

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MISSOURI

(Revised November 2015)



Whittaker Courthouse
Kansas City, Missouri



Bond Court House
Jefferson City, Missouri



U.S. Courthouse
Springfield, Missouri

FILING YOUR LAWSUIT IN THE WESTERN DISTRICT OF MISSOURI:

A Guide to “Pro Se” or Self-Representation (Non-Prisoners)

Disclaimer: This Guide is provided for informational purposes only and does not constitute legal advice. If you are in a prison or a jail, or your suit is related to your incarceration, this Guide should *not* be used. Prisoners should refer to the Prisoner Pro Se Handbook available on the court’s website.

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Introduction

This Guide is provided for individuals who are representing themselves in civil actions in the Western District of Missouri without the assistance of an attorney. Plaintiffs and defendants in court cases are generally referred to as “parties” or “litigants.” Parties who choose to represent themselves are referred to as “pro se parties” or “pro se litigants” or, more specifically, “pro se plaintiffs” or “pro se defendants.” Pro se is a Latin phrase meaning “for yourself.”

This Guide will not answer all of your questions about how to represent yourself effectively, but it will provide basic steps required to properly file an action, or lawsuit, with this court. It also provides general guidance on the process of litigating the action once you have filed it with the Clerk of Court. You are responsible for following the procedures that govern the court process. Although the staff of the Clerk’s Office can provide you with general information concerning court rules and procedures, they are forbidden by law from providing legal advice, interpreting and applying court rules, or otherwise participating, directly or indirectly, in any action. In addition, the judges of this court cannot give you legal advice since they will be ruling on motions submitted by the parties and may ultimately try the case.

Self-representation carries certain responsibilities. Pro se litigants should educate themselves regarding proceedings in federal court, and a good place to start is <http://www.uscourts.gov>. This website contains a section entitled “Understanding the Federal Courts” and can provide an overview of how the federal courts work and the general civil process. You may also request a booklet version of this information by contacting the Clerk’s Office.

Pro se litigants should familiarize themselves with the rules and procedures of the court, including the Federal Rules of Civil Procedure and the Western District of Missouri Local Civil Rules. The Federal Rules of Civil Procedure may be found in public libraries, law libraries, courthouses or on the internet at <http://www.law.cornell.edu/rules/frcp>. The Western District of Missouri Local Rules may be found on the court’s website, <http://www.mow.uscourts.gov>. Keep in mind that the law is constantly changing, and the information contained in this document may not be complete or up-to-date. The laws and rules to which this Guide refers may have changed since the Guide’s publication, and new laws or rules may apply to your case. You are responsible for the accuracy of any information on which you rely.

The statements and materials presented in this Guide are for educational purposes only and do not constitute legal advice. This Guide is *not* intended to be a substitute for the advice and assistance of a licensed attorney. With that caveat, the Clerk’s Office does hope that this Guide provides useful information about the process of filing or defending a case in federal court, and you may contact us at 816-512-5000 or visit <http://www.mow.uscourts.gov> if you have additional questions.

Before Filing

Before you file your case, consider ways to resolve your dispute/problem without going to 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, it is generally called a “case” or a “lawsuit.” Before you decide to file a case in federal court, you may want to consider other ways to resolve your dispute. 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.

Contact an attorney. An attorney can help you make sure that federal court is the right place to solve your problem. An attorney can also 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 “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 to follow the rules. An attorney can help explain these rules.

If you cannot afford to hire your own attorney. You might consider calling Legal Aid or local or state bar associations in Missouri. They may be able to provide you with

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information regarding which lawyers practice the type of law that relates to your case. Or, they may be able to tell you where you can find information that may be helpful in your case. Contact information for these organizations is listed in Part 5 of this Guide.

Do your own research. Public libraries can provide research guidance and internet access for research purposes.

Types of Cases Filed in Federal Court

As discussed above, federal courts may only hear certain types of cases. Check again to make sure your case falls in one of the categories below:

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, labor laws, environmental matters, agriculture, federal tax matters, and many other areas.

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 Missouri and you file a lawsuit against a defendant who lives in Iowa, then there would be “diversity.”

Diversity cases must involve a dispute about or alleged damages of at least \$75,000.00. If your case is worth less than that amount, you may need to file it in state court. If the other party, or the court, questions whether your case is worth more than \$75,000.00 or whether “diversity” exists, you may need to provide evidence supporting these allegations before you can proceed.

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 rather than state court. A federal court can only hear or “exercise its jurisdiction” over certain types of cases. Federal court jurisdiction is generally limited to two main types of cases:

- **“Diversity” Cases** – disputes between states or between residents of different states where the amount in question exceeds \$75,000; or

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- **“Federal Question” Cases** – disputes that arise under the U.S. Constitution or the laws of the United States or U.S. treaties, such as disputes involving federal taxes, interstate commerce, patents and trademarks or civil rights.

State courts have more general jurisdiction and can hear cases that do not fall within the limited jurisdiction of the federal courts. For example, state courts handle most cases involving family law, real property disputes, wills and trusts, personal injury and Workers’ compensation claims.

Deciding whether you can file a case in federal court can be very complicated, so Pro se litigants should analyze their claims carefully before filing. Here are some questions that may help:

- 1) **Is your case about divorce, child custody, adoption, a will, a name change, or a decision of a state agency? Is your case about city/state traffic or parking ticket, a landlord-tenant dispute or a zoning or other local ordinance?**

If so, your case may belong in state court rather than federal court. State courts hear cases about matters that are regulated by state law. Each Missouri County has courts that decide matters brought under state law, municipal law or the state constitution.

- 2) **Is your case about the denial of Social Security or other federal benefits, or a decision of a federal agency? Is your case about federal taxes or do you believe you have been denied something guaranteed to you by the U.S. Constitution or another federal law?**

If so, you are probably in the right court.

Determining whether the federal court can hear your case is an essential first step in the process, and you should research this point carefully before moving forward.

Are you in the right division of the Western District of Missouri?

When your case is filed in the Western District of Missouri, it will be assigned to the appropriate divisional office (Kansas City, Jefferson City or Springfield) based on the parties involved and the county information listed below.

- (A) **Divisions within the Western District of Missouri.** The United States District Court for the Western District of Missouri is comprised of the following divisions, and each division is comprised of the counties listed:

1. **To Be Heard in Federal Court in Kansas City, Missouri:**

- (a) **Western Division:** Clay, Ray, Carroll, Saline, Lafayette, Jackson, Cass, Johnson, Henry, Bates, and St. Clair counties.

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 the legal fees of the party that you sued.**
- **Privacy Policy.** In compliance with the E-Government Act of 2002, and to address the privacy concerns created by internet access to court documents, litigants should not include sensitive information in any document filed with the court unless such inclusion is necessary and relevant to the case.

If sensitive information must be included, the following personal data identifiers **must** be modified or partially redacted (“blacked out”) from the pleading whether it is filed traditionally or electronically:

1. Names of minor children to the initials (e.g. P.J.)
2. Financial account numbers to the last four digits (e.g. Account ending in 1234)
3. Social Security numbers to the last four digits (e.g. XXX-XX-1234)
4. Dates of birth to the year only (e.g. DOB 1970)

You must modify or redact this sensitive information before filing your documents. The Clerk’s Office is not responsible for reviewing the pleadings and will not redact information for you. If you have questions about how or what to redact, however, you may contact the Clerk’s Office for assistance.

