UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Representing Yourself in Federal Court: A Handbook for Pro Se Litigants in Civil Litigation

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This Handbook was first developed in 2011 through a collaborative effort among members of the private bar, law student interns assisting the Court, and Judges and staff attorneys of the United States District Court for the Northern District of California. This Handbook was later adapted for use in the United States District Court for the District of Columbia. The Court thanks the Northern District of California for allowing it to adapt the Handbook for use by this Court.

The District Court for the District of Columbia's Advisory Committee on Pro Se Litigation is responsible for maintaining and updating this Handbook.

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INTRODUCTION

This Handbook is designed to help people without lawyers deal with civil lawsuits in federal court. Proceeding without a lawyer is called proceeding "*pro se*," a Latin phrase meaning "for oneself," or sometimes "**in propria persona**," meaning "in his or her own person."[1] Representing yourself in a lawsuit can be complicated, time consuming, and costly, particularly if you are not familiar with court rules and procedures. For these reasons, you are urged to work with a lawyer, if possible. Chapter 2 gives suggestions on finding a lawyer.

Do not rely entirely on this Handbook. This Handbook provides a summary of civil procedures, but may not cover all procedures that may apply in your **case**. In addition, this Handbook does not teach you about the laws that will control your case. Make sure you read the applicable laws and also the applicable federal and local court rules (see Chapter 3), and that you do your own research at a **law library** or online.

Tips For Handling Your Own Case

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

1. **Read everything you get from the Court and the other parties in your case right away**, including the papers you get from the **Clerk's Office** when you file your **complaint** or other documents. It is very important that you know what is happening 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. Turning things in on time is more important than doing everything perfectly. You can lose your case if you miss deadlines. Although the Judge may not grant your request, if you need more time to do something, you may ask the Judge in writing for more time as soon as you know that you will need it and before the deadline has passed. If the Judge grants a request for an extension of time, he or she typically issues an order setting a new deadline.
3. **Use your own words and be as clear as possible**. You do not need to try to sound like a lawyer. In your papers, be specific about the facts that are important to the lawsuit.
4. **Always keep all of your paperwork and stay organized**. Keep copies of everything you send out and/or file with the **Court**. 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 so that you can use them to work on your case.
5. **Where possible, have someone else read your papers before you turn them in**. 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 telephone number**. If your contact information changes, notify the Clerk's Office in writing immediately. Always include your case number on any paperwork you submit to the Court.
7. **Omit certain personal identifying information from documents submitted to the Court for filing**. Documents filed with the Court typically will be available to the public on the Internet. Protect your privacy and do *not* include social security and taxpayer identification numbers, names of minor children, dates of birth, and financial account numbers.
8. **Treat Court staff, opposing parties and their lawyers, the Judge, and the process with respect.** While you can (and should) argue your case strongly, always conduct yourself civilly and avoid disruptive behavior and personal attacks. Judges can impose penalties against you, including fines, for inappropriate conduct.

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[1] Words appearing in this bold format are defined in the Glossary at the end of this Handbook.

CHAPTER 1
WHAT SHOULD I THINK ABOUT BEFORE FILING A LAWSUIT?

To begin a lawsuit, you have to file a **complaint**, which is a written explanation of your **claim.** The party who starts a civil lawsuit by **filing** a complaint is called the **plaintiff.** The party being sued is the **defendant.** Both are called **litigants** or parties to a lawsuit. A complaint gives formal notice of your lawsuit to the defendant and the **Court**.

To Be Heard In This Federal Court, Your Case Has To Meet All Of These Requirements:

1. **You must have a legal claim**.

   You have a legal claim if (a) someone broke a law, AND, as a result, (b) you were personally harmed. You usually cannot sue on the basis of someone else being harmed.

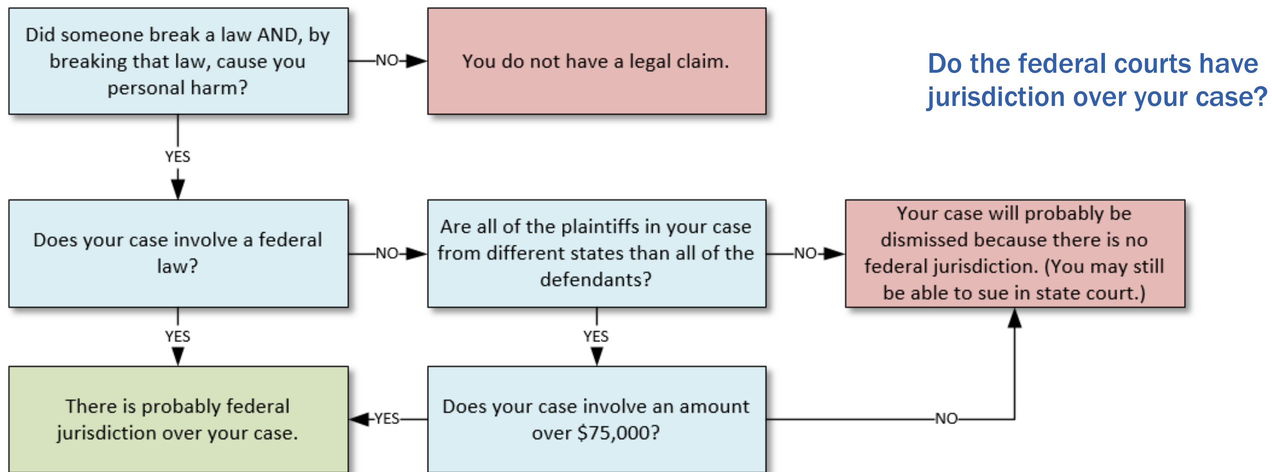
2. **You must sue in the correct court**.

   a. Federal courts can only decide certain kinds of **cases**:

      i. Cases involving federal law — not state or District of Columbia law (**subject matter jurisdiction**) OR

      ii. Cases in which all the plaintiffs and all the defendants live in different states AND the **amount in controversy** is more than $75,000 (**diversity jurisdiction).**

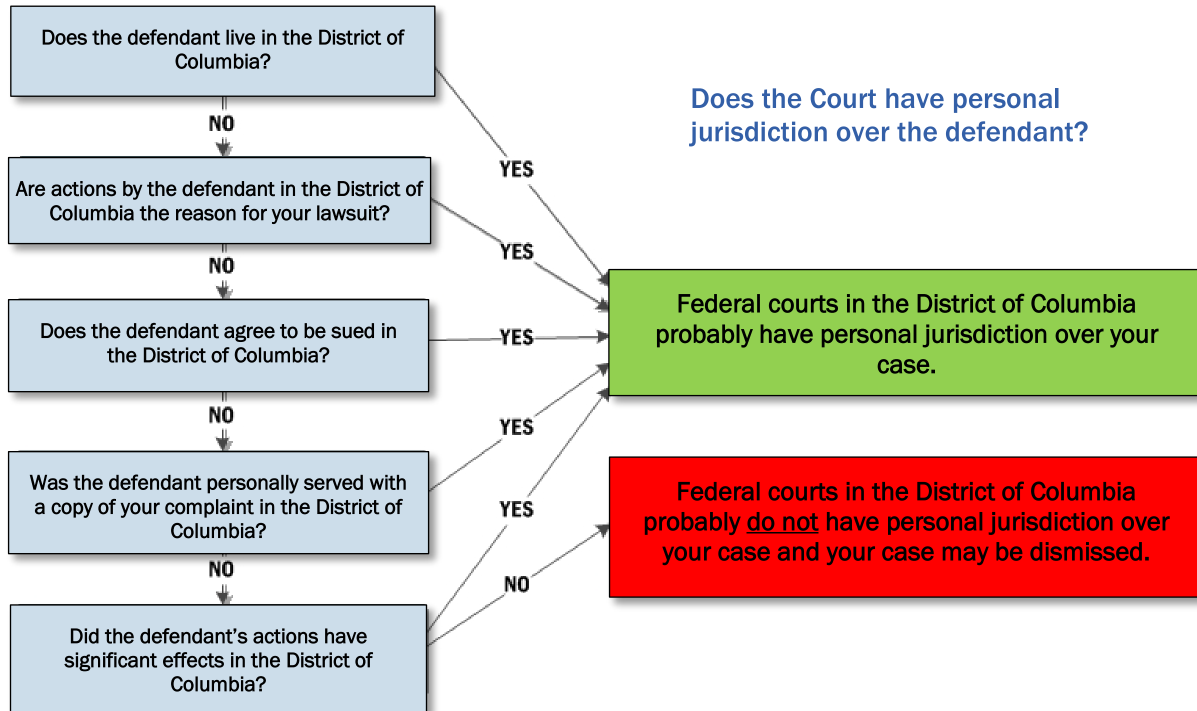
   b. If your lawsuit does not meet one of these descriptions, you cannot sue in federal court. You may be able to sue in D.C. Superior Court or another state court.



3. **You must sue someone who is under the Court's power**.

   A federal court in the District of Columbia cannot hear your case if it does not have power over the person or organization you are suing, meaning the Court lacks **personal jurisdiction** over the defendant. This Court can hear your case if the defendant:

   - Lives in the District of Columbia; OR
   - Did something in the District of Columbia that is the reason for your lawsuit; OR
   - Agreed to be sued in the District of Columbia; OR
   - Has been personally **served** with a copy of your complaint in the District of Columbia (see Chapter 8); OR
   - Has done things that have had significant effects in the District of Columbia.



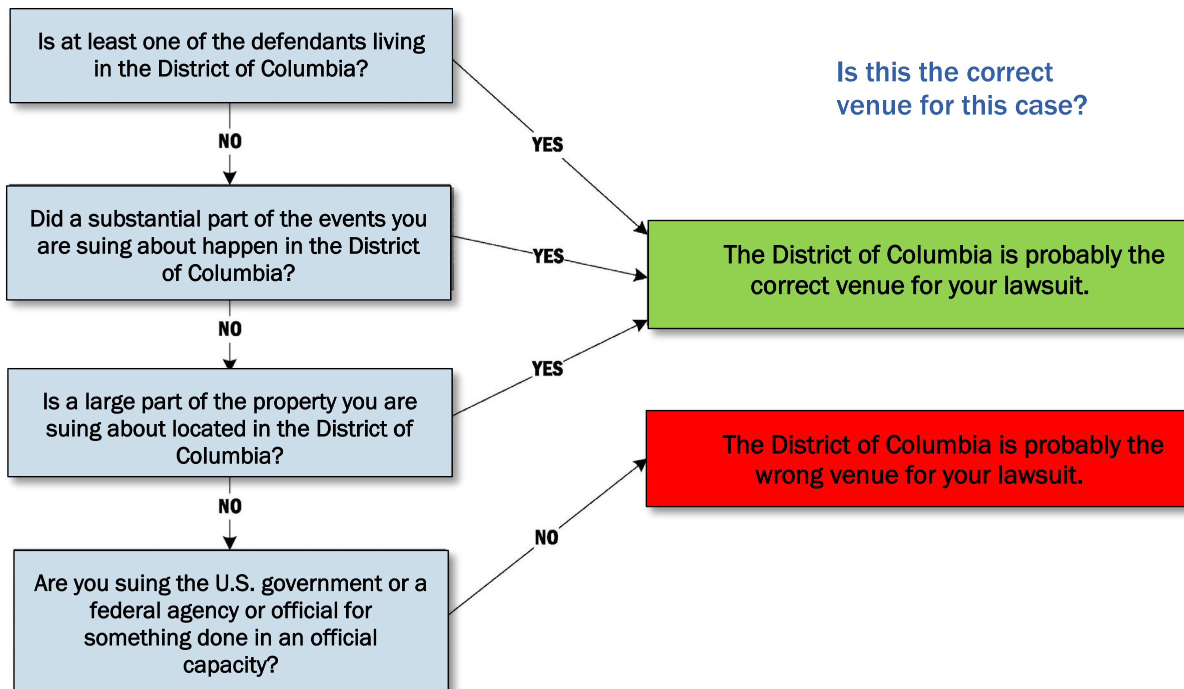
4. <u>You must sue in the correct federal district for your case</u>.

   a. The rules about suing in the right court are called **venue** rules. Our legal system has venue requirements so that it is not overly difficult for all parties to get to the courthouse. You can read the venue statute at 28 United States Code (U.S.C.) § 1391.

   b. The right venue for your case generally is the district where:

      - One of the defendants lives (but only if all defendants live in the District of Columbia); **OR**
      - The events that are the reason for your lawsuit happened; **OR**
      - A large part of the property you are suing about is located, **OR**
      - You live, if you are suing the U.S. government or a federal agency or official for something done in an official capacity.

   c. If you file your case in the wrong district, the Court may either transfer the case to the correct district or dismiss your case. If the case is transferred, you would then have to go to that district court to argue it.



Have You 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:

i. Gathering Information

Sometimes things are not what they seem at first. For example, sometimes things that appear to have been done on purpose were done unintentionally. Fully investigating what happened may help you decide whether to file a lawsuit.

ii. 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 than if the first they hear about a problem is through a lawsuit.

iii. Going to Governmental or Private Agencies

Consider whether other processes are available for you to use or whether you could ask agencies for help with your problem. Sometimes there is a governmental or private agency that can address your problem or provide assistance. Examples of such agencies include:

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

iv. Using a Small Claims Court

In some cases you may have the option of filing a case in the Small Claims & Conciliation Branch of the Civil Division of the Superior Court of the District of Columbia, which is designed for people

without formal training in the law suing for $10,000 or less. There is no equivalent to the small claims court in the federal courts. This website can help you understand small claims court and help with filing: www.dccourts.gov/services/civil-matters/requesting-10k-or-less.

v. **Alternative Dispute Resolution**

Dispute resolution services — such as **mediation** — may be faster and less expensive than taking a case to court. Mediation is a settlement meeting or conference that encourages parties to communicate clearly and constructively to find common ground or to identify solutions that can serve the parties' real interests. For information about alternative dispute resolution resources in the District of Columbia, see: www.dccourts.gov/superior-court/multi-door-dispute-resolution-division. If you end up filing a case in federal court, there is also a free mediation program available in certain cases. More information can be found at this website: www.dcd.uscourts.gov/court-mediation-program.

CHAPTER 2
FINDING A LAWYER

This Handbook is designed to help those without an attorney, but it is no substitute for having your own lawyer. Effective representation requires an understanding of:

1. The law that applies to your **case**;
2. The **Court** procedures you have to follow;
3. The strengths and weaknesses of your arguments and the other party's arguments.

If you do not understand each of these things, you can make critical mistakes with serious legal consequences. Because of this, the Court encourages you to find a lawyer, if possible.

How Can I Find A Lawyer?

There are numerous legal aid services provided by various non-profit and other organizations in D.C. You can find a free legal services program through www.LawHelp.org — a repository assembled, in part, by the D.C. Bar Pro Bono Center and the D.C. Consortium of Legal Services Providers. This website allows you to search for legal services providers based on the type of legal problem you are experiencing.

What Is "Pro Bono" Representation?

In a very limited number of cases, the Court may appoint a lawyer to step in for all or part of the case and represent a ***pro se*** litigant (a party that does not already have a lawyer) without charge. Free legal **counsel** is called **pro bono representation**. The Court will sometimes appoint pro bono counsel for just part of a case. For example, if requested, the Court might appoint *pro bono* counsel for **mediation** in hopes that a lawyer could help negotiate a settlement. You can ask the presiding Judge to send your case to mediation and appoint a lawyer to help you for this purpose.

What Is The Civil Pro Bono Panel?

The Civil Pro Bono Panel is a list of attorneys, law firms, and clinical legal education programs that have expressed an interest in accepting Court appointments to represent **indigent litigants** that do not already have a lawyer. A litigant not represented by a lawyer may ask the presiding Judge to appoint counsel by **filing** a **motion** in the case. Decisions on whether or not to appoint counsel for a particular matter are left to the Judge's discretion and are made considering the following factors:

- Nature and complexity of the **action**;
- Potential merit of the unrepresented party's (*pro se* litigant's) **claims**;
- Demonstrated inability of the unrepresented party to retain counsel by other means; and
- Degree to which the interests of justice will be served by appointment of counsel, including the benefit the Court may derive from the assistance of the appointed counsel.

CHAPTER 3
HOW DO I RESEARCH THE LAW?

Two kinds of law are important for you to know to represent yourself: **procedural rules** and **substantive law**. The United States Code (abbreviated U.S.C.) contains both, but you may also need to look at state codes and at federal and state judicial opinions or "case law."

1. Procedural rules describe the different steps required to pursue a lawsuit. You must follow these four sources of rules to have the **Court** consider your **case**:
   a. **Federal Rules of Civil Procedure**: These apply in every federal court in the country. Review them at any **law library** or online:
      - www.uscourts.gov/rules-policies/current-rules-practice-procedure
      - www.law.cornell.edu/rules/frcp
   b. **Federal Rules of Evidence**: These rules define the types of **evidence** that a federal court considers to be **admissible.** You can only prove your case to the Court using **admissible evidence.** Review these rules early in your case at a law library or online:
      - www.uscourts.gov/rules-policies/current-rules-practice-procedure
      - www.law.cornell.edu/rules/fre
   c. **Local Rules of the United States District Court for the District of Columbia**: These are procedural rules that build on the Federal Rules of Civil Procedure and apply only in this Court. Review them:
      - Online: www.dcd.uscourts.gov/court-info/local-rules-and-orders/local-rules **OR**
      - At the **Clerk's Office**
   d. Judges' **Standing Orders**: These are special rules issued by some individual Judges that apply in all cases assigned to them. Normally, the Judge issues his or her Standing Orders shortly after the case is filed. You can generally find them on your Judge's web page on the Court's website: www.dcd.uscourts.gov/judges.
2. Substantive law describes what you must prove to establish your **claims.** Each claim has a different set of laws that you need to learn. For example, different laws apply to an employment discrimination case than to a Freedom of Information Act case. To find the substantive law that applies to your claims you will need to visit a law library. A law librarian can show you where to find the specific law that you need. Public law libraries in the District of Columbia and surrounding area are listed online: www.dcbar.org/bar-resources/legal-links/lawlibraries.cfm. You can find some statutes and cases online for free on sites such as FindLaw (www.caselaw.findlaw.com).

Law Libraries In The District of Columbia (And Surrounding Area)

These law libraries are listed in alphabetical order. Some libraries listed below may place restrictions on public access, such as by requiring photo ID or a prior appointment. Additional restrictions may be in place during the Covid-19 pandemic.

WASHINGTON, D.C.

