ANSWERS TO PRISONER LITIGANTS' COMMON QUESTIONS

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN

Clerk of Court – Milwaukee Division

517 E. Wisconsin Ave., Room 362
Milwaukee, WI 53202
(414) 297-3372

Clerk of Court – Green Bay Division

125 S. Jefferson St., Room 102
Green Bay, WI 54301
(920) 884-3720

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Introduction

This guide provides basic information for pro se prisoners (that is, prisoners representing themselves) who have filed a civil case in the United States District Court for the Eastern District of Wisconsin. This information is general and some of it might not apply to your case.

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

The court will communicate with you through the mail. Therefore, **if your mailing address changes while this case is pending, you must immediately notify the court**. Institutions rarely forward an inmate's mail, and they do not notify the court when an inmate is released or transferred. It is your responsibility to notify the court if your address changes. If you don't, 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 Federal Rules of Civil Procedure and the Local Rules?

The Federal Rules of Civil Procedure, often abbreviated Fed. R. Civ. P., are rules that control every civil case filed in federal court everywhere in the country. The Local Rules, often abbreviated L.R., are rules that control every case filed in the Eastern District of Wisconsin.

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

You may be able to find these rules at your institution's law library. Also, the court will often include the text of a relevant rule in its orders. If you

need the text of a rule and you can't find it elsewhere, you may write to the court and request the text of a particular rule.

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.

Affidavit:	A written statement made under oath. The person who signs the statement swears that everything in the statement is true.
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 or in response to 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 the winning party had to pay 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 a plaintiff to begin a lawsuit. In this document, a 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, although the district judge may refer the case to a magistrate judge to handle pretrial matters.
Damages:	Money that a defendant pays a plaintiff in a civil case if the plaintiff wins. 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 a plaintiff and against a defendant when a defendant doesn't answer or respond to a complaint. *See Fed. R. Civ. P. 55.*
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. A prisoner is nearly always deposed at his or her institution. *See Fed. R. Civ. P. 27, 28, 30, 31, 32.*

Discovery:	The phase of a civil case where each party collects information 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. *See Fed. R. Civ. P. 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37.*
Dispositive Motion:	A motion that, if granted, would end a portion of a case or 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 cases 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 of the United States and confirmed by the Senate to serve in a district court under Article III of the Constitution.
Docket:	A chronological summary 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 then uploads the documents to the ECF system. Inmates at certain institutions may be able to file documents by giving them to institutional staff. The institution then electronically submits the documents to the Clerk of Court. Check with your institution's law librarian to see if your institution participates in this program.
Evidence:	Information presented in testimony or documents that is used to support your arguments.
Federal Rules of Civil Procedure:	The rules that control a civil case filed in federal court. Often abbreviated Fed. R. Civ. P.
Federal Rules of Evidence:	Rules that control what you can use as evidence and how you can present your evidence in federal court. Often abbreviated Fed. R. Evid.
Hearsay:	Statements that someone else made or told to the person presenting the statement to the court; secondhand information. 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 case and therefore asks the court for permission to proceed "as a poor person" and not require him to prepay the filing 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 over time through deductions from their prison trust account.
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 or her 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 authority 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 (often a magistrate judge) to try to settle the case.
Motion:	A request to a judge for a decision on an issue relating to the case. *See Fed. R. Civ. P. 7(b); Civ. L.R. 7.*
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 case by filing a complaint.
Pleadings:	Written statements filed with the court that describe a party's legal or factual statements about the case. Pleadings may include a complaint, an answer, a motion, or a brief. *See Fed. R. Civ. P. 7, 8, 9, 10, 11, 15.*
Prejudice:	Motions or cases can be decided 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 refiled, if circumstances have changed.
Pro Bono Attorney:	An attorney who represents a person without cost to the plaintiff.
Relief:	What a party wants if it wins a lawsuit or a motion.

Reply:	What a party files after the other party responds to a motion. A party generally files a brief in support of its motion. The other party then files a response to the motion. The party who filed the motion can then file a reply. The court will then decide the motion. Replies are optional. *See Civ. L.R. 7, 56*.
Response:	What a party files in response to a motion. A party generally files a brief in support of its motion. The other party then files a response to the motion. The party who filed the motion can then file a reply. The court will then decide the motion. *See Civ. L.R. 7, 56*.
Service of Process:	When the defendant is given a copy of a summons and a copy of the complaint to inform the defendant that he or she has been sued. *See Fed. R. Civ. P. 4.*
Settlement:	When parties agree to resolve the case without having a trial. Often, the defendants will agree to pay the plaintiff money or give the plaintiff something he or she wants in exchange for the plaintiff agreeing to dismiss the case.
Status Conference:	A meeting with the court and the parties to discuss issues in the case. The parties generally participate by telephone.
Statute of Limitations:	The deadline by which a plaintiff must file his complaint. Generally, in § 1983 cases, the statute of limitations is three years.

