

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

PRO SE HANDBOOK

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1. Introduction

Welcome to the United States District Court for the Southern District of Indiana.

The Court has prepared this Handbook for you as someone who wants (or needs) to be a party in a civil lawsuit without a lawyer. We call that type of person a "pro se" litigant. (That is Latin phrase meaning "for himself" or "for herself.")

This Handbook will help you understand the basics of the legal process. But it will not teach you about the law. For that, you must do your own research. This Handbook is no substitute for having your own lawyer. If you need to participate in a lawsuit, you are urged to obtain a lawyer, if possible.

Chapter 2 of this Handbook will help you decide whether you can or should file your lawsuit here. If you read Chapter 2 and decide to file your lawsuit here, Chapters 3 to 10 will help explain how to file it, and how it will proceed once you do. At the end, there is a glossary of legal terms that may be unfamiliar to you.

This Handbook should not be considered as either the last word or your only resource. It is only a summary of the procedures that may apply when you file and litigate your lawsuit. If, **after reading this Handbook**, you still have questions about your case, you may wish to contact the Clerk's Office. Please know, however, that **employees of the Court cannot give legal advice.**

The Clerk's Office has offices in the following locations:

Evansville Division

304 Federal Building
Evansville, IN 47708
Phone (812) 434-6410

Indianapolis Division

105 U.S. Courthouse
46 E. Ohio Street
Indianapolis, IN 46204
Phone (317) 229-3700

New Albany Division

210 Federal Building
New Albany, IN 47150
Phone (812) 542-4510

Terre Haute Division

207 Federal Building
Terre Haute, IN 47808
Phone (812) 234-9484

Each office is open from 8:30 a.m. to 5:00 p.m., Monday through Friday, except for federal holidays. Envelopes containing documents to be filed should be directed to the Clerk of the Court.

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2. Should You File Your Complaint in the United States District Court, Southern District of Indiana?

There are two different court systems in the United States: state courts and federal courts. Before filing a case in a federal court, you should first make sure that the federal court has **jurisdiction** over your potential lawsuit, which means the power to hear and decide certain cases, based on the kind of case you are bringing and the identity of the parties to the case. State courts can hear almost any type of case. This includes civil, domestic (divorce, child custody, and child support), probate and property disputes. On the other hand, federal courts (like this one) can only hear certain types of cases. For example, federal courts can hear cases where someone claims a federal law or the U.S. Constitution has been violated, or cases where the U.S. government is a party. Federal courts can also hear cases where (1) the plaintiff is a citizen of a different state than the defendant(s) **and** (2) the plaintiff claims to be owed at least \$75,000. This court, the United States District Court for the Southern District of Indiana, is a federal court.

If you believe that your case is the right type of case to file in federal court, please remember that there are two United States District Courts in Indiana: the Southern District and the Northern District. The Southern District consists of 60 counties in Indiana. For your reference, we have listed the counties within the Southern District and the divisional office to which they are assigned to assist you in determining whether you should file your lawsuit in this District or another Federal District Court.

COUNTIES WITHIN THE SOUTHERN DISTRICT OF INDIANA

Indianapolis Division Counties:

Bartholomew, Boone, Brown, Clinton, Decatur, Delaware, Fayette, Fountain, Franklin, Hamilton, Hancock, Hendricks, Henry, Howard, Johnson, Madison, Marion, Monroe, Montgomery, Morgan, Randolph, Rush, Shelby, Tipton, Union and Wayne

Evansville Division Counties:

Daviess, Dubois, Gibson, Martin, Perry, Pike, Posey, Spencer, Vanderburgh and Warrick

Terre Haute Division Counties:

Clay, Greene, Knox, Owen, Parke, Putnam, Sullivan, Vermillion and Vigo

New Albany Division Counties:

Clark, Crawford, Dearborn, Floyd, Harrison, Jackson, Jefferson, Jennings, Lawrence, Ohio, Orange, Ripley, Scott, Switzerland and Washington

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3. Questions to Ask Before You File a Lawsuit

Just filing a lawsuit does not mean that you will get the result you want or expect. There are five important questions you should consider before you file a case in federal court. Of course, there are other questions that you may need to consider depending on your case, but this list is a good place to start before you file your lawsuit.

