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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

PRO SE LITIGANT GUIDE

Office of the Clerk of the Court

January 2007

WHO THIS GUIDE IS INTENDED TO ASSIST:

This guide is designed to assist you if:

1. 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 filed already in federal court.
2. You have elected to proceed without the assistance of a trained and licensed attorney.

SOME BASIC DEFINITIONS:

Plaintiff and defendants in court cases generally are referred to as the “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 licensed attorneys, who elect to represent themselves, generally are referred to as *pro-se* litigants. Likewise, plaintiffs or defendants who represent themselves generally are referred to as *pro-se* plaintiffs or *pro-se* defendants.

HOW THIS GUIDE SHOULD HELP YOU:

This guide will not answer all your questions about what you need to do to represent yourself effectively as a *pro-se* litigant. The Guide outlines the basic steps that are required to properly file an **action**, or lawsuit, with this court. It also provides some general guidance on the next steps in the process of litigating the action once you have filed it with the Clerk of Court.

However, you are responsible for learning about and following the procedures that govern the court process. Although the staff of the Clerk’s Office can provide *pro-se* litigants 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.

A WORD OF ADVICE:

Self-representation carries certain responsibilities and risks that *pro-se* litigants should be aware of before they proceed. The court encourages all individuals who are thinking about *pro-se* or self-representation to carefully review the risks associated with self-representation and to inform themselves of the potential consequences.

WARNING:

Rule 11 of the Federal Rules of Civil Procedure prohibits the filing of lawsuits that are clearly frivolous or filed merely to harass someone. If, after reviewing your complaint, the court determines that you have filed a lawsuit for an improper or clearly unnecessary purpose, it may impose sanctions against you, including ordering you to pay a fine to the court or pay the legal fees of the person or persons against whom you filed the lawsuit.

IMPORTANT ISSUES YOU SHOULD CONSIDER BEFORE YOU DECIDE TO REPRESENT YOURSELF IN AN ACTION BEFORE THIS COURT

IS THIS COURT THE APPROPRIATE COURT TO HEAR YOUR DISPUTE?

Federal courts can only hear limited kinds of cases. The United States District Court for the Southern District of Illinois is one of 94 trial courts in the federal court system. As is the case in all the federal trial courts, this court is authorized to hear disputes that fall into the following four categories only:

1. Those that deal with a questions 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 as plaintiff or defendant.
4. Those that involve a dispute among residents of different states with an amount in controversy over \$75,000.00.

if you complaint does not fall under any of these categories, you should not file it in federal court.

IS THERE AN ALTERNATIVE TO APPEARING *PRO-SE* (REPRESENTING YOURSELF) THAT IS AFFORDABLE?

Most people who file and pursue litigation in federal court employ a licensed attorney who practices law, has appeared in court and who is familiar with the rules of procedure that govern court processes. If you would prefer to have an attorney represent you but you are unable to afford one, you should consider contacting one of the following:

Illinois Lawyer Finders at 217/525-5297;

Land of Lincoln Legal Assistance in East St. Louis at 618/271-9140
or 618/874-8214; or

Land of Lincoln Legal Assistance in Mt. Vernon at 618/242-9351.

These agencies can explain the various options for obtaining and paying for legal services

If you cannot find an attorney to represent you, you have the right to pursue your claims in the court by appearing without representation, or *pro-se*, a Latin phrase that means "for yourself". Bear in mind that as a *pro-se* litigant, you are representing only yourself and presenting only your claims or 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. When you appear *pro-se*, you must follow the same rules and procedures that licensed attorneys who practice in this court must follow. Generally, judges hold *pro-se* litigants to the same standards of professional responsibility as trained attorneys.

WHERE TO REVIEW THIS COURT'S RULES OF PROCEDURE AND APPLICABLE FEDERAL LAWS IF PROCEEDING *PRO-SE*:

As a *pro-se* litigant, you should be familiar with the federal rules of procedure. These rules set forth the procedural requirements for litigating cases in all federal courts. As a *pro-se* litigant in a **civil case**, you should be familiar with the Federal Rules of Civil Procedure (abbreviated as Fed.R.Civ.P) and the Federal Rules of Evidence (abbreviated F.R.E.). If you are a *pro-se* defendant in a criminal case, you should familiarize yourself with the Federal Rules of Criminal Procedure (abbreviated as Fed.R.Crim.P.) and the Federal Rules of Evidence. Federal laws are found in the United States Code (abbreviated U.S.C.). These rules and laws are available for review at law libraries. You should contact them to determine the hours they are open to the public. You may also access the federal rules on the internet at www.house.gov/judiciary/docs105.htm.

