

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA**



**GUIDE FOR
SELF-REPRESENTED
LITIGANTS**

Revised March 2022

<u>INTRODUCTION.....</u>	<u>3</u>
<u>SECTION I <u>IMPORTANT ISSUES YOU SHOULD CONSIDER</u></u>	
<u> <u>BEFORE DECIDING TO REPRESENT YOURSELF</u></u>	
<u> <u>BEFORE THIS COURT.....</u></u>	<u>4</u>
<u>SECTION II <u>PROCEEDING WITH YOUR CASE.....</u></u>	<u>6</u>
<u>SECTION III <u>EMPLOYMENT DISCRIMINATION CASES.....</u></u>	<u>13</u>
<u>SECTION IV <u>MOTION TO PROCEED WITHOUT PRE-PAYMENT</u></u>	
<u> <u>OF FEES</u></u>	<u>13</u>
<u>SECTION V <u>APPOINTMENT OF COUNSEL.....</u></u>	<u>15</u>
<u>SECTION VI <u>REQUIREMENT TO DILIGENTLY PROSECUTE</u></u>	
<u> <u>YOUR CASE</u></u>	<u>15</u>
<u>SECTION VII <u>SOCIAL SECURITY IDENTIFICATION FORM.....</u></u>	<u>16</u>
<u>GLOSSARY</u>	<u>17</u>
<u>APPENDIX A <u>COMPLAINT FORMAT</u></u>	
<u>APPENDIX B <u>CERTIFICATE OF SERVICE FORMAT</u></u>	
<u>APPENDIX C <u>AO 239 (12/13) Application to Proceed in District Court Without</u></u>	
<u> <u>Prepaying Fees or Costs (Long Form)</u></u>	
<u>APPENDIX D <u>Form-Complaint for Employment Discrimination</u></u>	
<u>APPENDIX E <u>Form-Complaint for Review of a Social Security Disability or</u></u>	
<u> <u>Supplemental Security Income Decision</u></u>	
<u>APPENDIX F <u>Social Security Identification Form</u></u>	
<u>APPENDIX G <u>Rule 4 Service Package</u></u>	

INTRODUCTION

WHO THIS GUIDE IS INTENDED TO ASSIST: This Guide is designed to assist you if (i) you want to file a lawsuit in federal court or you have an active role, either as a plaintiff or defendant, in a case that you or someone else has already filed in federal court, and (ii) you have elected to proceed without assistance of a trained and licensed attorney.

SOME BASIC DEFINITIONS: Plaintiffs and defendants in court cases generally are referred to as “parties” or “litigants.” The plaintiff asserts a claim or right protected by law against the defendant, the defendant denies the claim or right, and the court determines whether the asserted claims or rights have merit. The great majority of litigants who appear in this court are represented by an attorney who has been trained in the law and is familiar with the applicable court rules and procedures. Parties or litigants who are not represented by an attorney and who elect to represent themselves sometimes are referred to as *pro se* parties or *pro se* litigants. In this guide, parties or litigants who represent themselves are referred to as self-represented.

HOW THIS GUIDE IS DESIGNED TO HELP YOU: This guide will not answer all of your questions about how to represent yourself effectively. The guide outlines **basic steps** required to properly file an **action**, or **lawsuit**, with this court. It also provides some 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.

A WORD OF ADVICE: Self-representation carries certain responsibilities and risks you should be aware of before you proceed. The court encourages all individuals who are considering self-representation to carefully review the risks associated and to educate themselves regarding potential consequences.

WARNING

[Rule 11](#) of the [Federal Rules of Civil Procedure](#) prohibits filing of lawsuits that are clearly frivolous or filed merely to harass. If after reviewing your complaint, the court determines that you have filed a lawsuit for an improper or unnecessary purpose, it may impose sanctions against you, including ordering you to pay a fine or pay the legal fees of the person(s) against whom you filed the lawsuit. In all cases, if you lose, you may be required to pay some of the costs that the winning party incurred in the course of the lawsuit.

SECTION I

IMPORTANT ISSUES YOU SHOULD CONSIDER BEFORE DECIDING TO REPRESENT YOURSELF BEFORE THIS COURT

A. IS THIS COURT THE APPROPRIATE COURT TO HEAR YOUR DISPUTE?

The United States District Court for the Middle District of Georgia is one of 94 trial courts in the federal court system. Federal courts can only hear limited types of cases. This court is authorized only to hear disputes that fall into the following four categories:

1. Those that deal with a question involving the United States Constitution;
2. Those that involve questions of federal law (as opposed to state law);
3. Those that involve the United States of America as a party, whether plaintiff or defendant; or,
4. Those that involve a dispute among residents of different states with an amount in controversy over \$75,000.

If your complaint does not fall into any of these categories, you should not file in this court.

B. IS THERE AN ALTERNATIVE TO REPRESENTING YOURSELF THAT IS AFFORDABLE?

Most people who file a complaint in federal court hire an attorney who has appeared in court and who is familiar with the rules and procedures that govern court processes. Some attorneys are willing to accept your case for an agreed upon percentage of their fee if you win your case and nothing if you do not. Some laws may require the payment of the prevailing litigant's attorney's fees and/or costs by an opposing party. Most attorneys screen cases to make sure potential clients have a viable chance of winning. If an attorney rejects your case, it may be because:

- (1) there is no merit to your case;
- (2) you may not be able to prove anyone liable for wrong done to you;
- (3) the wrong done to you may not be severe enough to warrant monetary damages;
- (4) you have no witnesses; and/or,
- (5) your witnesses are not credible.

If you prefer to have an attorney represent you, but you simply cannot afford to pay legal fees, you may consider contacting [Georgia Legal Services](#) at 1-800-498-9469 whose staff can explain the various options for obtaining and paying for legal services.

If you are unable to find an attorney to represent you, you have the right to pursue your claim(s) in the court by appearing without representation. As a self-represented litigant you are representing only yourself and presenting only your claims and defenses. Under the law, you cannot speak for another person, a company, or other entity such as a club or association that includes other individuals. As a self-represented litigant, you must follow the same rules and procedures that licensed attorneys must follow. Generally, judges hold self-represented litigants to the same standards of professional responsibility as trained attorneys.

C. IF YOU PLAN TO REPRESENT YOURSELF, WHERE CAN YOU GO TO REVIEW FEDERAL LAWS AND PROCEDURES AND THIS COURT'S LOCAL RULES OF PROCEDURE?

As a self-represented litigant, you should be familiar with the [Federal Rules of Civil Procedure](#) and the [Federal Rules of Evidence](#). These rules set forth the general procedural requirements for litigating cases in federal court. Federal laws can be found in the [United States Code](#), abbreviated as U.S.C. The contents of each of these publications can be found on the internet and at most public libraries.

As a self-represented litigant, you should be familiar with our court's local rules which apply specifically to proceedings in our court. You can obtain a free copy of the local rules at any of our district court offices or you can access and print a copy of this publication from our court's web site at: www.gamd.uscourts.gov.

D. LEGAL ADVICE

Although the staff of the Clerk's Office can provide you with general information concerning court rules and procedures, they are forbidden as a matter of law from providing legal advice, from interpreting and applying court rules, or otherwise participating, directly or indirectly, in any action. Therefore, Clerk's Office personnel cannot:

- Explain the meaning of a specific rule
- Make an interpretation of case law
- Explain the result of taking or not taking an action in a case
- Answer whether jurisdiction is proper in a case
- Answer whether a complaint properly presents a claim
- Provide advice on the best procedure to accomplish a particular objective

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 with or without a jury.

SECTION II

PROCEEDING WITH YOUR CASE

A. **HOW DO YOU GET YOUR CASE ESTABLISHED IN OUR COURT?**

Preparing Your Complaint:

The **plaintiff** or person bringing the lawsuit to court files a **complaint**. The complaint outlines a problem or reason for the lawsuit, also known as a **cause of action**. When preparing your complaint, you should use 8 ½" x 11" (letter size) paper. The contents should include the following:

- (1) a short statement of the grounds on which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it;
- (2) a short statement of the claim showing that you are entitled to relief; and,
- (3) a demand for judgment for the relief to which you feel you are entitled.

