

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS



PRO SE LITIGANT GUIDE

This guide is designed to assist you if: (1) You want to file a lawsuit in federal court or you have an active role, either as a plaintiff or a defendant, in a case that you or someone else has filed already in federal court; and (2) You have elected to proceed without the assistance of a trained and licensed attorney.

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I. GENERAL INFORMATION.

A. BASIC DEFINITIONS.

The **plaintiff** and **defendant** in a court case generally are referred to as the “**parties**” or “**litigants**.” The plaintiff asserts a claim or right protected by law against the defendant; the defendant denies the claim or right. Then the court determines whether the asserted claim or right has merit. The great majority of litigants who appear in this court are represented by an attorney who has been trained in the law and is familiar with court rules and procedures. Parties who are not represented by licensed attorneys (who elect to represent themselves) are referred to as **pro se litigants** (*pro se* plaintiff or *pro se* defendant). The term “*pro se*” is simply a Latin phrase that means “for yourself.”

B. HOW THIS GUIDE CAN HELP.

This guide will not answer all questions about what you need to do to represent yourself effectively as a *pro se* litigant. It outlines the basic steps that are required to file an **action** (also known as a lawsuit) in this district court. It also provides some general guidance on the next steps in the process once you have filed an action.

You are responsible for learning and following the procedures that govern the court process. Although the staff of the clerk’s office can provide general information concerning court rules and procedures, staff is forbidden as a matter of law from providing legal advice, from interpreting and applying court rules, or otherwise participating, directly or indirectly, in any action.

C. THE RISKS INVOLVED IN REPRESENTING YOURSELF.

Self-representation carries certain responsibilities and risks that a *pro se* litigant should know before proceeding. The court encourages all individuals who are thinking about self-representation to carefully review the risks associated with self-representation and to be aware of the potential consequences. Rule 11 of the Federal Rules of Civil Procedure prohibits the filing of lawsuits that are clearly frivolous or filed merely to harass someone. If, after reviewing your complaint, a judge determines that you have filed a lawsuit for an improper or clearly unnecessary purpose, the judge may impose sanctions against you, including ordering you to pay a fine to the court or to pay the legal fees of the person or persons against whom you filed the lawsuit.

II. IMPORTANT ISSUES.

You should consider these important issues before you decide to represent yourself in an action before this district court:

A. IS THIS COURT THE APPROPRIATE COURT TO HEAR YOUR DISPUTE?

Federal courts can only decide limited kinds of cases. The United States District Court for the Southern District of Illinois is one of 94 trial courts in the federal court system. A federal trial court is authorized to hear disputes that fall into the following four categories only:

- Those that deal with a question involving the United States Constitution;
- Those that involve questions of federal law, as opposed to state law;
- Those that involve the United States of America as a party, whether as plaintiff or defendant; and
- Those that involve a dispute among citizens of different states when the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. (Note: A person is a citizen of the state where he or she is physically present with an intent to remain there indefinitely.)

If your complaint does not fall under any of these categories, you should not file it in federal court. Instead, you should contact the Circuit Court in the county in which you live.

B. IF THE CASE CAN BE FILED IN FEDERAL COURT, IS IT THE TYPE OF CASE IN WHICH LITIGANTS TYPICALLY REPRESENT THEMSELVES?

A litigant may appear *pro se* in any case that is properly within the jurisdiction of this court. There are five categories of cases that are most often filed by *pro se* litigants:

- Cases alleging denial of civil rights under Title 42, United States Code, Section 1983, that are not filed by prisoners;
- Cases alleging denial of civil rights under Title 42, United States Code, Section 1983, filed by persons who are in jail or prison and who challenge their sentences or conditions of confinement;
- Cases alleging a tort claim which is an injury to an individual (note that tort claims brought in federal court are subject to strict jurisdictional

requirements);

- Cases alleging employment discrimination under Title 42, United States Code, Section 2000(e); and
- Cases seeking judicial review of a decision by the Commissioner of Social Security.

C. IS THERE AN ALTERNATIVE TO REPRESENTING YOURSELF THAT IS AFFORDABLE?

Most people who file and pursue litigation in federal court employ a licensed, practicing attorney who has appeared in court and is familiar with the rules of procedure that govern the court process. If you would prefer to have an attorney represent you but you are unable to afford one, you should consider contacting one of the following

Illinois Lawyer Finder: (217) 525-5297 or toll free (800) 922-8757
www.illinoislawyerfinder.com

Land of Lincoln Legal Assistance: (618) 394-7300 or toll free (877) 342-7891
www.lollaf.org

These agencies can explain the various options for obtaining and paying for legal services.

