

**UNITED STATES DISTRICT COURT
for the
WESTERN DISTRICT OF TENNESSEE**

**FILING A CIVIL CASE WITHOUT AN ATTORNEY
A GUIDE FOR THE PRO SE LITIGANT**

1. GENERAL INFORMATION

If you are filing a lawsuit on your own behalf and will represent yourself, you are proceeding PRO SE. This procedural guide will assist you with how to file a civil action pro se and is intended only as a general reference, **NOT** as substitute for the advice of professional legal counsel. The fact that you have chosen self-representation does not excuse you from complying with the Federal Rules of Civil Procedure (Fed.R.Civ.P.) and the Federal Rules of Evidence, both of which are found in Title 28 of the United States Code, or this district's Local Rules. The Federal Rules of Civil Procedure are available in numerous [local legal libraries](#), and at several on-line sites, such as www.law.cornell.edu/rules/frcp/overview.html. The Local Rules are accessible in the Clerk's Office and on line at www.tnwd.uscourts.gov.

Be advised, the Clerk and his employees are forbidden by law from giving you legal advice. This includes:

- offering interpretation of rules;
- recommending a course of action;
- predicting a judicial officer's decision;
- interpreting the meaning or effect of any court order of judgment.

Also, BEFORE filing suit you should consider the consequences of losing. Under limited circumstances the winning party may ask that you be ordered to pay his/her attorneys' fees. The winning party has a presumptive right pursuant to Fed.R.Civ.P. 54(d)(1) to seek certain costs which it incurs during a law suit. These costs can include those related to taking and transcribing depositions, witness fees, copy work, etc. Often these costs can add up to thousands of dollars. See Paragraph 13, "Taxation of Costs," below.

2. JURISDICTION AND VENUE

JURISDICTION (See Federal Rules of Civil Procedure, 28 U.S.C. § 1331-1332):

The United States District Court for the Western District of Tennessee is a federal trial court with limited jurisdiction; that is, this court is only authorized to adjudicate disputes that:

- deal with a question involving the United States Constitution;
- involve a question of federal law;

- involve the United States of America as a party, whether as plaintiff or defendant;
- involve a dispute between residents of different states where the amount in controversy exceeds \$75,000.

If your complaint does not fall under any of these categories, you should not file in this court.

VENUE (Generally, see Federal Rule of Civil Procedure, 28 U.S.C. § 1391):

The United States District Court for the Western District of Tennessee has jurisdiction over 22 counties in the western part of the state (28 U.S.C. §123). All but two of these counties (Decatur and Perry) are located between the Tennessee and the Mississippi rivers. The district is divided into two divisions (See [Local Rule 77.1](#)):

Western Division: Dyer, Fayette, Lauderdale, Shelby, and Tipton counties. The courthouse is in Memphis.

Room 242, Federal Building

167 North Main Street

Memphis, TN 38103

Telephone Numbers:

Intake (filing information) (901) 495-1200

PACER (901) 495-1259

1-800-407-4456

General Office Fax (901) 495-1250¹

Records Section Fax (901) 495-1206

Eastern Division: Benton, Carroll, Chester, Crockett, Decatur, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, McNairy, Madison, Obion, Perry and Weakley counties. The courthouse is in Jackson.

United States Courthouse

111 South Highland Avenue, Rm. 262

Jackson, TN 38301

Telephone (731) 421-9200

Fax (731) 421-9210

¹ The Clerk's Office will NOT accept any filing by fax. All documents tendered for filing must be delivered over-the-counter, by drop-box or by mail.

A civil action against a single defendant residing in the district must be brought in the division where the defendant resides, and civil action against multiple defendants residing in different divisions of this district may be brought in either division.

