PRISONER SELF-HELP PACKET

CIVIL RIGHTS COMPLAINT

INSTRUCTIONS
(U.S. Federal Court)

WHAT YOU WILL NEED:

1. These instructions for filing a Complaint.

2. Prisoner Complaint form (copy page 2 if you are suing more than two defendants).

3. Application for in Forma Pauperis (IFP) Status form or the filing fee.

4. Statement of Trust Fund Account form (for IFP only). Send this to your institution's accounting office as soon as possible, so it can be completed and returned to you.

I. INTRODUCTION

Please read the following brief summary of legal standards to determine whether your facts state a potential civil rights violation and how to proceed in federal court. The purpose of this prisoner self-help packet is to provide general guidance regarding your civil rights case. The packet is not intended to be an exhaustive recitation of the law, but it will provide a starting point.

The complaint form is designed to help you state all of the elements of a civil rights claim in a simplified way so the court can efficiently review your case and the defendants can understand your claims. It is not helpful to the court for you to write a long narrative of what happened to you. Rather, you must allege facts showing that you can prove each element of the type of claim you are bringing, as further explained below. If you choose to type your complaint, please use the same format as the complaint form, which helps streamline the court's initial review of your case. Because the court is required to review all complaints filed by prisoners, it is not helpful to the court for you to follow the format generally followed by attorneys, which lists defendants, facts, and causes of action in different sections. Should you choose to disregard these suggestions, the review process may take longer to complete.

This packet should **not** be construed as a substitute for legal advice from an attorney. It is always best to consult an attorney to determine the best course of action under your particular facts, and to determine whether any subsequent changes to the law have occurred that will affect your cause of action.

II. CIVIL RIGHTS ACTION

A civil rights complaint is used to bring claims that seek relief for the violation of a person's federal or constitutional rights. Title 42 § 1983 (the civil rights statute) does not confer rights, but instead allows individuals to enforce rights contained in the United States Constitution and defined by federal law. To state a claim under §1983, the person seeking relief (a *plaintiff*) must allege **(1)** a violation of rights protected by the Constitution or created by federal statute **(2)** proximately caused by conduct of **(3)** a person **(4)** acting under color of state law (a *defendant*). *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). Under this law, a person who acts under color of state law to violate another's constitutional rights may be liable for money damages, declaratory relief (a court declaration that a violation is occurring), or injunctive relief (an order for the defendant to act or stop acting in a particular way).

A. Bringing the Action

To begin an action, you must file an original completed Prisoner Complaint form (complaint) with the Clerk of Court of the United States District Court. Retain a copy of the complaint for your records.

A substantial filing fee is due when you file a civil rights complaint in federal court. If you cannot pay the filing fee at the time of filing, you must file an Application for in Forma Pauperis Status, where you state information about your income, assets, and debts. You must also submit a certified copy of your prisoner trust fund account for the six-month period preceding the filing of the complaint. 28 U.S.C. § 1915(b)(1). If the court grants the request, you will be permitted to proceed without paying the full fee at the time of filing, but you will be required to pay it over time as funds are deposited into your prisoner trust account. The court will direct the appropriate agency to periodically collect the filing fee from your trust account and forward it to the clerk of court. The full fee will be collected over the course of your incarceration, even if the court dismisses your case before trial. In prisoner cases filed in federal court, "in forma pauperis" does not mean "free."

Your complaint must be legibly handwritten or typed. The complaint must contain facts that support your claim, your signature, and a declaration under penalty of perjury that the facts in the complaint are true. While you must briefly state the legal basis for your claim, case citations and argument should **not** be included in a complaint.

B. Jurisdiction

Jurisdiction is the authority given to a court to hear and decide certain cases. For a court to render a valid judgment, it must have jurisdiction over **the subject matter** of the lawsuit. Civil rights actions lie within the federal court's jurisdiction to hear matters arising under the United States Constitution and federal laws. The federal court also has jurisdiction to hear claims arising under other federal statutes, such as the Religious Land Use and Institutionalized Persons Act (RLUIPA), discussed later in these instructions.

The court must also have jurisdiction over **the persons or entities** being sued. The basic due process requirement for personal jurisdiction is whether each defendant has minimum contacts with the State of Idaho "such that maintenance of the suit does not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

Supplemental jurisdiction allows the Court to hear state law claims when they are "so related" to the federal claims "that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367. In other words, the supplemental jurisdiction power extends to all state and federal claims a person would ordinarily expect to be tried in a single judicial proceeding. *Penobscot Indian Nation v. Key Bank of Maine*, 112 F.3d 538, 563-64 (1st Cir. 1997). If a plaintiff's federal claims are dismissed, the Court may decline to exercise supplemental jurisdiction over a plaintiff's state claims. 28 U.S.C. § 1367(c)(3).

C. Jury Trial

A demand for jury trial must be made in the complaint or "no later than 14 days after the last pleading directed to the issue is served." Fed. R. Civ. P. 38(b). You may demand a jury trial by indicating "yes" in the appropriate blank on the first page of the Prisoner Complaint form. If you would like a trial by judge ("bench trial"), then indicate "no" in the appropriate blank. However, if any defendant timely requests a jury trial, that request will govern over another party's request for a bench trial.

