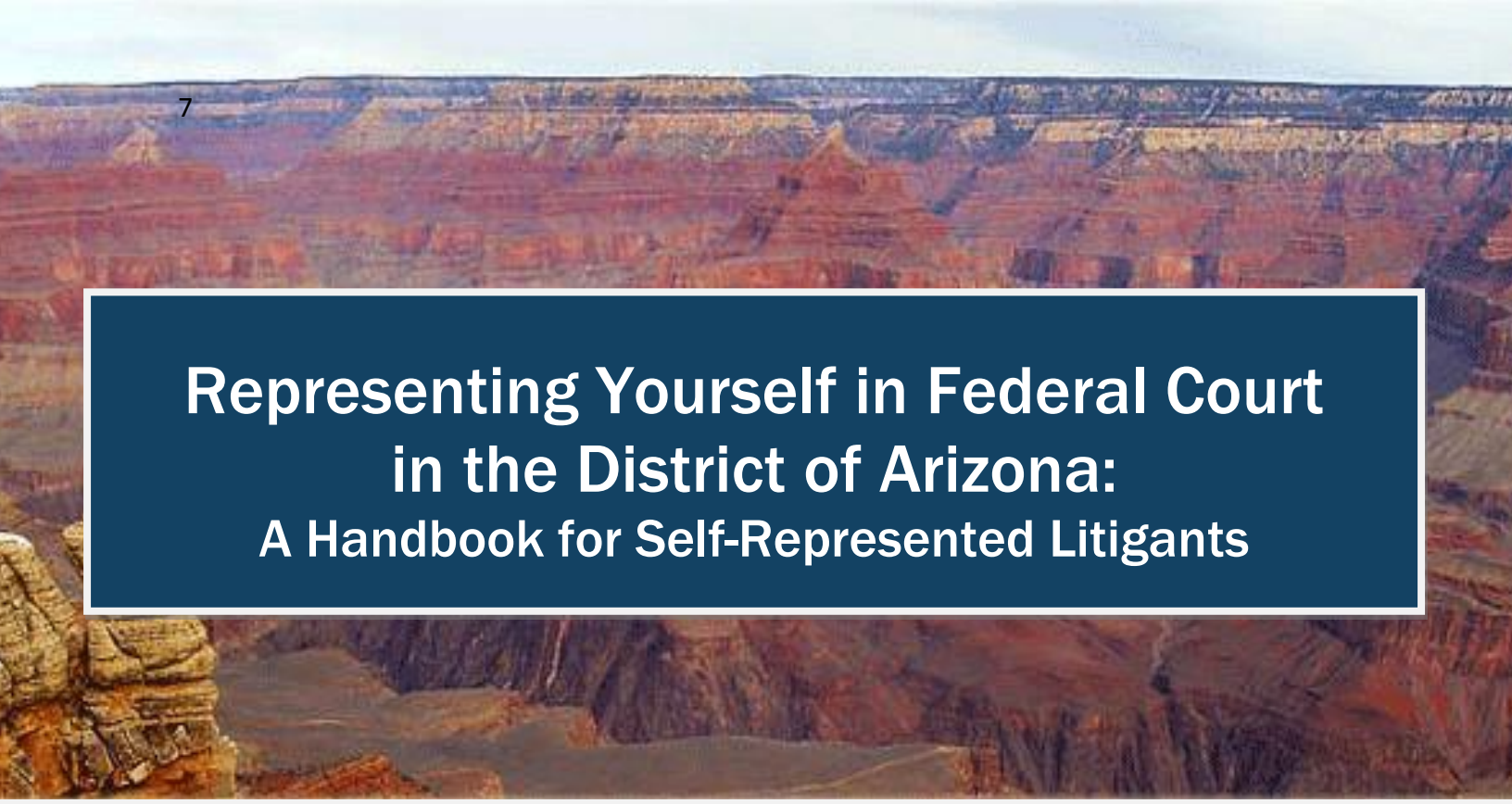

Representing Yourself in Federal Court in the District of Arizona:

A Handbook for Self-Represented Litigants

This is an informational handbook.

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 Do not cite to this handbook in your filings with the Court: the Court will not consider this handbook as legal authority.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

This Handbook was first developed in 2011 as a collaborative effort between 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. It was edited by Lynn D. Fuller, United States District Court Media & Public Outreach Liaison, and the federal courthouse Legal Help Center attorneys, with help from Supervising Attorney Manjari Chawla.

The third edition was adapted for the District of Arizona in 2016.

To communicate comments, suggestions, or corrections, please send written correspondence to:

U.S. Courts Law Library

United States District Court District of Arizona - Tucson Division

Evo A. DeConcini U.S. Courthouse

405 West Congress Street, Suite 1500

Tucson, AZ 85701

This is an informational handbook.

The United States District Court, District of Arizona cannot provide legal advice to the public. Clerk's Office staff are prohibited from giving legal advice pursuant to 28 USC § 955. **This handbook, including all files and hyperlinks herein contained, is a guide for self-represented litigants. It is not legal advice and should not be considered as legal advice.** The Court will not answer questions about the handbook's content or how it may pertain to an individual case, except as required by law. Those seeking guidance concerning a federal action should consult with an attorney. The handbook does not, is not intended to, shall not be construed to, and may not be relied upon to create or to limit any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal. **Do not cite this handbook in filings with the Court; cite the applicable rules and law.**

Warning to Incarcerated or Detained Persons:

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

Table of Contents

INTRODUCTION

This Handbook is designed to help people dealing with civil lawsuits in federal court without legal representation. Proceeding without a lawyer is sometimes referred to as proceeding "*PRO SE*," a Latin phrase meaning "for oneself," or sometimes "*IN PROPRIA PERSONA*," meaning "in his or her own person." Representing yourself in a lawsuit can be complicated, time consuming, and costly. Failing to follow court procedures can mean losing your CASE[1]. For these reasons, you are urged to retain a lawyer if at all possible. Chapter 2 gives suggestions on finding a lawyer.

Do not rely entirely on this Handbook. This Handbook provides a summary of civil lawsuit procedures, but it may not cover all procedures that may apply in your case. It also does not teach you about the points of law that will control your case. Rules or sources mentioned in this Handbook may have changed since its production. Make sure you read the applicable federal and local court rules yourself and do your own research at a law library or online to understand your case. Any documents you file in court must comply with the FEDERAL RULES OF CIVIL PROCEDURE and the District of Arizona Local Rules of Practice.

This Court (the United States District Court for the District of Arizona) has courthouses in Phoenix, Tucson, Yuma, Flagstaff, and Prescott.[2] The courthouses in Yuma, Flagstaff, and Prescott do not have staff to assist with routine Clerk's Office matters. All filing, questions, and requests for records must be done in Phoenix and Tucson.

Do not contact the Clerk's Office with questions about this Handbook. Clerk's Office staff are prohibited from giving legal advice pursuant to 28 USC §955. This includes:

- offering interpretations of rules;
- recommending a course of action;
- predicting a decision a judicial officer might make on any given matter; or
- interpreting the meaning or effect of any court order or judgment.

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[1] Words appearing in THIS FORMAT in this Handbook are defined in the Glossary included at the back.

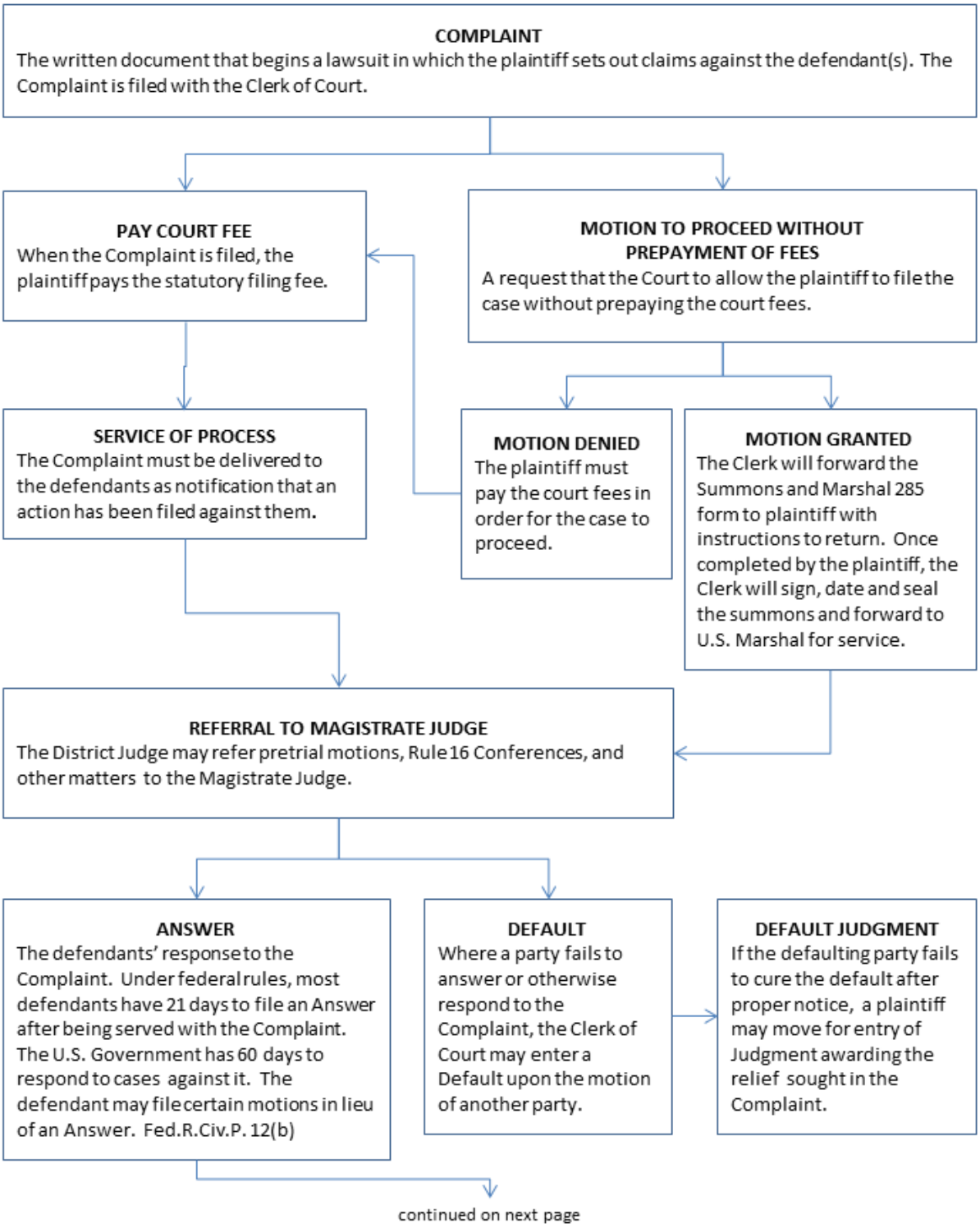
[2] The Flagstaff Court also has locations in Grand Canyon, Kingman, and Page, Arizona. However, these courts hear only traffic and minor criminal matters. Court filings are not accepted at these locations.

Tips for Pro Se Litigants

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

1. **Read everything you get from the Court and the opposing party right away**, including the papers you get from the Clerk's Office when you file. It is very important that you know what is going on in your case and what deadlines have been set.
2. **Meet every deadline.** If you do not know exactly how to do something, try to get help and do your best; it is more important to turn things in on time than it is to do everything perfectly. You can lose your case if you miss deadlines. If you need more time to do something, ask the Court in writing for more time as soon as you know that you will need it and before the deadline has passed.
3. **Use your own words and be as clear as possible.** You do not need to try to sound like a lawyer. In your papers, be specific about the facts that are important to the lawsuit.
4. **Always keep all of your paperwork and stay organized.** Keep paper or electronic copies of everything you send out and/or file with the Court. When you file a paper in the Clerk's Office, bring the original and at least two copies so that you can keep a stamped copy for yourself. Know where your papers are so that you can use them when you need them to work on your case.
5. **Have someone else read your papers before you turn them in.** Be sure that a person understands what you wrote; if not, rewrite your papers to try to explain yourself more clearly. The judge may not get to hear you explain yourself in person and may rely only on your papers when making decisions about your case.
6. **Be sure the Court always has your correct address and phone number.** If your contact information changes, file a notice of change of address or contact the Clerk's Office **in writing** immediately.
7. **Omit certain personal identifying information from documents submitted to the court for filing.** All documents filed with the court will be available to the public on the Internet through PACER (Public Access to Court Electronic Records) and the court's Electronic Case Filing (ECF) system. Protect your privacy by leaving off social security and taxpayer identification numbers, names of minor children, dates of birth, and financial account numbers.
   See Rule 5.2, FEDERAL RULES OF CIVIL PROCEDURE
8. **Become familiar with the stages of federal civil litigation.** A flowchart illustration of how a case moves through federal court appears on the next page.

Civil Case Flowchart



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SCHEDULING ORDERS

If the Court orders, the parties must participate in a preliminary pretrial conference to discuss the scheduling of the case, including discovery, any agreements between the parties, and any other matters needed to promote the just and speedy resolution of the lawsuit. The Judge will then enter a Scheduling Order detailing the procedures and deadlines for discovery and trial.

DISCOVERY

Before trial, the parties develop evidence for trial by methods including depositions, written interrogatories, requests for production, inspections, and requests for admissions.

MOTIONS

Parties may file motions regarding discovery and other issues within time limits set out in the Scheduling Order.

DISPOSITIVE MOTIONS

After the period of discovery, it may appear that the facts of the case are not disputed, and one or more parties may file a Motion for Summary Judgment. The Judge will determine whether there are material disputed issues of fact and rule on the motion. If such a motion is granted on all clams, no trial is needed, and the lawsuit will be resolved by that motion. In some cases, the motion may be decided in part, and only certain issues will remain for trial.

FINAL PRETRIAL CONFERENCE

Following discovery, the Judge conducts a conference with the parties to discuss the issues for trial, the evidence that will be used at trial, and the possibility of settlement.

TRIAL

A trial allows the parties to formally present their case in open court by offering testimony and evidence in support of their positions and by making oral argument. In many instances, the parties have a right to a trial by jury in a civil action, and the jury ordinarily must reach a unanimous verdict.

JUDGMENT

After a verdict, the Court enters a Judgment on its docket which states the result of the proceeding and clearly identifies the specific relief to which the prevailing parties are entitled.

NOTICE OF APPEAL

A dissatisfied party may appeal the Judgment by filing a Notice of Appeal with the Clerk of the District Court. The Notice of Appeal ordinarily must be filed within 30 days after the Judgment. If the United States or its officer or agency is a party, the Notice of Appeal must be filed within 60 days after the Judgment.

SETTLEMENT

The parties may settle a case at any time with or without the Court's involvement. The parties may also request a judicial settlement conference or employ private mediators. If the parties reach a settlement, the case will be dismissed.

CHAPTER 1
What Should I Think About Before Filing a Lawsuit?

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 and stressful and can consume time and attention that might instead be directed to effective alternatives or other priorities and solutions. Some alternatives to bringing a lawsuit include:

Gathering Information

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

Working Things Out

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

Going to Governmental or Private Agencies

Consider whether there are other processes you could use or agencies you could enlist to address your problem. Sometimes there is a governmental or private agency that can address your problem or lend you assistance. Examples of such agencies include:

- The Equal Employment Opportunity Commission (or an equivalent state, county or city agency) to address employment discrimination;
- The local police review board or office of citizens' complaints to hear complaints about police conduct;
- A consumer protection agency, the state attorney general, or the local county attorney's office to investigate consumer FRAUD;
- The Better Business Bureau or private professional associations (e.g., associations of contractors, accountants, securities dealers, architects and engineers, etc.) to hear business-related complaints;
- Visit the Arizona State Bar's website at http://azlawhelp.org/legalaidlisting.cfm for a list of agencies that may offer legal assistance or support.