3. WHAT YOU MUST DO TO GET STARTED:

To file a civil case, you must submit an original and two identical copies of each of the following documents to the Clerk's Office Intake Clerk:

- a **COMPLAINT**. The document a plaintiff files with the Clerk of Court to commence a civil lawsuit. It identifies each defendant against whom the complaint applies and provides the court a clear, concise statement of the basis for a claim and what relief is being sought. All complaints and subsequent papers filed must be on 8 ½ by 11 inch paper (See **Fed.R.Civ.P. 8(a)** and **Local Rule 83.7**)
 - A. All NEW CASES FILED IN CLERK'S OFFICE should be brought to the INTAKE Counter (Room 242 - Memphis; Room 262 - Jackson). **LOCAL RULE 83.7** requires the filing of the **original and two copies** of all submissions.
 - B. BY MAIL Filings may also be made by mail addressed to the Clerk's Office. If you want a file-stamped copy returned for your file, mail an original and three (3) copies of the document, plus a self-addressed, stamped envelope.
 - C. PAPERS FILED IN NON-CONFORMANCE Papers received by the court which do not conform to the court's rules will be submitted to the assigned judge for a decision on final acceptance or rejection.
 - D. CRITICAL ELEMENTS OF FILINGS The most important information elements to be provided on court filings are the **correct case name** and **case number**, the **judicial officer's name**, and a **clear, simple title for the document** to ensure correct docketing and distribution of papers. This information together forms what is sometimes called the "caption" or "style" of a case. An example of a caption for a "complaint" is:

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE

A. Brown,)
Plaintiff)
)
v.) (The Clerk will insert the
) assigned case number and
B. Smith,) judge here)
Defendant)

COMPLAINT

If the title or style of the case changes, or if the case is subsequently reassigned to another judge, the filing party is responsible for making the corresponding changes on subsequent filings.

Format your complaint in numbered paragraphs, each paragraph being a separate point of your case. **SIGN THE LAST PAGE OF THE COMPLAINT.** Below your signature, print your name and address.

- E. NO PAPERS FILED WITH JUDGES No original papers shall be left with or mailed to a judge for filing, except in a response to the judge's specific order (**LOCAL RULE 83.7(a)**).
- F. COMPUTING TIME LIMITATIONS Litigants are advised to consult the Federal Rules of Civil Procedures for computing periods of time. The Clerk's Office will not compute time limits for litigants.

4. FILING FEES AND INDIGENT (IN FORMA PAUPERIS) STATUS

The law (28 U.S.C. § 1914(a)) requires that you pay a filing fee, presently \$150, and that this fee be paid at the time the case is filed. If you pay by check or money order, make it payable to the Clerk, U.S. District Court, at the time you file your case. If you are unable to pay the filing fee, you must file with your complaint an original and two copies of an [Affidavit in Support of Motion Under 28 U.S.C. § 1915 for Appointment of Attorney and Authorization to Commence Suit Without Prepayment of Filing Fee](#), (“Application to Proceed”). In effect, you are asking the court to grant you “in forma pauperis” status, a Latin phrase which means “in the status of a poor person.” The legal community frequently refers to this as IFP status and these cases as IFP cases.

In completing an Application to Proceed, it is imperative that you answer all questions truthfully and completely. Be very specific about any real estate or vehicles you own and all

outstanding mortgages, loans and other debt obligations you owe. Remember, you are required to sign the affidavit under penalty of perjury which carries punishment for any known misrepresentations or falsehoods made.

If the court grants your petition for IFP status, the court will direct that the U.S. Marshal serve the defendant(s) with the summons/complaint package. If the court does not grant you IFP status, you will be required to pay the filing fee and be instructed, by court order, on the requirements for delivering the summons/complaint package.. SUMMONS WILL NOT BE ISSUED BY THE CLERK UNTIL THE FEE REQUIREMENT IS MET OR IN FORMA PAUPERIS STATUS IS GRANTED.

All inmate petitioners must pay the full filing fee, by installment if necessary, even if the inmate is found to be indigent. If a prisoner pro se is not able to prepay the filing fee at the time of filing, the prisoner must complete an in forma pauperis application, sign it and have it certified by an authorized prison official at the inmate's place of incarceration. The inmate petitioner must also provide with the complaint a certified copy of his/her inmate trust fund account statement (or institutional equivalent), if available, for the six-month period immediately preceding the filing of the complaint.

