PRISONER LITIGATION HANDBOOK

INFORMATION AND INSTRUCTIONS FOR FILING PRISONER LITIGATION AS A SELF-REPRESENTED LITIGANT IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

I. INTRODUCTION

This handbook was prepared to assist incarcerated litigants who are seeking to proceed as a Self-Represented Litigant (SRL) also known as proceeding pro se (representing yourself without an attorney) in the United States District Court for the Eastern District of Missouri. The information contained in this handbook generally covers information and instructions for filing habeas corpus petitions and civil rights complaints, including those cases filed in forma pauperis (without prepayment of costs or fees by a person who is found indigent by the court).

This handbook is intended only as a general guide and cannot take the place of an attorney's legal advice. The fact that you are not represented by an attorney does not relieve you of the responsibility to comply with the law, including all statutes and rules which apply to your case, including but not limited to all federal statutes, the Federal Rules of Civil Procedure, the Federal Rules of Appellate Procedure, the Rules Governing Habeas Corpus under 28 U.S.C. § 2254 and the Rules Governing the Filing of Motions under 28 U.S.C. § 2255, and the Local Rules of the United States District Court for the Eastern District of Missouri. The rules listed above should be available to you in your institutional law library.

You should consult the above legal resources as well as any others that are necessary in litigating a lawsuit in this court. If you have questions about the law, it is up to you to research the answers yourself. Although court staff can provide you with court-approved forms and answer certain questions about your case file and court procedures, court staff cannot provide you with legal advice or tell you what you should do in any given situation. For example, court staff cannot tell you whether you should file a case, tell you how to word your court pleadings, interpret the law or court rules, recommend how you should proceed in a case, predict how a judge may rule on any matter, interpret the meaning of a court order, talk to a judge for you or let you talk to a judge outside of court, compute deadlines in your case, or request any action from the court without a written pleading in a case. All requests for relief from the court must be made in writing in your case. You may not request relief from the court over the telephone.

II. HABEAS CORPUS PETITIONS FILED UNDER 28 U.S.C. § 2254

Prisoners in custody pursuant to a state criminal or civil court judgment may file a federal petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 to challenge the fact or duration of their confinement on federal constitutional grounds. (Note: Prisoners being held under a federal criminal conviction should proceed under 28 U.S.C. § 2255.) The object of a habeas corpus petition is to obtain release from custody. You cannot obtain monetary relief in a habeas

corpus petition.

You must exhaust state court remedies before you can proceed with a federal habeas corpus petition. See 28 U.S.C. § 2254 (b) and (c). If you fail to exhaust state remedies properly, your grounds for relief may be dismissed for failure to exhaust or as procedurally defaulted. You also must comply with the one-year statute of limitations set forth in 28 U.S.C. § 2244(d)(1)-(3).

Prisoners proceeding without an attorney usually are entitled to the benefits of the prison mailbox rule set forth in Fed. R. App. P. 4(e), which provides that a legal document is deemed filed on the date that a prisoner delivers it to the prison authorities for mailing, rather than the date it is actually filed with the court.

You can obtain court-approved forms for filing a petition for writ of habeas corpus from the clerk's office. Instructions for filing a petition are included on the forms, and a sufficient number of forms are included in each packet for you to keep one copy for your records. Included with the forms is a motion for leave to proceed in forma pauperis without payment of court fees or costs if you cannot afford to pay the $5.00 filing fee in habeas cases. When you file a habeas case, you must either pay the $5.00 filing fee or submit the required forms for proceeding in forma pauperis. Make certain to answer all questions clearly and concisely on the court-approved forms. You also must sign the petition and inform the clerk of the court each time you change your address in order to ensure that you receive all court orders and correspondence in your case. Failure to do so may result in dismissal of your case without further notice. Notarization is not required.

If you wish to file a motion of any type in your habeas case (such as a motion for appointment of counsel or a motion for an evidentiary hearing), you may do so on a separate sheet of paper simply by including your case name (and number, if available) at the top of the pleading and by stating exactly what relief you seek from the court and why such relief is necessary and appropriate. It is improper to write a letter asking the court to take any action in your case.

After your case has been filed, the court reviews the petition to determine whether it is subject to summary dismissal or whether certain information still needs to be provided before any other action can be taken. You must respond in a timely manner to all court orders to prevent your case from being dismissed. If the court determines that your petition is not subject to summary dismissal, the court will order the respondent to file a response showing why the petition should not be granted. After the response is filed by respondent, you will be ordered to file a reply to respondent's response. Usually, that completes the required pleadings in order for the court to rule on your petition. Court review of your grounds for relief, however, may require further information as ordered by the court and may take several months due to the court's caseload. **You will receive a copy of all court orders in your case as long as you keep the court informed of your correct address.**

Rules Governing Section 2254 Cases in the federal courts do not permit discovery in

habeas corpus cases without a prior court order. See Rule 6 of the Rules Governing Section 2254 Cases. If the respondent does not file all portions of the state court record that you deem relevant to the determination of the claims, you can file a motion to expand the record under Rule 7 of the Rules Governing Section 2254 Cases.

