

# **A PRISONER'S INFORMATION AND INSTRUCTIONS FOR FILING A SECTION 1983 CIVIL RIGHTS COMPLAINT IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI**

## **I. INFORMATION**

### JURISDICTION

The United States District Courts have jurisdiction to adjudicate lawsuits brought under the Civil Rights Act of 1871, 42 U.S.C. § 1983.

### EXHAUSTION OF REMEDIES

Before bringing a lawsuit challenging prison conditions, you must exhaust available administrative remedies. For example, if your institution has a grievance procedure, then you must pursue your claims through all the steps of that procedure. If you do not exhaust available administrative remedies, your case will be dismissed. 42 U.S.C. § 1997e.

### STATING A § 1983 CLAIM

A § 1983 claim must contain an alleged violation of a federally protected right by a state actor. If your complaint does not make such an allegation, as to each named defendant, the district court may dismiss your complaint.

### VENUE

The word "venue" refers to the geographic area over which a court has authority. The federal district courts each have their own venue and they have very strict rules on where you may file your § 1983 complaint. If you do not comply with these rules, your action may be transferred to another court or dismissed. You should file your § 1983 complaint in the judicial district (i) where any defendant resides, if all the defendants reside in the same state; (ii) where a substantial part of the acts or omissions giving rise to the claim occurred; or (iii) where any defendant may be found, if there is no district where the action may otherwise be brought.

The State of Missouri is divided into the Eastern and Western Districts. The U.S. District Court for the Eastern District of Missouri is located at 111 S. Tenth Street, St. Louis, Missouri, 63102, and is comprised of the following counties: Adair, Audrain, Bolinger, Butler, Cape Girardeau, Carter, Chariton, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Iron, Jefferson, Knox, Lincoln, Linn, Macon, Madison, Maries, Marion, Mississippi, Monroe, Montgomery, New Madrid, Pemiscot, Perry, Phelps, Pike, Ralls, Randolph, Reynolds, Ripley, Saint Charles, Saint Francois, Saint Genevieve, Saint Louis, Schuyler, Scotland, Scott, Shannon, Shelby, Stoddard, Warren, Washington, and Wayne, and the City of Saint Louis. The U.S. District Court for the Western District of Missouri is located at 400 East 9th Street, Kansas City, Missouri, 64106. The counties comprising the Western District of Missouri are set forth in 28 U.S.C. § 105(b).

## RULES OF COURT

If you file a § 1983 complaint in the Eastern District of Missouri, you must follow the Federal Rules of Civil Procedure, as well as the Court's Local Rules. Even if you proceed pro se (representing yourself without an attorney), you must follow these rules. You should find both the federal rules and the local rules in the prison library. If your library does not have a copy of this Court's Local Rules, you should request that the prison library contact the Clerk's Office and the rules will be provided to the library.

## CHANGE OF ADDRESS

To ensure prompt delivery of court documents, you must file a change of address with the court every time your address changes. Failure to do so will prevent the Court from notifying you of developments in your case. If any mail is returned to the Court without a forwarding address and you do not notify the Court of the change of address within thirty (30) days, the Court may, without further notice, dismiss the action without prejudice.

## LEGAL ADVICE

Court personnel, including district court judges, magistrate judges, the Clerk of Court, and all staff, are prohibited by law from giving you legal advice. You should seek legal advice from your attorney or a legal clinic.

## NOTARIZATION

Documents certified as true under penalty of perjury do not need to be notarized. See 28 U.S.C. § 1746.

## **II. INSTRUCTIONS**

### COMPLETING THE ENCLOSED COMPLAINT FORM

To file a § 1983 complaint, complete the enclosed complaint form and mail the original with one copy to the Clerk of Court. (If you pay the filing fee you must also submit one copy of the complaint for each defendant). All copies must conform to the original. In addition, the complaint must:

- (1) be typed or legibly written;
- (2) be signed by each plaintiff; and
- (3) conform to the instructions in the "Filing Fee" section below.

You should answer all questions concisely and to the best of your ability. If you need extra space to answer a question, insert an additional page in the appropriate place. Use 8-1/2 x 11 inch sized paper, if possible. Do not use the back of the page unless you cannot obtain blank paper. Do not name as a plaintiff in your complaint any other person, unless he or she is raising claims which arise from the same incident or involve the same issue as the claim raised in your complaint.

### JURY DEMANDS

Depending on your claim and the type of relief you are seeking, you may be entitled to a trial by jury. However, you may lose your right to a jury trial if you do not request it early in the proceeding. If you want a jury trial, you should write "Jury Trial Demanded" on the first page of your complaint, to the right of the caption, below the words "Case No."

