

ANSWERS TO PRISONER LITIGANTS' COMMON QUESTIONS

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN



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Introduction

For a variety of reasons, many people represent themselves in court. A person who represents himself in court is often said to be proceeding “pro se” (pronounced “pro say”) and may be called a “pro se litigant” or a “self-represented litigant.”

A person who is not a lawyer can represent only himself in court. A non-lawyer generally cannot represent another person in court, even if that person is a close family member. A non-lawyer also cannot represent a corporation or limited liability company (LLC) in federal court even if the person is the owner of the company or corporation. If a corporation or LLC is a party to a lawsuit in federal court, the corporation or company must be represented by an attorney.

This guide provides basic information for prisoners seeking to represent themselves in a civil action in the United States District Court for the Eastern District of Wisconsin. This guide provides only the most basic information. It is not a substitute for an attorney. This information is general in nature and some of it might not apply to your case.

The staff of the Clerk of Court’s office will be able to answer certain procedural questions, but they absolutely **cannot give you legal advice**. Therefore, staff of the Clerk of Court’s office will **not** be able to predict whether you might win your case, recommend a strategy of how you might win your case, predict how a judge might decide an issue, or interpret the meaning of any statute, rule, regulation, order, or decision.

You will be notified about all of the court’s actions in your case through the mail. Therefore, **if your mailing address changes while this case is pending you must immediately notify the court**. Do not assume that your mail will be forwarded to you or that the court knows that your address changed. It is your responsibility to notify the court. If you fail to do so, you might not receive important information about your case. This could result in you losing important rights or losing your entire case.

What are the Local Rules and Federal Rules of Civil Procedure?

The [Federal Rules of Civil Procedure](http://www.frcp.com), often abbreviated Fed. R. Civ. P., are rules that control every civil case filed in federal court everywhere in the country. They can be found at a law library or on many websites including: www.law.cornell.edu/rules/frcp and www.uscourts.gov.

The [Local Rules](http://www.wied.uscourts.gov), often abbreviated L.R., are rules that apply to every case filed in the Eastern District of Wisconsin. Copies of the Local Rules can be obtained from the Clerk of Court's office or at the Eastern District of Wisconsin's website, www.wied.uscourts.gov. The Local Rules are divided into three sections: (1) General Rules that apply to all cases; (2) Civil Rules that apply in only civil cases; and (3) Criminal Rules that apply in only criminal cases.

Like everyone else, pro se litigants **MUST** comply with these rules. Failure to comply with these rules may have serious consequences. Depending upon the circumstances, it is possible that **you might lose your case if you do not comply with all the rules.**

What does that word mean? A glossary of common legal terms.

Courts and lawyers often use terms that have special meanings when used in the legal setting. Simple definitions of some of the most common terms are below. Additional information can be found at various websites such as <http://www.uscourts.gov/glossary> or by consulting a legal dictionary.

Affidavit: A written or printed statement made under oath.

Amount in controversy: The amount of money at issue in a case.

- Answer:** The document that a defendant files in response to a plaintiff's complaint. See *Fed. R. Civ. P. 7, 8, 9, 10, 11, 12.*
- Brief:** A written statement submitted to a court that explains a party's factual and legal arguments in support of a motion.
- Civil case:** A legal action where a plaintiff seeks some sort of relief from a defendant.
- Costs:** Money a court may award to a party who wins a lawsuit for expenses incurred by the winning party during the lawsuit for things such as filing fees, service of a summons or subpoena, court reporters, or witnesses. See *Fed. R. Civ. P. 54(d); 28 U.S.C. § 1920.*
- Complaint:** A written statement filed by the plaintiff to begin a lawsuit. In this document, the plaintiff outlines his case and states what he would like to happen. See *Fed. R. Civ. P. 7, 8, 9, 10, 11, 12.*
- [Consent/Refusal to Proceed Before U.S. Magistrate Judge](#) A form on which a party states whether he or she authorizes a United States Magistrate Judge to be the judge in the case. If all parties consent, the magistrate judge will handle all aspects of the case, including a jury trial, if necessary.
- If even one party does not consent to have a magistrate judge handle the case, the case will be handled by a district judge.
- Damages:** Money that a defendant pays a plaintiff in a civil case if the plaintiff has won. Damages may be compensatory (to compensate for a loss or injury) or punitive (to punish or deter future misconduct).

