

STEP BY STEP

A SIMPLE GUIDE TO FILING A CIVIL ACTION



**IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

October 2022

STEP BY STEP

A Simple Guide to Filing a Civil Action

You believe that you have been injured or wronged by someone, some individual, corporation or government agency. You also believe you should be compensated for the harm you have suffered. In order to accomplish this, you have decided to file a civil suit in the United States District Court, without the help of an attorney.

FUNDAMENTAL INFORMATION

First, there are a few simple 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 a Latin term meaning "for yourself."

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. The Local Rules are available In the Clerk's Office or on the Court's website - www.mad.uscourts.gov. The Federal Rules can be accessed in any law library or through the Federal Judiciary's website - www.uscourts.gov.

FEDERAL COURT vs STATE COURT

There is a difference between State Court and Federal Court. The difference being in what types of cases (lawsuits) they can decide. This is called **JURISDICTION**. State Court has general/broad jurisdiction, and Federal Court has limited/specific jurisdiction. Under Federal Court jurisdiction, the two main types of cases are Federal Question Cases (see 28 U.S.C. § 1331) and Diversity Cases (see 28 U.S.C. § 1332).

FEDERAL QUESTION CASES: are cases where the issue involves violation of Federal Law.

DIVERSITY CASES: are cases where the Plaintiff and Defendant are citizens of different states and the amount in controversy exceeds the sum or value of \$75,000., exclusive of interest and costs.

STEP ONE: WRITE YOUR COMPLAINT

All cases are comprised of documents prepared and filed by litigants. The most common documents are the complaint, answer and motions. The first document that you must write is called a COMPLAINT - (Attachment 1). The function of the COMPLAINT is to tell the Court and defendant the reason for filing the lawsuit and what relief you desire. The COMPLAINT is made up of four main parts:

1. The NAME AND ADDRESS of the plaintiff and the defendant. These are usually listed in the first and second paragraphs respectively. If there is more than one defendant, list each defendant's name and address in separate additional paragraphs.
2. The JURISDICTION or reason your case is being filed in this federal court. See 28 U.S.C. §1331 et seq.
3. The ALLEGATIONS or claims that you are making against the defendant. Place each allegation in a short, clearly written paragraph. See Rule 10 Federal Rules of Civil Procedure
4. The RELIEF you are seeking from the court. This can be money or something you want the judge to make the defendant do or stop doing. This information is usually written in the last paragraph of the COMPLAINT.

Please be sure to number each paragraph except for the paragraph that asks the court for relief. If you believe you are entitled to a trial by jury, you must 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. 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 Rule 8 and 10 of the Federal Rules of Civil Procedure.

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 sentence by a person in federal custody are available from the PRO SE clerk.

All pleadings submitted to this court must be on 8 1/2 x 11" paper. See Rule 5.1 of the Local Rules of this Court.

STEP TWO: FILE YOUR COMPLAINT

Your next step is to file the COMPLAINT with the court. In addition to filing the COMPLAINT, the following forms will have to be completed and submitted with the complaint:

1. A Civil Cover Sheet - (Attachment 2)
2. A Civil Category Sheet - (Attachment 3)
3. A completed SUMMONS for each defendant - (Attachment 4)

You will also have to pay a filing fee of \$405.00¹ at the time you file your COMPLAINT and cover sheets. The filing fee for a petition for writ of habeas corpus is \$5.00. The filing fee, however, may be waived if you cannot afford to pay it. For more information, see below. All checks or money orders should be made payable to: "CLERK, UNITED STATES DISTRICT COURT".

IF YOU CANNOT AFFORD TO PAY THE FILING FEE you may be allowed to have the filing fee waived if you fill out the following form and send it to the court with the COMPLAINT, Cover Sheets and completed Summons forms:

1. Application to Proceed Without Prepayment of Fees and Affidavit
(AO 240 (Rev. 07/10)) (Attachment 5)

When you file the COMPLAINT, Cover Sheets, Summons forms and Application to Proceed Without Prepayment of Fees, each of these will be reviewed and forwarded to a Judicial Officer for his or her consideration. If your Application is approved, the filing fee will be waived and your case will be drawn to a United States District Judge or a United States Magistrate Judge. If your Application is **not** approved, you must pay the filing fee to have your case filed and drawn to a United States District Judge or a United States Magistrate Judge. Ask the PRO SE clerk for more information on this subject.

