

INSTRUCTIONS

You should use this packet if:

1. You are a prisoner; and
2. You believe your federal constitutional rights have been violated; and
3. You wish to file a complaint under 42 U.S.C. § 1983 in the United States District Court for the Southern District of Iowa; and
4. You do not have a licensed attorney to help you with your complaint.

Section 1983 or Habeas Corpus?

Sometimes prisoners do not know if they should file a § 1983 action or a habeas corpus action. Both § 1983 and the Writ of Habeas Corpus can help people who have been deprived of federal constitutional rights. However, if you want the Court to release you from custody or shorten your sentence, you should file a habeas corpus action (the court cannot do this for you in a § 1983 action). In a habeas corpus action, you must ask the **STATE** Courts to help you before you ask the **FEDERAL** Court's help. This is not required for a § 1983 action, unless you lost good time.

Do NOT use this § 1983 form to apply for a writ of habeas corpus. A separate form is available for that purpose. The Clerk of Court can send you a copy upon request, or one should be available in the law library of your institution.

The Right Court and the Right Defendants

Your complaint can be filed in the United States District Court for the Southern District of Iowa only if one or more of the defendants is located in the Southern District, or if the facts of your complaint took place in this district.

A defendant in a § 1983 action must be a person who acted "under color of" state law. This generally means that the person is either a state employee or someone else who acted for the state or under some power given to him/her by the state. (This is not a complete statement of the law on this subject, but is intended **ONLY** as guidance.)

In order for the warden or some other supervisory official to be a proper defendant, you must have some proof that such person either: (1) personally did some act that harmed you, or (2) harmed you by personally failing to do something he/she should have done, or (3) authorized (in words or otherwise) someone else's conduct which harmed you, or (4) was aware of someone else's conduct which harmed you, and went along with that conduct in some way.

It is important that you give the full and correct name and work address, if known, of each **person** you name as a defendant, so that each of them can be notified of your complaint.

IMPORTANT NOTICE

Do **NOT** include exhibits with the complaint at this point. Any exhibits submitted with this complaint will be returned to you.

Your complaint will **NOT** be considered by the Court unless you have followed these instructions and those on the forms themselves.

Filling out the Forms

These forms may be filled out by hand or by typewriter. Handwriting **MUST** be clear and readable. Please do not use fancy lettering. If your writing is hard to read, print. Every question

on the forms must be answered, even if your answer is “none,” “don't know,” etc. Your complaint will be more effective if you (1) state your claim **briefly**, and (2) only tell the Court about claims you truly believe are important. Stick to the **facts** (who, what, when, where, why, how). **Always** include dates, times, places, and names. **THE COMPLAINT SHOULD NOT CONTAIN LEGAL ARGUMENTS OR CASE CITATIONS.**

If you need more space to answer a question, use the back side of this form or an extra blank page. However, if you keep your answer to the point, extra space should not be needed. You must **personally sign** the complaint. If there is more than one plaintiff **each person must sign.** YOU MAY NOT SIGN FOR THEM.

Additional Claims

If, in addition to your § 1983 claim, you have other claims against one or more of the defendants that do not involve violations of constitutional rights, you may state those claims on a separate sheet of paper and attach it to the complaint form. Write the heading “Additional Claims” at the top of the sheet. If you know the name or number of a statute that you think applies to your additional claim, you may state it, but it is not essential. The Court will determine whether any of these claims can be decided in Federal Court. Do **not** include any habeas corpus claims with the complaint. Those claims should be filed on the habeas corpus form available from your institutional library or the Clerk of Court.

Other Instructions

There is a fee of \$400.00 for filing your complaint. You will also be required to pay the cost of notifying each defendant of your complaint. If you feel you cannot pay the filing fee and service costs, please read the instructions titled “**INFORMATION ABOUT FEES**” and submit Forms “B,” and “C,” as instructed.

Read the attached “**Important Notice to Prisoners Filing an Action Under 42 U.S.C. § 1983.**” On April 26, 1996, the President signed into law the Prison Litigation Reform Act, which makes a number of changes affecting § 1983 lawsuits by inmates.

Mail your packet to the Clerk of Court at the address below. With this complaint you must send a money order for \$400.00 or a completed and signed Application to Proceed Without Prepayment of Fees and Affidavit (Form B), and Certificate of Inmate Account & Assets (Form C).

**Clerk -- U.S. District Court
P.O. Box 9344
Des Moines, IA 50306-9344**

You MUST notify the Clerk at the above address if your address changes. This includes a transfer to another institution or release. If you don't, your case might be dismissed.

