

UNITED STATES DISTRICT COURT DISTRICT OF KANSAS

REVISED 1/2010



FILING YOUR LAWSUIT IN FEDERAL COURT: A Pro Se Guide

Disclaimer: The contents of the Pro Se Packet and Pro Se Guide are provided for informational purposes only and do not constitute legal advice.

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Before You File Your Case

Consider ways to resolve your dispute/problem outside court

Are you having a disagreement with another person, business or government agency? Are you thinking about going to court to ask a judge to resolve a disagreement or solve a problem for you? The federal court is one type of court that can help people resolve disputes. When two or more people (or a person and a business or government agency) have a disagreement and want a judge to listen to the facts, we call this a “case” or a “lawsuit.” Before you decide to file a case in federal court, you may want to consider other ways to solve your dispute or problem. Here are a few suggestions:

- **Try talking to the person, business or government agency that you feel has done something wrong or try sending a letter asking the person, business or government agency to fix the problem.** Many government agencies have requirements or special rules you must follow before filing a “case” in court.
- **Seek help from other sources.** There are many different agencies that may be able to provide help. Part 5 (on page 25) provides a list of agencies that you may want to call for help.
- **Contact an attorney.** An attorney will be able to help you make sure that federal court is the right place to solve your problem. An attorney will also be able to provide you with more information about resources that may help you. You have the right to file a case without an attorney's help. This is known as “representing yourself” or “proceeding pro se.” If you are representing yourself, the judge will still expect you to state your complaints clearly, to meet all your deadlines and follow the rules. An attorney can help explain these rules.

If you can afford to hire your own attorney, but don't know any, you might consider calling the Kansas Bar Association Referral Service (800-928-3111 or 316-265-1247) or the Kansas City Metropolitan Bar Association (816-221-9472) (www.kcmba.org/PublicService/lrs.htm). These organizations can tell you which lawyers practice the type of law that you need help with. Please see Part 5, “Resources That May Help You,” on page 25 for more resources.

Are you in the right court?

Before you file a case, you need to make sure that your case should be filed in federal court. Here are some questions that you should ask:

- Is your case about divorce, child custody, adoption, a will, an injury caused by another person, medical malpractice, a name change, or a decision of a state agency?

If so, you may be in the wrong court. State courts hear cases about matters that are regulated by state law. Each Kansas county has a District Court that decides matters brought under state law or the state Constitution.

- Is your case about city traffic or parking ticket, a landlord-tenant dispute, a zoning or other local ordinance?

If so, you may be in the wrong court. Every city has a City or Municipal Court that decides matters brought under the municipal code.

- Is your case about being treated differently or being fired because of your age, race, religion, sex, or because you have a disability; the denial of Social Security or other federal benefits; or a decision of a federal agency?

If so, you are probably in the right court.

Types of cases filed in federal court

Federal courts are courts of limited jurisdiction. There are three types of cases that may be filed in the federal courts:

1. Cases where the United States government is a party.

The federal courts hear lawsuits for benefits from the Social Security Administration or Veterans Administration or cases against a federal agency, such as the United States Postal Service or the Internal Revenue Service.

2. Cases brought under federal law.

The federal courts hear specific types of cases described in the U.S. Constitution or specifically provided for by Congress. Federal laws may cover issues not addressed by state laws, such as interstate commerce, damages at sea, labor laws, environmental

matters, agriculture, federal tax matters, and many other areas. Some federal laws may duplicate state laws, such as in civil rights matters.

3. Cases where the parties reside in different states

Lawsuits between parties residing in different states are called “diversity cases.” For example, if you live in Kansas and you file a lawsuit against a defendant who lives in Missouri, then there would be “diversity.” In a diversity case, the defendant may challenge your decision to file the lawsuit in a particular U.S. District Court by filing a motion. For example, if you file your lawsuit in the District of Kansas but the defendant believes that the lawsuit should have been filed in the Eastern District of Missouri, then the defendant may file a motion challenging your decision to file the lawsuit in the District of Kansas. If the defendant files this kind of motion, the judge will decide which U.S. District Court should hear your case. The decision where a case should be heard is called “venue.” In determining the proper venue for a case, the judge will consider factors such as where the case was filed, where the majority of the parties reside, where the witnesses are located, and where the injury or harm occurred. Generally, a case is heard in the same location it was filed however, the judge may determine that another location is more appropriate.

Diversity cases must involve a claim valued in excess of \$75,000.00. If your case does not seek more than that amount, you may need to file your claim in state court.

Are your claims timely?

A statute of limitations is the period of time set by law within which a lawsuit must be filed. This period of time ordinarily begins when the injury occurs or a right has been violated. If you fail to bring your claim within the time allowed by statute, your lawsuit may be dismissed.

You should consult the statute that applies to your claim, but the following are some current examples of statutes of limitations::

- most personal injury cases: 2 years
- most civil rights violations: 2 years
- Social Security: 60 days from Commissioner's decision
- Title VII: 90 days from the date on the EEOC right to sue letter

Other issues to consider

Before you file, please consider:

- **Rule 11 of the Federal Rules of Civil Procedure.** This rule prohibits the filing of lawsuits that are clearly frivolous or filed just to harass someone. **If the court determines that you have filed a lawsuit for an improper or**

unnecessary reason, it may impose sanctions against you, including ordering that you pay any legal fees of the party that you sued.