D. WHAT IF YOU CANNOT FIND AN ATTORNEY TO TAKE YOUR CASE?

If you cannot find an attorney to represent you, you have the right to file an action on your own. Remember, however, that as a *pro se* litigant, you are representing only yourself and presenting only your claims or defenses. Under the law, you cannot speak for another person, a company, or an entity (such as a club or association that includes other individuals). When you appear *pro se*, you must follow the same rules and procedures that licensed attorneys who practice in this court must follow. Generally, judges hold *pro se* litigants to the same standards of professional responsibility as trained attorneys.

Pro se litigants may also ask the court to recruit an attorney (also called “counsel”) for them in a civil case. *Pro se* litigants have no right to be represented by counsel in a civil case, and the court has no obligation to appoint counsel in a civil case. All this court can do is try to find a lawyer to volunteer to assist a *pro se* litigant. The court will attempt to recruit counsel in a few select cases where having an attorney seems appropriate or important. You must first show that you have tried to find counsel to represent you but have been unsuccessful (and provide proof of your efforts). The court needs to know other information, which is requested in the court’s “Motion for Recruitment of Counsel”

form. If you would like to request that the court recruit counsel to represent you in your lawsuit, you must file a motion for recruitment of counsel with the court. The motion should be filed at the time you file the complaint, but it can be filed at any time. A sample of a motion for recruitment counsel is attached in the Appendix Section.

E. WHAT COURT FEES AND COSTS ARE YOU REQUIRED TO PAY?

The fees charged by the United States District Court, Southern District of Illinois, are as follows:

Filing a complaint and opening of a civil case:	\$ 405.00
Filing a notice of appeal:	\$ 605.00
Copies of documents, per page:	\$.50
Copies of any record or document accessed electronically at a public terminal in the clerk's office:	\$.10
Certification of a document from a court file:	\$ 12.00
Record Retrieval	
Physical	
First Box Retrieved	\$ 70.00
Each Additional Box Retrieved	\$ 43.00
Electronic	
Based Record Retrieval Flat Fee	\$ 20.90
Additional Fee for Each Page of the Record	\$ 0.65

These fees may be paid with a money order, check, or major credit card.

If you are unable to pay the filing fee, you may apply for permission to proceed *in forma pauperis*, a Latin phrase for “in the form of a pauper”. Information on filing *in forma pauperis* is discussed below, and a sample motion to proceed *in forma pauperis* is located in the Appendix Section. These forms are also available in the clerk's office and on the court's website, www.ilsd.uscourts.gov. Completed motions are forwarded to a judge for review. If your motion is denied, your case cannot proceed until you pay the filing fee. If the fee is not paid, the case will be dismissed.

Waiver of the filing fee does not automatically waive the other costs associated with pursuing or litigating your case. If, for example, you need copies of documents in your case, the clerk's office is required to charge a fee per page for those documents as set forth above. Service of your complaint on the other party will entail additional costs unless you have made (and the court has approved) a motion that the United States

Marshal serve your complaint.

F. WHAT IF YOU CANNOT AFFORD TO PAY THE FEES?

As noted above, filing a case in this court requires the plaintiff to pay a \$405.00 filing fee at the time the new case is filed. If you are unable to pay this fee, you may apply to have the fee waived. Bear in mind that you can apply for waiver of the fee only after your action is filed. The clerk's office will accept your case without payment if, at the time you file it, you also apply for waiver of the fee by filing a motion to proceed *in forma pauperis* as discussed below. If the judge subsequently denies your motion, you will be required to pay the filing fee; if you do not pay it within a specified period of time, your case will be dismissed. Note that if your case is dismissed for non-payment of the fee, you will still owe that fee to the court. In other words, your obligation to pay the filing fee begins when you file your case, regardless of the outcome of your lawsuit. On the other hand, if the judge grants your motion to waive the filing fee, and you later settle your case for a monetary payment or win at trial, any money you recover must be first paid to the Clerk of Court so that your fees and costs can be deducted to reimburse the court. See SDIL-LR Rule 3.1(c)(1).

The application process requires that you complete and submit a motion to proceed *in forma pauperis*. A sample of this motion is attached in the Appendix Section. The clerk's office will provide the case number. You must answer all questions truthfully and completely. If you own real estate or automobiles that have outstanding mortgages or loans, you should be very specific about your debt balance so the judge who reviews the motion has accurate information as to the property's value. You also must sign the statement under penalty of perjury.

