

United States District Court Western District of Michigan



FILING YOUR LAWSUIT IN FEDERAL COURT

** This handbook is not for use by prisoners **

Prepared by the Office of the Clerk
United States District Court
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So You Want to File a Federal Lawsuit Without a Lawyer?

You may file a federal lawsuit without a lawyer. However, before choosing to do so, you should consider a number of things. First, you should know that you will be expected to follow all laws governing procedure in the federal courts, including the Federal Rules of Civil Procedure and the Local Rules of the Western District of Michigan. Both the Federal Rules and the Local Rules are available on the Court's website at http://www.miwd.uscourts.gov/rules_opinions.htm. It is likely that a number of other laws and regulations will apply to your particular case, and you will need to ensure that you comply with the requirements of those laws as well. Second, neither the Court nor the Clerk's Office can give you legal advice or "coach" you. This Handbook is designed to provide you some guidance in understanding how to proceed, but it is not intended to be comprehensive. Third, this Handbook is designed as a guide for persons proceeding without a lawyer *with the exception of prisoners. Prisoners should not use this Handbook, but must follow the instructions provided on the forms specifically designed for prisoner civil rights actions and habeas corpus proceedings. Those forms are available at most prisons and may also be found on the Court's website at http://www.miwd.uscourts.gov/court_forms.htm.*

The Different Courts in Michigan

You may be aware that there are both federal and state courts. In Michigan, state courts are divided by county, and enforce state and municipal laws. Each Michigan county has a *circuit* court, which decides issues brought under the laws of the state, such as family disputes, probate matters, broken contracts and actions brought under the state constitution. In addition, every city has a *district* court, which decides municipal matters, such as traffic tickets, landlord-tenant matters, and zoning matters. Although the Michigan state courts must enforce the federal constitution and laws, most of the cases they decide involve the constitution and laws of the state.

Federal courts were established by the United States government to decide disputes concerning the United States Constitution and laws passed by Congress and to decide certain disputes between residents of different states. The state of Michigan has two federal courts, the Eastern District of Michigan and the Western District of Michigan. The Eastern District covers the eastern half of the lower peninsula. The Western District covers the rest of the state. A map of the Western District of Michigan can be accessed at http://www.miwd.uscourts.gov/GENERAL/map_of_counties.htm.

The Types of Civil Cases Filed in the U.S. District Court

There are three types of civil cases that may be filed in the United States District Courts:

1. Cases where the United States government is a party.

The federal government and its agencies are subject to suit only when an Act of Congress (called a "statute") allows them to be sued. When Congress has authorized suit, the statute generally directs that the case must be brought in the federal district court. Examples of such lawsuits are claims for review of administrative decisions denying social security benefits or cases for personal injury or property damage brought against the United States for the negligent act of a federal employee.

2. Cases brought under the federal Constitution or statutes.

The United States District Court is limited to hearing the specific types of cases described in the Constitution or specifically provided for by Congress. Congress has passed statutes allowing a person to sue for violation of federal rights, including laws forbidding discrimination on the basis of race, gender, age or disability, violation of civil rights, and violation of employment rights. Generally, a person suing for violation of rights created by a federal statute may sue in either state or federal court, except in those few instances where Congress has said that the case may only be filed in federal court. Whether you decide to sue in state or federal court, you should identify in your complaint the precise statute that gives you the right to bring suit.

The District Court also has authority to hear cases brought against a federal officer for alleged violation of a person's constitutional rights. In such a case, the officer, and not the United States government, is the appropriate defendant. Such cases may only be brought in federal court and not in state court.

3. Cases where the parties reside in different states.

Most cases involve state law and must be brought in the state courts. The major exception is when the case involves more than \$75,000 in claimed damages and plaintiffs and defendants are from different states. These matters are called "diversity cases." In a diversity case, if all defendants are of different citizenship from the plaintiff, and the case involves more than \$75,000, then the case may be brought either in state or federal court, even though it involves only state law.

4. Removal Jurisdiction

If a case is filed in state court, the defendant may remove it to federal court if the case could have been brought in federal court in the first place. Therefore, if you bring a case in state court, the defendant may choose to remove it to federal court if the case is against the federal government, or is brought under a federal statute, or falls within the court's diversity jurisdiction. The removal must be done in a timely manner and must conform to the requirements of the removal statute. If a case has been removed properly, it is thereafter treated as if it had been filed in federal court.

