



**USNYWD'S PRO SE HANDBOOK
CHAPTER 2: BEGINNING A LAWSUIT
[ALL-IN-ONE DOCUMENT]**

Pro Se Handbook
Chapter 2
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PRO SE HANDBOOK

US DISTRICT COURT, NEW YORK, WESTERN DISTRICT

CHAPTER: 2 BEGINNING A LAWSUIT

AUTHOR: US DISTRICT COURT, NEW YORK, WESTERN DISTRICT

DATE: January 1, 2017

ITEMS: 2.01 through 2.12



2.01 | WHERE TO FILE

The United States District Court for the Western District of New York comprises two divisions: Buffalo and Rochester. Generally, a case must be filed in the division where the defendant resides or where the claim arose. In cases based on diversity of citizenship (i.e., when the plaintiffs and defendants are residents of different states), suit may be brought in the division where the plaintiff resides. However, because pro se cases are randomly assigned, your case may be heard by a judge located in either division.

The Buffalo Division includes the counties of Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming.

The Rochester Division includes the counties of Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne and Yates.

The complaint and other pleadings filed must be delivered or mailed to the Clerk's office in the appropriate division at the addresses listed below. Do not send papers concerning your case directly to the judge.

Buffalo Division:

Office of the Clerk
200 United States Courthouse
2 Niagara Square
Buffalo, New York 14202

Rochester Division:

Office of the Clerk
2120 United States Courthouse
100 State Street
Rochester, New York 14614-1387

(or deliver to the Intake Clerk
located on the 2nd floor)

(or deliver to the Intake Clerk
located on the 2nd floor)

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2.02 | FILING FEES

In order to file the completed complaint and other necessary papers, you must pay a filing fee (currently \$400.00). If you pay in person, you may pay by check or money order. If you file by mail, you may send a money order or check made out to "Clerk, United States District Court." The court does not accept payment by credit card. The filing fee for habeas corpus petitions is \$5.00. See, pp. 37-38.

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2.03 | IN FORMA PAUPERIS

A plaintiff who cannot prepay the filing fee may request to proceed in forma pauperis. The request must be submitted with the complaint and must be accompanied by an affidavit setting forth the plaintiff's financial resources. Form affidavits may be obtained in person from the intake clerk in the Clerk's Office, by mail from the Court's Pro Se Offices, and from the Western District Court web site at <<http://www.nywd.uscourts.gov>>. A statute enacted in 1996 affected in forma pauperis status for prisoners. As a result prisoners, even though they are granted in forma pauperis status, must still pay the filing fee, but over a period of time out of their prisoner account. However, the filing of the lawsuit will not be delayed because the prisoner has no money in his or her prisoner account. 28 U.S.C. §1915(b)(1) and (4).

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2.04 | ASSIGNMENT OF CASES

Civil cases are assigned at random to the judges of the district court. Local Rule 7.1. Assignments are made so that no party or lawyer may choose the judge to whom the case is assigned. All cases filed by a pro se plaintiff/petitioner shall be assigned to the same judge or magistrate judge to whom a previously filed case by the same plaintiff/petitioner was assigned.

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2.05 | WHAT TO FILE

A Civil Cover Sheet (JS-44) must be filled out and submitted with your complaint, along with the Summons in a Civil Action form (AO-440) (one original and a copy for each defendant). Civil cover sheets may be obtained in person from the intake clerk in the Clerk's Office, by mail from the Court's Pro Se Offices, and from the Western District Court web site at <http://www.nywd.uscourts.gov>. Instructions for filling them out are as follows:

- (1) Your name as the Plaintiff.
- (2) The names of the people you are suing as the Defendants.
- (3) Fill in your county and one defendant's county.
- (4) Under "Plaintiff's Attorney" put "Pro Se," your name, prisoner number if applicable, and address.
- (5) Leave "Defendant's Attorney" blank.
- (6) Under "Basis of Jurisdiction," check the appropriate block. (see INSTRUCTIONS)
- (7) Under "Citizenship" (residence) fill in the appropriate information, if Basis of Jurisdiction is Diversity. Otherwise, leave blank.
- (8) Under "Nature of Suit" check the appropriate box.
- (9) Under "Origin," check box 1: "Original Proceeding."
- (10) Under "Cause of Action," put the statute you cited in your complaint's jurisdictional statement.
- (11) Under "Requested in Complaint," write in the amount of money you are suing for, and check the appropriate box after "jury demand."
- (12) List all related cases, by Court and Docket Number, that you have filed regarding the claims in this action.
- (13) Date the form, and sign your name, followed by "Pro Se" on the last line.

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2.06 | THE COMPLAINT

A civil lawsuit is begun by filing a complaint in the office of the Clerk of the Court. Complaint forms, which the Court encourages you to use, may be obtained in person from the intake clerk in the Clerk's Office, by mail from the Court's Pro Se Offices, and from the Western District Court web site at <http://www.nywd.uscourts.gov>. Rule 5.2 of the Local Rules of Civil Procedure points out that a complaint not filed on the appropriate form may be returned to the plaintiff for refileing on the proper form.