The completed motion should be submitted to the clerk's office with your complaint. A judge will review the motion, along with the complaint, and the motion will be "granted" or "denied." A copy of the order explaining the judge's decision will be mailed to you by the clerk's office. As noted above, if your motion is denied, you must pay the filing fee within the time period specified or your case will be dismissed.

G. WHERE CAN YOU FIND THIS COURT'S RULES OF PROCEDURE AND APPLICABLE FEDERAL LAWS IF PROCEEDING *PRO SE*?

As a *pro se* litigant, you should be familiar with the Federal Rules of Procedure. These rules set forth the procedural requirements for litigating cases in all federal courts. As a *pro se* litigant in a **civil** case, you should be familiar with the Federal Rules of Civil Procedure (abbreviated as Fed.R.Civ.P) and the Federal Rules of Evidence (abbreviated F.R.E.). If you are a *pro se* defendant in a **criminal** case, you should familiarize yourself with the Federal Rules of Criminal Procedure (abbreviated as Fed.R.Crim.P.) and the Federal Rules of Evidence. Federal laws are found in the United States Code (abbreviated U.S.C.). These rules and laws are available for review at law libraries. You may also access the federal rules on the internet at www.uscourts.gov/rules.

You should also be familiar with the Local Rules for the Southern District of Illinois (SDIL-LR). A paper version of the Local Rules can be purchased at the clerk's office at either the East St. Louis or Benton locations for \$3.00. For more information, please call the clerk's office in East St. Louis at (618) 482-9371 or in Benton at (618) 439-7760. You may also view these Rules at our website, www.ilsd.uscourts.gov.

III. HOW DO YOU START A NEW CIVIL CASE?

A. FILE A COMPLAINT.

A case begins when a plaintiff, the person bringing the lawsuit, files a complaint. The complaint is the document in which the plaintiff asserts the claim(s) or rights(s) being violated and outlines the problem or reason for the lawsuit. Sample complaints are available on the court's website, www.ilsd.uscourts.gov and/or from the clerk's office. As a pro se party, the complaint must be filed by hand-delivering or mailing it to the clerk's office at either of the two addresses listed below:

**United States District Court
750 Missouri Avenue
East St. Louis, IL 62201**

**United States District Court
301 W. Main Street
Benton, IL 62812**

Whether you deliver or mail your complaint, you must submit the following:

- The original complaint with your full name, address, and telephone number.
- The \$405.00 filing fee or a motion to proceed *in forma pauperis* if you cannot afford to pay the filing fee. Note: the subject of fees and how to seek *in forma pauperis* status is discussed above.

The complaint will be given a case number and assigned to a judge by the clerk's office. If you would like a file-marked copy of the complaint (or any other pleading) returned to you, please provide an additional copy at the time you file the original.

Please note that a *pro se* party may not file their initial complaint through the Court's electronic case filing ("ECF") system. As detailed in Section V. below, a *pro se* party must hand-deliver or mail to the Clerk's Office their complaint first and then seek permission from the Court to file case-related pleadings and documents through the ECF system in every case.

B. SERVE THE COMPLAINT.

Each defendant (the person whom the plaintiff claims is responsible for the claim

or problem) must be notified of the lawsuit through a process that is specified under law. The responsibility for notifying each defendant rests with the plaintiff and is referred to as **service of process**. The provisions for service of process are described in Rule 4 of the Federal Rules of Civil Procedure. If the service of process requirements are not followed correctly, the case can be dismissed.

You have 90 days after the complaint is filed to serve the complaint upon the defendant(s). It is your responsibility to properly serve the complaint. If you fail to do so within 90 days, your case may be dismissed.

The defendant shall be notified of the lawsuit either by service of a summons or by waiver of service. The summons and waiver of service forms may be obtained from the clerk's office. Again, detailed provisions on how to serve a defendant are contained in **Rule 4** of the **Federal Rules of Civil Procedure**. You should carefully review this rule. The service of process requirements can be satisfied in one of three ways.

1. **Personal Service:** If you choose to satisfy the service of process requirements by personal service, you will direct someone else to deliver or serve a copy of the complaint and summons on the defendant(s). Personal service can be performed by anyone who is at least 18 years old and who is not a party in the case. Sheriff's Departments and private process servers will do this for a fee.

