



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA

INSTRUCTIONS FOR FILING A FEDERAL CIVIL RIGHTS COMPLAINT
(*BIVENS* ACTION)

This packet is to be used by *pro se* prisoners filing a civil rights suit pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). A *Bivens* complaint may be filed by a FEDERAL prisoner, against a person or persons acting in his or her individual capacity, under color of FEDERAL authority, for violations of a prisoner's constitutional rights. (LR PL 27.1)

Do NOT use this form for anything other than a FEDERAL civil rights complaint filed under *Bivens*. Separate forms are available for other actions. The Clerk of Court can send you a copy upon request, or one should be available in the law library of your institution.

GENERAL INFORMATION

THE RIGHT COURT AND THE RIGHT DEFENDANTS

You may file your federal civil rights complaint in the United States District Court for the Northern District of West Virginia ONLY if one or more of the defendants is located in the Northern District, or if the events about which you are complaining occurred in the Northern District of West Virginia.

EXHAUSTION

You may not bring an action challenging prison conditions UNTIL YOU HAVE EXHAUSTED ALL AVAILABLE ADMINISTRATIVE REMEDIES, including any grievance system. See 42 U.S.C. § 1997e(a).

SCREENING/DISMISSAL

The Court is required to screen your complaint and to dismiss your case at any time if it determines the following:

1. You failed to exhaust all administrative remedies; or
2. Your case is frivolous, or malicious, or fails to state a claim on which relief may be granted, or seeks money from a defendant who is immune from such relief.

THREE-STRIKES RULE

If, while incarcerated or detained in any facility, you have filed three or more civil actions or appeals in federal court which were dismissed, either by a district court or an appellate court, as being frivolous, malicious, or failing to state a claim, you are prohibited from bringing another civil action *in forma pauperis*.

COMPENSATORY DAMAGES

If your case is allowed to proceed and you are awarded compensatory damages against a federal officer, before payment of any compensatory damages, the government will attempt to notify victims of the crime for which you were convicted, because you must first pay all pending restitution orders before any part of the award goes to you.

BASIC GUIDELINES

When filing forms and documents with the Court, you must follow these guidelines:

- Complete all forms as thoroughly as possible
- Use letter size paper only (8 ½ x 11)
- Sign all documents
- Send the original
- Do not use pencil. Either type or print neatly using black or blue pens only
- Do not bind or staple documents
- Write only on the fronts of documents, do not write on the backs of documents
- Number all additional pages

FORMS AND INSTRUCTIONS FOR FILING DOCUMENTS

To file a civil action, you must use the forms provided by the Court and submit either: (a) the Complaint and filing fee of \$400.00 to be paid by money order or U.S. Treasury check, OR (b) the Complaint and *in forma pauperis* forms, which include: Application and Affidavit to Proceed Without Prepayment of Fees (Attachment B), Consent to Collection of Fees from Trust Account (Attachment C), and the Prisoner Trust Account Report (Attachment D). **FAILURE TO SUBMIT ALL OF THE REQUIRED FORMS WILL RESULT IN DISMISSAL OF YOUR COMPLAINT BY THE COURT.**

Directions for filing a complaint are listed below and all necessary forms are included. Please read all of the following instructions carefully before completing **ANY** of the attached forms. **PLEASE ALSO READ THE LOCAL RULES OF PRISONER LITIGATION.**

THE COMPLAINT (Attachment A). *Instructions for Completing the Complaint Form:*

- a. Submit one original complaint to the Court. Keep one exact copy of the complaint for your records. If you do not keep a copy of your complaint and later request a copy from the Court, you will be required to pay a copying fee of \$0.50 per page.
- b. Forms from other districts must not be submitted.
- c. Do not write on the back of the complaint forms. If you need more space, use additional sheets of paper not to exceed a total of five (5) typed pages or ten (10) neatly printed pages unless accompanied by a Motion for Leave to file excess pages. (LR PL 3.4.4). Additional pages must be numbered. Your complaint and all other pleadings/documents must be in English and must be neatly printed or typed. (LR PL 3.4.1).
- d. **DEFENDANTS:** You must provide the Clerk of Court with the complete name and address of each defendant. If the first name is unknown, provide an initial. Otherwise, the Clerk cannot prepare a summons for issuance of service of process by the Marshal. See Rule 4 of the Federal Rules of Civil Procedure.
- e. **STATEMENT OF CLAIM:** You are required to give facts regarding your complaint. When your complaint involves more than one incident, each

