

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

INFORMATION AND INSTRUCTIONS

FOR PRISONERS FILING

CIVIL RIGHTS COMPLAINTS UNDER 42 U.S.C. § 1983 or BIVENS ACTIONS

1. FORMS

The attached form is to assist you in the preparation of a complaint seeking relief for violation of civil rights under either 42 U.S.C. § 1983 (defendants are state officials) or a Bivens action (defendants are federal officials). These forms may be filled out by typewriter or by hand. Handwriting must be clear and readable. Every question on the forms must be answered, even if your answer is “no,” or “don’t know.” The use of forms is required by D. Kan. Rule 9.1(a).

Do not write on the back of the complaint forms. If you need more space, use additional sheets of paper. Federal rules require that the complaint be a BRIEF statement. Stick to the facts (who, what, when, where, why, how). Always include dates, times, places, and names.

Pursuant to D. Kan. Rule 7.1(e), the argument and authorities section of a brief or memorandum in a civil action may not exceed 30 pages absent an order of the court.

2. COPIES NOT REQUIRED

Pursuant to D. Kan. Rule 9.1(h), petitioners, movants, and plaintiffs need only submit the ORIGINAL petition, motion, or complaint to the clerk for filing. Additional copies are not required.

It is your responsibility to keep a copy for your records of every complaint and other document or letter that you send to the court.

3. SIGNATURE REQUIRED

You must personally sign the complaint, motion, or petition. If there is more than one plaintiff, each person must sign. You may not sign for anyone else.

4. TENDER OF PLEADINGS

When your complaint or pleading is completed, it should be transmitted to the clerk of the court with the appropriate filing fee or in forma pauperis motion.

If you are incarcerated in a facility with mandatory electronic filing, you should follow instructions available at the facility for transmitting the pleading electronically to the court.

If you are not subject to mandatory electronic filing, you should mail the pleading to:

TIMOTHY M. O'BRIEN, CLERK OF COURT
UNITED STATES DISTRICT COURT
444 S.E. QUINCY
TOPEKA, KANSAS 66683

5. FILING FEES

The complaint must be accompanied by a filing fee or a motion for leave to proceed in forma pauperis. The statutory filing fee for civil rights complaints is \$400.00.¹ If you cannot afford to prepay the filing fee, you may request permission to proceed in forma pauperis by completing a form motion available from the court and submitting certified copies of your institutional financial records for the six months preceding your motion for leave to proceed in forma pauperis.

After receiving these materials, the court will assess an initial partial filing fee that is the greater of (a) 20% of the average monthly deposits in your account for the past six months; OR (b) 20% of the average monthly balance in your account for the past six months.

If your motion is granted, you will be allowed to pay the filing fee in installments, and you must pay 20% of each month's income in every month your institutional account balance exceeds ten dollars (\$10.00) until the full filing fee is paid. See 28 U.S.C. § 1915(b). The financial officer of the facility where you are incarcerated will be directed to make these payments, and it is your responsibility to cooperate with facility personnel to authorize these arrangements. The failure to cooperate may result in sanctions by the court. You must pay the full filing fee even if your case is dismissed by the court.

If you have no assets, you will not be prohibited from bringing an action without payment of an initial partial fee. See 28 U.S.C. § 1915(b)(4). However, when you receive assets, you must pay the filing fee as described.

If you have had three or more civil actions or appeals dismissed as frivolous, malicious, or for failure to state a claim, you are no longer eligible to proceed without prepayment of the full filing fee unless you are under serious danger of serious physical injury. See 28 U.S.C. § 1915(g).

6. SERVICE

Once you have submitted the portion of the filing fee directed by the court, the court will review your claims to determine whether summons or waiver of summons forms should be issued to the defendants. Your complaint should list the complete name and address of each person named as a defendant. Without this information, the Clerk cannot prepare summons or waivers for issuance by the Marshal. See Rule 4 of the Federal Rules of Civil Procedure.

7. AFTER THE COMPLAINT IS FILED

You must comply with court rules, which include keeping the court informed in writing of your current address. See D. Kan. R. 5(c)(3). If you fail to comply with this or any other court rule or fail to comply with any court imposed deadline, your case may be dismissed for want of prosecution.

Exhibits included with the complaint or a pleading are considered part of the court record and will not be returned.