Filing Your Case

In Part 1, you learned that when two or more persons have a disagreement and want a judge to hear the facts, they may file 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 this Guide will tell you what must be provided to the Clerk’s Office so that your case can be filed.

Rules You Must Follow

Before you file your case, it may be helpful to review some of the rules that you must follow. You can locate copies of the relevant rules by using the resources listed in Part 5 of this Guide. Here is a brief explanation of some of those rules.

- **Federal Rules of Civil Procedure.** These rules govern the filing of a civil lawsuit in federal court, and you should be familiar with them. For example, Rule 4 of the Federal Rules of Civil Procedure describes the procedures for service of a 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 are suing. You may direct questions about 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 begins, 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. You must follow all the rules.
- **United States District Court for the Western District of Missouri Local Rules (General and Civil).** This is a collection of “local rules” that are written for the practice of law in the Western District of Missouri. They are in addition to the Federal Rules (see above). Most federal district courts have local rules, and these local rules differ from court to court, so *please remember to refer only to the Western District of Missouri’s local rules*. The local rules for this court are on the court’s website at <http://www.mow.uscourts.gov/district>. Both the Local Rules and the Federal Rules must be followed.

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 multiple parties to the lawsuit. In order to file your case, you will need to complete the three forms listed below. The forms are available on the court's website at www.mow.uscourts.gov/district or in the Clerk's Office.

- **Complaint**
- **Civil Cover Sheet**
- **Summons**

Complaint

The **Complaint** is often the case initiating document. It tells the judge who you are suing, what your case is about and the type of relief you are seeking. If you have decided to file your lawsuit in the U.S. District Court for the Western District of Missouri, you will need to file a **Complaint** in the Clerk's Office. You may write your own complaint or use the form available in the Clerk's Office or on the court's website. The **Complaint** form in Appendix B and other specialized complaint forms, such as for Social Security disability cases and Title VII discrimination cases, are available on the court's website at <http://www.mow.uscourts.gov/district>. Be sure that all of your documents are typed or legibly printed on 8 ½ x 11 plain white paper. Rule 10 of the Federal Rules of Civil Procedure requires that the **Complaint** contain a caption which includes the name of the court, **all** of the parties' names, and the case number (if known) (**See Appendix B for the proper format**).



HINT: Make sure your **Complaint** is clear, understandable and legibly written. Be certain the spellings of all defendants' names are correct.

This **Complaint** is where you 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, by attaching a key document for example, **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 outlining the basic facts of your claim.

NOTE: If your **Complaint** does not include sufficient facts to allow the court to draw the

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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 five sections. You will need to complete a civil cover sheet to file with the **Complaint (See Appendix C)**.

Below are instructions for completing the **Civil Cover Sheet**. This can be done with an online form available on the court's website or with a hard copy form available in the Clerk's Office.

Section I – Plaintiff, Defendant, and Attorney

Plaintiffs and Defendants

- **Names** – Enter the name of the plaintiff(s) and the defendant(s). If either party is a government agency, use the full name or standard abbreviation. If either party is an official within a government agency, identify first the agency and then the official, including both name and title.
- **County of Residence** - Enter the counties where the parties are located.
- **Citizenship and State of Residence** – For diversity of citizenship cases, where parties are citizens of different states, indicate the citizenship and state of residence of each plaintiff and defendant.

Attorneys

- Enter your name, address, telephone number, fax number, and e-mail address. Since you are acting as your own attorney, please put your own information and enter “Pro Se.”

Section II – Case Information

County Where Claim for Relief Arose – Select the county in which the action upon which the lawsuit is based occurred.

In Forma Pauperis – Indicate whether you are requesting permission to proceed with this case without having to pay filing fees due to poverty. The criteria and detailed procedure for seeking a fee waiver are located on page 14.

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Constitutional Challenge to Statute – Indicate whether the case challenges the constitutionality of a state or federal statute.

Basis of Jurisdiction - Indicate the basis of jurisdiction as set forth in Rule 8(a) of the Federal Rules of Civil Procedure. If there is more than one basis of jurisdiction, precedence is given in the following order:

1. **United States Plaintiff** - This one will **not** apply to you. This is only for government use.
2. **United States Defendant** - Jurisdiction arises because the plaintiffs are suing the United States, its officers or its agencies. Mark this if you are filing a case against a federal agency or the U.S. government.
3. **Federal Question** - Mark this if your case is about or filed pursuant to a federal law. This includes suits filed under 28 U.S.C. 1331 and suits where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress, or a treaty of the United States.
4. **Diversity of Citizenship** – Suits filed under 28 U.S.C. 1332, where the parties are citizens of different states. For diversity of citizenship cases, you must provide information on the citizenship and state of residence of the parties. **(See “Citizenship and State of Residence” in the Plaintiff, Defendant, and Attorney section of the form.)**

Origin - Please select from the following origin codes:

1. **Original Proceedings** – Cases which originate in the United States District Courts. This is usually the option selected when Pro Se litigants file a new lawsuit.
2. **Removed From State Court** – Cases initiated in state court and subsequently removed to the United States District Court under 28 U.S.C. 1441. Choose a county from the drop down list and enter the associated state case number. (Note: This option is not used by plaintiffs. You would only select this code if you are a defendant in state court and are seeking to remove the case to federal court.
3. **Remanded from Appellate Court** – Cases returned to the United States District Court for further actions. Use the date of remand as the filing date. This option is generally not used by Pro Se litigants.
4. **Reinstated or Reopened** – Cases reinstated or reopened in the United States District Courts. Use the reopening date as the filing date. This option is generally not used by Pro Se litigants.
5. **Transferred from Another District** – Cases sent from one United States District Court to another United States District Court under 28 U.S.C. 1404(a). This option is generally not used by Pro Se litigants.
6. **Multidistrict Litigation** – Civil cases of a similar type filed throughout the United States which are reviewed by the Judicial Panel on Multidistrict Litigation under 28 U.S.C. 1407, and

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then transferred back to the United States District Court for resolution. This option is generally not used by Pro se litigants.

Class Action – For original proceedings and cases removed from state court, indicate the class action status of the case.

Demand – Enter the dollar amount demanded or other demand information such as a temporary restraining order or preliminary injunction.

Cause of Action – A brief statement telling us what your case is about. For example, “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. Do not cite jurisdictional statutes unless the basis of jurisdiction is diversity of citizenship.

Related Federal Cases – If there are related cases pending in this district, provide the docket numbers and judges’ names for such cases.

Section III – Nature of Suit

Check the appropriate box which best describes the type of case you are filing. Please check one box only.

Section IV – Signature

Sign and date the form in the space labeled “Signature of Attorney of Record.” If using the online form, click on “Generate Civil Cover Sheet (JS-44)” button. Print, sign, and date the form for submission to the court with the other initiating case documents.

Application (Motion) to Proceed without Prepayment of Fees and Affidavit of Financial Status

A filing fee is typically required when initiating a new case. The amount of this fee is found on the court’s fee schedule which is available in the Clerk’s Office or on the court’s website at the following link: http://www.mow.uscourts.gov/district/rules/dc_fees.pdf. There are no other fees involved in the act of filing the case.

