

**UNITED STATES DISTRICT COURT**

**WESTERN DISTRICT OF TEXAS**



**A STEP-BY-STEP GUIDE TO FILING A CIVIL LAWSUIT**

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE WESTERN DISTRICT OF TEXAS**

## **ACKNOWLEDGMENT**

**This Guide was prepared in cooperation with the  
San Antonio Chapter of the Federal Bar Association**

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**NOTICE**

**This handbook is not intended to and does not confer any rights. Rather, this handbook is a guide for the non-prisoner<sup>1</sup> pro se plaintiff who seeks to initiate a civil lawsuit in this Court. Once the lawsuit is filed, the civil case is assigned to a judge or judges who will enter Orders to govern the disposition of the case. The Court’s Orders may supercede any matter addressed in this handbook. Further, the progression of a civil lawsuit is controlled by the Federal Rules of Civil Procedure and the Local Civil Rules of this Court, copies of which may be found at the Court’s website located at [www.txwd.uscourts.gov](http://www.txwd.uscourts.gov).**

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<sup>1</sup> Incarcerated persons who file civil lawsuits in this Court are governed by the Prison Litigation Reform Act (PLRA) which impose separate requirements and responsibilities. Prison and jail facilities in the State of Texas have information available on the PLRA and should be able to provide a copy of the proper form complaint (there are several) to be used to file a complaint or such forms are available from the Clerk’s Office of this Court.

## INTRODUCTION

In federal court, civil lawsuits are commenced by filing civil complaints. Although an individual may file a complaint without the assistance of an attorney, appearing “pro se” (by yourself), it is strongly recommended that you secure the assistance of an attorney in the preparation, filing and prosecution of your complaint.<sup>2</sup> Experience has shown that an attorney can make the complex process of federal litigation much simpler. Organizations such as the State Bar of Texas Lawyer Referral Program (Telephone: 1-800-252-9690) may be able to assist you in obtaining an attorney at little cost. Although some courts may be more lenient to pro se parties in applying the applicable rules governing lawsuits, you should be aware that failure to comply with a court’s order or applicable rules may result in dismissal of all or part of your case without the merits being addressed.

Lawsuits in federal court go through a number of steps from the time they are filed until they are ultimately resolved by a judge, a jury or through dispute settlement. This guide summarizes the procedures concerning how and where to file necessary legal papers, the exchange of information between opposing parties, trial preparation, and certain other legal procedures which you and your opponent may need to use before your case is resolved. When applicable, this guide may cite actual rules governing procedure in the federal courts generally (the Federal Rules of Civil Procedure) and the Local Rules which are used in the Western District of Texas.

This guide was developed to help pro se litigants understand some of the procedural requirements associated with filing a civil suit in United States District Court. This guide is not an

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<sup>2</sup> Individuals who are named as defendants in a lawsuit also may proceed pro se (corporations generally may not file an answer pro se). This handbook focuses on filing a civil action.

all inclusive set of instructions designed to guarantee success in any particular lawsuit and it is not a substitute for legal representation by an attorney. Pro se litigants are admonished not to rely solely upon the information provided herein as a basis for filing and prosecuting an action. Furthermore, because this guide is provided by the Clerk's Office, rather than the court, pro se litigants must understand that the information contained in this guide is not legal advice. Clerk's Office personnel are prohibited from providing legal advice of any kind. Therefore, members of the Clerk's Office staff may not help you evaluate your complaint or give advice on possible methods of prosecuting your civil action.

## **BEGINNING A LAWSUIT**

### **Jurisdiction of the United States District Court**

In order for a federal court to hear a case, the court must have jurisdiction over the particular action and the parties to the action. Federal court jurisdiction may be based on either (1) a federal question or (2) diversity of citizenship. A federal question case is one that alleges that a federal law, either a statute or federal constitutional provision has been violated. A case's federal jurisdiction is based on diversity of citizenship when the parties reside in different states.

### **Where to File**

The United States District Court for the Western District of Texas is comprised of seven divisions located in the following cities: Austin, Del Rio, El Paso, Midland, Pecos, San Antonio, and Waco. Generally, a case is filed in the division where the claim arose or where the defendant resides. In cases based on diversity of citizenship (i.e., when the plaintiff and defendant are residents of different states), suit may be brought in the division where the plaintiff resides.

### **Basics**

The complaint and other pleadings related to your suit must be delivered or mailed to the Clerk's Office in the appropriate division at the addresses available from the Clerk's Office. You must tender to the Clerk's Office an original and one copy of any document you wish to file with the Court. As discussed below, generally after your complaint has been served on opposing counsel, you must serve an additional copy of any document filed on each opposing party, by mailing the copy to the attorney of record for that party (or by mailing to the party directly if no attorney has entered an appearance). The requirements for service of the complaint are discussed further below. Any document you prepare for filing with the Court must be typewritten or neatly and legibly hand-

printed/written. Type, print or write on only one side of the paper.

### **Time Involved in Litigation**

Pro se litigants should be aware of both the complexity of federal court litigation and the relatively lengthy time periods often necessary to resolve an individual case. In addition to thousands of civil actions, the courts for the Western District of Texas are charged with resolving thousands of criminal cases. Among other reasons, because of the high importance of resolving matters involving personal liberty interests of those criminally accused, the law grants criminal cases a priority over civil cases in terms of resolution. As your case is important to you, so are the remaining hundreds of individual cases on any federal judge's docket. Although inherent delays in litigation are certainly unfortunate and frustrating for all involved, be assured that thoughtful consideration of each individual case is given by the judge and such consideration necessarily often requires considerable lengths of time to resolve an individual case.

## **STEP 1 - GETTING STARTED**

A federal civil case begins when someone files a paper with the Clerk of Court that states a claim against a person or entity the filer believes has committed a wrongful act. The paper that is filed with the Clerk of Court is called a complaint. The lawsuit must be based upon a legal duty owed by the defendant to a plaintiff personally. A lawsuit must not be based upon any improper purpose, such as only to harass an individual or entity. If a lawsuit is filed for an improper purpose, in addition to dismissing the case, a court may impose penalties or sanctions, including awarding of an opposing party's legal fees. The filing of a lawsuit is a serious matter that should only be undertaken after careful consideration.

First, there are two terms to remember and understand:

1. The person who files the complaint is known as the Plaintiff.
2. The person who is being sued is known as the Defendant.

You, the Plaintiff, are representing yourself without benefit of an attorney. For this reason you are known as a pro se litigant. Pro se is a Latin term meaning "for himself" or "for herself."

After you have read this guide, any questions you may have should be directed to the Intake Deputies in the United States District Clerk's Office.

### **Filing a Complaint**

The first pleading written and filed in a lawsuit is called a COMPLAINT (See ATTACHMENT 1).

The text of the complaint should be double-spaced. The Clerk's Office has form complaints available to address certain types of cases. The most common of these forms are discussed below.

