trial, and enter the final judgment in the case.

If you chose option (2), the case will be assigned to a District Judge as the presiding Judge. The Magistrate Judge will remain in the case as the referral judge. This means that the Magistrate Judge will rule on most pretrial matters. However, a dispositive motion—a motion that could result in the dismissal of your case, such as a motion to dismiss or a motion for summary judgment—will require the Magistrate Judge to enter a report and recommendation. The District Judge will then make the final decision on whether the dispositive motion should be granted or denied. If the case goes to trial, the District Judge will conduct the trial and enter the final judgment in the case.

Completing and returning the Magistrate Consent/Reassignment form is **mandatory**. You must return the form selecting either option (1) or (2). Failure to return the consent/reassignment form will result in your case being **delayed**. The defendants will also be required to complete this form. All parties must consent to the jurisdiction of the Magistrate Judge for the Magistrate to be authorized to make all decisions in the case.

7. **Address Changes:** If your address changes, you are required to immediately notify the Court of your new address. If you fail to do this and **thirty (30) days** have passed without you providing a new address, your case will be **dismissed**.

II. FILING DOCUMENTS

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

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

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

- The case number assigned by the Clerk when your case is opened;
- The names of the parties;
- The title of the pleading, for example, amended complaint, motion for appointment of counsel, response to summary judgment motion, etc. The Clerk is not responsible for determining how to file your documents;
- Your signature along with your printed name at the end of the document;
- Your current address at the end of the document. If you are incarcerated, you **must** use the facility address;
- If you are no longer incarcerated, your telephone number.

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

4. **Letters:** Letters addressed to the Judge or the Judge's staff are **strictly prohibited**. The Court will not respond to these letters.

III. COPIES

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

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

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

IV. AMENDING YOUR COMPLAINT

1. **Without a Motion:** Under Rule 15 of the Federal Rules of Civil Procedure you are generally allowed to amend your complaint **one time** without requesting permission from the court to amend **BUT** the amended complaint must be filed no later than 21 days after the defendants have either answered or filed a motion to dismiss the original complaint.

2. **Motion Required:** If you want to amend your complaint at any other time, you **must** first file a motion asking the Court for permission. The motion should explain how you intend to amend the complaint. For example, are you adding defendants involved in the same facts or circumstances giving rise to your claims; are you identifying the John or Jane Doe defendant; are you adding facts to your original claims; or are you adding claims that arise from the same time frame? In your motion, you may request an additional § 1983 complaint form.

3. **Exhibits:** Do not submit exhibits with your amended complaint. If you do, the exhibits will be returned without being filed.

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

V. SERVICE OF DOCUMENTS ON DEFENDANTS

1. **Requirement:** After the defendants have answered or filed a motion to dismiss, the Federal Rules of Civil Procedure require you to serve the Defendants with a copy of all documents you file in your case.

2. **Unrepresented Defendants:** If a defendant is representing himself (proceeding *pro se*), you must **mail** that defendant a copy of each document you directly.

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

VI. MOTIONS

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

2. **Titles:** The motion must include a title, for example, motion to amend or motion for appointment of counsel, and explain in detail what action you want the court to take and why.

3. **Response Times:** Responses to motions are due within **fourteen (14) days** from service of the motion. If you do not respond, the court will assume you agree the defendants are entitled to the relief requested.

4. **Court Ordered Response Time:** Occasionally, the court enters an Order directing you to respond to a motion such as a motion to dismiss or a motion for summary judgment. The court order will give you a specific date by which your response is due. Do not assume the court will order you to respond.

5. **Extensions of Time:** If you need additional time to respond to a motion, you must file a motion requesting additional time. However, you must file your motion within the 14-day response time or by the date specified in an order directing your response. If you fail to request an extension of time and do not file a timely response, the court may dismiss your case.

VII. EXHIBITS

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

- a motion for summary judgment or response to a motion for summary judgment;
- a motion for a temporary restraining order or preliminary injunction and a response to such motion;

- a motion to compel or a response to a motion to compel;
- a motion for sanctions; or
- at a hearing or trial.

2. **May Not Just File:** You may not just mail exhibits to the court for filing if they are not in support of a motion or in support of a response to a motion. Exhibits submitted by themselves or with motions or responses not identified above, will not be considered by the Court.

VIII. DISCOVERY

1. **Beginning:** Discovery begins after an **answer** has been filed by defendants.

2. **Bench Order:** If your claims concern incidents or conditions at a detention center, the Magistrate Judge will enter a Bench Order. The Bench Order temporarily **stays** discovery. If defendants intend to argue that you did not exhaust your administrative remedies by following the institution's grievance procedure, they must file a motion for summary judgment by the time specified in the Bench Order. If they do not intend to argue exhaustion, they must promptly file a notice with the court informing the court and parties that they do not intend to pursue exhaustion as an affirmative defense at trial.

3. **Initial Scheduling Order:** After the exhaustion issue has been resolved, the Magistrate Judge will enter an Initial Scheduling Order governing discovery and setting specific deadlines. One of those deadlines is the date by which the defendants must send you initial disclosures. The initial disclosures may include reports documenting the incidents identified in your complaint, including any color photographs or video footage of the same, and copies of all medical requests, grievances, and photographs in your jail file, as well as any written policies which relate to the facts set forth in your complaint. You do not have to ask for these documents. You will receive them automatically.

