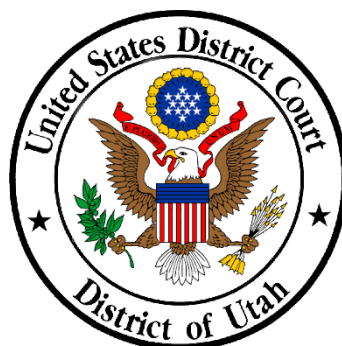


# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH



## PRO SE LITIGANT GUIDE

**Office of the Clerk of Court**

May 2023

## TABLE OF CONTENTS

SECTION	PAGE
INTRODUCTION .....	4
SECTION I: IMPORTANT ISSUES YOU SHOULD CONSIDER BEFORE DECIDING TO REPRESENT YOURSELF IN THIS COURT .....	6
A. IS THIS COURT THE APPROPRIATE COURT TO HEAR YOUR DISPUTE? .....	6
B. IS THERE AN ALTERNATIVE TO APPEARING <i>PRO SE</i> (REPRESENTING YOURSELF) THAT IS AFFORDABLE? .....	6
C. IF YOU PLAN TO REPRESENT YOURSELF, WHERE CAN YOU GO TO REVIEW THIS COURT'S RULES OF PROCEDURE AND APPLICABLE FEDERAL LAWS? .....	7
D. ARE THERE CERTAIN TYPES OF CASES IN WHICH LITIGANTS TYPICALLY REPRESENT THEMSELVES? .....	8
E. HOW DO YOU START A NEW CASE? .....	8
F. WHAT HAPPENS WHEN A CASE IS AT ISSUE? .....	10
G. WHAT COURT FEES AND COSTS ARE YOU REQUIRED TO PAY? .....	11
H. HOW DO YOU SUBMIT DOCUMENTS TO THE COURT? .....	11
I. HOW DO YOU OBTAIN INFORMATION ABOUT THE STATUS AND PROGRESS OF YOUR CASE? .....	13
J. IS IT POSSIBLE FOR YOU TO SPEAK DIRECTLY TO A JUDGE OR MEMBER OF HIS PERSONAL STAFF ABOUT YOUR CASE? .....	13
SECTION II: PROCEDURE FOR FILING A CIVIL RIGHTS ACTION UNDER TITLE 42 UNITED STATES CODE, SECTIONS 1983 AND 1985 .....	14
SECTION III: ACTIONS BROUGHT BY PRISONERS APPEARING <i>PRO SE</i> .....	15
SECTION IV: EMPLOYMENT DISCRIMINATION CASES .....	16
A. PROCEDURES TO FOLLOW BEFORE THE COMPLAINT IS FILED: .....	16
SECTION V: WAIVER OF FILING FEES .....	17
SECTION VI: REQUEST FOR APPOINTMENT OF COUNSEL .....	18
Appendices:	
A. List of Court Fees	
B. Motions to Proceed Without Prepaying Fees and Costs; Motion to Proceed <i>In Forma Pauperis</i>	

- C. Certificate of Service
- D. Motion for Appointment of Counsel
- E. Sample Motion

## INTRODUCTION

**WHO THIS GUIDE IS INTENDED TO ASSIST:** This guide is designed to assist you if (i) you want to file a lawsuit in federal court or you have an active role, either as a plaintiff or defendant, in a case that you or someone else has filed already in federal court, and (ii) you have elected to proceed without the assistance of a trained and licensed attorney.

**SOME BASIC DEFINITIONS:** Plaintiffs and defendants in court cases generally are referred to as the "parties" or "litigants." The plaintiff asserts a claim or right protected by law against the defendant; the defendant denies the claim or right, and the court determines whether the asserted claims or rights have merit. The great majority of litigants who appear in this court are represented by an attorney who has been trained in the law and is familiar with the applicable court rules and procedures. Parties of litigants who are not represented by licensed attorneys, who elect to represent themselves, generally are referred to as *pro se* parties or *pro se* litigants. Likewise, plaintiffs or defendants who represent themselves generally are referred to as *pro se* plaintiffs or *pro se* defendants.

**HOW THIS GUIDE SHOULD HELP YOU:** This guide will not answer all your questions about what you need to do to represent yourself effectively as a *pro se* litigant. The guide outlines the basic steps that are required to properly file an **action**, or lawsuit, with this court. It also provides some general guidance on the next steps in the process of litigating the action once you have filed it with the clerk of court. **However, you are responsible for learning about and following the procedures that govern the court process. Although the staff of the clerk's office can provide *pro se* litigants with general information concerning court rules and procedures, they are forbidden, as a matter of law, from providing legal advice, from interpreting and applying court rules, or otherwise participating, directly or indirectly, in any action.**

**A WORD OF ADVICE:** Self-representation carries certain responsibilities and risks that *pro se* litigants should be aware of before they proceed. The court encourages all individuals who are thinking about *pro se* or self-representation to carefully review the risks associated with self-representation and to inform themselves of the potential consequences.

**WARNING:** Rule 11 of the Federal Rules of Civil Procedure prohibits the filing of lawsuits that are clearly frivolous or filed only to harass someone. If after reviewing your complaint, the court determines that you have filed a lawsuit for an improper or clearly

unnecessary purpose, the judge may impose sanctions against you, including ordering you to pay a fine to the court or pay the legal fees of the person or persons against whom you filed the lawsuit.

## SECTION I: IMPORTANT ISSUES YOU SHOULD CONSIDER BEFORE DECIDING TO REPRESENT YOURSELF IN THIS COURT

### A. IS THIS COURT THE APPROPRIATE COURT TO HEAR YOUR DISPUTE?

The United States District Court for the District of Utah is one of 94 trial courts in the federal court system. Federal courts can only hear limited kinds of cases. As is the case in all of the federal courts, this court is authorized only to hear disputes that fall into the following four categories:

1. Those that deal with a question involving the United States Constitution;
2. Those that involve questions of federal -- as opposed to state -- law;
3. Those that involve the United States of America as a party, whether plaintiff or defendant; and,
4. Those that involve a dispute among residents of different states with an amount in controversy over \$75,000.

If your complaint does not fall under any of these categories, you cannot file it here.

### B. IS THERE AN ALTERNATIVE TO APPEARING *PRO SE* (REPRESENTING YOURSELF) THAT IS AFFORDABLE?

Most people who file and pursue litigation in the federal court employ a licensed attorney who practices law, has appeared in court, and is familiar with the rules of procedure that govern court process. If you would prefer to have an attorney to represent you, but you are unable to afford one that charges high hourly rates, you should consider contacting the Utah State Bar Association's Lawyer Referral Service (telephone number (801) 531-9075) whose staff can explain the various options for obtaining and paying for legal services.

