# Representing Yourself in Federal District Court Northern District of Ohio

## A Handbook for *Pro Se* Litigants

**This is an informational handbook.** This handbook is a guide for self-represented litigants. It is not legal advice and should not be considered as such. Do not cite to this handbook in your filings with the Court. The Court will not consider this handbook as legal authority. Do not contact the Clerk's Office with questions about this handbook. The Court will not answer questions about the handbook's content or how it may pertain to an individual case. Those seeking guidance concerning a federal action should consult with an attorney.

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## INTRODUCTION

This Handbook is designed to help people with filing civil lawsuits in the Northern District of Ohio without legal representation. Proceeding without a lawyer is called proceeding "*pro se*," a Latin phrase meaning "for oneself." Representing yourself in a lawsuit can be complicated, time consuming, and costly. Failing to follow court procedures can mean losing your case. For these reasons, you are urged to work with a lawyer if possible.

Do not rely entirely on this Handbook. **THIS HANDBOOK IS MEANT TO BE USED FOR INFORMATIONAL PURPOSES ONLY AND DOES NOT CONSTITUTE LEGAL ADVICE.** This Handbook provides a summary of civil lawsuit procedures and may not cover all procedures that may apply in your case. It also does not teach you about the laws that will control your case. Make sure you read the applicable Federal Rules and Northern District of Ohio's Local Rules and do your own research at a law library or online to understand your case. This Handbook identifies the location of resources you can access, free of charge, to do research.

The United States District Court Clerk's Office staff can answer general questions, but they cannot give you any legal advice. For example, they cannot help you decide what to do in your lawsuit, tell you what the law means, or even advise you when documents are due.

**Warning to Incarcerated or Detained Persons**: Please note that some parts of this handbook will not apply to actions filed by incarcerated or detained persons. Detained litigants are often required to comply with different statutes and Court rules. These rules may include—but are not limited to—the use of Court-approved forms where applicable and the exhaustion of administrative remedies prior to filing suit.

## Tips For *Pro Se* Litigants

There is a lot to learn in representing yourself in federal court, but here are some key pointers.

**1.** **Read everything you get from the Court and the other side right away**, including the papers you get from the Clerk's Office when you file. It is very important that you know what is going on in your case and what deadlines have been set.

**2.** **Meet every deadline**. If you do not know exactly how to do something, try to get help and do your best. It is more important to file/submit required documents and responses on time, than to do everything perfectly. You can lose your case if you miss deadlines. If you need more time to do something, ask the Court in writing for more time as soon as you know that you will need more time it and before the deadline has passed.

**3.** **Use your own words and be as clear as possible**. You do not need to try to sound like a lawyer. In the documents you file with the Court, be specific about the facts that are important to the lawsuit. When you cite a case that you believe supports your position, explain to the Court why that case applies or is similar to your case.

**4.** **Always keep all of your paperwork and stay organized**. Keep paper or electronic copies of everything you send to and/or file with the Court. Also, keep everything you receive from the Court, the other side, or anyone else relating to your case. When you file a paper in the Clerk's Office, bring at least the original and one copy so that you can keep a stamped copy for yourself. Know where your papers are located so that you can use them to work on your case.

**5.** **Have someone else read your papers before you submit/file them**. Be sure that person understands what you wrote; if not, rewrite your papers to try to explain yourself more clearly. The judge may not hear you explain yourself in person and may rely only on your papers when making decisions about your case.

**6.** **Be sure the Court always has your correct address and phone number**. If your contact information changes, contact the Clerk's Office in writing immediately. Always include your case number on any paperwork that you submit to the Court.

**7.** **Omit certain personal identifying information from documents submitted to the Court for filing**. All documents filed with the Court will be available to the public on the Internet. Protect your privacy and that of other individuals you refer to in your documents by not including in documents you send to the Court any of the following: social security and taxpayer identification numbers, names of minor children, dates of birth, and financial account numbers. If your lawsuit involves a minor, you must identify them by their initials only.

**7.** **Check the Court's website**. The U.S. District Court for the Northern District of Ohio's website is located at www.ohnd.uscourts.gov and contains information for *pro se* litigants that includes useful forms and other helpful information.

## BEFORE FILING A LAWSUIT

There are six important questions you should consider before you file a case in federal court. This list does not include every important thing to think about – there may be other important considerations that are not listed here. However, these six questions are essential to every lawsuit filed in federal court. You should also be aware that even if you can answer "Yes" to each question, and you believe you should win your lawsuit, there is always a possibility that you may not ultimately win.

## SIX QUESTIONS TO ANSWER

1. Have I explored alternatives to suing?
2. Have I suffered the type of injury or harm that a Court can help me with?
3. Does the federal district court have jurisdiction to hear my claim?
4. Which District is the proper one to file my action?
5. Will my claim be timely if I file it now?
6. Have I exhausted all other available remedies?

### 1. Have I explored alternatives to suing?

Even if you do have the right to sue, you should carefully consider alternatives to suing. Lawsuits can be costly, stressful, and time-consuming. Instead of filing a lawsuit, you can try other alternatives or solutions. Some alternatives to bringing a lawsuit include:

**Gathering Information.** Sometimes things are not what they seem at first. Sometimes things that appear to have been done on purpose were done unintentionally. Fully investigating what happened may help you decide whether a lawsuit is advisable.

**Working Things Out.** Consider talking directly to the people who you think might be responsible for causing the problem. Sometimes people are more likely to respond in a positive way if they are approached respectfully and given a real opportunity to talk about the problem, rather than if they first they hear about the problem through a lawsuit.

**Going to Governmental or Private Agencies.** Consider whether there are other processes you could use, or agencies you could ask for help, with your problem. Sometimes there is a governmental or private agency that can address your problem or lend assistance to you. Examples of such agencies include:

- The Equal Employment Opportunity Commission (or an equivalent state, county or city agency) to address employment discrimination;

- The local police review board or office of citizens' complaints to hear complaints about police conduct;

- A consumer protection agency or the local district attorney's office to investigate consumer fraud;

- The Better Business Bureau or private professional associations (e.g., associations of contractors, accountants, securities dealers, architects and engineers, etc.) to hear business-related complaints.

**Using a Small Claims Court.** In some cases, you may have the option of filing a case in small claims court, which is designed for people without formal training in the law. These courts are part of any state court system. There is no equivalent to the small claims court in the federal courts.

**Alternative Dispute Resolution.** Dispute resolution services—such as mediation—may be faster and less expensive than taking a case to court. Mediation encourages parties to communicate clearly and constructively to find common ground or to identify solutions that can serve the parties' real interests. Many counties have free or low-cost agencies that can assist you in finding a provider of alternative dispute resolution services. Go to page 37 for more information about Alternative Dispute Resolution.

## 2. Have I suffered the type of injury or harm that a Court can help me with?

You cannot sue someone just because you are angry at him or her, nor can you sue someone simply because he or she has committed some illegal act. In order to bring a lawsuit that the Court

will not dismiss right away, the person you are suing must have caused you to be harmed or wronged in some real, concrete way.

The person bringing the lawsuit, called the "plaintiff," must be asserting his or her own personal legal interests. A *pro* se litigant may not sue to assert the rights of a third party. In other words, a plaintiff normally must assert that he or she has suffered the injury, or that a distinct group of individuals of which he or she is a part, has suffered the injury. A Court generally will not address a "generalized grievance," which is an injury that is shared in "substantially equal measure by all or a large class of citizens."[1] Further, the plaintiff must have actually suffered the harm already, or else the plaintiff must be about to suffer the harm "imminently," meaning that the plaintiff will actually suffer the harm in the immediate future. Lastly, remember that some cases (such as False Claims Act claims) cannot be handled without an attorney.

**3. <u>Does the federal district court have jurisdiction to hear my claim?</u>**

The United States District Court is a federal trial court. Federal courts have "jurisdiction," meaning the legal authority, to hear only certain types of cases. As is the case in all federal trial courts, a federal district court is generally authorized only to hear cases that fall into the following four categories:

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, unless there is a state law claim related to a federal claim being made, in which case the court may agree to consider it);

3. Those that involve the United States as a party, whether as a plaintiff or defendant;

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[1] *Warth v. Seldin*, 422 U.S. 490, 499 (1975); see *U.S. v. Hays*, 515 U.S. 737, 743 (1995).

4. Those that involve a dispute among citizens of different states with an amount in controversy exceeding $75,000.[2]

If your case does not fall under any of these categories, you should not file it in a federal district court.

**4. Which District is the proper one to file my action?**

If you decide that your claim may be brought in a federal district court because there is either a federal question, the United States is a party, or when the dispute is between citizens of different states and the amount in controversy is more than $75,000, you must then determine in which federal court to file. To decide a case, the court you select must have some logical relationship either to the litigants or to the subject matter of the dispute; this is called venue. Generally, you may only file a lawsuit if the actions or inactions that you believe violated your rights occurred within the boundaries of that District Court. If you are unsure, you should consult the Federal Rules of Civil Procedure regarding venue.

**5. Will my claim be timely if I file it now?**

Usually a claim must be filed within a certain period of time after an injury occurs or is discovered. This time bar is called the "statute of limitations," and the length of the statute of limitations varies depending on the type of claim. Some federal and state statutes set forth a specific limitations period that may differ from the general statute of limitations that apply to a claim. Whether your claim is barred by the statute of limitations is a legal question which may require you to do some legal research. You should make sure your claim is not time-barred before you file a lawsuit.

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[2] It is important to note that in cases invoking diversity jurisdiction with multiple defendants or multiple plaintiffs, no single defendant can be a citizen of the same state as any single plaintiff.

## 6. Have I exhausted all other available remedies?

You should be aware that, in some instances, it is necessary for you to pursue certain remedies **before** you can properly pursue a claim in federal court. Two common instances are discussed below.

**Administrative Grievance Procedures**

People frequently want to appeal the decision of a governmental agency that affects them. For example, a person may want to appeal the decision of the Social Security Administration that denied him or her social security benefits.

If you want to appeal the denial of a benefit that is provided through an agency of the United States government, you must pursue all the administrative procedures established by the agency for appealing its rulings before you file a lawsuit. Only after you have exhausted your administrative remedies, and you still believe you are entitled to a benefit that you have not received, may you initiate a lawsuit in a federal district court.

**Employment Discrimination Claims**

A person who believes he or she has been illegally discriminated against by an employer may wish to bring a lawsuit against that employer under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, or the Age Discrimination in Employment Act. However, before a person can bring such a lawsuit, he or she must first file a complaint with either the Equal Employment Opportunity Commission ("EEOC") or the state Division of Civil Rights.

In conclusion, it is important that you consider all of these questions before you file a case. After all of these factors have been considered, you must still follow the procedures set out by the particular district court in which you decide to file your case. Many of the specific procedural

rules for your district court are set forth in the Local Rules, which are available online at: https://www.ohnd.uscourts.gov/local-civil-rules or at the Clerk's Office.

