

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF ALABAMA



PRO SE LITIGANT HANDBOOK

This is an informational handbook. This handbook is a guide for self-represented litigants. It is not legal advice. Do not cite to this handbook in your filings with the Court. This handbook is not legal authority. Do not contact the Clerk's Office with inquiries about this handbook. The Court will not answer questions about the handbook's content or how it may pertain to your case. You are strongly encouraged to consult with an attorney to answer questions about this handbook as it relates to your case.

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INTRODUCTION

This Handbook is designed to assist you if (i) either you want to file a lawsuit in federal court or you are a party (*i.e.*, a plaintiff or a defendant) in a case that has already been filed in federal court; and (ii) you have elected to proceed without assistance of a trained and licensed attorney. This Handbook is **not** intended for prisoner litigation, and some parts of it do not apply to actions filed by incarcerated or detained persons.

Most litigants in federal court are represented by attorneys who are trained in the law and familiar with federal rules and procedures. Proceeding without a lawyer is called proceeding *pro se*, a Latin phrase meaning “for oneself.” Representing yourself in federal court can be complicated, time consuming, and costly. Failure to follow court procedures can mean losing your case. For these reasons, you should carefully review the risks associated with self-representation, and you are strongly encouraged to work with a lawyer if possible.

Do not rely exclusively on this Handbook. **THIS HANDBOOK IS MEANT TO BE USED FOR INFORMATIONAL PURPOSES ONLY. IT DOES NOT CONSTITUTE LEGAL ADVICE.** This Handbook provides a general overview of civil lawsuit procedures and may not cover all procedures that may apply in your case. It also does not describe the laws that will control your case. You are responsible for learning about the applicable law and following court procedures. Make sure you read the federal and local court rules and do your own research at a law library or online to understand your case.

Clerk’s Office staff can answer general questions, but they cannot give you legal advice. For example, they cannot help you decide what to do in your lawsuit, tell you what the law means, or even advise you when documents are due. In addition, the judges of this Court cannot give you legal advice since they will ultimately be charged with ruling on motions submitted by the parties and with conducting the trial of the case with or without a jury.

CAUTION: Rule 11 of the Federal Rules of Civil Procedure prohibits the filing of lawsuits that are clearly frivolous or brought merely to harass someone. If after reviewing your complaint, the Court determines that you have filed a lawsuit for an improper or clearly unnecessary purpose, it may impose sanctions against you, which may include ordering you to pay a fine or pay the legal fees of the person(s) against whom you filed the lawsuit. In certain types of cases, such as employment discrimination cases, if you lose, you may be required to pay the legal fees of the winning party. In all cases, if you lose, you may be required to pay some of the costs the winning party incurred in the course of the lawsuit.

Chapter 1 Tips For Pro Se Litigants

There is a lot to learn in representing yourself in federal court, but here are some key pointers.

1. Read everything you receive from the Court and the other side right away.

This includes the papers you get from the Clerk's Office when you file. It is very important that you know what is going on in your case and what deadlines have been set.

2. Meet every deadline.

If you do not know exactly how to do something, try to get help and do your best. It is more important to file/submit required documents and responses on time, than to do everything perfectly. You can lose your case if you miss deadlines. If you need more time to do something, ask the Court in writing for an extension as soon as you know that you will need more time and before the deadline has passed.

3. Use your own words and be as clear as possible.

Do not try to sound like a lawyer. Using plain English, explain your claims and your arguments. In documents you file with the Court, be specific about facts that are important to the lawsuit. If you cite a case that you believe supports your position, explain why that case applies or is helpful to your case.

4. Keep all of your paperwork and stay organized.

Maintain paper or electronic copies of everything you send to and/or file with the Court. Also, keep everything you receive from the Court, the other side, or anyone else relating to your case. When you file a paper in the Clerk's Office, bring at least the original and two copies so that you can retain a stamped copy for yourself. Know where your papers are located so that you can use them to work on your case.

5. Have someone else read your papers before you submit/file them.

Be sure that person understands what you wrote. If not, rewrite your papers to explain yourself more clearly. The judge may not give you an opportunity to appear in person and may rely only on your papers when making decisions in your case.

6. Be sure the Court always has your correct address and phone number.

If your contact information changes, notify the Clerk's Office in writing immediately. Always include your case number on any paperwork that you submit to the Court. Also, include your email contact information.

7. Omit certain personal identifying information from documents submitted to the Court for filing.

Ordinarily, documents filed with the Court will be available to the public on the Internet. Protect your privacy and that of other individuals by not including in documents you send to the Court any of the following: social security and taxpayer identification numbers, names of minor children, dates of birth, and financial account numbers. If your lawsuit involves a minor, you must identify that individual by his or her initials only.

Chapter 2 Before Filing A Lawsuit

You should consider many important questions before you file a case in federal court. This list does not cover every potentially significant factor. Other important considerations may not be listed here. However, these questions are essential to every lawsuit filed in federal court.

1. **Have I explored alternatives to suing?**

Even if you do have the right to sue, you should carefully consider the alternatives. Lawsuits can be costly, stressful, and time-consuming. Instead of filing a lawsuit, you can try other alternatives or solutions. Some alternatives to bringing a lawsuit include:

a. **Gathering Information.** Sometimes things are not what they seem at first.

Sometimes things that appear to have been done on purpose were done unintentionally. Fully investigating what happened may help you decide whether a lawsuit is advisable.

b. **Working Things Out.** Consider talking directly to the people who you think might be responsible for the problem. Sometimes people respond in a more positive way if they are approached respectfully and given a real opportunity to talk about the issue, rather than if they first hear from you through a lawsuit.

c. **Going to Governmental or Private Agencies.** Consider whether there are other processes you could use, or agencies you could ask for help, with your problem. Sometimes a governmental or private agency can address your problem or lend assistance to you. Examples of such agencies include:

- The Equal Employment Opportunity Commission to address employment discrimination;
- The local police review board or office of citizens' complaints to hear complaints about police conduct;

- A consumer protection agency or the local district attorney's office to investigate consumer fraud;
- The Better Business Bureau or private professional associations (e.g., associations of contractors, accountants, securities dealers, architects and engineers, etc.) to hear business-related complaints.

d. **Using a Small Claims Court.** You may have the option of filing a case in small claims court, which is designed for people without formal training in the law. These courts are part of the state court system. No equivalent to small claims court exists in the federal court system.

e. **Alternative Dispute Resolution.** Dispute resolution services – such as mediation – may be faster and less expensive than taking a case to court.

Mediation encourages parties to communicate clearly and constructively to find common ground and to identify solutions that can serve the parties' real interests without the burdens of litigation.

