

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Allen Aikens,

Plaintiff,

Case No. 19-cv-12204

v.

Judith E. Levy

United States District Judge

Detroit Police Department, *et al.*,

Mag. Judge Elizabeth A. Stafford

Defendants.

_____ /

**OPINION AND ORDER GRANTING APPLICATION TO
PROCEED WITHOUT PREPAYING FEES OR COSTS [7],
VACATING ORDER DISMISSING COMPLAINT
WITHOUT PREJUDICE [5], AND DISMISSING COMPLAINT**

On July 26, 2019, Plaintiff Allen Aikens, a Michigan state prisoner incarcerated at the Carson City Correctional Facility, filed a *pro se* complaint. (ECF No. 1.) Aikens failed to pay the filing fee or to file a properly completed and supported application for leave to proceed *in forma pauperis* as required by 28 U.S.C. § 1915(a)(2). On August 8, 2019, the Court issued an order requiring Aikens to correct the filing deficiency or face dismissal of his action. (ECF No. 3.) Plaintiff was given until September 9, 2019, to correct the deficiency (*id.*), but he did not meet this

deadline. The Court dismissed the complaint without prejudice on September 18, 2019. (ECF No. 5.)

The Court now vacates this order of dismissal (ECF No. 5) because Plaintiff filed an application to proceed *in forma pauperis* on September 19, 2019. (ECF No. 7.) The *in forma pauperis* statute, 28 U.S.C. § 1915(a)(1) states: “any court of the United States may authorize the commencement . . . of any suit, action or proceeding . . . without prepayment of fees . . . by a person who submits an affidavit that includes a statement . . . that the person is unable to pay such fees.” Plaintiff states that he has \$0.00 in a checking or savings account. (ECF No. 7.) He is also unemployed and has received no income over the past twelve months. (*Id.*) Based on this, it is reasonable to infer that Plaintiff satisfies the requirements under 28 U.S.C. § 1915(a)(1), and his application to proceed *in forma pauperis* is granted.

In his application, Aikens additionally requests that his complaint be dismissed without prejudice because it was not “intended to be a civil complaint.” (ECF No. 7.) From what the Court can discern, Plaintiff’s original complaint is aimed at challenging the validity of his state criminal proceedings—for example, he asks for a “motion to indict”

various individuals associated with his state criminal case. (ECF No. 1.) The Court will grant Plaintiff's request to dismiss this case without prejudice. Aikens also requests a pro se handbook for filing cases in the Eastern District of Michigan. (ECF No. 7.) The Court has attached with this order a copy of the *Pro Se Handbook: Filing Your Lawsuit in Federal Court*, published by the Eastern District of Michigan's Clerk's Office.¹

Accordingly, the Court VACATES its former order dismissing the complaint without prejudice, GRANTS Plaintiff's motion to proceed *in forma pauperis*, and DISMISSES Plaintiff's case without prejudice.

IT IS SO ORDERED.

