A Guide for Prisoners

How to File a Lawsuit Without a Lawyer

United States District Court
for the District of Colorado

Revised, effective Dec.. 1, 2020

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How to Use this Guide

This Guide is for people who are in a prison, jail, detention facility, or otherwise "in custody" who want to file one of these lawsuits (sometimes called "actions" or "cases") in the U.S. District Court for the District of Colorado:

- 42 U.S.C. § 1983 and/or *Bivens* cases for constitutional rights violations (more on page 10 of this Guide)
- Habeas corpus case about a state court conviction under 28 U.S.C. § 2254 (more on page 27 of this Guide)
- Habeas corpus case under 28 U.S.C. § 2241 (more on page 32 of this Guide)
- A motion to vacate, set aside, or correct a federal sentence under 28 U.S.C. § 2255 (more on page 33 of this Guide)

This Guide will not answer all of your questions. It only outlines these kinds of cases. Please also see the court's other publication, *A Guide to Civil Lawsuits.* Neither guide is legal advice. You may not quote them as legal authority for your case. They are for information only.

If you don't have a lawyer, you are *pro se.*

If you are representing yourself without help from a lawyer, you are a ***"pro se* litigant."** "*Pro se*" is Latin meaning "for oneself." A "litigant" is a party to a lawsuit, usually called either a plaintiff or a defendant. *Pro se* litigants have all the same rights as people with lawyers. You must also follow all the legal rules and procedures that lawyers follow.

You should learn the:

- Federal Rules of Civil Procedure,
- Federal Rules of Evidence,
- Local Rules of this Court, and
- Practice Standards for judges of this District.

Your facility may have copies of these resources that you can use. Or click on the links above to read the rules. You also can request a copy of the Local Rules or a judge's practice standards from the Clerk's Office.

Pro Se Forms

There are special forms for people who do not have lawyers. Each section in this Guide lists the forms you need. You can get the forms at the court's website (address: www.cod.uscourts.gov), the Clerk's Office, or where you are detained or imprisoned, probably with the help of the facility's law librarian or your case manager.

Note: If you do not use the current version of the court's approved forms, the court can dismiss your case. This rule applies to all cases described in this Guide. Local Rule 5.1(c).

List of Common Forms

- *Prisoner Complaint* and instructions
- *Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915*
- *Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241* and instructions
- *Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254* and instructions
- *Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action*
- *Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255* and instructions
- *Prisoner Motion for Appointment of Counsel*

Getting Help from Others

Other people, like other prisoners and family or friends, can help you fill out forms or write your statements. But *only* you may sign papers that are filed with the court. No one (except your lawyer) may appear for you in court.

Note: If other prisoners are filing the case with you, they must also sign the court papers.

What are the Federal Courts?

The *federal* court system has three levels:

- district courts,
- circuit courts of appeal, and
- the U.S. Supreme Court.

The district courts are the **first** level. That's where federal cases begin and are decided. This Guide is for a specific district court: the U.S. District Court for the District of Colorado. The rules for other district courts may be different.

The District of Colorado has 4 jury divisions with a courthouse in each division:

- Denver,
- Durango,
- Grand Junction, and
- Colorado Springs/Pueblo.

Papers for **all** jury divisions must be filed **by mail** at the main Clerk's Office in Denver, Colorado at:

Clerk of the Court
U.S. District Court for the District of Colorado
Alfred A. Arraj U.S. Courthouse
901 19th Street, Room A105
Denver, CO 80294-3589
Tel.: (303) 844-3433

The circuit courts (or appeals courts) are the **second** level. Generally, anyone who loses a district court case can appeal to the circuit court. There are thirteen U.S. Circuit Courts of Appeals in the nation. Appeals from our district court go to the U.S. Court of Appeals for the 10th Circuit. (The 10th circuit court also hears appeals from district courts in nearby states and regions.)

You may contact the 10th Circuit Court of Appeals at:

Office of the Clerk, U.S. Court of Appeals for the Tenth Circuit
Byron White U.S. Courthouse
1823 Stout Street
Denver, CO 80257-1823
Tel.: (303) 844-3157

The U.S. Supreme Court is the **third** and highest level. It hears select cases from the circuit courts and from the highest state courts. The U.S. Supreme Court has the power to choose which cases it will decide. It only accepts a very small number of the cases that are sent for its review.

You may contact the U.S. Supreme Court at:

U.S. Supreme Court
One First Street N.E.
Washington, DC 20543
Tel.: (202) 479-3000

Important Court Rules!

You MUST:

✓ **Handle your case carefully.**

That includes following orders and meeting deadlines. If you can't meet a deadline, you must ask the court for more time *before* your deadline. If not, the court will probably dismiss (throw out) your case.

✓ **Keep your contact information current.**

Notify the Clerk's Office **in writing** of any change of name, mailing address or phone number for you (the *pro se* prisoner). Do this within 5 days of any change. Local Rule 5.1(c). Keep in mind that until any defendant or respondent has been provided official notice of your case (also called service), you need to provide correct contact information for them.

Important! Put your case number on anything you send to the Clerk.
If you think you will be in transit for some time, contact the Clerk's Office in writing to check on the status of your case and let them know about the transit. Give the Clerk's Office your new address within 5 days of your arrival.

✓ **You must file a "motion" to ask the court to do *anything* in your case.**

Unless you are in court in front of a judge, either in person, or by video or telephone, the only way to ask for a court order is to follow these steps:

1. File a motion by asking for the order you want in writing, under your case heading, with a title that says "motion",
2. Explain in writing exactly why you want the order, and
3. Say what order(s) you want the court to make. Federal Rule of Civil Procedure 7.