As a *pro-se* litigant, you should also be familiar with the District Court Local Rules that apply specifically to court proceedings in this court. A paper bound version of the Local Rules can be purchased at the Clerk's Office at either the East St. Louis or Benton locations for a nominal charge of \$3.00. The Clerk's Office also accepts prepaid orders for the rules; there are no shipping or handling charges. For information and payments methods please call in East St. Louis 618/482-9371 or in Benton at 618/439-7760. You may also view these Rules at our website at www.ilsd.uscourts.gov.

CERTAIN TYPES OF CASES IN WHICH LITIGANTS TYPICALLY REPRESENT THEMSELVES:

As noted previously, a litigant may appear *pro-se* in any case that is properly within the jurisdiction of this court. There are four categories of cases that are most often filed by *pro-se* litigants. There are:

1. Cases alleging denial of civil rights under Title 42, United States Code, Section 1983 that **are not** filed by prisoners; and
2. Cases alleging denial of civil rights under Title 42, United States Code, Section 1983 filed by persons who **are** in jail or prison and who challenge their sentences or conditions of confinement; and
3. Cases alleging a tort claim which is an injury to an individual. Tort claims brought in federal court are subject to strict jurisdictional requirements;

and

4. Cases alleging employment discrimination under Title 42, United States Code, Section 2000(e).

HOW DO YOU START A NEW CIVIL CASE?

1. FILE A COMPLAINT.

The plaintiff, or person bringing the lawsuit, files a complaint. The complaint is the document in which the plaintiff asserts the claim(s) or rights(s) being violated and outlines the problem or reason for the suit.

The complaint can be filed by hand-delivering or mailing it to the Clerk's Office at either of the two addresses listed below:

United States Clerk's Office
750 Missouri Avenue
East St. Louis, IL 62201

United States Clerk's Office
301 West Main Street
Benton, IL 62812

Whether you deliver or mail your complaint, you must submit the following:

1. The original complaint with your full name, address and telephone number.
2. The \$350.00 filing fee or a motion to proceed in forma pauperis if you cannot afford to pay the filing fee. (Fees and/or costs are discussed later in this handbook).

The complaint will be given a case number and assigned to a district judge by the Clerk's Office. If you would like a file-marked copy/copies returned to you for your service, please provide additional copies of the complaint at the time you file the original.

2. SERVE THE COMPLAINT.

Each defendant, or person whom the plaintiff claims is responsible for the claim or problem, must be notified of the lawsuit through a process that is specified under law. The responsibility for notifying each defendant rests with the plaintiff and is referred to as **service of process**. The provisions for service of process are described in Rule 4 of the Federal Rules of Civil Procedure. If the service of process requirements are not followed correctly, the case can be dismissed.

You have 120 days to serve the complaint upon the defendant(s). It is your responsibility to properly serve the complaint. If you fail to do so within the 120 days, your case may be dismissed.

The defendant shall be notified of the lawsuit either by service of a summons or by waiver of service. The summons and waiver of service forms may be obtained from the Clerk's Office.

Detailed provisions on how to serve the defendant(s) are contained in **Rule 4** of the

Federal Rules of Civil Procedure. You should carefully review the rule to make sure that you are familiar with those provision. The service of process requirements can be satisfied in one of three ways.

1. **Personal Service:** Here you direct someone else to deliver or serve a copy of the complaint and summons on the defendant(s). Such service can be performed by anyone who is over eighteen years of age and who is not a party in the case. Sheriff Departments and private process servers will do this for a fee.

After you complete the summons form, which you may obtain from the Clerk's Office, staff of the Clerk's Office officially **issue** the summons; this means that an authorized court employee will sign the form and emboss it with the official seal of the court. The summons and complaint are then ready for service upon the defendant.

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 it is not completed, service of process is not complete. Rule 4 requires confirmation that service has been completed. Such confirmation or **proof** that the documents have been served on the defendant(s) requires that the original summons form with the return of service completed be returned to the Court and that a copy of the form be left with the defendant.

