



## UNITED STATES DISTRICT COURT WESTERN DISTRICT OF ARKANSAS 1983 PRISONER LITIGATION GUIDE

*The purpose of this guide is to provide assistance regarding filing procedures. This guide is **not** intended to be used as legal advice or to take the place of the Federal Rules of Civil Procedure or the Local Rules. **All parties using this guide remain responsible for complying with the Federal Rules of Civil Procedure and Local Rules.***

### FILING DOCUMENTS IN THE WESTERN DISTRICT OF ARKANSAS

- You are required to file the **original** pleading with the Clerk. The Clerk will provide **one** copy of all **court generated** documents such as orders.
  - The Clerk will **only** provide a courtesy copy of your Complaint, Amended/Supplemental Complaint, and response to dispositive motions (e.g. Response to Summary Judgment Motion).
  - You will receive a copy of the Notice of Electronic Filing (NEF) that will indicate your documents have been filed.
  - **It is your responsibility** to create and maintain copies for your record.
- Under Local Rule 5.5, all pleadings, motions, and other papers **must** be typewritten or legibly handwritten on letter size paper using only one side of the page.
- Under Rules 10 and 11 of the Federal Rules of Civil Procedure (Fed.R.Civ.P.), the first page of **all documents** filed with the Court **must** contain:
  - The appropriate **case number**. The Clerk will assign a case number when your case is opened.
  - The **party names**.
  - The **title** of the pleading. The Clerk is not responsible for determining how to file your document. Examples include “Motion to Amend Complaint,” “Response to Motion,” or “Supplement to Complaint.”
  - Your **signature** along with your printed name at the end of the document.
  - Your **current address** at the end of the document.
    - You will always need to provide the facility address if you are incarcerated.
    - You must promptly notify the Clerk and other parties of any change of address.
  - Your **telephone number**, *only if* you are no longer incarcerated.
  - **\*\*\*Letters addressed to the Judge and/or to the Judge’s staff are STRICTLY PROHIBITED.** The Court will not respond to these letters.\*\*\*

### CASE PROCEEDINGS

- The Clerk will forward your 1983 complaint form to the appropriate Magistrate Judge. The Magistrate Judge will review your complaint to determine whether or not your case should proceed, be transferred to the proper district, or be recommended for dismissal. You will receive the order regarding the Magistrate Judge’s decision.
- The Magistrate Judge will also determine your *In Forma Pauperis (IFP)* status.
  - The court grants *IFP* status to Plaintiffs who cannot afford to pay the full filing fee.
    - You are still responsible for the full amount of the filing fee if you are granted *IFP* status. The Court will have the facility deduct 20% of each future month’s income received in your prisoner account until the filing fee is paid in full.
    - *IFP* status does not exempt you from paying for additional copies.

- The Magistrate Judge will not allow your case to proceed with an incomplete *IFP* application. You will be directed to re-submit a complete *IFP* application.
  - Once the Magistrate Judge allows your case to proceed, you will receive a Notice of Availability of a United States Magistrate Judge to Exercise Jurisdiction form (Magistrate Consent Notice).
    - Your case will be assigned to a District Judge and Magistrate Judge when it is opened.
    - Completing and returning the Magistrate Consent Notice means that you consent to having only the Magistrate Judge assigned to your case. The opposing party will also need to consent. The Clerk will provide the opposing party with a Magistrate Consent Notice.
    - There is no consequence to withholding your consent.
  - The Magistrate Judge will determine if the U.S. Marshal should serve your complaint upon Defendants. You will receive a copy of the service order if/when it is entered.
    - The Defendants will have twenty-one (21) days after the date the U.S. Marshal serves your complaint upon Defendants, **not** the date the order is entered, to file an answer or a motion to dismiss.
    - You may only reply/respond to an answer if ordered to do so by the court.
- **Discovery**
  - An *Initial Scheduling Order* (ISO) will be entered after all named Defendants have filed an answer. The ISO will set deadlines for discovery, motion for summary judgment, and the response to motion for summary judgment. You will receive a copy of that order.
  - The Discovery process begins after Defendants file an answer. You are responsible for participating in the discovery process.
  - During the discovery process, parties are allowed to obtain relevant information/evidence from one another that is necessary to support a claim.
    - Interrogatories, requests for the production of documents, requests for admission and responses to these discovery requests **are not filed with the court**. The only time these documents are filed is as exhibits in support of a motion such as a motion to compel or motion for summary judgment or when the court orders them to be filed. Fed.R.Civ.P. Rule 5(d)(1).
    - Discovery documents (requests and responses) should be served upon the Defendant's counsel only, not served upon the named Defendants.
    - **Do not file discovery documents with the court.** Discovery documents that are received by the Clerk **will not** be returned.
      - Defendant's counsel contact information will be provided on the answer.
    - You may file a "Motion to Subpoena/Request Documents" to request documents that will help support your claim from non-parties such as hospitals.
- **Service of Documents After Defendant Has Filed an Answer or Motion to Dismiss**
  - In addition to sending the original pleading to the Clerk, you **must** serve a copy of each pleading upon Defendant's counsel.
  - You **must** attach a certificate of service to the original pleading sent to the Clerk stating that you have mailed a copy of the pleading to Defendant's counsel indicating the date the pleading was mailed.
- **Motions**
  - A motion is a formal request made to the presiding Judge to act on your behalf.
  - You need to include a title and explain in detail the reason you are filing the motion.

