

**PRO SE PACKAGE**

**A SIMPLE GUIDE TO FILING A CIVIL ACTION**



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

Office of the Clerk of Court

501 "I" Street  
Sacramento, CA 95814-2322  
(916) 930-4000

1130 "O" Street  
Fresno, CA 93721-2201  
(559) 498-7483

Office Hours are 8:30 to 4:30 p.m., Monday through Friday

August, 2002

The following instructions have been compiled to assist any person wishing to file a complaint in this court. We have attempted to simplify procedures; however, we cannot and will not act as lawyers nor give advice as counsel. We do not anticipate that these simple procedures will satisfy all needs, and the Local Rules of Practice for the U.S. District Court are available for more specific guidance. You should use the Local Rules along with the Federal Rules of Civil Procedures. The Federal Rules are available at a public library and the Local Rules are available from the Clerk's Office and can be accessed on our web site at [www.caed.uscourts.gov](http://www.caed.uscourts.gov).

\*\*\*\*\*

If you believe that you have been injured or wronged by someone, some individual, corporation or government agency and you also believe you should be compensated for the harm you have suffered, you may decide to file a civil suit in the United States District Court, without the help of an attorney.

### **FUNDAMENTAL INFORMATION**

First, there are a few simple concepts you must get to know and understand.

The PLAINTIFF is the person who files the lawsuit.

The DEFENDANT is the person who is being sued.

If you are representing yourself without the benefit of an attorney, you are known as a PRO SE LITIGANT. “Pro Se” is a Latin term meaning “for yourself.”

As a pro se litigant, you enjoy every right entitled to you under the law. You need not worry if you have had little or no experience with the courts before. However, pro se litigants are expected to follow/abide by the rules that govern the practice of law in the Federal Courts. Pro Se Litigants should be familiar with the Federal Rules of Civil Procedure and the Local Rules of this court.

### **FEDERAL COURT vs STATE COURT**

There is a difference between State Court and Federal Court. The difference being in what types of cases (law suits) they can decide. This is called JURISDICTION. State Court has general/broad jurisdiction and Federal Court has limited/specific jurisdiction. Under Federal Court jurisdiction, the two main types of cases are Federal Question Cases and Diversity Cases.

**FEDERAL QUESTION CASES:** are cases where the issue involves violation of Federal Law.

**DIVERSITY CASES:** are cases where the Plaintiff and Defendant are citizens of different states and the

amount in controversy exceeds the sum or value of \$75,000. exclusive of interest and costs.

## **STEP ONE: WRITE YOUR COMPLAINT**

All cases are comprised of documents prepared and filed by litigants. The most common documents are the complaint, answer and motions. The first document that you must write/file is called a COMPLAINT (see Attachment No.1).

The function of the COMPLAINT is to tell the Court and the defendant the reason for filing the lawsuit and what relief you desire. You must provide an original and one of the complaint, along with sufficient copies for each defendant to be served. The COMPLAINT must state:

1. The NAME AND ADDRESS of the plaintiff in the upper left hand corner of the complaint. The names of all the plaintiffs and defendants must be stated in the caption. The Court will provide the case number.
2. The JURISDICTION or reason your case is being filed in Federal Court. See 28 U.S.C. § 1331et seq.
3. The ALLEGATIONS or claims that you are making against the defendant(s). Place each allegation in a short clearly-written paragraph. See Rule 10 Federal Rules of Civil Procedure.

4. The RELIEF you are seeking from the court. This can be money or something you want the Judge to make the defendant do or stop doing. This information is usually written in the last paragraph of the COMPLAINT.

If you believe that you are entitled to a trial by jury, you must indicate in a paragraph following the relief requested that you claim trial by jury. See Rule 38(b) of the Federal Rules of Civil Procedure.

Do not worry that your COMPLAINT is not professionally written. It should be typed if possible. The Court will take into consideration that you are a PRO SE litigant and untrained in drafting legal documents. You should, however, make every effort to state your case in clear, concise terms. See Rules 8 and 10 of the Federal Rules of Civil Procedure. **YOU MUST SIGN YOUR COMPLAINT.**

Forms for filing a petition under Title 28 U.S.C. § 2254 for writ of habeas corpus by a person in state custody or a motion under Title 28 U.S.C. § 2255 to vacate, set aside, or correct sentence by a person in Federal custody are available from the Clerk's Office.

All pleadings submitted to this Court must be on 8 ½ x 11" paper. See Rule 7-130 of the Local Rules.

## **STEP TWO: FILE YOUR COMPLAINT**

Your next step is to file the COMPLAINT with the Court. In addition to filing the COMPLAINT the following forms will have to be completed and submitted with the complaint:

1. A Civil Cover Sheet - (Attachment 2)
2. If you are making service by SUMMONS, a completed SUMMONS for each defendant - (Attachment 3) Please refer to Step 3 for service.
3. A \$150.00 file fee for a civil case (the filing fee for a petition for writ of habeas corpus is \$5.00)

The filing fee may be waived if you cannot afford to pay it. For more information, see below. All checks or money orders should be made payable to: "CLERK, UNITED STATES DISTRICT COURT".

**IF YOU CANNOT AFFORD TO PAY THE FILING FEE** you may be allowed to have the filing fee waived if you fill out an APPLICATION FOR LEAVE TO PROCEED IN FORMA PAUPERIS - (Attachment 4) and send it to the Court with the COMPLAINT, Cover Sheet, service copies for each defendant and, if appropriate, completed Summons forms. The Financial Affidavit is required to be completed so

that the selected Judge can make a determination of your inability to pay the filing fee.

