

UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA
December 2015

FILING YOUR LAWSUIT IN
THE DISTRICT OF NEBRASKA:
A Guide to Self Representation
for Non-Prisoners

Disclaimer: The contents of this Guide are provided for informational purposes only and do not constitute legal advice. If you are in a prison or a jail, or your suit is related to your incarceration, this Guide should *not* be used.

Introduction

Congress organized the United States District Court for the District of Nebraska (“the Court”) as one judicial district on March 25, 1867. At that time, Congress assigned the Court to the Eighth Circuit, where it remains today. The Court operates from three locations – Omaha, Lincoln, and North Platte. The Omaha office has one active district judge, two senior-status judges, and two full-time magistrate judges. The Lincoln office has one active district judge, one senior-status judge, and one full-time magistrate judge. The Lincoln and Omaha offices have a fully-staffed office for the Clerk of the District Court. The North Platte office is unstaffed. Judges sit in the North Platte office on a rotating basis periodically.

This Guide has been prepared for individuals who choose to file a lawsuit in the Court without an attorney (“pro se”) and who are not incarcerated. The Court would like to acknowledge and thank the District of Kansas, which has an excellent pro se guide that served as a model for creating this Guide.

The Court takes pro se cases seriously and its goal is to resolve them quickly and fairly. The Guide has been prepared with this goal in mind. It is intended as an informative and practical resource and guide to understanding the basic practices, rules, and procedures of the Court. A glossary that explains some of the words used in this Guide is included in Part 6.

The statements and materials presented in this Guide are for educational purposes only and do not constitute legal advice. This Guide is not intended to be a substitute for the advice and assistance of a licensed attorney. In addition, you should keep in mind that the law is constantly changing and the information contained in these pages may not be complete or up-to-date. The laws and rules to which this Guide refers may have changed since the Guide’s publication, and new laws or rules may apply to your case. You are responsible for the accuracy of any information on which you rely.

Before You File Your Case

Consider ways to resolve your dispute/ problem outside court

Are you having a disagreement with another person, business, or government agency? Are you thinking about going to court to ask a judge to resolve a disagreement or solve a problem for you? The federal court is one type of court that can help people resolve disputes. When two or more people (or a person and a business or government agency) have a disagreement and want a judge to listen to the facts, it is generally called a “case” or a “lawsuit.” Before you decide to file a case in federal court, you may want to consider other ways to solve your dispute or problem. Here are a few suggestions:

- **Try talking to the person, business, or government agency that you feel has done something wrong or try sending a letter asking the person, business, or government agency to fix the problem.** Many government agencies have requirements or special rules you must follow before filing a case in court.
- **Seek help from other sources.** Many different agencies may be able to provide help. Part 5 of this Guide provides a list of agencies that you may want to call for help.
- **Contact an attorney.** An attorney can help you make sure that federal court is the right place to solve your problem. An attorney can also provide you with more information about resources that may help you. You have the right to file a case without an attorney’s help. This is known as “self representation” or “proceeding pro se.” If you are representing yourself, the

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judge will still expect you to state your complaints clearly, to meet all your deadlines, and to follow the rules. An attorney can help explain these rules.

- If you can afford to hire your own attorney, but do not know any, you might consider calling the agencies listed in Part 5 of this Guide. These organizations can tell you which lawyers practice the type of law that relates to your case.

Are you in the right court?

Before you file a case, you need to make sure that your case should be filed in federal court. Here are some questions that you should ask:

- **Is your case about divorce, child custody, adoption, a will, an injury caused by another person, medical malpractice, a name change, or a decision of a state agency? Is your case about a city traffic or parking ticket, a landlord-tenant dispute, a zoning or other local ordinance?**

If so, you probably belong in state rather than federal court. State courts hear cases about matters that are regulated by state law. Each Nebraska county has courts that decide matters brought under state law, municipal law, or the state Constitution.

- **Is your case about being treated differently or being fired because of your age, race, religion, sex, or because you have a disability? Is your case about the denial of Social Security or other federal benefits, or a decision of a federal agency?**

If so, you are probably in the right court.

Types of cases filed in federal court

Federal courts are courts of limited jurisdiction. Generally, three types of cases may be filed in the federal courts:

1. **Cases where the United States government is a party.**

The federal courts hear lawsuits for benefits from the Social Security Administration or Veterans Administration or cases against a federal agency, such as the United States Postal Service or the Internal Revenue Service.

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2. Cases brought under federal law.

The federal courts hear specific types of cases described in the U.S. Constitution or specifically provided for by Congress. Federal laws may cover issues not addressed by state laws, such as interstate commerce, damages at sea, labor laws, environmental matters, agriculture, federal tax matters, and many other areas. Some federal laws may be the same as state laws, such as in civil rights matters.