2. **Have I suffered the type of injury or harm that a Court can help me with?**

You cannot sue someone just because you are angry at him or her, nor can you sue someone simply because he or she has committed some illegal act. In order to bring a lawsuit that the Court will not dismiss right away, the person you are suing must have caused you harm or wronged you in some real, concrete way.

The person bringing the lawsuit, called the "plaintiff," must be asserting his or her own personal legal interests. Typically, a person may not sue to assert the rights of someone else. In other words, a plaintiff normally must assert that he or she has suffered the injury, or that a distinct group of individuals of which he or she is a part, has suffered the injury. Courts typically will not address a "generalized grievance," which is an injury that is shared in "substantially equal measure by all or a large class of citizens." Further, the plaintiff must have suffered the

harm already, or else the plaintiff must be about to suffer the harm “imminently,” meaning that the plaintiff will actually suffer the harm in the immediate future.

3. Does the federal district court have jurisdiction to hear my claim?

The United States District Court is a federal trial court. Federal courts have “jurisdiction,” meaning legal authority, to hear only certain types of cases. As with all federal trial courts, this Court is generally authorized only to hear cases that fall into the following categories:

- a. Those that deal with a question involving the United States Constitution;
- b. Those that involve questions of federal law (as opposed to state law, unless there is a state law claim related to a federal claim being made, in which case the court may agree to consider it);
- c. Those that involve the United States as a party, whether as a plaintiff or defendant;
- d. Those that involve a dispute among residents of different states with an amount in controversy exceeding \$75,000. If there are multiple defendants or multiple plaintiffs, then this type of federal jurisdiction does not exist unless every single plaintiff is a citizen of a different state than every single defendant.

If your case does not lie within any of these categories, then you should not file it in federal court because it will be subject to prompt dismissal for lack of jurisdiction.

4. Which District is the proper one to file my action?

If you decide a federal district court may have jurisdiction over your claim, then you must identify a proper federal court in which to file. The court you select must have venue, meaning a logical relationship to the subject matter of the dispute. Generally, you may only file a lawsuit in this Court if the actions or omissions that you believe violated your rights occurred within the boundaries of the Southern District of Alabama. Counties in the Southern

District of Alabama are: Baldwin, Choctaw, Clarke, Conecuh, Dallas, Escambia, Hale, Marengo, Mobile, Monroe, Perry, Washington, and Wilcox Counties.

5. Will my claim be timely if I file it now?

Usually a claim must be filed within a certain period of time after an injury occurs or is discovered. This time bar is called the “statute of limitations,” and the length of that period varies depending on the type of claim. Whether your claim is barred by the statute of limitations is a legal question that may require research. You should make sure your claim is not time-barred before you file a lawsuit.

6. Have I exhausted all other available remedies?

In some circumstances, you may be required to pursue certain remedies outside of court **before** you can properly proceed in federal court. Two common instances are discussed below.

a. Administrative Grievance Procedures

People frequently want to appeal the decision of a governmental agency that affects them. For example, a person may want to appeal a decision of the Social Security Administration that denied him or her social security benefits.

If you want to appeal the denial of a benefit that is provided through an agency of the United States government, you must pursue all administrative procedures established by the agency for appealing its rulings before you file a lawsuit. Only after you have exhausted those administrative remedies, and you still believe you are entitled to a benefit that you have not received, may you initiate a lawsuit in a federal court.

b. Employment Discrimination Claims

A person who believes he or she has been illegally discriminated against by an employer may wish to bring a lawsuit against that employer under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, or the Age Discrimination in Employment Act.

However, before a person can bring such a lawsuit, he or she typically must first file a complaint with the Equal Employment Opportunity Commission and obtain a right-to-sue letter.

It is important to consider all of these questions before you file a case. You must also follow the procedures set out by the particular district court in which you decide to file your case. Many of the specific procedural rules for this District Court are set forth in the Local Rules, which are available on the District Court's website or in the Clerk's Office.

Chapter 3 Finding An Attorney

Bringing a lawsuit can be time consuming and complicated. While it is possible to navigate the federal judicial system on your own, having an experienced attorney may improve your chances of doing things properly and getting a favorable result. Some cases (such as False Claims Act claims) cannot be handled without an attorney. While retaining a lawyer can be expensive, there are several options for hiring a lawyer that will cost you little or no money. Those options include: (1) hiring a lawyer who will work on a “contingency” basis; (2) finding a lawyer to take your case “pro bono” (meaning at no cost to you); and (3) requesting a court-appointed lawyer.

It is important to note that in a criminal case, a defendant is entitled to legal counsel by the United States Constitution, and one is provided if the criminal defendant is unable to hire a lawyer. However, a party to a civil case is not entitled to an attorney paid for by the government, even if he or she cannot afford one. You may file a motion requesting that an attorney be appointed for you in a civil case. That appointment decision is in the discretion of the Court, and counsel is only appointed in a few select cases where attorney representation seems particularly necessary. Generally, the Court has no funds to pay appointed counsel.

Some attorneys may be willing to accept your case on a contingency basis, meaning the attorney would receive a fee based upon a percentage of your recovery if you win, and the attorney would get nothing if you lose. In some kinds of cases, the law includes provisions requiring the other side to pay your attorney’s fees should you win your case.

Most attorneys who work on a contingency basis screen cases carefully before agreeing to accept them. If an attorney rejects your case, reasons for that decision could be based on considerations such as: (1) there may be no merit to your case; (2) you may not be able to prove that anyone is liable for the wrong done to you; (3) the wrong done to you may

not be severe enough to warrant substantial monetary damages; (4) you may have no witnesses; or (5) your witnesses may not be believable.

If you would prefer to have an attorney represent you but are unable to find one who is willing to take your case on a contingency basis, and if you cannot afford to pay high hourly attorney fees, then you may wish to consider contacting the following services for assistance in locating an attorney to represent you:

- Legal Services Alabama – (251) 433-6560
<https://legalservicesalabama.org>
- Alabama State Bar Lawyer Referral Service – (800) 392-5660
<https://www.alabar.org/lrs-form/>
- South Alabama Volunteer Lawyers Program – (251) 438-1102
www.savlp.org

If you are unable to find an attorney to represent you or if you do not wish to be represented by an attorney, you have the right to pursue your claims in federal court by appearing without representation, or *pro se*. Under the law, you cannot speak for another person, a company, or other entity such as a club or association that includes other individuals. When you appear *pro se*, you must follow the same rules and procedures that licensed attorneys practicing in this Court must follow. Generally, judges hold *pro se* litigants to the same standards of professional responsibility as trained attorneys.