5. FILING AN EMPLOYMENT DISCRIMINATION COMPLAINT

A common pro se case in federal court is an allegation of employment discrimination. However, before a plaintiff may file an employment discrimination complaint, he or she must first file charges with the Equal Employment Opportunity Commission (EEOC) for an administrative review of the allegations. Upon completing review, and barring any complications, the EEOC will either provide you a **NOTICE OF RIGHT TO SUE** letter indicating all administrative procedures have been completed and no further action will be taken by the EEOC, or bring a suit on your behalf.

Upon receipt of a "Right to Sue" letter, you have a limited period of time to file a lawsuit in federal court. Failure to adhere to the time requirement may result in your case being time-barred and dismissed by the court. The Right to Sue letter must be filed with your complaint and becomes part of the court's record.

A complaint alleging employment discrimination against a person or entity other than the federal government or one of its agencies requires a special complaint form, "**Complaint Under Title VII of the Civil Rights Act of 1964.**" This complaint form is available in the Clerk's Office or from the Clerk's web site (www.tnwd.uscourts.gov). In completing the complaint form, be as complete and thorough as possible. For example, the defendant(s) named in the complaint must be the same person(s) or company named in the EEOC proceeding. In addition to name(s), you must also provide complete address(es) and, if possible, the telephone number of each defendant.

6. REQUESTS FOR APPOINTMENT OF COUNSEL

Although a pro se plaintiff may request that the court appoint an attorney to represent him or her at no cost to the plaintiff, the court infrequently grants this request. Generally, the court will grant such a request only when representation by a licensed attorney seems to the court especially warranted, given the complexity of the case. When an appointment is made, representation is undertaken on a pro bono (literally, “for the good,” meant to describe legal services provided free of charge) basis. The court has a [Civil Pro Bono Plan for Pro Se Indigent Parties](#) which, if the court orders so, is used to help defray the costs of representation. It is important to remember, however, pro se litigants have no right to be represented by court-appointed counsel. A request for appointment of counsel is made by motion and accompanies your complaint at the time of filing.

If you do not request an appointed counsel (see [Section 4](#)) or your request is denied, and unless and until you hire an attorney to represent you, you are fully obligated to diligently prosecute your case. This includes responding to discovery requests and the defendant’s motions. Do not expect the court, through its orders, to instruct you on how to prosecute your case. Failure to follow established procedures and/or the court’s orders may result in your having to show cause (demonstrate to the court) why your case should not be dismissed for lack of prosecution.

7. WHAT HAPPENS AFTER THE COMPLAINT IS FILED?

Your case started when a **complaint** was filed with the Clerk of Court. A complaint is a statement about matters of fact and law. It is served on a defendant or on a third party to say that the plaintiff alleges that certain facts and laws entitle him or her to certain relief. The **plaintiff**, you, is the party claiming to have been wronged; a **defendant** is a party sued. A “**third party to litigation**” is someone who has or may have an interest in the lawsuit other than that of the principal litigants. After the defendant(s) are served with a copy of the complaint and a summons, a defendant responds by filing a formal **answer**.

If the defendant(s) file(s) an answer, the judge assigned to the case will issue a scheduling order. A scheduling order sets deadlines for doing or filing certain things. It may include deadlines for completing discovery, filing motions, and/or filing status reports. The scheduling order also sets a trial date. Pretrial conferences are held to enable the court to monitor the case’s progress and to better determine alternative dispute options and when trial might begin.

After an answer is filed, several other legal issues may be raised. **Jurisdiction**, for instance: Is this court the proper one to decide the case? A **motion to dismiss**, a defendant motion, is a legal “so-what,” stating that even if everything the plaintiff states in his complaint is true, the plaintiff is still not, under the correct interpretation of the law, entitled to any relief. A **motion for summary judgment** is an allegation that there are no genuine factual issues to be determined by the court, and, as a result, the matter can be resolved without trial by simply

applying the controlling law. Some cases are disposed this way before trial.