3. Cases where the parties reside in different states.

Lawsuits between parties residing in different states are called “diversity cases.” For example, if you live in Nebraska and you file a lawsuit against a defendant who lives in Iowa, then there would be “diversity.” In a diversity case, the defendant may challenge your decision to file the lawsuit in a particular U.S. District Court. For example, if you file your lawsuit in the District of Nebraska, but the defendant believes that the lawsuit should have been filed in the Southern District of Iowa, then the defendant may file a motion challenging your decision to file the lawsuit in the District of Nebraska. If the defendant files this kind of motion, the judge will decide which court should hear your case. The location where a court hears a case is called “venue.” In determining the proper venue for a case, the judge will consider factors such as where the case was filed, where the majority of the parties reside, where the witnesses are located, and where the injury or harm occurred. Generally, a case is heard in the same location where it was filed; however, the judge may determine that another location is more appropriate.

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

Is your case timely?

A statute of limitations is the period of time set by law within which a lawsuit must be filed. If you fail to bring your case within the time allowed by statute, your lawsuit may be dismissed. Before filing your case, you should find out the statute of limitations that applies to your case.

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Other issues to consider

Before you file, please consider:

- **Rule 11 of the Federal Rules of Civil Procedure.** This rule prohibits the filing of lawsuits that are clearly frivolous or filed just to harass someone. **If the court determines that you have filed a lawsuit for an improper or unnecessary reason, it may impose sanctions against you, including ordering that you pay any legal fees of the party that you sued.**
- **What Happens If You Lose?** If you lose, the winning party may ask that you be ordered to pay the party's attorneys' fees. The winning party also commonly seeks from the losing party certain costs incurred during a lawsuit. These costs can include things such as deposition transcripts, witness fees, copy expenses, etc. In many cases, these fees may add up to thousands of dollars.

If you have decided to proceed with filing a lawsuit, you should review Part 6 of this Guide, which is a glossary of common legal terms related to a lawsuit.

Filing Your Case

In Part 1, you learned that when two or more people have a disagreement and want a judge to listen to the facts, it is called a “case” or a “lawsuit.” But before a judge can listen to the facts in any case, you must give required case information to the clerk of the court. This process is called “filing your case.” The District of Nebraska Clerk’s Office is responsible for keeping a record of all of the cases that are filed in federal district court. Part 2 of this Guide will tell you what you must provide to the clerk’s office so that your case can be filed.

Rules that you must follow

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

- **Federal Rules of Civil Procedure.** These rules govern the filing of a civil lawsuit in federal court, and you should be familiar with them. For example, Rule 4 of the Federal Rules of Civil Procedure describes the procedures for service of summons in civil cases (see Part 3). Be sure to read this rule carefully before the complaint and the summons form are served on the person or party that you have named in your case. You may ask the clerk’s office questions about how to serve the complaint and summons. Please remember that Rule 4 is not the only rule that must be followed. For example, Rule 3 of the Federal Rules of Civil Procedure explains how an action begins, and Rule 5 of the Federal Rules of Civil Procedure explains the general filing and service requirements for pleadings filed after the complaint is served. You must follow all of the rules.

- **United States District Court, District of Nebraska Local Rules (General and Civil).** This is a collection of “local rules” that are written for

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the practice of law in the Nebraska federal district court. They are in addition to the Federal Rules (see above). Most federal district courts have them, and local rules will differ from court to court, so *please remember to refer ONLY to the District of Nebraska's local rules*. Both the Local Rules and the Federal Rules must be followed. These rules are on the court's Web site at <http://www.ned.uscourts.gov/localrules>.

- **Nebraska Statutes Annotated, Chapter 25, Civil Procedure.** These statutes may also apply to your lawsuit. For example, Federal Rule of Civil Procedure 4 permits service on some individuals by a manner set forth in state law. Therefore, consulting Nebraska state law may be necessary for some parts of your case.

Forms you will need to complete

First you will need to know some basic terms. The person filing the lawsuit is known as the plaintiff. The person, business, or organization you are filing the lawsuit against is the defendant. The plaintiff and defendant are also called parties. The parties should be identified as either the plaintiff or defendant on all pleadings and documents you file with the court. You may find it helpful to use these terms along with the party's name (e.g., Plaintiff Smith or Defendant Jones). This identifies whom you are talking about if there are many parties to the lawsuit.