- **What Happens If You Lose?** If you lose, the winning party may ask that you be ordered to pay his/her attorneys' fees. The winning party is also entitled to seek certain costs which it incurs during a lawsuit. These costs can include things such as deposition transcripts, witness fees, copy expenses, etc. In many cases, these fees may add up to thousands of dollars. It is common for a winning party to seek these costs from the losing party.

If you have decided to proceed with filing a lawsuit, you should review the glossary of some of the more common legal terms related to a lawsuit, which starts on page 27.



Filing Your Case

In Part 1, we told you that when two or more people have a disagreement and want a judge to listen to the facts, we call this a “case” or a “lawsuit.” But before a judge can listen to the facts in any case, required case information must be given to the clerk’s office. This process is called “filing your case.” The U.S. District Court clerk’s office is responsible for keeping a record of all of the cases that are filed in federal court. Part 2 of the Pro Se Guide will tell you what must be provided to the clerk’s office so that your case can be filed.

Rules that you must follow

Included in your packet are copies of some of the rules that you will need to follow. Before you file your case, it may be helpful to review some of the rules. Here is a summary of the rules included in this packet:

- **Federal Rules of Civil Procedure.** These rules govern the filing of a civil lawsuit in federal court, and you should be familiar with them. Included in this packet is Rule 4 of the Federal Rules of Civil Procedure, which describes the procedures of service of summons in civil cases (see Part 3). Be sure to read this rule carefully before the complaint and the summons form are served on the person or party that you have named in your case. You may direct questions about the procedure of service to the clerk’s office. Please remember that Rule 4 is only one of the rules that must be followed. For example, Rule 3 of the Federal Rules of Civil Procedure explains how an action is commenced, and Rule 5 of the Federal Rules of Civil Procedure explains the general filing and service requirements for pleadings filed after the complaint is served.
- **United States District Court, District of Kansas, Rules of Practice and Procedure for District and Bankruptcy Court.** This is a collection of “local rules” that are written for the practice of law here in Kansas federal courts. They are published as additions to the Federal Rules (see above), which govern federal law in a more general sense. All district courts have them, and local rules will differ from court to court, so *please remember to refer ONLY to Kansas local rules*. Both Local Rules and the Federal Rules must be followed.

- **Kansas Statutes Annotated (KSA), Chapter 60, Civil Procedure.** These statutes have also been provided as a guide to the actual process of making service of your lawsuit on the opposing party (see Part 3), such as how service can be made, and by whom.
- **Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means in Civil Cases, Part III, Page 15.** This section of the court’s administrative procedures will explain the various options available to you for filing documents with the court.

Forms you will need to complete

First you will need to know some basic terms. The person filing the lawsuit is known as the plaintiff. The person, business or organization you are filing the lawsuit against is the defendant. The plaintiff and defendant are also called parties. The parties should be identified as either the plaintiff or defendant on all pleadings and documents you file with the court. You may find it helpful to use these terms along with the party’s name (e.g., Plaintiff Smith or Defendant Jones). This assists with identifying who you are talking about if there are many parties to the lawsuit.

In order to file your case, you will need to complete the following three forms. These forms can be found on the left-hand side of your pro se packet folder. The forms are also available on the court’s website at www.ksd.uscourts.gov or in the clerk’s office.

- Complaint
- Civil Cover Sheet
- Summons

Complaint

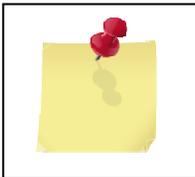
The complaint is the first document filed. It tells the judge who you are suing, what your case is about and what you want the court to do about it. If you have decided to file your lawsuit in U.S. District Court for the District of Kansas, you will need to file a Complaint in the clerk's office. You may write your own complaint or use a form available in the clerk's office. Be sure that all of your documents are typed or legibly printed on 8 ½ x 11 plain white paper. Below is an example of how the top part of the complaint should look. This is called the case caption. You will put a case caption on all of the documents that you file in your case.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS	
MARY SMITH, (INSERT ADDRESS) Plaintiff)))) Civil Case No: _____
vs. JOHN DOE, (INSERT ADDRESS) Defendant))))



HINT: Make sure your complaint is clear and understandable, and in neat, easy to read writing. Be certain the spellings of all defendants' names are correct.

This is the time to present the facts of the case: what happened, where it happened, when it happened, how it happened, and who was involved. You may choose to support your complaint with evidence (for example, many plaintiffs will provide the Right to Sue letter from the Equal Employment Opportunity Commission [EEOC] in discrimination cases), **but you do not need to supply all the evidence you may have collected at this time.** There will be opportunities for that as the case moves toward trial. This is the time for laying out the basic facts of your claim. NOTE: If your complaint does not include sufficient facts to allow the court to draw the reasonable inference that the defendant is liable for the misconduct you allege, your complaint may be subject to dismissal.



NOTE: These instructions are only a summary. It is your responsibility to follow the Rules.

Civil Cover Sheet

The **Civil Cover Sheet** asks information about your case. It is broken down into eight sections:

§10.44 (Rev. 11/94) **CIVIL COVER SHEET**

The 25.44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THIS FORM.)