If you cannot pay the filing 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 form entitled **Application to Proceed without Prepayment of Fees** (this form may also be referred to as a **Motion to Proceed In Forma Pauperis**) and **Affidavit of Financial Status** and turn these forms in when you are filing your complaint (**See Appendix F and Appendix G**). The court will then decide if you have to pay the filing fee. These are the official forms to request that the filing fee in your case be waived. They are available in the Clerk’s office or on the court’s website.

An **Affidavit of Financial Status** must be filed with your **Application to Proceed without Prepayment of Fees**. Also, if you are filing a Motion for Appointment of Counsel, an **Affidavit of Financial Status** must be filed. The **Affidavit of Financial Status** is a sworn description of your assets. It is very important to complete the form as accurately and completely as possible.

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Incomplete affidavits may cause your motion(s) to be denied. If applicable, you must also provide information about your spouse. Note that your lack of 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, a vehicle, rental property, or other sources of income, the court may find that you can obtain the funds to pay the filing fee.

Application (Motion) for Appointment of Counsel

If you would like an attorney and cannot afford to hire one, you may ask the court to 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 and should understand that these requests are not often granted. To ask the court to appoint a lawyer, please fill out the **Application for Appointment of Counsel** form and the Affidavit of Financial Status (**See Appendix H**). The judge bases the decision to appoint an attorney on several factors:

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 may use the Lawyer Referral Service located on the Missouri Bar's website for assistance in finding counsel. The link is <http://www.mobar.org/forthepublic/findalawyer.htm>. (Refer to Part 5 for other resource information.) In the motion, you will need to list all the attorneys you have contacted.
3. **Can you prepare and present your case without the help of counsel?** The court will look at your **Complaint** to see if you are able to explain your case clearly.
4. **How complex is your case?** The court will consider whether your case involves unusually complicated facts or legal issues.

How to File Your Case

Contact one of the Clerk's Offices – this is a great option if you are filing a case for the first time and have questions. Clerk's Office representatives can also make sure that your forms are filled out completely. There are courthouses located in Kansas City, Jefferson City and Springfield. Clerk's office hours are 9:00 a.m. – 4:30 p.m. The Clerk's Office addresses are as follows:

Charles Evans Whittaker Courthouse
400 East 9th Street
Kansas City, Missouri 64106
816-512-5000

Christopher S. Bond Court House
80 Lafayette Street
Jefferson City, Missouri 65101
573-636-4015

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United States Courthouse
222 North John Q. Hammons Parkway
Springfield, Missouri 65806
417-865-3869

- **Mail your complaint and associated documents to one of the addresses above.**
- **The court does not accept fax filings.**
- **The court does not accept e-mail filings.**



NOTE: If you do not personally come to the Clerk's Office, you may 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 individual clerk who is helping you will review your documents to insure that all necessary information has been provided. If everything is in order, and you are paying the filing fee, the clerk will:

- Scan and file your document. If you provide a copy, the clerk will receive stamp your copy;
- Assign a case number and judge (a district judge or a magistrate judge);
- Provide a receipt to you if the filing fee was paid; and
- Sign your summons forms.

If you are asking that the filing fee be waived, no summons will be issued at case opening.

If the judge orders the filing fee waived, the clerk may be directed to prepare and issue the summons, and the U.S. Marshal's may be directed to serve the summons on your behalf. You must provide complete addresses of your defendants to the Clerk's Office.

If your application is **denied**, you will receive an order in the mail to this effect, and may include 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, refer to Part 3.

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Paying Court Fees and Payment Options

Below are your options for paying court fees. If you have any questions about fee payment or acceptable forms of payment, please contact the Clerk's Office.

- Check or money order made payable to "Clerk, U.S. District Court;"
- Cash is accepted in the Kansas City office only. Since the Clerk's Office is not permitted to make change, the exact amount is required; or
- Credit card.

Electronic Filing System (CM/ECF)

Once you have filed your initial documents and your case is on file with the court, you may file documents in your case electronically, using the Case Management/Electronic Case Filing System (CM/ECF). This system allows you to file your documents without coming to the Clerk's Office, and it allows you to see everything that is filed by you, the court and the other parties in your case. You may learn more about using CM/ECF to file documents on the court's website. Public computer terminals are available for use at any of the district's courthouses so that you may review electronically filed documents.

As indicated previously, you must file your **Complaint** and **Civil Cover Sheet** in-person or by regular mail. Once those initial documents have been filed, you may apply to file subsequent materials electronically by submitting the "Case Management/Electronic Case Files Attorney/Participant Registration Form" available on the court's website.

What the Clerk's Office Can and Cannot Do

The Clerk's Office cannot give legal advice or act as your attorney. Clerk's office representatives can assist you with procedural questions and provide paper forms. Printable forms and answers to frequently asked questions are also available online at <http://www.mow.uscourts.gov/district>.

Listed below are examples of how the Clerk's Office can and cannot assist you:

THE CLERK'S OFFICE 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.

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- 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.

THE CLERK'S OFFICE 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.
- Provide legal advice.



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.
 - 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 ready for payment. Contact the Clerk's Office in your area regarding acceptable forms of payment at that location.
-

Service of Summons and Complaint

What does service mean?

Each defendant or person you are suing or claiming is responsible for the problem at issue must be notified of the lawsuit through a process that is specified by law. The responsibility for notifying each defendant rests with the plaintiff and is referred to as **service of process**. Each defendant must receive a copy of the summons form (may have an embossed or electronic seal) along with a copy of your Complaint. Except in very limited circumstances, the case will not go forward against a defendant who has not been served.

How is service done?

The summons is a document which demands the defendant respond to the Complaint. In the space that asks for the name and address of the defendant being served, enter the name of the party you are suing and his/her address. Pursuant to Rule 4 of the Federal Rules of Civil Procedure, a summons that is addressed to multiple defendants must be issued for each defendant separately. The Clerk's Office cannot issue a summons without a complete name and address of the defendant.

The summons must (a) name the court and the parties; (b) be directed to the defendant; (c) state the name and address of the plaintiff's attorney or – if unrepresented – of the plaintiff; (d) state the time within which the defendant must answer the complaint; (e) notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint; (f) be signed by the clerk; and (g) bear the court's seal (**See Appendix D**).

Once you've completed the summons, the Clerk's Office will officially **issue the summons** by signing the form and affixing it with the official seal of the court (embossed or electronic). Both the summons and complaint must then be served on the defendant(s).

Remember that each defendant gets his or her own summons to be served and that one additional summons per defendant will need to be returned to the Clerk's Office for filing after service has been made on each defendant. This means **at least two copies of each summons will need to be**

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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.



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

What types of service are available?

Personal Service:

Rule 4(e) of the Federal Rules of Civil Procedure provides that service may be effected by either following state law for serving a summons in an action brought in the state of Missouri or the state where service is made, or by (a) delivering a copy of the summons and Complaint to the individual personally; (b) leaving a copy of each with someone of suitable age and discretion at the individual's dwelling or usual place of abode, or (c) delivering a copy of each to an agent authorized by appointment or law to receive service. The following methods may be used:

- **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 years of age. 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 also can serve the defendant using certain state law methods or under the provisions of Rule 4 of the Federal Rules of Civil Procedure.**

The person who serves the summons must record on the back of the summons form his or her name, the name of the person who was served, and the date and time of service. This section of the summons form is referred to as the return of service, and if not completed, service of process is not complete. The original summons form with the **return of service completed** must be returned to the court and a copy of the form left with the defendant(s) for service to be complete.

