

PRISONER PRO SE HANDBOOK

1st Edition, July 1997



**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

Prepared for

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ACKNOWLEDGMENTS

**This manual is a result of the combined
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CHAPTER 1: INTRODUCTION

Welcome to the United States District Court for the District of Idaho. We have prepared this handbook specifically for a prisoner who has chosen, for whatever reason, to represent himself or herself as a party to a lawsuit: the prisoner pro se litigant. The purpose of this handbook is to provide the prisoner pro se litigant with a practical and informative initial resource that will assist in the decision-making process and in the filing of a lawsuit when choosing not to retain the aid of a licensed attorney.

The next few chapters of this handbook provide information that you should consider before filing your own lawsuit such as whether or not you have a case you can win, the importance of legal counsel and the alternatives, and the structure of the federal court system. If after considering this information, you feel you have a case that should be filed in federal court and you wish to represent yourself, additional information has been provided to assist you in filing your case and utilizing the appropriate rules of procedure for the United States District Court for the District of Idaho in accordance with the Prisoner Litigation Reform Act of 1995.

Additionally, we have also provided an overview of legal research and a glossary of common and foreign words regularly used in the legal field. These tools should not be considered the last word, nor should this entire handbook be used as your only resource. This handbook should be considered only as the first step in filing your own lawsuit.

As Clerk of Court for the District of Idaho, my deputy clerks and I are willing to assist you with questions regarding the Local Rules of Civil Procedure as well as the Federal Rules of Civil Procedure. However, by law we cannot answer questions of a legal nature. Do not hesitate to call on us regarding a procedural matter.

We wish you the very best in your endeavor. The mission statement for the United States District Court for the District of Idaho is as follows:

The mission of the United States District and Bankruptcy Courts for the District of Idaho is to provide an impartial and accessible forum for the just, timely, and economical resolution of legal proceedings within the jurisdiction of the courts, so as to preserve judicial independence, protect individual rights and liberties, and promote public trust and confidence.

Those of us employed by the District of Idaho take this mission statement very seriously. In order to provide the impartial and accessible forum that you are entitled to, the federal courts for Idaho are housed in the main courthouse in Boise and three satellite courthouses throughout the state. The addresses and telephone numbers are as follows:

U.S. District Court
District of Idaho
550 West Fort Street
Boise, ID 83724
(208) 334-1361

U.S. District Court
District of Idaho
220 East 5th Street
Moscow, ID 83843
(208) 882-7612

U.S. District Court
District of Idaho
250 S. 4th Avenue
Pocatello, ID 83201
(208) 236-6912

U.S. District Court
District of Idaho
205 N. 4th, 2nd Floor
Coeur d'Alene, ID 83814
(208) 664-4925

CHAPTER 2: THE FIVE REQUIRED ELEMENTS OF A LAWSUIT

There are five very important elements that must exist before you can file a case in federal court. The following is a summary of the things you should consider before filing a case in federal court. This summary is not to be considered the final word. Before continuing, you must understand that even if you have met all five elements, there is always a possibility that you may not win.

THE FIVE REQUIRED ELEMENTS OF A LAWSUIT

- A. Personal Injury or Wrong.
- B. Jurisdiction.
- C. Statute of Limitations.
- D. Immunity.
- E. Facts and Evidence.

A. REAL INJURY OR WRONG

Cases brought by persons without counsel typically fall into two categories: civil rights violations and tort claims.

A **civil rights** case involves a claim seeking redress for the violation of a person's

constitutional rights. This type of claim is often brought under the federal statute, 42 U.S.C. S 1983. Under this law, a person who acts under color of state law to violate another's constitutional rights may be liable for damages.

A **tort** is defined as a "private or civil wrong or injury." It is distinguished from criminal law because it is an injury against an individual and not the state (city, county, or state government). If a person ran a stoplight and hit your car, the state would ticket the driver for running the stoplight but it would not be able to sue the driver for the injuries received by the victim of the other car. That is considered a private wrong or injury and it is the right of the victim to file a **civil** suit against the driver seeking damages for the injuries received.

There are three types of torts: intentional, negligence, and strict liability. You cannot sue someone just because you are angry at them; you have to have been injured in some way. You can bring a tort action in federal court if a violation of a federal law has occurred.

B. JURISDICTION

Jurisdiction is the authority given a court to hear and decide certain cases. For a court to render a valid judgment, it must have both jurisdiction over the subject matter of the controversy and jurisdiction over the persons or entities involved. The court system is described more fully in Chapter IV of this handbook; however, to file a case in federal court, you must meet at least one of two important criteria:

- The case must deal with a "federal question" of law; or

- The parties to the case must be residents of different states (known as diversity of citizenship) and the monetary amount in controversy must exceed \$75,000.

Federal courts enforce "federal law," that is, the United States Constitution and federal statutes enacted by Congress. State courts enforce state laws. Sometimes they overlap, such as in diversity cases. This is why it is important that legal counsel is obtained as often as possible.

C. STATUTE OF LIMITATIONS

A **statute of limitations** is that part of the statute that sets a particular period of time within which a suit can be filed. It begins to run when the injury or right has been violated.

Some examples are as follows:

- Car accident or other personal injury: 2 years
- Civil rights violation: 2 years
- Contract dispute: 6 years
- Medical malpractice: 2 ½ years

D. IMMUNITY

Immunity prohibits you from suing a person who is performing his/her duties as prescribed by law. When a judge decides a case, the judge is immune from suit because the judge is performing duties directed by law. Federal judges are subject to the Code of

Conduct for United States Judges. However, if a judge has operated his or her car illegally and caused you to be harmed, you can sue the judge for damages because driving his or her car does fall under the duties of being a judge. Complaints about judges' decisions on procedural matters or the merits of disputes can only be addressed through the regular appellate process. Any person alleging that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or that a judge is unable to discharge all the duties of the office by reason of mental or physical disability may file a complaint pursuant to the rules of the Ninth Circuit Court of Appeals regarding judicial misconduct or disability.

Most government employees are immune from suit if they are performing their assigned duties and are not aware of a violation of the law. The Clerk of Court and the Clerk's office staff are subject to the Code of Conduct for Judicial Employees. The Clerk of Court has interpreted Canon 4(C)(2) to prohibit Clerk's office employees from accepting any gift, without exception, from anyone seeking official action from or doing business with the court or from anyone whose interests may be substantially affected by the performance or nonperformance of official duties. This prohibition includes accepting any sort of holiday gift, whether intended for the Clerk's office as a whole or for a specific individual.

Complaints about the performance or behavior of Clerk's office staff should be made to the Clerk of Court or to one of the judges.

You should realize that immunity may be a defense that prevents a person who is sued from being liable. There may be other legal defenses that the person can assert which will

also protect them from liability.

E. FACTS AND EVIDENCE

You cannot sue someone because you believe or you have a feeling the person has violated your rights. You must have facts to support your lawsuit such as the time and place of the incident, witnesses who observed the behavior, and actual articles of evidence such as a gun or a police report or other documentary evidence. The burden of proof is on the plaintiff to win the case; and without factual evidence, the case cannot be won.

It is very important that you have all five required elements before you consider filing a case against someone or some entity. After all of these elements are met, you must still follow the procedures set out for the particular court in which you will file your case. In Chapter VI of this handbook, we will discuss the rules and procedures for filing lawsuits in the United States District Court for the District of Idaho. If your case needs to be filed in any other court, you should contact the clerk's office of that court for information regarding local rules and procedures for filing your particular case.

CHAPTER 3: PRISON LITIGATION REFORM ACT OF 1995

On April 26, 1996, the President signed into law the Prison Litigation Reform Act (PLRA). This Act makes a number of changes affecting Section 1983 lawsuits by inmates. You should be aware of the following aspects of the new law.

A. WHO THE LAW AFFECTS

The law applies to prisoners. Prisoners are persons incarcerated or detained in a facility who have been accused of, convicted of, sentenced for, or adjudicated delinquent for violations of (1) criminal law, or (2) the terms and conditions of parole, probation, pretrial release, or diversionary program.

B. NECESSITY OF EXHAUSTING AVAILABLE REMEDIES

You should be aware that, in some instances, it is necessary for you to pursue all remedies that are available before you pursue a claim in federal court. There are two areas in particular where this is likely to arise: (1) if you are appealing an agency decision, or (2) if you are seeking a writ of habeas corpus in the federal court.

- **ADMINISTRATIVE GRIEVANCE PROCEDURES.**

Often times people want to appeal the decision of some governmental agency that affects them. An example of this is in the area of Social Security benefits.

If you want to appeal the denial of some benefit that is provided through an agency of the United States government or the state of Idaho, you must pursue all of the administrative procedures which are set up by the agency before you can bring a lawsuit. Only after you have pursued and exhausted the administrative procedure will the court have jurisdiction to hear a claim.

- **PETITION FOR WRIT OF HABEAS CORPUS**

A person who is incarcerated or is otherwise in custody pursuant to court order may wish to challenge the fact or duration of his confinement. Such a challenge would be brought as a petition for writ of habeas corpus against the person or entity who holds them in custody, e.g., the prison's warden, the county, or the state. If the person can successfully show that a constitutional right was violated, which would have otherwise prevented the incarceration ("fact of incarceration") or the duration of the incarceration the court will grant a writ of habeas corpus.

However, before such a petition can be filed in the federal court, the petitioner must pursue and exhaust all available state law remedies. This means that if you want to challenge a conviction or a sentence, you must pursue your right of appeal under Idaho law. This may be accomplished in two ways: (1) the direct right of appeal to the Idaho Supreme Court, or

(2) by filing a petition for post-conviction relief in the state district court followed by an appeal to the Idaho Supreme Court. Only after you have fully pursued the available state law remedies will you be eligible to pursue a federal petition for writ of habeas corpus.

C. FILING AN ACTION IN ACCORDANCE WITH THE PLRA

When you bring a civil action or file an appeal, you must pay the full amount of the filing fee (\$150.00 for civil actions) if you have money to pay it. If you cannot pay the full fee at the time of filing, you must apply to proceed in forma pauperis.

- To file an application to proceed in forma pauperis, you must submit an affidavit that includes a statement of all assets you possess. (Found on page 28 herein.) Upon request to the Idaho Department of Corrections, the court will receive a printout of Petitioner's Trust Fund Balance for a six-month period. Based upon the information contained in that record and application of Section 1915(b)(1), an initial partial filing fee will be assessed by court order.
- After receiving your complaint, the court will direct the appropriate agency to collect the initial partial filing fee from petitioner's trust account and forward it to the Clerk of Court. Thereafter, petitioner will be obligated for monthly payments as follows:
 - (a) 20% of the average monthly deposits to your prisoner account for the past six months; or
 - (b) 20% of the average monthly balance in your prisoner account for the past six

months.