III. PRELIMINARY CONSIDERATIONS IN FILING A COMPLAINT

A. Initial Review Process and Service of Complaint upon Defendants

When a prisoner files a complaint seeking relief against a governmental entity, official, or employee, the court must authorize the prisoner to proceed before the defendants can be served. The court reviews each complaint to determine whether summary dismissal is appropriate. 28 U.S.C. § 1915. It is important to consider the validity of your claims prior to filing a civil rights complaint. In the event the court determines that three or more of a prisoner's lawsuits are frivolous, malicious, or fail to state a legally valid claim, the prisoner will not be allowed to file a new civil action or appeal a judgment in a civil action without first paying the full filing fee. 28 U.S.C. § 1915(g). The only exception to this is if the prisoner can show he is in imminent danger of serious physical injury. *Id*.

Due to the large number of prisoner civil rights complaints filed with the court, the review process can take many months. Plaintiffs cannot serve the defendants, pursue discovery, or request entry of a default judgment prior to the time their complaint has been reviewed.

Before a defendant must appear in a case to defend, he or she must be served with the complaint. If the prisoner is permitted to proceed in forma pauperis, then the prisoner is responsible for providing the court with the physical addresses where the defendants can be served, and the clerk is charged with the responsibility of taking reasonable measures for serving defendants, either by obtaining a written waiver of service from the defendants or by using the United States Marshal's Service for personal service. If a prisoner is not proceeding in forma pauperis, then he or she is responsible for serving the complaint within a time period set by the order authorizing the case to proceed.

B. Exhaustion of Prison or Jail Grievance System

Before you bring a claim in a complaint or amended complaint, you must first try to resolve the claim with the jail or prison by using the complete jail or prison administrative grievance system. *Rhodes v. Robinson*, 621 F.3d 1002 (9th Cir. 2010). Title 42 U.S.C. § 1997e(a) provides that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." The exhaustion requirement applies to "all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." *Porter v. Nussle*, 534 U.S. 516 (2002). **Failure to exhaust is grounds for dismissing the complaint without prejudice, and you will still be required to pay the entire filing fee by automatic deductions from your prison trust account**.

C. Statute of Limitations

Your complaint must set forth the dates on which each alleged constitutional rights violation occurred. A statute of limitations is a law that sets a particular period of time within which a suit must be filed. It begins to run when the injury occurs or the constitutional right is violated. The statute of limitations period for filing a civil rights suit is two years. *See Wilson v. Garcia*, 471 U.S. 261 (1985); I.C. § 5-219(4). The statute of limitations is tolled while the inmate exhausts administrative grievance procedures. *Brown v. Valoff*, 422 F.3d 926 (9th Cir. 2005).

IV. ELEMENTS OF A § 1983 CIVIL RIGHTS CAUSE OF ACTION

A. Status as "Persons"

1. The State of Idaho and Idaho State Entities

The state of Idaho is **not** considered a "person" for purposes of § 1983 because the Eleventh Amendment to the United States Constitution generally prohibits litigants from

bringing suits against states and state agencies, a protection called "sovereign immunity." *Puerto Rico Aqueduct and Sewer Auth. v. Metcalf & Eddy, Inc*., 506 U.S. 139 (1993). Section 1983 claims against the state of Idaho, the Idaho Department of Correction, the Idaho Commission of Pardons and Parole, and other Idaho state entities will be dismissed if brought, and so the state and state entities should **not** be included as defendants. To obtain declaratory relief (a court declaration that a violation is occurring) or injunctive relief (an order for the defendant to act or stop acting in a particular way) from a state or state entity, a plaintiff can use an official capacity claim against an individual employee or official. *Please note that if you are asserting a claim under a federal statute **other than** the civil rights statute, state entities **may** be proper defendants.* (See later discussion on RLUIPA and ADA claims.)

2. Local Governmental Entities and Private Entities Performing State Functions

A county, municipality (city), or other local governmental entity, or a private entity performing a state function, may be considered a "person" that can be sued under § 1983 if the claim alleges that a government policy or custom inflicted the injury of which a plaintiff complains. *Monell v. Dept. of Soc. Serv. of New York*, 436 U.S. 658, 694 (1978). To proceed on such a claim, the plaintiff must state facts in the complaint alleging the following: (1) the plaintiff was deprived of a constitutional right; (2) the county had a policy or custom; (3) the policy or custom amounted to deliberate indifference to plaintiff's constitutional right; and (4) the policy or custom was the moving force behind the constitutional violation. *Mabe v. San Bernardino County, Dep't of Pub. Soc. Servs*., 237 F.3d 1101, 1110-11 (9th Cir. 2001) (internal citations and punctuation omitted)). In *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009), the Court clarified that a complaint must state plausible facts suggesting not simply that Defendants had a policy, but that the policy was adopted *for an unconstitutional purpose*, for example, discriminating against someone on the basis of their race, religion, or national origin. *Id*. at 1951-52.