Service by the U.S. Marshal:

If you were not required to pay the filing fee because the judge approved your Application to Proceed In Forma Pauperis, the judge may direct the U.S. Marshal to serve the summons and Complaint at the government's expense. You will still be required to prepare the summons form and the top of a Marshal 285 form. Once you've completed those forms for each defendant, you will submit the service packet to the Clerk's Office for service.

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Requesting Waiver of Service by Mail:

Federal Rule of Civil Procedure 4(d) permits a plaintiff to request that a defendant waive service. In requesting a waiver of service, the plaintiff must send a notice and request to the individual defendant by regular mail, accompanied by a copy of the complaint, two copies of a waiver form, and a prepaid means for returning the form.

By waiving service, the defendant(s) agrees to respond to your Complaint without being personally served with a copy. The Clerk's Office can provide you the waiver forms you can mail to the defendant(s) along with the Complaint. Alternatively, you can obtain the two necessary forms from the court's website. The **Notice of Lawsuit and Request for Waiver of Service of Summons** form and the **Waiver of Service** form are available at <http://www.mow.uscourts.gov/district>.

If the defendant(s) completes and returns the waiver to you, you must file the **originals** with the court. This will inform the court that the defendant(s) has waived service of the Complaint and that you have fulfilled your requirement to effect service of the Complaint within 90 days of the date the Complaint was filed. This spares you the burden of personal service as described above. A defendant who timely returns a waiver does not need to answer the complaint until 60 days after the request was sent.

If a defendant fails to return the waiver form within the time specified in the **Notice of Lawsuit and Request for Waiver of Service of Summons** form, you must personally serve that defendant by following the instructions above.

When must service be done?

If you are suing under federal law, the time limits from the date you filed the Complaint to serve the defendant(s) in your case are found in Rule 4(m) of the Federal Rule of Civil Procedures. **This rule may change which will adjust the time limits.** You are advised to check, in order to make sure you are in compliance. If your case has a claim under state law, you might have fewer 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.



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 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's Office will only issue summons upon parties named as defendants in your Complaint.



HINT: If the defendant is a company that does business in Missouri, the easiest way to serve the summons and complaint is on the registered agent. The registered agent is a person or company with a Missouri address who is authorized to accept service of process. You can find out if a company has a registered agent by contacting the Missouri Secretary of State at (573) 751-4153 and at <http://www.sos.mo.gov>.

Serving a Summons on the United States

Special rules apply if you are suing and trying to serve a summons on the United States or its agencies or employees (**See Federal Rule of Civil Procedure 4(i)**). If you are serving the United States Government itself, you will need to:

- Serve a copy of the summons and Complaint to the United States Attorney for the district where the action is brought—or to an assistant United States Attorney or clerical employee whom the United States Attorney has designated to accept service—or send a copy of each by registered or certified mail to the civil-process clerk at the United States Attorney’s office; **and**
- Send a copy of the summons and Complaint by registered or certified mail to the Attorney General of the United States at Washington, D.C; **and**
- If the action challenges an order of a non-party agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

If you are suing and attempting to serve an agency of the United States or an officer or employee of the United States in their individual capacity, different rules apply (**See Federal Rule of Civil Procedure 4(i)(2) and (3)**).

See Appendix A, entitled “If you are suing the United States Government,” for additional information on this topic.

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 a copy 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 to a U.S. Government defendant, you will receive the green certified mail receipt from the post office after the summons has been delivered. You will then complete the back side of your copy of the summons and attach the green receipt to the front and file it with the Clerk’s Office.



What happens after the case is filed?

Case Number and Judge Assignment

The Clerk's Office assigns the case a number that must appear on all documents. The case will randomly be assigned to either a district judge or a magistrate judge. You cannot choose your judge.

If a magistrate judge is randomly assigned to your case, all parties must consent to the exercise of jurisdiction by a magistrate judge in accordance with the provisions of 28 U.S.C. 636(c) and Federal Rule of Civil Procedure 73.



HINT: In cases where at least one of the parties has not consented to the magistrate judge handling the case, the case will be re-assigned to a district judge.

A judge rules on the Application or Motion to Proceed without Prepayment of Fees (if filed)

Part 2 of this Guide described the process by which you could ask the court to waive your filing fee by submitting an Application to Proceed Without Prepayment of Fees (**See Appendix F**) and an

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Affidavit of Financial Status (**See Appendix G**). If the judge grants your request, you will not have to pay the filing fee, and your case will proceed. In many cases, the Clerk's Office will issue the summons and the U.S. Marshals Service will then serve the summons.

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 filing fee all at one time. After you pay the fee, **you** must serve the summons and Complaint on the defendant(s).

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

A judge rules on the Application or Motion for Appointment of Counsel (if filed)

Part 2 also described how Pro se litigants who cannot afford to hire an attorney may request that the court appoint an attorney to represent them. This is **very rare** in civil cases. However, you are allowed to file a motion for appointment of counsel with the court (**See Appendix H**).

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 at your own cost.

You may get a notice about participating in the Mediation and Assessment Program or "MAP"

The Mediation and Assessment Program ("MAP") is the Western District of Missouri's alternative dispute resolution program for civil lawsuits. The purpose of MAP is to allow parties to discuss their claims and potential ways of resolving their dispute prior to lengthy and expensive litigation. You are not required to settle your suit. The program merely provides a forum for you to discuss your case with the other side with the assistance of a neutral mediator.

When a civil case is filed in this court, and it is the type of case covered by the MAP, a Notice of Inclusion in the Mediation and Assessment Program is filed in the case and sent to you. For purposes of mediation, the notice will state whether your case has been assigned to a United States Magistrate Judge, a United States Bankruptcy Judge, the Director of the MAP, or to an Outside Mediator.

It is important to read the notice and to carefully review the MAP General Order included with the notice. Normally, the mediation of your case will be scheduled no later than 75 calendar days after the "Conference of the Parties" under Federal Rule of Civil Procedure 26(f). If you have been assigned to an Outside Mediator, you will need to work with the opposing lawyer to select the mediator and schedule your mediation. If you are assigned to a Judge or to the Director for mediation, you will receive notice of the mediation date from the Judge's office or the Director's office.

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You are required to be present in person for the mediation. It is expected that both sides will have their case reasonably evaluated before mediation so there may be productive discussion about the possible settlement of the case.

At the mediation, you should be prepared to discuss the material facts, any unusual law concerning your case, and the reasonable litigation costs for a trial and appeal of your case. The mediator is a neutral party and cannot “make your case” for you, but he or she can and will explain the mediation process. Again, it is essential that you review the General Order for MAP and that you come to the mediation session prepared to discuss the pros and cons of your case as well as your objectives in filing the lawsuit. Questions about the MAP may be directed to the telephone number or email address listed on the Notice of Inclusion.

Inclusion in MAP does not relieve you of any of the obligations or deadlines that you have in this lawsuit. If you have been served, you must file a timely response in order to avoid the risk of a default judgment.

What if the Defendant does not respond to your suit?

If you properly file your case and serve the summons and Complaint on the defendant(s), he or she must respond by filing an “Answer” to the Complaint or a certain type of motion. If the defendant(s) fails to respond, he or she may be in default.

- **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 file a written request that the default be entered into the court record by the Clerk pursuant to Federal Rule of Civil Procedure 55(a). This gives the plaintiff the opportunity to obtain a default judgment.
- **Default judgment** - Once the Clerk’s Office enters a party’s default per Rule 55(a), 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, page 28**).

