

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**



**INSTRUCTIONS AND FORMS
FOR PRISONERS WHO FILE
CIVIL CASES OR CIVIL APPEALS
IN FEDERAL COURT**

Office of the Clerk of Court

December 2020

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GENERAL INTRODUCTION

This packet of instructions and forms for prisoner litigation has been prepared by the Office of the Clerk of Court for the United States District Court for the District of Utah to assist prisoners who intend to file civil rights cases and appeals in federal court. It provides general instructions on:

- how to prepare and file these types of actions;
- how to provide copies of the complaint or appeal to those who are named in it as required under the Federal Rules of Civil and Appellate Procedure;
- what to do if you are unable to pay the fees that are required for filing or appealing cases; and
- what the Prison Litigation Reform Act of 1995 and its strict new requirements mean for prisoners who seek to have the filing fees waived by the court.

Prospective litigants should carefully review this packet and follow the directions it provides.

The packet is divided into three sections. Section I outlines the general requirements for preparing documentation for filing and appealing civil rights cases. Section II outlines what you need to do if you are unable to pay the fees required for filing or appealing your case. It also explains the Prisoner Litigation Reform Act of 1995 and how the Act affects prisoners who file petitions, civil cases, and civil appeals in federal court. Section III includes all the blank forms you will need for filing a civil case or civil appeal and for requesting that the court waive the required fees.

SECTION I: PREPARING YOUR PETITION, COMPLAINT, OR APPEAL INTRODUCTION

Section I is designed to assist you if (i) you have an active role as a *plaintiff* (a person who files a complaint against another person or persons), or an *appellant* (a person who appeals a decision by a U.S. district judge to a U.S. circuit court of appeals), and (ii) you have elected to proceed without the assistance of a trained and licensed attorney.

Plaintiffs and defendants in court cases 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, and the court determines whether the asserted claims or rights have merit. The great majority of litigants who appear in court are represented by an attorney who has been trained in the law and is familiar with the applicable court rules and procedures. Plaintiffs or defendants who are not represented by licensed attorneys, who elect to represent themselves, generally are referred to as *prose* plaintiffs or *prose* defendants.

Section I will not answer all your questions about what you need to do to effectively represent yourself as a pro se litigant. It outlines the basic steps you must follow to properly file an action with the court. It also provides some general guidance on subsequent steps in the process of litigating the action, once you have filed it with the clerk of court. *However, you are responsible for learning about and following the procedural and other rules that govern the court process.* Although court staff can provide prisoners with general information concerning court rules and procedures, they are forbidden, as a matter of law, from providing legal advice, from interpreting and applying court rules, and otherwise participating, directly or indirectly, in the litigation of any case.

Self-representation carries certain responsibilities and risks that prisoner pro se litigants should be aware of before they proceed. The court encourages all individuals who are contemplating pro se or self-representation to carefully review the responsibilities and risks associated with self-representation and to inform themselves of the potential consequences.

A. IS THIS COURT THE APPROPRIATE FORUM FOR MY DISPUTE?

The United States District Court for the District of Utah is one of 94 trial courts in the federal court system. Unlike the state courts, which have relatively broad jurisdiction, the federal trial courts exercise limited jurisdiction. As is the case in

all the federal trial courts, this court is authorized only to hear disputes that fall into the four categories:

1. Those that deal with a question involving the United States Constitution;
2. Those that involve questions of federal - as opposed to state -law;
3. Those that involve the United States of America as a party, whether plaintiff' or defendant; and,
4. Those that involve a dispute among residents of different states with an amount in controversy over \$75,000.

Other types of disputes, those that fall outside the legal boundaries of these four categories, can neither be filed in nor heard by this court. If your complaint does not fall under any of these categories, you should determine whether the state courts have jurisdiction over it.