The complaint (and any other pleadings filed such as motions, etc.) should contain a caption including the name of the court, the title of the action, the case number (if known), and a description such as "Complaint." **Refer to [Appendix A](#) for the proper format.**

In stating your claim against defendants, you are only required to state exactly what happened by stating **facts**, not conclusions, and what relief you want. For example, a complaint stating conclusions might read:

"The Commissioner of the Social Security Administration *denied me my right* to Social Security benefits."

whereas, a complaint stating facts would read:

"The Commissioner of the Social Security Administration *issued an unfavorable decision* on July 27, 1997."

Your statement of claim should not contain legal argument or citations of cases. These may be submitted separately from the complaint if desired. You should clearly identify all defendants by name and address. It is your responsibility to determine the identity of any and all defendants you wish to sue. It is common for the name of one or more defendants to be unknown at the time of filing the complaint. Frequently, plaintiffs will identify a defendant by the name of "John Doe" or "Jane Doe". If you later determine the proper name, you should file a **Motion to Amend** your complaint, stating the correct name (and address) of any such defendant.

Make sure that you have included all relevant names, addresses, and dates in your complaint. You may attach as an exhibit any written document you have referred to in your complaint that you would like to make a part of the complaint. You must sign the complaint and state your address and phone number. If there is more than one plaintiff, each must sign the complaint as well as all future pleadings.

How to File Documents:

You may file documents by mail or in person at the Clerk's Office. Pursuant to Local Rule 5, pro se litigants may only file electronically if they first receive permission from the court. Pro se litigants who receive permission from the court may file electronically using the Case Management/Electronic Case Filing (CM/ECF) system. At this time, complaints and other case initiating documents cannot be electronically filed. To file electronically, [register](#) at the Court's website. You must also [register](#) for Public Access to Court Electronic Records (PACER). Registration is free and allows you to view documents filed in your case (except for transcripts) free of charge once within the first fifteen days of filing.

All documents filed using the CM/ECF filing system, must comply with [Rule 11](#) of the Federal Rules of Civil Procedures and the [Administrative Procedures for Electronic Filing](#). Failure to abide by the rules of the Middle District could result in termination of your access to CM/ECF.

Where to File Your Complaint:

Generally, you may file a civil case in the district where any defendant resides or where the claim arose (see [28 U.S.C. § 1391](#)). According to [Local Rule 3.4](#), a plaintiff may file a civil case in the division in which the plaintiff resides, the defendant resides, or the claim arose.

The U.S. District Court for the Middle District of Georgia is divided into five divisions: Albany, Athens, Columbus, Macon, and Valdosta. Division offices in this district and associated counties for each are:

- (1) **Albany Division:** Baker, Ben Hill, Calhoun, Crisp, Decatur, Dougherty, Early, Grady, Lee, Miller, Mitchell, Schley, Seminole, Sumter, Terrell, Turner, Worth, and Webster;
- (2) **Athens Division:** Clarke, Elbert, Franklin, Greene, Hart, Madison, Morgan, Oconee, Oglethorpe, and Walton;
- (3) **Columbus Division:** Chattahoochee, Clay, Harris, Marion, Muscogee, Quitman, Randolph, Stewart, Talbot, and Taylor;
- (4) **Macon Division:** Baldwin, Bibb, Bleckley, Butts, Crawford, Dooly, Hancock, Houston, Jasper, Jones, Lamar, Macon, Monroe, Peach, Pulaski, Putnam, Twiggs, Upson, Washington, Wilcox, and Wilkinson;

(5) **Valdosta Division:** Berrien, Brooks, Clinch, Colquitt, Cook, Echols, Irwin, Lanier, Lowndes, Thomas, and Tift.

All visitors to the courthouses in the Middle District of Georgia will be screened for security purposes. Brief cases, purses, packages, and the like will be x-rayed; no weapons of any kind, cell phones, cameras, or recording devices are allowed in the courthouses. The complete [policy](#) regarding electronic devices is available at our website.

Addresses and phone numbers for each office are below:

U.S. District Court
Clerk’s Office
P. O. Box 128
Macon, GA 31202

U.S. District Court
Clerk’s Office
201 W. Broad Ave.
Albany, GA 31707

U.S. District Court
Clerk’s Office
P. O. Box 1106
Athens, GA 30603

Street Address:

475 Mulberry Street
Suite 216
Phone: (478) 752-3497

Street Address:

201 W. Broad Ave.
Phone: (229) 430-8432

Street Address:

115 E. Hancock Street
2nd Floor
Phone: (706) 227-1094

U.S. District Court
Clerk’s Office
P. O. Box 124
Columbus, GA 31902

U.S. District Court
Clerk’s Office
401 North Patterson St, Ste 212
Valdosta, GA 31601

Street Address:

120 12th Street
Suite 103
Phone: (706) 649-7816

Street Address:

401 North Patterson Street
Suite 212
Phone: (229) 242-3616

You must file your complaint by hand-delivering or mailing to the Clerk’s Office. You must submit: the original complaint, a completed [civil cover sheet \(JS 44\)](#) and, the filing fee. If you feel you cannot afford the filing fee, you may apply to file *in forma pauperis* as described in [Section IV](#) of this guide. Blank forms can be obtained from the Clerk’s Office or from our court’s website at www.gamd.uscourts.gov

Although pleadings may be filed in any divisional Clerk’s Office within this district, it is recommended that they be filed in the divisional office where the case will be managed as indicated above. Once received in the Clerk’s Office, the complaint is given a case number and assigned to a district judge.

Service of Your Complaint:

Each defendant or person you claim is responsible for the problem 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**. Detailed instructions for service of process are described in [Rule 4](#) of the [Federal Rules of Civil Procedure](#) and are included at [Appendix F](#). If the service of process requirements are not followed correctly, the case can be dismissed for failure to effect proper service. Service of process requirements can be satisfied in one of three ways:

(1) Personal Service –

You direct someone else to deliver or serve a copy of the complaint and summons on the defendant(s). Service can be performed by anyone over eighteen years of age who is not a party named in the case. A standard summons form can be obtained from the Clerk's Office or this court's web site at www.uscourts.gov. After you have completed the form, the Clerk's Office will officially **issue the summons** by signing the form and embossing it with the official seal of the court. Both the summons and the complaint must then be served on the defendant(s). 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. After you file your complaint with the Clerk's Office, you have 90 days to serve a copy of it and the summons on the defendant(s). It is your responsibility to effect service; if you fail to do so within 90 days, your case may be dismissed.

(2) Waiver of Service –

Rule 4 permits a defendant to **waive personal service of process**. This means that the defendant(s) agrees to respond to your complaint without being personally served with a copy. The Clerk's Office can provide you a waiver form that you can mail to the defendant(s) along with the complaint. Alternatively, you can obtain the forms from the court's web site at www.uscourts.gov. If the defendant(s) completes and returns the waiver, you will not have to perform personal service as described above.

(3) Service by the U.S. Marshal –

If a judge approves your application for waiver of the requirement to pay the filing fee and otherwise determines that your case should go forward, the judge will direct the U.S. Marshal to serve the summons and complaint at the government's expense.

IMPORTANT NOTICE: Although a judge may order that a defendant be served, it may be several weeks from the date of the order directing service before service is complete. When a judge orders that a defendant be served, typically the order will only require that a copy of the

complaint and a waiver of service form be mailed to the defendant's last known address (as provided by the plaintiff). If a defendant refuses to waive service that defendant must then be served by personal service.

B. WHAT HAPPENS ONCE THE DEFENDANT(S) HAS BEEN SERVED?

Once the defendant(s) has been served with a copy of the complaint, the defendant(s) must file an **answer** or other response within a specified number of days. [See Rule 12 of the Federal Rules of Civil Procedure](#). Under the rules governing service of process, each defendant is required to provide a copy of the response to the plaintiff. Once each defendant named in the lawsuit has filed a response, the case is considered to be **at issue**.

C. WHAT HAPPENS WHEN A CASE IS AT ISSUE?

Once the case is at issue, a number of different actions may occur which include:

Referral to a U.S. Magistrate Judge:

The district judge to whom the case is assigned may refer the case to a **U.S. Magistrate Judge** for assistance in managing the case by issuing an **Order of Referral**. Once a case has been referred to a magistrate judge, subsequent court proceedings may be conducted before that judge.