I. (a) PLAINTIFFS		DEFENDANTS	
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)		County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)	
(c) Attorney's (From Name, Address, and Telephone Number)		Attorney's (If Known)	
II. BASIS OF JURISDICTION (Place an "X" in One Box Only)		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)	
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	<input type="checkbox"/> 1 Plaintiff: U.S. Citizen	<input type="checkbox"/> 1 Defendant: U.S. Citizen
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<input type="checkbox"/> 2 Plaintiff: Foreign Citizen	<input type="checkbox"/> 2 Defendant: Foreign Citizen
IV. NATURE OF SUIT (Place an "X" in One Box Only)		LABOR	
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 130 Maritime	<input type="checkbox"/> 140 Admiralty	<input type="checkbox"/> 150 Admiralty
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V. ORIGIN (Place an "X" in One Box Only)

1 Original

2 Removed from State Court

3 Removed from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multi-district litigation

7 Appeal to District Judge from Appellate Judgment

VI. CAUSE OF ACTION

Brief description of cause:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

VII. REQUESTED IN COMPLAINT

DEMANDS

CHECK YES only if demanded in complaint:

JURY DEMANDS: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions) JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING OFF JUDGE MAG. JUDGE

Print Save As... Export as PDF Retrieve PDF File Reset

SECTION I

- Asks the name of the plaintiff(s) and the defendant (s).
- Asks for the counties where the parties are located. We need to know this in order to help us assign the case to the right office.
- Asks for the name, address and telephone number of the attorney handling your case. Since you are acting as your own attorney, please put your own information.

SECTION II

Basis of Jurisdiction tells us which of four types of cases you are filing:

- **Government as the plaintiff** - This one will **not** apply to you. This is only for government use.
- **Government as the defendant** - Mark this if you are filing a case against a federal agency or the U.S. government.
- **Federal Question** - Mark this if your case is about a federal law.
- **Diversity** - Mark this if the defendant lives in another state and is not the federal government and if your case involves a claim valued in excess of \$75,000.00.

Please mark the one item that best describes why your case is being filed in federal court. If you are not sure, the clerk's office may be able to help you.

SECTION III

Citizenship of Principal Parties is used *only if you indicated "Diversity" in section II*. Diversity refers to cases where the parties involved are from different states. Pick one box that says where the plaintiff is located and one box to show where the defendant is located.

SECTION IV

Nature of Suit says very generally what your case is about. Please check one box only.

SECTION V

Origin gives 7 options. You will most likely choose option one, "original proceeding," meaning that you are filing a new lawsuit.

SECTION VI

Cause of Action asks for a brief statement telling us what your case is about. Something like, "I am suing my employer for violating my civil rights for not promoting me." You do not need to list a civil statute, but it is helpful if you have one identified.

SECTION VII

Requested in Complaint asks that you write the dollar amount you requested in the complaint and check the box to show whether you demanded a jury.

SECTION VIII

Related Case(s) If Any asks if there are any related cases. If you sued the same defendants in this or any other court, write down the name of the judge and the case number. Please date and sign the form where it says, "Signature of Attorney of Record."

Summons in a Civil Action

The **Summons** is a document which demands the defendant to respond to the complaint. In the blank that asks for the name and address of the defendant being served, you can only put down one name - the party you are suing - and his/her address. If you are suing more than one person, **each individual defendant gets his/her own summons** so you must fill out a summons form for each individual defendant. The clerk's office cannot issue summonses without this information.

§AG 449 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

District of _____

SUMMONS IN A CIVIL ACTION

V.

CASE NUMBER: _____

TO: (Name and address of Defendant)

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

an answer to the complaint which is served on you with this summons, within _____ days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

CLERK

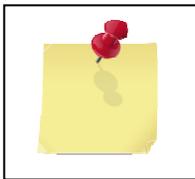
DATE

(By) DEPUTY CLERK

Remember that each defendant gets his or her own summons to be served on this defendant and that one additional summons per defendant will be required to be returned to the clerk's office for filing after service has been made on each defendant. This means **at least two copies will need to be presented to the clerk for signature**. After serving the defendants, the second copy will be entered into the file as proof that the defendant has been served in the case. However, if you would like a copy for your records too, you will want to submit three

copies of each summons: one to serve, one to return to the clerk, and one to be kept for your own records. Do not put more than one party and address on a summons form. We should be able to look at your completed summons form and see exactly which party is going to receive it.

In the space that gives the defendants the number of days they have to answer, please write in, "20." If you are suing the United States government, enter "60."



HINT: The summons may only be issued to parties that are named as defendants in the complaint.

Other forms included in your packet (you are not required to complete these)

- Motion to Proceed Without Prepayment of Fees
- Motion for Appointment of Counsel
- Affidavit of Financial Status (required for the above motions)

Motion to Proceed Without Prepayment of Fees

The fee to file a complaint is \$350.00. There are no other fees involved in the act of filing the case. If you do not have the \$350.00 fee, you may apply to have the fee "waived," which means that you may file your case without paying the fee. You must fill out the **Motion to Proceed Without Prepayment of Fees** form and the Affidavit of Financial Status and turn these forms in when you are filing your complaint. The court will then decide if you have to pay the fee.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

_____))
Plaintiff(s),))
v.)) Case No. _____))
_____))
_____))
Defendant(s).))

MOTION TO PROCEED WITHOUT PREPAYMENT OF FEES

I, _____, ask the court for permission to continue with this case without the payment of fees and costs. In support of my request, I state, under penalty of perjury, that the following facts are true:

(1) I am the plaintiff in this case and I believe that I am entitled to relief.