Using a Small Claims Court

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

Alternative Dispute Resolution

Dispute resolution services—such as MEDIATION or ARBITRATION—may be faster and less expensive than taking a case to court. MEDIATION encourages parties to

communicate clearly and constructively to find common ground or to identify solutions that can serve the parties' real interests. Many counties have free or low-cost agencies that can assist you in finding a provider of alternative dispute resolution services. You can research which organizations help with this at the Arizona Bar's website:

http://azlawhelp.org/legalaidlisting.cfm.

There are also alternative dispute resolution options for parties who have filed lawsuits in this Court. Please refer to Chapter 16.

To be Heard in Federal Court, Your Case has to Meet All These Requirements:

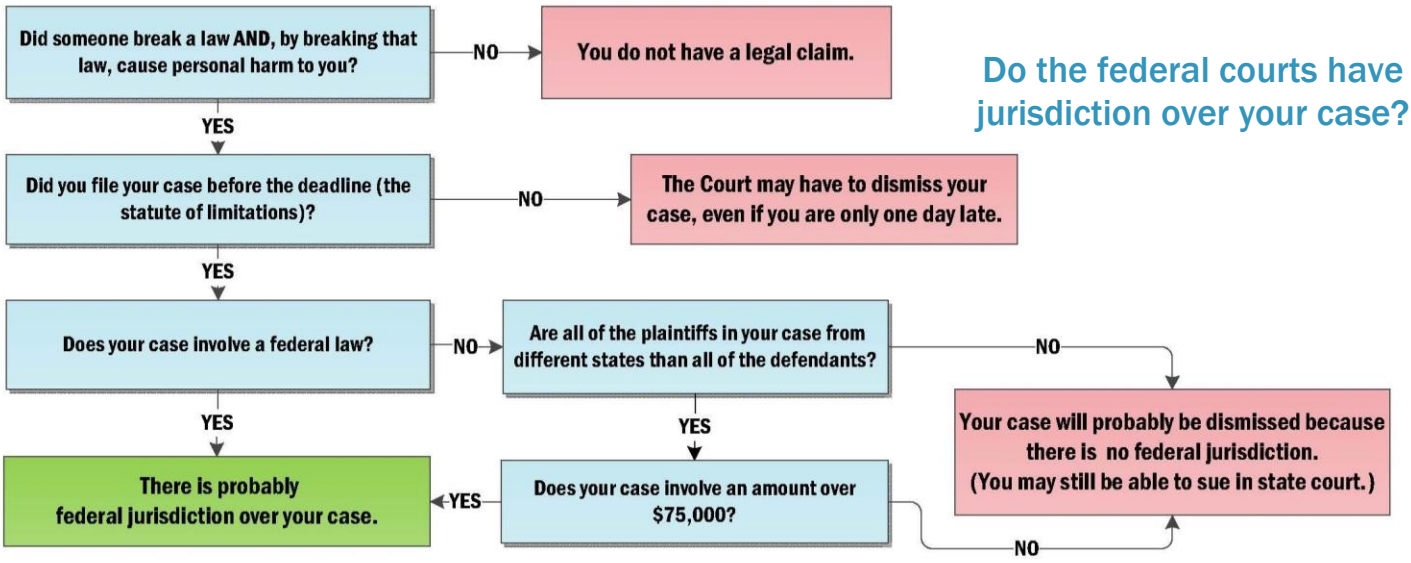
To begin a lawsuit, you have to file a COMPLAINT, which is a written explanation of your claim with the court. The party who starts a civil lawsuit by FILING a complaint is called the PLAINTIFF. The party being sued is the DEFENDANT. Both are called LITIGANTS, which means parties to a lawsuit. A complaint gives formal notice of your lawsuit to the defendant and the court.

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 start your case before the deadline**.
   a. There are very strict deadlines for lawsuits called STATUTES OF LIMITATION. If you miss the deadline that applies to your case, the Court may be required to dismiss your case—even if you are only a day late.
   b. To find out the deadline for your case, you can:
      i. Ask a lawyer, if you know one;
      ii. Go to a law library or use online legal research tools to research the statute of limitation for your claim.

3. **You must be suing in the correct court**.
   a. Federal courts can only decide certain kinds of cases:
      i. Cases involving federal law—not state law (SUBJECT MATTER JURISDICTION) OR
      ii. Cases in which the plaintiff and the defendant live in different states **AND** the AMOUNT IN CONTROVERSY is more than $75,000 (DIVERSITY JURISDICTION).
   b. If your suit does not meet one of these descriptions, you cannot sue in federal court. You may be able to sue in state court.



4. **You must be suing someone who is under the Court's power.**

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

5. **You must sue in the right federal district for your case.**
   - **a.** This Court's jurisdiction is the District of Arizona, which covers the entire state of Arizona.
   - **b.** However, the District is divided into three divisions, each named and comprising counties as follows:
     1. Phoenix Division: Maricopa, Pinal, Yuma, La Paz and Gila counties.
     2. Prescott Division: Apache, Navajo, Coconino, Mohave, and Yavapai counties.
     3. Tucson Division: Pima, Cochise, Santa Cruz, Graham, and Greenlee counties.
   - **c.** All files and records of the Phoenix and Prescott divisions are kept at Phoenix and all files and records of the Tucson division are kept at Tucson.
   - **d.** Unless otherwise ordered by the Court, all filings for the Phoenix and Prescott divisions shall be made in Phoenix, and all filings for the Tucson division shall be made in Tucson.
   - **e.** In cases where the cause of action has arisen in more than one county, the plaintiff may elect any of the divisions appropriate to those counties for filing and trial purposes, although the Court reserves the right to assign any cases for trial elsewhere in the District at its discretion.
   - **f.** 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.
   - **g.** The right VENUE for your case is the district where:
     - One of the defendants lives (if all defendants live in the same state); **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.
   - **h.** If you start your case in the wrong district, the Court may transfer the case to the correct court. You would then have to go to that court to argue your case.

6. **The person or agency you are suing must not have immunity.**

   Some people and organizations cannot be successfully sued. This happens when a person's job entitles him or her to partial or complete IMMUNITY. For example, the federal government, state governments, judges, and many government officials usually have immunity in civil cases. Even if federal and state governments have

waived immunity to allow some types of suits, these cases may be subject to additional rules and procedures, like stricter STATUTES OF LIMITATION. If you try to sue someone who has complete immunity in federal court, your case will be dismissed.

To find out if the person or organization you are suing has immunity, you can:

a. Ask a lawyer. If you don't have a lawyer you can find one using the resources in Chapter 2.
b. Go to a law library. Ask how to research immunity from federal lawsuits.

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.

Not understanding any of the above can result in critical mistakes with serious legal consequences. Because of this, the Court encourages you to find a lawyer, if at all possible.

How Can I Find A Lawyer?

Certified legal referral services help people find lawyers. The following resources may be helpful:

- State Bar of Arizona's Maricopa County Bar Lawyer Referral Service (602) 257-4434. They will schedule a 30-minute consultation with you and an attorney for a low fee. www.maricopabar.org
- Pima County Bar Lawyer Referral Service (520) 623-4625
  For a non-refundable minimal fee due at the time of the referral, the Lawyer Referral Service will provide you with a licensed attorney who will provide you with a 30-minute consultation.
  www.pimacountybar.org/lawyer-referral-service-lrs
- The Arizona State Bar website: http://www.azbar.org/FindaLawyer

I Can't Afford An Attorney. Who Can I Contact For Help?

- There are legal aid resources offered throughout the state of Arizona for litigants who cannot afford a lawyer. You can find a list of these resources at www.azlawhelp.org or call 866.637.5341.
- In the federal courthouse in Tucson, you can schedule an appointment to meet with a volunteer attorney at the Step Up to Justice Federal Court Self-Service Clinic. This clinic is offered by appointment only on Tuesdays from 1:30 p.m. to 3:30 p.m. For more information, contact the courthouse librarian, Mary Ann O'Neil, at 520-205-4661 or MaryAnn_O'Neil@LB9.uscourts.gov.

What Is "Pro Bono" Representation?

In a limited number of cases, the Court may ask a lawyer to step in for all or part of the case and represent a pro se litigant 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, the Court might appoint pro bono counsel for a SETTLEMENT CONFERENCE in which it believes a lawyer could help negotiate a settlement. You can ask the Court to appoint a lawyer for you by filing a motion for appointment of counsel (see Chapter 12 for more information about drafting motions). There is no right to counsel in a civil case, however, and the Court will only appoint counsel in exceptional circumstances.

CHAPTER 3
How Do I Research the Law?

There are two kinds of law that you will need 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: http://www.uscourts.gov/rules-policies/current-rules-practice-procedure
    b. Federal Rules of Evidence: These rules define the types of evidence that are ADMISSIBLE in federal court. 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: http://www.uscourts.gov/rules-policies/current-rules-practice-procedure.
    c. Local Rules of the United States District Court for the District of Arizona: These are procedural rules that build on the Federal Rules of Civil Procedure and apply only in this Court. Review them at the Clerk's Office, or online: http://www.azd.uscourts.gov/local-rules.
    d. *General Orders* and *Standard Orders:* General orders are special orders issued by the Court that apply to all cases in one or both Divisions. Individual judges may also have their own standard orders that they use in most cases. You can find general orders and standard orders on the Court's website:

        http://www.azd.uscourts.gov/general-orders

2. SUBSTANTIVE LAW describes what you must prove to establish your claims. Each kind of case has a different set of laws that you need to learn. For example, different laws apply to an employment discrimination case than a real estate 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. Some public law libraries in the District of Arizona are listed below. Find some statutes and cases online for free on websites such as FindLaw (findlaw.com/casecode/).

To look up unfamiliar LEGAL TERMS, **use:**

1. The Glossary at the back of this handbook (all glossary terms in this book are in a special format like this: SERVICE OF PROCESS);
2. A legal dictionary, such as *Black's Law Dictionary*;
3. Free online resources, such as dictionary.law.com.

Public Law Libraries In The District of Arizona (By County)

MARICOPA COUNTY

Maricopa County Law Library
http://www.superiorcourt.maricopa.gov/LawLibrary/index.asp
101 West Jefferson Street
Phoenix, AZ 85003
Phone: (602) 506-3461

Arizona State Library
http://www.azlibrary.gov
1700 West Washington Street
Phoenix, AZ 85007
Phone: (602) 926-4035

ASU Sandra Day O'Connor Ross-Blakley Law Library
http://web.law.asu.edu/library/RossBlakleyLawLibrary.aspx
Sandra Day O'Connor College of Law
111 East Taylor Street
Phoenix, AZ 85004
Phone: (480) 965-6144

PIMA COUNTY

Pima County Law Library
http://www.sc.pima.gov/?tabid=60
110 West Congress, 2nd Floor
Tucson, AZ 85701
Phone: (520) 621-1413

University of Arizona James E. Rogers College of Law
Daniel F. Cracchiolo Law Library
http://lawlibrary.arizona.edu/
1201 East Speedway Blvd.
Tucson, AZ 85721
Phone: (520) 621-1373

CHAPTER 4
How Do I Draft a Complaint?

To begin a lawsuit, you have to file a COMPLAINT, which is a written explanation of your claim with the court. 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, which means parties to a lawsuit. A complaint gives formal notice of your lawsuit to the defendant and 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 this Court.

The United States District Court for the District of Arizona offers a user-friendly web application called E-Pro Se, available on the District of Arizona website and on kiosks in the Phoenix and Tucson Clerk's Office locations.

You can prepare your complaint online using E-Pro Se at the Court's website at:
https://jobs.azd.uscourts.gov/eprose

What does a Complaint Look Like?

Formal documents that you submit to the court are called PLEADINGS. A complaint is one type of pleading. Pleadings are written on PLEADING PAPER, which is letter-sized paper that has the numbers 1 through 28 running down the left side.

In addition, to the E-Pro Se complaint drafting tool on the United States District Court for the District of Arizona website, the United States Courts website provides sample complaint forms for different types of civil cases. Refer to the "pro se forms" section of the website at: http://www.uscourts.gov/services-forms/forms

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

Arizona Legal Forms (West Publishing Co., current)
West's Legal Forms (West Publishing Co., current)
Nichols Cyclopedia of Legal Forms Annotated (West Publishing Co., current)
Legal Checklists: Specially Selected Forms (West Publishing Co., current)
American Jurisprudence Legal Forms (West Publishing Co., current)

What Information Must Be In A Complaint?

Number each page of your complaint and type "Complaint" in the footer at the bottom. Number each paragraph that follows the CAPTION. The complaint should contain all of the following:

1. Caption Page
   a. On the first page of your complaint, list your name, address, and telephone number.
   b. List the names of the defendants and the title of the document ("COMPLAINT").
   c. Write "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 this kind of 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 are citizens of different states than all defendants and more than $75,000 is in dispute)—for more information, read 28 U.S.C. § 1332.

3. **Complaint**
   This section should list your legal CLAIMS. You should include a separate section for each claim (Claim 1, Claim 2, etc.) identifying the specific law that you allege the defendant violated. The Complaint must comply with Rule 8(a), FEDERAL RULES OF CIVIL PROCEDURE

4. **Demand**
   This section should explain what you want the Court to do. For example, you can ask the Court 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. If you want a JURY TRIAL, you can request it here. 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; in that event, the judge will decide the facts of your case if a trial is held. See Chapter 20 for more about trials.

5. **Plaintiff's Signature**
   At the end of the complaint, date and sign your name in ink. Underneath your signature type or print your name, address, and telephone number. 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 Court 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.

How Do I File Documents?

In-Person Filing: Bring the signed original document (with two copies) to the Clerk's Office to file it in person.

Filing documents in person during normal business hours

The Clerk's Office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except for legal holidays.

Phoenix Sandra Day O'Connor U.S. Courthouse
401 West Washington Street, Suite 130, SPC 1
phone: (602) 322-7200

Tucson Evo A. DeConcini U.S. Courthouse
405 West Congress Street, Suite 1500
phone: (520) 205-4200

E-Filing: E-FILING is the process of using the internet to file documents with the Court and serve them on other parties from your computer. Attorneys filing in the District of Arizona are required to file electronically. Pro se litigants must get prior permission from the Court in order to join the e-filing system. You must file a motion for permission to e-file in hard copy with your complaint. A sample motion is available here: http://www.azd.uscourts.gov/sites/default/files/forms/ProSeMotionToEfile.pdf

If you receive permission, you can file documents in your case (but not any other case) online at the Court's Electronic Case Filing (ECF) website. You may also view case dockets and documents through the Public Access to Court Electronic Records (PACER) website, pacer.gov, if you have obtained a login and password for PACER. More details about e-filing can be found in Chapter 9.

If the Court does not grant permission to electronically file your documents, you may still receive electronic notices when documents are filed by submitting a form available from the Clerk's Office.

- Registered users in ECF may e-file 24 hours per day. To secure the filing date, the original document must be e-filed prior to midnight, and all other rules of procedure for the District of Arizona must also be followed.
- **Regardless of whether or not an original document is filed electronically, a paper courtesy copy must usually be provided to the judge.** To verify electronic filing, a copy of the Notice of Electronic Filing must be appended to the last page of the courtesy

copy. The courtesy copy must be either post-marked and mailed directly to the judge or hand-delivered to the judge's mail box located in the courthouse. See LRCiv 5.4.

Even if you receive permission to e-file, some documents cannot be filed electronically. A list of documents that must be filed in paper copy is available in the Electronic Case Filing Administrative Policies and Procedures Manual: http://www.azd.uscourts.gov/sites/default/files/documents/adm%20manual.pdf. Documents that must be filed in paper may be filed at the Phoenix Division or Tucson Division courthouses, depending upon in which Division your case is pending.

Filing Your Case: Initial Pleadings

The complaint must not include any personal identifiers (see FEDERAL RULES OF CIVIL PROCEDURE 5.2). When filing a complaint, you must submit the following:

1. An original and two copies of the complaint.
2. An original and one copy of the SUMMONS; you must prepare a summons for each named defendant.
3. Filing and administrative fee made payable to Clerk, U.S. District Court, **OR** An original and two copies of a motion (request) to proceed IN FORMA PAUPERIS (IFP) with supporting information regarding your financial status, and an original and two copies of a proposed order granting leave to proceed in forma pauperis for the judge's signature. Filing fees are posted on the Court's website: http://www.azd.uscourts.gov/sites/default/files/documents/fee%20schedule.pdf. Your request to proceed IN FORMA PAUPERIS must be submitted on Form 239, available here: http://www.uscourts.gov/forms/fee-waiver-application-forms/application-proceed-district-court-without-prepaying-fees-or

NOTE: The term "in forma pauperis" refers to one's inability to pay the fees for filing and serving a complaint.

