PRO SE HANDBOOK
CHAPTER 3: BASIC PROCEDURES FOR FILING A LAWSUIT
(ALL-IN-ONE DOCUMENT)

FEDERAL BAR ASSOCIATION
ACCESS TO JUSTICE TASK FORCE

{10/23/2019}

"*A HANDBOOK FOR PRO SE LITIGANTS*"

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PRO SE HANDBOOK
FROM THE FEDERAL BAR ASSOCIATION

CHAPTER 3 BASIC PROCEDURES FOR FILING A LAWSUIT

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ITEMS 3.00 through 3.08

3.00 | PREPARING THE COMPLAINT

Before you bring a lawsuit, you should become familiar with the rules that explain the Court's procedures for preparing and filing a complaint. These rules are the Federal Rules of Civil Procedure (FRCP), and they apply in every federal court in the country. A party can be sanctioned (penalties imposed) for violating the FRCP.[3] You can review the FRCP in any law library or on the website for the District Court where you will be filing your complaint. In addition, you must follow your particular District Court's "Local Rules," also found on the website for the District Court where you are filing your complaint.

The first step in filing a lawsuit is to prepare a complaint. Most district courts have forms for preparing a complaint, including a general form for pro se cases, and specific forms for prisoner pro se cases, employment discrimination cases, and Social Security disability appeals. These forms are usually available on each District Court's website under the "Forms" tab on the homepage. If you choose to prepare your own complaint, the following information should be included.

Footnotes

[3] For more information about sanctions, see Federal Rules of Civil Procedure 11 and 37.

3.01 | COMPLAINT SECTION 1: CAPTION

IN THE UNITED STATES DISTRICT COURT
FOR THE ____________ DISTRICT OF [STATE]

[Plaintiff's Name:
123 Street Name
City, State Zip Code],
Plaintiff,
vs.
[Defendant #1's Name: Case No.____________
456 Street Name
City, State Zip Code]: COMPLAINT

[Defendant #2's Name (If applicable):
789 Street Name
City, State Zip Code],
Defendants.

You should list on page 1 of your complaint the name and address of the person filing the complaint (the plaintiff), and the names and addresses of all individuals or entities against whom you are seeking relief (the defendants).[4]

In certain kinds of cases, the parties are entitled to a jury trial. The best way to ensure your right to a jury trial is to make the demand when you file your complaint by either writing the words "Jury Trial Demanded" on the first page of your complaint or, if you are using a form complaint available from the Clerk's Office, by checking the option for a jury trial on the first page of the form complaint.

Footnotes

[4] The name and address of each plaintiff and defendant may also be stated in numbered paragraphs in the complaint.

3.02 | COMPLAIN SECTION 2: BODY OF THE COMPLAINT

The body of the complaint should contain numbered paragraphs which provide the following information.

a. Jurisdiction.

The complaint should state why the Court has jurisdiction over the case. As discussed previously, a District Court has limited authority to hear cases. It can only hear cases over which the district court has jurisdiction. Pro se litigants often file the following types of federal cases: a denial of civil rights under 42 U.S.C. § 1983; employment discrimination under 42 U.S.C. § 2000e, et seq.; and inmates challenging the conditions of their confinement. The first numbered paragraphs should also state why the court you are filing in has proper "venue" for this claim.

b. Numbered paragraphs.

The complaint must contain numbered paragraphs, with each paragraph containing a statement of those facts that are alleged to have caused the damage claimed. These allegations, or claims, should be concise and clearly written. There should be a separate numbered paragraph for each factual allegation made. Each paragraph should specify to the greatest extent possible: (i) the alleged act of misconduct; (ii) the date on which the misconduct occurred; (iii) the names of each and every individual who participated in that misconduct; (iv) the location where the alleged misconduct occurred; and (v) the connection between the misconduct and your causes of action. The statement of facts should include a description of what the defendant(s) did or failed to do and how those acts or omissions caused injury or damage, as well as a description of any injury you sustained and what medical treatment, if any, was required. It is important to be as specific as possible in stating the facts. Names, dates, and events should be described accurately and as succinctly as possible. Failure to allege facts demonstrating that each defendant was personally involved in and/or responsible for the alleged incident or harm may result in dismissal of that defendant or the case. In short, these numbered paragraphs must state the facts supporting the claim; what happened, where it happened, when it happened, how it happened, and who was involved.

c. Legal basis.