(2) This case is about:

(3) Because of my financial status, I am unable to pay the fees and costs of this case.

(4) I have completed and am filing an Affidavit of Financial Status with this motion.

Executed this ____ day of _____, 20__.

It is **very** important to fill out all parts of this form with as much information as possible since the judge will use this information to determine if you have the financial ability to pay the filing fee. This includes providing information about your spouse. Also, just because you do not have any cash on hand does not mean that you are unable to pay the filing fee. If you have assets, such as equity in your home, own several cars or rental property, or have other sources of income, the court may find that you can obtain the funds to pay the filing fee.

Motion for Appointment of Counsel

If you would like an attorney and cannot afford to hire one, the court may appoint an attorney to represent you, which means that the court asks a lawyer to handle your case at no cost to you. You may still be responsible for certain expenses and court costs. To ask the court to appoint a lawyer, please fill out the **Motion for Appointment of Counsel** form and the Affidavit of Financial Status. The judge bases the decision to appoint an attorney on several factors:

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

_____))
Plaintiff(s),))
vs.)) Case No. _____))
_____))
_____))
Defendant(s).))

MOTION FOR APPOINTMENT OF COUNSEL

I, _____, ask the court to appoint a lawyer to represent me in this case.

I understand that the court may appoint lawyers in some cases, but that there is no constitutional right to having an appointed lawyer. I understand that the court will consider the information I am providing to decide whether justice requires the appointment of a lawyer in this case.

I understand that before the court will consider appointing a lawyer for me, I must contact the Lawyer Referral Service, 200 N. Broadway, Suite 500, Wichita, Kansas 67202, 1-800-928-3111, to get names of lawyers in the Kansas City area (both Missouri and

1. **Do you have the financial ability to hire counsel?** If you have not already filed an Affidavit of Financial Status, you must file one with your motion for appointment of counsel.
2. **Have you made reasonable efforts to hire counsel?** You should first contact the Kansas Bar Association Referral Service (800-928-3111 or 316-265-1247)

How to file your case

- **Come to one of our clerk’s offices** – this is a great option if you are filing a case for the first time and have questions. We can also make sure that your forms are filled out completely. Here are the clerk’s office addresses:

Robert J. Dole United States Courthouse
500 State Ave. Room 259
Kansas City, KS 66101
(913) 551-6719

490 United States Courthouse
444 S.E. Quincy
Topeka, KS 66683
(785) 295-2610

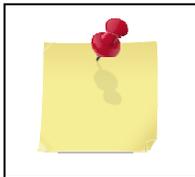
204 United States Courthouse
401 N. Market
Wichita, KS 67202
(316) 269-6941

- **Send by fax** – You may fax us a copy of your original document with your signature on it. If you are filing a new case, you will need to contact the clerk’s office and make arrangements to pay the filing fee before you fax the new case. Below are the clerk’s office fax numbers:

Kansas City: (913) 551-6942
Topeka: (785) 295-2613
Wichita (316) 269-6116

- **Send by e-mail** – If you would like to send your documents by e-mail, you must send them in .pdf format. You can scan the documents, or you can use various software programs to convert them into the proper .pdf format. You may also sign the documents by using an electronic signature. An electronic signature is made by typing “s/ Your Name” (for example, “s/ Jane Doe”) If you choose to do this, you must to send the original copies of the documents to the clerk within 5 business days. Here are the clerk’s office e-mail addresses:

ksd_clerks_kansascity@ksd.uscourts.gov
ksd_clerks_topeka@ksd.uscourts.gov
ksd_clerks_wichita@ksd.uscourts.gov



NOTE: If you do not personally come to the clerk’s office, you will want to call the clerk’s office to make sure your case information has arrived.

What does the clerk's office do with the case information?

The clerk who is helping you will review the documents in your case to make sure we have everything we need. He or she will make sure that all of the questions have been answered on the forms. If everything is in order, and you are paying the filing fee, the clerk will:

- file-stamp your documents (the file-stamp shows the date and time you filed the case),
- assign a case number and judges (both a district judge and a magistrate judge),
- sign your summons forms, and
- write you a receipt for the \$350.00 filing fee.

If you are asking that the filing fee be waived, no summons will be issued. If the judge orders the filing fee waived, the clerk will prepare and serve the summons on your behalf after you provide the complete addresses. If your application is **denied**, you will receive an order in the mail to this effect, with instructions as to when the filing fee must be paid. **Your case may be dismissed if this date is missed.** If you are required to pay the fee, then it will be your responsibility to serve the defendants with your complaint and the summons. For more information on how to serve the defendants, please refer to Part 3.

Paying court fees and payment options

Below are your options for paying court fees. If you have any questions about fee payment, please contact the clerk's office.

- Check made payable to "Clerk, U.S. District Court" (personal, cashiers checks or money order accepted; NO counter checks)
- Cash (exact amount required!)
- Credit card

Electronic filing system

Once you have filed your initial documents and your case is on file with the court, you may file documents in your case on-line, or electronically, using our Case Management/Electronic Case Filing System (CM/ECF). This system not only allows you to file your documents without coming in to the clerk's office, it also allows you to see everything that is filed by you (the plaintiff), the court, the defense and any other parties in your case. If you would like to learn more about filing your case electronically you may go to our website at www.ksd.uscourts.gov. Public computer terminals are available for use at any of our clerk's office.