If filing *in forma pauperis* (IFP), the original complaint will be filed and assigned the next consecutive civil case number. You have the right to request that the judge order the U. S. Marshal to serve the summons and complaint. An original and one copy of each of the documents, including the complaint, are to be provided by the filer. These documents will be forwarded to the judge who is randomly assigned to the case. After reviewing the documents submitted to the court, the judge will determine whether or not you will be granted leave to proceed in forma pauperis. Once a decision has been made, you will receive a copy of the judge's order by mail.

If leave to proceed IFP is denied, your case will be dismissed unless you pay the filing fee.

If IFP is granted, you must submit an original and one copy of a summons prepared for each defendant and the clerk will issue the summons(es) and return them to you for service. You will be responsible for initiating service of a summons and the complaint upon each of the other parties in accordance with Rule 4 of the FEDERAL RULES OF CIVIL PROCEDURE. You may also choose to serve the defendant(s) by mail as described in Rule 4 of the FEDERAL RULES OF CIVIL PROCEDURE. If you wish to make service by mail, complete Form 398 (Notice of Lawsuit and Request for Waiver of Service), and Form 399 (Waiver of Service of Summons), both of which are available online at: http://www.uscourts.gov/services-

forms/forms. If you had requested that the U. S. Marshal make service on your behalf and the judge granted your request, the court will send you various forms to complete and return to the Clerk's Office. The clerk will then issue the summons(es) and forward the documents to the U.S. Marshal's Office for service pursuant to the FEDERAL RULES OF CIVIL PROCEDURE.

If you are paying the filing and administrative fee, the complaint and all other documents submitted to the court will be filed and assigned the next consecutive civil case number. An original and one copy of each of the documents, including the complaint, are to be provided by the filer. Keep in mind, however, that an original of the summons form should be prepared for each named defendant. The complaint and supporting documents will be forwarded to the judge who is randomly assigned to the case. If you have submitted summonses, the court will issue them and return them to you at the time you file your complaint. You will be responsible for serving the summons and complaint upon the defendant(s) in accordance with Rule 4 of the FEDERAL RULES OF CIVIL PROCEDURE. You may choose to serve the defendant(s) by waiver of service, as described in Rule 4 of the FEDERAL RULES OF CIVIL PROCEDURE. If you wish to make service by mail, complete Form 398 (Notice of Lawsuit and Request for Waiver of Service) and Form 399 (Waiver of Service of Summons).

Remember, when filing a complaint, you must:

1. **File the original complaint plus two copies.**
2. **Arrive at the Clerk's Office before 3:30 p.m.** because it takes more time for the Clerk to file complaints than other documents.
3. **Pay the fee to file your complaint.** After the initial complaint is filed, you do not have to pay any additional fees to file most documents with the Court (unlike state court). The Clerk's Office accepts payment in cash (exact change required), check or money order made payable to "Clerk, U.S. District Court," or credit card (Visa or MasterCard accepted; credit card payments must be made in person).

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

If you cannot afford the filing fee, you may file an APPLICATION TO PROCEED *IN FORMA PAUPERIS* ("IFP"). You can get this form at either the Clerk's Office or at the Court's website. You will have to tell 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.

If the Court finds that you cannot afford to pay the filing fee (GRANTS your IFP application), the Court will not require you to pay the filing fee in order to proceed with your lawsuit but the IFP status does not automatically extend to other costs, e.g. copy fees. ***Be cautious:*** the fee waiver does not necessarily mean you will never have to pay. You may still be obligated to pay costs or fees later on in your lawsuit.

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

CHAPTER 6
Once My Case is Assigned to a Judge, What Do I Do?

After the complaint is filed and the fee paid, the Clerk assigns a number to the case and assigns the case to a judge. The judge's initials are added to the case number.

District Judges
are appointed by the President of the United States and confirmed by the United States Senate. District Judges are appointed for life and cannot be removed unless impeached.

If your case is assigned to a District Judge, you may receive Form 85, "Notice, Consent, and Reference of a Civil Action to a Magistrate Judge." This form asks whether you will consent to having your case decided by a Magistrate Judge.

Magistrate Judges
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, jury trial, or non-jury trial only if all plaintiffs and all defendants consent to have the case decided by a magistrate judge.

If your case is assigned to a MAGISTRATE JUDGE, the Clerk's Office will give you a notice explaining that your case has been assigned to a Magistrate Judge, along with a form asking if you consent to have your case decided by a MAGISTRATE JUDGE (called "Consent to Proceed Before a United States magistrate judge").

It is important that you complete and file with the Court the form indicating whether you consent to have your case decided by a MAGISTRATE JUDGE ***or instead would like your case to be reassigned to a*** DISTRICT JUDGE. The Magistrate Judge may also issue a separate order or send a letter asking you to submit either a consent form or a request for reassignment by a specific date.

If you fail to return the form, the Court will assume that you do not consent to having your case decided by a magistrate judge and will eventually reassign the case to a DISTRICT JUDGE. You should not wait to complete the form, however, as this may delay your case, because a Magistrate Judge cannot rule on some pending motions without the consent of all parties.

Even if you consent to having your case decided by a magistrate judge, the case may be reassigned to a District Judge if another party to the lawsuit does not consent to magistrate judge jurisdiction. The case may also be reassigned to a District Judge if a new plaintiff or defendant is added to the case who does not consent to having a Magistrate Judge decide the case.

You are not required to consent to a Magistrate Judge. Regardless of whether you consent to have your case decided by a Magistrate Judge or request reassignment of your case to 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 to a Magistrate Judge for ruling. Some rulings made by a Magistrate Judge can be appealed to the District Judge. See Chapter 21.

A Magistrate Judge may also be assigned to serve as a SETTLEMENT JUDGE with the power to set SETTLEMENT CONFERENCE dates, order parties to attend SETTLEMENT CONFERENCES, and order the production of documents or other evidence.

Bear in mind that if your case is assigned to a District Judge and your case is set for trial, your trial may be rescheduled to accommodate the District Judge's criminal calendar. This may not happen if your case was assigned to a Magistrate Judge.

Once your case is assigned to a judge, that judge may have specific, additional requirements related to motions and orders. Judges' STANDARD ORDERS, forms and procedures are available on the court's website: http://www.azd.uscourts.gov/judges/judges-orders.

CHAPTER 7
How Can I Make Sure that I Know about Everything that is Happening in My Case?

How do I Review the Docket?

The DOCKET is a computer file maintained by the Court for each case that includes: (1) the names and addresses of all the attorneys and unrepresented parties **AND**, (2) in chronological order, the title of every document filed along with the filing date, 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. (It may take up to two 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.

Contact the U.S. District Court of the District of Arizona's Customer Service Department in Phoenix at (602) 322-7200 or in Tucson at (520) 205-4200 for questions regarding the docket (see Chapter 3). **DO NOT** call the judge, the judge's chambers, or the judge's other staff.

Where can I Access the Electronic Docket?

You may access the electronic docket using the computer terminals available in the Phoenix or Tucson Clerk's Offices during the hours the Clerk's Office is open, or you may do so from any computer with internet access if you have a **PACER** account.

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, 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 **https://pcl.uscourts.gov/search**.
2. **To view documents and obtain docket information*:***

   Visit the PACER system at http: www.pacer.gov. If you do not have a computer, you can use the public computers in the Clerk's Office in the Phoenix or Tucson courthouses to obtain docket information.
3. **You must register to become a PACER user** before you can use any version of the PACER system:

Register online at http://pacer.psc.uscourts.gov 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.Internet access to PACER is billed per page of information. The fees associated with accessing PACER documents are listed on the Court's website at:https://www.pacer.gov/documents/epa_feesched.pdf
   - You will be billed quarterly by the PACER Service Center.
   - An order designated as a written opinion by the judge is free to view.
   - If you have been given permission to electronically file your documents or you have requested electronic notice of documents being filed, you will receive a "NOTICE OF ELECTRONIC FILING" e-mail which will allow you to view the document for free one time. This "free look" is only for the first time you open the document. Be cautious: you will be charged for subsequent viewings of the document. You should therefore print or save an electronic copy of the document during your initial viewing. NEVER double-click the attachment or you will lose your free look. Also, be aware that viewing a document by smartphone may also serve as a free look and some smartphone browsers may not be compatible with ECF.

5. **Information available through PACER**

PACER contains docket information for the District of Arizona for*:*

- All civil and miscellaneous cases filed since August 1990;
- All criminal cases filed since August 1991; **AND**
- A small number of cases filed before August 1990.

Once case information has been updated in the District of Arizona's Electronic Case Filing system, it 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 ECF questions, but cannot help with problems with your PACER account.

How do I Review the Case File?

Cases filed after August 1, 2005 are electronic and documents may be viewed through PACER. If you do not have a login and password for PACER, you may view the documents at a public terminal in the Phoenix or Tucson Clerk's Offices. Copies may be printed from PACER at a cost per page. If the Clerk prints an electronic copy the cost will also be billed per page, but at a higher rate.

If an entry on the case docket does not have a pdf attachment, ask the Clerk if the document was filed in paper. If the document was filed in paper it will be available in the Clerk's Office where the case was filed. You must present a valid government-issued picture identification card and view the file in the Clerk's Office. Files cannot be removed from the

Clerk's Office. Copies of paper documents may be made by the Clerk at a cost set by the United States Judicial Conference Fee Schedule.

What if I Move While My Case is Pending?

If you should change your address, LRCiv 83.3(d) requires that you file and serve a written notice of a change of address.

CHAPTER 8
What are the Rules for Serving Documents on the Other Parties to 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 to 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, the case will not proceed and can be dismissed by the Court. Rule 4, FEDERAL RULES OF CIVIL PROCEDURE, is the federal rule governing service.

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 (http://www.azd.uscourts.gov/forms/ao-440-summons-civil-action). The Clerk must sign, seal, and "ISSUE" the summons to the plaintiff before it can be served on the defendant. If you sue more than one defendant, you must prepare a separate summons for each one. See FEDERAL RULES OF CIVIL PROCEDURE 4. Note that the Clerk's Office will not issue a summons until you have paid your filing fee or been granted In Forma Pauperis status.

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 may 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 afford 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 Of Court For "Issuance"?

After filling out your summons form completely, you must present it to the Clerk for signature and seal before it is valid to serve on the defendants. You can submit a summons form to the Court in person or by mail. If you submit a summons form to the Court by mail, include a self-addressed, stamped envelope so that the Court 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 your APPLICATION TO PROCEED IN FORMA PAUPERIS is approved, you may file a motion asking the Court to forward the summons to the United States Marshal to serve on the defendants at no cost to you. 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 or at the Court's website. 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 **BOTH** of the following documents on each defendant:

1. Complaint;
2. Summons, issued by the Clerk of the Court.

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, the Court may dismiss all claims against any defendant who was not served. The dismissal would be "WITHOUT PREJUDICE," however, which means that you could file a new complaint in which you assert the same claims. If you did so, you would then have another 90 days to try to serve the complaint and summons.

How can I get the Defendant to Waive Service?

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 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: http://www.azd.uscourts.gov/forms

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 the 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. Following are the rules for serving different kinds of defendants:

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 Arizona law or the laws of the state where the defendant is served. Arizona law on service of process can be found in the Arizona Rules of Civil Procedure for the Superior Courts of Arizona beginning at 16 A.R.S. Rules of Civil Procedure, Rule 4.1. Arizona law generally allows service by:
    - Hand delivery to the defendant; **OR**
    - Leaving copies of the summons and of the pleading at that individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein (see 16 A.R.S. Rules of Civil Procedure, Rule 4.1(d)); **OR**
    - Delivering a copy of the summons and of the pleading to an agent authorized by appointment or by law to receive service of process (see 16 A.R.S. Rules of Civil Procedure, Rule 4.1(d)); **OR**
    - Service by publication in a newspaper. Where the person to be served is one whose residence is unknown to the party seeking service but whose last known residence address was within the state, or has avoided service of process, and service by publication is the best means practicable under the circumstances for providing notice of the institution of the action, then service may be made by publication in accordance with the entire requirements of 16 A.R.S. Rules of Civil Procedure, Rule 4.1(l) (see 16 A.R.S. Rules of Civil Procedure, Rule 4.1(l)); **OR**

- Alternative or Substituted Service. If service by one of the means set forth in the preceding methods proves impracticable, then service may be accomplished in such manner, other than by publication, as the court, upon motion and without notice, may direct; (see 16 A.R.S. Rules of Civil Procedure, Rule 4.1(k)).
- Service by Publication; Unknown Heirs in Real Property Actions. When in an action for the foreclosure of a mortgage on real property or in any action involving title to real property, it is necessary for a complete determination of the action that the unknown heirs of a deceased person be made parties, they may be sued as the unknown heirs of the decedent, and service of a summons may be made on them by publication in the county where the action is pending, as provided in 16 A.R.S. Rules of Civil Procedure, Rule 4.1(l). (See 16 A.R.S. Rules of Civil Procedure, Rule 4.1(m)).

Different service rules apply Depending on the type of defendant :

<table>
<tr><th colspan="3">How do I serve...</th></tr>
<tr><td>Individuals
See Rule 4(e) of the FEDERAL RULES OF CIVIL PROCEDURE and Arizona law on service of process for individuals (16 A.R.S. Rules of Civil Procedure, Rule 4.1).</td><td>A Business
If you serve a business in the United States: See Rule 4(h)(1) of the FEDERAL RULES OF CIVIL PROCEDURE and Arizona Law on service of process for corporations, partnerships, and unincorporated associations (16 A.R.S. Rules of Civil Procedure, Rule 4.1(i) & (j)). If you serve a business outside the United States: See Rule 4(h)(2) of FEDERAL RULES OF CIVIL PROCEDURE.</td><td>A Foreign Country
See 28 U.S.C. § 1608.</td></tr>
<tr><td rowspan="2">Individuals in Foreign Countries
See Rule 4(f) and (g) of the FEDERAL RULES OF CIVIL PROCEDURE.</td><td rowspan="2">The United States, Its Agencies, Corporations, Officers, or Employees
See Rule 4(i) of FEDERAL RULES OF CIVIL PROCEDURE. If you also sue 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, you must also serve the employee or officer in accordance with Rule 4(e), (f), or (g) of the FEDERAL RULES OF CIVIL PROCEDURE.</td><td>A State or Local Government
See Rule 4(j)(2) of the FEDERAL RULES OF CIVIL PROCEDURE.</td></tr>
<tr><td rowspan="2">Minors or Incompetent Persons
See Rule 4(g) of the FEDERAL RULES OF CIVIL PROCEDURE. and Arizona Law for service of process on minors and incompetent persons (16 A.R.S. Rules of Civil Procedure, Rule 4.1(e) & (g)).</td></tr>
</table>

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, using methods prescribed by the foreign country's law or government, hand delivery, certified mail delivery or in the manner the Court orders.

A business:

Under Rule 4(h) of the FEDERAL RULES OF CIVIL PROCEDURE, there are several approved methods for serving the complaint, summons, and related documents on a corporation, partnership, or unincorporated association.

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 Arizona law or the law of the state in which the business is served. Arizona's laws on serving corporations, partnerships, and unincorporated associations can be found in the 16 A.R.S. Rules of Civil Procedure, Rule 4.1(i) - (j). Rule 4.2(h) provides for service on businesses outside Arizona.

***A business outside the United States*:**

see 16 A.R.S. Rules of Civil Procedure, Rules 4.2(i) - (l).

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.

The United States:

- Hand delivery to the United States Attorney for the District of Arizona; **OR**
- Hand delivery to an Assistant United States Attorney (or to a specially-designated clerical employee of the United States Attorney); **OR**
- Service by registered or certified mail addressed to the civil process clerk at the office of the United States Attorney for the District of Arizona.