There are other affordable options for legal assistance, including legal aid societies and legal services, that can assist you to obtain the services of an attorney at a reduced cost. You also may want to call the Utah State Bar Association for information about its *Tuesday Night Bar*, a program where attorneys voluntarily provide limited legal consultation without charge.

If you cannot find an attorney to represent you, you have the right to pursue your claims in the court by appearing without representation or *pro se*, a Latin phrase that means "for yourself ". Bear in mind that as a *pro se* litigant, you are representing only yourself and presenting only your own claims or defenses. 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 who practice in this court must follow. Generally, judges hold *pro se* litigants to the same standards of professional responsibility as trained attorneys.

**C. IF YOU PLAN TO REPRESENT YOURSELF, WHERE CAN YOU GO TO REVIEW THIS COURT'S RULES OF PROCEDURE AND APPLICABLE FEDERAL LAWS?**

As a *pro se* litigant, you should be familiar with the appropriate sets of federal rules of procedure. These rules set forth the general procedural requirements for litigating cases in all federal courts. As a *pro se* litigant in a civil case, you should be familiar with the Federal Rules of Civil Procedure and the Federal Rules of Evidence. If you are a *pro se* defendant in a criminal case, you should familiarize yourself with the Federal Rules of Criminal Procedure and Federal Rules of Evidence. Federal laws are located in the United States Code, which is abbreviated as "U.S.C." These rules and laws are available for review at several law libraries in the Salt Lake metropolitan area, as listed below. You should contact them by telephone to determine the hours they are open to the public.

1. The Utah State Law Library located in the Scott M. Matheson Courthouse, 450 S. State Street, room W-13, (801) 238-7990;
2. The University of Utah college Law Library located on University Street at approximately 300 South on the University of Utah campus; and
3. The U.S. Courts Law Library located on the fifth floor of the Orrin G. Hatch United States Courthouse at 351 South West Temple, room 5.200 in downtown Salt Lake City.

Most counties have law books available. Call your county library to inquire about the location of those books. Also, Brigham Young University's law school, located on the Brigham Young University campus in Provo, Utah, has a law library open to the public.

As a *pro se* litigant, you also should be familiar with the District Court Rules of Practice, a set of rules commonly referred to as **local rules** that apply specifically to court proceedings in this court. The local rules include General Rules, Civil Rules, Criminal Rules

and Bankruptcy Rules. The libraries listed above have copies of the court's local rules available for review.

The clerk's office also accepts prepaid orders for the rules; there are no shipping or handling charges. For information, you should call (801) 524-6100. The local rules are also available on the Internet at [www.utd.uscourts.gov](http://www.utd.uscourts.gov).

#### **D. ARE THERE CERTAIN TYPES OF CASES IN WHICH LITIGANTS TYPICALLY REPRESENT THEMSELVES?**

As noted earlier, a litigant may appear *pro se* in any case that is properly within the jurisdiction of this court. There are three categories of cases that are most often filed by *pro se* litigants. They are as follows:

1. Cases alleging denial of civil rights under Title 42, United States Code, Section 1983;
2. Cases alleging employment discrimination under Title 42 United States Code, Section 2000(e); and
3. Cases filed by persons who are in jail or prison and who challenge their sentences or conditions of confinement.

#### **E. HOW DO YOU START A NEW CASE?**

**File a Complaint:** The **plaintiff** or person bringing the lawsuit to court must file a **complaint**. The complaint can be filed by hand-delivering it or mailing it to the clerk's office, Orrin G. Hatch United States Courthouse, Room 1.100, 351 South West Temple, Salt Lake City, Utah 84101. Whether you deliver or mail your complaint to the court, you must submit

(i) an original and one copy of the complaint, (ii) a completed **cover sheet**, a copy of which can be obtained from the clerk's office, and (iii) the \$402 filing fee (unless you are proceeding *in forma pauperis* as discussed in sections I(G) and V of this guide). The complaint outlines a problem or reason for the suit, also known as a **cause of action**. This complaint is given a case number and assigned to a district judge.

**Serve the Complaint:** Each **defendant** or person whom the plaintiff claims is responsible for the problem must be notified of the lawsuit through a process that is specified under law. The responsibility for notifying each defendant rests with the plaintiff and is referred to as **service of process**. The provisions for service of process are described in **Rule 4 of the Federal Rules of Civil Procedure**, If these service of process requirements



are not followed correctly, the case can be dismissed for failure to effect proper service of process.

The defendant(s) can be notified by service of a **summons**. You can obtain the standard summons form from the clerk's office. After you complete this summons form, staff members of the clerk's office officially **issue** the summons; this means that an authorized court employee will sign the form and emboss it with the official seal of the court. The summons and complaint are then served on the defendant.

Detailed provisions on how to serve the defendant are contained in **Rule 4** of the **Federal Rules of Civil Procedure**. You should carefully review the rule to make sure that you are familiar with those provisions. The service of process requirements can be satisfied in one of three ways.

- 1. Personal Service:** Here you direct someone else to deliver or serve a copy of the complaint and summons on the defendant(s). Such service can be performed by anyone who is over eighteen years of age and who is not a party in the case. Constables and private process servers will do this for a fee. The person who serves the summons must record on the back of the summons for his or her name, the name of the person who was served, and the date and time of service. This section of the summons form is referred to as the **return of service**, and if it is not completed, service of process is not complete. Rule 4 requires confirmation that service has been completed. Such confirmation or **proof** that the documents have been served on the defendant requires that the original summons form with the return of service completed be returned to the court and that a copy of the form be left with the defendant.
- 2. Waiver of Service:** Rule 4 permits a defendant to **waive** personal service of process. That means the defendant agrees to respond to your complaint without being served with it. The clerk's office can provide you with a waiver form that you can mail to the defendant. If the defendant completes and returns the waiver, you will be spared the burden of personal service.
- 3. Service by the U.S. Marshal:** If a judge approves your application for waiver of the requirement to pay the \$402 case filing fee as described in Section V of this guide and screens the case for valid claims, it may order service by the U.S. Marshal's Service. If ordered by the court, a nonincarcerated party will be required to provide the clerk's office with a completed summons for each defendant. The clerk will then issue the summons and forward them

to the U.S. Marshal for service, unless the court asks the defendant to waive formal service of the complaint. The court may ask defendants to waive service of the summons

After you file your complaint with the clerk's office, you have 90 days to serve a copy of it and the summons on the defendant(s). It is your responsibility to effect service; if you fail to do so within the 90 days, your case may be dismissed.

**File and Serve the Response:** Once the defendant(s) has been served with a copy of the complaint, the defendant(s) must file with the court an **answer** or some other response within a specified number of days. Under the rules governing service of process, each defendant is required to provide a copy of the response on the plaintiff.

Once each defendant has filed a response the case is considered **at issue**.

#### **F. WHAT HAPPENS WHEN A CASE IS AT ISSUE?**

When a case is at issue, any one of a number of different procedures may occur.