The complaint must also state the legal basis for the claim. This would be a description of how you believe the defendant(s) violated your rights, and a statement of which of your legal rights you believe the defendant(s) violated. If you are filing your lawsuit on the basis that the defendant violated a law, you must identify that law in your complaint. For example, if you believe an employer discriminated against you, you must cite to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, et seq..

d. Relief sought.

The complaint must state or describe the relief which is being sought. You must state what it is that you wish the Court to do. This could be requesting that the Court award money damages or issue a court order prohibiting particular conduct, directing that certain action be taken, and/or directing something the plaintiff wants the court to do to correct the situation. This information is contained in a closing or final paragraph, which is not numbered (note: this is the only paragraph in the complaint that is not numbered), outlining the relief you are asking to Court to provide.

e. Signature.

The individual(s) filing the complaint must sign and date the complaint, and underneath the signature(s), type or print their full names, addresses, and phone numbers.[5] If there is more than one plaintiff, the complaint must contain an original signature for each plaintiff. By signing or filing the complaint you are certifying to the Court that the statements you have made in the complaint are true, and that you are not filing the complaint for an improper purpose such as to harass the defendant(s).

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Footnotes

[5] Your signature, address, and phone number must always appear on all documents filed with the Court.

3.03 | PRIVACY PROTECTION

Certain sensitive information about individuals involved in the claim cannot be included in documents filed with the Court. If personal information is necessary for the complaint, personal identifiers must be redacted (blackened out) as follows:

- minor children must not be identified by their full names, but by their initials (e.g., A.B., C.D.); financial account numbers must be redacted except for the last four digits (e.g., xxxx-xxxx-1234);
- Social Security and taxpayer-identification numbers must be redacted except for the last four digits (e.g., xxx-xx-1234); and
- dates of birth must include the year only (e.g., X/X/1980).

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3.04 | FILING THE COMPLAINT

Once you have prepared the complaint, you must file the complaint in the District Court Clerk's Office. The following procedures regarding copies of the complaint, filing fees, the civil cover sheet and the summons forms must be followed.

1. Copies

You must file the original complaint with the Court and provide the Court with a copy for each defendant you name. If the defendant is the United States, an agency of the United States, or an officer or employee of the United States who is being sued for acts or omissions related to his/her employment, you must provide the Court three (3) copies of the complaint. You should also keep a copy of the complaint for your own records.

2. Filing Fees[6]

Generally, you must pay a filing fee when you file your complaint, and this fee must either be paid in full at the time you present your complaint to the Court for filing or, if you are unable to pay the fee, you must submit an application to proceed in forma pauperis, along with your complaint (discussed below). The current filing fee for a complaint is $400.00, and payment is due when you file the complaint.[7]

3. Civil Cover Sheet

In addition to the complaint you must also complete a Civil Cover Sheet. This form is used to help the Clerk's Office open your case and gather statistical information. The form is also available on the District Court's website or in the Clerk's Office.

When you complete the form, you will need to include the county of residence of the first listed Plaintiff and Defendant. You will also need to identify the basis of jurisdiction. Federal question jurisdiction (the case involves a violation of federal law or the United States Constitution) and diversity jurisdiction (the plaintiff and defendant are citizens of different states and the case involves an amount of controversy greater than $75,000) are the two most common.

Complete the form as best as you can. If you do not know how to provide some of the information required, then leave the space for that information blank. Note that the Civil Cover Sheet contains instructions for completing the form on the second page. The District Court's website will also provide the "Nature of Suit" codes to assist you in completing Section IV.

4. Summons

All plaintiffs must complete and submit a summons form for each defendant at the same time the complaint is filed. You need to prepare a summons for each defendant named in your lawsuit. The summons form is available on the District Court's website or from the Clerk's Office. In completing this form, you must: (1) fill out the case caption; (2) provide the name and address where the defendant is to be served with the complaint; and 3) provide your name and address. **Do NOT complete the Proof of Service portion of the summons form until service of process has been completed.**

5. Filing

While you may be able to file your lawsuit in person with the Clerk's office, most filing in federal court is done using an electronic system. The judge may order that you use this electronic system to understand what is happening with your case and to file documents. CM/ECF (Case Management/Electronic Case Files) is the name of this electronic system. Members of the public can gain access to this system using a system called PACER (Public Access to Court Electronic Records). You can contact your District Court Clerk's office to obtain information about how to use PACER to file documents, access documents filed by others (including orders of the judge), print, and download documents.