A plaintiff may also establish liability of a local governmental entity or private entity performing a state function by demonstrating that the alleged constitutional violation was caused by a failure to train its employees adequately. *See City of Canton, Ohio v. Harris*, 489 U.S. 378, 388-91 (1989); *Bd. of County Comm's v. Brown*, 520 U.S. 397, 409-10 (1997) (discussing limited scope of such a claim). To proceed on such a claim, the plaintiff must state facts in the complaint alleging the following: (1) the training program must be inadequate "in relation to the tasks the particular officers must perform"; (2) the officials must have been deliberately indifferent "to the rights of persons with whom the [officials] come into contact"; and (3) the inadequacy of the training "must be shown to have 'actually caused' the constitutional deprivation at issue." *Merritt v. County of Los Angeles*, 875 F.2d 765, 770 (9th Cir. 1989). (internal citations and punctuation omitted).

3. Official Capacity Claims against Individual Officers or Employees

Whether a defendant is sued in his or her "official or personal capacity" determines who will have to pay damages or provide relief if your claim is successful. A claim against a state actor "in his or her official capacity" is considered a claim against the State, and Eleventh Amendment sovereign immunity (discussed above) applies. Because the Eleventh Amendment generally does not allow you to sue the State for money damages in federal court, claims for money damages against state actors in their **official capacity** are subject to dismissal and should not be included in the complaint. *See Hafer v. Malo*, 502 U.S. 21, 2658, 362 (1991).

However, if you are seeking a court order requiring a state actor to act or stop acting in a particular manner (prospective or future injunctive relief), then that is an exception to Eleventh Amendment immunity. In that instance, the proper defendant is the state actor directly in charge of such acts, sued in their **official capacity, not the governmental entity itself**. *Ex parte Young*, 209 U.S. 123 (1908).

4. Personal Capacity Claims against Individual Officers or Employees

A claim seeking monetary damages against a state actor should be asserted against the person in his or her "personal capacity." This is a claim alleging that the state actor is personally liable for action taken while acting for the government. *Kentucky v. Graham*, 473 U.S. 159, 165 (1985).

B. Acting Under Color of State Law

"Acting under color of state law" is different from being sued in one's "official capacity." "Acting under color of state law generally means that a "person," as defined above, was working for or acting on behalf of a governmental entity when they violated your civil rights. This is an essential element of a civil rights claim against defendants in both their official capacity (declaratory or injunctive relief) and their personal capacity (monetary relief), meaning that either type of claim cannot proceed unless the plaintiff alleges that the defendant was acting under color of state law. On the civil rights prisoner complaint form, section C(1) covers this element; the plaintiff should state the person's job title and the governmental entity for which the person worked at the time of the alleged violation (or, if the defendant is a private entity, the government function it was performing).

C. Conduct Proximately Caused by the Person

An essential element of a § 1983 case is that the plaintiff show that the defendant's actions **caused** the deprivation of a constitutional right. 42 U.S.C. § 1983*; Arnold v. International Business Machines Corp*., 637 F.2d 1350, 1355 (9th Cir. 1981).

There are two theories under which a state official may be held liable for civil rights violations: (1) personal involvement in the act that caused the injury; or (2) sufficient causal connection between the official's act and the injury. There is no "respondeat superior" liability under § 1983, meaning that supervisors are not liable for their subordinate employees' actions simply because they are supervisors. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

D. Constitutional Violations

To state a claim for a constitutional violation, you will need to present **factual allegations** that meet the elements of the claim you are bringing. For example, It is not enough to simply state that the defendant acted "with deliberate indifference"; rather, you must state **facts** from which a jury could find that the defendant so acted. *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1953-54 (2009) ("the Federal Rules do not require courts to credit a complaint's conclusory statements without reference to its factual context[,]" and a plaintiff cannot "plead the bare elements of his cause of action, . . . and expect his complaint to survive . . . dismiss[al]").

1. First Amendment Access to Courts Claims

Prisoners have a First Amendment right to access the courts. *Bounds v. Smith*, 430 U.S. 817 (1977). However, to state a claim, a prisoner must state facts showing that he suffered an actual injury as a result of the alleged denial of access (like dismissal of a meritorious case), and that the denial occurred in one of the following types of cases: a direct appeal from a conviction for which the prisoner is incarcerated, a habeas petition, or a civil rights action regarding prison conditions. *Lewis v. Casey*, 518 U.S. 343, 354 (1996). "Impairment of any other litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration." *Id*. at 355.

2. First Amendment Free Speech Claims

First Amendment prisoner claims, including free speech claims, are governed by *Turner v. Safley*, 482 U.S. 78 (1987). There, the Supreme Court held that "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to

legitimate penological interests." 482 U.S. at 89. The Court identified four factors to consider when determining whether a regulation is valid: (1) whether there is a "rational connection between the prison regulation and the legitimate governmental interest put forward to justify it"; (2) whether "there are alternative means of exercising the right that remain open to prison inmates"; (3) what "impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally"; and (4) whether "ready alternatives" exist. 482 U.S. at 89-90.

3. First Amendment Religion Claims

Generally, the Establishment Clause of the First Amendment is used when a plaintiff asserts that the government is sponsoring religion, while the Free Exercise Clause is used when the government is allegedly attempting to discourage a religion or practice. A program violates the Establishment Clause if its primary effect is to advance or inhibit religion. *Gray v. Johnson*, 436 F.Supp. 2d 795 (W.D. Va. 2006) (citing *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 337 (1987)).