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) in the FEDERAL RULES OF CIVIL PROCEDURE.

A state or local government:

- 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.

Minors or incompetent persons:

- 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. Arizona law for service of process on minors and incompetent persons can be found at 16 A.R.S. Rules of Civil Procedure 4(e) - (h).

A foreign country (or a political subdivision, agency, or instrumentality of a foreign country):

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

What is a Certificate of Service?

After you serve the complaint, you are required to file a "CERTIFICATE OF SERVICE" (also called a "PROOF OF SERVICE") with the Court that shows when and how you served the complaint, summons, and other required documents 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 5(d).

Please note: If you have received permission to file documents electronically, no certificate of service is required for documents that are filed electronically after service of the complaint. Those documents will be served electronically.

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. 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 note that 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 serve on other parties, you need to file a CERTIFICATE OF SERVICE. See LRCiv. 5.2.

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 so that they can be viewed on a computer. Attorneys are required to file documents electronically. Parties representing themselves are not ordinarily permitted to e-file, but you may request to do so (See "What are the pros and cons of e-filing?" below). The judge in your case must give permission for you to register for e-filing.

What Are The Technical Requirements For E-Filing?

In order to fulfill the technical requirements for e-filing, you must have access to**:**

1. A ***computer, internet,*** and ***email*** on a daily basis so you can e-file your documents and receive notifications from the Court.
2. A ***scanner*** to scan documents that are only in paper format (like exhibits).
3. A ***printer/copier*** because each documents that you e-file will also need to be sent to the judge in hard copy (the judge's copy is called the "COURTESY COPY").
4. A ***word-processing program*** to create your documents.
5. A ***.pdf reader*** and a ***.pdf writer***, which enables you to convert word processing documents into .pdf format. Only .pdf documents are accepted for e-filing. Adobe Acrobat is the most common program used. The reader (Adobe Acrobat Reader) is free, but the writer is not. Some word processing programs come with a .pdf writer already installed.

More information and resources regarding these technical requirements are available on the Court's website at http://www.azd.uscourts.gov/efiling/requirements.

What Are The Pros And Cons Of E-Filing?

PROS*:*

1. You can e-file from any computer.
2. You can access court documents any time from any computer.
3. You will not have to go to the courthouse to file your court papers or mail them.
4. You have until midnight on the day your filing is due to e-file (instead of being limited to the regular business hours of the Clerk's Office with paper filings).
5. You will not need to serve other registered users of the ECF system with paper copies (pro se parties to your litigation who do not have permission to e-file will still need paper copies).

CONS*:*

1. If you do not already have all the hardware and software required to e-file, there may be some initial cost.

2. Hands-on training is not available for use of the ECF system so you must rely on written training materials available on the Court's website.
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.

If you need assistance obtaining permission to e-file, you may call the U.S. District Court for the District of Arizona's Customer Service Department in Phoenix or Tucson. For contact details, see Chapter 2.

How Do I Start E-Filing With ECF?

To begin e-filing, you must first file a MOTION FOR PERMISSION TO E-FILE with the Court. View or download a sample motion for permission to e-file from the Court's website: http://www.azd.uscourts.gov/sites/default/files/forms/ProSeMotionToEfile.pdf. If the judge grants permission, you can register with ECF (the Court's Electronic Case Filing system) to get a login and password. There are no registration costs and no fees for e-filing. If the judge denies the request, you must continue to file all documents in paper form.

In order to use ECF, you will also have to register with **PACER** (the Public Access to Court Electronic Records system of the United States Courts), if you have not already done so. ECF allows you to *submit* documents to the Court electronically. PACER allows you to *retrieve* documents from the Court electronically. PACER registration is covered in Chapter 7.

Important E-Filing Tips

1. Once you sign up for ECF, make sure your account always has the correct e-mail address on file.
2. All registered participants of the ECF system receive a "NOTICE OF ELECTRONIC FILING" (NEF) e-mail for every document filed in their cases. That NEF provides one "free look" at each e-filed document. This "free look" is only available the first time you open a file sent to your e-mail. You will be charged for any subsequent viewings. Your free look will expire after two weeks. Make sure that you are able to check your e-mail every day in order to save and/or print any documents you receive. Do not double-click on the document to open it; this will cause you to lose your one "free look."
3. When you receive a Notice of Electronic Filing, save the documents to your computer's local hard drive **OR** print it out immediately. This way, you will be able to keep everything organized for your own files, and you can avoid future access costs.
4. When you e-file, none of the files you upload will be saved in the ECF system until you hit the **SUBMIT** button.
5. E-filed documents are subject to review by Court staff and the text of the docket entry may be modified to meet court electronic docketing requirements. Any modification to the docket will generate a Notice of Electronic Filing to all parties to alert them of any correction or adjustment.
6. For more support, you can utilize the following resources:

- See the Electronic Case Filing Administrative Policies and Procedures Manual for more information:

  http://www.azd.uscourts.gov/sites/default/files/documents/adm%20manual.pdf

- Review the ECF User's Manual:

  http://www.azd.uscourts.gov/efiling/training-user-manual

- Take advantage of the experience of others by searching our Frequently-Asked Questions:

  http://www.azd.uscourts.gov/faqs/ecf

- Call the ECF Help Center:
  - Phoenix/Prescott Divisions: 602-322-7200
  - Tucson Division: 520-205-4200

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 Court rules on your motion.

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 Court consider the claims in the complaint. See the section titled "What does it mean to win by default judgment?" and Rule 55 of the FEDERAL RULES OF CIVIL PROCEDURE.

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. See the table below.

If you need additional time to respond to the complaint, you can ask the plaintiff to agree to extend the deadline for responding as long as the new deadline does not interfere with any dates or deadlines set by the Court. If you and the plaintiff agree to extend the deadline, you must file a stipulation with the court notifying the court of the agreed-upon extension and asking the court to grant it.

When Rule Applies	Federal Rule No.	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 a complaint if he or she returns a signed waiver of service within the amount of time specified in the plaintiff's request for a 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.

– CONTINUED ON NEXT PAGE –

When Rule Applies	Federal Rule No.	Deadlines
– CONTINUED FROM PREVIOUS PAGE –		
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, 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. 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. Some examples of affirmative defenses include: fraud, illegality, and the 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 it cannot be brought up 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.**

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***. See Rule 13(a) of the FEDERAL RULES OF CIVIL PROCEDURE and 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 once within 21 days after it is served on the plaintiff without the need for permission from the Court or from the plaintiff. See Rule 15(a) 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. File a motion with the Court seeking permission to amend your answer. You should 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 Court to change your answer as attached. Once you receive the Court's approval, then you will be allowed to file the amended answer. To learn more about how to file motions, see Chapter 12.

According to LRCiv 15.1, if a party files an amended pleading as a matter of course or with the opposing party's written consent, the amending party must file a separate notice of filing the amended pleading. The notice must attach a copy of the amended pleading that indicates in what respect it differs from the pleading which it amends, by bracketing or striking through the text that was deleted and underlining the text that was added. The amended pleading must not incorporate by reference any part of the preceding pleading, including exhibits. If an amended pleading is filed with the opposing party's written consent, the notice must so certify.

If a motion for leave to amend is granted, the party whose pleading was amended must file and serve the amended pleading on all parties under Rule 5 of the FEDERAL RULES OF CIVIL PROCEDURE within fourteen (14) days of the filing of the order granting leave to amend, unless the Court orders otherwise.

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 his or her answer. See Rule 13(a). If you fail to include a compulsory counterclaim with your answer, you will generally 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. 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."

Once a Counterclaim is Filed, Does the Plaintiff have to File A Response to it?

Since a counterclaim is really a complaint against the plaintiff, the plaintiff must file a written response to it. The response to a counterclaim is called a REPLY. Rule 12(a)(1)(B) requires the plaintiff to file a reply to a counterclaim within 21 days of being served, unless the plaintiff files a motion regarding the reply.

What if I Want to Sue a New Party?

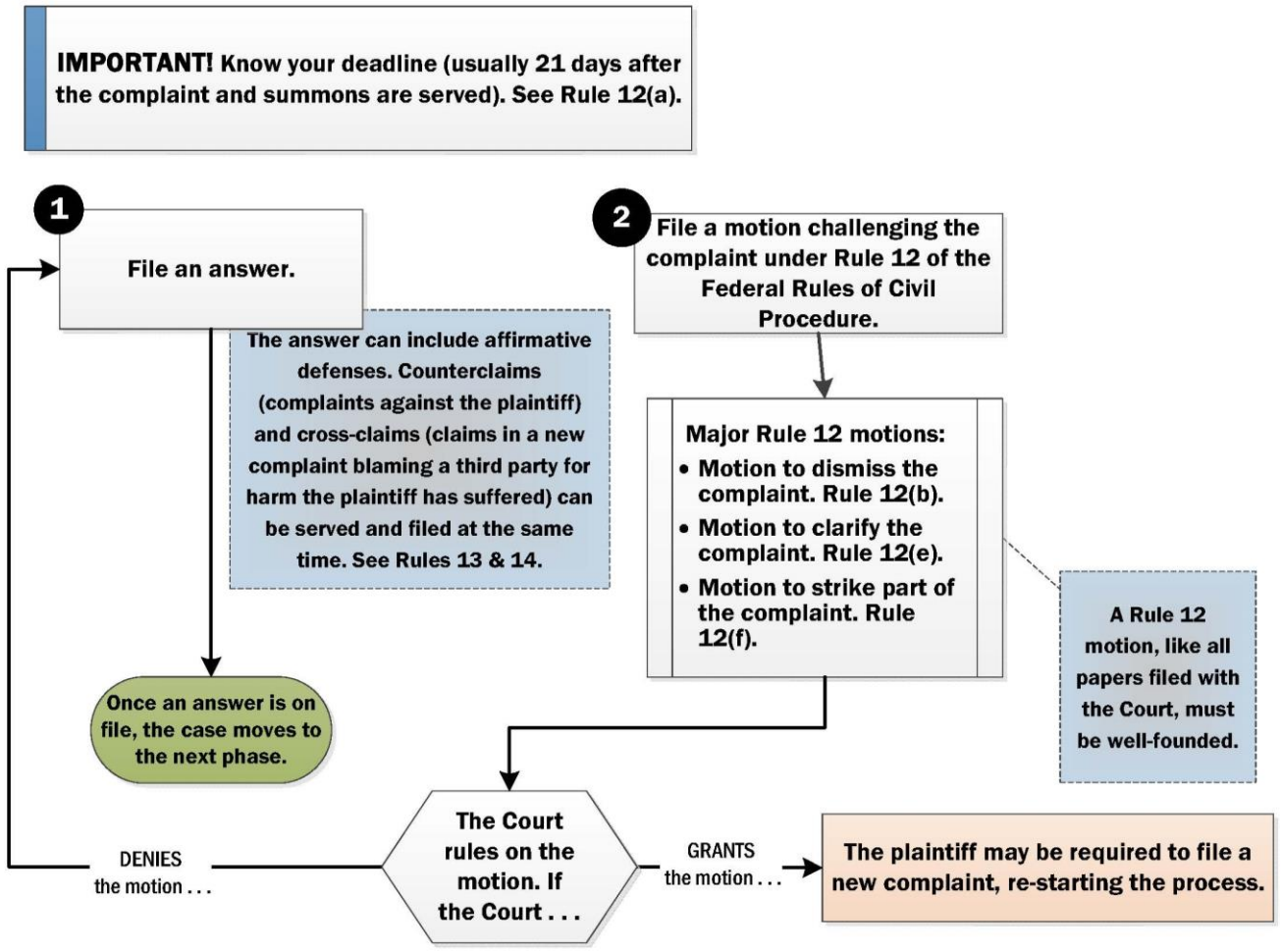
A CROSSCLAIM brings a new party into the case and essentially blames that third party for any harm that the plaintiff has suffered. A CROSSCLAIM can also be used by a plaintiff against a co-plaintiff or by a defendant against a co-defendant. Like a compulsory counterclaim, a CROSSCLAIM must be based on the same series of events as the original

complaint. Crossclaims are covered by Rule 13(g)&(h) of the FEDERAL RULES OF CIVIL PROCEDURE.

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 Court decides your motion.

To learn more about how to file a motion, see Chapter 12 on "What is a motion and how do I make or respond to one?"



About Motions to Dismiss

A MOTION TO DISMISS the complaint argues that there are technical 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 so little 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 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 Court **DENIES** a motion to dismiss, the defendant must file an answer within 14 days after receiving notice that the Court denied the motion. See Rule 12(a)(4) of the FEDERAL RULES OF CIVIL PROCEDURE. If the Court **GRANTS** the motion to dismiss, it can grant the motion with "LEAVE TO AMEND" or "WITH 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 Court will set a time by which the plaintiff must submit an AMENDED COMPLAINT to the Court— often 30 days. The AMENDED COMPLAINT can be served on the defendant by mail or, for ECF users, through e-filing.
   b. Once the defendant is served with the amended complaint, he or she must file a written response within the time the Court orders or by the deadline set forth in Rule 15(a)(3). The defendant can either file an answer 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 Court 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 Court's order.

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 Court **GRANTS** a motion for a more definite statement, the defendant must file a written response to the complaint within 14 days after receiving the new complaint from the plaintiff. Rule 12(a)(4)(B). The written response can be either an answer or another motion.

If the Court **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 Court's order.

About Motions to Strike

Rule 12(f) permits the defendant to file a MOTION TO STRIKE from the complaint any "redundant, immaterial, impertinent, or scandalous matter." This can be used to attack portions of the complaint rather than the entire complaint or even entire claims.

What is a Default Judgment and How Does a Plaintiff Obtain One?

If a defendant has been properly served with a complaint but fails to file any response in the required amount of time, then that defendant is considered in "DEFAULT." Once the defendant is in default, the plaintiff can ask the Court for a DEFAULT JUDGMENT, which means that the plaintiff wins the case and may take steps to collect on the judgment against that defendant. Rule 55 of the FEDERAL RULES OF CIVIL PROCEDURE provides for a two-step process that applies in most cases:

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). 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 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 declaration proving the amount of damages claimed in the complaint against the defendant. Under Rule 54(c), the Court cannot enter a DEFAULT JUDGMENT that awards the plaintiff more (money, relief, etc.) than was 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 App. U.S.C. § 521
A foreign country ..... See 28 U.S.C. §1608(e)

If at all possible, the defendant should file a response to the motion for default judgment and appear at any default hearing the court might set. 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. The Court may not enter a default judgment if an alternative exists because it can be very 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 make a motion to set aside the default or default judgment. See Rule 55(c) of the FEDERAL RULES OF CIVIL PROCEDURE. The Court will set aside an ENTRY OF DEFAULT or a default judgment for good cause or for a reason listed in Rule 60(b) such as mistake, fraud, newly-discovered evidence, void judgment, or "any other reason that justifies relief."

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 12.

CHAPTER 11
Removal of Cases to Federal Court

REMOVAL permits a defendant to move a case from a state trial court to a federal district court. 28 U.S.C. § 1441 identifies most of the kinds of lawsuits that may be removed from a state court to federal district court, including most diversity suits (cases in which the opposing parties reside in different states and the amount in controversy exceeds $75,000) and cases arising under federal law. Other federal statutes provide for removal in particular circumstances, such as suits against federal officers or agencies or certain class action lawsuits.

For Defendants Wishing to Remove a Case to Federal Court

The procedure for removal is set forth in 28 U.S.C. § 1446. If you are a defendant in a state court action and you believe that removal of your case to federal court is appropriate (for example, the parties in the case satisfy the diversity requirements of 28 U.S.C. § 1441 or the case involves a federal claim) you have 30 days from the date you have reason to believe the case is eligible for removal to file a notice of removal. State court criminal proceedings may not be removed to federal court under 28 U.S.C. § 1446, which only applies to civil actions.

A notice of removal should contain:

- a concise statement of the grounds upon which removal is based;
- copies of all process, pleadings, and orders served upon the defendant seeking removal.

Filing the notice of removal automatically removes the case from the jurisdiction of the state court and the federal court will make decisions as to how the case will thereafter be processed. If the federal court determines that the case has been properly removed, the case will proceed in federal court. If the federal court determines that the removal was improper, the federal court will remand the case back to state court.

