

Guidelines for Litigants without Lawyers
Southern District of Texas

1. Introduction

- A. These guidelines are to make persons who represent themselves in lawsuits familiar with some of the rules and procedures which must be followed in the United States District Court for the Southern District of Texas.
- B. Disclaimer. This summary does not take the place of a pro se litigant's responsibility to comply with the Local Rules (L.R.), the Federal Rules of Civil Procedure (Fed.R.Civ.P.) and all other laws. This summary is not legal advice and reliance on it is at your own risk.

2. The Complaint

- A. A civil lawsuit is begun by filing a complaint in the office of the Clerk of the Court. The purpose of the complaint is to give notice to the persons being sued and to the court about the nature of the lawsuit. The complaint must contain:
 - 1. a caption specifying the court in which the suit is brought and names of the parties;
 - 2. a short, plain statement of why the court has jurisdiction;
 - 3. a short, plain statement of the claim that entitles the plaintiff to relief, including a concise statement of the facts;
 - 4. a statement of the particular relief sought; and
 - 5. your signature, address and telephone number.
- B. Pleadings should be simple and direct; technical, legal jargon is not required.
- C. Generally, each statement of claim should be made in separately numbered paragraphs, with each paragraph limited as far as possible to a statement of a single set of facts.
- D. If the basis of your suit is employment discrimination, there is a form attached which you may use for filing your complaint. (Appendix A) If your suit has any other nature, the Original Complaint form attached (Appendix B) may be used to get started.

3. Where to File

- A. Clerk. All papers to be filed must be delivered or mailed to the Clerk's Office. Never send papers directly to the judge.

B. Options. Generally, the suit must be filed in the district where the defendant resides or where the claim arose. In suits based on diversity of citizenship (when the plaintiff and defendant are residents of different states), the suit may be brought in the district where the plaintiff resides (28 U.S.C. §1391).

C. Divisions. There are seven divisions of the Southern District of Texas:

1. Brownsville
 - a. Mail and Delivery: 600 East Harrison Street, Room 101
Brownsville, TX 78520
 - b. Counties: Cameron and Willacy.
2. Corpus Christi
 - a. Mail and Delivery: 1133 North Shoreline Boulevard
Corpus Christi, TX 78401
 - b. Counties: Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, Nueces and San Patricio.
3. Galveston
 - a. Mail: P.O. Box 2300
Galveston, TX 77553
 - b. Delivery: 601 Rosenberg, Room 411
Galveston, TX 77550
 - c. Counties: Brazoria, Chambers, Galveston and Matagorda.
4. Houston
 - a. Mail: P.O. Box 61010
Houston, TX 77208
 - b. Delivery: 515 Rusk St.
Houston, TX 77002
 - c. Counties: Austin, Brazos, Colorado, Fayette, Fort Bend, Grimes, Harris, Madison, Montgomery, San Jacinto, Walker, Waller and Wharton.
5. Laredo
 - a. Mail: 1300 Victoria St.
Laredo, TX 78040
 - b. Delivery: 1300 Victoria St., Ste. 1131
Laredo, TX 78040
 - c. Counties: Jim Hogg, LaSalle, McMullen, Webb and Zapata.
6. McAllen
 - a. Mail and Delivery: 1701 West Business Highway 83, Suite 1011
McAllen, TX 78501
 - b. Counties: Hidalgo and Starr.
7. Victoria
 - a. Mail: P.O. Box 1638

- Victoria, TX 77902
- b. Delivery: 312 S. Main Street, Room 406
Victoria, TX 77901
 - c. Counties: Calhoun, De Witt, Goliad, Jackson, Lavaca,
Refugio and Victoria.

4. Requirements for Filings

- A. The requirements for filing the complaint and all other pleadings are found in LR5 and LR10 as well as Fed.R.Civ.P. 10 and 11. They include
 - 1. be on 8½" x 11" paper;
 - 2. be double spaced and with page numbers;
 - 3. stapled at the top only;
 - 4. punched with two holes;
 - 5. include the plaintiff's address and telephone number; and
 - 6. be signed by the plaintiff.
- B. Address. Failure of a litigant to keep the Clerk of the Court informed of his current address and telephone number during the pendency of the lawsuit. (LR83.4)

5. Filing Fees

- A. The fee for filing a civil action is \$350.00. Filing fees must be paid to the Clerk at the time of filing the complaint, unless the Court grants leave to proceed in forma pauperis.
- B. In Forma Pauperis:
 - 1. A plaintiff who cannot pay the filing fee and the costs for service may request to proceed in forma pauperis. (Appendix C) The request must be submitted with the complaint and must be accompanied by an affidavit setting forth the plaintiff's financial resources.
 - 2. If leave to proceed in forma pauperis is granted, the plaintiff's suit will be filed without prepayment of the filing fee.
 - 3. If leave to proceed in forma pauperis is denied, you must pay the filing fee for your case (suit) to be filed.