## FINDING AN ATTORNEY

Bringing a lawsuit can be time consuming and complicated. While it is possible to navigate the federal judicial system on your own, having an experienced attorney to help you can improve your chances of doing things properly and getting a result with which you are happy. While some lawyers are expensive to hire, there are several options for hiring a lawyer that will cost you little or no money. In general, the options are: (1) hiring a lawyer who will work on a "contingency" basis; (2) finding a lawyer to take on your case "pro bono" (meaning at no cost to you); and (3) asking the court to appoint counsel for you. These options are discussed in more detail below.

It is important to note that in a criminal case, a defendant is entitled to legal counsel by the United States Constitution, and one is provided if the criminal defendant is unable to hire a lawyer. However, a party to a civil case is not entitled to an attorney paid for the by the government, even if he or she cannot afford one.

### Counsel Performing Work On A Contingency Basis or Pro Bono

There are several options to find a lawyer to represent you even if you cannot afford to pay for legal services. For example, some attorneys may be willing to accept a reduced fee or lenient fee payment schedule to take on your case. Some attorneys also offer "limited representation," meaning that they may help you evaluate your case, or draft a pleading, without requiring that you hire them for the entire case. Other attorneys may be willing to accept your case on a contingent fee basis, which means the attorney would receive a fee based upon a percentage of your recovery if you win your case and would receive nothing if you do not win. If you would like assistance in

finding an attorney who may consider taking your case on a contingency or "limited representation" basis, there are lawyer-referral services that may be able to help you.

In addition to lawyers who will work for reduced fees or on a contingency basis, many lawyers offer "pro bono" legal assistance. This means that a lawyer will represent you, but will not charge you any money for their time or work, and (generally) will not take a portion of anything you recover. If you prefer to have an attorney represent you, but you are unable to pay to retain one, you should consider contacting a local legal services office or state bar association. You may also call law firms and ask whether they have a pro bono practice and if you would qualify for such assistance.

**Appointment of Counsel by the Court**

If your income, financial resources, or circumstances make it very hard for you to hire or otherwise find a lawyer, the Court may find that you are "indigent," which means that you do not have the resources to pay for an attorney. Typically, the Court is asked to make this finding when a *pro se* litigant files a document with the Court known as an application to proceed "*in forma pauperis*." Information regarding the *in forma pauperis* application and the effects of being permitted to proceed *in forma pauperis* are discussed later in this Handbook.

If you are granted *in forma pauperis* status, you may request, by submitting a written motion, that the Court appoint counsel for you if you are otherwise unable to obtain a lawyer. Before you submit such a motion, you must try to obtain counsel on your own.

The Court considers requests for counsel in light of a number of factors set forth by the district court's Local Rules. Usually, the Court must determine whether the party's legal position in the lawsuit is of substance. If so, the Court will then consider several other factors, including how

complex the legal issues are in the particular case and the indigent party's ability to investigate and present his or her case.

## BASIC PROCEDURES FOR FILING A LAWSUIT

### Preparing the Complaint

Before you bring a lawsuit, you should become familiar with the rules that explain the Court's procedures for preparing and filing a complaint. These rules are the Federal Rules of Civil Procedure (FRCP), and they apply in every federal court in the country. A party can be sanctioned (penalties imposed) for violating the FRCP.[3] You can review the FRCP in any law library or on the website for the Northern District of Ohio. In addition, you must follow the Northern District of Ohio's "Local Rules," also found on the website at https://www.ohnd.uscourts.gov/local-civil-rules.

The first step in filing a lawsuit is to prepare a complaint. Most district courts have forms for preparing a complaint, including a general form for *pro se* cases, and specific forms for prisoner *pro se* cases and Social Security disability appeals. These forms are available on the Northern District of Ohio's website at: www.ohnd.uscourts.gov/forms or under the "Forms" tab on the website. If you choose to prepare your own complaint, the following information should be included.

#### 1. Caption

A complaint caption or heading specifies the Court in which the suit is brought and the names of the parties. The top of the first page should contain the case caption, which includes the name of the Court, the names and addresses of all parties, and a blank space for the case number.

[3] For more information about sanctions, see Federal Rules of Civil Procedure 11 and 37.

The case number will be assigned once the complaint is filed with the Court. The case caption should appear as follows:

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

| | | |
|---|---|---|
| [Plaintiff's Name<br>123 Street Name<br>City, State Zip Code],<br>Plaintiff, | :<br><br>:<br>: | Case No. _____ |
| vs. | : | COMPLAINT |
| [Defendant #1's Name<br>456 Street Name<br>City, State Zip Code] | :<br><br>: | |
| [Defendant #2's Name (If applicable)<br>789 Street Name<br>City, State Zip Code],<br>Defendants. | :<br><br>:<br>: | |

You should list on page 1 of your complaint the name and address of the person filing the complaint (the plaintiff), and the names and addresses of all individuals or entities against whom you are seeking relief (the defendants).[4]

In certain kinds of cases, the parties are entitled to a jury trial. The best way to ensure your right to a jury trial is to make the demand when you file your complaint by either writing the words "Jury Trial Demanded" on the first page of your complaint.

[4] The name and address of each plaintiff and defendant may also be stated in numbered paragraphs in the complaint.

### 2. Body of the Complaint

The body of the complaint should contain numbered paragraphs which provide the following information.

**a.** **Jurisdiction.** The complaint should state why the Court has jurisdiction over the case. As discussed previously, a District Court has limited authority to hear cases. It can only hear cases over which the district court has jurisdiction. *Pro se* litigants often file the following types of federal cases: a denial of civil rights under 42 U.S.C. § 1983; employment discrimination under 42 U.S.C. § 2000e, *et seq*.; and inmates challenging the conditions of their confinement. The first numbered paragraphs should also state why the court you are filing in has proper "venue" for this claim.

**b.** **Numbered paragraphs.** The complaint must contain numbered paragraphs, with each paragraph containing a statement of those facts that are alleged to have caused the damage claimed. These allegations, or claims, should be concise and clearly written. There should be a separate numbered paragraph for each factual allegation made. Each paragraph should specify to the greatest extent possible: (i) the alleged act of misconduct; (ii) the date on which the misconduct occurred; (iii) the names of each and every individual who participated in that misconduct; (iv) the location where the alleged misconduct occurred; and (v) the connection between the misconduct and your causes of action. The statement of facts should include a description of what the defendant(s) did or failed to do and how those acts or omissions caused injury or damage, as well as a description of any injury you sustained and what medical treatment, if any, was required. It is important to be as specific as possible in stating the facts. Names, dates, and events should be described accurately

and as succinctly as possible. Failure to allege facts demonstrating that each defendant was personally involved in and/or responsible for the alleged incident or harm may result in dismissal of that defendant or the case. In short, these numbered paragraphs must state the facts supporting the claim; what happened, where it happened, when it happened, how it happened, and who was involved.

**c.** **Legal basis.** The complaint must also state the legal basis for the claim. This would be a description of how you believe the defendant(s) violated your rights, and a statement of which of your legal rights you believe the defendant(s) violated. If you are filing your lawsuit on the basis that the defendant violated a law, you must identify that law in your complaint. For example, if you believe an employer discriminated against you, you must cite to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, *et seq.*

**d.** **Relief sought.** The complaint must state or describe the relief which is being sought. You must state what it is that you wish the Court to do. This could be requesting that the Court award money damages or issue a court order prohibiting particular conduct, directing that certain action be taken, and/or directing something the plaintiff wants the court to do to correct the situation. This information is contained in a closing or final paragraph, which is not numbered (note: this is the only paragraph in the complaint that is not numbered), outlining the relief you are asking to Court to provide.

**e.** **Signature.** The individual(s) filing the complaint must sign and date the complaint, and underneath the signature(s), type or print their full names, addresses, and phone numbers.[5]

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[5] Your signature, address, and phone number must always appear on all documents filed with the Court.

If there is more than one plaintiff, the complaint must contain an original signature for each plaintiff. By signing or filing the complaint you are certifying to the Court that the statements you have made in the complaint are true, and that you are not filing the complaint for an improper purpose such as to harass the defendant(s).

**Privacy Protection**

Certain sensitive information about individuals involved in the claim cannot be included in documents filed with the Court. If personal information is necessary for the complaint, personal identifiers must be redacted (blackened out) as follows:

- minor children must not be identified by their full names, but by their initials (e.g., A.B., C.D.);

  financial account numbers must be redacted except for the last four digits (e.g., xxxx-xxxx-1234);

- Social Security and taxpayer-identification numbers must be redacted except for the last four digits (e.g., xxx-xx-1234); and

- dates of birth must include the year only (e.g., X/X/1980).

**Filing the Complaint**

Once you have prepared the complaint, you must file the complaint in the District Court Clerk's Office. The following procedures regarding copies of the complaint, filing fees, the civil cover sheet and the summons forms must be followed.

**1. Copies**

You must file the original complaint with the Court and provide the Court with a copy for each defendant you name. If the defendant is the United States, an agency of the United States, or an officer or employee of the United States who is being sued for acts or omissions related to his/her employment, you must provide the Court three (3) copies of the complaint. You should also keep a copy of the complaint for your own records.

### 2. Filing Fees[6]

Generally, you must pay a filing fee when you file your complaint, and this fee must either be paid in full at the time you present your complaint to the Court for filing or, if you are unable to pay the fee, you must submit an application to proceed *in forma pauperis*, along with your complaint (discussed below). See the Northern District of Ohio's website for the current filing fee at www.ohnd.uscourts.gov/fee-schedule. Payment is due when you file the complaint.[7]

### 3. Civil Cover Sheet

In addition to the complaint you must also complete a Civil Cover Sheet. This form is used to help the Clerk's Office open your case and gather statistical information. The form is also available on the District Court's website at www.ohnd.uscourts.gov/forms/ or in the Clerk's Office.

When you complete the form, you will need to include the county of residence of the first listed Plaintiff and Defendant. You will also need to identify the basis of jurisdiction. Federal question jurisdiction (the case involves a violation of federal law or the United States Constitution) and diversity jurisdiction (the plaintiff and defendant are citizens of different states and the case involves an amount of controversy greater than $75,000) are the two most common.

Complete the form as best as you can. If you do not know how to provide some of the information required, then leave the space for that information blank. Note that the Civil Cover Sheet contains instructions for completing the form on the second page.

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[6] These procedures for filing fees do not apply to incarcerated individuals. If you are incarcerated, you will need to check the District Court's website or with the Clerk's office for instructions on how to pay the filing fee.

[7] You should check the District Court's website for further information concerning whether you can pay by cash, check, cashier's check, money order, or credit card.