incident should be identified as a separate count. Each incident must include appropriate supporting facts and must be clearly described, including the relevant times, dates and locations. Each incident description must also clearly identify the relevant defendant and describe what the defendant's role was in the incident. You must explain what each defendant did to violate your civil rights. All of the claims described in your complaint must arise out of the same set of facts. **CLAIMS ARISING OUT OF DIFFERENT SETS OF FACTS MUST BE PRESENTED AND FILED IN SEPARATE COMPLAINTS WHICH REQUIRE SEPARATE FILING FEES. THIS COMPLAINT SHOULD NOT CONTAIN LEGAL ARGUMENTS OR CITATIONS.**

- f. RELIEF REQUESTED: State what you want the Court to do for you. Do not make legal arguments.
- g. VERIFICATION: You should make sure that all answers are true and correct. You must declare under "Penalty of Perjury" that the information contained in your complaint is true and accurate. This is done by signing the Complaint form on p. 16.
- h. Note: under RULE 11, Federal Rules of Civil Procedure: only the signature of a *pro se* party on pleadings will be acceptable to the Court.
- i. INSTRUCTIONS FOR A COMPLAINT WITH MORE THAN ONE PLAINTIFF: If you and any other plaintiff(s) have the same claims, events, and defendants to be stated in your complaint, each plaintiff must file a separate complaint.

IN FORMA PAUPERIS FORMS (Attachments B, C, D)

To file an application to proceed without prepayment of fees, you must complete and submit the following forms: Application and Affidavit to Proceed Without Prepayment of Fees (Attachment B), Consent to Collection of Fees from Trust Account (Attachment C), and the Prisoner Trust Account Report (Attachment D) with ledger sheets from your prisoner trust account which reflect your account's activity for the past six months.

After completing the complaint and all applicable forms, proofread them to ensure compliance with all instructions. Return the completed forms and the correct number of

copies to the appropriate point of holding court in the County where the events about which you claim occurred. The West Virginia counties for each point of holding court are listed below.

Clerk, U.S. District Court
PO Box 2857
Clarksburg, WV 26302
Attn: Inmate Litigation Clerk
Pleasants, Ritchie, Calhoun, Gilmer,
Braxton, Doddridge, Harrison,
Marion, Monongalia, Taylor and
Preston Counties

Clerk, U.S. District Court
PO Box 471
Wheeling, WV 26003
Attn: Inmate Litigation Clerk
Hancock, Brooke, Ohio,
Marshall, Wetzel and
Tyler Counties

Clerk, U.S. District Court
217 W. King St., Room 102
Martinsburg, WV 25401
Attn: Inmate Litigation Clerk
Mineral, Hampshire, Morgan,
Berkeley and Jefferson Counties

Clerk, U.S. District Court
PO Box 1518
Elkins, WV 26241
Attn: Inmate Litigation Clerk
Lewis, Upshur, Webster,
Pocahontas, Randolph,
Pendleton, Barbour, Tucker,
Grant and Hardy Counties

FILING DOCUMENTS AFTER THE DEFENDANT(S) HAVE ANSWERED

Documents filed with the Clerk of Court after the defendant(s) have answered must be filed with the Court in writing in the form of a pleading, for example: motion, notice, memorandum, etc.

You must serve defense counsel or the defendant(s), if not represented by counsel, with a copy of every pleading, letter, or other document submitted for consideration by the Court. The original of all documents filed with the Clerk should have a “Certificate of Service” (Attachment E).

The Court may return any document submitted to the Clerk of Court for filing that does not bear a proper Certificate of Service. You must sign all papers (pleadings, letters, motions, or other documents) relating to your case and must state the case number. All documents and correspondence submitted to the Clerk of Court should be on letter-size paper (8 ½ x 11 inches). Please do not use legal-size (8 ½ x 14 inches) paper.

IMPORTANT ADDITIONAL INFORMATION

1. IF YOU DO NOT KEEP THE COURT ADVISED OF YOUR CURRENT ADDRESS, YOUR CASE WILL BE DISMISSED BY THE COURT.
2. It is improper to communicate directly with Judges or Magistrate Judges concerning matters that may become a subject in their Court.
3. The Clerk, Judges, Law Clerks, and Magistrate Judges are prohibited from giving legal advice to litigants.