PRISONERS are now required to pay the full filing fee of \$405.00 for civil actions, \$5.00 for habeas corpus applications under 28 U.S.C. §2254 and 605.00² for appeals *in forma pauperis*. If insufficient funds exist

¹ The filing fee for civil action cases was increased from \$350.00 to \$405.00 effective December 1, 2023.

² The filing fee for appeals was increased from \$505.00 to \$605.00 effective Decemner 1 2023.

in the prisoner's account, the court must assess and, when funds exist, collect, an initial partial filing fee of 20 percent of the greater of:

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

Thereafter, the prisoner will be required to make monthly payments of 20 percent of the preceding month's income. The agency having custody of the prisoner must forward payments from the prisoner's account to the clerk of court each time the amount exceeds \$10.00 until the filing fees are paid in full. See 28 U.S.C. §1915 as amended effective April 26, 1996 (Attachment 6) regarding proceedings *In Forma Pauperis* pursuant to the Prison Litigation Reform Act (Pub. L. No. 104-134, 110 Stat. 1321.)

A PRISONER who cannot pay the entire filing fee and who is seeking to proceed *in forma pauperis* must submit along with the complaint, cover sheet, category sheet and summons:

1. the Application to Proceed Without Prepayment of Fees and Affidavit form (AO 240) with:
 - a. completed certificate portion of the AO 240 form by the institution of incarceration; and
2. certified copy of the prisoner's trust fund account (or institutional equivalent) for the prior six-month period.

STEP THREE: JUDICIAL REVIEW OF COMPLAINT

Once you have submitted all the necessary papers, the court will review the complaint and other documents and shall dismiss the case at any time if the court determines that:

1. the allegation of poverty is untrue;
2. the action or appeal --
 - a. is frivolous or malicious;
 - b. fails to state a claim on which relief may be granted; or
 - c. seeks monetary relief against a defendant who is immune from such relief.

The court will also review the prior submissions of prisoners to determine if a prisoner proceeding IFP has, on three or more occasions, while incarcerated, brought an action or appeal in a federal court that was dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief may be granted. Under the Prison Litigation Reform Act, unless a prisoner is under imminent danger of serious physical

injury, he may not bring a civil action or appeal a judgment in a civil action or proceeding in forma pauperis, if, on three or more previous occasions, he has brought an action or appeal in a federal court that was dismissed on the ground that the action or appeal was frivolous, malicious, or failed to state a claim upon which relief could be granted. In cases in which the prisoner has had three or more previous matters dismissed for one or more of these reasons, the prisoner must pay the entire filing fee at the time the civil action or appeal is filed or his action or appeal may be dismissed. See 28 U.S.C. § 1915(g).

Even if your complaint is dismissed, you will still be obligated to pay the full amount of the filing fee.

A copy of Title 28 U.S.C. §1915 - Proceedings *in forma pauperis* as amended is included with this package. (Attachment 6)

STEP FOUR: SERVICE OF PROCESS

If your COMPLAINT is filed, your case will be drawn to a District Judge or Magistrate Judge and assigned a civil action number. The completed SUMMONS (Attachment 4) will be signed and sealed by the clerk and returned to you.

Your next step is to SERVE (inform) each of the defendants that he or she is being sued. This may be done in two ways:

1. **NOTICE & REQUEST FOR WAIVER OF SERVICE**

If you are suing the United States (and its agencies, corporations, or officers) or a state, local or foreign government, you CANNOT use Form AO398 and YOU MUST arrange for Service of Process (which is described below).