1. District of Columbia Circuit Library, www.cadc.uscourts.gov/internet/home.nsf/Content/VL+-+Human+Resources+-+Library (open to members of the public with a case actively pending in the D.C. Circuit, including the District Court for the District of Columbia)
2. Pence Law Library, American University Washington College of Law, www.wcl.american.edu/impact/library/
3. Judge Kathryn J. DuFour Law Library, Catholic University of America Columbus School of Law, www.law.edu/library/
4. Commodity Futures Trading Commission Library, www.cftc.gov/
5. D.C. Superior Court Law Library, www.dccourts.gov/services/dccourts-libraries
6. Federal Judicial Center Library, Thurgood Marshall Federal Judiciary Building, www.fjc.gov/

7. Georgetown Law Library, www.law.georgetown.edu/library/
8. Jacob Burns Law Library, George Washington University Law School, www.law.gwu.edu/library
9. Howard University School of Law Library, www.library.law.howard.edu/index
10. Law Library of Congress, www.loc.gov/
11. National Labor Relations Board, www.nlrb.gov/
12. National Library of Education, www.ies.ed.gov/ncee/projects/nle/
13. National Transportation Library, www.ntl.bts.gov/
14. Navy Department Library, www.history.navy.mil/research/library/about.html
15. Securities and Exchange Commission Library, www.sec.gov/
16. Charles N. and Hilda H.M. Mason Law Library, University of the District of Columbia David A. Clarke School of Law, www.udclaw.libguides.com/home
17. U.S. Department of Commerce Library, www.library.doc.gov/home
18. U.S. Department of Energy General Counsel Law Library, www.energy.gov/gc/general-counsel-law-library
19. U.S. Department of Health and Human Services, www.hhs.gov/
20. U.S. Department of the Interior Law Library, www.doi.gov/library/collections/law
21. Wirtz Labor Library, U.S. Department of Labor, www.dol.gov/agencies/oasam/centers-offices/business-operations-center/library
22. U.S. Federal Communications Commission Consumer Publications Library, www.fcc.gov/
23. U.S. Federal Trade Commission Library, www.ftc.gov/
24. U.S. General Accounting Office Library, www.gao.gov/

VIRGINIA

1. Alexandria Law Library, www.alexlibraryva.org/law-library
2. Fairfax County Public Law Library, www.fairfaxcounty.gov/topics/public-law-library
3. George Mason School of Law Library, www.law.gmu.edu/library/

MARYLAND

1. Montgomery County Circuit Court Library, www.montgomerycountymd.gov/cct/law-library.html
2. National Agricultural Library, www.nal.usda.gov/main/
3. Prince George's County Circuit Court Library, www.princegeorgescourts.org/285/Law-Library

CHAPTER 4
HOW DO I DRAFT A COMPLAINT?

The first step in a lawsuit is to file a **complaint** with the **Court**. The complaint tells the Court and the **defendant** how and why you believe the defendant violated the law and injured you. Before you draft your complaint, read Chapter 1, which explains some requirements for a **case** to proceed in the United States District Court for the District of Columbia. You also should review Rules 8, 9, 10 and 11 of the Federal Rules of Civil Procedure and Local Civil Rules 5.1 and 5.4(f).

What Does A Complaint Look Like?

Certain formal documents that you submit to the Court are called **pleadings.** A complaint is one type of pleading. You can download complaint forms online at www.uscourts.gov/services-forms/forms?k=complaint&c=All.

Here are some resources for different types of complaints:

1. Employment discrimination:

   www.uscourts.gov/forms/pro-se-forms/complaint-employment-discrimination

   www.law.cornell.edu/wex/Employment_discrimination

   www.nolo.com/legal-encyclopedia/workplace-rights

2. Social Security:

   www.uscourts.gov/forms/pro-se-forms/complaint-review-social-security-decision
   www.nolo.com/legal-encyclopedia/social-security-appeal-denied-claims-30167.html

3. General and civil rights:

   - Non-Prisoners: www.uscourts.gov/forms/pro-se-forms/complaint-violation-civil-rights-non-prisoner
   - Prisoners: www.uscourts.gov/forms/pro-se-forms/complaint-violation-civil-rights-prisoner
   - Resources from the Department of Justice: www.civilrights.justice.gov

4. Other complaint forms are available in law libraries. Some books that contain complaint forms are:

   West's Federal Forms

   Federal Procedural Forms

   Lawyer's Edition

   American Jurisprudence Pleading and Practice Forms

What Information Must Be In A Complaint?

The complaint should contain the following:

1. Caption

The **caption** appears at the top of the first page of the complaint. It must include:

a. Your name, full residence address, telephone number, fax number (if any), and email address. If you want to use a Post Office Box (P.O. Box) as your mailing address, you must obtain the Court's permission to do so. When you file your complaint, you may file a separate motion for permission to use a P.O. Box as your mailing address and explain why you do not provide a residence address.

b. The name, full residence or official address, and title, if any, of each defendant.

c. Space for the case number ("Civil Action No.") and the Judge's initials. A case number and a judge will be assigned to the case by the **Clerk's Office** if it is accepted for **filing** (see Chapters 5 and 6).

d. Title of the document ("Complaint").

It is also helpful if the caption includes a "Demand for Jury Trial" if you want your case to be heard by a jury.

2. Subject Matter Jurisdiction

The first numbered paragraph in your complaint (labeled "**Jurisdiction**") should explain why this Court has the power to decide your case. As discussed in Chapter 1, a federal court can hear a case based on:

- **Federal question jurisdiction** (a violation of federal law) — for more information, read 28 U.S.C. § 1331; OR
- **Diversity jurisdiction** (when all **plaintiffs** and all defendants are citizens of different states disputing more than $75,000) — for more information, read 28 U.S.C. § 1332.

3. Venue

The next numbered paragraph (labeled "**Venue**") should explain why the District of Columbia is the proper location for your lawsuit. Venue is usually determined by where a matter occurs or where a litigant resides. For more information, see Chapter 1 and 28 U.S.C. § 1391.

4. <u>Parties</u>

   In separate numbered paragraphs, identify the plaintiff(s) and the defendant(s) in the case.

5. <u>Statement of Facts</u>

   This section should explain the important facts in your case in numbered paragraphs. It should explain to the Court how the defendant violated the law and how you have been injured. If you refer to any documents in this section, you can attach them to the complaint as **exhibits**. Identify each exhibit by number (for example, Exhibit 1) or by letter (for example, Exhibit A).

6. <u>Claims</u>

   This section should list your legal **claims** — basically, the laws you think the defendant broke. If possible, you should include a separate section for each claim (e.g., Claim 1, Claim 2, etc.) identifying the specific law that you think the defendant violated and providing a short and plain explanation of what the defendant did to violate each law.

7. <u>Request for Relief</u>

   This section should explain what you want the Judge to do. For example, you can ask the Judge to order the defendant to pay you money or to give you your job back. Each type of relief you request should be in a separate numbered paragraph.

8. <u>Demand for Jury Trial</u>

   If you want a **jury trial**, you can include a demand for jury trial in the caption, at the end of your complaint, or in a separate document. It is best to include this in your complaint because, if you do not request a jury trial within 10 days of filing your complaint, you may give up your right to a jury trial. You may decide you do not want to have a jury trial. Then the Judge will decide the facts of your case at a **bench trial**, if a trial is held. See Chapter 19 for more information about trials.

9. <u>Plaintiff's Signature</u>

   At the end of the complaint, sign your name. When you sign your name, you are certifying to the Court that you are filing your complaint in **good faith**. This means that you believe:

   - You have a valid legal claim; AND
   - You are not filing the case to harass the defendant; AND
   - You have good reason to believe that what you say in the complaint is true.

   If your complaint does not meet these standards, the Judge can require you to pay fines for harassment, frivolous arguments, or a lack of factual investigation. See Rule 11 of the Federal Rules of Civil Procedure.

CHAPTER 5
HOW DO I FILE PAPERS WITH THE COURT?

Once you have drafted your **complaint**, you must officially file it with the **Court** in order to begin your lawsuit.

<u>How Do I File Documents?</u>

You can file documents in several different ways:

1. <u>In-Person Filing</u>: Bring the signed original document and one copy to the **Clerk's Office** to file it in person.

   a. ***Filing documents in person during normal business hours***

   The Clerk's Office is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, except for federal holidays.

   333 Constitution Avenue, N.W., Room 1225, Washington, D.C. 20001

   Telephone: (202) 354-3050

When you file a document, the Clerk's Office will date-stamp it. You may ask the Clerk to date-stamp the copy and return it to you. Keep a copy for your records. You must pay the current **filing fee** unless you are filing a fee waiver request with your complaint. Currently, the filing fee is $405.

b. ***Filing documents in person after hours using the drop box***

You can file your documents in person even if the Clerk's Office is closed. The Clerk's Office maintains a **drop box** located at the Third Street entrance to the courthouse that can be used to file most documents before and after regular business hours. For security reasons, the Court strongly recommends that you do not close or seal envelopes placed in the drop box. Before putting a document in the drop box, ***follow the instructions that are posted next to the drop box*** explaining how to date-stamp, label, and identify your documents. If you use the drop box to file a complaint, you must include a check or money order for the current **filing fee** of $405, made payable to "Clerk, United States District Court." Do not enclose cash. You do not need to include payment if you are filing a fee waiver request with your complaint.

2. **Filing by Mail**: Mail the signed original document and a copy to: Clerk's Office, United States District Court for the District of Columbia, 333 Constitution Avenue, N.W., Washington, D.C., 20001. You must include a check or money order for the filing fee (which is currently $405), made payable to "Clerk, United States District Court." Do not enclose cash. You do not need to include payment if you are filing a fee waiver request with your complaint. If you want the **Clerk** to return a file-stamped copy to you, you must provide an extra copy and a self-addressed, stamped envelope.
3. **E-Filing**: **E-filing** is the process of using the internet to file documents with the Court and **serve** them on other parties. It offers many advantages, including convenient access to Court records, saving time, postage expenses, and administrative work. The Court's system for electronically managing and filing documents is called Case Management/Electronic Case Files, or **CM/ECF**.
   - Litigants representing themselves CANNOT file complaints using CM/ECF. You must either file your complaint in person or by mail. Litigants representing themselves can only use CM/ECF once the complaint is filed and if permission is obtained from the Court. More details about e-filing can be found in Chapter 9.
   - Litigants representing themselves must get prior permission from the Court to use the e-filing system, and must do so by filing a **motion** for a CM/ECF password and meeting certain prerequisites. See Local Civil Rule 5.4(b). If you receive permission to use CM/ECF, you can file documents in your **case** online at the Court's CM/ECF website and view case **dockets** and documents through the Public Access to Court Electronic Records (**PACER**) website, www.pacer.gov.

How Do I File A Complaint?

When filing a complaint, you must:

1. **Fill out and file a Civil Cover Sheet**. Obtain a copy of the form at the Clerk's Office or at the Court's website (www.dcd.uscourts.gov/sites/dcd/files/CivilCoverSheetJS44_2016FILL.pdf). Instructions for filling out the Civil Cover Sheet are on the form. You can also obtain assistance in filling out a Civil Cover Sheet from the resources referenced in Chapter 2.
2. **File the original complaint, plus one copy of the complaint.**
3. **Pay to file your complaint.** Filing a complaint generally costs $405.00. This is known as the filing fee. The Clerk's Office accepts payment of the filing fee in cash, check, or money order made payable to "Clerk, U.S. District Court," or credit card (Visa, MasterCard, American Express, or Discover Card). Cash and credit card payments must be made in person. After the complaint is filed and the filing fee is paid, you do not have to pay any additional fees to file most documents with the Court (unlike state court).

What If I Can't Afford The $405.00 Fee For Filing A New Complaint?

If you cannot afford the filing fee, you may ask the Court to waive the fee. This request is known as a motion to proceed *in forma pauperis* (or "**IFP**"). You can get a form titled **Application to Proceed In District Court Without Prepaying Fees or Costs** at the Clerk's Office or from the Court's website (www.dcd.uscourts.gov/sites/dcd/files/AO240woPrepaymentCosts.pdf). This form requires you to give the

Court information about your income, your current employment, and your general financial situation. You can find out more information about filing IFP by reading 28 U.S.C. § 1915 (www.law.cornell.edu/uscode/text/28/1915). Please note that there may be a delay for the Court's consideration of an IFP application.

<u>If you are not a prisoner</u> and the Court finds that you cannot afford to pay the filing fee (meaning the Court GRANTS your IFP application), the Court will not require you to pay the filing fee in order to proceed with your lawsuit, and may waive other costs. ***Be cautious:*** the filing fee waiver does not necessarily mean you will never have to pay anything. You may still be obligated to pay expenses later on in your lawsuit.

If the Court DENIES your IFP application, you will be required to pay the filing fee.

<u>If you are a prisoner</u> and you are unable to pay the full filing fee at the time of filing, you must submit:

1. An **affidavit** that includes a statement of all assets you possess, AND
2. If you have an account with the institution at which you are incarcerated, a certified document stating all receipts, expenditures, and balances during the last six months for each prison you have been incarcerated in during this period.

If the Court determines that you are unable to pay the full filing fee at the time of filing, you will be granted IFP status. Even if you have complied with 28 U.S.C. § 1915(a) and the Court has granted you IFP status, if you are a prisoner you will still be required to pay the full amount of the filing fee over time.

Prisoners' filing fees are collected in installments:

1. First, the Court will assess and collect an initial partial filing fee;
2. After payment of the initial partial filing fee, you will be required to make monthly payments of 20% of the preceding month's income credited to your account.

While the Court can ***assess*** the initial fee even if there are no funds in your account at the time of assessment, the Court can only ***collect*** this fee "when funds exist." Your prison trust account office is responsible for forwarding to the Court payments from your account each time there is more than $10.00 in your account, until the entire filing fee is paid.

CHAPTER 6

ONCE MY CASE IS ASSIGNED TO A JUDGE, WHAT DO I DO?

After the **complaint** is filed, a **case** number assigned, and the filing fee paid (or waived), the **Clerk's Office** assigns the case to a judge. Case assignments are random, unless the case is deemed related to an earlier pending case. The assigned Judge's initials are added to the case number (Example: 1:22-cv-9999 (BAH)).

<u>U.S. District Court Judges</u> are appointed by the President of the United States and confirmed by the United States Senate. Federal District Court Judges are appointed for life and cannot be removed unless impeached.

<u>U.S. Magistrate Judges</u> are appointed by the **District Judges** of the **Court** to 8-year terms. They may (and often do) serve more than one term.

Rule 73 of the Federal Rules of Civil Procedure states that a **magistrate judge** may conduct a civil **action**, proceeding, trial, or **bench trial** (non-jury trial) only if all **plaintiffs** and all **defendants** consent to have the case decided by a magistrate judge. You are not required to consent to a magistrate judge. Regardless of whether your case is decided by a magistrate judge or a district judge, the rules and procedures used to decide the case will be the same. Once a party has consented, however, that party may not later in the case withdraw consent and request reassignment to a district judge.

Even if a district judge is the assigned Judge in your case, he or she may refer parts of the case, such as **discovery** disputes (discussed in Chapters 16-17), to a magistrate judge for ruling. Some rulings made by the Magistrate Judge can be **appealed** to the District Judge. See Chapter 20. A district judge also may refer a case to a magistrate judge for **mediation** or settlement discussions. The Magistrate Judge has the authority to set dates for **settlement conferences**, order parties to attend settlement conferences, and order the production of documents or other **evidence**.

CHAPTER 7
HOW CAN I BE SURE I KNOW WHAT IS HAPPENING IN MY CASE?

How Do I Review The Docket?

The **docket** is a computer file maintained by the **Court** in the **Case Management/Electronic Case Filing**, or **CM/ECF**, system. The docket for each **case** includes: (1) the names and addresses of all the attorneys and parties representing themselves (***pro se*** parties) AND, (2) in chronological order, the title of every document filed along with the filing date, the name of the party who filed it, and other information.

To prevent mistakes and to ensure that documents are not lost in the mail, you should check the case docket regularly to ensure that:

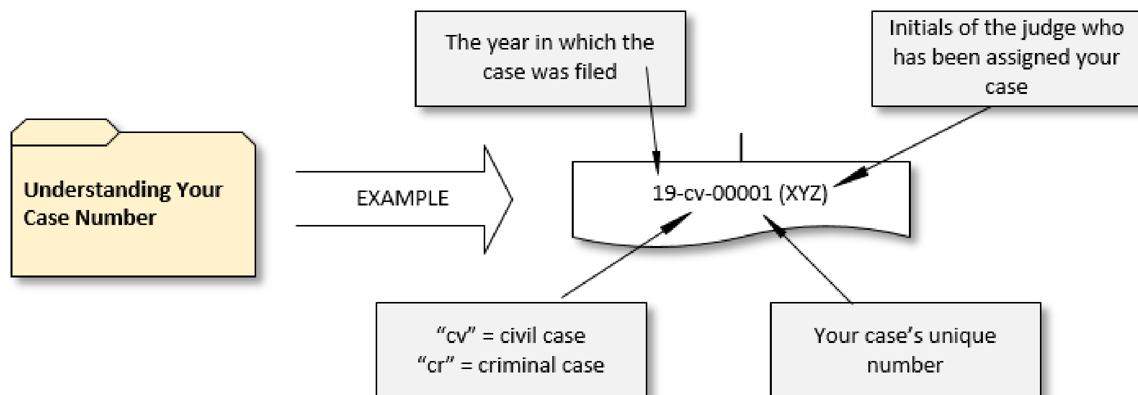
- Every document you filed has been entered on the docket. (Note that it may take a few working days for a paper filing to be scanned and entered on the electronic docket.)
- You have received copies of every document that other parties have filed.
- You are aware of every order that the Court has issued.

DO NOT CALL, FAX, OR EMAIL the Judge, the Judge's **chambers**, or the Judge's other staff unless the Judge has given you permission to do so. See Local Civil Rule 5.1(a), (b).

How Do I Start Viewing Dockets And Court Documents With PACER?

PACER stands for "Public Access to Court Electronic Records." It is a service of the United States Courts. You should sign up for PACER as soon as possible after you become a party to a case in federal court.

1. **PACER users can***:*
   - Review dockets online.
   - Print or download a .pdf copy of a docket.
   - Search by case number, by party name, or for all cases filed within a specified range of dates.
   - Search for specified parties in federal court cases nationwide by U.S. party/case index at www.pcl.uscourts.gov/search.
2. **To view documents and obtain docket information***:*
   Visit the PACER system at www.pacer.gov.



3. **You must register to become a PACER user** before you can use any version of the PACER system:
   Register online at www.pacer.gov/register.html OR call (800) 676-6856 to obtain a PACER registration form by mail. If you provide your credit card information at the time of registration, you will receive an e-mail with instructions on how to retrieve your login information. If you do not provide your credit card information at the time of registration, you will receive login instructions by mail. Please allow two weeks for delivery.

4. **PACER Fees**
    - There are no registration costs.
    - Case information and documents may be viewed for no charge at courthouse public access terminals.
    - Fees may be charged for access to information on PACER. Refer to PACER's FAQs for the most current information on fees and billing (www.pacer.uscourts.gov/help/faqs).

5. **Information available through PACER**

PACER contains docket information for the District of Columbia for civil, criminal, and miscellaneous cases filed in the past several decades. Case information updated in CM/ECF (the Court's **Electronic Case Filing** system) is immediately available on PACER.

6. **PACER Support**

If you have problems with your PACER account, please call the PACER Service Center at (800) 676-6856. The Court can help you with CM/ECF questions, but cannot help with problems with your PACER account.

How Do I Review The Case File?

