

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 Northern District of Iowa; and
- (4) You do not have a licensed attorney to help you with your complaint.

This packet contains:

- (1) This 2-page sheet of INSTRUCTIONS;
- (2) Notice to Prisoners;
- (3) Form A (§ 1983 complaint form); and
- (4) Form B (Request to Proceed *In Forma Pauperis* and declaration).

§ 1983 or Habeas Corpus?

Sometimes prisoners do not know whether they should file a § 1983 action or a habeas corpus action. Both § 1983 and the writ of habeas corpus can help persons who have been deprived of federal constitutional rights. However, if you will be asking the court for any kind of release from custody, or if you will be asking the court to restore good and honor time that was taken from you, you should file a habeas corpus action. (The court cannot do those things for you in a § 1983 action.) In a habeas corpus action, you must ask the state courts to help you before you ask for the federal court's help. This is not required for a § 1983 action.

DO NOT USE THE FORMS IN THIS PACKET 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.

The Correct Court and the Correct Defendants

Your complaint can be filed in the United States District Court for the Northern District of Iowa only if one or more of the defendants is located in this 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 official, a state employee, or someone else who acted for the state or under some power given to him 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 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 acquiesced in (went along with) that conduct in some way.

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

Filling Out the Forms

Your forms may be filled out by hand or by typewriter. If handwriting is used, it must be clear and readable. If printing would be easier for the court to read, please print. Every question on the forms should be answered, even if your answer is "None," "Don't Know," or "N/A" (not applicable).

Your complaint will be most effective if you (1) state your claim briefly and plainly, and (2) tell the court only about the claim or claims you truly believe to be important. Stick to the FACTS (who, what, where, when, how). **THE COMPLAINT SHOULD NOT CONTAIN LEGAL ARGUMENTS OR CASE CITATIONS.**

If you need more space to answer a question, you may use the back side of the form or an extra blank page. However, if you keep your answers brief and to the point, as recommended above, extra space should not be needed in most cases.

You, the plaintiff, must personally sign the complaint, and if there is more than one plaintiff, each of you must sign. If a person other than a named plaintiff helped you with your complaint, that person must sign in the place indicated under Part VII.

Additional Claims

If, in addition to your § 1983 claim, you have other claims against one or more of the defendants, you may state those claims on a separate sheet of paper which you attach to the complaint form. Write the heading ADDITIONAL CLAIMS at the top of the sheet. If you happen to know the name or number of a statute that you think applies to your additional claim, you may state it. It is not necessary, however, that you do so. If you just state the facts, the court will determine what federal or state laws, if any, apply. The court will also determine whether any state law claims can be decided in federal court. Do **NOT** include any habeas corpus claims with this complaint. Those claims should be filed separately on a special habeas corpus form which the Clerk of Court can send you.

Other Instructions

There is a fee of \$350.00 for filing your complaint. You will also be required to pay the cost of notifying each defendant on your complaint. In prisoner cases, this is usually done by certified mail, which costs relatively little. If you feel you cannot pay the full filing fee and service costs for this action, you should fill out Form B: APPLICATION TO PROCEED IN FORMA PAUPERIS AND DECLARATION IN SUPPORT THEREOF. If there is more than one plaintiff, each plaintiff must complete a separate Form B. The completed form(s) must be signed and returned to the Clerk of Court with your Form A Complaint.

Mail your Form A complaint to the address below. With your complaint you must send either a money order for \$350.00 or completed and signed Form B. When all forms have been received, the Clerk of Court will assign them to a judge.

Mailing address: Clerk of Court
Federal Building & U.S. Courthouse
101 1st Street SE, Room 313
Cedar Rapids, IA 52401

NOTE: YOUR COMPLAINT WILL NOT BE CONSIDERED BY THE COURT UNLESS YOU HAVE FOLLOWED THESE INSTRUCTIONS AND THOSE ON THE FORMS THEMSELVES.

NOTICE:

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

On April 26, 1996, the Prison Litigation Reform Act of 1995 was signed into law. This Act substantially affects the filing of civil rights actions by prisoners. Aspects of the new Prisoner Litigation Reform Act of which any prisoner filing a § 1983 action must be aware include the following:

- (A) You must exhaust available administrative remedies, including any grievance system, before filing an action challenging prison conditions under 42 U.S.C. § 1983 or any other federal law.
- (B) Regardless of your financial status, you are required to pay the full \$350.00 filing fee. If you cannot submit the fee in full when you file your action, you may request to proceed *in forma pauperis*. **In no event will a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.**
 - (1) A prisoner seeking to proceed *in forma pauperis* must submit an affidavit that includes a statement of all assets the prisoner possesses, and he/she must submit a certified copy of his/her "inmate account" statement (or institutional equivalent) for the six-month period immediately preceding the filing of the action.
 - (2) The court will assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of twenty percent (20%) of the greater of:
 - (a) the average monthly deposits to your prison account; or
 - (b) the average monthly balance in your prison account for the six-month period immediately preceding the filing of the action.
 - (3) After payment of the initial partial filing fee, you must make monthly payments of twenty percent (20%) of the preceding month's income credited to your prison account. (The correctional facility charged with your custody will forward payments from your prison account to the clerk of the court each time the amount in the account exceeds \$10.00 until the filing fee is paid.)
 - (4) Irrespective of any filing fee, or any portion thereof, that may have been paid, the court must dismiss the case at any time if the court determines that:
 - (a) the allegation of poverty is untrue: or
 - (b) the action or appeal:

- (i) is frivolous or malicious;
- (ii) fails to state a claim upon which relief may be granted; or
- (iii) seeks monetary relief against a defendant who is immune from such relief.