You may notify the 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 (Attachment 7) and AO 399 (Attachment 8) 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 self-addressed return envelope. See Rule 4(d) of the Federal Rules of Civil Procedure. If service is waived by the defendant, the Waiver of Service form is returned to the plaintiff for filing with the court and the action shall proceed. If the defendant does not waive service, the plaintiff must proceed with service of process.

2. **SERVICE OF PROCESS**

Making "service of process" involves serving a copy of a summons and a copy of the complaint to 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.

You must complete a summons for each defendant and present each summons to the Clerk who will sign and place the court seal on each summons. A copy of the summons must be served upon each defendant with a copy of the complaint. The original summons should be kept by the person making service.

You can make service of process by having a "disinterested" person who is over the age of eighteen deliver copies of the SUMMONS and COMPLAINT to each of the defendants. When using this method of making service of process, have the server fill out the back of the original SUMMONS, and send it to the court. See Rule 4, Federal Rules of Civil Procedure.

If you have filed an Application to Proceed Without Prepayment of Fees and it has been allowed by a Judge, service of process will be made upon each defendant, without cost to you, by the United States Marshal. **However, you are responsible for completing all of the forms required by the Marshal for service.** You will receive instructions on this matter from the PRO SE Clerk after the Judge has approved your application.

If you have filed a petition under 28 U.S.C. §2254 for writ of habeas corpus by a person in state custody or a motion under 28 U.S.C. §2255 to vacate, set aside, or correct sentence by a person in federal custody, an order will be issued by the Court concerning service upon the respondents. No Summons are issued in these types of cases.

NOTE: Service of the SUMMONS and 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.

For more information, read Rule 4 of the Federal Rules of Civil Procedure or contact the PRO SE Clerk.

THINGS YOU SHOULD KNOW ABOUT

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 and Local Rule 7.1.

IF YOU CANNOT AFFORD AN ATTORNEY, you may make a written motion asking the court to appoint an attorney for you. Use the same heading that you used on your COMPLAINT, but entitle the document "Motion for Appointment of Counsel". In your motion, provide the court with your financial status, your attempts, if any, to find a lawyer, and any other information which would be helpful to the court in determining whether a lawyer should be appointed for you. **The Court is not required to appoint an attorney**, but may request an attorney who has indicated a willingness to accept such cases on a pro bono basis to represent you. See Title 28 U.S.C. §1915.

AFTER THE ANSWER

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. See Local Rules 26.1 through 26.6 and 33.1 through 37.1. The Discovery period always comes after the filing of the answer by the defendant, and before the 1st day of the trial.

Whenever you file a document with the court, **you must always**:

1. Send a copy to each of the parties, or their lawyers, who are involved in the case and indicate at the end of the document that you have done so in accordance with Local Rule 5.2.

2. Provide the correct civil action number of your case on both the document and the front of the envelope in which it is enclosed.
3. 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.

The Customer Services Section of the United States District Court Clerk's Office in Boston is located in Suite 2300, United States Courthouse, 1 Courthouse Way, Boston, MA 02210. Office hours are 8:30 A.M. to 4:30 P.M., Monday through Friday.

If you are located in the Worcester or Springfield area you may contact one of the divisional offices as indicated below:

United States District Court
Donohue Federal Building
595 Main Street - Room 502
Worcester, MA 01608
(508) 929-9900

United States District Court
Federal Building & Courthouse
1550 Main Street
Springfield, MA 01103
(413) 785-0015

UNITED STATES DISTRICT COURT

for the

District of Massachusetts

) Case No. _____
)
) (to be filled in by the Clerk's Office)
)

Plaintiff(s)
(Write the full name of each plaintiff who is filing this complaint.
If the names of all the plaintiffs cannot fit in the space above,
please write "see attached" in the space and attach an additional
page with the full list of names.)

) Jury Trial: (check one) Yes No
)
)
)
)
)
)
)
)
)
)

-v-

Defendant(s)
(Write the full name of each defendant who is being sued. If the
names of all the defendants cannot fit in the space above, please
write "see attached" in the space and attach an additional page
with the full list of names.)

