

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
Office of the Clerk of Court

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Montgomery AL 36104

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PRO SE PACKAGE

A SIMPLE GUIDE TO FILING A CIVIL ACTION

The following instructions have been compiled to assist any person wishing to file a complaint in this court. We have attempted to simplify procedures; however, we cannot and will not act as lawyers nor give advice as counsel. We do not anticipate that this guide will satisfy all needs, and the Local Rules of Practice for the U.S. District Court are available for more specific guidance. You should use the Local Rules along with the *Federal Rules of Civil Procedures*. The Federal Rules are available at a public library and the Local Rules are available from the Clerk's Office and can be accessed on our web site. All forms mentioned in this pamphlet are available online and in our office.

If you believe that you have been injured or wronged by someone (an individual, company, or government agency, *etc.*) and you also believe you should be compensated for the harm you have suffered, you may decide to file a civil suit in the United States District Court, without the help of an attorney. (A person representing themselves is called a *pro se* litigant.)

Fundamental Information

There are a few basic concepts you must get to know and understand. The **plaintiff** is the person who files the lawsuit. The **Defendant** is the person who is being sued.

If you are representing yourself without the benefit of an attorney, you are known as a *pro se* litigant. *Pro se* is the Latin phrase that means, "for oneself."

As a *pro se* litigant, you enjoy every right entitled to you under the law. You need not worry if you have had little or no experience with the courts before. However, *pro se* litigants are expected to follow/abide by the rules that govern the practice of law in the Federal Courts. *Pro se* litigants should be familiar with the *Federal Rules of Civil Procedure* and the Local Rules of this court.

JURISDICTION: Federal Court vs. State Court

There is a difference between the Federal Court and the State Court. The difference is what types of cases (lawsuits) they can decide. This is called **jurisdiction**. State Court has a general/broad jurisdiction and Federal Court has limited/specific jurisdiction. The United States District Court for the Middle District of Alabama is one of 94 trial courts in the federal court system. Federal courts can only hear certain types of cases. Like all other federal trial courts, this court is only authorized to hear disputes that fall into the following four categories:

1. Those that deal with a question involving the United States Constitution;
2. Those that involve a question of federal (not state) law;
3. Those that involve the United States of America as a plaintiff or defendant; and
4. Those that involve a dispute among residents of different states with an amount in controversy of more than \$75,000.

STEP 1: Write Your Complaint

All cases include documents prepared and filed by litigants. The most common documents are the complaint, the answer, and various motions. The first document that you must write/file is called a **complaint**. The function of the complaint is to tell the Court and the defendant the reason(s) for filing the lawsuit and what relief you seek. The complaint must state:

1. The name and address of the plaintiff in the upper left-hand corner of the complaint. The names of all the plaintiffs and defendants must be stated in the caption. The Court will provide the case number.
2. The jurisdiction or reason your case is being filed in Federal Court. *See* 28 U.S.C §1331 *et seq.*
3. The allegation(s) or claim(s) that you are making against the defendant(s). Place each separate allegation in a short clearly written paragraph. *See* Rule 10 of the *Federal Rules of Civil Procedure*.
4. The relief you are seeking from the court. This can be monetary or something you want the Judge to make the defendant do or stop doing. This is usually the last paragraph of the complaint.

If you believe that you are entitled to and are requesting a trial by jury, write “Demand for Jury Trial” in the caption under the place for the case number. You may also indicate in a paragraph following the relief requested that you claim trial by jury. *See* Rule 38(b) of the *Federal Rules of Civil Procedure*. Do not worry that your complaint is not professionally written. It should be typed if possible. The Court will take into consideration that you are a *pro se* litigant and untrained in drafting legal documents. You should, however, make every effort to state your case in clear, concise terms. *See* Rules 8 and 10 of the

Federal Rules of Civil Procedure. All pleadings submitted to this Court must be on 8½" x 11" paper.

You must sign and date your complaint.

Forms for filing a petition under Title 28 U.S.C. §2254 for writ of habeas corpus by a person in state custody or a motion under Title 28 U.S.C. §2255 to vacate, set aside, or correct a sentence by a person in Federal custody are available from the Clerk's Office.

STEP 2: File Your Complaint

Your next step is to file the complaint with the Court. Submit the following:

1. The complaint. You must provide an original plus one copy for *each* defendant to be served.
2. If you are making service by **summons**, the Court needs multiple copies of the summons prepared for *each* defendant. If your service will be via certified mail (return receipt requested) then you will need to prepare two (2) summons forms for each defendant. If your service will be in person via process server, then you will need to prepare three (3) summons forms for each defendant. Please refer to Step 3 for more service information.
3. Please see the [Court's Fee Schedule](#) for information regarding the civil case filing fee. You can find the Fee Schedule on our website, at <https://www.almd.uscourts.gov/about-court/fees>. The filing fee may be waived if you cannot afford to pay it¹. Payment must be by cashier's check or money order payable to: "CLERK, UNITED STATES DISTRICT COURT." Cash is accepted at the counter with exact change required. If you cannot afford to pay the filing fee, then you may be allowed to have the filing fee waived if you file a Motion to Proceed *In Forma Pauperis* along with an Application to Proceed *In Forma Pauperis* and send it to the Court with the complaint, requisite service copies for each defendant, and when appropriate, completed Summons forms. The financial affidavit is required so that the Judge can rule on your inability to pay the filing fee.

