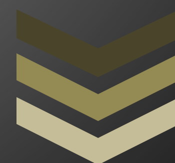
Handbook for Self-Represented Parties



United States District Court for the District of Oregon

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Clerk of Court

2024 Edition

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Introduction

This Handbook is designed to help people dealing with civil lawsuits in federal court without legal representation. Proceeding without a lawyer is called proceeding "*pro se*," a Latin phrase meaning "for oneself," or sometimes "*in propria persona*," meaning "in his or her own person." Representing yourself in a lawsuit can be complicated, time consuming, and costly. Failing to follow court procedures can mean losing your case. For these reasons, you are urged to work with a lawyer if possible. Chapter 2 gives suggestions about finding a lawyer. Keep in mind that although you may represent yourself, you cannot represent another person or a business.

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 laws that will control your case. Make sure you read the applicable federal and local court rules and do your own research at a law library or online to understand your case.

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

Keep in mind that this Handbook serves as a guide. It is not a legal authority. Every effort is made to make sure that this Handbook is updated when procedural rules are amended, but if there is a conflict between a rule and this Handbook, the rule controls.

Basic Terms

A **plaintiff** is a party who files a lawsuit against someone else. A **defendant** is a party who is being sued. A **litigant** is a party to the lawsuit. A party may be a person, business, or government agency who is named in the lawsuit. A **statute** is a written law.

A glossary of other frequently used legal terms can be found at the end of this Handbook.

Tips For Self-Represented Litigants

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

Read everything you get from the Court and the other side (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.

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 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.

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.

Always keep all of your paperwork and stay organized. Keep paper or electronic copies of everything you send to and receive from the opposing party, and everything you file with the Court. When you file a paper in the Clerk's Office, bring at least the original and two copies (or enough copies for each defendant if you are filing a new case) so that you can keep a stamped copy for yourself. Know where your papers are so that you can use them to work on your case.

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

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

Omit certain personal identifying information from documents submitted to the Court for filing. All documents filed with the Court will be available to the public on the Internet. Protect your privacy by leaving off social security and taxpayer identification numbers, names of minor children, dates of birth, and financial account numbers.

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

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

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

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.

You must start your case before the deadline.
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.

You must sue in the correct court.
Federal courts can decide only certain kinds of cases:

- Cases involving federal law—not state law (**federal question jurisdiction**); or
- Cases in which the plaintiff and the defendant live in different states and the amount in controversy is more than $75,000 (**diversity jurisdiction**).

If your lawsuit does not meet one of these descriptions, you cannot sue in federal court. You may be able to sue in state court.

You must sue someone who is under the Court's power.
A federal court in Oregon 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 Oregon; or
- Did something in Oregon that is the reason for your lawsuit; or
- Agreed to be sued in Oregon; or
- Has been personally served with a copy of your complaint in Oregon; or
- Has done things that have had significant effects in Oregon.

You must sue in the correct federal district for your case, and the appropriate division.
There is one federal district court in Oregon. The United States District Court for the District of Oregon is comprised of four divisions: Portland, Eugene, Medford, and Pendleton. Each division is comprised of multiple counties:

- Portland Division: Clackamas, Clatsop, Columbia, Hood River, Jefferson, Multnomah, Polk, Tillamook, Wasco, Washington, Yamhill
- Eugene Division: Benton, Coos, Deschutes, Douglas, Lane, Lincoln, Linn, Marion
- Medford Division: Curry, Jackson, Josephine, Klamath, Lake
- Pendleton Division: Baker, Crook, Gilliam, Grant, Harney, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wheeler

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.

The right venue for your case is the division of the district where:

- One of the defendants lives (but only if all defendants live in Oregon); 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.

If you start your case in the wrong venue, the Court may transfer the case to the correct district or division. You would then have to go to that venue to argue your case.

The person or agency you are suing must not have immunity.
Some people and organizations cannot be 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. If you try to sue someone who has complete immunity in federal court, your case will be dismissed.

To find out whether the person or organization you are suing has immunity, you can:
- Ask a lawyer, if you know one, or

- Go to a law library. Ask how to research immunity from federal lawsuits.

A Few Words of Caution

Self-representation carries certain responsibilities and risks. Some of the risks involved include but are not limited to:

- Missing deadlines;
- Failing to object or move;
- Failing to present all evidence available;
- Failing to spot the issues on each side;
- Being unaware of the standards of consideration or review;
- Presenting and framing arguments in a convincing fashion; and
- Failing to research all applicable rules and laws.

Sanctions

When you submit a pleading, motion, or other paper to the Court, you are certifying that you have a **good faith belief** that your claims and arguments have a basis in fact and law and are not being submitted for an improper or frivolous purpose, such as to harass someone or to delay litigation. Federal Rule of Civil Procedure 11 permits the Court to impose sanctions against any party, even a self-represented party, who violates this rule. Sanctions can include an order to pay a penalty, or all or part of the opposing party's legal fees or expenses.

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:

- The law that applies to your case;
- The court procedures you have to follow;
- 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 possible.

How do I find a lawyer?

If you can afford to hire an attorney but cannot locate one, many local bar associations (such as the Oregon State Bar or the Multnomah County Bar Association) have lawyer referral services. You can also ask family, friends, neighbors, and colleagues for attorney recommendations. Court staff cannot give attorney or law firm recommendations.

What Is "*Pro Bono*" Representation?

In a very 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.

PLEASE NOTE: The Court will not appoint a *pro bono* attorney to your case *before* you file your complaint.

You may, of course, decide to try to find an attorney on your own. A number of organizations provide *pro bono* or low-cost legal services. Most of these organizations have income eligibility requirements and provide assistance only with specific types of cases. Resources for finding *pro bono* or "low-bono" (lower cost legal services) are available in Appendix B.

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."

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:

- **Federal Rules of Civil Procedure** (Fed. R. Civ. P.): These apply in every federal court in the country. Review them at any law library or online:
  - www.uscourts.gov/rules-policies/current-rules-practice-procedure
  - law.cornell.edu/rules/frcp
- **Federal Rules of Evidence** (Fed. R. Evid.): These rules define the types of evidence that a federal court considers to be admissible. You may use only admissible evidence to prove your case to the Court. Review these rules early in your case at a law library or online:
  - www.uscourts.gov/rules-policies/current-rules-practice-procedure
  - law.cornell.edu/rules/fre
- **Local Rules of the United States District Court for the District of Oregon** (LR): These are procedural rules that build on the Federal Rules of Civil Procedure and apply only in this Court. Review them:
  - Online: https://ord.uscourts.gov
  - At the Clerk's Office
- **Standing Orders**: From time to time, the Court issues orders related to procedures in the Court that supplement or amend a local rule, or describe procedures for certain types of cases or specific types of litigants. All active Standing Orders are available for review on the Court's website or at the Clerk's Office.

Substantive law describes what you must prove to establish your claims. Each claim has a different set of laws that you need to learn. For example, laws that apply to an employment discrimination case differ from laws that apply to 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. A list of law libraries in Oregon can be found in Appendix A. You can find some statutes and cases online for free on websites such as FindLaw (caselaw.findlaw.com).

To look up unfamiliar legal terms, use:

- The glossary at the back of this Handbook;
- A legal dictionary, such as Black's Law Dictionary;
- Free online resources, such as dictionary.law.com.

How to Read Citations to Laws, Rules, and Cases

As you research the law, you will come across citations to sources of legal authority. Frequently, these citations are in a standardized format. For example, a citation to section 1983 of Title 42 of the United States Code will frequently be cited as: 42 U.S.C. § 1983. (The § symbol means section). A citation to Fed. R. Civ. P. 12(b), refers to Rule 12, subsection (b), of the Federal Rules of Civil Procedure.

