

**INFORMATION AND INSTRUCTIONS
FOR FILING A CIVIL RIGHTS COMPLAINT
PURSUANT TO 42 U.S.C. § 1983
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

YOU SHOULD FOLLOW THESE INSTRUCTIONS CAREFULLY
FAILURE TO DO SO MAY RESULT IN YOUR COMPLAINT
NOT BEING FILED AND CONSIDERED BY THE COURT

A. General Information About The Civil Rights Complaint Form:

1. The civil rights complaint form is designed to help you prepare a complaint seeking relief under the Civil Rights Act, 42 U.S.C. § 1983. Local Rule 215 requires the use of the civil rights complaint form by anyone not represented by counsel, that is, if they are proceeding pro se. For your complaint to be considered by the District Court, it must be typewritten or legibly handwritten. (See Local Rule 130-1). **NOTE: DO NOT WRITE ON THE BACK OF ANY OF THE PAGES;** any writing on the back of any page might not be considered by the court. All information must be clearly and concisely written, **only in the space provided on the form, and only one line of writing per line provided. Do not write in the margins.** Additional space has been provided at the bottom of the last page of the form for continuing allegations contained in Parts B or C. If needed, you may attach **two** additional pages of standard letter size paper to complete Parts B & C of the complaint. Be sure you make identify the count or claim to which the continued information applies. If you add more than the two pages, you must file a motion for leave of court (permission) to file the longer than normal complaint at the time you submit the complaint. This two page limitation only applies to pages added to Parts B & C.

2. You must sign the complaint, which constitutes a certificate that: 1) you have read the complaint; 2) to the best of your knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and law; and 3) it is not being filed for any improper purpose. You should review Rule 11 of the Federal Rules of Civil Procedure. Note also that Rule 11 provides for the imposition of sanctions if the complaint is signed in violation of the rule. Additionally, if a court finds that you have engaged in sanctionable conduct (such as pursuing a frivolous or malicious action), and if you are under the control of the Nevada Department of Prisons, you can be disciplined under the Prisons' Code of Penal Discipline, which can include all sanctions authorized under the Code including punitive confinement and the loss of good time credits.

3. If you do not meet the requirements for proceeding *in forma pauperis* or the payment of a lower filing fee, then the full filing fee of three hundred and fifty dollars (\$350.00) must accompany the complaint. You will also be responsible for paying the service fees of the individual you choose to serve the complaint. Be advised that you cannot hire the U.S. Marshal to perform service of process; the U.S. Marshal will perform service of process only when ordered to do so by the Court. The Federal Rules of Civil Procedure provide an inexpensive means for effecting service of process by obtaining a waiver from the defendant(s). See Rule 4(d).

4. If you are currently residing in a county that is part of the unofficial Northern Division, then you should mail your complaint to the Reno address; if you are currently residing in a county that is part of the unofficial Southern Division, then you should mail your complaint to the Las Vegas address. The counties in the unofficial Southern Division are Clark, Esmeralda, Lincoln and Nye. All other counties are in the unofficial Northern Division. See Local Rule LR IA 6-1 and Local Rule LR 8-1. Once your case is filed, a copy will be sent to you by the Clerk of the Court.

When you have completed writing your complaint, you should mail **ONLY THE ORIGINAL** with the proper filing fee or a motion to proceed *in forma pauperis* (see the separate "Information and Instructions for Filing a Motion for Leave to Proceed *In Forma Pauperis*" to determine whether you need to submit a filing fee) to:

Clerk, U.S. District Court
District of Nevada
Suite #301
400 South Virginia Street
Reno, Nevada 89501

OR

Clerk, U.S. District Court
District of Nevada
Room #1334
333 Las Vegas Blvd., South
Las Vegas, Nevada 89101

5. Except for the original complaint and a motion for leave to proceed *in forma pauperis*, all documents must bear the correct case number. In addition, you must furnish the opposing party or their attorney (if there is one) with a copy of any documents submitted to the court. Each original document (except the original complaint and a motion for leave to proceed *in forma pauperis*) must include a certificate of service stating the date a copy of the document was mailed to the opposing party or their attorney, and the address to which it was mailed. Pursuant to Local Rule LR 5-1, any pleading (except the original complaint and a motion for leave to proceed *in forma pauperis*) or other document received by the court which fails to include a certificate of service may be disregarded by the court or returned. A certificate of service may be in the following form:

I hereby certify that a copy of the foregoing document was mailed to

_____ (name of opposing party or counsel)
at _____
(address)
on _____, 20__.

(signature)

6. Except for the original complaint and a motion for leave to proceed *in forma pauperis*, you must furnish an original and one copy of any document submitted to the court. You must furnish one additional copy to the clerk if you wish to have a file-stamped copy returned to you.