"Filing" a document means to deliver it to the Clerk of Court either in person or by mail to have it file-stamped. The purpose of the complaint is to give notice to the persons being sued and to the court as to the nature of the lawsuit. The complaint should contain:

(1) A caption specifying the court in which the case is filed and the names of the parties. Every document you file should have a caption at the top of the first page. After the case is filed, it will be assigned a number, each document filed thereafter must include this number next to the caption. The complaint and all other pleadings must be on 8 1/2" x 11" paper. The Court allows double spacing or 1-1/2 spacing.

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2.07 | CASE CAPTION

Following is a sample caption:

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Your Name,

Plaintiff,

v.

- CV -

LEAVE THIS BLANK FOR NOW. THE CLERK
OF THE COURT WILL ASSIGN A 'DOCKET
NUMBER' TO YOUR ACTION WHICH THEY
WILL WRITE ONTO YOUR COMPLAINT, AND
WHICH YOU SHOULD PUT IN THIS
POSITION ON EVERY DOCUMENT YOU FILE
AFTER THE COMPLAINT

COMPLAINT

(This is the title.)

Defendants' Names,

Defendant(s).

You should list the names of all the defendants you wish to sue in the caption. Do not use phrases like 'et al.' or 'etc.' in your caption. Do not use 'John or Jane Doe' unless you do not know the defendant's name. If you know only a nickname, use that in the caption. You will need to describe the defendants more fully in another part of the complaint; if you don't know their names, be prepared to describe them by their titles or positions. It is your obligation as plaintiff to identify the people who you wish to sue.

(2) A short and plain statement of why the court has jurisdiction. Your complaint should be written in short, numbered paragraphs, each of which contains a single idea. The first paragraph should identify the basis of the Court's jurisdiction. You should include in your jurisdictional statement a statement of venue, that is, a statement why you are filing suit in the Western District of New York. Generally speaking, you must bring a federal action in the district in which the defendants reside, or in which the events giving rise to your claim occurred. If your claim arises in or the defendants live in the 17 western-most counties of New York State, then it is properly venued in the Western District of New York.



In a separate paragraph for each individual party, you should identify each party by name, title or some other unique characteristic. You should also indicate where the party lives or maintains a business, or, if the party is a correctional officer, where the party is employed. The location of a defendant's residence or place of business is important for determining venue.

(3) A short and plain statement of the claim showing why you, the plaintiff, are entitled to relief, including a concise statement of the facts. Generally, each statement of a claim should be made in separately numbered paragraphs, with each paragraph limited as far as possible to a statement of a single set of factual circumstances. In short, clear, numbered paragraphs describe the actions or failures to act of the defendant that you believe violated your rights, and identify the legal rights you believe the defendant violated. If the statute under which you are bringing your case requires you to exhaust administrative remedies before filing a federal action, describe your efforts to exhaust those administrative remedies.

(4) A statement of the particular relief sought. Tell the Court what you want to require the defendant to do, whether it is to stop doing something, to start doing something, and/or to pay you monetary damages.

(5) If a party (plaintiff or defendant) wants a jury trial (and is entitled to one by law), he or she must request one either in the complaint or answer, or by filing a separate demand for a jury trial in writing within 10 days after the defendant's answer is served. See Federal Rules of Civil Procedure, Rule 38(b). Failure to timely request a jury trial constitutes a waiver of one's right to a jury trial.

(6) Exhibits to the Complaint - Attach to the complaint any exhibits which are necessary to explain your complaint. Do not send original exhibits to the Court unless you have no ability to obtain photocopies. Any exhibits filed after the complaint is filed must be included as attachments to an affidavit or affirmation which refers to each exhibit and explains why the exhibit is relevant to your case. See Rule re affidavit p. 13.

Sign and date your complaint. The complaint and all subsequent pleadings must include your address and telephone number, and must be signed by you. See, Federal Rules of Civil Procedure, Rules 8-11. It is mandatory that you keep the Clerk of Court informed of your current address and telephone number during the entire lawsuit



and contact the Clerk's Office as soon as your address changes. Failure to do so is grounds for dismissal of the case. See Local Rules of Civil Procedure, Rule 5.3(d).

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2.08 | THE SUMMONS

A summons is an official court document, signed by the Clerk, directing a defendant to respond to a complaint. A summons for each defendant must be completed and submitted to the Clerk of Court with the complaint. Summonses may be obtained in person from the intake clerk in the Clerk's Office, by mail from the Court's Pro Se Office, and from the Western District Court web site at <<http://www.nywd.uscourts.gov>>.