If, however, you have no assets and no means to pay the initial partial fee, you will not be prohibited from bringing an in forma pauperis action. *See* 28 U.S.C. § 1915(b)(4). Any money you later receive will be collected as described below.

- After paying this initial partial fee, you must pay 20% of each future 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 in it, until the full filing fee is paid. *See* 28 U.S.C. § 1915(b). The full fee will be collected even if the court dismisses the case because it is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks money damages against a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2). The filing fee debt is not dischargeable in bankruptcy.

D. DISMISSAL OF YOUR CASE

The court must dismiss your case at any time if it determines that:

- Your allegation of poverty is untrue; or
- Your case is:
 - (a) frivolous, or
 - (b) malicious, or
 - (c) fails to state a claim on which relief may be granted, or

- (d) seeks money from a defendant who is immune from such relief.

Even if your case is dismissed for one of the above reasons, you are still responsible for paying any unpaid portion of the filing fee.

E. THREE-DISMISSAL RULE

If you have, three or more times in the past, while incarcerated, brought a civil action or appeal in federal court that was dismissed because it was (1) frivolous, or (2) malicious, or (3) failed to state a claim upon which relief may be granted, you cannot bring a new civil action or appeal a judgment in a civil action in forma pauperis. The only exception to this is if you are in “imminent danger of serious physical injury.” *See* 28 U.S.C. § 1915(g).

If you are not proceeding in forma pauperis, you may file a new civil action or appeal even if you have three or more of these dismissals.

Regardless of whether you proceed in forma pauperis in a civil case, if your case is dismissed as frivolous, malicious, or for failure to state a claim at any time, the dismissal will count against you for purposes of the three-dismissal rule if you seek to bring a case in forma pauperis in the future.

F. COMPENSATORY DAMAGES

If your case is allowed to proceed and you are awarded compensatory damages against a

correctional facility or an official or agent of a correctional facility, the damages award will first be used to satisfy any outstanding restitution orders pending.

Before payment of any compensatory damages, reasonable attempts will be made to notify the victims of the crime for which you were convicted concerning payment of such damages. The restitution must be fully paid before any part of the award goes to you.

G. ATTORNEY FEES

If you were granted appointment of counsel and you were awarded attorney fees from the defendant, a portion of your award (but not more than 25% of it) will be used to pay the attorney fees.

H. ATTORNEY FEE SANCTIONS AND HOW THEY APPLY TO THE PRO SE LITIGANT

Pro se litigants are subject to the same sanctions as licensed attorneys. Pursuant to Local Rule 1.3, Sanctions:

- (a) The court may sanction for violation of any local rule governing the form of pleadings and other papers filed with the court only by the imposition of a fine against the attorney or a person proceeding pro se.

- (b) Other sanctions for non-technical violations are provided through the Federal Rules of Civil Procedure including but not limited to imposition of costs, allowance of attorney fees, dismissal or default in the action, contempt proceedings, and suspension or disbarment of counsel.

In many cases, the prevailing party may be awarded costs to be paid by the non-prevailing party under certain conditions. Pursuant to Local Rule 54.1, Taxation of Costs:

- (a) Within ten (10) days after entry of judgment, under which costs may be claimed, the prevailing party may serve and file a cost bill requesting taxation of costs itemized thereon.

These costs shall include clerk's fees and service fees; trial transcripts; deposition costs; witness fees; mileage and subsistence; exemplification and copies of papers; maps, charts, models, photographs, summaries, computations, and statistical summaries; interpreter fees; docket fees; and other items with prior court approval.

Local Rule 54.3, Award of Attorney Fees, states that "attorney fees will not be treated as routine items of costs. Attorney fees will only be allowed upon an order of a judge of the court after such fact finding process as the judge shall order." Rule 54.3 sets out the requirements for petitioning the court for an award of award fees; and after the petition is filed by the prevailing party, the other party has fourteen days to object to the award.

As a pro se litigant, you must remember that if you are not the prevailing party in your lawsuit, you could be required to reimburse the other party(ies) for their costs and attorney fees, subject to the fact finding of the judge.

NOTE: The following paragraph is quoted from the Federal Rules of Civil Procedure:

- Rule 11. Signing of Pleadings, Motions,
and Other Papers; Sanctions

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. . . . The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

CHAPTER 4: STRUCTURE OF THE COURTS

(OR: SHOULD THIS CASE BE FILED IN STATE COURT OR FEDERAL COURT?)

There are two court systems in the United States: the state courts and the federal courts. The state courts typically hear matters relating to civil, criminal, domestic (divorce and child custody), probate, and property in accordance with the laws of the respective state. Matters typically heard by the federal courts involve violation of federal laws; civil rights actions under 42 U.S.C. § 1983, admiralty and maritime matters; United States patent, trademark, and copyright matters; bankruptcy proceedings; proceedings against ambassadors, consuls, and ministers. These matters usually fall into two main categories:

- **federal question cases** -- cases which arise under the Constitution, laws, or treaties of the United States; and
- **diversity cases** -- civil matters arising between parties who are citizens of different states and the amount in controversy exceeds \$75,000.

Remember, in Chapter II we discussed the five required elements of a lawsuit. Before filing a case in a federal court, you must decide if the court has jurisdiction. Jurisdiction is the authority given a court to hear and decide certain cases. The United States Supreme Court is given its authority by Article III of the United States Constitution. There may be instances when the United States Supreme Court might review a judgment rendered by a state court, but those instances are rare, occurring only when there has been a final judgment or decree of the highest court of the state in which a decision could be had involving a

substantial federal question. Normally, the United States Supreme Court reviews judgments rendered by the United States Courts of Appeals, of which there are thirteen federal judicial circuits. The United States Supreme Court has original jurisdiction over matters involving treason and presidential impeachment.

The following are all of the other federal courts which are established and given their authority by acts of Congress enacted under constitutional authority.

- **United States Courts of Appeal:**

- The Courts of Appeals for the District of Columbia and for the First through the Eleventh Circuits hear appeals from the federal district courts, bankruptcy courts, and tax courts. They also review some decisions of various federal administrative agencies.
- The United States Court of Appeals for the Federal Circuit hears appeals from final decisions of federal district courts for civil actions arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks, including claims of unfair competition when joined with substantial and related claims dealing with patents, copyrights, etc. as well as the final decisions of the district courts and the United States Claims Court where the United States is sued as defendant, and appeals from decisions of the United States Court of International Trade, and United States Patent and Trademark Office, the United States International Trade Commission relating to unfair import practices, and decisions by the Secretary of Commerce relating to import tariffs, among others.
- United States Court of Military Appeals. This court hears appeals from court martial decisions. There is no further appeal from this court.

- **United States Claims Court.** This court hears certain kinds of actions against the United States Government, except those involving tort claims under the Federal Tort Claims Act. These cases may be appealed to the United States Court of Appeals for the Federal Circuit.

- **Tax Court of the United States.** This court hears cases concerning the federal tax laws. Its decisions may be appealed to the United States Court of Appeals.
- **United States Court of International Trade.** This court hears cases concerning the federal tariff laws. Its decisions may be appealed to the United States Court of Appeals for the Federal Circuit.
- **United States Bankruptcy Courts.** These courts hear all matters pertaining to bankruptcy and financial reorganization. Their decisions may be appealed to the United States District Court and, in some cases, to the appropriate United States Court of Appeals.
- **United States District Courts.** These courts try both criminal and civil actions and sit as admiralty courts. They may also review decisions of federal administrative agencies. There is at least one United States District Court in each state. Their decisions may be appealed to the appropriate United States Court of Appeals.

NOTE: The United States District Court for the District of Idaho is located in the Ninth Circuit of the United States Courts of Appeals.

The federal district courts have both civil and criminal jurisdiction. They have original jurisdiction in the following types of actions:

- Civil actions arising under the Constitution, laws, or treaties of the United States ("federal question" cases).
- Actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states; citizens of a state and foreign states or citizens or subjects thereof; or citizens of different states in which foreign states or citizens or subjects thereof are additional parties ("diversity" cases).
- All criminal offenses against the laws of the United States.
- Admiralty, maritime, and prize cases.
- Bankruptcy matters and proceedings.

- o Actions of interpleader involving money or property of value of \$500 or more claimed by citizens of different states.
- o Action to enforce, enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission.
- o Actions or proceedings arising under any act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies ("antitrust" cases).
- o Any civil action arising under any act of Congress relating to the postal service.
- o Actions arising under any act of Congress providing for internal revenue or revenue from imports or tonnage except matters within the jurisdiction of the United States Customs Court.
- o Any civil action authorized by law to be commenced by any person dealing with civil rights, election disputes, and voting rights.
- o All civil actions, suits, or proceedings commenced by the United States or by any agency or officer thereof.
- o Actions for recovery of interest revenue tax or actions not exceeding \$10,000, founded upon the United States Constitution, any action of Congress, or any regulation of any executive department (The United States Court of Claims has concurrent jurisdiction in these actions).
- o Actions for the partition of lands where the United States is one of the tenants in common or is a joint tenant.
- o Actions involving national banks and other federal corporations.
- o Actions involving labor disputes which are authorized by specific statutes to be litigated in federal court.
- o Aliens' actions for torts.
- o Tort claim actions against the United States.
- o Actions and proceedings against consuls or vice consuls of foreign states.

- o Actions on bonds executed under any law of the United States (state courts have concurrent jurisdiction in these actions).
- o Actions involving Indian allotments or land grants to the states.
- o Actions involving injuries protected by specific federal laws (i.e., the Federal Employers Liability Act).
- o All proceedings to condemn real estate for the use of the United States or its departments or agencies.
- o Actions involving use or management of the public lands of the United States.
- o Actions involving regulations by the United States of environmental quality.

CHAPTER 5: RULES AND PROCEDURES FOR FILING A CASE IN DISTRICT COURT

Whether you are a party to a lawsuit, a person representing yourself in a lawsuit, or an attorney representing a party in a lawsuit, you are subject to the rules of procedure for any court in which your case is filed. The federal courts are governed by the Federal Rules of Civil Procedure (Fed. R. Civ. P.) and the Federal Rules of Criminal Procedure (Fed. R. Cr. P.) as well as other rules of procedure regarding other areas such as evidence, appeals, etc. No matter what document or procedure you are involved with, you must follow the particular rule or rules that govern the matter.

In the United States District Court for the District of Idaho, all procedures are governed not only by the federal rules of procedure listed above but also by the Local Rules of Civil Procedure and the Local Rules of Criminal Procedure. The numbering system of the Local Rules coincides with the numbering system of the federal rules for easy reference. Copies of the federal rules can be found at the Idaho State Law Library, 450 West State Street, Boise, Idaho, or at the Ninth Circuit Law Library located in the Federal Building and U.S. Courthouse, 550 West Fort Street, Boise, Idaho.