**Referral to a Magistrate Judge:** The district judge to whom the case is assigned may refer the case to a **magistrate judge** for assistance in managing it. To do so, the district judge signs an **order of reference**. Once a case has been referred to a magistrate judge, subsequent court proceedings may be conducted before that judge.

**Filing of Motions and Objections:** Either party-- the plaintiff or the defendant-- may request that the court take specific action related to the case. To do so, the party prepares a formal request or what is referred to as a **motion**. DUCivR 10-1 provides formatting instructions for motions and other papers. The party then signs the motion, submits it or **files** it with the clerk of court, and sends a copy to the opposing party. The opposing party may file an **objection** or a **responsive pleading** to the motion. This objection sets forth the reasons why the court should deny rather than grant the motion.

**Motion Review:** The district or magistrate judge may schedule hearings to provide the parties with an opportunity to argue the motion and the objections. Or the judge may decide a hearing is unnecessary and rule on the motion by issuing a written order that either grants, denies, or partially grants and partially denies what the motion sought.

**Dispositive vs. Nondispositive Motions:** Motions fall into two broad categories: dispositive and nondispositive. **Dispositive** motions, if granted, dispose of the case; **nondispositive** motions, if granted, affect the case but do not dispose of it. District

judges have the authority to rule on both kinds of motions; magistrate judges are authorized to rule only on nondispositive motions.

**Magistrate Judge Report and Recommendation:** Where the case has been referred to a magistrate judge and one of the parties files a dispositive motion, the magistrate judge is authorized to prepare a written **report and recommendation**, essentially a recommendation that the motion be either granted or denied and stating the reason why. This report and recommendation then is forwarded to the district judge assigned to the case, and copies are sent to the parties. As a party, you have a certain number of days within which to file objections to the report and recommendation. All objections that are received within the specified time are forwarded to the district judge. The district judge will then issue an order that adopts, rejects, or adopts in part and rejects in part the magistrate judge's report and recommendation. Where the judge's order dismisses the complaint and the cause of action, the clerk of court will prepare and enter a **judgment** in the case. Such judgment is final and can be appealed only to the Tenth United States Circuit Court of Appeals located in Denver, Colorado.

#### **G. WHAT COURT FEES AND COSTS ARE YOU REQUIRED TO PAY?**

The fee for filing a complaint and opening a civil case in any U.S. District court is \$402. This may be paid by cash, check, or credit card. A list of the fees charged by the court for various services and materials is attached to this guide as Appendix A and is also available in the clerk's office. If you are unable to pay the filing fee, you may apply to waive the fee or for an installment payment plan. This is called *in forma pauperis*, which is Latin for "in the form of a pauper." Please refer to section V of this guide for additional information about waiving the filing fee.

Waiver of the filing fee by the magistrate judge does not automatically waive the other costs associated with pursuing or litigating your case. If, for example, you need copies of original documents in your case file, the clerk's office is required to charge the standard rate of \$.50 per page. Service of your complaint on the other parties will entail additional costs, which the court may waive as part of your request to proceed *in forma pauperis*. Other expenses you will incur include the cost of (i) preparing the papers you file with the court, and (ii) mailing or hand-delivering a copy of each paper to the opposing party to satisfy the requirements of service.

#### **H. HOW DO YOU SUBMIT DOCUMENTS TO THE COURT?**

Case-related documents that ask the court to take specific action are referred to as **motions** or **pleadings**. If, for example, you want to ask the court to take an action,

such as appointing an attorney, you must do so by means of a written motion. A motion should be supported by a summary of the law supporting the motion called a **memorandum** and/or by an affidavit or declaration of the movant that provide the court with facts that support the granting of the motion. In preparing a motion, you should follow the same general format as the sample motion attached to this guide as Appendix E. In preparing motions, you should be as specific as possible about the order or the action you would like the court to take.

As a matter of policy, the court requires parties to submit or **file** an original with the clerk of court. Clerk's office staff will stamp the filing date on each document received. Pro Se parties may file documents with the court in person or by mail. Parties may also ask the court for permission to file and receive notice by email. A form motion, application, and proposed order for email notification and filing is available on the pro se page of the court's website.

For purposes of filing in person, the clerk's office is located in Room 1.100 of the United States Courthouse on the corner of Fourth South and West Temple. The telephone number for the clerk's office is (801) 524-6100. The office is open to the public from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on federal holidays. As noted, pleadings also may be mailed to the clerk's office.

The mailing address for the clerk's office is:  
United States District Court,  
Orrin G. Hatch Courthouse  
Office of the Clerk  
351 S West Temple, Room 1.100  
Salt Lake City, Utah 84101

You should retain a copy of all pleadings and other documents you file with the court for your own use. When you file pleadings in person, plan to bring your personal copy with you so staff of the clerk's office can stamp it. By doing so, your records will reflect the filing date of the original. If you mail your pleading and wish to have your copy stamped, you should enclose a third copy and a self-addressed, stamped envelope. The clerk's office will return your copy stamped by the court.

**Note: When you file a document with the court, you also must mail or deliver a copy to the attorney of the opposing parties, or, if they don't have an attorney, to the party individually.**

Each document you file must include a **certificate of service** that states the date that you mailed or delivered a copy of the pleading to the opposing parties. A sample form for a certificate of service is attached to this guide as Appendix C.

**I. HOW DO YOU OBTAIN INFORMATION ABOUT THE STATUS AND PROGRESS OF YOUR CASE?**

The clerk's office maintains an automated record or **docket** for every case. This docket is a chronological summary of all significant events in the history of the case. For example, each time you file a pleading or appear for a hearing, an entry summarizing the event is added to the case docket. You may review the docket on the public access terminals located in the public review area in the clerk's office. Alternatively, if you have a personal computer (PC) and modem with communications software, by registering with the court you can dial up the court's automated PACER system and review your case docket directly on your PC; note that use of this capability is billed at \$.10 per page for viewing and use of it requires that you register with PACER by calling (800) 676-6856 or (210) 301-6440 and obtain a password. If you wish to have a paper copy of your docket, staff of the clerk's office will provide it for you at \$.50 per page. Staff of the clerk's office also can provide you with basic docket information over the telephone.

It is important that you realize that staff of the clerk's office do not know and cannot provide you with the reasons for a judge's decision. Nor is the clerk's office in a position to know when a judge will respond to a motion or issue a ruling in a case. The judge's personal staff -- the secretary or a law clerk -- can respond to specific questions regarding scheduling.