✓ **Keep a copy of every paper you file** in your case. You may need them in the future.

Clerk's Office Copy Policy

- No Free Copies, except Court Orders, or as otherwise ordered by the Court.
- No Charge for Court Orders. The Clerk will mail these to you at no charge, or as otherwise ordered by the Court. You may file a motion to ask for an extra free copy of your Order, if needed.
- Copies are 50¢ per page.
- You must pay before copies are made.
- If you cannot afford the copies, make a handwritten copy for yourself.

✓ **Court files are <u>not</u> private! Do not disclose confidential or sensitive information.**

Anyone can see the papers you file in your case over the Internet. Do not include private or sensitive information unless you need that information to prove your case. If you need it, you can protect the information by marking over it or sharing only part of that information.

It's up to **you**, the filer, to check for and protect sensitive information. The Clerk's Office will **not** do this for you. Below are examples of how you can protect your information.

Social Security numbers. To protect social security numbers, provide the last 4 numbers only.
Examples:
"The social security number ending in 2335."
"SSN: [redacted]2335."

Names of minor children. You must not list the full name of a child who is not an adult. Use the child's initials instead.
Example: "ELH agrees with this request."

Dates of birth. If your document lists a date of birth, only the year should be readable.
Two examples:
Prisoner was born: 1966
Prisoner was born: [redacted]1966

Financial account numbers. If these are needed, only show the last 4 numbers.
Examples:
"The bank account number ending in 6159."
"Bank Account #: [redacted]6159."

What Does the Clerk's Office Do?

The Clerk's Office keeps electronic records for each case that is filed. These records are also called a docket. A docket keeps track of every filing or other significant event in a case in the order it is filed (chronological).

The abbreviation "CM/ECF" refers to the court's case management and electronic case filing system. Sometimes judges will refer to a specific document in the docket by stating "ECF No." or "Doc. No."

To see a particular case docket,

- File a motion (a written request) to ask the court to mail you a copy of the docket sheet. Be sure to include the case number in your request.
- Ask a family member or friend to go to the Clerk's Office to use a public computer terminal, where they can access the docket by case number.

✓ How the Clerk's Office Can Help You

The Clerk's Office can give you information about the court's processes and help you file your documents. The Clerk's Office can:

- Mail you copies of court forms,
- Make copies of court documents (you must pay the copy fee first), and
- Confirm that papers you filed are listed on the docket.

✓ The Clerk's Office staff are <u>not</u> your lawyers.

They **cannot:**

- Tell you if this is the right court to file your papers,
- Say which form to use or who to list as defendants,
- Tell you when a judge will answer a motion or make a decision in a case,
- Recommend what to do in your case or give you legal advice,
- Look up case law, interpret statutes, or orders for you, or
- Give you reasons for a judge's decision.

How to File a 42 U.S.C. § 1983 and/or *Bivens* Case
for Violations of U.S. Constitutional Rights or Other Federal Rights

If a federal, state, or local government employee or official violated your rights under the U.S. Constitution or other federal law, and you want to sue that person, you may want to file your case under:

- 42 U.S.C. § 1983, or
- *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971).

If your complaint is about the actions of a state or local government employee or official, you may want to file it under 42 U.S.C. § 1983. If your complaint is about the custom or policy of a city or county, you may want to file it under 42 U.S.C. § 1983.

If your complaint is about the actions of a federal employee or official, and you want money as relief, you may want to file it under *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971). If your complaint is about the actions of a federal employee or official, and you want relief only in the form of an action, also called injunctive relief (no money), you may want to file it under the Administrative Procedure Act, 5 U.S.C. § 702.

✓ **You Must Use the Court's Approved Forms**

Start by filling out the *Prisoner Complaint* form. If you do not have a lawyer, you **must** use the court's *pro se* forms to file your case. You can get the forms and instructions from the Court's website or Clerk's Office.

Note: If you do not use the current version of the court's approved forms, the court can dismiss your case. Local Rule 5.1(c).

✓ **You may have to "exhaust other options" before you file.**

For many kinds of cases, the law says you cannot sue until you "exhaust all available administrative remedies." Usually that means using your facility's grievance process before you file your case. It's up to you to find out if your case requires you to use the administrative process first.

Warning! If the law requires you to exhaust all available administrative options first and you skip this step, the court can dismiss your case. 42 U.S.C. § 1997e(a).

✓ **The Clerk Will Charge a Fee to File Your Case**

The Clerk charges $405 to file a case under 42 U.S.C. § 1983 and/or *Bivens*.

(The filing fee is $350, plus a $55 administrative fee.) You must address the filing fee at the same time you file your *Prisoner Complaint*. You can either:

1) pay the whole filing fee up front, or
2) if you cannot afford it, ask permission to pay the filing fee in installments by filing a *Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915*.

If you file a *Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915*, which is a court form, you must attach a copy of your inmate account statement for the 6-month period just before you file your *Prisoner Complaint*. 28 U.S.C. § 1915(a)(2). You can get a copy of your inmate account statement from the person in charge of inmate accounts at your facility.

Even if the court agrees to let you file without paying the fee now, you will have to pay the fee later in installments. The money will be taken out of your inmate account. This is true no matter how your case turns out, or even if you drop your case.

➢ **3 Strikes Rule If You Don't Pre-Pay the Filing Fee**

You cannot file a new case without prepaying the filing fees ***if…***

- You filed 3 (or more) cases while you were in prison, jail, or other detention facility, *and*
- The court dismissed those cases for being frivolous or malicious, or for not alleging facts that show you are entitled to a remedy under the law. 28 U.S.C. § 1915(g).