What if the Defendant responds?

The defendant(s) may respond to your Complaint by filing an Answer or a Motion. If this occurs, the case will proceed to the pretrial stage where the parties conduct discovery to learn about the other side’s case. The parties may also file motions asking the court to take action on all or part of the case.

Case Progression

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. If a defendant files a motion to dismiss your Complaint, the court will ordinarily decide that motion before it permits the case to

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proceed. If the defendant files an Answer, the court will issue a Notice of Pretrial Procedures or an Order Setting Deadlines for filing Proposed Scheduling Order. These documents will direct the parties to undertake certain initial activities pursuant to Federal Rules of Civil Procedure 16 and 26, including meeting to confer pursuant to the Rule 26(f). The notice will also set a date for the parties to file proposed scheduling orders. After the court reviews the parties' proposed scheduling order dates, the court will issue the Scheduling Order for the case.

The Scheduling Order represents the overall timeline for your lawsuit. It will set deadlines for doing or filing certain things in the case. It will include deadlines for discovery (getting information from each other about the case) and filing motions and will also set the date for the pretrial conference and for the trial itself. The court uses the Scheduling Order to make sure that your case keeps moving forward. It is essential that you follow the order exactly and meet all the deadlines or you could harm your case.

Discovery

There are several ways that you and the defendant(s) will exchange information about the case, including sharing documents and asking questions in writing or in person. The process of exchanging information is generally called "discovery." While pleadings (like the Complaint and Answer) and motions are filed with the court, discovery requests are not filed with the court, except when authorized by a court order (**See Local Rule 37.1**).

Instead, discovery requests, such as interrogatories, requests for production of documents, requests for admissions or notices to take depositions (and responses to them) are served on the opposing parties' attorney. So if you serve or present the opposing attorney with a discovery request by mail, the document itself is not filed with the court. However, you should file a short "certificate of service" with the court describing what documents were served when and upon whom. A sample "certificate of service" is available on the court's website.

You should consult the Federal Rules to review the permitted methods of conducting discovery, but the most common tools are described below.

- **DEPOSITIONS** - A deposition is like an interview where a party to the lawsuit or a witness answers questions in person and under oath. The deposition will be recorded by a court reporter and often by tape or video recording (**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. The parties, and not the court, are responsible for hiring and scheduling court reporters and paying all associated fees.
- **INTERROGATORIES** - These are written questions that must be answered in writing, under oath within the prescribed time frame. (**See Rule 33 of the Federal Rules of Civil Procedure**).
- **DOCUMENT REQUESTS** - These are written requests that the parties send to each other 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, email etc. (**See Rule 34 of the Federal Rules of Civil Procedure**).

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- **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**).

If you submit requests to opposing parties, they must respond within the time limits set forth in the Federal Rules. Likewise, if you receive requests, you must respond within those same time limits. Consult the Rules carefully to make sure you do not miss any discovery deadlines.

Dispositive Motions

During the course of the case, a defendant or plaintiff may file dispositive motions. Dispositive motions ask the court to decide certain claims or the entire case without a trial. These motions may be used when a party believes that the court can decide the case or a claim as a matter of law. Two common types of dispositive motions are motions to dismiss and motions for summary judgment.

If a party files such a motion, the other parties will have an opportunity to respond in writing before the court rules on the motion. Again, the Federal Rules set time limits for you to respond, and it is essential to meet those deadlines if you want the court to consider your position on a motion or issue.

Final Pretrial Conference

In the Scheduling Order, the court will set a date and time for the final pretrial conference. This will take place after discovery is complete. The final pretrial conference will either be in person in the courtroom or by telephone conference. At the pretrial conference, the judge will discuss the issues and details of the trial with the parties, as well as the court's trial procedures. The date, time and estimated length of trial will also be finalized.

Trial

If your case goes to trial, it can be tried by the court (meaning that only the judge decides the case) or by a jury. Each judge may have specific guidelines about how he or she conducts a trial, so you should check the court's website under the name of your judge to review any trial instructions. If your case is tried by the court, it is called a bench trial. 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.

If your case is tried by 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 potential conflict which would prevent the juror from being fair and impartial in considering the evidence. Once this process is complete, the jury panel will be selected and sworn to try the case.

In either a bench 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.

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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 (**See Rule 45 of the Federal Rules of Civil Procedure**).

You will ask questions of each witness you call to testify which is called direct examination. After direct examination is concluded, the defense may ask questions to cross-examine your witnesses. At the conclusion of cross examination, you will have another chance to follow up on questions the defense asked, but you are not allowed to ask questions on new topics not already discussed. The judge will control this process and, if objections are made, will make decisions about whether a question is proper or whether 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 additional rebuttal witnesses. If you have any rebuttal witnesses, you may not ask them any questions on new 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, the jury will go to the jury room to talk about the case (deliberate). Once the jury has reached a decision, the jurors will come back into court and the decision will be read. This is called a verdict. The judge will direct the clerk to prepare a judgment and the case will be closed.

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 won from the defendant. The judgment will list the exact amount, in dollars and cents, and say which defendant owes you how much money.

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. Depending on the nature of your suit, the defendant may seek to recover certain expenses or costs from you as well. In general, each side is responsible for its own attorney's fees regardless of who prevails. However, there are certain types of lawsuits where the winning party is allowed to ask the court to make the other party pay its attorney's fees. After the judgment is rendered, you may receive post-trial motions on these types of matters.

Either you or the defendant may file an appeal to the Eighth Circuit Court of Appeals if you disagree with the court's decision and have proper reasons to appeal under the Federal Rules.

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Notice of Appeal

You may appeal a final decision of this court to the United States Court of Appeals for the Eighth Circuit in St. Louis, Missouri. You should consult Federal Rule of Appellate Procedure 4 for the time limits and procedures regarding filing an appeal.

To file an appeal, you must file a notice of appeal with the Clerk of the district court where your case was tried. A **Notice of Appeal** form (**See Appendix I**) is available in the Federal Rules of Appellate Procedure Forms Index and is available on the court's Web site at <http://www.mow.uscourts.gov/forms>.

A filing fee will apply to your Notice of Appeal. The appellate filing fee is found on the court's fee schedule which is available in the Clerk's office or at the following link http://www.mow.uscourts.gov/district/rules/dc_fees.pdf. If you cannot afford to pay the appeal fee, you may file a Motion to Proceed without Prepayment of Fees and Affidavit of Financial Status along with your appeal (**See Appendix F and Appendix G**).

Additional information about the Eighth Circuit Court of Appeals can be found online at: <http://www.ca8.uscourts.gov>.

WHEN YOU GO TO 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" and speak clearly if addressing the court.
- Be respectful to the court security officers. They are here for your protection.
- Remember that Pro Se parties are treated like attorneys and must comply with the court's Local Rules regarding courtroom decorum.

Resources That May Help You

Where can you get legal advice?