Thank you in advance for your cooperation regarding these instructions.

AT THE DIRECTION OF THE COURT

Cheryl Dean Riley, Clerk

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

Your full name

FEDERAL CIVIL RIGHTS
COMPLAINT
(BIVENS ACTION)

v. Civil Action No.: _____
(To be assigned by the Clerk of Court)

Enter above the full name of defendant(s) in this action

I. JURISDICTION

This is a civil action brought pursuant to **Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971)**. The Court has jurisdiction over this action pursuant to Title 28 U.S.C. §§ 1331 and 2201.

II. PARTIES

In Item A below, place your full name, inmate number, place of detention, and complete mailing address in the space provided.

A. Name of Plaintiff: _____ Inmate No.: _____
Address: _____

In Item B below, place the full name of each defendant, his or her official position, place of employment, and address in the space provided.

B. Name of Defendant: _____
Position: _____
Place of Employment: _____
Address: _____

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? Yes No

If your answer is "YES," briefly explain: _____

B.1 Name of Defendant: _____
Position: _____
Place of Employment: _____
Address: _____

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? Yes No

If your answer is "YES," briefly explain: _____

B.2 Name of Defendant: _____
Position: _____
Place of Employment: _____
Address: _____

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? Yes No

If your answer is "YES," briefly explain: _____

B.3 Name of Defendant: _____
Position: _____
Place of Employment: _____
Address: _____

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? Yes No

If your answer is "YES," briefly explain: _____

B.4 Name of Defendant: _____
Position: _____
Place of Employment: _____
Address: _____

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? Yes No

If your answer is "YES," briefly explain: _____

B.5 Name of Defendant: _____
Position: _____
Place of Employment: _____
Address: _____

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? Yes No

If your answer is "YES," briefly explain: _____

III. PLACE OF PRESENT CONFINEMENT

Name of Prison/ Institution: _____

A. Is this where the events concerning your complaint took place?
 Yes No

If you answered "NO," where did the events occur?

B. Is there a prisoner grievance procedure in the institution where the events occurred? Yes No

C. Did you file a grievance concerning the facts relating to this complaint in the prisoner grievance procedure?
 Yes No

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

E. If your answer is "YES," identify the administrative grievance procedure number(s) in which the claims raised in this complaint were addressed

and state the result at level one, level two, and level three. **ATTACH GRIEVANCES AND RESPONSES:**

LEVEL 1 _____

LEVEL 2 _____

LEVEL 3 _____

IV. **PREVIOUS LAWSUITS AND ADMINISTRATIVE REMEDIES**

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action? Yes No

B. If your answer is “YES”, describe each lawsuit in the space below. If there is more than one lawsuit, describe additional lawsuits using the same format on a separate piece of paper which you should attach and label: “IV PREVIOUS LAWSUITS”

1. Parties to this previous lawsuit:

Plaintiff(s): _____

Defendant(s): _____

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

3. Case Number: _____

4. Basic Claim Made/Issues Raised: _____

5. Name of Judge(s) to whom case was assigned:

6. Disposition: _____
(For example, was the case dismissed? Appealed? Pending?)

7. Approximate date of filing lawsuit: _____

8. Approximate date of disposition. Attach Copies: _____

C. Did you seek informal or formal relief from the appropriate administrative officials regarding the acts complained of in Part B?

Yes No

D. If your answer is "YES," briefly describe how relief was sought and the result. If your answer is "NO," explain why administrative relief was not sought.

E. Did you exhaust available administrative remedies?

Yes No

F. If your answer is "YES," briefly explain the steps taken and attach proof of exhaustion. If your answer is "NO," briefly explain why administrative remedies were not exhausted.