Exception: This 3 strikes rule does not apply to 42 U.S.C. § 1983/*Bivens* actions if you are in "imminent danger of serious physical harm."

What happens after I file my 42 U.S.C. § 1983 and/or *Bivens* case?

➢ **The Clerk assigns a case number to your case.**

Your case number is very important. Write it on all documents you file in your case so the Clerk knows it belongs to *your* case.

- **The Clerk assigns a judge for an initial review.**

The assigned judge reviews your *Prisoner Complaint* according to Local Rule 8.1(b). The judge checks basic things, such as making sure:

- You used the correct form for your *Prisoner Complaint*,
- You signed the *Prisoner Complaint*, and
- You paid the required fees or filed a *Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915.*

If you do not file your *Prisoner Complaint* correctly, the court will mail you a court order telling you to correct the "deficiencies" by a certain deadline. If you do not correct the problem(s) by the deadline, the court can dismiss your *Prisoner Complaint.*

- **If you filed a motion asking to not pre-pay the filing fee, the judge will make a decision about your filing fee.**

If the judge agrees…

The judge will grant your *Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915*. This means you do not have to pre-pay the whole filing fee. But, you will have to pay $350.00 over time, in installments, depending on your income. Here's how it works:

When you have money in your inmate account, the court takes the first filing fee payment. The first filing fee payment is 20% of the larger of these two amounts:

- Your average monthly inmate account deposits, or
- Your average monthly inmate account balance,

for the 6 months before you filed your *Prisoner Complaint.*

After the first payment, payments will be 20% of the previous month's inmate account deposits, if there is at least $10 in your account. This continues until the fee is completely paid. 28 U.S.C. § 1915.

You will get a copy of the judge's order. The court will send an order to the correctional central office, jail, or prison telling them to deduct the fee as explained above. You will receive a copy of the order, too.

If the judge does not agree… The judge will deny your motion and give you a deadline to pay the whole filing fee.

- **The judge screens your *Prisoner Complaint* before service.**

The law says the judge assigned to your case for initial review must screen your *Prisoner Complaint* before service. 28 U.S.C. § 1915A.

The judge will decide if the *Prisoner Complaint* is legally valid. If so, the case will move forward.

If the judge decides that the *Prisoner Complaint* (or a part of the *Prisoner Complaint*) is **not** legally valid, the judge will dismiss the *Prisoner Complaint* (or the invalid part).

Dismissal can happen if the *Prisoner Complaint* is:

- frivolous;
- malicious;
- does not state a valid legal basis for the claim or the damages requested; or
- asks for damages from a defendant who is legally exempt from having to pay damages.

> ***How long does the court take to screen my Prisoner Complaint?***
>
> The court tries to review all *Complaints* promptly. But there are hundreds of *Complaints* filed each year. It may take some time. You can file a motion to ask the court about the status of your case.

Court Order After Screening

After screening your *Prisoner Complaint*, the court will make an order with its decision. The order will say:

- Your claim (or some part of your claim) can move forward to the next legal step, or
- You need to file an *"Amended" Prisoner Complaint* for reasons explained in the order, or
- Your claim(s) were dismissed, and the reason(s) why.

➢ **Read your Order Carefully**

Court dates and deadlines. The judge may have scheduled things you must do by a certain date or deadline. If you cannot do any of these things, you must tell the court in writing before the deadline. If not, the court can dismiss your case.

- *If the court said you need to file an "Amended" Prisoner Complaint,* you must do so by the deadline or the court can dismiss your case.
- *If the court dismissed all your claims*, your case is finished, unless you file a motion after a final judgment or appeal, as described more below.
- *If the court said your case can move forward*, the judge will assign your case to a different judge. The new judge will be in charge of the rest of your case.

If a magistrate judge is assigned to your case, you and the defendant(s) will be asked to agree (consent) to the magistrate judge making all decisions in the case. If you do not all agree (it has to be unanimous), then the case will be re-assigned to a district court judge.

What is a magistrate judge?

A magistrate judge is a judge who is appointed by the court for certain term and has some, but not all, of the powers of a district judge. 28 U.S.C. § 636(b). A magistrate judge may handle civil cases from start to finish if all parties agree (consent). Otherwise, a magistrate judge may handle scheduling, hear motions and other pretrial matters, and make recommendations, as assigned by a district judge.

A magistrate judge may be assigned to conduct a hearing or file a recommendation for dismissing all or part of your case or about a particular issue in your case – for example, a motion to amend. After the magistrate judge files a recommendation, the Clerk must promptly serve copies to all parties. Parties have **14 days** after being served to file objections. The assigned district judge must make a new decision *(de novo)* on any proposed finding or recommendation that has been objected to. The judge may accept, reject, or modify any proposed finding or recommendation.

If a magistrate judge files a recommendation, and you do not object to the recommendation, you may not be able to appeal the parts of the recommendation that are accepted or adopted by the district judge.

➢ **Serving the Defendant(s)**

If you do not have a lawyer and are in custody or did not pre-pay your fees, the court will order the U.S. Marshals Service to serve the defendant(s) the *Prisoner Complaint* and *Summons* prepared by the Clerk's Office for your case. Fed. R. Civ. P. 4(c)(3).

Sometimes the Marshals Service cannot complete service. This can happen, for example, if the address you provided for a defendant is incorrect. The Marshals Service will notify the Clerk they could not complete service. The Clerk will make a note in the docket.

Will the Clerk notify me if Service could not be completed?

No. It's up to you to file a motion to check with the Clerk about service. You must make sure all defendants in your case were served.

➢ **The defendant(s) can respond to your *Prisoner Complaint*.**

The defendant(s) can:

- file an answer,
- file a motion, or
- do nothing.