Evidentiary hearings are held in federal habeas corpus proceedings as required by law, and such hearings are rare. Generally, the written state court record is sufficient for the court to determine the outcome of the case. Under § 2254(e)(2), a petitioner is not entitled to produce new evidence or have an evidentiary hearing in federal court on the merits of his case if he or she has failed to develop the factual basis of a claim in state court proceedings as a result of his or her own fault and lack of diligence. Williams (Michael) v. Taylor, 529 U.S. 420 (2000). A petitioner who is not entitled to present new evidence must rely on facts contained in the state record to show his or her entitlement to relief.

You must bring all available federal claims related to a particular state court judgment in a single federal habeas corpus action. Otherwise, you will not be able to bring a second or successive action without first obtaining permission to do so from the United States Court of Appeals for the Eighth Circuit. See § 2244(b). Only if a previous habeas petition was dismissed without prejudice can you file a second habeas petition without Eighth Circuit permission.

III. NON-HABEAS CIVIL LAWSUITS

Non-habeas civil lawsuits may be filed in the federal district courts as long as the federal courts have jurisdiction under federal law. Examples of such civil suits are civil rights suits filed under 42 U.S.C. §1983 (against persons acting under color of state law for violations of federally protected rights), or under 28 U.S.C. §1331 (against persons acting under color of federal law for violations of federally protected rights as allowed by Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics,403 U.S. 388 (1971)). Some other examples of civil cases are Federal Tort Claim Actions (FTCA) under 28 U.S.C. § 2671 et seq., diversity actions under 28 U.S.C. §1332, and Freedom of Information Act (FOIA) cases under 5 U.S.C. § 552. The filing fee for all non-habeas civil actions is $405.00

A civil rights action filed pursuant to 42 U.S.C. §1983 must contain an alleged violation of a federally protected right by a state actor and may seek monetary relief as well as declaratory and injunctive relief against defendants. You can obtain court-approved forms for filing a civil rights action pursuant to 42 U.S.C. § 1983 from the Clerk's Office. (Separate court-approved forms are available for filing a civil rights action against federal actors under 28 U.S.C. § 1331 and Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics,403 U.S. 388 (1971)). Instructions for filing a complaint are included on the forms. Answer all questions on the forms concisely and to the best of your ability.

Included with the forms is an Application to Proceed in District Court Without Prepaying Fees or Costs (short form) if you cannot afford to pay the filing fee. When you file a

civil complaint, you either must pay the $405.00 fee or request leave to proceed without prepaying fees or costs pursuant to 28 U.S.C. § 1915. Based on the information in your application and supporting documents, the court may require you to pay an initial partial filing fee. In any event, if the court grants you leave to proceed without prepaying fees or costs, you will be required to pay the fee and the appropriate agency will be directed to collect the fee from your inmate account as the money becomes available (even if the court later dismisses your complaint as frivolous or malicious or for failure to state a claim upon which relief may be granted).

Your complaint must be legibly handwritten or typed and must contain a summary of the facts and your signature with a declaration under penalty of perjury that the facts in the complaint are true. Documents certified as true under penalty of perjury do not need to be notarized. See 28 U.S.C. § 1746. Include time and place details in the section entitled Statement of Claim. Be specific about what each defendant did. It is not enough to list the defendants at the beginning of the complaint. The complaint clearly must describe how you were injured by the action or omission of each defendant. This is the most important section of the complaint. Without a detailed and clear facts section, the court will be unable to determine whether you have a valid claim. It is not necessary for you to argue legal authority in your complaints or motions. If you require additional space to answer a question on the form, attach a separate page to the form. Do not use the back of the page. Do not name any other person as a plaintiff. The plaintiff must sign the complaint and file the required application if the entire filing fee is not paid.

In order for the court to have jurisdiction to hear and decide cases, it must have jurisdiction over both the subject matter of your lawsuit and over the persons or entities involved. Section 1983 lawsuits fall within the federal court's jurisdiction to hear matters arising under the United States Constitution and federal laws. The court also must have jurisdiction over the persons or entities being sued. You should file your civil lawsuit in the judicial district (1) where any defendant resides, if all defendants reside in the same state; (2) in a district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is situated; or (3) in a district in which any defendant may be found, if there is no district in which the action may otherwise be brought. You should refer to 28 U.S.C. § 105(a) and (b) for the counties comprising the Eastern and Western Districts of Missouri. If you file a case which does not comply with both jurisdictional and venue rules, your case may be transferred to another court or dismissed.

Before bringing a lawsuit challenging prison conditions, you must exhaust available administrative remedies. For example, if your institution has a grievance procedure, you must pursue your claims through all the steps of that procedure. If you do not exhaust available administrative remedies, your case must be dismissed. 42 U.S.C. § 1997e.