A. Does the Law Recognize Your Injury?

A lawsuit requires a legal injury that the law recognizes and for which it provides a remedy. Many things that are “wrong” are not illegal. Which statute or court decision do you think that the defendant has violated? After you have determined that you have a legal claim you must decide whether this court is the proper court to file your civil suit.

B. Have You Waited Too Long to File a Lawsuit?

The “statute of limitations” sets a time limit within which a lawsuit can properly be filed in court. If the deadline has passed before you file suit, the Court may dismiss your case. Whether your claim is barred by

the applicable statute of limitations is a question which may require legal research on your part.

C. Who Are the Right Defendants?

You can only sue defendants whom you believe are responsible for the wrong you have suffered. When you write your complaint, you must include facts (such as specific dates, names, and events) which support the relief you seek against **each** person that you have sued. Just listing a name in the caption of the complaint is not enough. If the main part (or “body”) of the complaint does not say what a person listed in the caption did wrong, that person can be dismissed from your case.

D. What Facts and Evidence Support Your Case?

The person who brings a claim in federal court has what is called the “burden of proof.” That means that person must establish that some injury under law actually happened. You should not sue someone that you will not be able to **prove** violated your rights. You need facts to support your claims. It helps greatly if you can find witnesses who saw what happened, or have written proof like medical reports, police reports, and letters.

E. Have You Exhausted Your Administrative Remedies?

Sometimes, it is necessary for you to pursue certain remedies that may be available to you **before** you can properly bring a claim in federal court. This happens most often in two areas: (1) if you are appealing a federal agency’s decision; or (2) if you are a prisoner trying to sue about prison conditions.

(i) Administrative Procedures

If you want to appeal the decision of a governmental agency the law may require you to complete **all** of the administrative procedures established by the agency for appealing its rulings **before** you file a federal lawsuit.

For example, the denial of an application for social security benefits can be appealed to a federal court only after a final

decision on the application is issued by the Commissioner of the Social Security Administration. A form to appeal a decision of the Commissioner of Social Security is available from the Clerk's Office and on this court's website at

<http://www.insd.uscourts.gov/prose/default.htm>

Another situation in which administrative procedures must be completed before a lawsuit can be filed consists of employment discrimination cases in which a charge of discrimination must be filed with the Equal Employment Opportunity Commission (EEOC) or its partner state agencies. An Employment Discrimination Complaint Form is available from the Clerk's Office and on this court's website.

(ii) Suits Brought About Prison Conditions

Current statutes (see 42 U.S.C. § 1997e(a)) provide that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." Meeting this requirement can become a contested issue.

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4. Basics for Filing a Case in the Southern District of Indiana

A. What Are the Federal and Local Rules of Civil Procedure?

Every plaintiff and defendant in a lawsuit must follow the rules of the court in which the case is filed. In the Southern District of Indiana there are several sets of rules you will need to follow.

Some rules apply in every federal court in the country. They include the *Federal Rules of Civil Procedure* (Fed. R. Civ. P.), which control everything from the filing of the complaint to the jury's verdict. Other national rules include the *Federal Rules of Evidence*, which control

what evidence a court may use to decide the case; and the *Federal Rules of Appellate Procedure*, which control how you can appeal this Court's decisions if you disagree with them. Copies of these rules can be found at most courthouse libraries, law schools, and correctional institutions throughout Indiana. You can also find them on the internet at www.law.cornell.edu/rules and <http://www.insd.uscourts.gov/ProSe/default.htm>. This court does not provide copies of these rules.