What is an answer*?*

An answer is a written response to your *Prisoner Complaint*. Federal Rule of Civil Procedure 8 explains the requirements for answers. An answer usually includes denials and defenses of the claims in your *Prisoner Complaint*. The law says the defendant has the following deadlines to file an answer:

- **21 days** after being served with the *Summons* and *Prisoner Complaint*, or
- **60 days** after the request for waiver was sent if the defendant timely waived service under Rule 4(d). (**90 days** if the defendant is not in a U.S. judicial district.) Federal Rule of Civil Procedure 12(a)(1)(A).

Unless the court tells you to, do not respond to the defendant's *Answer*.

What is a motion?

A motion is a written request for a specific order. If the defendant files a motion at this step, it would probably be a motion to dismiss your *Prisoner Complaint*. The defendant would give one of the reasons listed in Federal Rule of Civil Procedure 12. If this happens:

- You will have **21 days** after being served to respond to the motion. Your response would explain why you think your *Prisoner Complaint* should not be dismissed.
- The defendant will get **14 days** after being served your response to file a reply.
- The judge can decide the motion at any time. But, it can take months before a decision is made about a motion to dismiss.

What if the defendant does not respond to my *Prisoner Complaint*?

If the defendant does not answer or file a motion in your case, you may ask the court for a "default judgment." Fed. R. Civ. P. 55. This means the judge can decide on the relief you asked for in your *Prisoner Complaint* without hearing from the defendant.

➢ **After service, you and the defendant(s) can do discovery.**

Discovery is when the plaintiff and defendant(s) collect and exchange information and evidence needed to support or defend against a claim. That evidence may include:

- relevant facts,
- certain documents, and
- witnesses whose testimony can establish those facts.

Who can be asked to provide information for discovery?

Either side in the case may ask for information from:

- other parties in the case,
- non-parties, and
- public records.

Are there limits on the information that can be requested?

Discovery allows parties to obtain a wide range of evidence. But there are limitations. It prohibits evidence considered privileged, such as communications

between an attorney and the attorney's client. It also considers the following factors:

- the evidence's relevance to the party's claim or defense and relative value in their case,
- the amount of money at stake (amount in controversy),
- how easy it is to access the requested information,
- the parties' resources,
- the importance of the discovery in resolving the issues, and
- whether the burden of the requested discovery outweighs its likely benefit.

Note: Information may be available to parties through discovery even if it is not admissible in evidence. Federal Rule of Civil Procedure 26(b)(1).

Is there a deadline to complete discovery?

Yes. The judge in your case will set a discovery deadline. If you need more time, you may file a motion to ask. But the judge may not approve your motion.

Does the court monitor discovery?

No. The court has only minimal involvement with your discovery process. The judge will only step in if you have disagreements that you cannot solve on your own.

Methods of Discovery

- depositions
- interrogatories
- requests for production of documents
- requests for admissions
- subpoenas
- mental/physical examinations

Discovery is explained more in Federal Rules of Civil Procedure 26-37.

A Note About Initial Disclosures: If you are a prisoner and you do not have a lawyer, you and the other parties in your case do not have to follow Rule 26(a)(1) of the Federal Rules of Civil Procedure about discovery. That means you do not have to provide a detailed discovery list at the outset of your case. But you will have to respond to any discovery requests made by the other side to you.

What are depositions?

Depositions are oral questions and answers about the case. The answers are given under oath and are recorded. Depositions happen before a trial. It's a way to get more information from a party or a witness about the claims in the case.

Federal Rules of Civil Procedure, Rules 27-31 explain the rules for taking a deposition. Rule 45 is about subpoenas, and it explains how to make someone who is not a party in the case go to a deposition to answer questions.

What are interrogatories?

You may ask other parties in your case to answer a set of written questions about your case. These written questions are called interrogatories. The answers must be written and must be signed under oath. People who are not parties in your case do not have to answer interrogatories.

Parties get **30 days** after being served the interrogatories to provide their answers. A party may object to a question. If that happens, they must say why they object and answer all other parts of the question. Parties may get more information later after they have provided their answers to the interrogatories. The law says they must provide additional information as it becomes available. Federal Rule of Civil Procedure 26(e)(1).

Federal Rule of Civil Procedure 33 explains the rules about interrogatories.

What is production of documents?

The law gives you a way to make another party provide, copy, show, or allow you to inspect documents they control. This is called producing documents. This law does not apply to people who are not parties. Federal Rule of Civil Procedure 34.

You must make your request in writing. And you must have it served to the other party. The request must say:

When: a reasonable date and time to do the request

Where: the place you want to see, inspect, or receive the documents

How: for example, send you copies, see the originals, or inspect records

After the party receives your request, they have 30 days to send you a written response. If a party serves you with requests, you have 30 days to send a written response. The response must say if:

- The request will be approved, or
- An objection to the request, and the reasons why.

The court may order a physical or mental examination.

In some cases, the court needs to know more about the physical or mental health of a party (or someone under the party's custody). This can happen when one of the parties shows there is a good legal reason to find out more about that person's physical or mental health. Federal Rule of Civil Procedure 35 explains the rules for this kind of request.

What are requests for admission?

The law allows you to serve a written request to any other party in your case to admit the truth about:

- some fact,
- an opinion,
- if a document is genuine, or
- other matter listed in Federal Rule of Civil Procedure 26(b)(1).

After the party receives your request, they have 30 days to serve you with a written response. If they do not answer or object, the matter is admitted as true. The same applies to you if you receive a request from another party. This law does not apply to people who are not parties. Federal Rule of Civil Procedure 36 explains more about requests for admission.