7. Exhibits should not be submitted with the complaint. Instead, the relevant information contained in an exhibit should be paraphrased in the complaint, and you should keep the exhibit to use to support or oppose a motion for summary judgment or a motion to dismiss.

8. You must immediately notify the clerk and the opposing party or their attorney in writing of any change in your mailing address.

9. If you need to change any of the information in the original complaint, you can only do so by filing an amended complaint which must also be written on the civil rights complaint form. Rule 15(a) of the Federal Rules of Civil Procedure allows you to file one amended complaint prior to defendants filing an answer. You must obtain leave of court to file a second amended complaint or a first amended complaint if an answer has been filed. Local Rule LR 15-11 requires that any amended pleading be complete in itself, without reference to any prior pleading. This is because an amended complaint supersedes prior complaints; consequently, the amended complaint must contain all the relevant information from the original complaint along with the necessary or desired changes—any omitted allegations or defendants are dismissed.

10. **It is inappropriate to write a letter to any of the District Judges, Magistrates Judges, or the staff of any of the judicial officers.** The only appropriate way to communicate with these persons is by filing a written motion; you must, of course, send a copy of any motion to the attorney representing the defendant(s). The United States Magistrate Judge, the Clerk of the Court and Deputy Clerks are officers of the court, and as such they are prohibited from giving legal advice. Questions of this nature should be directed to an attorney who is not a member of the court's staff.

B. General Information About Civil Rights Actions:

1. To be able to bring a civil rights action, you must have had **your** civil rights violated. This is what is called "standing". You may not sue a defendant for the violation of someone else's civil rights. For example, if a friend had their civil rights violated, they could sue the defendant; you could not, even if your friend asks you to sue.

An exception is if you file what is called a class action. Still, you have to have had your rights violated but you can sue on behalf of many others who have also had their rights violated by the defendant's same acts. The requirements that must be met in order to file a class action suit are stringent, and the court has the discretion whether to allow a class action suit. The plaintiffs must file a motion with the court in which they show that they have met all of the requirements of Rule 23 of the Federal Rules of Civil Procedure. You should note that certain case law decisions hold that a *pro se* plaintiff cannot represent other plaintiffs in a class action. Fed.R.Civ.P. 23(a)(4); see *Oxendine v. Williams*, 509 F.2d 1405, 1407 (4th Cir.1975); *Griffin v. Smith*, 493 F.Supp. 129, 131 (W.D.N.Y.1980)

2. Your complaint can proceed in this court only if this court is able to exercise what is called "personal jurisdiction" over the named defendant(s). This means that, in order to require persons to defend themselves in a civil rights action filed in this court, they must either (1) reside in the State of Nevada, (2) have been in the State of Nevada when they caused the civil rights violation, or (3) have what is called "sufficient minimum contacts" with the State of Nevada. Generally speaking, personal jurisdiction based on "sufficient minimum contacts" is limited to situations in which the out-of-state defendants should have known that their acts would likely make them have to defend a suit in Nevada.

3. The court can grant relief in a § 1983 action only for wrongs which amount to the denial of federal constitutional rights by persons acting under color of state law. For a person to be "acting under color of state law", they must have committed the violation while performing their job as a state, county or city employee, official or agent. For example, police officers, parole and probation officers and prison or jail correctional officers performing their duties act "under color of state law" when arresting or searching a person or place. Whereas, a private party (that is, someone not employed by a state, county or city) does not act "under color of state law" when committing the same acts. For example, a security guard employed by a department store does not act "under color of state law" when they detain someone suspected of shoplifting.

Additionally, a person injured by a federal officer acting pursuant to their duties as a federal employee may sue the officer for a violation of their civil rights under what is called a *Bivens* action. The legal principles and rules that apply to actions against individuals acting under color of state law also apply to *Bivens* actions. Accordingly, the civil rights complaint form must be used for *Bivens* actions.

4. A defendant can be named in one of two different capacities: individual capacity and official capacity. Many people confuse the difference between the capacity in which a person is sued and "color of law"--the difference is quite simple. As described above, "color of law" refers to whether the person was a private party or an employee, official or agent of a state, county or city or the

federal government. The capacity in which a defendant is sued, however, is concerned with whether the defendant is sued because of actions personally taken, or whether they are sued because they happen to be holding a certain office or title, such as governor, warden or chief of police. There can be no civil rights suit unless the defendant was "acting under color of law". After the "color of law" requirement has been met, then it must be determined in which capacity the defendant is sued.

The distinction between whether a defendant is sued in their individual or official capacity is important because it determines what type of facts must be stated in the complaint. To sue a defendant in their individual capacity, you must be able to state facts showing that the person was actually, personally involved in violating your civil rights. However, a suit against a defendant in their official capacity is in reality a suit against the office/position that the defendant holds, instead of being based on that person's own actions. For example, a warden is responsible for the conditions of confinement, so a suit against the person who happens to be the warden (because he holds the title of warden) is a suit based on their official capacity. However, if the suit is based on actions taken by a person who happens to be the warden (without regard to the fact that they are the warden), then the suit is an individual capacity suit.