Complaints often include the following six main parts:

1. The caption. The CAPTION of the complaint appears at the top of the first page of

the complaint. It states the court in which the case is filed and the names of the parties. Every document you file with the court should have a caption at the top of the first page. The complaint and all other pleadings filed with the court should be on 8 ½ inch by 11 inch paper. You should list the names of all the defendants you wish to sue in the caption. Do not use phrases like “et al.” or “etc.” in your case caption. You will describe the defendants more fully in another part of your complaint. It is your obligation as pro se plaintiff to identify the people who allegedly injured you.

2. The NAME and ADDRESS of the plaintiff and the defendant. These are sometimes 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.
3. A JURISDICTIONAL PLEA - You should state why you believe the court has jurisdiction over your case. A jurisdictional plea is a statement of the power and authority of the court to hear your case. If the court does not have jurisdiction, it cannot decide your case. See 28 U.S.C. § 1330 et seq.
4. The ALLEGATIONS or claims that you are making against the defendant. Each allegation should be set forth in a separate, short, clearly written paragraph. This should be a short and plain statement of the claim showing why you, the pro se plaintiff, are entitled to the relief you request. Generally, each statement of the claim should be made in separately numbered paragraphs, with each paragraph limited as far as possible to a statement of a single set of factual circumstances. In short, clear, numbered paragraphs describe the actions or omissions of the defendant(s) that you

believe violated your rights or caused you injury .

5. The RELIEF you are seeking from the court. This paragraph describes what you want the court to do in response to your complaint. This information is usually written in the last paragraph of the complaint. Usually each paragraph of a complaint is numbered except for the paragraph that asks the court for relief.
6. SIGNATURE LINE. You must sign the original complaint. Place the date on your complaint and include your address and telephone number.

### **Filing a Complaint Alleging Employment Discrimination**

If you are filing an employment discrimination suit pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 et seq., the Americans with Disabilities Act (“ADA”), the Age Discrimination in Employment Act (“ADEA”), the Equal Pay Act, or the Rehabilitation Act, please use the complaint form set forth in ATTACHMENT 2.

### **Filing Fees**

Your next step usually is to file the complaint with the court. You will be required to complete and submit a CIVIL COVER SHEET (See ATTACHMENT 6) with your complaint. You will also be required to pay a FILING FEE. See 28 U.S.C. § 1914. Please contact the Intake Deputy Clerk in the United States District Clerk’s Office to obtain current filing fee information. Fee information is also available on the internet website for the United States District Court, Western District of Texas at [www.txwd.uscourts.gov](http://www.txwd.uscourts.gov). All checks and money orders should be made payable to: “**Clerk, U.S. District Court.**”

### **Filing a Request that the Court Waive Payment of Filing Fees**

If you cannot afford to pay the filing fee, you may be allowed to have the filing fee waived

by filling out an APPLICATION TO PROCEED IN FORMA PAUPERIS (ATTACHMENT 4). If you are requesting the court to waive the filing fees, this application should be filed with your original Complaint and Civil Cover Sheet.

The Complaint, Civil Cover Sheet, and Application to proceed in forma pauperis will be considered by the court. See 28 U.S.C. § 1915(d). If your Application to proceed in forma pauperis is granted by the Court, part or all of the filing fee will be waived. If your Application to proceed in forma pauperis is denied, you must pay the filing fee.

### **Filing a Request that the Court Appoint an Attorney for You**

If you cannot afford an attorney, you may make a written motion asking the court to appoint an attorney for you. The written motion containing a request for an attorney may be entitled “*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 you would like the court to consider in determining whether a lawyer should be appointed for you. The court is not required to appoint an attorney, but the court may ask an attorney who has indicated a willingness to accept such appointments to represent you. See 28 U.S.C. § 1915. The appointments are pro bono appointments, that is, unless you prevail on a claim, you (and/or your attorney) will not be able to recover costs, and, unless there is a statute authorizing an award of attorney’s fees, the Court will not even be able to consider entering an Order awarding any or part of the attorney’s fees. In other words, unlike most criminal cases, Congress has not generally appropriated funds to pay for attorneys to represent civil litigants.

## **Service of Process (notifying each defendant that a complaint has been filed)**

### **The Summons**

Each defendant must be informed that he/she is being sued and must receive a copy of the complaint. A Summons is the document used to notify a defendant that he/she has been sued. You must prepare a summons for each defendant and submit the summons forms and a copy of your complaint to the Clerk of Court. A summons is an official court document, signed by the Clerk or Deputy Clerk, directing a defendant to respond to a complaint. Summons forms are available in the United States District Clerk's Office or on the internet site at [www.txwd.uscourts.gov](http://www.txwd.uscourts.gov).

### **Instructions for Completing the Summons Form**

- ▶ Write your name above the "v." as plaintiff;
- ▶ Write the name of each person or entity you are suing as defendants below the "v."
- ▶ Write the name and address of one defendant after the word "To." You must prepare a separate summons for each defendant.
- ▶ Because you are representing yourself, in the space after "plaintiff's attorney" fill in your name and your address. Cross out "Plaintiff's Attorney" and write "Pro Se" after your name.
- ▶ Put the proper number in the space before "days after service of this summons . . . ." Defendants generally have twenty (20) days to file an answer after they are served with the complaint. If the United States or any of its agencies or employees is a defendant, the United States has sixty (60) days to answer a complaint. Defendants in cases seeking review of decisions under the Social Security Act have ninety (90) days to answer.

When you have completely filled out the summons form, provide it to the Clerk's Office; the Clerk will sign and seal each summons form and return it to you to attach to a copy of your complaint for service on each defendant. One completed summons form and one copy of your complaint must be provided to the Clerk's Office for each defendant required to be served.

### **Service of Summons**

Service of summons, also called service of process, is the actual delivery of the summons and complaint to the defendant(s) in your case. Service of process in federal court is governed by Rule 4 of the Federal Rules of Civil Procedure. You are responsible for serving the summons and a copy of the complaint on each defendant to the lawsuit, and for returning proof of that service to the court. The summons and complaint must be served within 120 days of filing the complaint or the case may be dismissed.

Federal Rule of Civil Procedure 4 states that process may be served upon defendant(s) who are individuals within a judicial district of the United States by having a person who is not a party and who is at least 18 years of age deliver a copy of the summons and complaint to each individual personally or by leaving copies thereof at the individual's dwelling or usual place of abode with some person of suitable age and discretion then residing therein. See Federal Rule of Civil Procedure 4(c) & (e). When using this method of service, the server fills out the back of the original summons and returns it to the court. **You should read Rule 4 of the Federal Rules of Civil Procedure in its entirety to determine the appropriate method of serving the defendant(s) in their case.**

If you have filed an Application to Proceed in forma pauperis, and the application was granted by the Court, the court may order the United States Marshal's Service to serve each

defendant with the summons a copy of your complaint, without cost to you. For each defendant named in the complaint, you are responsible for completing a *Summons*, and a *USM-285* form entitled *PROCESS RECEIPT AND RETURN* which may be mailed to you with your copy of the court order granting you in forma pauperis status. You are responsible for making an extra copy of your Complaint, and Summons form for each defendant. Give the completed summons forms and a copy of your complaint for each defendant to a Civil Intake Deputy Clerk. The Clerk will forward these documents to the Marshal's Service.