Chapter 4 Resources For Researching Federal Law And Procedures

Before you bring a lawsuit, you should become familiar with Federal Rules of Civil Procedure, which set forth the general procedural requirements for litigating cases in federal court. You should also familiarize yourself with the Federal Rules of Evidence, which are used in determining what evidence may be properly considered in your case. Also, federal laws can be found in the United States Code, which is often abbreviated as “U.S.C.” or “U.S.C.A.” Each of these publications may be accessed on the Internet, free of charge, at (for example) the following website addresses:

- Federal Rules of Civil Procedure - <https://www.law.cornell.edu/rules/frcp>
- Federal Rules of Evidence - <https://www.law.cornell.edu/rules/fre>
- United States Code - <https://www.law.cornell.edu/uscode/text>

All litigants must also follow this District Court’s Local Rules, which apply specifically to federal court proceedings in the Southern District of Alabama. You can access the Local Rules on the Internet, free of charge, via the following website address:

- <https://www.alsd.uscourts.gov/sites/alsd/files/local-rules.pdf>

Some public libraries have computers with Internet services that may be available to you for reviewing these resources if you do not otherwise have Internet access.

Chapter 5 Basic Procedures For Filing A Lawsuit

Preparing the Complaint

The first step in filing a lawsuit is to prepare a complaint. Please refer to Appendix A for the proper format of a complaint. The complaint outlines a problem or reason for the lawsuit, also known as a “cause of action.” If you choose to prepare your own complaint, the following information should be included.

1. **Caption**

A complaint caption or heading specifies the District Court in which the suit is brought and the names of the parties. The top of the first page should contain the case caption, which includes the name of the Court, the names of all parties, and a blank space for the case number. The case number will be assigned once the complaint is filed with the Clerk’s Office. The case caption should appear as shown in Appendix A.

In certain kinds of cases, the parties are entitled to a jury trial. If you want a jury trial, instead of a judge alone deciding your case in a bench trial, then the best way to exercise your right to a jury trial is to make the demand by writing the words “Jury Trial Demanded” on the first page of your complaint.

2. **Body of the Complaint**

The body of the complaint should contain numbered paragraphs which provide the following information.

- a. **Jurisdiction.** The complaint must include a short and plain statement showing why the Court has jurisdiction over the case. As discussed previously, federal courts have limited authority to hear cases. They can only hear cases over which the district court has jurisdiction. *Pro se* litigants often file the following types of federal cases: denial of civil rights under 42 U.S.C. § 1983; employment discrimination under 42 U.S.C. §§ 2000e, *et seq.*; and inmates

challenging the conditions of their confinement. The first numbered paragraphs should also state why the court you are filing in is a proper “venue” for your claim (*i.e.*, that this District Court has a sufficient connection to the dispute).

b. **Numbered paragraphs.** The complaint must contain a short and plain statement of the claim showing that you are entitled to relief. This statement is presented in the form of numbered paragraphs identifying those facts that are alleged to have caused the damage claimed. These factual allegations should be concise and clearly written. There should be a separate numbered paragraph for each factual allegation. These paragraphs should specify in some detail: (i) the act of misconduct; (ii) the date on which the misconduct occurred; (iii) the names of each individual who participated in that misconduct; (iv) the location where the alleged misconduct occurred; and (v) the connection between the misconduct and your causes of action. The statement of facts should include a description of what each defendant did or failed to do and how those acts or omissions caused injury or damage to you, as well as a description of any injury you sustained and what medical treatment, if any, was required. It is important to be specific in stating these facts. Names, dates, and events should be described in a way that is accurate and to the point. Failure to allege facts demonstrating that each defendant was personally involved in and/or responsible for the alleged harm may result in dismissal of that defendant from the case. In short, these numbered paragraphs must state the facts supporting the claim: what happened, where it happened, when it happened, how it happened, and who was involved.

c. **Legal basis.** The complaint must also state the legal basis for the claim. This would include a description of how you believe the defendant(s) violated your rights, and a statement of which of your legal rights you believe the

defendant(s) violated. If you are filing your lawsuit on the basis that the defendant violated a law, then you must identify that law in your complaint.

d. **Relief sought.** The complaint must include a demand for judgment that states or describes the relief being sought. You must state what you wish the Court to do. This could include requesting an award of money damages or an order prohibiting particular conduct, directing that certain action be taken, and/or directing something you want to happen to correct the situation. This information is contained in a closing or final paragraph, which is not numbered (note: this is the only paragraph in the complaint that is not numbered), outlining the relief you are requesting from the Court.

e. **Signature.** The individual(s) filing the complaint must sign and date it, and underneath the signature(s), type or print their full names, addresses, and phone numbers. (Your signature, address and telephone number must appear on every document you file with the Court.) If there is more than one plaintiff, the complaint must contain an original signature for each plaintiff. By signing the complaint, you are certifying to the Court that the statements you have made in the complaint are true, and that you are not filing the complaint for an improper purpose such as to harass the defendant(s).

Filing the Complaint

Once you have prepared the complaint, you must file it by either hand-delivering or mailing it to the District Court Clerk's Office. The Clerk's Office mailing address and telephone number are as follows:

**United States District Court
155 St. Joseph St.
Mobile, AL 36602**

(251) 690-2371

You are required to follow these procedures regarding copies of the complaint, filing fees, the civil cover sheet and the summons forms.

1. Copies

You must file the original complaint with the Court and provide the Court with a copy for each defendant you name. If the defendant is the United States, an agency of the United States, or an officer or employee of the United States who is being sued for acts or omissions related to his/her employment, you must provide the Court with three (3) copies of the complaint. You should also keep a copy of the complaint for your records.

2. Filing Fees

Generally, you must pay a filing fee in full at the time you file your complaint. The Fee Schedule is available on the District Court's website (www.alsd.uscourts.gov), or in the Clerk's Office. This fee may be paid in cash, or by personal check or money order made payable to Clerk, U.S. District Court. If you are unable to pay the filing fee, then you must submit an application to proceed *in forma pauperis* (as discussed below), along with your complaint.

3. Civil Cover Sheet

In addition to the complaint, you must also complete a Civil Cover Sheet. This form helps the Clerk's Office open your case and gather statistical information. A copy of this form may be found in Appendix B. The form is also available on the District Court's website (www.alsd.uscourts.gov) or in the Clerk's Office.

Complete the form as best as you can. If you do not know how to provide some of the information required, then leave the space for that information blank. Note that the Civil Cover Sheet contains instructions for completing the form on the second page.

4. Summons

All plaintiffs who do not follow the "waiver of service" process discussed below must complete and submit a summons form for each defendant at the time the complaint is filed.