**4. Summons**

All plaintiffs must complete and submit a summons form for each defendant at the same time the complaint is filed. You need to prepare a summons for each defendant named in your lawsuit. The summons form is available on the District Court's website www.ohnd.uscourts.gov/forms/ or from the Clerk's Office. In completing this form, you must: (1) fill out the case caption; (2) provide the name and address where the defendant is to be served with the complaint; and 3) provide your name and address. **Do NOT complete the Proof of Service portion of the summons form until service of process has been completed**.

**5. Filing**

You may file your lawsuit in person or via mail with the Clerk's office, at any location within the Northern District of Ohio between the hours of 9:00 a.m. – 4:00 p.m. Locations within the Northern District of Ohio are as follows:

2-161 Carl B. Stokes United States Court House
801 West Superior Avenue
Cleveland, Ohio 44113-1830

337 Thomas D. Lambros
Federal Building and U.S. Court House
125 Market Street
Youngstown, Ohio 44503-1787

114 James M. Ashley & Thomas W.W. Ashley U.S. Court House
1716 Spielbusch Avenue
Toledo, Ohio 43604-5385

568 John F. Seiberling Federal Building and U.S. Court House
2 South Main Street
Akron, Ohio 44308-1876

The judge may order that you use this electronic system to understand what is happening with your case and to file documents. CM/ECF (Case Management/Electronic Case Files) is the name of this electronic system. Members of the public can gain access to this system using a system

called PACER (Public Access to Court Electronic Records). You can contact your District Court Clerk's office to obtain information about how to use PACER to access documents filed by others (including orders of the judge), print, and download documents. Public terminals are available at each office location for easy access to documents and cases.

**Service of Process**

"Service of process," is the procedure that officially notifies a defendant in person that a lawsuit has been filed against him or her. When "served" the defendant receives a copy of the complaint so that he/she knows what the lawsuit is about. Further, the summons (discussed above) notifies the defendant when they must respond to the complaint. Under Federal Rule of Civil Procedure 4, you must either obtain a waiver of service from each defendant or serve each defendant through formal service or personal service within 90 days after the complaint has been filed in district court. Mailed summons are typically not allowed.

**1. Waiver of Service**[8]

"Waiving service" means agreeing to give up the right to service in person and instead accepting service by mail. If a defendant waives service, the plaintiff (you) will not have to go to the trouble or expense of serving that defendant. If the defendant agrees to waive service, you need to have the defendant sign and send back to you, a form called a "waiver of service," which you then file with the Court. To complete the "waiver of service" process, you must complete two forms and set certain documents to the defendant(s). The two forms you need to complete are:

a. "Notice of a Lawsuit and Request to Waive Services of Summons"

b. "Waiver of Service of Summons."

Both forms are available at the Clerk's Office or on the District Court's website.

[8] The waiver of service rule does not apply if the United States is named as a defendant.

The documents you need to send to each named defendant are:

a. A copy of the complaint you filed;

b. One completed Notice of Lawsuit Form;

c. Two completed Waiver Forms; and

d. One self-addressed stamped envelope (for the defendant's return of the Waiver Forms).

If a defendant sends back the signed waiver of service, you do not need to do anything else to serve the defendant. You simply need to file the defendant's signed waiver with the Court and save a copy for your files. If the defendant does not return a signed waiver of service by the due date, you need to arrange to serve that defendant in one of the other ways approved by Federal Rule of Civil Procedure 4 (see below).

**2. Formal service (no waiver)**

If the defendant does not return the waiver of service form within the specified time, you must notify the Clerk of the court in writing, prepare a summons for each Defendant, and ask the Clerk's Office to issue the summonses you prepared.[9] You may ask the Court to order the defendant to pay the costs you incurred serving that defendant. You must serve the defendant within 90 days from the filing date of the complaint (or, if you applied for IFP, from the date the Court ruled on your IFP application). If you do not properly complete service of process within the 90-day deadline, your case may be dismissed. **Be sure to carefully check the FRCP to make sure you properly serve the defendant(s) you named in the complaint.**

[9] The only exception to this rule is if you are incarcerated AND are suing a government official. In that case, you should wait for the judge to complete a preliminary review, after which you will receive an order from the Court and should follow the instructions in that order regarding service.

### 3. Personal service

Service of process may be accomplished by "personal service." This means that the summons and complaint are hand-delivered to the defendant. You, as the plaintiff, CANNOT personally serve the defendant. However, another person can personally serve the defendant if that person 1) is at least 18 years of age and 2) is not a plaintiff or defendant in the case. Alternatively, you can hire a private process server to serve the defendant for a fee. In either case, Federal Rule of Civil Procedure 4 requires you to file proof with the Court that the complaint has been served on the defendant. The person serving the summons must leave a copy of both the summons form and the complaint with the defendant. On the back of the summons is a section referred to as the return of service or "proof of service," which must be completed by the person who served the summons. The person who serves the summons must record his or her name, the name of the person whom he or she served, and the date and time of the service. Service of process is not complete until the original summons form, with the completed return of service, has been filed with the court.

**If the above service methods are not available, consult Federal Rule of Civil Procedure 4 and any Local Rule applicable for your District Court.**

If you name as a defendant the United States, a United States agency, or an officer or employee of the United States (who is being sued for acts or omissions related to his/her employment), you must serve the complaint and summons on three individuals:

1. the named defendant;

2. the Attorney General of the United States, U.S. Department of Justice, 950 Pennsylvania Ave, Washington, D.C. 20530.; and

3. the United States Attorney for the District Court in which you are filing your complaint. Office of the United States Attorney for the Northern District of Ohio, 801 W. Superior Ave., Suite 400 Cleveland, Ohio 44113

The waiver of service rule DOES NOT APPLY to the United States. Formal service upon the federal government or any of its agencies can be accomplished by certified mail (return receipt required) with the properly executed summons.

**Proceeding *In Forma Pauperis* ("IFP")**

If you cannot afford to pay the filing fee, you may request the court to waive the fee by filing an application to proceed without paying fees or costs, or "*in forma pauperis*." To apply for *in forma pauperis* status, you must present the following documents to the Clerk's Office:

1. Application to Proceed *In Forma Pauperis*;
2. Civil Cover Sheet;
3. Original complaint with copies for service on each of the defendants;
4. All service forms, which includes the summons and USM 285 or Waiver of Service of Summons (see below).

You can obtain an *in forma pauperis* application on the Northern District of Ohio's website at www.ohnd.uscourts.gov/forms/ or the Clerk's Office. The *in forma pauperis* application asks you to provide information about your (and your spouse's) finances (e.g., your income, assets and liabilities). In filling out the *in forma pauperis* application, you must answer all questions truthfully and completely. You must also sign the statement under penalty of perjury. In addition to waiving the obligation to pay the filing fee, if you are granted permission to proceed *in forma pauperis,* you are also entitled to have your complaint served on the defendant by the U.S. Marshals Service.

If your *in forma pauperis* application is approved, the Court will arrange for the Clerk's Office or the U.S. Marshals Service to complete service of process on your behalf. In *in forma pauperis* cases, the summons will not be issued until after the judge reviews the complaint. If the

Court determines, based upon the facts stated in your complaint, that you will not be successful in your case (e.g., you fail to state a claim upon which relief may be granted, your lawsuit is frivolous or malicious, or the named defendant is immune from liability), the Court can dismiss your case at that stage. See 28 U.S.C. § 1915(e)(2). Likewise, the Court can dismiss your complaint at any time if you were granted IFP status and the Court later determines that your allegation of poverty was untrue.

However, if after conducting a preliminary review of the complaint, the judge finds that the complaint states a claim upon which relief may be granted, the judge will then order the Clerk's Office or the United States Marshals Office to make service of the complaint and summonses. In all instances, however, you are responsible for completing and providing the Clerk's Office with the appropriate service forms. This consists of the following service documents **for each named Defendant:**

1. A copy of the complaint you filed for each Defendant;
2. Two summons forms for each Defendant;
3. One U.S. Marshal Form for each Defendant.[10]

Once the forms are properly completed and filed, the Clerk's Office will officially issue the summons (e.g., an authorized Court employee signs the form and embosses it with the Court's official seal). The Clerk's Office will then deliver the summons and other materials to the U.S. Marshals Service, which will serve the defendant on your behalf. You will be notified when service has been accomplished.

[10] These forms can be found on the District Court's website or obtained from the Clerk's Office.

## Defendant's Response to the Complaint

### 1. Answer

If service is made on a defendant by summons, the defendant has twenty-one (21) days from the date of service of the complaint to file an answer with the court. However, if the defendant is the United States or a federal official, the defendant has sixty (60) days from the date of service to file an answer. In an answer, a defendant admits or denies each of the plaintiff's allegations. The answer can also include affirmative defenses. **It is important that the defendant admit, deny, or clarify each allegation made by paragraph number**. Once the defendant files an answer, the case moves to the next phase.

### 2. Default

If a defendant has been properly served with a complaint, but fails to file any response in the required amount of time, then that defendant is considered in "default." Once the defendant is in default, the plaintiff can ask the Court for a default judgment, which means that the plaintiff wins the case and may take steps to collect on the judgment against that defendant.

If a defendant is in default, the plaintiff should file a "request for Clerk's entry of default" AND proof that the defendant has been served with the complaint. If the Clerk of Court approves the request, he or she will then enter default against the defendant. Once the Clerk has entered default against the defendant, the plaintiff may then file a "Motion for Default Judgment" supported by: (1) a declaration showing that the defendant was served with the complaint but did not file a written response within the required time for responding; and (2) a declaration proving the amount of damages claimed in the complaint against the defendant. There are special rules for default judgments against minors and the U.S. government and its officers and agents, which are explained in Federal Rule of Civil Procedure 55.

A defendant against whom default or a default judgment has been entered may make a motion to set aside the default or default judgment. The Court will set aside an entry of default or a default judgment for good cause or for one of the reasons listed in Rule 60(b), which includes mistake, fraud, newly-discovered evidence, the judgment is void, or "any other reason that justifies relief."

### 3. Motion To Dismiss

In lieu of filing an answer to the complaint, a defendant may file a motion to dismiss, which asks the Court to dismiss the case. The motion argues that there are problems with the way the complaint was written, filed, or served. A motion to dismiss may be filed for any of the reasons set forth in Federal Rule of Civil Procedure 12(b): lack of subject-matter jurisdiction; lack of personal jurisdiction; improper venue; insufficient process; insufficient service of process; failure to state a claim upon which relief can be granted; and failure to join a party under Rule 19.

The motion to dismiss must state the specific facts and legal arguments supporting the stated reasons for dismissal. A defendant may move to dismiss all the claims in the complaint or just certain claims.

A court may deny or grant the motion to dismiss as to each claim that is the subject of the motion. If the Court denies the motion to dismiss, the defendant must file an answer within fourteen (14) days, and the case moves to the next phase. *See* Federal Rule of Civil Procedure 12(a)(4). If the Court grants the motion to dismiss without prejudice, the plaintiff may submit an amended complaint that corrects the deficiencies identified by the Court within a time period specified by the Court. Finally, if the Court grants the motion to dismiss with prejudice, the case is over as to those claims.