- Parties are allowed fourteen (14) days from the date of service of the motion to file a response to the motion. Local Rule 7.2.
- **Amending the Complaint**
  - You may amend your complaint **one time**. This amended complaint may be filed after service of the original complaint on the Defendant but not later than twenty-one (21) days after the Defendant has filed an answer or motion to dismiss. Fed.R.Civ.P. Rule 15(a)(1)(A).
    - **Do not attach exhibits to your complaint or amended complaint. Grievances directly related to the claims asserted in the complaint may be attached to the complaint and amended complaint.**
  - If more than twenty-one (21) days has passed since the Defendant filed an answer or motion to dismiss, you must first file a motion to amend your complaint.
  - The motion to amend complaint needs to explain in detail the reason you need to amend your complaint.
    - You will need to attach a copy of the proposed amended complaint to the motion.
    - You may request another 1983 complaint form to file an amended complaint.
  - The amended complaint completely replaces the original complaint and the Court will no longer consider the allegation(s) in the original complaint.
- **Supplementing the Complaint**
  - You may file only one supplement to your complaint.
  - The supplement must contain only incidents that occurred after you filed your original complaint and that are **directly related** to your original claims. Fed.R.Civ.P. Rule 15(d).
  - Additionally, new incidents **must** first be fully exhausted through the prison grievance procedure prior to filing a supplement.
  - **Do not attach exhibits to your supplemental complaint.** Any second or subsequent supplemental complaint will not be considered by the Court. Grievances **directly related** to the claims asserted in the complaint may be attached to the supplement.
- **Exhibits**
  - Exhibits or other evidence **may only** be submitted **(1)** with a motion for summary judgment, **(2)** with a response to a motion for summary judgment, or **(3)** during a trial or hearing.
  - Exhibits submitted with any other letter, pleading or motion **will not** be considered by the Court.
- **Summary Judgment Motion**
  - The Judge may direct the Defendant(s) to file a Fed.R.Civ.P. Rule 56 summary judgment motion after the discovery process has ended. The summary judgment motion asserts that there are no genuine issues of material fact for the Court to resolve.
  - If a Defendant files a Motion for Summary Judgment, you will receive an Order directing you to file a Response.
    - This Response *must* include a Statement of Disputed Facts as a separate document. For this Statement, you should respond to each of the Defendant(s)' Statement of Facts *using the same paragraph numbering to identify your response for each paragraph*. A brief sample of this is included below. It is not necessary to repeat what the Defendant(s) said in your Statement of Disputed Facts, but you may do so if it helps you to organize your Statement of Disputed Facts.

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**U.S. District Court, Western District of Arkansas**

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- The **sample** provided below is designed to show you how your response should correspond on a paragraph by paragraph basis.

<b>Defendant(s)' Statement of Facts</b>	<b>Plaintiff's Statement of Disputed Facts</b>
1. On March 5, 2018, the Plaintiff filed a Complaint in which he alleges that his Constitutional rights were violated during his incarceration at the XYZ Detention Center. (ECF No. 1).	1. Undisputed
2. Plaintiff alleges he was denied his prescribed medication from January 15, 2018, through March 1, 2018. (ECF No. 1).	2. Undisputed
3. Plaintiff was to receive prescribed Medication "A" twice a day. (ECF No. 3).	3. Undisputed
4. Plaintiff was given prescribed Medication "A" twice a day at all times during his incarceration in XYZ Detention Center. (ECF No. 4).	4. Disputed. I started receiving my medication when I was booked into the facility on January 5, 2018, but I did not receive it at all from January 15, 2018 through March 1, 2018. I filed daily medical requests and two grievances concerning the missing medication. Two of these medical requests and the grievances are attached with my Summary Judgment Response. (ECF No. 10 at 11-15.)

- **Appeal**
  - You may appeal the final judgment that dismissed your case.
  - The Provisions of the Prison Litigation Reform Act requires you to either pay the \$505.00 appeal filing fee or appeal in forma pauperis (IFP).
  - You may request an IFP application from the Clerk if you are unable to pay the appeal filing fee.

**THE CLERK IS UNABLE TO DO THE FOLLOWING:**

- Calculate case deadlines, provide legal advice or conduct research on your behalf.
- Provide a free copy of filed or unfiled documents received by the Clerk.
- Forward documents on your behalf.
- Advise you as to how or when a Judge will rule on a motion or make a decision regarding your case.
- Interpret Local Rules, Court Orders, or the Federal Rules of Civil Procedure.
- Advise you as to what you should include in your documents.
- Provide a copy of the Federal Rules of Civil Procedure or the Local Rules.

The Local Rules and other court information are available at <http://www.arwd.uscourts.gov/>.

The Federal Rules of Civil Procedure are available at <http://www.uscourts.gov>