You may come to the **Clerk's Office** during business hours to view the docket of your case, though because there are very few paper files maintained in the Clerk's Office, we recommend viewing court documents through PACER.

1. **Visit the Clerk's Office during business hours, Monday through Friday, from 9 a.m. to 4 p.m.** You may review the docket on CM/ECF at no charge using terminals in the Clerk's Office made available to the public.
2. **Bring your case number with you**. The case number appears in the upper right corner in the **caption** (Example: Civil Action No. 1:22-cv-9999 (BAH)). If you do not have the case number, you can find it by looking up the names of the parties at a public terminal in the Clerk's Office.
3. **Request your case file**. If a paper file exists for your case, it will be made available to you upon request. Most paper files have been archived, and very few remain in the Clerk's Office. You cannot take the **case file** out of the Clerk's Office, and must look at the file in the Clerk's Office.

CHAPTER 8
WHAT ARE THE RULES FOR SERVING DOCUMENTS ON OTHER PARTIES IN THE LAWSUIT?

You must give the other parties to your lawsuit a copy of every document that you file with the **Court**. This is referred to as "**serving**" or "**service on**" the other parties. It is critical that you **serve** your papers on the other parties in exactly the way the law requires. The rules for serving the **complaint** are different from the rules for serving other documents. If the complaint is not properly served on the **defendant**(s), the **case** will not proceed and can be dismissed by the Court.

What Are The Rules For Serving The Complaint?

In order to serve the complaint, you must first get a **summons** from the Court. You can get a form titled "Summons in a Civil Action" from the **Clerk's Office** or at the Court's website (www.uscourts.gov/forms/notice-lawsuit-summons-subpoena/summons-civil-action). The Clerk must sign, seal, and "**issue**" the summons to the **plaintiff** before it can be served on the defendant.

Rule 4 of the Federal Rules of Civil Procedure states that the complaint must be served within 90 days after **filing**, or the Court can dismiss your lawsuit. The rule describes different ways to serve a complaint ("**service of process**"). The requirements differ based on whether the defendant is a person, a company, a government agency, etc., and where the defendant is located.

Generally, Rule 4(c)(2) of the Federal Rules of Civil Procedure allows any person who is at least 18 years old and **NOT A PARTY TO THE CASE** to serve a summons and complaint. Under Rule 4(c)(3), the United States Marshals Service will serve a summons and complaint for a plaintiff who has been given permission to proceed ***in forma pauperis*** (that is, the Court has found the plaintiff unable to pay the Court's filing fee). You can find more information about proceeding *in forma pauperis* in Chapter 5 and in 28 U.S.C. § 1915.

How Do I Submit A Summons To The Clerk For "Issuance"?

Fill out your summons form completely and present it to the Clerk for signature and seal. The summons is not valid without the Clerk's signature and seal. You can submit a summons form to the Court in person, using the **drop box**, or by mail, but NOT by fax. If you submit a summons form to the Court by mail or by using the drop box, you must include a self-addressed, stamped envelope so that the Clerk can return the issued summons to you. For more information, review Rule 4(b) of the Federal Rules of Civil Procedure.

What If I Filed In Forma Pauperis?

If the Court granted your **Application to Proceed in Forma Pauperis**, then the Clerk of Court will issue the summons and forward it to the United States Marshals Service to serve on the defendants at no cost to you. You are responsible for providing the defendants' names, titles, addresses, and other information necessary for service of process. For more information on how to file an Application to Proceed in Forma Pauperis, see Chapter 5.

How Do I Get A Summons If I Did Not File In Forma Pauperis?

At the time you file your complaint and pay the filing fee, you can obtain as many summonses as you need from the Clerk's Office. You can also obtain the summonses later if you wish.

What Documents Do I Need To Serve On The Defendant(s)?

You are required to serve a summons issued by the Clerk of Court and a copy of the complaint on each defendant.

Is There A Time Limit For Serving The Complaint And Summons?

Yes. Rule 4(m) of the Federal Rules of Civil Procedure requires that you EITHER:

- Obtain a **waiver of service** from each defendant, OR
- Serve each defendant within 90 days after the complaint is filed.

If you do not meet this deadline (or receive an extension), the Judge may dismiss all **claims** against any defendant who was not served.

How Can I Get The Defendant To Waive Service of Process?

Waiving service means agreeing to give up the right to **service** in person and instead accepting service by mail. If a defendant waives service, you will not have to go to the trouble and/or expense of serving that defendant. If the defendant agrees to waive service, you need the defendant to sign and send back to you a form called a "waiver of service," which you then must file with the Court.

You can ask for a waiver of service from any defendant EXCEPT:

- A minor or incompetent person in the United States OR
- The United States government, its agencies, corporations, officers, or employees OR
- A foreign, state, or local government

To request waiver of service from a defendant, you will need two forms:

1. A notice of a lawsuit and request to waive service of a summons AND
2. A waiver of the service of summons form.

You can obtain these forms from the Clerk's Office or download them from the Court's website (www.uscourts.gov/forms/notice-lawsuit-summons-subpoena/waiver-service-summons).

To request waiver of service, complete and send these two forms to the defendant by first-class mail along with a copy of the complaint, summons, and other required documents, plus an extra copy of the request to waive service and a self-addressed, stamped envelope. In choosing a due date on the form, you must give the defendant a reasonable amount of time to return the waiver of service — at least 30 days from the date the request is sent (or 60 days if the defendant is outside the United States).

If the defendant sends you back the signed waiver of service, you do not need to do anything else to serve that defendant. Just file the defendant's signed waiver of service form with the Court and save a copy for your files.

Review Rule 4(c) & (d) of the Federal Rules of Civil Procedure regarding service and waiver of service.

What If I Requested A Waiver Of Service And The Defendant Doesn't Send It Back?

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 Rule 4 of the Federal Rules of Civil Procedure. You may ask the Court to order the defendant to pay the costs you incurred serving that defendant.

How Do I Serve?

Rule 4(c)(2) provides that YOU MAY NOT SERVE THE DEFENDANT YOURSELF. You must have someone else who is at least 18 years old serve each defendant with the complaint and summons. You may hire a professional **process server** or you can have a friend, family member, or any other person over 18 years old serve the complaint and summons for you. The person should not be a potential party or a potential **witness** in the case. Following are the rules for serving different kinds of defendants:

1. To serve individuals in the United States

Under Rule 4(e) of the Federal Rules of Civil Procedure, there are several approved ways to serve the complaint, summons, and related documents on an individual in the United States:

- Hand delivery to the defendant; OR
- Hand delivery to another responsible person who lives at the defendant's home; OR
- Hand delivery to an agent authorized by the defendant or by law to receive service of process for the defendant; OR
- Service by any other method approved by District of Columbia law, or by the law of the state where the defendant is served.

2. To serve individuals in foreign countries

Under Rule 4(f) of the Federal Rules of Civil Procedure, an individual in a foreign country may be served by "any internationally agreed means that is reasonably calculated to give notice," or, if there is none, by using methods prescribed by the foreign country's law or government, by hand delivery or certified mail unless prohibited by the foreign country's law, or in the manner the Court orders.

3. To serve a business

Under Rule 4(h) of the Federal Rules of Civil Procedure, several approved methods are provided for serving the complaint, summons, and related documents on a corporation, partnership, or unincorporated association.

i. A business in the United States:

- Hand delivery to an officer of the business, a managing or general agent for the business, or any other agent authorized by the defendant to accept service of process; OR
- Hand delivery to any other agent authorized by law to receive service of process for the defendant AND, if the law authorizing the agent to accept service of process requires it, you must also mail a copy of the summons and complaint to the defendant; OR
- Any other method approved by District of Columbia law, or by the law of the state in which the business is served.

ii. A business outside the United States:

- Any method described in Rule 4(f) except personal delivery.

4. To serve the United States, its agencies, corporations, officers, or employees

Rule 4(i) of the Federal Rules of Civil Procedure specifies the approved ways to serve the complaint, summons, and related documents on the United States government or its agencies, corporations, officers, or employees, outlined below:

- Hand deliver to the United States Attorney for the District of Columbia; OR
- For the District of Columbia, send the complaint by registered or certified mail to the United States

Attorney's Office for the District of Columbia, addressing the complaint to the "Civil Process Clerk"

AND BOTH of the following:

- Mail a copy of all served documents by registered or certified mail to the Attorney General of the United States in Washington, D.C.; AND
- If your lawsuit challenges the validity of an order of a United States officer or agency but you have not named that officer or agency as a defendant, also send a copy by registered or certified mail to the officer or agency.

A United States agency or corporation (or a United States officer or employee sued only in an official capacity):

- Serve the United States in the manner described above; AND
- Send a copy of the summons and complaint by registered or certified mail to the officer, employee, agency, or corporation.

A United States officer or employee sued in an individual capacity for conduct in connection with the performance of duties on behalf of the United States:

- Serve the United States in the manner described above AND
- Serve the employee or officer personally in the manner set forth by Rule 4(e), (f), or (g) of the Federal Rules of Civil Procedure.

5. <u>To serve state or local government</u>

- Hand delivery to the chief executive officer of the government entity you wish to serve; OR
- Service according to the law of the state in which the state or local government is located.

6. <u>To serve minors or incompetent persons</u>

Rule 4(g) of the Federal Rules of Civil Procedure provides that service on a minor or incompetent person in the United States must be made according to the law of the state where the person is served.

7. <u>To serve a foreign country (or a political subdivision, agency, or instrumentality of a foreign country)</u>

Read 28 U.S.C. § 1608 for information on serving foreign governmental entities.

What Is A Certificate Of Service?

After service of the complaint and summons is completed, you are required to file a "**certificate of service**" (also called a "**proof of service**") with the Court that shows when and how the complaint, summons, and other required documents were served on each defendant. The certificate of service allows the Court to determine whether service met legal requirements. It MUST contain:

- The date service was completed; AND
- The place where service was completed; AND
- The method of service used; AND
- The names and street address or e-mail address of each person served; AND
- The documents that were served; AND
- The dated signature of the person who actually served the complaint and summons.

For example, if you hired a process server, the certificate of service must be signed by the process server. The person who served the documents must swear under penalty of **perjury** that the statements in the certificate of service are true. See Federal Rule of Civil Procedure 4(*l*).

What Are The Rules For Service Of Documents Other Than The Complaint?

Rule 5 of the Federal Rules of Civil Procedure sets the rules for serving documents other than the original complaint, such as a **motion** or an **amended pleading.** If the party you served has a lawyer, then you MUST serve that party's lawyer. If the other party does not have a lawyer, you must serve the party.

Rule 5 allows you to serve documents using any ONE of the following methods:

- Hand it to the person; OR
- Leave it at the person's office with a clerk or other person in charge, or, if no one is in charge, leave it in a conspicuous place in the office; OR

- If the person has no office or the office is closed, leave it at the person's home with an adult who lives there; OR
- Mail a copy to the person's last known address; OR
- If the person you want to serve has no known address, you may leave a copy with the Clerk of the Court; OR
- Send it by e-mail if the person has consented in writing (but electronic service is not effective if you learn that the e-mail did not reach the person to be served); OR
- Deliver a copy by any other method that the person you are serving has consented to in writing.

For every document that you file and serve on other parties, you need to file a certificate of service. For more information, read Local Civil Rules 5.3 & 5.4.

CHAPTER 9
FILING AND SERVING DOCUMENTS ELECTRONICALLY

After the **complaint** is filed and the **case** is opened, the **docket** and all documents in the case are maintained in an electronic format on **CM/ECF**. Attorneys are required to file documents electronically ("e-file"). Parties representing themselves (proceeding ***pro se***) may not file documents electronically unless a judge grants permission to do so. Parties representing themselves must file a written **motion** entitled "**Motion for CM/ECF User Name and Password**" describing the party's access to the internet, confirming the party's capacity to file documents and receive filings electronically, and certifying completion of an online tutorial provided by the **Clerk's Office**. For more information, read Local Civil Rule 5.4(b)(2).

What Are The Pros And Cons Of E-Filing?

Pros:

1. You can e-file from any computer.
2. You will not have to go to the courthouse to file your court papers.
3. You have until midnight on the day your filing is due to e-file (instead of 4:00 p.m. for physical delivery to the Clerk's Office with paper filings).
4. You will not need to **serve** the other parties with paper copies.
5. You will likely have more time to respond to any motion filed by the opposing side because you can receive and review the motion as soon as it is filed, instead of having to wait for your copy to arrive by mail. **Opposition papers** must be filed within 14 days after the motion is filed, even if you do not receive your copy in the mail until a few days later, unless the Judge sets a different deadline.

Issues to Consider:

1. If you do not already have all the hardware and software required to e-file, there may be some initial costs.
2. You may require some training in:
   a. How to convert documents to .pdf and to work with .pdf documents.
   b. How to log into and use the CM/ECF system to file documents.

   Free training on using CM/ECF is available online.
3. You will not receive documents in paper, so you will be responsible for checking your e-mail every day to make sure you read filings and court orders. You will need to print out all documents yourself.
4. Even if you do not register to file documents electronically, you can access court records online. See Chapter 7.

CHAPTER 10
HOW DO I RESPOND TO A COMPLAINT?

What Happens When A Complaint Is Served?

When you are **served** with a **complaint** and **summons**, you become a **defendant** in a lawsuit. You will be required to file a written response with the **Court**. Under Rule 12 of the Federal Rules of Civil Procedure, there are two general ways to respond. You can:

1. File an **answer** to the complaint, OR
2. File a **motion** challenging some aspect of the complaint. If you file a motion, you may still have to file an answer but only after the Judge rules on your motion. See Chapter 11 for more information about motions.

It is very important that you respond to the complaint by the deadline, or else the **plaintiff** can seek a **default judgment** against you, which means that the plaintiff can win the **case** and collect a **judgment** against you without ever having the Judge consider the **claims** in the complaint. See Rule 55 of the Federal Rules of Civil Procedure and the section titled "What does it mean to win by default judgment?"

How Much Time Do I Have To Respond To The Complaint?

Generally, the summons will specify how much time you have to respond. The time you have to file a response to a complaint depends on who you are and how you were served. These are covered in the **Federal Rules of Civil Procedure** and explained in the table below.

When Rule Applies	Federal Rule No(s).	Deadlines
General Rule	12(a)(1)(A)(i)	Once served with a summons and the complaint, a defendant must file a written response to the complaint **WITHIN 21 DAYS**, unless a different time is specified in an applicable United States statute.
If Service Is Waived	4(d)(3) and 12(a)(1)(A)(ii)	A defendant can be granted extra time to file a response to the complaint **IF** the plaintiff has chosen this method of service **AND** defendant returns a signed waiver of service within the amount of time specified in the plaintiff's request for waiver of service. Defendants within the United States have **60 DAYS** from the date the request for waiver of service was sent to file a response to the complaint. Defendants outside the United States have **90 DAYS** from the date the request for waiver of service was sent.
US Defendants Sued In Official Capacity	12(a)(2)	The United States, an agency of the United States, or an officer or employee of the United States sued in an official capacity, generally must file a written response to the complaint **WITHIN 60 DAYS** after the United States Attorney is served.
US Defendants Sued In Individual Capacity	12(a)(3)	Any officer or employee of the United States sued in an individual capacity for acts or omissions occurring in connection with the performance of duties on behalf of the United States must file a written response to the complaint **WITHIN 60 DAYS** after he or she was served, or **WITHIN 60 DAYS** after the United States Attorney is served, whichever is later.
After An Amended Complaint Has Been Filed	15(a)(3)	A defendant must respond to an amended complaint either: 1. Within the time remaining to respond to the original complaint, **OR** 2. **WITHIN 14 DAYS** after being served with the amended complaint, whichever period is later.

How Do I Prepare An Answer To A Complaint?

An **answer** "on the merits" challenges the complaint's factual accuracy or the plaintiff's legal entitlement to relief based on the facts set forth in the complaint. The format of your answer must track the format of the complaint. It should include a numbered response to each numbered paragraph of the plaintiff's complaint. Rule 8(b)(1) of the Federal Rules of Civil Procedure governs answers. A sample "answer packet"

is available on the Court's website at www.uscourts.gov/forms/pro-se-forms/defendants-answer-complaint. There are several requirements to consider:

1. **For each sentence in the complaint, state what you admit and what you deny**.
    - If you feel that you do not have enough information to determine if a statement is true or false, you can state that in your answer.
    - If only part of a statement is true, you should admit to that part and deny the rest.
    - If you do not deny a statement, it is considered the same as admitting to it. See Rule 8(b)(6) of the Federal Rules of Civil Procedure.
2. **Include affirmative defenses, if there are any that apply**. **Affirmative defenses** are new factual **allegations** that, under legal rules, defeat all or a portion of the plaintiff's claim. The sample "answer packet" includes information about affirmative defenses. Examples of affirmative defenses include: fraud, illegality, and **statute of limitations**. See Rule 8(c) of the Federal Rules of Civil Procedure.
    - As the defendant, you are responsible for raising any affirmative defenses that can help you in the lawsuit. At trial, you will have the burden of proving their truth.
    - Each affirmative defense should be listed in a separate paragraph at the end of the answer.
    - Any affirmative defense not listed in the answer is waived, meaning you cannot raise the defense later in the lawsuit.
3. **Include a prayer for relief**. The **prayer for relief** states what **damages** or other relief you believe the Court should **award** to the plaintiff (usually, the defendant suggests that the plaintiff receive nothing).
4. **Sign and date your answer**. See Rule 11 of the Federal Rules of Civil Procedure.

Can I Make Claims Against The Plaintiff In My Answer?

You may not assert claims against the plaintiff in the answer. In order to assert claims against the plaintiff, you must file a **counterclaim**. You may, however, include the counterclaim after your answer and file both as a single document. ***Certain types of counterclaims must be filed at the same time the answer is filed or they are considered waived and cannot be raised later***, according to Rule 13(a) of the Federal Rules of Civil Procedure. See the section "How do I file a counterclaim?" below.

Can I Amend The Answer After I File It?

If** LESS THAN **21 days has passed since you served the answer:

You can amend your answer anytime within 21 days after it is served on the plaintiff without obtaining permission from the Judge or from the plaintiff. See Rule 15(a)(1) of the Federal Rules of Civil Procedure,

If** MORE THAN **21 days has passed since you served the answer:

There are two ways to amend your answer even after 21 days have passed since your answer was served on the plaintiff:

1. Obtain written permission from the plaintiff; OR
2. If the plaintiff does not agree to allow you to amend your answer, you can file a motion with the Court seeking permission to amend your answer. Draft your new **amended answer** and attach it to the motion to amend. The motion to amend should state specifically what you have changed in your answer and that you are requesting permission from the Judge to change your answer as attached. If the Judge grants the motion, you will be allowed to file the amended answer. To learn more about how to file motions, see Chapter 11.

Once The Answer Is Filed, Does The Plaintiff Have To File A Response To It?

No. Under Rule 8(b)(6) of the Federal Rules of Civil Procedure, all statements in an answer are automatically denied by the other parties to the lawsuit.

How Do I File A Counterclaim?