**a. Lack of Subject Matter Jurisdiction**

The defendant argues that the Court does not have the legal authority to hear the kind of lawsuit the plaintiff filed. In other words, the defendant contests that the case neither involves a violation of a federal law or the U.S. Constitution, nor is between citizens of different states involving an amount in controversy greater than $75,000.

**b. Lack of Personal Jurisdiction**

The defendant argues that the Court has no legal authority to hear the case because the defendant has so little connection with the district in which the case was filed. The defendant must show that it is not a resident of the state in which the case was brought and that it did not even have "minimum contacts" with the state.

**c. Improper Venue**

The defendant argues that the lawsuit was filed in the wrong geographical location.

**d. Insufficiency of Service of Process**

The defendant argues that the plaintiff did not prepare the summons correctly or did not correctly serve the defendant.

**e. Failure to State a Claim Upon which Relief can be Granted**

The defendant argues that even if everything in the complaint is true, the defendant did not violate the law. Each type of claim requires that the plaintiff allege and show facts to support certain elements. For example, a negligence claim requires that the plaintiff allege and show facts to support a duty, a breach of the duty, proximate cause, and damages. Here, the defendant is asserting that the plaintiff did not plead sufficient facts to support all requisite elements of the plaintiff's claim.

**f. Failure to Join an Indispensable Party Under Rule 19**

The defendant argues that the plaintiff failed to sue someone who must be included in the lawsuit before the Court can decide the issues raised in the complaint. A party must be included in a lawsuit when: (1) a court cannot accord complete relief among the parties without the additional party's presence, or (2) the party's absence impedes its ability to protect its interest or leaves the party vulnerable to incurring inconsistent obligations because of the interest. *See* Federal Rule of Civil Procedure 19.

**Response to a Motion to Dismiss**

If a defendant files a motion to dismiss, the plaintiff will need to file an opposition to that motion. The response must specifically assert facts and law that explain why the motion to dismiss should be denied. Unless otherwise ordered by the Judicial Officer, each party opposing a motion must serve and file a memorandum in opposition within thirty (30) days after service of any dispositive motion and within fourteen (14) days after service of any non-dispositive motion.

To calculate the deadline, exclude the day that the defendant files the response, and beginning counting the next day. Count every day, including weekends and holidays. The response is due on the fourteenth (or seventeenth, if mailed) day, unless that day is a Saturday, Sunday, or legal holiday, in which case the response is due on the next day that is not a Saturday, Sunday, or legal holiday. *See* Federal Rule of Civil Procedure 6.

If you need more time to file your opposition, you need to file a motion for extension of time with the Court. If you can, contact the opposing side and get consent. If you get consent for an extension, make sure that consent is reflected in your motion.

If you cannot get the consent from the other time, file the motion for extension of time before the response is due and show there is "good cause" for the extension. Federal Rule of Civil

Procedure 6(b). If a motion for extension of time is filed after the due date, you must show "excusable neglect" for missing the deadline. Federal Rule of Civil Procedure 6(b).

## CASE MANAGEMENT PROCEDURES

**What is a Case Management (Rule 16) Conference ("CMC")?**

A case management conference ("CMC")—sometimes referred to as a Rule 16 Conference—is held shortly after the action commences. The purpose of the conference is for the judge and parties to set the trial date, as well as other key deadlines for initial disclosures, discovery, and pretrial motions.

**Does Every Case Have a Case Management Conference?**

No, some categories of actions are exempt from CMCs. See Northern District of Ohio Local Civil Rule 16.1.

**How do I prepare for it (Rule 26)?**

Prior to the CMC, all parties and their lawyers MUST "meet and confer," either on the phone or in person, to try to agree on a number of issues. The parties must submit a report on their discussions at least seven days before the Fed. R. Civ. P. 16(b) conference. The purpose of the meet-and-confer process is to save time by requiring parties to agree on as much as possible and to understand each other's positions. The parties should be prepared to:

1. Discuss the basis of the claims and defenses;

2. Discuss resolution through settlement;

3. Arrange for the initial disclosure of information by both sides as required by Rule 26(a)(1) including:

    a. an exchange of names and contact information of individuals with discoverable information; and

    b. a list of certain documents described in FRCP 26(a).

4. Agree on a discovery plan;

5. Select an alternative dispute resolution ("ADR") process: mediation, early neutral evaluation or settlement conference (discussed later in this Handbook);

6. Prepare and file a joint written report outlining the discovery plan.

**Preparing the Discovery Plan (Rule 26(f)(2))**

The proposed discovery plan is a written proposal on how the parties expect to conduct discovery, i.e. a schedule of when and how the parties will exchange documents and conduct depositions in order to learn the facts of the case. The parties must make a good faith effort to agree on a proposed discovery plan for the judge to review and determine how discovery should proceed. The plan should include each parties' views and proposals about:

1. Changes that should be made in the timing, form, or content of disclosures under Rule 26(a), including a statement of when initial disclosures were made or will be made;

2. The subjects, timing, and issues for discovery;

3. Limitations on discovery imposed by Federal or Local Rules;

4. Other orders that the Court should consider under Rule 26(c) or under Rule 16(b) or (c).

**What is the Case Management Order?**

During or after the CMC, the judge will issue a Case Management Order, which sets the schedule for the rest of the case. The Case Management Order will govern the case unless and until it is changed later by the judge.

A Case Management Order "shall not be modified except upon a showing of good cause and by leave of the district judge." Federal Rule of Civil Procedure 16(b). If you want to change the deadlines set forth in the Case Management Order, you will need to file a motion requesting that the deadlines be changed and show good cause for the request.

**What happens at a Court hearing?**

A hearing is a formal court proceeding in which the parties present their arguments to the judge and answer the Judge's questions about the motion or other matter being heard. Sometimes witnesses can be presented at these hearings. You should prepare for a hearing by reviewing all papers that have been filed for the hearing and expect to answer questions about issues that are being addressed at the hearing. Organize your papers so that you can find things easily when you need to answer the Judge's questions. Be sure to have a pen and paper with you so that you can take notes.

**How should I dress and behave when I come to Court?**

1. Dress nicely and conservatively.
2. Be on time.
3. You should sit in the benches in the back of the courtroom until your case is announced. The courtroom deputy may ask "counsel" to come forward and check in. You should check in with the courtroom deputy at that time. If your hearing is the only one scheduled, you may sit at the plaintiffs' or defendants' table in the center of the courtroom. The courtroom deputy will tell you where to sit.
4. When the Judge enters the courtroom, you must stand and remain standing until the Judge sits down.
5. When you speak to the Judge, call him or her "Your Honor."
6. A judge might ask you questions about your argument in a motion. If the Judge asks a question, always stop your argument and answer the Judge's question completely. When you are finished answering the question, you can go back and

finish the other points you wanted to make. Always answer the Judge's questions completely and never interrupt the judge when he or she is speaking.

7. If the Judge asks you a question when you are seated at the table or away from the lectern, stand and walk up to the lectern before you answer the question.

## DISCOVERY

"Discovery" is a term that refers to the information that the parties will gather to support their case. Federal Rules of Civil Procedure 26 through 37 govern discovery. Parties often need to gather documents such as medical records, employment records, or business records. Information can be obtained in the form of written questions, written document requests, or oral questions. Discovery can begin only after the parties have met and conferred. Rule 26(d). Earlier discovery can take place if the parties agree or if the Court issues an order allowing earlier discovery.

Each party in an action will seek some discovery. This means that if you file an action, you will need to obtain information from the party you are suing, as well as provide information to that party. For example, if you file a personal injury action, your medical condition is at issue and you will need to provide some of your own medical records to the opposing party.

### Methods of Discovery Available

Interrogatories, requests for production, depositions, requests for admissions, and a mental or physical examination are the most common methods for obtaining discovery. You will need to read the federal rules carefully regarding each type of discovery request to make sure that you comply with their specific requirements. This Handbook will give you a quick overview of the methods of discovery and how they may be useful to your case.

### 1. Interrogatories (Rule 33)

Interrogatories are written questions sent by one party to any other party to the lawsuit and must be answered in writing and under oath. Rule 33 of the Federal Rules of Civil Procedure covers interrogatories in detail. If you are serving interrogatories, you may not serve more than 25 interrogatories without the Court's permission.

If you are answering interrogatories, you must answer any interrogatory with all non-privileged information available to you without doing research. This means that if the answer is contained in your business records or personal files, you must look for the answer. You may object to an interrogatory seeking privileged information or that is overbroad, vague, or unduly burdensome. You must explain fully the reason for your objection. If you later learn that your answer is incomplete or incorrect, you must let the other side know and promptly supplement your original answer.

The interrogatories must be answered within 30 days and must be signed in accordance with Rule 26(g)(1). If you need more time to answer, you can request more time from the opposing party. If the opposing party does not agree, you can request more time from the Court by filing a motion.

### 2. Requests for Production (Rule 34)

In a request for production of documents, you can ask the opposing party for documents, including electronically stored information (like e-mails) which you need to make or defend your case. You may seek documents that you reasonably believe the other side has and contains information relevant to the lawsuit.

If the person who has the documents you want is a party to the lawsuit, you must follow Rules 34(a) and (b). Under Rule 34(a), any party can serve another party: (1) a request for

production of documents; (2) a request for production of tangible things; or (3) a request for inspection of property. Each request for document production should be numbered separately and signed in accordance with Rule 26(g)(1). There is no limit to the number of requests, as long as they are not unreasonable or unduly burdensome.

If you have been served with a request for production of documents, you must give a response within 30 days (unless you obtain an extension from the opposing party or the Court). If you object to a request, you must state the reason for the objection.

Rules 34(c) and 45 cover obtaining documents from persons not party to the lawsuit. Under Rule 34(c), you can ask the Court to compel a person who is not a party to the lawsuit to produce documents and items or submit to an inspection.

### 3. Depositions (Rule 30)

Depositions are question and answer sessions that takes place outside the hearing of the Court, but are recorded by a court reporter. The person being deposed is under oath (the "deponent"), and that person may be a party, non-party eye witness, or expert witness. The deponent answers all questions under oath, meaning that he or she swears that his or her answers are true.

The party seeking to take a deposition should confer with opposing counsel and the deponent to choose a convenient time and place for the deposition. The party asking for the deposition must then prepare a notice of deposition and serve the notice on all parties.[11] You may ask questions of the deponent about any non-privileged matter that is relevant to the claims or defenses of any party. The party taking the deposition must pay the cost of the court reporter.

[11] Specific instructions for a notice of deposition is contained in Federal Rule of Civil Procedure 30(b).

After the deposition, the parties must obtain a copy of the transcript from the court reporter themselves.

