

**INFORMATION AND INSTRUCTIONS FOR A
PRISONER FILING CIVIL RIGHTS COMPLAINT
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA**

I. General Information About the Civil Rights Complaint Form:

- A. The Form. The civil rights complaint form is designed to help prisoners prepare a complaint seeking relief for a violation of their federal civil rights. Complaints must be typewritten or legibly handwritten. All information must be clearly and concisely written, only in the space provided on the form. If needed, you may attach additional pages of standard letter size paper to continue any part of the complaint. You must identify which part of the complaint is being continued and number all pages. Do **not** write on the back of any page.
- B. Your Signature. You must sign the complaint. Your signature must be an original signature, not a photocopy. Your signature constitutes a certificate that: 1) you have read the complaint; 2) to the best of your knowledge, information and belief formed after reasonable inquiry it is well-grounded in fact and law; and 3) it is not being filed for any improper purpose. Any false statement of a material fact may serve as a basis for prosecution and conviction for perjury. Please review Rule 11 of the Federal Rules of Civil Procedure. Rule 11 provides for the imposition of sanctions if the complaint is signed in violation of the Rule.
- C. The Filing Fee.
Payment of filing fee required. In accordance with the Prison Litigation Reform Act, 28 U.S.C. § 1915, as a prisoner you will be obligated to pay the full filing fee of \$350 for a civil action regardless of your forma pauperis status and the disposition of the case. Additionally, there is a \$55.00 administrative fee for filing a civil action. However, the administrative fee does not apply to persons granted in forma pauperis status under 28 U.S.C. § 1915.
If you have the money to pay the filing fee, you must submit payment to the Clerk of Court at the time of filing your complaint to the appropriate address listed at the end of these instructions.
Request to pay filing fee in monthly installments. If you do not have the money to pay the full filing fee, you must complete the Application to Proceed Without Prepayment of Fees and Declaration Under Penalty of Perjury. The Application must be returned to the Court with your complaint. **NOTE: You must have a prison or jail official complete the Certification Section on the Application and attach a certified copy of your prison or jail trust account statement for the six months immediately preceding the filing of the complaint. If you submit an incomplete Application or do not submit a prison or jail trust account statement with the Application, your request to proceed without prepayment of the filing fee may be denied.**
Initial partial filing fee assessment. If your application to proceed without prepayment of the filing fees is granted, the Court will assess an initial partial filing fee at the time your action is filed. The initial partial filing fee will be equal to 20% of the average monthly deposits to your prison or jail account for the six months immediately preceding the filing of the action, or 20% of the average monthly balance in your prison or jail account for that same six month period, whichever is greater. The Court will order the agency that has custody of you to take that initial partial filing fee out of your prison or jail account as soon as funds are available and forward the money to the Clerk of Court.
Collection of balance of filing fee. After the initial partial filing fee has been paid, you will owe the

balance of the filing fee. Until the amount of the filing fee is paid in full, each month you will owe 20% of your preceding month's income toward the balance. The agency that has custody of you will collect that money and send payments to the Clerk of Court any time the amount in your account exceeds \$10.00. Prison authorities are required to continue withdrawing funds from the prisoner's account until the \$350.00 filing fee is paid, even if the prisoner's action is dismissed or voluntarily withdrawn before the full fee is paid.

- D. Dismissal of the Complaint. Regardless of whether some or all of the filing fee has been paid, the Court is required to screen your complaint and to dismiss the complaint if: 1) your allegation of poverty is untrue; 2) the action is frivolous or malicious; 3) your complaint does not state a claim on which relief can be granted; or 4) you sue a defendant for money damages and that defendant is immune from liability for money damages.

If you file more than three actions while you are a prisoner which are dismissed as frivolous or malicious or for failure to state a claim on which relief can be granted, you will be prohibited from bringing any other actions in forma pauperis unless you are in imminent danger of serious physical injury. **NOTE: You are required under penalties of perjury to provide accurate information regarding previous filings. Failure to provide this information may result in immediate dismissal of your complaint.**

- E. Court Divisions. The District of South Dakota consists of four divisions. A list of the counties that make up each division is included below. Your complaint should be filed in the division where the violation occurred.