If you are looking for an attorney or you cannot pay an attorney but need legal advice, there are a number of organizations that may be able to assist you:

Missouri Bar Association
1-573-635-4128
<http://www.mobar.org/forthepublic/findalawyer.htm>
<http://www.mobar.org/publicinformation/>

Kansas City Metropolitan Bar Association
Two Pershing Square
2300 Main Street, Suite 100
Kansas City, MO 64108`
(816) 474-4322
<http://www.kcmba.org>

Springfield Metropolitan Bar Association
1615 South Ingram Mill Road, Bldg. D
Springfield, MO 65804
(417) 831-2783
<http://springfieldbar.com>

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Mid-Missouri Legal Services
205 East Forest Avenue
Columbia, MO 65201
(573) 442-0116 or (800) 568-4931
<http://www.lsmo.org/content/mid-missouri-legal-services>

Legal Aid of Western Missouri
1125 Grand Boulevard, #1900
Kansas City, MO 64106
(816) 474-6750
<http://lawmo.org/>

Legal Services of Southern Missouri
809 N. Campbell Avenue
Springfield, MO 65802
(417) 881-0533 or (800) 444-4863
<http://www.lsosm.org/>

Missouri Commission on Human Rights
(573) 751-3325 or 1-877-781-4236
<http://labor.mo.gov/mohumanrights/>

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

Missouri Seniors' Legal Helpline:
<http://www.moaging.com/LegalHelp/WebPages/Home.aspx>

Volunteer Attorney Project – Jackson County
(816) 474-6750

Southwest Missouri Volunteer Attorney Project – Jasper County
(417) 782-1650

Northwest Missouri Volunteer Attorney Project – Buchanan County
(816) 364-2325

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Western Central Missouri Volunteer Attorney Project – Johnson County
(660) 747-7101

Missouri Protection and Advocacy Services
925 South Country Club Drive
Jefferson City, MO 65109
(573) 893-3333
<http://www.moadvocacy.org/>

Where can you do legal research?

State Libraries:

Missouri Supreme Court Law Library
207 W. High Street, 2nd Floor
Jefferson City, MO 65101
(573) 751-2636
<http://www.courts.mo.gov/page.jsp?id=218>

Missouri State Library
Office of the Secretary of State
600 W. Main Street
Jefferson City, MO 65102
<http://www.sos.mo.gov/library/>

Missouri Court of Appeals Law Library
Western District
1300 Oak Street
Kansas City, MO 64106
(816) 889-3639

Jackson County Law Library
Traders on Grand
1125 Grand Blvd Ste. 1050
Kansas City, MO 64106
(816) 221-2221
<http://jccl.org/nonattorney/>

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Public Libraries:

Missouri River Regional Library (serves Cole and Osage Counties)

214 Adams Street

Jefferson City, MO 65102

(573) 634-2464

<http://www.mrrl.org>

Daniel Boone Regional Library System (serves Boone and Callaway Counties)

100 W. Broadway

Columbia, MO 65205

(573) 443-3161

Main: <http://www.dbrl.org>

Online Legal Resources page: <http://www.dbrl.org/reference/subject-guides/laws-legal-information>

Kansas City Public Library – Central Branch

14 W. 10th Street

Kansas City, MO 64105

(816) 701-3400

Main Site: <http://www.kclibrary.org>

Legal Resources Page: <http://www.kclibrary.org/government-legal>

Mid-Continent Public Library (30 branches -serves Clay, Platte & Suburbs of Jackson County)

(816) 836-5200

Main Site: <http://www.mcpl.lib.mo.us/>

Legal Databases Page: <http://www.mymcpl.org/online-resources/research-databases/Legal>

Springfield – Greene County Library

The Library Center

4653 S. Campbell Avenue

Springfield, MO 65801

(417) 882-0714

Main Site: <http://thelibrary.springfield.missouri.org/index.cfm>

Legal Resources Page: <http://thelibrary.org/research/law.cfm?lid=54>

Joplin Public Library

300 S. Main Street

Joplin, MO 64801

(417) 623-7953

Main Site: <http://www.joplinpubliclibrary.org/>

Legal Resources Page: http://www.joplinpubliclibrary.org/reference/ref_legalgov.php

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St. Joseph Public Library
927 Felix Street
St. Joseph, MO 64501
(816) 232-8151
<http://sjpl.lib.mo.us/>

Rolling Hills Consolidated Library (serves Andrew and Buchanan counties)
1904 N. Belt Highway
St. Joseph, MO 64506
(816) 232-5479
<http://www.rollinghills.lib.mo.us/>

University/Law Libraries

University of Missouri Law Library
203 Hulston Hall
Columbia, MO 65211
(573) 884-6362
<http://www.law.missouri.edu/library/>

Leon E. Bloch Law Library
University of Missouri – Kansas City School of Law
500 E. 52nd Street
Kansas City, MO 64110
(816) 235-1650
<http://www.law.umkc.edu/Library/>

Missouri State University Libraries
Meyer Library
850 S. John Q. Hammons Parkway
Springfield, MO 65897
(417) 836-4535

Miscellaneous References:

Library of Congress
www.loc.gov

Federal Rules of Procedure
<http://www.law.cornell.edu/rules/frcp>

Western District of Missouri – Local Rules
http://www.mow.uscourts.gov/district/rules/dc_rules.pdf

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Electronic Access to Information

CM/ECF - What is it?

Case Management/Electronic Case Filing (CM/ECF) is a comprehensive case management system that allows courts to maintain electronic case files and allows electronic filing over the internet. This system allows parties to file their materials online, to receive notices from the court online and to access pleadings, motions and orders in their own case online.

In order to file documents on CM/ECF, you must register for a separate account which is issued to you by the Clerk's Office.

CM/ECF is a tool to use to file and view documents related to your own case. As described below, PACER allows users to view documents in federal cases nationwide and focuses more on electronic research and information gathering.

PACER - What is it?

Public Access to Court Electronic Records (PACER) is an electronic public access service that allows users to obtain case and docket information from federal appellate, district and bankruptcy courts, and the PACER Case Locator via the Internet. PACER is provided by the federal judiciary in keeping with the commitment to providing public access to court information via a centralized service.

The difference between PACER and CM/ECF is that PACER is a search tool only. You can use PACER to look at docket sheets and electronically filed documents in cases in any federal court, but it is not used to file documents electronically in your own case. In addition, there are fees associated with using or printing documents from PACER.

Who can access PACER?

PACER is available to anyone who registers for an account. The nearly one million PACER users include attorneys, pro se filers, government agencies, trustees, data collectors, researchers, educational and financial institutions, commercial enterprises, the media, and the general public.

How do I access PACER?

You will need to register for a PACER account. Sign up for one using PACER's convenient on-line registration process. At <http://www.pacer.gov/register.html>.

Each court maintains its case information locally. If you know the district or circuit in which the case is filed, you may search that court directly. If you do not know where the case is filed, you may

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use the PACER Case Locator. The link for these options is <http://www.pacer.gov/findcase.html>. Free PACER training is also available at <http://www.pacer.gov/announcements/general/train.html>.

When can I access PACER?

PACER is available 24 hours a day, including weekends. Updates are processed in real-time and are available immediately.

What information is available on PACER?

PACER includes case and docket information for all district, bankruptcy, and appellate courts. PACER currently hosts 500 million case file documents. These are available immediately after they have been electronically filed. No other court system provides as rapid access to as much case information.

Is all case data available to the public?

No, a policy to protect private information while ensuring public access to electronic case information requires that personal identifiers be removed or redacted before the records become public. These identifiers include the first five digits of a Social Security number, financial account numbers, the name of a minor, a person's date of birth, and home addresses in a criminal case. In addition, certain types of documents may be unavailable to the general public.

How much does PACER cost?