Copies of the Local Rules for the District of Idaho can be obtained at any of the offices listed in Chapter I of this handbook. **As a pro se litigant, you are responsible for becoming familiar with the court's local rules and procedures.**

A. GENERAL PROCEDURAL RULES FOUND IN THE LOCAL RULES FOR THE DISTRICT OF IDAHO

- GENERAL FORMAT OF PLEADINGS: Local Rule 5.1.
- PROOF OF SERVICE: Local Rule 5.2
- COPIES OF ORDERS AND ENVELOPES: Local Rule 7.1
- NON-FILING OF DISCOVERY PLEADINGS: Local Rule 5.5
- MOTION PRACTICE: Local Rule 7.1
- REQUESTS AND ORDERS TO SHORTEN OR EXTEND TIME OR CONTINUE TRIAL DATES: Local Rule 6.1
- STIPULATIONS: Local Rule 7.3
- FORM OF A MOTION TO AMEND AND ITS SUPPORTING DOCUMENTATION: Local Rule 15.1
- PRE-TRIAL PROCEDURES: Local Rule 16.1
- INFANTS AND INCOMPETENT PERSONS: Local Rule 17.1
- REQUIREMENTS OF DISCLOSURE OF FACTS: Local Rule 26.2
- LIMITATION ON DEPOSITIONS: Local Rule 30.1
- LIMITATION ON INTERROGATORIES: Local Rule 33.1
- NOTATION OF “JURY DEMAND” IN THE PLEADING: Local Rule 38.1

NOTE: The above list and the following graph are not all inclusive. Do not rely on this information alone.

B. PROCEDURAL DEADLINES BY RULE

PLEADING	DESCRIPTION	RULE	TIME
1. Pleading Format	All pleadings, motions, and other papers presented for filing must follow the format described in Local Rule 5.1. This rule advises the drafter of paper size, margins, typeface or font, requirements of captions, etc.	L.R. 5.1	At filing.
2. Civil Cover Sheet	The document that must accompany the complaint and summons before filing can occur.	LR 5.1(e)	Initial filing.
3. Complaint	Sets out the parties, the controversy and the governing law, allegations, statements of facts, and demand for relief.	LR 3.1 LR 5.1(b) FRCP 10	Initial filing.
4. Summons	Issued by the Clerk at the time of filing the complaint, the summons is served on the defendant with a copy of the complaint. A Waiver of Service of Summons can also be served on the defendant with a copy of the complaint. The summons informs the defendant that they must answer the allegations in the complaint or judgment will be entered in favor of the plaintiff.	FRCP 4	Issued with the seal of the Clerk.
5. Motions and proposed orders.	To seek an order from the court on some particular matter during the pendency of a case. Either party may bring.	LR 7.1 FRCP 11 & 12	Motions are filed with the Clerk and proposed Orders are sent to the respective Judge's office for review.
6. Length of Briefs and Responses.	Briefs in support of and in opposition to motions filed shall be no longer than twenty (20) pages in length.	L.R. 7.1(a)(3)	
7. Response to motions.	The other party is entitled to respond to a motion.	FRCP 6 LR 7.1 (a)(2)	Within 14 days of when the motion was served.
8. Proof of Service Requirement.	Whenever a document is filed with the court, there must be a proof of service certificate included, which certifies that a copy of the document was sent to the other party.	LR 5.2	Attached to the document served and filed with the Clerk.

PLEADING	DESCRIPTION	RULE	TIME
9. Copies of Pleadings	When motions and stipulations are filed, you are required to include copies of the proposed order and stamped, addressed envelopes for each of the parties to be served.	LR 7.1(a)(4)	Received by the Clerk and forwarded to the Judge for review.
10. Discovery	Disclosure of expert testimony, notices of depositions, depositions, interrogatories, requests for documents, requests for admission, and answers and responses thereto shall be served upon other counsel and parties but shall NOT be filed with the court unless on order of the court or for use in the proceeding.	LR 5.5 LR 26.2	Documents are exchanged between the parties prior to certain deadlines.
11. Discovery Limits.	There shall be no more than 10 depositions per party and no more than 40 interrogatories, including subparts which shall be counted as separate interrogatories.	L.R. 30.1 L.R. 33.1	
12. Pretrial Procedures	All rules governing all pretrial requirements and hearings are set out in this rule.	LR 16.1	

D. COURT COPY SERVICE AND PROCEDURE

If you wish to request copies of a particular document, you must contact the Court Copy Service at 550 West Fort Street, Boise, Idaho 83724, (208) 334-9463, as follows:

- (1) All requests must be in writing;
- (2) The charge is \$.25 per page, plus postage;
- (2) Each request must state the name of the case and case number, the title of the document, and the date the document was filed;
- (3) Each request must be accompanied by a cashier's check in the amount of \$15. Any amount overpaid will be refunded and mailed with the copies; and
- (4) If your copy request consists of more than ten (10) pages, an oversized mailing envelope will also be required. If you choose, the copy service will provide one for you at your expense.

E. FEE SCHEDULE

The following filing and service fees shall be collected by the Clerk of Court:

Ordinary Civil	\$ 150.00
Habeas Corpus	5.00
Notice of Appeal (including joint notices)	5.00
Docket Fees for Ninth Circuit	100.00
Naturalization:	
Declaration of Intention	70.00
Petition	70.00
Miscellaneous:	
Filing and Indexing any paper not a case	20.00
Registration of Judgments	20.00
Petition to Perpetuate Testimony	20.00
Letters Rogatory	20.00
Letters of Request	20.00
Photocopy	
(does not include certification) (per page)	.50
Requests for and certification of results of search	15.00
Abstract of judgment	15.00
Certification of any document (each certification)	5.00
Exemplifications (3 certifications)	5.00
<i>Pro Hac Vice</i> Application Fee	100.00
Attorney Admission	70.00
Duplicate certificate of admission	5.00
Certification that attorney is a member of this court	5.00
Retrieving record from Federal Records Center, National Archives, or other storage location removed from place of business of court	25.00
Check paid into court which is returned for lack of funds	25.00
Appeal to district judge from judgment of conviction by magistrate judge in misdemeanor case	25.00

F. FORMS FOR PRISONER PRO SE LITIGANTS

1. APPLICATION TO PROCEED *IN FORMA PAUPERIS* Page 29-32
2. INSTRUCTIONS FOR FILING A COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983 Page 33
3. COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983 Page 35-40
4. INFORMATION AND INSTRUCTIONS FOR FILING AN PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2254 (PERSONS IN STATE COURT) Page 41-42
5. PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. §2254 BY A PERSON IN STATE CUSTODY Page 43-58
6. INFORMATION AND INSTRUCTIONS FOR FILING A MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE UNDER 28 U.S.C. § 2255 (PERSONS IN FEDERAL CUSTODY) Page 59-60
7. MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY. Page 61-70

Full Name/Prisoner Number

Complete Mailing Address

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

Applicant(s),
Full name(s) and prisoner number(s)
(Do not use *et al.*)

vs.

Respondent(s) (Full name(s))
(Do not use *et al.*)
(Name of Warden, Superintendent, Jailor, or
authorized person having custody of applicant.)

_____)

)
)
) CASE NO.:
) (To be supplied by the Court)

) **APPLICATION TO PROCEED
IN FORMA PAUPERIS**

) **SUPPORTING DOCUMENTATION
AND
ORDER**

I, _____, declare that I am the
Petitioner/Plaintiff/Applicant in the above-entitled proceeding; that, in support of my request
to proceed without being required to prepay fees, costs, or give security therefor, I state that
because of my poverty, I am unable to pay the costs of said proceeding or give security
therefor, and that I believe that I am entitled to relief. The nature of my action, defense, or
other proceeding or the issues I intend to present on appeal are briefly stated as follows:

In further support of this application, I answer the following questions:

1. Are you presently employed: Yes _____ No _____

a. If the answer is "yes," state the amount of your salary or wages per month and give

the name(s) and address(es) of your employer(s).
(List both gross and net salary).

- b. If the answer is “no,” state the date of your last employment and the amount of the salary or wages per month you received.

2. Have you received within the past twelve (12) months any money from any of the following sources?

- a. Business, or other 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 sources? Yes _____ No _____

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

3. Do you own any cash or do you have any money in checking or savings accounts?

Yes _____ No _____ (Include any funds in prison accounts.)

If the answer is “yes,” state the total value of items owned.

- 4. Do you own or have any interest in 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.

- 5. List the persons who are dependant upon your support, state your relationship to those persons, and indicate how much you contribute toward their support.

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

Executed on this _____ day of _____, 19____.

Signature of Petitioner/Plaintiff/Applicant

CERTIFICATE
(Prisoner Accounts Only)

I certify that the applicant named herein has the sum of \$_____ on account to his credit at the _____ where he is confined. I further certify that the applicant likewise has the following securities to his credit according to the records of said institution:

I further certify that during the last six months the applicant's average balance was \$_____.

Authorized Officer of Institution

ORDER OF THE COURT

_____ The Application to Proceed *in Forma Pauperis* is hereby denied.

_____ The Application to Proceed *in Forma Pauperis* is hereby granted. Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

DATED this _____ day of _____, _____.

UNITED STATES MAGISTRATE JUDGE
FOR THE DISTRICT OF IDAHO

**INSTRUCTIONS FOR FILING A COMPLAINT BY A PRISONER
PURSUANT TO THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983**

To begin an action, you must file one **original** and a copy for each defendant named. You also should keep a copy for your own records. **All copies of the original complaint must be identical.**

1. There is a \$150.00 filing fee required if you have money to pay it. If you cannot pay the full fee at the time of filing, you must file an Application to Proceed *in Forma Pauperis* which includes a statement of all assets you possess. In addition, pursuant to 28 U.S.C. § 1915(b)(1), you must submit a certified copy of your Prisoner Trust Fund Balance for a six-month period. Based upon the information contained in that record and your application pursuant to 28 U.S.C. § 1915(b)(1), an initial partial filing fee will be assessed by court order. After receiving your complaint, the court will direct the appropriate agency to collect the initial partial filing fee from petitioner's trust account and forward it to the Clerk of Court. Thereafter, petitioner will be obligated for monthly payments as follows:
 - (a) 20% of the average monthly deposits to your prisoner account the past six months; or
 - (b) 20% of the average monthly balance in your prisoner account for the past six months.

If, however, you have no assets and no means to pay the initial partial fee, you will not be prohibited from bringing an *in forma pauperis* action. See 28 U.S.C. § 1915(b)(4).

After paying this initial partial fee, you must pay 20% of each future 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 in it, until the full filing fee is paid. See 28 U.S.C. § 1915(b). The full fee will be collected even if the court dismisses the case because it is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks money damages against a defendant who is immune from such relief. See 28 U.S.C. § 1915(c)(2). The filing fee debt is not dischargeable in bankruptcy.