The First Amendment Free Exercise Clause absolutely protects the right to believe in a religion; it does not absolutely protect all conduct associated with a religion. *Cantwell v. Connecticut*, 310 U.S. 296 (1940). Prisoners retain their free exercise of religion rights in prison. *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987). The courts must balance prisoners' First Amendment rights against the goals of the correctional facility. *Bell v. Wolfish*, 441 U.S. 520 (1979). As mentioned above, the four *Turner v. Safley* factors are analyzed to determine whether a prison regulation unconstitutionally impinges on an prisoner's First Amendment rights.

4. First Amendment Retaliation Claims

A retaliation claim must allege the following: "(1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal." *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005); *Brodheim v. Cry*, 584 F.3d 1262 (9th Cir. 2009).

5. Fourth Amendment Privacy Claims

A prisoner has **no** reasonable expectation of privacy in his prison cell entitling him to protection of the Fourth Amendment against unreasonable searches and seizures. *Hudson v. Palmer*, 468 U.S. 517 (1984) (noting, however, that multiple cell searches may amount to an Eighth Amendment calculated harassment claim). Prisoners have a limited right to bodily privacy; body searches may be performed if the action is reasonably related to legitimate penological interests (this claim may be addressed under the Fourth or the Eighth Amendment). *Jordan v. Gardner,* 986 F.3d 1521, 1524 (9th Cir. 1993).

6. Eighth Amendment Medical Claims

To state an Eighth Amendment claim regarding prison medical care, a plaintiff must allege facts showing that prison officials' "acts or omissions [were] sufficiently harmful to evidence deliberate indifference to serious medical needs." *Hudson v. McMillian*, 503 U.S. 1, 8 (1992) (citing *Estelle v. Gamble*, 429 U.S. 97, 103-04 (1976)). "Because society does not expect that prisoners will have unqualified access to health care, deliberate indifference to medical needs amounts to an Eighth Amendment violation only if those needs are 'serious.'" *Id.* The definition of serious medical need includes the following:

> failure to treat a prisoner's condition [that] could result in further significant injury or the unnecessary and wanton infliction of pain; . . . [t]he existence of an injury that a reasonable doctor or patient would find important and worthy of comment or treatment; the presence of a medical condition that significantly affects an individual's daily activities; or the existence of chronic and substantial

pain.

McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th Cir. 1992), *overruled on other grounds*, *WMX Technologies, Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997).

Deliberate indifference exists when an official knows of and disregards a serious medical condition or when an official is "aware of facts from which the inference could be drawn that a substantial risk of harm exists," and actually draws such an inference. *Farmer v. Brennan,* 511 U.S. 825, 838 (1994). Differences in judgment between a prisoner and prison medical personnel, or between different medical providers, regarding appropriate medical diagnosis and treatment are not enough to establish a deliberate indifference claim. *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989). Mere indifference, medical malpractice, or negligence also will not support a cause of action under the Eighth Amendment. *Broughton v. Cutter Lab*, 622 F.2d 458, 460 (9th Cir. 1980). Also, a mere delay in treatment does not constitute a violation of the Eighth Amendment, unless the delay causes serious harm. *Wood v. Housewright*, 900 F.2d 1332, 1335 (9th Cir. 1990).

7. Other Types of Eighth Amendment Claims

To state a claim under the Eighth Amendment, a plaintiff must allege facts showing he is incarcerated "under conditions posing a substantial risk of serious harm," or that he has been deprived of "the minimal civilized measure of life's necessities." *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (internal citation omitted). A plaintiff must also show that the defendants were deliberately indifferent to the substantial risk of serious harm. Verbal harassment, abuse, and threats, without more, are **not** sufficient to state a constitutional deprivation under § 1983. *Oltarzewski v. Ruggiero*, 830 F.2d 136 (9th Cir. 1987).

8. Fourteenth Amendment Due Process Claims

Prisoners often bring claims that they were wrongfully placed in segregation or punished in prison because they were not given proper due process after being accused of a disciplinary offense. Most claims of this type are not actionable, even if the prison did not follow its own procedures in finding a prisoner guilty of the disciplinary offense.

Only claims involving a "liberty interest" are actionable under the Due Process Clause of the Fourteenth Amendment. *Sandin v. Conner*, 515 U.S. 472, 487 (1995). To determine whether a prisoner has a liberty interest in being free from confinement in disciplinary segregation, a court considers three factors: (1) whether disciplinary segregation was essentially the same as discretionary forms of segregation; (2) whether a comparison between the plaintiff's confinement and conditions in the general population showed that the plaintiff suffered no "major disruption in his environment"; and (3) whether the length of the plaintiff's sentence was affected. *Id*., 515 U.S. at 486-87. If these factors are not met, a prisoner cannot bring a due process claim. An actionable liberty interest is generally limited to freedom from conditions that impose an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Id*. at 484.

A failure of prison officials to respond to and return grievances is **not** a constitutional violation. "There is no legitimate claim of entitlement to a [prison] grievance procedure." *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988), *cert. denied*, 488 U.S. 898 (1988); *see Sandin v. Connor*, 515 U.S. 472 (1995) (liberty interests are generally limited to freedom from restraint).