Dated: September 23, 2019
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

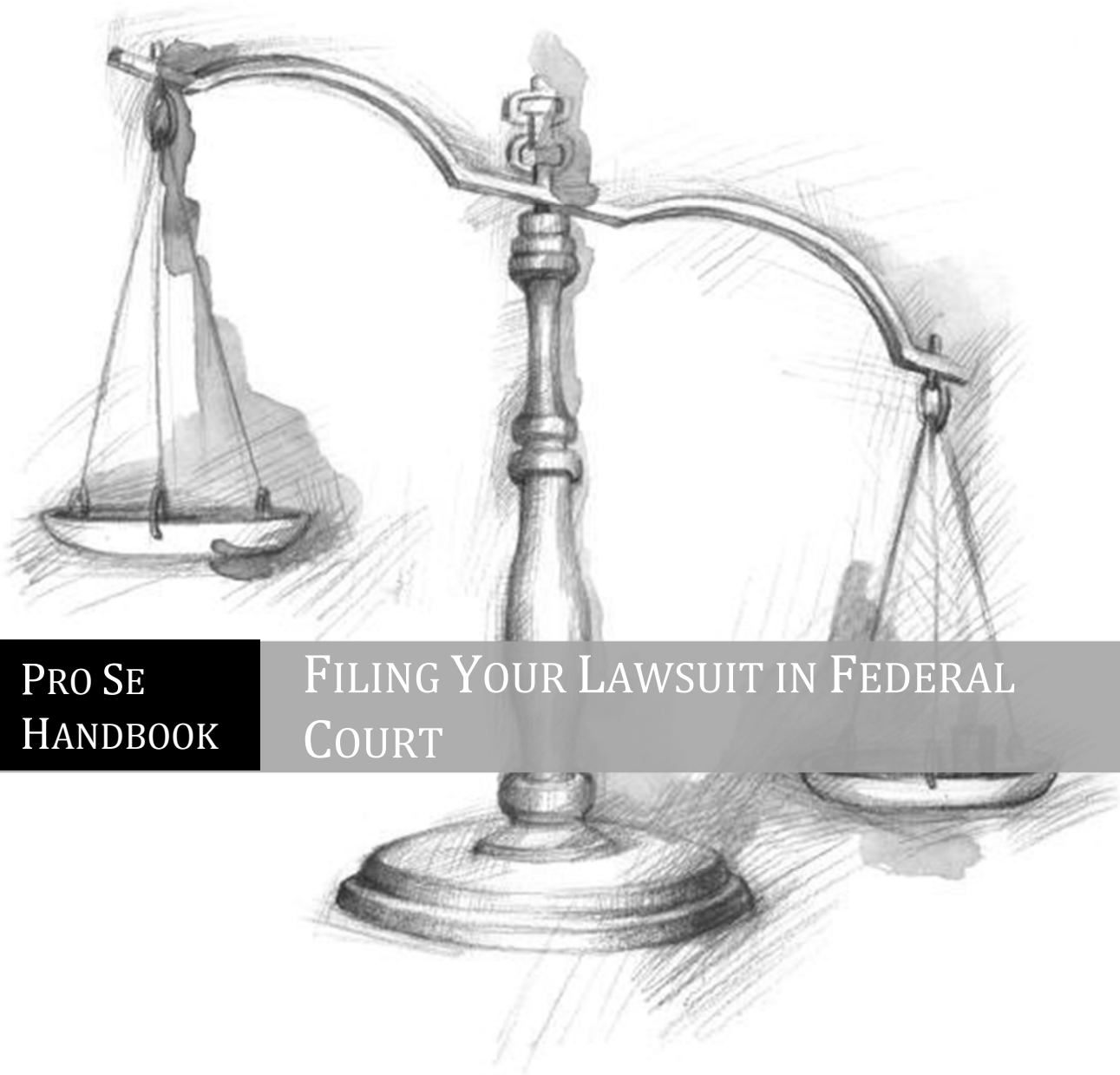
CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on September 23, 2019.

s/Shawna Burns
SHAWNA BURNS
Case Manager

¹ This handbook is also available online at <https://www.mied.uscourts.gov/PDFFiles/howToFileYourLawsuithandbook.pdf>.

Revised: October 2017



PRO SE
HANDBOOK

FILING YOUR LAWSUIT IN FEDERAL
COURT



United States District Court
Eastern District of Michigan

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This manual is provided to assist individuals in properly filing a new lawsuit in this court. This document is NOT intended to be legal advice, nor should it be relied upon as legal authority. Filers should read the Court’s Local Rules and the Federal Rules of Civil Procedure. Please refer to the Court’s website for additional information, court rules and forms.

INTRODUCTION

This Guide outlines the basic steps required to file a lawsuit in federal court. You are responsible for knowing and following the procedures that govern the court process. Although the staff of the Clerk's Office can provide you with general procedural information, they cannot provide you with legal advice, tell you what steps to take, or interpret the local or federal rules for you.