Each plaintiff named must complete a separate Application to Proceed *in Forma Pauperis*.

2. Your complaint must be legibly handwritten or typed. You are required to give facts and must sign and declare under penalty of perjury that the facts are correct. This complaint should not contain legal arguments or citations.
3. If you need additional space to answer a question, you may use the reverse side of the form or an additional blank sheet of paper.
4. You may file this complaint with this court only if one or more of the defendants are located within this district.
5. You are required to furnish the correct name and address of **each** person you have named as a defendant.
6. You must file a separate complaint for each claim that you have **unless** they are all related to the same incident or issue.
7. When these forms are completed, mail the original and copies to:

Cameron S. Burke, Court Executive
United States District Court

United States Courthouse, MSC 039
550 West Fort Street
Boise, ID 83724

3. Defendant _____ is a citizen of _____
(Name of second defendant) (State)
whose address is _____
and who is employed as _____.
(Title and place of employment)

At the time the claim(s) alleged in this complaint arose, was this defendant acting under color of state law?
____Yes ____No. If your answer is "Yes," briefly explain:

NOTE: If more space is needed to furnish the above information for additional defendants, continue on a blank sheet which you should label "APPENDIX A. PARTIES." Be sure to include the same information for each defendant including their complete address and title.

B. JURISDICTION

1. Jurisdiction is asserted pursuant to (CHECK ONE)
____ 42 U.S.C. § 1983 (applies to state prisoners)
____ *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) and 28 U.S.C. § 1331 (applies to federal prisoners)
2. Jurisdiction also is invoked pursuant to 28 U.S.C. § 1343(a)(3). (If you wish to assert jurisdiction under different or additional statutes, you may list them below.)

C. NATURE OF THE CASE

BRIEFLY state the background of your case.

D. CAUSE OF ACTION

I allege that the following of my constitutional rights, privileges, or immunities have been violated and that the following facts form the basis of my allegations: (If more space is needed to explain any allegation or to list additional supporting facts, continue on a blank sheet which you should label "D. CAUSE OF ACTION.")

Claim I:

Supporting Facts: (Include all facts you consider important, including names of persons involved, places, and dates. Describe exactly how each defendant is involved. State the facts clearly in your own words without citing legal authority or argument.)

Claim II:

Supporting Facts:

Claim III:

Supporting Facts:

E. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

1. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to the conditions of your imprisonment? ____Yes ____No. If your answer is "Yes," describe each lawsuit. (If there is more than one lawsuit, describe the additional lawsuits using this same format on a blank sheet which you should label "E. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF.")

a. Parties to previous lawsuit:
Plaintiff(s):

Defendant(s):

b. Name and location of court and docket number:

c. Disposition of lawsuit. (For example, was the case dismissed? Was it appealed? Is it still pending?)

d. Issues raised:

e. Approximate date of filing law suit:

f. Approximate date of disposition:

2. I previously have sought informal or formal relief from the appropriate administrative officials regarding the acts complained of in Part D.

____ Yes ____ No.

If your answer is "Yes," briefly describe how relief was sought and the results.

3. I have exhausted available administrative remedies. ____ Yes ____ No. If your answer is "Yes," briefly explain the steps taken. Attach proof of exhaustion. If your answer is "No," briefly explain why administrative remedies were not exhausted.

F. PREVIOUSLY DISMISSED ACTIONS OR APPEALS

1. If you are proceeding under 28 U.S.C. § 1915, please list each civil action or appeal you have brought in a court of the United States, while you were incarcerated or detained in any facility, that was dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. Please describe each civil action or appeal. If there is more than one civil action or appeal, describe the additional civil actions or appeals using this same format on a blank sheet which you should label "F. PREVIOUSLY DISMISSED ACTIONS OR APPEALS."

a. Parties to previous lawsuit:

Plaintiff(s):

Defendant(s):

b. Name and location of court and docket number

c. Grounds for dismissal: () frivolous () malicious () failure to state a claim upon which relief may be granted.

d. Approximate date of filing lawsuit:

e. Approximate date of disposition:

2. Are you in imminent danger of serious physical injury? ____ Yes ____ No. If your answer is "Yes," please describe the facts in detail below without citing legal authority or argument.

G. REQUEST FOR RELIEF

I request the following relief:

Original signature of attorney (if any)

Prisoner's Original Signature

Attorney's full address and telephone

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he/she is the plaintiff in the above action, that he/she has read the above complaint and that the information contained in the complaint is true and correct. 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed at _____ on _____
(location) (date)

Prisoner's Original Signature

**INFORMATION AND INSTRUCTIONS FOR FILING
A PETITION FOR A WRIT OF HABEAS CORPUS
UNDER 28 U.S.C. § 2254 (PERSONS IN STATE CUSTODY)**

Attached are the forms you will need to file an petition for a writ of habeas corpus. You must pay the full filing fee or complete an Application to Proceed *in Forma Pauperis* pursuant to 28 U.S.C. § 1915. Further instructions are provided below.

1. The habeas corpus petition must be typewritten or legibly handwritten. All questions must be answered clearly and concisely in the appropriate space on the form. You must sign the petition and the declaration under penalty of perjury. You are cautioned that any deliberately false statement of a material fact may serve as a basis for prosecution and conviction for perjury. You should exercise care to assure that all answers are true, correct and complete.

2. You must provide the court with an original and a copy of the habeas corpus petition. You also must provide the court with a copy of the petition to be served on each named respondent. You should keep an additional copy of the petition for your own records. All copies of the petition must be identical to the original.

3. Upon receipt of a fee of \$5.00, your petition will be filed if it is in proper order.

4. If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed *in forma pauperis* by filing an Application to Proceed *in Forma Pauperis* required by the court, setting forth information establishing your inability to pay the costs. If you wish to proceed *in forma pauperis*, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

5. The law governing petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 has changed dramatically. You should consult these statutory changes in 28 U.S.C. §§ 2244, 2253, and 2254, *as amended by*, Title I of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, §§ 101-106, 110 Stat. 1214 (Apr. 24, 1996).

6. The following list of the most frequently raised grounds for relief in post-conviction proceedings is furnished for your information only. This list includes (a) conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with the understanding of the nature of the charge or the consequences of the plea, (b) conviction obtained by use of coerced confession, (c) conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure, (d) conviction obtained by use of evidence obtained pursuant to an unlawful arrest, (e) conviction obtained by a violation of the privilege against self-incrimination, (f) conviction obtained by the unconstitutional failure of the prosecution to disclose evidence favorable to the defendant, (g)

conviction obtained by a violation of the protection against double jeopardy, (h) conviction obtained by the action of a grand or petit jury which was unconstitutionally selected and impaneled, (i) denial of effective assistance of counsel (except during federal or state collateral post-conviction proceedings), (j) denial of right of appeal. This is not a complete list, and you may raise any other claims for relief you may have.

7. On a single habeas corpus petition, you may challenge the judgment of only one court. If you seek to challenge several judgments entered by different courts in different cases, you must file separate petitions as to each judgment.

8. When your habeas corpus petition is completed, it should be mailed with the necessary copies and filing fee to the clerk of the United States District Court whose address is:

Cameron S. Burke, Court Executive
U.S. District Court for the District of Idaho
United States Courthouse, MSC #039
550 West Fort Street
Boise, ID 83724

9. You must furnish an original and one copy of all motions, pleadings, correspondence or other documentation submitted to the court for filing and consideration. In addition, you must furnish the respondent(s) or his or her attorney with a copy of all such documents submitted to the court. Each original document (except the original habeas corpus petition) must include a certificate stating the date a copy of the document was mailed to the respondent(s) or his or her attorney and the address to which it was mailed. Any document received which fails to include a certificate of service may be disregarded by the court or returned. An example of a certificate of service is:

I hereby certify that on this _____ day of _____,
19____, copy of the foregoing pleading/ document was mailed to the
following (respondent(s) or counsel for respondent(s)) at the following
addresses:

Original Signature of Applicant

10. The United States District Judges, the United States Magistrate Judges, the clerk of the court, and deputy clerks are officers of the court and are prohibited from giving legal advice. Legal questions should be directed to an attorney.

Full Name/Prisoner Number

Complete Mailing Address

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

_____)	
)	
)	CASE NO.:
Petitioner(s),)	(To be supplied by the Court)
Full name(s) and prisoner number(s))	
(Do not use <i>et al.</i>))	
)	
vs.)	PETITION FOR WRIT
)	OF HABEAS CORPUS
_____)	
Respondent(s) (Full name(s)))	
(Do not use <i>et al.</i>))	
(Name of Warden, Superintendent, Jailor, or)	
authorized person having custody of applicant.))	
)	
_____)	

**PETITION FOR A WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY**

Note: If the petitioner is attacking a judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment of conviction was entered. If the petitioner has a sentence to be served in the future under a federal judgment, which he/she wishes to attack, he/she should file a motion under 28 U.S.C. § 2255, in the federal court which entered the judgment.

CONVICTION UNDER ATTACK

1. Name and location of the court which entered the judgment of conviction under attack

2. Date judgment of conviction was entered:

3. Case number _____

4. Type and length of sentence imposed:

5. Are you presently serving a sentence imposed for a conviction other than the conviction under attack in this motion? Yes ___ No ___

6. Nature of the offense involved (all counts)

7. What was your plea? (check one) Not Guilty ___ Guilty ___ Nolo Contendere ___

If you entered a guilty plea to one count or indictment, and a not guilty plea to another court or indictment, give details:

8. If you entered a plea of guilty pursuant to a plea bargain, state the terms and conditions of the agreement:

9. Kind of trial (check one) Jury ____ Judge only ____

10. Did you testify at trial? Yes ____ No ____

DIRECT APPEAL

11. Did you appeal from the judgment of conviction? Yes ____ No ____

12. If you did appeal, give the name and location of the court where the appeal was filed, the result, the case number and date of the court's decision (or attach a copy of the court's opinion or order):

13. If you did not appeal, explain briefly why you did not:

14. Did you seek permission to file a late appeal? Yes ____ No ____

POST-CONVICTION PROCEEDINGS

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? Yes ____ No ____

14. If your answer to 14 was "Yes," give the following information:

(a) FIRST petition, application or motion.

(1) Name of court:

(2) Nature of proceeding:

(3) Claims raised:

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ____ No ____

(5) Result:

(6) Date of result: _____

(7) Did you appeal the result to the highest state court having jurisdiction?
Yes ____ No ____ If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order):

(8) If you did not appeal, briefly explain why you did not.