G. If you are requesting to proceed in this action *in forma pauperis* under 28 U.S.C. § 1915, list each civil action or appeal you filed in any court of the United States while you were incarcerated or detained in any facility that was dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. Describe each civil action or appeal. If there is more than one civil action or appeal, describe the additional civil actions or appeals using the same format on a separate sheet of paper which you should attach and label "G. PREVIOUSLY DISMISSED ACTIONS OR APPEALS"

1. Parties to previous lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. Name and location of court and case number:

3. Grounds for dismissal: frivolous malicious
 failure to state a claim upon which relief may be granted

4. Approximate date of filing lawsuit: _____

5. Approximate date of disposition: _____

V. STATEMENT OF CLAIM

*State here, as **BRIEFLY** as possible, the facts of your case. Describe what each defendant did to violate your constitutional rights. **You must include allegations of specific wrongful conduct as to EACH and EVERY defendant in the complaint.** Include also the names of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, you must number and set forth each claim in a separate paragraph. **UNRELATED CLAIMS MUST BE RAISED IN SEPARATE COMPLAINTS WITH ADDITIONAL FILING FEES. NO MORE THAN FIVE (5) TYPED OR TEN (10) NEATLY PRINTED PAGES MAY BE ATTACHED TO THIS COMPLAINT. (LR PL 3.4.4)***

CLAIM 1: _____

Supporting Facts: _____

CLAIM 2: _____

Supporting Facts: _____

CLAIM 3: _____

Supporting Facts: _____

CLAIM 4: _____

Supporting Facts: _____

CLAIM 5: _____

Supporting Facts: _____

VI. INJURY

Describe **BRIEFLY and SPECIFICALLY** how you have been injured and the exact nature of your damages.

VII. RELIEF

State **BRIEFLY and EXACTLY** what you want the Court to do for you. *Make no legal arguments. Cite no cases or statutes.*

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he/she is the plaintiff in the above action, that he/she has read the above complaint and that the information contained in the complaint is true and accurate. Title 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed at _____ on _____.
(Location) (Date)

Your Signature

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

Your full name

v.

APPLICATION AND AFFIDAVIT
TO PROCEED WITHOUT
PREPAYMENT OF FEES

Civil Action No: _____
(To be assigned by the Clerk of Court)

Enter above the full name of defendant(s) in this action

I, _____ declare that I am the (check appropriate box)
 Plaintiff/petitioner/movant Appellant (on appeal to the Fourth Circuit)
 other
in this case.

In support of my request to proceed without prepayment of fees or costs under 28 U.S.C. § 1915, I declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief sought in the complaint/petition/motion/notice of appeal. **I agree that, if I am granted this application, a portion of any recovery, as directed by the Court, will be paid to the Clerk of Court for reimbursement of all unpaid fees and**

costs incurred by me in this case.

In support of this application, I answer the following questions under penalty of perjury:

1. I am currently incarcerated at _____.

IMPORTANT: HAVE THE INSTITUTION FILL OUT THE PRISONER TRUST ACCOUNT REPORT PORTION OF THIS APPLICATION AND ATTACH A CERTIFIED COPY OF YOUR PRISON TRUST ACCOUNT STATEMENT SHOWING TRANSACTIONS FOR THE PAST SIX MONTHS.

2. Are you employed at the Institution? Yes No

If the answer is "YES," state the amount of your pay: _____

3. In the past twelve (12) months have you received any money from any of the following sources?

- a. Business, profession or other self-employment Yes No
- b. Rent payments, interest, or dividends Yes No
- c. Pensions, annuities, or life insurance payments Yes No
- d. Disability or workers compensation payments Yes No
- e. Gifts or inheritances Yes No
- f. Any other sources Yes No

If you answered "YES" to any portion of question #3, describe each source of money and state the amount received and what you expect you will continue to receive. _____

4. Do you have any **cash, checking, or savings accounts**, other than your prisoner

trust account, or are there any such accounts where your name is listed in addition to other individuals as an account holder?

- Yes No

If you answered "YES" above, list the name(s) and address(es) of the institutions where your accounts are located, the type of account, and the present balance of each account. _____

5. Do you have any IRA/money market/ or CDs separate from the accounts listed above? Yes No

If you answered "YES" above, list the name(s) and address(es) of the institutions where your accounts are located, the type of account, and the present balance of each account. _____

6. Do you own an automobile(s), or does your name appear with any other individuals on the title of any automobile(s)? Yes No

If you answered "YES" above, for each such automobile please state:

Make _____ Model _____ Year _____

Is it financed? Yes No

If you answered "YES," what is the amount owed? _____

7. Do you own any real estate, stocks, bonds, securities, other financial instruments, or any other thing of value? Yes No

If you answered "YES," describe the property and state its value.