B. WHAT IF I CANNOT OBTAIN LEGAL REPRESENTATION?

If you cannot obtain legal counsel on your own or through the contract attorneys for the Utah State Department of Corrections, you have the right to pursue your claims in the court by appearing without representation or *pro se*, a Latin phrase that means "for yourself." Bear in mind that as a *pro se* litigant, you are representing only your own claims or defenses. Under the law, you cannot speak for another prisoner or group of prisoners.

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. Neither judges nor other court staff are permitted under the law to provide legal assistance to you.

C. WITH WHAT COURT RULES SHOULD I BE FAMILIAR:

As a *pro se* prisoner litigant in a civil case, you should be familiar with the Federal Rules of Civil Procedure and the Federal Rules of Evidence. If you intend to appeal a decision by a district judge in this court to the Tenth Circuit Court of Appeals, you also should be familiar with the Federal Rules of Appellate Procedure. These rules should be available for review at the prison library.

You also should be familiar with the District Court Rules of Practice or local rules that apply to proceedings in this court. The local rules include two sections: the

civil rules and the criminal rules. In this packet, references to the District Court Rules of Practice are DUCivR # or DUCrimR #, where # represents the specific rule number. Your prison library should have the court's local rules available for review. The clerk's office at the United States District Courthouse also accepts prepaid orders for the rules; the cost is \$5.00 and there are no shipping or handling charges. The clerk accepts checks, money orders, and VISA/MasterCard. For a copy of the rules, write to the Office of the Clerk, United States District Court, Suite 1.100, 351 South West Temple, Salt Lake City, Utah 84101.

D. WHAT TYPES OF CASES DO PRISONERS TYPICALLY FILE?

Persons who are confined or incarcerated in a jail or a prison occasionally file pro se actions with the court. These actions fall into three general categories.

1. **Petition for Writ of Habeas Corpus:** In this type of action, the prisoner applies or petitions this court for a writ of habeas corpus. This is, in essence, an action that contests the constitutionality of the prisoner's terms of confinement, and it seeks to have the sentence vacated. Cases filed by incarcerated persons challenging their sentences or conditions of confinement fall under Title 28, United States Code, Sections 2254 and 2255. Both actions are established by federal law. If you are in the custody of a state institution, you may file petition under 28 U.S.C. § 2254. If you are in federal custody, you may file a motion to vacate sentence under 28 U.S.C. § 2255. These forms may be requested separately from the Clerk's Office.
2. **Prisoner Civil Rights:** In this type of action, a prisoner challenges the conditions of confinement. This action generally takes the form of a civil rights complaint; these cases allege denial of federally protected civil rights under Title 42, United States Code, Section 1983.
3. **Appeal of Sentence or Decision:** In this type of action, a prisoner submits an appeal to have a higher or superior federal court review the federal trial judge's decision in a civil case or sentence in a criminal case. *Note that appeals of sentences issued by state trial courts must be filed in a state appeals court.*

E. HOW DO I START A NEW CIVIL RIGHTS CASE?

File a Complaint: As the plaintiff or person bringing the lawsuit to court, you begin by filing a complaint. The complaint outlines a problem or reason for the suit or cause of action and describes the jurisdiction that the court has to hear and resolve such problems. Once the \$350 filing fee is paid, the complaint is given a

case number and assigned to a district judge. (See Section II for waiver of the requirement to prepay the filing fee.)

If you have a court order allowing you to file without paying the filing fee, the court will review the case and then the court may order the summons and complaint to be served by the court, not by the pro se litigant.

File and Serve the Response: Once the defendant has been served with a copy of your complaint, the defendant must file with the court an answer or some other response within a specified number of days. The defendant is required to provide a copy of the response to you, the plaintiff.

Once the defendant has filed a response, the case is considered *at issue*.

F. WHAT HAPPENS ONCE A CIVIL CASE IS AT ISSUE?

When a case is at issue, any of a number of different procedures may occur.

Referral to a Magistrate Judge: The district judge to whom the case is assigned may refer the case to a magistrate judge for assistance in managing it. To do so, the district judge signs an order of reference. Once a case has been referred to a magistrate judge, any subsequent court proceedings may be conducted before that judge.