Cases are cited by case name: the first party listed in each side of the "v." Party names can be either underlined or italicized.

The case name is followed by a comma then (1) the volume of the reporter where the case was published; (2) the abbreviated name of the reporter; and (3) the page number where the case begins. Additionally, after the first page number, a citation may include a "pincite." This tells the reader the exact page or page range where the cited proposition can be found in the case.

Next, in parentheses, is the court that issued the decision and the year of the decision (unless the case was decided by the United States Supreme Court, then only the year the case was decided is used).

Examples:

- *Chavez v. U.S.*, 683 F.3d 1102 (9th Cir. 2012).
- Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388, 395 (1971).

Tip: Whenever you quote or refer to a statute, rule, or case law, you must include a citation to the authority (the source) in a citation after the sentence. The District of Oregon uses The Bluebook form of citation. Citations to Local Rules of Civil Procedure may be cited as LR [rule number]. For example, Local Rule of Civil Procedure 5-1 subsection (b) is cited as LR 5-1(b).

CHAPTER 4: HOW DO I DRAFT A COMPLAINT?

The first step in a lawsuit is to file a complaint with the Court. The complaint tells the Court and the defendant how and why you believe the defendant violated the law and injured you. Before you draft your complaint, read Chapter 1, which explains some requirements for a case to proceed in this Court.

What Does A Complaint Look Like?

Formal documents that you submit to the court are called pleadings. A complaint is one type of pleading. Complaint forms for use by *pro se* litigants are available at: http://www.uscourts.gov. If you choose to draft your own complaint, make sure to review the formatting requirements described in the Local Rules.

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:

Caption Page

On the first page of your complaint, list your name, address, telephone number, fax number (if any), and e-mail address. List the names of the defendants and the title of the document ("COMPLAINT"). Write "DEMAND FOR JURY TRIAL" if you want your case to be heard by a jury.

A sample complaint caption page is below:

Plaintiff's name
Plaintiff's e-mail address
Mailing Address
City, State 9-digit zip code
Area Code and Phone Number

Plaintiff, appearing Pro Se

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

DIVISION

PLAINTIFF NAME(S), Plaintiff(s), v. DEFENDANT NAME(S), Defendant(s).	Case No.: COMPLAINT DEMAND FOR JURY TRIAL

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 none of the plaintiffs live in the same state as any of the defendants and the amount in controversy is more than $75,000)—for more information, read 28 U.S.C. § 1332.

Venue

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

Divisional Venue

The next numbered paragraph should state the division of the United States District Court for the District of Oregon—specifically, Portland, Eugene, Medford, or Pendleton—to which you believe the case should be assigned. Generally, cases from each county within the district are assigned as follows:

- Portland Division: Clackamas, Clatsop, Columbia, Hood River, Jefferson, Multnomah, Polk, Tillamook, Wasco, Washington, Yamhill
- Eugene Division: Benton, Coos, Deschutes, Douglas, Lane, Lincoln, Linn, Marion
- Medford Division: Curry, Jackson, Josephine, Klamath, Lake
- Pendleton Division: Baker, Crook, Gilliam, Grant, Harney, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wheeler

Parties

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

Statement of Facts

This section should explain the important facts in your case in numbered paragraphs. It should explain to the Court how the defendant violated the law and how you have been injured. If you refer to any documents in this section, you can attach them to the complaint as **exhibits**.

Claims

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

Request for Relief

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.

Demand for Jury Trial

If you want a jury trial, you can request it at the end of your complaint or in a separate document. It is best to include this in your complaint because, if you do not request a jury trial within 14 days of filing your complaint, you may give up your right to a jury trial. *See* Federal Rule of Civil Procedure 38 and Local Rule 38-1. If you request a jury trial, you must include the phrase "DEMAND FOR JURY TRIAL" in the document title.

You may decide you do not want to have a jury trial. Then the judge will decide the facts of your case at a **bench trial**, if a trial is held. See Chapter 16 for more about trials.

Plaintiff's Signature

When you sign your name, you are certifying to the Court that you are filing your complaint in **good faith**. At the end of the complaint, sign your name. 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* Federal Rule of Civil Procedure 11.

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.

Filing a Complaint

You may file a complaint in person or by mail. To do so, you must provide:

- an **original signed paper complaint** plus enough **copies for service on each defendant**;

  - Make sure to review the Local Rules regarding requirements for paper copies (for example, Local Rule 10-1 states that pages must be single-sided, flat and unfolded).
  - You may also provide an **extra copy** for the intake clerk to stamp and return to you for your records. If you file by mail, enclose an extra copy of the complaint and a written request to the Court for a stamped copy. The request must include your mailing address.
- civil cover sheet (also known as the JS 44 form);
- summons(es); and
- either pay the filing fee or submit an Application to Proceed without Prepayment of Fees or Costs (*In Forma Pauperis*) (see below).
- **Exception**: If you are filing a complaint seeking district court review of the final decision of the Commissioner of Social Security, you are not required to include extra copies of the complaint for the defendants, or summons(es). *See* Fed. R. Civ. P. Supp. R. Soc. Sec. 3.

In-Person Filing: You can file your complaint in person at the Clerk's Office in the Portland, Eugene, or Medford courthouses during intake hours. You may file your complaint at any of these three courthouses, regardless of the divisional venue.

Court Locations

Portland: Mark O. Hatfield U.S. Courthouse, 1000 S.W. Third Ave., Portland, OR 97204
Eugene: Wayne L. Morse U.S. Courthouse, 405 East Eighth Ave., Eugene, OR 97401
Medford: James A. Redden U.S. Courthouse, 310 West Sixth St., Medford, OR 97501

Please note that you will need to bring a valid, government-issued photo identification in order to enter any U.S. District of Oregon courthouse.

Filing Fee Payment

Filing fees are listed on the Schedule of Fees available on the Court's website or at the Clerk's Office in the Portland, Eugene, or Medford courthouses. The filing fee must be paid at the time the complaint is filed.

The Clerk's Office currently accepts the following methods of payment: money order, check (business, cashier, certified, or personal), and credit or debit card (Visa, MasterCard, American Express, and Discover). Checks and money orders must be made payable to: Clerk, U.S. District Court. Exact payment for services is required.

If you cannot pay the filing fee, you should submit an Application to Proceed without Prepayment of Fees or Costs (*In Forma Pauperis*). This form is available from the Clerk's Office and on the Court's website. When completing the application, you must answer all of the questions relating to income, assets, and liabilities. If you do not provide complete and accurate information, the Court may deny your request or require you to provide additional information before it can make a decision. If the Court grants your request, you will not be required to pay the filing fee at the time the complaint is filed. If the Court denies your request, you will be allowed a reasonable opportunity 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. The Case Assignment Order provides you with contact information for the case administrator and the assigned judge's courtroom deputy clerk.

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.

Magistrate Judges are appointed by the District Judges of the Court to eight-year terms. They may (and often do) serve more than one term. Resumes for all Magistrate Judges in the District of Oregon are available on the Court's website.

Federal Rule of Civil Procedure 73 states that a Magistrate Judge may conduct a civil action, proceeding, trial, or non-jury trial only if all plaintiffs and all defendants consent to have the case decided by a Magistrate Judge. In the District of Oregon, civil cases involving self-represented parties may be randomly assigned to a Magistrate Judge, except for cases seeking review of Social Security decisions.