Access to court documents costs \$0.10 per page. The cost to access a single document is capped at \$3.00, the equivalent of 30 pages. The cap does not apply to name searches, reports that are not case-specific and transcripts of federal court proceedings.

By Judicial Conference policy, if your usage does not exceed \$15 in a quarter, fees for that quarter are waived, effectively making the service free for most users.

How do I get more information about PACER?

If you have questions or need assistance, contact our centralized registration, billing, and technical support center.

PACER website: <http://pacer.gov>

Service Center email: pacer@psc.uscourts.gov

Phone: (800) 676-6856 or (210) 301-6440

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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. In a jury trial questions of facts are determined by the jury and only questions of law are decided by the judge. The rules of evidence and procedural methods are the same in both.
- **Brief:** A written statement submitted in a trial or appellate proceeding that explains one side's legal and factual arguments. Sometimes a brief is called a "Memorandum in Support."
- **Civil Cover Sheet:** A form that asks questions about your case and is required when filing a new case.
- **Clerk of Court:** The court officer who oversees administrative functions, especially managing the flow of cases through the court.
- **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 do a particular thing.
- **Counsel:** Giving legal advice or a term also used to refer to the lawyers in a case.
- **Court:** Government entity that resolves legal disputes.
- **Damages:** Money that a defendant pays a plaintiff in a civil case if the plaintiff has won. Damages may be compensatory (for loss or injury) or punitive (to punish and deter future misconduct).
- **Default judgment:** A judgment awarding a plaintiff the relief sought in the complaint because the defendant has failed to appear in court or otherwise respond to the complaint.
- **Defendant:** In a civil case, the person, company, or organization that the plaintiff is suing.
- **Discovery:** Procedures used to obtain disclosure of information or evidence before trial.
- **District Judge:** A judge in the federal court system appointed by the President of the United States with confirmation by the United States Senate.
- **Dismiss a case:** When a judge dismisses a case, he/she essentially throws the case out of court, indicating that the case will no longer be allowed to proceed.
- **Docket:** A log containing the complete history of each case in the form of brief chronological entries summarizing the court proceedings.
- **Exhibits:** Papers or documents produced during a trial, hearing or deposition, or attached to pleadings or motions, as proof of facts.
- **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, U.S. Treaties or U.S. statutes.
- **File:** To place a paper in the official custody of the clerk of court to enter into the files or records of the case.
- **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.
- **Interrogatories:** A form of discovery consisting of written questions to be answered in writing and under oath.
- **Issue:** 1. A disputed point between parties in a lawsuit; 2. To send out officially, as in a court issuing an order.

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- **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 a 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.
- **Litigation:** A case, controversy, or lawsuit. Participants (plaintiffs and defendants) in lawsuits are called litigants.
- **Magistrate Judge:** Judicial officers appointed by the judges of federal district courts pursuant to the United States Magistrates Act. Federal magistrate judges may be assigned some, but not all, of the duties of United States District Court Judges.
- **Moot:** Not subject to a court ruling because the controversy has not actually arisen, or has ended.
- **Motion:** A request by a litigant to a judge for a decision on an issue relating to the case.
- **Ordinance:** A rule established by authority; a permanent rule of action. In a more limited sense, the term is used to designate the enactments of the legislative body of a municipal corporation, e.g. a city ordinance.
- **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 describe a party's legal or factual assertions about the case.
- **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.
- **Sanction:** A penalty or other type of enforcement used to bring about compliance with the law or with rules and regulations.
- **Sealed:** Closed off (as records) from public access.
- **Service of Process:** The delivery of writs or summonses to the appropriate party.
- **Settlement:** Parties to a lawsuit resolve their dispute without having a trial. Settlements often involve the payment of compensation by one party in at least partial satisfaction of the other party's claims, but they do not usually include an admission of fault.
- **Statute:** A law passed by a legislature.
- **Subpoena:** A writ commanding a person designated in it to attend court under a penalty for failure.
- **Subpoena duces tecum:** A writ commanding a person to produce in court or at a deposition certain designated documents or other evidence.
- **Summary Judgment:** A decision made on the basis of statements and evidence presented for the record without a trial. Summary judgment is granted when – on the undisputed facts in the record – one party is entitled to judgment as a matter of law.
- **Summons:** A notice, typically served along with a complaint, informing the defendant that a lawsuit has been initiated and notifying the defendant 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.

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APPENDIX A SUING UNITED STATES GOVERNMENT HANDOUT

If you are suing the United States Government

Rule 4(i) of the Federal Rules of Civil Procedure outlines the process for obtaining service on the United States. If you are suing the United States itself, you must deliver or send a copy of the summons and Complaint to three different parties as outlined in the rule and Part 3 of this Guide. If you are suing an agency of the United States, you must serve the agency and the United States.

Listed below are some addresses that may be helpful in obtaining service:

- The United States Attorney in the Western District of Missouri

U.S. Attorney (Attn: Civil Process Clerk)
400 E. 9th Street, 5th Floor
Kansas City, MO 64106

- The United States Attorney General in Washington, D.C.

Office of the Attorney General
Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Some frequently named United States government agencies include:

Office of the Regional Chief Counsel, Region VII
Social Security Administration
601 East 12th Street, Room 535
Kansas City, MO 64106-2898

U.S. Postmaster General
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260-0010

Secretary, Department of Treasury
1500 Pennsylvania Ave., NW
Washington, D.C. 20260-0010

If you need an address not shown here, you can get help from the Federal Information Center, (800) 333-4636. Help is also available online at <http://www.usa.gov>.

***UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI***

_____ ***DIVISION***

CIVIL COMPLAINT

_____)
_____)
_____)
Enter above the full name of Plaintiff or Plaintiffs in this action)
vs.) CASE NO. _____)
_____)
_____)
_____)
Enter above the full name of Defendant or Defendants in this action)

I. Parties to this Civil Action

(In item A below, place your name in the first blank and place your present address in the second blank. Do the same for additional plaintiffs, if any, on back side of this sheet.)

A. Name of Plaintiff _____
Address _____

(In item B below, place the full name of the defendant in the first blank, his official position in the second adding word blank, and his place of employment in the third blank. Use item C for the names, positions, and places of employment of any additional defendants.)

B. Defendant, _____ is employed as _____ at _____

C. Additional Defendants _____

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II. Statement of Claim

(State here as briefly as possible the facts of your claim. Describe how each named defendant is involved. Include 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, number and set forth each claim in a separate paragraph. [Use as much space as you need to state the facts. Attach extra sheets if necessary.] **Unrelated** separate claims should be raised in separate civil actions.)

III. Relief

State briefly exactly what you want the Court to do for you.

Make no legal arguments. Cite no cases or statutes.

IV. Do you claim the wrongs alleged in your complaint are continuing to occur at the present time?

Yes No

V. Do you claim actual or punitive monetary damages for the acts alleged in your complaint?

Yes No

If you answered yes, state the amounts claimed and the **reasons** you claim you are entitled to recover money damages.

VI. Counsel

Do you have an attorney to represent you in this civil action? Yes No

A. Have you made any effort to contact a private attorney to determine if he or she would represent you in this civil action?

Yes No

B. If you answered yes, state the names and addresses of the attorneys contacted, and give the results of those efforts.

C. If you answered no, state your reasons why no such efforts have been made.

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VII. Administrative Procedures

A. Have the claims which you make in this civil action been presented through any type of Administrative Procedure within any government agency?