9. Fourteenth Amendment Negligence and Loss of Property Claims

The Due Process Clause is "not implicated by a negligent act of an official causing unintended loss of or injury to life, liberty, or property." *Daniels v. Williams*, 474 U.S. 327, 328 (1986). Thus, prisoners have no civil rights cause of action for an injury or a loss of property caused by the negligence of a state actor.

10. Prison Employment Claims

Prisoners often allege that they were denied the right to prison employment. Prisoners do not have a protected liberty interest in prison employment, and this type of claim is not actionable. *Vignolo v. Miller*, 120 F.3d 1075, 1077 (9th Cir. 1997). However, an inmate who is fired from a job in retaliation for exercising a constitutional right may have an actionable claim.

11. Title 42 U.S.C. § 1985, 1986 Claims

Prisoners often assert claims under 42 U.S.C. §§ 1985 and 1986. Section 1985 governs conspiracies to interfere with civil rights. In order to state a claim under either § 1985(2) or (3), a plaintiff must allege a racial or class-based discriminatory motive behind the conspirators' actions. *Burns v. County of King*, 883 F.2d 819, 821 (9th Cir. 1989); *A & A Concrete, Inc. v. White Mountain Apache Tribe*, 676 F.2d 1330, 1333 (9th Cir. 1982) (claims under § 1985(2) and (3) require the element of class-based animus).

Section 1986 provides that persons who fail to prevent a wrongful conspiracy as described in § 1985 may be liable to the party injured. A prerequisite to stating a § 1986 claim is stating a § 1985 claim. *McCalden v. California Library Association*, 955 F.2d 1214, 1223 (9th Cir. 1990).

12. Transfer and Classification Claims

Prisoners do **not** have a liberty interest in being classified at a particular level or assigned to a particular institution within the prison system. *Pratt v. Rowland*, 65 F.3d 802, 806 (9th Cir. 1995); *Rizzo v. Dawson*, 778 F.2d 527 (9th Cir. 1985). However, an inmate who is transferred in retaliation for exercising a constitutional right may have an actionable claim.

13. Challenging your Criminal Conviction

When a civil rights claim is related to or arises from a criminal case, there are several rules governing whether and when such a claim can proceed. The first is that an inmate may not challenge a criminal conviction or seek an immediate or speedier release from imprisonment in a civil rights action; rather, such relief must be sought through a federal habeas corpus action. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973).

Second, a claim for damages that would imply the invalidity of a criminal conviction or sentence is not cognizable under § 1983 unless and until a plaintiff has shown that the conviction or sentence has been "reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254." *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). Generally, when *Heck* applies, the Court dismisses the lawsuit without prejudice.

14. Claims Barred by Absolute Immunity

If it is clear that a claim is barred by absolute immunity, the claim will be dismissed on initial review, and, therefore, you should **not** include it in a complaint.

(a) *Judges*

Under the doctrine of absolute judicial immunity, a judge is not liable for monetary damages for acts performed in the exercise of his judicial functions. *Stump v. Sparkman*, 435 U.S. 349 (1978). Judicial officers are also generally entitled to absolute immunity from claims for injunctive relief. *Kampfer v. Scullin*, 989 F.Supp. 194, 201 (D.N.Y. 1997).

(b) *Parole Commission Members*

Parole commission members are entitled to absolute immunity for the imposition of parole conditions. *Anderson v. Boyd*, 714 F.2d 906, 909 (9th Cir. 1983), *abrogated in part on other grounds by Swift v. California*, 384 F.3d 1184, 1190 (9th Cir. 2004). Parole commission members are also protected by absolute immunity when they grant, deny, or revoke parole, because these acts are functionally similar to judicial acts. *Sellars v. Procunier*, 641 F.2d 1295 (9th Cir. 1981).

(c) *County Prosecutors and Attorneys General*

A prosecutor has absolute immunity for initiating and pursuing a criminal prosecution, *Imbler v. Pachtman*, 424 U.S. 409, 410 (1976), preparing and filing charging documents, *Kalina v. Fletcher*, 522 U.S. 118, 131 (1997), and participating in hearings. *Burns v. Reed*, 500 U.S. 478 (1991). A prosecutor does not have absolute immunity if the prosecutor is performing merely "investigatory or administrative functions, or [when he or she] is essentially functioning as a police officer or detective." *Broam v. Bogan*, 320 F.3d 1023, 1028 (9th Cir. 2003). Similarly, attorneys general who defend against prisoners' civil claims have absolute immunity for conduct related to their official duties. *Bly-Magee v. California*, 236 F.3d 1014 (9th Cir. 2001).

V. RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT (RLUIPA)

Title 42 U.S.C. § 2000cc, the Religious Land Use and Institutionalized Persons Act (RLUIPA), provides that "[n]o government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution . . . even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person . . . is in furtherance of a compelling governmental interest and . . . is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000 cc-1(a). RLUIPA applies to entities receiving federal financial assistance. *Id*. at (b)(1).

Under RLUIPA, the prisoner must state facts alleging that he has a sincerely-held religious belief or practice, and facts alleging that the government has imposed a substantial burden on the exercise of his religion. Under RLUIPA, a prisoner may sue a governmental entity (including a state or state entity), official, or other person acting under color of state law. 42 U.S.C. § 2000cc-5(4)(A).