Strike:	A consequence of a prisoner's case or appeal being dismissed because the case or appeal is frivolous, malicious, or fails to state a claim upon which relief may be granted. If a prisoner gets three or more strikes, in future cases he can't proceed in forma pauperis unless he is under immediate danger of serious physical injury. Instead, he will have to pay the full filing fee before he will be allowed to proceed with his case. *See 28 U.S.C. §1915(g).*
Summary Judgment:	A decision entered by the court for one party and against another party without a trial. The court will grant a party's motion for summary judgment when there are no material disagreements about the facts and the moving party wins based on the law. *See Fed. R. Civ. P. 56; Civ. L.R. 56.*
Text Only Order:	An order entered by a judge that appears only on the docket. There is no separate written order. These orders are generally short and for minor matters, such as extending deadlines.

How your case will proceed

Now that the court has identified the claims with which you may proceed, the named defendants will be served with your complaint and given time to respond. If the defendants work for the State of Wisconsin or Milwaukee County, they will be served under an agreement with the court that requires them to respond to your complaint within sixty days after entry of the court's screening order.

If one or more of the defendants do not work for the State or Milwaukee County, the court will direct the U.S. Marshals Service to serve them with your complaint. Once the defendants are served, their deadline to respond to your complaint is set by Federal Rule of Civil Procedure 12. Because the U.S. Marshals Service is very busy, it may take several months for the Marshals to serve the defendants with your complaint. The court asks you to be patient during this time.

After the defendants are served with your complaint, they will file either an answer to your complaint or a motion to dismiss under Federal Rule of Civil Procedure 12. It is unnecessary to respond to the answer. After the defendants file an answer, the court will enter a scheduling order. The scheduling order sets deadlines for completing discovery and for filing motions for summary judgment. The scheduling order also provides you with information about how to communicate with the court and defense counsel and with copies of several important procedural rules. You may not start discovery until *after* the court enters a scheduling order.

After discovery is completed, the defendants will often file a motion for summary judgment. If your claims survive summary judgment, your case will proceed to trial.

Responding to a motion to dismiss

Instead of answering your complaint, sometimes the defendants will file a motion to dismiss. Federal Rule of Civil Procedure 12(b) lists different defenses defendants may raise in response to a complaint. The most

common defense is that the allegations in the complaint fail to state a claim upon which relief may be granted.

If the defendants file a motion to dismiss, you must respond to the motion within twenty-one days after being served with the motion. If you need more than twenty-one days to respond, you may ask the court to give you more time. It is up to the court to decide how much extra time (if any) to give you, so ask the court right away if you think you will need extra time. If you do not respond to a motion to dismiss, the court may conclude that you do not oppose the motion and that you no longer wish to continue with your case. Under Civil Local Rule 7(d), failure to respond to a motion is enough of a reason for the court to grant the motion.

Amending your complaint

If you want to proceed on claims or against defendants that you did not include in your original complaint, you must file an amended complaint. Federal Rule of Civil Procedure 15 and Civil Local Rule 15 explain the requirements for filing amended complaints. Generally, you may amend your complaint one time without the court's permission *before* the court screens your complaint or within twenty-one days after the defendants respond to your complaint. If you already amended your complaint, or if it has been more than twenty-one days since the defendants responded to your complaint, you must file a motion asking the court for permission to amend your complaint (*see* Civil L. R. 15). In your motion, you must explain the differences between the current complaint and your proposed amended complaint. You must attach the proposed amended complaint to your motion. Your proposed amended complaint must be on the court's complaint form, which you can get at your institution.

An amended complaint takes the place of prior complaints, so it must be complete by itself. That means your amended complaint must include all of your allegations against all of the defendants you want to sue. You cannot simply refer to your prior complaint or rely on other filings; all of your allegations must be in a single document.

Your amended complaint does not have to be overly detailed or cite to cases. It simply needs to give the defendants notice of what you think they did or did not do to violate your constitutional rights.

As with your original complaint, the court will screen your amended complaint to identify the claims with which you may proceed. The defendants will have an opportunity to respond to your amended complaint.