What the clerk's office can and cannot do

Our office is happy to help you if we are able. However, since we must be fair to everyone, we are only allowed to help you in certain ways. Printable forms and answers to frequently asked questions are available online. Please visit our website at www.ksd.uscourts.gov.

WE CAN:

- Explain and answer questions about how the court works.
- Provide you with the phone numbers and addresses of local lawyer services, legal aid services, and/or state libraries.
- Give you general information about the court rules, procedures, and practices.
- Provide you with information from your case file and help you look at it from the public computer station.
- Provide you with available court forms and instructions.

WE CANNOT:

- Tell you whether or not you should file a new case.
- Tell you what words you should use in your court pleadings/papers.
- Talk to the judge for you or let you talk to the judge outside of court.
- Tell you what you should say in court.
- Compute deadlines in your case.



HINTS:

WHEN YOU GO TO THE CLERK'S OFFICE:

- You must show a photo ID to enter the courthouse. You must pass through courthouse security.
 - Do not bring cell phones, cameras, recording devices, or other electronic devices (such as MP3 players).
 - No weapons of any type, drugs or other illegal items are allowed.
 - Have your information/case organized.
 - Do not be afraid to ask questions; however, the clerk's office staff cannot give you legal advice or answer questions about procedures of other agencies.
 - Have your fees (cash, check, money order or credit card will be accepted) ready for payment.
-

Service of Summons and Complaint

What does service mean?

You are required to let the defendant(s) know that you have filed a case against them in federal court. You do this by having the deputy clerk sign and stamp the court's seal on the summons form that you filled out (on page 9). Each defendant must receive a copy of the stamped summons form along with a copy of your complaint. This process is called "service" or "serving the defendant(s)."

When must it be done?

If you are suing under federal law, you have 120 days from the date you filed the complaint to serve the defendants in your case. If your case has a claim under state law, you might have fewer than 120 days to serve the defendant(s). Make sure you understand the applicable federal and state rules and time limits or your case could be dismissed.

Who must be served?

All of the defendants that you have named in your complaint must be served. The defendants who are not served within the required time limit may be dismissed from your lawsuit. It is also important to note that the clerk will only issue summons upon parties named as defendants in your complaint.



HINT: After you have filed your case, attempt to serve the stamped summons and a copy of your complaint on the defendant(s) as soon as possible!

Who serves the documents?

Did you pay the \$350 filing fee?

1. If the answer is yes, here are your options:
 - **You can hire a private process server.**
 - **You can have someone else personally deliver the summons.**
The rules say that the summons can be served by anyone who is not a “party” and is at least 18. You cannot personally give the summons to the defendant(s) because both you (the plaintiff) and the defendant(s) are considered “parties” in your case.
 - **You can send the summons to the defendant(s) by certified mail.**
 - **You also can serve the defendant using certain state law methods or under the provisions of Rule 4 of the Federal Rules of Civil Procedure.**
2. **If the answer is no and the court told you that you don’t have to pay the filing fee,** your motion to proceed without prepayment of fees was granted and the court will serve the summons for you.



HINT: If the defendant is a company that does business in Kansas, the easiest way to serve the summons and complaint is on the resident agent. The resident agent is a person or company with a Kansas address who is authorized to accept service of process. You can find out if a company has a resident agent by contacting the Kansas Secretary of State at (785) 296-4564 and at <http://www.kssos.org>.

Serving a summons on a federal agency

If you are suing the United States Government, the Federal Rules say that you will need to serve summonses on three separate parties. They are:

1. The head of the agency you are suing
2. The United States Attorney in Kansas
3. The United States Attorney General in Washington, DC.

For more information please see the handout “If you are suing the United States Government” in your Pro Se Guide packet.

How does the court know when the summons has been served?

Whoever serves the summons and complaint on the defendant must complete the Return of Service information on the back side of the summons and return it to you. You will then file it with the clerk's office. If you send the summons by certified mail, you will receive the green certified mail receipt from the post office after the summons has been delivered. You will then attach the green receipt to the service page (2nd page) of your copy of the summons and file it with the clerk's office.

What Happens After the Case is Filed

Case assignment

The clerk's office assigns the case a number that must appear on all documents. The case will randomly be assigned to two judges – a district judge and a magistrate judge. You cannot choose your judges. The district judge may refer your case to the magistrate judge to handle different stages of your case leading up to the trial of your case.

The magistrate judge may handle the entire case if all of the parties in the case consent to having the magistrate judge handle the entire case. See Rule 73 of the Federal Rules of Civil Procedure and Local Rule 72.1.1(h). In such cases, the district judge will take no part in the case. The clerk's office can provide you with the form to have your case handled by a magistrate judge or you may get a copy of the form from the court's website.



HINT: In cases where the parties have not consented to the magistrate judge handling the entire case and the magistrate judge enters an order that you believe is clearly wrong, you may ask the district judge to review the order. See Rule 72 of the Federal Rules of Civil Procedure and Local Rule 72.1.4. This is done by filing a motion for review. Do not ask the district judge to review every order of the magistrate judge. You should only make this request when you believe the order is **clearly** wrong or contrary to the law.