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

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

All discovery requests should be short, to the point, and relevant to your claims or defenses. The following are examples of potential discovery requests in a case alleging unconstitutional conditions of confinement.

Interrogatory No. 1: How long have you worked for the Washington County Detention Center?

Request for Production No. 1: Please provide any written incident reports or other documents dated on or about January 1, 2025, relating to the diet, including the undercooked meat, being provided to inmates.

Request for Admission No. 1: You were present on or about January 1, 2025, when the inmates in pod D complained of undercooked meat.

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

7. Requests for Subpoenas: You may file a motion requesting the court issue a subpoena pursuant to Rule 45 of the Federal Rules of Civil Procedure if you need documents from a non-party. For example, if you need the medical records from a hospital and the hospital (or medical provider affiliated with the hospital) is not a party to the action.

8. Deposition: In the Initial Scheduling Order, the court will grant the defendants authority to take your deposition. This means that they will be allowed to schedule a time to ask you questions about your claims under oath.

9. Motions to Compel: In the event defendants have failed to respond to your discovery requests or you do not believe their responses are sufficient, you may file a motion to compel discovery.

- **Good Faith Effort:** Before you file a motion to compel, you must make a good faith attempt to resolve discovery disputes with defense counsel. If you are incarcerated, this is typically done by writing counsel, identifying which response to which request was insufficient, and asking for additional information. You may file a motion to compel, **only after you have tried to resolve concerns directly with the defendant.** Your motion to compel must include the steps you took to try to resolve the dispute before involving the court. If you fail to either resolve the dispute with the defendants first or if you fail to explain in your motion what steps you took to try to resolve the dispute, your motion to compel will be denied.
- **Required Exhibits:** You must attach your discovery requests and defendants' responses to your motion to compel. Note that you should also describe the good faith efforts you took to settle the discovery disputes, prior to asking for the Court's assistance.

If defendants believe that you have failed to adequately respond to their requests for discovery, they must follow this same procedure before filing a motion to compel.

IX. SUMMARY JUDGMENT MOTIONS

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

2. **Response:** If defendants file a motion for summary judgment, an Order will be entered directing you to file a response to the motion for summary judgment by a specific date. The Order provides specific instructions on how to respond in accordance with Rule 56 of the Federal Rules of Civil Procedure and Rule 56.1 of the Local Rules for the Eastern and Western District of Arkansas. Your response must include:

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

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

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

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

6. **Exhibits:** If you refer to documents or exhibits **you must** provide the Court with the necessary information to locate the document. You may refer to a document by its Exhibit number or letter and page (for example, defendants' exhibit 1 at page 4), by the CM/ECF number and page (for example, ECF No. 10 at page 2), or by its title (for example, the Amended Complaint at page 8). The Court must be able to locate the document you are referencing in your argument. The Court will not sift through the entire case file looking for the document you say supports your claims.

7. **Court Opinion:** The Magistrate Judge will enter an opinion in a consent case or a report and recommendation in a non-consent case on the summary judgment motion. If a report and recommendation is filed, you must file any objections within 14 days of the date of filing.

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

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

X. DOCUMENT FILING RESTRICTIONS

1. **Do Not File:** You may not file the following with the Court:

- a response to an answer;
- discovery documents unless filed in connection with a motion to compel, motion for sanctions, or a motion for summary judgment;
- multiple motions raising the same issue;
- multiple supplements to a document or motion you file;
- multiple responses to the same motion;
- a reply to a reply brief filed by defendants;
- letters; and
- trial exhibits.

XI. APPEAL

1. **Time Limit:** An appeal must generally be filed within thirty (30) days of the entry of judgment or order you are appealing.

2. **Notice:** To appeal, you must file a notice of appeal stating what order or judgment you are appealing.

3. **Fee or IFP:** You must either pay the \$605 filing fee or apply to proceed IFP. If you do not have an IFP application form, you may request one from the Clerk. If you are a prisoner, recall that if you financially qualify for IFP status, you may nevertheless be ordered to pay the filing fee in installments.

XII. LIMITATIONS ON ACTIONS OF THE CLERK

1. **Prohibited Actions:** The Clerks work for the Court. They are not permitted to:

- Calculate deadlines;
- Provide legal advice or conduct legal research on your behalf;
- provide free copies of filed or unfiled documents submitted to the Clerk's Office (other than those specifically mentioned in section III or as ordered by Judge),
- Forward documents on your behalf;
- Tell you when a Judge will rule on a motion or decide in your case;
- Interpret the Federal Rules of Civil Procedure, the Local Rules for the Eastern and Western Districts of Arkansas, or court orders;
- Tell you what to include with your documents;
- Provide a copy of the Constitution, the Federal Rules of Civil Procedure, or the Local Rules for the Eastern and Western Districts of Arkansas.

**REMEMBER NO ONE WHO WORKS FOR THE COURT CAN GIVE LEGAL ADVICE.
No one can tell you what documents to file or interpret documents that have been filed.**