If you file a civil lawsuit in the Eastern District of Missouri, you must follow the Federal Rules of Civil Procedure as well as the court's Local Rules even if you proceed pro se (representing yourself without an attorney). You should find copies of these rules in the prison library. If your library does not have a copy of the court's Local Rules, you should request that the prison library contact the clerk's office to request a copy of the Local Rules.

There is no absolute right to appointment of counsel in a civil action. The court may, in its discretion, appoint an attorney to represent you. Form motions for appointment of counsel are available from the clerk's office upon request. You may file a motion for appointment of counsel in a pending case by stating why you believe that appointment of counsel is necessary and appropriate.

You must file a change of address with the court every time your address changes. Failure to do so will prevent the court from notifying you of developments in your case. If any mail is returned to the court without a forwarding address and you do not notify the court of the change of address, the court may dismiss the case.

If you proceed without prepaying fees or costs, the court is responsible for service of your complaint upon each defendant. You are responsible, however, for providing the court with the correct identity and/or address of each defendant.

You cannot bring a new civil action without prepaying of fees or costs pursuant to 28 U.S.C. § 1915(d) if you have on three or more occasions, while incarcerated, brought a civil action or appeal in federal court that was dismissed because it was (1) frivolous, (2) malicious, or (3) failed to state a claim upon which relief may be granted. 28 U.S.C. § 1915(g). The only exception to this rule is if you are in imminent danger of serious physical harm at the time of the filing of the complaint. You may, however, pay the entire filing fee (up front - not in installments) and file a new civil action even if you have had three or more of these dismissals.

If the court requires that defendants answer or otherwise respond to your complaint and defendants file an answer, a Case Management Order may be entered in your case to set deadlines for discovery. The purpose of discovery is to enable parties to obtain the evidence necessary to evaluate and resolve the case before the trial. Some mistakenly believe that they can withhold their evidence until trial, but all relevant, non-privileged evidence is subject to discovery early in the case. In most cases, the court will order both parties to disclose all witnesses and documents that support the parties' claims and defenses once the prisoner has been authorized to proceed with his or her case. The court has broad discretion to limit the frequency and extent of any discovery method. Fed.R.Civ.P. 16(b) and 26(b)(2).

The main discovery methods utilized in prisoner litigation are written interrogatories (Fed.R.Civ.P. 33), requests for production of documents (Fed.R.Civ.P. 34), and requests for admission (Fed.R.Civ.P. 36). An interrogatory is a written question served by one party to another party, who must answer under oath and in writing. A written document request is used to compel the other party to produce records or other evidence in their possession or under their control. Parties may be compelled to produce documents through the document request, without the necessity of serving a subpoena. A request for admission is the procedure whereby one party can request that the other party admit or deny the truth of any relevant fact or the genuineness of any relevant document.

Interrogatories, document requests, and requests for admission only can be served on the parties to the lawsuit, namely the plaintiff and defendant. If items are held by a non-party,

prisoners may request the items from the third party by informal request or by subpoena duces tecum. Fed.R.Civ.P. 45.

Section 1983 lawsuits are often resolved by dispositive motions. A dispositive motion is a motion that has the potential to dispose of or end the case. Two common dispositive motions are the motion to dismiss and the motion for summary judgment.

A motion to dismiss is brought under Rule 12 of the Federal Rules of Civil Procedure or pursuant to the court's duty to dismiss claims under 28 U.S.C. §§ 1915 and 1915A. For example, a motion to dismiss may be brought if it appears from the complaint that your claims are barred by the statute of limitations.

A motion for summary judgment is brought under Rule 56 of the Federal Rules of Civil Procedure and may be filed by plaintiff and/or defendant(s). This motion asserts that there are no genuine issues of material fact for the court to resolve, and that the court may decide the disputed issues as a matter of law. To oppose a motion for summary judgment which challenges the merits of your claims, you should file a response, outlining the important facts which support your opposition, and argue any applicable law to which you have access.

After you have filed your response to a dispositive motion, the defendant may file a reply. If a reply is filed, you are not entitled to file a response to the reply, unless the court directs you to do so.

The court will take the motion under advisement and consider everything in the record which is properly before it. After consideration, the court will issue a written order. If the dispositive motion is granted, the case usually will be dismissed.

IV. APPEALS

If you lose your case, information for filing a Notice of Appeal in a particular case will be included with the court's order ruling on your case. Generally, an appeal must be filed within 30 days in cases involving state habeas and state defendants and within 60 days in cases involving federal habeas and federal defendants. The notice is timely if you deposit the Notice of Appeal in the prison mail system on or before the last day for filing. Fed.R.App.P. 4(a).

The district court will file, process, and transmit your appeal to the United States Court of Appeals for the Eighth Circuit. If you were granted in forma pauperis or leave to proceed without prepayment of fees or costs in the district court, the status does not automatically continue for the appeal. You either must pay the appellate filing fee of $505.00 or re-apply to proceed in forma pauperis in appellate court. Even if you are granted leave to proceed in forma pauperis or without prepayment of fees or costs on appeal, you will be responsible for the full appellate filing fee in monthly installments.