STEP 3: Serve Your Complaint

The next step is to serve (inform) each of the defendants that they are being sued. This may be done in one of two ways:

1. Notice and Request for Waiver of Service. If you are suing the United States (or its agencies, corporations, or officers) or a state, local or foreign government, you cannot use this method and you **MUST** arrange for Service of Process (See below.) You may notify non-government

¹ When you file the complaint, summons, and Motion along with Application for Leave to Proceed *In Forma Pauperis* (if applicable), each of these will be reviewed and forwarded to a Judge for consideration. If your Application IFP is approved, the filing fee will be waived, and your case will proceed. If your Application is not approved, you must pay the filing fee to have your case proceed.

defendant(s) of the commencement of the lawsuit by sending a “[Notice of Lawsuit and Request for Waiver of Service of Summons](#)” (Form AO 398) along with a copy of the complaint by first-class mail or other reliable means. You must also include a copy of the [Waiver of Service of Summons \(Form AO 399\)](#) and a stamped self-addressed return envelope. *See* Rule 4(d) of the *Federal Rules of Civil Procedure*. A copy of the Notice (AO 398) should be filed with the court when you mail it to the defendants. If service is waived by the defendant(s), the Waiver of Service form is returned to you; you should then file that with the court and the action shall proceed. If the defendant does not waive service, the plaintiff must proceed with service of process, as follows.

2. Service of Process. Making “service of process” involves serving a copy of the complaint upon each of the defendants. A summons is a writ used to notify the person named as the defendant of the commencement of the civil action and the requirement to appear and answer. The summons must contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff’s attorney, if any, otherwise the plaintiff’s address, and the time within which the rules require the defendant to answer the complaint. If a defendant has not waived service of summons or you are suing a government (federal, state, local, foreign) you *must* arrange to have a copy of an original Summons and a copy of the complaint served upon each defendant. **NOTE:** Service of the complaint on the defendant must be made within 90 days from the date the complaint was filed, or the case will be subject to dismissal. *See* Rule 4(m), *Federal Rules of Civil Procedure*. In this court, most civil cases are served by Certified Mail by the Clerk’s Office; however, Service of Process in our Court can be accomplished by either (A) Certified Mail or (B) in person.

A. Certified Mail. In our court, most service of process is done by the Clerk’s Office on behalf of the plaintiff, using certified mail. If you want the Clerk’s Office to make service for you by certified mail, please provide the following for each defendant:

- Green return receipt cards and green certified mail receipt cards, addressed to the U.S.D.C. Clerk of Court, One Church Street, Suite B-110, Montgomery, AL 36104. The green return receipt card and green certified mail should **not** be affixed to the envelope(s).
- An envelope with postage affixed in advance for the amount needed to mail the complaint and summonses. (The Post Office can provide you with an exact amount of postage necessary for certified mail. *Do not give us money*. Affix the stamps or postage tape to the envelope) Pre-address the envelope(s) to your defendant(s) and use the Court’s address as the return address. **Note:** The

mailing address(es) of your defendant(s) on the summons(es) and on the service material(s) should be identical.

- A copy of the complaint and two (2) Summonses for service for each defendant. For example, if you are suing two people, in addition to the original complaint for our office, you need to provide two (2) extra copies of the complaint and two (2) summonses for each defendant for a total of four (4) summonses.

B. In person. Alternatively, you can make service of process by having a “disinterested” (non-party) person who is over the age of eighteen (18) deliver copies of the summons and complaint to each of the defendants.

- For personal service, you must complete three (3) summonses for each defendant and present each summons to the Clerk who will sign and place the Court Seal on each summons. The original summons is for the use of the person making service. One copy of the summons must be served upon each defendant with a copy of the complaint and the other copy of the summons is retained by the court.
- When using this method of making service of process, have the server fill out the back of the original summons. Then send it to the Court. *See Rule 4, Federal Rules of Civil Procedure.*

THINGS YOU SHOULD KNOW ABOUT: Answer(s) and Motion(s)

The **answer** is the formal written statement by the defendant responding to a complaint setting forth any defenses and objections to the claims by the plaintiff.

A **motion** is an application or request made to the court for the purpose of obtaining a ruling or order directing some act to be done in favor of the applicant. *See Rule 7(b), Federal Rules of Civil Procedure.*

AFTER THE ANSWER: Scheduling Order and Discovery

In most cases the Court will issue a **scheduling order** which sets forth a timetable with deadlines the litigants must follow. The discovery period is the time frame allowed by the Court for both plaintiff and defendant to discover facts, research the law, and gather evidence to be presented at trial to prove the litigant’s position/case. The discovery period always comes after the filing of the answer by the defendant and before the first day of the trial.

DOCUMENT REQUIREMENTS

Whenever you file any document with the Court, you must always:

- Send a copy to each of the parties who are involved in the case, or their lawyers, and indicate on a Certificate of Service form at the end of the document that you have done so in accordance with Rule 5 of the *Federal Rules of Civil Procedure*.
- After you have filed your original complaint, provide the correct case number on all documents and correspondence and have it readily available whenever you call the Court for information.
- Sign all documents you file with the Court. Place the words “*PRO SE*” after your name. Place your address and telephone number on all documents and inform the Court of any changes as soon as possible to ensure proper service of Court-issued orders. It is very important that you provide a telephone number in the event it is necessary to obtain further information or clarification or advise you of any changes in hearing schedules.
- Submit all documents to this Court on 8½” x 11” paper.

FURTHER ASSISTANCE

The Office of the Clerk of Court is happy to help you in any way that we are able. However, we are only allowed to help you in certain ways. Specifically, we can provide certain *procedural* information but strictly *cannot* provide any legal advice. All forms mentioned in this pamphlet are available online and in our office.

If you do not know an attorney, perhaps you should contact the Lawyer Referral Service of your local county Bar Association. If you cannot afford an attorney, perhaps you should contact the Neighborhood Legal Services or Legal Aid in your area.

Printable forms and answers to frequently asked questions are available online at www.almd.uscourts.gov.