BASIC DEFINITIONS

Before you proceed you will need to be familiar with some basic terms used when filing documents in federal court:

- **Complaint:** A written statement that begins a civil lawsuit, in which the plaintiff details the claims against the defendant.
- **Defendant:** An individual (or business) against whom a lawsuit is filed.
- **In Forma Pauperis (IFP):** When the filer has been granted the ability to file their lawsuit in federal court without paying the civil filing fee.
- **Litigation:** A case, controversy, or lawsuit. Participants (plaintiffs and defendants) in lawsuits are called litigants.
- **Plaintiff:** A person or business that files a formal complaint with the court.
- **Pro Se:** Representing oneself. Serving as one's own lawyer.
- **Rules:** There are certain guidelines that must be followed when filing documents in federal court. Examples of these guidelines are the Federal Rules of Civil Procedure and the Court's Local Rules. You can find a copy of the Court's Local Rules and the Federal Rules of Civil Procedure on the Court's website (www.mied.uscourts.gov) or in person at the Clerk's Office.
- **Service of Process:** The delivery of summonses to the appropriate party.
- **Summons:** Form that is filled out and served by the plaintiffs on the defendants in a case.
- **Waiver of Service:** Method of serving complaint on defendants.

For more definitions and other information about U.S. Courts, visit www.uscourts.gov.

REPRESENTING YOURSELF

Self-representation carries certain responsibilities you should be aware of before you proceed:

1. You will be expected to follow all laws governing procedure in the federal courts, including the Federal Rules of Civil Procedure and the Court's Local Rules. 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 as well.

2. The Clerk's Office cannot give you legal advice or "coach" you. This handbook is designed to provide basic guidance and is not intended to be comprehensive. You will need to consult other sources regarding legal and some procedural questions.
3. If a judge determines that you have filed a lawsuit for an improper or unnecessary reason, you may be ordered to pay any legal fees and costs of the party that you sued.

QUESTIONS TO CONSIDER BEFORE FILING A LAWSUIT

Before you decide to file your lawsuit, there are some important questions you should consider:

1. **Have I suffered a real injury or wrong?** Has the defendant that you are suing harmed you? Is the defendant planning an action that is going to harm you?
2. **Will I be able to establish sufficient facts to support my claims?** Before you begin a lawsuit, be sure that you have enough facts to support your claim. Such facts should include who each defendant is, what exactly the defendant did or did not do that you believe was wrongful, when the incident took place, and where the incident happened.

In a civil lawsuit, the burden is on the plaintiff to prove that the defendant(s) violated the plaintiff's rights. Simply stating that the defendant(s) caused you harm or violated your rights will be insufficient.

In order to prove your case, you must be able to provide evidence that supports the facts you allege. In addition, you need to be able to identify any witnesses whom you believe observed the incident. You may also be called upon to present physical evidence such as photographs, letters, emails, police reports, medical records, or other proof.

3. **Am I able to determine, identify, and locate the proper defendants for my action?** When determining whom you should name as a defendant in your lawsuit, there are several factors you should consider:
 - a. You generally must show that each person or entity you are suing engaged in wrongful conduct that caused you harm. Thus, you should name a defendant only if you are able to describe his or her actions or inactions that you believe were wrongful and how you believe those actions harmed you.
 - b. You must identify specific individuals, companies, or government agencies whenever possible. **It is your responsibility, and not the duty of the Court, to get the correct identities and addresses of those defendants whom you believe caused you to be injured.**
4. **Is federal district court (as opposed to a state court) the appropriate place to file my lawsuit?** Federal courts have jurisdiction in the following areas:

- a. When the U.S. Government is a party. (U.S. Government Party)
- b. When a case is brought under a Federal Statute. (Federal Statute)
- c. When the parties in the case are located in different states and the claim of damages is more than \$75,000. (Diversity)

5. **Is the Eastern District of Michigan the appropriate federal court in which to file my lawsuit?** There are two United States District Courts in Michigan: the Eastern District and the Western District. There are two divisions within the Eastern District of Michigan, Southern Division and Northern Division. The following lists the counties in each division:

Southern Division	Northern Division
Genesee, Jackson, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Sanilac, Shiawassee, Washtenaw, and Wayne	Alcona, Alpena, Arenac, Bay, Cheboygan, Clare, Crawford, Gladwin, Gratiot, Huron, Iosco, Isabella, Midland, Montmorency, Ogemaw, Oscoda, Otsego, Presque Isle, Roscommon, Saginaw, and Tuscola

6. **Am I able to pay the required filing fee?** To file a new civil lawsuit in federal court, the filer must pay the current civil filing fee. This amount can be found in the Fee Schedule on the Court’s website or at the Clerk’s Office. If you cannot afford to pay the filing fee, you may request that the judge waive the filing fee based on financial hardship by completing an **Application to Proceed in District Court Without Prepaying Fees or Costs**. This form can be found on the Court’s website or at the Clerk’s Office.