A copy of the summons form may be found in Appendix C. The form is also available on the District Court's website or from the Clerk's Office. Do not complete the Proof of Service portion of the summons form until service of process has been completed. After you complete the form, the Clerk's Office will officially issue the summons, which means that an authorized court employee will sign the form and emboss it with the official seal of the Court.

5. Filing

While you may file your complaint by mail or in person at the Clerk's Office, most filing in federal court is done using an electronic system called CM/ECF (Case Management / Electronic Case Files). A judge may order that you use CM/ECF to understand what is happening with your case and to file documents. Members of the public can gain access to this system using PACER (Public Access to Court Electronic Records). Please contact the Clerk's Office to obtain information about how to access court orders and documents filed by other parties, print, and download documents. You may also request that the Court grant you filing privileges on the CM/ECF system.

Proceeding In Forma Pauperis ("IFP")

If you cannot afford to pay the filing fee, you may request to waive the fee by filing a motion to proceed without prepayment of fees, also known as proceeding *in forma pauperis*. The Clerk's Office will accept your case without payment of the fee if, at the time you file the complaint, you also file a motion to proceed without prepayment of fees.

The Motion to Proceed without Prepayment of Fees form may be found in Appendix D. It is also available on the District Court's website or from the Clerk's Office. The form requires detailed information about your (and your spouse's) finances (e.g., income, assets and liabilities). You must inform the Court how you pay for life's basic necessities if you have not otherwise stated that information fully in your answers to the questions on the form. You

must answer all questions truthfully and completely. You must also sign the statement under penalty of perjury. The completed form must be filed with the Clerk's Office.

If your motion is granted, the Court will review your complaint to determine if all, or any, of your claims should be allowed to go forward. If the Court determines, based upon the facts stated in your complaint, that your case will not be successful (e.g., you fail to state a claim upon which relief may be granted, your lawsuit is frivolous or malicious, or the named defendant is immune from money damages), the Court may dismiss your case at that stage, prior to service of process, or possibly later. The Court can also dismiss your complaint at any time after IFP status is granted if the Court determines that your allegation of poverty was untrue.

If after conducting a preliminary review of the complaint, the Judge finds that the complaint states a claim upon which relief may be granted, the Judge will direct the Clerk's Office to arrange for service of the complaint and summons on the defendant(s). In all instances except waiver of service (as discussed below), you are responsible for completing and providing the Clerk's Office with the appropriate service forms, including a copy of the complaint for each defendant, and a summons form for each defendant. Once the forms are properly completed and filed, the Clerk's Office will issue the summons and arrange for service to be attempted on your behalf. You will be notified when service has been accomplished.

Even if you are allowed to proceed IFP, you may still be required to pay other costs associated with litigating your case. If, for example, you need copies of original documents in your case file, you will be charged the standard rate of 50 cents per page. If you choose to make the copies yourself, you may use the Court's copier at a rate of 25 cents per page, or print electronically available copies at 10 cents per page. Other expenses you may incur include the costs of preparing and copying papers you file with the Court, and delivering a

copy of each paper to the opposing party to satisfy service requirements. You may also be responsible for witness fees if your case goes to trial.

Service of Process

“Service of process” is the procedure that officially notifies a defendant that a lawsuit has been filed against him, her or it. When “served,” the defendant receives a copy of the complaint so that the defendant knows what the lawsuit is about. Further, the summons provides notice as to when the defendant must respond to the complaint. You must either obtain a waiver of service from each defendant or serve each defendant within 90 days after the complaint has been filed. Detailed instructions for service of process may be found in Rule 4 of the Federal Rules of Civil Procedure. If the service of process requirements are not followed correctly, then your case may be dismissed. The most common methods of service of process are described below.

1. Waiver of Service

“Waiving service” means agreeing to give up the right to service in person and instead accepting service by mail. If a defendant waives service, you will not have to go to the trouble or expense of serving that defendant. Instead, you will simply have the defendant sign and return a form called a “waiver of service,” which you then file with the Court. To complete the “waiver of service” process, you must complete two forms and send certain documents to the defendant(s). The two forms you need to complete are:

- a. “Notice of a Lawsuit and Request to Waive Service of Summons”
- b. “Waiver of Service of Summons.”

These forms may be found in Appendix E and F, respectively, and are also available at the Clerk’s Office and on the District Court’s website.

The documents you need to send to each named defendant are:

- c. A copy of the complaint;

- d. One completed Notice of Lawsuit Form;
- e. Two completed Waiver Forms; and
- f. One self-addressed stamped envelope (for the defendant's return of the Waiver Forms).

If a defendant sends back the signed waiver of service, you do not need to do anything else to serve the defendant. You simply need to file the defendant's signed waiver with the Court and save a copy for your files. If the defendant does not return a signed waiver of service by the due date, you need to arrange to serve that defendant in one of the other ways approved by Rule 4 of the Federal Rules of Civil Procedure.

2. Service of Summons and Complaint.

If you do not obtain a waiver of service, then you must direct someone else to deliver or serve a copy of the complaint and summons on the defendant. The most common methods for effecting service are either (i) certified mail with a return receipt, or (ii) personal service.

"Personal service" means that the summons and complaint are hand-delivered to the defendant. You, as the plaintiff, CANNOT personally serve the defendant. However, another person can personally serve the defendant if that person is (1) at least 18 years of age, and (2) not a plaintiff or defendant in the case. Alternatively, you can hire a private process server to serve the defendant for a fee. In either case, Rule 4 requires you to file proof with the Court that the complaint has been served on the defendant. The person serving the summons must leave a copy of both the summons form and the complaint with the defendant. On the back of the summons is a section referred to as the return of service or "proof of service." The person who serves the summons must record his or her name, the name of the person whom he or she served, and the date and time of the service. Service of process is not complete until the original summons form, with the completed return of service, has been filed with the Court.

If you name as a defendant the United States, a United States agency, or an officer or employee of the United States (who is being sued for acts or omissions related to his/her employment), you must serve the complaint and summons on the named defendant; the Attorney General of the United States in Washington, D.C.; and the United States Attorney for the Southern District of Alabama. The waiver of service rule does not apply to the United States. Formal service upon the federal government or any of its agencies can be accomplished by certified mail (return receipt required) with the properly executed summons.

3. Service by the Clerk's Office.

If a judge grants your motion to proceed without prepayment of fees, and waives the requirement that you pay the filing fee, then that judge may direct the Clerk's Office to serve the summons and complaint, or to send the notice of lawsuit and request for waiver of service to the defendant. Although a judge may order service of process, it may take several weeks from the date of that order before service is complete. When a judge orders that a defendant be served, typically the order will only require that a copy of the complaint and a waiver of service form be mailed to the defendant's last known address (as provided by you).