You should first contact the Clerk of Court to obtain a summons form for *each defendant* listed in your complaint. You will then fill in the necessary information on the form, including a complete name and address for the defendant who will be served with the summons. After you complete the summons form, the Clerk of Court will officially **issue** the summons; this simply means that an authorized court employee will sign the form and emboss it with the official seal of the court. The summons and complaint are then ready for service.

The person who serves the summons must record on the back of the summons form his or her name, the name of the person who was served, and the date and time of service. This section of the summons form is referred to as the **return of service**, and if it is not completed, service of process is not complete. Rule 4(l) requires confirmation that service has been completed. Such confirmation or **proof** that the documents have been served on the defendant(s) requires that the original summons form with the return of service completed be returned to the court and that a copy of the form be left with the defendant.

2. **Waiver of Service:** Rule 4(d) permits a defendant to **waive** personal service of process. That means the defendant agrees to respond to your complaint without being served with a summons but accepts a copy of the complaint by mail. The clerk's office can provide you with a waiver of service

of summons form. You must mail two copies of the waiver of service of summons form, a copy of the complaint, and a pre-paid means for returning the waiver form to you (i.e., a self-addressed, stamped envelope) to each defendant named in your lawsuit. If a defendant completes and returns the waiver, you will be spared the burden of personal service on that defendant.

3. **Service by a Marshal of Someone Specially Appointed:** You may ask the judge to order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court (at the government's expense). You must, however, make such a request by formal written **motion**. An example of this motion is attached in the Appendix Section.

Once a defendant has been served with a copy of the complaint, the defendant must file with the court an **answer** or some other response within a specified number of days. Under the rules governing service of process, each defendant is required to provide a copy of the response on the plaintiff.

IV. WHAT HAPPENS NEXT?

After the complaint has been filed and served and the defendants have responded to the complaint, any one of a number of different procedures may occur.

1. **Referral to a Magistrate Judge:** If your case is initially assigned to a magistrate judge, you will be sent a form asking whether you consent to have your case decided by a magistrate judge. If all parties consent, your case will be decided by a magistrate judge. If all parties do not consent, your case will be decided by a district judge, although certain preliminary issues may still be handled by a magistrate judge.
2. **Motion Practice:** Either party (plaintiff or defendant), may request that the court take specific action related to the case. To do so, the party prepares a formal request or what is referred to as a **motion**. **Local Rule 5.1** provides information on the preferred form and style of motions in this court. The party then signs the motion, submits it or **files** it with the Clerk of Court and sends a copy to the opposing party. The opposing party may file with the Clerk of Court a **response** to the motion. The response sets forth the reasons why the court should deny rather than grant the motion. **Local Rule 7.1** sets forth the deadlines and page limitations that apply to motions (see box below concerning the distinction between dispositive and non-dispositive motions). After a response (and sometimes a reply) is filed, the district judge or magistrate judge may schedule a hearing to provide the parties with an opportunity to argue the motion and the objections. Or, the judge may decide a hearing is unnecessary and rule on the motion by issuing a written order that either grants or denies (in whole or in part) the relief sought in the motion.

Dispositive vs. Non-Dispositive Motions:

Motions fall into two categories: dispositive and non-dispositive.

Dispositive motions, if granted, end the case; **non-dispositive** motions, if granted, affect the case but do not end it. District judges have the authority to rule on both kinds of motions; magistrate judges are authorized to rule on non-dispositive motions only, except on cases consented to them.

- 3. Magistrate Judge Report and Recommendation:** When a case is assigned to a district judge and one of the parties files a dispositive motion, the magistrate judge is authorized to prepare a written **Report and Recommendation**, essentially a recommendation that the motion be granted or denied and the reason(s) why. This Report and Recommendation is filed by the magistrate judge, and copies are sent to the parties. You have only **14 days** to file objections to the Report and Recommendation and **14 days** to respond to another party's objections (after you receive a copy). All timely objections and responses are reviewed by the district judge along with the Report and Recommendation. The district judge then will issue an order that adopts, rejects, or adopts in part and/or rejects in part the magistrate judge's report and recommendation. When the district judge's order dismisses the case, the Clerk of Court will prepare and enter a **judgment** in the case. Such judgment is final and can be appealed only to the United States Circuit of Appeals for the Seventh Circuit in Chicago, Illinois. See **Local Rule 73.1** concerning the procedure for review of non-dispositive orders and proposed dispositive findings.