In addition to the rules that apply in all federal courts, this Court also has its own related rules which you must follow. They are called the "Local Rules." The numbering system of the Local Rules correlates with the numbering system of the Federal Rules for easy reference. It is important to remember that, as a pro se litigant, **you are responsible for knowing and following the court's Local Rules and procedures.** You can view the Local Rules of the United States District Court for the Southern District of Indiana and Pro Se Handbook through the court's website at <http://www.insd.uscourts.gov/ProSe/default.htm>. The Clerk's Office can send you a copy of the Local Rules or Pro Se Handbook if you submit a written inquiry. There may be a fee charged for a copy regardless of whether you are proceeding *in forma pauperis*.

If your case needs to be filed in another court, you should contact the Clerk's Office of that court for information regarding local rules and procedures for filing your case.

B. What Should I Put in My Complaint?

A civil case in Federal Court must be commenced through the filing of a complaint. The *Federal Rules of Civil Procedure* have rules that you must follow when writing your complaint. Specifically, Rule 8(a) and Rule 10 require you to:

1. List the names, addresses, and telephone numbers of all of the plaintiffs, and the names and addresses of all the defendants;
2. Say why you believe this court has the power to decide this particular case (i.e., that it has jurisdiction over your lawsuit);

3. Explain why you believe that each defendant violated the law and is responsible for your injuries;
4. Number each paragraph in your complaint and limit, as much as possible, each paragraph to a single set of circumstances;
5. State what legal injuries you claim to have suffered and what persons are responsible for each such legal injury.;
6. Clearly state what you are asking the Court to do if you prevail; and
7. Sign it at the bottom. (Each plaintiff must sign.)

The Clerk's Office has available some forms that may help you write your complaint. They are listed at the end of this Handbook, and are available on the internet at <http://www.insd.uscourts.gov/prose/default.htm>. You can modify these forms as needed. No particular form of complaint is needed, so long as it follows the requirements listed above.

C. How Much Does It Cost?

Most civil actions require you to pay a filing fee of Four Hundred Dollars (\$400.00).¹ If you cannot afford to pay the \$400.00 filing fee, you may file an Application to Proceed *In Forma Pauperis*. If the Court grants your application to sue *in forma pauperis* (because you have shown that you cannot afford the fee), you will be allowed to file your complaint without prepayment of the entire fee. Copies of this form are available from the Clerk and on this court's website.

The procedure for filing an Application to Proceed *In Forma Pauperis* differs depending upon whether the individual commencing the action is an inmate or a non-inmate.

(i) Procedure to be Followed by Non-Inmates

If you are not incarcerated at the time you want to file your action and you cannot afford to pay the full filing fee of \$400.00, you must follow the following procedure: (a) completely fill out an *in forma pauperis* application form and sign it (copies are available from the Clerk and on this court's website); and (b) submit the *in*

¹ The fee is \$5.00 for the filing of a petition for writ of habeas corpus.

forma pauperis application to the court at the time you file the action with an original version of your complaint and a copy of the complaint for each of the defendants named in your lawsuit.

(ii) Procedure to be Followed by Inmates

All inmates must pay, over time, the full filing fee **even if the inmate is found to be indigent.** This is true even if your case is dismissed. If you are incarcerated at the time you commence your action you must proceed as outlined above and **submit a certified copy of your inmate trust fund account statement** (or institutional equivalent), if available, for the six-month period immediately preceding the filing of the action.

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5. Motions — How Do I Ask the Court to Do Things?

A motion is an application or request made by a party to the court. Litigants should be aware of the Local Rules regarding motions practice (Local Rule 56.1 for summary judgment motions, Local Rule 65.2 for preliminary injunctions and temporary restraining orders, and Local Rule 7.1 for other motions). All motions must comply with the Local Rules or the court may "strike" or disregard them. Motions are used to seek various types of relief while a lawsuit is pending, such as a motion to amend pleadings or a motion to compel discovery. A note of caution: motions should only be filed when necessary; multiple or frivolous motions can result in penalties by the court.