6. Judge's Procedures

At the time a suit is filed, the Intake Section will provide the plaintiff a procedural manual for the judge to whom the case is assigned. The procedural manual contains information about the specific requirements of that particular judge.

7. Scheduling Conference

Also, at the time a suit is filed the following will be provided to the plaintiff:

- A. Order for Conference. This conference will be set within 140 days of the filing of the complaint. At the conference a scheduling order will be signed by the judge which will set deadlines, as well as, a trial date. (L.R. 16.1)
- B. Instructions for the Preparation of the Joint Report of Meeting and Discovery/Case Management Plan under Rule 26(f) Fed.R.Civ.P.

8. Service of Process (Summons)

- A. Issuance of Summons. Upon the filing of a complaint, the plaintiff is responsible for prompt service of the summons and a copy of the complaint on each of the defendants named in the complaint. (Fed.R.Civ.P. 4 and L.R. 4) Failure to serve the summons and complaint within 120 days after filing of the complaint is grounds for dismissal of each party not served.

In addition to the summons and complaint, the above mentioned Order for Conference and the Instructions for the Preparation of the Joint Report of Meeting and Discovery/Case Management Plan must be served on all defendants.

A summons must be prepared in duplicate by the plaintiff for each defendant. (Appendix D) In addition, the plaintiff must submit a copy of the complaint for each defendant at the time the complaint is filed. The summons must show the time within which the defendant is required to respond to the complaint. All defendants have twenty (20) days, with the exception of the United States which has sixty (60) days to respond. The time runs from the date the defendant is served with the complaint.

The summons will be signed and sealed by the Clerk and returned to the plaintiff together with the copies of the complaint to be served. The plaintiff must then serve the summons and complaint as provided by Fed.R.Civ.P. 4. To avoid costs, the plaintiff may notify a defendant of the commencement of the action and request that the defendant waive service of a summons. (See Fed.R.Civ.P. 4(d) and Appendices E and F)

When an agency of the United States is named as a defendant, the summons must be served on:

- 1. the agency named,
- 2. the Attorney General of the United States in Washington, D.C., and
- 3. the United States Attorney. It is required that the U.S. Attorney (or an assistant U. S. attorney or clerical employee designated by the U. S.

Attorney) for the district in which the action is brought be served by sending a copy of the summons, complaint and other documentation previously mentioned by registered or certified mail addressed to the civil process clerk at the office of the United States Attorney. (See Appendix G for a list of designees and addresses.)

The summons may be served by anyone over 18 years of age, who is not a party to the suit.

- B. Proof of Service. Finally, the plaintiff must return to the court proof that the defendants have been served in accordance with Rule 4(l) of the Federal Rules of Civil Procedure.

If service is not waived, proof of service must be filed with the Clerk. Where service is made other than by mail, proof of service may be made by completing the return on the back of the summons form and returning it to the Clerk.

It is the responsibility of the person serving the summons to prepare and submit the forms showing proof of service once it is made. (Fed.R.Civ.P. 4(l)) Plaintiffs should read Local Rule 4 and Rule 4 of the Federal Rules of Civil Procedure to become thoroughly familiar with the procedures governing service of process.

9. Assignment of Cases

Civil cases are assigned at random to the judges of the district court. Assignments are made so that no party or lawyer may choose which judge will hear the case.

10. The Answer

- A. The defendant in an ordinary civil case will have twenty (20) days from the date of service of the complaint to file an answer. The United States or a federal official will have sixty (60) days.
- B. Just as the plaintiff in the complaint must make a short, plain statement of the claim, the defendant in the answer must state the defenses to the claims and either admit or deny the specific allegations contained in the complaint. (Fed.R.Civ.P. 8(b))
- C. As with all other pleadings, the defendant must file the answer with the Clerk and serve a copy on the opposing party. Failure to answer or otherwise defend in a timely fashion is grounds for judgment by default against the defendant. (Fed.R.Civ.P. 55)

11. Motions against the Complaint

- A. Although most defenses to a complaint must be asserted in the answer, a defendant has the option of asserting certain defenses in the form of a motion to dismiss the complaint before filing an answer. (A motion is an application to the

Court asking that the Court take some particular action in the case.)

