

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON

PRISONER LITIGATION MANUAL



Revised 5/11/2012

This manual is intended only as a general guide. It does not take the place of the Federal Rules of Civil Procedure (FRCP) or this court's Local Rules. No part of this guide is intended to provide the filer with legal advice. The Clerk's Office is prohibited from interpreting Federal and Local Rules. Questions regarding legal advice should be directed to an attorney.

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Part One

Before You File Your Case

Introduction

This guide's intended purpose is to help filers who are currently incarcerated navigate sometimes complex court filing procedures. No part of this guide is intended to be used as legal advice. The Clerk's Office is prohibited by law from providing legal advice. Such questions should be directed to a qualified attorney.

The Clerk's Office **will** be able to provide assistance in understanding filing procedures, court fees, and inquiries regarding case status. You will find more information regarding this in the sections below.

This manual will focus specifically on the various prisoner-related filings accepted in this court. It is meant to act as a general guide and should in no way be construed as comprehensive.

How Do I Contact the Clerk's Office?

You may write or contact the court at the following locations.

Clerk's Office
US District Court
700 Stewart St, Suite 2310
Seattle, WA 98101
Phone: (206)370-8400

Clerk's Office
US District Court
1717 Pacific Ave
Tacoma, WA 98402
Phone: (253)882-3800

Office Hours: 9:00AM-4:30PM

The Clerk's Office **cannot accept collect calls**. If you choose to write to the court, please state clearly what you are requesting. Letters should not be addressed to a specific judge.

What Types of Cases Can I File?

In this manual, you will find guidelines for filing several different types of cases in the Western District of Washington. These include:

- **Petition for Writ of Habeas Corpus (28 USC § 2241)** *Filing Fee: \$5.00*
 - These are generally filed by inmates who are in **federal custody or immigration detention** and seek to challenge their confinement.
- **Petition for Writ of Habeas Corpus (28 USC § 2254)** *Filing Fee: \$5.00*
 - These are generally filed by inmates who are in **state custody** and seek to challenge their confinement in violation of the Constitution, law, or treaties of the United States.
- **Civil Rights Complaint (42 USC § 1983)** *Filing Fee: \$350.00 plus a \$50.00 administrative fee for a total of \$400.00*
 - A 42 U.S.C. § 1983 action may be brought by anyone who believes that his or her federal constitutional rights have been violated.
- **Motions to Vacate, Set Aside, or Correct Sentence (28 USC § 2255)** *Filing Fee: None*
 - These are motions to vacate, set aside or correct a sentence by a person in federal custody. You may file this motion **only** if you are attacking your **federal** sentence. A federal sentence is a sentence imposed by a federal court. The fact that you may be located in a federal institution has nothing to do with this motion. If you are attacking a *state* sentence, a 28 U.S.C. § 2254 Habeas Corpus Petition may be the proper procedure.

The Clerk's Office cannot make the determination for you which type of case you should file. In order to determine under which cause of action you should file, it is best to consult the Federal Rules of Civil Procedure and this court's Local Civil Rules.

Court Rules

Should you decide to file your case in the Western District of Washington, please note that the Federal Rules of Civil Procedure (FRCP) and the Local Civil Rules of this court control how civil cases must be filed and processed.

Copies of this court's Local Civil Rules can be purchased from the Clerk's Office at a cost of \$0.50 per page (total of \$48.50). Payment must be received prior to the Clerk's Office mailing the copies. The rules are also available for free on this courts website at the address below:

<http://www.wawd.uscourts.gov/local-rules-and-orders>

The Clerk's Office will not be able to interpret how a specific rule applies to your case.

Where Can I Get Forms?

Prisoner forms can be obtained from the Clerk's Office or through the court's website (www.wawd.uscourts.gov). When requesting forms, please be sure to specify the type of case you are trying to file in order to help the Clerk's Office determine the forms you will need to submit.

Please note that we do not have a form for every type of document you wish to file. In these cases, you will need to draft the document. The Local Civil Rules of this court control how documents for filing should be drafted.

Fees

Below are some of the more common fees you will encounter while your case proceeds through the Western District of Washington.

- **Habeas Corpus filing fee:** \$5.00 (both 2241 and 2254 cases)
- **Paper Copies:** \$0.50/page
- **Civil Rights Complaint:** \$350.00 plus \$50.00 administrative fee, for a total of \$400.00
- **Copy of Local Civil Rules:** \$48.50

There is no fee to file a "Motion to Vacate, Set Aside, or Correct Sentence."

If you are unable to pay the filing fee at the time of filing, you may submit a **Motion to Proceed In Forma Pauperis** (See Part 2).