**J. IS IT POSSIBLE FOR YOU TO SPEAK DIRECTLY TO A JUDGE OR MEMBER OF HIS PERSONAL STAFF ABOUT YOUR CASE?**

As a party appearing *pro se*, you are prohibited from all private or *ex parte* communication with the judge to whom your case is assigned. *Ex parte* communication occurs when one of the parties to a lawsuit exchanges information with the assigned judge (i) without the opposing party being present or (ii) without the knowledge and consent of the opposing party. With few exceptions, because of this prohibition a judge will refuse to speak or otherwise communicate *ex parte* with any party to a case that is assigned to him. Any communication between the assigned judge and a *pro se* litigant should be in writing, and a copy of the communication should be sent either to the opposing party or that party's attorney. For example, a party appearing *pro se* should send to the opposing party a copy of any letter sent to the judge. Moreover, the letter to the judge should indicate that a copy has been sent to the opposing party. As noted above, telephone or personal contact with the judge's personal staff should be limited to specific scheduling inquiries.

## SECTION II: PROCEDURE FOR FILING A CIVIL RIGHTS ACTION UNDER TITLE 42 UNITED STATES CODE, SECTIONS 1983 AND 1985

One type of action frequently filed by *pro se* litigants is alleged denial or violation of an individual's civil rights. In a civil rights complaint, a *pro se* plaintiff is alleging that his or her constitutional rights or privileges or immunities have been violated. The federal law under which a civil rights claim arises is 42 U.S.C. Sections 1983 and 1985.

As noted earlier in this guide, to file an action in this court you first must prepare a complaint. Most complaints filed by *pro se* litigants involve alleged violations of civil rights. To assist *pro se* litigants with the process of filing a federal civil rights complaint, the clerk's office has prepared an information packet called **Information for Filing a Civil Rights Complaint Under 42 United States Code Sections 1983 and 1985**. That packet includes a sample complaint form that you should use as a guide when you prepare your complaint; the packet is available at the clerk's office. Your complaint should be either typed or handwritten. In either case, you should make certain that your complaint can be easily read by the judge.

## SECTION III: ACTIONS BROUGHT BY PRISONERS APPEARING PRO SE

Persons who are confined or incarcerated in a jail or a prison occasionally file *pro se* actions with the court. These actions fall into three general categories.

**A. Appeal of Sentence:** This is a criminal action in which a prisoner submits an appeal to have a higher or superior court review the punishment or **sentence** that the trial court imposed. If a person was sentenced by a judge from the United States District Court for the District of Utah, an appeal is made to the Tenth United States Circuit Court of Appeals which is located in Denver, Colorado. An appeal to the Tenth Circuit is made by filing a **notice of appeal** with the clerk of the court in Salt Lake City. Appeals to the Tenth Circuit are governed by the **Federal Rules of Appellate Procedure**, which set forth specific time deadlines for filing an appeal. See section I(C) for information on where you can review those rules.

**B. Writ of Habeas Corpus:** In this type of action, the prisoner applies or petitions this court for a writ of *habeas corpus*; this is, in essence, an action that challenges the constitutionality of the confinement and seeks to have the sentence vacated or dismissed.

Both of these actions are established by federal law. If you are in state custody, having been sentenced by a state court judge, you may file a petition under 28 U.S.C. § 2254. If, alternatively, you are in federal custody, having been sentenced by a federal judge, you may file a motion to vacate sentence under 28 U.S.C. § 2255. The office of the clerk has prepared separate information packets, complete with the required forms, for these two types of actions. To obtain a copy of either packet, you should contact the office of the clerk. ***Note: Section 2254 and 2255 proceedings are governed by special rules called Rules Governing section 2254 and 2255 Proceedings. It is the petitioner's responsibility to become familiar with those rules. See section I(C) for information on where you can find those rules.***

**C. Prisoner Civil Rights:** In this type of action, a prisoner challenges the conditions of confinement, or the way he or she is being treated in prison or jail. this type of action generally takes the form of a civil rights complaint. If you wish to file a civil rights complaint, you should ask the clerk's office for a copy of the information packet called **Information for Filing a Complaint Under 42 U.S.C. Sections 1983 and 1985**. That packet includes a sample complaint form that you should use as a guide when you prepare your complaint.

## SECTION IV: EMPLOYMENT DISCRIMINATION CASES

Another type of action filed by *pro se* litigants is alleged employment discrimination. Prior to filing an employment discrimination complaint in federal court, the plaintiff is required to follow specific administrative procedures. ***Note: This is not a complete statement of the law on the administrative procedures to follow in an employment discrimination case. The procedures are complicated, and it is the pro se litigant's responsibility to make sure that all procedures are followed correctly and within the applicable time limit. If the requirements are not followed, your case may be dismissed.***

### **A. PROCEDURES TO FOLLOW BEFORE THE COMPLAINT IS FILED:**

If you wish to file an employment discrimination case in this court, you first must file your charges with the Anti-Discrimination Division of the Utah State Industrial Commission (UADD). In most cases, the UADD will review your charges and, barring complications, the Equal Employment Opportunity Commission (EEOC) will issue to you a **Notice of Right to Sue** indicating that (i) the administrative process has been completed, and (ii) no further action will be taken on behalf of the EEOC. Once this notice is issued, you have a limited time period within which to file your lawsuit; failure to file a complaint in that time period will result in having your cause of action dismissed by this court. A Notice of Right to Sue is not issued where the charges allege employment discrimination based on age. However, not having such a notice will not prevent you from filing an employment discrimination complaint based on age.

The Notice of Right to Sue will indicate that you, as the litigant, have the right to request the court to appoint an attorney to represent you if, for financial reasons, you are unable to retain your own attorney. You should bear in mind that in this court, a request for appointment of an attorney will be considered only after a complaint has been filed and is pending before the court.

**B. PREPARING THE COMPLAINT:** To assist a party appearing *pro se* in filing an employment discrimination complaint, the office of the clerk has prepared an information packet called **Information on Filing an Employment Discrimination Complaint**. The packet is available at the clerk's office. The packet includes a sample complaint form to assist you in filing an employment discrimination complaint. You should make certain that your complaint is legible and can be easily read by the judge.



## SECTION V: WAIVER OF FILING FEES

As is noted earlier in this guide, generally filing a case in this court requires the payment of a filing fee before the Clerk's office will open the case. If you are unable to pay the filing fee and are not incarcerated, you may file a **Motion to Proceed In Forma Pauperis (Nonincarcerated Party)** requesting that the court waive the fee. If you are incarcerated, you will need to file **Motion to Proceed Without Prepaying Fees or Costs (Incarcerated Party) requesting permission to pay the filing fee and any costs to have the complaint served in installments.** If you file the **Motion to Proceed Without Prepaying Fees or Costs (Incarcerated Party)**, you must also attach a copy of your inmate account statement for the 6-month period just before you file your complaint.

The clerk's office will only accept your case without payment if your initial document (e.g., the complaint) is accompanied by the appropriate motion discussed above. A magistrate judge will review and rule on the motion and screen the case to make sure it is legally valid before the complaint can be served. Dismissal of the case can happen if the magistrate judge decides any of the following:

- the court lacks jurisdiction;
- the allegations of indigency are false;
- the complaint is frivolous or malicious;
- the complaint does not state a legal basis for which relief can be granted;
- or
- the complaint asks for damages from a defendant who is legally exempt from paying damages.