OBTAINING COUNSEL

Litigants in civil cases do not have a constitutional right to court-appointed counsel. Typically, the Court does not appoint attorneys in civil cases except in extraordinary circumstances. You should do your best to find an attorney to represent you. If you cannot afford an attorney, you may be eligible for free or reduced-cost legal services.

For a list of legal aid programs, please visit:

http://www.michbar.org/public_resources/legalaid

or

www.michiganlegalhelp.org/organizations-courts/find-lawyer

PREPARING YOUR COMPLAINT

The complaint is a document telling the Court who 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. There is a form available on the Court's website or at the Clerk's Office.

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 of ALL parties involved. Subsequent documents you file must include the case number and case caption (the name of the first plaintiff and first 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:

- A short and plain statement of the grounds for the Court's jurisdiction.
- A short and plain statement of the claim showing that the pleader is entitled to relief.
- A demand for the relief sought.

If the complaint fails to contain these requirements, the judge may dismiss your 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 plain English.

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

CIVIL COVER SHEET

A civil cover sheet, which is available on the Court's website or in the Clerk's Office, must be filled out. You must provide two (2) copies along with your complaint.

FILING YOUR CASE

These instructions do not cover all circumstances, or all types of cases. It is your responsibility to comply with the Federal Rules of Civil Procedure, the Court's Local Rules, and any statutes and rules that may apply to your particular case.

When you have your paperwork ready, you may file your lawsuit in-person or send your documents by mail to any of the following locations:

United States District Court Office of the Clerk 231 W. Lafayette 5th Floor Detroit, MI 48226 (313) 234-5005	United States District Court Office of the Clerk 1000 Washington Avenue Room 304, P.O. Box 913 Bay City, MI 48707 (989) 894-8800	United States District Court Office of the Clerk 600 Church Street Room 140 Flint, MI 48502 (810) 341-7840
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The Clerk's Offices are open 8:30 a.m. to 4:30 p.m. Monday through Friday (except Federal and Court holidays).

When filing a complaint with the Court you are required to: pay the filing fee (the current fee can be found in the Fee Schedule on the Court's website or at the Clerk's Office) or, if you are unable to pay the filing fee, you may file an **Application to Proceed in District Court Without Prepaying Fees or Costs** (this form can be found on the Court's Website or at the Clerk's Office).

Depending on whether or not you will be paying the filing fee or asking the Court to waive the fee, you will need to provide specific documents to file your lawsuit as listed in the table below:

If paying the filing fee:	If asking the Court to waive the filing fee:
<ul style="list-style-type: none"> • Two (2) copies of the complaint: Clerk's Office copy and Judge's copy; • Two (2) completed civil cover sheets; • Three (3) completed summons for each defendant including each defendant's name, <u>unless</u> you are choosing to use the Waiver of the Service of Summons method; and • The appropriate filing fee is payable by check, money order, or credit/debit card 	<ul style="list-style-type: none"> • Two (2) copies of the complaint: Clerk's Office copy and Judge's copy; • Two (2) completed civil cover sheets; • Two (2) Applications to Proceed in District Court without Prepaying Fees or Costs; and • Two (2) Plaintiff's Notice Waiving Service by U.S. Marshal (if choosing to serve the defendants yourself)

SERVICE

The plaintiff is responsible for ensuring each defendant is notified about the lawsuit.

Federal Rule of Civil Procedure 4 explains the ways in which you can accomplish service of process on a defendant. There are two ways you can notify your defendants that you have named them in a complaint. Below are general explanations of each type of service:

Summons

A summons is a formal notice by the court telling the defendant that they are being sued by the plaintiff, and that an answer is required in a set amount of time.