If you have not been granted IFP status, then it is your responsibility to complete service of process. If you fail to do so within 90 days, your case may be dismissed. It is also your responsibility to notify the Court of your efforts to serve process if not completed within 45 days after you file the complaint.

Defendant's Response to the Complaint

1. Answer

If service is made by summons, the defendant has twenty-one (21) days from the date of service of the complaint to file an answer or a motion to dismiss. However, if the defendant is the United States or a federal official, the defendant has sixty (60) days from the date of

service to file an answer or a motion to dismiss. In an answer, a defendant admits or denies each of the complaint's allegations and may also raise affirmative defenses.

2. Default

If a defendant has been properly served with a complaint but fails to file a response in the required amount of time, then that defendant is considered in "default." When a defendant is in default, the plaintiff can ask the Court for a default judgment, which means that the plaintiff wins the case and may take steps to collect on the judgment against that defendant.

If a defendant is in default, the plaintiff should file a request for Clerk's entry of default and proof of when and how the defendant was served with the complaint. If the Clerk of Court approves the request and enters default against the defendant, the plaintiff may then file a motion for default judgment supported by: (1) a declaration showing that the defendant was served with the complaint but did not file a written response within the required time; and (2) a declaration proving the amount of damages claimed in the complaint against that defendant. There are special rules for default judgments against minors and the U.S. government and its officers and agents, which are explained in Federal Rule of Civil Procedure 55.

A defendant against whom default or default judgment has been entered may file a motion to set aside the default or default judgment. The Court may set aside an entry of default or a default judgment for good cause or for the reasons listed in Rule 60(b), which include mistake, fraud, newly discovered evidence, the judgment is void, or "any other reason that justifies relief."

3. Motion to Dismiss

Any party may request that the Court take specific action in a case. To do so, the party prepares a formal request called a "motion." The party must sign the motion, and file it with the Clerk's Office. The opposing party may then file a response explaining why it believes the motion should be denied. The Court normally rules on motions by issuing a written order that

grants or denies the motion (in whole or in part). Except in unusual cases, the Court will not schedule a hearing to allow the parties to argue the motion in person.

One type of motion is a motion to dismiss. Rather than file an answer to the complaint, a defendant may file a motion to dismiss, asking the Court to dismiss the case. The motion may argue that there are problems with the way the complaint was written, filed, or served. A motion to dismiss may be filed for any of the reasons set forth in Federal Rule of Civil Procedure 12(b): lack of subject-matter jurisdiction; lack of personal jurisdiction; improper venue; insufficient process; insufficient service of process; failure to state a claim upon which relief can be granted; and failure to join a party under Rule 19.

4. Response to a Motion to Dismiss

If a defendant files a motion to dismiss, the plaintiff may file a response in opposition to that motion. The response must specifically assert facts and law to explain why the motion to dismiss should be denied. The plaintiff's response to the motion to dismiss is due fourteen (14) days after the defendant files the motion, unless otherwise ordered by the Court. If you need more time to file your response, you must file a motion for extension of time. The motion for extension should be filed before the response is due and show "good cause" for the extension.

5. Entry of Report and Recommendation

A motion to dismiss or other dispositive motion may be referred to the assigned Magistrate Judge to prepare a written Report and Recommendation for the District Judge. The Report and Recommendation will contain a recommendation that the motion be granted or denied, and state the reasons why. Parties are allowed a certain number of days to file objections to the Report and Recommendation. The District Judge then reviews the Report and Recommendation, along with any timely filed objections, and issues an order that adopts or rejects the Report and Recommendation.

Procedure for Submitting Documents to the Court

You are required to submit for filing with the Clerk of Court an original of any motion or pleading. Should you desire a file-stamped copy for your records, submit an extra copy along with the original and (if you are filing by mail) a self-addressed stamped envelope for return mailing. You may file documents with the Clerk of Court in person, by mail, or (with prior Court approval) electronically.

Requests for Court action must be submitted in the form of a motion, complaint or other pleading as authorized by statute or rule. Requests for Court action may not be submitted in the form of a letter.

The Clerk's Office is open to the public from 8:00 a.m. until 5:00 p.m., Monday through Friday, except on federal holidays.

Whenever you file a document with the Clerk's Office, you must also mail or deliver a copy of it to the other party's attorney, or if the other party has no attorney, to the party directly. As an attachment to the filing, you must include a certificate of service that states the date and method by which you served a copy of the document on each other party. The format for the certificate of service may be found at Appendix G.

Chapter 6 Case Management Procedures

What is a Rule 16 Conference?

A Rule 16 Conference may be held shortly after the action commences. The purpose of the conference is for the Judge and parties to set the trial date and other key deadlines for initial disclosures, discovery, pretrial motions and the final pretrial conference. Once the defendant files an answer or a motion to dismiss, the Court will typically issue a Preliminary Scheduling Order setting a deadline for the parties to meet and prepare a Rule 26(f) report to be used in the Rule 16 Conference or for preparation of the scheduling order.

Does Every Case Have a Rule 16 Conference?

No, some categories of actions are exempt from Rule 16 Conferences. Refer to the Local Rules for a list of exempt categories of cases.

What is a Parties' Planning Meeting?

At least 21 days before a scheduling conference is to be held or a scheduling order is due, all parties and their lawyers must "meet and confer," either on the phone or in person, to try to agree on a number of issues. The purpose of the meet-and-confer process is to save time by requiring parties to agree on as much as possible and to understand each other's positions. The parties should be prepared to:

1. Discuss the basis of the claims and defenses;
2. Discuss resolving the case by settlement;
3. Arrange for the initial disclosure of information by both sides as required by Rule 26(a)(1) including:
 - a. names and contact information of individuals with discoverable information; and
 - b. a list of certain documents described in Rule 26(a).
4. Agree on a proposed discovery plan;

5. Select an alternative dispute resolution (“ADR”) process: mediation, early neutral evaluation or settlement conference (discussed later in this Handbook);
6. Prepare and file a joint written report outlining the proposed discovery plan.

Preparing the Discovery Plan (Rule 26(f)(2))

The discovery plan is a written proposal on how the parties expect to conduct discovery, i.e., a schedule of when and how the parties will exchange documents and conduct depositions in order to develop the facts of the case. The parties must make a good faith effort to agree on a proposed discovery plan for the judge to review and determine how discovery should proceed. The plan should include each party’s views and proposals about:

1. Changes to the timing, form, or content of disclosures under Rule 26(a), including a statement of when initial disclosures were made or will be made;
2. The subjects, timing, and issues for discovery;
3. Limitations on discovery imposed by Federal or Local Rules;
4. Other orders that the Court should consider under Rule 26(c) or under Rule 16(b) or (c).