Filing of Motions and Objections:

Either the plaintiff or the defendant, may request that the court take specific action related to the case. To do so, the party prepares a formal request or what is referred to as a **motion**. The party must sign the motion, **file** it with the Clerk of Court and send a copy to the opposing party. Unless the assigned judge directs otherwise, every motion must be accompanied by a memorandum of law citing supporting legal authorities (see [Local Rule 7](#)). The opposing party may then file with the Clerk of Court an **objection** or **responsive pleading** to the motion. The objection states the reasons why the court should deny rather than grant the motion. You should familiarize yourself with the rules and time limits set forth in [Local Rule 7](#) with regard to motions and responsive pleadings filed in this court.

Dispositive vs. Non-dispositive Motions:

Motions fall into two categories: dispositive and non-dispositive. If granted, **dispositive** motions dispose of the case. **Non-dispositive** motions, if granted, affect the case but do not dispose of it. District judges have the authority to rule on both kinds of motions. Magistrate judges are authorized to rule only on non-dispositive motions unless all parties in the lawsuit have agreed to allow their case to proceed entirely with the magistrate judge.

Motion Review:

The district or magistrate judge usually rules on a motion by issuing a written order that either grants, denies, or partially grants and partially denies the relief sought in the motion. The court generally does not schedule hearings in order for the parties to argue the motion or objections.

Filing of Magistrate Judge Report and Recommendation:

When a case has been referred to a magistrate judge and one of the parties files a dispositive motion, the magistrate judge is authorized to prepare a written **Report and Recommendation**, essentially a recommendation that the motion be either granted or denied and stating the reason(s). The Report and Recommendation is sent to the district judge assigned to the case and all parties. As a party, you will have a specified number of days to file objections to the Report and Recommendation. All objections that are received within the specified time are forwarded to the district judge. The district judge reviews the Report and Recommendation and any objections that have been filed and issues an order that adopts, rejects, or adopts in part and rejects in part the magistrate judge's Report and Recommendation. When the judge's order dismisses the complaint, the Clerk of Court will prepare and enter **judgment** in the case. Such judgment is final but can be appealed to the [United States Court of Appeals for the Eleventh Circuit](#) located in Atlanta, Georgia.

Recusal of Judge:

Occasionally, parties involved in a proceeding are unhappy with the decision(s) of the judge who is handling their case so they file a motion requesting that the judge recuse himself to allow another judge to hear the case. A party who is considering filing a motion to recuse should note that a judge's ruling(s) on a particular case rarely provides a basis for requiring the judge to recuse himself.

D. WHAT COURT FEES AND COSTS ARE YOU REQUIRED TO PAY?

The fee for filing a complaint in any U.S. District Court is \$350.00, plus an administrative fee of \$52.00 for a total of \$402.00. The administrative processing fee does not apply to *habeas* cases or to persons granted *in forma pauperis* status pursuant to [28 U.S.C. § 1915](#). This fee may be paid by money order, personal check, or credit card. If you are unable to pay the filing fee, you may apply for permission of the court to proceed *in forma pauperis*, which is Latin for "in the form of a pauper."

If the court allows you to proceed *in forma pauperis*, you are not exempt from paying other costs associated with your case. For example, if you need copies of original documents in your case, the Clerk's Office is required to charge the standard copy rate of 50 cents per page. Other expenses you may incur include the costs of preparing the original and copies of the papers you file with the court, and mailing or hand-delivering a copy of each paper to the opposing party to satisfy the

requirements of service. If your case goes to trial, you may be responsible for certain costs associated with bringing your witnesses to court.

E. WHAT IS THE PROCEDURE FOR SUBMITTING DOCUMENTS TO THE COURT?

As a matter of policy, the court requires parties to submit an **original** of motions or pleadings. Should you need a file-stamped copy of a pleading or motion for your records, submit an extra copy along with the original and a self-addressed stamped envelope for return mailing. The Clerk's Office will electronically file the original and file stamp the copy to be returned to you. You may file pleadings with the court in person, by mail or electronically using CM/ECF. Our offices are open to the public from 8:30 A.M. until 5:00 P.M., Monday through Friday, except on federal holidays. [Electronic filing](#) is available 24 hours a day with the exception of those times the system is brought down for regular maintenance. A pleading is considered filed as of the time the system receives and records it. The time and date are located on the Notice of Electronic Filing (NEF) and the filed date is available on the case docket.

IMPORTANT NOTICE: When you submit a pleading to the court, you must also mail or deliver a copy of the pleading to the defendant(s)' attorney, or, if the defendant(s) has no attorney, to the defendant(s). If you e-file, service can be made through the district's CM/ECF system. This process saves postage in mailing documents to the Clerk's office as well as to opposing parties registered for CM/ECF, as service of documents is accomplished by a Notice of Electronic Filing (NEF). You are responsible for verifying that all parties are registered to receive service via electronic means and adjusting your service as necessary. As an attachment to your pleading, you must include a **certificate of service** that states the date that you delivered a copy of the pleading to the defendant and the means by which you executed such service. The format to be used for the certificate of service is attached to this guide as [Appendix B](#).

F. HOW DO YOU OBTAIN INFORMATION ABOUT THE STATUS AND PROGRESS OF YOUR CASE?

The Clerk's Office maintains an automated record or **docket** for every case. A docket is a chronological summary of all significant events in the history of the case. You may review the docket for your case on the public access terminals located in each of our divisional offices. If you have internet access, you may access the PACER system to review your case documents directly from your computer. In order to use the PACER system, you must register to obtain a login and password at https://www.pacer.gov/reg_nonatty.html or call 1-800-676-6856. You may print a paper copy of the docket and documents from PACER for \$.10 per page. The first \$15.00 of documents accessed through PACER each quarter are free. Staff of the Clerk's Office can provide copies, but must charge \$.50 per page. Clerk's Office staff may also provide basic docket information to you over the telephone.

G. IS IT POSSIBLE FOR YOU TO SPEAK DIRECTLY TO A JUDGE OR MEMBER OF HIS STAFF ABOUT YOUR CASE?

All parties, including self-represented litigants, are prohibited from private or *ex parte* communication with the judge to whom your case is assigned. Because of this prohibition, a judge will refuse, with very few exceptions, to speak or otherwise communicate *ex parte* with any party or that party's attorney. Any communication between the assigned judge and a litigant should be in writing, with a copy of the communication sent either to the opposing party or to that party's attorney.

H. IF YOU WISH TO APPEAL THE COURTS DECISION IN YOUR CASE, WHAT SHOULD YOU DO?

The judge may issue an order in your case with which you disagree and which you think an appellate court should review immediately. Most orders issued while a case is still ongoing cannot be appealed immediately and you should wait until a final judgment has been entered in your case before the order(s) can be considered by an appellate court. The [Federal Rules of Appellate Procedure](#) explain when an order is appealable and you should familiarize yourself with these rules before filing a notice of appeal. Filing a notice of appeal prematurely will delay final resolution of your case and may add unnecessary expense to your case.

If you file a notice of appeal, you will be required to pay a filing fee of \$505.00 with the district court unless you are permitted to proceed on appeal *in forma pauperis*. If you wish to proceed *in forma pauperis*, you must file a form with the court to proceed *in forma pauperis on appeal* along with your notice of appeal. The form to be used for this purpose is at [our website](#). A non-prisoner party who was permitted to proceed *in forma pauperis* in district court, may proceed on appeal *in forma pauperis* without further authorization, unless the court certifies that the appeal is not taken in good faith or finds that you are not otherwise entitled to proceed *in forma pauperis*.

If it is determined that the appellate court has jurisdiction over the appeal, it will direct the district court to transmit the record from the district court. If you are permitted to proceed *in forma pauperis* on appeal, you may still be required to pay for certain costs, such as the cost of transcribing any hearings or other proceedings which may have occurred before the judge.