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 for consenting to have your case decided by a Magistrate Judge (called "Consent to Jurisdiction by a Magistrate Judge"). The consent form affords each party an opportunity to consent to having a Magistrate Judge assume complete jurisdiction over the case, including trial and entry of judgment. You are strongly encouraged to consent to jurisdiction by a Magistrate Judge as early as possible and prior to the filing of motions that impact the outcome of the case (dispositive motions).

If all parties consent to Magistrate Judge jurisdiction, then pursuant to Federal Rule of Civil Procedure 73(b), the Magistrate Judge will have the same jurisdictional authority as a District Judge, including authority to:

- Schedule, hear, and decide all dispositive and non-dispositive matters;
- Schedule, hear, and decide all interlocutory matters;
- Conduct jury or non-jury trials;
- Enter final orders and judgment; and
- Decide all post-trial motions.

If all parties consent, the appeal route from any final order or judgment entered by a Magistrate Judge is directly to the United States Court of Appeals for the Ninth Circuit. *See* 28 U.S.C. § 636(c)(3) and Federal Rule of Civil Procedure 73(c).

Even if all parties do not consent to Magistrate Judge jurisdiction, the assigned Magistrate Judge will be responsible for all case management and scheduling activities, will hear and decide all non-dispositive pretrial and discovery matters, and will consider dispositive motions by issuing Findings and Recommendations. *See* Federal Rule of Civil Procedure 72.

After all parties have consented to Magistrate Judge jurisdiction, they will receive a date certain for trial. The right to a speedy trial in felony criminal cases requires District Judges to give statutory priority to trying those cases, which can sometimes require that civil trial dates be rescheduled. Unlike

District Judges, Magistrate Judges do not preside over felony criminal trials. As a result, their trial dockets are generally less crowded than those of the District Judges, and they usually are able to provide earlier and firmer trial dates than might otherwise be possible for a District Judge.

Unless all parties have consented to magistrate jurisdiction, a Magistrate Judge must enter Findings and Recommendations on any dispositive matters, such as a motion to dismiss or a motion for summary judgment. If any of the parties file objections to the Findings and Recommendations, the review process by a District Judge generally takes 60 days. By consenting to Magistrate Judge jurisdiction, the parties can avoid the delays and expense of this review process, while preserving the right of appeal directly to the Ninth Circuit Court of Appeals.

Social Security Cases

If you file a complaint seeking district court review of the final decision of the Social Security Administration, your case will be randomly assigned to a District Judge and you will not be asked for consent to Magistrate Judge jurisdiction.

Discovery and Pretrial Scheduling Order

When your case is assigned to a judge, the Court will issue a **Discovery and Pretrial Order** that outlines the steps the parties must take next and the deadlines by which they must be completed. Some of these requirements involve communicating with the opposing party only, and some involve meeting with all of the parties and the assigned judge. Chapter 13 on Discovery discusses some of these issues.

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

How Do I Review The Docket?

The docket is an electronic 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.

Where Can I Access The Electronic Docket?

You may access the electronic docket using the computer terminals available in the Portland, Eugene, and Medford 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 (see below).

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.

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.

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

PACER Fees

There are no registration costs. Internet access to PACER is billed at 10 cents per page of information. You will be billed quarterly by the PACER Service Center. The charge for any single document is capped at $3.00, the equivalent of 30 pages. The cap does not apply to name searches, reports that are not case-specific, and transcripts of federal court proceedings. If your usage does not exceed $30.00 in a quarter, fees for that quarter are waived. If your usage exceeds $30.00, you will be charged.

An order designated as a written opinion by the judge is free to view.

E-Filers

If you also register as an e-filer with the Court's case management and electronic filing system (CM/ECF) (*see* Chapter 9), each time a document is filed and docketed in your case, you will receive a "notice of electronic filing" e-mail, which will allow you to view the document for free one time via a hyperlink. 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.

NOTE: PACER fee information changes frequently and is current only as of the publication date on the cover of this Handbook. Refer to PACER's FAQ on fees for the most current information (pacer.gov/psc/faq.html).

Obtaining a PACER fee exemption

If you cannot afford to pay the PACER access fees, you may file a motion with the Court asking to be excused from paying the fees. (*In forma pauperis* status does not automatically grant you free access to PACER). Your motion must show that it would be an unreasonable burden for you to pay the fees and that it would promote public access to electronic court docket information if you were permitted to use PACER without paying a fee.

If the Court grants your motion, the Clerk's Office will notify the PACER Service Center. You should call the PACER Service Center at 800-676-6856 to confirm your registration before you begin accessing dockets and documents.

If the Court denies your motion and you still want to use PACER, you can do so without cost as long as you avoid incurring more than the free maximum usage per quarter.

Information available through PACER

Once case information has been updated in the District of Oregon's electronic case filing system, it is immediately available on PACER.

PACER Support

If you have problems with your PACER account, please call the PACER Service Center at 800-676-6856.

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

You must give the other parties to your lawsuit a copy of every document that you file with the Court. This is referred to as "serving" or "service on" the other parties. It is critical that you serve your papers 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.

Serving the Complaint

The plaintiff is responsible for making sure that the summons and complaint are served on the defendant(s) within 90 days of filing of the complaint. This is called "service of process," and it is the method used to notify the defendant that a lawsuit is pending. Detailed instructions about how to serve a summons and complaint can be found in Federal Rule of Civil Procedure 4. If these instructions are not followed correctly, the case can be dismissed for failure to comply with Federal Rule of Civil Procedure 4.

The person who serves the summons and complaint must file a "**Return of Service**" document with the Court. The Return of Service is a statement, made under oath, explaining when and how service on the defendant(s) was completed.

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. If you file by mail, enclose the summons form and a written request to the Court to mail the issued summons to you. The request must include your mailing address.

What if I Filed *In Forma Pauperis*?

If your Application to Proceed *In Forma Pauperis* is approved, the Court will issue the summons and forward it to the United States Marshal to serve on the defendants at no cost to you. However, first the Court will provide the necessary forms (one per defendant) to you, and you must complete the forms and return them to the Court. The Court will then provide the U.S. Marshal with the form you completed, and the U.S. Marshal will serve the defendant for you.

Tip: You are responsible for providing valid address information about where service can be made on each defendant. If the defendant is a business, you may be able find information about where service is accepted (sometimes called a "registered agent" or "agent for service") through the secretary of state in the state where the business is registered.

Different rules apply for serving the United States, United States officers or employees acting in their official capacity, and foreign, state, or local governments. Make sure to review Federal Rule of Civil Procedure 4.

If the Court denies an Application to Proceed *In Forma Pauperis*, the U.S. Marshal is not responsible for serving the summons and complaint. However, you may pay the U.S. Marshal to perform service. Forms for service by the U.S. Marshal are available from the Clerk's Office.

You may also request a **waiver of service** from the defendant(s) pursuant to Federal Rule of Civil Procedure 4(d) (see below). If the defendant(s) waive service, you can avoid hiring the U.S. Marshal or a private process server.

What Documents Do I Need to Serve on the Defendant(s)?

You are required to serve a copy of the complaint plus copies of all of the documents issued by the Clerk's Office at case initiation on each defendant. *See* Local Rules 3-5 and 16-1.

Generally, the list of documents to be served includes:

- Complaint;
- Summons, issued by the Clerk of the Court;
- Civil Case Assignment Order;
- Discovery and Pretrial Scheduling Order;
- Fed. R. Civ. P. 26(a)(1) Discovery Agreement form;
- District of Oregon Civil Case Management Time Schedules; and
- Forms for consent to jurisdiction by a Magistrate Judge.

Is There a Time Limit for Serving the Complaint and Summons?

Yes. Federal Rule of Civil Procedure 4(m) 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.