### 4. Request for Admissions (Rule 36)

In a "Request for Admissions," one party can ask the other party to admit the truthfulness of facts related to the lawsuit. The Court will consider anything admitted in response to a request for admission as proven. Requests for admission may be served by any of the methods listed in Rule 5(b) of the Federal Rules of Civil Procedure, including service by mail.

If you are responding to a request for admissions, you must admit or deny the request or explain in detail why you cannot truthfully admit or deny it. If you do not know the answer, then you must state that you do not have enough information to admit or deny the request, but you must first make a reasonable search for the information. Remember, any matter that is admitted is treated as a proven fact within the context of this particular lawsuit.

### 5. Mental or Physical Examinations (Rule 35)

When the mental or physical condition of a party, or a person under the custody or legal control of a party, is at issue in a lawsuit, Rule 35 of the Federal Rules of Civil Procedure allows the Court to order that person to submit to a physical or mental examination. The examination must be done by a suitably licensed or certified examiner, and the party who requested the examination must pay the examiner. The examiner is not responsible for treating the person and any communications with the examiner are NOT confidential. Unlike other discovery procedures, physical or mental examinations can be obtained only by filing a motion with the Court or by agreement of the parties.

**Discovery Disputes**

Sometimes, the parties will disagree about the disclosures, discovery, or objections filed. The Federal Rules require the parties to meet and confer to try to resolve the dispute before filing a motion to compel with the Court. Under Rule 37(a)(2), a motion to compel a party to make disclosures or to respond to discovery must be filed in the Court where the lawsuit is pending. A motion to compel MUST include:

1. A certification that have tried in good faith to resolve the problem without help from the Court; AND

2. An explanation of the problem and what you want the Court to do; AND

3. If the problem involves discovery, the complete text of each disputed discovery request immediately followed by the complete text of the objections or disputed responses to that request; AND

4. An explanation of the facts AND law that make it appropriate for the Court to grant your motion.

## ALTERNATIVE DISPUTE RESOLUTION

### What is Alternative Dispute Resolution?

**Alternative Dispute Resolution (ADR)** can save time and money by helping parties work out their differences without formal litigation. ADR can lead to resolutions that are better tailored to the parties' interests. Methods include mediation, arbitration, and settlement, among others. In many courts, the parties are required to participate in some form of ADR before trial and such requirements will generally be included in the Case Management Order.

### What Are the Major ADR Processes?

#### 1. Settlement Conference

In some jurisdictions, a settlement conference may be available to the parties. In a settlement conference, a judge other than the assigned judge (usually a magistrate judge), helps the parties negotiate a settlement of all or part of the dispute. Settlement conferences are generally best fit for *pro se* litigants because a judge who has experience working with unrepresented parties conducts the process.

#### 2. Mediation

In mediation, a neutral third party meets with the parties to help them negotiate a mutually-satisfactory agreement resolving all or part of the dispute. The process is informal and confidential. Any decision to enter into a settlement agreement is voluntary, and the parties do not lose their right to trial if they do not reach an agreement.

#### 3. Arbitration

In arbitration, the parties submit their dispute to an arbitrator or a panel of arbitrators for review, hearing, and adjudication in a binding decision. Arbitration is similar to litigation because both parties present arguments and evidence, including witnesses, to a neutral decision-maker.

Arbitration is an abbreviated, efficient means of resolving disputes, the outcome of which contractually has the force of a mandatory, binding determination.

**4. Early Neutral Evaluation**

In early neutral evaluation (ENE), a specially-trained lawyer who is an expert in the subject matter of the case gives the parties a non-binding assessment of the merits and may help with settlement discussions. The goals are to promote communication and provide a "reality check" about the claims and evidence, identify and clarity key issues in dispute, assist with discovery and information exchange and motion planning and help with settlement discussions if requested by the parties.

**5. Limited Scope ADR Counsel (if available in your district)**

Most cases are referred by the Court to go to ADR. In some jurisdictions, if you do not have a lawyer, you may request that the Court appoint a lawyer to you for the limited purpose of representing you at mediation. Although the scope of this representation is limited, the lawyer can engage in settlement discussions with the other side, request additional discovery that would assist in the mediation, and meet with you to prepare for your mediation.

**Please refer to Northern District of Ohio's Local Civil Rule 16.4 for more information on ADR.**

## MOTIONS FOR SUMMARY JUDGMENT (Rule 56)

A motion for summary judgment asks the Court to decide a lawsuit without going to trial because there are no disputes about the key facts of the case. When the parties agree on the facts, or if one party does not have enough evidence to support his or her case, the Court can decide the issues based on the papers that are filed by the parties. When the plaintiff files a motion for summary judgment, the goal is to show that the undisputed facts prove that the defendant violated the law. When defendants file a motion for summary judgment, the goal is to show that the undisputed facts prove that they did not violate the law. The overwhelming majority of summary judgment motions are filed by defendants.

Sometimes, a motion for summary judgment can address the whole lawsuit or individual claims. If the summary judgment motion addresses the whole lawsuit and the Court grants summary judgment, the lawsuit is over. If the Court denies a motion for summary judgment, it means that there is a dispute of material fact, and the case will go to trial unless the parties settle.

A motion for summary judgment must include a statement of undisputed facts. Each fact must be supported by admissible evidence, such as deposition testimony, affidavits, or relevant documents. If you need specific discovery in order to provide more evidence to the Court showing why summary judgment should not be granted, you can file, on or before the deadline for opposing the motion, a request under Rule 56(d) of the Federal Rules of Civil Procedure for additional time to conduct discovery. Your request must be accompanied by an affidavit or declaration clearly setting out (1) the reasons why you do not already have the evidence you need to defeat summary judgment and (2) exactly what additional discovery you need and how it relates to the pending motion for summary judgment.

## TRIAL

If a case has not settled or been dismissed following a motion for summary judgment, it is going to trial. You have to make pre-trial disclosures to the other party before trial, including expert witnesses and reports and witness and exhibit lists. Read Rule 26(a)(2) & (a)(3) for more detailed information. The following information is not meant to be all inclusive, and you should always consult the Federal Rules of Civil Procedure and the Local Rules to make sure you understand what the Court requires of the parties preparing for trial. You should also become familiar with the Federal Rules of Evidence, which govern the admission of evidence at trial.

### 1. Final Pretrial Conference

Prior to the actual trial, a pretrial conference is usually held between the judge and the parties (or their counsel) to determine (1) what exhibits and witnesses each side might use during the trial; (2) the approximate length of time that will be necessary for the trial and (3) the "ground rules" the Court will utilize before, during and after the trial.

### 2. Motions in Limine

Parties may argue motions in limine at the pretrial conference. These motions request that the Judge not allow certain facts to be admitted into evidence, such as insurance policies, criminal records, or other matters which are either not relevant to the particular case or which might unfairly influence the jury. Either party may file a motion in limine.

### 3. The Role of the Judge and Jury

If your case proceeds to trial, the parties will each get the opportunity to present their side of the case, and the Judge and jury (if the trial is a jury trial) are responsible for entering a verdict and judgment based on the evidence and arguments presented. It is the Judge's duty to see that only proper evidence and arguments are presented. In a jury trial, the Judge also instructs the jury,

which will be called upon at the conclusion of the jury trial to make decisions regarding factual matters in dispute. A judgment will then be entered based on the verdict reached by the jury.

If the parties have not requested a trial by jury, the judge becomes the trier of both law and fact. At the end of the trial, the Judge enters "Findings of Fact" and "Conclusions of Law," sometimes in writing, based on the evidence and arguments presented. A judgment is then entered based on those findings of fact and conclusions of law.

A jury trial begins with the Judge choosing prospective jurors to be called for voir dire (examination). The Court will determine the number of jurors.

Peremptory Challenges: Each party will be given a number of peremptory challenges which enable the party to reject (in most cases) prospective jurors without cause. This decision is based on subjective considerations of the party when he or she feels a prospective juror would be detrimental to his or her case.

Challenges for Cause: The plaintiff or defendant may also challenge a prospective juror "for cause" when the prospective juror lacks a qualification required by law, is not impartial, is related to either of the parties, or will not accept the law as given to him or her by the Court.

**4. Opening Statements**

After the jury is sworn in or "empaneled," each side may present an opening statement. The plaintiff has the burden of proving that he or she was wronged and suffered damages from that wrong and that the defendant caused those damages. The plaintiff is allowed to present the opening statement first. This may be followed by a statement by the defendant. The Court will determine the time to be allotted for opening and closing arguments.

### 5. Testimony of Witnesses

After opening statements are given, testimony of witnesses and documents are presented to the jury or the Court. The plaintiff presents his or her case first. After the initial examination of a witness (also known as "direct examination"), cross-examination is conducted by the other side. After a party has cross-examined a witness, the opposing side has the opportunity to conduct "redirect" examination in order to re-question the witness on the points covered by the cross-examination.

If a witness testifies as to a fact, and a statement or document in the case file contradicts that testimony, the document can then be used to question the witness on the accuracy of the witness' statements. If the evidence shows that the testimony of the witness is false, the witness is considered "impeached" by the cross-examination.

### 6. Motions During the Course of the Trial

Motion for Judgment as a Matter of Law: This motion is usually made by the defendant at the close of evidence presented by the plaintiff. It is based on the premise that the plaintiff has failed to prove his or her case. If this motion is granted, the trial is concluded in the movant's favor. If the Court denies the motion, the trial continues with presentation of the defendant's side.

Motion for Mistrial: Either party can move for a mistrial if, for example, during the course of the trial certain matters which are not admissible (such as those determined to be inadmissible in a prior motion in limine) are presented by any witness, either purposely or unintentionally, in the presence of the jury. If the Judge grants the motion for mistrial, the trial is immediately ended and the jury is dismissed.

Objections: During the examination of a witness, one side may "object" to the questioning or testimony of a witness, or presentation of evidence, if the litigant believes that the testimony or

evidence about to be given should be excluded. If the objection is sustained by the Judge, that particular testimony or evidence is excluded. If the objection is overruled by the Judge, the testimony or evidence may be given despite the objection. Check the Federal Rules of Evidence to make sure you know the proper grounds for making an objection.

**7. Closing Arguments**

Closing arguments to the jury set out the facts that each side has presented and the reasons why each party believes the jury should find in favor of him or her. Time limits are sometimes set by the Court for closing arguments, and each side must adhere to the specified time.

**8. Charge to the Jury**

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

**9. Judgment**

Following the entry of the jury's verdict, judgment in favor of the prevailing party is entered by the Clerk. If costs are awarded to the prevailing party, it is necessary to prepare a "bill of costs" for the approval of the Court. A bill of costs sets forth those costs that were incurred in the suit. A prevailing party may serve a bill of costs within thirty (30) days after entry of a judgment. If attorney's fees are awarded, an application for attorney's fees must be made by motion filed no later than fourteen (14) days after entry of judgment. See Fed. R. Civ. P. 54(d)(2).