2. **Waiver of Service:** Rule 4 permits a defendant to **waive** personal service of process. That means the defendant agrees to respond to your complaint without being served with a summons, but accepts a copy of the complaint. The Clerk's Office can provide you with a waiver form that you can mail to the defendant. If the defendant completes and returns the waiver, you will be spared the burden of personal service.
3. **Service by the U.S. Marshal:** If a judge approves your application for waiver of the requirement to pay the \$350.00 case filing fee as described in this guide, you may request that the judge direct the U.S. Marshal to serve the summons and complaint at the government's expense. However, you must make such a request by formal written **motion** and also provide the judge with a proposed **order** directing service of process for the judge to sign. Examples of such a motion and order are attached in the Appendix Section. A judge may or may not grant the motion and sign the order.

Once the defendant(s) has/have been served with a copy of the complaint, the defendant(s) must file with the court an **answer** or some other response within a specified number of days. Under the rules governing service of process, each

defendant is required to provide a copy of the response on the plaintiff.

WHAT HAPPENS WHEN A CASE IS AT ISSUE

After all defendants have responded to the complaint, any one of a number of different procedures may occur.

1. **Referral to a Magistrate Judge:** The district judge to whom the case is assigned may refer the case to a magistrate judge for assistance in managing it. To do so, the district judge signs an **order referring the case to a magistrate judge**. Once a case has been referred to a magistrate judge, subsequent court proceedings may be conducted before that judge.
2. **Filing of Motions and Objections:** Either party, plaintiff or 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**. Local Rule 5.1 provides information on the preferred form and style of filing motions in this court. The party then signs the motion, submits it or **files** it with the clerk of court and sends a copy to the opposing party. The opposing party may file with the clerk of court an **objection** or a **responsive pleading** to the motion. This objection sets forth the reasons why the court should deny rather than grant the motion.
3. **Motion Review:** The district or magistrate judge may schedule hearings to provide the parties with an opportunity to argue the motion and the objections. Or, the judge may decide a hearing is unnecessary and rule on the motion by issuing a written order that either grants, denies, partially grants and/or partially denies what the motion sought.
4. **Dispositive vs Non-Dispositive Motions:** Motions fall into two categories: dispositive and non-dispositive. **Dispositive** motions, if granted, 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, except on cases consented to them.
5. **Magistrate Judge Report and Recommendation:** Where the 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 why. This report and recommendation then is forwarded to the district judge assigned to the case, and copies are sent to the parties. As a party, you

have a certain number of days within which 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. The district judge then will issue an order that adopts, rejects, or adopts in part and/or rejects in part the magistrate judge's report and recommendation. Where the judge's order dismisses the complaint and the cause of action, the Clerk of Court will prepare and enter a **judgment** in the case. Such judgment is final and can be appealed only to the Seventh United States Circuit Court of Appeals located in Chicago, Illinois.

WHAT COURT FEES AND COSTS ARE YOU REQUIRED TO PAY?

The fees charged by the United States District Court, Southern District of Illinois are as follow:

Filing a complaint and opening of a civil case:	\$350.00
Filing a notice of appeal:	\$455.00
Copies of documents from a file, per page fee:	\$.50
Certification of a document from a court file:	\$ 9.00

These fees may be paid in the case in full with a money order, check or major credit card.

In you are unable to pay the filing fee, you may apply for permission to proceed *in forma pauperis*, which is Latin for "in the form of a pauper". Information on filing *in forma pauperis* is found later in this Guide and an application for filing *in forma pauperis* is located in the Appendix Section. These forms are also available in the clerk's office. Completed applications are forwarded to a judge for review. If your application is denied by the judge, your case cannot proceed until you pay the filing fee. If the fee is not paid, the case may be dismissed.

Waiver of the filing fee does not automatically waive the other costs associated with pursuing or litigating your case. If, for example, you need copies of original documents in your case file, the clerk's office is required to charge the standard rate of \$.50 per page. Service of your complaint on the other party will entail additional costs unless you have made and the court has approved a motion that the United States Marshal serve your complaint.

HOW DO YOU SUBMIT DOCUMENTS TO THE COURT?

Case related documents that ask the court to take specific action are referred to as **motions** or **pleadings**. If, for example, you want to ask the court to take an action, such as appointing an attorney, you must do so by means of a written motion. A motion should be supported by a summary of the law supporting the motion called a **memorandum** and/or by an affidavit or declaration of the movant that provides the court with facts that support the granting of the motion. In preparing a motion, you should follow the same general format as the motion for official service of process that is attached to this Guide in the Appendix Section. In preparing motions, you should be as specific as possible about the order of the action you would like the court to take.