For Plaintiffs Wishing to Remand a Case that has been Removed to Federal Court

If you are a state court plaintiff and the defendant in your case removes the case to federal court, you will receive a copy of the notice of removal from the defendant. If you believe that your case has been improperly removed to federal court, you have 30 days from the date the notice of removal is filed in which to file a motion for remand. There is one exception to the 30-day requirement: if you have reason to believe that the federal court lacks subject matter jurisdiction over the case (i.e., the parties are not diverse or there is no federal law at

issue in the case), you may file a motion for remand at any time prior to final judgment in the case. You must file your motion for remand, and any other filings, in federal court, not state court.

A motion for remand should:

- contain a concise statement of the grounds upon which remand is based;
- comply with the requirements for motions set forth in Chapter 12 ("What is a motion and how do I make or respond to one?").

The court will consider the motion for remand after allowing the defendant an opportunity to respond and the plaintiff an opportunity to reply. If the court denies the motion for remand, the case will stay in federal court. If the court grants the motion for remand, the case will be transferred back to state court.

The procedural and time requirements that apply generally to removal and remand are set forth at 18 U.S.C. §§ 1446-1448. Be sure to review these statutes to ensure that you understand all of the procedural and time requirements.

CHAPTER 12
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.

In general, you do not need a motion for clerical things like changing your address on the docket or requesting copies.

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

- Motion for appointment of counsel
- Motion for extension of time to file document
- Motion to appear by telephone

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

Phase	Specialized Motion
In connection with filing a complaint:	Motion to amend/correct
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

What is the Timeline of a Motion?

1. **Filing.** A party files a motion explaining what he or she wants the Court to do and why. The party who files a motion is the "MOVING PARTY." The other parties are "NON-MOVING PARTIES." A party who does not want the motion to be granted is the "opposing party."
2. **Opposition.** The OPPOSING PARTY files a RESPONSE BRIEF stating whether the party opposes the motion and if so why it believes the Court should not grant the moving party's motion.
3. **Reply.** The moving party files a REPLY BRIEF in which it responds only to the arguments made by the opposing party's response opposition brief. After this is done, neither party can file any more documents about the motion without first getting permission from the Court.
4. **Hearing.** After the motion and the briefs are filed, the Court can decide the motion based entirely on the arguments in the papers, or it can hold a HEARING. If the Court holds a hearing, each party will be given a chance to talk to the Court about the arguments in their papers. The Court then announces its decision in the courtroom or sends the parties a written decision. If you would like a hearing on a motion, you must comply with LRCiv 7.2(f).

How to Calculate Time for Filing Documents

Rules 5(b) and 6, FEDERAL RULES OF CIVIL PROCEDURE set forth the rules for calculating filing deadlines in federal court.

Under Rule 6(a), the day of the event that triggers the period is not counted. All other days—including intermediate Saturdays, Sundays, and federal legal holidays—are counted, with one exception: if the period ends on a Saturday, Sunday or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday.

Under Rule 5(b)(2)(C), when a document is served by mail, the mailing of the document triggers the beginning of the period, not the date the document is received. The date the document was mailed will appear on the certificate of service, which is required to be sent with the document as provided in Rule 5(d). Under Rule 6(d), 3 additional calendar days are added to the period if the document is served by mail. But these rules do not apply if the judge sets a specific calendar day as the deadline.

Example 1: Plaintiff has 14 days to respond to defendant's motion, which was hand delivered on Monday, August 23, 2010. The calculation begins on Tuesday, August 24, the day after service. The response is due no later than Tuesday, September 7, 2010 (Monday, September 6, 2010 is Labor Day).

Example 2: Plaintiff has 14 days to respond to defendant's motion, which was mailed to plaintiff on Monday August 23, 2010. Plaintiff receives the motion on Wednesday, August 25, 2010. The calculation begins on Tuesday, August 24, the day after the document was mailed. But three additional days are added to the Example 1 calculations because the motion was mailed. Plaintiff's response is due no later than Friday, September 9, 2010.

Remember that Court Personnel are not permitted to evaluate your case or to offer advice on how to proceed with your case. Thus, they cannot perform any time calculation for you,

nor are they able to make a determination as to whether or not you are calculating the time correctly.

What are the Requirements for Motion Papers?

1. Rules 7(b) and 11(b) of the FEDERAL RULES OF CIVIL PROCEDURE and Civil Local Rules 7.1 through 7.3 set the requirements for motions. If you do not make your best effort to follow these rules, the Court may refuse to consider your motion. Note that there are special rules for motions for summary judgment. See Chapter 19.
    a. A motion should be made in writing and comply with the formatting requirements of Local Rule 7.1.
    b. All of the Court's rules about captions and the format of documents apply to motions. See Chapter 4. Civil Local Rule 7.2(e) requires that motions be no more than 17 pages long (excluding declarations and exhibits). Motions that are longer than 17 pages may not be accepted or the extra pages might not be read.
    c. If you are the moving party, include your name, address, e-mail, and phone number. You must also sign the motion to 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.
2. Civil Local Rules 7.1 and 7.2 require that all motions contain the following:
    a. **Name of the motion**. For example: "PLAINTIFF'S MOTION FOR EXTENSION OF TIME."
    b. **Oral Argument Hearing.** A party that desires an oral argument hearing must request it by placing "Oral Argument Requested" immediately under the title of a motion or a response to a motion. Under Civil Local Rule 7.2(f), the Court may decide whether to grant an oral argument and will give notice when the hearing is set.
    c. **Statement of purpose**. In the first paragraph, give a brief statement of what you want the Court to do.
    d. **Memorandum of points and authorities**. The MEMORANDUM OF POINTS AND AUTHORITIES (or "BRIEF") provides your statement of facts and legal arguments explaining why the Court should grant your motion.
    e. **Citations**. For every mention of a law, rule, or case, it is necessary to insert a CITATION at the end of the sentence.
    f. **Proposed order**. Except for motions to dismiss or summary judgment, you should include with your motion a PROPOSED ORDER for the Court to sign that spells out what will happen if the Court grants your motion. The first page of the order should include the title: "[PROPOSED] ORDER." At the end of the order, you must include a line space for the Court's signature. If the Court grants your motion, it may sign your proposed order or it may write its own order.

3. Rule 6, FEDERAL RULES OF CIVIL PROCEDURE, requires that motions be filed and served on the other parties.
4. If the Court decides to set your motion for hearing, the Court will issue an Order that sets forth the hearing date, time, and location. You do NOT need to contact the judge's staff to reserve a hearing date.

How do I Oppose (Or Not Oppose) a Motion?

1. Civil Local Rule 7.2(c) requires responsive memorandums to be filed and served no later than 14 days after the motion is filed (unless you are responding to a motion to dismiss asserting a lack of personal or subject matter jurisdiction or responding to a motion for summary judgment in which case the response deadline is 30 days). If you DO NOT respond to the motion as required by the Local Rules, the Court may assume consent to the denial or granting of the motion and may dispose of the motion summarily under Civil Local Rule 7.2(i).
2. Under the case number, put the title: "RESPONSE TO [name of motion]".
3. The memorandum of points and authorities (or "brief") may not exceed 17 pages; it should explain the reasons why the motion should be denied, with citations to appropriate law and facts.

What if I Need More Time to Respond to a Motion?

You can contact the opposing party and ask them if they will agree to extend your response time. If they agree, the parties can file a STIPULATION to extend time with the Court.

If the opposing party will not agree to an extension of time, you can file a motion for extension of time with the Court. Rule 6(b) of the FEDERAL RULES OF CIVIL PROCEDURE allows the Court to give you extra time to respond to a motion only for a good reason. File your motion for extension of time before your deadline passes. If you wait until after the original deadline passes before asking for extra time, you must show a good reason for missing the deadline.

What are the Requirements for Reply Briefs?

1. Civil Local Rule 7.2(d) limits reply briefs to 11 pages and they must be filed and served no later than 7 days after the responsive brief is due (for motions to dismiss asserting a lack of personal or subject matter jurisdiction and for summary judgment motions, the reply deadline is 15 days).
2. Under the case number, put the title: "REPLY BRIEF IN SUPPORT OF [name of motion]".
3. Do not include a notice of motion or a proposed order.
4. The MEMORANDUM OF POINTS AND AUTHORITIES should discuss only the arguments made in the responsive 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.
5. The reply brief may not include new arguments in support of your motion. (Because the opposing party is not allowed to file a response to a reply brief, it would be unfair to include new arguments.)

CHAPTER 13
What Happens at a Court Hearing?

What is a Hearing?

A HEARING is a formal court proceeding in which the parties present their arguments to the judge and answer the judge's questions about the motion or other matter being heard. Sometimes WITNESSES can be presented at these hearings.

IMPORTANT: Many judges choose not to hold hearings on motions. Judges are very busy and may decide cases "ON THE PAPERS." Therefore, there will not necessarily be a hearing on a particular motion.

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 nicely and conservatively.
- Be on time.
- You should sit in the benches in the back of the courtroom until your case is announced. The courtroom deputy may ask "counsel" to come forward and check in. You should check in with the courtroom deputy when the attorneys do. If your hearing is the only one scheduled, you may sit at the PLAINTIFFS' OR DEFENDANTS' TABLE in the center of the courtroom. The courtroom deputy will tell you where to sit.
- 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."
- You can bring any papers that you may need to refer to during the hearing. The courtroom deputy will tell the parties to "state your appearances." Step up to the microphone and say: "Good [morning or afternoon], your Honor, my name is [your name] and I am the [plaintiff or defendant] in this case."

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. Sometimes there is no court reporter because hearings are often recorded.

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.

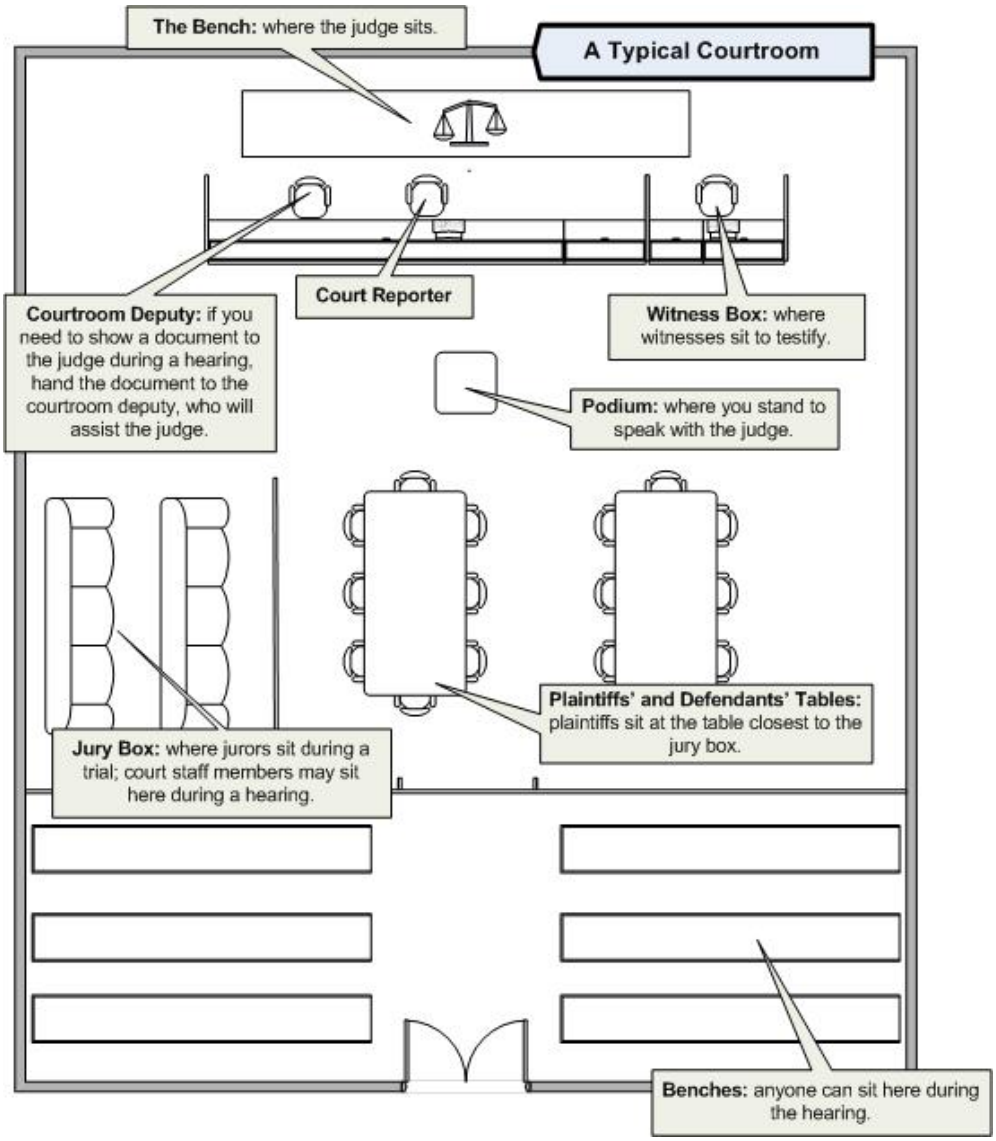
In the center of the courtroom in front of the BENCH is a LECTERN (sometimes referred to as a “podium”) with a microphone. This is where a lawyer or pro se party stands when speaking to the judge.

The JURY BOX is located against the wall, at one side of the courtroom. The jury box 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 the hearing or trial, provided that it is open to the public.

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 has an opportunity to explain why he or she believes the opposing party's argument is wrong.

Points to remember for the hearing:

- ***Do not 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 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 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 before your argument and may ask questions throughout your argument. ***If the judge asks a question, always stop your argument and answer the judge's question completely.*** When you are finished answering the question, you can go back and finish the other points you wanted to make. Always answer the judge's questions completely and never interrupt the judge when he or she is speaking.
- If the judge asks you a question when you are seated at the table or away from the lectern, stand and walk up to the lectern before you answer the question.

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, you should either 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, you must leave the courtroom and discuss the matter in the hallway.

CHAPTER 14
Initial Disclosures: What are They and When Do They Happen?

Before the parties begin DISCOVERY (the formal process of information exchange governed by certain procedural rules covered in Chapter 17), 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 20, "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 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. ***Make sure that you know the date by which you have to serve the initial disclosure.***

Timing	Initial disclosures 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 CASE MANAGEMENT CONFERENCE. See "Why do I have to meet and confer?" in Chapter 15), **UNLESS**: **1.** Parties stipulate to a different time; **OR** **2.** The Court 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. Pursuant to LRCiv. 5.2, you should file a notice of service with the Court.
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); **5.** Insurance agreements that may cover an award of damages in the lawsuit.

CHAPTER 15
What is a Case Management (or Status) Conference and How Do I Prepare for It?

A CASE MANAGEMENT CONFERENCE is scheduled upon the filing of every case; its purpose is for the judge and the parties to set a schedule for the case. No issues or claims are decided at the case management conference, but it is a very important event in a new civil case.

A STATUS CONFERENCE or FURTHER CASE MANAGEMENT CONFERENCE is a subsequent case management conference that the judge holds to check in with the parties about the status of 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. Not every case requires further case management conferences.

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 Case Management Conference?

Under Civil Local Rule 16.2(b)(3), the Court will issue an **Order Setting Initial Case Management Conference** shortly after the answer is filed. The order sets the date for the initial case management conference, which will be usually be scheduled within 180 days of filing.

Does Every Case have a Case Management Conference?

No. Certain types of cases— listed in Civil Local Rule 16.2(b)(1)(A)(i)— do not have case management conferences. These cases include social security appeals, bankruptcy appeals, student loan cases, veteran's benefits cases, Freedom of Information Act (FOIA) actions, and Summons and Subpoena enforcement actions.

What should I Do Before the Initial Case Management Conference?