In cases where the parties have consented to the magistrate judge handling the entire case and the magistrate judge enters a **final** order that you believe is clearly wrong, as a general rule you may be able to appeal the magistrate judge's final order to the court of appeals. See Rule 73(c) of the Federal Rules of Civil Procedure.

A judge rules on the motion to proceed without prepayment of fees (if filed)

If you do not have the \$350.00 fee, you may apply to have the fee "waived," which means that you may file your case without prepaying the fee (see Part 2, on page 10). You must file a Motion to Proceed Without Prepayment of Fees (a copy of this motion is included in this packet and on the court's website). You must also fill out the Affidavit of Financial Status (see Part 2, on page 11). If the judge grants your motion, you will not have to pay the filing fee and your case will proceed. The first step will be for the clerk of the court to serve the summons (see Part 3).

If the judge denies your motion, you will be given a deadline to pay the fee. If you are not incarcerated, you must pay the \$350.00 fee all at one time. After you pay the fee, **you** must serve the summons on defendants (see Part 3).

If you do not pay the fee, your case cannot proceed and will likely be dismissed.

A judge rules on the motion for appointment of counsel (if filed)

If you would like an attorney, and cannot afford to hire one, the court **may** appoint an attorney to represent you, which means that the court will find a lawyer to handle your case.

To ask the court to appoint a lawyer, you must file a motion for appointment of counsel (see Part 3, on page 10). (A copy of this motion is included in this packet and on the court's website.)

If the judge grants your motion, you will be sent an order that contains the name, address and phone number of the lawyer who will be handling your case.

If the judge denies your motion, you must either represent yourself or find an attorney to represent you.

Defendants do not file an answer

- **Entry of default** - A party is in default when it fails to respond to a summons and complaint served on the party in the time required by law. If a party is in default, the plaintiff can request that the default be entered into the court record by the clerk, which gives the plaintiff the opportunity to get a default judgment.
- **Default judgment** - Once the clerk's office enters a party's default, the court may enter default judgment in favor of the plaintiff. Default judgment is a judgment awarding the plaintiff the relief sought in the complaint because the defendant has failed to appear in court or otherwise respond to the complaint. (*See* Judgment, p.23)

Defendants file an answer

Each named defendant responds to the complaint by filing an answer or a motion. The case will proceed to the pretrial stage.

Pretrial stage

After the defendant or defendants have entered their appearance in your case, either by filing an answer or a motion, the case will move into the pretrial stage.

You will receive an order from the court setting a scheduling conference with the magistrate judge. This conference will likely be the first meeting with the judge. This conference may be held in the courthouse or by telephone conference call.

Before the conference, you and defendant(s) or their attorney(s) will meet, either in person or by telephone conference call, and discuss various matters and prepare a report for the court. This report will include a proposed schedule for the case. The attorney(s) for defendant(s) will prepare the report and submit it to the magistrate judge.

At the scheduling conference, the magistrate judge will review the report with you and, the attorney(s) for the defendant(s), and will prepare and file a Scheduling Order. The scheduling order will set deadlines for doing or filing certain things in a case. It includes deadlines for discovery (getting information from each other about the case), filing motions, a pretrial conference and possible trial setting.

D I S C O V E R Y

There are several ways that you and the defendant will exchange information about the case. The court does accept filings that have to do with discovery. See local rule 26.3. Disclosures, interrogatories, requests for production or inspection and requests for admission and responses shall be served upon other counsel or parties, if not represented by counsel, but shall not be filed with the clerk.

- **DEPOSITIONS** - This is like an interview where you, the defendants, or another person, like a witness, answer questions in person and under oath. The deposition will be recorded by tape or video recording and/or by a court reporter (See Rule 30 of the Federal Rules of Civil Procedure). Court reporters charge a per page fee to transcribe the testimony and prepare a written transcript.
- **INTERROGATORIES** - These are written questions that must be answered in writing, under oath. (See Rule 33 of the Federal Rules of Civil Procedure)
- **DOCUMENT REQUESTS** - These are written requests asking for documents and tangible things (like a defective product). The term document can include all forms of recorded information such as drawings, graphs, charts, photographs, etc. (See Rule 34 of the Federal Rules of Civil Procedure)
- **REQUESTS FOR ADMISSION** - These are written requests asking you or the defendant(s) to admit that certain facts are true or that certain documents are genuine. (See Rule 36 of the Federal Rules of Civil Procedure)

Final pretrial conference

At the scheduling conference, the court will have set a date for the final pretrial conference. The final pretrial conference will take place after discovery is completed (usually 4 months after the scheduling conference). You and the defendant(s)' lawyer will work together in preparing a proposed pretrial order to be submitted to the magistrate judge. The conference will usually be conducted by telephone with the magistrate judge.

The pretrial order will take the place of the complaint and will be the “road-map” for the trial of the case. The trial will be limited to issues and claims raised in the pretrial order.

After the pretrial conference, the magistrate judge will no longer be involved in the case unless you consented to have the magistrate judge preside over the whole case. The district judge may hold a status conference before the trial.

Dispositive motions

During the course of the case, a defendant or plaintiff may file a dispositive motion. Dispositive motions are motions that ask the court to decide claims or the case without a complete trial. They are used when there are no factual disputes between the parties and the court can decide a case or claim as a matter of law. Two common types of dispositive motions are motions to dismiss and motions for summary judgment.