### **Answer to Complaint by Defendant**

The answer is a written response to the plaintiff's complaint in which defendant sets forth a defense to all or part of the allegations stated in the complaint. As with the complaint and all other pleadings, a defendant must file the answer with the Clerk of Court and serve a copy on the opposing party. Failure to answer or otherwise defend in a timely fashion is grounds for judgment by default against the defendant (See Federal Rule of Civil Procedure 55).

### **Motions filed Against the Complaint**

Although most defenses filed by a defendant to a complaint are stated in the answer, a defendant has the option of asserting certain defenses before filing the answer. A motion is an application to the court asking that the court take some particular action in the case. Motions to dismiss the complaint may contain the following arguments: (1) the court lacks jurisdiction over the subject matter, that is, the court lacks the power to decide the subject matter of the case; (2) the court lacks jurisdiction over the person, that is, the court lacks the power to compel a defendant to appear; (3) venue is not proper, that is, plaintiff's case should not be handled in the District in which it was filed; (4) process was not sufficient; (5) service of process was not sufficient; (6) the complaint fails

to state a claim which the law will recognize as enforceable; and/or (7) plaintiff has failed to join a needed party. If such a motion is filed by a defendant in your case, you will have 11 days after the motion is served on you in which to file your response to the motion. *It is very important to respond to such motions to dismiss; otherwise, your case may be dismissed without your having an opportunity to present an argument to the court.* After defendant's answer or motion is filed, the civil case begins to move through the United States District Court.

## **STEP 2- PRETRIAL/DISCOVERY**

### **Scheduling Order**

After defendant(s) have answered your complaint the court may enter a Scheduling Order. Pursuant to the Local Civil Rules and the Federal Rules of Civil Procedure, the parties should confer to consider the nature and basis of their claims and defenses for initial discovery disclosures, and to develop a discovery plan. See particularly Local Civil Rule CV-6(c) and Federal Rules of Civil Procedure 16(b) and 26(f). Within 60 days of the first appearance of any defendant (see Local Civil Rule 16-(c)), that is, within 60 days of the date when any defendant has entered an appearance in the case (by, for example, filing a motion or an answer), plaintiff must submit a proposed agreed scheduling Order that sets out the parties' agreement, and notes any areas of non-agreement, as to all deadlines set out in the form scheduling Order included in Appendix B to the Local Civil Rules. Some of the deadlines that may be set in a Scheduling Order are deadlines to: amend the complaint add or correct allegations or theories of recovery, join other parties, to complete discovery, file motions, file pretrial submissions, and set a date and time for the trial.

The court may request that the parties consider having their case handled and decided by a United States Magistrate Judge as opposed to a District Court Judge. If both parties consent, the case

proceeds under the same rules and in the same manner as it would if the District Court Judge was handling the case.

During the pretrial stage, you, as pro se plaintiff, and defendant's or defendants' counsel determine what issues are in dispute and what issues are not in dispute concerning your complaint. Both you and all defense counsel determine who each side intends to call as witnesses, and, generally, what evidence will be introduced at trial. Each side is required to furnish the other side with information about potential witnesses and exhibits.

Through a process called the discovery process both you and defendant(s) learn as much as possible about each other's case by exchanging information and material. Discovery may include the filing by either side of a document called a motion.

### **Filing Motions**

A motion is a document that contains a request by a litigant to the judge asking for a decision on an issue relating to the case. Unless a motion is made orally during a hearing or trial, all motions should be in writing. (ATTACHMENT 9). Motions are the primary way for litigants to ask the court to take action in a case. The motion document should:

- ▶ Contain the case caption, the case number and the title of the motion at the top of the first page of the motion;
- ▶ Set forth the facts and legal authority supporting the motion;
- ▶ Contain a Certificate of Service (ATTACHMENT 10). A certificate of service states that the opposing party has received a copy of the motion and states the means by which the motion was delivered to the opposing party.

The original motion and a copy of the motion, along with a proposed order for the Judge to sign,

must be filed with the Clerk of Court. Do not forward motions or any other document you wish to file in your case directly to the judge. A copy of your motion must be served on the opposing party. Plaintiff should comply with Rule 7, Federal Rules of Civil Procedure and Rule CV-7, Local Rules for the Western District of Texas when preparing and submitting motion documents. Unless otherwise ordered by the court, motions are limited to ten (10) pages in length and responses to motions generally must be filed within eleven (11) calendar days of service of the motion. Local Rule CV-7(d). An additional three calendar days for filing a response is allowed if the motion was served upon you by mail. Fed.R.Civ.P. 6(e). Failure to file a timely response to a motion may result in the court entering an Order granting the motion as un-opposed or dismissing plaintiff's case for failure to prosecute. See Fed.R.Civ.P. 41. Also, Local Rule CV-7 contains a limit on the number of responses that may be filed.

### **Discovery**

Discovery is the exchange of information between opposing parties. Rules 26 through 37, Federal Rules of Civil Procedure provide for pretrial discovery. Local Rules CV-26, CV-30, CV-33 and CV-36 set forth discovery procedures followed in this court. Local Rule CV-16(b) contains certain definitions of common discovery terms.

Rule 26(a) states that – except in certain proceedings exempted under Rule 26(a)(1)(E) (such as a case filed by a pro se prisoner), stipulated to by the parties, or ordered by the court – a party must, without awaiting a discovery request, provide the other parties with information, set out in Rule 26, such as: the names of individuals likely to have discoverable information, a copy or description on the contents and location of all relevant documents and tangible things, computation of damages, and a copy of any insurance agreement that could satisfy any part of any judgment.

Federal Rule 26(b) states that the discovery matter sought must be “relevant to the subject matter involved in the pending action.” Discovery is also limited by the right of any person from whom discovery is sought to seek a court order protecting him/her from “annoyance, embarrassment, oppression, or undue burden or expense.” (See Federal Rule 26(c); a draft protective order is attached as Appendix H to the Local Civil Rules). If a party fails to cooperate with discovery, the party requesting discovery may file a motion to compel discovery, or to seek sanctions for the failure to cooperate with good faith discovery efforts.

It is possible that during the pretrial/discovery stage the court may order your case to mediation/alternate dispute resolution.

### **Mediation/Alternate Dispute Resolution**

Alternate Dispute Resolution is a resource courts may use to resolve disputes between litigants through means other than a trial. The court may refer a case to Alternate Dispute Resolution on the motion of a party, on the agreement of the parties, or on the court’s own motion.

Rule CV-88 (a), Local Rules of the United States District Court for the Western District of Texas states that the court recognizes the following Alternative Dispute Resolution methods: early neutral evaluation, mediation, mini-trial, moderated settlement conference, summary jury trial, and arbitration. The court may also approve other alternative dispute resolution methods the parties suggest or the court believes is suited to the litigation.