Footnotes

[6] These procedures for filing fees do not apply to incarcerated individuals. If you are incarcerated, you will need to check the District Court's website or with the Clerk's office for instructions on how to pay the filing fee.

[7] You should check the District Court's website for further information concerning whether you can pay by cash, check, cashier's check, money order, or credit card.

3.05 | SERVICE OF PROCESS

"Service of process," is the procedure that officially notifies a defendant in person that a lawsuit has been filed against him or her. When "served" the defendant receives a copy of the complaint so that he/she knows what the lawsuit is about. Further, the summons (discussed above) notifies the defendant when they must respond to the complaint. Under Federal Rule of Civil Procedure 4, you must either obtain a waiver of service from each defendant or serve each defendant through formal service or personal service within 90 days after the complaint has been filed in district court. Mailed summons are typically not allowed.

1. Waiver of Service[8]

"Waiving service" means agreeing to give up the right to service in person and instead accepting service by mail. If a defendant waives service, the plaintiff (you) will not have to go to the trouble or expense of serving that defendant. If the defendant agrees to waive service, you need to have the defendant sign and send back to you, a form called a "waiver of service," which you then file with the Court. To complete the "waiver of service" process, you must complete two forms and set certain documents to the defendant(s). The two forms you need to complete are:

a. "Notice of a Lawsuit and Request to Waive Services of Summons"

b. "Waiver of Service of Summons."

Both forms are available at the Clerk's Office or on the District Court's website.

The documents you need to send to each named defendant are:

a. A copy of the complaint you filed;

b. One completed Notice of Lawsuit Form;

c. Two completed Waiver Forms; and

d. One self-addressed stamped envelope (for the defendant's return of the Waiver Forms).

If a defendant sends back the signed waiver of service, you do not need to do anything else to serve the defendant. You simply need to file the defendant's signed waiver with the Court and save a copy for your files. If the defendant does not return a signed waiver of service by the due date, you need to arrange to serve that defendant in one of the other ways approved by Federal Rule of Civil Procedure 4 (see below).

2. Formal service (no waiver)

If the defendant does not return the waiver of service form within the specified time, you must notify the Clerk of the court in writing, prepare a summons for each Defendant, and ask the Clerk's Office to issue the summonses you prepared.[9] You may ask the Court to order the defendant to pay the costs you incurred serving that defendant. You must serve the defendant within 90 days from the filing date of the complaint (or, if you applied for IFP, from the date the Court ruled on your IFP application). If you do not properly complete service of process within the 90-day deadline, your case may be dismissed. Be sure to carefully check the FRCP to make sure you properly serve the defendant(s) you named in the complaint.

3. Personal service

Service of process may be accomplished by "personal service." This means that the summons and complaint are hand-delivered to the defendant. You, as the plaintiff, CANNOT personally serve the defendant. However, another person can personally serve the defendant if that person 1) is at least 18 years of age and 2) is not a plaintiff or defendant in the case. Alternatively, you can hire a private process server to serve the defendant for a fee. In either case, Federal Rule of Civil Procedure 4 requires you to file proof with the Court that the complaint has been served on the defendant. The person serving the summons must leave a copy of both the summons form and the complaint with the defendant. On the back of the summons is a section referred to as the return of service or "proof of service," which must be completed by the person who served the summons. The person who serves the summons must record his or her name, the name of the person whom he or she served, and the date and time of the service. Service of process is not complete until the original summons form, with the completed return of service, has been filed with the court.

If the above service methods are not available, consult Federal Rule of Civil Procedure 4 and any Local Rule applicable for your District Court.

> If you name as a defendant the United States, a United States agency, or an officer or employee of the United States (who is being sued for acts or omissions related to his/her employment), you must serve the complaint and summons on three individuals:
>
> 1. the named defendant;
>
> 2. the Attorney General of the United States in Washington, D.C.; and
>
> 3. the United States Attorney for the District Court in which you are filing your complaint.

The waiver of service rule DOES NOT APPLY to the United States. Formal service upon the federal government or any of its agencies can be accomplished by certified mail (return receipt required) with the properly executed summons.

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Footnotes

[8] The waiver of service rule does not apply if the United States is named as a defendant.

[9] The only exception to this rule is if you are incarcerated AND are suing a government official. In that case, you should wait for the judge to complete a preliminary review, after which you will receive an order from the Court and should follow the instructions in that order regarding service.