What Sort of Information Can the Clerk's Office Provide?

The Clerk's Office is prohibited from providing any sort of legal advice. Questions of this nature should be directed to an attorney.

We will NOT:

- Calculate a deadline in your case.
- Advise you as to how or when a judge will make a ruling in your case.
- Advise you on whether or not you should file a case.
- Tell you what words to use in your paperwork.
- Talk to the judge for you or let you talk to the judge outside of court.
- Interpret Local or Federal Rules.
- Tell you what document you should file.

We WILL:

- Provide forms and explain case filing procedure.
- Make copies in your case (as long as the proper fee has been paid).
- 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.

Tips for Filing in the US District Court

- Use white, letter-sized paper if possible. This will result in a better quality scan on our case filing system.
- Try to avoid using pencil. Pencil does not show up well in scanned copies of your documents. Use black or blue pens for the best result.
- Clearly label your documents with your case number and case title. Also label the type of document you are filing, be it a motion, affidavit, declaration, etc.
- Be sure to read all the instructions provided to you by the court and the Clerk's Office. There may be important deadlines you need to be aware of in order for your case to move forward.

Part Two

In Forma Pauperis Application (IFP)

When you submit your case to the court for filing, you must also submit either the **complete filing fee** or a **Motion to Proceed In Forma Pauperis** (also known as an IFP application). The motion will allow us to assign a number and a judge to your case.

Note: you do not need to file a Motion to Proceed In Forma Pauperis or pay a filing fee if you are filing a Motion to Vacate, Set Aside, or Correct Sentence.

What is "In Forma Pauperis" Status?

"In Forma Pauperis" (IFP) means "in the manner of a pauper." The court grants IFP status to plaintiffs who cannot afford to pay filing fees, service fees, and witness fees for actions they file in the U.S. District Court. However, **IFP status does NOT mean free photocopies**. A case cannot be opened for you unless you pay the filing fee or submit an IFP application. IFP status applies only to your current action. You must refile for IFP approval with each new action. IFP status applies to the following types of actions:

- **42 U.S.C. § 1983 civil rights actions**
- **28 U.S.C. § 2254 habeas corpus actions**
- **28 U.S.C. § 2241 habeas corpus actions**

How to Apply for IFP Status

To apply for IFP status, complete the required forms and send them to the court with your complaint or petition. **Please note there are separate IFP forms for Civil Rights Complaints and Habeas actions.**

- **If you are filing a Civil Rights Complaint (42 USC 1983)**
 - You must complete the "Declaration and Application to Proceed In Forma Pauperis" form for prisoners bringing a civil action. This form may be printed from our website or requested from the Clerk's Office. It contains the information the

court needs to decide whether you qualify for IFP status. Along with questions regarding your current financial situation, you will also complete the following sections of the form:

- **Consent for Payment of Costs:** You must also sign the Consent for Payment of Costs page. This shows your consent to a reduction in any award you may receive in the case by the amount of costs. The IFP application is not complete without this consent.
- **Acknowledgment and Authorization:** By signing the Acknowledgment and Authorization page, you authorize the court to check your financial status so that a ruling may be made on your IFP application. The IFP application is not complete without this page signed.
- The form must be typewritten or *clearly* printed. Be sure to answer all questions. Review the form to make sure it is complete. Finally, sign and date the form. If an IFP application does not comply with the rules and is not corrected or a filing fee is not paid within 30 days, the entire case may be dismissed.
- Attach a certified copy of your prison trust account statement showing transactions for the past six months. Failure to provide a full six month statement showing a current balance may result in a deficiency notice from the Clerk’s Office requesting the full statement.
- **You are required to use the forms provided by the Clerk’s Office. Failure to do so will result in a deficiency notice.**
- **If you are filing a Petition for Writ of Habeas Corpus (either 2241 or 2254)**
 - You must complete the “Declaration and Application to Proceed In Forma Pauperis” form for prisoners bringing a habeas action. This form may be printed from our website or requested from the Clerk’s Office. It contains the information the court needs to decide whether you qualify for IFP status.
 - The form must be typewritten or *clearly* printed. Be sure to answer all questions. Review the form to make sure it is complete. Finally, sign and date the form. If an IFP application does not comply with the rules and is not corrected or a filing fee is not paid within 30 days, the entire case may be dismissed.
 - Attach a certified copy of your prison trust account statement showing transactions for the past six months. Failure to provide a full six month statement showing a current balance may result in a deficiency notice from the Clerk’s Office requesting the full statement.
 - **You are required to use the forms provided by the Clerk’s Office. Failure to do so will result in a deficiency notice.**

What is a Deficiency Notice?