## APPEAL

If you are unhappy with the ultimate disposition of your action, you may appeal that determination to the United States Court of Appeals. Grounds for an appeal usually consist of allegations that the Judge made an error either in interpreting or applying the law or in a procedural ruling during the course of the case. Any error must have been sufficiently significant that the Judge or jury reached an incorrect result because of the error.

In general, only final orders or judgments of the district court may be appealed. 28 U.S.C. § 1291. This kind of appeal is called an appeal as of right. Most orders issued before judgment ("interlocutory orders") cannot be appealed until a final judgment is entered. Some of the few interlocutory orders that can be appealed are listed under 28 U.S.C. § 1292. A final order or judgment is the document which announces the final decision with respect to your case (that is, whether you won or lost) and closes the case with the district court. In order to appeal, a final order or judgment should be entered on the docket of your case.

**Timing.** An appeal must be filed within **30 DAYS AFTER ENTRY OF JUDGMENT** (or order being appealed). Exceptions to this rule are few. If you plan to appeal, it is very important to calendar this deadline and meet it. The process for starting an appeal is the filing of a notice of appeal in the District Court together with a filing fee. The fee may be waived under certain conditions. See Rule 24 of the Federal Rule of Appellate Procedure. The Clerk's Office then transmits the appeal and the case file to the Court of Appeals, which opens a new file with a new case number; all proceedings on appeal are then handled by the judges and the clerk of the Court of Appeals.

## GLOSSARY OF COMMON LEGAL TERMS[12]

**ACTION:** Another term for lawsuit or case.

**ADMISSIBLE EVIDENCE:** Evidence that can properly be introduced at trial for the judge or jury to consider in reaching a decision; the Federal Rules of Evidence govern the admissibility of evidence in federal court.

**ADR (ALTERNATIVE DISPUTE RESOLUTION)**: A Court-sponsored program offering methods by which a complaint can be resolved outside of traditional court proceedings.

**ADJOURN, ADJOURNMENT:** To bring a proceeding to an end, such as a court calendar or trial.

**AFFIDAVIT:** A statement of fact written by a witness, which the witness affirms to be true before a notary public.

**AFFIRMATIVE DEFENSES:** Allegations included in the answer that, under legal rules, defeat all or a portion of the plaintiff's claim.

**ALLEGATION:** An assertion of fact in a complaint or other pleading.

**AMEND (A DOCUMENT):** To alter or change a document that has been filed with the Court, such as a complaint or answer, by filing and serving a revised version of that document. Certain documents cannot be amended without prior approval of the Court.

**AMENDED PLEADING (COMPLAINT OR ANSWER):** A revised version of the original complaint or answer that has been filed with the Court.

**AMOUNT IN CONTROVERSY:** The dollar value of how much the plaintiff is asking for in the complaint. ANSWER: The written response to a complaint. An "answer on the merits" challenges the complaint's factual accuracy.

**APPEAL:** To seek formal review of a district court judgment by the Court of Appeals.

**APPLICATION TO PROCEED *IN FORMA PAUPERIS* (IFP):** A form filed by the plaintiff asking permission to file the complaint without paying the entire filing fee at the start of the case, but instead to pay in installments. The plaintiff must establish an inability to pay the whole fee.

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[12] This Glossary was borrowed from the United States District Court for the Northern District of California's handbook titled "Representing Yourself in Federal Court: A Handbook for *Pro Se* Litigants," drafted by Susan Y. Soong, Clerk of Court, 2017 Edition.

**ARBITRATION:** A form of alternative dispute resolution, overseen by a judge or arbitrator, in which the parties argue their positions in a trial-like setting that lacks some of the formalities of a full trial.

**ARBITRATOR:** The neutral third party who presides at arbitration, usually an attorney.

**AWARD:** The sum of money or other relief to which an arbitrator rules the winning party in an arbitration is entitled.

**BENCH TRIAL:** A trial in which the judge, rather than the jury, determines the law, the facts, and the verdict of the lawsuit. A bench trial is also known as a "court trial."

**BREACH:** Failure to perform a legal obligation.

**BRIEF:** A document filed with the Court arguing for or against a motion.

**BURDEN OF PROOF:** Under legal rules, one party or the other bears responsibility for proving or disproving one or more elements of a claim. What must be proven or disproven is the burden of proof.

**CAPTION:** A formatted heading on the first page of every document filed with the Court, listing the parties, the name of the case, and other identifying information. The specific information that must be included in the caption is explained in Rule 10(a) of the Federal Rules of Civil Procedure.

**CAPTION PAGE:** The cover page of the document containing the caption. It is always the first page of any document a party to a lawsuit files with the Court.

**CASE:** Another term for lawsuit or action.

**CASE FILE:** A file in which the original of every document manually filed with the Court is kept. E-filed documents are generally not placed in the case file.

**CASE MANAGEMENT CONFERENCE (CMC):** A court proceeding at which the judge, with the help of the parties, sets a schedule for various events in the case.

**CASE MANAGEMENT ORDER:** The Court's written order scheduling certain events in the case.

**CASE MANAGEMENT STATEMENT:** A statement filed by the parties providing information to be discussed at the case management conference.

**CERTIFICATE OF SERVICE:** A document showing that a copy of a particular document — for example, notice of motion — has been mailed or otherwise provided to (in other words, "served on") all of the other parties in the lawsuit.

**CHALLENGE FOR CAUSE:** A request by a party that the Court excuse a juror whom they believe to be too biased to be fair and impartial, or unable perform his or her duties as a juror for other reasons.

**CHAMBERS:** The private offices of an individual judge and the judge's "chambers staff"—usually an administrative assistant and law clerks.

**CHAMBERS COPY:** A paper copy of a case document delivered to the Court for the judge's use.

**CITATION:** A reference to a law, rule, or case.

**CLAIM:** A statement made in a complaint, in which the plaintiff(s) argue that the defendant(s) violated the law in a specific way; sometimes called a count.

**CLOSING ARGUMENTS:** An oral statement by each party summarizing the evidence and arguing how the jury (or, in a bench trial, the judge) should decide the case.

**COMPLAINT:** A legal document in which the plaintiff tells the Court and the defendant how and why the defendant violated the law in a way that has caused harm to the plaintiff.

**COMPULSORY COUNTERCLAIM:** A claim by the defendant against the plaintiff that is based on the same events or transactions as the plaintiff's claim against the defendant.

**CONTEMPT OF COURT:** Acts found by the Court to be committed in willful violation of the Court's authority or dignity, or to interfere with or obstruct its administration of justice.

**CONTINUANCE:** An extension of time ordered by the Court.

**COUNSEL:** Attorney(s); lawyer(s).

**COUNT:** A term sometimes used instead of claim.

**COUNTERCLAIM:** A defendant's complaint against the plaintiff, filed in the plaintiff's case.

**COURT OF APPEALS:** A court that hears appeals from the district courts located within its circuit, as well as appeals from decisions of federal administrative agencies.

**COURT REPORTER:** A person specially trained and licensed to record testimony in the courtroom or, in the case of depositions, another location.

**COURTROOM DEPUTY:** A Court employee who assists the judge in the courtroom and usually sits at a desk in front of the judge.

**COURT TRIAL:** A trial (also known as a "bench trial") in which the judge, rather than the jury, determines the law, the facts, and the verdict of the lawsuit.

**CROSSCLAIM:** A new claim bringing a new party into the case or asserting a claim against a co-party (by a plaintiff against a co-plaintiff or by a defendant against a co-defendant).

**CROSS-EXAMINATION:** The opposing party's questioning of a witness following direct examination, generally limited to the topics covered during the direct examination.

**DAMAGES:** The money that can be recovered in the courts by the plaintiff for the plaintiff's loss or injury due to the defendant's violation of the law.

**DELIBERATE:** The process in which the jury discusses the case in private and makes a decision about the verdict. See also jury deliberations.

**DE NOVO REVIEW:** A Court's complete review and re-determination the matter before it from the beginning; for example, a referring judge's de novo review of a magistrate judge's report and recommendation includes considering the same evidence reviewed by the magistrate judge and reaching an independent conclusion.

**DECLARATION:** A written statement signed under penalty of perjury by a person who has personal knowledge that what he or she states is true; declarations may contain only facts and may not contain law or argument. The person who signs a declaration is called a declarant.

**DEFAULT:** A defendant's failure to file an answer or other response within the required amount of time, after being properly served with the complaint.

**DEFAULT JUDGMENT:** A judgment entered against a defendant who fails to respond to the complaint.

**DEFENDANT:** The person, company or government agency against whom the plaintiff makes claims in the complaint.

**DEFENDANT'S TABLE:** The table where the defendant sits, usually the one further from the jury box.

**DEFENSES:** The reasons given by the defendant why the plaintiff's claims should be dismissed.

**DEPONENT:** The person who answers the questions in a deposition; a deponent can be any person who may have information about the lawsuit, including one of the other parties to the lawsuit.

**DEPOSITION:** A question-and-answer session, before trial and outside the courtroom, in which one party to the lawsuit asks another person, who is under oath, questions about the events and issues in the lawsuit. The process of taking a deposition is called deposing.

**DEPOSITION NOTICE:** A notice served on the deponent specifying the time and place of the deposition.

**DEPOSITION SUBPOENA:** See subpoena.

**DIRECT EXAMINATION:** The process during a trial in which a party calls witnesses to the witness stand and asks them questions.

**DISCLOSURES:** Information that each party must automatically give the other parties in a lawsuit.

**DISCOVERY:** The formal process by which a party to a lawsuit asks other people to provide information about the events and issues in the case.

**DISCOVERY PLAN:** The joint proposed discovery plan required by Rule 26(a) of the Federal Rules of Civil Procedure, which must include the parties' views about, and proposals for, how discovery should proceed in the lawsuit.

**DISTRICT JUDGE:** A federal judge who is nominated by the President of the United States and confirmed by the United States Senate to a lifetime appointment.

**DIVERSITY JURISDICTION:** A basis for federal court jurisdiction in lawsuits in which none of the plaintiffs reside in the same state as any of the defendants and the amount in controversy exceeds $75,000.

**DOCKET:** The computer file for each case, maintained by the Court, listing the title of every document filed, the date of filing and docketing of each document and other information.

**DOCKET CLERK:** Also known as "case systems administrator," a court staff member who enters documents and case information into the court docket.

**ELECTRONIC CASE FILING (ECF):** Also known as "e-filing," the process of submitting documents to the Court for filing and serving them on other parties electronically through the Internet. The United States Courts use an e-filing system called "Electronic Case Filing" or "ECF."

**ECF HELPDESK**: A court staff member with ECF expertise who helps ECF users with technical problems (by phone or email).