Motions and counter-motions are orderly ways of identifying and resolving disputes incident to the case. Often they help focus the court's attention on the real sticking points of the case. In fact, they might help bring about early settlement, which could save you time and money. However, motion filing can be overdone. Motions should only be filed for good reason and, generally, only after trying to obtain relief voluntarily, through negotiations with the defendant(s). Judges can impose penalties to cut down on costly, unnecessary motions, but they would rather rely on the professionalism, reasonableness, and good judgment of the parties.

All motions must be accompanied at the time of filing by a “**certificate of consultation**” affirming that, after consultation between the parties, they are unable to reach an agreement as to all issues or that all other parties are in agreement with the action requested by the motion. The court may consider failure to file an accompanying certificate as good grounds for denying the motion. (See **Local Rule 7.2 (a) (1)(B)**).

Also, every motion must include a “**certificate of service**” showing when, how and to whom a copy of the motion was provided to the opposing counsel/party. An example of the certificate of service:

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of March, 2003, a copy of the foregoing Motion for Extension of Time was mailed, postage prepaid, to Mary Lawyer, Esquire, 200 Jefferson, Suite 400, Memphis, Tennessee, 38103, counsel for Defendant April May.

(signature)

It is NOT necessary to state in the certificate of service that copies were sent to the court or to the clerk.

Upon filing, the Clerk opens a pro se case on the court's **docket** and assigns to it, by random selection, a district judge. The procedural stages of the law suit then unfold. If the court does not dismiss the case for some stated defect, after the defendant(s) answer the complaint, the court, following a Fed.R.Civ.P. 16(b) scheduling conference with the parties, will issue a scheduling order informing the parties of the dates and deadlines relevant to the suit. The order will also set the date of the trial itself; the time period during which opposing sides can engage in discovery; and the deadlines for turning in certain documents and papers to the court. The case proceeds according to the timetable set forth in the scheduling order, unless unusual circumstances cause a delay or **continuance** to be ordered by the court. Continuances are not favored by the court and are given only for the most compelling reasons.

Because of the great volume of civil cases and because over ninety percent of all civil cases are settled or dismissed before trial, the court must "stack" cases on the docket so that the court is always in session without gaps between trials. Thus, you may have to block out a week or two on your calendar even though your case may only take a day or two to try. This cannot be avoided. There is simply no way for the court to manage the great number of cases on its docket without introducing a certain level of inconvenience. Nevertheless, the judge, the Clerk of Court, and all the court personnel work hard to minimize such inconveniences.

8. COMMUNICATING WITH THE COURT

Contact with the Assigned Judge

As a party appearing pro se, you are prohibited from all *ex parte (private)* communication with the judge to whom your case is assigned. *Ex parte* communication occurs when one of the parties to a lawsuit, or when that party's attorney, exchanges information with the assigned judge without presence of the opposing party or without knowledge and consent of the opposing party. Because of this prohibition, a judge will refuse, with very few exceptions, to speak or otherwise communicate *ex parte* with any party, or that party's attorney, involved in a case assigned to him/her. All communication between the assigned judge and a litigant must be in writing, a copy of which should be sent either to the opposing party or that party's attorney. For example, the pro se party should send the opposing party a copy of any letter sent to the judge, and the letter to the judge should indicate that a copy has been sent to the opposing party.

Status of Your Case

You can obtain information about the status of your case by accessing the docket, an automated chronological summary of all significant events in the history of the case. Every pleading filed is summarized on the docket by filing date. You may review the docket on the public access terminals located in the public areas of the Clerk's Offices. As an alternative, if you have a personal computer and internet access at home, you may access the district's automated docket through the "Public Access to Court Electronic Records" (PACER) system. To use this system you must register through the PACER portal on the court's web site, www.tnwd.uscourts.gov. Once you gain access, you will be billed a modest fee (presently .07 per page) for access. The Clerk's Office will also provide basic docket information to you telephonically.