<u>Southern Division</u>	<u>Western Division</u>	<u>Central Division</u>	<u>Northern Division</u>
Aurora	Bennett	Buffalo	Brown
Beadle	Butte	Dewey	Campbell
Bon Homme	Custer	Faulk	Clark
Brookings	Fall River	Gregory	Codington
Brule	Harding	Haakon	Corson
Charles Mix	Jackson	Hand	Day
Clay	Lawrence	Hughes	Deuel
Davison	Meade	Hyde	Edmunds
Douglas	Oglala Lakota	Jerault	Grant
Hanson	Pennington	Jones	Hamlin
Hutchinson	Perkins	Lyman	McPherson
Kingsbury		Mellette	Marshall
Lake		Potter	Roberts
Lincoln		Stanley	Spink
McCook		Sully	Walworth
Miner		Todd	
Minnehaha		Tripp	
Moody		Ziebach	
Sanborn			
Turner			
Union			
Yankton			

You should mail the complaint with the \$400 filing fee (or the Motion to Proceed Without Prepayment of Fees and the Prisoner Trust Account Report) to:

Southern Division:

U.S. District Court Clerk
U.S. Courthouse
400 S. Phillips Avenue #128
Sioux Falls, SD 57104

Central & Northern Divisions:

U.S. District Court Clerk
U.S. Post Office & Courthouse
225 South Pierre Street #405
Pierre, SD 57104

Western Division:

U.S. District Court Clerk
Andrew W. Bogue Federal
Bldg. & U.S. Courthouse
515 Ninth Street #302
Rapid City, SD 57701

- F. Service: Summons and USM 285 forms will be provided to you if, after screening your complaint as is required under 28 U.S.C. §1915, the court orders your case served upon one or more defendants.
- G. Certificate of Service on Defendants: You must furnish the opposing party or their attorney with a copy of any document you submit to the court (except the initial complaint and application to proceed in forma pauperis). Pursuant to Rules 5(a) and (d) of the Federal Rules of Civil Procedure, each original document (except the initial complaint and application to proceed in forma pauperis) must include a certificate of service on the last page of the document stating the date a copy of the document was mailed to the defendants or their attorney and the address(es) to which it was mailed. Any document received by the court which does not include a certificate may be stricken. A certificate of service should be in the following form:

Certificate of Service

I hereby certify that a copy of the foregoing document was mailed this ___ day of ___(month),
___(year), to:

Name: _____

Address: _____

Attorney for Defendant(s).

(Signature of Plaintiff)

- H. Inquiries and Copying Requests. You will be notified as soon as the court issues an order in your case. Because of the large volume of cases filed by prisoners in this court and limited court resources, the court and clerk's office will not answer inquiries concerning the status of your case or provide copies of documents, except at a charge of fifty cents (\$0.50) per page. You must therefore keep copies of all documents submitted to the court for your own records.
- I. Change of Address. You must immediately notify the clerk and the opposing parties or their attorneys in writing of any change in your mailing address. Failure to notify the court of any change in your mailing address may result in the dismissal of your case.
- J. Amended Complaint. If you need to change any of the information in the initial complaint, you must file an amended complaint. The amended complaint must be written on the court-approved civil rights complaint form. Rule 15(a) of the Federal Rules of Civil Procedure allows you to file one amended complaint prior to any defendant filing an answer. After any defendant has filed an answer, you must file a motion for leave to amend and lodge a proposed amended complaint. Further, any allegations or defendants not included in the amended complaint are considered dismissed.

- K. Letters and Motions. It is generally inappropriate to write a letter to any of the district judges, magistrate judges, or the staff of any of the judicial officers. The appropriate way to communicate with these persons is by filing a written pleading or motion.