Complaint

In order to file your case, you will need to complete a complaint form. The complaint is the first document filed. It tells the judge whom you are suing, what your case is about, and what you want the court to do. If you have decided to file your lawsuit in the U.S. District Court for the District of Nebraska, you will need to file a complaint with the clerk's office. You may write your own complaint or use the form available in the clerk's office. The forms are also available on the court's Web site at <http://www.ned.uscourts.gov/forms>. Be sure that all of your documents are typed or legibly printed on 8 ½ x 11 plain white paper. The following is an example of how the top part of the complaint should look. This is called the case caption. You will put a case caption on all documents filed in your case.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

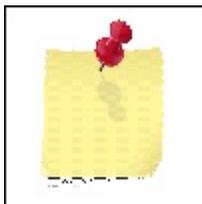
MARY SMITH,)
Plaintiff,) Case No. _____
)
vs.)
)
JOHN DOE,) COMPLAINT
Defendant.)
_____)



HINT: Make sure your complaint is clear and understandable, and in neat, easy to read writing. Be certain the spellings of all defendants' names are correct.

This is where you present the facts of the case: what happened, where it happened, when it happened, how it happened, and who was involved. You may choose to support your complaint with evidence (for example, many plaintiffs will provide the Right to Sue letter from the Equal Employment Opportunity Commission in discrimination cases), *but you do not need to supply all the evidence you may have collected when you file your complaint.* There will be opportunities to present evidence as the case moves toward trial.

This is the time for laying out the basic facts of your case. If your complaint does not include enough facts to let the judge reasonably think that the defendant is responsible for the claims you are making, the judge may dismiss (throw out) your complaint.



NOTE: These instructions are only a summary. You are responsible for following the Rules discussed earlier in this Part.

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Application to Proceed Without Prepayment of Fees

The fees to file a complaint are \$350.00 plus a \$50.00 administrative fee. There are no other fees to file the case. If you do not have the \$400.00 filing and administrative fees, you may apply to have the fee “waived,” which means that you may file your case without paying the fee. To make this request, you must fill out the **Application to Proceed Without Prepayment of Fees** form in its entirety, then turn this form in when you file your complaint. (This form is also sometimes called a Motion to Proceed In Forma Pauperis.) The court will review your motion and will decide if you have to pay the fee. A case cannot proceed until either you pay the filing fee or the court grants your filed motion.

It is **very** important to fill out all parts of this form with as much information as possible since the judge will use this information to determine if you have the financial ability to pay the filing fee. If the form is incomplete, the judge can deny your motion. You must provide information about your spouse. Also, just because you do not have any cash on hand does not mean that you are unable to pay the filing fee. If you have assets, such as equity in your home, own several cars or rental property, or have other sources of income, the court may find that you can obtain the funds to pay the filing fee. If you plan on filling out the motion when you arrive at the courthouse to file your complaint, it is recommended that you gather the appropriate financial information from home.

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This is the official form to request that the filing fee in your case be waived. It is available in the clerk's office or on the court's Web site at <http://www.ned.uscourts.gov/forms>.

AO 244 (Rev. 06/09) Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form)

UNITED STATES DISTRICT COURT

for the

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

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

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.

In support of this application, I answer the following questions under penalty of perjury:

1. *If incarcerated.* I am being held at: _____

If employed there, or have an account in the institution, I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for any institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. *If not incarcerated.* If I am employed, my employer's name and address are:

My gross pay or wages are: \$ _____, and my take-home pay or wages are: \$ _____ per
(specify pay period) _____.

3. *Other income.* In the past 12 months, I have received income from the following sources *(check all that apply)*:

- | | | |
|--|------------------------------|-----------------------------|
| (a) Business, profession, or other self-employment | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (b) Rent payments, interest, or dividends | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (c) Pension, annuity, or life insurance payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (d) Disability, or worker's compensation payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (e) Gifts, or inheritances | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (f) Any other sources | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

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AO 240 (Rev. 06/09) Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form)

4. Amount of money that I have in cash or in a checking or savings account: \$ _____ .

5. Any automobile, real estate, stock, bond, security, trust, jewelry, artwork, or other financial instrument or thing of value that I own, including any item of value held in someone else's name (*describe the property and its approximate value*):

6. Any housing, transportation, utilities, or loan payments, or other regular monthly expenses (*describe and provide the amount of the monthly expense*):

7. Names (or, if under 18, initials only) of all persons who are dependent on me for support, my relationship with each person, and how much I contribute to their support:

8. Any debts or financial obligations (*describe the amounts owed and to whom they are payable*):

Declaration: I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

Date: _____

Applicant's signature

Printed name

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Summons in a Civil Action

The **Summons** is a document that demands a defendant respond to the complaint. It looks like this:

AO 448 (Rev. 12/89) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the

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

SUMMONS IN A CIVIL ACTION

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

A lawsuit has been filed against you.

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

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

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

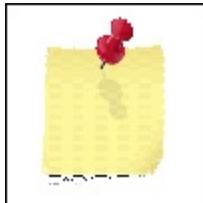
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You must fill out a summons form for each defendant you are suing. Summons forms are available in the clerk's office or on the court's Web site at <http://www.ned.uscourts.gov/forms>. If the court gave you permission to proceed without payment of the filing fee (in forma pauperis), then the clerk's office will not give you summons forms to complete until after the court reviews your complaint.

