

## **INSTRUCTIONS FOR FILING A CIVIL ACTION FOR VIOLATION OF CIVIL RIGHTS (BIVENS ACTION)**

Pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), a plaintiff may bring a civil rights suit against federal officials in their individual capacity for damages caused by constitutional torts under color of their authority.

**Do NOT use this form to apply for a writ of habeas corpus or to challenge the sentence you received in federal court.** Separate forms are available for these actions. The Clerk of Court can send you a copy upon request, or one should be available in the law library of your institution.

### **THE RIGHT COURT AND THE RIGHT DEFENDANTS**

You may file your complaint in the United States District Court for the Southern District of West Virginia only if one or more of the defendants is located in the Southern District, or if the events of which you complain occurred in the Southern District. File complaints against state personnel under 42 U.S.C. § 1983. File complaints against federal personnel on this Bivens action form. **Do NOT use 42 U.S.C. § 1983 forms to apply for a writ of habeas corpus or to challenge the sentence you received in state or federal court.**

### **EXHAUSTION**

You may not bring an action challenging conditions until you have completely exhausted available administrative remedies, including any grievance system. See 42 U.S.C. Section 1997e(a); 28 C.F.R. Part 542 – Administrative Remedy; and Program Statement 1330.13 – Administrative Remedy Program.

### **SCREENING/DISMISSAL**

The Court is required to screen your complaint and to dismiss your case at any time if it determines the following:

1. You failed to exhaust all administrative remedies; or
2. Your case is frivolous, or malicious, or fails to state a claim on which relief may be granted, or seeks money from a defendant who is immune from such relief; or
3. You are requesting to file your case without paying the filing fee and your allegation of poverty is untrue.

### **THREE-DISMISSAL RULE**

If you have, while incarcerated, brought a civil action or appeal in federal court three or more times in the past that was dismissed with prejudice because it was (1) frivolous, or (2) malicious, or (3) failed to state a claim on which relief may be granted, you cannot bring a new civil action or appeal a judgment in a civil action without pre-payment of the filing fee in full. The only exception to this is if you are in “imminent danger of serious physical injury.” See 28 U.S.C. Section 1915(g).

## COMPENSATORY DAMAGES

If your case is allowed to proceed and you are awarded compensatory damages against a federal officer, before payment of any compensatory damages, the government will attempt to notify victims of the crime for which you were convicted, because you must first pay all pending restitution orders before any part of the award goes to you.

## BASIC GUIDELINES

When filing forms and documents with the Court, follow these guidelines:

- complete all forms as thoroughly as possible
- use letter size paper only (8½ x 11)
- sign all documents
- send the original
- do not use staples
- do not use pencil: use black or blue pens only
- do not bind documents
- write only on the fronts of documents, do not write on the back of documents

## FORMS

To file a civil rights action, you must use the forms provided by the Court, and submit either (a) Complaint and filing fee of \$400.00 to be paid by certified check or money order, OR (b) Complaint and the following forms: Application to Proceed Without Prepayment of Fees and Costs form, Consent to Collection of Fees from Trust Account form, and the Prisoner Trust Account Report form. Directions for filing a complaint are listed below and all necessary forms are included. Please read all of the following instructions carefully before completing **ANY** of the attached forms.

### THE COMPLAINT (Attachment A)

1. *Instructions for Completing the Complaint Form:*
  - a. You should submit one original to the Clerk of Court and keep one copy of the complaint for your records. If you do not retain a copy of your complaint and later request a copy from the Court, you will be required to pay a copying fee of \$0.50 per page.
  - b. Do not submit forms from other districts.
  - c. Do not write on the back of complaint forms. If you need more space, use additional sheets of paper. Your complaint and all other pleadings/documents must be legibly handwritten or typed. You may submit attachments, exhibits, or motions with the complaint.
  - d. **TITLE OF THE ACTION:** In the complaint, “the title of the action: (your name), Plaintiff v. (names of people you are suing), Defendant” should include the names of all parties. See Rule 10(a), Federal Rules of Civil Procedure.