A defendant can bring a complaint against the plaintiff by **filing** a counterclaim. Rule 13 of the Federal Rules of Civil Procedure covers two different types of counterclaims:

1. Compulsory counterclaims: These are the defendant's claims against the plaintiff that are based on the same events, facts, or transactions as the plaintiff's claim against the defendant. For example, if the plaintiff sues the defendant for a **breach** of contract, the defendant's claim that the plaintiff breached the same contract is a **compulsory counterclaim**.
    a. A compulsory counterclaim generally must be filed at the same time the defendant files an answer. See Rule 13(a). If you fail to include a compulsory counterclaim with your answer, you generally will be unable to bring that claim later.
    b. If the Court already has **subject-matter jurisdiction** over plaintiff's claim against you, the Court will also have **jurisdiction** over your compulsory counterclaim.
2. Permissive counterclaims: These are the defendant's claims against the plaintiff that are **NOT** based on the same events, facts, or transactions as the plaintiff's claim against the defendant. In the above example, the defendant's claim that the plaintiff owes him or her money under a different contract would be a **permissive counterclaim**.
    a. No rule governs the time for filing a permissive counterclaim.
    b. You must have an independent basis for **subject matter jurisdiction** over the permissive counterclaim.

Counterclaims should be written using the same format and rules as a complaint. See Chapter 4. If you file your counterclaim at the same time you file your answer, you can include the answer and counterclaim on the same or separate documents. If combined in one document, the title should read "ANSWER AND COUNTERCLAIM." A sample counterclaim is included in the "answer packet" available on the Court's website at www.uscourts.gov/forms/pro-se-forms/defendants-answer-complaint.

Once A Counterclaim Is Filed, Does The Plaintiff Have To File A Response To It?

Yes. Since a counterclaim is really a complaint against the plaintiff, the plaintiff must file a written response to it. Rule 12(a)(1)(B) of the Federal Rules of Civil Procedure requires the plaintiff to respond to the counterclaim within 21 days of being served by filing an answer or a motion regarding the counterclaim.

What If I Want To Sue A New Party?

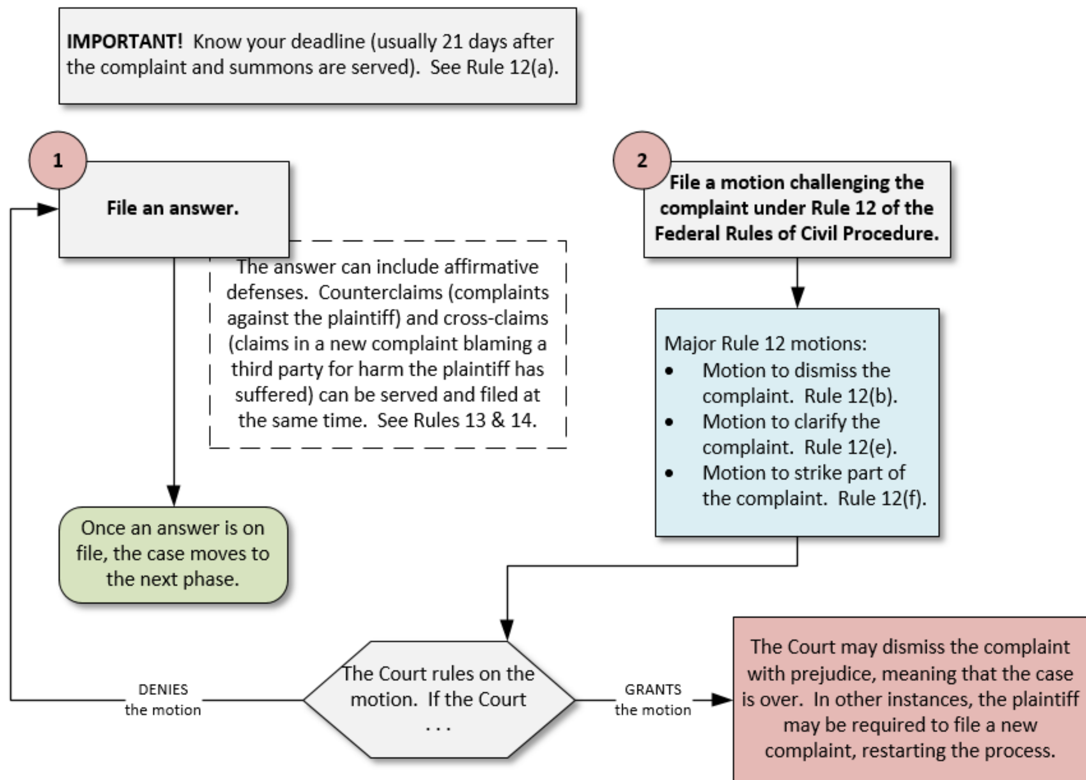
A **crossclaim** brings a new party into the case and essentially blames that third party for all or some of the harm that the plaintiff has suffered. A crossclaim can also be used by a plaintiff against a co-plaintiff or by a defendant against a co-defendant. Like a compulsory counterclaim, a crossclaim must be based on the same series of events as the original complaint. Crossclaims are covered by Rule 13(g) and (h) of the Federal Rules of Civil Procedure. A sample crossclaim is included in the "answer packet," available on the Court's website at www.uscourts.gov/forms/pro-se-forms/defendants-answer-complaint.

How Can I Use A Motion To Challenge The Complaint?

Once you are served with a complaint, you have a limited amount of time to file a written response to the complaint. You will eventually need to file an answer (unless the case is dismissed), but you initially may have the option to challenge the complaint by filing one of the motions specified in Rule 12 of the Federal Rules of Civil Procedure instead of an answer. If you file a Rule 12 motion, you will not need to file your answer until after the Judge decides your motion.

This chapter describes motions to challenge the complaint. To learn more about the procedures for filing a motion, see Chapter 11 on "What is a motion and how do I write or respond to one?"

The defendant may file an answer or may first file a motion, depending on what is in the complaint.



About Motions To Dismiss

A **motion to dismiss** the complaint argues that there are problems with the way the complaint was written, filed, or served. Rule 12(b) of the Federal Rules of Civil Procedure lists the following **defenses** that can be raised in a motion to dismiss the complaint or any individual claim:

1. **Lack of subject matter jurisdiction**: the defendant argues that the Court does not have the legal authority to hear the kind of lawsuit that the plaintiff filed.
2. **Lack of personal jurisdiction over the defendant**: the defendant argues that he or she has little or no connection with the district in which the case was filed that the Court has no legal authority to hear the case.
3. **Improper venue**: the defendant argues that the lawsuit was filed in the wrong geographical location.
4. **Insufficiency of process or insufficiency of service of process**: the defendant argues that the plaintiff did not prepare the summons correctly or did not correctly serve the summons and complaint on the defendant.
5. **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.
6. **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.

If the Judge **DENIES** a motion to dismiss, the defendant must file an answer within 14 days after receiving notice that the Judge denied the motion unless the Judge sets a different time. See Rule 12(a)(4) of the Federal Rules of Civil Procedure. If the Judge **GRANTS** the motion to dismiss, it can grant the motion "**with leave to amend**," "**with prejudice**," or "**without prejudice**" as explained below:

1. With leave to amend means there is a problem with the complaint or an individual claim that the plaintiff may be able to fix.

a. The Judge may set a time by which the plaintiff must file an **amended complaint**. The amended complaint can be served on each defendant by mail or by electronic means if the plaintiff is permitted to file electronically through **CM/ECF**.

b. Once the defendant is served with the amended complaint, he or she must file a written response within the time the Judge orders or by the deadline set forth in Rule 15(a)(3) of the Federal Rules of Civil Procedure. The defendant can either file an answer to the amended complaint or file another motion under Rule 12 of the Federal Rules of Civil Procedure.

2. With prejudice means there are legal problems with the complaint or individual claim that cannot be fixed. Any claim that is dismissed with prejudice is eliminated permanently from the lawsuit.

    a. If the Judge dismisses the entire complaint "with prejudice," then the case is over.

    b. If some, but not all, claims are dismissed "with prejudice," then the defendant must file an answer to the remaining claims, within the time specified in the Judge's order.

3. Without prejudice means that the case is dismissed, but the claim is not permanently eliminated. The plaintiff may bring another suit based on the same **grounds**.

About Motions For A More Definite Statement

Under Rule 12(e), the defendant argues in a **motion for a more definite statement** that the complaint is so vague, ambiguous or confusing that the defendant is unable to answer it. The motion must identify the confusing portions of the complaint and ask for the details needed to respond to it. A motion for a more definite statement must be made before a responsive pleading (usually an answer) is filed.

If the Judge GRANTS a motion for a more definite statement, the plaintiff is given an opportunity to file a new complaint. The defendant then must file a written response to the complaint within 14 days after receiving it. See Rule 12(a)(4)(B) of the Federal Rules of Civil Procedure. The written response can be either an answer or another motion.

If the Judge DENIES the motion for a more definite statement, then the defendant must file a written response to the complaint within 14 days after receiving notice of the Judge's order.

About Motions To Strike

Rule 12(f)(2) of the Federal Rules of Civil Procedure permits the defendant to file a **motion to strike** from the complaint any "redundant, immaterial, impertinent, or scandalous matter." This can be used to challenge portions of the complaint rather than the entire complaint or even entire claims.

What If I Do Not Respond To The Complaint?

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 Judge for a **default judgment**, which means that the plaintiff wins the case and may take steps to collect on the judgment against that defendant.

About Default Judgments

Rule 55 of the Federal Rules of Civil Procedure provides for a two-step process that applies in most cases when the defendant has not responded to the complaint:

1. The plaintiff begins by filing a **request for entry of default** with the Clerk together with proof (usually in the form of a **declaration**) that the defendant has been served with the complaint.

    If the Clerk approves and enters default against the defendant, then the defendant is no longer able to respond to the complaint without first filing a **motion to set aside default.** See Rule 55(c) of the Federal Rules of Civil Procedure. Once default is entered, the defendant is considered to have admitted to every fact stated in the complaint except for the amount of damages.

2. Once the Clerk has entered default against the defendant, the plaintiff may then file a **motion for default judgment** supported by:

    a. A declaration submitted under penalty of **perjury**, showing that the defendant was served with the complaint but did not file a written response within the required time for responding; AND

b. A sworn declaration proving the amount of damages claimed in the complaint against the defendant. Under Rule 54(c) of the Federal Rules of Civil Procedure, the Judge cannot enter a default judgment that awards the plaintiff more (money, relief, etc.) than the plaintiff specifically asked for in the complaint.

Special rules apply if the plaintiff seeks a default judgment against any of the following parties:

A minor or incompetent person .... See Rule 55(b)

The United States government or its officers or agencies .... See Rule 55(d)

A person serving in the military ....See 50 U.S.C. App. § 521

A foreign country .... See 28 U.S.C. §1608(e)

The defendant should file a response to the motion for default judgment and also appear at the **hearing** if at all possible. The defendant usually opposes a motion for default judgment by challenging the sufficiency of **service** of the complaint, but can also argue that the facts stated do not amount to a violation of the law or that the amount of damages claimed by the plaintiff is incorrect. In general, the Judge will not enter a default judgment if an alternative exists (for example, if the defendant has belatedly appeared and is willing to defend against the case on the merits) because then entering a default judgment may be unfair to the defendant.

Obtaining Relief From A Default Or Default Judgment

A defendant against whom default or a default judgment has been entered may file a motion to set aside the default or default judgment. See Rule 55(c) of the Federal Rules of Civil Procedure. The Judge will set aside an entry of default or a default judgment for good cause or for a reason listed in Rule 60(b) of the Federal Rules of Civil Procedure such as mistake, fraud, newly-discovered **evidence**, a void judgment, or any other justifiable reason.

In either case, the motion must explain in detail your reasons for failing to respond to the complaint. To learn about the requirements for motions, see Chapter 11.

CHAPTER 11
WHAT IS A MOTION AND HOW DO I MAKE OR RESPOND TO ONE?

A **motion** is a formal request you make to the Judge for some sort of action in your **case**. Most motions are brought by parties, but certain motions can be brought by non-parties.

Here are some common motions that may be filed at any point in a civil case:

Motion for extension of time to file document

Motion to appear by telephone

Motion for sanctions

Motion for appointment of counsel

Here are some specialized motions that are filed during specific phases of a civil case:

After filing a complaint:	Motion to amend
In response to a complaint:	Motion to dismiss Motion for a more definite statement Motion to strike Motion to set aside default judgment
During discovery:	Motion to compel deposition/document production/response to interrogatories Motion for a protective order
Before and during trial:	Motion for summary judgment Motion in limine Motion for judgment as a matter of law

After trial or judgment:	Motion to set aside the verdict Motion to amend or vacate the judgment

Motion Terminology and Timeline

The party who files a motion is the "movant" or "**moving party.**" The other parties are "**non-moving parties.**" A party who does not want the motion to be granted is the "**opposing party.**"

1. **Filing.** The moving party files a motion explaining what action he or she wants the Judge to take and why.
2. **Opposition.** The opposing party files an **opposition brief** explaining why he or she believes the Judge should deny the moving party's motion. Under Local Civil Rule 7(b), an opposition is due within 14 days of the date of **service** of the motion, or by the deadline set by the Judge.
3. **Reply.** The moving party may file, not later than 7 days after the due date for the opposition brief, a **reply brief** responding only to the arguments made by the opposing party's opposition brief. After the **reply**, the opposing party may not file another document or "sur-reply" without first getting permission from the Judge.
4. **Hearing.** After the motion and the **briefs** are filed, the Judge can decide the motion based entirely on the arguments in the papers, or can hold a **hearing**. If the Judge holds a hearing, each party will be given a chance to talk to the Judge about the arguments in his or her papers. The Judge may ask the parties to submit additional briefs after the hearing, announce its decision in the courtroom, or issue a written decision.

Non-Dispositive Motions

If the Judge's ruling on a motion will not resolve the case in whole or in part, the moving party must discuss the upcoming motion with the opposing party "in a good-faith effort to determine whether there is any opposition to the relief sought and, if there is, to narrow the areas of disagreement." Local Civil Rule 7(m). The moving party shall include in his or her motion a statement that this discussion has occurred and shall indicate whether the motion is opposed. This rule applies to **counsel** and non-incarcerated parties representing themselves (*pro se* parties).

What Are The Requirements For Motions?

1. Rules 7(b) and 11 of the Federal Rules of Civil Procedure and Local Civil Rule 7 set the requirements for motions. If you do not make your best effort to follow these rules, the Judge may refuse to consider your motion. For more information on the requirements for motions, you can seek help from **Legal Help Centers** discussed in Chapter 2.
    a. A motion usually should be made in writing. While you may be able to make a motion orally ("**speaking motions**") during a hearing or trial, the Judge may still direct you to put your motion in writing.
    b. All of the Court's rules about **captions** and the format of documents apply to motions. See Chapter 4.
    c. Local Civil Rule 7(e) sets page limits. A memorandum in support of or in opposition to a motion shall not exceed 45 pages (excluding **declarations** and **exhibits**), and a reply memorandum shall not exceed 25 pages. If you want to file more pages, you must file a motion seeking the Judge's permission. Some judges may have lower page limits in their **standing orders.** It is important to stay within the page limits. A judge may require that, if a motion exceeds a specified number of pages, the party submit a courtesy copy (paper copy) to chambers. All motions should be double-spaced and in standard-sized type. If you must handwrite your motion, make sure that someone can read your handwriting.
    d. The motion must meet the requirements of Rule 11 of the Federal Rules of Civil Procedure. Rule 11 forbids parties to file motions that have no legal basis or are based on too little investigation or on facts known to be false.

e. For non-dispositive motions, a motion must include a statement that the moving party has discussed the motion with the opposing party and a statement as to whether the motion is opposed. See Local Civil Rule 7(m).

2. Motions should contain the following:
   a. **Title of the motion**. Examples of common titles include: "PLAINTIFF'S MOTION FOR AN EXTENSION OF TIME," "DEFENDANT'S MOTION TO DISMISS," and "JOINT MOTION FOR REFERRAL TO MEDIATION."
   b. **Statement of purpose**. Begin with your request (what you want the Judge to do) and your reasons for the request.
   c. **Memorandum of points and authorities**. The **memorandum of points and authorities** (or "**brief**") states the issues to be decided in the motion and your facts and legal arguments explaining why the Judge should grant your motion. Title your memorandum, for example: "DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THEIR MOTION TO DISMISS"). Local Civil Rule 7(a) requires that the moving party include a statement of specific points of law and authority in support of the motion. Note that a **motion for summary judgment** "shall be accompanied by a statement of **material facts** as to which the moving party contends there is no genuine issue, which shall include references to the parts of the record relied on to support the statement." Local Civil Rule 7(h)(1). If judicial review of your case "is based solely on the administrative record," the supporting memoranda "shall include a statement of facts with references to the administrative record." Local Civil Rule 7(h)(2). See Chapter 18 for more information about motions for summary judgment.
   d. **Citations**. Every mention of a law, rule, or case is called a "**citation**." When citing a law, rule, or case, use the format that is required by the Court. Check your Judge's standing order to determine whether you will be required to include a table of such citations in your brief or other filing.
   e. **Request for Oral Hearing**. You may ask the Judge for a hearing on your motion. The Judge will decide whether to hold a hearing. If there is a hearing, the Judge will notify the parties of the date, time, and place of the hearing.
   f. **Declaration(s)**. If your motion depends on facts, you must also provide the Judge with **evidence** that those facts are true by **filing** one or more "declarations." A declaration is a written statement signed under penalty of **perjury** by a person who has personal knowledge that what he or she states in the declaration is true. A declaration includes ONLY facts, and may not contain any law or argument.
      i. The first page of each declaration must include the name of the document, for example: "DECLARATION OF JOHN SMITH IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT."
      ii. The declaration should be made up of numbered paragraphs.
      iii. You must include the following language at the end of the declaration:

         If the declaration is being signed in the United States—it must state: "I declare under penalty of perjury that the foregoing is true and correct. Executed on (insert the date the document is signed)."

         If the declaration is being signed outside of the United States—the language must read: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (insert the date the document is signed)."
      iv. The person whose statements are included in the declaration must sign and date it.
   g. **Proposed order**. Attach to your motion a **proposed order** for the Judge to sign that spells out what will happen if the Judge grants your motion. The first page of the order should include the title: "[PROPOSED] ORDER." At the end of the proposed order, you must include a line space for the Judge's signature. If the Judge grants your motion, he or she may sign your proposed order or write his or her own order. See Local Civil Rule 7(c).

How Do I Oppose (Or Not Oppose) A Motion?

1. Unless the time is extended, Local Civil Rule 7(b) requires that opposition briefs be filed and **served** no later than 14 days after the motion is filed. In many instances, judges allow longer periods of time for litigants representing themselves (*pro se* litigants) to file their briefs, and typically issue orders setting deadlines for their oppositions.
2. Title your opposition, for example: "PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS."
3. If you do not oppose the motion, you may file a notice to the Court stating your consent to all or part of the motion.
4. Include a memorandum of points and authorities (or "brief") and title it, for example, "PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS"). It may not exceed 45 pages; it should explain the reasons why the motion should be denied, with citations to appropriate law and facts.
5. If you are opposing a **summary judgment** motion, your opposition "shall be accompanied by a separate concise statement of genuine issues setting forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated, which shall include references to the parts of the record relied on to support the statement." Local Civil Rule 7(h)(1). See Chapter 18 for more information about opposing a motion for summary judgment.
6. If you fail to address an argument in the motion, the Judge may consider that argument as conceded.
7. Include a proposed order containing the language that you want the Judge to sign. See Local Civil Rule 7(c).