### **Ending the Case Without a Trial**

A trial is necessary only when there are disputed issues of fact. After the discovery period has ended, it may become apparent that the facts in the case are not in dispute, and one or more parties may file a motion for summary judgment. A motion for summary judgment can be filed at

any time after the answer is filed. By filing a motion for summary judgment, the moving party asks the court to enter judgment as a matter of law for that party because there are no genuine issues of material fact, that is, under the agreed or uncontested or established facts, the law directs judgment for the moving party. If a motion for summary judgment is filed by an opposing party, you should respond to that motion, within eleven (11) calendar days from the date the motion was served as discussed above, setting out your arguments and submitting any relevant evidence, such as documents supporting your position.

After the motion for summary judgment and response have been filed, the court will decide whether or not to grant the motion. If the court grants the motion in whole, the case will be over and judgment will be entered in favor of the party who moved for summary judgment. If the court grants the motion in part, the issues that are disputed will be tried and those issues on which summary judgment was granted will not be tried. If the court denies the motion, the case will be set for trial.

### **STEP 3 - TRIAL/JUDGMENT**

If a case is not resolved by summary judgment or dismissed by the court, and if the parties to an action do not agree to settle a case, the case will proceed to trial. The purpose of a trial is to find out whether or not the defendants failed to fulfill a legal duty to the plaintiff as the plaintiff states in the complaint.

Many trials are presented to the court (called a “bench trial”), although parties may request a trial before a jury. During a trial, the following may occur:

All parties, witnesses, court reporters, and court personnel assemble in the courtroom. The judge enters the courtroom, is seated at his/her bench. Your case will be called for trial.

Opening statements are presented first by plaintiff, then by each defendant.

You, as plaintiff, present your case.

Defendant(s) or each defendant’s counsel presents his/her/their case.

You, as plaintiff have the opportunity to rebut defense testimony.

Each party is permitted to give a closing argument to the court. Closing arguments summarize what the testimony presented at trial reflects or proves and why judgment should be entered for a party.

A decision/verdict will be made by the court or the jury.

A formal, written judgment is entered based upon either the court decision or jury verdict.

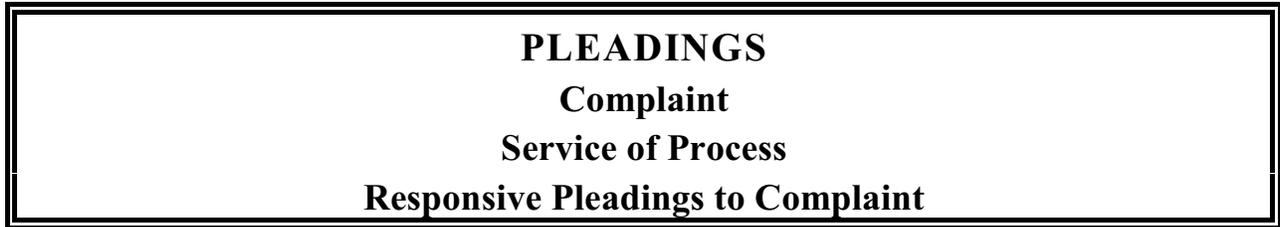
#### **STEP 4 - POST-TRIAL**

This stage of the legal action allows parties the opportunity to seek either the enforcement or the reconsideration of the final judgment rendered by the court. For example, the losing party may file a motion asking the court to permit a new trial; to reconsider its decision or to overturn a jury verdict. The successful party may file a motion asking the court to award attorney's fees and costs for successfully prosecuting/defending the lawsuit.

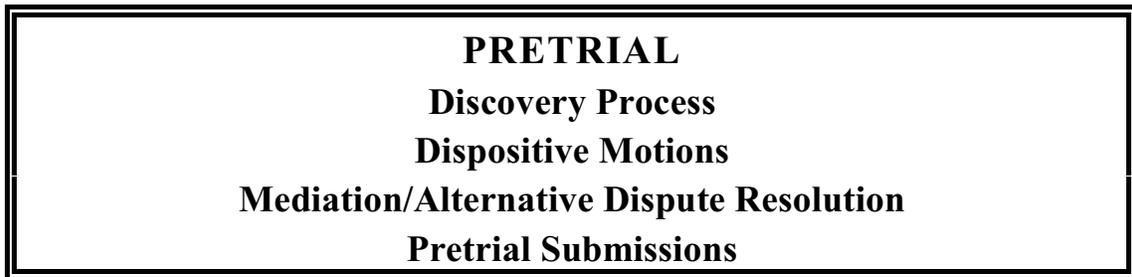
A party to the lawsuit who wishes to challenge the judgment or an order entered by the court may file a notice of appeal with the Clerk's Office. The time limits for appeal are set out in Rule 4 of the Federal Rules of Appellate Procedure. The notice of appeal will be forwarded to the Court of Appeals for the Fifth Circuit where the case will be reviewed. The appeals court will then either affirm (agree with) the lower court's judgment or will reverse and remand (return) the case to the trial court for further action. Please contact the Clerk's Office for the United States District Court of the Western District of Texas for current filing fee information on the docketing fee required to be paid to file an appeal; again, if appropriate, you would be able to file a motion for leave to proceed on appeal in forma pauperis.

# CIVIL CASE FLOW CHART

## STAGE 1



## STAGE 2



## STAGE 3



## STAGE 4



**FORMS**  
**ATTACHMENT 1 - Civil Complaint Example**  
**UNITED STATES DISTRICT COURT**  
**WESTERN DISTRICT OF TEXAS**  
**SAN ANTONIO DIVISION**

\_\_\_\_\_  
(Enter your full name)  
Plaintiff(s)

v.

CASE NUMBER: \_\_\_\_\_  
(To be supplied by Intake Deputy)

\_\_\_\_\_  
(Enter full name of each Defendant)  
Defendant(s)

**COMPLAINT**

1. First Paragraph (Name and Address of Plaintiff)
2. Second Paragraph (Name and Address(es) of Defendant(s))
3. Third Paragraph (Jurisdiction Plea).
4. Fourth Paragraph ....
5. Fifth Paragraph ...

The final paragraph should contain a statement of the relief you are seeking. This paragraph should not be numbered.

\_\_\_\_\_  
Signature  
Name (Typed or Printed)  
Address  
Telephone Number

ATTACHMENT 2 - EEOC Complaint Form

United States District Court  
for the Western District of Texas  
\_\_\_\_\_ Division

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Name of plaintiff or plaintiffs)

\_\_\_\_\_ Civil Action Number:

v.

\_\_\_\_\_  
(Case Number to be supplied  
by the Intake Clerk)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Name of defendant or defendants)

COMPLAINT

1. This action is brought by \_\_\_\_\_, Plaintiff, pursuant to the following selected jurisdiction:

(Please select the applicable jurisdiction)

- Title VII of the Civil Rights Act of 1964 (42 USC §§ 2000e et seq.) Employment Discrimination on the basis of race, color, sex (gender, pregnancy and sexual harassment), religion or national origin.
- The Age Discrimination in Employment Act (29 USC §§ 621 et seq.) (ADEA).
- The Americans With Disabilities Act (42 USC §§ 12102 et seq.) (ADA).
- The Equal Pay Act (29 USC § 206(d)) (EPA).
- The Rehabilitation Act of 1973 (29 USC §791 et seq.) (Applicable to federal employees only).