(b) As to any SECOND petition, application or motion, give the following information:

6. State concisely every claim that you are being held unlawfully. Summarize briefly the facts supporting each claim. If necessary, you may attach extra pages stating additional claims and supporting facts. You should raise in this petition all claims for relief which relate to the conviction under attack.

In order to proceed in federal court, you ordinarily must exhaust the remedies available to you in the state courts as to each claim on which you request action by the federal court.

Claim One:

(a) Supporting Facts: (Without citing legal authorities or argument state briefly the facts in of this claim)

(b) Statement of exhaustion of state remedies as to claim one:

Direct Appeal

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes
_____ No _____

(2) If you did not raise this issue in your direct appeal, explain briefly explain why you did not:

Post-Conviction Proceedings

(3) Did you raise this issue by means of a post-conviction motion or petition for habeas

corpus in a state trial court? Yes ____ No ____

(4) If your answer to (3) is "Yes," state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision:

(5) Did you receive an evidentiary hearing on your motion or petition?
Yes ____ No ____

(6) Did you appeal from the denial of your motion or petition?
Yes ____ No ____

(7) If your answer to (6) is "Yes," state whether this issue was raised in the appeal, Yes ____ No ____, and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order):

(8) If your answer to question (5), (6) or (7) is "No," briefly explain:

Other Remedies

(i) Describe all other procedures (such as habeas corpus in the state supreme court, administrative remedies, etc.) you have used to exhaust your state remedies as to the issue:

Claim Two:

(a) **Supporting Facts:** (Without citing legal authorities or argument state briefly the facts in of this claim)

(b) Statement of exhaustion of state remedies as to claim two:

Direct Appeal

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ____ No ____

(2) If you did not raise this issue in your direct appeal, explain briefly explain why you did not:

Post-Conviction Proceedings

- (3) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial court? Yes ____ No ____
- (4) If your answer to (3) is "Yes," state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision:
- (5) Did you receive an evidentiary hearing on your motion or petition?
Yes ____ No ____
- (6) Did you appeal from the denial of your motion or petition?
Yes ____ No ____
- (7) If your answer to (6) is "Yes," state whether this issue was raised in the appeal, Yes ____ No ____, and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order):
- (8) If your answer to question (5), (6) or (7) is "No," briefly explain:

Other Remedies

(i) Describe all other procedures (such as habeas corpus in the state supreme court, administrative remedies, etc.) you have used to exhaust your state remedies as to the issue:

Claim Three:

(a) **Supporting Facts:** (Without citing legal authorities or argument state briefly the facts in of this claim)

(b) Statement of exhaustion of state remedies as to claim three:

Direct Appeal

(1) If you appealed from the judgment of conviction, did you raise this issue?
Yes ____ No ____

(2) If you did not raise this issue in your direct appeal, explain briefly explain why you did not:

Post-Conviction Proceedings

(3) Did you raise this issue by means of a post-conviction motion or petition for habeas

corpus in a state trial court? Yes ____ No ____

- (4) If your answer to (3) is "Yes," state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision:
- (5) Did you receive an evidentiary hearing on your motion or petition?
Yes ____ No ____
- (6) Did you appeal from the denial of your motion or petition?
Yes ____ No ____
- (7) If your answer to (6) is "Yes," state whether this issue was raised in the appeal, Yes ____ No ____, and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order):
- (8) If your answer to question (5), (6) or (7) is "No," briefly explain:

Other Remedies

(i) Describe all other procedures (such as habeas corpus in the state supreme court, administrative remedies, etc.) you have used to exhaust your state remedies as to the issue:

17. Have all claims for relief raised in this petition been presented to the highest state court having jurisdiction? Yes ___ No ___

18. If you answered "No" to question 17, state which claims have not been so presented and briefly give your reasons(s) for not presenting them:

19. If any of the claims listed in this petition were not previously presented in any other court, state or federal, state briefly what claims were not so presented, and give your reasons for not presenting them:

20. Have you previously filed any type of petition, application or motion in a federal court regarding the conviction under attack? Yes ___ No ___

If "Yes," answer the following and attach a copy of the court's decision for each petition, application, or motion filed:

(a) Name and location of court:

(b) Type of proceeding:

(c) The issues raised:

- (d) The result:

SUCCESSIVE PETITIONS

This court is required to dismiss any claim presented in a second or successive petition that the federal court of appeals has authorized to be filed unless the petitioner shows that each claim satisfies the requirements of 28 U.S.C. § 2244, *as amended* by Title I of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 106, 110 Stat. 1214 (Apr. 24, 1996).

21. If you are raising a claim which you have not presented in a prior petition, have you obtained an order from the United States Court of Appeals for the Ninth Circuit authorizing this district court to consider the petition? Yes ____ No ____
(Please attach a copy of the order.)
22. Do you have any petition, petition, motion or appeal now pending in any court, either state or federal, regarding the conviction under attack? Yes ____ No ____.

If "Yes," state the name of the court, case file number (if known), and the nature of the proceeding:

LEGAL REPRESENTATION

23. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:
- (a) At preliminary hearing:
- (b) At arraignment and plea:
- (c) At trial:

- (d) At sentencing:
- (e) On appeal:
- (f) In any post-conviction proceeding:
- (g) On appeal from any adverse ruling in a post-conviction proceeding:

OTHER CONVICTIONS

- 24. Were you sentenced on more than one count of an indictment or on more than one indictment, in the same court and at the same time? Yes ____ No ____
- 25. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes ____ No ____
 - (a) If so, give name and location of court which imposed sentence to be served in the future:
 - (b) and give date and length of service to be served in the future:
 - (c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? Yes ____ No ____

Wherefore, petitioner prays that the court grant him such relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

Petitioner's Original Signature

Attorney's Full Address and
Telephone Number

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he/she is the petitioner in this action, that he/she has read this petition and that the information contained in the petition is true and correct. 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed at _____ on _____.
(Location) (Date)

Petitioner's Original Signature

**INFORMATION AND INSTRUCTIONS FOR FILING
A MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE
UNDER 28 U.S.C. § 2255 (PERSONS IN FEDERAL CUSTODY)**

Attached are the forms you will need to file a motion pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct sentence (hereinafter referred to collectively as a “§ 2255 motion”). Further instructions for completing these forms are provided below.

The § 2255 Motion

1. The § 2255 motion must be typewritten or legibly handwritten. All questions must be answered clearly and concisely in the appropriate space on the form. You must sign the § 2255 motion and the declaration under penalty of perjury. You are cautioned that any deliberately false statement of a material fact may serve as a basis for prosecution and conviction for perjury. You should exercise care to assure that all answers are true, correct, and complete.

2. You must provide the court with an original and two copies of the § 2255 motion. You should keep an additional copy of the § 2255 motion for your own records. All copies of the § 2255 motion must be identical to the original.

3. The law governing motions to vacate pursuant to 28 U.S.C. § 2255 has changed dramatically. You should consult these statutory changes in 28 U.S.C. §§ 2244, 2253, and 2254, *as amended by*, Title I of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, §§ 101-106, 110 Stat. 1214 (Apr. 24, 1996).

4. There is no filing fee required for this motion; however, if you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed *in forma pauperis*, in which event you must complete an Application to Proceed *in Forma Pauperis* pursuant to 28 U.S.C. § 1915, required by the court, setting forth information establishing your inability to pay the costs. If you wish to proceed *in forma pauperis*, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

5. The following list of the most frequently raised claims for relief in proceedings pursuant to 28 U.S.C. § 2255 is furnished for your information only. This list includes (a) conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with the understanding of the nature of the charge or the consequences of the plea, (b) conviction obtained by use of coerced confession, (c) conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure, (d) conviction obtained by use of evidence obtained pursuant to an unlawful arrest, (e) conviction obtained by a violation of the privilege against self-incrimination, (f) conviction obtained by the unconstitutional failure of the prosecution to disclose evidence favorable to the defendant, (g) conviction obtained by a violation of the protection against double jeopardy, (h) conviction obtained by the action of a grand or petit jury which was unconstitutionally selected and impaneled, (i) denial of effective assistance of counsel, (j) denial of right of appeal. This is not a complete list, and you

may raise any other claims for relief you may have.

6. On a single § 2255 motion, you may challenge the judgment of only one court. If you seek to challenge judgments entered by different judges or divisions either in the same district or in different districts, you must file separate § 2255 motions as to each judgment.

7. All pleadings must contain the criminal case number. The civil case number is assigned by the court in § 2255 cases for statistical purposes only.

8. When your § 2255 motion is completed, it should be mailed with the necessary copies to the clerk of the United States District Court whose address is:

Cameron S. Burke, Court Executive
United States District Court
for the District of Idaho
United States Courthouse, MSC #039
550 West Fort Street
Boise, ID 83724

9. You must furnish an original and one copy of all other motions as well as pleadings, correspondence or other documentation submitted to the court for filing and consideration. In addition, you must furnish the opposing party or its attorney with a copy of all such documents submitted to the court. Each original document (except the original § 2255 motion) must include a certificate stating the date a copy of the document was mailed to the opposing party or its attorney and the address to which it was mailed. An example of a certificate of service is:

I hereby certify that on this _____ day of _____, 19____, a copy of the foregoing pleading/document was mailed to the following respondent(s) or counsel for respondent(s) at the following address(es).

Original Signature of Petitioner

10. The United States District Judges, the United States Magistrate Judges, the clerk of the court, and deputy clerks are officers of the court and are prohibited from giving legal advice. Legal questions should be directed to an attorney.

Full Name/Prisoner Number

Complete Mailing Address

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

UNITED STATES OF AMERICA,)	
)	
)	Criminal Case No. _____
)	
vs.)	Place of Confinement:
)	_____
)	_____
_____ Movant. (Full name.))	Civil Case No. _____
)	(Assigned by the Court.)
)	
_____)	

**MOTION PURSUANT TO 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR
CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY**

CONVICTION UNDER ATTACK

(If movant is attacking a sentence based on a federal conviction to be served in the future, the motion should be filed in the federal court which entered the judgment.)