Subpoenas

You may ask the court to issue a subpoena to make someone who is not a party go to your trial and/or produce documents. To do this, you must file a motion that explains

- who or what is being subpoenaed, and
- why a subpoena is needed.

The person asking for the subpoena must pay for the related costs, including:

- witness fees,
- mileage costs, and
- copying costs.

Federal Rule of Civil Procedure 45 explains more about subpoenas.

➢ **Not all cases go to trial.**

Most cases end before there is a trial. This can happen when there is a:

- motion to dismiss,
- motion for summary judgment, or
- settlement.

Read more about these situations below.

Motion to Dismiss

A defendant can file a motion to dismiss your case for several reasons. Here are some common legal reasons:

- The court does not have jurisdiction over the subject matter.
- You have not exhausted all available administrative remedies.
- Your *Prisoner Complaint* does not say valid legal reasons for the order(s) you ask for.

There is a deadline to file a motion to dismiss. Sometimes they are filed before the defendant files an answer. Learn more about the laws for motions to dismiss by reading Federal Rule of Civil Procedure 12(b).

Summary Judgment

A case can finish early when the outcome of the case is obvious and one or more parties files a motion for summary judgment. This happens after the defendant files an answer.

A motion for summary judgment tells the judge that based on all the important (material) evidence gathered by the parties, the party filing the motion should win, and there is no need to have a trial. If the other parties disagree, they can respond to the motion explaining why it should be denied.

The court may decide to:

- grant (approve) the motion *entirely,* and the case will end. The judge will decide in favor of the party that asked for the summary judgment.
- grant (approve) the motion *partially.* Only the issues that are still in dispute will move on to trial.
- deny the motion. The case will move on to trial (unless the parties make a settlement).

Federal Rule of Civil Procedure 56 explains more about summary judgment motions.

Settlement

Another way to finish a case without a trial is when the parties make a settlement. This is when the parties agree to resolve the case by themselves.

In most settlements, the defendant offers the plaintiff a sum of money in exchange for dismissing the case. The parties can discuss settlement and settle the case at any time. You do not need the court's participation to do this. If you settle your case, the court will make a short order to dismiss the case.

- **Trial**

A trial is the last step in a district court case. It can take 2-3 years to get to this step. Fewer than 2% of cases filed make it to trial. Most cases get dismissed, settled, or there is a summary judgment.

If you go to trial, your judge will give you important dates, including filing deadlines and your trial date.

There are two kinds of trials:

- bench trials, and
- jury trials.

A bench trial has a judge, but no jury. This happens when:

- The parties agree they do not want a jury trial,
- None of the parties asks for a jury trial (or asks by the deadline), or
- The kind of case does not allow a jury to decide.

A **bench trial** usually follows these steps:

1. Each party makes an opening statement.
2. The plaintiff presents evidence.
3. The defendant presents evidence.
4. Each party makes a closing statement.
5. The judge ends (adjourns) the trial.

After the bench trial, the judge reviews the evidence and writes findings of facts and conclusions of law. The judge also issues a written decision on the case, called a judgment. After the judgment, the case is over, unless one of the parties wants to appeal or file a post-judgment motion. *(More on appeals below.)*

A **jury trial** usually follows these steps:

1. A jury is selected. *(Read more about jury selection below.)*
2. The judge tells the jury about their responsibilities and the laws that apply to your case.
3. Each party makes an opening statement.
4. The plaintiff presents evidence.
5. The defendant presents evidence.
6. Each party makes a closing argument.

7. The judge gives the jury detailed information about the laws that apply to your case. This is called jury instructions.
8. The jury deliberates. This means the jury applies the law to the facts they find to be true, and they decide who wins the case.

> **How are juries selected?**
>
> The parties participate in a process called *voir dire* to select jurors who can be fair to both sides. In *voir dire*, the parties ask the potential jurors questions. If a potential juror's answers show they cannot be fair or they are not qualified, they can be eliminated by a "strike for cause." A potential juror can also be struck for no specific reason, called a "peremptory strike." Each side gets three strikes. 28 U.S.C. § 1870.

Can anyone get a jury trial?

No. Your kind of case must qualify for a jury trial. And you (or another party in the case) must request a jury trial by the deadline. Rule 38 of the Federal Rules of Civil Procedure explains how to request a jury trial.

What is an opening statement?

The opening statement is a speech made by each side. In a jury trial, it comes after the jury is chosen. The opening statement summarizes the issues in the case and says what each side expects to prove during the trial. Opening statements are not evidence or a legal argument. They simply help the jury or judge understand what to expect and what you consider important.

How does each side present evidence?

The plaintiff presents evidence first, then the defendant presents.

If there are witnesses, they are questioned by:

- direct examination (questioning) first, then
- cross-examination by the other party,

- redirect (more questions by the party that did the direct examination), and
- re-cross by the party that did the cross-examination.

The Federal Rules of Evidence explain what kinds of evidence are allowed (admissible). If a party presents evidence that is not allowed under the rules, or asks a witness an improper question, the opposing party may object. All evidence must be admissible, but if the opposing party does not object, the judge may allow improper evidence to be presented.

A "motion for judgment as a matter of law" can end the trial early.

A "motion for judgment as a matter of law" asks the judge to end the case because the other party did not present enough evidence for a jury to decide in the other party's favor. This happens when one party thinks there is so little evidence supporting the other side's case that no jury could reasonably decide the case in favor of that party. There are two times when a party can ask for this kind of motion:

1. The defendant can ask after the plaintiff presents evidence, and
2. Either party may ask after the defendant presents evidence.