2. Defendant \_\_\_\_\_ (Defendant's name) lives at, or its business is located at \_\_\_\_\_ (street address), \_\_\_\_\_ (city), \_\_\_\_\_ (state), \_\_\_\_\_ (zip).

3a. Plaintiff sought employment from the defendant or was employed by the defendant at \_\_\_\_\_ (street address), \_\_\_\_\_ (city), \_\_\_\_\_ (state), \_\_\_\_\_ (zip).

3b. At all relevant times of claim of discrimination, Defendant employed \_\_\_\_\_ (#) employees. If defendant is a union, at all relevant times of claim of discrimination, Defendant had \_\_\_\_\_ (#) members.

4. Defendant discriminated against plaintiff in the manner indicated in paragraph 8 of this complaint on or about \_\_\_\_\_ (month) \_\_\_\_\_ (day) \_\_\_\_\_ (year). If incidents of discrimination occurred more than one day, please indicate the beginning and ending dates of such acts: \_\_\_\_\_  
\_\_\_\_\_.

5. Plaintiff filed charges against the defendant with the Equal Employment Opportunity Commission (E.E.O.C.) charging defendant with the acts of discrimination indicated in paragraph 7 of this complaint on or about \_\_\_\_\_ (month) \_\_\_\_\_ (day) \_\_\_\_\_ (year). (Not applicable to federal civil service employees).

6a. The E.E.O.C. issued a Notice of Right to Sue which was received by plaintiff on \_\_\_\_\_ (month) \_\_\_\_\_ (day) \_\_\_\_\_ (year). (Not applicable to ADEA and EPA claims or federal civil service employees).

**VERY IMPORTANT NOTE:** PLEASE ATTACH A COPY OF YOUR NOTICE OF RIGHT TO SUE AND THE ENVELOPE IN WHICH IT WAS RECEIVED TO THIS COMPLAINT.

6b. Please indicate below if the E.E.O.C issued a Determination in your case:

- Yes
- No

**VERY IMPORTANT NOTE:** IF YOU CHECKED "YES", PLEASE ATTACH A COPY OF THE E.E.O.C.'S DETERMINATION TO THIS COMPLAINT.

7. **Because of plaintiff's:**

(Please select the applicable allegation(s))

- Race (If applicable, state race)** \_\_\_\_\_
- Color (If applicable, state color)** \_\_\_\_\_
- Sex (gender, pregnancy or sexual harassment) (If applicable, state sex and claim)** \_\_\_\_\_
- Religion (If applicable, state religion)** \_\_\_\_\_
- National Origin (If applicable, state national origin)** \_\_\_\_\_
- Age (If applicable, state date of birth)** \_\_\_\_\_
- Disability (If applicable, state disability)** \_\_\_\_\_
- Prior complaint of discrimination or opposition to acts of discrimination. (Retaliation) (If applicable, explain events of retaliation)** \_\_\_\_\_

\_\_\_\_\_.  
**The defendant: (please select all that apply)**

- failed to employ plaintiff.**
- terminated plaintiff's employment.**
- failed to promote plaintiff.**
- harassed plaintiff.**
- other (specify)** \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_.

**8a. State specifically the circumstances under which defendant, its agent, or employees discriminated against plaintiff PERSONALLY:**

**VERY IMPORTANT NOTE: INCLUDE SPECIFIC DATES, SPECIFIC EVENTS, AND ANY SPECIFIC COMMENTS MADE BY DEFENDANT PERTAINING TO THE DISCRIMINATION CLAIM ALLEGED ABOVE.**

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**8b. List any witnesses who would testify for plaintiff to support plaintiff's allegations and the substance of their testimony:**

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**8c. List any documentation that would support plaintiff's allegations and explain what the documents will prove:**

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**9. The above acts or omissions set forth in paragraphs 7 and 8 are:**

- still being committed by defendant.
- no longer being committed by defendant.

**10. Plaintiff should attach to this complaint a copy of the charge filed with the Equal Employment Opportunity Commission. This charge is submitted as a brief statement of the facts supporting this complaint.**

**WHEREFORE, plaintiff prays that the Court grant the following relief to the plaintiff:**

**Defendant be directed to employ plaintiff.**

**Defendant be directed to re-employ plaintiff.**

**Defendant be directed to promote plaintiff.**

**Defendant be directed to \_\_\_\_\_**

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\_\_\_\_\_ **and that the Court grant such other relief as may be appropriate, including injunctive orders, damages, costs and attorney's fees.**

**I declare (or certify, verify, or state) under penalty or perjury that the foregoing is true and correct.**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Signature of Plaintiff**

\_\_\_\_\_  
**Address of Plaintiff**

\_\_\_\_\_  
**City State Zip Code**

\_\_\_\_\_  
**Telephone Number(s)**

## EEOC SUIT CHECKLIST

The following items are essential for processing your case. Please use this checklist to make sure you have included all necessary items which are applicable to your claim.

- [ ] Did you fill out the complaint form legibly and completely?
- [ ] Did you attach one copy of the Right to Sue Letter from the E.E.O.C. and the envelope in which it was received to your complaint? (Not applicable to ADEA and EPA claims or federal civil service employees).
- [ ] If a determination was made by the E.E.O.C. in your case, did you attach one copy of that determination to your complaint?
- [ ] Did you attempt to contact any attorneys? Did you utilize the reference lists provided at the end of the complaint package in your attempt to retain an attorney?
- [ ] If you are not being represented by an attorney and want to be represented by a court appointed attorney, did you complete the Request for Appointment of Counsel form?
- [ ] Did you complete the Application to Proceed In Forma Pauperis Form? (Applicable to those who wish to have appointed counsel and/or those who wish to represent themselves but cannot afford filing and service of process fees).
- [ ] Did you complete the USM/285 and summons forms for each defendant? (These forms are for service of process).
- [ ] Did you file with the court the original and one copy of the above forms which are applicable to your case?
- [ ] Did you provide corresponding additional copies of your complaint and right to sue letter for each of the defendants you are suing? (Copies are needed for service of process).
- [ ] Did you pay the \$150.00 filing fee? (Not applicable to those applying to proceed in forma pauperis). Note: The court may either grant or deny the Application to Proceed In Forma Pauperis. If the court denies the application, you must pay the filing fee and the service of process costs or your complaint will not proceed through the court.

***It is very important that you print legibly throughout these forms so that the judge reviewing your case can read your claim and make proper decisions concerning your claim. If writing space is insufficient for complete answers on any question, you may attach additional pages.***

**United States District Court  
for the Western District of Texas  
\_\_\_\_\_Division**

\_\_\_\_\_  
\_\_\_\_\_  
(Name of plaintiff or plaintiffs)

\_\_\_\_\_ Civil Action Number:

v.

\_\_\_\_\_  
(Case Number to be supplied  
by the Intake Clerk)

\_\_\_\_\_  
(Name of defendant or defendants)

**APPLICATION TO PROCEED IN FORMA PAUPERIS**

I, \_\_\_\_\_, declare that I am the Plaintiff in the above-entitled proceeding; that, in support of my request to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty, I am unable to pay the costs of said proceeding or give security therefor; that I believe I am entitled to relief. The nature of my action is briefly stated as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In further support of this application, I answer the following questions.