SECTION III

EMPLOYMENT DISCRIMINATION CASES

A very common action filed by self-represented litigants in federal court is alleged employment discrimination. Prior to filing an employment discrimination complaint, the plaintiff is required to follow specific administrative procedures.

NOTE: This is not a complete statement of the law on the administrative procedures to follow in an employment discrimination case. The procedures are complicated and it is your responsibility to make sure that all procedures are followed correctly and within the applicable time limit. If the requirements are not followed, your case may be dismissed.

If you wish to file an employment discrimination case in this court, you must first file your charges with the Equal Employment Opportunity Commission (EEOC) for review. Barring complications, the EEOC will issue you a **Notice of Right to Sue** indicating that (i) the administrative process has been completed, and (ii) no further action will be taken on behalf of the EEOC. Once this notice has been issued, you have a limited time period within which to file your lawsuit; failure to file a complaint within that time period will result in your case being dismissed by the court. A Notice of Right to Sue is not required when the charges allege employment discrimination based on age; however, you must timely file a complaint with the EEOC and wait a prescribed length of time before filing an age discrimination suit in this court.

To assist a self-represented litigant in filing an employment discrimination complaint, the Office of the Clerk has established a complaint form to be used specifically for this purpose which is included in this guide as [Appendix D](#). When completing the form, you should ensure that the information you enter is neat and accurate to the best of your knowledge. When filing your complaint with the Clerk's Office, **you must present the Right to Sue Notice** which will be included as part of your case file.

SECTION IV

MOTION TO PROCEED WITHOUT PREPAYMENT OF FEES (IN FORMA PAUPERIS)

Filing a case in this court requires the plaintiff to pay a filing fee at the time the new case is filed. If you are unable to pay the fee, you may apply to have payment of the fee waived. You can apply for waiver of the fee only after your action is filed. The Clerk's Office will accept your case without payment if, at the time you file it, you also file a form for waiver of the fee. If the judge denies your motion, you will be required to pay the fee within a specified time period. If you do not pay it, your case will be dismissed.

This process requires that you complete and submit an **Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form)**. This form can be obtained at our website at www.uscourts.gov and a sample is at [Appendix C](#). Instructions for completion are as follows:

- (1) At the top of the form, you must note the name of the case or case **caption**. The case name consists of your name as plaintiff above the "v." and the name of the defendant(s) below the "v." The Clerk's Office will enter the case number on the form at the time your case is filed; and,
- (2) You must answer all questions truthfully and completely. If you own real estate or automobiles, you should be very specific about your debt balance so the judge who reviews the application has accurate information as to the property's value. You must sign the statement under penalty of perjury.

The completed form should be delivered to the Clerk's Office. It will be submitted along with your complaint to a magistrate judge for review. If the judge grants the motion, it will be returned to the Clerk's Office for processing. At the conclusion of the case, if the court determines that you then have sufficient funds to pay the filing fee, the court may direct you to pay the full amount immediately, pay a portion of the filing fee, or pay the fee in installments.

Before directing the U.S. Marshal to serve the complaint and summons at government expense, the judge will review your complaint to determine which, if any, claims may go forward and which, if any, defendant(s) should be served with a copy of the complaint.

SECTION V

APPOINTMENT OF COUNSEL

You may ask the court to appoint an attorney for you in a civil case. However, counsel is only appointed in rare cases where representation by an attorney is determined by the judge to be particularly appropriate or necessary. In a civil matter, you have no right to be represented by court-appointed counsel and the Court has no funds to pay appointed counsel. If you would like to request that the court appoint counsel to represent you in your lawsuit, you must file a Motion for Appointment of Counsel along with your complaint. You should explain why you think you need the assistance of an attorney.

SECTION VI

REQUIREMENT TO DILIGENTLY PROSECUTE YOUR CASE

It is important that you understand your obligation to prosecute your case once it is filed.

- (1) You are required to diligently prosecute your lawsuit. Unless and until you hire an attorney to represent you, it is your responsibility to do everything necessary to prepare your case for trial;
- (2) If you fail to follow established procedures, your case may be dismissed for failure to prosecute (see [Rule 41\(b\)](#) of the [Federal Rules of Civil Procedure](#));
- (3) Pursuant to Local Rule 5, disclosures as addressed in the [Federal Rules of Civil Procedure](#) Rule 26(a)(3) must be promptly filed. Disclosures as addressed in the [Federal Rules of Civil Procedure](#) Rule 26(a)(1) or (a)(2) and the following discovery requests and responses are only exchanged between the parties and must not be filed unless they are used in a proceeding or the court orders filing: (a) depositions, (b) interrogatories, (c) requests for documents or to permit entry upon land, and (d) requests for admission. Except with prior written permission of the court, interrogatories (see [Local Rule 33.1](#)) may not exceed twenty-five, requests for production (see [Local Rule 34](#)) may not exceed ten requests, and requests for admissions (see [Local Rule 36](#)) may not exceed fifteen requests. All discovery

must be addressed to a specific defendant if there is more than one defendant named in your case;

- (4) You are required to serve the attorney representing the defendant(s) with copies of all pleadings and motions filed with the court. Counsel for the defendant(s) is required to serve you with copies of all pleadings and motions filed on behalf of the defendant(s);
- (5) It is **your** responsibility to serve the defendant(s), not the Clerk's Office;
- (6) You should familiarize yourself with the rules and time limits set forth in [Local Rule 7](#) with regard to motions and responsive pleadings filed with this court. It is possible for a motion to be denied because response or reply briefs to the motion are not filed with the court in a timely manner; and,
- (7) It is your responsibility to keep the court informed at all times of your current mailing address. If you have a change of address while your case is pending, you must notify the court and all parties to the case **in writing** stating your new address.

SECTION VII

SOCIAL SECURITY CASES

In social security cases, Local Rule 9.2 requires completion of a confidential identification form which can be found at [Appendix F](#).

Glossary

- **Answer:** The formal written statement by a defendant responding to a civil complaint or similar pleading that sets forth the grounds for a 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. On the other hand, 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.
- **Civil Cover Sheet:** A form that asks questions about your case and is required when filing a new case.
- **Complaint:** A written statement filed by the plaintiff that opens a civil case, stating what the plaintiff claims that the defendant did and requesting relief from the court.
- **Contract:** An agreement between two or more persons that creates an obligation to do or not do a particular thing.
- **Counsel:** Legal advice; a term also used to refer to the lawyers in a case.
- **Court:** Government entity that resolves legal disputes.
- **Damages:** Money paid by defendants to successful plaintiffs in civil cases to compensate the plaintiffs for their injuries.
- **Defendant:** In a civil case, the person, company, or organization that the plaintiff is suing.
- **District Judge:** A judge in the federal court system appointed by the President of the United States with confirmation by the United States Senate.
- **Dismiss a case:** When a judge dismisses a case, the case goes no further and the party who began the matter must refile initial pleading papers.
- **Evidence:** Information presented to a judge or jury, including testimony of witnesses and documents.
- **Federal Question Jurisdiction:** Jurisdiction given to federal courts in cases involving the U.S. Constitution, acts of Congress and treaties.
- **In Forma Pauperis:** “In the manner of a pauper.” Permission given by the court to a person to file a case without prepayment of the required court fees because the person cannot pay them.
- **Issue:** 1. The disputed point between parties in a lawsuit; 2. To send out officially, as in a court issuing an order.
- **Judge:** An official of the judicial branch with authority to decide legal matters brought before courts.
- **Judgment:** The official decision of a court finally resolving the dispute between the parties to a legal matter.
- **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 claiming, for example, that the defendant failed to perform a legal duty which resulted in harm to the plaintiff.
- **Magistrate Judge:** Judicial officers appointed by the judges of federal district courts pursuant to the United States Magistrates Act. Federal magistrate judges may be assigned some, but not all, of the duties of a United States District Court Judge.