If the court agrees to the motion, the case will end. If the court does not agree, the case will continue to the next step. Federal Rule of Civil Procedure 50 explains motions for judgment as a matter of law.

What are closing arguments?

Closing arguments are when the parties take turns to summarize their side to the jury (or judge in a bench trial). They say why they think their evidence proves their case.

How does the jury reach a verdict?

In a jury trial, the judge explains the law and the jury's duty to the jurors. Next, the jury will meet to consider the case so they can decide. The jurors' decision must be unanimous, which means all jurors must agree.

Once they decide, the jurors fill out a verdict form and let the judge know they completed their deliberations. The judge brings the jury back into the courtroom, and the verdict is read out loud.

Later the judge issues a written judgment with the verdict and any orders about what you asked for as relief. At this point, most cases are over. Exceptions include:

- motions filed after a judgment, or
- if the losing party wants to file an appeal.

Motions After a Final Judgment

In limited situations the court will change a judgment if you file a motion requesting it. For example, you may ask the court to change a clerical mistake or omission in the judgment. You may file a motion to ask for a new trial or an amended judgment for any reason listed in Federal Rule of Civil Procedure 59.

You also may ask for relief:

- from an order that was the result of a mistake, fraud, or neglect,
- if there is newly discovered evidence not available at the time of the trial,
- if the judgment is void, already completed, or
- for any other reason stated in Federal Rule of Civil Procedure 60 or that justifies relief.

Rules 59 and 60 of the Federal Rules of Civil Procedure provide **specific deadlines** for filing this kind of motion. Check the rules to find out what kind of motion to file and when.

- **Appeals**

An appeal means asking a circuit court to review and reverse the decision of a district court. Appeals from the U.S. District Court for the District of Colorado are sent to the U.S. Court of Appeals for the Tenth Circuit.

Appeals are complicated. The Federal Rules of Appellate Procedure and Tenth Circuit website explain more. This Guide does not provide detailed information about appeals. Here is some general information.

You Can Appeal a Final Judgment

In general, you can only appeal a district court case when all issues in the case are resolved, and there is a final order or judgment on the district court's docket. 28 U.S.C. § 1291. This kind of appeal is called an *appeal as of right.*

Deadline: You have **30 days** from the date on the final order or judgment to file your *Notice of Appeal* in the district court where the judgment was entered. You may file a motion to ask for more time. The court may or may not approve your motion. If your case involves a party that is the United States, a federal agency, or federal employee, the deadline is **60 days**.

What is a *Notice of Appeal*?

A *Notice of Appeal* is a 1-page document that lists:

- your name,
- a description of the final order, judgment, or particular section you want to appeal, and
- the name of the court you are appealing to (the Tenth Circuit).

The filing fee for a *Notice of Appeal* is $605. If you cannot afford to pay the fee all at once, you can ask the district court for permission to not pre-pay the fee. *Note:* The "Three Strikes Rule" applies to appeals.

Interlocutory Appeals

In limited situations, you may appeal a judge's decision that is not final while your case is still active. This type of appeal is called *interlocutory*. 28 U.S.C. § 1292 explains more about interlocutory appeals.

You must file a *Notice of Appeal* for an interlocutory appeal in the district court case where the decision you are appealing was filed.

Habeas Corpus Cases under 28 U.S.C. § 2254

If you are in custody, and you believe your imprisonment is illegal, you have the right to ask the court to decide if your imprisonment is legal. This is called a habeas corpus case.

If you are in prison, jail, or otherwise "in custody" as a result of a **state court conviction**, a habeas corpus case under 28 U.S.C. § 2254 allows you to ask the district court to review your state court conviction if it violated the U.S. Constitution or other federal law. You do so by filing an *Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254*.

You must use up all remedies available in state court before asking the federal court for relief under § 2254. This is called exhaustion.

- **You can file only one § 2254 Application, unless you get permission.**

If you filed a § 2254 Application before, and it was dismissed or denied with prejudice (the court said you could not file again), you must get permission from the U.S. Court of Appeals for the Tenth Circuit before filing another § 2254 Application in this district court. 28 U.S.C. § 2244(b).

The Tenth Circuit website has a form for doing this, titled "Motion for Authorization to File a Second or Successive Habeas Corpus Petition under 28 U.S.C. § 2244(b) by a Prisoner in State Custody."

- **Rules for § 2254 Cases**

The Rules Governing § 2254 Cases in the U.S. District Courts are specific to habeas corpus cases. The Federal Rules of Civil Procedure can also apply to a habeas corpus case, if consistent with the § 2254 rules.

- **How to File a § 2254 Application**

Start by filling out the *Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254*. You must use the current court-approved form. You can get the form and instructions from:

- The court's website,
- The Clerk's Office, or
- Your jail, prison, detention facility, or where you are "in custody."

Note: If you do not use the current court-approved form to file your claims, the court can dismiss your case. Local Rule 5.1(c).

- **The Clerk Will Charge a $5 Filing Fee**

You must pay $5 when you file your *Application*. If you cannot pay the fee, you must also file the current court-approved form *Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action*. You must include a copy of your inmate account statement showing your current balance with the motion.

- **The Clerk assigns a case number to your case.**

Your case number is very important. Write it on all documents you file in your case so the Clerk knows it belongs to *your* case.

- **The Clerk assigns a judge for an initial review.**

The assigned judge reviews your *Application* according to Local Rule 8.1(b). The judge checks basic things, such as making sure:

- You filed an *Application* on the current court-approved form,
- You signed the *Application*, and
- You paid the required fee or filed a *Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action.*

If you do not file your *Application* correctly, the court will mail you a court order telling you to correct the "deficiencies" by a certain deadline. If you do not correct the problem(s) by the deadline, the court can dismiss your *Application.*

- **If you filed a motion asking for permission to not pay the $5 filing fee, the court will make a decision about your fee.**

If the judge agrees, the judge will grant your *Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action.* You do not have to pay the $5 filing fee.