VI. AMERICANS WITH DISABILITIES ACT (ADA)

Title II of the ADA applies to a "qualified individual with a disability who with or without reasonable modifications to rules, policies, or practices, . . . meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 U.S.C. § 12131(2). A "disability" must fit one of three definitions under 42 U.S.C. § 12102(2) to be actionable under the ADA: there must be "(A) a physical or mental impairment that substantially limits one or more of the major life activities of [an] individual; [or] (B) a record of such an impairment; or (C) being regarded as having such an impairment."

Title II of the ADA applies to prisoners who are deprived of the benefits of participation in prison programs, services, or activities because of a physical disability. *Pennsylvania Dept. of Corrections v. Yeskey*, 524 U.S. 206, 211(1998).

In order for a plaintiff to go forward on an ADA claim, he must allege facts showing he is a "qualified individual with a disability." 42 U.S.C. §12112(a). He must also allege facts showing that a public entity denied him the benefits of its services or discriminated against him **solely by reason of** his disability. *Weinriech v. Los Angeles County Metropolitan Transportation Authority,* 114 F.3d 976, 978 (9th Cir. 1997). Finally, he must allege facts showing intentional discrimination on the part of prison officials if he is seeking monetary damages. *Memmer v. Marin County Courts*, 169 F.3d 630, 633 (9th Cir. 1999) (stating that a plaintiff must establish defendants' deliberate indifference to recover monetary damages under Title II of the ADA).

The ADA is **not** a remedy for inadequate medical treatment. *See Simmons v. Navajo County, Ariz*., 609 F.3d 1011, 1022 (9th Cir. 2010). In other words, to state an ADA claim, a plaintiff must allege facts showing that he received inadequate medical treatment **because of** his disability, not simply that he received inadequate treatment **for** his disability.

Unlike an action brought under § 1983, governmental entities **are** the proper defendants in Title II ADA claims, and Eleventh Amendment immunity does not apply.

VII. DISCLOSURE AND DISCOVERY PROCEDURES

A. Disclosure and Discovery Tools

1. Required Disclosure

The purpose of disclosure and discovery is to enable parties to obtain the evidence necessary to evaluate and resolve the case. Some prisoners mistakenly believe that they can withhold their evidence until trial; in reality, all relevant, non-privileged evidence is subject to disclosure and discovery early in the case. In most cases, the Court will order both parties to disclose all witnesses and documents that support the parties' claims and defenses once the prisoner has been authorized to proceed with his or her case. The Court has broad discretion to limit the frequency and extent of any discovery method. Fed. R. Civ. P. 16(b) and 26(b)(2).

Defendants' documents produced in disclosure or in response to discovery may be provided in a **redacted** form if necessary for security or privilege purposes (meaning parts of the records may be whited out if the parts are not relevant to the claims); but if the facts are subject to a security or privilege purpose **and** they are relevant to a claim or defense, the defendants may provide the prisoner with a security/privilege log sufficiently describing the documents that are alleged to be subject to nondisclosure, while providing the documents to the Court "**in camera**," meaning that the Court will review the withheld documents or information.

2. Written Discovery

The main discovery methods used in prisoner litigation are written interrogatories (Fed. R. Civ. P. 33), requests for production of documents (Fed. R. Civ. P. 34), and requests for admission (Fed. R. Civ. P. 36). An interrogatory is a written question served by one party to another party, who must answer under oath and in writing. A written document request is used to obtain records or other evidence in another party's possession or under their control. **Parties** (plaintiffs and defendants) must produce documents pursuant to such a document request; a subpoena is unnecessary. A request for admission is the procedure whereby one party can request that another party admit or deny the truth of any relevant fact or the genuineness of any relevant document.

These types of discovery are **not** filed with the Court, but are exchanged between parties only. The discovery responses can later be attached as exhibits to motions or responses to motions.

To answer, respond, or object to interrogatories, document requests, and requests for admission, you must first must quote each interrogatory or request in full immediately preceding the answer or objection thereto. D. Idaho L. Civ. R. 26.1. Interrogatories are limited to no more than twenty-five (25), including subparts. Additional interrogatories can be served only if the parties stipulate to a greater number or the Court grants leave to serve more.

3. Subpoenas

If items are held by a non-party, prisoners may request the items from a non-party by informal request (letter) or by a formal subpoena duces tecum (order to produce documents). Fed. R. Civ. P. 45. To obtain a subpoena, the plaintiff must first submit to the court the names,

addresses, and the type of information sought from each person or entity to be subpoenaed, and the plaintiff must explain the relevance of the items requested to the claims. The court will then determine whether the subpoenas should issue and who must pay the costs.

4. Depositions

Attorneys often use depositions to obtain testimony under oath from parties or witnesses so that they know what the party or witness would say at trial. Depositions are very expensive because certain procedures must be followed to ensure that an accurate transcription of testimony is produced. If you are required to give testimony at a deposition, the following rules apply. The parties and counsel are required to be professional and courteous to one another during the depositions. The court reporter, who is neutral and not a representative of the defendants, will be present to record all of the words spoken by the plaintiff (or other deponent), counsel, and any other persons at the deposition. If the deponent wishes to ensure that the court reporter did not make mistakes in transcribing the deposition into a written form, then the deponent can request the opportunity to read and sign the deposition, noting any discrepancies between what is transcribed and what the deponent believes was said.