8. MOTIONS

A request for any type of relief must be in the form of a proper motion beginning with the case caption and title of the motion.

9. COMMUNICATION WITH THE COURT

It is improper to communicate directly with a Judge or Magistrate Judge concerning matters which are or may become a subject in Court. Procedural questions may be directed to the clerk's office, but Judges, Magistrate Judges, and court staff are prohibited from giving legal advice.

10. EXHAUSTION OF ADMINISTRATIVE REMEDIES UNDER THE PRISON LITIGATION REFORM ACT (PLRA)

You may not bring an action challenging prison conditions under 42 U.S.C. § 1983 or any other federal law until you have exhausted available administrative remedies.

¹ Effective May 1, 2013, there is a \$50 general administrative fee for filing a civil action, suit, or proceeding in a district court. This fee is in addition to the existing civil filing fee of \$350. Therefore, effective May 1, 2013, the total fee for filing a new civil case will be \$400. This new fee is part of the "District Court Miscellaneous Fee Schedule", established by the Judicial Conference of the United States, pursuant to 28 U.S.C. § 1914. This fee does not apply to persons granted in forma pauperis status under 28 U.S.C. § 1915.

(Name)

(Institution Register No.)

(Current Mailing Address)

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

_____, Plaintiff
(Full and Correct Name)

CASE NO. _____
(To be supplied by the Clerk)

vs.

_____, Defendants

**CIVIL RIGHTS COMPLAINT
PURSUANT TO 28 U.S.C. 1331**

A. JURISDICTION

1) _____, is a resident of _____
(Plaintiff) (State of residency prior to incarceration)

who presently located at _____
(Mailing address or place of confinement.)

2) Defendant _____ is a resident of _____
(Name of first defendant)

_____, and is employed as _____
(City, State)

_____, and may be _____
(Position and title, if any)

located at _____. At the time the claim(s) alleged
(Address for service of process)

in this complaint arose, was this defendant acting under the color of state law? Yes No

If your answer is "Yes", briefly explain: _____

3) Defendant _____ is a resident of
(Name of first defendant)
_____, and is employed as
(City, state)
_____, and may be located at
(Position and title, if any)
_____. At the time the
(Address for service of process)

claim (s) alleged in this complaint arose was this defendant acting under the color of state law? Yes No . If your answer is “Yes”, briefly explain:

(Use the back of this page to furnish the above information for additional defendants.)

4) Jurisdiction is invoked pursuant to 28 U.S.C. §1331(3). (If you wish to assert jurisdiction under different or additional statuses, you may list them below.)

B. NATURE OF THE CASE

1) Briefly state the background of your case:

C. CAUSE OF ACTION

1) I allege that my claims arise under the following constitutional provisions or laws of the United States and that the following facts form the basis for my allegations: (If necessary you may attach up to two additional pages (8 1/2" x 11") to explain any allegation or to list additional supporting facts.)

A) (1) Count I: _____

(2) Supporting Facts: (Include all facts you consider important, including names of persons involved, places and dates. Describe exactly how each defendant is involved. State the facts clearly in your own words without citing legal authority or argument.):

B) (1) Count II: _____

(2) Supporting Facts: _____

C) (1) Count III: _____

(2) Supporting Facts: _____

D. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

1) Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to the conditions of your imprisonment?
Yes No . If your answer is “Yes”, describe each lawsuit. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

a) Parties to previous lawsuit:

Plaintiffs: _____

Defendants: _____

b) Name of court and docket number _____

c) Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?) _____

d) Issues raised _____

e) Approximate date of filing lawsuit _____

f) Approximate date of disposition _____

E. ADMINISTRATIVE RELIEF

- 1) Have you presented all grounds for relief raised in this complaint by way of BP-9, BP-10, and BP-11 grievances? Yes No .
- 2) If your answer to (1) is "Yes", state the date of disposition, result and reasons given for the administrative decision _____

- 3) If your answer to (1) is "No", list each ground not fully presented through the administrative grievance process and explain why it was not _____

- 4) Describe all other procedures you have used (such as tort claim or Parole Commission administrative appeals procedures) to exhaust administrative remedies as to each issue raised. _____

F. REQUEST FOR RELIEF

- 5) I believe that I am entitled to the following relief:

Signature of Attorney (if any)

Signature of Petitioner

(Attorney's full address and telephone number)