What If I Need More Time To Respond To A Motion?

Under Rule 6(b) of the Federal Rules of Civil Procedure, the Judge may allow you extra time to respond to a motion only for a good reason. You may request extra time by filing a **motion for an extension of time** with the Court. Local Civil Rule 7(m) requires that you discuss your motion with the opposing party before you file it, and include in your motion a statement whether your motion is opposed. If you make the request before the original deadline passes, the Judge may grant extra time with or without a motion or notice to the other parties. If you wait until after the original deadline passes before asking for extra time, you must file a motion and show that you had a good reason for missing the deadline. Whether to grant an extension of time is left to the Judge's discretion.

What Are The Requirements For Reply Briefs?

1. Local Civil Rule 7(e) requires a reply brief to be filed and served no later than 7 days after service of the opposition brief. A reply brief shall not exceed 25 pages. Please note that the Judge may set another due date or page limit.
2. Title your reply "REPLY BRIEF IN SUPPORT OF [name of motion]".
3. The memorandum of points and authorities should discuss only the arguments made in the opposition brief. Do not repeat the arguments you made in the motion, except to the extent necessary to explain why you believe the arguments in the opposition brief are wrong.
4. The reply brief may not include new arguments in support of your motion. Because the opposing party ordinarily is not allowed to file a response to a reply brief (called a surreply), including new arguments in a reply would be unfair.

Ex Parte Motion: An **ex parte motion** is a motion that is filed without giving notice to the opposing party. You may file an ex parte motion ONLY if a statute, federal rule, local rule, or standing order authorizes the filing of such a motion AND you have complied with all the requirements.

CHAPTER 12
WHAT HAPPENS AT A COURT HEARING?

What Is A Hearing?

A **hearing** is a formal court proceeding. A **motion** hearing is the time for the parties to present their arguments to the Judge and answer the Judge's questions about the motion. Hearings can be held for other purposes, and sometimes **witnesses** can be presented at these hearings. The Judge may hold a hearing in person in a courtroom, by telephone, or by videoconference.

How Do I Prepare For A Hearing?

1. Review all papers that have been filed for the hearing.
2. Expect to answer questions about issues that are being addressed at the hearing. You may find it helpful to practice answering the questions you think the Judge will ask.
3. Organize all your papers so that you can find things easily when you need to answer the Judge's questions.

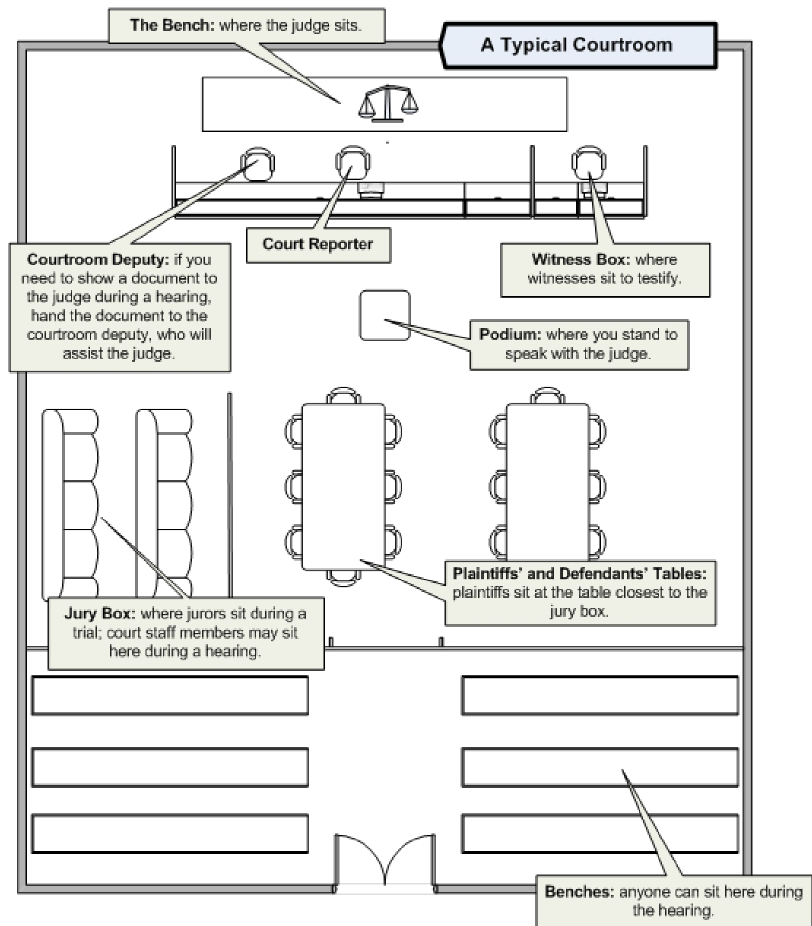
How Should I Dress And Behave At A Hearing?

- Dress neatly and conservatively.
- Be on time.
- Turn off your cell phone.
- 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 courtroom. If you are not sure where to sit, ask the courtroom deputy where to sit.
- When the Judge enters the courtroom, you must stand and remain standing until the Judge sits down.
- When you speak to the Judge, call him or her "Your Honor."
- The courtroom deputy may tell the parties to "state your appearances" or "state your name for the record." Say: "Good [morning or afternoon], your Honor, my name is [your name] and I am the [plaintiff or **defendant**] in this **case**."
- You may be asked to approach the podium and speak into a microphone so that the **court reporter** can hear and understand you. You can bring up any papers that you may need to the podium and refer to them during the hearing.

How Is A Courtroom Arranged And Where Do I Fit In?

The **bench** is a large desk where the Judge sits in the front of the courtroom.

The **witness box** is the seat next to the bench where witnesses sit when they testify.



The court reporter is the person seated in front of and below the bench writing on a special machine. The court reporter makes a record of everything that is said at the hearing, which is called a **transcript**. You may order a copy of the transcript from the court reporter, for a fee.

The courtroom deputy assists the Judge. If you need to show a document to the Judge during a hearing, you should hand the document to the courtroom deputy, who will then hand it to the Judge. You will often be asked to check in with the courtroom deputy before the Judge comes into the courtroom.

In the center of the courtroom in front of the bench is a **lectern** (sometimes referred to as a "podium") with a microphone. This is where a lawyer or party representing themselves (*pro se* party) usually stands when speaking to the Judge.

The **jury box** is located against the wall, at one side of the courtroom. This is where jurors sit during a trial. During a hearing, court staff members may be sitting in the jury box.

In the center of the courtroom, there will be plaintiffs' and defendants' tables with a number of chairs around them. This is where the lawyers and the parties sit during hearings and trials. The plaintiffs sit at the table that is closest to the jury box. The defendants sit at the table next to the plaintiffs.

There are several rows of benches in the back of the courtroom, where anyone can sit and watch open hearings or trials. This is where you will sit to wait for your case to be called.

What Happens At A Motion Hearing?

First, the party who filed the motion has a chance to argue why the motion should be granted. Then, the **opposing party** will argue why the motion should be denied. Finally, the party who filed the motion may have an opportunity to explain why he or she believes the opposing party's argument is wrong. The Judge may ask questions at any point in the hearing.

Points to remember for the hearing:

- **Be polite and respectful to the Judge and opposing parties.**
- ***Do not interrupt the Judge when he or she is speaking.***
- **Do not simply repeat all the points made in your motion or opposition papers.** Highlight the key points.
- **You cannot make new arguments that are not in the papers you filed with the Court**, unless you have a very good reason why you could not have included the argument in your papers.
- You can refer to notes during your argument. It is often more effective to speak to the Judge rather than read an argument that you have written down ahead of time, but you may find it helpful to write down your key points to refer to if necessary.

- You should step aside or return to your seat to allow the other side to use the lectern when it is the other side's turn to speak or the Judge has asked the other side a question.
- When one party is speaking at the lectern, the other party should sit at the table or remain standing at least a few feet away, giving the speaker some space.
- **Never interrupt the other party.** Always wait until it is your turn to speak.
- The Judge may ask you questions about your argument. **If the Judge asks a question, always stop speaking, listen carefully to the Judge's question, and answer the question completely.** When you are finished answering the question, you can go back and finish the other points you wanted to make.
- If the Judge asks you a question when you are seated at the table or away from the podium, stand and walk up to the lectern before you answer the question.
- Remain in the courtroom until the Judge excuses the parties.

General Advice For Hearings

Be sure to have a pen and paper with you so that you can take notes.

When your hearing is over, the Judge will excuse the parties. You may leave the courtroom or return to one of the benches in the back of the courtroom to watch the rest of the hearings.

If you need to discuss something with opposing counsel before or after your hearing, leave the courtroom and discuss the matter in the hallway.

CHAPTER 13

INITIAL DISCLOSURES: WHAT ARE THEY AND WHEN DO THEY HAPPEN?

Before the parties begin **discovery** (the formal process of information exchange between parties that is governed by specific **procedural rules** — see Chapter 16), they are required to hand over to each other certain types of information. This is called an "**initial disclosure.**" Federal Rule of Civil Procedure 26(a) lists three types of **disclosures** which you must provide to the other parties at different times during the course of the lawsuit: **initial disclosures**, **expert disclosures**, and **pretrial disclosures**. Expert disclosures and pretrial disclosures are covered in Chapter 19, "What happens at trial?"

Initial disclosures, covered in detail in Rule 26(a)(1), are required in all civil **cases** except those listed in Rule 26(a)(1)(B), such as: **actions** for review of administrative agency action (like social security appeals), petitions for habeas corpus, actions brought by prisoners representing themselves (***pro se*** prisoners), and actions to enforce **arbitration awards**. In all other types of cases, you will have to **serve** initial disclosures on the other parties early in the case. Even though you may not yet have fully investigated the case, you are REQUIRED to make initial disclosures based on the best information available to you. **If you fail to disclose relevant information, the Judge may not let you use that information in your case.**

Make sure that you know the date by which you must serve the initial disclosure.

Timing:	Must be served within 14 days after your Rule 26(f) **meet and confer** (which, in turn, normally takes place at least 21 days before your **initial scheduling conference**). See Chapter 15. **UNLESS**: **1.** Parties agree to a different time; **OR** **2.** The Judge orders a different time; **OR** **3.** One party objects during the conference that initial disclosures are not appropriate under the circumstances of the lawsuit, and states the objection in the Rule 26(f) **discovery plan**.
Form:	Initial disclosures must be in writing, signed and served on all other parties to the lawsuit but **NOT** filed with the **Court**. Your signature certifies that the disclosure is complete and correct as of time it is made, to the best of your knowledge.

Required Content:	1. Name and (if known) address and telephone number of each individual likely to have information that you may use to support your **claims** and **defenses**, unless that information will be used solely for **impeachment** (information used to attack the credibility of a witness rather than to prove your case); 2. Type of information each individual has; 3. Copies or a description by category and location of all documents or other things that you have in your possession that you might use to support your claims or defenses, unless they will be used solely for impeachment; 4. Calculation of **damages** you claim to have suffered, including all documents that support your calculation (you do not need to disclose documents that are privileged or otherwise protected; see Chapter 16); 5. Insurance agreements that may cover an award of damages in the lawsuit.
Adding to/ Changing A Disclosure	1. If you realize that there is additional or different information to disclose, you must let the other side know right away. If you do not timely disclose information, you may not be able to use that **evidence** later in the case. 2. If you need to add information to your disclosure, serve on the other parties a document titled "Supplemental Initial Disclosure" in the same format as your original "Initial Disclosure" that includes all new information. 3. If you need to change information you have already disclosed, serve on the other parties a document titled "Amended Initial Disclosure" in the same format as your original "Initial Disclosure" that includes all information that must be changed.

CHAPTER 14

WHAT IS A SCHEDULING CONFERENCE AND HOW DO I PREPARE FOR IT?

A **scheduling conference** usually is held early in the **case**, either in person in a courtroom, by telephone, or by videoconference. Its purpose is for the Judge and the parties to set a schedule for the case for **discovery**, **motions**, a **pretrial conference**, a trial date, and other key deadlines. The Judge may ask you questions about your case, but no issues or **claims** are decided at the **initial scheduling conference.** It is still a very important event in a new civil case.

The Judge may schedule a **status conference** later in the case to check in with the parties about what is happening in the case. It is a chance for the parties to tell the Judge about the progress of their case and any problems they have had in preparing for trial or in meeting the original schedule.

A pretrial conference is held shortly before trial at which the Judge and the parties discuss the procedures for the upcoming trial.

When Is The Initial Scheduling Conference?

Under Federal Rule of Civil Procedure 16, the Judge will issue an order setting the date for an initial scheduling conference. At this scheduling conference, the parties will discuss how the case should proceed, including whether parties plan to file motions, whether the case could benefit from **Alternative Dispute Resolution** ("ADR") (Chapter 15), and whether there is a realistic probability of settling the case. If you want to try to settle your case with the other side, you can ask the presiding Judge to consider sending your case to mediation and appoint a lawyer to represent you for this purpose.

Does Every Case Have An Initial Scheduling Conference?

No. Certain types of cases — listed in Local Civil Rule 16.3(b) — do not have initial scheduling conferences. For example, there is no initial scheduling conference in a case seeking review on an administrative record or **actions** brought by unrepresented persons in the custody of the United States. And the Judge may not hold an initial scheduling conference if the parties' joint proposed schedule and **discovery plan** are adequate.

"Meeting And Conferring" Before The Initial Scheduling Conference

At least 21 days before the initial scheduling conference, all parties MUST "**meet and confer**" — that is, talk by phone or in person to try to agree on a number of issues. If the other party has a lawyer, you will meet and confer with the lawyer. The meet-and-confer process saves time by requiring the parties to agree on as much as possible and to understand each other's positions.

During the "meet and confer," you should be prepared to:

1. Discuss the nature and basis of your claims;
2. Discuss whether there is a way to resolve the case early through settlement;
3. Arrange for initial disclosure of information by both sides as required by Rule 26(a)(1), including:
   a. The exchange of names and contact information of every person who is likely to have information about the issues; AND
   b. Listing certain documents described in Rule 26(a);
4. Agree on a plan for how and when discovery will be completed;
5. Discuss whether the case could benefit from **ADR**;
6. Prepare a **joint statement** which tells the Judge the results of the parties' discussions and complies with all parts of the Judge's standing order.

Local Civil Rules 16.3 and 16.4 and Rules 16(b) & 26(f) of the Federal Rules of Civil Procedure contain detailed rules about initial scheduling conferences and parties' duty to "meet and confer."

Preparing The Scheduling Report

Within 14 days of the initial scheduling conference, or by the deadline set by the presiding Judge, attorneys and parties representing themselves (***pro se*** parties) should jointly file a written report outlining the plan for discovery (Chapter 16), a proposed schedule, and other matters discussed at the "meet and confer." Parties should file the report jointly, but may file separate proposed **scheduling orders** to reflect any disagreements. Ordinarily, the **plaintiff** is responsible for ensuring timely **filing** of the report. However, the Judge may designate another party to file the report. For example, if the plaintiff is representing herself (proceeding *pro se*), the Judge may direct the **defendant** or a party represented by counsel to file the report. Local Civil Rule 16.3(d).

The Proposed Discovery Plan

The proposed discovery plan is a written proposal that the parties make to the Judge describing how each party thinks discovery should be conducted in the case. Discovery, the process by which the parties exchange factual information before trial, is covered in detail in Chapter 16. The Judge will review the plan and determine how discovery will proceed and include this in the scheduling order.

The parties must make a **good faith** effort to agree on a joint proposed discovery plan, which should include each party's views and proposals about:

- Any changes that should be made in the timing, form, or content of **disclosures** under Rule 26(a), including a statement as to when **initial disclosures** under Rule 26(a)(1) were made or will be made;
- The subjects, timing, and particular issues for discovery;
- Limitations on discovery (number of **depositions**, limits on document requests, etc.); AND
- Other orders that should be entered by the Judge under Rule 26(c) or Rule 16(b) and (c).

What Happens At The Initial Scheduling Conference?

The Judge will ask about the issues in the parties' report and other issues that may have arisen. The Judge is also likely to ask about the form of ADR (Chapter 15) most appropriate for your case.

What Is A Scheduling Order?

During or after the initial scheduling conference, the Judge will issue a scheduling order setting a schedule for the rest of the case. The Judge may include dates for a post-discovery status **hearing**, a pretrial conference, dispositive motions, and trial in the scheduling order. The scheduling order will govern the case unless and until it is changed later by the Judge.

CHAPTER 15
WHAT IS ALTERNATIVE DISPUTE RESOLUTION ("ADR")?

It is the mission of the **Court** to do everything it can to help parties resolve their disputes as fairly, quickly and efficiently as possible. **ADR** can save time and money by helping parties work out their differences without formal litigation. ADR also can lead to resolutions that are more creative and better tailored to the parties' underlying interests.

Local Civil Rule 16.3 requires that parties confer about whether the **case** could benefit from ADR, including the Court's Mediation Program. In **mediation**, a specially trained lawyer meets with the parties to help them negotiate a mutually satisfactory agreement resolving all or part of the dispute. Mediators focus not only the relevant **evidence** and law, but also the parties' underlying interests, needs, and priorities. A judge also may refer a case to a **magistrate judge** for mediation.

Parties not represented by a lawyer are generally ineligible for referral to the Court's mediation program, but you may ask the Judge to appoint a lawyer for the purpose of mediation. If both parties are represented, the District Judge may refer the case to mediation by either encouraging parties to voluntarily submit to mediation or requiring parties to participate. A judge often refers cases to mediation at the first **status conference**, though cases can be referred to mediation at any point during the litigation process. The Court's mediation program is informal and any communications made in connection with the mediation are confidential.

More information on the Court's mediation program may be found on the Court's website: www.dcd.uscourts.gov/court-mediation-program.

CHAPTER 16
WHAT IS DISCOVERY?

"**Discovery**" is the process in which the parties exchange information about the issues in the **case** before trial. There are six ways to request and receive this information: **depositions**, **interrogatories**, **requests for production of documents and/or other items**, **request for admissions**, **mental examinations**, and **physical examinations.** You may use the methods of discovery in any order or at the same time. What methods the other party uses does not determine what methods you may use. Ordinarily, discovery materials are **served** upon the parties and are not filed with the **Court**. See Local Civil Rule 5.2(a).

When Can Discovery Begin?

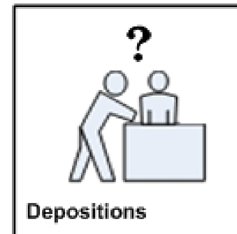
Rule 26(d) of the Federal Rules of Civil Procedure states that discovery cannot begin until the parties have had their Rule 26(f) **meet and confer**, UNLESS:

1. Earlier discovery is allowed by another part of the Federal Rules of Civil Procedure; OR
2. The Judge issues an order that allows earlier discovery; OR
3. All parties agree that discovery can be taken earlier.