- **Motion:** A request by a litigant to a judge for a decision on an issue relating to the case.
- **Party:** One of the litigants. At the trial level, the parties are typically referred to as the plaintiff and defendant.
- **Plaintiff:** The person who files the complaint in a civil lawsuit.
- **Pleadings:** Written statements filed with the court which describes a party's legal or factual assertions about the case.
- **Procedure:** The rules for conducting a lawsuit.
- **Pro Se:** A Latin term meaning "on one's own behalf"; in courts, it refers to persons who present their own cases without lawyers.
- **Record:** A written account of the proceedings in a case, including all pleadings, evidence, and exhibits submitted in the course of the case.
- **Sealed:** To close off (as records) from public access.
- **Statute:** A law passed by a legislature.
- **Summons:** A notice, typically served along with a complaint, informing the defendant that a lawsuit has been initiated and notifying the defendant 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 legal matter to give testimony before the court or jury.

UNITED STATES DISTRICT COURT

for the

Middle District of Georgia

Appendix A

Plaintiff(s)
(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)
-v-
Defendant(s)
(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

Case No. (to be filled in by the Clerk's Office)

Jury Trial: (check one) [] Yes [] No

COMPLAINT FOR A CIVIL CASE

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name
Street Address
City and County
State and Zip Code
Telephone Number
E-mail Address

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name _____
Job or Title *(if known)* _____
Street Address _____
City and County _____
State and Zip Code _____
Telephone Number _____
E-mail Address *(if known)* _____

Defendant No. 2

Name _____
Job or Title *(if known)* _____
Street Address _____
City and County _____
State and Zip Code _____
Telephone Number _____
E-mail Address *(if known)* _____

Defendant No. 3

Name _____
Job or Title *(if known)* _____
Street Address _____
City and County _____
State and Zip Code _____
Telephone Number _____
E-mail Address *(if known)* _____

Defendant No. 4

Name _____
Job or Title *(if known)* _____
Street Address _____
City and County _____
State and Zip Code _____
Telephone Number _____
E-mail Address *(if known)* _____

II. Basis for Jurisdiction

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal court jurisdiction? (*check all that apply*)

- Federal question Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

A. If the Basis for Jurisdiction Is a Federal Question

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

B. If the Basis for Jurisdiction Is Diversity of Citizenship

1. The Plaintiff(s)

a. If the plaintiff is an individual

The plaintiff. (*name*) _____ . is a citizen of the State of (*name*) _____ .

b. If the plaintiff is a corporation

The plaintiff. (*name*) _____ . is incorporated under the laws of the State of (*name*) _____ . and has its principal place of business in the State of (*name*) _____ .

(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)

2. The Defendant(s)

a. If the defendant is an individual

The defendant. (*name*) _____ . is a citizen of the State of (*name*) _____ . Or is a citizen of (*foreign nation*) _____ .

b. If the defendant is a corporation

The defendant. *(name)* _____ . is incorporated under the laws of the State of *(name)* _____ . and has its principal place of business in the State of *(name)* _____ .
Or is incorporated under the laws of *(foreign nation)* _____ . and has its principal place of business in *(name)* _____ .

(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)

3. The Amount in Controversy

The amount in controversy-the amount the plaintiff claims the defendant owes or the amount at stake-is more than \$75,000, not counting interest and costs of court, because *(explain)*:

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

IV. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: _____

Signature of Plaintiff _____

Printed Name of Plaintiff _____

B. For Attorneys

Date of signing: _____

Signature of Attornev _____

Printed Name of Attornev _____

Bar Number _____

Name of Law Firm _____

Street Address _____

State and Zip Code _____

Telephone Number _____

E-mail Address _____

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing _____
(Name of pleading)

was mailed/delivered to _____ at _____
(Name of defendant(s) or defendant's attorney) (Physical or E-Mail Address)

(Signature and date)

(Address)

(Phone Number)

UNITED STATES DISTRICT COURT

for the

Middle District of Georgia

<i>Plaintiff/Petitioner</i>)	
v.)	Civil Action No.
<i>Defendant/Respondent</i>)	

**APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS
(Long Form)**

<p>Affidavit in Support of the Application</p> <p>I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested. I declare under penalty of perjury that the information below is true and understand that a false statement may result in a dismissal of my claims.</p> <p>Signed: _____</p>	<p>Instructions</p> <p>Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is “0,” “none,” or “not applicable (N/A),” write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.</p> <p>Date: _____</p>
--	---

- For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly income amount during the past 12 months		Income amount expected next month	
	You	Spouse	You	Spouse
Employment	\$	\$	\$	\$
Self-employment	\$	\$	\$	\$
Income from real property <i>(such as rental income)</i>	\$	\$	\$	\$
Interest and dividends	\$	\$	\$	\$
Gifts	\$	\$	\$	\$
Alimony	\$	\$	\$	\$
Child support	\$	\$	\$	\$

Retirement (such as social security, pensions, annuities, insurance)	\$	\$	\$	\$
Disability (such as social security, insurance payments)	\$	\$	\$	\$
Unemployment payments	\$	\$	\$	\$
Public-assistance (such as welfare)	\$	\$	\$	\$
Other (specify):	\$	\$	\$	\$
Total monthly income:	\$	\$	\$	\$

2. List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$
			\$

4. How much cash do you and your spouse have? \$ _____

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
		\$	\$
		\$	\$
		\$	\$

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Assets owned by you or your spouse	
Home <i>(Value)</i>	\$
Other real estate <i>(Value)</i>	\$
Motor vehicle #1 <i>(Value)</i>	\$
Make and year:	
Model:	
Registration #:	
Motor vehicle #2 <i>(Value)</i>	\$
Make and year:	
Model:	
Registration #:	
Other assets <i>(Value)</i>	\$
Other assets <i>(Value)</i>	\$

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
	\$	\$
	\$	\$
	\$	\$

7. State the persons who rely on you or your spouse for support.

Name (or, if under 18, initials only)	Relationship	Age

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment <i>(including lot rented for mobile home)</i>		
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No	\$	\$
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities <i>(electricity, heating fuel, water, sewer, and telephone)</i>	\$	\$
Home maintenance <i>(repairs and upkeep)</i>	\$	\$
Food	\$	\$
Clothing	\$	\$
Laundry and dry-cleaning	\$	\$
Medical and dental expenses	\$	\$
Transportation <i>(not including motor vehicle payments)</i>	\$	\$
Recreation, entertainment, newspapers, magazines, etc.	\$	\$
Insurance <i>(not deducted from wages or included in mortgage payments)</i>		
Homeowner's or renter's:	\$	\$
Life:	\$	\$
Health:	\$	\$
Motor vehicle:	\$	\$
Other:	\$	\$
Taxes <i>(not deducted from wages or included in mortgage payments) (specify):</i>	\$	\$
Installment payments		
Motor vehicle:	\$	\$
Credit card <i>(name):</i>	\$	\$
Department store <i>(name):</i>	\$	\$
Other:	\$	\$
Alimony, maintenance, and support paid to others	\$	\$

Regular expenses for operation of business, profession, or farm (<i>attach detailed statement</i>)	\$	\$
Other (<i>specify</i>):	\$	\$
Total monthly expenses:	\$	\$

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes No If yes, describe on an attached sheet.

10. Have you spent — or will you be spending — any money for expenses or attorney fees in conjunction with this lawsuit? Yes No

If yes, how much? \$ _____

11. Provide any other information that will help explain why you cannot pay the costs of these proceedings.

12. Identify the city and state of your legal residence.

Your daytime phone number: _____

Your age: _____ Your years of schooling: _____

Last four digits of your social-security number: _____

UNITED STATES DISTRICT COURT

for the
District of

Appendix D

Case No. _____
(to be filled in by the Clerk's Office)

Plaintiff(s)
(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Defendant(s)
(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

Jury Trial: *(check one)* Yes No

COMPLAINT FOR EMPLOYMENT DISCRIMINATION

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name _____
Street Address _____
City and County _____
State and Zip Code _____
Telephone Number _____
E-mail Address _____

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title *(if known)*. Attach additional pages if needed.