If the magistrate judge grants the motion to waive the fee or to make installment payments, your initial document(s) will be filed and docketed in the case as of the date the motion was granted. If the judge subsequently denies your motion or orders you to pay a reduced filing fee, you will be required to make the payment before the clerk will file the complaint in the case. If you fail to make the payment within the specified period of time, your case will be closed.

A copy of the motions discussed above is included in Appendix B, is available in the clerk's office, or on the court's website at <https://www.utd.uscourts.gov/usdc-forms>.

Please review DUCivR 3-2 for additional information about obtaining a waiver, a reduced filing fee, or an installment payment plan. Please contact the clerk's office at (801) 524-6100 with additional questions.

## SECTION VI: REQUEST FOR APPOINTMENT OF COUNSEL

*Pro se* litigants may ask the court to appoint an attorney or counsel, for them in a civil case. The Court has a limited number of attorneys who accept cases on behalf of the Court. These attorneys serve *pro bono*, or without charge, to the *pro se* litigant. *Pro se* litigants have no right to be represented by court-appointed counsel, and the court has no obligation to appoint counsel. The court will appoint counsel only in a few select cases where having an attorney seems particularly appropriate or important. If you would like to request that the court appoint counsel to represent you in your lawsuit, you must file a "motion for appointment of counsel" form with the court. The form should be filed with the complaint. A copy of a motion for appointment of counsel is attached to this guide as Appendix D.

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



**APPENDIX A**

**District Court Fee Schedule**

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**Office of the Clerk of Court**

**District Court Fee Schedule**  
**Effective December 1, 2020**

*(Updated changes in red)*

The fees included in the District Court Miscellaneous Fee Schedule<sup>1</sup> are to be charged for services provided by the district courts.

- The United States should not be charged fees under this schedule, with the exception of records searches, photocopies and reproduction of audio recordings when the information requested is available through remote electronic access.
- Federal agencies or programs that are funded from judiciary appropriations (agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. 3006 and bankruptcy administrators) should not be charged any fees under this schedule.

**FILING FEES**

- \$402.00** **Civil case filing fee** (includes **\$52.00 Administrative fee** for filing a civil action, suit or proceeding in a district court. (This fee does not apply to applications for a writ of *habeas corpus* or to person granted *in forma pauperis* status under 28 U.S.C. 1915.)
- \$49.00** **For filing any document that is not related to a pending case or proceeding.**  
*Fee applies to (i) filing of petition to perpetuate testimony, Fed. Rule of Civil Procedure 27(a), (ii) filing of papers by trustees under 28 U.S.C. § 754, (iii) filing of letters rogatory or letters of request, and (iv) registering of a judgment from another district pursuant to 28 U.S.C. § 1963)*
- \$6,800.00** **For filing an action brought under Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, P.L. 104-114, 110 Stat. § 785 (1996).**  
*(This fee is in addition to the filing fee prescribed in 28 U.S.C. 1914(a) for instituting any civil action other than a writ of habeas corpus.)*

**PROCESSING FEES**

- \$30.00** Processing fee **for an offense** charged on a federal violation notice.

**NOTICES OF APPEAL**

- \$505.00** To the Tenth Circuit Court of Appeals
- \$39.00** **For an appeal to a district judge from a judgment of conviction by a magistrate judge in a misdemeanor case.**

---

<sup>1</sup>Issued in accordance with 28 U.S.C. § 1914.

## **RECORDS SEARCH**

**\$32.00** For conducting a search of the district court records, \$32 per name or item searched.

*This fee applies to services rendered on behalf of the United States if the information requested is available through electronic access.*

## **CERTIFICATION AND EXEMPLIFICATION**

11.00 For certification of any document. *(except documents reproduced by the FRC)*

**\$23.00** For exemplification of any document. *(except documents reproduced by the FRC)*

\$47.00 For issuance of an apostille.

## **PHOTOCOPIES**

\$.50 Per page for reproducing any record and providing a copy in paper form. This fee shall apply to paper copies or electronic made from either (1) original documents; or (2) microfiche or microfilm reproductions of the original records. *This fee applies to services rendered on behalf of the United States if the record is available through electronic access.*

\$.10 Per page printed from the public access terminals in the Clerk's Office.

## **ELECTRONIC RECORDS**

**\$32.00** Per record provided. For reproducing and transmitting in any manner a copy of an electronic record stored outside of the court's electronic case management system, including but no limited to, document files, audio recordings, and video recordings.

## **MICROFICHE/MICROFILM**

\$6.00 For each microfiche sheet of film or microfilm jacket copy of any court record, where available.

## **AUDIO RECORDINGS**

**\$32.00** For reproduction of an audio recording of a court proceeding.

*This fee applies to services rendered on behalf of the United States if the information is available through electronic access.*

## **ARCHIVED CASE FILE RETRIEVAL**

- \$64.00 For retrieval of one box of records from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court.
- \$39.00 For retrievals involving multiple boxes, \$39 for each additional box.
- \$19.90 For electronic record retrieval
- \$ 0.65 Per page for electronic copies of records retrieved from a Federal Records Center (Limit 100 pages)(Other restrictions may apply)

## **RETURNED CHECKS**

- \$53.00 For any payment returned or denied for insufficient funds.

## **ATTORNEY ADMISSION**

- \$188.00 For original admission of attorneys to practice in the District of Utah, including a certificate of admission.**
- \$250.00 Pro Hac Vice Admission.
- \$ 30.00 Annual Court Bar Registration.
- \$ 20.00 For a duplicate certificate of admission or certificate of good standing.**

## **DISTRICT COURT RULES OF PRACTICE**

- \$15.00 Tabbed spiral-bound edition
- \$5.00 CD

## **REGISTRY FUND ACCOUNTS**

The clerk shall assess a charge for the handling of registry funds deposited with the court, to be assessed from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts.

*For management of registry funds invested through the Court Registry Investment System, a fee at a rate of 10 basis points of assets on deposit shall be assessed from interest earnings excluding registry funds from disputed ownership interpleader cases deposited under 28 U.S.C. § 1335 and held in a Court Registry Investment System Disputed Ownership Fund. For management of funds deposited under 28 U.S.C. § 1335 and invested in a Disputed Ownership Fund through the Court Registry Investment System, a fee at an annual rate of 20 basis points of assets on deposit shall be assessed from interest earnings. (Not used in the District of Utah)*  
*The Director of the Administrative Office has the authority to waive these fees for cause.*

## **ELECTRONIC ACCESS TO CASE INFORMATION DATABASES**

\$.10 Per page to view case information on the PACER system. The total for any document, docket sheet, or case-specific report not to exceed the fee for 30 pages. Use of PACER requires users to register with the PACER Service Center. Register online at <http://www.pacer.gov/register.html> or call 1-800-676-6856. Fees are invoiced quarterly. Fee applies to all users -- private/public/state/federal, except as noted in the introductory paragraph to this fee schedule. The court, for good cause, may exempt persons or classes of persons from these fees, in order to avoid unreasonable burdens and to promote public access to such information.