The Clerk's Office will review your IFP application to ensure that all forms have been submitted and all questions answered. If we find information lacking from your application, the Clerk's Office will issue a "deficiency notice" giving you thirty (30) days to correct the mistake. **This is not a determination of your application. A judge will still review and rule on your application after the thirty day deadline.**

Below are several instances that will result in a deficiency notice:

- You did not provide a full, six month prison trust account statement.
- You did not use the correct, court-produced forms.
- You did not provide an IFP application or filing fee.
- Forms were not signed.
- Questions were not answered on the IFP application.

IFP Checklist

Below is a summary of what the court requires to process and rule on your IFP application.

- **Declaration and Application to Proceed In Forma Pauperis in a Civil Case** (for 1983 Civil Rights Cases) OR,
- **Declaration and Application to Proceed In Forma Pauperis in a Habeas Action** (2254 and 2241 Petitions for Writ of Habeas Corpus).
- A certified copy of your prison trust account showing transactions for the past six months.

Failure to comply with any of the above may cause the court to deny your application.

Part Three

42 U.S.C. § 1983 Civil Rights Complaint

A 42 U.S.C. § 1983 action may be brought by anyone who believes that his or her **federal constitutional rights** have been violated. These are cases that require the full, \$350 filing fee (plus the \$50 administrative fee, for a total of \$400) or an IFP application (submitted at the time of filing).

What to Consider Before Filing

You should consider the following points before filing your case in federal court.

- Whether you have a civil rights claim.
- Whether you have met the exhaustion requirements.
- Whether the person(s) you claim violated your civil rights has/have immunity.
- Whether your claim will be timely, or is filed before the statute of limitations expired (Remember, the Clerk's Office cannot advise you on matters pertaining to calculating these deadlines).

How do I file a Civil Rights Complaint?

Ensuring you have all the necessary parts to file a Civil Rights Complaint completed will allow your case to be considered sooner. Follow each point below to the best of your ability.

- **Civil Rights Complaint Form**
 - Prisoners filing a civil rights complaint must use the form entitled, "Prisoner Civil Rights Complaint, 42 U.S.C. § 1983." It must be typewritten or legibly handwritten. **Do not write on the back of any page or in the margins.** If additional space is needed, you may attach additional pages of standard letter size paper and indicate the sections that are being continued. You must use this form.
 - Be sure to answer all of the questions on the complaint form. The name and address for each defendant must be provided on the front page of the complaint or on a

separate sheet of paper. If you do not provide this information, the court will be unable to serve the defendants. Finally, write your original signature and date the last page.

- When the form is complete, make the required number of copies. **The Clerk's Office will not make copies for you without payment.**
- **Filing Fee**
 - A \$350 filing fee, plus a \$50 administrative fee, is required for all civil rights actions. The fee must accompany the complaint. Checks or money orders must be made payable to the U.S. District Court. If you cannot afford the filing fee, you may ask to proceed *in forma pauperis* (IFP) (See Part Two). You are still responsible for your own copying costs. **The Clerk's Office will not make copies for you without payment.** To file an application for IFP status, refer to that section in this manual.
- **Name and Address for Each Defendant**
 - In order to serve the complaint on the defendants, you must supply enough information so that the Court can personally serve them. You may do this by submitting the defendants' names and addresses on the front of the complaint or on a separate sheet of paper. Be sure to include the person's name, title (if any) and physical address (i.e., a P.O. Box does *not* help). Complete and accurate information is very important for service.

Where Do I File My Complaint?

The Western District of Washington has a court in Seattle and another court in Tacoma. The place to file a civil rights action is determined by where the defendants reside or where the action occurred. The local rule states:

"All civil cases in which all defendants reside, or in which the claim arose, in the counties of Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Kitsap, Lewis, Mason, Pacific, Pierce, Skamania, Thurston and Wahkiakum, shall be filed at Tacoma." Local Rule 5.

Actions in which the defendants reside or in which the claim arose in Island, King, San Juan, Skagit, Snohomish and Whatcom Counties must be filed in Seattle.

The addresses for both courts are:

Clerk's Office
US District Court
700 Stewart St, Suite 2310
Seattle, WA 98101

Clerk's Office
US District Court
1717 Pacific Ave
Tacoma, WA 98402

1983 Civil Rights Complaint Checklist

The court must have:

- Complaint on this court's form
- Names and addresses of defendants to be served
- \$350.00 filing fee (plus the \$50 administrative fee, for a total of \$400), or an IFP application.

Failure to comply with any of the above may result in the dismissal of your case.

