

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

PRO SE LITIGANT GUIDE

Office of the Clerk of Court

Revised March 9, 2006

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INTRODUCTION

This guide is designed to assist you if:

1. You want to file a lawsuit in federal court or you have an active role, either as a plaintiff or defendant, in a case that has already been filed by you or someone else;
2. You have elected to proceed without the assistance of a licensed attorney, and
3. You are not incarcerated and seeking to challenge your criminal conviction.

SOME BASIC DEFINITIONS:

Plaintiffs and defendants in court cases generally are referred to as the “parties” or “litigants”. The plaintiff asserts a claim or right protected by law against the defendant; the defendant disputes the claim or right, and the court determines whether the asserted claims or rights have merit. The great majority of litigants who appear in this court are represented by an attorney who has been trained in the law and is familiar with the applicable court rules and procedures. Parties or litigants who are not represented by licensed attorneys, who elect to represent themselves, generally are referred to as *pro se* parties or *pro se* litigants. Likewise, plaintiffs or defendants who represent themselves generally are referred to as *pro se* plaintiffs or *pro se* defendants.

HOW THIS GUIDE SHOULD HELP YOU

This guide will not answer all your questions about what you need to do to represent yourself effectively as a *pro se* litigant. It will outline the basic steps that are required to properly file an action, or lawsuit, with this court. It also provides some general guidance on the next steps in the process of litigating the action once you have filed it with the clerk of court. **However, you are responsible for learning about and following the procedures that govern the court process. Although the staff of the clerk’s office can provide *pro se* litigants with general information concerning court rules and procedures, they are forbidden, as a matter of law, from providing legal advice, from interpreting and applying court rules, or otherwise participating, directly or indirectly, in any action.**

THINGS TO KEEP IN MIND

Self-representation carries certain responsibilities and risks that *pro se* litigants should be aware of before they proceed. The court encourages all individuals who are thinking about *pro se* or self-representation to carefully review the risks associated with self-representation and to inform themselves of the potential consequences.

Rule 11 of the Federal Rules of Civil Procedure prohibits the filing of lawsuits that are clearly frivolous or filed merely to harass someone. If after reviewing your complaint, the court determines that you have filed a lawsuit for an improper or clearly unnecessary purpose, it may impose sanctions against you, which may include ordering you to pay a fine to the court or pay the legal fees of the person or persons against whom you filed the lawsuit or by striking claims contained in your complaint.

SECTION 1

IMPORTANT ISSUES YOU SHOULD CONSIDER BEFORE YOU DECIDE TO REPRESENT YOURSELF IN AN ACTION BEFORE THIS COURT

IS THIS COURT THE APPROPRIATE COURT TO HEAR YOUR DISPUTE?

Federal courts can only hear limited kinds of cases. The United States District Court for the District of Wyoming is one of 94 trial courts in the federal court system. As is the case in all the federal trial courts, this court is generally authorized to hear disputes that fall into the following four categories only:

1. Those that deal with a question involving the United States Constitution.
2. Those that involve questions of federal law as opposed to state law.
3. Those that involve the United States of America as a party, whether as plaintiff or defendant.
4. Those that involve a dispute among residents of different states with an amount in controversy over \$75,000.

If your complaint does not fall under any of these categories, you cannot file it in federal court.

IS THERE AN ALTERNATIVE TO APPEARING *PRO SE* (REPRESENTING YOURSELF) THAT IS AFFORDABLE?

Most people who file and pursue litigation in federal court employ a licensed attorney who practices law, has appeared in court and who is familiar with the rules of procedure that govern court processes. If you would prefer to have an attorney to represent you but you are unable to afford one, you should consider contacting the Wyoming State Bar's Lawyer Referral Service (telephone number 307/632-9061) whose staff can explain the various options for obtaining and paying for legal services.

There are other affordable options for legal assistance, including legal aid societies and legal services, that can assist you to obtain the services of an attorney at a reduced cost. A listing of these services is available from the Wyoming State Bar at the number listed above.

If you cannot find an attorney to represent you, you have the right to pursue your claims in the court by appearing without representation, or *pro se*, a Latin phrase that means "for yourself". Bear in mind that as a *pro se* litigant, you are representing only yourself and presenting only your claims or defenses. Under the law, you cannot speak for another person, a company or other entity such as a club or association that includes other individuals. When you appear *pro se*, you must follow the same rules and procedures that licensed attorneys who practice in this court must follow. Generally, judges hold *pro se* litigants to the same standards of professional responsibility as trained attorneys.

IF YOU PLAN TO REPRESENT YOURSELF, WHERE CAN YOU GO TO REVIEW THIS COURT'S RULES OF PROCEDURE AND APPLICABLE FEDERAL LAWS?

As a *pro se* litigant, you should be familiar with the federal rules of procedure. These rules set forth the procedural requirements for litigating cases in all federal courts. In order to determine which rules apply, you must first decide whether your case is a civil or criminal action. A civil action is an action brought to enforce, redress, or protect a private or civil right. A criminal action is an action instituted by the government to punish offenses against the public.

As a *pro se* litigant in a civil case, you should be familiar with the Federal Rules of Civil Procedure (abbreviated as Fed.R.Civ.P.) and the Federal Rules of Evidence (abbreviated as F.R.E.). If you are a *pro se* defendant in a criminal case, you should familiarize yourself with the Federal Rules of Criminal Procedure (abbreviated as Fed.R.Crim.P.) and the Federal Rules of Evidence. Federal laws are found in the United States Code (abbreviated as U.S.C.). These rules and laws are available for review at law libraries. You should contact them to determine the hours they are open to the public. Two law libraries available in southeast Wyoming are:

1. The Wyoming State Law Library located in the Wyoming Supreme Court Building in Cheyenne.
2. The University of Wyoming College of Law Library on the University of Wyoming campus.

County libraries also have some law books available. Check with your local county library about availability.

The federal rules are also available on the internet at the following address:
<http://judiciary.house.gov/Printshop.aspx?Section=1>.

As a *pro se* litigant, you also should be familiar with the District Court Local Rules that apply specifically to court proceedings in this court. The law libraries listed above have copies of this court's local rules available for review. The local rules are also available on the internet at the following address: www.ck10.uscourts.gov/wyoming/district/index.html. If you do not have access to the internet, you can purchase a printed copy of the local rules from the clerk's office. For pricing information, please inquire at the following address:

U.S. District Court Clerk's Office
2120 Capitol Avenue, Room 2131
Cheyenne, WY 82001
307/433-2120

HOW DO YOU START A NEW CASE?

1. FILE THE COMPLAINT.

The plaintiff, or person bringing the lawsuit, files a complaint. The complaint is the document in which the plaintiff asserts the claim(s) or right(s) being violated and outlines the problem or reason for the suit.

The complaint can be filed by hand-delivering it or mailing it to:

U.S. District Court Clerk's Office 2120 Capitol Ave., Room 2131 Cheyenne, WY 82001	or	U.S. District Court Clerk's Office 111 S. Wolcott, Room 121 Casper, WY 82601
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Whether you deliver or mail your complaint, you must submit the following:

- a. the original and one copy of the complaint;
- b. the \$350 filing fee, or a motion to proceed *in forma pauperis* if you cannot afford to pay the filing fee. Fees are discussed below.

The complaint will be given a case number and assigned to a district judge by the clerk's office.

c. SERVE THE COMPLAINT.

Each defendant, or person whom the plaintiff claims is responsible for the claim or problem, must be notified of the lawsuit through a process that is specified under law. The responsibility for notifying each defendant rests with the plaintiff and is referred to as **service of process**. The provisions for service of process are described in Rule 4 of the Federal Rules of Civil Procedure. If the service of process requirements are not followed correctly, the case can be dismissed.

After you file your complaint with the clerk's office, you have 120 days to serve it upon the defendant(s). It is your responsibility to properly serve the complaint. If you fail to do so within the 120 days, your case may be dismissed.

The defendant(s) shall be notified of the lawsuit either by service of a copy of the complaint and summons **or** by waiver of service. The summons and waiver of service forms may be obtained from the clerk's office or from the website.

Detailed provisions on how to serve the defendant(s) are contained in Rule 4 of the Federal Rules of Civil Procedure. You should carefully review the rule to make sure that you are familiar with those provisions. The service of process requirements can be satisfied in one of three ways:

- a. Personal service. With personal service you direct someone else to deliver, or serve, a copy of the complaint and summons to the defendant(s). This service can be performed by anyone who is over eighteen years of age and who is not a party in the case. Sheriff's departments and private process servers will do this for a fee.

You will need to obtain a summons form from the clerk's office which you will need to complete and present to the clerk's office for issuance. This means that an authorized clerk's office employee will sign the form and emboss it with the official seal of the court.

The person who serves the summons must record on the form, in the space provided, his/her name, the name of the person who was served and the date and time of service. This section of the summons form is referred to as the **return of service** and if it is not completed, service of process is not complete. Rule 4 of the Fed.R.Civ.P. also requires confirmation that service has been completed. Such confirmation, or proof of service, that the documents have been served on the defendant(s) requires that the original summons form with the return of service portion completed be returned to the court for filing and that a copy of the form be left with the defendant, along with a copy of the complaint.

Service by the U.S. Marshal. If a judge approves your application for leave to proceed *in forma pauperis*, you may request, in writing, that the judge direct the U.S. Marshal to serve the summons and complaint at government expense. The judge may or may not grant the motion. A sample motion and proposed order are attached as Appendix A.

- b. Waiver of service. Rule 4 of the Fed.R.Civ.P. permits a defendant to waive personal service of process. This means that the defendant(s) agree(s) to respond to your complaint without being served with it. You can mail the waiver form to the defendant(s). If the defendant(s) complete(s) and return(s) the waiver, you will be spared the burden of personal service.

Once the defendant(s) has/have been served with a copy of the complaint, the defendant(s) must file with the court an answer or some other response within a specified number of days. Under the rules governing service of process, each defendant is required to provide a copy of the response to the plaintiff.

WHAT HAPPENS WHEN ALL DEFENDANTS HAVE RESPONDED?

After all defendants have responded to the complaint, any one of a number of different procedures may occur.

Referral to a Magistrate Judge. The district judge to whom the case is assigned may refer the case to the magistrate judge in Cheyenne for assistance in managing it. To do so, the district judge signs an **order of reference**. Subsequent court proceedings will be conducted before the magistrate judge after a case has been referred.

Scheduling Conference. A scheduling conference before the magistrate judge in Cheyenne will be set in most civil cases soon after all defendants have filed a response to the complaint. At this conference, discovery scheduling will be discussed as well as those matters appropriate to readying the case for trial. (See Local Rule 16.1)

Filing of Motions and Objections. Either party, plaintiff or defendant, may request that the court take specific action related to the case. To do so, the party prepares a formal request or what is referred to as a **motion**. Local Rule 5.1 provides formatting instructions for motions and other papers. The party then signs the motion, submits or **files** it with the clerk of court and sends a copy to the opposing party. The opposing party may file with the clerk of court an **objection** or a **response** to the motion within a specified period of time (see Local Rule 7.1 for time limitations). The objection sets forth the reasons why the court should deny rather than grant the motion.

Motion Review. The district or magistrate judge may schedule hearings to provide the parties with an opportunity to argue the motion and any objections, or the judge may decide a hearing is unnecessary and rule on the motion by issuing a written order.

Dispositive vs. Nondispositive Motions. Motions fall into two broad categories: dispositive and nondispositive. **Dispositive** motions, if granted, dispose of all of the case or a portion of the case; **Nondispositive** motions, if granted, affect the case but do not dispose of it. District judges have the authority to rule on both dispositive and nondispositive motions; magistrate judges are authorized to rule on nondispositive motions.

Magistrate Judge Report and Recommendation. Where the case has been referred to a magistrate judge and one of the parties files a dispositive motion, the magistrate judge is authorized to prepare a written report and recommendation, essentially a recommendation that the motion be either granted or denied and stating the reason why. This report and recommendation is then forwarded to the district judge assigned to the case and copies are sent to the parties. As a party, you have a certain period of time within which to file objections to the report and recommendation. All objections that are received within the specified time are forwarded to the district judge. The district judge reviews the report and recommendation and any objections that have been filed. The district judge then will issue an order that adopts, rejects, or adopts in part and rejects in part the magistrate judge's report and recommendation. Such order is final and can be appealed to the United States Court of Appeals for the Tenth Circuit located in Denver, Colorado.

WHAT COURT FEES AND COSTS ARE YOU REQUIRED TO PAY?

The fees charged by U.S. district courts are as follows:

for filing a complaint and opening a civil case: \$350.00;

for filing a notice of appeal: \$455.00;

for copies of documents from a court file: 50¢ per page for paper copies and 10¢ per page for e-copies;

for a certified copy of a document from a court file: \$9.00 plus the copy fee.

These fees may be paid by cash, check or money order.

If you are unable to pay the filing fee, you may apply for permission to proceed *in forma pauperis*, which is Latin for "in the form of a pauper". Information on filing *in forma pauperis* can be found in Section 2 of this guide. A motion form for filing *in forma pauperis* is attached as Appendix B. This form is also available from the clerk's office. Completed motions are forwarded to the magistrate judge for review. If your motion is denied by the judge, your case cannot proceed until you pay the filing fee.

Waiver of the filing fee does not automatically waive the other costs associated with pursuing or litigating your case. If, for example, you need copies of original documents in your case file, the clerk's office is required to charge the fees mentioned above. Service of your complaint on the other party will involve additional costs unless you have made, and the court has approved, a motion that directs the U.S. Marshal to serve your complaint. Other expenses you may incur are the cost of preparing the original and copies of the papers you file with the court and mailing or hand-delivering copies of each paper to the opposing party to satisfy the requirements of service.

HOW DO YOU SUBMIT DOCUMENTS TO THE COURT?

Case-related documents that ask the court to take specific action are referred to as **motions** or **pleadings**. The plaintiff's complaint and the answer(s) of the defendant(s) are the pleadings; requests for action are generally called motions. If, for example, you want to ask the court to take an action, such as appointing an attorney, you must do so by means of a written motion. A motion should be accompanied by a summary of the law supporting the motion called a **memorandum** and/or by an affidavit or declaration by you that provides the court with facts supporting the granting of the motion. In preparing a motion, you should follow the same general format as the motion for service of process by the U.S. Marshal that is attached to this guide as Appendix A. In preparing motions you should be as specific as possible about the action you would like the court to take.

This court requires parties to file an original and one copy of all motions or pleadings with the clerk of court. Staff of the clerk's office file-stamp both, then place the original in the case file and forward the copy to the judge for review. Parties may file pleadings and motions with the clerk's office in person or by mail. The clerk's office has two locations, one in Cheyenne and one in Casper. The addresses, phone numbers and the hours the clerk's offices are open to the public are:

U.S. District Court Clerk's Office 2120 Capitol Ave., Room 2131 Cheyenne, WY 82001 307/433-2120 8:30 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m. weekdays excluding holidays	or	U.S. District Court Clerk's Office 111 S. Wolcott, Room 121 Casper, WY 82601 307/232-2620 8:30 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m. weekdays excluding holidays
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You should retain for your own use a copy of all documents you file with the court. When you file documents in person, bring your personal copy with you so staff of the clerk's office can file-stamp it. By doing so, your records will reflect the filing date of the original. If you mail your document and wish to have your copy file-stamped, you should enclose a second copy and a pre-addressed, stamped envelope.

Note: When you submit a document to the court, you must also mail or deliver a copy of the document to the defendant's attorney, or if the defendant has no attorney, to the defendant directly. At the end of your document, you must include a **certificate of service** that states the date you mailed or delivered a copy of the document to the defendant. A sample format for a certificate of service is attached to this guide as Appendix C.

HOW DO YOU OBTAIN INFORMATION ABOUT THE STATUS AND PROGRESS OF YOUR CASE?

The clerk's office maintains a record or **docket** for every case. This docket is a chronological listing of all documents that have been filed in a case. You may review the docket on the public access terminal located at the front counter in the clerk's office. Alternatively, if you have a personal computer and modem with communications software, by registering with the court you can dial up the court's automated PACER system and review your case docket directly from your computer. There is a charge for using this system. For information about how to register you can contact the Cheyenne clerk's office and ask for the systems manager. If you wish to have a paper copy of your docket, the clerk's office will provide it for you at no charge. Clerk's office staff can also provide basic docket information over the phone.

IS IT POSSIBLE FOR YOU TO SPEAK DIRECTLY TO A JUDGE OR MEMBER OF HIS PERSONAL STAFF ABOUT YOUR CASE?

All parties and their counsel, including parties appearing *pro se*, are prohibited from all private or **ex parte** communication with the judge or judge's staff. *Ex parte* communication occurs when one of the parties to a lawsuit exchanges information about the merits of the case with the assigned judge without the opposing party being present or without the knowledge and consent of the opposing party. With few exceptions because of this prohibition, a judge will refuse to speak or otherwise communicate *ex parte* with any party about the merits of the case. Any communication between the assigned judge and a *pro se* litigant should be in writing and a copy of the communication should be sent either to opposing party's attorney, or directly to the party if the opposing party is also appearing *pro se*. For example, a party appearing *pro se* should send to the opposing party's attorney a copy of any letter sent to the judge. Moreover, the letter to the judge should indicate that a copy has been sent to the opposing party's attorney. As noted above, telephone or personal contact with the judge's staff should be limited to specific scheduling inquiries.

SECTION 2

APPLICATION TO PROCEED IN FORMA PAUPERIS

As noted earlier in this guide, filing a case in this court requires the plaintiff to pay a \$350 filing fee at the time the new case is filed. If you are unable to pay this fee, you may apply to have payment of the fee waived. Bear in mind that you can apply for waiver of the fee only after your action is filed. The clerk's office will accept your case without payment if, at the time you file it, you also apply for waiver of the fee. If the judge subsequently denies your waiver application, you will be required to pay the \$350 fee; if you do not pay it within a specified period of time, your case will be dismissed.

To obtain a waiver of the filing fee, you must complete and submit a motion to proceed *in forma pauperis*. A motion form is attached as Appendix B. Brief instructions for completing the motion are as follows:

At the top of the motion, you must note the name of the case or **case caption**. The case name consists of your name as plaintiff and the name(s) of the defendant(s) on the lines provided. Clerk's office staff will provide the case number at the time the case is filed.

You must answer all questions truthfully and completely. If you own real estate or automobiles that have outstanding mortgages or loans, you should be very specific about your debt balance so the judge who reviews the motion has accurate information as to the property's value. You must also sign the statement under penalty of perjury

The completed motion form should be submitted to the clerk's office with your complaint. Clerk's office staff will transmit it with the complaint to the judge for review. The judge may grant or deny the motion. Because the process of reviewing your motion may take more than one business day, a copy of the order will be mailed to you by the clerk's office. As noted above, if your motion is denied you must immediately pay the required filing fee or your case will be dismissed.

SECTION 3

REQUEST FOR APPOINTMENT OF COUNSEL

Pro se litigants may ask the court to appoint an attorney, or **counsel**, for them in a civil case. Pro se litigants have no right to be represented by court-appointed counsel and the court has no obligation to appoint counsel. The court will appoint counsel in a few select cases where having an attorney seems particularly appropriate or important. If you would like to request that the court appoint counsel to represent you in your lawsuit, you must file a motion for appointment of counsel with the court. A copy of a motion for appointment of counsel is attached as Appendix D.

APPENDIX A

(Your Name)
(Your Address)
(Your Telephone No.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	
)	
)	
Defendant(s).)	

MOTION FOR SERVICE OF PROCESS AT GOVERNMENT EXPENSE

The plaintiff moves the court for an order directing the United States Marshal to serve the summons and complaint pursuant to 28 U.S.C. §1915(d). The full names and address of the defendants are contained in the complaint.

Dated this _____ day of _____, 20____.

/Sign your name/
Print your name below line

(Your Name)
(Your Address)
(Your Telephone No.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	
)	
)	
Defendant(s).)	

ORDER DIRECTING SERVICE OF SUMMONS AND COMPLAINT AT
GOVERNMENT EXPENSE

The Court having found the plaintiff to be indigent by granting plaintiff's motion to proceed in forma pauperis, it is

ORDERED that the United States Marshal serve the summons, together with a copy of the complaint upon the defendants.

Dated this ____ day of _____, 20__.

UNITED STATES DISTRICT JUDGE

APPENDIX B

**UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING**

_____)	
)	
Plaintiff(s),)	
)	
vs.)	Case No. _____
)	
_____)	
)	
Defendant(s).)	

**MOTION TO PROCEED
IN FORMA PAUPERIS AND SUPPORTING AFFIDAVIT**

I, _____ declare that I am the (check appropriate box)

petitioner/plaintiff/movant other

in the above-entitled proceeding; that in support of my request to proceed without prepayment of fees or costs under 28 U.S.C. § 1915 I declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief sought in the complaint/petition/motion.

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

1. Are you currently incarcerated? Yes No (If "No," complete questions 2-6 ONLY. If "Yes," complete all questions and pages 3 and 4.)

If "Yes," state the place of your incarceration. _____

Are you employed at the institution? ____ Do you receive any payment from the institution? ____

Attach a statement from the institution(s) of your incarceration showing at least the past **six** months of your trust account.

2. Are you currently employed? Yes No

a. If the answer is "Yes," state the amount of your take-home salary or wages and pay period and give the name and address of your employer. _____

b. If the answer is "No," state the date of your last employment, the amount of your take-home salary or wages and pay period and the name and address of your last employer. _____

PRISONER FILING FEE INFORMATION

- (1) The filing fees are:
Motion to Vacate Sentence (28 U.S.C. § 2255) \$0.00
Petition for Writ of Habeas Corpus (28 U.S.C. § 2254) \$5.00
Civil Rights Complaint \$350.00
All Appeals to Tenth Circuit \$455.00

(2) If you are filing a petition for writ of habeas corpus, or are appealing a denial of a petition for writ of habeas corpus or a § 2255 motion, you must pay the entire filing fee unless you are granted leave to proceed without prepayment of fees or security under 28 U.S.C. § 1915(a)(1).

(3) If you are filing a civil rights complaint or appeal, you are required to pay the entire filing fee, even if you are granted leave to proceed *in forma pauperis*. If you do not have sufficient funds in your trust account to pay the entire fee at this time, you will be required to make an initial partial payment of the filing fee and subsequent monthly payments until you have paid the entire filing fee.

(A) Your initial partial payment will be 20% of your average monthly balance or the average monthly deposits to your account, whichever is greater. Thereafter, you must pay installments of 20% of the preceding month's income, including all deposits to your account;

(B) You must continue to make installment payments until the filing fee is fully paid, without regard to whether your action is closed or you are released from confinement.

PRISONER FILING FEE AUTHORIZATION

I request and authorize my custodian to send to the Clerk of the United States District Court for the District of Wyoming a certified copy of the statement for the past six months of my trust fund account (or institutional equivalent). I further request and authorize my custodian to remit the entire filing fee to the Clerk if I have sufficient funds in my trust account to pay the full fee. If I do not have sufficient funds to pay the full filing fee, I request and authorize the custodian to calculate and disburse funds from my trust account (or institutional equivalent) in the amounts specified by 28 U.S.C. § 1915(b). This authorization is furnished in connection with a civil action or appeal, and I understand that the total amount of the filing fee is \$350.00 for a civil rights complaint and \$455.00 for an appeal to the Tenth Circuit Court of Appeals. I also understand that these fees will be withdrawn from my account **regardless of the outcome of my action or appeal**. This authorization shall apply to any other institution to which I may be transferred.

Dated: _____, 20____.

Signature of Prisoner

CERTIFICATE OF PENAL INSTITUTION

I hereby certify that on _____, 20____, the prisoner herein had the following amount in his/her prisoner's trust fund account:

Date

Signature of authorized trust fund officer

Printed or typed name of authorized officer

Title of authorized officer

Name of institution

APPENDIX C

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing (insert name of document) was mailed/delivered to [insert name of defendant(s) and address(es) *or* name of attorney(s) and address(es)] on (insert date).

/Sign your name/
Print your name