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



**APPENDIX B**

**Motions to Proceed Without Prepaying Fees and  
Costs; Motion to Proceed *In Forma Pauperis***



**UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH**

_____	)	
	)	
Plaintiff/Petitioner	)	Civil Action No. _____
v.	)	
_____	)	<b>MOTION TO PROCEED WITHOUT</b>
	)	<b>PREPAYING FILING FEE--WITH</b>
Defendant/Respondent	)	<b>REQUIRED AFFIDAVIT AND</b>
	)	<b>AUTHORIZATION</b>
	)	<b>(INCARCERATED PARTY)</b>
	)	

**THIS FORM SHALL BE USED BY ANY INMATE SEEKING TO PROCEED *IN FORMA PAUPERIS*, FILING A CIVIL COMPLAINT IN THE DISTRICT OF UTAH.**

**Please read fully before signing and *fill every blank*, even if to state "N/A," or "not applicable." If any lines are left blank, this Motion will be deemed invalid. This Motion must be signed and dated at page 4. Pages 1-2 will be filed under seal to protect your financial information from being seen by the public. To help you understand this process, the federal statute and local rule governing motions to proceed without prepaying filing fees are attached.**

I, \_\_\_\_\_ (print name), declare that I am the plaintiff/petitioner in this case; I believe that I am entitled to relief; and I am unable to prepay the costs of this proceeding. I therefore apply to have my case filed **without prepaying** the entire court filing fee of \$350, or without paying the habeas-petition filing fee of \$5. The nature of my action is briefly stated as follows:

\_\_\_\_\_.

In support of this motion, I provide *all* the following information, in **affidavit** format:

**(1)** I am incarcerated in the following facility: \_\_\_\_\_.

Within the past 6 months, I was also held in other facilities, as follows:

\_\_\_\_\_.

**(2)** In my correctional facility, I am employed / not employed (circle one).

\_\_\_\_\_  
Inmate/Plaintiff name

\_\_\_\_\_  
Case number

**(3)** In the past 12 months, I have received the specified amount of money from these sources  
**(on each line, you must indicate an amount, even if zero):**

- (a) Business, profession, or other self-employment \$ \_\_\_\_\_
- (b) Income from rent, interest, or dividends \$ \_\_\_\_\_
- (c) Pensions, annuities, or life-insurance payments \$ \_\_\_\_\_
- (d) Disability, unemployment, workers compensation \$ \_\_\_\_\_
- (e) Public assistance \$ \_\_\_\_\_
- (f) Gifts or inheritances \$ \_\_\_\_\_
- (g) Child support or alimony \$ \_\_\_\_\_
- (h) Any other source of income \$ \_\_\_\_\_

**(4)** List the dollar amount for each of the following **(on each line, you must indicate an amount, even if zero):**

Cash on hand \$ \_\_\_\_\_ Checking account \$ \_\_\_\_\_ Savings account \$ \_\_\_\_\_

**(5)** Do you own or have interest in any real estate, stocks, bonds, notes, retirement plans, vehicles, or other valuable property (excluding ordinary household furnishings and clothing)? If "yes," describe the property and state its approximate value and equity (if applicable):

\_\_\_\_ Yes \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_ No

\* \* \* \* \*

---

**Inmate/Plaintiff name**

---

**Case number**

**REQUIRED AUTHORIZATION, CONSENT, AND DECLARATION**

**(A)** I understand that it is ultimately my responsibility to meet the requirements of the statute governing federal legal actions in which an inmate applies to proceed without prepaying the entire court filing fee. This includes ensuring that the Court gets the required inmate-account statement, and, if required, an initial partial filing fee (IPFF). Regardless of whether an IPFF is required, the filing fee must be paid in increments, as described below in paragraph (H).

**(B)** To help me understand and meet my responsibilities, I have read this form and the attached statute governing my application to proceed without prepaying the entire court filing fee.

**(C)** I understand that even if the Court grants this application to proceed *in forma pauperis* and files my complaint, I must still eventually pay the entire filing fee of \$5 (habeas petition) or \$350 (non-habeas civil case). I understand that I must pay the complete filing fee even if my case is later dismissed.

**(D)** I understand that I must provide within **fourteen days** the statutorily required statement *certified* by my facility's inmate-account office, showing all receipts, expenditures, and balances during the last six months, for any account in the facility in which I am being held, and including a calculation of my IPFF in this Court. I will also submit a similar statement from any other institution where I was incarcerated during the last six months.

**(E)** To meet my statutory obligation, I authorize the Court to transmit a copy of this completed and signed form to my facility's or former facility's inmate-account office to serve as a request to that office to transmit to the Court (and to me) my account statement as described in the above paragraph.

**(F)** I understand that, on my certified inmate-account statement, my institution may calculate whether I must pay an initial partial filing fee (IPFF), by applying the formula set forth by federal statute. The IPFF is:

20% of the greater of--(a) the average monthly deposits to my account for the six-month period immediately preceding the filing of my complaint or petition; or (b) the average monthly balance in my account for the six-month period immediately preceding the filing of my complaint or petition.

28 U.S.C.S. § 1915(b) (2023).

---

**Inmate/Plaintiff name**

---

**Case number**

**(G)** If the statement, with its IPFF calculation, shows that I owe an IPFF, I authorize the inmate-account office to--within thirty days of my signature here--remit the IPFF to the Court. If the IPFF is not remitted to the Court within thirty days, I understand that my case will be dismissed and closed.

**(H)** I understand that, so long as there is a remaining unpaid balance on my \$350 filing fee, I am required by statute "to make monthly payments of 20 percent of the preceding month's income credited to [my inmate] account." 28 U.S.C.S. § 1915(b) (2023). I therefore consent for the inmate-account office "to forward payments from [my] account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid." *Id.* The inmate-account office shall forward any payments to the Clerk's Office, United States District Court for the District of Utah, 351 S. West Temple, Rm. 1.100, Salt Lake City, UT 84101.

**(I)** I authorize collection on a continuing basis of any additional fees, costs, and sanctions imposed by the District Court. I understand that ultimately it is my responsibility to ensure my fees and costs are paid.