According to Local Rule 7.1, responses to motions must be filed with the Clerk's Office and served on the opposing party within at least fifteen (15) days after the motion was filed. A moving party has seven (7) days following service of such response to serve and file a reply. If a party wishes to file briefs beyond the motion, the response and the reply, the party must obtain the permission of the court to file such papers, which will be granted only upon a showing of clear necessity. Failure to file a response or reply within the time prescribed may

subject the motion to summary ruling. Motions for summary judgment have different time frames for briefing. See Local Rule 56.1.

Local Rule 7.1 limits a brief or response to 35 pages in length (exclusive of any pages containing a table of contents, table of authorities, and appendices), and a reply to 20 pages. Permission to file a brief in excess of these page limitations will be granted only upon motion supported by extraordinary and compelling reasons.

The court may modify any of the above schedules and limitations.

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6. **Serving Documents — Do I Have to Give the Defendant(s) Copies of Everything I File?**

Pro se litigants proceeding *in forma pauperis*, like everyone else, must serve on the parties named in the lawsuit identical copies of all documents submitted to the court for filing. It is a good idea for you to keep a copy of all documents that you send to the court for your own records. Service and filing of pleadings, motions and other papers is provided for in Rule 5 of the *Federal Rules of Civil Procedure*.

It should be noted that under the Local Rules filing by fax is not permitted without prior court authorization.

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7. **Discovery — How Do I Get Evidence to Help Me Prove My Case?**

“Discovery” is the process by which parties exchange or acquire information about the issues in their case before trial. There are five main types of discovery. Each main type is discussed below:

1. **“Depositions”** are question-and-answer sessions held before trial. In them, one party to a lawsuit asks another person questions about the issues raised in the lawsuit. Rules 30 and 31 of the *Federal Rules of Civil Procedure* explain the procedures for taking a deposition. The person taking the deposition must pay the costs associated with it. If the person who will answer the questions is not a party to the lawsuit, Rule 45 explains how they can be made to appear for questioning.

2. “**Interrogatories**” are written questions served on another party to the lawsuit. These questions, unless subject to objections, must be answered under oath. Rule 33 of the *Federal Rules of Civil Procedure* states the rules for serving interrogatories.
3. In a “**request for production of documents**,” one person asks the other person to turn over documents about the issues in the lawsuit. The person asking for the documents must describe them in enough detail that the other person knows which documents are being requested. Rules 34(a) and (b) of the *Federal Rules of Civil Procedure* explain how to request documents from the other side in the lawsuit. If the person that you want documents from is not a party to the lawsuit, Rules 34(c) and 45 of the *Federal Rules of Civil Procedure* explain how to request their documents.
4. In a “**request for admission**,” one side writes out statements that it wants the other side to admit are true. Rule 36 of the *Federal Rules of Civil Procedure* establishes the requirements for requests for admission.
5. When the mental or physical condition of a party is at issue in a lawsuit, Rule 35 of the *Federal Rules of Civil Procedure* allows the Court to order that person to submit to a physical or mental examination. The examination must be done by someone qualified, like a physician or psychiatrist. The party who requested the examination must pay for it.

In accordance with Local Rule 26.2, requests for discovery and discovery responses **should generally not be filed with the court**, however, discovery related documents may be filed if necessary for the court to resolve a discovery dispute or a pretrial motion.

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8. If I Can't Find a Lawyer, But I Want One, What Should I Do?

Even with this handbook, representing yourself in Court may be very difficult. That is why the Court encourages everyone to find a lawyer if possible.