What is the Scheduling Order?

After the parties file the Rule 26(f) report and after the Rule 16 conference (if one is held), the judge will issue a Rule 16(b) Scheduling Order, which sets the schedule and deadlines for the entire case. The Scheduling Order will govern the case unless and until the judge modifies it later.

Under Rule 16(b), a Scheduling Order shall not be modified except upon a showing of good cause and by leave of the district judge. If you want to change a deadline in the Scheduling Order, you must file a motion requesting that the deadline be changed and show good cause for the request.

Chapter 7 Court Hearings

What happens at a Court hearing?

A hearing is a formal Court proceeding in which the parties present their arguments to the Judge and answer the Judge's questions about the motion or other matter being heard. Sometimes witnesses can be presented at these hearings. You should prepare for a hearing by reviewing all papers that have been filed for the hearing and expect to answer questions about issues being addressed at the hearing. Organize your papers so that you can find things easily when you need to answer the Judge's questions. Bring a pen and paper so that you can take notes.

How should I dress and behave when I come to Court?

1. Dress nicely and conservatively.
2. Be on time.
3. Sit in the benches in the back of the courtroom until your case is announced. The courtroom deputy may ask "counsel" to come forward and check in. You should check in with the courtroom deputy at that time. If your hearing is the only one scheduled, you may sit at the plaintiffs' or defendants' table in the center of the courtroom. The courtroom deputy will tell you where to sit.
4. When the Judge enters the courtroom, you must stand and remain standing until the Judge sits down.
5. When you speak to the Judge, call him or her "Your Honor."
6. The Judge might ask you questions about your argument in a motion or brief. If the Judge asks a question, stop what you are saying and answer the Judge's question completely. When you are finished answering the question, you can go back and finish the other points you want to make. Always answer the Judge's questions completely and never interrupt the Judge when he or she is speaking.

7. If the Judge asks you a question when you are seated at the table or away from the lectern, stand and speak into a microphone.

Obtaining information about your case

The Clerk's Office maintains an automated record or "docket" for every case. The docket is a chronological summary of all filings and events in the history of the case. You may review the docket on the public access terminal located in the Clerk's Office. Alternatively, you may access the Court's automated PACER system from any personal computer to review your case docket. In order to use this system, you must call the PACER Service Center at 1-800-676-8856 to obtain a login and password. You may also visit the PACER website at www.pacer.gov. You will be billed at a rate of 10 cents per page for case documents you access through the PACER system, except that you will be allowed to receive one free electronic copy of all documents filed electronically and you may access written opinions free of charge. The Clerk's Office can also provide basic docket information to you over the telephone or in person.

Private or *ex parte* communications with the Judge are prohibited. An "*ex parte* communication" is one in which a party provides information to the Judge without the opposing party's presence, knowledge or consent. With very few exceptions, the Judge will refuse to speak or otherwise communicate *ex parte* with any party or any party's lawyer. Communications between the Judge and a litigant must be in writing, and you must send a copy of that writing to the other side.

Chapter 8 Alternative Dispute Resolution

What is Alternative Dispute Resolution?

Alternative Dispute Resolution (ADR) can save time and money by helping parties work out their differences without formal litigation. ADR can lead to resolutions that are better tailored to the parties' interests. Methods include mediation and settlement conferences, among others. The parties will be required to discuss settlement possibilities and the potential of resolving the case by ADR before trial. The Court may order the parties to participate in ADR in a specified manner at a specified time. Also, the parties may voluntarily agree to engage in ADR on their own at any time without a Court order. The Court maintains a detailed ADR Plan, which you may access through the District Court's website.

Any decision to enter into a settlement agreement is voluntary. The parties do not lose their right to go to trial if ADR is unsuccessful and they are unable to reach a negotiated settlement of their entire dispute.

What Are the Major ADR Processes?

1. Settlement Conference

Settlement conferences are generally available to the parties at any time upon request, or they may be ordered by the Court. In a settlement conference, a judge other than the assigned judge (usually a magistrate judge) helps the parties attempt to negotiate a settlement of all or part of the dispute. Settlement conferences may be a good fit for *pro se* litigants because they are conducted by a judge who has experience working with unrepresented parties in federal court.

2. Mediation

In mediation, a neutral third party meets with the parties to help them negotiate a mutually satisfactory agreement resolving all or part of the dispute. The process is informal

and confidential; however, the parties must make arrangements to pay the mediator for his or her time, even if mediation is ultimately unsuccessful in producing a settlement.

Motions for Summary Judgment (Rule 56)

A motion for summary judgment asks the Court to decide a lawsuit without going to trial because there are no disputes about the key facts of the case. When the parties agree on the facts, or if one party does not have enough evidence to support his or her case, the Court can decide the issues based on papers in the Court file. When the plaintiff files a motion for summary judgment, the goal is to show that the undisputed facts prove that the defendant violated the law. When defendants file a motion for summary judgment, the goal is to show that the undisputed facts prove that they did not violate the law. Most summary judgment motions are filed by defendants. Summary judgment motions may be filed at any time, but are typically filed after the close of discovery.

A motion for summary judgment can address the whole lawsuit or just individual claims. If the motion addresses the entire lawsuit and the Court grants summary judgment, then the case is over (subject to the losing party's right to appeal). If the Court denies a motion for summary judgment, it means that there is a dispute of material fact, and the case will go to trial unless the parties reach a settlement.

A motion for summary judgment must include a statement of undisputed facts. Each fact must be supported by admissible evidence, such as deposition testimony, affidavits or relevant documents. If you need specific discovery in order to show the Court why summary judgment should not be granted, you can file a request for additional time to conduct discovery. Your request must be accompanied by an affidavit or declaration explaining (1) why you do not already have the evidence you need and (2) exactly what additional discovery you need and how it relates to the pending motion for summary judgment.

Chapter 9 Trial

If a case has not settled or been dismissed following a motion for summary judgment, it is going to trial. You must make pretrial disclosures to the other party before trial, including expert witnesses and reports and witness and exhibit lists. Read Rules 26(a)(2) & (a)(3) for more detailed information. The following summary is not meant to be all inclusive, and you should always consult the Federal Rules of Civil Procedure, the Local Rules, the Federal Rules of Evidence, and all court orders issued in your case in preparing for trial.

Final Pretrial Conference

Prior to the trial, the Judge conducts a final pretrial conference with the parties (or their counsel) to determine (1) what exhibits and witnesses each side might use during the trial; (2) the approximate length of time for the trial and specific trial dates; (3) what issues may need to be resolved before and during the trial; and (4) the “ground rules” the Court will utilize before, during and after the trial.