If the judge does not agree, the judge will deny your motion, and you will have to pay the $5 filing fee. The judge will give you a deadline to pay. If you miss the deadline, the court can dismiss your case.

- **Your assigned judge does a preliminary review of your *Application*.**

The law says that a judge must examine your *Application* promptly and make an order. The order will say **one** of these things:

- Your *Application* can move forward to the next legal step, or
- You need to file an *"Amended" Application* by a certain deadline for reasons explained in the order, or
- Your *Application* is dismissed, and the reason(s) why.

Rule 4 of the Rules Governing § 2254 Cases in U.S. District Courts explains more about the judge's preliminary review of your *Application*.

If the judge does not dismiss your *Application*, the judge will order it be served on the respondent and the Attorney General for the State of Colorado. The judge also may order:

- The respondents to file a "Pre-Answer Response" about the affirmative defenses of timeliness and failure to exhaust available state court remedies, and other procedural issues, if applicable.
- You to file a Reply to the Pre-Answer Response.

Based on the Pre-Answer Response and Reply, the judge may dismiss all or part of your *Application* based on timeliness or failure to exhaust all available remedies, or other procedural issue.

If the judge does not dismiss your *Application*, the judge will assign your case to a different judge. The new judge will be in charge of the rest of your case. The judge will order respondents to file the state court record and an answer about the merits of your claims. You can file a reply to the answer. The order will set deadlines for respondents and you to tell the judge more about your case.

- **No Discovery Without the Court's Permission**

In a § 2254 case, if either party wants to do discovery, they must get permission from the judge. You must tell the judge the reasons for wanting to do discovery and list what evidence you want discovered. The judge must agree that discovery is needed. Once the judge agrees to discovery, and you need a lawyer for effective discovery, but you cannot afford one, the judge must appoint one for you. Rule 6, § 2254 Cases in U.S. District Courts.

- **The judge may ask the parties to provide more information.**

Sometimes a judge orders the parties to provide more information related to the *Application*. This is called *expanding the record*. The judge may ask for many kinds of evidence, including:

- Letters written before the *Application* was filed,
- Documents,
- Exhibits,
- Affidavits, and
- Answers to the judge's written questions (interrogatories).

The judge must give the party against whom such materials are presented an opportunity to say whether they are correct. Rule 7, § 2254 Cases in U.S. District Courts.

- **The judge may hold an evidentiary hearing.**

The judge must review the answer, transcripts and records of state-court proceedings, and all evidence submitted under Rule 7 to determine if an evidentiary hearing is needed. Rule 8, § 2254 Cases in U.S. District Courts. If the judge decides an evidentiary hearing is needed, the court must appoint a lawyer for you, if you cannot afford one and you qualify under 18 U.S.C. § 3006A.

- **The evidentiary hearing must take place as soon as possible.**

The judge will give the lawyers enough time to investigate and prepare. Rule 8, § 2254 Cases in U.S. District Courts.

- **The judge may send the hearing to a Magistrate Judge**.

The law (28 U.S.C. § 636(b)) allows your judge to send the evidentiary hearing part of your case to a Magistrate Judge. If that happens the Magistrate Judge would:

- conduct the hearing, and
- file proposed findings of fact and recommendations for disposition.

After the recommended findings and disposition are filed, the Clerk must promptly serve copies to all parties. Parties have **14 days** after being served to file objections. The judge must make a new decision *(de novo)* on any proposed finding or recommendation that has been objected to. Rule 8, § 2254 Cases in U.S. District

Courts. The judge may accept, reject, or modify any proposed finding or recommendation.

- **The judge will issue a final decision on the case.**

The final decision on the case will either grant relief (agree with you) or deny relief (disagree with you).

- **You may file an appeal if you disagree with the final decision.**

If the judge issued a final decision that denies your relief, the court must also issue or deny a "certificate of appealability."

- If the judge thinks a certificate of appealability is needed, the certificate shows that you have made a substantial showing that you were denied a constitutional right about a specific issue. 28 U.S.C. § 2253(c)(2).
- If the judge denies you a certificate of appealability, you can ask the circuit court for a certificate. See Federal Rule of Appellate Procedure 22.

The deadlines and procedures for an appeal are the same as those described above for § 1983 and *Bivens* cases.

Habeas Corpus Cases under 28 U.S.C. § 2241

You can ask for habeas corpus relief under 28 U.S.C. § 2241(c)(3) if:

- Your imprisonment or detention violates U.S. law, the U.S. Constitution, or a U.S. treaty, and
- Your *Application* claims one or more of these issues:
    - You are challenging how your state or federal sentence is being calculated, the revocation or denial of parole, or the loss of good-time or earned-time credits.
    - You are a pretrial detainee raising speedy trial or extradition issues.
    - You are an alien challenging certain federal immigration proceedings, such as detention after removal has been ordered.

Do **not** file a § 2241 *Application* if you are a:

- State prisoner challenging a state conviction. Use § 2254.
- Federal prisoner challenging a federal conviction or sentence. Use § 2255. (In very rare situations § 2241 may apply.)
- State or federal prisoner challenging the conditions of your confinement, such as medical treatment claims. Use 42 U.S.C. § 1983 and/or *Bivens*.