Trial

If your case goes to trial, it can be tried to the court (meaning that only the judge decides the case) or to a jury. Each judge may have specific court guidelines and if so, they are available at www.ksd.uscourts.gov.

If your case is tried to the court, no jury is present and the judge will consider all evidence and make a ruling. Many times the judge will take the case under advisement. This means that the judge will issue a written order at a later date after the last day of trial. This can sometimes take several months.

If your case is tried to a jury, you will go through the process of selecting a jury which is called “voir dire.” This process allows the judge, you and counsel for the defendant to ask questions of potential jurors to see if there is a conflict for a juror to sit and fairly and impartially consider the evidence. Once this process is complete, the jurors will be sworn to try the case. In civil cases, eight (8) jurors will hear the evidence. There are no alternate jurors.

In either a court or a jury trial, as plaintiff, you get to present your evidence first. The Federal Rules of Evidence will determine whether you can present certain factual information to the court or jury. Your evidence will consist of exhibits and the testimony of witnesses who have agreed to come to court to testify on your behalf, or witnesses you have subpoenaed to testify. Please refer to the federal rules on the issuance of subpoenas for trial (Rule 45 of the Federal Rules of Civil Procedure). You will ask questions of each witness you call to testify.

When you are finished asking questions, the defense will get to ask questions of your witnesses. When they have finished asking questions, you will have another chance to follow up on questions the defense asked, but you don't get to ask new questions on topics not already discussed. The judge will control this process and, when asked, will make decisions about whether a question is proper or if an exhibit should be admitted into evidence.

Once you have presented all of your exhibits and witnesses, the defense will get a chance to present exhibits and witnesses. You will be able to ask questions of defense witnesses. When the defense is through, you will have a chance to put on any additional witnesses. These are called "rebuttal witnesses." If you have any rebuttal witnesses, you may not ask them any new questions on topics that were not already discussed. You can use rebuttal witnesses to try to show the testimony of defense witnesses was not accurate.

In a jury trial, the judge will prepare jury instructions. These are instructions on the law that the jury must apply to your case in making their decision. You and the defense counsel will be consulted on these instructions before they are read to the jury.

Once the jury has heard all the evidence and testimony and listened to the court's instructions, they will go to the jury room to talk about the case. Once they have reached a decision, they will come back into court and the decision will be read. The judge will direct the clerk to prepare a judgment and the case will be closed.

If you tried your case to the court, the judge will evaluate all evidence and testimony. The judge ordinarily will issue a written order at a later date.

Judgment

If you win, by default or at trial, the judge will have the clerk of court prepare a judgment stating the amount of damages you win from the defendant. The judgment will list the exact amount, in dollars and cents, and say which defendant owes you how much money. A deputy clerk will prepare and sign the judgment for the clerk.

If you lose at trial or by summary judgment, the judge will have the clerk of court prepare a judgment stating that the defendant owes you nothing. The defendant may also be able to recover money damages from you because they had to try the case and spend money and attorneys fees defending the case. A deputy clerk will prepare and sign the judgment for the clerk.

Either you or the defendant may file an appeal to the Tenth Circuit Court of Appeals if you disagree with the court's decision.

Notice of Appeal

You may appeal a final decision of this court to the United States Court of Appeals for the Tenth Circuit in Denver, Colorado. You should consult Federal Rule of Appellate Procedure 4 for the time limits.

The filing fee for an appeal is \$455.00 unless the court granted your Motion to Proceed Without Prepayment of Fees when your complaint was filed, in which case,

you will not need to pay the filing fee for the appeal. If you paid the filing fee for your original case but you cannot afford to pay the appeal fee, you may file the forms “Motion to Proceed Without Prepayment of Fees” and “Affidavit of Financial Status” along with your appeal (see p. 10).

To file an appeal, you must file a notice of appeal with the clerk of this court. A Notice of Appeal form is available in the Federal Rules of Appellate Procedure Forms Index.

Information about the Tenth Circuit Court of Appeals can be found at: <http://www.ck10.uscourts.gov>.



WHEN YOU ARE IN COURT:

- You must show a photo ID to enter the courthouse.
 - Do not bring your cell phone, cameras, or recording devices.
 - No weapons, drugs or other illegal items allowed.
 - Dress properly and take off your hat (be neat and clean).
 - No gum chewing; no eating; no drinking; no reading newspapers or magazines; no sleeping; no loud talking.
 - When the judge enters or leaves the courtroom, you must stand up.
 - Call the judge “Your Honor;” speak clearly.
 - Be respectful to the court security officers. They are here for your protection.
-

Resources That May Help You

Where can you get legal advice?

If you cannot pay an attorney, but need legal advice, there are a number of agencies that may be able to help you:

Kansas Bar Association
1-800-928-3111
www.ksbar.org/public/public_resources/lawyer_referral
www.ksbar.org/public/public_resources/pamphlets/

Kansas Legal Services
(785) 233-2068 or 1-800-723-6953
TDD#: (785) 233-4028
www.kansaslegalservices.org/Home/PublicWeb

Kansas City Metropolitan Bar Association
(816) 221-9472
www.kcmba.org/PublicService/lrs.htm

Kansas Human Rights Commission
(785) 296-3206 or 1-888-793-6874
TTY: (785) 296-0245
www.khrc.net/main.html

United States Equal Employment Opportunity Commission (EEOC)
1-800-669-4000
TTY: 1-800-669-6820
www.eeoc.gov/kansascity

Wichita Bar Association
(316) 263-2251, extension 103
www.wichitabar.org/lawyer_referral.htm

Children's Advocacy Resource Center:
1-877-298-2674

Elder Law Hotline:
1-888-353-5337

Foster Care Help Line:
1-877-298-2674 or 234-8345 (in Topeka)

Where can you do legal research?