Motions in Limine

Parties may file motions in limine before trial. These motions request that the Judge not allow certain arguments to be made or certain facts to be admitted into evidence, such as insurance policies, criminal records, or other matters which are either not relevant to the particular case or might unfairly influence the finder of fact. Any party may file a motion in limine.

The Role of the Judge and Jury

At trial, the parties will each get the opportunity to present their side of the case, and the Judge and jury (if the trial is a jury trial) are responsible for entering a verdict and judgment based on the evidence and arguments presented. It is the Judge’s duty to see that only proper evidence and arguments are presented. In a jury trial, the Judge also instructs the jury on the

law. At the conclusion of the trial, the jury makes decisions regarding factual matters in dispute. Judgment will be entered based on the jury's verdict.

If the parties have not requested a trial by jury, the Judge becomes both the trier of law and the finder of fact. At the end of the trial, the Judge enters "Findings of Fact" and "Conclusions of Law," based on the evidence and arguments presented. A judgment is then entered based on those findings and conclusions.

1. Opening Statements

At the outset of the trial, each side may present an opening statement. The plaintiff goes first because the plaintiff has the burden of proving that he or she was wronged and suffered damages from that wrong and that the defendant caused those damages. This may be followed by a statement by the defendant. Opening statements cannot be presented in the form of an argument, but must instead consist of a forecast or "road map" of what the party believes the evidence at trial will show. The Court may set time limits for opening statements.

2. Presentation of Evidence

After opening statements, each side has the opportunity to present testimony of witnesses and exhibits. The plaintiff presents his or her case first. After the initial examination of a witness (also known as "direct examination"), the other side may conduct cross-examination. After a party has cross-examined a witness, the opposing side has the opportunity to conduct "redirect" examination in order to re-question the witness on the points covered by the cross-examination. Re-cross examination is generally not permitted in this District Court.

If a witness testifies as to a fact, and a statement or document in the case file contradicts that testimony, the document can then be used to question the witness on the accuracy of the witness's statements. If the evidence tends to show that the testimony is false, then the witness is considered "impeached" by the cross-examination.

3. Closing Arguments

Closing arguments set out the facts that each side has presented and the reasons why each party believes the finder of fact should decide the case in his or her favor. The Court may set time limits for closing arguments.

4. Jury Charge

At the close of all the evidence and after closing arguments, the Judge delivers the “charge,” or instructions on the law, to the jury. Before trial, each side may present proposed written jury instructions to the Judge for consideration. After the Judge has considered all proposed charges, the jury is given appropriate instructions which set forth the jury’s responsibility to decide the facts in light of the applicable rules of law. The jury then deliberates and returns a verdict in favor of either the plaintiff or the defendant, assessing damages (if any) to be awarded.

5. Judgment

Following the entry of the jury’s verdict, judgment in favor of the prevailing party is entered by the Clerk. If costs are awarded, the prevailing party must prepare a “bill of costs” for the Court’s approval within 30 days after entry of judgment. A bill of costs itemizes costs incurred in the suit.

Chapter 10 Appeal

If you are dissatisfied with the ultimate disposition of your action, you may appeal the judgment to the United States Court of Appeals for the Eleventh Circuit. Grounds for an appeal usually consist of allegations that the Judge made an error either in interpreting or applying the law or in a procedural or evidentiary ruling during the course of the case. Any error must have been sufficiently significant that the Judge or jury reached an incorrect result because of the error.

In general, only final orders or judgments may be appealed. This kind of appeal is called an appeal as of right. Most orders issued before judgment (called “interlocutory orders”) cannot be appealed until a final judgment is entered. Some of the few interlocutory orders that can be appealed are listed at 28 U.S.C. § 1292. A final order or judgment announces the final decision with respect to your case (that is, whether you won or lost) and closes the case with the District Court. In order to appeal, a final order or judgment should be entered on the docket of your case.

Timing

An appeal must be filed within **30 DAYS AFTER ENTRY OF JUDGMENT** (or order being appealed). Exceptions to this rule are few. If you plan to appeal, it is important to meet this deadline. The process for starting an appeal is the filing of a notice of appeal in the District Court together with the payment of the prescribed filing fee. The Fee Schedule is available on the District Court’s website (www.alsd.uscourts.gov), or in the Clerk’s Office. The fee may be waived under certain conditions. The Clerk’s Office then transmits the appeal and the case file to the Court of Appeals, which opens a new file with a new case number. The proceedings on appeal are then handled by the judges and the clerk of the Court of Appeals.

Requirement to prosecute your case diligently

You are required to prosecute your case diligently. Unless you hire an attorney to represent you, it is your sole responsibility to do everything necessary to prepare your case for trial. This includes, but is not limited to, meeting all Court deadlines, making all required court appearances, and responding to all discovery requests and motions in a timely manner. You must comply with all Court orders. It is also your responsibility to try your case in court.

Do not expect the Court to provide you with instructions on the proper procedures for prosecuting your lawsuit. If you fail to follow established procedures, your case may be subject to dismissal.

You are responsible for performing your own legal research, for knowing the law that applies in your case, and for formulating your own legal arguments. The Court cannot and will not make those arguments for you.

Remember that you must serve the other party's attorney (or, if that party does not have a lawyer, the party himself or herself) with copies of all documents filed with the Court.

You must keep the Court and other parties informed of any change in your address or telephone number. Should you fail to provide prompt notice of any change in your contact information, you may be subject to sanctions, including dismissal of your case.

APPENDIX

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA
_____ DIVISION

(Name of Plaintiff) :
Plaintiff :
 :
vs. : **Civil Action No.** _____
 :
(Name of Defendant(s)) :
Defendant :
 :

COMPLAINT
(Double space text of complaint)

1.
(Grounds for jurisdiction)
2.
(Show plaintiff's name(s) and residence or address)
3.
(Show defendant(s) name(s) and address(es))

APPENDIX A (Cont'd)
COMPLAINT FORMAT

4.

(State briefly your legal claim or your reason for filing suit. Include the statute under which the suit is filed.)

5.

(Give a brief, concise statement of the specific facts involved in your case)

6.

(State the relief you are requesting.)

(Signature and date), pro se

(Address)

(Phone Number)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

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

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

DEFENDANTS

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

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

Attorneys (If Known) _____

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

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

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

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

IV. NATURE OF SUIT (Place an "X" in One Box Only) [Click here for: Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

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

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

VI. CAUSE OF ACTION

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

Brief description of cause: _____

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

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

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

JS 44 Reverse (Rev. 09/19)

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.Cv.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; **NOTE: 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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- 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 actual dollar amount 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.

