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CIVIL PRO SE LITIGANT GUIDEBOOK

United States District Court for the District of Puerto Rico
Room 150 Federal Building
San Juan, Puerto Rico 00918-1767

Raúl M. Arias-Marxuach, Chief Judge
Ada I. García-Rivera, Clerk of Court

www.prd.uscourts.gov

FUNDAMENTAL INFORMATION

The Clerk's Office is not allowed to give you legal advice, but will try to answer any questions about procedure or rules of the Court.

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

The **PLAINTIFF** is the person who files the lawsuit.

The **DEFENDANT** is the person who is being sued.

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

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

CASE MANAGEMENT/ELECTRONIC CASE FILES (CM/ECF)

The Court offers Internet access to official case records through its Case Management/Electronic Case Files (CM/ECF) system, to which authorized users electronically upload case file documents. Pro se litigants generally submit their documents in paper, and Court personnel scans them for electronic filing.

The Judiciary has a strong commitment to protect private information in publicly accessible court records. In keeping with this policy and in compliance with the Rules of Civil Procedure, all filers must redact from their filings social security numbers, taxpayer identification numbers, birth dates, names of minor children, and financial account numbers. See, Rule 5.2 of the Federal Rules of Civil Procedure.

Other restrictions and requirements may apply depending on the type of case. As a litigant before this Court you are solely responsible for redacting private information in all documents you file. For more information, read the Federal Rules of Civil Procedure and the Court's Local Rules, visit the Court's website at www.prd.uscourts.gov, or contact the Clerk's Office.

FEDERAL COURT vs COMMONWEALTH COURTS

There is a difference between a Commonwealth Court and Federal Court. The difference being in what types of cases (lawsuits) they can decide. This is called **JURISDICTION**. Commonwealth Courts have general or broad jurisdiction, and Federal Courts have limited or specific jurisdiction. Under Federal Court jurisdiction, the two main types of cases are Federal Question Cases and Diversity Cases.

FEDERAL QUESTION CASES are cases where the issue involves a violation of federal law.

DIVERSITY CASES are cases where the Plaintiff and Defendant are citizens of different states and the amount in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs. Citizens of different states includes the situation of a citizen of the Commonwealth of Puerto Rico and a citizen of a state.

STEP ONE: WRITE YOUR COMPLAINT

All cases are comprised of documents prepared and filed by litigants. The most common documents are the complaint, answer and motions. The first document that you must write as a plaintiff is called a **COMPLAINT**. The function of the COMPLAINT is to tell the Court and the defendant the reason for filing the lawsuit and what relief you desire. The COMPLAINT consists of four main parts:

1. The **NAME AND ADDRESS** of the plaintiff and the defendant. These are usually listed in the first and second paragraphs respectively. If there is more than one defendant, list each defendant's name and address in separate additional paragraphs.
2. The **JURISDICTION** or reason your case is being filed in this federal court. See, 28 U.S.C. §§ 1331, et seq.
3. The **ALLEGATIONS** or claims that you are making against the defendant. Place each allegation in a short, clearly written paragraph. See, Rule 10 of the Federal Rules of Civil Procedure.

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

You must write your COMPLAINT yourself; the Clerk's Office cannot help you do this.

Please be sure to number each paragraph except for the paragraph that asks the court for relief. If you believe you are entitled to a trial by jury, you must indicate in a paragraph following the relief requested that you claim trial by jury. See, Rule 38(b) of the Federal Rules of Civil Procedure.

Do not worry that your COMPLAINT is not professionally written. The court will take into consideration that you are a PRO SE LITIGANT and untrained in drafting legal documents. You should, however, make every effort to state your case in clear, concise terms. See, Rules 8 and 10 of the Federal Rules of Civil Procedure.

Forms for filing a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody, a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence by a person in federal custody, or a civil rights complaint under 42 U.S.C. § 1983, are available at the Office of the Clerk and at the Court's website, www.prd.uscourts.gov. These forms must be filled out according to the instructions and signed; your complaint or petition will not be considered by the Court unless you have followed the form's instructions.

You **MUST** notify the Clerk of Court of any CHANGES OF ADDRESS. If you are a PRISONER, you must notify the Clerk of Court of transfers between institutions or release. Your case may be dismissed if you cannot be contacted by mail.

All pleadings submitted to this court must be on 8 1/2 x 11" paper and the writing must be legible and double-spaced, whether typed or printed, and bear an original signature. Be certain to state what relief you are seeking. See, Rules 8, 10 and 11 of the Federal Rules of Civil Procedure. Handwritten complaints must be legibly written.