**I certify--under penalty of perjury--that the foregoing (everything on pages one through four) is true and correct. 28 U.S.C.S. § 1746 (2023).**

---

Date executed

---

Inmate's signature

**(As necessary, the Court will transmit pages 3-4 to the relevant correctional facility.)**

**THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH**

**THE COURT RESPECTFULLY REQUESTS THAT THE CORRECTIONAL FACILITY'S INMATE-ACCOUNT  
OFFICE FOLLOW THESE INSTRUCTIONS:**

**A.** The attached Order, based on your inmate's signed authorization, authorizes and requests your office to--**within fourteen days** of receiving the Order and a copy of this motion from the federal court clerk's office--submit the completed Financial Certificate (found below) together with the inmate's *certified* inmate-account statement (showing all receipts, expenditures, and balances during the last six months) to the Clerk's Office at the following email address: [utdecf\\_clerk@utd.uscourts.gov](mailto:utdecf_clerk@utd.uscourts.gov). When the Certificate and statement are sent to the Court, please also give a copy of that same inmate-account statement to the involved inmate. Please note the case number on the statement.

**B.** Please include in the Financial Certificate for this inmate a calculation of the initial partial filing fee (IPFF), using the statutory formula above and reiterated here. The IPFF is:

20% of the greater of--(a) the average monthly deposits to my account for the six-month period immediately preceding the filing of my complaint or petition; or (b) the average monthly balance in my account for the six-month period immediately preceding the filing of my complaint or petition.

28 U.S.C.S. § 1915(b) (2023).

**C.** Please certify the inmate-account statement, by completing the "Financial Certificate" found on the next page, and e-mailing to the Court the completed Financial Certificate with the inmate-account statement.

**D.** The attached Order, with this signed motion--and its authorization signed by your inmate--authorizes and requests your office to remit the calculated IPFF within the next thirty days. If the IPFF is not remitted within thirty days of the inmate's signature above, the Court will dismiss and close the inmate's case.

**E.** Based on the attached Order and inmate's authorization, so long as there is a remaining unpaid balance on this inmate's \$350 filing fee--on the inmate's behalf—we authorize and request your office "make monthly payments of 20 percent of the preceding month's income credited to [my inmate] account." *Id.* These payments can be forwarded from this inmate's "account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid." *Id.*

**E.** Please remit payments by check to the Clerk's Office, United States District Court for the District of Utah, 351 S. West Temple, Rm. 1.100, Salt Lake City, UT 84101. Please make checks payable to "Clerk United States District Court."

**F.** Should the District Court impose any additional fees, costs, and sanctions upon this inmate and notify your office of such, under this signed motion with its declaration and consent, your office is authorized and requested to remit those from the inmate's account to the Court.

**G.** Any questions may be directed by email to [jessica\\_lykins@utd.uscourts.gov](mailto:jessica_lykins@utd.uscourts.gov) or [laurie\\_corcoran@utd.uscourts.gov](mailto:laurie_corcoran@utd.uscourts.gov).

**FINANCIAL CERTIFICATE**

(To be completed by official in Correctional Facility's Inmate Account Office)

PLEASE ATTACH A PRINTOUT OF ALL TRANSACTIONS IN THE INMATE'S FACILITY  
ACCOUNT FOR THE PRECEDING 6 MONTHS TO  
THIS CERTIFICATE AND EMAIL TO: [utdecf\\_clerk@utd.uscourts.gov](mailto:utdecf_clerk@utd.uscourts.gov).

1. Inmate's name: \_\_\_\_\_

2. Case number: \_\_\_\_\_

3. Current account balance: \_\_\_\_\_

4. Average monthly balance for preceding 6 months: \_\_\_\_\_

5. Average monthly deposits for preceding 6 months: \_\_\_\_\_

6. Federal initial partial filing fee: \_\_\_\_\_ (To be remitted within  
30 days)

I hereby certify that, as of this date, the above information for the prison account of the  
inmate named above is correct.

\_\_\_\_\_  
Signature of authorized official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed name of authorized official & title

(a)

(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such [person] prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)

(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—

(A) the average monthly deposits to the prisoner's account; or

(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate [United States magistrate judge] in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title [28 USCS § 636(b)] or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is

required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title [28 USCS § 636(c)]. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e)

(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

(A) the allegation of poverty is untrue; or

(B) the action or appeal—

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(f)

(1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(2)

(A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(h) As used in this section, the term “prisoner” means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.



## District of Utah Local Rules of Civil Practice (December 2022)

### Rule 3-2 PROCEEDING WITHOUT PREPAYMENT OR PAYMENT OF FILING FEES

#### (a) Motion to Proceed In Forma Pauperis.

. . . .

(2) An Incarcerated Party. Under 28 U.S.C. § 1915, an incarcerated party may request authorization to proceed in a civil action without prepayment of the filing fee by filing a Motion to Proceed Without Prepayment of Fees. A form motion is available from the Clerk's Office and on the court's website.

(A) *Account Statement and Consent*. In addition to the motion, a party must submit:

(i) a certified copy of the incarcerated party's trust fund account statement (or institutional equivalent) from each institution in which the incarcerated party was confined in the 6 months before the motion is filed. The account statement must be submitted with the motion; and

(ii) written consent authorizing the appropriate prison official to collect fees and submit payments to the clerk if the motion is granted. If the motion is granted, the court will send a written consent form to the incarcerated party to sign and return to the court.

(B) *Initial Partial Filing Fee*. If the motion is granted, the court will assess and, when funds exist, collect an initial partial filing fee of 20% of the greater of:

(i) the average monthly deposits to the account during the six-month period preceding the filing of the action; or

(ii) the average monthly balance in the account for the six-month period preceding the filing of the action.

(C) *Monthly Payments*. After the initial partial filing fee is paid, the incarcerated party must make monthly payments of 20% of the preceding month's income credited to the account but only if the account balance exceeds \$10.

(D) *Collecting Payments*. The agency having custody of the incarcerated party must forward any payment required under this rule in the proper amount to the clerk until the filing fees are paid.

(E) *Conditions for Filing the Action*. The clerk will file the action as of the date of the order granting the motion. If the motion is denied, the clerk will notify the incarcerated party of the decision and will file the action only upon receipt of the required fee.

#### (b) Screening the Case.

(1) At any time, including when reviewing the motion, a magistrate judge may recommend dismissal of the action or a district judge may order dismissal of the action if: (A) the allegation of indigence is untrue; (B) the court lacks jurisdiction; (C) the claims are frivolous or malicious; (D) it fails to state a claim on which relief can be granted; or (E) it seeks monetary relief against a defendant who is immune.

#### (c) Service of Process.

(1) The clerk will not issue a summons until directed to do so by the court.

(2) After the motion is granted, or after the case has been screened and a decision has been made to proceed with service, the court will order: . . . (B) Regarding an incarcerated party's action: (i) each defendant to waive service of process, under Rule 4 of the Federal Rules of Civil Procedure; or (ii) the United States Marshal to serve on each defendant the completed summons, the complaint, and a copy of the order.

# UNITED STATES DISTRICT COURT

District of Utah

Plaintiff

vs.