Defendant No. 1

Name _____
Job or Title *(if known)* _____

Street Address _____
City and County _____
State and Zip Code _____
Telephone Number _____
E-mail Address *(if known)* _____

Defendant No. 2

Name _____
Job or Title *(if known)* _____
Street Address _____
City and County _____
State and Zip Code _____
Telephone Number _____
E-mail Address *(if known)* _____

Defendant No. 3

Name _____
Job or Title *(if known)* _____
Street Address _____
City and County _____
State and Zip Code _____
Telephone Number _____
E-mail Address *(if known)* _____

Defendant No. 4

Name _____
Job or Title *(if known)* _____
Street Address _____
City and County _____
State and Zip Code _____
Telephone Number _____
E-mail Address *(if known)* _____

C. Place of Employment

The address at which I sought employment or was employed by the defendant(s) is

Name _____
Street Address _____
City and County _____
State and Zip Code _____
Telephone Number _____

II. Basis for Jurisdiction

This action is brought for discrimination in employment pursuant to *(check all that apply)*:

- Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (race, color, gender, religion, national origin).

(Note: In order to bring suit in federal district court under Title VII, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)

- Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621 to 634.

(Note: In order to bring suit in federal district court under the Age Discrimination in Employment Act, you must first file a charge with the Equal Employment Opportunity Commission.)

- Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112 to 12117.

(Note: In order to bring suit in federal district court under the Americans with Disabilities Act, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)

- Other federal law *(specify the federal law)*:

- Relevant state law *(specify, if known)*:
-

- Relevant city or county law *(specify, if known)*:
-

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

A. The discriminatory conduct of which I complain in this action includes *(check all that apply)*:

- Failure to hire me.
 Termination of my employment.
 Failure to promote me.

- Failure to accommodate my disability.
- Unequal terms and conditions of my employment.
- Retaliation.
- Other acts (*specify*): _____

(Note: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court under the federal employment discrimination statutes.)

B. It is my best recollection that the alleged discriminatory acts occurred on date(s)

C. I believe that defendant(s) (*check one*):

- is/are still committing these acts against me.
- is/are not still committing these acts against me.

D. Defendant(s) discriminated against me based on my (*check all that apply and explain*):

- race _____
- color _____
- gender/sex _____
- religion _____
- national origin _____
- age (*year of birth*) _____ (*only when asserting a claim of age discrimination.*)
- disability or perceived disability (*specify disability*) _____

E. The facts of my case are as follows. Attach additional pages if needed.

(Note: As additional support for the facts of your claim, you may attach to this complaint a copy of your charge filed with the Equal Employment Opportunity Commission, or the charge filed with the relevant state or city human rights division.)

IV. Exhaustion of Federal Administrative Remedies

A. It is my best recollection that I filed a charge with the Equal Employment Opportunity Commission or my Equal Employment Opportunity counselor regarding the defendant's alleged discriminatory conduct on *(date)*

B. The Equal Employment Opportunity Commission *(check one)*:

has not issued a Notice of Right to Sue letter.

issued a Notice of Right to Sue letter, which I received on *(date)* _____ .

(Note: Attach a copy of the Notice of Right to Sue letter from the Equal Employment Opportunity Commission to this complaint.)

C. Only litigants alleging age discrimination must answer this question.

Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding the defendant's alleged discriminatory conduct *(check one)*:

60 days or more have elapsed.

less than 60 days have elapsed.

V. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

VI. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: _____

Signature of Plaintiff _____

Printed Name of Plaintiff _____

B. For Attorneys

Date of signing: _____

Signature of Attorney _____

Printed Name of Attorney _____

Bar Number _____

Name of Law Firm _____

Street Address _____

State and Zip Code _____

Telephone Number _____

E-mail Address _____

UNITED STATES DISTRICT COURT

for the

District of

Division

Appendix E

Case No. _____

(to be filled in by the Clerk's Office)

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Defendant

(Write the full name of the current Commissioner of the Social Security Administration. Do not include address here.)

COMPLAINT FOR REVIEW OF A SOCIAL SECURITY DISABILITY OR SUPPLEMENTAL SECURITY INCOME DECISION

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name _____

Street Address _____

City and County _____

State and Zip Code _____

Telephone Number _____

E-mail Address _____

Last Four Digits of Your Social Security Number *(Do not include full number)* _____

B. The Defendant

Provide the information below for the defendant named in the complaint. Attach additional pages if needed.

Defendant *(The current Commissioner of the Social Security Administration)*

Name _____

Street Address _____

City and County _____

State and Zip Code _____

(Regional Office of the Social Security Administration General Counsel.)

Telephone Number _____

E-mail Address *(if known)* _____

II. Basis for Jurisdiction

This is an action seeking court review of a decision of the Commissioner of the Social Security Administration. Jurisdiction for such proceedings can be based on two statutes. If this complaint seeks review of a decision regarding Disability Insurance Benefits under Title II of the Social Security Act, jurisdiction is proper under 42 U.S.C. § 405(g). If this complaint seeks review of a decision regarding Supplemental Security Income under Title XVI of the Social Security Act, jurisdiction is proper under 42 U.S.C. § 1383(c)(3). Please check the type of claim you are filing.

Claim Type	For Clerk's Office Use Only
<input type="checkbox"/> Disability Insurance Benefits Claim (Title II)	COA: 42:0405id NOS: 864
<input type="checkbox"/> Supplemental Security Income Claim (Title XVI)	COA: 42:1383 NOS: 863/864
<input type="checkbox"/> Child Disability Claim	COA: 42:0405wc NOS: 863
<input type="checkbox"/> Widow or Widower Claim	COA: 42:0405ww NOS: 863

An appeal from a decision of the Commissioner must be filed within 60 days of the date on which you received notice that the Commissioner's decision became final. When did you receive notice that the Commissioner's decision was final? *(This is likely the date on which you received notice from the Social Security Appeals Council that your appeal was denied.)*

Please attach a copy of the Commissioner's final decision, and a copy of the notice you received that your appeal was denied from the Social Security Appeals Council.

III. Statement of Claim

Federal courts may overturn decisions by the Commissioner of Social Security only if the decision was not supported by substantial evidence in the record or was based on legal error. Why should this court overturn the Commissioner's decision? *(Check all that apply)*

The Commissioner found the following facts to be true, but these facts are not supported by substantial evidence in the record. *(Explain why the Commissioner's factual findings are not supported by substantial evidence in the record.)*

The Commissioner's decision was based on legal error. *(Identify all legal errors.)*

IV. Relief

State what you want the court to do *(check all that apply)*:

- Issue a summons directing the defendant to appear before the court.
- Order the defendant to submit a certified copy of the transcript and record, including evidence upon which the findings and decision are based.
- Modify the defendant's decision and grant monthly maximum insurance benefits to the plaintiff, retroactive to the date of initial disability.

- In the alternative, remand to the defendant for reconsideration of the evidence.
- Grant any further relief as may be just and proper under the circumstances of this case.

V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk’s Office with any changes to my address where case–related papers may be served. I understand that my failure to keep a current address on file with the Clerk’s Office may result in the dismissal of my case.

Date of signing: _____

Signature of Plaintiff _____
Printed Name of Plaintiff _____

B. For Attorneys

Date of signing: _____

Signature of Attorney _____
Printed Name of Attorney _____
Bar Number _____
Name of Law Firm _____
Street Address _____
State and Zip Code _____
Telephone Number _____
E-mail Address _____

CONFIDENTIAL INFORMATION

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA

_____ :
 Plaintiff
 vs. : CIVIL ACTION NO. _____
 _____ :
 COMMISSIONER OF SOCIAL SECURITY
 Defendant

LOCAL RULE 9.2 SOCIAL SECURITY IDENTIFICATION FORM

- Full Name and complete Social Security Number of Plaintiff, including that of a minor plaintiff not otherwise identified by his or her full name:

Full Name: _____

Social Security Number: _____

- If plaintiff's application for Social Security benefits was filed on another person's wage-record, provide that person's full name and Social Security Number:

Full Name: _____

Social Security Number: _____

Date

Signature

APPENDIX G

Forms for Serving a Complaint Under Rule 4

Rule 4 of the Federal Rules of Civil Procedure provides that service on a defendant can be accomplished either through “personal service” of a complaint and summons or mail service through a procedure called “waiver of service of summons”.

PERSONAL SERVICE

Under this method, a copy of the complaint and summons are personally handed to the defendant by any person who is not a party and who is at least 18 years of age. Contact the Clerk’s Office to obtain a summons and consult [Rule 4](#) for additional information.

