

Instructions for a § 1983/Bivens/Federal tort claims act Case Filed by an Inmate/Detainee

How do I file a case?

- Submit a complaint via U.S. Mail, or by e-filing (available only in IDOC) with your prison law library.
- Pay the \$405 fee or submit an In Forma Pauperis application with your trust fund statement for the last six months. You can request a form for this application.

What should my complaint say?

- What happened, when, where, and who is responsible. Think of what you would tell a friend or family member. Tell the important facts. Leave out details that don't change anything.
 - **DO:** Write a **short** statement of what happened. Explain **who** violated your rights, **what** each defendant personally did, **when** they did it, **where** they did it, and **why** they did it (if you know why).
 - **DO NOT:** Do not make legal arguments or give citations. Do not include evidence or exhibits. You will have a chance later in the case to give evidence and to make arguments. Do not combine multiple claims that are not related.¹ Do not ask for release from custody; this must be requested in habeas proceedings (28 U.S.C. §§ 2241, 2254, 2255).
- What do you want the Court to do? A specific demand for relief like money damages, or injunctive relief.
- Your signature and the date, promising that the facts you give are true to the best of your knowledge.
- The shorter, the better. The Court is required under 28 U.S.C. § 1915A to review inmate-filed complaints. If your complaint is long or combines a lot of issues, it may take the Court a long time to review it and to decide if the defendants will be served and will have to file answers.

After my complaint is filed, what do I do?

- If your address changes, you must write the Court to update your address within 14 days.
- Watch for any Court orders asking for more information or for payment of an initial fee.
- Wait for a Court order telling you that claims are going forward ("Order for Service of Process") or asking you to amend or take other action ("Order to Amend" or "Order to Show Cause").
- If the Court decides you have stated a claim, the Court (or your attorney) will begin service.
- Once the defendants return executed waivers of service, they will have time to file an answer.
- Service and answers usually take at least 60 days after the "Order for Service of Process."
- After service and answers, you will get a "Scheduling Order" with clear directions for next steps.
- Make sure that every document you file after the complaint has your **case number** on it!

When can I file a motion?

- A motion is a way to ask the Court to do something for you.
- You can file a motion at any time under Federal Rule of Civil Procedure 65 if you believe your situation is an emergency. You can only get emergency help related to claims and parties in your lawsuit, and only if you are in serious danger. You cannot ask for your release from custody. Release must be sought in a habeas case.
- Motions can also be used for things like a status update or copies. The Court will not answer letters.

¹ The Court is not required to allow you to join multiple claims in a single case. The Federal Rules of Civil Procedure 18-21 control joinder of claims and parties. It is possible if you present many claims or claims that are not related, that the Court will ask you for an amended complaint or it will divide your claims into separate cases.

- Copies are \$0.50/page. Write the Clerk of Court to ask for the price. You must prepay for a copy.
- You should avoid filing motions unless you truly need something. They can slow down a case.
- If the defendant files a motion for summary judgment, you will have a chance to respond, and will get information about how to respond.
- You can apply for court-recruited counsel at any time. You must attach proof that you tried to get your own lawyer. You must also be very clear about why you need help. There is no right to counsel in a civil case, and most motions are not granted right away.

What should I save for later in the case?

- If you have legal arguments or citations you want to provide, you should save them for later in the case when the defendants file a motion to dismiss or a motion for summary judgment.
- If you have evidence or witness statements you want to file, you should also save them until a motion for judgment on the pleadings or summary judgment is filed. Federal Rule of Civil Procedure 8(a) only requires your complaint to provide a short plain statement of what went wrong; the Rules do not require you to file any evidence up front. If you file evidence right away, it might take the Court longer to review your case.

What is special about cases filed by prisoners?

- 28 U.S.C. § 1915A requires a Court to “screen” every complaint filed by a prisoner to see if it states a claim, and/or if it is frivolous or malicious.
- 28 U.S.C. § 1915(g) says that if you have 3 or more other cases dismissed under § 1915A, then you must pay the \$405 fee up front OR you must show you are in “imminent danger of serious physical harm.”
- 42 U.S.C. §1997e(a) requires state and federal inmates to exhaust claims before they file a federal lawsuit.
- 28 U.S.C. § 2675(a) requires Federal tort claims to be exhausted by the administrative remedy process before a federal lawsuit can be filed.

WARNINGS

- **If you seek release from custody or a reduction in the length of your sentence, you MUST use the federal habeas corpus forms for cases under 28 U.S.C. §§ 2241, 2254, and 2255. You can request these from the Clerk of Court.**
- If you do not wait to finish the grievance process, the defendants might point this out and it might slow your case down, or you may be required to file a new case later.
- As soon as you file a complaint, you are responsible for the filing fee. If you later decide you do not want to have the case, if the case is dismissed, or if you lose the case, you will still have to keep paying the fee.
- If you file more than one case about the same topic, this will slow things down and could result in penalties.
- If you are not honest about anything, including strikes you have under 28 U.S.C. § 1915(g), you can be punished with a monetary fine, dismissal of your case, or even a ban on filing future cases.
- You are responsible for protecting sensitive information per Federal Rule of Civil Procedure 5.2. This means you should not file things like social security numbers, the year of a person’s birth, or financial account information.
- You are responsible for following the Federal Rules of Civil Procedure, the Court’s Local Rules, and any order from the Court. Failure to follow the rules may have a bad impact on your case or may end your case.