Filing of Motions and Objections: Either party, the plaintiff, or the 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*. DUCivR 10-1 provides format instructions for motions and other papers. The party then signs the motion, files it with the clerk of court, and sends a copy to the opposing party. The opposing party may file with the clerk an objection or a responsive pleading to the motion, a copy of which must be sent to the other party. This objection sets forth the reasons why the court should deny rather than grant the motion.

Motion Review: District and magistrate judges typically do not schedule hearings on motions; rather, they rule on motions by issuing written orders that grant, deny, or partially grant and partially deny the motion.

Dispositive vs. Non-dispositive Motions: Motions fall into two categories: dispositive and non-dispositive. Dispositive motions, if granted, close the case; non-dispositive motions, if granted, affect the case but do not close it. District judges have the authority to rule on both kinds of motions; Magistrate judges

may rule only on non-dispositive motions.

Magistrate Judge Report and Recommendation: Where the case has been referred to a magistrate judge and a party files a dispositive motion, the magistrate judge prepares a written *Report and Recommendation* that recommends that the motion be either granted or denied with an appropriate justification. This report and recommendation then are forwarded to the assigned district judge, and copies are sent to the parties. As a party, you have 14 days to file objections to the report and recommendation; see Federal Rule of Civil Procedure 72. All objections received within the 10 days are forwarded to the district judge who will review the report and recommendation. The district judge then will issue an order that adopts, rejects, or adopts in part and rejects in part the magistrate judge's report and recommendation. If the judge dismisses the complaint and the cause of action, the clerk of the court will enter judgment in the case. Judgments generally are final and can be appealed only to the Tenth U.S. Circuit Court of Appeals in Denver, Colorado.

G. HOW DO I APPEAL A DECISION?

Generally, you must have a final judgment in this court before you can file a *Notice of Appeal* to the Tenth Circuit Court of Appeals. (There are limited circumstances in which an interlocutory appeal can be heard.) Your appeal must be filed within the time limits set forth in Rule 4 of the Federal Rules of Appellate Procedure. Your time to file an appeal begins to run when the final order is entered on the docket. Usually that will be indicated by a stamp on the bottom of the order or judgment you receive. The Notice of Appeal is captioned as all other pleadings in the case and entitled "Notice of Appeal." The original notice should be relatively brief; it should indicate (i) your intent to appeal, and (ii) the specific trial court order or decision which you are appealing.

Once a Notice of Appeal is filed, you will receive further information from the district court and the court of appeals on the requirements for pursuing your appeal at the Tenth Circuit Court of Appeals. You should carefully read the information and follow the instructions.

Generally, prisoners will file one of two types of appeals.

1. **Appeal of a Civil Rights Action:** To file an appeal of a civil rights action, you must prepare and file a Notice of Appeal. At the time you file the Notice of Appeal, you must submit a payment for the \$505.00 fee. If you cannot pay the fee, you must include a **Motion to Proceed Without Prepaying Fees or Costs (Incarcerated Party)** (hereafter *motion*) and other forms as described in

Section II of this packet. Your Notice of Appeal must be filed within the time period set in the Federal Rules of Appellate Procedure. This period is generally 30 days after the entry of the judgment. Some exceptions may apply in specific cases.

2. **Appeal of Denial of a Habeas Petition:** To file an Appeal of a Denial of a Petition for a Writ of Habeas Corpus, you seek to obtain a Certificate of Appealability (formerly called a Certificate of Probable Cause) from the district court by filing a motion for such certificate. If the motion for a certificate is approved by the district court judge, it then is forwarded to the court of appeals with the Notice of Appeal.

If the district court judge denies the motion for a Certificate of Appealability, you can request one from the Tenth Circuit Court of Appeals. The filing fee for these appeals is \$505.00. If you are unable to pay the fee, you must submit a new motion and other forms as described in Section II of this packet. Again, this must be filed within the time period set for civil appeals.