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 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:

- A notice of a lawsuit and request to waive service of a summons; and
- 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: https://ord.uscourts.gov/ under the "Representing Yourself" tab.

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 Federal Rule of Civil Procedure 4(c) and (d) 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 Federal Rule of Civil Procedure 4. You may ask the Court to order the defendant to pay the costs you incurred serving that defendant.

How Do I Serve?

Federal Rule of Civil Procedure 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. The person should not be a potential party or a potential witness in the case.

What is a Certificate of Service?

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

- The date service was completed;
- The place where service was completed;
- The method of service used;
- The names and street address or e-mail address of each person served;
- 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.

Social Security Cases

Special procedural rules apply if you file a complaint seeking district court review of the final decision of the Social Security Administration. Pursuant to Rule 3 of the Supplemental Rules for Social Security Actions Under 42 U.S.C. § 405(g), the Clerk's Office will send an electronic notice of filing to counsel for the Social Security Administration and the Oregon U.S. Attorney's Office. You will not need to

serve your complaint or summonses on the Government. Verification that the notice of electronic filing (NEF) was sent will be included in the scheduling order you receive from the Court.

What Are the Rules for Service of Documents Other than the Complaint?

Federal Rule of Civil Procedure 5 sets forth 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.

CHAPTER 9: FILING AND SERVING DOCUMENTS ELECTRONICALLY

The default mode of filing and serving documents for self-represented parties is paper. This chapter explains available options for electronic filing and service.

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. The Court uses an electronic case management and filing system called CM/ECF. Attorneys are required to file documents electronically ("e-file").

In the District of Oregon, non-prisoner self-represented parties who wish to e-file must register with PACER and fill out and submit a Pro Se Party Application for CM/ECF Registration. Detailed instructions about how to apply for permission to be a Registered User are available on the Court's website: www.ord.uscourts.gov.

If the Court approves your application, you will be a "Registered User" in your case. As a Registered User, you would be able to e-file documents in your case. E-filing documents eliminates the need to serve paper copies on any other party who is also a Registered User. (All attorneys admitted to practice in U.S. District Court for the District of Oregon must be Registered Users.) In turn, you would no longer receive paper copies of documents filed in your case. Instead, you would receive a notice of electronic filing (NEF) via e-mail for any documents filed in your case; the NEF contains a link that grants you "one free look" at the document through CM/ECF and/or PACER.

> **Tip:** Local Rule 5-8 requires a paper **judge's copy** of certain types of documents be delivered to the Clerk's Office within three business days of electronic filing. Many judges waive this requirement for self-represented parties. You may call the assigned judge's Courtroom Deputy to ask if a judge's copy is required.

What Are The Technical Requirements For E-Filing?

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

- A computer;
- Internet access;
- A compatible browser that supports 128 bit encryption and has JavaScript and cookies enabled;
- A Portable Document Format (PDF)-compatible word processor, such as Microsoft Word;
- Software to convert documents from a word processor format to PDF format;
- Software to read PDF documents (Adobe Acrobat Reader is available at no cost);
- Access to a flatbed scanner with sheet feeder for paper documents that need to be scanned to PDF format;
- An e-mail account; and

- A PACER account. *See* Chapter 7.
- You are also required to review the District of Oregon CM/ECF User Manual available on the Court's website at **ord.uscourts.gov** and the PACER Training section for District Courts on the PACER website at pacer.gov. You must certify that you have reviewed these materials as part of the application process.

What Are the Pros of E-Filing?

- You can e-file from any computer that meets the technical specifications above.
- You will not have to go to the courthouse to file your court papers.
- You have until midnight on the day your filing is due to e-file (instead of 4:30 p.m. for physical delivery to the Clerk's Office with paper filings).
- You will not need to serve the other parties with paper copies.
- You will likely have more time to respond to any motion filed by the opposing side because you can receive and review the motion as soon as it is filed, instead of having to wait for your copy to arrive by mail. Opposition papers must be filed within 14 days after a motion is filed, even if you do not receive your copy of the motion in the mail until a few days later.

Issues to Consider:
If you do not already have the hardware and software required to e-file, there may be some initial cost.
You may require some training in:

- How to convert documents to PDF and to work with PDF documents.
- How to log into and use CM/ECF to file documents.

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.

Even if you do not register to file documents electronically or to receive electronic service via notices of electronic filing, you can access court records online via PACER. *See* Chapter 7.

CHAPTER 10: HOW DO I RESPOND TO A COMPLAINT?

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 Federal Rule of Civil Procedure 12, there are two general ways to respond. You can:

- File an answer to the complaint; or
- 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 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* Federal Rule of Civil Procedure 55.

After being served with the summons and complaint, you have a period of time, specified in the summons, within which to answer or respond to the complaint. The time for filing an answer runs from the date the complaint and summons are served, not the date the summons was issued.

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. Federal Rule of Civil Procedure 8(b)(1) governs answers.

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* Federal Rule of Civil Procedure 8(b)(6).

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. Examples of affirmative defenses include: fraud, illegality, and statute of limitations. *See* Federal Rule of Civil Procedure 8(c).

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 its truth. Each affirmative defense should be listed in a separate paragraph at the end of the answer.

NOTE: Any affirmative defense not listed in the answer may be waived, meaning it cannot be brought up later in the lawsuit. However, if you become aware of facts during the case that support a new affirmative defense, you may ask the Court to amend your answer to add the affirmative defense. *See* Can I Amend the Answer After I File It, below.

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).

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*, according to Federal Rule of Civil Procedure 13(a). See the section, "How do I file a counterclaim?" below.

Can I Amend The Answer After I File It?

If FEWER THAN *21 days have passed since you served the answer*:

- You can amend your answer anytime within 21 days after it is served on the plaintiff without the need for permission from the Court or from the plaintiff. *See* Federal Rule of Civil Procedure 15(a)(1).
- You must attach as an exhibit a copy of the amended answer that shows through strikeouts, bolding, or other such means, how the amended answer differs from the previous version. *See* Local Rule 15-1.

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:
  - Obtain written permission from the plaintiff; or
  - If the plaintiff does not agree to allow you to amend your answer, you can file a motion with the Court seeking permission to amend your answer. Draft your new amended answer and attach it to the motion to amend. The motion to amend should state specifically what you have changed in your answer and that you are requesting permission from the Court to change your answer as attached. If the Court grants the motion, you will be allowed to file the amended answer. To learn more about how to file motions, see Chapter 11.
- You must attach as an exhibit to the motion to file an amended answer a copy of the amended answer that shows through strikeouts, bolding, or other such means, how the amended answer differs from the previous version. *See* Local Rule 15-1.

If you file an amended answer, Local Rule 15-1 requires you to file an entirely new answer and not simply the changes you made to the original.

The caption for your amended answer should read "FIRST AMENDED ANSWER," and if you have included a counterclaim, it should read "FIRST AMENDED ANSWER AND COUNTERCLAIM."

Requesting a Jury Trial

As a defendant, you can request a jury trial, even if a plaintiff does not demand a jury trial. If you want a jury trial, then you must demand one no later than 14 days after the last pleading (your answer) is served. You may file a demand for jury trial separately or as part of the answer. Make sure to include "DEMAND FOR JURY TRIAL" on the last line of the document title like the example below. *See* Local Rule 38-1.

Defendant's name
Defendant's e-mail address
Mailing Address
City, State 9-digit zip code
Area Code and Phone Number

Defendant, appearing Pro Se

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

DIVISION

PLAINTIFF NAME(S), Plaintiff(s), v. DEFENDANT NAME(S), Defendant(s).	Case No.: x:xx-cv-xxxx-xx ANSWER DEMAND FOR JURY TRIAL

NOTE: There are some types of cases that are not entitled to be decided by a jury and can only be heard by a judge.