V. HOW DO YOU SUBMIT DOCUMENTS TO THE COURT?

Case related documents that ask the court to take specific action are referred to as **motions** or pleadings. If, for example, you want to ask the court to do something, you must do so by means of a written motion. A motion should be supported by a summary of the law supporting the motion called a **memorandum** and/or by an affidavit or declaration of the movant that provides the court with facts that support the motion. In preparing a motion, you should follow the same general format as the sample motions attached to this Guide in the Appendix Section. Be as specific as possible about the action you would like the court to take.

Initially, you will not be authorized to use the Court's electronic case filing ("ECF") system and must submit your complaint to the Clerk's Office for filing as directed in Section III.A., above. However, once your complaint is filed, you may choose to file (either by hand-delivery or mail to the Clerk's Office address above) a Motion for *Pro Se* Filing User privileges which would authorize you to file pleadings through the ECF system (via login and password) on a case-by-case basis should the Court grant your request. You

should review the Electronic Case Filing Rules on the Court's website prior to requesting such privileges. In the event your request is granted, you will be directed to the Court's website and the Electronic Filing Registration Form as you must register for an e-file only account via www.pacer.gov before you can utilize the ECF system. *Pro se* filers must seek prior Court approval to use the ECF system in each unique case filed.

If you are granted *Pro Se* Filing User Privileges, the Clerk's Office will not accept any future paper copies of pleadings for filing on your behalf, nor will it mail paper copies of any pleadings to you. You will be responsible for filing your pleadings via the ECF system according to the Electronic Case Filing Rules located on the Court's website and will only receive electronic notice of pleadings that are filed.

If you are not authorized to use the Court's ECF system, you shall submit the original of any motion or other pleading you wish to file with the Clerk of Court, but you should always retain a copy for yourself. If extra copies are submitted to the court, file-marked copies will be returned if a self-addressed stamped envelope is sent to the Clerk of Court with the original pleading. The clerk's office has two locations; hours are 9:00 am to 4:30 pm Monday through Friday, excluding all federal holidays.

**United States District Court
750 Missouri Avenue
East St. Louis, IL 62201
(618) 482-9371**

**United States District Court
301 West Main Street
Benton, IL 62812
(618) 439-7760**

When you submit a pleading to the court, you also must mail or deliver a copy of the pleading to the defendant's attorney or, if the defendant has no attorney, to the defendant. At the end of your pleading, you must include a certificate of service that states the date that you mailed or delivered a copy of the pleading to the defendant. A sample form for a certificate of service is in the Appendix Section.

The clerk's office maintains an automated record or **docket** for every case. This docket is a listing of all documents that have been filed in a case. You may review the docket on the public access terminal located at the intake area of each clerk's office. Clerk's office staff may provide basic docket information over the telephone.

VII. IS IT POSSIBLE TO SPEAK DIRECTLY TO A JUDGE OR MEMBER OF HIS/HER STAFF ABOUT YOUR CASE?

As a party appearing *pro se*, you are prohibited from all private (also called **ex parte**) communications with the judge to whom your case is assigned. *Ex parte* communication occurs when one of the parties to a lawsuit exchanges information with the assigned judge (a) without the opposing party being present; or (b) without the knowledge and consent of the opposing party.

With few exceptions, because of this prohibition, a judge will refuse to speak or otherwise communicate *ex parte* with any party to a case that is assigned to him/her. Any

communication between the assigned judge and a *pro se* litigant should be in writing, and a copy of the communication should be sent either to the opposing party or that party's attorney. For example, a party appearing *pro se* should send to the opposing party a copy of any letter sent to the judge. The letter to the judge should also indicate that a copy has been sent to the opposing party. As noted above, telephone or personal contact with the judge's staff should be limited to specific scheduling inquiries.

VIII. WHAT HAPPENS IF YOUR CASE IS DISMISSED?

If the judge dismisses your claims "on the merits" or "with prejudice" and/or enters judgment, you may appeal to the United States Court of Appeals for the Seventh Circuit in Chicago, Illinois, by filing a **notice of appeal**. In general, a notice of appeal must be filed within **30 days** after the judgment or order appealed from is entered. As set forth above, the fee for filing a notice of appeal is \$605.00. The notice of appeal is filed (and the fee paid) in the district court. If you are unable to pay the filing fee for an appeal, you may apply for permission to proceed *in forma pauperis* on appeal. A form for this request is available at the Seventh Circuit's website, www.ca7.uscourts.gov, or you may contact the district court clerk's office for a copy of the form. As with filing a case in the district court, your obligation to pay the appellate filing fee begins when you file a notice of appeal. You remain obligated to pay the \$605.00 appellate filing fee regardless of the outcome of your appeal.

APPENDIX OF FORMS