1. Name and location of the court which entered the judgment of conviction under attack:

2. Date judgment of conviction was entered: _____

3. Length and term of sentence:

4. Are you presently serving a sentence imposed for a conviction other than the conviction

under attack in this motion? Yes ___ No ___

5. Name of judge who imposed sentence under attack in this motion:

6. Nature of the offense involved (all counts):

7. What was your plea? (check one)

Not guilty ___ Guilty ___ Nolo Contendere ___

8. If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

9. If you entered a plea of guilty pursuant to a plea bargain, state the terms and conditions of the agreement:

10. Kind of trial: (check one) Jury ___ Judge only ___

11. Did you testify at trial (if any)? Yes ___ No ___

DIRECT APPEAL

12. Did you appeal from the judgment of conviction? Yes ___ No ___

13. If you did appeal, answer the following:

- a) State the name and location of the court where the appeal was filed, the result, the case number and the date of the court's decision (or attach a copy of the court's opinion or order):
 - b) State the issues raised:
14. If you did not appeal, explain briefly why you did not:

POST-CONVICTION PROCEEDINGS

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court? Yes ___ No ___
16. If your answer to question 16 was "Yes," give the following information:
- a) FIRST petition, application or motion.
 - i) Name of court:
 - ii) Nature of proceeding :
 - iii) Claims raised:
 - iv) Did you receive any evidentiary hearing on your petition, application or motion? Yes ___ No ___
 - v) Result:
 - vi) Date of result:
 - vii) Did you appeal the result to the federal appellate court having jurisdiction? Yes ___ No ___. If you did appeal, give the name

of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order):

viii) If you did not appeal, explain briefly why not:

b) As to any SECOND petition, application or motion, give the following information:

i) Name of court:

ii) Nature of proceeding:

iii) Claims raised:

iv) Did you receive any evidentiary hearing on your petition, application or motion? Yes ___ No ___

v) Result:

vi) Date of result:

vii) Did you appeal the result to the federal appellate court having jurisdiction? Yes ___ No ___. If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order):

viii) If you did not appeal, explain briefly why not:

c) As to any THIRD petition, application or motion, give the following information:

i) Name of court:

- ii) Nature of proceeding:
- iii) Claims raised:
- iv) Did you receive any evidentiary hearing on your petition, application or motion? Yes ___ No ___
- v) Result:
- vi) Date of result:
- vii) Did you appeal the result to the federal appellate court having jurisdiction? Yes ___ No ___. If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order):
- viii) If you did not appeal, explain briefly why not:

CLAIMS

17. State concisely every claim that you are being held unlawfully. Summarize briefly the facts supporting each claim. If necessary, you may attach extra pages stating additional claims or supporting facts. You should raise in this motion all available claims for relief which relate to the conviction under attack. **CAUTION:** If you fail to set forth all claims in this motion, you may be barred from presenting them at a later date.

CLAIM ONE:

Supporting facts (tell your story briefly without citing legal authority or argument):

CLAIM TWO:

Supporting facts (tell your story briefly without citing legal authority or argument):

CLAIM THREE:

Supporting facts (tell your story briefly without citing legal authority or argument):

CLAIM FOUR:

Supporting facts (tell your story briefly without citing legal authority or argument):

18. If any of the claims listed in 17 were not previously presented, state briefly what claims were not so presented, and give your reasons for not presenting them:

19. Do you have any petition, application, motion or appeal now pending in any court,

either state or federal, regarding the conviction under attack?

Yes ___ No ___. If "Yes," state the name of the court, case file number (if known), and the nature of the proceeding:

SUCCESSIVE MOTIONS

20. If you are raising a claim which you have not presented in a prior motion, have you obtained an order from the United States Court of Appeals for the Ninth Circuit authorizing this district court to consider the motion. Yes ___ No ___. Please attach a copy of the order.

LEGAL REPRESENTATION

21. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:
- (a) At preliminary hearing:
 - (b) At arraignment and plea:
 - (c) At trial:
 - (d) At sentencing:
 - (e) On appeal:
 - (f) In any post-conviction proceeding:
 - (g) On appeal from any adverse ruling in a post-conviction proceeding:

OTHER CONVICTIONS

22. Were you sentenced on more than one count of any indictment or on more than one

indictment, in the same court and at the same time?

Yes ___ No ___

23. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes ___ No ___

(a) If so, give name and location of court which imposed sentence to be served in the future:

(b) And give date and length of sentence to be served in the future

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ___ No ___

Wherefore, movant prays that the court grant him such relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

Movant's Original Signature

(Attorney's full address and telephone number)

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he/she is the movant in the above action, that he/she has read the above pleading and that the information contained therein is true and correct. 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed at _____ on _____
(Location) (Date)

Movant's Original Signature

CHAPTER 6: TRIAL PREPARATION

The Local Rules of the District of Idaho cover all phases of trial preparation from the pretrial conference to the satisfaction of judgment. The following information is not meant to be all inclusive and you should always consult the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Idaho to find out what the court requires of all parties when filing suit and participating in trial. **Local Rule 16.1** sets out those pretrial requirements that all parties should be aware of.

NOTE: In accordance with Fed. R. Civ. P. 38(b) and Local Rule 38.1, any party has a constitutional right to trial by jury only upon filing the appropriate demand for such.

A. PRETRIAL CONFERENCE AND ORDER

Prior to the actual trial, a pretrial conference is usually held between the trial judge and counsel to determine if all discovery has been completed, what exhibits and witnesses each side might use during the trial, the approximate length of time that will be necessary for the trial, and what ground rules the judge will require before, during, and after the trial. After the conference, a pretrial order is usually prepared which sets out the above.

B. THE TRIAL -- THE ROLE OF THE JUDGE AND JURY

A trial is defined as "a judicial examination of issues between parties to an action." The parties each get the opportunity to present their side of the case, and the judge and jury (if the trial is

a jury trial) are responsible for entering a verdict and judgment based on the evidence and arguments presented. It is the judge's duty to see that only proper evidence and arguments are presented. In a jury trial, the judge also instructs the jury which will be called on to make decisions regarding those matters at issue and then a judgment is entered based on the verdict reached by the jury. **Local Rule 58.1.**

If the parties have not requested a trial by jury, **Local Rule 38.1**, the judge becomes the trier of law (the judge) and the trier of fact (the jury). The judge then enters a Findings of Fact and Conclusions of Law, sometimes prepared by the prevailing party, based on the evidence and arguments presented and then a judgment is entered based on those findings of fact and conclusions of law.

C. SELECTION OF THE JURY

A jury trial begins with the judge choosing prospective jurors to be called for voir dire (examination). **Local Rule 47.1.** The jury box shall be filled before examination on voir dire and the Court will examine the jurors as to their qualifications. Not less than five (5) days before trial, the parties are to submit written requests for voir dire questions. Unless otherwise ordered, six (6) jurors plus a number of jurors equal to the total number of preemptory challenges which are allowed by law shall be called to complete the initial panel. After voir dire of all prospective jurors, a jury of six (6) is named and instructed by the judge regarding the issues they will be deciding. **Local Rule 51.1.**

- **Peremptory Challenges:** Each party has been given number of peremptory challenges established by law which enable the parties to reject the prospective jurors without cause. This decision is based on subjective considerations of the parties when they feel a prospective juror would be detrimental to their side of the case.
- **Challenges for Cause:** Either the plaintiff or defendant may challenge a prospective juror for cause when the prospective juror lacks a qualification required by law, is not impartial, is related to either of the parties, will not accept the law as given to him or her by the court, or other reasons approved by the court.

D. OPENING STATEMENTS

After the jury is empaneled, each side may present an opening statement. The plaintiff has the burden of proving that he or she was wronged and suffered damages from such wrong and that the defendant caused such damages; the plaintiff is therefore allowed to present his statement first. This may be followed by a statement by the defendant.

E. TESTIMONY OF WITNESSES

After opening statements are given, testimony of witnesses and documents are presented by each side, plaintiff side to begin. **Local Rule 43.1.** Cross-examination is conducted by the other side after the initial examination. If after a party has cross-examined a witness, the other side has the opportunity to redirect examination in order to requestion the witness on the points covered by the cross-examination.

If a witness testifies to one fact and a statement or document in the files shows that testimony to be contradicted, the document can then be used to question the witness on the accuracy of his statements. If the evidence produced shows that the witness's testimony is false, the witness is considered impeached upon cross-examination.

F. MOTIONS DURING THE COURSE OF A TRIAL

Before the closing arguments and up until the time the case is sent to the jury for deliberation, certain motions may be made during the course of the trial.

- **Motion in Limine:** This motion is made prior to the jury selection and it requests that the judge not allowed certain facts to be admitted into evidence--such as insurance policies, subsequent marriages, criminal records, and other matters which are either not relevant to the particular case involved or which might influence the jury unfairly.
- **Motion for Instructed or Directed Verdict:** This motion is usually made by defendant at the close of evidence presented by the plaintiff's side and is based on the premise that the plaintiff has failed to prove his case. If it is granted, the court instructs the jury to render a verdict for the defendant and against the plaintiff, and the trial is concluded in the defendant's favor. If the court denies the motion, the trial continues with presentation of the defendant's side.

- **Motion for Mistrial:** Either party can move for a mistrial if, for example, during the course of the trial certain matters which are not admissible such as those mentioned in a motion for limine are presented by any witness either purposely or unintentionally in the presence of the jury. If the jury grants the motion for mistrial, the trial is immediately ended and the jury is dismissed.
- **Objections:** During the examination of a witness, one side may “object” to the questioning or testimony of a witness or presentation of evidence if the attorney feels the testimony or evidence about to be given should be excluded. If the objection is sustained by the judge, that particular testimony or evidence is excluded. If the objection is overruled by the judge, the testimony or evidence may be given. A ruling on an objection may be the basis for appeal.

G. REBUTTAL TESTIMONY

After each side has presented its evidence, the plaintiff may be allowed to present some rebuttal testimony.

H. CLOSING ARGUMENTS

Closing arguments to the jury set out the facts that each side has presented and the reasons why the jury should find in favor of the client. Time limits are sometimes set by the court for closing arguments, and each side must adhere to the specified time. The plaintiff presents closing

argument first and may reserve some of the time for a rebuttal to defendant's closing argument.

I. CHARGE TO THE JURY

After each side presents testimony and evidence, the jury delivers his charge to the jury, usually in the form of written instructions. Each side may present proposed written instructions to the judge for consideration. After the judge has considered all proposed instructions, the jury is given each instruction which sets forth the jury's responsibility to decide the facts in light of the applicable rules of law. The jury then returns a verdict granting favor to the plaintiff or defendant and assesses damages to be awarded, if any.

J. MISTRIAL

If a jury is unable to reach a verdict, in which case the judge declares a mistrial, the case must be tried again before a new jury. A jury which cannot reach a verdict is usually referred to as a *hung jury*.

K. PREPARATION OF JUDGMENT

Following the entry of the jury's verdict, either side may give notice of its intention to appeal. The judgment is prepared by the prevailing side and presented to the court for entry. The losing side has the opportunity to file post-trial motions which usually set out why the jury's verdict should be disregarded or why the judgment submitted by the other side should be more in

keeping with the jury's verdict. **Local Rule 58.1.**

L. COSTS

If the jury or the judge awarded costs to the prevailing party, it is necessary to prepare a bill of costs incurred in the suit for the approval of the court. Costs are specified by **Local Rule 54.1** as to what is allowable, and only those costs listed as allowable may be recovered by the prevailing party. Within fourteen (14) days after entry of judgment, under which the costs may be claimed, the prevailing party may serve and file a cost bill requesting taxation of costs itemized thereon.