What Are The Limits On Discovery?

1. **Privileged information.** This is a small category of information consisting mostly of confidential communications such as those between a doctor and patient or an attorney and client.
2. **Limits imposed by the Judge.** The Judge can limit the use of any discovery method if the Judge finds:
   - The discovery seeks information that is already provided or is available from more convenient and less expensive sources; OR
   - The party seeking discovery has had multiple chances to get the requested information; OR
   - The burden or expense of the proposed discovery is greater than its likely benefit; OR
   - The discovery seeks information that is privileged or otherwise confidential.

There are also limits to how many requests you can make, discussed below. Rule 26(b) covers discovery scope and limits in detail.



Depositions

A deposition is a question-and-answer session that takes place outside of Court but is recorded by a **court reporter**. Rule 30 of the Federal Rules of Civil Procedure covers depositions in detail. One party to a lawsuit asks another person — either a party or a **witness** — who is under oath, questions about the issues raised in the lawsuit. The person answering the questions under oath is the "**deponent.**" The deponent can be any person who may have information about the case, including eye witnesses, **expert witnesses**, or other parties to the lawsuit. A deposition may also be taken by telephone or by written questions. At a deposition:

1. The deponent answers all questions under oath, meaning he or she swears that his or her answers are true.
2. The questions and answers of the deposition are recorded by audio, audio-visual, or stenographic means by a court reporter. See Rule 28.
3. The party taking the deposition must pay the cost of recording the deposition. After the deposition, it is the responsibility of the parties to obtain the **transcript** from the court reporter.

Do I need the Judge's permission to take a deposition?

Usually, you do not need the Judge's permission to take a deposition EXCEPT in the following situations:

- The deponent is in prison; OR
- Your side of the lawsuit has already taken the maximum number of depositions allowed in the case (usually 10) and the other parties have not agreed that you may take more (refer to Rule 30(a) for more detail); OR
- The deponent has already been deposed in the same case and the other parties have not agreed in writing that the deponent may be deposed again; OR
- You want to take a deposition before the parties have their Rule 26(f) meet and confer and the other parties will not agree to let you take the early deposition. A **motion** is not required if the deponent is expected to leave the United States and therefore will be unavailable for deposition after the Rule 26(f) meeting.

How do I arrange a deposition?

1. **Consult with opposing counsel to choose a convenient time for the deposition.**
2. **Pick a convenient time for the deposition and give written notice of the deposition to the deponent.** This document is known as the **notice of deposition**. Notice of deposition should be given at least seven days in advance of the deposition; notice should be given at least fourteen days in advance if the deposition is to be taken more than 50 miles from the District of Columbia.
3. **Serve the notice of deposition** on all parties.

What do I include in a notice of deposition?

Under Rule 30(b) and 26(g)(1) of the Federal Rules of Civil Procedure, the notice of deposition must include:

1. The time and place where the deposition will be held; AND
2. The name and address of the deponent (if this is not known, the deponent must be described well enough so that he or she can be identified by the other side; for example, "the store manager who was on duty after 6:00 pm"); AND
3. If you name a business or government agency as a deponent, then it must include the name of the person who will testify on its behalf; AND
4. The method by which the deposition will be recorded; AND
5. Your address and signature pursuant to Rule 26(g)(1).

When do I need to use a subpoena for a deposition?

Under Rule 45 of the Federal Rules of Civil Procedure:

- You DO NOT need a **subpoena** to depose someone who is a party to the lawsuit.

- Only deponents who are not parties to the lawsuit (**non-party deponents** or **non-party witnesses**) must be served with a subpoena to compel their attendance. You can get a blank subpoena from the Court's website for any cases pending in the District of Columbia: www.uscourts.gov/services-forms/forms ("Subpoena to Testify at a Deposition in a Civil Action").
- A subpoena may be served (hand delivered) on the deponent by any person who is not a party to the lawsuit and who is at least 18 years of age.
- A subpoena must be hand delivered to the deponent along with the fees for one day's attendance and mileage allowance required by law.
- You must pay for a non-party deponent's travel expenses under 28 U.S.C. § 1821 and 41 C.F.R. 301-10.303.

What does it mean if the deponent files a motion for the Judge to quash the subpoena?

To **quash a subpoena** is to issue an order that the person does not have to obey the subpoena or appear at the deposition. The Judge may quash a subpoena if there is undue burden or expense required for the deponent to appear at the deposition. The Judge must quash a subpoena if it requires a non-party deponent to travel more than 100 miles to the deposition. See Rule 45(c)(1).

I've been served with a deposition subpoena; what do I do?

The other party will set a date, time, and place for your deposition and send you this information in a **deposition notice** or **subpoena**. As a party to a lawsuit, you are required to appear at a deposition in response to either a deposition notice or subpoena.

If the other side has set a date that is inconvenient for you, it is important that you contact them right away and suggest another date for the deposition. It is usually best to send a letter or email confirming any agreement that you reach with the other side in order to avoid later misunderstandings.

What can I do to prepare to have my deposition taken?

Depositions are very important because the transcript of your answers can be submitted as **evidence** to the Court. Answers you give in a deposition can have the same effect as if you had given those answers under oath in front of the Judge. Here are some practical tips for helping your deposition go smoothly:

- *Review documents beforehand.* Before the deposition, the deponent can better remember events and answer questions about them by reviewing the documents exchanged during **initial disclosures** and discovery. If asked what you did to prepare, be prepared to state what you reviewed.
- *Ask for unclear or confusing questions to be restated or clarified.* During the deposition, it is acceptable for the deponent to ask for clarification before attempting to answer a question.
- *Focus on answering the questions asked.* Depositions go more smoothly when the deponent stays focused on the questions asked. If the questioner wants more information, he or she will ask another question.
- *Use the opportunity provided at the end to put additional important information on the record.* There may be information that the deponent thinks is important that did not come up in the question-and-answer portion of the deposition. At the end of the deposition, the deponent can state that information and ask the court reporter to write it down in the deposition transcript.

What is a "subpoena duces tecum" and why would I need one?

A **subpoena duces tecum** is a court order requiring someone to provide copies of papers, books, or other things. It is a discovery tool that can be used with a deposition or by itself. Under Rule 30(b)(2), the documents you want the deponent to bring to the deposition must be listed in both the "notice of deposition" and the "subpoena duces tecum."

How long can a deposition last?

Under Rule 30(d)(1) of the Federal Rules of Civil Procedure, a deposition may last no longer than 1 day of seven hours, unless more time is authorized by all parties or the Judge.

Does the deponent have to answer all questions?

Under Rule 26(b)(1) of the Federal Rules of Civil Procedure, you may ask questions about any non-privileged matter that is relevant to the **claim** or defense of any party and that is proportional to the needs of the case.

Under Rule 30(c), the deponent is entitled to state any legal **objections** he or she has to any question. Certain types of objections are considered proper, such as:

- The question is vague;
- The question is actually a series of questions all together (a "compound question");
- The question is argumentative;
- The question asks for information that you are not legally able to give.

In most of these cases, however, the deponent must still answer the question after making the objection. Under Rule 30(c)(2), the deponent may refuse to answer a question only when:

- Answering would violate a confidentiality privilege such as the attorney-client or doctor-patient privilege; OR
- The Judge has already ordered that the question does not have to be answered; OR
- The deposition has been stopped in order for the deponent or a party to make a motion to the Court on the **grounds** that the deposition is being conducted in bad faith or in an unreasonable manner or meant to annoy, embarrass, or oppress the deponent or party. See Rule 30(d)(3).

Who is allowed to ask the deponent questions?

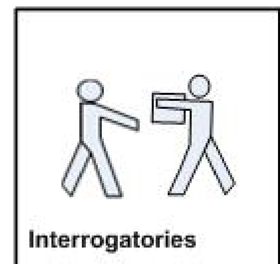
Any party may ask questions at the deposition.

Can the deponent change his or her deposition testimony after the deposition?

Under Rule 30(e) of the Federal Rules of Civil Procedure, the deponent has 30 days from the time the deposition transcript is complete to review the deposition and make changes. The deponent must sign a statement listing the changes and the reasons for making them.

Interrogatories

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.



Do I need the Judge's permission to serve interrogatories?

Under Rule 33(a), you may serve up to 25 interrogatories, including all subparts, on the same party without the Judge's permission. If you want to serve more than 25 on one party, you must file a motion asking the Judge's permission. See Local Civil Rule 26.2(b).

What kinds of questions can I ask?

Consistent with Rule 26(b)(1) of the Federal Rules of Civil Procedure, parties may use interrogatories to ask about any non-privileged matter that is relevant to any party's claim or defense.

Are there any requirements for the form of interrogatories?

Usually each interrogatory is written out with a separate number. Interrogatories must be signed in accordance with Rule 26(g)(1).

How do I answer interrogatories?

- The interrogatories must be answered within 30 days.
- Local Civil Rule 26.2(d) states that you must rewrite each interrogatory in full before you state your response or objection.
- As the responding party, you can either answer the interrogatory, object, or both.
- When answering an interrogatory, a party must answer with all "available" information. This means information a party can remember without doing research, but if the information exists within your business records or other files, then you must look for the answer.
- If the burden of finding the answer is the same for you as for the party who served the interrogatory, then you may answer the interrogatory by simply telling the other side where the answer can be found. The burden then falls to the other party to find the answer. You must be specific; you cannot just say, "In the documents I gave you."

- If you need more than 30 days to answer, you can request more time from the other party. If the other party refuses, you can file a motion with the Court.
- Each interrogatory must be answered separately and fully in writing under oath, unless objected to.
- If you object to only part of an interrogatory, then you must answer the rest of the question.
- Any objections must be stated in writing and include the reasons for the objection. The objections should be signed by the party's lawyer, unless the party does not have a lawyer.
- Answers must be signed by the party whether or not the party has a lawyer.
- It is not appropriate to answer "I don't know" if the answer is available to you.
- If you learn later that your answer is incomplete or incorrect, you must let the other side know by supplementing your original answer. See Rule 26(e)(1).

Request For Document Production

In a **request for production of documents** you can ask the other side for documents, including electronically stored information (e.g., emails), that you need to prove or defend your case. These should be documents that you reasonably believe the other side has and would contain information about the issues in the lawsuit. Document requests can be served on any person, not just parties to the lawsuit.

How do I get documents from the other parties?

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

A request for production of documents, seeking to inspect and copy any documents which are in that party's possession, custody, or control;

A **request for production of tangible things** (i.e., physical things that are not documents), seeking to inspect and copy, test, or sample anything that is in that party's possession, custody, or control;

A request for inspection of property, seeking entry onto property controlled or possessed by that party for the purposes of inspecting, measuring, surveying, photographing, testing, or sampling the property or any object on that property.

The request must list the items that you want to inspect and describe each one in enough detail so that it is reasonably easy for the other party to figure out what you want. It must also specify a reasonable time, place and manner for the inspection.

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. A request for document production from a party to the lawsuit may be served by any of the methods listed in Rule 5(b) of the Federal Rules of Civil Procedure.

How do I respond to a request for document production?

1. The party who has been served with the request must give a response within 30 days after the request is served unless the Judge has authorized more time. You can also ask the other side for more time to respond but the other side does not have to give it to you.
2. Local Civil Rule 26.2(d) states that you must rewrite each request in full before you state your response or objection.
3. The response may state that you will allow the inspection of each item and the related activities that were requested, or you may object if you have a proper basis for doing so.
4. If you object to the request, you must state the reasons for that objection and state whether any documents are being withheld on the basis of that objection.
5. If you object to only part of the request, you must state your objection to that part and state whether any documents are being withheld on that basis and permit inspection of the rest.

6. Documents produced for inspection must be presented EITHER organized as they are kept in the usual course of business OR organized and labeled so that they correspond with the categories in the request.
7. Documents must be produced by the time specified in the request or another reasonable time frame specified in the response.
8. If you discover more documents that also respond to the request after you have provided some documents, you must also provide these additional documents promptly. See Rule 26(e)(2).

How do I get documents from persons who are not parties?

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

Rule 45 sets out the rules for issuing, serving, protesting, and responding to subpoenas, including **subpoenas duces tecum** (subpoenas requesting the production of documents and items).

Use forms AO 88A and AO 88B for a subpoena duces tecum and a **deposition subpoena**. If you want a non-party to produce documents at deposition, you can fill out just one subpoena form directing the person to appear at the deposition and to bring along specific documents to the deposition. You can also serve a deposition subpoena and a subpoena duces tecum separately so that the deponent will appear for a deposition at one time and produce documents at a different time.

You can get blank subpoena forms from the **Clerk's Office** or online at www.uscourts.gov/forms/civil-forms for any production of documents or inspection for cases pending in the District of Columbia.

A subpoena duces tecum may be served by any of the methods listed in Rule 5(b), including **service** by mail. You must take steps to avoid imposing an undue burden or expense on the person receiving the subpoena. See Rules 45(b)(1) & (c)(1) of the Federal Rules of Civil Procedure.

What kind of response can I expect if I serve a subpoena duces tecum?

The person who has been served with a subpoena duces tecum has 14 days to serve written objections (less if the time required for production or inspection is less than 14 days). If an objection is made, the parties should **meet and confer** to try to resolve the issue. If the objection cannot be resolved through agreement, the party serving the subpoena will need to seek a court order before being allowed to inspect or copy any of the materials requested in the subpoena. Rule 45(d)(2)(B).

The person served with the subpoena duces tecum does not have to appear in person at the time and place for the production of documents for inspection unless he or she also has been subpoenaed to appear for a deposition, **hearing**, or trial at the same time or place. Rule 45(d)(2)(A).

Requests For Admission

In a request for admission, one party asks, in writing, the other party to admit the truthfulness, for purposes of the lawsuit, of:

- A fact or facts;
- The application of law to fact;
- Opinions about facts or the application of law to fact; AND/OR
- The genuineness of any described documents.

Requests for admission can only be used on other parties to the lawsuit.

The Judge will consider anything admitted in response to a request for admission as proven.

Rule 36 of the Federal Rules of Civil Procedure governs requests for admission. 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.

Like depositions and interrogatories, requests for admission must be stated separately and numbered in order. They must also be signed and certified in accordance with Rule 26(g)(1).

There is no limit to the number of requests for admission that you may serve, as long as they are not unreasonable, unduly burdensome, or expensive.

Local Civil Rule 26.2(d) provides that responses to requests for admission must state each request in full before each response or objection. If a party objects to a request for admission, then that party must state its reasons for objection. Responses to requests for admission must be signed by the party or by the party's attorney.

The party who receives a request for admission has 30 days to respond under Rule 36(a) of the Federal Rules of Civil Procedure. That time can be increased or decreased if the parties agree or by court order. If no response is served within 30 days (or the time otherwise set by agreement or by the Judge), all of the requests for admission are automatically considered admitted.

How do I respond to a request for admission?

1. Your answer must admit or deny the request or explain in detail why you cannot admit or deny the request truthfully.
2. If you can only admit or deny part of the request, then you must admit or deny that part and then explain why you cannot admit or deny the other part of the request.
3. If you do not know the answer, then you may state that you do not have enough information to admit or deny the requested information but only after you have made a reasonable search for information that would allow you to admit or deny the request.
4. Any matter that is admitted is treated as proven within the context of that particular lawsuit. But an admission in one lawsuit cannot be used against that party in any other proceeding.

What if I do not want to admit to the truth of a request for admission?

If a party fails to admit to a fact that is later proven true, the requesting party may file a motion with the Court seeking compensation in the form of expenses, including attorney fees, that were incurred in the process of proving that fact. See Rule 37(c)(2) of the Federal Rules of Civil Procedure. The Judge MUST grant the motion unless he or she finds that:

- The request was objectionable under Rule 36(a); OR
- The admissions were not important; OR
- The party who did not admit the fact had reasonable ground to believe that it might prevail on that point; OR
- There were other good reasons for the failure to admit.

Duty to supplement responses

If a party discovers that the responses that party has already submitted are incomplete or incorrect, then that party is required under Rule 26(e)(1) of the Federal Rules of Civil Procedure to supplement the earlier responses promptly.

Physical Or Mental Examinations

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 Judge 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 or by agreement of the parties. If a motion is filed, it MUST:

1. Explain why there is a need for the examination; AND
2. Specify the time, place, conditions, and scope of the proposed examination; AND
3. Identify the person or persons who will conduct the examination.

What happens to the result of the examination?

If the Judge orders a mental or physical examination, the party or other person who is to be examined has the right to request a detailed written report from the examiner explaining the results of all exams.

Because a mental or physical examination may raise unforeseen issues, the party that has obtained the examination may need to ask for other related information, such as medical records. The parties may request from each other similar reports of other examinations that they may possess.

If an examiner does not produce a report, the Judge can exclude the examiner's testimony at trial.

These requirements apply to both court-ordered reports and reports agreed to by both parties.

CHAPTER 17
WHAT CAN I DO IF THERE ARE PROBLEMS WITH DISCLOSURES OR DISCOVERY?

What Is The First Step?

Consult the Judge's standing order, the **discovery scheduling order**, or any specific instruction the Judge has given orally or in writing. Judges typically require you to contact the other side and try to resolve the issue before submitting the issue to the **Court** for resolution, and often require the parties to contact **chambers** jointly before **filing** a discovery-related **motion**.

If your **case** is proceeding before a district judge, the Judge may refer your discovery dispute to a **magistrate judge**. If your case is proceeding before a magistrate judge, the Magistrate Judge likely will handle your discovery dispute.

What If The Parties Can't Resolve The Problem And Discovery Is Still Due?

If you receive a discovery request that you believe is inappropriate or too burdensome, you may file a **motion for a protective order** under Rule 26(c) of the Federal Rules of Civil Procedure. A **protective order** is an order limiting discovery or requiring discovery to proceed in a certain way. A motion for a protective order must be filed in either the court where the lawsuit is being heard or in the federal district court in the district where a deposition in which an issue arises is being taken.

A motion for a protective order MUST include:

1. A certification that you have tried to confer in **good faith** with the other parties to resolve the dispute without help from the Judge; AND
2. An explanation of the dispute and what you want the Judge to do; AND
3. An explanation of the facts and law that make it appropriate for the Judge to grant your motion.

What If The Parties Are Stuck On A Problem In The Middle Of A Discovery Event?

A "discovery event" is any activity in which the parties meet to exchange discovery information. A problem may arise during a discovery event and you may believe that a lot of time or expense would be saved if the problem were resolved immediately. Before calling the Judge's chambers, though, you must first try to resolve the problem on your own and consult the Judge's standing order.

What Do I Do If A Party Does Not Respond, Or If The Response Is Inadequate?

When a dispute arises over **disclosures** or discovery responses, there are TWO types of motions that may be appropriate:

1. A motion to compel: a motion asking the Judge to order a person to make disclosures or to respond to a discovery request, or to provide more detailed disclosures. See Rule 37(a) of the Federal Rules of Civil Procedure.
2. A motion for sanctions: a motion asking the Judge to penalize 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. See Federal Rule of Civil Procedure 37(b)-(f).