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

No. Under Federal Rule of Civil Procedure 8(b)(6), 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. Federal Rule of Civil Procedure 13 covers two different types of counterclaims:

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 compulsory counterclaim generally must be filed at the same time the defendant files his or her answer. *See* Federal Rule of Civil Procedure 13(a). If you fail to include a compulsory counterclaim with your answer, you will generally be unable to bring that claim later. If the Court already has subject matter jurisdiction over the plaintiff's claim against you, the Court will also have jurisdiction over your compulsory counterclaim.

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. No rule governs the time for filing a permissive counterclaim. You must have an independent basis for federal jurisdiction over the permissive counterclaim.

Counterclaims should be written using the same format and rules as a complaint. *See* Chapter 4. If you file your counterclaim at the same time you file your answer, you can include the answer and counterclaim on the same or separate documents. If combined in one document, the title should read "ANSWER AND COUNTERCLAIM."

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**. Federal Rule of Civil Procedure 12(a)(1)(B) requires the plaintiff to respond to the counterclaim within 21 days of being served by filing a reply or a motion regarding the counterclaim.

What If I Want To Sue A New Party?

A **crossclaim** brings a new party into the case and essentially blames that third party for 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 Federal Rule of Civil Procedure 13(g) and (h).

How Can I Use A Motion To Challenge The Complaint?

About Motions to Dismiss

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

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.

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.

Improper venue: the defendant argues that the lawsuit was filed in the wrong geographical location.

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.

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.

Failure to join an indispensable party under Federal Rule of Civil Procedure 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* Federal Rule of Civil Procedure 12(a)(4). If the Court **grants** the motion to dismiss, it can grant the motion with "leave to amend" or "with prejudice," as explained below:

"**With leave to amend**" means there is a problem with the complaint or an individual claim that the plaintiff may be able to fix. The Court will set a time by which the plaintiff must submit an amended complaint to the Court. The amended complaint can be served on the defendant by mail or, for CM/ECF users, through e-filing.

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 Federal Rule of Civil Procedure 15(a)(3). The defendant can either file an answer or file another motion under Federal Rule of Civil Procedure 12.

"**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.

- If the Court dismisses the entire complaint "with prejudice," the case is over.
- If some, but not all, claims are dismissed "with prejudice," 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 Federal Rule of Civil Procedure 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 plaintiff is given an opportunity to file a new complaint. The defendant then must file a written response to the complaint within 14 days after receiving it. *See* Federal Rule of Civil Procedure 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

Federal Rule of Civil Procedure 12(f)(2) 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.

What If I Do Not Respond To The Complaint?

If a defendant has been properly served with a complaint but fails to file any response in the required amount of time, then that defendant is considered in "**default**." Once the defendant is in default, the plaintiff can ask the 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.

About Default Judgments

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

- Local Rule 55-1 requires a **good faith effort to confer** before a motion or request for default is filed.
- 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* Federal Rule of Civil Procedure 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.
- Once the Clerk has entered default against the defendant, the plaintiff may then file a motion for default judgment supported by:
    - 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
    - A declaration proving the amount of damages claimed in the complaint against the defendant. Under Federal Rule of Civil Procedure 54(c), the Court cannot enter a default judgment that awards the plaintiff more (money, relief, etc.) than the plaintiff specifically asked for in the complaint.

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

A minor or incompetent person..*See* Fed. R. Civ. P. 55(b)
The United States government or its officers or agencies.......................*See* Fed. R. Civ. P. 55(d)
A person serving in the military...*See* 50 U.S.C. App. § 521
A foreign country... *See* 28 U.S.C. § 1608(e)

The defendant should file a response to the motion for default judgment and also appear at the hearing if at all possible. The defendant usually opposes a motion for default judgment by challenging the sufficiency of service of the complaint, but can also argue that the facts stated do not amount to a violation of the law or that the amount of damages claimed by the plaintiff is incorrect. In general, the Court will not enter a default judgment if an alternative exists (for example, if the defendant has belatedly appeared and is willing to defend against the case on the merits) because 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* Federal Rule of Civil Procedure 55(c). The Court will set aside an entry of default or a default judgment for good cause or for a reason listed in Federal Rule of Civil Procedure 60(b) such as mistake, fraud, newly-discovered evidence, the judgment is void, 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 11.

CHAPTER 11: WHAT IS A MOTION?

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

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

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

Motion Terminology and Timeline

The party who files a motion is the "**moving party**." The other parties are "**non-moving parties**." A party who does not want the motion to be granted is the "**opposing party**." Local Rule 7-1 sets out the minimum time periods for responding to motions.

Filing. The moving party files a motion explaining what action he or she wants the Court to take and why.

Opposition. The opposing party files a response brief explaining why it believes the Court should not grant the moving party's motion. It is due within 14 days after service of the motion, or within 21 days after service if it is a response to a motion for summary judgment.

Reply. Unless filing a reply is not permitted (*see* Local Rule 26-3(c)), the moving party may file a reply brief within 14 days after service of the opposition brief. A reply brief responds only to the arguments made by the opposing party's opposition brief. After this is done, neither party can file any more documents about the motion without first getting permission from the Court.

Hearing. If you would like an opportunity to make oral arguments in support of your motion, you must include "Request for Oral Argument" on the last line of the caption to the motion or response. After all of the briefs are filed, the assigned judge will decide whether oral argument would help the Court decide the matter. If so, the Court will notify the parties of the date and time for any hearing.

What Are The Requirements For Motion Papers?
Federal Rules of Civil Procedure 7(b) and 11, and Local Rules 7 and 10 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.

A motion should be made in writing. While you may be able to make verbal ("speaking motions") during a hearing or trial, the Court may still ask you to put your motion in writing. All of the Court's rules about captions and the format of documents apply to motions.

- Local Rule 7-2(b) requires that motions be no more than 11,000 words or 35 pages long (excluding declarations and exhibits).
- Local Rule 26-3(b) limits discovery motions to 3,000 words or 10 pages.
- Motions related to Bills of Costs and motions related to awarding attorney fees are also limited to 3,000 words or 10 pages. *See* Local Rules 54-1(c) and 54-3(e).

It is important to stay within the page and word limits.

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 Federal Rule of Civil Procedure 11, which forbids filing motions that have no legal basis, that are based on too little investigation, or that are based upon facts known to be false.

Local Rules 7-1 and 7-2 require that all motions contain the following:

Certification of Conferral. Except for motions for temporary restraining orders, parties are required to make a good faith effort to resolve the dispute, either in person or by telephone. The first paragraph of every motion must certify that the parties have conferred and whether the parties were able to reach a

resolution. The certification must note if the opposing party willfully refused to confer or one of the parties is a prisoner, not represented by counsel. If the other parties to the action do not oppose the motion, the filing party must state "UNOPPOSED" in the caption. For example: "PLAINTIFF'S UNOPPOSED MOTION FOR AN EXTENSION OF TIME."

Name of the motion. For example: "PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT."

Certificate of Compliance: You must include a short paragraph stating that the motion complies with the applicable word-count limitation.

Memorandum of points and authorities. The memorandum of points and authorities (or "brief") provides your list of the issues to be decided in the motion and your statement of facts and legal arguments explaining why the Court should grant your motion. If the brief is longer than 20 pages, Local Rule 7-1(c) requires both a table of contents and a table of cases and authorities – a list of all the laws, rules, and cases that you have mentioned and the page numbers where they are cited in the brief.