The provisions of the Prison Litigation Reform Act apply to appeals of civil actions. Even if you could proceed without prepayment of filing fees by the district court judge, you still may be responsible for the filing fee for a Notice of Appeal to the Tenth Circuit Court of Appeals. That fee is \$505.00; if you cannot pay it when you file your appeal, you must follow the procedures set forth in Section II of this packet.

H. HOW DO I FILE A PETITION FOR WRIT OF HABEAS CORPUS:

To file a habeas petition under §2254 or § 2255, you must complete special forms. If you are presently in state custody - incarcerated in an institution that is run by the State of Utah - you will need to complete a petition under Title 28 United States Code Section 2254. If you are in federal custody - in a federal institution - you will need to complete a petition under 28 U.S.C. § 2255. These forms may be requested separately from the Clerk's Office.

There is a \$5.00 filing fee for a petition under § 2254. There is no filing fee for a petition under § 2255. If you do not have the funds available to pay the filing fee, you must complete **Motion to Proceed Without Prepaying Fees or Costs (Incarcerated Party)** and follow the other procedures described in Section II of this packet.

I. WHAT COURT FEES AND COSTS AM I REQUIRED TO PAY?

As noted above, the fee for filing a complaint and opening a civil case in any

federal trial court is \$350.00. The fee for filing an appeal to the Tenth Circuit Court of Appeals is \$505.00. Payment must be included when you mail your action to the clerk; you may pay by money order, check, or VISA/MasterCard. If you are unable to pay the filing fee, you may apply for permission to proceed without prepayment of fees. Section II of this packet describes the motion process. Failure to follow that process may result in your action being returned to you without any court action or having it dismissed. *If your motion for waiver of the prepayment of fees is approved, you still are responsible for paying other expenses, such as copy fees, associated with processing your case.*

J. HOW DO I SUBMIT DOCUMENTS TO THE COURT?

After you file your complaint, you might want to request court action on a particular matter related to your complaint. Case-related documents that ask the court to take specific action are referred to as motions or pleadings. These must be in writing and conform to certain requirements as specified in DUCivR 7-1 and DUCivR 10-1. Your motion can be accompanied by a memorandum of applicable law supporting the motion or by an affidavit or declaration that provides the court with facts that support the granting of your motion. In preparing motions, you should be very specific about the action you want the court to take on your behalf.

As a matter of policy, the court requires parties to submit or file an original with the clerk of court. Clerk's office staff will stamp the date the document was filed and then forward it to be entered in your case. Documents may also be mailed to the court. The mailing address is:

United States District Court,

Office of the Clerk

Suite 1.100

351 South Temple

Salt Lake City, Utah 84101

You should retain a copy of documents you file with the court for your records. If you mail your document and wish to have your copy stamped for your records, you should enclose a copy and a self-addressed, stamped envelope. The clerk's office will return your copy with the court's received stamp imprinted on it.

REMINDER: Once you have filed a complaint or petition in the court, it is your obligation to keep the court notified if you are transferred to a different facility and your mailing address changes. If you fail to do so, you will not receive notice of court action and may lose an opportunity to object or appeal. If your mail is returned and the court is unable to contact you, your case may be dismissed for lack of prosecution. You also should provide the opposing party or his or her attorney with your new address in order to receive copies of the pleadings that they file.

K. HOW DO I OBTAIN INFORMATION ABOUT CASE PROGRESS?

The clerk's office maintains an automated log or docket for every case. This docket is a chronological summary of all significant events in the history of the case. For example, each time you file a pleading or appear for a hearing, an entry summarizing the event is added to the case docket. If your institution has a PC and modem with communications software, by registering with the court you can dial up the court's automated PACER system and review your case docket directly on a PC; note that use of PACER is billed at \$.10 per page for viewing. If you do not have access to a PC but wish to have a paper copy of your docket, staff of the clerk's office will mail it to you at \$.50 per page. Staff of the clerk's office also can provide you with basic docket information over the telephone.