Filing in State or Federal Court

As noted above, in some circumstances you have the choice of filing suit in either state or federal court. There are practical differences between the state and federal court systems. In state court, the jury is selected from citizens residing in the county where the case was filed. In federal court, the jury is selected from citizens residing in the western half of the Lower Peninsula (in the Southern Division) or from the entire Upper Peninsula (in the Northern Division). Michigan's state courts are governed by different rules of procedure and have different time lines and fee schedules. It may be worthwhile to do some research to determine which court is better suited for your case.

Things You Should Know Before Filing a Lawsuit in Federal Court

If you decide to file your lawsuit in the U.S. District Court, you will need to file a complaint with the Clerk's Office. The judge will expect you to state your case clearly, follow our filing procedures, meet all of your deadlines, and follow all procedural rules.

There is a **filing fee of \$350.00** for most types of civil lawsuits. The fee must be paid at the time your complaint is filed. If you are unable to pay the filing fee, see page 5 (paragraph 4).

Rule 11 of the Federal Rules of Civil Procedure prohibits the filing of lawsuits that are clearly frivolous or filed simply to harass someone. If the Court determines that you have filed a lawsuit for an improper or unnecessary reason, it may impose sanctions against you, including ordering you to pay any legal fees of the party that you sued.

You should consider the consequences of losing your lawsuit. Under limited circumstances, the winning party may ask that you be ordered to pay his/her attorney's fees. The winning party also is entitled to seek certain costs incurred during a lawsuit. These costs can include things such as deposition transcripts, witness fees, copy work expenses, etc. In many cases, this can easily add up to thousands of dollars.

Obtaining Counsel

Litigants in civil cases, even if they are indigent, do not have a constitutional right to court-appointed counsel. Although Congress has appropriated funds to pay appointed attorneys in criminal cases, no such funds have been appropriated for civil cases. Therefore, the Court cannot generally appoint attorneys in civil cases, except in the presence of extraordinary circumstances. You should therefore do your best to find an attorney to represent you. Contacting one of the referral agencies listed below should assist you in this effort. Even if you have no money to pay attorney's fees, some lawyers may be willing to take a case on a contingency basis, which means you are responsible to pay legal fees only if you recover an award or settlement in the case. The Court does maintain a *pro bono* program, under which lawyers have volunteered to represent indigent parties in a limited number of cases. If you would like an attorney and cannot afford to hire one, you may file a motion with the Court requesting that the Court secure *pro bono* representation for you. In determining whether to grant your motion, the Court will review your financial situation, the merits of your case, its complexity, your efforts to find your own counsel, and your ability to present the case without the help of an attorney. Because of the limited availability of *pro bono* counsel, the Court will not be able to honor every request.

Legal Resources

If you can afford to hire an attorney, but do not know of any, you might consider contacting the State Bar of Michigan Lawyer Referral and Information Service at (800) 968-0738 or the Grand Rapids Bar Association Lawyer Referral and Information Service at (616) 855-0273. They will inform you of which Bar Association members practice the type of law you need assistance with.

If you cannot afford an attorney, but need legal advice, there are a number of agencies where you may receive assistance (see below). NOTE: Court and Clerk's Office staff CANNOT give you legal advice.

American Bar Association Lawyer Referral & Information Service	(312) 988-5000
Grand Rapids Bar Association Lawyer Referral & Information Service	(616) 855-0273
Legal Assistance Center (Kent County)	(616) 632-6000
Legal Services of Northern Michigan	
Escanaba	(906) 786-2303
Houghton	(906) 482-3908
Marquette	(906) 228-5620
Traverse City	(231) 941-0771
Sault Ste. Marie	(906) 632-3361
Legal Services of Western Michigan	
Big Rapids	(231) 796-4878
Grand Rapids	(616) 774-0672
Holland	(616) 394-1380
Kalamazoo	(269) 344-8113
Muskegon	(231) 726-4887
St. Joseph	(269) 983-6363
Senior Law Center	(269) 684-2920
Legal Services of South Central Michigan	(517) 394-3121
Legal Hotline for Michigan Seniors	(517) 372-5959
Michigan Indian Legal Services	
Lansing	(517) 316-0934
Traverse City	(231) 947-0122
Michigan League for Human Services	(517) 487-5436
Michigan Protection and Advocacy Service, Inc.	(517) 487-1755
State Bar of Michigan Lawyer Referral Service	(800) 968-0738

Legal Research

Wayne State University, the University of Michigan, Michigan State University College of Law, Thomas M. Cooley Law School and the University of Detroit Mercy Law School libraries are open to the public, though they will not allow you to check out materials unless you are a student. Some of the libraries mentioned

above may require that you fill out a form and show your state ID prior to using their facility. An online list of libraries may be accessed at <http://www.michbar.org/generalinfo/libraries/lib4.cfm>.