When you file the COMPLAINT, Cover Sheet (summons if applicable) and Application for Leave to Proceed in Forma Pauperis, each of these will be reviewed and forwarded to a Judge for consideration. If your Application is approved, the filing fee will be waived and your case will proceed. If your Application is **not** approved, you must pay the filing fee to have your case proceed.

If your In Forma Pauperis application is granted, the Court will direct the U.S. Marshal to serve your summons and complaint upon the defendants. In order for the Marshal to effectuate service on all defendants, you must provide service copies of the complaint for each defendant and complete a Marshal's 285 form for each defendant. You are responsible for the movement of your case once it is filed.

### **CONSENT FORMS**

When you file your complaint you will be given forms called:  
NOTICE OF RIGHT TO CONSENT TO THE EXERCISE OF CIVIL  
JURISDICTION BY A MAGISTRATE JUDGE AND APPEAL OPTION  
and CONSENT TO PROCEED BEFORE UNITED MAGISTRATE

JUDGE, which you will need to serve on the parties in your case. Upon the voluntary consent of ALL parties (who must file the consent form with the Court), a Magistrate Judge may conduct any and all proceedings in your civil case, including a jury or non-jury trial, and the entry of final judgment, in accordance with the provisions of Title 28, U.S.C. § 636(c) and Local Rule 73-305.

### **STEP THREE: SERVICE OF PROCESS**

If you are NOT proceeding In Forma Pauperis, your next step is to SERVE (inform) each of the defendants that he or she is being sued. This may be done in two ways:

1. **NOTICE AND REQUEST FOR WAIVER OF SERVICE**

If you are suing the United States (and its agencies, corporations, or officers) or a state, local or foreign government, you CANNOT use this method and you MUST arrange for Service of Process (described below at number 2).

You may notify non-government defendant(s) of the commencement of the lawsuit by sending a “NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS” - Form AO 398 (Attachment 5) along with a copy of the complaint by first-class mail or other reliable means. You must also include a copy of the WAIVER OF SERVICE OF SUMMONS- Form AO 399 (Attachment 6) and a self addressed

return envelope. See Rule 4(d) of the Federal Rules of Civil Procedure. If service is waived by the defendant the Waiver of Service form is returned to the plaintiff for filing with the court and the action shall proceed. If the defendant does not waive service, the plaintiff must proceed with service of process.

## 2. SERVICE OF PROCESS

Making “service of process” involves serving a copy of the complaint upon each of the defendants.

A SUMMONS is a writ used to notify the person named as the defendant of the commencement of the civil action and the requirement to appear and answer. The summons must contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff’s attorney, if any, otherwise the plaintiff’s address and the time within which the rules require the defendant to answer the complaint.

If a defendant has not “waived service of summons” OR you are suing a government (federal, state, local, foreign) you **MUST** arrange to have a copy of an original Summons and a copy of the complaint served upon each defendant.

You must complete a summons for each defendant and present each summons to the Clerk who will sign and place the Court Seal on each summons. A copy of the summons must be served

upon each defendant with a copy of the complaint. The original summons is for the use of the person making service.

You can make **service of process** by having a “disinterested” (non-party) person who is over the age of eighteen deliver copies of the SUMMONS and COMPLAINT to each of the defendants. When using this method of making service of process, have the server fill out the back of the **original** SUMMONS and send it to the Court. See Rule 4, Federal Rules of Civil Procedure.

NOTE: Service of the COMPLAINT on the defendant must be made within 120 days from the date the complaint was filed or the case will be subject to dismissal. See Rule 4(m), Federal Rules of Civil Procedure.

### **THINGS YOU SHOULD KNOW ABOUT**

The ANSWER is the formal written statement by the defendant responding to a complaint setting forth any defenses and objections to the claims by the plaintiff.

A MOTION is an application or request made to the court for the purpose of obtaining a ruling or order directing some act to be done in favor of the applicant. See Rule 7(b), Federal Rules of Civil Procedure and Local Rule 7.1.

## **AFTER THE ANSWER**

In most cases the Court will issue a SCHEDULING ORDER which sets forth a timetable with deadlines the litigants must follow.

The DISCOVERY PERIOD is the time frame allowed by the Court for both plaintiff and defendant to discover facts, research the law, and gather evidence to be presented at trial to prove the litigant's position/case.

The discovery period always comes after the filing of the answer by the defendant and before the first day of the trial.

### **COMPLAINT/ANSWER/DISCOVERY PERIOD/TRIAL**

Whenever you file any document with the Court, **you must always**:

1. Send a copy to each of the parties who are involved in the case, or their lawyers, and indicate on a Proof of Service form (see attachment 7) at the end of the document that you have done so in accordance with Federal Rule of Civil Procedure 5.
2. Provide the correct civil action number of your case on ALL documents and correspondence and have it readily available whenever you call the Court for information.
3. Sign all documents you file with the Court. Place the words "PRO SE" after your name. Place your address and telephone number on all documents and inform the Court of any changes,

in accordance with Local Rule 83-182(d), as soon as possible to ensure proper service of Court issued orders. It is very important that you provide a telephone number in the event it is necessary to obtain further information or clarification or advise you of any changes in hearing schedules. In addition, you must comply with the Local Rule 7-131, regarding counsel identification.

If you do not know an attorney, perhaps you should contact the Lawyer Referral Service of your local county Bar Association.

If you cannot afford an attorney, perhaps you should contact the Neighborhood Legal Services or Legal Aid in your area.