1. Are you presently employed?                     Yes         No

a. If the answer is "yes," state the amount of your salary or wages per month, and give the name and address of your employer:

Employer: \_\_\_\_\_

Salary/Wages per Month: \_\_\_\_\_

Position: \_\_\_\_\_

Dates of Employment: \_\_\_\_\_

- b. If the answer is "no," state the date of last employment, amount of your salary or wages per month, and name and address of your former employer:

Employer: \_\_\_\_\_

Salary/Wages per Month: \_\_\_\_\_

Position: \_\_\_\_\_

Dates of Employment: \_\_\_\_\_

2. Are you married?  Yes  No

- a. If the answer is "yes," state the amount of your spouse's salary or wages per month, and give the name and address of his/her employer:

Employer: \_\_\_\_\_

Salary/Wages per Month: \_\_\_\_\_

Position: \_\_\_\_\_

Dates of Employment: \_\_\_\_\_

- b. If the answer is "yes," is your spouse dependent on your financial support?

Yes  No

3. Do you have any children?  Yes  No

- a. If the answer is "yes," state all of your children's names and their ages below:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- b. If the answer is "yes," are the children dependent on your financial support?

Yes  No

4. List any other persons other than your spouse (if any) and your children (if any) who are dependent on your financial support (please state your relationship to them and how much you contribute toward their support):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5. Have you received within the past twelve months any money from any of the following sources?

- a. Business, profession or other form of self employment  Yes  No
- b. Rent payments, interest or dividends  Yes  No
- c. Pensions, annuities or life insurance payments  Yes  No
- d. Gifts or inheritances  Yes  No
- e. Family and/or Friends  Yes  No
- f. Any other sources  Yes  No

6. If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months.

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7. Do you own any cash, or do you have money in checking or savings accounts?  
 Yes  No

If the answer is "yes," state the total value of the items owned:

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8. Do you own or have any interest in any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?  
 Yes  No

If the answer is "yes," describe the property, state its approximate value, whether you have any outstanding mortgages, liens or debts secured by that property and, if so, the unpaid balance of that debt.

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**ATTACHMENT 5 - Request for Appointment of Counsel**

**United States District Court  
for the Western District of Texas  
\_\_\_\_\_ Division**

\_\_\_\_\_

\_\_\_\_\_  
(Name of plaintiff or plaintiffs)

\_\_\_\_\_ Civil Action Number:

v.

\_\_\_\_\_  
(Case Number to be supplied  
by the Intake Clerk)

\_\_\_\_\_

\_\_\_\_\_  
(Name of defendant or defendants)

**REQUEST FOR APPOINTMENT OF COUNSEL**

Comes now, \_\_\_\_\_, Plaintiff in the above-styled and numbered matter, and respectfully requests appointment of counsel as provided by in 42 U.S.C. §2000(e)5. In support thereof, Plaintiff will show the following:

I. That Plaintiff has made a diligent effort to employ counsel.

[ ] CONTACTED PRIVATE ATTORNEYS. (List all attorneys who specialize in labor law, employment discrimination or civil rights complaints you contacted and state why each would not represent you.)

**CONTACTED LEGAL AID ASSOCIATION. (Bexar County Legal Aid Association: (210) 227-0111 Ask for Virginia Schramm) (State when this association was contacted and why it could not assist you.)**

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**CONTACTED LOCAL LAWYER REFERRAL SERVICE. (San Antonio Bar Association Lawyer Referral Service: (210) 227-1853). (List the lawyers to whom you were referred, the attorneys you contacted, and why they could not assist you.)**

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**II. Please state your level of education:**

**Did not graduate from high school. (Specify highest grade completed)**\_\_\_\_\_

**G.E.D. (Date acquired)**\_\_\_\_\_

**High School Graduate. (Year graduated)** \_\_\_\_\_

**Some College. (Specify field of study)**\_\_\_\_\_

**College Graduate. (Specify field of study)** \_\_\_\_\_

**Graduate Level Education (Specify level and field of study)**\_\_\_\_\_

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**III. Please state your employment for the last five years beginning with your most current employment:**

**Employer:** \_\_\_\_\_  
**Salary/Wages per Month:** \_\_\_\_\_  
**Position:** \_\_\_\_\_  
**Dates of Employment:** \_\_\_\_\_

**Employer:** \_\_\_\_\_  
**Salary/Wages per Month:** \_\_\_\_\_  
**Position:** \_\_\_\_\_  
**Dates of Employment:** \_\_\_\_\_

**Employer:** \_\_\_\_\_  
**Salary/Wages per Month:** \_\_\_\_\_  
**Position:** \_\_\_\_\_  
**Dates of Employment:** \_\_\_\_\_

**Employer:** \_\_\_\_\_  
**Salary/Wages per Month:** \_\_\_\_\_  
**Position:** \_\_\_\_\_  
**Dates of Employment:** \_\_\_\_\_

**Employer:** \_\_\_\_\_  
**Salary/Wages per Month:** \_\_\_\_\_  
**Position:** \_\_\_\_\_  
**Dates of Employment:** \_\_\_\_\_

**IV. Plaintiff is financially unable to hire counsel for the reasons stated in the attached Application to Proceed In Forma Pauperis. (Please complete the attached Application to Proceed In Forma Pauperis)**

**I declare (or certify, verify, or state) under penalty or perjury that the foregoing is true and correct.**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Signature of Plaintiff**

ATTACHMENT 6 - Example Civil Cover Sheet - Form JS 44

CIVIL COVER SHEET

JS 44 (Rev. 3/99)

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 THE REVERSE OF THE FORM.)

|   |  |
|---|--|
| <p><b>PLAINTIFFS</b></p> <p>(b) County of Residence of First Listed _____<br/>(EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) _____</p> | <p><b>DEFENDANTS</b></p> <p>County of Residence of First Listed _____<br/>(IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known) _____</p> |
|---|--|