Citations. Every mention of a law, rule, or case is called a "citation." When citing a law, rule, or case, use the format that is required by the Court.

Declaration(s). If your motion depends on facts, you must also provide the Court with evidence that those facts are true by filing one or more "declarations." A **declaration** is a written statement signed under penalty of perjury by a person who has personal knowledge that what he or she states in the declaration is true. A declaration includes only facts, and may not contain any law or argument. *See* Local Rules 5-12 and 10-3, and 28 U.S.C. § 1746.

- The first page of each declaration must include the name of the document, for example: "DECLARATION OF JOHN SMITH IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT."
- The declaration should be made up of numbered paragraphs.
- You must include the following language at the end of the declaration:
  - *If the declaration is being signed in the United States*—it must state: "I declare under penalty of perjury that the foregoing is true and correct. Executed on (insert the date the document is signed)."
  - *If the declaration is being signed outside of the United States*—the language must read: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (insert the date the document is signed)."
- The person whose statements are included in the declaration must sign and date it.

CHAPTER 12: 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: The judge may have enough information from the papers filed by the parties and will decide cases "on the papers," even if oral argument has been requested.

How do I Prepare for a Hearing?

- Review all papers that have been filed for the hearing.
- 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.
- 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 at that time. If your hearing is the only one scheduled, you may sit at the plaintiffs' or defendants' table in the center of the courtroom. The courtroom deputy will tell you where to sit.
- 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."
- When you hear your case announced, approach the desk in front of the bench. You may bring up 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.
- 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.
- The **jury box** is located against the wall, at one side of the courtroom. This is where jurors sit during a trial. During a hearing, court staff members may be sitting in the jury box.

In the center of the courtroom, there will be plaintiffs' and defendants' tables with a number of chairs around them. This is where the lawyers and the parties sit during hearings and trials.

- The plaintiffs sit at the table that is closest to the jury box.
- The defendants sit at the table next to the plaintiffs.

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

What Happens At A Motion Hearing?

First, the party who filed the motion has a chance to argue why the motion should be granted. Then, the opposing party will argue why the motion should be denied. Finally, the party who filed the motion has

an opportunity to explain why he or she believes the opposing party's argument is wrong. The judge may ask questions at any point in the hearing.

Points to remember for the hearing:

- *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 stand at the table when addressing the judge.
- When one party is speaking, the other party should sit at the table. *Never interrupt the other party.* Always wait until it is your turn to speak.
- The judge may ask you questions about your argument. *If the judge asks a question, always stop 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, stand up before you answer the question.

General Advice for Hearings

- Be on time!
- 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 13: WHAT IS DISCOVERY?

"Discovery" is the process in which the parties exchange information about the issues in the 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 admissions, mental examinations, and physical examinations.

The rules regarding discovery are complex, and before conducting any discovery, you should carefully read **Federal Rules of Civil Procedure 26 through 37**. It is particularly important that you become familiar with the requirements of **Rule 26** on the mandatory exchange of information between parties. You should also review **Local Rules 26 through 37**.

Ordinarily the Court does not get involved in the request for, and exchange of, discovery. If the parties have a discovery dispute, they must first make a good faith effort to resolve the dispute between themselves. If you are unable to reach an agreement, you may then file a Motion to Compel Discovery. (Note that some judges require that you schedule a telephone hearing with the judge before filing a motion to compel). The motion to compel must include a certified statement in its first paragraph that you have made a good faith effort to obtain the information or material without court action. Sanctions may be awarded against parties who are found to have abused the discovery process.

Tip: Discovery requests or responses to discovery requests should not be filed with the Court.

What Are The Limits On Discovery?

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.

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 burden or expense of the proposed discovery is greater than its likely benefit; or
- Privileged or otherwise confidential information.

There are also limits to how many requests you can make. Federal Rule of Civil Procedure 26(b) covers discovery scope and limits in detail.

Initial Disclosures

In most cases, you are required to provide certain information to the other parties without waiting for a discovery request. Federal Rule of Civil Procedure 26(a)(1) describes the types of information that should be included in an initial disclosure. Some types of cases are exempt from this Rule (see Federal Rule of Civil Procedure 26(a)(1)(B) for a list of exempt cases). Additionally, Local Rule 26-2 allows parties to agree to forgo the initial disclosures. Parties must notify the Court by filing a Federal Rule of Civil Procedure 26(a) Discovery Agreement Form.

Getting Started

Counsel and *pro se* litigants are usually required to hold an initial discovery planning conference within 30 days after a defendant files a responsive pleading or a motion under Federal Rule of Civil Procedure 12. *See* Federal Rule of Civil Procedure 26(f) and Local Rule 26-1.

Rule 16 Scheduling and Planning Conference

Around the time you hold your initial discovery conference with opposing counsel, you and opposing counsel should contact the assigned judge's courtroom deputy to schedule a Rule 16 scheduling and planning conference. At the Rule 16 Conference, the parties will meet with the assigned judge and set deadlines for exchange of discovery, deadlines for dispositive motions, and dates for pretrial conferences. *See* Federal Rule of Civil Procedure 16(b) and Local Rule 16-2.

CHAPTER 14: ALTERNATIVE DISPUTE RESOLUTION

Alternative Dispute Resolution (ADR) is an informal way for the parties to try to resolve their case by reaching a mutually agreed upon settlement. Often, ADR involves mediation, where a neutral third-party assists the parties in their negotiations. ADR can help parties save time and money by helping the parties resolve their differences without formal litigation. ADR allows the parties to be in control of the outcome and to reach creative resolutions that are tailored to the parties' underlying interests.
Local Rule 16-4 requires all parties to confer no later than 120 days from when the lawsuit is first filed about whether the case would benefit from ADR. Within 150 days from when the lawsuit is filed, the parties must submit a Joint Alternative Dispute Resolution Report. The form is available on the Court's website.

NOTE: Some types of cases are exempt from the ADR requirement. A list of the types of cases that are exempt is included in Local Rule 16-4(b).

CHAPTER 15: 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 usually go to trial because parties do not agree about the facts. When the parties agree upon the facts or if one party does not have any evidence to support its version of what actually happened, the 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.

Federal Rule of Civil Procedure 56 governs summary judgment motions.

Factors to Consider in a Summary Judgment Motion

- A motion for summary judgment can address the whole lawsuit or it can address one or more individual claims.
- If the summary judgment motion addresses the whole lawsuit, and the Court grants summary judgment, the lawsuit is over.
- Summary judgment will only be granted if under the evidence presented, a jury could not reasonably find in favor of the opposing party.
- The Court considers all of the admissible evidence from both parties.
- The Court considers evidence in the light most favorable to the party who does not want summary judgment.
- Denying summary judgment means that there is a dispute about the facts, not that the Court believes one side over the other.
- 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.
- Some judges permit only one motion for summary judgment per side for the entire case.

When Is A Motion For Summary Judgment Granted?

Under Federal Rule of Civil Procedure 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 or 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 11.

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

If the **plaintiff** files a motion for summary judgment, the plaintiff must:

- *Provide admissible evidence.* Evidence includes things like sworn statements, medical records, and physical objects (evidence is "admissible" if federal law allows that evidence to be considered for the purpose for which it was offered); and
- *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.

To counter the plaintiff's motion for summary judgment, the **defendant** must either:

- 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
- Show that the plaintiff has not submitted sufficient evidence to prove one or more elements of the plaintiff's claims.