The types of relief that can be granted by the court are also determined by the capacity in which the defendant is sued. All types of relief can be granted in an individual capacity suit, i.e., monetary damages as well as injunctive relief. All types of relief can also be granted in an official capacity suit against a county or city official, but only injunctive relief is available in an official capacity suit against a state official.

5. You should keep in mind that if your suit is an individual capacity suit you cannot include someone as a defendant simply because they are a supervisor. You must be able to allege facts that show that the supervisor was personally involved in violating your civil rights. This is because liability must be based on the personal involvement of the defendant; liability may not be based on *respondeat superior* (which simply means that a supervisor is responsible for the acts of their subordinates). Consequently, a complaint that fails to show how the person was personally involved, or simply states that they are liable because they are the supervisor of another, fails to properly allege liability.

6. You can claim that the defendants acted as part of a conspiracy to violate your civil rights; you must, however, state sufficient facts to support the claim. Simply saying that the defendants acted as part of a conspiracy is not sufficient. Although a private party does not act "under color of law", they can be sued in a civil rights action if they are a co-conspirator with a federal, state, county or city official. As a partner in a conspiracy, they act as the agent of the state official.

7. You can name someone as "John Doe" in the complaint if you do not know their true name. However, to properly name a "John Doe" Defendant, you must provide all of the information you would normally provide if you already knew their name. For example, the easiest way to allege "John Does" is according to their function or action, such as John Doe #1 was the arresting officer, John Doe #2 was the booking officer, John Doe #3 was the medical officer who treated my injuries on (date), or John Doe #4 was the officer who searched my cell. Simply saying "John Does 1-15" is totally meaningless.

8. Even though you properly allege everything in the above paragraphs, there are some individuals who cannot be sued in a civil rights suit, that is, they are immune from suit. There are, however, different degrees of immunity. Absolute immunity protects judges, prosecutors and court personnel (to name a few) from civil rights suits in any court for actions they take within the scope of their duties as an integral part of the judicial process. Similarly, a state and its agencies are protected from suit in federal court by the Eleventh Amendment to the United States Constitution; but the immunity does not preclude the suit from being litigated in a state court.

9. Again, even though you properly allege everything in the above paragraphs, a civil rights action may be barred if it is not brought in a timely fashion, that is, within the time period designated by statute. The statute of limitations for civil rights actions filed in this court is two (2) years. Consequently, a civil rights action is barred if the complaint is not received by the court within the two (2) year deadline. For example, if a civil rights violation occurred on January 1, 2004, the complaint would have had to have been received by the clerk's office on or before January 1, 2006. If it was not received until January 2, 2006, the action would have to be dismissed as being barred by the statute of limitations.

C. Completing the Civil Rights Complaint Form:

Heading:

1. Print your name and mailing address on the lines provided. If you have a prison or jail inmate number, be sure to write it on the line provided.
2. Space is provided for you to name up to five (5) defendants. If you are attempting to sue more than five (5) individuals, then on the five lines provided in the heading write "see additional page for defendants"; on an additional page you must list in alphabetical order the names of all of the defendants. This additional page should be inserted after page 1 and numbered as page "1-A" at the bottom of the page. The original complaint must contain the names of all of the parties (plaintiffs as well as defendants) in the heading (or on the additional page if more than five defendants). See Rule 10(a) of the Federal Rules of Civil Procedure.
3. If you want a jury trial, then you must write "JURY TRIAL DEMANDED" on the line below "42 U.S.C. § 1983". A jury trial is not available if you are only seeking injunctive relief.
4. If you are filing a complaint in which you are naming as a defendant a federal officer instead of a state, county or city official, then you should cross-out "42 U.S.C. § 1983" and below it write "*BIVENS ACTION*".

Part A:

(This part of the form is designed for you to easily tell the court that it has the necessary jurisdiction over all of the parties and jurisdiction over the subject matter)

1. Fill-in all of the requested information about you on the spaces provided. Be sure to write the date(s) on which you allege your rights were violated in Counts I-III. If your complaint has more than three counts, then at the beginning of each additional Count be sure you write the necessary date(s).
2. Fill-in all of the requested information about each of the defendants in the spaces provided. Space is provided for you to give the necessary information for five (5) defendants. If you are naming more than five (5) defendants, then make a copy of page 2 of the form so you can provide the necessary information for the additional defendants. Label the page(s) as "2-A", "2-B", etc., at the bottom of the page and insert the additional page(s) immediately behind page 2.
3. This civil rights complaint form is designed so that it invokes the court's jurisdiction under 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under any other statutes, then you must list them at the top of page 3.