Certain college libraries have law-related collections, including Michigan State University, Western Michigan University, Grand Valley State University (Steelcase Library) and Northern Michigan University. These collections are not as extensive as most law school libraries.

The public libraries in Grand Rapids, Kalamazoo, Lansing and Marquette also maintain law-related collections.

What You Need to File With the Court

You will need to file with the Court, **the original complaint**, one copy for the judge, and one copy for each defendant. Keep a copy for your records. ALL COPIES MUST BE IDENTICAL TO THE ORIGINAL. You will also need to fill out additional forms, as explained below, which are available at any Clerk's Office (refer to page 8 for addresses), online at <http://www.miwd.uscourts.gov>, or at the links shown below. Note: These forms are fillable.

- 1) **Civil Cover Sheets** (2 copies): An information form used by the Court when opening your case. (<http://www.miwd.uscourts.gov/FORMS/Civil%20Cover%20Sheet%20JS44.pdf>)
- 2) **Summons** (2 summonses for each defendant): A form that lets people know you are suing them. (<http://www.miwd.uscourts.gov/FORMS/Civil%20Summons.pdf>)
- 3) **Filing fee** in the amount of \$350.00, payable to "Clerk, U.S. District Court."

Additional Forms (voluntary):

- 4) **Application to Proceed without Prepayment of Fees** (<http://www.miwd.uscourts.gov/FORMS/ao240.pdf>) -OR- **Affidavit of Financial Status** (<http://www.miwd.uscourts.gov/FORMS/ifpafdvt.pdf>): If you are unable to pay the filing fee of \$350.00, you may file one of these documents (an original and one copy) with your complaint. This is referred to as filing *in forma pauperis*. If the Court grants your request to proceed *in forma pauperis*, you will not have to pay the filing fee at the time your complaint is filed. Even if you have been granted pauper's status, you remain responsible for other costs of litigation, such as transportation, copying costs, court reporter fees and transcript costs.

IMPORTANT: The Judicial Conference Privacy Policy requires that documents filed with the Court must not contain certain "personal identifiers." **Social Security** and **financial account numbers** should not appear in papers filed with the Court. If it is absolutely necessary to refer to these numbers, use only the last four digits. The **names of minor children** should be limited to initials, and **dates of birth** should include only the year.

Preparing Your Complaint

The complaint is a document telling the Court whom you are suing, what your case is about and what you want the Court to do about it. If you prepare your own complaint, it must be legibly handwritten or typed. All pages should be on white 8½ x 11 inch paper. The first page of your complaint should include the name of the Court and the names and addresses of ALL parties involved. Subsequent documents you file do not need to include the addresses of all parties, but must include the case number and case caption (the name of the first plaintiff and defendant, for example, Tom Jones v. John Smith).

It is important that you make your complaint clear and understandable. The Federal Rules require that the complaint set forth (1) the grounds on which the Court's jurisdiction depends, and (2) a short, plain statement of the facts upon which the plaintiff relies as the basis for asking for relief. If the complaint fails to contain these two necessary requirements, the Court may dismiss the case. Therefore, your complaint should state, in numbered paragraphs, the type of claim you are asserting, why you believe this Court has jurisdiction over the matter, the facts of your claim, whether you demand a jury or not, and what relief you are seeking. It is not necessary to cite specific cases, and you should avoid "legalese." Write your complaint in concise, plain English.

Make certain to sign and date at the end of the complaint. Type or print your full name, address, phone number, and fax number (if available) below your signature. This information must appear below your signature at the end of the last page of every document you file.

Preparing the Summons Forms

The summons form is fairly simple to prepare. In the upper right corner of the form, after the word "TO," the name and address of the defendant being served should be inserted. **ONLY one party's** name and address can be listed on each summons. The Clerk's Office staff cannot issue a summons without the party's address information. **If you are suing more than one defendant, you must complete a separate summons for each defendant.** In the space that notifies the defendant of the number of days to file an answer, enter "21." **EXCEPTIONS:** If you are suing the United States government (such as the U.S. Post Office), enter "60" days. If the defendant is an agency of the United States and the complaint is brought under the Freedom of Information Act, enter "30" days. **NOTE:** The time for filing an answer begins the date the summons and complaint are served, not the date the summons is issued.

Are you Suing the U.S. Government?