➢ **How It Works**

§ 2241 *Applications* move forward in the same way as § 2254 *Applications*, described above, with the following exceptions:

- File an *Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241* (not § 2254). You must use the current court-approved form.
- Instead of a *Pre-Answer Response,* the judge orders respondents to file a *Preliminary Response* about the affirmative defenses of timeliness and/or your failure to exhaust administrative or state court remedies.
- Federal prisoners do not need to get a certificate of appealability to appeal the denial of a § 2241 *Application*. A certificate of appealability *is* required if the claim is related to a state court order, or if the claim is in a motion under 28 U.S.C. § 2255, which is explained next. 28 U.S.C. § 2253(c).

Motions Challenging a Federal Sentence Under 28 U.S.C. § 2255

28 U.S.C. § 2255 motions are for people who *are* or *will be* in custody because of a federal court order, and believe:

- Their custody violates U.S. law or the U.S. Constitution, ***or***
- The federal court did not have jurisdiction to impose the judgment, ***or***
- Their federal sentence exceeds the maximum permitted by law, ***or***
- Their federal sentence is unlawful in some other way.

You may only file **one** § 2255 motion in your case. If you filed a § 2255 motion before, and the motion was dismissed or denied with prejudice (the court said you could not file again), you must get permission from the U.S. Court of Appeals for the Tenth Circuit before filing another
§ 2255 action in this court.

- **How to File a § 2255 Motion**

You must use the current court-approved form. You can get the form and instructions from:

- The court's website,
- The Clerk's Office, or
- Your jail, prison, detention facility, or where you are "in custody."

Note: If you do not use the current court-approved form, the court can deny your motion. Local Rule 5.1(c).

There is no filing fee for § 2255 Motions.

- **Rules for § 2255 Proceedings**

- Rules Governing Section 2255 Proceedings in the U.S. District Courts
- Federal Rules of Civil Procedure
- Federal Rules of Criminal Procedure

What happens after I file my § 2255 Motion?

- **The Clerk assigns your motion for review.**

The Clerk must promptly send your motion to the judge who tried and sentenced you. If the judge who sentenced you was not the trial judge, your motion will be sent to

the judge whose proceedings you are challenging. If that judge is not available, the Clerk must send the motion to another judge according to the court's assignment procedure. Rule 4, § 2255 Proceedings in U.S. District Courts.

- **The sentencing judge reviews your motion.**

The sentencing judge must promptly examine your motion, the attached exhibits, and records from previous proceedings. Then the judge must make an order. The Order will say **one** of these things:

- Your motion can move forward to the next legal step,
- Your motion is dismissed based on the judge's review of the case, or
- The judge may make a different order, and notify you.

The Clerk will mail you the order with the judge's decision. Rule 4, § 2255 Proceedings in U.S. District Courts.

If your motion moves forward: the judge will order the United States attorney to respond to the motion. The judge will also order you to file a reply to the response. The order will set deadline for these filings. Rule 5, § 2255 Proceedings in U.S. District Courts.

- **No Discovery Without the Court's Permission**

In a § 2255 case, if either party wants to do discovery, they must get permission from the court. You must tell the court the reasons for wanting to do discovery and list what evidence you want discovered. Rule 6, § 2255 Proceedings in U.S. District Courts.

The judge must agree that discovery is needed. Once the judge agrees to discovery, and you need a lawyer for effective discovery, but you cannot afford one, the judge must appoint one for you. 18 U.S.C. § 3006A.

- **The judge may ask for more information.**

Sometimes a judge orders the parties to provide more information related to the motion. This is called *expanding the record*. The judge may ask for evidence including:

- Letters written before the motion was filed,
- Documents,
- Exhibits,
- Affidavits, and

- Answers to the judge's written questions (interrogatories).

The judge must give the party against whom such materials are presented an opportunity to say whether they are correct. Rule 7, § 2255 Proceedings in U.S. District Courts.

➢ **The judge may hold an evidentiary hearing.**

The judge must review the motion, response, case record, and all evidence submitted under Rule 7 to determine if an evidentiary hearing is needed. Rule 8, § 2255 Proceedings in U.S. District Courts. If the judge decides an evidentiary hearing is needed, the court must appoint a lawyer for you, if you cannot afford one and you qualify under 18 U.S.C. § 3006A.

➢ **The evidentiary hearing must take place as soon as possible.**

The judge will give the lawyers enough time to investigate and prepare. Rule 8, § 2255 Proceedings in U.S. District Courts.

➢ **The judge may send the hearing to a Magistrate Judge**.

The law (28 U.S.C. § 636(b)) allows your judge to send the evidentiary hearing part of your case to a Magistrate Judge. If that happens the Magistrate Judge would:

- conduct the hearing, and
- file proposed findings of fact and recommendations for disposition.

After the recommended findings and disposition are filed, the Clerk must promptly serve copies to all parties. Parties have **14 days** after being served to file objections. The judge must make a new decision *(de novo)* on any proposed finding or recommendation that has been objected to. Rule 8, § 2255 Proceedings in U.S. District Courts. The judge may accept, reject, or modify any proposed finding or recommendation.

➢ **The judge will issue a final order about the motion.**

The final order about the motion will either grant relief (agree with you) or deny relief (disagree with you).

- **You may file an appeal if you disagree with the final order.**

If the judge issued a final order that denies your relief, the court must also issue or deny a "certificate of appealability."

- If the judge thinks a certificate of appealability is needed, the certificate shows that you have made a substantial showing that you were denied a constitutional right about a specific issue. 28 U.S.C. § 2253(c)(2).
- If the judge denies you a certificate of appealability, you can ask the circuit court for a certificate. See Federal Rule of Appellate Procedure 22.

The deadlines and procedures for an appeal are the same as those described above for § 1983 and *Bivens* cases.