3.06 | PROCEEDING IN FORMA PAUPERIS ("IFP")

If you cannot afford to pay the filing fee, you may request to waive the fee by filing an application to proceed without paying fees or costs, or "in forma pauperis." To apply for in forma pauperis status, you must present the following documents to the Clerk's Office:

1. Application to Proceed In Forma Pauperis;
2. Civil Cover Sheet;
3. Original complaint with copies for service on each of the defendants;
4. All service forms, which includes the summons and USM 285 or Waiver of Service of Summons (see below).

You can obtain an in forma pauperis application on the District Court's website or from the Clerk's Office. The in forma pauperis application asks you to provide information about your (and your spouse's) finances (e.g., your income, assets and liabilities). In filling out the in forma pauperis application, you must answer all questions truthfully and completely. You must also sign the statement under penalty of perjury. In addition to waiving the obligation to pay the filing fee, if you are granted permission to proceed in forma pauperis, you are also entitled: (1) to submit a motion for appointment of counsel; and (2) to have your complaint served on the defendant by the U.S. Marshals Service.

If your in forma pauperis application is approved, the Court will arrange for the Clerk's Office or the U.S. Marshal Service to complete service of process on your behalf. In in forma pauperis cases, the summons will not be issued until after the judge reviews the complaint. If the Court determines, based upon the facts stated in your complaint, that you will not be successful in your case (e.g., you fail to state a claim upon which relief may be granted, your lawsuit is frivolous or malicious, or the named defendant is immune from liability), the Court can dismiss your case at that stage. See 28 U.S.C. § 1915(e)(2). Likewise, the Court can dismiss your complaint at any time if you were granted IFP status and the Court later determines that your allegation of poverty was untrue.

However, if after conducting a preliminary review of the complaint, the judge finds that the complaint states a claim upon which relief may be granted, the judge will then order that a summons form be issued against the defendant. The judge will also appoint the Clerk of Court or the **United States Marshals Office** to make service. In all instances, however, you are responsible for completing and providing the Clerk's Office with the appropriate service forms This consists of the following service documents **for each named Defendant:**

1. A copy of the complaint you filed for each Defendant;
2. One summons form for each Defendant;
3. One U.S. Marshal Form for each Defendant.[10]

Once the forms are properly completed and filed, the Clerk's Office will officially issue the summons (e.g., an authorized Court employee signs the form and embosses it with the Court's official seal). The Clerk's Office will then deliver the summons and other materials to the **U.S. Marshal Service,** which will serve the defendant on your behalf. You will be notified when service has been accomplished.

Footnotes

[10] These forms can be found on the District Court's website or obtained from the Clerk's Office.

3.07 | DEFENDANT'S RESPONSE TO THE COMPLAINT

1. Answer

If service is made on a defendant by summons, the defendant has twenty-one (21) days from the date of service of the complaint to file an answer with the court. However, if the defendant is the United States or a federal official, the defendant has sixty (60) days from the date of service to file an answer. In an answer, a defendant admits or denies each of the plaintiff's allegations. The answer can also include affirmative defenses. It is important that the defendant admit, deny, or clarify each allegation made by paragraph number. Once the defendant files an answer, the case moves to the next phase.

2. Default

If a defendant has been properly served with a complaint, but fails to file any response in the required amount of time, then that defendant is considered in "default." Once the defendant is in default, the plaintiff can ask the Court for a default judgment, which means that the plaintiff wins the case and may take steps to collect on the judgment against that defendant.

If a defendant is in default, the plaintiff should file a "request for Clerk's entry of default" AND proof that the defendant has been served with the complaint. If the Clerk of Court approves the request, he or she will then enter default against the defendant. Once the Clerk has entered default against the defendant, the plaintiff may then file a "Motion for Default Judgment" supported by: (1) a declaration showing that the defendant was served with the complaint but did not file a written response within the required time for responding; and (2) a declaration proving the amount of damages claimed in the complaint against the defendant. There are special rules for default judgments against minors and the U.S. government and its officers and agents, which are explained in Federal Rule of Civil Procedure 55.

A defendant against whom default or a default judgment has been entered may make a motion to set aside the default or default judgment. The Court will set aside an entry of default or a default judgment for good cause or for one of the reasons listed in Rule 60(b), which includes mistake, fraud, newlydiscovered evidence, the judgment is void, or "any other reason that justifies relief."

3. Motion to Dismiss

In lieu of filing an answer to the complaint, a defendant may file a motion to dismiss, which asks the Court to dismiss the case. The motion argues that there are problems with the way the complaint was written, filed, or served. A motion to dismiss may be filed for any of the reasons set forth in Federal Rule of Civil Procedure 12(b): lack of subject-matter jurisdiction; lack of personal jurisdiction; improper venue; insufficient process; insufficient service of process; failure to state a claim upon which relief can be granted; and failure to join a party under Rule 19.