There may be alternatives to representing yourself if you are without sufficient funds to hire a lawyer to assist you. There are attorneys and organizations, such as legal aid societies, that may be willing to represent you "pro bono," that is, free of charge or based on some other arrangement. The

Lawyer Referral Service of the Indianapolis Bar Association at 317-269-2222 is one resource for investigating that possibility. In addition, the Indiana Pro Bono Commission's website provides information on how a person may be able to obtain a pro bono attorney and provides links to pro bono providers. You may wish to visit this website at <http://www.in.gov/judiciary/probono/public>.

In a **civil** case, a party is **not entitled** by law to an attorney. A pro se litigant who has been found to be indigent (typically by the granting of an *in forma pauperis* application) and is unable to otherwise obtain counsel may ask by filing a written motion that the court request a lawyer to represent him or her. You should be aware, however, that there are many more litigants making that request than there are attorneys available to volunteer their services. Whether a lawyer is ultimately requested to represent a litigant depends on a number of factors.

Sometimes the judges may appoint an attorney for any number of different reasons or purposes. The attorney may be recruited to represent you at trial, to prepare a motion or brief for you, or to represent you at a settlement conference. What role such an attorney performs in any particular case is entirely within the discretion of the court.

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9. Sanctions — What Are They?

Sanctions is a legal term for penalty or punishment. Pro se litigants (including individuals who are incarcerated) are subject to sanctions for some of the same reasons as licensed attorneys. When a party to a lawsuit presents a document to the court, Rule 11(b) of the *Federal Rules of Civil Procedure* requires that party to verify the accuracy and reasonableness of that document. If a submission to the court is false, improper, or frivolous, the party filing such a document may be liable for monetary or other sanctions. Sanctions imposed by a court could consist of a monetary penalty or an order to pay the opponent's attorney fees, which could be a substantial amount. The court may also restrict a

person from filing any future lawsuit until and unless specified conditions have been met.

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10. Appeals

A. General

Most appeals from a decision of the District Court proceed to the U.S. Court of Appeals for the Seventh Circuit in Chicago and in most situations are proper only after the case has been concluded through the Entry of Final Judgment. To initiate an appeal, a Notice of Appeal is filed with the Clerk of the District Court. Pursuant to Federal Rules of Appellate Procedure (“Appellate Rule”) Rule 10(a), the Clerk notifies all parties that a notice of appeal has been filed.

A notice of appeal should be accompanied by the following:

1. Docketing Statement (filed with the District Court Clerk); and
2. Filing fee. (Check the Court’s website - <http://www.insd.uscourts.gov/> - to obtain current fee information. Follow the link to “Court Information” and then select “Fee Schedule.”)

A notice of appeal must conform to the requirements of Appellate Rule 3(c). It should be signed and dated and must include the names of all parties seeking to appeal. The use of "et al.," "plaintiffs" or similar abbreviations will not be effective or sufficient for anyone not actually named. It must also include a designation of the judgment, order or part thereof from which the appeal is taken.

Upon the filing of a notice of appeal, a “short record” on appeal is immediately forwarded to the Court of Appeals. The short record consists of a copy of the docket, the notice of appeal, the appellant's docketing statement and the judgment or order from which an appeal is being taken, including any explanatory Entry.

If you intend to file an appeal, you should familiarize yourself with Seventh Circuit Rules 3, 10, 11 and 45. Appellate Rule 4(a) governs the time within which a notice of appeal must be filed.

B. Designation of Record

Local Rule 76.1 provides a mechanism for separate or joint designations of items to be included in the record on appeal pursuant to Circuit Rule 10(a). All parties should closely review the Circuit Rules so that any designation filed in the District Court is compliant with Circuit guidelines. The Court of Appeals will inform the District Court when the complete record should be sent to the Court of Appeals.

C. Questions About the Status of Your Appeal

This court's staff does not have access to the Court of Appeals' computer system. Questions about the status of your appeal should be directed to the Court of Appeals' staff at 312-435-5850. The Court of Appeals maintains its own website (www.ca7.uscourts.gov), from which certain docket information may be accessed.