8. Do you have any assets or personal property other than clothing?
 Yes No

If you answered "YES," describe each such asset and state its value.

9. Have you placed any property, assets, or cash in the name(s) or custody of anyone else in the last two (2) years? Yes No

If you answered "YES," describe each type of property, asset and/or money, give the name(s) of the person(s) given custody, and the reason(s) for the transfer.

Petitioner's Declaration

I understand that if I am released or transferred, it is my responsibility to keep the Court informed of my whereabouts and failure to do so will result in this action being dismissed by the Court.

Executed at _____ on _____.
(Location) (Date)

Your Signature

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

Your full name

v.

Civil Action No.: _____
(To be assigned by the Clerk of Court)

Enter above the full name of defendant(s) in this action

CONSENT TO COLLECTION OF FEES FROM TRUST ACCOUNT

I, _____, Inmate # _____, hereby consent for the appropriate prison officials to withhold from my prison account and pay to the Clerk of Court for the United States District Court, at Elkins, West Virginia, an initial payment of 20 percent of the greater of the following choices:

(a) The average monthly deposits to my account for the six month period immediately preceding the filing of the complaint.

OR

(b) The average monthly balance in my account for the six month period immediately preceding the filing of the complaint.

Attachment C

I further consent for the appropriate prison officials to collect from my account, on a continuing basis each month, an amount equal to 20 percent of each month's income. Each time the amount in the account reaches \$10.00, the Trust Officer shall forward the interim payment to the Clerk's Office in Elkins, West Virginia, until such time as the filing fee is paid in full (\$350.00 if request to proceed IFP is granted; \$400.00 if request to proceed IFP is denied, or as otherwise specified by order of this Court).

By executing this document, I also authorize collection on a continuing basis of any additional fees, costs, or sanctions imposed by the United States District Court for the Northern District of West Virginia.

Date

Your Signature

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
OFFICE OF THE CLERK
P.O. Box 1518
ELKINS, WV 26241-1518**

PRISONER TRUST ACCOUNT REPORT

Name: _____ Inmate #: _____

TO: Trust Officer

FROM: Cheryl Dean Riley, Clerk, U. S. District Court,
Northern District of West Virginia

RE: Civil Action No. _____

Under the Prison Litigation Reform Act, a prisoner initiating a civil action must obtain from the Trust Officer of each institution in which the prisoner was confined during the preceding six months, a certified copy of the prisoner's trust account statement for the six months prior to the filing of his or her petition.

Please complete this form, attach the supporting ledger sheets, and return these documents to the prisoner for mailing to the Clerk of Court. **The ledger sheets MUST be attached for the Court to process this form.**

Date petition to be filed: _____

Account Balance at time of filing petition: _____

AVERAGE MONTHLY DEPOSITS during the six months prior to the filing of the civil action: _____

Attachment D

AVERAGE MONTHLY BALANCE during the six months prior to the filing of the civil action: _____

I certify that the above information accurately states the deposits and balances in the applicant's trust account for the period shown and that the attached ledger sheets are true copies of the account records maintained in the ordinary course of business.

Date

Authorized Signature

Title

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

Your full name

v.

Civil Action No.: _____

Enter above the full name of defendant(s) in this action

Certificate of Service

I, _____ (your name here), appearing *pro se*, hereby certify that I have served the foregoing _____ (title of document being sent) upon the defendant(s) by depositing true copies of the same in the United States mail, postage prepaid, upon the following counsel of record for the defendant(s) on _____ (insert date here):

(List name and address of counsel for defendant(s))

(sign your name)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA

v.

Case Number: _____

NOTICE OF CHANGE OF ADDRESS AND/OR CONTACT INFORMATION FOR PRO SE LITIGANTS

(Note: You must keep your contact information (address and phone number) current with the Court. The Court and opposing counsel will send orders, correspondence, motions, pleadings, notices, etc., to the last address filed with the Court in writing. Please file a separate Notice of Change of Address form for each case in which you are involved.)

I hereby notify the Court that my address has changed as follows:

Your name: _____

Old Address: _____

New address: _____

My current telephone number is: _____

I hereby request that copies of any future orders, correspondence, motions, pleadings, notices, etc., be provided to me at this new address.

I will notify the Clerk of Court in writing by filing a new Notice form if my address or telephone number changes.

Date: _____

Signature _____