STEP TWO: FILE YOUR COMPLAINT

Your next step is to file the COMPLAINT with the court. The following forms must be completed and submitted with the COMPLAINT:

1. A Civil Cover Sheet
2. A Civil Category Sheet.
3. A completed SUMMONS for each defendant

Both the original and one copy of the COMPLAINT must be filed. You will also have to pay a **STATUTORY FILING FEE** of \$405.00 at the time you file your COMPLAINT. See, 28 U.S.C. § 1914. [Note: Effective 5/1/2013, this includes a \$50.00 Administrative Fee for Filing a Civil Action, Suit or Proceeding in a District Court.] Under certain circumstances, the filing fee may be waived if you cannot afford to pay it. For more information, see below. All money orders should be made payable to: "CLERK, UNITED STATES DISTRICT COURT."

IF YOU CANNOT AFFORD TO PAY THE FILING FEE, you may be allowed to have the filing fee waived if you fill out one of the following forms and send it to the court with the COMPLAINT, Cover and Category Sheets, and completed Summons forms:

- AO 239 - Application to Proceed Without Prepaying Fees or Costs (long version)
- AO 240 - Application to Proceed Without Prepaying Fees or Costs (short version)

When you file the COMPLAINT with the initiating documents, and Application to Proceed Without Prepaying Fees or Costs, your case will be randomly drawn to a United States District Judge; all pleadings will be reviewed and forwarded to a United States District Court Judge for his or her consideration. If your Application is approved, the filing fee will be waived. If your Application is **not** approved, you must pay the filing fee; failure to pay the filing fee in these circumstances may entail dismissal of the action.

If you are filing a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody or a civil rights complaint under 42 U.S.C. § 1983, you must pay the full amount of the statutory filing fee (\$405 for civil actions; \$5 for petitions for writ of habeas corpus) or apply to proceed IN FORMA PAUPERIS. When you apply to proceed IN FORMA PAUPERIS, you must attach the following local forms to your complaint or petition:

1. Motion to Proceed In Forma Pauperis
2. Affidavit in Support of Motion to Proceed In Forma Pauperis

These forms are available at the Clerk's Office as part of the form petitions under 28 U.S.C. § 2254, and the complaint form under 42 U.S.C. § 1983. You may contact the Office of the Clerk for more information on this subject.

If you do not apply to proceed IN FORMA PAUPERIS or the Court denies you that status, it is up to you to pay the filing fee and find someone to serve the defendants. You must also file

a proper return with the Court, showing that the defendants have been served, as stated below.

IF YOU ARE A PRISONER FILING A FEDERAL CIVIL RIGHTS COMPLAINT under 42 U.S.C. § 1983 you should be aware that the Prison Litigation Reform Act of 1996, and the Antiterrorism and Effective Death Penalty Act of 1996 made substantial changes which affect the filing of prisoner federal civil rights complaints and habeas corpus litigation procedures. All PRISONERS applying to proceed IN FORMA PAUPERIS must submit a certified copy of the PRISONER ACCOUNT statement for the six months preceding the filing of the complaint, obtained from the appropriate official at the correctional institution (the form for the certified copy is included within the Motion to Proceed In Forma Pauperis).

After receiving a PRISONER COMPLAINT, the Court will assess and collect an INITIAL PARTIAL FILING FEE of the greater of the following:

1. 20 percent of the average monthly deposits to your PRISONER ACCOUNT for the past 6 months; or
2. 20 percent of the average monthly balance in your prisoner account for the past 6 months.

If you are a PRISONER and have no assets and no means to pay the initial partial filing fee, you will not be prohibited from filing an in forma pauperis action. 28 U.S.C. § 1915(b)(4). However, your custodian (agency or correctional institution) will send payments of 20 percent of the future monthly income received in your PRISONER ACCOUNT to the Clerk of Court each time your PRISONER ACCOUNT has a balance of more than \$10. Any money you receive will be collected in this manner until the full filing fee is paid. You will still be responsible for paying any unpaid portion of the filing fee even if the Court dismisses your case.

STEP THREE: SERVICE OF PROCESS

When your COMPLAINT is filed, your case will be randomly drawn to a District Judge and assigned a civil action number. The completed SUMMONS forms (AO 440) will then be signed and sealed by the clerk and returned to you.

Your next step is to SERVE (inform) each of the defendants that he or she is being sued. This may be done in two ways:

1. NOTICE AND REQUEST FOR WAIVER OF SERVICE

If you are suing the United States (and its agencies, corporations, or officers) or a state, local or foreign government, you CANNOT use For AO 398 and YOU MUST arrange for Service of Process (as described below).