The summons must show the time by which the defendant is required to respond to the complaint. Defendants generally have twenty (20) days to file an answer after they are served with the complaint; United States government defendants have sixty (60) days. Pursuant to a Standing Order of the Court, defendants in prisoner civil rights cases involving the New York State Department of Corrections and Community Supervision ("DOCCS") and/or employees of DOCCS have 60 days to answer a complaint if the defendant(s) returns a Statement and Acknowledgment of Service by Mail, see N.Y.C.P.L.R. §312-a, within 30 days of being mailed the summons and Complaint and Statement and Acknowledgment of Service by Mail. Defendants in cases seeking review of decisions under the Social Security Act have ninety (90) days to answer. Defendants in cases brought under the Freedom of Information Act have thirty (30) days to answer. Failure to include the response time on the summons is grounds for dismissal of the case. You should also submit to the Clerk a copy of the complaint which you intend to serve on each defendant so that the Clerk can stamp the copies as filed and write on them the case number and judge assigned.

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2.09 | INSTRUCTIONS FOR COMPLETING THE SUMMONS FORM:

(a) Write your name above the "v" as plaintiff; write in the names of all the people you are suing as defendants below the "v."

(b) Write the name and address of one defendant after the "To." You must make a separate summons for each defendant.

(c) Because you do not have an attorney, in the space after "plaintiff's attorney" fill in your own name and your address. Cross out "Plaintiff's Attorney" and write "Pro Se" after your name.

(d) Put the proper number in the space before "days after service of this summons..."

The summons will be signed and sealed by the Clerk and returned to you along with the service copies of the complaint unless the summons and complaint is going to be served by the U.S. Marshal.

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2.10 | SERVICE OF PROCESS IN FEDERAL COURT

Service of process is the actual delivery of the summons and complaint to the defendant in your case. Service of process in federal court is governed by Rule 4 of the Federal Rules of Civil Procedure. You are responsible for having a summons and a copy of the complaint "served" upon each party to the lawsuit, and for returning proof of the service to the Court. The summons and complaint must be served within 90 days of filing the complaint or the case may be dismissed. A party who cannot complete service within 90 days must file a motion with the Clerk's Office asking the Court to extend the time to serve the summons and complaint.

See Motions, pp. 11-14.

Anyone who is over 18 years old and is not a party to the action may serve the summons and complaint. If the Court has granted you permission to proceed in forma pauperis, the United States Marshal will serve process at no charge. Parties who have not been granted in forma pauperis status must make arrangements for service at their own expense (or request the defendant to waive service -- see below Waiver of Service of Summons and Complaint). Professional process servers are listed in the telephone directory yellow pages and will serve a summons and complaint for a fee. Any other person who is at least 18 years of age and who is not a party to the lawsuit, such as an employee, family member or friend, may serve the summons and complaint, but they must be careful to follow the service procedures exactly or the case may be dismissed for improper service. The United States Marshal can also serve process on behalf of a party who has not been granted permission to proceed in forma pauperis, but the party must first request (file a motion) and obtain an order of the Court directing service by the Marshal (forms for doing so may be obtained in person from the intake clerk of the Clerk's Office, by mail from the Pro Se Office, and from the Western District Court web site at <<http://www.nywd.uscourts.gov>>). There is a small fee (\$8.00) per complaint served for this service.

If the Marshal fails to complete service upon the first attempt, it is your responsibility to require the Marshal to try to serve again, or to move the Court for an order directing the Marshal to make a second attempt.

The procedures for serving process differ depending on whether the defendant is an individual within the United States (including territories), in a foreign country, under the age of 18 or



incompetent, or is a corporation, the United States (or a government agency), or a foreign, state or local government. See Federal Rules of Civil Procedure, Rule 4(e) - (j). It is important to follow the rules for service on these different persons and entities to the letter. The methods of serving process upon individuals within the United States and its territories are contained in Federal Rule of Civil Procedure 4(e) and in state law.

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2.11 | WAIVER OF SERVICE OF SUMMONS

A plaintiff who is not proceeding in forma pauperis (i.e. who paid the filing fee) may be able to avoid the cost of service by requesting that a defendant waive service of the summons prior to the plaintiff hiring a process server or requesting service by the United State Marshal or some other method. Waiver of service is encouraged by the Federal Rules of Civil Procedure and is less expensive for the plaintiff. A defendant who timely returns a waiver of service can extend the time in which to answer. See Federal Rules of Civil Procedure 4 (d)(3). Procedures for making this request are set forth in Federal Rule of Civil Procedure 4(d) and forms for doing so (AO 398 and AO 399) are available in the Clerk's office. If a defendant refuses to waive service of the summons, the plaintiff must arrange for service and the Court may require the defendant to pay for the cost of this subsequent service.

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2.12 | PROOF OF SERVICE

Finally, you must return to the court the appropriate proof that the defendants have been served. Where service is made by requesting defendant to waive service of the summons, proof of service must be made by filing with the Court the completed AO 399 form(s) that you sent to the defendant or defendants. Where service is made by any other manner, proof of service can be made by completing and returning to the Clerk of Court a civil process return form located on the back of a summons form. It is the responsibility of the person serving process to prepare and submit the forms showing proof of service. Plaintiffs should read Rule 4 of the Federal Rules of Civil Procedure to become thoroughly familiar with the procedures governing service of process.

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