9. DISCOVERY

The law recognizes that there is no way to resolve a case properly if either side withholds information basic to an understanding of the case. As a result, both parties to a suit are required to cooperate in **discovery**, that is, in the disclosure of facts and documents which closely relate to the case. Discovery happens in several ways -- by **interrogatories** (written questions from one side to the other), **requests for admissions** (written statements which the opposing side must admit or deny), or **depositions** (live, sworn, pre-trial testimony, before a court reporter and the

lawyers of people who have knowledge of the facts of the case). It is crucial that discovery be completed in a timely and orderly manner. If you and the other parties to the suit do not cooperate by agreeing on the principal issues of facts involved, the court will intervene to get this done. The scheduling order may direct all parties to meet together by a certain date in the hope that costs and delays will be minimized by the agreement of the parties to disclose relevant information *voluntarily*.

The court will ask the parties to **stipulate**, or agree formally, to the truth of certain matters of fact when those facts are not really in dispute. This is a way of pinpointing exactly what the conflicts between the litigants are. Such stipulations save money and time. Once certain facts are agreed upon, the parties, through their attorneys, if represented by counsel, can go about investigating those things which are genuinely disputed.

All necessary discovery must be started immediately and be concluded as soon as possible -- no later than the discovery cut-off date set by the court. Sometimes parties can not agree on what matters are appropriate for discovery. When a discovery problem comes up which cannot be resolved without court intervention, the problem must be brought to the court's attention promptly, by motion.

10. ALTERNATE DISPUTE RESOLUTION: SOME VOLUNTARY OPTIONS

Parties to a lawsuit can always consider the possibility of early settlement discussions in order to see if the dispute can be resolved promptly and as cheaply as possible.

If your case meets the jurisdictional requirements, states a legally valid claim, and has genuine issues of material fact, then you are constitutionally granted the right to a civil trial, and will not be forced to give up that right. However, it may be in your best interest to settle your lawsuit voluntarily, without going to trial. This might be cheaper and easier for everyone involved in the case. Give close attention to the court's recommendations in this regard. Ultimately, though, it is you who must decide whether or not to settle, and you need not apologize if you do insist on "your day in court." That is your right.

You and the opposing party's attorney may be able to work out terms for a settlement which are agreeable to both sides. This type of informal negotiated settlement is the most common and familiar way your suit can be resolved without trial. However, if it looks as though that route might be unsatisfactory, you can use a more formal Alternative Dispute Resolution (ADR) technique or program to help you settle. Some means of ADR settlement are binding -- that is, they result in a decision both sides must accept. Some are non-binding; they result in findings more like advice, and either party may take it or leave it. All involve a neutral third party who evaluates the case and helps guide it to resolution. However, the different ADR methods vary in the amount of control that the neutral third party has. ADR techniques are variable and flexible, letting the parties and their attorneys design an effective, efficient, and

private resolution of their dispute. But usually they are not cost-free. Indeed, some may be very expensive.

For more detail on ADR, review the court's [Mediation Program Plan](#) available from the Clerk's Office and from the court's web site at www.tnwd.uscourts.gov. Note, this court has consciously rejected *mandatory* ADR because it believes it is important to uphold your right to have your case tried to a jury or a judge, if you choose. Nevertheless, ADR remains a voluntary option which, if chosen, might save you time, money, and anxiety.

11. GOING TO TRIAL

Some lawsuits seek only equitable relief such as an **injunction**, a court order requiring someone to do (or stop doing) something. Within our legal system, judges have historically tried the factual issues in such cases. Some laws or statutes also provide that a judge alone must decide particular types of cases. Usually when the relief being sought is money damages, a jury can be demanded. But even where a jury is ordinarily required, if requested, the parties can agree to try the factual issues to the court -- that is, the judge -- without a jury. This is referred to as a "bench trial."

In a jury trial, the jury "judges" the *facts* and the judge applies the *law* to the facts; when the jury is waived, the judge listens to the testimony and decides the facts, then applies the law to the facts. This is called a "bench trial." Consider what kind of trial you should have.