**ELEMENT (OF A CLAIM OR DEFENSE):** An essential component of a legal claim or defense.

**ENTRY OF DEFAULT:** A formal action taken by the Clerk of Court in response to a plaintiff's request when a defendant has not responded to a properly served complaint; the Clerk must enter default against the defendant before the plaintiff may file a motion for default judgment.

**EVIDENCE:** Testimony, documents, recordings, photographs and physical objects that tend to establish the truth of important facts in a case.

**EX PARTE MOTION:** A motion that is filed without notice to the opposing party.

**EX PARTE:** Without notice to the other parties and without their being present (as in a written or telephone communication with the Court).

**EXHIBITS:** Documents or other materials that are presented as evidence at trial or as attachments to motions or declarations.

**EXPERT DISCLOSURES:** The disclosures required by Rule 26(a)(2) to the other parties of the identity of, and additional information about, any expert witnesses who will testify at trial.

**EXPERT REPORT:** A written report signed by an expert witness that must accompany the expert disclosures for any expert witness; Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure lists what must be included in an expert report.

**EXPERT WITNESS:** A person who has scientific, technical, or other specialized knowledge that can help the Court or the jury understand the evidence.

**FEDERAL QUESTION JURISDICTION:** Federal courts are authorized to hear lawsuits in which at least one of the plaintiff's claims arises under the Constitution, laws, or treaties of the United States.

**FEDERAL RULES OF CIVIL PROCEDURE:** The procedural rules that apply to every federal district court in the United States.

**FEDERAL RULES OF EVIDENCE:** The rules for submitting, considering and admitting evidence in the federal courts.

**FILING:** The process by which documents are submitted to the Court and entered into the case docket.

**FILING FEE:** The amount of money the Court charges the plaintiff to file a new lawsuit.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW:** A statement issued by a judge explaining what facts he or she has found to be true and the legal consequences to be included in the judgment; it concludes a bench trial once all evidence has been submitted and all arguments have been presented.

**FRAUD:** The act of making a false representation of a past or present fact on which another person relies, resulting in injury (usually financial).

**GOOD FAITH:** Having honesty of intention; for example, negotiating in good faith would be to come to the table with an open mind and a sincere desire to reach an agreement.

**GROUNDS:** The reason or reasons for requesting action by the Court.

**HEARING:** A formal proceeding before the judge for the purpose of resolving one or more issues.

**HEARSAY:** A statement offered to prove the truth of the matter asserted in the statement.

**IMPEACHMENT:** To call into question a witness's truthfulness or credibility.

***IN FORMA PAUPERIS* (IFP):** See application to proceed *in forma pauperis*.

**IN PROPRIA PERSONA:** Often shortened to "*pro se*;"- representing oneself; Latin for "in his or her own person."

**INITIAL DISCLOSURES:** The disclosures that the parties are required to serve within 14 days of their initial case management conference.

**INTERLOCUTORY ORDER:** Court orders issued before judgment.

**INTERROGATORIES:** Written questions served on another party in the lawsuit, which must be answered (or objected to) in writing and under oath. I

**ISSUE SUMMONS:** What the Clerk of Court must do before a summons is valid for service on a defendant.

**JOINT CASE MANAGEMENT CONFERENCE (CMC) STATEMENT:** A court-approved form the parties are asked to complete jointly and file before the initial case management conference.

**JUDGMENT:** A final document issued by the Court stating which party wins on each claim. Unless there are post-judgment motions, the entry of judgment closes the case.

**JURISDICTION:** See diversity jurisdiction and subject matter jurisdiction.

**JURY BOX:** The rows of seats, usually located against a side wall in a courtroom and separated from the well of the courtroom by a divider, where the jury sits during a trial.

**JURY DELIBERATIONS:** The process in which the jury, after having heard all the evidence, closing arguments from the parties, and instructions from the judge, meets in private to decide the case.

**JURY INSTRUCTIONS:** The judge's directions to the jury about its duties, the law that applies to the lawsuit, and how it should evaluate the evidence.

**JURY SELECTION:** The process by which the individual members of the jury are chosen.

**JURY TRIAL:** A trial in which a jury weighs the evidence and determines what happened; the Court instructs the jury on the law, and the jury applies the law to the facts and determines who wins the lawsuit.

**LAW LIBRARY:** A special library containing only legal materials, usually staffed by a specially trained librarian.

**LECTERN:** The stand for holding papers in front of the bench in the courtroom where an attorney or *pro se* party making arguments on a motion stands and speaks to the judge.

**LITIGANTS:** The parties to a lawsuit.

**LOCAL RULES:** Specific federal court rules that set forth additional requirements to the Federal Rules of Civil Procedure that only apply to the specific District Court deciding your case.

**MAGISTRATE JUDGE:** A judicial officer who is appointed by the Court for an 8-year, renewable term and has some, but not all, of the powers of a district judge. A magistrate judge may handle civil cases from start to finish if all parties consent. In non-consent cases, a magistrate judge may hear motions and other pretrial matters assigned by a district judge.

**MANUAL FILING:** A filing of a paper document at the Clerk's Office instead of by electronic filing/e-fling.

**MATERIAL FACT:** A fact that must be proven to establish and element of a claim or defense in the lawsuit.

**MEDIATION:** An ADR process in which a trained mediator helps the parties talk through the issues in the case to seek a negotiated resolution of all or part of the dispute.

**MEET AND CONFER:** The parties meeting and working together to resolve specific issues under Court rules or a Court order.

**MENTAL EXAMINATION:** See physical or mental examination.

**MOTION:** A formal application to the Court asking for a specific ruling or order (such as dismissal of the plaintiff's lawsuit).

**MOTION FOR A MORE DEFINITE STATEMENT:** Defendant argues that the complaint is so vague, ambiguous, or confusing that he or she cannot respond to it and asks for additional details.

**MOTION FOR A NEW TRIAL:** Argues that another trial should be held because of a deficiency in the current trial.

**MOTION FOR A PROTECTIVE ORDER:** Asks the Court to relieve a party of the obligation to respond to a discovery request or grant more time to respond.

**MOTION FOR DEFAULT JUDGMENT:** Asks the Court to grant judgment in favor of the plaintiff because the defendant failed to file an answer to the complaint. If the court grants the motion, the plaintiff wins the case.

**MOTION FOR JUDGMENT AS A MATTER OF LAW:** Argues that the opposing party's evidence is so legally deficient that no jury could reasonably decide the case in favor of that party. The defendant may bring such a motion after the plaintiff has presented all evidence, and after all the evidence has been presented, either party may bring such a motion; if the Court grants the motion, the case is over.

**MOTION FOR LEAVE TO FILE A MOTION FOR RECONSIDERATION:** Asks the Court to change a decision it has already made. A party must ask the Court for permission to file such a motion.

**MOTION FOR RECONSIDERATION:** Asks the Court to consider changing a previous decision; cannot be filed without the permission of the Court.

**MOTION FOR RELIEF FROM JUDGMENT OR ORDER:** Asks the Court to rule that a judgment or order should not be given effect or should be changed for one of the reasons permitted by Rule 60(b) of the Federal Rules of Civil Procedure.

**MOTION FOR SANCTIONS:** Asks the Court to impose a penalty on a party; for example, in the context of discovery, a motion for sanctions asks the Court to punish a person for failing to make required disclosures, refusing to respond to a discovery request, or refusing to obey a court order to respond to a discovery request.

**MOTION FOR SUMMARY JUDGMENT:** Asks the Court to decide a lawsuit without a trial because the evidence shows that there is no real dispute about the key facts.

**MOTION IN LIMINE:** A motion asking the judge to settle an issue relating to the trial, usually argued shortly before the beginning of trial.

**MOTION TO AMEND OR ALTER THE JUDGMENT**: After entry of judgment, asks the Court to correct what a party argues is a mistake in the judgment.

**MOTION TO COMPEL**: Asks the Court to order a person to make disclosures, or to respond to a discovery request, or to provide more detailed disclosures or a more detailed response to a discovery request.

**MOTION TO DISMISS:** Asks the Court to deny certain claims in the complaint for procedural or legal reasons.

**MOTION TO EXTEND TIME:** A motion asking the Court to allow more time to file a brief or comply with a court order; also referred to as a continuance.

**MOTION TO SET ASIDE DEFAULT/DEFAULT JUDGMENT:** A defendant against whom default or default judgment has been entered may bring this motion in order to be allowed to appear in the suit and respond to the complaint.

**MOTION TO SHORTEN TIME:** Asks the Court to hear a motion on a shorter-than-usual schedule.

**MOTION TO STRIKE:** A motion asking the Court to order certain parts of the complaint or other pleading deleted because they are redundant, immaterial, impertinent, or scandalous.

**MOVING PARTY:** The party who files a motion.

**NON-BINDING ARBITRATION:** An alternative dispute resolution process in which a neutral third party (an arbitrator) gives a decision on the complaint after a hearing at which both parties have an opportunity to be heard; the parties are not required to abide by the decision.

**NON-MOVING PARTY:** Usually used in the context of a motion for summary judgment; any party who is not bringing the motion.

**NON-PARTY DEPONENT:** A deponent who is not a party to the lawsuit.

**NON-PARTY WITNESS:** A person who is not a party to the lawsuit but who has relevant information.

**NOTICE OF ELECTRONIC FILING (NEF):** An email generated by the ECF system that is sent to every registered attorney, party and watcher associated with a case every time a new document is filed. The NEF contains details about the filing and a hyperlink to the new document.

**NOTICE OF DEPOSITION:** Gives all the information required under Rules 30(b) and 26(g)(1) of the Federal Rules of Civil Procedure and must be served on opposing parties to a lawsuit.

**NOTARY PUBLIC:** A public officer who is authorized by the state or federal government to administer oaths and to attest to the authenticity of signatures.

**NOTICE OF MOTION:** A statement in the first paragraph of a motion telling the other parties what type of motion you have filed and when you have asked the Court to hold a hearing on the motion.

**OBJECTION:** The formal means of challenging evidence on the ground that it is not admissible.

**ON THE PAPERS:** A judge may decide to render a decision on a motion “on the papers” rather than holding a hearing in the courtroom; in such a case, the judge will vacate the hearing.

**OPENING STATEMENTS:** At the beginning of the trial, after the jury has been selected, if it is a jury trial, the parties have an opportunity to make individual opening statements, in which they can describe the issues in the case and state what they expect to prove during the trial.

**OPPOSING PARTY:** In the context of motions, the party against whom a motion is filed; more generally, the party on the other side.

**OPPOSITION, OPPOSITION BRIEF**: A filing that consists of a brief, often accompanied by evidence, filed with the court containing facts and legal arguments that explain why the Court should deny the motion.

**OVERRULE AN OBJECTION:** During examination of witnesses at trial, if a party objects to evidence being admitted or a question being asked, the judge may overrule the objection. This means that the evidence will be admitted, or the question may be asked, unless the judge later sustains a different objection.