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11. List of Available Forms

The forms listed below are among those available from the Clerk's Office or can be found online at

<http://www.insd.uscourts.gov><http://www.insd.uscourts.gov/ProSe/default.htm>

1. Prisoner Civil Rights Complaint
2. Civil Rights Complaint (General)
3. Social Security Complaint
4. Title VII Discrimination Complaint
5. Employment Discrimination Complaint
6. Application to Proceed In Forma Pauperis (Without Prepayment of Fees)
7. Petition for Writ of Habeas Corpus (Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus)

8. Movant's Response as to Why His Motion Under 28 U.S.C. § 2255 Should not be Barred Under Rule 9

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12. Glossary of Terms

Brief - A written statement submitted by a party in a case that explains why the court should decide the case, or particular issues in a case, in that party's favor

Chief Judge - The judge who has primary responsibility for the administration of a court; chief judges in the lower federal courts are determined by seniority, among other rules.

Clerk of the Court - An officer appointed by the judges of the court to provide administrative support to the court.

Complaint - A written statement filed by the plaintiff that initiates a civil case, stating the wrongs allegedly committed by the defendant and requesting relief from the court.

Counsel - Legal advice; a term also used to refer to the lawyers in a case.

Damages - money paid by defendants to successful plaintiffs in civil cases to compensate the plaintiffs for their injuries.

Default judgment - A judgment rendered in favor of a party asserting a claim because the defendant's failure to answer or appear to contest the claim.

Defendants - The defendants are the people and/or entities that the plaintiffs contend caused them a legal injury.

Docket - A log maintained by the clerk containing the complete history of each case in the form of brief chronological entries summarizing the court proceedings, filings or other actions.

Federal Question Jurisdiction - Jurisdiction given to federal courts in cases involving the interpretation and application of the U.S. Constitution, acts of Congress, and treaties.

File - To place a paper in the official custody of the clerk of court to enter into the files or records of a case.

In Forma Pauperis - “In the manner of a pauper.” Permission given by the court to a person to file a case without prepayment of the required court fees because the person cannot pay them.

Injunction - A court order prohibiting a defendant from performing a specific act, or compelling a defendant to perform a specific act.

Judgment - The official decision of a court finally resolving the claims brought in a lawsuit.

Jurisdiction - 1. The legal authority of a court to hear and decide a case; 2. The geographic area over which the court has authority to decide cases.

Litigation - A case, controversy, or lawsuit. Participants (plaintiffs and defendants) in lawsuits are called litigants.

Magistrate Judge - A judicial officer of a district court who conducts many pretrial civil and criminal matters to move a case forward, and decides civil cases with the consent of the parties.

Motion - A request by a litigant to a judge for a decision on an issue relating to the case.

Opinion - A judge’s written explanation of the decision of the court.

Party - One of the litigants, typically referred to as the plaintiff and defendant.

Plaintiffs - The plaintiffs are the people who file the complaint and who assert claims identifying legal injury to them.

Procedure - The rules for conducting a lawsuit; there are local rules, rules of civil procedure, criminal procedure, evidence, bankruptcy, and appellate procedure.

Pro Se - A Latin term meaning “on one’s own behalf”; in courts, it refers to persons who present their own cases without lawyers.

Record - A written account of the proceedings in a case, including all pleadings, evidence, and exhibits submitted in the course of the case.

Service of Process - The delivery of writs or summonses to the appropriate party.

Settlement - Parties to a lawsuit resolve their dispute without having a trial.

Statute of Limitations - A law that sets the deadline by which parties must file suit to enforce their rights.

Subpoena - A command, issued under authority of a court or other authorized government entity, to a witness to appear and give testimony or produce documents.

Summary Judgment - A decision made on the basis of statements and evidence presented for the record without a trial. It is used when it is not necessary to resolve any factual disputes in the case as to all or some of the claims.

Venue - The geographical location in which a case is tried.

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