Parties are expected to "MEET AND CONFER"— that is, talk by phone or in person to try to agree on a number of issues, including:

1. Developing a plan for how and when DISCOVERY will be completed;
2. Discussing whether to engage in an ADR process: ARBITRATION, MEDIATION, EARLY NEUTRAL EVALUATION or SETTLEMENT CONFERENCE (see Chapter 16);
3. Preparing a JOINT OR SEPARATE CASE MANAGEMENT STATEMENT which tells the Court the results of the parties' discussions and complies with all parts of the judge's scheduling order.

Civil Local Rules 16.1 and 16.2 and Rules 16(b) & 26(f) of the FEDERAL RULES OF CIVIL PROCEDURE contain detailed rules about case management conferences. A judges scheduling order will specify in detail what information must be included in the parties' CASE MANAGEMENT STATEMENT.

Why do I have to Meet and Confer?

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. Under Rule 26(f) of the FEDERAL RULES OF CIVIL PROCEDURE, unless the case is in one of the categories listed in Rule 26(a)(1)(B), all parties **MUST** meet and confer at least 21 days before the case management conference to:

1. Discuss the nature and basis of their 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. A list of certain documents described in Rule 26(a);
4. Develop a proposed discovery plan.

What is the Proposed Discovery Plan?

The proposed DISCOVERY PLAN is a proposal that the parties make to the judge about how each party thinks discovery should be conducted in the case. Discovery is covered in detail in Chapter 17. The judge will review the plan and determine how discovery will proceed and include this in the CASE MANAGEMENT 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 Court under Rule 26(c) or Rule 16(b) and (c).

What is the Case Management Report?

Judges prefer that parties file a single JOINT CASE MANAGEMENT REPORT together. The Order setting the initial case management conference will direct the parties as to the form of their joint case management statement. The Order will also set a deadline for parties to file their joint case management report.

What Happens at the Initial Case Management Conference?

The judge or the judge's law clerk will ask about the issues in the CASE MANAGEMENT REPORT and other issues that may have arisen.

What is the Case Management Order?

During or after the case management conference, the judge will issue a CASE MANAGEMENT ORDER, which will set a schedule for the rest of the case. The case

management order will govern the case unless and until it is changed later by the judge. The deadlines set by the case management order must be complied with, even if they differ from the standard time limits set by the FEDERAL RULES OF CIVIL PROCEDURE.

What Should I do to Prepare for Other Conferences with the Judge?

If the judge schedules a subsequent case management conference, the judge may require the parties to file a **supplemental case management statement**. The joint statement should report:

- Progress or changes in the case since the last statement was filed;
- Problems with meeting the existing deadlines;
- Suggestions for changes to the schedule for the rest of the case.

Your judge's scheduling order may contain additional requirements as well, including time requirements, so be sure to re-read it before each court appearance.

CHAPTER 16
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. ALTERNATIVE DISPUTE RESOLUTION (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.

If the parties have not stipulated to an ADR process before their case management conference, they may discuss ADR with the judge who may refer them to one of the Court's ADR processes.

Pursuant to Local Rule 83.10, the court may offer or parties may request to refer a case to a magistrate judge for the purposes of holding a SETTLEMENT CONFERENCE or other form of dispute resolution. In a settlement conference, a judge other than the assigned judge (ordinarily a magistrate judge), meets with the parties to help them negotiate a settlement of all or part of the dispute. Settlement conferences are generally the best fit for pro se litigants because a judge who has experience working with unrepresented parties conducts the process.

CHAPTER 17
What is Discovery?

"DISCOVERY" is the process in which a party finds out information about the issues in his or her case before the trial. There are six ways to ask for and receive this information: DEPOSITIONS, INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS AND/OR OTHER ITEMS, REQUESTS FOR ADMISSION, 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 must use.

Discovery requests are meant to be served on parties -- do not file your discovery requests with the Court. *See* Rule 5(d), FEDERAL RULES OF CIVIL PROCEDURE. Instead, pursuant to LRCiv 5.2, file only a Notice of Service with the Court.

When can Discovery Begin?

Generally, discovery cannot begin until the parties have conferred in preparation for their Rule 16 scheduling conference. *See* Rule 26(f), FEDERAL RULES OF CIVIL PROCEDURE. After the Rule 16 scheduling conference, the judge will issue a CASE MANAGEMENT ORDER setting deadlines for discovery. Initial disclosure is exempted from this discovery limitation.

Discovery may begin before the Court issues its case management order if:

1. Earlier discovery is allowed by another part of the FEDERAL RULES OF CIVIL PROCEDURE; **OR**
2. The Court issues an order that allows earlier discovery; **OR**
3. All parties agree that discovery can be taken earlier. *See* Rule 26(d), FEDERAL RULES OF CIVIL PROCEDURE.

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 Court.** The Court can limit the use of any discovery method if it 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 proposed discovery is outside the scope permitted by Rule 26(b)(1); **OR**
   - Some information requested may be privileged or protected by various confidentiality agreements.

There are also limits to how many requests you can make, discussed in the following detailed explanations of each method of discovery. 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 lawsuit, including eye witnesses, expert witnesses, or other parties to the lawsuit. A deposition may also be taken by telephone or by means of 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 must be 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.

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

Usually, you do not need the Court'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 10 other depositions and the other parties have not stipulated 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 stipulated 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.*** The convenience of the lawyers, the parties, and the witnesses must be taken into account, if possible.
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.
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 tell you the name of the person who will testify on its behalf. A subpoena must advise a *nonparty* organization about its duty to make this designation; **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 **DO NEED** the Court's permission to issue a subpoena. See section below.
- 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 the 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.

Do I need the Court's permission to issue a subpoena?

Yes. Under the District of Arizona's General Order 18-19:

- You **must file a motion** with the Court before you may issue a subpoena. The motion must (1) be in writing, (2) attach copy of the proposed subpoena, (3) set forth the name and address of the witness to be subpoenaed and the custodian and general nature of any documents requested, and (4) state with particularity the reasons for seeking the testimony and documents.
- You can get a blank subpoena from the United States Court's website for any deposition that will take place in the District of Arizona: uscourts.gov/services-forms/forms. For depositions taken outside of the District of Arizona, a subpoena from the federal district court where the deposition will be taken may be required. The assigned judge will determine whether the requested subpoena shall issue. Attorneys can issue their own civil subpoenas.

What does it mean if the deponent files a motion for the Court 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 Court may quash a subpoena if there is undue burden or expense required for the deponent to appear at the deposition. The Court 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 notice; 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.*
  The DEPONENT can better remember events and answer questions about them by reviewing the documents exchanged during initial disclosures and discovery before the deposition. 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/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 seven hours, unless more time is agreed to by the parties or authorized by the Court.

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, 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 Court 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 Court'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 Court's permission. If you want to serve more than 25 on one party, you must file a motion asking the Court's permission. See FEDERAL RULES OF CIVIL PROCEDURE 26(b)(2).

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). Interrogatories must be prepared so that the responding party can provide his or her response in an adequate blank space. See Civil Local Rule 33.1.

How do I answer interrogatories?

- The interrogatories must be answered within 30 days.
- As the responding party, you can either answer the question, object, or both.
- When answering a question, 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 a question, 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 FEDERAL RULES OF CIVIL PROCEDURE 26(e)(1).

Request For Document Production

In a REQUEST FOR PRODUCTION OF DOCUMENTS you write out descriptions of documents you think another person has. These should be documents which you reasonably believe would have information in them 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 which 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 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 respond within 30 days after the request is served unless the Court has authorized more time. A request for production of documents that is delivered before the Court issues its Scheduling Order is not considered "served" (such that the 30 day response deadline begins to run) until the date of the parties' scheduling conference. See Rule 26(d)(2), FEDERAL RULES OF CIVIL PROCEDURE 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. 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.
3. If you object to the request, you must state with specificity the reasons for that objection. You must also state whether anything is being withheld on the basis of the objection. See Rule 34(b)(2)(C), FEDERAL RULES OF CIVIL PROCEDURE.
4. If you object to only part of the request, you must state with specificity your objection to that part and permit inspection of the rest.
5. Documents produced for inspection must be presented **EITHER** as they are kept in the usual course of business **OR** organized and labeled so that they correspond with the categories in the request.
6. 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)(1).

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 Court 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, which are subpoenas that request the production of documents and items.

The same form is used both 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 must file a motion with the Court obtaining permission before you may issue a subpoena. The motion must (1) be in writing, (2) attach a copy of the proposed subpoena, (3) set forth the name and address of the witness to be subpoenaed and the custodian and general nature of any documents requested, and (4) state with particularity the reasons for seeking the testimony and documents.

You can get a blank subpoena to produce documents, information, or objects or to permit inspection of premises in a civil action from the United States Court's website: uscourts.gov/services-forms/forms.

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:

- 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 Court 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.

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.

Civil Local Rule 36.1 provides that the form of requests for admission shall be the same as the form of interrogatories, as provided in Civil Local Rule 33.1.

The party who receives a request for admission has 30 days to respond under Rule 36(a)(3) 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 Court), 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 which is later proven true, the requesting party may file a motion with the Court seeking compensation in the form of expenses, including attorney fees, which were accrued in the process of proving that fact. See Rule 37(c)(2) of the FEDERAL RULES OF CIVIL PROCEDURE. The Court **MUST** grant the motion unless it 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 Court to order that person to submit to a PHYSICAL OR MENTAL EXAMINATION. The examination must be done by a suitably licensed or certified examiner and the party who requested the examination must pay the examiner. The examiner is not responsible for treating the person and any communications with the examiner are **NOT** confidential.

Unlike other discovery procedures, PHYSICAL OR MENTAL EXAMINATIONS can be obtained only by filing a motion with the Court or by agreement of the parties. 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 Court 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 Court can exclude the examiner's testimony at trial.

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

CHAPTER 18
What Can I Do If There are Problems with Disclosures or Discovery?

What Is the First Step?

Contact the other side and try to resolve the issue. See FEDERAL RULES OF CIVIL PROCEDURE 37(a)(1).

Some judges do not permit the parties to file any type of discovery motions without the approval of the court after first contacting chambers to identify the discovery dispute. Review the scheduling order in your case to confirm if the judge assigned to your case has specific requirements regarding discovery disputes.

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

If you receive a discovery request and you believe it 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 Court; **AND**
2. An explanation of the dispute and what you want the Court to do; **AND**
3. An explanation of the facts and law that make it appropriate for the Court 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. If a problem arises during a discovery event and you believe it would save a lot of time or expense if the problem were resolved immediately, you may call the chambers of the judge who is assigned to handle discovery in your case to request that he or she address the problem through a telephone conference with the parties. This may be the District Judge or it may be a magistrate judge to whom the District Judge has referred discovery in your case. Before calling the judge's chambers, though, you must first try to resolve the problem on your own.

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 Court to order a person to make disclosures, to respond to a discovery request, or to provide more detailed disclosures. See FEDERAL RULES OF CIVIL PROCEDURE 37 and Civil Local Rule 37.1.
2. A **MOTION FOR SANCTIONS**: a motion asking the Court to punish a person for failing to make required disclosures, refusing to respond to a discovery request, or refusing

to obey a court order to respond to a discovery request. 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. Review the scheduling order issued in your case before filing a MOTION TO COMPEL—some judges do not allow these motions and have different procedures for resolving discovery disputes. Also review Local Civil Rule 37.1, which sets forth formatting requirements for motions to compel.

A motion to compel **MUST** 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 Court to do; **AND**
3. If the problem involves discovery, the complete text of each disputed discovery request immediately followed by the complete text of the objections or disputed responses to that request; **AND**
4. An explanation of the facts and law that make it appropriate for the Court to grant your motion.

Who Pays for Expenses Of Making the Motion to Compel?

If the Court grants a motion to compel, the Court 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 Court 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 only 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; OR
   - Preserve electronically stored information.
2. **Procedural requirements: a motion must be**:
   - Filed as a separate motion; **AND**
   - Made as soon as possible after you learn about the circumstances that made the motion appropriate;

3. **A motion for sanctions must contain**:
    - A certification that you have, in good faith, tried to resolve the problem without help from the Court; **AND**
    - An explanation of the problem and what you want the Court 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 intervention by the Court; **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 Court's Options for Discovery Sanctions?

If the Court 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 disobedient person 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, or dismissing the lawsuit or any part of the lawsuit, or rendering a default judgment against the disobedient party; **OR**
4. An order finding the disobedient party 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, unless the Court determines that the failure to disclose caused no harm to the other side's case or was substantially justified. See Rule 37(c).

Who Pays the Cost of a Motion for Sanctions?

If a Court grants a motion for sanctions, it must require the disobedient person or that person's lawyer, or both, to pay the other side's reasonable expenses, including attorney's fees, unless the Court 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 obtain an award of attorney's fees.

CHAPTER 19
What is a Motion for Summary Judgment?

A MOTION FOR SUMMARY JUDGMENT asks the Court to decide a lawsuit without going to trial because there is no dispute about the key facts of the case. A case must go to trial if the parties do not agree about the key facts. When the parties agree about the facts or if one party does not have any evidence to support its version of what actually happened, the Court can decide the issue based on the papers that are filed by the parties.

When the plaintiff files a MOTION FOR SUMMARY JUDGMENT, the goal is to show that the UNDISPUTED FACTS prove that the defendant violated the law. When defendants file a motion for summary judgment, the goal is to show that the undisputed facts prove that they did not violate the law. The overwhelming majority of summary judgment motions are filed by defendants. Successful summary judgment motions brought by plaintiffs are uncommon.

Rule 56 of the FEDERAL RULES OF CIVIL PROCEDURE and LRCiv 56.1 govern summary judgment motions and the timing for filing responses and replies.

Factors to Consider in Planning to Make or Defend 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 Court 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 non-moving party.
4. The Court considers all of the ADMISSIBLE EVIDENCE from both parties.
5. The Court 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 Court believes one side over the other.
7. If the Court 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.

Under What Circumstances is a Motion for Summary Judgment Granted?

Under Rule 56(a), the Court 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 in which you dispute the other side's version of the facts and present your own. The procedures for filing an opposition to the motion for summary judgment are the same as any other motion, and are described in Chapter 12, "What is a motion and how do I make or respond to one?"

However, motions for summary judgment and oppositions to motions for summary judgment must also comply with a special Local Rule, LRCiv 56.1.

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**.** Admissible evidence includes things like sworn statements, medical records, and verified documentation (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 employment discrimination, one element that a plaintiff must prove is the plaintiff belongs to a protected class. If the plaintiff cannot prove that element with admissible evidence, summary judgment may be granted in the defendant's favor on the plaintiff's claim for employment discrimination; **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 an employment discrimination case, the plaintiff must exhaust administrative remedies prior to filing suit. If the defendant presents admissible evidence showing that the plaintiff failed to exhaust administrative remedies, that 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; **AND**
   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 Court Consider for Summary Judgment?

1. The Court 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 Court to consider when it decides a motion for summary judgment and refer to the evidence throughout your papers.
4. When you cite a document, you should point the Court to the exact page and line of the document where the Court will find the information that you think is important. The Court does not have to look at any evidence that is not mentioned in your briefs, even if you include it.
5. The Court 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 as Evidence on Summary Judgment

An AFFIDAVIT is a statement of fact written by a witness and signed under oath. An affidavit must be sworn before a NOTARY PUBLIC. A DECLARATION is a signed statement under oath that does not require a notary, but which meets the requirements set forth in 28 U.S.C. § 1746. AFFIDAVITS and DECLARATIONS may be used as evidence in supporting or opposing a motion for summary judgment. Under Rule 56(c)(4) of the FEDERAL RULES OF CIVIL PROCEDURE, an affidavit or a 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?

Generally, a declaration or affidavit based on HEARSAY is not admissible in federal court. HEARSAY is "second-hand" evidence or a witness's statement about a fact that is based on something the witness heard from someone else. See Rules 801-807 of the Federal Rules of Evidence for the definition of what constitutes hearsay and what exceptions may apply to the rule against hearsay.

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. Any exhibit that is submitted as evidence must be AUTHENTICATED before it can be considered by the Court.

A document can be authenticated **EITHER** by:

1. Submitting a statement under oath from someone who can testify from personal knowledge that the document is authentic; **OR**
2. Demonstrating that the document is "SELF-AUTHENTICATING" (examples include government publications and newspapers).