Motions to appoint counsel

In a criminal case, every defendant who cannot afford a lawyer has a right to have a lawyer appointed to represent him or her. But this is a civil case. Although plaintiffs in civil cases do not have a right to have a lawyer appointed to represent them, the court can try to recruit a lawyer to represent you on a volunteer basis. Before the court will consider whether to recruit a lawyer for you, you must first try to find a lawyer to represent you. If you ask the court to recruit a lawyer for you, you must include proof that you contacted at least three lawyers and asked them to represent you. Proof could include the names of the lawyers and the dates that you contacted them, copies of the letters you sent asking the lawyers to represent you, or copies of the lawyers' responses to you.

There are not enough lawyers willing and able to represent all of the prisoner plaintiffs who ask for free representation. As a result, the court cannot recruit a lawyer for every plaintiff who asks for one. When deciding whether to recruit a lawyer to represent you, the court will consider the complexity of the issues in your case and whether you are able to handle the tasks required to litigate your case, including whether you have the ability to participate in discovery and respond to a motion for summary judgment.

Keep in mind that nearly all prisoner plaintiffs have limited education and no legal education and that many prisoner plaintiffs suffer from mental health conditions. So even though those facts are relevant to the court's decision, they are not enough on their own to warrant the court recruiting a lawyer to represent you. In your motion, you must explain

to the court why you cannot handle the case on your own. Be specific about what challenges you are facing and why you are unable to overcome those challenges.

Discovery

After the court enters a scheduling order, the discovery phase of your case will begin. Discovery is a cooperative effort between you and the defendants to exchange information that relates to your case. Your case will proceed much more smoothly if you and defense counsel cooperate with one another.

The court generally does not get involved in discovery. You should mail your discovery requests and responses to defense counsel; you should not send your discovery requests or responses to the court. It is common to need additional time to prepare responses to discovery requests. Although only the court can extend the deadline in the scheduling order to complete all discovery, the parties can agree without the court's approval to give each other additional time to respond to discovery requests. Keep in mind that the discovery deadline is the date by which the parties must *complete* discovery. That means that you must mail your discovery requests to defense counsel at least thirty days *before* the discovery deadline so that the defendants have enough time to respond to your requests before discovery closes.

Scope of Discovery: Under Federal Rule of Civil Procedure 26, the parties must provide each other with information that is "relevant to any party's claim or defense and proportional to the needs of the case." That means you may have to give the defendants access to private and confidential information, such as your medical records. You cannot refuse to respond to a discovery request simply because you do not want to or because you think it may hurt your case.

Interrogatories: Under Federal Rule of Civil Procedure 33, the parties may ask each other to answer interrogatories, which is a legal term for written questions. Your interrogatories must be specific and relevant to the issues in the case. You may serve up to twenty-five interrogatories

(including subparts) on each defendant, and they may serve you with up to twenty-five interrogatories. You can ask defense counsel to let you serve more than twenty-five interrogatories. If he or she says no, you may ask the court for permission to serve more than twenty-five interrogatories. If you ask the court for permission, you must explain why twenty-five interrogatories are not enough to get the information you need, and you must tell the court how many additional interrogatories you want to serve. In nearly all cases twenty-five interrogatories will be sufficient, so draft your interrogatories carefully.

A party must respond to interrogatories by answering or objecting to each interrogatory. If you object to a particular interrogatory, you must explain the basis for your objection. You must respond to interrogatories within thirty days of receiving them. Contact defense counsel if you think you will need more time to respond. Your responses must be in writing, and you must sign your responses. Your responses are made under oath, which means that you are swearing under penalty of perjury that your responses are truthful.

Requests for Production of Documents: Under Federal Rule of Civil Procedure 34, each party may ask the other party for reports, records, or videos that it believes it needs to prove his or her claims. The requests must be specific and relevant to the issues in the case. Defendants do not have to give you copies of documents that you can access through your institution. For example, you should follow the policies at your institution to inspect and copy your medical records. As with interrogatories, you must respond within thirty days of being served with requests for documents. Contact defense counsel if you think you will need more time to respond.