- e. DEFENDANTS: You should provide the Clerk of Court with the complete name and address of each defendant. If the first name is unknown, provide an initial. Otherwise, the Clerk cannot prepare a summons for issuance of service of process. See Rule 4, Federal Rules of Civil Procedure.
- f. STATEMENT OF CLAIM: You are required to give facts regarding your grievance. THIS COMPLAINT SHOULD NOT CONTAIN LEGAL ARGUMENTS OR CITATIONS.
- g. RELIEF REQUESTED: State what you want. Do not make legal arguments.
- h. VERIFICATION: You should make sure that all answers are true and correct. You must verify or certify the correctness of the contents of the complaint. You verify or certify your answers by signing the complaint on page 5.
- i. Note: Under RULE 11, Federal Rules of Civil Procedure: only the signature of a pro se party on pleadings will be acceptable to the Court.

#### FILING FEE (Attachments B, C and D)

When you bring a civil action in federal court, you must pay the full amount of the filing and administrative fees in the amount of \$400.00 (\$350.00 filing fee and a \$50.00 administrative fee if not granted *in forma pauperis* status) or apply to proceed without pre-payment of the filing fee. If you have the funds to pay the filing fee, send a money order payable to Clerk, U.S. District Court in the amount of \$400.00.

If you cannot pay the full fee at the time of filing, you must apply to proceed without prepayment of fees. To file an application to proceed without prepayment of fees, you must submit the following forms: Application to Proceed Without Prepayment of Fees and Costs form (Attachment B), Consent to Collection of Fees from Trust Account form (Attachment C), and the Prisoner Trust Account Report (Attachment D) with ledger sheets from your prisoner trust account which reflect your account's activity for the past six months. Failure to submit all of these forms may result in dismissal of your complaint.

#### Filing Fee Procedures

After receiving your complaint, the Court will assess and collect an initial partial filing fee of the greater of the following:

1. 20% of the average monthly deposits to your prisoner account for the past six months; or
2. 20% of the average monthly balance in your prisoner account for the past six months.

After paying this initial partial fee, you must pay 20% of the preceding month's income received in your prisoner account. The agency having custody of you will send these payments to the Clerk of Court when your prisoner account has more than \$10.00 in it, until the full filing fee is paid. See 28 U.S.C. Section 1915(b).

See below additional important instructions regarding your in forma pauperis documents:

1. You must verify or certify the correctness of the contents of the above-referenced documents. You should make sure that all answers are true and correct.
2. The Clerk does not provide copies unless a fee of \$0.50 per page is paid. Permission to proceed without prepayment of fees or costs does not entitle you to free copies of documents.

### **CONSENT TO TRIAL BY MAGISTRATE JUDGE**

In accordance with the provision of 28 U.S.C. Section 636(c), and Fed. R. Civ. P. 73, you are notified that a United States Magistrate Judge of this district is available to conduct any and all proceedings in this case including a jury or non-jury trial and to enter the final order in this case. However, exercise of this jurisdiction by a magistrate judge is permitted only if all parties voluntarily consent. If you consent to having this matter tried by a magistrate judge, you need to complete the form for "Consent to Jurisdiction by a United States Magistrate Judge." (Attachment E).

After completing the complaint and all applicable forms, proofread them to ensure compliance with all instructions. Return the completed forms and the correct number of copies to the appropriate point of holding court:

**CHARLESTON:** Robert C. Byrd Federal Building and U.S. Courthouse  
300 Virginia Street, East, Room 2400  
Charleston, West Virginia 25301

**HUNTINGTON:** Sidney L. Christie Federal Building and U.S. Courthouse  
845 Fifth Avenue, Room 101  
Huntington, West Virginia 25701

**BECKLEY:** Robert C. Byrd Federal Building and U.S. Courthouse  
100 North Heber Street, Room 119  
Beckley, West Virginia 25801

**BLUEFIELD:** Elizabeth Kee Federal Building  
601 Federal Street,  
Room 1000  
Bluefield, West Virginia 24701

**IMPORTANT ADDITIONAL INFORMATION**

1. IF YOU DO NOT KEEP THE COURT ADVISED OF YOUR CURRENT ADDRESS, YOUR CASE MAY BE DISMISSED FOR WANT OF PROSECUTION.
2. It is improper to communicate directly with Judges or Magistrate Judges concerning matters that may become a subject of their Court.
3. It is improper for the Clerk, Judges or Magistrate Judges to give legal advice to litigants.

Thank you in advance for your cooperation regarding these instructions.

AT THE DIRECTION OF THE COURT

Rory L. Perry II, Clerk  
United States District Court for the  
Southern District of West Virginia