WAIVER OF SERVICE OF SUMMONS

Under this method, you must mail by first-class mail to each defendant:

1. Two copies of the “[Notice of Lawsuit and Request for Waiver of Service of Summons](#)”;
2. A “[Waiver of Service of Summons](#)”;
3. A copy of the complaint; and,
4. A postage prepaid envelope for returning the waiver form to you.

Copies of the necessary forms are attached and are available at our court’s internet website at www.gamd.uscourts.gov.

United States Code Annotated
Federal Rules of Civil Procedure for the United States District Courts (Refs & Annos)
Title II. Commencing an Action; Service of Process, Pleadings, Motions, and Orders

Federal Rules of Civil Procedure Rule 4

Rule 4. Summons

[Currentness](#)

(a) Contents; Amendments.

(1) Contents. A 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 appear and defend;

(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.

(2) *Amendments.* The court may permit a summons to be amended.

(b) *Issuance.* On or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the plaintiff for service on the defendant. A summons--or a copy of a summons that is addressed to multiple defendants--must be issued for each defendant to be served.

(c) *Service.*

(1) *In General.* A summons must be served with a copy of the complaint. The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service.

(2) *By Whom.* Any person who is at least 18 years old and not a party may serve a summons and complaint.

(3) *By a Marshal or Someone Specially Appointed.* At the plaintiff's request, the court may order that service be

made by a United States marshal or deputy marshal or by a person specially appointed by the court. The court must so order if the plaintiff is authorized to proceed in forma pauperis under [28 U.S.C. § 1915](#) or as a seaman under [28 U.S.C. § 1916](#).

(d) Waiving Service.

(1) *Requesting a Waiver.* An individual, corporation, or association that is subject to service under Rule 4(e), (f), or (h) has a duty to avoid unnecessary expenses of serving the summons. The plaintiff may notify such a defendant that an action has been commenced and request that the defendant waive service of a summons. The notice and request must:

(A) be in writing and be addressed:

(i) to the individual defendant; or

(ii) for a defendant subject to service under Rule 4(h), to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process;

(B) name the court where the complaint was filed;

(C) be accompanied by a copy of the complaint, 2 copies of the waiver form appended to this Rule 4, and a prepaid means for returning the form;

(D) inform the defendant, using the form appended to this Rule 4, of the consequences of waiving and not waiving service;

(E) state the date when the request is sent;

(F) give the defendant a reasonable time of at least 30 days after the request was sent--or at least 60 days if sent to the defendant outside any judicial district of the United States--to return the waiver; and

(G) be sent by first-class mail or other reliable means.

(2) Failure to Waive. If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant:

(A) the expenses later incurred in making service; and

(B) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

(3) Time to Answer After a Waiver. A defendant who, before being served with process, timely returns a waiver need not serve an answer to the complaint until 60 days after the request was sent--or until 90 days after it was sent to the defendant outside any judicial district of the United States.

(4) Results of Filing a Waiver. When the plaintiff files a waiver, proof of service is not required and these rules apply as if a summons and complaint had been served at the time of filing the waiver.

(5) Jurisdiction and Venue Not Waived. Waiving service of a summons does not waive any objection to personal jurisdiction or to venue.

(e) Serving an Individual Within a Judicial District of the United States. Unless federal law provides otherwise, an individual--other than a minor, an incompetent person, or a person whose waiver has been filed--may be served in a judicial district of the United States by:

(1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or

(2) doing any of the following:

(A) delivering a copy of the summons and of the complaint to the individual personally;

(B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and

discretion who resides there; or

(C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

(f) Serving an Individual in a Foreign Country. Unless federal law provides otherwise, an individual--other than a minor, an incompetent person, or a person whose waiver has been filed--may be served at a place not within any judicial district of the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:

(i) delivering a copy of the summons and of the complaint to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

(g) Serving a Minor or an Incompetent Person. A minor or an incompetent person in a judicial district of the United States must be served by following state law for serving a summons or like process on such a defendant in an action brought in the courts of general jurisdiction of the state where service is made. A minor or an incompetent person who

is not within any judicial district of the United States must be served in the manner prescribed by Rule 4(f)(2)(A), (f)(2)(B), or (f)(3).

(h) Serving a Corporation, Partnership, or Association. Unless federal law provides otherwise or the defendant's waiver has been filed, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served:

(1) in a judicial district of the United States:

(A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or

(B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and--if the agent is one authorized by statute and the statute so requires--by also mailing a copy of each to the defendant; or

(2) at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).

(i) Serving the United States and Its Agencies, Corporations, Officers, or Employees.

(1) *United States.* To serve the United States, a party must:

(A)(i) deliver a copy of the summons and of the 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 designates in a writing filed with the court clerk--or

(ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney's office;

(B) send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and

(C) if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

(2) Agency; Corporation; Officer or Employee Sued in an Official Capacity. To serve a United States agency or corporation, or a United States officer or employee sued only in an official capacity, a party must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer, or employee.

(3) Officer or Employee Sued Individually. To serve a United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf (whether or not the officer or employee is also sued in an official capacity), a party must serve the United States and also serve the officer or employee under Rule 4(e), (f), or (g).

(4) Extending Time. The court must allow a party a reasonable time to cure its failure to:

(A) serve a person required to be served under Rule 4(i)(2), if the party has served either the United States attorney or the Attorney General of the United States; or

(B) serve the United States under Rule 4(i)(3), if the party has served the United States officer or employee.

(j) Serving a Foreign, State, or Local Government.

(1) Foreign State. A foreign state or its political subdivision, agency, or instrumentality must be served in accordance with [28 U.S.C. § 1608](#).

(2) State or Local Government. A state, a municipal corporation, or any other state-created governmental organization that is subject to suit must be served by:

(A) delivering a copy of the summons and of the complaint to its chief executive officer; or

(B) serving a copy of each in the manner prescribed by that state's law for serving a summons or like process on

such a defendant.

(k) Territorial Limits of Effective Service.

(1) *In General.* Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant:

(A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located;

(B) who is a party joined under [Rule 14](#) or [19](#) and is served within a judicial district of the United States and not more than 100 miles from where the summons was issued; or

(C) when authorized by a federal statute.

(2) *Federal Claim Outside State-Court Jurisdiction.* For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if:

(A) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and

(B) exercising jurisdiction is consistent with the United States Constitution and laws.

(l) Proving Service.

(1) *Affidavit Required.* Unless service is waived, proof of service must be made to the court. Except for service by a United States marshal or deputy marshal, proof must be by the server's affidavit.

(2) *Service Outside the United States.* Service not within any judicial district of the United States must be proved as follows:

(A) if made under Rule 4(f)(1), as provided in the applicable treaty or convention; or

(B) if made under Rule 4(f)(2) or (f)(3), by a receipt signed by the addressee, or by other evidence satisfying the court that the summons and complaint were delivered to the addressee.

(3) **Validity of Service; Amending Proof.** Failure to prove service does not affect the validity of service. The court may permit proof of service to be amended.

(m) **Time Limit for Service.** If a defendant is not served within 90 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under [Rule 71.1\(d\)\(3\)\(A\)](#).

(n) Asserting Jurisdiction over Property or Assets.

(1) **Federal Law.** The court may assert jurisdiction over property if authorized by a federal statute. Notice to claimants of the property must be given as provided in the statute or by serving a summons under this rule.

(2) **State Law.** On a showing that personal jurisdiction over a defendant cannot be obtained in the district where the action is brought by reasonable efforts to serve a summons under this rule, the court may assert jurisdiction over the defendant's assets found in the district. Jurisdiction is acquired by seizing the assets under the circumstances and in the manner provided by state law in that district.

Notice of a Lawsuit and Request to Waive Service of Summons.

(Caption)

To (*name the defendant or -- if the defendant is a corporation, partnership, or association -- name an officer or agent authorized to receive service*):

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal

service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within (*give at least 30 days or at least 60 days if the defendant is outside any judicial district of the United States*) from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: _____

(Signature of the attorney
or unrepresented party)

(Printed name)

(Address)

(E-mail address)

(Telephone number)

Waiver of the Service of Summons.