PLEASE NOTE THAT THE CLERK'S OFFICE DOES NOT ACCEPT COLLECT TELEPHONE CALLS.

It is important that you realize that staff of the clerk's office do not know and cannot provide you with the reasons for a judge's decision. Nor is the clerk's office in a position to know when a judge will respond to a motion or issue a ruling in your case. The judge's personal staff - the secretary or a law clerk- can respond to specific questions regarding scheduling, and clerk's office staff can answer procedural questions. Obtaining specific information on the progress of a case is sometimes difficult. Please be patient and treat court staff with the same respect that you expect from them. *Telephone calls or letters that contain threats and obscenities or foul language do little to advance your cause and may get you into trouble or result in the dismissal of your case. It is a federal offense to threaten judicial officers and personnel.*

L. CAN I SPEAK TO A JUDGE ABOUT MY CASE?

As a party appearing pro se, as is the case with attorneys, you are prohibited from all private or *ex parte* communication 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 (i) without the other party being present or (ii) 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. Any communication, such as a letter, between the assigned judge and pro se litigant should be in writing, and a copy should be sent either to the opposing party or that party's attorney. Moreover, any letter or other written communication to the judge should indicate that a copy has been sent to the opposing party. As noted above, telephone contact with the judge's personal staff should be limited to specific scheduling inquiries.

SECTION II: FILING FEES AND THE PRISONER LITIGATION REFORM ACT

A. WHAT ARE THE FILING FEES IN FEDERAL COURT?

To file a habeas petition (§ 2254) in the United States District Court you must pay a \$5.00 filing fee; no fee is required for filing a § 2255 action. To file a civil case in the United States District Court, you, as the *plaintiff*, must pay a \$350.00 filing fee. To file an appeal from a decision in a civil case from the United States District Court to, the United States Court of Appeals, you, as the *appellant*, must pay a \$455.00 filing fee. These are standard fees that apply in every federal district and appeals court in the country. You must pay these fees at the time the action is filed. Payment can be made by check, money order, or credit card.

B. CAN I REQUEST THAT THE FEE BE WAIVED IN MY CASE?

You may request that a judge either waive these fees or allow you to pay them in installments if you cannot afford to pay them. To make such a request, you must complete a Motion to Proceed Without Prepaying Fees or Costs (Incarcerated Party) and submit it to the court for review. A blank copy of the motion for your use is included in Appendix A. As you complete the motion, you must include information about your financial circumstances and ability to pay. You also must satisfy other requirements imposed by the Prison Litigation Reform Act of 1995. These requirements are explained below in the sections that follow. Remember, simply submitting the motion is no guarantee that the court will approve it.

C. WHAT IS THE PRISON LITIGATION REFORM ACT OF 1995?

The Prison Litigation Reform Act of 1995 is a law that imposes special requirements on prisoners who file or appeal civil cases and who ask the Court to waive the required fees by submitting a motion. The Act does not apply if you pay the filing fees in full at the time you file the case.

D. CAN THE COURT WAIVE PAYMENT OF THE FEE?

Under the Act, when you complete a motion that is approved by the court, you must pay all the required filing fee if your prison trust account has a minimal balance. However, instead of having to pay the entire fee in advance, you must pay only a portion of the fee, as determined by the court, before your action can

be filed. This is known as the *“initial payment”*. Once your action has been filed, you must continue to make monthly payments until you have paid the full amount of the fee. These monthly payments will be withdrawn from your prison trust account by the accounting officer at the institution and forwarded to the court.

E. IF MY MOTION IS APPROVED, WHEN IS MY ACTION FILED?

As soon as the motion has been approved, the clerk's office will file your action and assign a judge to it. However, the judge will not review or process your action until the initial payment has been received.

F. HOW MUCH IS THE INITIAL PAYMENT?

At the time you file your case, petition, or appeal, the initial payment must be 20% of (i) the average amount deposited each month in your prisoner trust account over the past six months, or (ii) the average monthly balance in your account over the past six months, whichever of these two is greater. The court will determine the amount based on these criteria.