This court requires only the original of any motion/pleading be filed with the Clerk of the Court. You should always retain a copy of all documents you file with the court. When you file documents in person, bring an additional copy with you so staff of the clerk's office can file stamp it and return it to you for your records. By keeping such a copy, your records will reflect the filing date of the original. If duplicate/extra copies are submitted to the court, file-marked copies will be returned if a self-addressed stamped envelope is enclosed when submitted via mail.

The Clerk's Office has two locations:

United States District Court
Clerk's Office
750 Missouri Avenue
East St. Louis, IL 62201
618/482-9371

United States District Court
Clerk's Office
301 West Main Street
Benton, IL 62812
618/439-7760

Hours are 9:00 am to 4:30 pm Monday through Friday, excluding all federal holidays.

NOTE: WHEN YOU SUBMIT A PLEADING TO THE COURT, YOU ALSO MUST MAIL OR DELIVER A COPY OF THE PLEADING TO THE DEFENDANT'S ATTORNEY OR, IF THE DEFENDANT HAS NO ATTORNEY, TO THE DEFENDANT.

At the end of your pleading, you must include a **certificate of service** that states the date that you mailed or delivered a copy of the pleading to the defendant. A sample form for a certificate of service is in the Appendix Section.

**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. This docket is a chronological listing of all documents that have been filed in a case. You may review the docket on the public access terminal located at the intake area of the clerk's office. If you wish to have a paper copy of your docket sheet, the clerk's office will provide it to you at \$.50 per page. Clerk's office staff may provide basic docket information over the telephone.

**IS IT POSSIBLE TO SPEAK DIRECTLY TO A JUDGE OR MEMBER OF HIS
PERSONAL STAFF ABOUT YOUR CASE?**

As a party appearing *pro-se*, you are prohibited from all private or **ex parte** communications with the judge to whom your case is assigned. Ex Parte communication occurs when one of the parties to a lawsuit exchanges information with the assigned judge:

- (a) without the opposing party being present; or
- (b) without the knowledge and consent of the opposing party.

With few exceptions, because of this prohibition, a judge will refuse to speak or otherwise communicate *ex parte* with any party to a case that is assigned to him. Any communication between the assigned judge and a *pro-se* litigant should be in writing, and a copy of the communication should be sent either to the opposing party or that party's attorney. For example, a party appearing *pro-se* should send to the opposing party a copy of any letter sent to the judge. Moreover, the letter to the judge should indicate that a copy has been sent to the opposing party. As noted above, telephone or personal contact with the judge's personal staff should be limited to specific scheduling inquiries.

SECTION 2

REQUEST FOR APPOINTMENT OF COUNSEL

Pro se litigants may ask the court to appoint an attorney, or counsel, for them in a civil case. *Pro se* litigants have no right to be represented by court appointed counsel and the court has no obligation to appoint counsel. The court will appoint counsel in a few select cases where having an attorney seems particularly appropriate or important. 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 with the court. The motion should be filed at the time you file the complaint. A copy of a motion for appointment of counsel is attached in the Appendix Section.

SECTION 3

APPLICATION TO PROCEED IN FORMA PAUPERIS

As noted earlier in this guide, filing a case in this court requires the plaintiff to pay a \$350.00 filing fee at the time the new case is filed. If you are unable to pay this fee, you may apply to have payment of the fee waived. Bear in mind that 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 apply for waiver of the fee. If the judge subsequently denies your waiver application, you will be required to pay the \$350.00 fee; if you do not pay it within a specified period of time, your case will be dismissed.

The application process requires that you complete and submit a motion to proceed in forma pauperis. An application is attached in the Appendix Section. Brief instructions for completing the motion are as follow:

At the top of the application you must note the name of the case or case **caption**. The case name consists of your name as plaintiff, along with your full address and telephone number, above the **v.** and the name(s) of the defendant(s) below the **v.** Staff in the Clerk's Office will provide the case number.

You must answer all questions truthfully and completely. If you own real estate or automobiles that have outstanding mortgages or loans, 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 also must sign the statement under penalty of perjury.

The completed application should be submitted to the Clerk's Office with your complaint. Clerk's Office staff will transmit the application along with the complaint to the judge for review. The judge may grant or deny the motion. Because this process may take some time, a copy of the order will be mailed to you by the Clerk's Office. As noted above, if your motion is denied you must pay the filing fee within the time period specified or your case will be dismissed.