(Caption)

To *(name the plaintiff's attorney or the unrepresented plaintiff)*:

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under [Rule 12](#) within 60 days from _____, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

(Signature of the attorney
or unrepresented party)

(Printed name)

(Address)

(E-mail address)

(Telephone number)

(Attach the following)

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service,

unless the defendant shows good cause for the failure.

“Good cause” does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant’s property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under [Rule 12](#) on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

CREDIT(S)

(Amended January 21, 1963, effective July 1, 1963; February 28, 1966, effective July 1, 1966; April 29, 1980, effective August 1, 1980; amended by [Pub.L. 97-462](#), § 2, January 12, 1983, 96 Stat. 2527, effective 45 days after January 12, 1983; amended March 2, 1987, effective August 1, 1987; April 22, 1993, effective December 1, 1993; April 17, 2000, effective December 1, 2000; April 30, 2007, effective December 1, 2007; April 29, 2015, effective December 1, 2015; April 28, 2016, effective December 1, 2016; April 27, 2017, effective December 1, 2017.)

Footnotes

¹

The drafting of the rules and amendments is actually done by a committee of the Judicial Conference of the United States. In the case of the Federal Rules of Civil Procedure, the initial draft is prepared by the Advisory Committee on Civil Rules. The Advisory Committee’s draft is then reviewed by the Committee on Rules of Practice and Procedure, which must give its approval to the draft. Any draft approved by that committee is forwarded to the Judicial Conference. If the Judicial Conference approves the draft, it forwards the draft to the Supreme Court. The Judicial Conference’s role in the rule-making process is defined by [28 U.S.C. 331](#).

²

All of the other amendments, including all of the proposed amendments to the Federal Rules of Criminal Procedure and the Rules and Forms Governing Proceedings in the United States District Courts under [sections 2254](#) and [2255 of Title 28, United States Code](#), took effect on August 1, 1982, as scheduled.

³

The President has urged Congress to act promptly. See President’s Statement on Signing H.R. 6663 into Law, 18 Weekly Comp. of Pres. Doc. 982 (August 2, 1982).

⁴

Where service of a summons is to be made upon a party who is neither an inhabitant of, nor found within, the state where the district court sits, subsection (e) authorizes service under a state statute or rule of court that provides for service upon such a party. This would authorize mail service if the state statute or rule of court provided for service by mail.

5

The Court's proposal authorized service by the Marshals Service in other situations. This authority, however, was not seen as thwarting the underlying policy of limiting the use of marshals. *See* Appendix II, at 16, 17 (Advisory Committee Note).

6

Appendix I, at 2 (letter of Assistant Attorney General Robert A. McConnell).

7

The provisions of H.R. 7154 conflict with [28 U.S.C. 569\(b\)](#) because the latter is a broader command to marshals to serve all federal court process. As a later statutory enactment, however, H.R. 7154 supersedes [28 U.S.C. 569\(b\)](#), thereby achieving the goal of reducing the role of marshals.

8

Proposed Rule 4(d)(8) provided that "Service ... shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a returned envelope showing refusal of the process by the defendant." This provision reflects a desire to preclude default judgments on unclaimed mail. *See* Appendix II, at 7 (Report of the Committee on Rules of Practice and Procedure).

9

See p. 15 *infra*.

10

Proponents of the California system of mail service, in particular, saw no reason to supplant California's proven method of mail service with a certified mail service that they believed likely to result in default judgments without actual notice to defendants. *See* House Report No. 97-662, at 3 (1982).

11

The parties may, of course, stipulate to service, as is frequently done now.

12

While return of the letter as unclaimed was deemed service for the purpose of determining whether the plaintiff's action could be dismissed, return of the letter as unclaimed was not service for the purpose of entry of a default judgment against the defendant. *See* note 8 *supra*.

13

The law governing the tolling of a statute of limitation depends upon the type of civil action involved. In a diversity action, state law governs tolling. *Walker v. Armco Steel Corp.*, 446 U.S. 740 (1980). In *Walker*, plaintiff had filed his complaint and thereby commenced the action under [Rule 3 of the Federal Rules of Civil Procedure](#) within the statutory period. He did not, however, serve the summons and complaint until after the statutory period had run. The Court held that state law (which required both filing and service within the statutory period) governed, barring plaintiff's action.

14

The same result obtains even if service occurs within the 120 day period, if the service occurs after the statute of limitation has run.

15

See p. 19 *infra*.

16

See p. 17 *infra*.

[17](#)

[Rule 45\(c\)](#) provides that “A subpoena may be served by the marshal, by his deputy, or by any other person who is not a party and is not less than 18 years of age.”

[18](#)

Some litigators have voiced concern that there may be situations in which personal service by someone other than a member of the Marshals Service may present a risk of injury to the person attempting to make the service. For example, a hostile defendant may have a history of injuring persons attempting to serve process. Federal judges undoubtedly will consider the risk of harm to private persons who would be making personal service when deciding whether to order the Marshals Service to make service under Rule 4(c)(2)(B)(iii).

[19](#)

The methods of service authorized by Rule 4(c)(2)(C) may be invoked by any person seeking to effect service. Thus, a nonparty adult who receives the summons and complaint for service under Rule 4(c)(1) may serve them personally or by mail in the manner authorized by Rule 4(c)(2)(C)(ii). Similarly, the Marshals Service may utilize the mail service authorized by Rule 4(c)(2)(C)(ii) when serving a summons and complaint under Rule 4(c)(2)(B)(i)(iii). When serving a summons and complaint under Rule 4(c)(2)(B)(ii), however, the Marshals Service must serve in the manner set forth in the court’s order. If no particular manner of service is specified, then the Marshals Service may utilize Rule 4(c)(2)(C)(ii). It would not seem to be appropriate, however, for the Marshals Service to utilize Rule 4(c)(2)(C)(ii) in a situation where a previous attempt to serve by mail failed. Thus, it would not seem to be appropriate for the Marshals Service to attempt service by regular mail when serving a summons and complaint on behalf of a plaintiff who is proceeding in forma pauperis if that plaintiff previously attempted unsuccessfully to serve the defendant by mail.

[20](#)

To obtain service by personnel of the Marshals Service or someone specially appointed by the court, a plaintiff who has unsuccessfully attempted mail service under Rule 4(c)(2)(C)(ii) must meet the conditions of Rule 4(c)(2)(B)--for example, the plaintiff must be proceeding *in forma pauperis*.

[21](#)

For example, the sender must state the date of mailing on the form. If the form is not returned to the sender within 20 days of that date, then the plaintiff must serve the defendant in another manner and the defendant may be liable for the costs of such service. Thus, a defendant would suffer the consequences of a misstatement about the date of mailing.

[22](#)

See p. 12 supra.

[23](#)

The 120 day period begins to run upon the filing of each complaint. Thus, where a defendant files a cross-claim against the plaintiff, the 120 day period begins to run upon the filing of the cross-complaint, not upon the filing of the plaintiff’s complaint initiating the action.

[24](#)

The person who may move to dismiss can be the putative defendant (i.e., the person named as defendant in the complaint filed with the court) or, in multi-party actions, another party to the action. (If the putative defendant moves to dismiss and the failure to effect service is due to that person’s evasion of service, a court should not dismiss because the plaintiff has “good cause” for not completing service.)

[25](#)

See Cal.Civ.Pro. § 415.30 (West 1973).

[26](#)

See p. 16 supra.

**

Delete if inappropriate.

Fed. Rules Civ. Proc. Rule 4, 28 U.S.C.A., FRCP Rule 4
Including Amendments Received Through 1-1-22

End of Document

© 2022 Thomson Reuters. No claim to original U.S. Government Works.

UNITED STATES DISTRICT COURT

for the

District of

Plaintiff
v.
Defendant

Civil Action No.

NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS

To: (Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within days (give at least 30 days, or at least 60 days if the defendant is outside any judicial district of the United States) from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date:

Signature of the attorney or unrepresented party

Printed name

Address

E-mail address

Telephone number

UNITED STATES DISTRICT COURT

for the

District of

Plaintiff v. Defendant Civil Action No.

WAIVER OF THE SERVICE OF SUMMONS

To: (Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date:

Signature of the attorney or unrepresented party

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.