Defendant(s)

Case Number: \_\_\_\_\_

## MOTION TO PROCEED IN FORMA PAUPERIS (NONINCARCERATED PARTY)

### MOTION TO PROCEED IN FORMA PAUPERIS (NONINCARCERATED PARTY)

#### Instructions

Complete all questions and then date and sign the motion. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case number, and the question number.

- |   | <b>Yes</b>               | <b>No</b>                |
|---|--------------------------|--------------------------|
| 1. Do you receive SNAP?                                       | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Do you receive Medicaid?                                   | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Do you receive SSI?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Are represented by a lawyer from a legal aid organization? | <input type="checkbox"/> | <input type="checkbox"/> |

**If you answered "yes" to any of the questions above, please skip to the bottom of the motion, sign and date it, and then submit the motion to the court for review.**

If you answered "no" to all of the questions above, please complete the following sections.

5. For both you and your spouse, estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly income amount during the past 12 months		Income amount expected next month	
	You	Spouse	You	Spouse
Employment	\$	\$	\$	\$
Self-employment	\$	\$	\$	\$
Income from real property <i>(such as rental income)</i>	\$	\$	\$	\$
Interest and dividends	\$	\$	\$	\$
Gifts	\$	\$	\$	\$
Alimony	\$	\$	\$	\$
Child support	\$	\$	\$	\$
Retirement <i>(such as social security, pensions, annuities, insurance)</i>	\$	\$	\$	\$
Disability <i>(such as social security, insurance payments)</i>	\$	\$	\$	\$
Unemployment payments	\$	\$	\$	\$
Public assistance <i>(such as welfare)</i>	\$	\$	\$	\$
Other <i>(specify):</i>	\$	\$	\$	\$
<b>Total monthly income:</b>	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

6. List your employment history for the past two years, most recent employer first. *(Gross monthly pay is before taxes or other deductions.)*

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$
			\$

7. List your spouse's employment history for the past two years, most recent employer first. *(Gross monthly pay is before taxes or other deductions.)*

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$
			\$

8. How much cash do you and your spouse have? \$ \_\_\_\_\_

Below, state how much money you and your spouse (either separately or jointly) have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
		\$	\$
		\$	\$
		\$	\$

9. List the assets that you and your spouse own (either separately or jointly) along with the estimated values and equity. Do not list clothing and ordinary household furnishings.

<b>Assets owned by you or your spouse</b>	
Home <i>(Value and equity)</i>	\$
Other real estate <i>(Value and equity)</i>	\$
Motor vehicle #1 <i>(Value and equity)</i>	\$
Make and year:	
Model:	
Registration #:	
Motor vehicle #2 <i>(Value)</i>	\$
Make and year:	
Model:	
Registration #:	
Other assets <i>(Value and equity)</i>	\$
Other assets <i>(Value and equity)</i>	\$

10. State every person, business, or organization owing you or your spouse money and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
	\$	\$
	\$	\$
	\$	\$

11. State the persons who rely on you or your spouse for support.

Name (or, if under 18, initials only)	Relationship	Age

12. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment <i>(including lot rented for mobile home)</i>		
Are real estate taxes included? Yes <input type="checkbox"/> No <input type="checkbox"/>	\$	\$
Is property insurance included? Yes <input type="checkbox"/> No <input type="checkbox"/>		
Utilities <i>(electricity, heating fuel, water, sewer, and telephone)</i>	\$	\$
Home maintenance <i>(repairs and upkeep)</i>	\$	\$
Food	\$	\$
Clothing	\$	\$
Laundry and dry cleaning	\$	\$
Medical and dental expenses	\$	\$
Transportation <i>(not including motor vehicle payments)</i>	\$	\$
Recreation, entertainment, newspapers, magazines, etc.	\$	\$
Insurance <i>(not deducted from wages or included in mortgage payments)</i>		
Homeowner's or renter's:	\$	\$
Life:	\$	\$
Health:	\$	\$
Motor vehicle:	\$	\$
Other:	\$	\$
Taxes <i>(not deducted from wages or included in mortgage payments) (specify):</i>	\$	\$
Installment payments		
Motor vehicle:	\$	\$
Credit card <i>(name):</i>	\$	\$
Department store <i>(name):</i>	\$	\$
Other:	\$	\$
Alimony, maintenance, and support paid to others	\$	\$

Regular expenses for operation of business, profession, or farm ( <i>attach detailed statement</i> )	\$	\$
Other ( <i>specify</i> ):	\$	\$
<b>Total monthly expenses:</b>	\$ 0.00	\$ 0.00

13. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes  No  If yes, describe on a separate sheet of paper and attach it to the motion.

14. Have you spent — or will you be spending — any money for expenses or attorney fees in conjunction with this lawsuit? Yes  No

If yes, how much? \$ \_\_\_\_\_

15. Provide any other information that will help explain why you cannot pay the costs of these proceedings.

16. Identify the city and state of your legal residence.

Your daytime phone number: \_\_\_\_\_

Your age: \_\_\_\_\_ Your years of schooling: \_\_\_\_\_

**Declaration in Support of the Motion**

I declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested. I declare under penalty of perjury that the information above is true and understand that a false statement may result in a dismissal of my claims.

Executed on: (Date)	Signature (Required)
---------------------	----------------------

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



**APPENDIX C**

**Certificate of Service**



**CERTIFICATE OF SERVICE**

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

was mailed/delivered to \_\_\_\_\_ at \_\_\_\_\_  
(choose one) (Name of defendants) or (Address)  
defendant's attorney)

on \_\_\_\_\_  
(Date)

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



**APPENDIX D**

**Motion for Appointment of Counsel**

NAME:

ADDRESS:

TELEPHONE:

---

**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF UTAH - \_\_\_\_\_ DIVISION**

---

Plaintiff,  
  
v.  
  
Defendants.

**MOTION FOR  
APPOINTMENT  
OF COUNSEL**

**Civil No:**

---

The plaintiff in the above entitled matter hereby moves the court for an order appointing legal counsel to act on his/her behalf.

The court has already approved the plaintiff's application to file the matter *in forma pauperis*.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Print your name below your signature.)

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



**APPENDIX E**

**Sample Motion**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

\_\_\_\_\_  
Plaintiff,

vs.

\_\_\_\_\_  
Defendant(s).

MOTION to/for: \_\_\_\_\_  
\_\_\_\_\_

Case No:

Judge:

I, \_\_\_\_\_, representing myself without a  
lawyer, move to/for \_\_\_\_\_  
under the following statute(s)/rule(s) (if known) \_\_\_\_\_ for the  
following reason(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

---

---

---

---

---

DATED: \_\_\_\_\_.

\_\_\_\_\_  
Signature

CERTIFICATE OF SERVICE

I certify that on \_\_\_\_\_ a copy of the above motion was served, by first class U.S. mail, fax, email, or hand-delivery, to  
at

(Opposing party or counsel)

\_\_\_\_\_  
(Address)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature