Filing a Pro Se Inmate Civil Rights Complaint or Habeas Petition

I. Use of Official Forms Required. The following filings must be in writing on forms approved by the Court, signed, and verified (meaning sworn under penalty of perjury):
(1) petitions for writs of habeas corpus pursuant to 28 U.S.C. § 2241 and 28 U.S.C. § 2254; (2) motions to vacate sentence pursuant to 28 U.S.C. § 2255; (3) motions to correct or reduce sentence pursuant to Fed. R. Crim. P. 35 by persons in custody pursuant to a judgment of a court; and (4) civil rights complaints by prisoners under 42 U.S.C. § 1983 and pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 91 S. Ct. 1999, 29 L.Ed.2d 619 (1971).

The official Court-approved forms are available on the Court's website. Upon request, the Clerk of the Court will also supply forms without charge.

II. Required Information. Rule 8 of the Federal Rules of Civil Procedure requires "a short and plain statement of the claim showing the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Only a generalized statement of the facts from which the defendant may form a responsive pleading is necessary or permissible. It is not necessary to attach exhibits or affidavits. However, the following information is required:

A) <u>Every petition, motion to vacate, and motion to correct or reduce sentence must contain the following information</u>:

(1) petitioner's full name and prison number (if any);

(2) name of the respondent (the proper respondent is the person having custody over the petitioner, like the warden, sheriff, or commandant);

(3) place of petitioner's detention;

(4) name and location of the court that imposed sentence;

(5) case number and the offense or offenses for which sentence was imposed;

(6) the date on which sentence was imposed and the terms of the sentence;

(7) whether a finding of guilty was made after a plea of guilty, not guilty, or *nolo contendere*;

(8) in the case of a petitioner who has been found guilty following a plea of not guilty, whether that finding was made by a jury or a judge without a jury;

(9) whether petitioner appealed from his or her conviction or the imposition of sentence, and if so, the name of each court to which he or she appealed, the results of such appeals, and the date of such results;

(10) whether petitioner was represented by an attorney at any time during the course of the proceedings under which sentence was imposed, and the name(s) and address(es) of such

attorney(s) and the proceedings in which petitioner was represented; whether the attorney was one of petitioner's own choosing or appointed by the court;

(11) whether a plea of guilty was entered pursuant to a plea bargain, and if so, the terms and conditions of the agreement;

(12) whether petitioner testified at trial (if any);

(13) whether petitioner has any petition, application, motion, or appeal currently pending in any court, and if so, the name of the court and the nature of the proceeding;

(14) whether petitioner has filed in any court, state or federal, previous petitions, applications, or motions with respect to this conviction; if so, the name and location of each such court, the specific nature of each proceeding, the disposition thereof, the date of each disposition, and citations (if known) of any written opinions or orders; and

(15) in concise form, the grounds upon which petitioner bases his or her allegations that he or she is held in custody unlawfully or his or her sentence is illegal, imposed in an illegal manner, or should be reduced; the facts that support each of the grounds; whether any such grounds have been previously presented to any court by petition, motion, or application; if so, which grounds have been previously presented and in what proceedings; and if any grounds have not been previously presented, which grounds have not been so presented and the reasons for not presenting them.

B) Additional Information in Challenges of a State Conviction. A petitioner challenging a state conviction must supply the following additional information:

(1) if petitioner did not appeal from the judgment of conviction or imposition of sentence,

(2) the reasons why he or she did not do so, and

(3) a showing that he or she has exhausted his or her remedies in state court.

C) Additional Information Required in Challenges to Federal Custody Pursuant to 28 U.S.C. § 2255. A petitioner in federal custody seeking a writ of habeas corpus or relief by motion pursuant to 28 U.S.C. § 2255 must provide the following additional information:

(1) the name of the judge who imposed sentence;

(2) in concise form, the grounds on which petitioner bases his or her allegation that the sentence imposed upon him or her is invalid; the facts that support each of the grounds; whether any such grounds have been presented to any federal court by way of petition for writ of habeas corpus, motion pursuant to 28 U.S.C. § 2255, or any other petition, motion, or application; if so, which grounds have been previously presented and in which proceedings; and if any grounds have not been previously presented, which grounds have not been so presented and the reasons for not presenting them;

(3) whether petitioner has filed in any court petitions for habeas corpus, motions pursuant to 28 U.S.C. § 2255, or any other petitions, motions, or applications with respect to the

conviction; if so, the name and location of each such court, the specific nature of each proceeding, the disposition thereof, the date of each such disposition, and citations, if known, of any written opinion or order entered therein or copies (if available) of such opinions or orders; and

(4) if a previous motion pursuant to 28 U.S.C. § 2255 was not filed or if such a motion was filed and denied, the reasons petitioner's remedy by way of such motion was inadequate or ineffective to test the legality of his or her detention.

D) All Grounds for Relief Required; Successive Petitions. Petitions and motions for post-conviction relief submitted pursuant to this rule must specify all grounds for relief available to the petitioner or movant and of which he or she has knowledge or, by the exercise of reasonable diligence, should have knowledge. Before filing a second or successive habeas corpus application, the applicant must file a motion, pursuant to 28 U.S.C. § 2244(b)(3), with the Tenth Circuit Court of Appeals for an order authorizing this Court to consider the application. Absent such authorization from the Tenth Circuit Court of Appeals, the second or successive habeas corpus application must be dismissed.

E) Information in Section 1983 Cases and Bivens Cases. A prisoner who is a plaintiff in a civil rights action filed pursuant to 42 U.S.C. § 1983 must supply the following information: (1) plaintiff's full name; (2) place of plaintiff's residence; (3) names of defendants; (4) places of defendants' residences; (5) title and position of each defendant; (6) whether the defendants were acting under color of state law or as federal agents at the time the claim alleged in the complaint arose; (7) a brief statement of the facts; (8) the grounds upon which plaintiff bases his or her allegations that constitutional rights, privileges, or immunities have been violated, together with the facts that support each of those grounds; (9) a statement of prior judicial and administrative relief sought; and (10) a statement of the relief requested.

III. Submitting Your Pleading to the Court:

KDOC Inmates: Prisoners incarcerated at Kansas Department of Corrections facilities are required to use mandatory electronic filing. You should follow the instructions available at the facility for transmitting pleadings electronically to the Court. The Court will e-file these pleadings upon receipt by email and will create a Notice of Electronic Filing (NEF), which will confirm the date the pleading was e-filed by the Court and contain an electronic link to the document. The NEF will be transmitted to an email address established by the Court upon the designation of the facility and will be distributed through institutional channels to the inmate. Questions regarding filing by prisoners who are in segregated housing should be directed to the facility librarian. A prisoner who is transferred to any facility not requiring electronic filing will resume the submission of pleadings by mail.

Non KDOC Inmates Filing by Mail: All other petitioners, movants, and plaintiffs need only submit the original petition, motion, or complaint to the clerk for filing. Additional copies are

not required. If tendered for filing by mail, any petition, motion, or complaint must be addressed to:

Clerk of the United States District Court
for the District of Kansas
500 State Avenue, Room 259
Kansas City, Kansas 66101

Non KDOC Inmates Filing by Email: Pro se parties that are not incarcerated at a Kansas Department of Corrections facility may also file papers as an attachment to an email sent to the clerk's office at KSD_INC@ksd.uscourts.gov. The attachment must be in .pdf format.

IV. Include the Filing Fee or a Motion for Leave to Proceed in Forma Pauperis: You must include the filing fee ($405 for civil complaints and $5 for habeas petitions) with your complaint or petition. If you are unable to pay the fee, you must submit a motion for leave to proceed without prepayment of fees (also called a motion for leave to proceed in forma pauperis). The motion must be submitted on the Court-approved form and must include the required financial information: a certified copy of the six-month prison account statement for civil rights complaints; and a certificate executed by an authorized officer of the institutions in which they are confined for habeas petitions. The certificate must state the amount of money or securities on deposit to his or her credit in any account in the institution.

V. After Your Case is Filed: The clerk will assign each case a civil case number upon filing. The number will begin with a two-digit indicator of the year in which the case was filed, followed by a hyphen and the individualized case number of four digits, followed by another hyphen and the initials of the judge or magistrate judge to whom the case has been assigned.

A) Civil Rights Complaints Must be Screened by the Court: The Prison Litigation Reform Act requires the Court to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised claims that are legally frivolous or malicious, that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1)–(2). The Court will enter an order after it has screened the complaint. Unless otherwise directed by the Court, do not file any evidence, arguments, motions or documents, until your case has been screened. The defendants you have named in your complaint will not be notified or served unless your complaint survives screening.

B) **Habeas Petitions Must be Screened by the Court:** The Court screens petitions for writs of habeas corpus under Rule 4 of the Rules Governing Habeas Corpus Cases, 28 USC § 2254. If it plainly appears from the petition and any attached exhibits that the

petitioner is not entitled to relief, the judge must dismiss the petition. If the petition is not dismissed, the judge will order the respondent to file an answer or other response.

VI. Guidelines that Apply Throughout Your Case: The following guidelines apply throughout your entire case:

A) The Court will keep track of your filings on a docket sheet. A docket sheet is a formal record on which judges or court clerks briefly note all proceedings and filings in a court case. If you wish to receive a copy of the docket sheet or a copy of any other pleading in your case from the Court, the cost is $0.50 per page and must be prepaid.

B) Do not include dates of birth, social security numbers, or names of minors in your pleadings. Redact this information prior to filing.

C) All filings must include the case number at the top of the page. Do not file one document with multiple case numbers listed or request filing in all of your pending cases. Documents without a case number may not be filed, and documents with multiple case numbers will only be filed in the first case number listed. If you are pursuing more than one action in this Court, you must submit a separate original document with the appropriate case number for each action in which you want the document filed.

D) Only write on one side of a page and number any additional pages that are included in a filing.

E) Do not file a motion if you have another motion on the same subject matter already pending before the Court. Filing multiple motions requesting the same relief is a litigation tactic that strains the resources of the Court and generally delays a decision in the case. The Court may impose sanctions on parties who engage in such litigation tactics. Any duplicate motions may be summarily denied.

F) Refrain from filing affidavits, declarations, or exhibits, unless they are filed in support of a motion or response/reply to a motion.

G) Any motion seeking an extension of time to perform an act required or allowed to be done within a specified time must be filed as soon as possible and in no event less than three days before the specified time.

H) A supplement to a complaint must comply with Fed. R. Civ. P. 15(d) and must contain incidents that occurred after you filed your complaint and that are directly related to your original claim. Additionally, new incidents must be fully exhausted through the prison grievance procedure prior to filing a supplement.

I) Multiple plaintiffs cannot bring claims in the same complaint or amended complaint unless all plaintiffs meet the requirements of Fed. R. Civ. P. 20(a)(1). This means that at least one claim of all plaintiffs "aris[es] out of the same transaction, occurrence, or series of transactions or occurrences" and raises a "question of law or fact common to all

plaintiffs." The Court may find that joinder is not feasible due to the incarceration and possible transfer of one or more plaintiffs.

J) You must notify the Court of any change of address. D. Kan. Local Rule 5.1(b)(3) provides that all pro se parties must notify the clerk of any change of address or telephone number.

K) Do not file any "letters" or "notices" (other than a notice of a change of address or a notice of voluntary dismissal) to the Court, the Clerk, or a judge. All requests for relief must be in the form of a motion.

L) After your case is closed, do not file anything in the closed case other than a notice of appeal or a motion under Fed. R. Civ. P. 59(e) or 60.

M) Nonparties are not allowed to file in a case. Therefore, any documents submitted by a nonparty attempting to file for you or on your behalf will be returned without filing.

N) The Clerk will not do the following: calculate case deadlines; provide legal advice or conduct research on your behalf; provide a free copy of filed or unfiled documents received by the Clerk; forward documents to other courts or agencies on your behalf; advise you as to how or when a judge will rule on a motion or make a decision regarding your case; interpret Local Rules, a Court order, or the Federal Rules of Civil Procedure; advise you as to what you should include in your documents; provide a copy of the Federal Rules of Civil Procedure or the Court's Local Rules; respond in writing to individual inquiries regarding the status of your case.

O) Letters addressed to the Judge and/or the Judge's staff are prohibited and the Court will not respond to these letters.