If the plaintiff wishes to take depositions, the plaintiff must file a motion with the Court requesting permission to do so, specifically showing the ability to comply with the applicable Federal Rules of Civil Procedure by providing the names of the proposed persons to be deposed, the name and address of the court reporter who will take the deposition, the estimated cost for the court reporter's time and the recording, and the source of funds for payment of the cost.

B. Bringing Discovery Motions

A party will not be allowed to bring discovery disputes before the Court until after (1) properly served discovery requests have been sent to the other party; (2) the time period for response has expired, and the response is not received or is inadequate; and (3) the requesting party has contacted the attorney of the answering party by telephone or letter and determine whether the dispute can be worked out. If you have completed these steps and are not able to resolve a discovery dispute, then you can file a motion to compel the responses.

A motion to compel must include "in the motion itself or in an attached memorandum, a verbatim recitation of each interrogatory, request, answer, response, and objection which is the subject of the motion or a copy of the actual discovery document which is the subject of the motion." D. Idaho L. Civ. R. 37.2. In addition, the motion must specify separately and with particularity each issue in dispute, and, to the best of your ability, you should specify why the response is inadequate. The other party will then be given the opportunity to respond to the motion.

C. Discovery May Be Stayed or Limited

Discovery may be limited or stayed in certain circumstances to permit the court to resolve threshold issues such as exhaustion of administrative remedies or qualified immunity. The court may also grant a protective order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

VIII. FILING AND RESPONDING TO DISPOSITIVE MOTIONS

Prisoner civil rights lawsuits are often resolved by **dispositive motions**. A dispositive motion is a motion that has the potential to "dispose of" or end the case. Two common dispositive motions are the motion to dismiss and the motion for summary judgment.

A. Rule 12 Motions to Dismiss

A motion to dismiss is brought under Rule 12 of the Federal Rules of Civil Procedure or pursuant to the court's duty to dismiss claims under 28 U.S.C. § 1915 and 1915A. This is usually a motion that asserts entitlement to dismissal based on information found only in the pleadings (complaint and answer).

An exception is that an unenumerated Rule 12(b) motion (such as a motion to dismiss for failure to exhaust administrative remedies) permits the parties to submit evidence outside the pleadings, such as offender concern forms, grievance forms, and affidavits. *Wyatt v. Terhune*, 315 F.3d 1108 (9th Cir. 2003). In deciding a motion to dismiss for failure to exhaust administrative remedies, a court may decide disputed issues of fact. *Id*. at 1119-20.

B. Rule 56 Motions for Summary Judgment

A motion for summary judgment is brought under Rule 56 of the Federal Rules of Civil Procedure. This motion asserts that no genuine issues of material fact are in dispute, and that the court may decide the claims as a matter of law. To oppose a motion for summary judgment, you must file a response, outlining the important facts and evidence that support your opposition; you may argue how the applicable law cited by the defendant or cited in court orders does not support judgment in the defendant's favor. If the defendant files a statement of undisputed material facts, you should file a statement of disputed material facts in response, if you believe some of the important facts are disputed. You must also present as exhibits to your response any evidence you have supporting your claims, including affidavits, medical records, prison records, or other documents.

C. Dispositive Motion Procedures

After you have filed your response to a dispositive motion, the defendant may or may not file a reply. If a reply is filed, you are **not** entitled to file a response to the reply ("sur-reply") without leave of court. The court will take the motion under advisement and consider everything in the record that is properly before it. A request for oral argument is usually not granted in prisoner civil rights cases. After consideration, the court will issue a written order. If the dispositive motion is granted on all claims, the case will be dismissed; if it is granted on some of the claims ("motion for partial summary dismissal") then some claims will be dismissed, while others may proceed.

D. Qualified Immunity Defense

Defendants often raise qualified immunity as a defense against claims for money damages in a motion to dismiss or motion for summary judgment. The doctrine of qualified immunity protects state officials from personal liability for on-the-job conduct so long as the conduct is objectively reasonable and does not violate a prisoner's clearly-established federal rights. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) (citations omitted). Contrarily, a state official may be held personally liable in a § 1983 action if he knew or should have known that he was violating a plaintiff's clearly-established federal rights. *Id*.

There are two factors a court must analyze to determine whether qualified immunity applies: (1) whether, "[t]aken in the light most favorable to the party asserting the injury, . . . the facts alleged show the [defendant's] conduct violated a constitutional right" and (2) whether the right was clearly established. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). A federal court may review these two factors in any order. *Pearson v. Callahan*, 129 S.Ct. 808, 815 (2009). Qualified immunity extends only to claims for money damages against defendants, and not to requests for injunctive relief.

IX. REQUESTING APPOINTMENT OF COUNSEL

Unlike criminal defendants, indigent prisoners in civil actions have no constitutional right to counsel unless their physical liberty is at stake. *Lassiter v. Dept. of Social Services*, 452 U.S. 18, 25 (1981). Whether a court appoints counsel for indigent litigants is within the court's discretion. *Wilborn v. Escalderon*, 789 F.2d 1328, 1330-31 (9th Cir. 1986). If you believe there are special circumstances warranting appointment of counsel in your case, please indicate the need on the prisoner civil rights complaint form. If you assert that you have a medical disability or a mental condition that prevents you from representing yourself, you should attach a medical record or doctor's opinion to your motion as an exhibit.