Waiver of the Service of Summons

“Waiver of Service” refers to circumstances where the plaintiff is able to waive (skip) the formal service of the summons on the defendant. For the plaintiff, the benefit of waiving service is not having to pay the cost of serving the summons. For the defendants, the benefit of agreeing to waive service is extra time to file an answer to the complaint.

SERVICE WHEN PROCEEDING IN FORMA PAUPERIS

Local Rule 4.1 provides that the Clerk shall arrange for service of the summons and complaint by the United States Marshal for a plaintiff authorized to proceed without paying the filing fee, unless the plaintiff requests otherwise.

Service via Summons by U.S. Marshal

When the Judge orders service by the United States Marshal, you will be notified by the Court to provide the Clerk’s Office with the following: one complaint per defendant; two completed USM – 285 forms per defendant; and three summonses per defendant. These forms can be found on the Court’s website or in the Clerk’s Office.

Plaintiff’s Notice Waiving Service by U.S. Marshal

If you request to proceed without paying the filing fee but decline service by the United States Marshal, you must submit two copies of **Plaintiff’s Notice Waiving Service by U.S. Marshal** with your initial complaint. The form can be found on the Court’s website or in the Clerk’s Office.

You will then be responsible for ensuring proper service of the lawsuit if the Court grants your Application to Proceed in District Court without Prepaying Fees or Costs.

If you choose to pay the filing fee, your application to proceed without prepayment of filing fee is denied, or you decline United States Marshal service, you will be required to notify each defendant by summons or notice of waiver of service.

SERVICE VIA SUMMONS BY PLAINTIFF

If you choose to serve your complaint using summons, here are some guidelines for filling them out.

If you are suing more than one defendant, you must complete a separate summons for each defendant. ONLY ONE defendant can be listed on each summons.

Federal Rule of Civil Procedure 4 and Michigan State Court Rule 2.105 explain the methods in which you can accomplish service of process on a defendant. The following are most commonly used:

1. You can have someone over 18 years of age personally serve the summons, along with a copy of your complaint, on each defendant.
2. You can serve the summons and complaint by certified mail with restricted delivery.

After service has been completed, you should file with the Court a “return of service of summons” stating when and how service was made.

NOTE: The time for filing an answer begins on the date the summons and complaint are served, not the date the summons is issued.

SERVICE VIA WAIVER OF SERVICE OF SUMMONS

If you choose to serve your complaint via Waiver of Service, once your case has been filed and opened with the Court, you will be responsible for completing and sending the **Notice of a Lawsuit and Request to Waive Service of Summons** form and two copies of the **Waiver of the Service of Summons** form along with your complaint to each defendant. ONLY ONE defendant’s name and address can be listed on the forms. Refer to Federal Rule of Civil Procedure 4 for all the requirements.

If you have requested to proceed without prepayment of fees and costs, you must wait until the judge grants your request before service can be made on your defendants.

Once the defendant returns the signed **Waiver of the Service of Summons** form to you, you must file this document with the Court to indicate that your case has been served, and that the defendant has agreed to waive service of the summons.

Note: You cannot use this method to serve the U.S. Government, one of its agencies, or an employee of the U.S. Government concerning his employment.

SERVING THE U.S. GOVERNMENT OR U.S. GOVERNMENT OFFICIAL

If your defendant is the U.S. Government, one of its agencies, or an employee of the U.S. Government concerning his employment, you must serve the defendant individually **AND** provide a copy of the summons and complaint to the following:

1. The United States Attorney General in Washington, D.C.
2. The United States Attorney in the Eastern District of Michigan.

If you are suing a U.S. Government 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 serve the Postmaster General in Washington, D.C., **not** the local Post Office.

You can obtain the addresses for the United States Attorney General, United States Attorney in the Eastern District of Michigan, and the head of the agency, officer, or employee you are suing online at www.usa.gov or by calling the Federal Information Center at 1-800-FED-INFO (1-800-333-4636).