However, you are still responsible for paying any remaining portion of the filing fee that is unpaid. (A further note: the filing fee debt is not dischargeable in a bankruptcy proceeding.)

- (C) If you have, on three or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, YOU ARE PROHIBITED FROM FILING A CIVIL RIGHTS ACTION *IN FORMA PAUPERIS* unless you are under imminent danger of serious physical injury. If you do not proceed *in forma pauperis*, (if you prepay the full \$350.00 filing fee), you may file a new civil action or appeal, even if you have three or more of these dismissals.
- (D) When proceeding *in forma pauperis*, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity is subject to judicial review. On review, the court shall identify arguable claims or dismiss the complaint, or any portion of the complaint, if the complaint:
 - (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
 - (2) seeks monetary relief from a defendant who is immune from such relief.
- (E) In the event a monetary (money) judgment is awarded to a prisoner as a result of a civil action against a jail, prison or correctional facility or against any official or agent thereof, the monetary award shall be paid directly to satisfy any outstanding restitution orders pending against the prisoner. Further, where the court has granted appointment of counsel in the prisoner's action, a portion of the judgment (not to exceed twenty-five percent (25%)) will be applied to satisfy the award of attorney's fees against the defendant. In addition, prior to any monetary award, notice of the monetary award will be given to your crime victim(s), if any, in the event they wish to file a claim against the award.

FORM A:

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

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA

(Enter above the full name of the plaintiff or plaintiffs in this action.)

vs.

COMPLAINT

(Enter above the full name of the defendant or defendants in this action, if known.)

(NOTE: If there is more than one plaintiff, a separate sheet should be attached giving the information in parts I and II below for each plaintiff, by name.)

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 the questions below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

1. Parties to previous lawsuit:

Plaintiffs _____

Defendants _____

2. Court (If federal court, name the district; if state court, name the county.) _____

3. Docket Number _____
4. Name of judge to whom case was assigned _____

5. Disposition, if known (For example: Was the case dismissed? Was it appealed? Is it still pending?)

6. Approximate date of filing lawsuit _____
7. Approximate date of disposition _____

II. Place of Present Confinement _____

- A. Is there a prisoner grievance procedure in this institution?
YES () NO ()
- B. Did you present the facts relating to your complaint in the state prisoner grievance procedure? YES () NO ()
- C. If your answer is YES,
 1. What steps did you take? _____

 2. What was the result? _____

- D. If your answer is NO, explain why not _____

- E. If there is no prisoner grievance procedure in the institution, did you complain to prison authorities?
YES () NO ()

F. If your answer is YES,

1. What steps did you take? _____

2. What was the result? _____

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 plaintiffs, 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 Defendant(s) is/are employed as _____ at _____

_____.

IV. Jurisdiction

This complaint is brought pursuant to 42 U.S.C. § 1983, and jurisdiction is based on 28 U.S.C. § 1343(a)(3). Plaintiff(s) allege(s) that the defendant(s) acted under color of state law with regard to the facts stated in Part V of this complaint.

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.

_____ (Date)

_____ (Signature)

VIII. Signature(s) of Plaintiff(s)

Signed this _____ day of _____, 20_____.

_____ (Signature)

Signatures of additional plaintiffs, if any:

FORM B:

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
_____ DIVISION

_____ ,		Civil No. _____
Plaintiff,		
vs.		
_____ ,		
_____ ,		
_____ ,		
Defendants.		

**APPLICATION TO PROCEED
IN FORMA PAUPERIS
IN CIVIL RIGHTS ACTION**

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 \$350.00 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:

- Where are you imprisoned? _____
- When did you begin your imprisonment there? _____
- When do you expect to be released? _____
- Are you presently receiving an allowance or wages from the prison or jail? YES () NO () If the answer is YES, state the amount of your allowance or wages per month.

- Have you received within the past twelve (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, gifts, inheritances, court award or settlement, or other sources? YES () NO () If YES, give the amount received and identify the source(s):

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? YES () NO ()
If YES, state the current balance: \$_____
7. Do you own any real estate, stocks, bonds, notes, vehicles, or other valuable property (you need not mention ordinary household and cell furnishings, such a radios, TV sets, stereo, books, etc., and personal clothing)? YES() NO()
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 further authorize the agency holding me in custody to disburse funds in an amount not to exceed \$350.00 from my inmate account to the Clerk of the United States District Court for the Northern District of Iowa, for the purpose of paying the initial partial filing fee and subsequent installment payments in this case. I declare under penalty of perjury that I have read the foregoing and it is true, complete and correct.

Signed this _____ day of _____, 20_____.

(Signature of Plaintiff)

CERTIFICATION OF INMATE ACCOUNT AND ASSETS

I certify that the applicant, _____,
I.D. # _____ 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, the applicant's
average inmate account balance was \$_____, and the past six-
month average monthly deposit amount to the inmate account is
\$_____.

Based on the above inmate account balance:
(Check the appropriate response)

_____ The applicant has sufficient funds in his/her account to pay
the \$350.00 filing fee; OR

_____ The applicant has insufficient funds in his/her account to pay
the \$350.00 filing fee at this time. I calculate that twenty
percent (20%) of the greater of:

- (a) the average monthly deposits to his/her prison account;
or
- (b) the average monthly balance in his/her prison account
for the six-month period immediately preceding the
filing of this action

is \$_____, for the purpose of an initial
partial filing fee. After payment of the initial partial
filing fee, this office will forward twenty percent (20%) of
the applicant's previous month's income as monthly payments
from his/her prison account to the clerk of the court each
time the amount in the amount exceeds \$10.00, until the
\$350.00 filing fee is paid in full.

Signed this _____ day of _____, 20_____.

Authorized Officer of Institution