Claims for attorney fees will not be treated as routine items of costs. Attorney fees will only be allowed upon an order of a judge of the court after such fact finding process as the judge shall order. **Local Rule 54.3.**

M. SATISFACTION OF JUDGMENT

Whenever the amount directed to be paid by any judgment or order, together with interest (if interest accrues) and the clerk's statutory charges, shall be paid into court by payment to the clerk, the clerk shall enter satisfaction of said judgment or order. The court will enter satisfaction of any judgment upon receipt of an acknowledgment from the prevailing party that all awards have been satisfied. **Local Rule 58.2.**

CHAPTER 7: APPEALS RIGHTS AND PROCEDURES

A. POST-JUDGMENT MOTIONS AND PROCEEDINGS

(1) Motions for reconsideration:

(a) Tolling Motions:

- **Types of Tolling Motions:** Pursuant to Fed. R. App. P. 4(a)(4), the timely filing of certain motions tolls the time for filing the appeal from the judgment or order. These motions include a motion for judgment pursuant to Fed. R. Civ. P. 50(b), a motion to amend findings of fact pursuant to Fed. R. Civ. P. 52(b), a motion to alter or amend the judgment or for a new trial pursuant to Fed. R. Civ. P. 59, a motion for attorneys fees **if** the district court extends the time to appeal, and a motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b).

These motions **must** be filed within ten (10) days of from entry of the judgment. Motions and other pleading filed by pro se prisoners are deemed filed on the date they are delivered to prison authorities for forwarding to the district court. The ten (10) days are calculated according to Fed. R. Civ. P. 6(a), and holidays and weekends are excluded. The district court does not have authority to extend the time for filing the above tolling motions.

A premature tolling motion, filed before the entry of the order or judgment to be challenged, will not toll time if the judgment or order itself implicitly denies the tolling motion.

In addition, an appeal filed on an order denying a motion for reconsideration, on a non appealable order, is not appealable and will not be considered by the court of appeals

- **Effect of Tolling Motions** - A notice of appeal filed prior to the disposition by the district court of a timely filed tolling motion is premature and ineffective until the motion is decided by the district court. Fed. R. App. P. 4(a)(4). Thus, the filing of a notice of appeal does not deprive the district court of jurisdiction to decide the motion, even if the appeal was filed before the timely tolling motion. The Ninth Circuit will stay any such appeal until disposition of the tolling motion. An appeal filed prior to the disposition of a tolling motion will not encompass review of the order disposing the motion unless the appeal is timely amended. Fed. R. App. Proc ,4(a)(4).

(2) Other Motions for Reconsideration:

(a) Motions to vacate under Rule 60(b) - A motion brought under Fed. R. Civ. P. 60(b) seeking relief for mistakes, inadvertence, excusable neglect, newly discovered Evidence, fraud, or other unusual circumstances, does not toll the time to appeal unless made within ten (10) days of the entry of the judgment. The motion may still be considered if made within one year of entry of the judgment or any reasonable time from entry, depending upon the circumstances. If an appeal is pending, and the motion is not filed within 10 days of the entry of the judgment, a remand from the appellate court must be sought.

(b) Motions for Stay of Injunction Pending Appeal

- **Jurisdiction:** An application for stay of a district court order or an injunction pending appeal must first be made to the district court pursuant to Fed. R. App. P. 8(a), unless it would be impracticable. The district court may stay its own judgment or order after a valid appeal has been filed, but a district court may not modify or vacate its order while an appeal is pending. If the district court denies the motion for stay or injunction, relief may be sought with the court of appeals, but a showing must be made that an application to the district court was impracticable or denied.
- **District Court Jurisdiction to Proceed with Trial:** Unless the district court or the appellate court stays the district court's proceedings pending the disposition of an appealable interlocutory order, the district court may proceed with action while the appeal is pending.

B. NOTICE OF APPEAL

Any party to a formal court action has a constitutional right to file an appeal to the jurisdictional appellate court from an appealable order entered by the district court. All appeals must comply with the rules set forth in Federal Rules of Appellate Procedure 3 and 4. The notice of appeal need not state legal analysis or legal issues on appeal. (Notice of Appeal sample form at p.____ of this chapter.)

(1) Filing the Notice of Appeal in a Civil Matter:

Timely Manner: The civil appeals which are most commonly filed by incarcerated litigants are 42 U.S.C. § 1983 Prisoner Civil Rights, 28 U.S.C. § 2254 state habeas/petition for review, and 28 U.S.C. § 2255 federal habeas/motion to vacate or reduce sentence. The civil appeals must be filed within thirty (30) days of the entry of the final judgment; however, if the United States is a party to the action, the appeal is sixty (60) days. Fed R. App. P. 4(a)(1),

If the Notice of Appeal is mistakenly delivered to the court of appeals, it will be transmitted to the district court and filed in that court as of the date it was first received in the appellate court.

Appeals filed by incarcerated litigants will be considered timely filed if deposited in the institution's internal mail system on or before the last day of filing. The timely filing may be shown by a notarized statement or declaration in compliance with 28 U.S.C. § 1746 setting forth the date of deposit and that first class postage has been prepaid. Fed R. App. P. 4(c).

(2) Motions for Leave to Appeal In Forma Pauperis:

Necessity of Motion: In cases where the plaintiff has been granted leave to file an action in forma pauperis or has been appointed counsel under the Criminal Justice Act in a criminal or habeas proceeding, pauper status automatically continues for the appeal unless the district court certifies that the appeal is taken in bad faith or is frivolous. 28 U.S.C. § 1915(a)(3); Fed R. App. P.24(a). If the appellant has been previously granted in forma pauperis status on the original petition, the appellant **need not** file an additional motion to proceed in forma pauperis on appeal.

Where the appellant has not been granted in forma pauperis status, the appellant must file a motion to proceed in forma pauperis on appeal. The motion should generally be filed in the

district court in the first instance. Fed. R. App. P. 24 (a). Thus, the district court maintains jurisdiction to decide in forma pauperis motions on appeal, even after the appeal has been filed.

If the district court grants the motion, the appellant will proceed in forma pauperis in the appellate court automatically. The initial filing fee will be assessed by the appellate court in prisoner civil rights cases according to 28 U.S.C. § 1915(b)(1), as amended by the Prisoner Litigation Reform Act. If the district court denies the motion, the appellant must file a new motion in the appellate court. Fed. R. App. P. 24(a).

(3) Motions for Transcripts and Counsel on Appeal:

(a) Transcripts at Government Expense: An appellant proceeding in forma pauperis on appeal may request the production of transcripts at government expense pursuant to 28 U.S.C. § 753(f), 1915(c). The request should first be made to the district court for consideration. The appellant must show that the appeal presents substantial question, is not frivolous and that the transcripts are necessary for disposition of the appeal. The district court may deny a motion for transcripts if the appellant fails to identify the grounds for appeal. If the district court denies the motion, the appellant may file a new motion with the appellate court.

(b) Appointment of Counsel on Appeal: The district court may appoint pro bono counsel for indigent pro se litigants in prisoner civil rights actions, pursuant to 28 U.S.C. § 1915 (e)(1), if the case presents exceptional circumstances. The pro se appellant should file the motion with the court of appeals. It is **not necessary** for the pro se appellant to first seek relief

in the district court. In habeas corpus matters proceeding under 28 U.S.C. §§ 2241, 2254 or 2255, the district court may appoint counsel on appeal pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A(2)(B), if the court determines that the interest of justice will best be served by appointing counsel. If counsel was not appointed for the district court proceedings, the appellant will be best served by filing the motion with the court of appeals.

(4) Certificate of Appealability - Habeas Corpus Matters:

(a) Need for Certificate: A certificate of appealability must be obtained by the appellant in order to pursue any appeal from the denial or dismissal of a petition for writ of habeas corpus brought by a state prisoner under 28 U.S.C. § 2254 or a motion to vacate a district court's judgment brought by a federal prisoner under 28 U.S.C. § 2255. The certificate of appealability requirement falls under 28 U.S.C. § 2253; Fed R. App. P 22(b) and applies to all appealable orders in habeas matters entered by the district court, including motions for reconsideration and denial of leave to proceed in forma pauperis. The certificate of appealability requirement is not applicable to matters filed under 28 U.S.C. § 2255 if the original habeas proceeding was filed prior to the enactment of Prisoner Litigation Reform Act.

(b) Request for Certificate: A request for certificate of appealability should be considered first by the district court. It is not necessary for a pro se appellant to file a formal request for the certificate, as a timely notice of appeal will effectively act as the request. The district court shall not transmit the appeal to the court of appeals until the request for certificate of appealability is ruled upon.

If the request is denied by the district court, the district court shall make its findings in writing, and will be transmitted with the notice of appeal to the appellate court. The court of appeals will automatically review the request for certificate of appealability before establishing a briefing schedule. If the certificate is granted, the appeal shall proceed as any other civil appeal. If request is denied by the court of appeals as well, the case is closed.

(5) Motions for Extension of Time to Appeal:

(a) Grounds for Motion:

- **Fed. R. App. P. 4(a)(5)** - The district court may extend the time to file a notice of appeal if the pro se appellant can show good cause or excusable neglect. If the motion for extension of time is filed within the original thirty-(30)-day time period for appeal, the lesser good cause standard will apply. If the motion is filed within the thirty-(30)-day period immediately preceding the time period to appeal, a stricter excludable neglect standard will apply.
- **Fed. R. App. P. 4(a)(6)** - The district court may also extend the time to appeal upon a demonstration that the appellant did not receive notice of entry of the judgment within twenty-one (21) days of entry of the judgment, and that no party will be prejudiced. The excusable neglect standard is not applicable under this rule and the district court's discretion is very limited.
- **Fed. R. App. P. 60(b)** - Under certain very limited circumstances, the district court may vacate its prior judgment and re-enter it to allow the appellant to file a timely notice of appeal. This relief is only available where the appellant can show the use of

due diligence and that the excusable neglect did not arise until after the time to file a motion under Rule 4(a)(5) had passed. Further, this relief may no longer be appropriate since the adoption of Rule 4(a)(6) in 1991.