AFTER YOUR CASE IS FILED

The following information will assist you as your case progresses:

Certificate of Service

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 United States Marshal for parties granted leave to proceed without prepayment of fees and costs, service of copies on opposing counsel is your responsibility.

Costs of Litigation

Even if you have been granted leave to proceed without prepaying the filing fee and costs, the Court cannot serve papers for you, make free copies on your behalf, or pay mailing costs for you. In short, you as the plaintiff are responsible for the costs of the litigation.

Electronic Filing

In some instances pro se filers are granted the opportunity to register and receive a login and password to file their documents (except for initiating documents) electronically. Applicants must be able to meet certain criteria and successfully complete an on-line tutorial.

To apply for an electronic filing login and password, download and complete the application by visiting:

https://www.mied.uscourts.gov/PDFFiles/Pro_Se_EFile_Application.pdf

Note: You must already have a case open in the Court before you may be issued a login and password. A separate application is required for each case in which you want to be able to e-file.

Maintaining Your Contact Information

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

INSTRUCTIONS FOR COMPLETING SUMMONS FORM

This form is filled out by the plaintiff and issued by the clerk. Once issued by the clerk, the defendant should be served a copy of the complaint along with a summons. This document notifies the parties that a lawsuit has been filed against them and informs them of the time they have to respond to the complaint.

Completing Summons Form

Follow the table below to see what information belongs in each section of the form.

Label	Field	Information Required
A	Plaintiff	Name of the plaintiff, if more than one, print the first plaintiff's name and then "et al."
B	Defendant	The name of the first listed defendant only. If more than one, print the first defendant's name and then "et al."
C	Civil Action No.	Civil case number
D	Hon.	Print the name of the Judge assigned to the case, if known.
E	To:	Print the name of the specific defendant you are addressing this summons to. Reminder: You will need an individual summons for each defendant.
F	Address	Print your name and address. This is where the defendant will send their answer or motion.
G	Signature of Clerk	The Clerk or one of his deputies will sign the summons before it can be sent to a defendant.
--	Back of Form	Leave all fields blank until service has been completed.

UNITED STATES DISTRICT COURT
for the
Eastern District of Michigan

A

Plaintiff,

Civil Action No. **C**

v.

Hon. **D**

B

Defendant.

SUMMONS IN A CIVIL ACTION

To: **E**

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:

F

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

DAVID J. WEAVER, CLERK OF COURT

G

By: _____
Signature of Clerk or Deputy Clerk

Date of Issuance: _____



INSTRUCTIONS FOR COMPLETING THE NOTICE OF LAWSUIT AND WAIVER OF SERVICE FORMS

The purpose of this document is to explain how to complete service of a lawsuit using the Waiver of Service method. Once your case has been paid or the fee has been waived, follow the instructions below to complete the process.

Serving Defendants

1. Complete one (1) **Notice of a Lawsuit and Request to Waive Service of a Summons** for each defendant.
2. Complete two (2) **Waiver of the Service of Summons** forms for each defendant.
3. Provide a self-addressed stamped envelope for each defendant.
4. Provide one copy of the file stamped complaint that was filed with the Clerk's Office.
5. Mail all of the above to each of your defendants.

After Service of Summons is Waived

After you receive the signed **Waiver of the Service of Summons** form from your defendants, you will file these documents with the Court.

Completing Notice of Lawsuit and Request to Waive Service of a Summons

The purpose of this form is to notify your defendants that a lawsuit has been filed against them and give them an opportunity to waive the requirement of service on them via summons.

Follow the table below to see what information belongs in each section of the form. (See Example 1)

Label	Field	Information Required
A	Plaintiff	Name of the plaintiff, if more than one, print the first plaintiff's name and then "et al."
B	Defendant	Name of the first listed defendant only, if more than one, print the first defendant's name and then "et al."
C	Civil Action No.	Civil case number.
D	To:	Print the name of the specific defendant you are addressing this Notice to.
E	Days to return	Print the appropriate number of days the defendant has to respond.
F	Date	Enter the date you are mailing this notice.
G	Signature	Sign your name.