If the **defendant** files a motion for summary judgment, the defendant must:

- Show that the plaintiff does not have evidence necessary to prove one of the elements of the plaintiff's claim. For example, in a claim about a contract, one element that a plaintiff must prove is that the parties reached an agreement; another element is that each side agreed to provide something of value to the other. If the plaintiff cannot prove one of those elements, summary judgment may be granted in the defendant's favor on the plaintiff's claim for breach of contract; or
- Show that there is no real factual dispute on any element of defendant's defenses against the plaintiff's claims. An affirmative defense is a complete excuse for doing what the defendant is accused of doing. For example, in a breach-of-contract case, evidence that it would have been illegal to perform the contract may be a complete defense.

To counter the defendant's motion for summary judgment, the **plaintiff** must:

- Submit admissible evidence showing that the plaintiff does have sufficient admissible evidence to prove every element of his or her claims, or that there is a factual dispute about one or more key parts of the claims; or
- 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?

The Court considers only admissible evidence provided by the parties. Every fact that you rely upon must be supported by admissible evidence. 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. 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.

NOTE: 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 in the summary judgment motion.

Affidavits And Declarations As Evidence On Summary Judgment

An **affidavit** is a statement of fact written by a witness and confirmed by oath or affirmation before a notary public. A **declaration** is a written statement of fact by a person with personal knowledge that what he or she states is true, signed under penalty of perjury. Affidavits and declarations may be used as evidence in supporting or opposing a motion for summary judgment. Under Federal Rule of Civil Procedure 56(c), an affidavit or declaration submitted in summary judgment proceedings must:

- 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
- State facts that are admissible in evidence; and
- Show that the person making the statement is competent to testify to the facts contained in the statement.

What Is Hearsay?

Hearsay is "second-hand" evidence or a witness's statement about a fact that is based on something the witness heard from someone else. A declaration or affidavit based on hearsay is not admissible in federal court. *See* Federal Rules of Evidence 801-807.

How Do I Authenticate My Evidence?

Some of your evidence may be in the form of documents such as letters, records, e-mails, 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. *See* Federal Rules of Evidence 901-902.

A document can be authenticated either by:

- Submitting a statement under oath from someone who can testify from personal knowledge that the document is authentic; or
- Demonstrating that the document is "self-authenticating" (examples include government publications and newspapers).

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

A **joint statement of undisputed facts** is a list of facts that all parties agree are true, and it contains citations to the evidence that shows the judge that the facts are true. A statement is not a joint statement unless it is signed by all of the parties. All facts contained in a joint statement of undisputed facts will be taken as true by the Court. Filing a joint statement of undisputed facts may be helpful when the parties agree on the facts but disagree as to how the law applies to the facts.

What Is A Concise Statement Of Material Facts, And Do I Need To File One?

A separate concise statement of material facts (filed in addition to the motion for summary judgment) is only required if the judge in the case orders a party to file it. Local Rule 56-1 sets out the requirements, including the page and word-count limits.

When Can A Motion For Summary Judgment Be Filed?

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.

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 Federal Rule of Civil Procedure 56(d) 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 16: TRIAL

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:

- The lawsuit is a type of case that the law allows to be decided by a jury; and
- 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* Federal Rule of Civil Procedure 38.

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:

- None of the parties asked for a jury trial (or did not request one in time); or
- The lawsuit is a type of case that the law does not allow a jury to decide; or
- 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. Often, this happens at the Rule 16 Conference (*see* Chapter 13), but sometimes the trial date will not be chosen until later in the case.

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 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* Federal Rules of Evidence 103 and 104.

Besides submitting documents, you also need to arrange for all of your witnesses to be present at trial. If a witness does not want to come to trial, you can serve that witness with a trial subpoena. A trial

subpoena is a court document that requires a person to come to court and give testimony on a particular date.

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***, potential jurors are asked questions by the judge in the courtroom. Potential jurors may also be asked to answer a questionnaire containing questions developed by the parties and 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. Usually, the judge conducts the courtroom *voir dire* examination. Counsel (or *pro se* litigants) may be permitted to submit questions for the judge to ask the jurors. *See* Local Rule 47-1.

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 successfully 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. The number of allowed peremptory challenges will be established by the trial judge at the final pretrial conference. *See* Local Rule 47-3.

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 at trial. It helps the jury understand what to expect and what each side considers important. The opening statements must not mention any evidence or issues that the judge has excluded from the trial.

In The Trial, Which Side Puts On Witnesses First?

After the opening statements:

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

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

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

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

All evidence that is presented by either party during trial must be admissible according to the Federal Rules of Evidence and the judge's rulings on the parties' motions *in limine*. If one party presents evidence that is not allowed under the Federal Rules of Evidence or asks improper questions of a witness, the opposing party may object. If the opposing party does not object, the judge may allow the improper evidence to be presented. At this point, the other party will not be able to challenge that decision on appeal. 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?

Stand and briefly state your objection to the judge. You may object while the other party is presenting evidence. Make sure to contain the basis for your objection. For example, "Objection, Your Honor, inadmissible hearsay."

Do not give arguments unless the judge asks you to explain your objection.

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 "sidebar").

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 Federal Rule of Civil Procedure 50(a), 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. A defendant puts on his or her case through the Direct Examination, Cross-Examination, and Re-Direct Examination procedures described above.

What Is Rebuttal?

Rebuttal is the final stage of presenting evidence at trial. It begins after both sides have had a chance to present their cases. In the rebuttal stage, whichever party has the burden of proof (usually the plaintiff) tries to attack or explain the opposing party's evidence. This evidence is called rebuttal evidence. Rebuttal is limited to countering only what the other side argued as evidence; entirely new arguments may not be made during rebuttal. For example, a rebuttal witness might testify that the other party's

witness could not have seen the events he reported to the 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 may make a motion for judgment as a matter of law under Federal Rule of Civil Procedure 50(a). *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, the Court next hears **closing arguments**.

Each party may present a **closing argument** that summarizes the evidence and argues how the jury or, in a bench trial, the judge should decide the case based on that evidence. 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. 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. 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.

CHAPTER 17: Prisoner *Pro Se* Litigants

Resources for Commonly Filed Actions by Prisoners

The following forms are available to assist prisoners with moving or petitioning the Court or filing a prisoner-specific civil rights complaint. The forms are available on the Court's website. If you do not have access to the internet, the forms are available through the Clerk's Office and may be available through the prison library.

- Motion to vacate, set aside, or correct a federal sentence pursuant to 28 U.S.C. § 2255
- Petition for Habeas Corpus pursuant to 28 U.S.C. § 2241 (challenges to the execution of a federal sentence)

- Petition for Habeas Corpus pursuant to 28 U.S.C. § 2254 (challenges to a state-court criminal judgment)
- Prisoner Civil Rights Complaint

After You File Your Complaint: Service and Scheduling

Actions filed by prisoners are generally subject to review by a judge to determine if the action meets the standards to proceed or requires dismissal. If you are a state prisoner filing a civil rights case that survives screening, the Court will typically seek a waiver of service on your behalf. If you are a federal prisoner or the state defendant(s) declines to waive service, the Clerk's Office will contact you to request that you submit the required summons(es) and U.S. Marshal instruction forms. The Court will not issue a Scheduling Order until it authorizes service on the defendant(s) and the defendant(s) have filed an answer or other response.

In habeas corpus cases, should the petition survive initial screening, the Court will issue a Scheduling Order that accomplishes service.

Tips for Prisoner *Pro Se* Litigants

If you are a prisoner, you should be aware of specific rules and requirements for prisoner litigants depending on whether you are challenging your conviction, sentence, or challenging the conditions of your confinement. Below is a list of common pitfalls or mistakes that can lead to dismissal of your case.