COMPLAINT FOR A CIVIL CASE

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name _____
Street Address _____
City and County _____
State and Zip Code _____
Telephone Number _____
E-mail Address _____

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name _____
Job or Title *(if known)* _____
Street Address _____
City and County _____
State and Zip Code _____
Telephone Number _____
E-mail Address *(if known)* _____

Defendant No. 2

Name _____
Job or Title *(if known)* _____
Street Address _____
City and County _____
State and Zip Code _____
Telephone Number _____
E-mail Address *(if known)* _____

Defendant No. 3

Name _____
Job or Title *(if known)* _____
Street Address _____
City and County _____
State and Zip Code _____
Telephone Number _____
E-mail Address *(if known)* _____

Defendant No. 4

Name _____
Job or Title *(if known)* _____
Street Address _____
City and County _____
State and Zip Code _____
Telephone Number _____
E-mail Address *(if known)* _____

II. Basis for Jurisdiction

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal court jurisdiction? *(check all that apply)*

- Federal question Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

A. If the Basis for Jurisdiction Is a Federal Question

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

B. If the Basis for Jurisdiction Is Diversity of Citizenship

1. The Plaintiff(s)

a. If the plaintiff is an individual

The plaintiff, *(name)* _____, is a citizen of the State of *(name)* _____.

b. If the plaintiff is a corporation

The plaintiff, *(name)* _____, is incorporated under the laws of the State of *(name)* _____, and has its principal place of business in the State of *(name)* _____.

(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)

2. The Defendant(s)

a. If the defendant is an individual

The defendant, *(name)* _____, is a citizen of the State of *(name)* _____ . Or is a citizen of *(foreign nation)* _____ .

b. If the defendant is a corporation

The defendant, *(name)* _____, is incorporated under the laws of the State of *(name)* _____, and has its principal place of business in the State of *(name)* _____.

Or is incorporated under the laws of *(foreign nation)* _____, and has its principal place of business in *(name)* _____.

(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)

3. The Amount in Controversy

The amount in controversy-the amount the plaintiff claims the defendant owes or the amount at stake-is more than \$75,000, not counting interest and costs of court, because *(explain)*:

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

IV. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: _____

Signature of Plaintiff _____

Printed Name of Plaintiff _____

B. For Attorneys

Date of signing: _____

Signature of Attorney _____

Printed Name of Attorney _____

Bar Number _____

Name of Law Firm _____

Street Address _____

State and Zip Code _____

Telephone Number _____

E-mail Address _____

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) _____

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

I. 160, 400, 410, 441, 535, 830*, 835*, 850, 880, 891, 893, R.23, REGARDLESS OF NATURE OF SUIT.

II. 110, 130, 190, 196, 370, 375, 376, 440, 442, 443, 445, 446, 448, 470, 751, 820*, 840*, 895, 896, 899.

III. 120, 140, 150, 151, 152, 153, 195, 210, 220, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 367, 368, 371, 380, 385, 422, 423, 430, 450, 460, 462, 463, 465, 480, 485, 490, 510, 530, 540, 550, 555, 560, 625, 690, 710, 720, 740, 790, 791, 861-865, 870, 871, 890, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S OR PRO SE'S NAME _____

ADDRESS _____

TELEPHONE NO. _____

EMAIL ADDRESS _____

UNITED STATES DISTRICT COURT

District of

SUMMONS IN A CIVIL CASE

V.

CASE

TO: (Name and address of Defendant)

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

an answer to the complaint which is herewith served upon you, within _____ days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

CLERK

DATE

(By) DEPUTY CLERK

RETURN OF SERVICE

Service of the Summons and complaint was made by me ⁽¹⁾	DATE
NAME OF SERVER (<i>PRINT</i>)	TITLE

Check one box below to indicate appropriate method of service

- G Served personally upon the third-party defendant. Place where served: _____

- G Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left: _____
- G Returned unexecuted: _____

- G Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date Signature of Server

Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff/Petitioner

v.