II. Completing the Civil Rights Complaint Form:

HEADING:

1. Your Name and Address. Print your name, prison or jail number, and mailing address on the lines provided in the upper left hand corner of the form.
2. Plaintiff. Print your full name on the first line of the caption.
3. Defendants. Print the names of each of the defendants. If you name more than four defendants, you should print the name of one defendant and "see additional page for defendants" in the space provided. On the additional page you must list the names of all of the defendants. The initial complaint must contain the names of all the parties (plaintiffs as well as defendants) in the heading (or on the additional page if more than four defendants). See Rule 10(a) of the Federal Rules of Civil Procedure.
4. Jury Demand. If you want a jury trial, you must write "JURY TRIAL DEMANDED" on the line below "CIVIL RIGHTS COMPLAINT BY A PRISONER." Failure to do so will result in the loss of the right to a jury trial. A jury trial is not available if you are seeking only injunctive relief.

Part A. JURISDICTION:

1. Nature of Suit. Mark whether you are filing the complaint pursuant to 42 U.S.C. § 1983 for state, county, or city defendants; *Bivens v. Six Unknown Federal Narcotics Agents* for federal defendants; or "other." If you mark "other," identify the source of that authority.
2. Plaintiff. Print all of the requested information on the spaces provided. Identify the institution and city where the alleged violation of your rights occurred.
3. Defendants. Print all of the requested information about each of the defendants in the spaces provided. If you are naming more than four defendants, you must provide the necessary information about each additional defendant on a separate page.

NOTE: A prisoner cannot challenge the fact or duration of his or her confinement in a civil rights action. A prisoner can challenge a conviction, an original sentence, or any action extending the time that must be served in prison only in a habeas corpus proceeding.

Part B. PREVIOUS LAWSUITS:

You must identify any other lawsuit you have filed in either state or federal court while you were a prisoner. Print all of the requested information about each lawsuit in the spaces provided. If you have filed more than three lawsuits, you must provide the necessary information about each additional lawsuit on a separate page.

Part C. CAUSE OF ACTION:

You must identify what rights the defendant(s) violated. The form provides space to allege three separate counts (one violation per count). If you are alleging more than three counts, you must provide the necessary information about each additional count on a separate page.

1. Counts. You must identify which civil right was violated. YOU MAY ALLEGE THE VIOLATION OF ONLY ONE CIVIL RIGHTS CLAIM PER COUNT.
2. Issue Involved. Check the box that most closely identifies the issue involved in your claim. YOU MAY CHECK ONLY ONE BOX PER COUNT. If you check the box marked "Other," you must identify the specific issue involved in the space provided.
3. Supporting Facts. After you have identified which civil right was violated, you need to state the supporting facts. Be as specific as possible. You must state what each individual defendant did to violate your rights. If there is more than one defendant, you need to identify which defendant did what act. You also need to state the date(s) on which the act(s) occurred if possible.
4. Injury. State precisely how you were injured by the alleged violation of your rights.
5. Administrative Remedies. Exhaustion of administrative remedies is a prerequisite to filing a civil rights complaint. 42 U.S.C. § 1997e requires prisoners to exhaust the available administrative remedies before being allowed to file a civil rights action. Consequently, you must disclose whether you have exhausted the inmate grievance procedures or administrative appeals for each count in your complaint. If one of your counts is exempt from the grievance procedures or administrative appeals, fully explain the exemption on the lines provided.

Part D. REQUEST FOR RELIEF:

Print the relief you are seeking in the space provided.

SIGNATURE:

You must sign your name and print the date you signed the complaint. Your signature must be an original signature, not a photocopy. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury.

FINAL NOTE

You should follow these instructions carefully. Failure to do so may result in your complaint being stricken or dismissed by the court. All questions must be answered concisely in the proper space on the form. If needed, you may attach additional pages. The form, however, must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number all pages.

Name and Prisoner/Booking Number

Place of Confinement

Mailing Address

City, State, Zip Code

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
_____ DIVISION**

_____,
(Full Name of Plaintiff)

Plaintiff,

vs.

_____,
_____,
_____,
_____,
(Full Name of Each Defendant)

Defendants.