You may only sue the federal government when a specific statute allows you to do so. According to the Federal Rules, when you sue the United States government, you will need to serve summonses on three separate parties. The three parties include:

- the head of the agency you are suing
- the U.S. Attorney in Grand Rapids
- the U.S. Attorney General in Washington

When suing a local office of a federal agency, you need to serve that office's headquarters, usually in

Washington, D.C. For example, if you were injured at a local post office, you would actually serve the Postmaster General in Washington, D.C., *not* the local post office.

Your summonses should be directed to:

- 1) Office of the Attorney General
Department of Justice
10th & Pennsylvania Ave., N.W.
Washington, D.C. 20530
- 2) United States Attorney
5th Floor Law Bldg.
330 Ionia Ave., N.W.
Grand Rapids, MI 49503
- 3) The head of the federal agency that you are suing. Some frequently named defendants include the following (you would only select one unless you are suing more than one agency):

Office of Regional Chief Counsel - Region II
Social Security Administration
26 Federal Plaza, Room 3904
New York, NY 10278

U.S. Postmaster General
475 L'Enfant Plaza, S. W.
Washington, D.C. 20260-0010

Secretary, Department of Treasury
1500 Pennsylvania Ave., N.W.
Washington, D.C. 20260-0010

If you need an address not listed above, you can obtain assistance from the Federal Citizen Information Center at (800) 688-9889. Assistance is also available online at <http://www.firstgov.gov>.

If you are suing a federal officer individually, the summons and complaint must be served on the officer himself or herself, and not on the federal agency by which the officer is employed.

Filing Your Case

These instructions do not cover all circumstances, nor all types of cases. It is your responsibility to comply with the Federal Rules of Civil Procedure, the Local Rules of the Court, and any statutes and rules that may apply to your particular case. Note: If you are filing a prisoner civil rights action under 42 U.S.C. Section 1983, a habeas corpus petition under 28 U.S.C. Section 2241 or Section 2254, or a motion to vacate or set aside sentence under 28 U.S.C. Section 2255, there are special forms and instructions available from the Clerk's Office or online at <http://www.miwd.uscourts.gov>.

When your paperwork is completely filled out, you may file it with the U.S. District Court Clerk's Office (see the addresses below). You may file the paperwork in person or by mail.

399 Federal Building (headquarters)
110 Michigan Street, N.W.
Grand Rapids, MI 49503
(616) 456-2381

B-35 Federal Building
410 W. Michigan Avenue
Kalamazoo, MI 49007
(269) 337-5706

113 Federal Building
315 W. Allegan Street
Lansing, MI 48933
(517) 377-1559

229 Federal Building
202 W. Washington
Marquette, MI 49855
(906) 226-2021

The **\$350 filing fee** must be paid at the time your complaint is filed (unless you are filing an Application to Proceed without Prepayment of Fees or an Affidavit of Financial Status). If you are paying by check or money order, please make the check payable to **“Clerk, U.S. District Court.”**

A deputy clerk will sign and seal your summons forms, return the summons forms to you, and open your case. Opening your case includes: assigning a case number and judge, file-stamping your documents, entering basic information on the court's computerized docket system, and making a paper case file folder. Once your case is opened, it will be forwarded to the assigned judge for review. A judge may require you to supplement your complaint with additional information.

Once your case is opened, everything you receive from the Court regarding your case will have the case number on it. Also, everything you send to the Court (after the complaint) must include the case number and case caption (the name of the first plaintiff and defendant, for example, Tom Jones v. John Smith).

Serving the Defendants

To enable the Court to exercise jurisdiction over a defendant, the defendant must be “served with process.” Rule 4 of the Federal Rules of Civil Procedure explains the ways in which you can accomplish service of process on a defendant. If you have been granted leave to proceed *in forma pauperis*, the Court will arrange for service of process—you are not required to do anything in this regard. If you are not proceeding *in forma pauperis*, you must serve the summons, along with a copy of your complaint, on each defendant in one of the ways allowed by Rule 4. One of the allowable ways is to serve the summons and complaint by mail (certified with restricted delivery). You must file with the Court a “return of service” stating when and how service was made. The time in which the defendant must respond to the complaint begins on the date the summons and complaint are properly served on that defendant, not on the date the summons is issued.

After Service is Made

Once a defendant has been served, the defendant has several options: the defendant may file an answer, the defendant may file a motion, or the defendant may do nothing. If there is more than one defendant, a combination of these things may occur.