The motion to dismiss must state the specific facts and legal arguments supporting the stated reasons for dismissal. A defendant may move to dismiss all the claims in the complaint or just certain claims.

A court may deny or grant the motion to dismiss as to each claim that is the subject of the motion. If the Court denies the motion to dismiss, the defendant must file an answer within fourteen (14) days, and the case moves to the next phase. See Federal Rule of Civil Procedure 12(a)(4). If the Court grants the motion to dismiss without prejudice, the plaintiff may submit an amended complaint that corrects the deficiencies identified by the Court within a time period specified by the Court. Finally, if the Court grants the motion to dismiss with prejudice, the case is over as to those claims.

a. Lack of Subject Matter Jurisdiction

The defendant argues that the Court does not have the legal authority to hear the kind of lawsuit the plaintiff filed. In other words, the defendant contests that the case neither involves a violation of a federal law or the U.S. Constitution, nor is between citizens of different states involving an amount in controversy greater than $75,000.

b. Lack of Personal Jurisdiction

The defendant argues that the Court has no legal authority to hear the case because the defendant has so little connection with the district in which the case was filed. The defendant must show that it is not a resident of the state in which the case was brought and that it did not even have "minimum contacts" with the state.

c. Improper Venue

The defendant argues that the lawsuit was filed in the wrong geographical location.

d. Insufficiency of Service of Process

The defendant argues that the plaintiff did not prepare the summons correctly or did not correctly serve the defendant.

e. Failure to State a Claim Upon Which Relief can be Granted

The defendant argues that even if everything in the complaint is true, the defendant did not violate the law. Each type of claim requires that the plaintiff allege and show facts to support certain elements. For example, a negligence claim requires that the plaintiff allege and show facts to support a duty, a breach of the duty, proximate cause, and damages. Here, the defendant is asserting that the plaintiff did not plead sufficient facts to support all requisite elements of the plaintiff's claim.

f. Failure to Join an Indispensable Party Under Rule 19

The defendant argues that the plaintiff failed to sue someone who must be included in the lawsuit before the Court can decide the issues raised in the complaint. A party must be included in a lawsuit when: (1) a court cannot accord complete relief among the parties without the additional party's presence, or (2) the party's absence impedes its ability to protect its interest or leaves the party vulnerable to incurring inconsistent obligations because of the interest. See Federal Rule of Civil Procedure 19.

3.08 | RESPONSE TO A MOTION TO DISMISS

If a defendant files a motion to dismiss, the plaintiff will need to file an opposition to that motion. The response must specifically assert facts and law that explain why the motion to dismiss should be denied. Any opposition to the motion to dismiss is typically due fourteen (14) days after the defendant files the motion. Check the Local Rules for deadlines specific to your District.

To calculate the deadline, exclude the day that the defendant files the response, and beginning counting the next day. Count every day, including weekends and holidays. The response is due on the fourteenth (or seventeenth, if mailed) day, unless that day is a Saturday, Sunday, or legal holiday, in which case the response is due on the next day that is not a Saturday, Sunday, or legal holiday. See Federal Rule of Civil Procedure 6.

If you need more time to file your opposition, you need to file a motion for extension of time with the Court. If you can, contact the opposing side and get consent. If you get consent for an extension, make sure that consent is reflected in your motion.

If you cannot get the consent from the other time, file the motion for extension of time before the response is due and show there is "good cause" for the extension. Federal Rule of Civil Procedure 6(b). If a motion for extension of time is filed after the due date, you must show "excusable neglect" for missing the deadline. Federal Rule of Civil Procedure 6(b).

APPENDIX

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1	Original Source	https://USCourts.gov

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1	HTML Version	TextBookDiscrimination.com/Handbooks/ProSe/US/C03

ADDITIONAL *PRO SE* RESOURCES

#	Item	Link
1	DOAH Handbook	TextBookDiscrimination.com/Handbooks/ProSe/DOAH/
2	FL Bar Handbook	TextBookDiscrimination.com/Handbooks/ProSe/FLBar/
3	USCA11 Handbook	TextBookDiscrimination.com/Handbooks/ProSe/CA11/
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Congratulations! You're now ***booked up*** on Chapter 3 of the Florida Bar Association's Pro Se Handbook!