Default judgment:	Judgment entered in favor of the plaintiff and against a defendant when the defendant fails to answer or respond to a complaint. <i>See Fed. R. Civ. P. 55.</i>
Defendant:	In a civil case, this is the party being sued by the plaintiff.
Deposition:	A part of discovery where a witness or party answers questions under oath. Generally, this happens in-person, and although similar to testifying in court, this generally takes place in a lawyer's office. <i>See Fed. R. Civ. P. 27, 28, 30, 31, 32.</i>
Discovery:	The phase of a civil case where each party collects information about the case from the other side. It may also refer to the actual information collected during this process, which may include copies of documents, written answers to questions, or depositions. <i>See Fed. R. Civ. P. 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37.</i>
Dispositive motion:	A motion that, if granted, would end a portion of a case or end an entire case. Examples include a motion to dismiss or a motion for summary judgment.
District court:	The court in the federal system where most actions start. The District Court for the Eastern District of Wisconsin is a district court.
District judge:	A federal judge appointed to serve for life by the President and confirmed by the Senate to serve in a district court under Article III of the Constitution.
Docket:	A brief written chronological list of what has happened in a case that is maintained by the Clerk of Court.

Electronic Court Filing (ECF):

A way for attorneys to file documents with the court by uploading them to a website. In the Eastern District of Wisconsin, pro se litigants cannot file documents this way. Pro se litigants must file documents by submitting them to the Clerk of Court. The Clerk's office staff will then upload the documents to the ECF system.

Inmates of certain institutions may be able to file documents by submitting them to institutional staff in accordance with the institution's policies. The institution will then ensure the documents are electronically submitted to the Clerk of Court.

Evidence:

Information presented in testimony or documents that is used to persuade a judge or jury to decide a case a certain way.

[Federal Rules of Civil Procedure:](#)

The rules for conducting a civil lawsuit filed in a federal court. Often abbreviated Fed. R. Civ. P.

[Federal Rules of Evidence:](#)

Rules that govern what types and how evidence may be presented in federal court. Often abbreviated Fed. R. Evid.

Hearsay:

Evidence where a witness recounts what he learned from someone else. Hearsay is generally not admissible in court. *See Fed. R. Evid. 801, 802, 803, 804, 806, 805, 807.*

In forma pauperis (IFP):

Latin phrase meaning “as a poor person.” It is used when a party cannot afford to pay the filing fee to start a civil suit and therefore asks the court for permission to proceed “as a poor person” and not require him to pay the fee. Prisoners will be required to pay the full filing fee even if granted permission to proceed in forma pauperis but will be allowed to pay the filing fee in installments.

A person wishing to proceed in forma pauperis must complete this district’s [“Request to Proceed without Prepaying the Filing Fee,”](#) which is available on the court’s website, from the Clerk of Court’s office, and at some institutions. *See 28 U.S.C. § 1915.*

Initial partial filing fee:

The portion of the \$350.00 filing fee that a prisoner who has been granted permission to proceed in forma pauperis must pay to begin his case. *See 28 U.S.C. § 1915(b).*

Interrogatory:

One party’s written question to another party that is asked as part of discovery. *See Fed. R. Civ. P. 33; Civ. L.R. 33.*

Judgment:

The final action by the court that ends a case in a district court.

Jurisdiction:

The legal authority of a court to hear and decide a certain type of case. It also is used as a synonym for venue, meaning the geographic area over which the court has territorial jurisdiction to decide cases.

Litigant:

A party to a lawsuit.

[Local Rules:](#)

Rules that apply to cases brought in a specific court. Often abbreviated L.R.

Magistrate judge:	A federal judge appointed by the judges in a district court who may oversee all aspects of a civil case if the parties consent.
Mediation:	A process where the parties meet with a neutral third party (sometimes a magistrate judge) in an effort to reach a mutually agreeable settlement of the case.
Motion:	A request by a litigant to a judge for a decision on an issue relating to the case. <i>See Fed. R. Civ. P. 7(b); Civ. L.R. 7.</i>
Movant:	The party that files a motion.
Order:	The court's command to a party, decision on a motion, or resolution of an issue in the case.
Party:	The plaintiff or the defendant in a lawsuit.
Plaintiff:	The party that starts a civil lawsuit by filing a complaint.
Pleadings:	Written statements filed with the court that describe a party's legal or factual assertions about the case. Pleadings may include a complaint, an answer, a motion, or a brief.
Prejudice:	Motions or cases can be resolved with or without prejudice. If "with prejudice," the case or motion cannot be filed again. If "without prejudice," the case or motion might be able to be re-filed at a later time.