Part Four

Writ of Habeas Corpus (2254 and 2241)

There are two types of writs of habeas corpus. When filing your case with our court, be sure to file the correct form that applies to your situation.

- **28 U.S.C. § 2254**
 - A writ of habeas corpus brought under 28 U.S.C. § 2254 challenges confinement of a prisoner in **state** custody in violation of the Constitution, law, or treaties of the United States.

- **28 U.S.C. § 2241**
 - A 28 U.S.C. § 2241 writ challenges confinement of a prisoner in **federal** custody. These are often filed by those in immigration detention or those in the custody of the federal Bureau of Prisons.

How Do I File a Writ of Habeas Corpus?

The following instructions apply to both 2254 and 2241 Petitions for Writ of Habeas Corpus. As stated above, be sure you submit the correct form for filing. Below, you will find the requirements necessary for the Clerk's Office to accept your petition.

- **Writ of Habeas Corpus Form**
 - Local Rule CR 100 requires everyone filing a writ of habeas corpus to use the forms supplied by the court. To file a 28 U.S.C. § 2254 writ, use the form entitled, "Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody." To file a 28 U.S.C. § 2241 writ, use the form entitled, "Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241."
 - The forms are designed to help you file your petition. The petition must be typewritten or *legibly* handwritten. **Do not write on the back of any forms or in the margins.** If additional space is needed, you may attach additional pages of standard letter size paper. Any additional briefs or memoranda must be filed separately. **Do not** attach additional briefs or motions to your petition.

- Answer *all* questions on the form. Be sure to include the criminal case number, judge, date and location of the court where you were convicted and sentenced, if applicable. Once the form is complete, sign and date it.
- **Filing Fee**
 - A \$5.00 filing fee is required. The filing fee must accompany the petition. If you meet the requirements for proceeding *In Forma Pauperis* (IFP), the fee will be waived. To file an IFP application, refer to that section in this manual.

Where Do I File My Complaint?

The Western District of Washington has a court in Seattle and another court in Tacoma. The place to file a habeas action is determined by which **state** court heard your case (for 2254 petitions) or **federal** (for 2241 petitions) court heard your case.

Habeas Checklist

The court must have:

- Petition submitted on this court's form.
- \$5.00 Filing fee or IFP application.

Failure to comply with any of the above may result in the dismissal of your writ.

Part Five

28 USC § Motion to Vacate, Set Aside, or Correct Sentence

These are motions to vacate, set aside or correct a sentence by a person in federal custody. You may file this motion **only** if you are attacking your **federal** sentence. A federal sentence is a sentence imposed by a federal court. The fact that you may be located in a federal institution has nothing to do with this motion. If you are attacking a *state* sentence, a 28 U.S.C. § 2254 Habeas Corpus Petition may be the proper procedure.

Where Can a Motion Be Brought?

All 2255 motions must be brought in the court that imposed your sentence. Therefore, you may bring a 2255 motion in the Western District of Washington if you were sentenced by this court. You **must** provide the case number of the original criminal matter. Your case will be reassigned to the judge who sentenced you.

How To File a Motion

28 U.S.C. § 2255 Motion Form

- Local Rule CR 100 requires everyone filing a 2255 motion to use the form entitled, "Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody." The form is designed to help you prepare your motion. It must be typewritten or *legibly* handwritten. **Do not write on the back of any forms or in the margins.** If additional space is needed, you may attach additional pages of standard letter size paper. Any additional briefs or memoranda must be filed separately. **DO NOT** attach additional documents to your motion.
- Answer *all* questions on the form. Be sure to include the criminal case number, judge and the date of your conviction and sentencing.

Filing Fee

- Application for IFP status is not necessary.

28 U.S.C. § 2255 Motion Checklist

The court must have:

- Motion submitted on this court's form
- **Failure to comply with the above may result in the dismissal of your motion.**

Part Six

After Your Case is Filed

Once your case is filed with the court, it is important to continue to follow the instructions of the court. Failure to do so may result in the dismissal of your case. You will need to follow the Federal Rules of Civil Procedure and this Court's Local Rules, along with any orders from your judge.

Filed Documents

All documents filed with the court must be on 8½ x 11 inch paper. An original signature, date and your current address must be included. The document must also have the case number printed clearly on the front page.

File all documents with the Clerk's Office. You should keep a copy of any filed document for your records.

Change of Address

If you change your address anytime after you have filed your case, you must notify the court in writing. Failure to do so may result in the dismissal of your case.

Discovery

Do not submit discovery material (i.e., interrogatories, requests for production) to the court. The material is not for the court's use.