The federal court has no authority to require attorneys to represent indigent litigants in civil cases under 28 U.S.C. § 1915(d). *Mallard v. U.S. Dist. Court for Southern Dist. of Iowa*, 490 U.S. 296, 298 (1989). Rather, when a court "appoints" an attorney, it can only do so if the attorney voluntarily agrees to work pro bono (without pay). *Id.* There are no court funds to pay for attorney fees in civil matters.

X. TRIAL

If your case is not dismissed as a result of an initial review order, a motion to dismiss, or a motion for summary judgment, and your case does not settle in a settlement conference or mediation (discussed below), then your case will be set for trial. The court will set dates for you to submit witness and exhibit lists, exchange exhibits with the other parties, provide exhibits to the clerk of court for use at trial, file motions in limine (usually used to prevent irrelevant, prejudicial evidence from being introduced to the jury), submit jury instructions, make requests for subpoenas for witness trial appearances, and submit pretrial briefs.

At trial, the judge decides the legal issues that are applicable to your case, such as the jury instructions that will inform the jury of the elements of your claims and the burden of proof you must meet. The jury will decide the factual issues based on the evidence presented at trial and the law provided in the jury instructions.

XI. SUMMARY OF APPEAL RIGHTS AND PROCEDURES

A. Dismissals with and without Prejudice

If a claim or case is denied or dismissed *with* prejudice, it means that the claim or case cannot be brought again. If a claim or case is dismissed *without* prejudice, it means that the claim or case can usually be brought again, usually in a different case. However, if a claim is dismissed "without prejudice," but there is some procedural bar to bringing it again, such as expiration of the statute of limitations, the dismissal will be deemed "with prejudice," because the claim cannot be brought again because of the procedural bar. *See Pension Benefit Guar. Corp. v. Carter & Tillery Enters*., 133 F.3d 1183, 1187 (9th Cir. 1998).

The dismissal of an entire case or action, with or without prejudice, is an appealable final order. *De Tie v. Orange County*, 152 F.3d 1109, 1111 (9th Cir. 1998). The United States Court of Appeals for the Ninth Circuit has jurisdiction over all "final decisions" of the United States District Court for the District of Idaho. 28 U.S.C. § 1291.

B. Post-Judgment Motions and Proceedings

Motions to alter or amend the judgment in your case must be filed within 28 days after entry of the judgment. Fed. R. Civ. P. 59(e). To prevail, you must show newly discovered evidence, that the court committed clear error, or there is an intervening change in the controlling law. *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). A motion seeking relief from a judgment or order may also be filed (under Fed. R. Civ. P. 60) within a reasonable time or not more than one year from the entry of judgment, as specified in the Rule.

C. Notice of Appeal

An appeal of a final judgment or order must be filed with **the federal district court** within thirty (30) days after the judgment or order appealed from is entered. *See* Fed. R. App. P. 4. The notice is timely if you deposit the notice of appeal in the prison mail system on or before the last day for filing. Fed. R. App. P. 4(c). Certain types of post-judgment motions may extend the time for appeal. *See* Fed. R. App. P. 4(a)(4). The district court will file, process, and transmit your appeal to the United States Court of Appeals for the Ninth Circuit.

D. In Forma Pauperis and Appointment of Counsel Requests on Appeal

If you were granted in forma pauperis status in the district court, the status automatically permits you to file your notice of appeal; therefore, do not file an additional motion to proceed in forma pauperis in the district court. When the court of appeals reviews your filing, it will notify you whether, when, and/or how to pay the filing fee for the appeal.

Requests for appointment of counsel on appeal should be filed with the court of appeals. It is not necessary to first make the request in the district court.

E. Transcripts

An appellant (person filing an appeal) proceeding in forma pauperis may request the production of transcripts. The request first should be made in the district court. If the district court denies the request, the appellant may file a request with the court of appeals. **Please note that if your case was dismissed without a trial, there will be no relevant transcripts for the court of appeals to review**. Rather, that court will review the motions, responses, exhibits, and district court orders in your case.

XII. ALTERNATIVE DISPUTE RESOLUTION (ADR)

The court screens cases for various forms of alternative dispute resolution at all stages of a litigation. Your case may be selected for **pre-answer mediation**, which means that you and the defendants will have the opportunity to have a neutral mediator or settlement judge evaluate your case and help you reach a settlement before litigation costs are incurred. Your case may be selected for a **triage conference** if it appears that case management and discovery issues could be narrowed or streamlined, or early settlement evaluation could aid in resolution of the case.

Cases are usually set for a **settlement conference** if they survive summary judgment. This allows both parties to avoid the risk of losing at trial and facilitates a win-win compromise.

Settlement negotiations remain confidential and cannot be used against a party at trial. A settlement judge or mediator who is different from the presiding judge will handle all aspects of the settlement or mediation conference.

The court will set a mediation or settlement conference at the request of the plaintiff and at least one defendant where both voluntarily agree to participate. The court will sometimes order the parties to attend a settlement conference as a mandatory step prior to trial, but the court usually will not set a settlement conference if only one party wishes to participate.