B. Motions to dismiss the complaint typically make the following arguments:

1. the Court lacks the power to decide the subject matter of the case or to compel a defendant to appear;
2. service of process was insufficient; or
3. the complaint fails to state a claim which the law will recognize as enforceable. (Fed.R.Civ.P. 12(b))

C. If such a motion is made, a plaintiff will have twenty (20) days from the date of filing in which to file a response. It is very important to respond to such motions; otherwise, the Court may assume that the motion is unopposed. (L.R. 7)

12. Motions (Local Rule 7)

As stated above, a motion is an application to the Court asking that the Court take certain action with respect to the conduct of the case.

Unless made orally during a hearing or trial, motions should be in writing, should state the action sought, and should set forth the facts. Motions are the primary way for litigants to ask the Court to take action in a case. They must be filed with the Clerk, and copies must be mailed to all opposing parties (L.R. 5); motions should not be sent directly to the judges.

Every motion must have a statement that the movant has conferred with opposing counsel and was unable to reach an agreement for the disposition of the matters raised in the motion. Failure to comply with this rule may result in the Court striking the motion.

Each party opposing a motion has twenty (20) days from the date of filing of a motion to respond. Failure to respond will be taken as a representation of no opposition.

13. Failure to Pursue the Lawsuit

Once a case has been filed, it is extremely important for a plaintiff to be diligent in pursuing the case. The plaintiff has an obligation to attempt to make the case ready for trial. All parties must make their best efforts to complete discovery into the facts of the case within the time limits and in accordance with the procedures. In addition, a plaintiff must obey all orders of the Court that may issue in the case and must appear for all conferences or hearings which a judge may schedule. Failure to do so is grounds for dismissal or sanctions.

14. Certificate of Service

Every paper sent to the clerk must have at the end a signed statement that you have sent a

copy of that paper to all parties in the case. You must, of course, actually send everyone a copy of every paper you file.

15. Court Appointed Attorneys

Motions for the appointment of an attorney are not ordinarily granted, as there are no funds for the payment of their services. However, in some special instances the Court may appoint an attorney for a party.

16. Personnel in the Office of the Clerk

The deputy clerks in the U.S. District Clerk's Office are there to help you; however, they are not allowed to complete the forms for you; make copies for you free of charge; and most important, advise you on the law.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
_____ DIVISION

versus

§
§
§
§
§
§
§

CIVIL ACTION NO. _____

EMPLOYMENT DISCRIMINATION COMPLAINT

1. This action is brought under Title VII of the Civil Rights Act of 1964 for employment discrimination. Jurisdiction is conferred by Title 42 United States Code, Section § 2000e-5.

2. The Plaintiff is: _____
Address: _____

County of Residence: _____

3. The defendant is: _____
Address: _____

Check here if there are additional defendants. List them on a separate sheet of paper with their complete address.

4. The plaintiff has attached to this complaint a copy of the charges filed on _____ with the Equal Opportunity Commission.

5. On the date of _____, the plaintiff received a Notice of Right to Sue

letter issued by the Equal Employment Opportunity Commission; a copy is attached.

6. Because of the plaintiff's:

- (a) race
- (b) color
- (c) sex
- (d) religion
- (e) national origin,

the defendant has:

- (a) failed to employ the plaintiff
- (b) terminated the plaintiff's employment
- (c) failed to promote the plaintiff
- (d) other: _____

7. When and how the defendant has discriminated against the plaintiff:

8. The plaintiff requests that the defendant be ordered:

- (a) to stop discriminating against the plaintiff
- (b) to employ the plaintiff
- (c) to re-employ the plaintiff
- (d) to promote the plaintiff

(e) to _____

_____ and that;

(f) the Court grant other relief, including injunctions, damages, costs and attorney's fees.

(Signature of Plaintiff)

Address: _____

Telephone: _____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
_____ DIVISION

versus

§
§
§
§
§
§
§

CIVIL ACTION NO. _____

ORIGINAL COMPLAINT

UNITED STATES DISTRICT COURT

District of _____

Plaintiff

v.

Defendant

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES AND AFFIDAVIT

CASE NUMBER: _____

I, _____ declare that I am the (check appropriate box)

petitioner/plaintiff/movant other

in the above-entitled proceeding; that in support of my request to proceed without prepayment of fees or costs under 28 USC §1915 I declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief sought in the complaint/petition/motion.

In support of this application, I answer the following questions under penalty of perjury:

1. Are you currently incarcerated? Yes No (If "No," go to Part 2)

If "Yes," state the place of your incarceration _____

Are you employed at the institution? _____ Do you receive any payment from the institution? _____

Attach a ledger sheet from the institution(s) of your incarceration showing at least the past **six** months' transactions.