To fill out the summons form, you must write in the caption. Next, in the blank that asks for the name and address of the defendant being served, you can only put down one name – the party you are suing – and that party's address. If you are suing more than one person, *each individual defendant gets a separate summons* so you must fill out a summons form for each individual defendant. The clerk's office cannot issue a summons without each defendant's name and address.

Do not put more than one party and address on a summons form. The clerk's office should be able to look at your completed summons form and see exactly which party is going to receive it.

In the space that gives the defendants the number of days they have to answer, please write in, "21." If you are suing the United States government, enter "60."



HINT: The summons may only be issued to parties named as defendants in the complaint.

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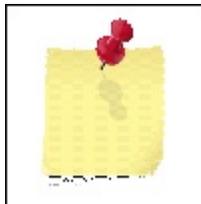
How to file your case

- **Come to one of our clerk's offices.** This is a great option if you are filing a case for the first time and have questions. The court maintains two staffed offices, one in Omaha and one in Lincoln. The court maintains an unstaffed office in North Platte, but the North Platte office does not accept filings. Here are the clerk's office addresses:

111 South 18th Plaza, Suite 1152
Omaha, NE 68102
(402) 661-7350
(866) 220-4381

593 Federal Building
100 Centennial Mall North
Lincoln, NE 68508-3803
(402) 437-1900
(866) 220-4379

- **Send by mail to one of the addresses above.**
- **No filings by fax.**
- **No filings by e-mail.**



NOTE: If you do not personally come to the clerk's office, you may want to call the clerk's office a few days after you send your complaint to make sure your case information has arrived.

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What does the clerk's office do with the case information?

The clerk who is helping you will review the documents in your case to make sure that all of the questions have been answered on the forms. If everything is in order, and you are paying the filing fee, the clerk will:

- file stamp your documents (the file stamp shows the date and time you filed the case),
- assign a case number and judges (both a district judge and a magistrate judge),
- sign your summons forms, and
- write you a receipt for the \$400.00 filing and administrative fees.

If you are asking that the filing fee be waived, the clerk will not issue any summons forms when you file your case. Instead, the judge will first conduct an initial review to decide if a) your filing fee should be waived and b) your complaint is subject to dismissal. If the court dismisses your complaint, your case is over. Neither the judge nor the clerk will take any further action in your case.

If the court determines that your case should proceed and that you do not need to pay the filing fee (it is waived), the court will order the clerk to send you summons forms. You must fill out the summons forms with the complete addresses and other information for the parties you are suing. After you return the completed summons forms, the clerk will issue them and the U.S. Marshal will serve the summons forms on your behalf.

If the court **denies** your application to proceed in forma pauperis, the court will send you an order in the mail telling you when the filing fee must be paid. **Your case may be dismissed if you miss this date.** If you are required to pay the fee, then you must serve the defendants with your complaint and the summons. For more information on how to serve the defendants, please refer to Part 3.

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Paying court fees and payment options

Below are your options for paying court fees. If you have any questions about fee payment, please contact the clerk's office.

- Check made payable to "Clerk, U.S. District Court" (personal, cashiers checks or money order accepted; NO counter checks)
- Cash (exact amount required!)
- Credit card

Electronic Filing System

Once you have filed your initial documents and your case is on file with the court, you may file documents in your case on-line over the Internet, using our Case Management/Electronic Case Filing System (CM/ECF). This system not only allows you to file your documents without coming into the clerk's office, it also allows you to see everything that is filed by you (the plaintiff), the court, the defense and any other parties in your case. If you would like to learn more about filing your case electronically, you may go to our Web site at <http://www.ned.uscourts.gov/cmecf>. You are also free to view your case on the public computer terminals at both of our clerk's offices.

What the clerk's office can and cannot do

The clerk's office is happy to help you whenever possible. However, since the clerk's office must be fair to everyone, the office is only allowed to help you in certain ways. Most importantly, the clerk's office cannot give legal advice or act as your attorney. Here are examples of how the clerk's office can assist you:

- Explain and answer questions about how the court works.
- Provide you with the phone numbers and addresses of local lawyer services, legal aid services, and/or state libraries.
- Give you general information about the court rules, procedures, and practices.
- Provide you with information from your case file and help you look at it from the public computer station.

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- Provide you with available court forms and instructions.
- Provide copies of documents filed in your case (for a fee).

The clerk CANNOT:

- Tell you whether or not you should file a new case.
- Tell you what words you should use in your court pleadings/papers.
- Talk to the judge for you or let you talk to the judge outside of court.
- Tell you what you should say in court.
- Compute deadlines in your case.
- Interpret rules, statutes or other law, or interpret any substantive matters contained in this Guide.
- Recommend a course of action.
- Predict a decision of a judge.
- Estimate or guess when a judge will act on your case.
- Interpret the meaning or effect of any court order or judgment.
- Assist with or do legal research for you.