See Rules 901 & 902 of the FEDERAL RULES OF EVIDENCE.

What is a Statement of Facts?

LRCiv 56.1(a) sets forth the requirements for the STATEMENT OF FACTS. A separate statement of facts is filed with a motion for summary judgment and sets forth all the facts relied upon in the motion. Each material fact in the statement must be set forth in a separately numbered paragraph and must refer to a specific, admissible portion of the record where the fact finds support. A failure to file a statement of facts may constitute grounds for denial of a motion for summary judgment.

What is a Controverting Statement of Facts?

LRCiv 56.1(b) sets forth the requirements for the controverting statement of facts. A party opposing a motion for summary judgment must file a statement, separate from his/her opposition to the motion, that states in numbered paragraphs whether the party disputes each fact in the opposing party's statement of facts. If the controverting statement of facts disputes a statement of fact, it must include citation to an admissible portion of the record that supports the factual dispute.

When can a Motion for Summary Judgment be Filed?

1. A defendant may file a motion for summary judgment at any time, as long as the motion is filed before any deadline set by the Court for filing motions for summary judgment (sometimes referred to as the dispositive motion deadline).
2. A plaintiff must wait at least 20 days after the complaint is filed before filing a motion for summary judgment, unless the defendant has already filed a motion for summary judgment by that date. Most motions for summary judgment rely heavily on evidence obtained in discovery, which means that summary judgment motions are usually not filed until several months after the complaint is filed.

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 Court showing why summary judgment should not be granted, you can file, ***on or before the deadline for opposing the motion***, a request under Rule 56(d) of the FEDERAL RULES OF CIVIL PROCEDURE for additional time to conduct discovery. Your request must be accompanied by an AFFIDAVIT or DECLARATION clearly setting out (1) the reasons why you do not already have the evidence you need to defeat summary judgment and (2) exactly what additional discovery you need and how it relates to the pending motion for summary judgment.

CHAPTER 20
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**

   Unless the judge assigned to your case sets an earlier time for disclosure, expert witnesses and their opinions must be disclosed at least **90 DAYS** before trial. You are required to give the other party information about any EXPERT WITNESSES you intend to have present evidence at trial. All parties must comply with this disclosure rule. An EXPERT WITNESS is a person who has scientific, technical, or other specialized knowledge that can help the Court or jury understand the evidence. If you hired/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, the parties stipulate to a different plan, or the witness is one from whom a written report is not required. See Rule 26(a)(2)(c), FEDERAL RULES OF CIVIL PROCEDURE.

Timing	Expert disclosures must be made by the deadline ordered by the Court. 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 four 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 at the time it is made, to the best of your knowledge.
Duty to Supplement	Rule 26(e)(2) requires 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 of your pretrial disclosures under Rule 26(a)(3) (discussed below) are due.

2. Pretrial Disclosures: Witness & Exhibit Lists

Unless the judge assigned to your case sets an earlier time for disclosure, 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 Court.
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. This may also include a transcript of the relevant portions of the deposition. **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.** Witnesses and documents 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. Your signature certifies that the disclosure is complete and correct as of the 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 Court 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. Typically, the Court does not set a trial date until after the deadline for dispositive motions has run and the parties have submitted a joint proposed pretrial order. (See Chapter 15 – the Court's case management order will set most pretrial deadlines, including a deadline for a joint proposed pretrial order.)

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. Usually, the judge will set a date for a final 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 Court's orders may also set a deadline ("cut-off date") for filing MOTIONS IN LIMINE. A motion in limine asks the Court 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 which 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 also apply to trial subpoenas, including the requirement under General Order 18-19 that you obtain permission of the Court prior to issuing a subpoena. (See Chapter 17.)

Timeline of a Trial

Generally, a trial follows the following timeline:

1. Jury selection;
2. Opening Statements;
3. Plaintiff's presentation of his/her case;
4. Defendant's presentation of his/her case;
5. Plaintiff's rebuttal;
6. Closing Arguments;
7. Jury Instruction;
8. Jury Deliberation;
9. Verdict;
10. Post-Verdict Motions;
11. Judgment.

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 judge. 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 those potential jurors whom the judge believes 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, how to deal with evidence, and about 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 they expect to prove during the 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.

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.
2. **Defendant's Case**: When the plaintiff has finished presenting all of his or her evidence, the defendant has a turn to put on his or her own case through the same process of direct examination, cross-examination, and re-direct examination.

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. It is the parties' responsibility to bring errors to the trial 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 briefly state 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's hearing to discuss the issue with you quietly (called a "SIDE BAR").
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. In that case, 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.

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 Court. 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 has another opportunity to 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 Court grants a motion for judgment as a matter of law on all of the claims in the case, the trial is over.

Otherwise, 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. 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 Court next issues a written JUDGMENT announcing the verdict and stating the REMEDIES that will be ordered if the plaintiff won. 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 will review the evidence and write findings of facts and conclusions of law. The Court will then issue a written judgment stating the remedies that will be ordered if the plaintiff prevailed. The Court's FINDINGS OF FACT AND CONCLUSIONS OF LAW and judgment are provided to the parties. When judgment is entered, the case is over unless the Court grants a motion for a new trial or one or more parties takes an appeal to the COURT OF APPEALS— in our district, the United States Court of Appeals for the Ninth Circuit. See "What about an appeal?" in Chapter 21.

CHAPTER 21
What Can I Do If I Think the Judge or Jury Made a Mistake?

There are a number of different procedures in the trial court that you can use 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. Information for pro se litigants is available on the website of the Ninth Circuit Court of Appeals at ca9.uscourts.gov/open_case_prose/.

What is a Motion for Reconsideration and How is One Made?

A MOTION FOR RECONSIDERATION asks the Court to consider changing a previous decision. A motion for reconsideration must be made **BEFORE** the trial court enters a judgment.

LRCiv 7.2(g) sets forth special requirements for motions for reconsideration. A motion for reconsideration must make a showing of manifest error or new facts or legal authority that could not have been brought to the Court's attention earlier with reasonable diligence. A motion for reconsideration cannot repeat arguments previously made to the Court.

No response may be filed to a motion for reconsideration unless the Court requests it. The Court cannot grant a motion for reconsideration without an opportunity for response.

If the Court grants a motion for reconsideration, it will VACATE the original order, which will have no further effect. The Court either will issue an entirely new order or an amended version of the original order.

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 losing party (usually) can consider making.

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 after trial if you have made a motion for judgment as a matter of law at the close of all evidence.

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 Court rules on a renewed motion for judgment as a matter of law, it may:

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

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 Court 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 the jury verdict.
  - 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 Court 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 Court 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 Court grants the motion for a new trial, the Court need not hold an entirely new trial. Instead, it 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.

Motion To Amend Or Alter The Judgment

Either party can also file a MOTION TO AMEND OR ALTER THE JUDGMENT; this type of motion asks the judge to change something in the final judgment because of errors during the trial. It is usually granted if:

- The Court is presented with newly discovered evidence;
- The Court has committed clear error; OR
- There is an intervening change in the controlling law.

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.

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 Court's decision. Instead, it asks the Court not to require the party to obey it.

Rule 60(a) allows the Court 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 Court of Appeals, the error may be corrected only by obtaining permission from the Court of Appeals.

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

- Mistake, inadvertence, surprise, or excusable neglect; **OR**
- 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**
- Fraud, misrepresentation, or other misconduct by an opposing party; **OR**
- The judgment is void; **OR**
- The judgment has been satisfied, released, or discharged, or 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**
- 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 must be made within one year after the judgment or order was entered. A motion based on the other three reasons must be made within a reasonable time.

What About Review of a Magistrate Judge's Decision?

Special rules sometimes apply to decisions by magistrate judges.

Consent Cases:
If the parties consented to have the magistrate judge hear the entire case (see Chapter 6 for a full explanation of the consent process), then the options for review are exactly the same as if the case were assigned to a District Judge— a motion for reconsideration, the post-judgment motions listed above, and appeal to the Ninth Circuit Court of Appeals (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. For non-dispositive matters (such as extensions of time or rulings on discovery issues) the magistrate judge enters an order. For dispositive matters (such as motions for summary judgment), the magistrate judge issues a "REPORT AND RECOMMENDATION," also called an "R&R."

If you think the magistrate judge's order or R&R contains an error, the procedure for seeking review will be either to file written objections to the magistrate judge's order or R&R. The objections should be limited to the specific portion 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.

A party's objections to the magistrate judge's order or R&R must be filed with the judge who referred the matter no later than 14 days after the party is served with a copy of the magistrate judge's order or R&R. The other party or parties may file a response to the objection within 14 days of the date the objection is filed. The objecting party may not file a reply without permission of the Court.

With respect to review of an R&R, the referring judge must 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 may elect to 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.

With respect to a District Judge's review of a Magistrate Judge's order in a non-dispositive matter, the review is not de novo, or from scratch. Instead, the District Judge applies a deferential standard of review and only reverses if the Magistrate Judge's decision was clearly erroneous or contrary to law. Rule 72(a), FEDERAL RULES OF CIVIL PROCEDURE.

What About an Appeal?

All final judgments can be appealed to the United States Court of Appeals for the Ninth 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 Ninth Circuit. See Rules 3 through 6 of the Federal Rules of Appellate Procedure and Ninth Circuit Rules 3-1 through 5-2.

> **FEDERAL RULES OF APPELLATE PROCEDURE CAN BE FOUND AT ANY LAW LIBRARY OR ONLINE AT:**
>
> uscourts.gov/rulesandpolicies/federalrulemaking/rulesandforms.aspx
> **or** law.cornell.edu/rules/frap
>
> The Ninth Circuit's Local Rules can be found at the Ninth Circuit Clerk's Office or online at: ce9.uscourts.gov

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

Information for pro se litigants is available at: ca9.uscourts.gov/open_case_prose/.

Glossary

Action	Another term for **lawsuit** or **case**.
Adjourn, Adjournment	To bring a proceeding to an end, such as a court calendar or trial.
Admissible evidence	Evidence that can, under the Federal Rules of Evidence, properly be introduced at trial for the judge or jury to consider in reaching a decision; the Federal Rules of Evidence govern the admissibility of evidence in federal court.
ADR (alternative dispute resolution)	A Court-sponsored program offering methods by which a complaint can be resolved outside of traditional court proceedings.
Affidavit	A statement of fact written by a witness, which the witness swears before a notary public.
Affirmative defenses	New factual allegations included in the answer that, under legal rules, defeat all or a portion of the plaintiff's claim.
Allegation	An assertion of fact in a complaint or other pleading.
Amend (a document)	To alter or change a document that has been filed with the Court, such as a complaint or answer, by filing and serving a revised version of that document. Certain documents cannot be amended without prior approval of the Court.
Amended pleading (Complaint or Answer)	A revised version of the original complaint or answer that has been filed with the Court.
Amount in controversy	The dollar value of how much the plaintiff is asking for in the complaint.
Answer	The written response to a complaint. An "answer on the merits" challenges the complaint's factual accuracy.
Appeal	To seek formal review of a district court judgment by the Court of Appeals.
Application to proceed *in forma pauperis* (IFP)	A form filed by the plaintiff asking permission to file the complaint without paying the required fee due to inability to pay.
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 arbitration is entitled.
Bench	The large desk located at the front of the courtroom where the judge sits.
Bench trial	A trial (also known as a "court trial") in which the judge, rather than the jury, determines the law, the facts, and the verdict of the lawsuit.

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 and in a civil case that burden must usually be supported by a preponderance of the evidence, or in other words, a showing that it is more likely than not.
Caption	A formatted heading on the first page of every document filed with the Court, listing the parties, the name of the case, and other identifying information. The specific information that must be included in the caption is explained in Rule 10(a) of the FEDERAL RULES OF CIVIL PROCEDURE and this Court's Civil Local Rule 7.1.
Caption page	The cover page of the document containing the caption. It is always the first page of any document a party to a lawsuit files with the Court.
Case	Another term for lawsuit or action.
Case file	A file in which the original of every document manually filed with the Court is kept. E-filed documents are generally not placed in the case file.
Case management conference	A court proceeding at which the judge, with the help of the parties, sets a schedule for various events in the case.
Case management order	The Court's written order scheduling certain events in the case.
Case management Report	A statement filed by the parties providing information to be discussed at the case management conference.
Certificate of service	A document showing that a copy of a particular document—for example, notice of motion—has been mailed or otherwise provided to (in other words, "served on") all of the other parties in the lawsuit.
Challenge for cause	A request by a party that the Court excuse a juror whom they believe to be too biased to be fair and impartial, or unable to perform their duties as jurors 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, or case.
Claim	A statement made in a complaint, in which the plaintiff(s) argue that the defendant(s) violated the law in a specific way; sometimes called a **count**.
Closing arguments	An oral statement by each party summarizing the evidence and arguing how the jury (or, in a **bench trial**, the judge) should decide the case.

Complaint	A legal document in which the plaintiff tells the Court and the defendant how and why the defendant violated the law in a way that has caused harm to the plaintiff.
Compulsory counterclaim	A **claim** by the defendant against the plaintiff that is based on the same events or transactions as the plaintiff's claim against the defendant.
Contempt of court	Acts found by the Court to be committed in willful violation of the Court's authority or dignity, or to interfere with or obstruct its administration of justice.
Continuance	An extension of time ordered by the Court.
Counsel	Attorney(s); lawyer(s).
Count	Sometimes used instead of **claim**.
Counterclaim	A defendant's complaint against the plaintiff, filed in the plaintiff's case.
Court of appeals	A court that hears appeals from the district courts located within its circuit, as well as appeals from decisions of federal administrative agencies. This Court's decisions are appealed to the Ninth 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.
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.
Courtesy copy	A paper copy of a case document delivered to the Court for the judge's use.
Courtroom deputy	A Court employee who assists the judge in the courtroom and usually sits at a desk in front of the judge.
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. This is 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.
De novo review	A Court's complete review and re-determination the matter before it from the beginning; for example, a referring judge's de novo review of a magistrate judge's **report and recommendation** includes considering the same evidence reviewed by the magistrate judge and reaching an independent conclusion.

Declaration	A written statement signed under penalty of perjury by a person who has personal knowledge that what he or she states is true; declarations may contain only facts, and may not contain law or argument. The person who signs a declaration is called a **declarant**.
Default	A defendant's failure to file an answer or other response within the required amount of time, after being properly served with the complaint.
Default judgment	A judgment entered against a defendant who fails to respond to the complaint.
Defendant	The person, company or government agency against whom the plaintiff makes claims in the complaint.
Defendants' 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.
Deliberate	The process in which the jury discusses the case in private and makes a decision about the verdict. See also **jury deliberations**.
Deponent	The person who answers the questions in a **deposition**; a deponent can be any person who may have information about the lawsuit, including one of the other parties to the lawsuit.
Deposition	A question-and-answer session, before trial and outside the courtroom, in which one party to the lawsuit asks another person, who is under oath, questions about the events and issues in the lawsuit. The process of taking a **deposition** is called **deposing**.
Deposition notice	A notice served on the **deponent** specifying the time and place of the **deposition**.
Deposition subpoena	See **subpoena**.
Direct examination	The process during a trial in which a party calls witnesses to the witness stand and asks them questions.
Disclosures	Information that each party must automatically give the other parties in a lawsuit.
Discovery	The formal process by which a party to a lawsuit asks other people to provide information about the events and issues in the case.
Discovery plan	The joint proposed discovery plan required by Rule 26(a) of the FEDERAL RULES OF CIVIL PROCEDURE, which must include the parties' views about, and proposals for, how discovery should proceed in the lawsuit.
District Judge	A federal judge who is nominated by the President of the United States and confirmed by the United States Senate to a lifetime appointment.