Prisoner:	Any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release or diversionary program. <i>See 28 U.S.C. § 1915(h); 1915A(c).</i>
Pro bono:	Phrase commonly used to refer to when a lawyer represents a person for free.
Relief:	What a party seeks either in a lawsuit or in a particular motion.
Reply:	A movant's submission following the other party's response to a motion. When a motion is filed, the movant may submit a brief in support. The other party will be able to submit a response. The movant will then be able to reply. The court will then decide the motion. <i>See Civ. L.R. 7, 56.</i>
Response:	A submission made by a party in opposition to a motion. When a motion is filed, the movant may submit a brief in support. The other party will be able to submit a response. The movant will then be able to reply. The court will then decide the motion. <i>See Civ. L.R. 7, 56.</i>
Scheduling conference:	A meeting with the court involving any pro se litigant and an attorney representing a party to discuss how the case will proceed. <i>See Fed. R. Civ. P. 16; Civ. L.R. 16.</i>
Service of process:	The act of formally providing the defendant with a copy of a summons and a copy of the complaint to inform him of the lawsuit against him. <i>See Fed. R. Civ. P. 4.</i>

Settlement:	Parties to a lawsuit resolve their dispute without having a trial. Settlements often involve the payment of compensation by one party in at least partial satisfaction of the other party's claims, but usually do not include the admission of fault.
Statute of limitations:	The time within which a lawsuit must be filed or a criminal prosecution begun. The deadline can vary, depending on the type of case.
Strike:	A consequence of a prisoner's civil suit or appeal being dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. If a prisoner incurs three or more strikes, he will be barred from proceeding in forma pauperis in federal court unless the prisoner is under immediate danger of serious physical injury. <i>See 28 U.S.C. §1915(g).</i>
Subpoena:	A command, issued under a court's authority, to a witness to appear and give testimony or to produce certain documents.
Summons:	A form prepared by the plaintiff and issued by a court that informs the defendant that he or she has been sued. <i>See Fed. R. Civ. P. 4.</i>
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. Summary judgment is granted when – on the undisputed facts in the record – one party is entitled to judgment as a matter of law. <i>See Fed. R. Civ. P. 56; Civ. L.R. 56.</i>

Text Only Order: An order entered by a judge that appears only on the docket and is not accompanied by a longer formal written order. These orders are generally short and for minor matters.

Waiver of service: A process where a defendant may agree that a plaintiff will not have to formally serve him with a summons and a copy of the complaint. *See Fed. R. Civ. P. 5(d)*.

How will my case proceed?

Before Filing

Prior to filing your complaint, you must exhaust all available administrative remedies for each claim in your complaint. For example, if your complaint involves something that happened while you were incarcerated, you must first try to resolve your dispute through every step of your institution's grievance process. If you file your complaint before exhausting all administrative remedies that were available to you, your complaint likely will be dismissed.

If your complaint is a civil rights action, you must submit your complaint using the form included in the court's "[Guide and Complaint for Prisoner Filing Without a Lawyer](#)", available from the Clerk of Court, the court's website, or some institutions.

When completing your complaint, you must be careful to follow all directions on the form. You should make sure that your complaint is readable. Try to be concise. Your complaint should provide enough detail to allow the court to understand your claim without referring to any supplemental exhibits. You must identify how each defendant was personally involved in the actions that are the basis of your complaint. You must then file the petition in accordance with the instructions included with the "[Guide and Complaint for Prisoner Filing Without a Lawyer](#)."

Inmates of certain institutions may be able to file documents by submitting them to institutional staff in accordance with the

institution's policies. The institution will then ensure the documents are electronically submitted to the Clerk of Court.

Paying the Filing Fee

When your complaint is submitted to the Clerk of Court's office, you must either pay a \$400.00 filing fee (which includes a \$50.00 administrative fee) or petition the court to proceed in forma pauperis.

You also must promptly submit the "[Consent/Refusal to Proceed Before U.S. Magistrate Judge](#)" form. This form will be provided to you after you file your case. The form is also available on the Eastern District of Wisconsin's website. The court might not take any action on your case until you submit this form.

If you cannot afford the full filing fee at the time you file your case and therefore wish to petition to proceed in forma pauperis, you must submit a "[Request to Proceed without Prepaying the Filing Fee](#)" This form can be obtained from the Clerk of Court, the court's website, or some institutions. You must also submit a copy of your institutional trust account statement for the last six-months.

Under the Prison Litigation Reform Act (PLRA), all prisoners must pay the full \$350.00 filing fee (prisoners granted leave to proceed in forma pauperis are not required to pay the \$50.00 administrative fee). However, if a prisoner is granted permission to proceed in forma pauperis, the prisoner will be able to pay the \$350.00 filing fee in installments.