HINT:

WHEN YOU GO TO THE CLERK'S OFFICE:

- You must show a photo ID to enter the courthouse. You must pass through courthouse security, including through a metal detector.
- Do not bring cell phones, cameras, recording devices, or other electronic devices (such as MP3 players).

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- Do not bring weapons of any type, drugs or other illegal items.
 - Have your information/case organized.
 - Do not be afraid to ask questions; however, keep in mind the limits on what the clerk's office can do for you.
 - Have your fees (cash, check, money order or credit card) ready for payment.
-

Service of Summons and Complaint

What does service mean?

You are required to let the defendant(s) know that you have filed a case against them in federal court. You do this by having the deputy clerk sign and stamp the court's seal on the summons form that you filled out. Each defendant must receive a copy of the stamped summons form addressed to them along with a copy of your complaint. This process is called "service" or "serving the defendant(s)."

When must it be done?

If you are suing under federal law, you have 90 days from the date you filed the complaint to serve the defendant(s) in your case. In some instances, the court may extend this time limit. Make sure you understand the applicable federal and state rules and time limits. Your case could be dismissed if you miss the deadlines for serving the defendant(s).

Who must be served?

All of the defendants that you have named in your complaint must be served. The judge may dismiss from your case any defendants who are not served within the required time limit. Remember, too, that the clerk will only issue summons on parties you named as defendants in your complaint.



HINT: After you have filed your case and the court has issued summons, attempt to serve the stamped summons and a copy of your complaint on the defendant(s) as soon as possible!

Who serves the documents?

The answer depends on whether you paid the \$400.00 filing and administrative fees.

1. If the answer is “yes,” here are your options:
 - **You can hire a private process server.** Some might be listed in the yellow pages in the phone book. Others may advertise on-line or in the newspaper.
 - **You can have someone else personally deliver the summons.** The rules say that the summons can be served by anyone who is not a “party” and is at least 18. You cannot personally give the summons to the defendant(s) because both you (the plaintiff) and the defendant(s) are considered “parties” in your case.
 - **You can send the summons to the defendant(s) by certified mail.**
 - **You also can serve the defendant using certain state law methods or under the provisions of Rule 4 of the Federal Rules of Civil Procedure.** A discussion of this option is beyond the scope of this Guide.
2. **If the answer is “no” and the court told you that you don’t have to pay the filing fee,** then the court granted your Application to Proceed Without Prepayment of Fees and will direct the United States Marshal to serve the summons for you.

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Serving a summons on a federal agency

If you are suing the United States Government, the Federal Rules say that you will need to serve summonses on three separate parties. They are:

1. The head of the agency you are suing;
2. The United States Attorney in Nebraska; and
3. The United States Attorney General in Washington, D.C.

For more information, read the rules regarding service carefully.

How does the court know when the summons has been served?

Whoever serves the summons and complaint on the defendant must complete the Return of Service information on the back side of the summons and return it to you. You will then file it with the clerk's office. If you send the summons by certified mail, you will receive the green certified mail receipt from the post office after the summons has been delivered. You will then attach the green receipt to the service page (2nd page) of your copy of the summons and file it with the clerk's office. If the United States Marshal serves the summons for you, the marshal will complete the Return of Service information and return it to the court. The clerk's office will file it in your case.

What Happens After the Case is Filed

Case Assignment

The clerk's office assigns the case a number that must appear on all documents. The case will randomly be assigned to a district judge and to a magistrate judge. Currently, all pro se cases are assigned to the magistrate judge located in Lincoln, Nebraska. You cannot choose your judges. The district judge may refer your case to the magistrate judge to handle different stages of your case leading up to the trial of your case.

A Judge Rules on the Motion to Proceed Without Prepayment of Fees (if filed)

If you do not have the \$400.00 filing and administrative fees, you may apply to have the fee "waived," which means that you file your case without prepaying the fee. To ask the court to waive the fee, you must file a Motion to Proceed Without Prepayment of Fees. You must also fill out the Affidavit of Financial Status (see Part 2 of this Guide). If the judge grants your motion, you will not have to pay the filing fee and your case will proceed. The court's first step will be to conduct an initial review of your complaint. If the court determines that the complaint is sufficient, the next step is service of summons (see Part 3 of this Guide).

If the judge denies your motion to have the fees waived, the judge will give you a deadline to pay the fee. You must pay the \$400.00 filing and administrative fees all at

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one time. After you pay the fees, **you** must serve the summons on defendants (see Part 3 of this Guide).

If you do not pay the fee by the deadline, your case cannot proceed and the court will dismiss it.