Diversity jurisdiction	A basis for federal court jurisdiction in lawsuits in which none of the plaintiffs live in the same state as any of the defendants and the amount in controversy exceeds $75,000.
Division	The District of Arizona has several divisions among which the Court's caseload is divided: Phoenix, Tucson, Yuma, Flagstaff, and Prescott.
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.
ECF HelpDesk	A court staff member with ECF expertise who helps ECF users with technical problems (by phone or email).
Electronic case filing (ECF)	Also known as "e-filing," the process of submitting documents to the Court for filing and serving them on other parties electronically through the internet. The United States Courts use an e-filing system called "Electronic Case Filing" or "ECF."
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	Without notice to the other parties and without their being present (as in a written or telephone communication with the Court).
Ex parte motion	A motion that is filed without notice to the opposing party.
Exhibits	Documents or other materials that are presented as evidence at trial or as attachments to motions or declarations.
Expert disclosures	The disclosures required by Rule 26(a)(2) to the other parties of the identity of, and additional information about, any expert witnesses who will testify at trial.
Expert report	A written report signed by an expert witness that must accompany the expert disclosures for any expert witness; Rule 26(a)(2)(B) of the FEDERAL RULES OF CIVIL PROCEDURE lists what must be included in an expert report.
Expert witness	A person who has scientific, technical, or other specialized knowledge that can help the Court or the jury understand the evidence.

Federal question jurisdiction	Federal courts are authorized to hear lawsuits in which at least one of the plaintiffs' 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 to process and file a document.
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	A false representation of a past or present fact by a person, on which another person or persons rely, resulting in their injury.
Good faith	Having honesty of intention; for example, negotiating in good faith would be to come to the table with an open mind and a sincere desire to reach an agreement.
Grounds	The reason or reasons for requesting action by the Court.
Hearing	A formal proceeding before the judge for the purpose of resolving some issue; hearings are typically open to the public and held in a courtroom.
Hearsay	A statement made by someone other than the witness, offered to prove the truth of the matter asserted in the statement.
Impeachment	To call into question a witness' truthfulness.
In forma pauperis (IFP)	See Application to proceed *in forma pauperis*.
In propria persona	Representing oneself; Latin for "in his or her own person."
Initial disclosures	The disclosures that the parties are required to serve within 14 days of their initial case management conference.
Interlocutory order	Court orders issued before judgment.
Interrogatories	Written questions served on another party in the lawsuit, which must be answered (or objected to) in writing and under oath.
Intradistrict assignment	The assignment by the Clerk's Office of a lawsuit to one of the Court's divisions (Phoenix, Tucson, Yuma, Flagstaff, or Page).
Issue summons	What the Clerk of Court must do before a summons is valid for service on a defendant.
Joint case management conference (CMC) statement	A court-approved form the parties are asked to complete jointly and file before the initial case management conference.

Judgment	A final document issued by the Court stating which party wins on each claim. Unless there are post-judgment motions, the entry of judgment closes the case.
Jurisdiction	See **diversity jurisdiction** and **subject matter jurisdiction**.
Jury box	The two rows of seats, usually located against a side wall in a courtroom and separated from the well of the courtroom by a divider, where the jury sits during a trial.
Jury deliberations	The process in which the jury, after having heard all the evidence, closing arguments from the parties, and instructions from the judge, meets in private to decide the case.
Jury instructions	The judge's directions to the jury about its duties, the law that applies to the lawsuit, and how it should evaluate the evidence.
Jury selection	The process by which the individual members of the jury are chosen.
Jury trial	A trial in which a jury weighs the evidence and determines what happened; the Court instructs the jury on the law, and the jury applies the law to the facts and determines who wins the lawsuit.
Law library	A special library containing only legal materials, usually staffed by a specially-trained librarian.
Lectern	The stand for holding papers in front of the **bench** in the courtroom where an attorney or pro se party making arguments on a motion stands and speaks to the judge.
Litigants	The parties to a lawsuit.
Local Rules	Specific federal court rules that set forth additional requirements to the FEDERAL RULES OF CIVIL PROCEDURE; for example, the Local Rules of the United States District Court for the District of Arizona explain some of the additional procedures that apply only to this Court.
Magistrate judge	A federal judge who is appointed by the Court for an 8-year, renewable term and has some, but not all, of the powers of a District Judge. A Magistrate Judge may handle civil cases from start to finish if all parties consent. In non-consent cases, a Magistrate Judge may hear motions and other pretrial matters assigned by a district judge.
Manual filing	A filing of a paper document at the Clerk's Office instead of by **electronic filing/e-fling**.
Material fact	A fact that must be proven to establish an element of a claim or defense in the lawsuit.
Mediation	An ADR process in which a trained mediator helps the parties talk through the issues in the case to seek a negotiated resolution of all or part of the dispute.

Meet and confer	The parties' meeting and working together to resolve specific issues under Court rules or a Court order. The lawyers or unrepresented parties must meet and confer before they may bring a discovery dispute to the judge.
Memorandum of points and authorities	The part of a motion that contains the arguments and the supporting law to persuade the Court to grant the motion; also referred to as a brief.
Mental examination	See **physical or mental examination**.
Motion	A formal application to the Court asking for a specific ruling or order (such as dismissal of the plaintiff's lawsuit).
Motion for a more definite statement	Defendant argues that the complaint is so vague, ambiguous, or confusing that he or she cannot respond to it, and asks for additional details.
Motion for a new trial	Argues that another trial should be held because of a deficiency in the current trial.
Motion for a protective order	A motion which asks the Court to relieve a party of the obligation to respond to a discovery request or grant more time to respond.
Motion for default judgment	A motion asking the Court to grant judgment in favor of the plaintiff because the defendant failed to file an answer to the complaint. If the court grants the motion, the plaintiff wins the case.
Motion for judgment as a matter of law	A motion arguing that the opposing party's evidence is so legally deficient that no jury could reasonably decide the case in favor of that party. The defendant may bring such a motion after the plaintiff has presented all evidence, and after all the evidence has been presented, either party may bring such a motion; if the Court grants the motion, the case is over.
Motion for permission to e-file	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 Electronic Case Filing (ECF)/e-filing.
Motion for reconsideration	Asks the Court to consider changing a previous decision. See LRCiv 7.2(g).
Motion for relief from judgment or order	Asks the Court to rule that a judgment or order should not be given effect or should be changed for one of the reasons permitted by Rule 60(b) of the FEDERAL RULES OF CIVIL PROCEDURE.
Motion for sanctions	Asks the Court to impose a penalty on a party; for example, in the context of discovery, a motion for sanctions asks the Court to punish a person for failing to make required disclosures, refusing to respond to a discovery request, or refusing to obey a court order to respond to a discovery request.
Motion for summary judgment	Asks the Court to decide a lawsuit without a trial because the evidence shows that there is no real dispute about the key facts.
Motion in limine	A motion, before trial, asking the judge to exclude specific evidence from the trial.

Motion to amend or alter the judgment	After entry of judgment, asks the Court to correct a mistake in the judgment.
Motion to compel	Asks the Court to order a person to make disclosures, respond to a discovery request, provide more detailed disclosures, or provide a more detailed response to a discovery request. See Rule 27, FEDERAL RULES OF CIVIL PROCEDURE
Motion to dismiss	Asks the Court to deny certain claims in the Complaint, due to procedural defects.
Motion to extend time	A motion asking the Court to allow more time to file a brief or comply with a court order; also referred to as a continuance.
Motion to set aside default/ default judgment	A defendant against whom **default** or **default judgment** has been entered may bring this motion in order to be allowed to appear in the suit and respond to the complaint.
Motion to strike	A motion asking the Court to order certain parts of the complaint or other pleading deleted because they are redundant, immaterial, impertinent, or scandalous.
Moving party	The party who files a motion.
Non-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.
Notary Public	A public officer who is authorized by the state or federal government to administer oaths and to attest to the authenticity of signatures.
Notice of deposition	Gives all of the information required under Rules 30(b) and 26(g) of the FEDERAL RULES OF CIVIL PROCEDURE, and must be served on opposing parties to a lawsuit.
Notice of Electronic Filing (NEF)	An email generated by the ECF system that is sent to every registered attorney, party and watcher associated with a case every time a new document is filed. The NEF contains details about the filing and a hyperlink to the new document.
Notice of motion	A statement in the first paragraph of a motion telling the other parties what type of motion you have filed and when you have asked the Court to hold a hearing on the motion.
Objection	The formal means of challenging evidence on the ground that it is not **admissible**.
On The Papers	A judge may decide to render a decision on a motion "on the papers" rather than holding a hearing in the courtroom; in such a case, the judge will not schedule the motion for hearing.

Opening statements	At the beginning of the trial, after the jury has been selected, if it is a jury trial, the parties have an opportunity to make individual opening statements, in which they can describe the issues in the case and state what they expect to prove during the trial.
Opposing party	In the context of motions, the party against whom a motion is filed; more generally, the party on the other side.
Overrule an objection	During examination of witnesses at trial, if a party objects to evidence being admitted or a question being asked, the judge may overrule the objection. This means that the evidence will be admitted or the question may be asked, unless the judge later sustains a different objection.
PACER system	"Public Access to Electronic Court Records" is an internet database where docket information is stored.
Peremptory challenge	During jury selection, after all 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.
Permanent case file	The compilation of the originals of every document filed with the Court.
Permissive counterclaim	A claim by the defendant against the plaintiff that is not based on the same events or transactions as the plaintiff's claim against the defendant.
Physical or mental examination	If the physical or mental condition of a party (or a person under the custody or legal control of a party) is at issue in a lawsuit, the Court may order that person to have a physical or mental examination by a medical professional such as a physician or psychiatrist; unlike other **discovery** procedures, physical or mental examinations can be obtained only by filing a motion with the court, or by agreement of the parties.
Plaintiff	The person who filed the complaint and claims to be injured by a violation of the law.
Plaintiffs' table	In the center of the courtroom, there are two long tables and chairs where the lawyers and parties sit during hearings and trial; the table nearest the jury box is usually the plaintiffs'.
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.

Prayer for relief	The last section of a complaint in which the plaintiff tells the Court what the plaintiff wants from the lawsuit: money damages, a court order telling the defendant to do or not do something, 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) 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 statement attached to each document filed with the court (or filed separately at the same time as the document) in which the filer affirms that he or she has served the document on other parties.
Proposed order (or other document)	A document a party is required by court rules to submit with a filing such as a motion that can serve as the final order if the judge crosses off the word "proposed" and signs at the bottom.
Protective order	A court order limiting discovery, either as to how discovery may be conducted or what can be discovered.
Quash a subpoena	After a motion, the Court's action vacating a subpoena so that it has no legal effect.
Rebuttal	The final stage of presenting evidence in a trial, presented by the plaintiff.
Rebuttal testimony	At trial, after defendants have completed examining each of their witnesses, plaintiffs can call additional witnesses solely to counter—or "rebut"—testimony given by the defendants' witnesses.
Re-direct examination	At trial, after the opposing party has cross-examined a witness, the party who called the witness may ask the witness questions about topics covered during the cross-examination.
Remedies	In the context of a civil lawsuit, remedies are actions the Court may take to redress or compensate a violation of rights under the law.

Removal	Removal permits a defendant to move a case from a state trial court to a federal district court.
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	The recommendation made by a United States Magistrate Judge to a federal District Judge regarding how the court should rule on a dispositive matter, such as a motion to dismiss or a motion for summary judgment.
Request for admission	A discovery request that a party admit a material fact or element of a claim.
Request for entry of default	The first step for the plaintiff to obtain a **default judgment** by the Court against a defendant; directed to the Clerk of Court, the request must show that the defendant has been served with the **complaint** and **summons**, but has not filed a written response to the complaint in the required time.
Request for inspection of property	A discovery request served on a party in order to enter property controlled by that party for the purpose of inspecting, measuring, surveying, photographing, testing, or sampling the property or any object on the property relevant to your lawsuit.
Request for production (of documents, etc.)	A common discovery request served by a party seeking documents or other items relevant to the lawsuit from another party.
Request for production of tangible things	A discovery request served on a party in order to inspect, copy, test, or sample anything relevant to your lawsuit which is in the possession, custody, or control of another party to the lawsuit.
Request for waiver of service	A written request that the defendant accept the summons and complaint without formal service.
Requests for admission	A discovery request served on a party asking that the party admit in writing and under oath the truth of any statement, or to admit the applicability of a law to a set of facts.
Response brief	A filing that consists of a **brief**, often accompanied by **evidence**, filed with the court containing facts and legal arguments that explain why the Court should deny the motion.
Ruling from the bench	A Court's announcing its decision on a motion in the courtroom following the hearing on that motion.
Sanction	A punishment the Court may impose on a party or an attorney for violating the Court's rules or orders.

Self-authenticating	Documents that do not need any proof of their genuineness beyond the documents themselves in order for them to be admissible evidence in accord with Rule 902 of the Federal Rules of Evidence.
Serve, service	The act of providing a document to 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 mediation usually held with a magistrate judge in which the judge works with the parties toward a negotiated resolution of part or all of the case.
Settlement judge	A federal judge — usually a magistrate judge — who holds settlement proceedings in a particular case. The settlement judge is a different judge than the judge assigned to the case.
Side bar	A private conference beside the judge's bench between the judge, and the lawyers (or self-represented parties) to discuss any issue out of the jury's hearing.
Speaking motion	A motion first made in the courtroom without motion papers being filed first.
Standard form of order	An individual judge's order 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 court's webpage: http://www.azd.uscourts.gov/judges/judges-orders
Statement of facts	Any party filing a motion for summary judgment must file a statement, separate from the motion for summary judgment, setting forth each material fact on which the party relies in support of the motion. See LRCiv 56.1.
Statement of non opposition	A party's written notice that it does not oppose another party's motion.
Status conference	A hearing the judge may hold during the course of the lawsuit to assess the progress of the case, or address problems the parties are having.
Statute of limitations	A legal time limit by which the plaintiff must file a complaint; after the time limit, the complaint may be dismissed as **time-barred**.
Stipulation	A written agreement signed by all the parties to the lawsuit or their attorneys.
Strike	To order claims or parts of documents "stricken" or deleted so that they cannot be part of the lawsuit or proceeding.

Subject matter jurisdiction	A federal court has **subject matter jurisdiction** only as defined by Congress over cases arising under the Constitution, treaties, or laws of the United States and diversity cases in which all plaintiffs are from different states than all defendants and the amount in controversy is greater than $75,000.
Subpoena	A document issued by the Court requiring a non-party to appear for a court proceeding or deposition at a specific time and place or to make certain documents available at a specific time and place.
Subpoena duces tecum	A form of subpoena used to require a non-party deponent to bring specified documents to a deposition.
Substantive law	Determines whether the facts of each individual lawsuit constitute a violation of the law for which the Court may order a remedy.
Summary judgment	After a motion, a decision by the Court to enter judgment in favor of one of the parties without a trial because the evidence shows that there is no real dispute about the **material facts**.
Summons	A document from the Court that you must serve on the defendant along with your original complaint to start your lawsuit.
Sustain an objection	A judge affirms that an objection is correct, and evidence should be excluded.
Taking a motion under consideration (or under advisement)	The Court's taking time to consider the motion and write an order after hearing arguments on the motion instead of ruling on the motion in the courtroom.
Transcript	The written version of what was said during a court proceeding or deposition as typed by a **court reporter** or **court stenographer**.
Trial subpoena	A type of **subpoena** that requires a witness to appear to testify at trial on a certain date.
Undisputed fact	A fact about which all the parties agree.
Vacate	To set aside a Court order so that the order has no further effect, or to cancel a scheduled hearing or trial.
Venue	The geographic location where the lawsuit is filed.
Verdict	The jury's final decision about the issues in the trial.
Verdict form	In a jury trial, the form the jury fills out to record the verdict.
Voir Dire	Part of the jury selection process in which potential jurors are asked questions designed to reveal biases that would interfere with fair and impartial jury service; the judge may ask questions from a list the parties have submitted before trial and may also allow the lawyers (or parties without lawyers) to ask additional questions.
Waiver of service, waiving service	A defendant's written, signed agreement that he or she does not require a document (usually the **complaint**) to be served on him or her in accordance with the formal service requirements of Rule 5 of the FEDERAL RULES OF CIVIL PROCEDURE.

With prejudice	A final decision on the merits of a claim. If a court dismisses claims in your complaint with prejudice then you may not file another complaint in which you assert those claims again.
Without prejudice	A decision that is not a final decision on the merits. A decision without prejudice does not prevent the claim from being re-filed.
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**.