After you submit a [Request to Proceed without Prepaying the Filing Fee](#) and provide the court with your institutional trust account statement, the court will review these documents to determine if you can afford to pay the filing fee at that time. If the court concludes you cannot pay the full filing fee, the court will determine the amount you must pay to have the case go forward. The PLRA requires the court to use a specific method to determine how much you must pay. The amount you must pay is referred to as the "initial partial filing fee." The court will issue an order telling you how much the initial partial filing fee is and instructing you to pay this amount within a certain amount of time. If you fail to pay the initial partial filing fee by the deadline

set by the court, your case will likely be dismissed. Each month afterwards, the institution where you reside will automatically deduct 20% of your monthly income from your trust account to pay towards the remaining filing fee until the full \$350.00 amount is paid.

After you pay the initial partial filing fee, the court will review your complaint to determine if it is sufficient to go forward. The court might determine that certain claims or certain defendants are not proper and therefore will dismiss these from your case. If the court determines that your entire complaint is without merit, the court will dismiss your entire case. If the court dismisses your entire case because it is frivolous, malicious, or fails to state a claim upon which relief may be granted, you will incur a “strike.” Under the PLRA, prisoners who incur three or more strikes cannot proceed in forma pauperis in federal court unless the prisoner is under imminent danger of serious bodily injury.

Serving the Defendant

If your complaint is not dismissed, the defendant(s) will have to be formally notified of the lawsuit. This is a process commonly referred to as “serving the defendant.” If a defendant is an employee of the State of Wisconsin, the Clerk of Court will usually automatically notify the defendant of the case and you will not have to do anything to notify the defendant about your lawsuit. If a defendant is not employed by the State of Wisconsin, for example, the defendant is an employee of the federal government or a county or local government, or is someone not associated with the government, you will be responsible for notifying the defendant of your lawsuit. If you paid the filing fee in full, you will be provided with instructions of how to serve the defendant. If you are proceeding in forma pauperis, the United States Marshals Service must serve the summons and the complaint. Even if you were granted permission to proceed in forma pauperis, you will be charged a fee to have the Marshals Service serve the defendant. The current fee for the Marshals Service to provide a defendant with a waiver-of-service packet is \$8.00. If personal service is required, the current fee is \$65.00 per hour, plus travel costs and any other out-of-pocket expenses for each Deputy Marshal needed for service.

After the defendant is served with a summons and a copy of the complaint, the defendant generally must file an answer to the complaint.

Discovery

Once the defendant answers the complaint, the court will usually enter a scheduling order setting deadlines for the parties to complete all discovery and to file dispositive motions.

During the discovery phase of the case, the parties exchange information about the case. This may include exchanging documents, presenting interrogatories, or conducting depositions. The discovery phase may last a number of months.

At any point in the case, the parties may try to negotiate a settlement of the case. The parties may try to do this on their own or may ask an unbiased third party, sometimes a magistrate judge, to help them settle the case through mediation.

Dispositive Motions

After the end of discovery, any party may file a motion for summary judgment. There are very specific rules about how to file and respond to a motion for summary judgment. In a motion for summary judgment, a party claims that the undisputed facts demonstrate that he or she must win the case. A party's motion for summary judgment must be supported by appropriate evidence. The other party must respond, and the movant may reply. The court will then decide the motion. The court's resolution of the motion might end the case. If the court's decision does not end the case, the court will schedule the matter for trial. It normally takes at least a year from the time a case is filed until a trial is held; in many cases, the time is longer.

Can the court appoint an attorney to represent me?

Unlike a criminal case, there is no right to counsel in a civil case. However, under certain circumstances, the court may attempt to find an attorney who is willing to volunteer his or her time to represent a person in federal court. Because the court lacks the funds to pay attorneys who agree to represent poor litigants, these attorneys do so without being paid (referred to as “pro bono”).

Before the court will consider trying to find an attorney to volunteer to represent a litigant in a civil action, the litigant must attempt to find an attorney on his or her own.

If after making appropriate efforts to find an attorney a party is unable to find an attorney, the party may file a “motion asking the court to recruit an attorney. In this motion, the party must explain why he or she is unable to afford counsel. The party must also provide details about his or her efforts to find counsel.

The court will then review the motion. If the court finds that the person lacks the resources to hire an attorney and has made appropriate efforts to obtain counsel on his or her own, the court will consider various factors to decide whether or not to try to find a volunteer attorney.