IMPORTANT NOTICE TO PRISONERS FILING AN ACTION UNDER 42 U.S.C. § 1983

On April 26, 1996, the President signed into law the Prison Litigation Reform Act. This act makes a number of changes affecting § 1983 lawsuits by inmates. You should be aware of the following aspects of the this law:

WHO THE LAW AFFECTS

The law applies to prisoners. Prisoners are persons incarcerated or detained in a facility who have been accused of, convicted of, sentenced for, or adjudicated delinquent for violations of (1) criminal law, or (2) the terms and conditions of parole, probation, pretrial release, or diversionary program.

EXHAUSTION

You may not bring an action challenging prison conditions under § 1983 or any other federal law until you have exhausted available administrative remedies, including any grievance system.

FILING

When you bring a civil action or file an appeal, you **must pay the full \$400 filing (\$350 for civil actions plus a \$50 administrative fee*) if you have money to pay it.** If you cannot pay the full fee at the time of filing, you must apply to proceed without prepayment of fees.

Do not send money with your complaint. The amount of your partial filing fee will be determined after you submit the items listed in #1 below.

1. To file an application to proceed without prepayment of fees, you must submit (1) an affidavit that includes a statement of all asset you possess, (2) an authorization to debit your account, and (3) a **certified copy** of your prisoner account statement for the past six months, obtained from the appropriate official at your institution. That official also must calculate the initial partial filing fee using the formula described in #2 below, and include it with the certified copy of your prisoner account statement. The form for the certified copy includes this.

2. After receiving your complaint the court will assess and collect an **initial partial filing fee** of the greater of the following:

(a) 20% of the average monthly deposits to your prisoner account for the past six months; or

(b) 20% of the average monthly balance in your prisoner account for the past six months.

If, however, you have no assets and no means to pay the initial partial fee, you will not be prohibited from bringing an action without prepayment of fees. See 28 U.S.C. § 1915(b)(4). Any money you later receive will be collected as described in #3 below.

3. After paying this initial partial fee, you must pay 20% of each future month's income received in your prisoner account. The agency having custody of you to send these payments to the clerk of court when your prisoner account has more than \$10 in it, until the full filing fee is paid. See 28 U.S.C. § 1915(b). **The full fee will be collected even if the court dismisses the case because it is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks money damages against a defendant who is immune from such relief.** See 28 U.S.C. §1915(e)(2). The filing fee debt is not dischargeable in bankruptcy.

*NOTE: If a motion to proceed in forma pauperis is granted, the administrative fee is waived and the total filing fee is \$350.

DISMISSAL

The Court must dismiss your case at any time if it determines that:

1. Your allegation of poverty is untrue; or
2. Your case is:
 - (a) frivolous, or
 - (b) malicious, or
 - (c) fails to state a claim on which relief may be granted, or
 - (d) seeks money from a defendant who is immune from such relief.

Even if your case is dismissed for one of the above reasons you are still responsible for paying any unpaid portion of the filing fee.

THREE-DISMISSAL RULE

If you have, on **three or more times in the past**, while incarcerated, brought a civil action or appeal in federal court that was dismissed because it was (1) frivolous, or (2) malicious, or (3) failed to state a claim upon which relief may be granted, you **cannot bring a new civil action or appeal a judgment in a civil action without prepayment of fees**. The only exception to this is if you are in “imminent danger of serious physical injury.” See 28 U.S.C. § 1915(g).

If you are **not proceeding without prepayment of fees**, you may file a new civil action or appeal even if you have three or more of these dismissals.

Regardless of whether you proceed without prepayment of fees in a civil case, if your case is dismissed as frivolous, malicious, or for failure to state a claim at any time, the dismissal will count against you for purposes of the three-dismissal rule if you seek to bring a case without prepayment of fees in the future.

COMPENSATORY DAMAGES

If your case is allowed to proceed and you are awarded compensatory damages against a correctional facility or an official or agent of a correctional facility, the damages award will first be used to satisfy any outstanding restitution orders pending.

Before payment of any compensatory damages, reasonable attempts will be made to notify the victims of the crime for which you were convicted concerning payment of such damages. The restitution orders must be fully paid before any part of the award goes to you.

ATTORNEY FEES

If you were granted appointment of counsel and you won attorney fees from the defendant, a portion of your award (but not more than 25% of it) will be used to pay the attorney fees.

FORM A

**FORM TO BE USED BY A PRISONER IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983**

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA**

(Enter above the **FULL** name and inmate number of the plaintiff or plaintiffs in this action)

vs.

COMPLAINT

(Enter above the **FULL** name of each defendant in this action)

(NOTE: If there is more than one plaintiff, the information in parts I and II should be shown for EACH plaintiff by name, using a separate sheet of paper.