|   |   |                            |   |                            |   |                            |                            |                    |                            |                            |   |                            |                            |   |                            |                            |                |                            |                            |
|---|---|----------------------------|---|----------------------------|---|----------------------------|----------------------------|--------------------|----------------------------|----------------------------|---|----------------------------|----------------------------|---|----------------------------|----------------------------|----------------|----------------------------|----------------------------|
| <p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p> | <p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%;"> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table> | Citizen of This State      | <input type="checkbox"/> 1                              | <input type="checkbox"/> 1 | Incorporated or Principal of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | Citizen of Another | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal 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 |
| Citizen of This State   | <input type="checkbox"/> 1  | <input type="checkbox"/> 1 | Incorporated or Principal of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4                          |                            |                            |                    |                            |                            |   |                            |                            |   |                            |                            |                |                            |                            |
| Citizen of Another  | <input type="checkbox"/> 2  | <input type="checkbox"/> 2 | Incorporated and Principal 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)  |   |   |   |  |
|--|---|---|---|--|
| <p><b>CONTRACT</b></p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment</p> <p><input type="checkbox"/> 151 Enforcement of Arbitration Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Social Security Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> | <p><b>TORTS</b></p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 362 Personal Injury—Med. Malpractice</p> <p><input type="checkbox"/> 365 Personal Injury — Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p><b>PERSONAL PROPERTY</b></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p> | <p><b>FORFEITURE/PENALTY</b></p> <p><input type="checkbox"/> 610 Agriculture</p> <p><input type="checkbox"/> 620 Other Food &amp; Drug</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC</p> <p><input type="checkbox"/> 630 Liquor Laws</p> <p><input type="checkbox"/> 640 R.R. &amp; Truck</p> <p><input type="checkbox"/> 650 Airline Regs.</p> <p><input type="checkbox"/> 660 Occupational Safety/Health</p> <p><input type="checkbox"/> 690 Other</p> <p><b>LABOR</b></p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Mgmt. Relations</p> <p><input type="checkbox"/> 730 Labor/Mgmt. Reporting</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act</p> | <p><b>BANKRUPTCY</b></p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><b>PROPERTY RIGHTS</b></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p><b>SOCIAL SECURITY</b></p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p><b>FEDERAL TAX SUITS</b></p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p> | <p><b>OTHER STATUTES</b></p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce/ICC Rates/etc.</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 810 Selective Service</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 875 Customer Challenge 12 USC 3410</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 892 Economic Stabilization</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 894 Energy Allocation Act</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 900 Appeal of Fee Determination</p> <p><input type="checkbox"/> 950 Constitutionalality of State Statutes</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> |
| <p><b>REAL PROPERTY</b></p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent Lease &amp; Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p>  | <p><b>CIVIL RIGHTS</b></p> <p><input type="checkbox"/> 441 Voting</p> <p><input type="checkbox"/> 442 Employment</p> <p><input type="checkbox"/> 443 Housing/Accommodations</p> <p><input type="checkbox"/> 444 Welfare</p> <p><input type="checkbox"/> 440 Other Civil Rights</p>  | <p><b>PRISONER PETITIONS</b></p> <p><input type="checkbox"/> 510 Motions to Vacate Sentence</p> <p>Habeas Corpus:</p> <p><input type="checkbox"/> 530 General</p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><input type="checkbox"/> 540 Mandamus &amp; Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Condition</p>  |   |  |

**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     7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23    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 # \_\_\_\_\_ AMOUN \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

### Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States, are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. **Residence (citizenship) of Principal Parties.** This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. **Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a) Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause.

VII. **Requested in Complaint. Class Action.** Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

**Demand.** In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

**Jury Demand.** Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

**ATTACHMENT 7 - Summons Form**

**AO440 (Rev. 10/93) Summons in a Civil Action**

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS**

**SUMMONS IN A CIVIL CASE**

**v.**

**CASE NUMBER:**

**TO: (Name and address of defendant)**

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

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**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.**

**William G. Putnicki**

**Clerk**

**Date**

---

**(BY) DEPUTY CLERK**

**AO 440 (Rev. 10/93) Summons in a Civil Action**

**RETURN OF SERVICE**

Service of the Summons and complaint was made by me (1)

DATE

NAME OF SERVER (*Print*)

TITLE

*Check one box below to indicate appropriate method of service*

Served personally upon the third-party defendant. Place where served: \_\_\_\_\_

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: \_\_\_\_\_

Return unexecuted: \_\_\_\_\_

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 Procedures

U.S. Department of Justice  
United States Marshals Service

**PROCESS RECEIPT AND RETURN**  
See Instructions for "Service of Process by the U.S. Marshal"  
on the reverse of this form.

|   |   |
|---|---|
| PLAINTIFF   | COURT CASE NUMBER   |
| DEFENDANT   | TYPE OF PROCESS   |
| <b>SERVE</b><br>➔<br><b>AT</b>  | NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN |
|   | ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)  |
| SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW:     |   |
| <div style="border: 1px solid black; width: 100%; height: 100%;"></div> | Number of process to be served with this Form - 285   |
|   | Number of parties to be served in this case   |
|   | Check for service on U.S.A.   |

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service):  
Fold Fold

|  |                                    |                  |      |
|--|------------------------------------|------------------|------|
| Signature of Attorney or other Originator requesting service on behalf of: | <input type="checkbox"/> PLAINTIFF | TELEPHONE NUMBER | DATE |
|  | <input type="checkbox"/> DEFENDANT |                  |      |

**SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE**

|  |               |                                 |                                |  |      |
|--|---------------|---------------------------------|--------------------------------|--|------|
| I acknowledge receipt for the total number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted) | Total Process | District of Origin<br>No. _____ | District to Serve<br>No. _____ | Signature of Authorized USMS Deputy or Clerk | Date |
|--|---------------|---------------------------------|--------------------------------|--|------|

I hereby certify and return that I  have personally served,  have legal evidence of service,  have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below.

I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above (See remarks below)

|  |   |                                     |    |
|--|---|-------------------------------------|----|
| Name and title of individual served (if not shown above) | <input type="checkbox"/> A person of suitable age and discretion then residing in the defendant's usual place of abode. |                                     |    |
| Address (complete only if different than shown above)    | Date of Service   | Time                                | am |
|  |   |                                     | pm |
|  |   | Signature of U.S. Marshal or Deputy |    |

|             |   |                |               |                  |                                |                  |
|-------------|---|----------------|---------------|------------------|--------------------------------|------------------|
| Service Fee | Total Mileage Charges (including endeavors) | Forwarding Fee | Total Charges | Advance Deposits | Amount owed to U.S. Marshal or | Amount of Refund |
|-------------|---|----------------|---------------|------------------|--------------------------------|------------------|

REMARKS:

PRIOR EDITIONS  
MAY BE USED

**1. CLERK OF THE COURT**

FORM USM-285 (Rev. 12/15/80)

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
\_\_\_\_\_ DIVISION

PLAINTIFF

v.

CASE NUMBER

DEFENDANT(S)

MOTION FOR \_\_\_\_\_

\_\_\_\_\_ Now comes \_\_\_\_\_, Plaintiff pro se, and  
requests the Court to:

Date:

\_\_\_\_\_  
Signature  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
\_\_\_\_\_

**ATTACHMENT 10 - Example of Certificate of Service**

**CERTIFICATE OF SERVICE**

I, \_\_\_\_\_, Plaintiff pro se, do here by certify that on the \_\_\_\_\_ Day of \_\_\_\_\_, 200 \_\_, a true and correct copy of the foregoing pleading was forwarded to \_\_\_\_\_, the attorney for (Defendant) by (State the manner of delivery - eg. U.S. Mail; Hand Delivery; Certified Mail) \_\_\_\_\_ at the following address: (give address of Attorney for the Defendant).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Dated:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ **Signature of Plaintiff**  
\_\_\_\_\_

## GLOSSARY

**affidavit**

A written statement of facts confirmed by the oath of the party making it, before a notary or officer having authority to administer oaths. See declaration.

**affirmed**

In the practice of the court of appeals, it means that the court of appeals has concluded that the lower court decision is correct and will stand as rendered by the lower court.