Defendants Do Not File an Answer

- **Entry of default** – A party defaults when it fails to respond to a summons and complaint served on it in the time required by law. If a party defaults, the plaintiff can request that the clerk enter the default into the court record by the clerk, which gives the plaintiff the opportunity to get a default judgment.
- **Default judgment** – Once the clerk’s office enters a party’s default, the court may enter default judgment in favor of the plaintiff. A default judgment awards the plaintiff the relief sought in the complaint because the defendant has failed to appear in court or otherwise respond to the complaint. (*See* Judgment in this section.) If you have asked for money damages, the judge may require that you come to court and prove your damages even though a default has been entered.

Defendants File an Answer

Each named defendant responds to the complaint by filing an answer or a motion. The case then will proceed to the pretrial stage.

Case Progression

After the defendant or defendants have entered their appearance in your case, either by filing an answer or a motion, the court will file a progression order. If a defendant files a motion to dismiss your complaint, the court will ordinarily decide that motion before it permits the case to proceed.

The progression order, sometimes called a scheduling order, will set deadlines for doing or filing certain things in your case. It includes deadlines for discovery (getting information from each other about the case) and filing motions, and will set a date for a final pretrial conference.

Discovery

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There are several ways that you and the defendant will exchange information about the case. The court does not accept filings that have to do with discovery. Disclosures, interrogatories, requests for production or inspection and requests for admission and responses are served upon other counsel or parties, if not represented by counsel, but **are not filed** with the clerk's office. Counsel or a pro se party should only file a certificate of service stating what documents were served, and upon whom.

- **DEPOSITIONS** – This is like an interview where you, the defendants, or another person, such as a witness, answer questions in person and under oath. The deposition will be recorded by tape or video recording and/or by a court reporter. (See Rule 30 of the Federal Rules of Civil Procedure.) Court reporters charge a per page fee to transcribe the testimony and prepare a written transcript. The parties, and not the court, are responsible for arranging a court reporter and paying all associated fees.
- **INTERROGATORIES** – These are written questions that must be answered in writing, under oath. (See Rule 33 of the Federal Rules of Civil Procedure.) The number of interrogatories you can send to an opposing party is limited so make sure you read the Rules carefully.
- **DOCUMENT REQUESTS** – These are written requests that the parties send to each other, asking for documents and tangible things (like a defective product). The term document can include all forms of recorded information such as drawings, graphs, charts, photographs, etc. (See Rule 34 of the Federal Rules of Civil Procedure.)
- **REQUESTS FOR ADMISSION** – These are written requests that the parties send to each other, asking you or the defendant(s) to admit that certain facts are true or that certain documents are genuine. (See Rule 36 of the Federal Rules of Civil Procedure.)

Final Pretrial Conference

In the progression order, the court sets a date for the final pretrial conference. The final pretrial conference takes place after discovery is completed and all motions are resolved (usually about six months after the progression order is filed). You and the defendant(s)'s lawyer will work together in preparing a proposed pretrial order to submit to the assigned magistrate judge, by the deadline set in the progression order. A form order on final pretrial conference is available on the court's Web site at <http://www.ned.uscourts.gov/forms>. The magistrate judge may decide to conduct the pretrial conference by telephone.

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During the final pretrial conference, the assigned magistrate judge will review the proposed pretrial order that you and the defendant(s)'s lawyer prepared. The magistrate judge may also ask you and the other parties questions about the case and about the proposed pretrial order. The magistrate judge will then finalize the order on final pretrial conference. The finalized order on pretrial conference will take the place of the complaint and will be the "road-map" for the trial of the case. The trial will be limited to issues and claims raised in the pretrial order.

After the final pretrial conference, the magistrate judge will no longer be involved in the case. The district judge may hold an additional planning or status conference before the trial.

Dispositive Motions

During the course of the case, a party may file a dispositive motion. In a dispositive motion, a party asks the court to decide some claims, or the entire case, without a trial. They are used when the filing party says there are no factual disputes between the parties and the court can decide the case or a claim as a matter of law. Two common types of dispositive motions are motions to dismiss and motions for summary judgment. If the opposing party files these motions in your case, or if you would like to file a dispositive motion, read the Rules carefully. The court has specific procedures for filing such motions.

Trial

If your case goes to trial, it can be tried to the court (meaning that only the judge decides the case) or to a jury. Each judge may have specific court guidelines and if so, they are available at the court's Web site at <http://www.ned.uscourts.gov> or by asking the clerk's office.

If your case is tried to the court, it is called a bench trial. No jury is present and the judge will consider all evidence and make a ruling. Many times the judge will take the case under advisement. This means that the judge will issue a written order at a later date after the last day of trial. This can sometimes take 60 days or longer.

If your case is tried to a jury, you will go through the process of selecting a jury which is called "voir dire." This process allows the judge, you and counsel for the defendant to ask questions of potential jurors to see if they can fairly and impartially consider the evidence. Once this process is complete, the jurors will be sworn in to try the case.