I. Previous Lawsuits:

A. Have you begun other lawsuits in State or Federal Court dealing with the same facts involved in this action or otherwise relating to your imprisonment?
Yes () No ()

B. If your answer to A is Yes, please answer questions 1 thru 7. (If there is more than one lawsuit, describe the additional lawsuits on another sheet of paper, using the same outline.)

III. Parties

(In item **A** below, place your name in the first blank and place your present address in the second blank. Do the same for additional plaintiff(s), if any.)

A. Name of Plaintiff _____

Address _____

B. Additional plaintiffs _____

(In item **C** below, place the full name of the defendant in the first blank, his official position in the second blank, and his place of employment in the third blank. Use item **D** for the names, positions, and places of employment of any additional defendants.)

C. Defendant _____

is employed as _____

at _____

D. Additional defendants _____

IV. Jurisdiction

This complaint is brought pursuant to 42 U.S.C. § 1983, and jurisdiction is based on 28 U.S.C. § 1343. Plaintiff(s) allege(s) the defendant(s) acted under color of state law with regard to the facts stated in part V of this complaint.

V. **Statement of Claim**

(state here as briefly as possible the **FACTS** of your case. You **MUST** state exactly what each defendant personally did, or failed to do, which resulted in harm to you. Include also the names of other persons involved (for example, other inmates) and state the date and place of all events. Attach an extra sheet if necessary, and write the heading **PART V CONTINUED** at the top of the sheet. Keep to the facts. Do not give any legal arguments or cite any cases.)

VI. (State briefly exactly what you want the Court to do for you. Make no legal arguments. **Do not cite cases or statutes.**)

VII. **Statement Regarding Assistance in Preparing this Complaint**

- A. Did any person other than a named plaintiff in this action assist you in preparing this complaint? **Yes** () **No** ()
- B. If your answer is **Yes** name the person who assisted you.
- C. Signature of person who helped prepare complaint.

(Signature) _____ (Date) _____

VIII. **Signature(s) of Plaintiff(s)**

Signed the _____ day of _____, _____.
(Signature of Plaintiff) _____
Signatures of additional plaintiffs, if any:

FORM B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

_____,)
)
Plaintiff,)
)
vs.) Case: _____
)
_____,) APPLICATION TO PROCEED
_____,) IN FORMA PAUPERIS
_____,)
_____,)
_____,)
_____,)
Defendant(s).)

I, _____, declare that I am the plaintiff in the above-entitled proceeding; that, in support of my request to proceed without being required to **prepay** the full filing fee, I state that because of my poverty, I am unable to prepay the filing fee for this action; that I believe I am entitled to relief.

In further support of this application, I answer the following questions:

1. Where are you imprisoned? _____
2. When did you begin your imprisonment there? _____
3. When do you expect to be released? _____
4. Are you presently receiving an allowance or wages from the prison or jail? _____
If the answer is YES, state the amount of your allowance or wages per month.
5. _____
Have you received within the past 12 months any money from a business, profession or other type of self-employment, or in the form of rent payments, interest, dividends, retirement or annuity, life insurance, gifts, inheritances, court award or settlement, or other sources? _____
If YES, give the amount received and identify the sources:

6. What is the current balance in your prison account? _____

7. Do you own cash, or do you have money in a checking or savings account, other than a prison account? _____.
If YES, state the current balance: _____

8. Do you own any real estate, stocks, bonds, notes, vehicles, or other valuable property (You need not mention ordinary household and cell furnishings, such as radios, TV sets, stereo, books, etc., and personal clothing)? _____.
If YES, describe the property and state its approximate value:

I hereby authorize officials of the institution where I am incarcerated to release my financial records to the court. My identification number at this institution is _____.

I declare under penalty of perjury that I have read the foregoing and it is true, complete, and correct.

Signed this _____ day of _____, _____.

Plaintiff)

(Signature of

FORM C

CERTIFICATE OF INMATE ACCOUNT AND ASSETS

I certify that the applicant, _____,
has the sum of \$ _____ on account to his/her credit at the _____
_____ institution where he/she is confined. I further certify that the
applicant likewise has the following securities to his/her credit according to the records of said
institution:

I further certify that, during the last six months,
(a) the applicant's average inmate account balance was \$ _____, and
(b) the average of the monthly deposits to the inmate account was \$ _____

Based on the above inmate account information, I calculate that 20 percent of the greater
of (a) or (b) above is \$ _____.

Attached is a certified copy of the trust fund account statement for the applicant for the
last six months.

Signed this _____ day of _____, _____.

Authorized Officer of Institution