UNITED STATES DISTRICT COURT

for the
District of

)	
)	
)	
_____)	
<i>Plaintiff(s)</i>)	
v.)	Civil Action No.
)	
)	
)	
_____)	
<i>Defendant(s)</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____
_____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA**

Plaintiff(s)/Petitioner(s)

vs.

CIVIL ACTION NO.

(To be supplied by Clerk of Court)

Defendant(s)/Respondent(s)

MOTION TO PROCEED WITHOUT PREPAYMENT OF FEES

I, _____, a United States citizen, make this Motion to Proceed Without Prepayment of Fees pursuant to Title 28 U.S.C. § 1915 in order to proceed *in forma pauperis* in this action. I am unable to make prepayment of fees or to give security therefor, and it is my belief that I am entitled to redress. I have not divested myself of any property, monies or any items of value for the purpose of avoiding payment of said fees.

I. BRIEF STATEMENT AS TO THE NATURE OF THE ACTION:

II. RESIDENCE:

Your address:

(Street)

(City)

(State)

(Zip Code)

III. MARITAL STATUS:

1. Single _____ Married _____ Separated _____ Divorced _____
2. If married, spouse's full name: _____

IV. DEPENDENTS:

1. Number: _____
2. Relationship to dependent(s): _____
3. How much money do you contribute toward your dependents' support on a monthly basis? \$ _____

V. EMPLOYMENT:

1. Name of employer:
 - a. Address of employer:

(Street)

(City) (State) (Zip Code)
 - b. How long have you been employed by present employer?
Years: _____ Months _____
 - c. Income: Monthly \$ _____ or Weekly \$ _____
 - d. What is your job title?

2. If unemployed, date of last employment:
Amount of salary and wages received per month in last employment: \$ _____

3. Is spouse employed? _____ If so, name of employer:
 - a. Income: Monthly \$ _____ or Weekly \$ _____
 - b. What is spouse's job title?

4. Are you and/or your spouse receiving welfare aid?
If so, amount: Monthly \$ _____ or Weekly \$ _____

VI. FINANCIAL STATUS:

1. Owner of real property (excluding ordinary household furnishings and clothing):
 - a. Description:
 - b. Full Address:
 - c. In whose name:
 - d. Estimated value - - - - - \$
 - e. Total amount owed - - - - - \$
Owed to: _____ \$
_____ \$

 - f. Annual income from property - - - - - \$

2. Other assets/property, such as automobiles, boats, motor homes, court judgments, etc. (If more than two, list information on back):
 - a.

	Asset (1)	Asset (2)
Make & Model:		
In whose name registered?		
Present Value of Asset:		
Amount owed:		
Owed to:		
 - b. Total cash in banks, savings and loan associations, prisoner accounts, financial institutions, other repositories, or anywhere else - \$
 - c. List monies received by you during the last twelve (12) months, or held for you

by banks, savings and loan associations, prisoner accounts, other financial institutions, or other sources as indicated below:

Business, profession or other forms of self-employment -	\$
Rent payments, interest or dividends -----	\$
Pensions, annuities or life insurance payments -----	\$
Gifts or inheritances -----	\$
Stocks, bonds or notes -----	\$
Tax refunds, Veteran benefits or social security benefits	\$
Any other sources -----	\$

3. Obligations:

a. Monthly rental on house or apartment -----	\$
b. Monthly mortgage payments on house -----	\$

4. Other information pertinent to your financial debts and obligations:

(Creditor)	(Total debt)	(Monthly payment)
(Creditor)	(Total debt)	(Monthly payment)
(Creditor)	(Total debt)	(Monthly payment)

5. If you have indicated that you have minimal or no assets or income, please explain how you provide for your basic living needs such as food, clothing and shelter. (e.g. food stamps, family assistance or charitable contributions.)

Other (Explain): _____

VII. ALL PLAINTIFFS/PETITIONERS MUST READ AND SIGN:

I UNDERSTAND that any false statement(s) of a material fact contained herein may serve as the basis of prosecution and conviction for perjury or making false statements. FURTHER, I CERTIFY that all questions contained herein have been answered and are true and correct to the best of my knowledge and belief.

DATE

SIGNATURE OF PLAINTIFF/PETITIONER

ADDRESS

VIII. FOR PRISONER PLAINTIFFS/PETITIONERS ONLY:

A financial statement containing all transactions in your prisoner account for the six (6) months immediately preceding the filing of the Complaint must accompany this Motion. The financial statement must be in the form of a computer printout or bank ledger card prepared by the institution; a notarized financial statement that you prepare; or a financial statement prepared by an authorized officer of the institution. Failure to provide this financial statement information may result in the dismissal of this action.

The requirement to submit the financial statement addressed above does not negate your responsibility to ensure that the Certificate found below is also properly executed and filed.

I hereby authorize the agency having custody of me to collect from my prison account and forward to the Clerk of the United States District Court payments in accordance with 28 U.S.C. § 1915(b)(2). I understand that even if I am allowed to proceed *in forma pauperis* or pay a partial filing fee and even if my case is later dismissed for any reason, I am obligated to pay to the Clerk of the Court the full amount of the filing fee \$350.00 if your IFP application is granted, or \$400.00 if your IFP application is denied for a civil action, \$5.00 for a habeas corpus petition, or \$505.00 for an appeal.

DATE

SIGNATURE OF PLAINTIFF/PETITIONER

CERTIFICATE
(To be completed by the institution of incarceration)

I certify that the applicant named herein has the sum of \$_____ on account to his/her credit at _____ (name of institution). I further certify that during the past six months the applicant's average monthly balance was \$_____. I further certify that during the past six months the average of monthly deposits to the applicant's account was \$_____. (Please attach a certified copy of the applicant's account statement showing transactions for the past six months.)

DATE

SIGNATURE OF AUTHORIZED OFFICER

UNITED STATES DISTRICT COURT

for the

District of

Plaintiff

v.

Defendant

)
)
)
)
)

Civil Action No.

NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS

To: _____
(Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within _____ days *(give at least 30 days, or at least 60 days if the defendant is outside any judicial district of the United States)* from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: _____

Signature of the attorney or unrepresented party

Printed name

Address

E-mail address

Telephone number

UNITED STATES DISTRICT COURT

for the

District of

_____)
Plaintiff)
v.) Civil Action No.
_____)
Defendant)

WAIVER OF THE SERVICE OF SUMMONS

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

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

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

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

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

Date: _____

Signature of the attorney or unrepresented party

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

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

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

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

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

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing _____
(Name of pleading)

was mailed/delivered to _____ at _____
(Name of defendant(s) or defendant's attorney) (Address)

on _____, 20 _____.

(Signature and date), pro se

(Address)

(Phone Number)