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In either a court or a jury trial, the proceedings will be recorded, either electronically or by a court reporter. In either kind of trial, as plaintiff, you get to present your evidence first. The Federal Rules of Evidence will determine whether you can present certain factual information to the court or jury. Your evidence may consist of exhibits and the testimony of witnesses who have agreed to come to court to testify on your behalf, or witnesses you have subpoenaed to testify. Please refer to the federal rules on the issuance of subpoenas for trial. (Rule 45 of the Federal Rules of Civil Procedure.) You will ask questions of each witness you call to testify.

When you are finished asking questions of your witness, the defense will get to ask questions of your witness. When they have finished asking questions, you will have another chance to follow up on questions the defense asked, but you don't get to ask new questions on topics not already discussed. The judge will control this process and, when asked, will make decisions about whether a question is proper or if an exhibit is proper.

Once you have presented all of your exhibits and witnesses, the defense will get a chance to present exhibits and witnesses. You will be able to ask questions of defense witnesses. When the defense is through, you will have a chance to put on any additional witnesses. These are called "rebuttal witnesses." If you have any rebuttal witnesses, you may not ask them questions on new topics. You can use rebuttal witnesses to try to show the testimony of defense witnesses was not accurate.

In a jury trial, the judge will prepare jury instructions. These are instructions on the law that the jury must apply to your case in making their decision. You and the defense counsel will be consulted on these instructions before they are read to the jury.

Once the jury has heard all the evidence and testimony and listened to the court's instructions on the law, which the judge will read to them, they will go to the jury room to talk about the case. Once they have reached a decision, they will come back into court and the decision will be read. The judge will direct the clerk's office to prepare a judgment and the case will be closed.

If you tried your case to the court, the judge will evaluate all evidence and testimony. The judge ordinarily will issue a written order at a later date.

Judgment

If you win, by default or at trial, the judge will prepare a judgment stating the amount of damages you win from the defendant. The judgment will list the exact amount, in dollars and cents, and say which defendant owes you how much money.

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If you lose at trial or by summary judgment, the judge will prepare a judgment stating that the defendant owes you nothing. The defendant may also be able to recover money from you for having to try the case and spend money and attorneys fees defending the case.

Either you or the defendant may file an appeal to the Eighth Circuit Court of Appeals if you disagree with the court's decision.

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Notice of Appeal

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

The filing fee for an appeal is \$505.00. However, if the district court granted your Motion to Proceed Without Prepayment of Fees when your complaint was filed, you may also be granted leave to appeal without payment of the fee. However, you will need to file another Motion to Proceed Without Prepayment of Fees and the Financial Affidavit with the district court.

If you paid the filing fee for your original case but you cannot afford to pay the appeal fee, you may file the forms Motion to Proceed Without Prepayment of Fees and Affidavit of Financial Status along with your appeal.

To file an appeal, you must file a notice of appeal with the clerk's office. A Notice of Appeal form is available in the Federal Rules of Appellate Procedure Forms Index and is available on the court's Web site at <http://www.ned.uscourts.gov/forms>. Information about the Eighth Circuit Court of Appeals can be found at <http://www.ca8.uscourts.gov>.

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WHEN YOU ARE IN COURT:

- You must show a photo ID to enter the courthouse.
 - Do not bring your cell phone, cameras, or recording devices.
 - Do not bring weapons, drugs or other illegal items.
 - Dress properly and take off your hat (be neat and clean).
 - Do not: chew gum; eat; drink; read newspapers or magazines; sleep; talk loudly.
 - When the judge enters or leaves the courtroom, you must stand up.
 - Call the judge “Your Honor;” and speak clearly.
 - Be respectful to the court security officers. They are here for your protection.
 - Remember that pro se parties are treated like attorneys and must comply with the court’s Local Rules regarding courtroom decorum. (See NEGenR 1.6(l)).
-

Resources That May Help You

Where can you get legal advice?

If you cannot pay an attorney, but need legal advice, there are a number of agencies that may be able to help you. The following list is not exhaustive, but these agencies and libraries may help you with your case. You should contact these agencies to determine whether they can help you.