### FILING FEE

Your complaint must be accompanied by a filing fee of \$350. A check or money order should be made payable to "Clerk, United States District Court." If you pay the \$350 filing fee, you will be responsible for service upon each defendant. To properly serve the defendant(s) you must submit to the Court Clerk for each named defendant a copy of the complaint, and a completed summons. The Court Clerk will return to you each defendant's copy of the complaint for you to serve and a copy for your own records. In the alternative, you may request that the defendant(s) waive service. Instructions and forms for requesting the waiver of service are available from Clerk's Office (Note: If a defendant fails to waive service, you will still be responsible for serving upon them a copy of the complaint and a summons).

### PROCEEDING IN FORMA PAUPERIS

If you are currently unable to pay the filing fee, you may request permission to proceed in forma pauperis ("IFP"). Although prisoners who proceed in forma pauperis must pay the entire filing fee, they may do so in installments. **(Note: If your request for leave to proceed IFP is granted, you are liable for the full \$350 filing fee, regardless of the outcome of the Court's initial review of your complaint. For example, even if the complaint is dismissed as frivolous, or for any reason, the Court will continue to collect monthly payments from your trust fund account until the entire filing fee is paid.)** If you have insufficient funds in your prison account, the court will assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of

- (1) the average monthly deposits in your account; or
- (2) the average monthly balance in your account for the prior six month period.

After payment of the partial filing fee, you must make monthly payments of 20 percent of your preceding month's income until the \$350 is paid. The agency having custody of you will forward payments from your account to the court each time the amount in the account exceeds \$10.00. 28 U.S.C. § 1915.

To request leave to proceed IFP, you must complete the enclosed Motion to Proceed In Forma Pauperis and Affidavit in Support and follow the instructions below.

- 1 . Your motion and affidavit in support must be legibly handwritten or typewritten. Answer questions to the best of your knowledge and belief. Be concise.
- 2 . Each plaintiff must submit and sign a separate motion and affidavit in support and request to proceed IFP.
- 3 . If you require additional space to answer a question, attach a separate page to the affidavit.
- 4 . The motion and affidavit in support must be accompanied *by a certificate of the warden or other appropriate officer of your institution showing the amount of money or securities on deposit at the institution during the last six (6) months.*

If you proceed IFP the Court is responsible for service of your complaint upon each defendant, however, you are responsible for providing the Court the correct address of each defendant.

### THREE-DISMISSAL RULE

You cannot bring a new civil action IFP if you have, on three or more occasions, while incarcerated, brought a civil action or appeal in federal court that was dismissed because it was (1) frivolous, or (2) malicious, or (3) failed to state a claim upon which relief may be granted. 28 U.S.C. § 1915(g). The only exception to this is if you are in "imminent danger of serious physical harm." However, if you are not proceeding IFP, you may file a new civil action or appeal even if you have three or more of these dismissals.

### APPOINTMENT OF COUNSEL

A § 1983 litigant does not have an absolute right to a court-appointed attorney. The court may, in its discretion, appoint an attorney to represent you. Form motions for appointment of counsel are available from the Clerk's Office upon request.

SUBSEQUENT FILINGS

**Certificate of Service**

To file a motion, pleading or other paper, you must submit the original document to the Court Clerk. The original document must include a certificate of service which should be in the following form:

<b>Certificate of Service</b>	
I hereby certify that a copy of the foregoing was mailed	
to _____ at _____	
[Opposing Party or Counsel]	[Address]
on _____, 20__.	_____
[Date]	[Your Signature]

Any pleading or document received by the court that fails to include a certificate of service may be returned. In addition to filing the original document with the court, you must mail a copy of each document to all other parties, or if they have counsel, to their attorney(s).

**Motions Filed By Other Parties**

If you do not timely respond to a motion filed by another party, you may waive your right to challenge the subject matter of the motion. Applicable time periods are set forth in the Federal Rules of Civil Procedure and the Court's Local Rules.

**Letters to the Court**

It is improper to send letters directly to district or magistrate judges regarding cases pending before them. All correspondence should be forwarded to the Clerk of Court. Copies of correspondence should also be sent to all other parties, or if they have counsel, to their attorney(s).

MAILING

All correspondence, fees, legal documents, etc. should be mailed to the following address:

Clerk of Court  
United States District Court  
Eastern District of Missouri  
111 S. Tenth Street, Suite 3.300  
St. Louis, MO 63102