Defendant/Respondent

)
)
)
)
)

Civil Action No.

APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS (Short Form)

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested.

In support of this application, I answer the following questions under penalty of perjury:

1. *If incarcerated.* I am being held at: _____.

If employed there, or have an account in the institution, I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for any institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. *If not incarcerated.* If I am employed, my employer's name and address are:

My gross pay or wages are: \$ _____, and my take-home pay or wages are: \$ _____ per
(specify pay period) _____.

3. *Other Income.* In the past 12 months, I have received income from the following sources (*check all that apply*):

- | | | |
|--|------------------------------|-----------------------------|
| (a) Business, profession, or other self-employment | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (b) Rent payments, interest, or dividends | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (c) Pension, annuity, or life insurance payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (d) Disability, or worker's compensation payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (e) Gifts, or inheritances | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (f) Any other sources | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

4. Amount of money that I have in cash or in a checking or savings account: \$ _____ .

5. Any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value that I own, including any item of value held in someone else's name (*describe the property and its approximate value*):

6. Any housing, transportation, utilities, or loan payments, or other regular monthly expenses (*describe and provide the amount of the monthly expense*):

7. Names (or, if under 18, initials only) of all persons who are dependent on me for support, my relationship with each person, and how much I contribute to their support:

8. Any debts or financial obligations (*describe the amounts owed and to whom they are payable*):

Declaration: I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

Date: _____

Applicant's signature

Printed name

28 USCS § 1915 (2002)

§ 1915. Proceedings in forma pauperis

(a) (1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such [person] prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b) (1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of--

(A) the average monthly deposits to the prisoner's account; or

(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$ 10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e) (1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that--

(A) the allegation of poverty is untrue; or

(B) the action or appeal--

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(f) (1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(2) (A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(h) As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

HISTORY: (June 25, 1948, ch 646, § 1, 62 Stat. 954; May 24, 1949, ch 139, § 98, 63 Stat. 104; Oct. 31, 1951, ch 655, § 51 (b), (c), 65 Stat. 727; Sept. 21, 1959, Pub.L. 86-320, 73 Stat. 590; Oct. 10, 1979, Pub.L. 96-82, § 6, 93 Stat. 645.) Dec. 1, 1990, Pub.L. 101-650, Title III § 321, 104 Stat. 5117; Apr. 26, 1996, Pub.L. 104-134, Title I § 101 [(a)] [Title VIII, § 804(a), (c)-(e)], 110 Stat. 1321-73, 1321-74, 1321-75; renumbered Title I May 2, 1996, Pub.L. 104-140, § 1(a), 110 Stat. 1327.)

28 USCS § 1915A (2002)

§ 1915A. Screening

(a) Screening. The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) Grounds for dismissal. On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint--

- (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
- (2) seeks monetary relief from a defendant who is immune from such relief.

(c) Definition. As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

HISTORY: (Added Pub.L. 104-134, Title I § 101[(a)] [Title VIII, § 805(a)], April 26, 1996, 110 Stat. 1321-75; renumbered Title I Pub.L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327.

**NOTICE OF LAWSUIT AND REQUEST FOR
WAIVER OF SERVICE OF SUMMONS**

ATTACHMENT 7

TO: (A) _____

as (B) _____ of (C) _____

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the (D) _____ District of _____ and has been assigned docket number (E) _____.

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within (F) _____ days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth at the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this _____ day of _____, _____.

Signature of Plaintiff's Attorney
or Unrepresented Plaintiff

A—Name of individual defendant (or name of officer or agent of corporate defendant)
B—Title, or other relationship of individual to corporate defendant
C—Name of corporate defendant, if any
D—District
E—Docket number of action
F—Addressee must be given at least 30 days (60 days if located in foreign country) in which to return waiver

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff

v.

Defendant

)
)
)
)
)

Civil Action No.

WAIVER OF THE SERVICE OF SUMMONS

To: _____
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from _____, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

Signature of the attorney or unrepresented party

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.