Jury Trial. At the start of a trial a time will be spent on selecting a jury from a pool of citizens summoned for this purpose. This process is governed by strict rules which the judge will explain in his or her spoken instructions to the jury pool. An important part of the jury selection process is the *voir dire*, during which prospective jurors are questioned to help determine whether they could be fair and impartial if trying the factual issues in the case.

Once the jury is selected, sworn, and seated and the trial begins, the case proceeds in a specific, orderly way. First, each side may make an opening statement -- not an opening argument, but a statement identifying the issues in the case and sketching out the proof and evidence that each side expects to bring before the jury during the course of the trial.

In our system of law, the plaintiff has the burden of proof and must put on evidence first, after which the defendant may put on evidence. Occasionally the court may permit rebuttal evidence. Evidence is presented according to certain rules. The jurors may take into account only that evidence the court has accepted. Either side may object to one another's evidence, or to certain kinds of questioning. The judge decides whether to admit or strike (disallow) certain evidence or testimony, and all parties and jurors must abide by that ruling. Evidence does not usually include things that you, the other side, or the judge say, but only those things, such as documents or the testimony of witnesses, that are marked and received by the court as "evidence" under the rules of law.

After all the evidence and proof have been seen and heard, each side is again allowed to address the jury directly, this time arguing their differing views of the evidence and its implications as persuasively as they can. The judge then instructs the jurors as to their duties and as to the law, and the jury retires to “**deliberate.**” The jurors are supposed to follow the court's instructions as to the law of the case, but they may use their own knowledge, experience, and reasoning powers to sort out the facts of the case from the evidence they have heard.

Listening to the judge's instructions to the jury will help you understand the rationale behind the different parts of a civil trial. Remember that these procedures exist for one reason only -- so that the jury can most readily and accurately determine the facts and render its verdict in accordance with the law and the evidence.

Bench Trial. When the judge alone is acting as both judge and jury, the basic trial format may be somewhat shortened. Litigants may not always give opening statements, because the judge is already familiar with the issues in the case. Presentation of testimony and evidence proceeds as usual, but there may be no closing arguments. The judge might not rule on the case immediately, choosing rather to take the matter under advisement. In either instance, the judge makes findings of fact and also usually states his/her conclusions of law.

12. AFTER THE VERDICT

If the case is decided against you, you may wish to appeal your case. Appeals from this federal court are to the Sixth Circuit Court of Appeals, which normally sits in Cincinnati, Ohio.

Appellate judges do not usually try cases. And, although district (trial) judges may sit on Courts of Appeals by assignment, certainly the judge who presided over your case at trial will not hear your appeal, should you lose the case and decide to appeal the outcome. Everything said during the initial trial is taken down verbatim by a court reporter. If you appeal your case, a transcript can be prepared for review by the appellate court. You will not go through the discovery process again. The appellate court will decide the case based entirely upon the record made in the trial court and the legal arguments made during the trial.

You should familiarize yourself with the Federal Rules of Appellate Procedure (28 U.S.C.) before filing a notice of appeal. If you file a notice of appeal, you will be required to pay a filing fee of \$255 (see fee schedule posted at www.tnwd.uscourts.gov) with the district court unless you are permitted to proceed in forma pauperis. If you wish to proceed in forma pauperis for purposes of the appeal, then at the time of filing your notice of appeal, you must also file an application to proceed in forma pauperis on appeal.

Once the appellate court has jurisdiction over the appeal, it will direct the district court clerk's office to transmit the record from the district court. If you are permitted to proceed in forma pauperis on appeal, you may still be required to pay for certain costs, such as the cost for transcribing any hearings or other proceedings which may have occurred before the trial judge.

13. TAXATION OF COSTS

Fed.R.Civ.P. 54(d)(1) provides that costs for litigating a case, except for attorney fees, shall be allowed as of course to the prevailing party in a case unless the court directs otherwise. Local Rule 54.1 provides that if the parties cannot agree on costs, a cost bill will be filed with the clerk within thirty days from the termination of a case, whereupon the clerk, after giving the parties notice and holding a hearing, will assess costs. Costs which are subject to taxation are outlined at 28 U.S.C. § 1920.