How Do I File A Motion To Compel?

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 a non-party to respond to discovery must be filed in the court in the district where the discovery is being taken. Read your Judge's **standing order** and the discovery scheduling order before filing a motion to compel.

A motion to compel should include:

1. A certification that you 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 Judge 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 Judge to grant your motion.

Who Pays For Expenses Of Making The Motion To Compel?

If the Judge grants a motion to compel, the Judge must make the person against whom the motion was filed pay the reasonable expenses involved in making the motion, including attorney's fees, UNLESS the Judge finds that:

1. The motion was filed without first making a good faith effort to obtain the disclosure or discovery without court action; OR
2. The **opposing party**'s nondisclosure, failure, or objection was substantially justified; OR
3. Other circumstances make an **award** of expenses unjust.

Under What Circumstances Can I Ask For Discovery Sanctions?

1. **A motion for sanctions may be brought if a person fails to**:
   - Provide required disclosures; OR
   - Obey a court order to respond to a discovery request; OR
   - Appear for a deposition that has been properly noticed; OR
   - Answer properly-**served interrogatories**; OR
   - Respond to a properly-served request for document production or inspection.
2. **A motion for sanctions must contain**:
   - A certification that you have, in good faith, tried to resolve the problem without the Judge's help; AND
   - An explanation of the problem and what you want the Judge to do; AND
   - An explanation of the facts and law that support your motion; AND
   - Competent **declarations** that explain the facts and circumstances that support the motion; AND
   - Competent declarations that describe in detail the efforts you made to secure compliance without the Judge's intervention; AND
   - If attorney's fees are requested, a declaration itemizing in detail the otherwise unnecessary expenses, including attorney's fees, directly caused by the alleged violation, and a justification for any attorney-fee hourly rate claimed.

What Are The Judge's Options For Discovery Sanctions?

If the Judge grants a **motion for sanctions**, it may issue any order authorized by Rule 37(b)(2), including:

1. An order resolving issues of fact in favor of the party who made the motion; OR
2. An order refusing to allow the person at fault to support certain **claims** or **defenses**, or prohibiting that party from introducing certain **evidence**; OR
3. An order striking certain documents or parts of documents from the case, or staying the lawsuit until the order is obeyed, dismissing the lawsuit or any part of the lawsuit, or rendering a **default judgment** against the party at fault; OR
4. An order finding the party at fault in **contempt of Court** for failing to obey an order, except an order to submit to a **physical or mental examination**.

In general, if a party fails to make required disclosures under Rule 26(a) or 26(e)(1), or to supplement a response under Rule 26(e), that party cannot use as evidence at the trial, at a **hearing**, or on any motion, any information or **witness** that was not disclosed. A party may be relieved of this restriction only by filing a motion, unless the failure to disclose caused no harm to the other side's case. See Rule 37(c).

Who Pays The Cost Of A Motion For Sanctions?

If a Judge grants a motion for sanctions, it must require the person at fault or that person's lawyer, or both, to pay the other side's reasonable expenses, including attorney's fees, unless the Judge finds that the conduct was substantially justified or that other circumstances make an award of expenses unjust. A party who does not have a lawyer may not receive an award of attorney's fees.

CHAPTER 18
WHAT IS A MOTION FOR SUMMARY JUDGMENT?

A **motion for summary judgment** asks the Judge to decide a lawsuit without going to trial because there is no dispute about the key facts of the **case**. A case must usually go to trial because parties do not agree about the facts. When the parties agree upon the facts or if one party does not have any **evidence** to support its version of what actually happened, the Judge can decide the issue in "summary" fashion based on just 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 the defendant files a motion for summary judgment, the goal is to show that the undisputed facts prove that he or she did not violate the law. The overwhelming majority of **summary judgment** motions are filed by defendants. Successful summary judgment motions brought by plaintiffs are uncommon.

Rule 56 of the Federal Rules of Civil Procedure and Local Civil Rule 7(h) govern summary judgment motions.

Factors To Consider In A Summary Judgment Motion

1. A motion for summary judgment can address the whole lawsuit or it can address one or more individual **claims**.
2. If the summary judgment motion addresses the whole lawsuit, and the Judge grants summary judgment, the lawsuit is over.
3. Summary judgment will only be granted if under the evidence presented, a jury could not reasonably find in favor of the **opposing party**.
4. The Judge considers all of the **admissible evidence** from both parties.
5. The Judge considers evidence in the light most favorable to the party who does not want summary judgment.
6. Denying summary judgment means that there is a dispute about the facts, not that the Judge believes one side over the other.
7. If the Judge denies a motion for summary judgment, the case will go to trial unless the parties decide to compromise and end the case themselves through settlement.

When Is A Motion For Summary Judgment Granted?

Under Rule 56(a), the Judge will grant summary judgment if:

1. The evidence presented by parties in their papers shows that there is no real dispute about any "**material fact**" AND
2. The undisputed facts show that the party who filed the motion should prevail (that is, the undisputed evidence proves/disproves the plaintiff's legal claim).

How Do I Oppose A Motion For Summary Judgment?

You may file an **opposition** to the motion for summary judgment disputing the other side's version of the facts and present your own, supported by evidence. The procedures for **filing** an opposition to the motion for summary judgment are the same as any other motion, and are described in Chapter 11, "What is a motion and how do I write or respond to one?"

What Does Each Side Need To Do To Succeed On Summary Judgment?

1. If the PLAINTIFF files a motion for summary judgment, the plaintiff MUST:
   a. *Provide admissible evidence.* Evidence includes things like sworn statements, medical records, and physical objects (evidence is "admissible" if federal law allows that evidence to be considered for the purpose for which it was offered) AND
   b. **Show that the defendant does not have any admissible evidence that, if true, would prove any of the defendant's defenses to the plaintiff's claims***.* Usually, this is done by showing that the defendant has admitted not having any other evidence.
2. To counter the plaintiff's motion for summary judgment, the defendant must EITHER:
   a. Submit admissible evidence showing that there is a factual dispute about one or more **elements** of the plaintiff's claims or the defendant's defenses; OR
   b. Show that the plaintiff has not submitted sufficient evidence to prove one or more elements of the plaintiff's claims.
3. If the DEFENDANT files a motion for summary judgment, the defendant MUST:
   a. Show that the plaintiff does not have evidence necessary to prove one of the elements of the plaintiff's claim. For example, in a claim about a contract, one element that a plaintiff must prove is that the parties reached an agreement; another element is that each side agreed to provide something of value to the other. If the plaintiff cannot prove one of those elements, summary judgment may be granted in the defendant's favor on the plaintiff's claim for breach of contract; OR
   b. Show that there is no real factual dispute on any element of defendant's defenses against the plaintiff's claims. An **affirmative defense** is a complete excuse for doing what the defendant is accused of doing. For example, in a breach-of-contract case, evidence that it would have been illegal to perform the contract may be a complete defense.
4. To counter the defendant's motion for summary judgment, the plaintiff MUST:
   a. Submit admissible evidence showing that the plaintiff does have sufficient admissible evidence to prove every element of his or her claims, or that there is a factual dispute about one or more key parts of the claims; OR
   b. Submit admissible evidence showing that there is a factual dispute about one or more key parts of the defendant's defenses, if the defendant originally moved for summary judgment. The plaintiff can simply point out that the defendant has not put forward admissible evidence needed to prove at least one element of its defenses.

What Evidence Does The Judge Consider For Summary Judgment?

1. The Judge only considers admissible evidence provided by the parties.
2. Every fact that you rely upon must be supported by admissible evidence.
3. You should file copies of the evidence that you want the Judge to consider when he or she decides a motion for summary judgment and refer to the evidence throughout your papers.
4. When you cite a document, you should point the Judge to the exact page and line of the document where the Judge will find the information that you think is important. The Judge does not have to look at any evidence that is not mentioned in your **briefs**, even if you include it.
5. The Judge will not search for other evidence that you may have provided at some other point in the case. You must present the evidence anew on the summary judgment motion.

Affidavits and Declarations As Evidence On Summary Judgment

Affidavits and **declarations** are statements of fact written by a **witness** and signed under oath. Affidavits and declarations may be used as evidence in supporting or opposing a motion for summary judgment. An affidavit (but not a declaration) must be sworn before a **notary public**. A declaration can be signed by a person under penalty of **perjury**. See Local Civil Rule 11.2.

Under Rule 56(c) of the Federal Rules of Civil Procedure, an affidavit or declaration submitted in summary judgment proceedings MUST:

1. Be made by someone who has personal knowledge of the facts contained in the written statement (this means first-hand knowledge such as observing the events in question); AND
2. State facts that are admissible in evidence; AND
3. Show that the person making the statement is competent to testify to the facts contained in the statement.

What Is Hearsay?

A declaration or affidavit based on **hearsay** is generally not admissible in federal court. Hearsay is a statement made outside the courtroom that is being offered to prove that the statement is true. For example, if Julie says after being hit by Brad that "Brad hit me," this statement is hearsay if it is offered to prove that Brad hit Julie. See Rules 801-807 of the Federal Rules of Evidence.

How Do I Authenticate My Evidence

Some of your evidence may be in the form of documents such as letters, records, emails, contracts, etc. These documents are "**exhibits**" to your motion. Even if a document is, in principle, admissible under the **Federal Rules of Evidence**, a document may still not be admissible if you cannot prove it is genuine, meaning that it is what you say it is. Any exhibit that is submitted as evidence must be **authenticated** before it can be considered by the Judge.

A document can be authenticated by:

1. Submitting a statement under oath from someone who can testify from personal knowledge that the document is authentic;
2. Offering other evidence that a document is authentic (e.g., distinctive characteristics, handwriting); OR
3. Demonstrating that the document is "**self-authenticating**" (examples include government publications and newspapers).

See Rules 901 and 902 of the Federal Rules of Evidence.

What Is A Joint Statement Of Undisputed Facts, And Why Would I File One?

A joint **statement of undisputed facts** is a list of facts that all parties agree are true, and it contains **citations** to the evidence that shows the Judge that the facts are true. A statement is not a **joint statement** unless it is signed by all of the parties. All facts contained in a joint statement of undisputed material facts will be taken as true by the Judge.

When Can A Motion For Summary Judgment Be Filed?

A party may file a motion for summary judgment at any time, as long as the motion is filed before any deadline set by the Judge. Most motions for summary judgment rely heavily on evidence obtained in **discovery**, which means that summary judgment motions often are not filed until several months after the **complaint** is filed or after discovery is completed.

What If My Opponent Files A Summary Judgment Motion But I Need More Discovery To Oppose It?

If you need specific discovery in order to provide more evidence to the Judge 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 should 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 its relationship to the pending motion for summary judgment.

CHAPTER 19
WHAT HAPPENS AT TRIAL?

What Kind Of Disclosures Do I Have To Give The Other Party Before Trial?

Pretrial disclosures are intended to allow the parties to prepare adequately for trial and to avoid surprises. The tables in this section show the basic requirements. Read Rule 26(a)(2) & (a)(3) of the Federal Rules of Civil Procedure for more detailed information.

1. Expert Disclosures: Disclosing Your Expert Witnesses & Their Opinions

At least 90 DAYS before trial, you must give the other party information about any expert witnesses you intend to have present evidence at trial, and vice versa. An expert witness is a person who has scientific, technical, or other specialized knowledge that can help the Judge or jury understand the evidence. If you hired or specially employed the expert witness to give testimony in your case OR if the expert witness is your employee, the disclosure must include a written report prepared and signed by the expert witness (expert report) unless there is a court order or the parties agree to a different plan.

Timing:	Expert disclosures must be made by the deadline ordered by the Judge. If a specific deadline is not set, disclosures must be made at least 90 days before the trial date. If your expert disclosures are intended solely to contradict or rebut another party's previously disclosed expert disclosures, your disclosures must be made no later than 30 days after the disclosure made by the other party.
Content:	Under Rule 26(a)(2)(B), the expert report must contain: **1.** A complete statement of all opinions the expert witness intends to give at trial, and the basis and reasons for those opinions; AND **2.** Data or other information considered by the expert witness in forming those opinions; AND **3.** Any exhibits to be used as a summary or support for those opinions; AND **4.** Qualifications of the expert witness, including a list of all publications authored by the witness within the preceding 10 years; AND **5.** Compensation to be paid for the study and testimony of the expert witness; AND **6.** A list of all other cases in which the witness has testified as an expert at trial or by deposition within the preceding 4 years.
Form:	Expert disclosures must be in writing, signed and served on all other parties to the lawsuit, ***but not filed with the Court.*** Your signature certifies that the disclosure is complete and correct as of the time it is made, to the best of your knowledge.
Duty to Supplement:	Rule 26(e)(1) & (e)(2) require you to supplement your expert disclosures if you learn that the information you disclosed is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. Any supplement to your expert disclosures must be served no later than the time your pretrial disclosures under Rule 26(a)(3) (discussed below) are due.

2. Pretrial Disclosures: Witness & Exhibit Lists

At least 30 DAYS before trial, you are required to disclose certain information about witnesses and evidence that you will present at trial. See Rule 26(a)(3).

Timing:	Witness and exhibit lists should be served on all parties ***and filed with the Court*** at least 30 days before trial, unless otherwise ordered by the Judge.
Content:	The following information about the witnesses, documents, and other exhibits you may use at trial should be included in your pretrial disclosures: **1.** Name, address, and telephone number of each witness. Identify separately: **a.** The witnesses you intend to present at trial, AND **b.** The witnesses you ***might*** present at trial, if the need arises. **2.** The identities of the witnesses whose testimony you expect to present at trial by means of a deposition rather than live testimony. A transcript of the relevant portions of the deposition may also be included. **3.** Identification of each document or exhibit that you may use at trial. Identify separately: **a.** The exhibits you intend to use at trial, AND **b.** Those which you ***might*** use if the need arises. **4.** Evidence offered only to impeach the other side's witnesses need not be disclosed.
Form	Pretrial disclosures must be in writing, signed, and served on all other parties to the lawsuit ***and filed with the Court***. Your signature certifies that the disclosure is complete and correct as of time it is made, to the best of your knowledge.

What Is The Difference Between A Jury Trial And A Bench Trial?

In a **jury trial**, a jury reviews the evidence presented by the parties, figures out which evidence to believe, and decides what it thinks actually happened. The Judge will instruct the jury about the law, and the jury will apply the law to the facts. A jury trial may be held when:

1. The lawsuit is a type of case that the law allows to be decided by a jury AND
2. At least one of the parties asked for a jury trial before the deadline for doing so. A party who does not make a demand for a jury trial on time forfeits that right. See Rule 38 of the Federal Rules of Civil Procedure.

In a **bench trial** (also sometimes known as a **court trial**), there is no jury. The Judge determines the law and the facts and who wins on each **claim**. A bench trial is held when:

1. None of the parties asked for a jury trial (or did not request one in time); OR
2. The lawsuit is a type of case that the law does not allow a jury to decide; OR
3. The parties have agreed that they do not want a jury trial.

When Does The Trial Start?

The Judge sets the date on which the trial will begin.

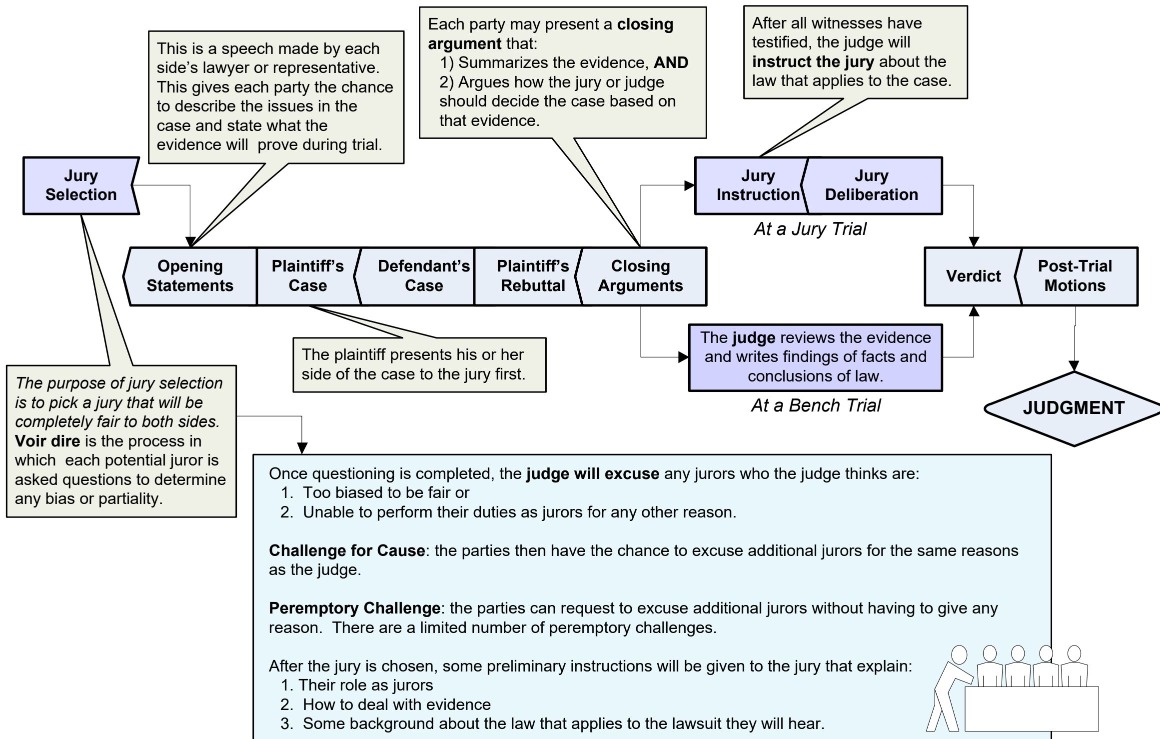
How Do I Prepare For Trial?

When setting the trial date, the Judge usually enters an order setting pretrial deadlines for **filing** or submitting various documents associated with the trial. For example, the Judge will set dates for submitting copies of exhibits, **objections** to exhibits, and **proposed jury instructions.** If the Judge does not, follow the deadlines set forth in the table on the preceding page. Usually, the Judge will set a date for a **pretrial conference** shortly before trial, at which the Judge and the parties will go over the procedure for the trial and resolve any final issues that have arisen before trial.

The Judge's orders may also set a deadline ("cut-off date") for filing **motions in limine.** A motion in limine asks the Judge to decide whether specific evidence can be used at trial. See Rules 103 & 104 of the Federal Rules of Evidence.

Besides submitting documents, you also need to arrange for all of your witnesses to be present at trial. If a witness does not want to come to trial, you can **serve** that witness with a **trial subpoena.** A trial subpoena is a court document that requires a person to come to court and give testimony on a particular date. Generally, the same rules that apply to **subpoenas** for deposition witnesses (see Chapter 16) also apply to trial subpoenas.