**answer**

The formal written statement by a defendant responding to a civil complaint and setting forth the grounds for his/her defense.

**appeal**

A request made after a trial by a party who has lost on one or more issues asking a higher court (appellate court) to review the trial court's decision on the issue(s) in question to determine if it was correct. To make such a request is "to appeal" or "to take an appeal."

**appellate**

About appeals; an appellate court has the power to review the judgment of a lower court (trial court) or tribunal. For example, the U.S. Circuit Courts of Appeal review the decisions of the U.S. District Courts.

**bench trial**

Trial without a jury in which a judge decides which party prevails.

**brief**

A written statement submitted by each party in a case that explains why the court should decide the case, or particular issues in a case, in that party's favor.

**chambers**

A judge's office, typically including work space for the judge's law clerks and judicial assistant.

**case law**

The law as reflected in the written decisions of the courts.

**chief judge**

The judge who has primary responsibility for the administration of a court; chief judges are determined by seniority.

**clerk of court**

An officer appointed by the judges of the court to assist in managing the flow of cases through the court, maintaining court records, handling financial matters and providing other administrative support to the court.

**common law**

The legal system that originated in England and is now in use in the United States that relies on the articulation of legal principles in a historical succession of judicial decisions. Common law principles can be changed by legislation.

**complaint**

A written statement filed by the plaintiff that initiates a civil case, stating the wrongs alleged committed by the defendant and requesting relief from the court.

**contract**

An agreement between two or more persons that creates an obligation to do or not to do a particular thing.

**counsel**

Legal advice; a term also used to refer to the lawyers in a case

**court**

Government entity authorized to resolve legal disputes.

**court reporter**

A person who makes a word-for-word record of what is said in court, generally by using a stenographic machine, shorthand or audio recording and then produces a transcript of the proceedings upon request.

**damages**

Money paid by defendants to successful plaintiffs in civil cases to compensate the plaintiffs for their injuries.

**declaration**

Whenever a matter is required or permitted to be supported by a sworn affidavit, such matter also may be established, with the same force and effect, by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him as true under the penalty of perjury and dated in substantially the following form: "I declare under penalty of perjury that the foregoing is true and correct. Executed on (date) and (signed)."

**default judgment**

A judgment rendered in favor of the plaintiff because of the defendant's failure to answer or appear to contest the plaintiff's claim.

**defendant**

In a civil case, the person, company, or organization against whom the plaintiff brings suit.

**deposition**

An oral statement made before an officer authorized by law to administer oaths. Such statements are often taken to examine potential witnesses, to obtain discovery, or to be used later in trial. See discovery.

**discovery**

The process by which lawyers learn about their opponent's case in preparation for trial. Typical tools of discovery include depositions, interrogatories, requests for admissions, and requests for documents. All of these devices help the parties learn the relevant facts and collect and examine any relevant documents or other materials.

**dispositive motion**

A dispositive motion is a motion that completely resolves a claim, either dismissing the claim and not granting relief or awarding relief based on a claim.

**docket**

A log containing the complete history of each case in the form of brief chronological entries summarizing the court proceedings.

**evidence**

Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case in favor of one side or the other.

**federal question jurisdiction**

Jurisdiction given to federal courts in cases involving the interpretation and application of the U.S. Constitution, acts of Congress and treaties.

**file**

To place a paper in the official custody of the clerk of court to enter into the files or records of a case.

**in forma pauperis**

“In the manner of a pauper.” Permission given by the court to a person to file a case without payment of the required court fees because the person cannot pay them.

**interrogatories**

Written questions sent by one party in a lawsuit to an opposing party as part of pretrial discovery in civil cases. The party receiving the interrogatories is required to answer them in writing under oath.

**issue**

1. The disputed point between parties in a lawsuit; 2. To send out officially, as in a court issuing an order.

**judge**

An official of the judicial branch with authority to decide lawsuits brought before courts.

**judgment**

The official decision of a court finally resolving the dispute between the parties to the lawsuit.

**jurisdiction**

1. The legal authority of a court to hear and decide a case; 2. The geographic area over which the court has authority to decide cases.

**jury**

The group of persons selected to hear the evidence in a trial and render a verdict on matters of fact.

**jury instructions**

A judge's directions to the jury before it begins deliberations regarding the factual questions it must answer and the legal rules that it must apply.

**jurisprudence**

The study of law and the structure of the legal system.

**lawsuit**

A legal action started by a plaintiff against a defendant based on a complaint that the defendant failed to perform a legal duty which resulted in harm to the plaintiff.

**litigation**

A case, controversy, or lawsuit. Participants (plaintiffs and defendants) in lawsuits are called “litigants.”

**magistrate judge**

A judicial officer of a district court who may conduct many pretrial civil matters on behalf of district judges, and who, with the consent of the parties may decide civil cases.

**mediation**

A formal process by which the parties and their attorneys, if any, meet with a mediator in order to discuss settling the case under mutually agreeable terms and conditions.

**mistrial**

An invalid trial, caused by fundamental error. When a mistrial is declared, the trial must begin again with the selection of a new jury.

**motion**

A request by a litigant to a judge for a decision on an issue relating to the case.

**opinion**

A judge’s written explanation of the decision of the court.

**oral argument**

An opportunity for lawyers to summarize their position before the court and also to answer the judge’s questions.

**party**

One of the litigants. At the trial level, the parties are typically referred to as the plaintiff and defendant.

**plaintiff**

The person who files the complaint in a civil lawsuit.

**pleadings**

Written statements filed with the court which describe a party’s legal or factual assertions about the case.

**pretrial conference**

A meeting of the judge and lawyers (or pro se litigants) to plan the trial, to discuss which matters should be presented to the jury, to review proposed evidence and witnesses, and to set a trial schedule.

**pretrial submissions**

The information required by Local Rule CV-16(e) to be submitted to the Court and exchanged with each opposing party no later than 10 days before trial.

**procedure**

The rules for conducting a lawsuit.

**pro se**

A Latin term meaning “on one’s own behalf;” in courts, it refers to persons who present their own cases without lawyers.

**record**

A written account of the proceedings in a case, including all pleadings, evidence, and exhibits submitted in the course of the case.

**service of process**

The delivery of summonses to the appropriate party.

**settlement**

Parties to a lawsuit resolve their dispute without having a trial.

**statute**

A law passed by a legislature.

**subpoena**

A command, issued under authority of a court or other authorized government entity, to a witness to appear and give testimony.

**subpoena duces tecum**

A command to a witness to appear and produce documents.

**summary judgment**

A decision made on the basis of statements and evidence presented for the record without a trial. It is used when it is not necessary to resolve any factual disputes in the case. Summary judgment is granted when –on the undisputed facts in the record –one party is entitled to judgment as a matter of law.

**testimony**

Evidence presented orally by witnesses during trials.

**transcript**

A written, word-for-word record of what was said, either in a proceeding such as a trial, or during some other formal conversation, such as a hearing or oral deposition.

**verdict**

The decision of a trial jury or a judge that determines the outcome of a civil case.

**witness**

A person called upon by either side in a lawsuit to give testimony before the court or jury.