2. Are you currently employed? Yes No

a. If the answer is "Yes," state the amount of your take-home salary or wages and pay period and give the name and address of your employer.

b. If the answer is "No," state the date of your last employment, the amount of your take-home salary or wages and pay period and the name and address of your last employer.

3. In the past 12 twelve months have you received any money from any of the following sources?

- a. Business, profession or other self-employment Yes No
- b. Rent payments, interest or dividends Yes No
- c. Pensions, annuities or life insurance payments Yes No
- d. Disability or workers compensation payments Yes No
- e. Gifts or inheritances Yes No
- f. Any other sources Yes No

If the answer to any of the above is "Yes," describe, on the following page, each source of money and state the amount received and what you expect you will continue to receive.

4. Do you have **any** cash or checking or savings accounts? Yes No

If "Yes," state the total amount. _____

5. Do you own any real estate, stocks, bonds, securities, other financial instruments, automobiles or any other thing of value? Yes No

If "Yes," describe the property and state its value.

6. List the persons who are dependent on you for support, state your relationship to each person and indicate how much you contribute to their support.

I declare under penalty of perjury that the above information is true and correct.

Date

Signature of Applicant

NOTICE TO PRISONER: A Prisoner seeking to proceed without prepayment of fees shall submit an affidavit stating all assets. In addition, a prisoner must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

UNITED STATES DISTRICT COURT

_____ **District of** _____

Plaintiff

V.

Defendant

ORDER ON APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES

CASE NUMBER: _____

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

GRANTED.

The clerk is directed to file the complaint.

IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

DENIED, for the following reasons:

ENTER this _____ day of _____, _____.

Signature of Judge

Name and Title of Judge

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff

v.

Defendant

)
)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)*
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)*
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)*
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)*
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date:

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

RETURN OF SERVICE		
Service of the Summons and complaint was made by me ⁽¹⁾	DATE	
NAME OF SERVER (<i>PRINT</i>)	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
<p>G Served personally upon the defendant. Place where served: _____ _____</p> <p>G Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____</p> <p>G Returned unexecuted: _____ _____ _____</p> <p>G Other (specify): _____ _____ _____</p>		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on _____ Date</p> <p style="margin-left: 200px;">_____ <i>Signature of Server</i></p> <p style="margin-left: 200px;">_____ <i>Address of Server</i></p>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

**NOTICE OF LAWSUIT AND REQUEST FOR
WAIVER OF SERVICE OF SUMMONS**

TO: (A) _____

as (B) _____ of (C) _____

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the

(D) _____ District of _____ and has been assigned docket number _____.

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver

within (F) _____ days after the date designated below as the date on which this Notice and is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth at the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this _____ day of _____, _____.

Signature of Plaintiff's Attorney
or Unrepresented Plaintiff

A—Name of individual defendant (or name of officer or agent of corporate defendant)
B—Title, or other relationship of individual to corporate defendant
C—Name of corporate defendant, if any

D—District

E—Docket number of action

F—Addressee must be given at least 30 days (60 days if located in foreign country) in which to return waiver

WAIVER OF SERVICE OF SUMMONS

TO: _____
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I, _____, acknowledge receipt of your request
(DEFENDANT NAME)

that I waive service of summons in the action of _____,
(CAPTION OF ACTION)

which is case number _____ in the United States District Court
(DOCKET NUMBER)

for the _____ District of _____.

I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after _____, (DATE REQUEST WAS SENT), or within 90 days after that date if the request was sent outside the United States.

(DATE)

(SIGNATURE)

Printed/Typed Name: _____

As _____ of _____
(TITLE) (CORPORATE DEFENDANT)

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

HELPFUL ADDRESSES IN THE EVENT THE
UNITED STATES IS NAMED A DEFENDANT

United States Attorney General
Department of Justice
10th and Constitution Ave., N.W.
Washington, DC 20530

UNITED STATES ATTORNEY'S OFFICE:

Houston/Galveston Division:

Mail: P.O. Box 61129
Houston, TX 77208

Delivery: 910 Travis, Suite 1500
Houston, TX 77002

Designated Agents: JoAnn Bohman, Linda Bowen, Felicia Dugas, Peggie Guillory, Patricia Skoff, Marie Southern, Gertrude Nelson, Marianne Bailey, Carrie Patterson, John Fonville.

Brownsville Division:

1001 E. Elizabeth St., Room 105
Brownsville, TX 78521

Corpus Christi Division:

400 Main, Room 505
Corpus Christi, TX 78401

Laredo Division:

1300 Matamoros, Room 200
Laredo, TX 78040

McAllen Division:

1701 W. Highway 83, Suite 858
McAllen, TX 78501-5159