Label	Field	Information Required
H	Printed Name	Print your name.
I	Address	Enter your address.
J	Email Address	Enter your email address (if you have one).
K	Telephone Number	Enter your telephone number.

Completing Waiver of the Service of Summons Forms

The purpose of this form is to allow your defendants the opportunity to accept your request that service via summons be waived. The way they do that is by signing one of the two copies that you will send to them. They will then send you one signed copy using the self-addressed stamped envelope you provided. Upon receipt, you will file this copy with the Clerk's Office.

Follow the table below to see what information belongs in each section of the form. (See Example 2)

Label	Field	Information Required
A	Plaintiff	Name of the plaintiff, if more than one, print the first plaintiff's name and then "et al."
B	Defendant	The name of the first listed defendant only.
C	Civil Action No.	Civil case number.
D	To:	Print your name.
E	Date	Print the date you mailed the form to the defendant.
	The rest of the form	Leave the rest of the form blank as it will be completed by the defendant.

UNITED STATES DISTRICT COURT
for the
Eastern District of Michigan

A
Plaintiff
v.
B
Defendant
Civil Action No. C

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

To: D
(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 E 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: F

G
Signature of the attorney or unrepresented party
H
Printed name
I
Address
J
E-mail address
K
Telephone number

UNITED STATES DISTRICT COURT

for the

Eastern District of Michigan

A)	
<i>Plaintiff</i>)	
v.)	Civil Action No. C
B)	
<i>Defendant</i>)	

WAIVER OF THE SERVICE OF SUMMONS

To: **D**
(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 **E**, 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.

INSTRUCTIONS FOR COMPLETING USM-285 FORM

This form is used to request service of a new complaint by the U.S. Marshal Service.

Note: Remember, even though your filing fees may be waived, you may be required to pay the U.S. Marshal for the cost of serving these documents.

Completing USM-285 Form

Follow the table below to see what information belongs in each section of the form.

Label	Field	Information Required
A	Plaintiff	Name of the plaintiff, if more than one, print the first plaintiff's name and then "et al."
B	Court Number	Civil case number
C	Defendant	Name of the first listed defendant only. If more than one, print the first defendant's name and then "et al."
D	Type of Process	Print "summons and complaint."
E	Name of Individual...	Name of the specific defendant you are asking the U.S. Marshal to serve.
F	Address	Address of the specific defendant you are asking the U.S. Marshal to serve. There must be a complete address listed, or the U.S. Marshal cannot serve your document.
G	Send Notice...	Print your name and address here.
H	Number of Process...	Print the number "1" in this space.
I	Number of Parties...	Print the number of defendants who can be identified at this time. If you are able to identify more defendants later, you may submit a new form at that time.
J	Check for service on U.S.A.	Check this box if any of your defendants is a U.S. Government agency, official or the United States.
K	Special Instructions	This is an optional space where you can enter special instructions which may assist the U.S. Marshal in expediting service.
L	Signature	Sign your name here.
M	Plaintiff/Defendant	Check the box for Plaintiff.
N	Telephone	Print your telephone number here. If you have no phone, print "none."
O	Date	Print the date on which you filled out the form.

U.S. Department of Justice
United States Marshals Service

PROCESS RECEIPT AND RETURN
See "*Instructions for Service of Process by U.S. Marshal*"

PLAINTIFF	A	COURT CASE NUMBER	B
DEFENDANT	C	TYPE OF PROCESS	D
SERVE AT	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN		
	ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)		
E		F	

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW	G	Number of process to be served with this Form 285	H
		Number of parties to be served in this case	I
		Check for service on U.S.A.	J

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

Fold

Fold

K

Signature of Attorney other Originator requesting service on behalf of:	<input type="checkbox"/> PLAINTIFF	TELEPHONE NUMBER	DATE
L	M <input type="checkbox"/> DEFENDANT	N	O

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

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

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

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

Name and title of individual served (<i>if not shown above</i>)	<input type="checkbox"/> A person of suitable age and discretion then residing in defendant's usual place of abode	
Address (<i>complete only different than shown above</i>)	Date	Time <input type="checkbox"/> am <input type="checkbox"/> pm
_____	_____	_____