Yes No

B. If you answered yes, state the date your claims were so presented, how they were presented, and the result of that procedure.

C. If you answered no, give the reasons, if any, why the claims made in this action have not been presented through Administrative Procedures.

Signed this _____ day of _____, 20

Signature of Plaintiff or Plaintiffs

VERIFICATION

State of _____)

County of _____)

_____, being first duly sworn under oath, presents that he is the plaintiff in this action; that he knows the contents of the complaint; and that the information contained therein is true to the best of his knowledge and belief.

Signature of Plaintiff or Plaintiffs
All parties must verify

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20

Notary Public

My Commission Expires

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APPENDIX C CIVIL COVER SHEET

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MISSOURI CIVIL COVER SHEET

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Western District of Missouri.

The completed cover sheet must be saved as a pdf document and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s):

First Listed Plaintiff:
Address

Defendant(s):

First Listed Defendant:
Address

County of Residence:

County of Residence:

County Where Claim For Relief Arose:

Plaintiff's Attorney(s):

Defendant's Attorney(s):

IFP REQUESTED

Basis of Jurisdiction:

Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff:

Defendant:

Origin: 1. Original Proceeding

Nature of Suit:

Cause of Action:

Requested in Complaint

Class Action:

Monetary Demand (in Thousands):

Jury Demand:

Related Cases:

Signature:

Date:

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**APPENDIX D
SUMMONS**

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
Western District of Missouri

Plaintiff)
)
v.) Civil Action No. _____
)

Defendant)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) – or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) – you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You must also file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

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AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____, a person of suitable age and discretion who resides there, on *(date)* _____, and mailed a copy to the individual's last known address;

or

I served the summons on *(name of individual)* _____,

who is designated by law to accept service of process on behalf of *(name of organization)*

_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)* _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____. I declare under penalty of perjury that this information is true.

Date: _____.

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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APPENDIX E
WAIVER OF SERVICE OF SUMMMONS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

Plaintiff

v. Case No. _____

Defendant

TO: _____
Name of Plaintiff's Attorney or Unrepresented Plaintiff

I acknowledge receipt of your request that I waive service of a summons in the above action. in the United States District Court for the Western District of Missouri. I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after _____, or within 90 days after that date if the request was sent outside the United States.
Date request was sent

Date

Signature

Printed/Typed Name

Street Address

City/State/Zip

Party Represented

Telephone Number Bar #

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(See Reverse)

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such services unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court if the answer or motion is not served within this time a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

***UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI***

Plaintiff)
)
vs.) Case No. _____)
)

Defendant)
)
)
)

**APPLICATION FOR LEAVE TO FILE ACTION
WITHOUT PAYMENT OF FEES
WITH AFFIDAVIT OF FINANCIAL STATUS IN SUPPORT**

I state that I am unable to pay the fees to file an action against the defendant(s) in this case and that the actions of the defendant(s) have harmed me.

Attached is my Affidavit of Financial Status in support of my application to the court for leave to file a civil action without payment of costs.

Plaintiff

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

_____))
Plaintiff))
vs.) Case No.)
_____))
Defendant))

AFFIDAVIT OF FINANCIAL STATUS

I, _____, declare that I am the plaintiff in this case, that because of my poverty I am unable to pay the costs of these proceedings, and that I believe I am entitled to relief.

I further swear that the responses which I have made to the questions below and the information I have given relating to my ability to pay the costs of commencing and prosecuting this action are true.

I. MARITAL STATUS AND PERSONAL DATA

- A. Single:___ Married:___ Separated:___ Divorced:___
- B. Name of Spouse:_____
- C. Age of plaintiff, petitioner or complainant:_____
- D. Age of spouse:_____
- E. Address of plaintiff, petitioner or complainant:_____
- Telephone:_____
- F. Address of spouse:_____
- Telephone:_____
- G. State name or names of dependents who live with you, their age, address, relationship, and how much of their monthly support you provide:

II. EMPLOYMENT

- A. Name of employer:_____
- Address of employer:_____
- Employer's telephone:_____ Length of employment:_____
- Job title or description:_____
- Net Income: Monthly \$_____ Weekly \$_____
- Gross Income: Monthly \$_____ Weekly \$_____
- Does employer provide health insurance: Yes___ No___
- If employer provides health insurance, describe coverage:_____
- _____
- _____

- B. Previous employment (Answer only if presently unemployed).

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Name of employer: _____
 Address of employer: _____
 Employer's telephone: _____ Length of employment: _____
 Job title or description: _____
 Net Income: Monthly \$ _____ Weekly \$ _____
 Gross Income: Monthly \$ _____ Weekly \$ _____

C. Employment of spouse:
 Name of employer: _____
 Address of employer: _____
 Employer's telephone: _____ Length of employment: _____
 Job title or description: _____
 Net Income: Monthly \$ _____ Weekly \$ _____
 Gross Income: Monthly \$ _____ Weekly \$ _____

III. FINANCIAL STATUS

(Answer questions on behalf of both the plaintiff, petitioner or complainant and spouse).

A. Owner of real property? Yes ___ No ___
 If yes - Description: _____
 Address: _____
 In whose name? _____
 Estimated value: _____
 Total amount owed: _____
 Owed to: _____
 Annual income from property: _____

B. Owner of automobile: Yes ___ No ___
 If yes - Number of automobiles owned: _____
 Make _____ Model _____ Year _____
 Make _____ Model _____ Year _____
 In whose name registered? _____
 Present value: _____
 Amount owed on the automobile(s): _____
 Owed to: _____
 Monthly payment(s): _____

C. Cash on hand: (Include checking and savings accounts)
 \$ _____
 List names and addresses of banks and associations:
 Please do not state account numbers: _____

D. Have you received within the past 12 months any money from any of the following sources:

	Yes	No
Rent payments, interest or dividends?	___	___
Pensions, trust funds, annuities or life ?	___	___
Insurance payments?	___	___
Gifts or inheritances?	___	___
Welfare payments?	___	___
ADC or other governmental child support?	___	___

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Unemployment benefits? _____

Social Security benefits? _____

Other sources? _____

E. If the answer to any item in D above was "Yes", describe each source of money and state the amount received from each during the past 12 months:

IV. OBLIGATIONS

A. Monthly rental on house or apartment: _____

B. Monthly mortgage payments on house: _____

Amount of equity in house: _____

C. Monthly mortgage payments on other properties: \$ _____

Amount of equity in other properties: \$ _____

D. Household expenses:

Monthly grocery expense: _____

Monthly utilities: _____

Gas: _____

Electric: _____

Water: _____

Other: (Specify) _____

E. Other debts and miscellaneous monthly expenses:

TO WHOM OWED AND FOR WHAT REASON INCURRED?	MONTHLY PAYMENTS	BALANCE DUE

V. OTHER INFORMATION PERTINENT TO FINANCIAL STATUS

(Include information regarding stocks, bonds, savings bonds, either individually or jointly owned).

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APPENDIX H
APPLICATION/MOTION FOR APPOINTMENT OF COUNSEL

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

_____))
Plaintiff))
vs.)) Case No.))
_____))
Defendant))

APPLICATION FOR APPOINTMENT OF COUNSEL

I am without means to employ counsel.

I have contacted the following attorneys (at least three)

- (1) _____
- (2) _____
- (3) _____

but have been unable to obtain their services.

My “Affidavit of Financial Status” is attached, or was previously filed.

Plaintiff