Case No. _____
(To be supplied by the Clerk)

**CIVIL RIGHTS COMPLAINT
BY A PRISONER**

- Original Complaint
- First Amended Complaint
- Second Amended Complaint

A. JURISDICTION

1. This Court has jurisdiction over this action pursuant to:
 - a. 28 U.S.C. § 1343(a)(3); 42 U.S.C. § 1983
 - b. 28 U.S.C. § 1331; *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).
 - c. Other: (Please specify.) _____

2. Name of Plaintiff: _____
Present mailing address: _____
(Failure to notify the Court of any change of address may result in dismissal of this action.)

Institution/city where violation occurred: _____

3. Name of first Defendant: _____ . The first Defendant is employed as:
_____ at _____ .
(Position and Title) (Institution)

This Defendant is sued in his/her: individual capacity official capacity (check one or both)

Explain how this Defendant was acting under color of law: _____
_____ .

4. Name of second Defendant: _____ . The second Defendant is employed as:
_____ at _____ .
(Position and Title) (Institution)

This Defendant is sued in his/her: individual capacity official capacity (check one or both)

Explain how this Defendant was acting under color of law: _____
_____ .

5. Name of third Defendant: _____ . The third Defendant is employed as:
as:

_____ at _____ .
(Position and Title) (Institution)

This Defendant is sued in his/her: individual capacity official capacity (check one or both)

Explain how this Defendant was acting under color of law: _____
_____ .

6. Name of fourth Defendant: _____ . The fourth Defendant is employed as:
_____ at _____ .
(Position and Title) (Institution)

This Defendant is sued in his/her: individual capacity official capacity (check one or both)

Explain how this Defendant was acting under color of law: _____
_____ .

(If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.)

B. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner? Yes No

2. If your answer is "yes," how many lawsuits have you filed? _____. Describe the previous lawsuits in the spaces provided below.

3. First prior lawsuit:

a. Parties to previous lawsuit:

Plaintiff: _____

Defendants: _____

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

c. Case or docket number: _____

d. Claims raised: _____

e. Disposition: (For example: Was the case dismissed? Was it appealed? Is it still pending?) _____

f. Approximate date lawsuit was filed: _____

g. Approximate date of disposition: _____

4. Second prior lawsuit:

a. Parties to previous lawsuit:

Plaintiff: _____

Defendants: _____

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

c. Case or docket number: _____

d. Claims raised: _____

e. Disposition: (For example: Was the case dismissed? Was it appealed? Is it still pending?) _____

f. Approximate date lawsuit was filed: _____

g. Approximate date of disposition: _____

5. Third prior lawsuit:

a. Parties to previous lawsuit:

Plaintiff: _____

Defendants: _____

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

c. Case or docket number: _____

d. Claims raised: _____

e. Disposition: (For example: Was the case dismissed? Was it appealed? Is it still pending?) _____

f. Approximate date lawsuit was filed: _____

g. Approximate date of disposition: _____

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
_____ DIVISION

_____,
Plaintiff, Case No. _____
To be supplied by the Clerk

vs.

_____,
_____,
_____,
_____,
_____,
_____,
Defendants. **APPLICATION TO PROCEED WITHOUT
PREPAYMENT OF FILING FEES
AND DECLARATION
UNDER PENALTY OF PERJURY**
(Prisoner Civil Rights Cases, 42 U.S.C. § 1983)

I, _____, declare under penalty of perjury, that the following is true and correct; that I am the prisoner-plaintiff in the above entitled case; that in support of my request to proceed without prepayment of fees under 28 U.S.C. Section 1915, I declare that because of my poverty I am unable to pay the full costs of said proceedings or to give security therefore and that I am entitled to redress.

I further declare under penalty of perjury that the responses which I have made to the questions and instructions below are true, correct, and complete.