Depositions: Under Federal Rule of Civil Procedure 30, a party may arrange for a deposition to be conducted before an officer that is appointed or designated under Federal Rule of Civil Procedure 28 (generally, a person who is authorized under federal law to administer oaths). Rule 30 requires the party who arranges a deposition to pay for the costs of recording it. Fed. R. Civ. P. 30(b)(3)(A). The court does not arrange depositions for parties, even if they are representing themselves. Also, just because you have been allowed to proceed *in forma pauperis*

does not mean the court will pay the costs of litigating your case. If you are unable to pay for the recording costs, you cannot take depositions. You must get the information you want by using other discovery tools, such as interrogatories and document requests

Motions to compel

If the defendants do not respond to your discovery requests or refuse to give you the information you request, you may file a motion to compel production of the information. However, you must first raise your concerns with defense counsel to try to resolve the dispute without the court's involvement. You can write defense counsel a letter explaining the problems with the defendants' discovery responses. You may ask the court to get involved *only* if you and defense counsel are unable to resolve the dispute on your own. Parties should be reasonable, flexible, and work together in good faith. If defense counsel has a good basis for objecting to a particular request, consider narrowing or modifying your request. If the defendants' concern is that your requests seek sensitive information, ask whether the information can be produced with the sensitive information redacted or removed.

If you file a motion to compel, include in your motion a copy of your discovery request, a copy of the defendants' response (if any), and an explanation of why you believe the defendants' response is inadequate. You also must provide the court with proof that you tried to resolve the dispute with defense counsel before you filed your motion. Proof could be a copy of the letter you sent defense counsel or defense counsel's response.

Responding to a motion for summary judgment

The court will grant a motion for summary judgment if a party shows that there is no disagreement about any material fact and that, even if there are disagreements, the moving party is entitled to win based on the law. Plaintiffs generally do not file motions for summary judgment because defendants nearly always can show there are disagreements on material facts.

If the defendants file a motion for summary judgment, you must respond to the motion within thirty days after being served with the motion. If you need more than thirty days to respond, you may ask the court to give you more time. It is up to the court to decide how much extra time (if any) to give you, so ask the court right away if you suspect you will need extra time. If you do not respond to a motion for summary judgment, the court may conclude that you do not oppose the motion and that you no longer wish to continue with your case. Under Civil Local Rule 7(d), failure to respond to a motion is enough of a reason for the court to grant the motion.

The defendants' summary judgment materials will include a motion, a legal brief, proposed findings of fact, and supporting evidence, such as affidavits or unsworn declarations of witnesses. You must respond to the arguments in the defendants' brief. You also must respond to each proposed fact by stating whether you agree or disagree with the proposed fact.

If you do not respond to a proposed fact, the court can conclude that you agree with it. You may file your own proposed findings of fact, but you should do that only if the fact you are proposing is not already addressed in the defendants' proposed facts. You must support your proposed facts or your disagreements with the defendants' proposed facts with evidence. You cannot simply say, "Disputed" or "I disagree." You must identify the evidence that supports your disagreement.

Example:
Proposed Fact No. 1: The plaintiff never told anyone about his knee pain.
Response: Disputed. I told Officer Jones and Nurse Roberts about my knee pain. *See* Declaration at ¶ 2; Health Services Records, Exhibit A at pages 3-5.

You may cite to the defendants' discovery responses or to documents you obtained during discovery. You must attach the discovery responses or documents you rely on. You may also include your version of what happened in an affidavit or an unsworn declaration under 28 U.S.C. § 1746. An unsworn declaration is a way for you to declare to the court

that everything you have said in the declaration is true and correct. You should not include opinions or legal conclusions in your declaration or affidavit; you should include only facts about which you have personal knowledge. Your declaration should conclude with: "I declare under penalty of perjury that the foregoing is true and correct. Executed on [date]. [Signature]."

Mediation

Mediation is an opportunity for the parties to discuss whether they can agree to resolve their dispute without a trial. A mediator will help the parties negotiate a settlement. Mediation works best when both parties are interested in exploring settlement. For this reason, the court rarely refers a case to mediation if only one of the parties requests it. You may reach out to defense counsel to see if the defendants would be interested in mediation; however, be aware that few § 1983 cases are resolved in mediation. Most are resolved on summary judgment or at trial.

If the parties agree they would like to try mediation, the court will refer the case to a magistrate judge who will facilitate the parties' discussions. After the mediation, the magistrate judge will report to the presiding judge only whether the case settled. The magistrate judge will not tell the presiding judge anything the parties said during the mediation.

If the case does not settle, the magistrate judge will return the case to the presiding judge and the case will proceed.

Motions for reconsideration

Motions for reconsideration are disfavored and rarely granted. Disagreeing with or being disappointed by a decision is not a reason to ask the court to reconsider a decision it has made. The court will deny motions that simply reargue arguments already rejected, that raise new arguments, or that just disagree with the court's analysis. If you disagree with a particular decision, you may appeal the decision after your case is completely resolved and judgment has been entered.