Timeline of a trial:



Jury Selection

The goal of **jury selection** is to select a jury that can serve for the whole trial and be fair and impartial through a process called **voir dire**, during which potential jurors are questioned by the attorneys and the Judge in the courtroom and/or through a questionnaire. The questions are designed to bring out any biases that the juror may have that would prevent fair and impartial service on that jury. Sometimes the Judge lets the lawyers for each party (or any party who does not have a lawyer) ask additional questions.

There are three ways a potential juror can be excused:

1. Once questioning is completed, the Judge will excuse a potential juror if the Judge believes that juror will not be able to perform their duties as jurors because of financial or personal hardship or other reasons.
2. **Challenge for cause:** The parties will then have an opportunity to convince the Judge that other potential jurors should be excused because they are too biased to be fair, or cannot perform their duties as jurors for other reasons.
3. **Peremptory challenges:** After all the potential jurors that have been challenged for cause have been excused, the parties have an opportunity to use peremptory challenges to dismiss a limited number of additional jurors without having to give any reason.

After the jury is chosen, the Judge will read general **instructions** to the jury about their duties as jurors, dealing with evidence, and the law that applies to the lawsuit that they are about to hear.

Opening Statements

In **opening statements**, each party describes the issues in the case and states what it expects to prove at trial. It helps the jury understand what to expect and what each side considers important. The opening statements must not mention any evidence or issues that the Judge has excluded from the trial. The Judge may set a time limit for an opening statement.

In The Trial, Which Side Puts On Witnesses First?

After the opening statements:

1. **Plaintiff's Case**: the **plaintiff** presents his or her side of the case to the jury first.

a. **Direct Examination**: the plaintiff begins by asking a witness all of his or her questions.
b. **Cross-Examination**: the **opposing party** then has the opportunity to cross-examine the witness by asking additional questions about the topics covered during the direct examination.
c. **Re-Direct Examination**: the plaintiff can ask additional questions, but only about the topics covered during the cross-examination. A judge will allow this process to continue until both sides state that they have no further questions for the witness.

2. **Defendant's Case**: the plaintiff will present all of his or her evidence before the **defendant** has a turn to put on his or her own case.

What If The Other Side Wants To Put On Improper Evidence?

All evidence that is presented by either party during trial must be **admissible** according to the **Federal Rules of Evidence** and the Judge's rulings on the parties' motions in limine. If one party presents evidence that is not allowed under the Federal Rules of Evidence or asks improper questions of a witness, the opposing party may object. If the opposing party does not object, the Judge may allow the improper evidence to be presented. At this point, the other party will not be able to challenge that decision on **appeal**. The parties are responsible for bringing errors to the Judge's attention and to give the Judge an opportunity to fix the problem through objections.

How Is An Objection Made And Handled?

1. **Stand and briefly state your objection to the Judge**. You may object while the other party is presenting evidence. Make sure to contain the basis for your objection. For example, "Objection, your honor, inadmissible **hearsay**."
2. **Do not give arguments unless the Judge asks you to explain your objection.**
3. **Sidebar Conference**. The Judge may ask you to come up to the **bench**, away from the jury, to discuss the issue with you quietly so that the jury cannot hear you (called a "**sidebar**" or "**bench conference**").
4. **The Judge will either sustain or overrule the objection**.

If the Judge **SUSTAINS** the objection, the evidence will not be admitted or the question may not be asked.

If the Judge **OVERRULES** the objection, the evidence will be admitted or the question may be asked.

What Is A Motion For Judgment As A Matter Of Law, And When Can It Be Made?

Under Rule 50(a) of the Federal Rules of Civil Procedure, in a jury trial either party may make a **motion for judgment as a matter of law** after the plaintiff has presented all of his or her evidence. A motion for judgment as a matter of law asks the Judge to decide the outcome of the case without assistance from the jury because either:

- The plaintiff has proven enough facts to be entitled to **judgment** no matter what evidence the defendant is able to bring (plaintiff's motion) **OR**
- All of plaintiff's evidence, even if true, could not persuade a reasonable jury to decide in the plaintiff's favor (defendant's motion).

When Does The Defendant Get To Present His Or Her Case?

If a judge does not grant a motion for judgment as a matter of law or the Judge puts off the ruling until a later time, the case moves forward. After the plaintiff has completed examining each of his or her witnesses, the defendant then presents all of the witnesses that support his or her **defenses** to the plaintiff's case. A defendant puts on its case through the Direct Examination, Cross-Examination, and Re-Direct Examination procedures described above.

What Is Rebuttal?

Rebuttal is the final stage of presenting evidence at trial. It begins after both sides have had a chance to present their cases. In the rebuttal stage, whichever party has the **burden of proof** (usually the plaintiff) tries to attack or explain the opposing party's evidence. This evidence is called rebuttal evidence. Rebuttal is

limited to countering only what the other side argued as evidence; entirely new arguments may not be made during rebuttal. For example, a rebuttal witness might testify that the other party's witness could not have seen the events he reported to the Judge. So, after the defendant has finished examining each of his or her witnesses, the plaintiff may call a new witness to show that one of those witnesses was not telling the truth.

What Happens After Both Sides Have Finished Presenting Their Evidence?

After all evidence has been presented, either party may make a motion for judgment as a matter of law under Rule 50(a) of the Federal Rules of Civil Procedure. See "What Is A Motion For Judgment As A Matter Of Law, And When Can It Be Made?" above. If the Judge grants a motion for judgment as a matter of law on all of the claims in the case, the trial is over.

Otherwise, the Judge next hears **closing arguments**. Each party may present a closing argument that summarizes the evidence and argues how the jury or, in a bench trial, the Judge should decide the case based on that evidence. The Judge may set time limits for closing arguments. In jury trials, the Judge then instructs the jury about the law and the jury's duties, and then the jury goes into the jury room to **deliberate.**

In A Jury Trial, What Does The Jury Do After Closing Arguments?

After closing arguments, the jury goes into the jury room and discusses the case in private. This process is called "**deliberating**." The jury discusses the claims, the evidence, and the legal arguments and tries to agree about which party should win on each claim. Because the decision of the jury must be unanimous in federal court trials, the jurors must make every effort to deliberate until they all agree.

When the members of the jury reach their decision ("**verdict**"), they fill out a **verdict form** and let the Judge know that they have completed their deliberations. The Judge will then bring the jury into the courtroom and the verdict will be read aloud.

The Judge next issues a written **judgment** announcing the verdict and stating the **remedies** that will be ordered. When the judgment on a jury verdict is issued, the case is usually over. In some cases, one or more parties files post-trial motions. These can include a **renewed motion for judgment as a matter of law** or a **motion for a new trial**.

In A Bench Trial, What Does The Judge Do After Closing Arguments?

The Judge will end ("**adjourn**") the trial after closing arguments. The Judge may direct the parties to submit proposed findings of fact and conclusions of law. The Judge will review the evidence and write findings of facts and conclusions of law. The Judge will then issue a written judgment stating the remedies that will be ordered. The Judge's **findings of fact and conclusions of law** and judgment are posted on the Court's CM/ECF system and, if necessary, mailed to the parties. When judgment is entered, the case is over unless the Judge grants a motion for a new trial or one or more parties takes an appeal to the **United States Court of Appeals for the District of Columbia Circuit** (informally known as the "D.C. Circuit"). See Chapter 20.

CHAPTER 20
WHAT CAN I DO IF I THINK THE JUDGE OR JURY MADE A MISTAKE?

A number of different procedures are available to you if you believe the Judge or jury made a serious mistake in your lawsuit. In addition, you can **appeal** the final **judgment**, which is not covered in detail in this Handbook.

What Are Post-Judgment Motions And How Are They Used?

After the entry of judgment, there are several **motions** provided for by the Federal Rules of Civil Procedure that the (usually) losing party can consider making.

1. **Renewed motion for judgment as a matter of law**

After a **jury trial**, if you believe the jury made a serious mistake and you had made a **motion for judgment as a matter of law** earlier that was denied, you may make a **renewed motion for judgment as a matter of law** under Rule 50(b) of the Federal Rules of Civil Procedure. You can only make a renewed motion if you have made a motion for judgment as a matter of law before **closing arguments**.

A renewed motion for judgment as a matter of law must be filed no later than 28 days after entry of judgment. The renewed motion must argue that the jury erred in reaching the decision that it made because under all the **evidence** presented, no reasonable jury could have reached that decision.

When the Judge rules on a renewed motion for judgment as a matter of law, he or she may:

- Refuse to disturb the **verdict,**
- Grant a new trial, **OR**
- Direct entry of judgment as a matter of law

2. **Motion For A New Trial**

After a jury trial or a **bench trial**, either party may file a **motion for a new trial**. A motion for a new trial asks for a complete re-do of the trial, either on every **claim** or on just some of them, because the first trial was flawed. The way the motion is handled differs slightly between bench and jury trials:

After a jury trial, the Judge is permitted to grant a motion for a new trial if the jury's verdict is against the ***clear weight of the evidence***.

- The Judge weighs the evidence and assesses the credibility of the **witnesses**. The Judge is not required to view the evidence from the perspective most favorable to the party who won with the jury.
- The Judge will not overturn the jury's verdict unless, after reviewing all the evidence, he or she is definitely and firmly convinced that a mistake has been made.
- If the Judge grants the motion for a new trial, a new trial will be held with a new jury, and the trial is conducted as if the first trial had never occurred.

After a bench trial, the Judge is permitted to grant a motion for a new trial if the Judge made a ***clear legal error*** or a ***clear factual error***, or there is newly-discovered evidence that could have affected the outcome of the trial.

If the Judge grants the motion for a new trial, the Judge need not hold an entirely new trial. Instead, the Judge can take additional testimony, amend the findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

3. **Motion To Amend Or Alter The Judgment**

Either party can file a **motion to amend or alter the judgment**, which asks the Judge to change something in the final judgment because of errors during the trial.

Both types of motions must be filed no later than 28 days after entry of the judgment. See Rule 59 of the Federal Rules of Civil Procedure.

4. **Motion For Relief From Judgment Or Order**

A **motion for relief from judgment or order** under Rule 60 of the Federal Rules of Civil Procedure does not argue with the Judge's decision. Instead, it asks the Judge not to require the party to obey it.

Rule 60(a) allows the Judge to correct clerical errors in judgments and orders at any time, on its own initiative, or as the result of a motion filed by one of the parties. This authority is usually viewed as limited to very minor errors, such as typos. If an appeal has already been docketed in the D.C. Circuit, the error may be corrected only by obtaining permission from the D.C. Circuit.

Rule 60(b), however, permits any party to file a motion for relief from a judgment or order for any of the following reasons:

A. Mistake, inadvertence, surprise, or excusable neglect; **OR**

B. Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); **OR**

C. Fraud, misrepresentation, or other misconduct by an opposing party; **OR**

D. The judgment is void; **OR**

E. The judgment has been satisfied, released, or discharged; a prior judgment upon which it has been based has been reversed or otherwise **vacated**; or it is no longer fair that the judgment should be applied; **OR**

F. Any other reason justifying relief from the judgment. Relief will be granted under this last category only under extraordinary circumstances.

A motion based on the first three reasons (A–C) must be made within one year after the judgment or order was entered. A motion based on the other three reasons (D–F) must be made within a reasonable time.

How Can A Magistrate Judge's Decision Be Reviewed?

Special rules sometimes apply to decisions by **magistrate judge**s.

Consent Cases: If the parties consented to have the Magistrate Judge hear the entire **case** (see Chapter 6), then the options for review are exactly the same as if the case were assigned to a district judge: the post-judgment motions listed above and appeal to the D.C. Circuit (see below).

Non-Consent Cases: If one or more of the parties did not consent, then when a magistrate judge enters orders in the case, he or she does so because the assigned District Judge has referred a motion or process (such as the **discovery** process) to the Magistrate Judge. In this situation, the District Judge is called the **referring Judge** and the Magistrate Judge is called the **referral Judge**.

A party's objections to the Magistrate Judge's order must be filed with the referring Judge no later than 14 days after the party is **served** with a copy of the Magistrate Judge's order. The other party or parties may file a response to the objection within 14 days of **service** and a **reply** may be filed within seven days of service of the response. The referring District Judge may modify or set aside any portion of the referral Judge's order.

What If The Parties Did Not Consent To A Magistrate Judge?

If the parties did not consent to the referral of the matter to the Magistrate Judge, then Rule 72 of the Federal Rules of Civil Procedure and Civil Local Rules 72.2 or 72.3 apply. In such cases, the Magistrate Judge often prepares a **report and recommendation** for the referring Judge.

If you think the Magistrate Judge's order or report contains an error, the procedure for seeking review will be either to file a motion or written objections within 14 days of **filing** of the Magistrate Judge's order or report. Please read the **local rules** carefully and, if possible, seek the help of a **Legal Help Center** attorney, such as on www.LawHelp.org (Chapter 2), in determining the correct procedure in your case. The motion or objections should be limited to the specific portions of the order or report you believe contains an error. When filing objections or responses to objections, either party may also file a motion asking the Judge to hear additional evidence not considered by the Magistrate Judge.

The referring Judge may make a "**de novo review**" of any portion of the magistrate's report to which an objection has been made, meaning that the Judge will review the issues in those portions of the report from scratch and make his or her own decision. Unless the Judge grants a motion to consider additional evidence not considered by the Magistrate Judge, the Judge will consider only the evidence that was presented to the Magistrate Judge.

The Judge may accept, reject, or modify the Magistrate Judge's recommendation, or send the matter back to the Magistrate Judge for further review with additional instructions.

What Is An Appeal And How Is An Appeal Filed?

All final judgments can be appealed to the United States Court of Appeals for the District of Columbia Circuit. 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.

Just as the Federal Rules of Civil Procedure set forth the procedures for litigating a lawsuit in this **Court**, the Federal Rules of Appellate Procedure set forth the procedures for litigating an appeal in the D.C. Circuit. See Rules 3 through 6 of the Federal Rules of Appellate Procedure and D.C. Circuit Rules 3-1 through 6.

- Federal Rules of Appellate Procedure can be found at any **law library** or online at www.uscourts.gov/rules-policies/current-rules-practice-procedure or law.cornell.edu/rules/frap.
- The D.C. Circuit's Local Rules can be found at the D.C. Circuit **Clerk's Office** or website: www.cadc.uscourts.gov/internet/home.nsf/content/Court+Rules+and+Operating+Procedures.

Timing. An appeal must be filed within 30 DAYS AFTER ENTRY OF JUDGMENT (or order being appealed). However, if one of the parties is the United States, a federal government agency, or a federal government officer or employee sued in his or her official capacity, the appeal must be filed within 60 days after entry of

judgment or order appealed from. 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 (this Court) together with the appellate filing fee, which currently is $605. The fee may be waived under certain conditions. See Rule 24 of the Federal Rule of Appellate Procedure. The Clerk's Office then electronically 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 D.C. Circuit.

Information for litigants representing themselves is available at www.cadc.uscourts.gov/internet/home.nsf/Content/Court+Rules+and+Operating+Procedures.

GLOSSARY

Term	Definition
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 mediation to resolve complaints 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 that 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 Judge.
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.
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	The large desk in the courtroom where the Judge sits.
BENCH CONFERENCE	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. Also known as a "sidebar."
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 Chapter 4.
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.
JOINT STATEMENT	A statement filed by the parties providing information to be discussed at the scheduling 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 Judge 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.
CITATION	A reference to a law, rule, case, or other source.
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**.
CLERK'S OFFICE	The office at the courthouse that handles various administrative matters, such as maintaining records, issuing process, and authenticating documents.
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.
CM/ECF	CM/ECF is the Court's case management and electronic filing system.
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 Judge to be committed in willful violation of the Judge's authority or dignity, or to interfere with or obstruct its administration of justice.
CONTINUANCE	An extension of time ordered by the Judge.
COUNSEL	Attorney(s); lawyer(s).
COUNT	Sometimes used instead of **claim**.
COURT	A term used in this document to refer to the United States District Court for the District of Columbia.
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. This Court's decisions are appealed to the District of Columbia Circuit Court of Appeals.
COURT REPORTER OR STENOGRAPHER	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 Judge's complete review and re-determination of 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 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 live 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.
DROP BOX	A secure depository where documents can be left for filing by the Clerk of Court when the Clerk's Office is closed to the public.
ELECTRONIC CASE FILING (CM/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 "Case Management/Electronic Case Filing" or "CM/ECF."
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 Judge).
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 Judge 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 Judge.
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.
INDIGENT	Impoverished or unable to afford basic necessities.
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 after the initial scheduling conference.
INITIAL SCHEDULING CONFERENCE	A court proceeding at which the Judge, with the help of the parties, sets a schedule for various events in the case.
INTERLOCUTORY ORDER	Court orders issued before judgment.
INTERROGATORIES	Written questions served on another party in the lawsuit that must be answered (or objected to) in writing and under oath.
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 Judge 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 the way 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 Judge 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; for example, the Local Rules of the United States District Court for the District of Columbia explain some of the additional procedures that apply only to this Court.
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.
Material fact	A fact that must be proven to establish and element of a claim or defense in the lawsuit.
Mediation	An Alternative Dispute Resolution 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.
Memorandum of points and authorities	The part of a motion that contains the arguments and the supporting law to persuade the Judge to grant motion; also referred to as a brief.
Mental examination	See **physical or mental examination**.
Motion	A formal application to the Judge 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 Judge 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 Judge to grant judgment in favor of the plaintiff because the defendant failed to file an answer to the complaint. If the Judge 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 Judge grants the motion, the case is over.
Motion for CM/ECF User Name and Password	A **pro se** party to a suit must file this motion and the Judge must grant it before that party will be permitted to register for Case Management/Electronic Case Filing (CM-ECF) e-filing.
Motion for relief from judgment or order	Asks the Judge 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 Judge to impose a penalty on a party; for example, in the context of discovery, a motion for sanctions asks the Judge 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 Judge 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 Judge to correct what a party argues is a mistake in the judgment.
Motion to compel	Asks the Judge to order a person to make disclosures, 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 Judge to deny certain claims in the complaint, due to procedural defects.
Motion for an Extension of Time	Asks the Judge 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 strike	Asks 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-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 CM/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 of 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.
OBJECTION	The formal means of challenging evidence on the ground that it is not **admissible**.
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 Judge 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	"Public Access to Electronic Court Records" is an internet database where docket information is stored.
PEREMPTORY CHALLENGE	During jury selection, after all of 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 Judge 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.
PRAYER FOR RELIEF	The last section of a complaint, in which the plaintiff tells the Judge 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 Judge'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.
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 Judge 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 Judge 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.
SANCTION	A punishment the Judge may impose on a party or an attorney for violating the Judge's rules or orders.
SCHEDULING ORDER	The Judge's written order scheduling certain events in the case.
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.
SIDEBAR	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. Also known as a "bench conference."
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 Judge's webpage via: www.dcd.uscourts.gov/judges.
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**.
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 Judge 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 Judge may order a remedy.
SUMMARY JUDGMENT	After a motion, a decision by the Judge 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.
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 LEAVE TO AMEND	Without a final decision on the merits which would prevent the claim from being re-filed. You are permitted to file an amended complaint or other document.

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.