G. HOW DOES THE COURT KNOW HOW MUCH IS IN MY ACCOUNT?

When you submit your motion, you must include with it a Correctional Officer Certification. The administrative officer in charge of prisoner accounts at your institution will prepare an account activity statement and provide it to the court. The court will review this statement and determine what the appropriate initial payment will be. The clerk's office then will notify you by mail as to the amount of your initial payment. Notification also will be sent to the administrative officer in charge of prisoner accounts who will withdraw the amount from your account and forward a check to the court.

H. MUST I CONSENT TO THIS WITHDRAWAL FROM MY ACCOUNT:

The court has taken the position that a prisoner must consent in writing to the withdrawal of funds from his prison trust account. The Court will forward a Consent to Withdrawal of Funds Form with a copy of the Order Granting Motion to Proceed Without Prepaying Fees or Costs (Incarcerated Party).

I. WHAT ABOUT THE REMAINING PAYMENTS?

For each month following the initial payment, the prison accounting office will withdraw from your account 20% of the monthly income in your prison trust account, provided the balance in the account exceeds \$10.00, and send it to the

court until the required filing fee has been paid.

J. WHAT IF MY CASE IS DISMISSED?

Your account will be charged for the entire amount of the fee, even if your case is dismissed. Assume, for example, that you have filed a civil case and you make four monthly payments of \$10.00 each totaling \$40.00. The judge, having reviewed your case, determines that your complaint is without merit and dismisses it. Even though your case has been dismissed, your account will continue to be charged \$10.00 per month for another twenty-one months until the full civil case filing fee of \$350.00 has been paid. The same process applies if you file an appeal which is dismissed before you have paid the full \$455.00 fee.

K. WHAT IF MY MOTION IS DENIED?

If your motion is denied by the court, your case or appeal will not be filed by the clerk unless you prepay the required fee. You are not responsible for paying any portion of the filing fee if your case is not filed.

L. WHAT IF I HAVE NO MONEY IN MY PRISON ACCOUNT?

If you have no funds in your prison account and you submit a motion with the required prisoner account statement, the court will review your motion. If the court approves the motion but waives the filing fee because your prison trust account has no funds, your case, petition, or appeal will be filed and you will not have to make an initial payment. However, if your account subsequently shows a balance, you may be required to pay a portion or all the fee. Even if the court does not require you to make a partial payment, you are responsible for other costs, such as copy fees.

M. IS THERE ANYTHING ELSE I NEED TO KNOW?

Yes. The Prison Litigation Reform Act of 1995 also has provisions that may affect the number of actions you are permitted to file. *If you file civil cases with the court and at least three of them are dismissed on grounds that they are frivolous, malicious, or fail to state a claim on which relief may be granted, the Act prohibits the court from accepting and filing any additional cases in which you are the plaintiff.* This condition extends to cases you already may have filed in previous years as well as to any new cases you may file; as soon as you have at least three cases on record with the court that have been dismissed as frivolous, etc., as noted above, any future cases you seek to file will not be filed. The prohibition applies to cases that you file as the plaintiff (or appellant where you seek to

appeal a judge's decision) as well as to any multiple plaintiff cases or multiple appellant appeals involving a number of prisoners of which you may be one. In such multiple plaintiff cases or multiple appellant appeals, any prisoner who has three cases that have been dismissed as frivolous will be removed by the court from the list of plaintiffs or appellants.

N. ARE THERE ANY EXCEPTIONS TO THIS PROHIBITION?

The only exception to this prohibition is a case or an appeal in which you claim and can demonstrate that you need the assistance of the court because you face the possibility or threat of "serious bodily injury." The court will review the allegations in the complaint and make a determination as to whether the case should be filed. If the court permits it to be filed, the case will be processed. If the assigned judge determines that the allegations concerning a threat of serious bodily injury are inaccurate or without merit, the case will be dismissed as frivolous. Regardless of how the case is resolved, you will be responsible for payment of the entire filing fee.