1. a. Where are you imprisoned? _____
b. When did you begin your imprisonment there? _____
c. When do you expect to be released? _____
2. Have you ever before brought an action or appeal in a federal court while you were incarcerated or detained? Yes No
a. If _____ so, _____ state _____ how _____ many _____ times:
b. Were any of the actions or appeals dismissed because they were frivolous, malicious, or failed to state a claim upon which relief may be granted? Yes No
c. Please note 28 U.S.C. § 1915(g), which provides:
In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.
3. Are you presently employed in prison? Yes No
a. If the answer is yes, state the number of hours you work per week and the hourly rate of pay:

b. If the answer is no, state the date of your last employment and the amount of hours you worked per week and the hourly rate of pay: _____

4. Have you received, *within the past twelve months*, any money from any of the following sources?

a. Business, profession or form of self-employment? Yes No

b. Rent payments, interest or dividends? Yes No

c. Pensions, annuities or life insurance payments? Yes No

d. Gifts or inheritances? Yes No

e. Any other income (other than listed above)? Yes No

If the answer to any of the above is yes, describe such source of money and state the amount received from each source during the past twelve (12) months: _____

5. Do you own any cash, or do you have money in a checking or savings account? (Include any funds in prison accounts, if applicable.) Yes No

If the answer is yes, state the total amount of cash owned. _____

6. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? Yes No

If the answer is yes, describe the property and state its approximate value: _____

7. List the persons who are dependent upon you for support; state your relationship to those persons, and indicate how much you contribute toward their support: _____

I understand that a false statement or answer to any question herein may subject me to criminal prosecution and penalties for perjury. I understand false statements herein may also adversely affect my ability to pursue this case or other cases. I further understand that perjury is punishable by a term of imprisonment of up to five (5) years and/or a fine of \$250,000 (18 U.S.C. Sections 1621, 3571).

I, _____, declare under penalty of perjury that the foregoing is true and correct.

Dated this _____ day of _____, 20____, at _____, _____ (State).
(day) (month) (year) (City or County)

Prisoner/Plaintiff (Signature)

PRISONER AUTHORIZATION

If my request to proceed without prepayment of filing fees is granted, I understand that I am required by statute to pay the full amount of the filing fees for this case, regardless of my forma pauperis status and the disposition of this case. I further authorize the prison officials at this institution to assess, collect and forward to the Court the full amount of these fees, in monthly payments based on the average of deposits to or balance in my prison trust account in accordance with 28 U.S.C. Section 1915.

I understand I am responsible for the payment of the statutory filing and docketing fees at the time of filing a civil case or notice of appeal. The filing fee for a civil case is \$350.00 and the fee for an appeal is \$605.00. I understand I will be assessed the full filing fee even if my case is eventually dismissed.

If my request to proceed without prepayment of filing fees is denied, I understand that I am required to pay the full amount of the filing fee for this case (\$350) and the administrative fee (\$55) for a total of \$405.

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Prisoner/Plaintiff (Signature)

NOTICE: A prisoner seeking to proceed in forma pauperis must submit an affidavit stating all assets. In addition, a prisoner 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.

PRISONER TRUST ACCOUNT REPORT

(To be Completed by the Institution of Incarceration)

PRISONER'S FULL NAME: _____

PRISONER'S IDENTIFICATION NUMBER: _____

Under the Prison Litigation Reform Act, a prisoner filing a civil case or appeal in the United States courts under 28 U.S.C. § 1915, must obtain from the trust officer of each institution in which the prisoner was confined during the preceding six months, a certified copy of the prisoner's trust account statement for the six months prior to filing the case.

Please complete this form, attach supporting ledger sheets if any, and return these documents to the prisoner for mailing to the court.

CERTIFICATE OF AUTHORIZED OFFICER

I certify that I have reviewed the financial records of the above-named prisoner and the following information is correct:

CURRENT BALANCE OF PRISON ACCOUNT: _____

AVERAGE MONTHLY DEPOSITS (past six months): _____

AVERAGE MONTHLY BALANCE (past six months): _____

(Any frozen funds must be included in the calculations.)

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

DATE

Authorized Officer of Institution (signature)