**PACER SYSTEM:** "Public Access to Electronic Court Records" is an internet database where docket information is stored.

**PEREMPTORY CHALLENGE:** During jury selection, after all the jurors challenged for cause have been excused, the parties will have an opportunity to request that additional jurors be excused without having to give any reason for the request

**PERJURY:** A false statement made under oath, punishable as a crime.

**PERMISSIVE COUNTERCLAIM:** A claim by the defendant against the plaintiff that is not based on the same events or transactions as the plaintiff's claim against the defendant.

**PHYSICAL OR MENTAL EXAMINATION:** If the physical or mental condition of a party (or a person under the custody or legal control of a party) is at issue in a lawsuit, the Court may order that person to have a physical or mental examination by a medical professional such as a physician or psychiatrist; unlike other discovery procedures, physical or mental examinations can be obtained only by filing a motion with the court, or by agreement of the parties.

**PLEADINGS, PLEADING PAPER:** Formal documents that are filed with the court, especially initial filings such as complaints and answers. Pleadings and most other court filings are written on pleading paper, which in this Court is letter-sized paper with the line numbers 1 through 28 running down the left side.

**PLAINTIFF:** The person who filed the complaint and claims to be injured by a violation of the law.

**PLAINTIFF'S TABLE:** In the center of the courtroom, there are two long tables and chairs where the lawyers and parties sit during hearings and trial; the table nearest the jury box is usually the plaintiff's.

**PRAYER FOR RELIEF:** The last section of a complaint, in which the plaintiff tells the Court what the plaintiff wants from the lawsuit, such as money damages, an injunction, or other relief.

**PRETRIAL CONFERENCE:** A hearing shortly before trial where the judge discusses the requirements for conducting trial and resolves any final issues that have arisen before trial.

**PRETRIAL DISCLOSURES:** The disclosures required by Rule 26(a) (3) of the Federal Rules of Civil Procedure of certain information about evidence that you may present at trial (except for evidence that will be used solely for impeachment).

**PRIVILEGED INFORMATION:** Information that is protected by legal rules from disclosure during discovery and trial.

**PRO BONO REPRESENTATION:** Legal representation by an attorney that is free to the person represented.

***PRO SE*:** A Latin term meaning "for oneself." A *pro se* litigant is a party without a lawyer handling a case in court.

**PROCEDURAL RULES:** The rules parties must follow for bringing and defending against a lawsuit in court.

**PROCESS SERVER:** A person authorized by law to serve the complaint and summons on the defendant.

**PROOF OF SERVICE:** A document attached to each document filed with the court (or filed separately at the same time as the document) in which the filer affirms that he or she has served the document on other parties.

**PROPOSED ORDER (OR OTHER DOCUMENT):** A document a party is required by court rules to submit with a filing such as a motion that can serve as the final order if the judge crosses off the word "proposed" and signs at the bottom.

**PROTECTIVE ORDER:** A court order limiting discovery, either as to how discovery may be conducted or what can be discovered.

**QUASH A SUBPOENA:** After a motion, the Court's action vacating a subpoena so that it has no legal effect.

**REBUTTAL:** The final stage of presenting evidence in a trial, presented by the plaintiff.

**TESTIMONY:** At trial, after defendants have completed examining each of their witnesses, plaintiffs can call additional witnesses solely to counter — or "rebut" — testimony given by the defendants' witnesses.

**RE-DIRECT EXAMINATION:** At trial, after the opposing party has cross-examined a witness, the party who called the witness may ask the witness questions about topics covered during the cross-examination.

**REFERRING JUDGE:** A federal district judge who refers an issue or motion within a lawsuit to another judge, usually a magistrate judge.

**REFERRAL JUDGE:** A United States magistrate judge assigned to handle an issue, proceeding or motion within a case assigned to a federal district judge.

**REMEDIES:** In the context of a civil lawsuit, remedies are actions the Court may take to redress or compensate a violation of rights under the law.

**RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW:** A motion arguing that the jury must have made a mistake in its verdict because the evidence was so one-sided that no reasonable jury could have reached that decision.

**REPLY:** Refers to both the answer to a counterclaim and the response to the opposition to a motion.

**REPLY BRIEF:** A document responding to the opposition to a motion.

**REPORT AND RECOMMENDATION:** After a federal district judge refers an issue for factual and legal findings by a magistrate judge, the magistrate judge files a report and recommendation containing those findings.

**REQUEST FOR ADMISSION:** A discovery request that a party admit a material fact or element of a claim.

**REQUEST FOR ENTRY OF DEFAULT:** The first step for the plaintiff to obtain a default judgment by the Court against a defendant; directed to the Clerk of Court, the request must show that the defendant has been served with the complaint and summons, but has not filed a written response to the complaint in the required time.

**REQUEST FOR INSPECTION OF PROPERTY:** A discovery request served on a party in order to enter property controlled by that party for the purpose of inspecting, measuring, surveying, photographing, testing or sampling the property or any object on the property relevant to your lawsuit.

**REQUEST FOR PRODUCTION (OF DOCUMENTS, ETC.):** A common discovery request served by a party seeking documents or other items relevant to the lawsuit from another party.

**REQUEST FOR PRODUCTION OF TANGIBLE THINGS:** A discovery request served on a party in order to inspect, copy, test, or sample anything relevant to your lawsuit which is in the possession, custody, or control of another party to the lawsuit.

**REQUEST FOR WAIVER OF SERVICE:** A written request that the defendant accept the summons and complaint without formal service.

**REQUESTS FOR ADMISSION:** A discovery request served on a party asking that the party admit in writing and under oath the truth of any statement, or to admit the applicability of a law to a set of facts.

**RULING FROM THE BENCH:** A Court's announcing its decision on a motion in the courtroom following the hearing on that motion.

**SANCTION:** A punishment the Court may impose on a party or an attorney for violating the Court's rules or orders.

**SELF-AUTHENTICATING:** Documents that do not need any proof of their genuineness beyond the documents themselves, in order for them to be admissible evidence in accord with Rule 902 of the Federal Rules of Evidence.

**SERVE, SERVICE:** The act of providing a document on a party in accord with the requirements found in Rules 4 and 5 of the Federal Rules of Civil Procedure.

**SERVICE OF PROCESS:** The formal delivery of the original complaint in the lawsuit to the defendant in accord with the requirements for service found in Rule 5 of the Federal Rules of Civil Procedure.

**SETTLEMENT CONFERENCE:** A proceeding usually held in a magistrate judge's chambers in which the judge works with the parties toward a negotiated resolution of part or all of the case.

**SIDE BAR:** A private conference beside the judge's bench between the judge, and the lawyers (or self-represented parties) to discuss any issue out of the jury's hearing.

**SPEAKING MOTION:** A motion first made in the courtroom without motion papers being filed first.

**STANDING ORDERS:** An individual judge's orders setting out rules and procedures, in addition to those found in the Federal Rules of Civil Procedure and the Civil Local Rules, that apply in all cases before that judge. You can find them on the district court judge's webpage.

**STATEMENT OF NON-OPPOSITION:** A party's written notice that it does not oppose another party's motion.

**STATEMENT OF UNDISPUTED FACTS:** A list of facts filed in a summary judgment motions with citations to the evidence showing that those facts are true. The statement may be jointly prepared and filed by the parties; separate statements require a prior court order.

**STATUS CONFERENCE**: A hearing the judge may hold during the course of the lawsuit to assess the progress of the case, or address problems the parties are having.

**STATUTE OF LIMITATIONS:** A legal time limit by which the plaintiff must file a complaint; after the time limit, the complaint may be dismissed as time barred.

**STIPULATION:** A written agreement signed by all the parties to the lawsuit or their attorneys.

**STRIKE:** To order claims or parts of documents "stricken" or deleted so that they cannot be part of the lawsuit or proceeding.

**SUBJECT MATTER JURISDICTION:** A federal court has subject matter jurisdiction only as defined by Congress over cases arising under the Constitution, treaties or laws of the United States and diversity cases in which the parties are from different states and the amount in controversy is greater than $75,000.

**SUBPOENA:** A document issued by the Court requiring a non-party to appear for a court proceeding or deposition at a specific time and place or to make certain documents available at a specific time and place.

**SUBPOENA DUCES TECUM:** A form of subpoena used to require a non-party deponent to bring specified documents to a deposition.

**SUBSTANTIVE LAW:** Determines whether the facts of each individual lawsuit constitute a violation of the law for which the Court may order a remedy.

**SUMMARY JUDGMENT:** After a motion, a decision by the Court to enter judgment in favor of one of the parties without a trial, because the evidence shows that there is no real dispute about the material facts.

**SUMMONS:** A document from the Court that you must serve on the defendant along with your original complaint to start your lawsuit.

**SUSTAIN AN OBJECTION:** To affirm that an objection is correct, and evidence should be excluded.

**TABLE OF AUTHORITIES:** The list of references to law that should be included with every brief usually more than 10 pages long.

**TAKING A MOTION UNDER CONSIDERATION (OR UNDER SUBMISSION**): The Court's taking time to consider the motion and write an order after hearing arguments on the motion instead of ruling on the motion in the courtroom.

**TRANSCRIPT:** The written version of what was said during a court proceeding or deposition as typed by a court reporter or court stenographer.

**TRIAL SUBPOENA:** A type of subpoena that requires a witness to appear to testify at trial on a certain date.

**UNDISPUTED FACT:** A fact about which all the parties agree.

**VACATE:** To set aside a Court order so that the order has no further effect, or to cancel a scheduled hearing or trial.

**VENUE:** The geographic location where the lawsuit is filed.

**VERDICT:** The jury's final decision about the issues in the trial.

**VERDICT FORM:** In a jury trial, the form the jury fills out to record the verdict.

**VOIR DIRE:** Part of the jury selection process in which potential jurors are asked questions designed to reveal biases that would interfere with fair and impartial jury service; the judge may ask questions from a list the parties have submitted before trial and may also allow the lawyers (or parties without lawyers) to ask additional questions.

**WAIVER OF SERVICE, WAIVING SERVICE:** A defendant's written, signed agreement that he or she does not require a document (usually the complaint) to be served on him or her in accordance with the formal service requirements of Rule 5 of the Federal Rules of Civil Procedure.

**WITH PREJUDICE:** As a final decision on the merits of the claim. If a court dismisses claims in your complaint with prejudice, you may not file another complaint in which you assert those claims again.

**WITHOUT PREJUDICE:** Without a final decision on the merits which would prevent the claim from being re-filed. Dismissal without prejudice is sometimes also referred to as dismissal "with leave to amend" because you are permitted to file an amended complaint or other document.

**WITNESS:** A person who has personal or expert knowledge of facts relevant to a lawsuit.

**WITNESS BOX:** The seat in which a witness sits when testifying in court, usually located to the side of the bench.