NEBRASKA STATE BAR ASSOCIATION

635 South 14th Street
P. O. Box 81809
Lincoln, NE 68508
(402) 475-7091

LINCOLN BAR ASSOCIATION

c/o DeMars Gordon Olson & Zalewski
134 South 13th Street, Suite 800
Lincoln, NE 68508
(402) 438-2500

OMAHA BAR ASSOCIATION

P. O. Box 11195
Omaha, NE 68111-1095
(402) 280-3603

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

131 M Street Northeast
Washington, DC 20507
(202) 663-4900

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(800) 669-4000
(TTY) 1-800-669-6820

NEBRASKA EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Lincoln (Main) Office:
Nebraska State Office Building
301 Centennial Mall South, 5th Floor
P. O. Box 94934
Lincoln, NE 68509-4934
(402) 471-2024
Toll Free Number 1-800-642-6112

Omaha Office:
Downtown Education Center/State Office Building
1313 Farnam Street, 3rd Floor
Omaha, NE 68102-1836
(402) 595-2028
Toll Free Number 1-800-382-7820

Scottsbluff Office:
Panhandle State Office Complex
4500 Avenue "I"
P. O. Box 1500
Scottsbluff, NE 69363-1500
(308) 632-1340

ACLU-NEBRASKA
941 "O" Street, Suite 706
Lincoln, NE 68508
(402) 476-8091

LEGAL AID OF NEBRASKA

Bancroft Office:
415 Main St.
Bancroft, NE 68004
(402) 648-3457

Grand Island Office:
207 W. 3rd St.
Grand Island, NE 68801
(308) 381-0517

Lincoln Office:

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941 O St. Ste. 825
Lincoln, NE 68508
(402) 435-2161

Norfolk Office:
214 N. 7th St.
Norfolk, NE 68701
(402) 644-4761

North Platte Office:
102 E. 3rd St. Ste. 102
North Platte, NE 69101
(308) 532-6793

Omaha Office:
1904 Farnam St., 5th Flr.
Omaha, NE 68102
(402) 348-1069

Scottsbluff Office:
1423 1st Ave.
Scottsbluff, NE 69363
(308) 632-4734

Where can you do legal research?

UNIVERSITY OF NEBRASKA COLLEGE OF LAW
1875 North 42nd Street
Lincoln, NE 68583

CREIGHTON UNIVERSITY SCHOOL OF LAW
2500 California Plaza
Omaha, NE 68178

EIGHTH CIRCUIT COURT OF APPEALS LIBRARY, LINCOLN
437 Federal Building
100 Centennial Mall North
Lincoln, NE 68508-3803
(402) 437-1610

EIGHTH CIRCUIT COURT OF APPEALS LIBRARY, OMAHA
Roman L. Hruska Courthouse

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111 South 18th Plaza, Suite 4104
Omaha, NE 68102-1322
(402) 661-7590

Glossary

- **Answer:** The formal written statement by a defendant responding to a civil complaint and setting forth the grounds for the 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 fact and questions of law. In a jury trial, the jury determines questions of fact and the judge determines only questions of law. The rules of evidence and procedural methods are the same in both kinds of trials.
- **Complaint:** A written statement filed by the plaintiff that begins a civil case, stating what the plaintiff claims that the defendant did and requesting relief from the court.
- **Counsel:** Legal advice; term also refers to the lawyers in a case.
- **Court:** A branch of government entity that resolves legal disputes.
- **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 for life by the President of the United States with confirmation by the United States Senate.
- **Dismiss a case:** The judge throws the case out of court, so that the plaintiff cannot continue with the case.
- **Evidence:** Information presented to a judge or jury, including testimony of witnesses and documents.

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- **Exhibits:** A paper or document produced and exhibited to a court during a trial or hearing, or to a person taking depositions, as a voucher, or a proof of facts.
- **Federal Question Jurisdiction:** Jurisdiction given to federal courts in cases involving the U.S. Constitution, acts of Congress and treaties.
- **In Forma Pauperis:** Latin phrase meaning “In the manner of a pauper.” With the court’s permission, a person files a case without prepayment of the required court fees because the person cannot afford them.
- **Judge:** An official of the judicial branch with authority to decide lawsuits brought before courts.
- **Judgment:** The official decision of a court finally resolving the dispute between the parties to the lawsuit.
- **Jurisdiction:** 1. The legal authority of a court to hear and decide a case; 2. The geographic area over which the court has authority to decide cases.
- **Jury:** The group of persons selected to hear the evidence in a trial and render a verdict on matters of fact.
- **Magistrate Judge:** Judicial officers appointed by the judges of federal district courts pursuant to the United States Magistrates Act. Federal magistrates 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.
- **Ordinance:** A rule established by authority; a permanent rule of action; a law or statute.
- **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.

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- **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.
- **Seal:** To close off (as records) from public access.
- **Statute:** A law passed by a legislature.
- **Subpoena:** A writ commanding a person designated in it to attend court under a penalty for failure.
- **Subpoena duces tecum:** A writ commanding a person to produce in court or at a deposition certain designated documents or other evidence.
- **Summons:** A notice, typically served along with a complaint, informing the defendant that a lawsuit has been initiated and notifying the defendant of where and when the defendant must respond.
- **Testimony:** Evidence presented orally by witnesses during hearings or trials.
- **Witness:** A person called upon by either side in a lawsuit to give testimony before the court or jury.