Part B:

1. Briefly state the general facts about your case. You should give an overview of what happened by informing the court of the background information relating to your claims. This is not the place to provide detailed information about what each defendant did to violate your rights--that should be done in Part C. Instead, all you are attempting to do in this part of the complaint is to tell the court the factual basis for your action. For example, in this part of the complaint you would inform the court that you allege that defendants failed to follow proper procedures in the disciplinary process.

2. You should not need additional space, but if you do, additional space is provided on the last page; and if that is not enough, then you may attach an additional page(s), labeled as page "3-A" at the bottom of the page and insert the additional page(s) immediately behind page 3. Remember, you are limited to a total of **two** (2) additional pages for Part B and Part C; if you have more than **two** (2) additional pages, you will also need to file a motion seeking permission from the court to file the complaint.

Part C:

1. This is where you identify what rights the defendant(s) violated. The form provides three (3) pages for alleging three (3) counts. If you are alleging more than three counts, use the additional space on the last page, and if that is not enough, then attach an additional page for each additional count (so that there is only one count per page). Number the additional pages "6-A", "6-B", etc., and inserted immediately behind page 6. Remember, you are limited to a total of two (2) additional pages for Part B and Part C; if you have more than two (2) additional pages, you will also need to file a motion seeking permission from the court to file the complaint.

2. To begin, you must identify which civil right was violated. **YOU MAY ALLEGE THE VIOLATION OF ONLY ONE CIVIL RIGHT PER COUNT.** Using the above example about the disciplinary process, you would state that your right to due process as guaranteed by the Fourteenth Amendment was violated.

3. After you have identified which civil right was violated, you need to state the supporting facts; and be as specific as possible. You must state what each individual defendant did to violate your rights. If there is more than one defendant, you need to identify by name which defendant did what act. Simply saying "the defendants" is insufficient; instead, you must say defendant X (insert the name of the defendant) did (tell what the defendant did), etc. for each named defendant. As best as possible, you also need to state the date(s) on which the act(s) occurred.

Part D:

1. You must identify any other action you have filed in either state or federal court that relates to the same or substantially similar claims you have alleged in this civil rights complaint. Also, if this civil rights complaint involves a claim relating to the conditions of confinement, then you must list any other action you have filed which relates to conditions of confinement.

2. Unlike habeas corpus actions, exhaustion of administrative remedies is generally not a prerequisite to filing a civil rights complaint. However, because the Inmate Grievance Procedures adopted by the Nevada Department of Prisons have been approved by the Attorney General of the United States pursuant to 42 U.S.C. § 1997e, if you are an inmate within the Nevada Department of Prisons you must exhaust the administrative remedies before you will be able to proceed with your case against the defendants. Consequently, you must disclose whether you have exhausted the inmate grievance procedures. If the basis for your complaint is exempt from the grievance procedures, be sure you fully explain why.

Part E:

1. Describe what relief you are seeking in the space provided. This should be kept very short--the form provides enough space without adding pages.

2. Generally, there are only two types of relief available in a civil rights action: monetary and injunctive. If you are seeking to prevent the defendants from doing a certain act, or to require them to do a certain act, then you should ask for injunctive relief. If you want to receive money from the defendants, then you should ask for monetary damages. You will need to specify how much in monetary damages you are seeking. Essentially, there are only two types of monetary damages: compensatory and punitive. Punitive damages are a form of punishment, and are rarely awarded in civil rights actions. Compensatory damages are intended to compensate the plaintiff for the violation of their civil rights. This includes lost wages, money which may have been wrongfully taken from you, as well as money for mental distress, pain and suffering, etc. You should be advised that in order to recover any compensatory damages, you must be able to prove that you have sustained the losses; consequently, you should be realistic about how much you claim. As an example, in a recent case an inmate was awarded twenty (\$20.00) for each day he was held in punitive confinement when it was proved that the defendants had denied him the necessary disciplinary hearing prior to placing him there. If you are not able to actually prove any damages even though you are able to prove a violation of your civil rights, you are entitled to receive what is called nominal damages, which is one dollar (\$1.00) for each violation.

3. You must sign your name and write your prison or jail number (if you have one) on the lines provided at the end of Part E. The signature must be an original signature, not a photocopy. Remember the warning at the beginning of these instructions about the requirements of Rule 11 of the Federal Rules of Civil Procedure. If someone wrote this civil rights complaint for you (such as an inmate law clerk or "jailhouse lawyer"), then that person must write their name on the line next to your signature.

FINAL NOTE

You should follow these instructions carefully. Failure to do so may result in your complaint not being filed and considered by the court. Additional space is provided at the bottom of the last page for the continuation of information from Parts B or Part C. Be sure to identify what is being continued.