If the defendant files an *answer*, the judge assigned to the case will issue a case management order (also referred to as a scheduling order). This order is entered only after the judge conducts a scheduling conference in court with the parties, or at least seeks your input in writing. A case management order sets deadlines for completing or filing certain things in a particular case. It may include deadlines for completing discovery, filing motions, or making disclosures to the opposing party. Most case management orders also set trial dates. The parties are responsible for adhering to all the requirements of the case management order; a case may be dismissed if a plaintiff fails to abide by the order without a good reason for doing so.

If the defendant files a *motion*, the motion typically will be decided before the complaint is answered and a scheduling conference is set. If the defendant *files nothing* within the time allowed for filing a response to the complaint, you may request entry of default under Federal Rules of Civil Procedure 55.

Discovery

Discovery is the process of obtaining relevant information from the opposing party or from nonparty witnesses. Discovery is allowable in most civil cases, but not in social security appeals. The process of discovery is governed by Rules 26 through 37 of the Rules of Civil Procedure, as well as the orders of the Court. The case management order will contain a deadline for the completion of discovery. There are many different ways to obtain discovery. The most common ways include:

- interrogatories (written questions to the opposing party)
- requests for production of documents from the opposing party
- depositions (a recorded questioning of a party or a potential witness under oath)

If your case involves discovery, here are some things you should know:

- Make discovery requests promptly, so the party to whom the discovery is directed has sufficient time to answer or object before the discovery deadline.
- Respond to any discovery requests you receive. A party who does not respond to a discovery request may be subject to sanctions.
- Do not send copies of discovery requests and answers to the Court, unless you are directed to do so by the Court.
- Keep copies of all discovery records.

After Your Complaint is Filed

After you file the complaint, you should not send communication regarding your case directly to any judge. If you want to ask the Court to order something, you should file a motion. All pleadings and motions must be filed with the Clerk's Office.

When submitting a motion, you must file the original and one copy. There are no motion fees. Every motion, unless uncontested, must be supported by a brief. Local Civil Rule 7 governs motion practice. You must comply with the requirements of this rule, including the limitations established for length of briefs.

You must sign every pleading, motion, and brief that you file. If more than one party is representing himself or herself in a particular case, each party must sign each pleading, motion or other paper submitted on behalf of that party. You may not sign on behalf of any other party. If a party is a corporation, it must be represented by an attorney.

Any pleading, motion or other paper that you file with the Court must be served on all other parties. This means that if you file any paper with the Court, you must make a copy of that paper for each opposing party and mail it to the attorney representing each defendant or directly to the defendant, if there is no attorney. It is important to include a **certificate of service** on anything you file after your complaint, stating under oath **when you mailed copies and to whom they were sent**. Except for initial service of process by the Marshal for indigent parties, service of copies on opposing counsel is the sole responsibility of the litigant. Even if you have been granted leave to proceed *in forma pauperis*, the Court cannot serve your papers for you, make free copies on your behalf, or pay mailing costs for you.

You must notify the Court and all parties, in writing, of any change in your address. Failure to do so may result in dismissal of your case.

Subpoenas are required whenever you intend to have someone appear at a hearing or trial, attend a deposition or produce documents for inspection. Pursuant to Rule 45(a)(3), "The clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service."

Upon issuance of a subpoena, the clerk will provide the requesting party with a notice regarding service requirements of the subpoena. Keep in mind that even upon successful completion of service, any party served with a subpoena has the right to challenge the authority of the subpoena by filing a motion to quash with the appropriate court. The judge will determine whether or not the subpoena should be enforced.

Filing An Appeal

You may appeal a final decision of this Court to the United States Court of Appeals for the Sixth Circuit. Refer to Rule 4 of the Federal Rules of Appellate Procedure for the time limits for filing an appeal.

The filing fee for an appeal is \$455.00. If you cannot afford to pay the filing fee, you may file a motion for leave to proceed *in forma pauperis* on appeal.

To file an appeal, you must file with the U.S. District Court Clerk a Notice of Appeal (http://www.miwd.uscourts.gov/FORMS/Notice_Of_Appeal_Pro_Se.pdf) along with one copy.

Additional Information

The Clerk's Office is open Monday through Friday from 8:30 a.m. to 4:30 p.m, and closed on federal holidays. For additional information, refer to the Court's website at <http://www.miwd.uscourts.gov>.

Both the Federal Rules of Civil Procedure and the Western District of Michigan Local Court Rules are available on the Court's web site at http://www.miwd.uscourts.gov/rules_opinions.htm.

Public terminals are available at the Clerk's Office for reviewing documents filed in a case. Public Access to Court Electronic Records (**PACER**) is an electronic public access service which is available for a fee to obtain case information from federal courts. See <http://pacer.psc.uscourts.gov> for further information.