Johnson County Law Library
100 North Kansas Avenue, 1st Floor
Olathe, KS 66061
Phone: (913) 715-4154
<http://lawlibrary.jocogov.org/>

Lyon County Law Library
430 Commercial, 3rd Floor
Emporia, KS 66801
Phone: (620) 341-3472
<http://www.lyoncounty.org/LawLibrary.htm>

Sedgwick County Law Library
225 N. Market Street, Suite 210
Wichita, Kansas 67202
Phone: (316) 263-2251, ext. 121 or 120
http://www.wichitabar.org/law_library.htm

University of Kansas Law Library, Green Hall
1535 West 15th Street
Lawrence, KS 66045
Phone: (785) 864-3025
http://www.law.ku.edu/library/general_services.shtml

Washburn University Law Library
1700 Southwest College Street
Topeka, KS 66621
Phone: (785) 670-1088
<http://washburnlaw.edu/library/>

For a complete list, please go to our website at www.ksd.uscourts.gov.

Glossary

- **Answer:** The formal written statement by a defendant responding to a civil complaint and setting forth the grounds for his/her defense.
- **Affidavit:** A written or printed statement made under oath.
- **Bench Trial:** A trial conducted before a judge without a jury. In such trials, the judge decides both questions of facts and questions of law. Whereas, in a jury trial questions of facts are determined by the jury and only questions of law is decided by the judge. The rules of evidence and procedural methods are the same in both.
- **Civil Cover Sheet:** A form that asks questions about your case and is required when filing a new case.
- **Complaint:** A written statement filed by the plaintiff that opens a civil case, stating what the plaintiff claims that the defendant did and requesting relief from the court.
- **Contract:** An agreement between two or more persons that creates an obligation to do or not to do a particular thing.
- **Counsel:** Legal advice; a term also used to refer to the lawyers in a case.
- **Court:** Government entity that resolves legal disputes.
- **Damages:** Money paid by defendants to successful plaintiffs in civil cases to compensate the plaintiffs for their injuries.
- **Defendant:** In a civil case, the person, company, or organization that the plaintiff is suing.
- **District Judge:** A judge in the federal court system appointed for life by the President of the United States with confirmation by the United States Senate.
- **Dismiss a case:** When a judge dismisses a case, the judge essentially throws the case out of court, so that the moving party must refile initial pleading papers.
- **Evidence:** Information presented to a judge or jury, including testimony of witnesses and documents.
- **Federal Question Jurisdiction:** Jurisdiction given to federal courts in cases involving the U.S. Constitution, acts of Congress and treaties.
- **In Forma Pauperis:** "In the manner of a pauper." Permission given by the court to a person to file a case without prepayment of the required court fees because the person cannot pay them.
- **Issue:** 1. The disputed point between parties in a lawsuit; 2. To send out officially, as in a court issuing an order.

- **Judge:** An official of the judicial branch with authority to decide lawsuits brought before courts.
- **Judgment:** The official decision of a court finally resolving the dispute between the parties to the lawsuit.
- **Jurisdiction:** 1. The legal authority of a court to hear and decide a case; 2. The geographic area over which the court has authority to decide cases.
- **Jury:** The group of persons selected to hear the evidence in a trial and render a verdict on matters of fact.
- **Lawsuit:** A legal action started by a plaintiff against a defendant based on a complaint that the defendant failed to perform a legal duty which resulted in harm to the plaintiff.
- **Magistrate Judge:** Judicial officers appointed by the judges of federal district courts pursuant to the United States Magistrates Act. Federal magistrates may be assigned some, but not all, of the duties of a United States District Court Judge.
- **Motion:** A request by a litigant to a judge for a decision on an issue relating to the case.
- **Party:** One of the litigants. At the trial level, the parties are typically referred to as the plaintiff and defendant.
- **Plaintiff:** The person who files the complaint in a civil lawsuit.
- **Pleadings:** Written statements filed with the **court** which describes a party's legal or factual assertions about the case.
- **Probate:** The legal process in which a court oversees the distribution of property left in a will.
- **Procedure:** The rules for conducting a lawsuit.
- **Pro Se:** A Latin term meaning "on one's own behalf"; in courts, it refers to persons who present their own cases without lawyers.
- **Record:** A written account of the proceedings in a case, including all pleadings, evidence, and exhibits submitted in the course of the case.
- **Sealed:** To close off (as records) from public access.
- **Statute:** A law passed by a legislature.
- **Summons:** A notice, typically served along with a complaint, informing the defendant that a lawsuit has been initiated and notifying the defendant of where and when he or she must respond.

- **Testimony:** Evidence presented orally by witnesses during trials or before grand juries.
- **Witness:** A person called upon by either side in a lawsuit to give testimony before the court or jury.