(b) Procedural Requirements:

- **Formal motion** - The district court may not extend the time to appeal unless the appellant files a formal motion seeking such relief. A letter to the court making the request will not be accepted as a formal motion for extension of time to file an appeal. Further, the filing of a late notice of appeal may not be construed as a motion for extension of time to file the appeal. An ex-parte motion for extension of time due to excusable neglect, may be filed if it is filed within the original appeal time.
 - **Timing of motion**- A motion for extension of time pursuant to Fed. R. App. P. 4(a)(6), where a party was entitled to notice of entry of judgment but did not receive notice, may be filed within one hundred eighty (180) days of the entry of judgment or seven (7) days from receipt of the notice of entry of the judgment. Extensions under Fed. R. App. P. 4(a)(6) may be no longer than fourteen (14) days from the entry of the order granting the extension. A motion for extension of time pursuant to Fed. R. App. P. 4(a)(5) must be filed within thirty (30) days after the time to appeal has expired. Fed. R. App. P. 4(a)(5) authorizes an extension of no more than thirty (30) days beyond the last day of the original time period for filing the appeal, or ten days from entry of the order granting the motion for extension, whichever occurs later.
- (c) Disposition** - The timely filing of a motion for extension of time is a jurisdictional

requirement and the district court has no authority to grant an extension beyond that stated in the rules. The denial of a motion for extension of time is appealable and will be reviewed for an abuse of discretion.

(6) DIRECT CRIMINAL APPEAL

(a) Appellate Jurisdiction: Pursuant to Fed. R. App. P. 4(b), a direct criminal appeal, filed by the defendant, from a district court sentencing and judgment must be filed within ten (10) days of the entry of the judgment. The government must file its notice of appeal within thirty (30) days of entry of the judgment. A notice of appeal filed after sentencing but prior to the entry of the judgment will be considered premature and held by the clerk for filing after the entry of the judgment.

As with appeals in civil cases, the timely filing of a notice of appeal is jurisdictional. Pursuant to Fed. R. App. P. 4(c), the appeal will be considered timely filed by an incarcerated appellant if it is placed in the institution's internal mail system on or before the last day of filing. Timely filing may be shown by a notarized statement or declaration in compliance with 17 U.S.C. § 1746 setting forth the date of deposit and that first class postage has been prepaid.

The district court may extend the time to appeal for up to thirty (30) days from the expiration of the time to appeal in a direct criminal appeal, upon showing of excusable neglect, whether or not a motion is filed. The Ninth Circuit will temporarily remand the case to the district court, for determination of excusable neglect, if the appeal was filed more than ten (10) days but less than forty (40) days from the entry of the judgment. The denial by the district court of a motion

for extension of time is appealable.

(b) Forma Pauperis and Transcripts at Government Expense: Indigent criminal defendants are automatically entitled to proceed in forma pauperis on appeal upon showing that they cannot afford the costs of appeal. If pauper status was granted at the arraignment and counsel was appointed, no further motion to proceed in forma pauperis is necessary. If the defendant retained counsel for the district court proceedings, but funds have been exhausted, it will be necessary to file a motion to proceed in forma pauperis on appeal. It is not necessary in a direct criminal appeal to demonstrate that the appeal is not frivolous. The requirement that the defendant must pay the filing fees as funds become available does not apply to direct criminal appeals.

Indigent criminal defendants are entitled to production of transcripts under 28 U.S.C. § 753 (f). A formal request for transcripts must be made by using the transcript designation form provided by the court or in pleading form. Criminal Justice Act Form 24 authorizing payment to the court reporter must also be completed by the appellant and signed by the presiding district judge. The designation and authorization forms must be filed with the district court within twenty (21) days from the date the notice of appeal was filed or the appeal may be dismissed for failure to prosecute.

(c) Pro Se Representation: A criminal defendant seeking leave to proceed pro se must demonstrate an unequivocal intent to proceed without counsel, and must make a knowing and intelligent waiver of his/her right to appointed counsel. Upon receipt of a motion for leave to proceed pro se by a defendant previously represented, the Ninth Circuit will conduct a telephone

hearing and/or sua sponte remand to the district court for hearing.

(d) Appointment of Counsel: Indigent criminal defendants are entitled to the appointment of counsel on their direct criminal appeal under 18 U.S.C. § 3006A(a). The appointment of counsel in appeals from the denial of a Fed. R. Crim. P. 35 motion or a habeas matter is discretionary.

Appointed counsel in criminal cases are required to continue their representation of an appellant unless relieved by the court. A motion for substitution of appointed counsel will be granted only upon a showing of good cause. The district court does not have jurisdiction to entertain a motion for substitution of counsel after a valid notice of appeal is filed. An order of the district court relieving and appointing new counsel, will usually be approved by the court of appeals only if new counsel is appointed.

C. NUTS AND BOLTS... After the Appeal is Filed.

(1) Pro Se Civil Appeals

- (a)** The district will file, process, and transmit your appeal to the Clerk's Office of the Ninth Circuit Court of Appeals located in San Francisco.
- (b)** You will receive an appeal packet from the district court shortly after the appeal has been filed which will have a conformed copy of the notice of appeal, a copy of the docket sheet, and a transcript designation form if any hearings were held.

The copies which will be sent to you will be necessary to perfect your appeal.

- (c) It is important to designate transcripts within the statutory deadline of thirty (30) days from filing your appeal. Even if transcripts will not be necessary, you must check the appropriate box on the designation form and return it to the clerk's office in Boise.
- (d) If you determine that transcripts will be necessary for resolution of your appeal you must make a request for payment of transcripts under the appropriate statute as discussed in the handbook. This request should be filed with the designation form.
- (e) If no hearings were held, the transcript designation requirement will be automatically satisfied.
- (f) When your appeal is opened by the court of appeals, you will receive a briefing schedule and other basic information to help you perfect your appeal.
- (g) It is very important to meet all deadlines, unless a motion for extension of time is filed.

(2) Addresses:

United States District Court
550 W. Fort Street, MSC 039
Boise, ID 83724

Ninth Circuit Court of Appeals
P.O. Box 193939
San Francisco, CA 94115-3939

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

vs Case No.
NOTICE OF APPEAL

Comes now, the above named petitioner, and files a Notice of Appeal to the United States Court of Appeals, for the Ninth Circuit, from the FINAL ORDER or other order specifically allowed by statute in this case.

Date of order being appealed Presiding Judge

Case type:

18 U.S.C. 1983 Prisoner Civil Rights

Filing fee included? Yes No
In forma Pauperis Status Previously Granted? Yes No (Do not make another motion if previously granted.)

28 U.S.C. 2254 state habeas/petition for Sentence Review. This will also be treated as an automatic request for issuance of a Certificate of Appealability.

filing fee included Yes No
In forma Pauperis Status Previously Granted? Yes No (Do not make another motion if previously granted.)

28 U.S.C. 2255 federal habeas/motion to vacate or modify federal sentence. This will also be treated as a request for issuance of Certificate of Appealability.

Filing fee included? Yes No
In forma Pauperis Status previously granted? Yes No (Do not make another request if previously granted.)

Transcripts will be necessary to perfect this appeal. A separate designation will be completed as required by F.R.A.P. 10 and filed with the district court within 30 days of filing the Notice of Appeal. A request for production of transcripts at government expense under 28 U.S.C. 753, 1915 shall accompany the transcript designation unless arrangements are made with the court reporter for payment of the transcripts.

Transcripts will not be necessary/ no hearings were held in this case. If you select this option, your transcript designation requirement under F.R.A.P. 10 will automatically be satisfied and a certificate of record will be issued on your behalf and filed with the court of appeals.

Signature Date signed and placed in Institution Mail. Appellant

CHAPTER 8: LEGAL RESEARCH--AN OVERVIEW

It is not the purpose of this chapter to teach the pro se litigant legal research and writing nor is it our goal to sort out the complexities of applying the law, whether it be statutory or case law, to the facts of a particular case. The law prohibits personnel in the Clerk's office from providing information regarding the application of the law to the facts of any case. The intention here is to provide information that is basic to a law library to be used as a guideline.

Just as there are certain standards of procedure for filing documents with the Clerk's office, there are certain standards for citing authority when applying the law to the facts of a certain case. The most common source of citation standards is A Uniform System of Citation, Fifteenth Edition, published and distributed by The Harvard Law Review Association, Cambridge, Massachusetts. It is more commonly referred to as "The Bluebook" and sometimes as the "The Harvard Citator." All of the information required for proper citation format can be found in this one text.

Authority is the information used to convince a court how to apply the law to the facts of a case. Legal authority is divided into two classes -- primary and secondary. There are two sources of primary authority: (1) constitutions, codes, statutes, and ordinances; and (2) court decisions, preferably from the same jurisdiction where the case is filed. Secondary authority, which is not cited except in certain circumstances, is found in legal encyclopedias, legal texts, treatises, law review articles, and court cases in other jurisdictions.

A. PRIMARY AUTHORITY

Primary authority is the most accepted form of authority cited and should be used before any other authority.

- Constitutions, codes, statutes, and ordinances are the written laws of either the United States, the individual states, counties, and municipalities. These laws are enacted by the United States Congress, state legislatures, commissioners, and city councils.
- When a particular case is decided, it becomes "precedent" which means that it becomes an example or authority for an identical or similar case or a similar question of law. Court decisions are the basis for the system of *stare decisis*. which means "to abide by decided cases." These decisions are published in what is called the National Reporter System which covers cases decided by the United States Supreme Court down to the individual state district courts. These reporters each have their own "digest" system which serves as an index by subject on points of law. There are many reporters in this system and they can be found in most law libraries.

B. SECONDARY AUTHORITY

Secondary authority is used to obtain a broad view of the area of law and also as a finding tool for primary authority. Secondary authority is not cited to the court unless there is no other

authority available.

- Legal encyclopedias contain topics which are arranged alphabetically and are substantiated by supporting authorities.
- Treatises are texts written on a certain area of law by an expert in the field.
- Law review articles are published by most accredited law schools and are sometimes a broad diagnosis of a particular area.
- The Index to Legal Periodicals provides the only book reviews in the law and also provides case comments, which cases are listed in the "Table of Cases."
- American Law Reports Annotated (A.L.R.) is a collection of cases on single narrow issues. You must be aware that A.L.R. must be constantly updated.
- Restatements are publications compiled from statutes and decisions which tell what the law is in a particular field.
- Shepard's Citations is a large set of law books which provide a means by which any reported case (cited decision) may be checked to see when and how another court (the citing decision) has cited the first decision. All cases must be checked to make sure another court has not reversed or overruled your cited decision.

C. BASIC RULES OF LEGAL RESEARCH:

- Give priority to cases from your own jurisdiction.
- Search for the most recent ruling on a subject matter.

- Check the pocket part in the back of almost all law books. The pocket part is the most frequently used device for updating law books.
- Pay attention to dates on books, i.e., copyright date and date of pocket parts.
- Be aware of "2d" and "3d" citations. They distinguish one series from another.
- All legal citations are written with the volume number first, an abbreviation of the title, and the page number, e.g., 152 P.2d 967 or 144 A.L.R. 422.
- Shepardizing your citations can save a lot of embarrassment later on.

As state above, the above information is not meant to be a complete or comprehensive guide to the law library or to legal research and writing.