You may notify the defendant(s) of the commencement of the lawsuit by sending a "NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS" (Form AO 398) or a "WAIVER OF THE SERVICE OF SUMMONS" (AO 399) along with a copy of the complaint by first-class mail or other reliable means. You must also include a copy of the Waiver of the Service of Summons form (AO 399) and a self-addressed return envelope. See, Rule 4(d) of the Federal Rules of Civil Procedure. If service is waived by the defendant, the Waiver of the Service of Summons form (AO 399) is returned to the plaintiff for filing with the court and the action shall proceed. If the defendant does not waive service, the plaintiff must proceed with service of process.

2. SERVICE OF PROCESS

Making "service of process" involves serving copy of a summons and a copy of the complaint to each of the defendants.

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

If a defendant has not "waived service of summons" OR you are suing a government (federal, state, local, foreign) YOU MUST ARRANGE to have a copy of an original summons (AO 440) and a copy of the complaint served upon each defendant.

You must complete a summons for each defendant and present each summons to the Clerk who will sign and place the court seal on each summons. A copy of the summons must be served upon each defendant with a copy of the complaint. The original summons should be kept by the person making service.

You can make service of process by having a "disinterested" person who is over the age of eighteen as a "server" who will deliver copies of the SUMMONS and COMPLAINT to each of the defendants. When using this method of making service of process, have the server fill out the back of the original SUMMONS, and send it to the court. See, Rule 4 of the Federal Rules of Civil Procedure.

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

If you have filed an Application to Proceed Without Prepayment of Fees and it has been allowed by a Judge, service of process will be made upon each defendant, without cost to you, by the United States Marshal. You must fill out one U.S. Marshal Form 285 for each defendant. However, **you are responsible for completing all of the forms required by the Marshal for service.**

If you have filed a petition under 28 U.S.C. § 2254 for writ of habeas corpus by a person in state custody, or a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence by a person in federal custody, an order will be issued by the Court concerning service upon the respondents. No Summons are issued in these types of cases.

For more information, read Rule 4 of the Federal Rules of Civil Procedure or contact the Office of the Clerk.

THINGS YOU SHOULD KNOW ABOUT

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

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

IF YOU CANNOT AFFORD AN ATTORNEY, you may file a written motion asking the court to appoint an attorney for you. Use the same heading that you used on your COMPLAINT but entitle the document "Motion for Appointment of Counsel." In your motion, provide the Court with your financial status, your attempts, if any, to find a lawyer, and any other information which would be helpful to the court in determining whether a lawyer should be appointed for you. **The Court is not required to appoint an attorney** but may request an attorney who has indicated a willingness to accept such cases on a pro bono basis to represent you. See, 28 U.S.C. § 1915.

AFTER THE ANSWER

In most cases, the Court will issue a SCHEDULING ORDER, which sets forth deadlines which the litigants must follow, or asking the litigants to set proposed time limits for discovery and motions.

The DISCOVERY PERIOD is the time frame allowed by the Court for both plaintiff and defendant to discover facts, research the law, and gather evidence to be presented at trial to prove the litigant's position/case. The DISCOVERY PERIOD always comes after the filing of the answer by the defendant, and before the first day of trial.

COMPLAINT / ANSWER / DISCOVERY PERIOD / TRIAL

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

1. Send a copy to each of the parties, or their lawyers, who are involved in the case and indicate at the end of the document that you have done so. This lets the Court know that the defendants have been served a copy of the same document you are filing. Even if you have been granted IN FORMA PAUPERIS status, the Clerk's Office or the U.S. Marshal will not serve any papers after the filing and service of the COMPLAINT.
2. Provide the correct civil action number of your case, including the initials of the Judge assigned, on the document.
3. Sign all documents you file with the Court. Place the words "PRO SE" after your name. Write your address (postal and e-mail), telephone and facsimile numbers, and inmate registration number (if applicable) on all documents.
4. Be certain to keep copies of all your documents. The Clerk's Office is not obligated to provide copies of documents free of charge.

The United States District Court's Clerk's Office in Puerto Rico is located in Jose V. Toledo U.S. Courthouse, 300 Recinto Sur St., Suite 325, San Juan, Puerto Rico 00901. Office hours are 8:30 A.M. to 12:00 noon and 1:00 P.M. to 4:45 P.M. Monday through Friday.

For more information, contact the Clerk's Office in Puerto Rico at (787)772-3000.