Civil Rights Cases

Failure to Exhaust Administrative Remedies

Before you file a lawsuit related to prison conditions under 42 U.S.C. § 1983 or any other federal law, you must "exhaust" whatever administrative remedies are available through the prison (or jail or other correctional facility) grievance system. You are required to exhaust the prison grievance system even if the grievance system cannot provide the specific kind of relief you seek. *See* 42 U.S.C. § 1997e.

Initial Pleading Requirements

Your complaint must tell the Court what federal rights or federal laws you think have been violated, how the named defendants personally participated in that violation, and what facts support your claim. The Court is required to dismiss any actions brought with respect to prison conditions that are frivolous, malicious, or fail to state a claim upon which relief can be granted. *See* 42 U.S.C. § 1997e.

Prison Litigation Reform Act

If, at any time while you were a prisoner, you filed three actions that the Court dismissed because they were deemed to be frivolous, malicious, or failed to state a claim upon which relief could be granted, then you may be barred from proceeding *in forma pauperis* in any future actions while in custody. This "three-strikes" provision does not bar you from filing an action; you may file an action if you pay the filing fee. Additionally, the three-strikes provision does not apply if you are in "imminent danger of serious physical harm." 28 U.S.C. § 1915(g).

Failure to Respond to a Defense Motion for Summary Judgment

A defense motion for summary judgment under Federal Rule of Civil Procedure 56 will, if granted, end your case. Federal Rule of Civil Procedure 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact – that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly

supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Federal Rule of Civil Procedure 56(e), that contradict the facts shown in the defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial. *See* Chapter 15.

Habeas Corpus Petitions

Exhaustion

In order for the Court to consider any application for writ of habeas corpus under 28 U.S.C. § 2254, you must first have "exhausted" your state court remedies. In other words, if you have the right to raise your federal claims in a state court, then you have not exhausted your state court remedies. Typically, claims of trial court error are presented during direct appeal, and claims of ineffective assistance of counsel are presented during post-conviction review. A claim is not properly exhausted until it is presented to the state's highest court in the proper procedural context, and that court has provided its ruling.

A federal prisoner who challenges the execution of a federal sentence in a 28 U.S.C. § 2241 habeas petition must exhaust his administrative remedies prior to filing his case.

Statute of Limitations

There is a one-year statute of limitations for filing habeas corpus petitions and motions to vacate pursuant to 28 U.S.C. §§ 2254 and 2255. *See* 28 U.S.C. §§ 2244, 2254.

Appeals

In order for the Court of Appeals to have jurisdiction over an appeal from the denial of a habeas petition, you must file a notice of appeal and obtain a certificate of appealability (COA) from the U.S. District Court. *See* 28 U.S.C. § 2253(c).

CHAPTER 18: WHAT CAN I DO IF I THINK THE JUDGE OR JURY MADE A MISTAKE?

Trial Court Procedures

If you believe the judge or jury made a serious mistake in your lawsuit, there are a number of different procedures in the trial court that you can use.

Motion for Reconsideration

A **motion for reconsideration** asks the Court to consider changing a previous decision. Generally a motion for reconsideration must be made before a final judgment is entered and show:

- The facts or law that the parties previously presented to the Court were wrong in an important way and could not have been reasonably discovered at the time of the Court's order; or
- Important new facts have emerged or a significant change in the law has occurred since the order was entered; or
- The Court clearly failed to consider material facts or key legal arguments that were presented to the Court before the order was issued.

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.

Post-Judgment Motions

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

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 Federal Rule of Civil Procedure 50(b). You may make a renewed motion only 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
- 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 with the jury.
- The judge will not overturn the jury's verdict unless, after reviewing all the evidence, he or she is definitely and firmly convinced that a mistake has been made.
- If the 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 its 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 can be granted if:

- The Court is presented with newly discovered evidence; or

- 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* Federal Rule of Civil Procedure 59.

Motion for Relief from Judgment or Order

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

How Can a Magistrate Judge's Decision be Reviewed?

Special rules sometimes apply to decisions by Magistrate Judges.

Consent Cases: If all 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 a case is assigned to a Magistrate Judge and one or more of the parties did not consent, then when a Magistrate Judge enters an order in the case, a party may file an objection. If an objection is filed, then the matter will be randomly assigned to a District Judge for review.
For matters that are not dispositive to a party's claim or defense, after conducting the appropriate proceedings, the Magistrate Judge will issue a written order. Any objections to the order must be filed and served within 14 days after the party is served with a copy of the Magistrate Judge's order. *See* Federal Rule of Civil Procedure 72(a).

For decisions related to "dispositive" issues, the Magistrate Judge will enter a report to the District Judge called "Findings and Recommendations." A party's objections to the Magistrate Judge's report must be

filed within 14 days after the party is served with a copy of the Magistrate Judge's report. The other party is not required to file a response to the objections, but any response must be filed within 14 days after being served with a copy of the objections. *See* Federal Rule of Civil Procedure 72(b).

The reviewing District Judge may make a "**de novo review"** of any portion of the Magistrate Judge's report to which an objection has been made, meaning that the District Judge will review the issues in those portions of the report from scratch and make his or her own decision. The District Judge may accept, reject, or modify the Magistrate Judge's recommendation, receive additional evidence, or send the matter back to the Magistrate Judge for further review with additional instructions. *See* Federal Rule of Civil Procedure 72(b)(3).

Appeal to the Ninth Circuit Court of Appeals

A final decision of this Court is called a **judgment** and may be appealed to the United States Court of Appeals for the Ninth Circuit, headquartered in San Francisco, California.

Litigation in the appeals court is a complex process. There are separate procedural rules that govern appeals called the Federal Rules of Appellate Procedure. Additionally, the Ninth Circuit Court of Appeals has its own local Circuit Rules. Requirements for filing an appeal are outlined in Federal Rules of Appellate Procedure 3 and 4 and corresponding Circuit Rules. These can be found on the Ninth Circuit's website: https://www.ca9.uscourts.gov/.

To appeal, you must file a **Notice of Appeal** with the Clerk of the **U.S. District Court**, with one copy for the Court and one copy for each attorney or self-represented party in the case. You also must pay the filing fee or submit an **Application for Leave to Appeal *In Forma Pauperis*.*** The Notice of Appeal should be legibly handwritten or typed and filed with the Clerk of this Court within thirty (30) days after entry of the judgment or order being appealed. When the United States or its officer or agency is a party, the Notice of Appeal may be filed by any party within sixty (60) days after entry of the judgment or order being appealed. *See* Federal Rule of Appellate Procedure 4.

*If the district court granted you leave to proceed *in forma pauperis*, then you need not apply again for *in forma pauperis* status on appeal *unless* the district court certifies that the appeal is not taken in good faith. *See* Federal Rule of Appellate Procedure 24(a)(3).

APPENDIX A: LAW LIBRARIES BY REGION

EUGENE

Lane County Law Library
Lane County Public Service Building
125 East 8th Avenue
Eugene, OR 97401
541-682-4337
E-mail: lclawlib@lanecountyor.gov
http://lanecounty.org/lawlibrary

University of Oregon School of Law, John E. Jaqua Law Library
1221 University of Oregon
Eugene, OR 97403
541-346-3088
E-mail: lawref@uoregon.edu
https://library.uoregon.edu/law

PORTLAND

Lewis & Clark Law School, Paul L. Boley Law Library
10015 SW Terwilliger Blvd.
Portland, OR 97219
Reference: 503-768-6688
Hours: 503-768-6687
E-mail: lawlib@lclark.edu
http://lawlib.lclark.edu
[During "public hours" open "to any person of the general public who can demonstrate a need for legal and/or federal depository materials." For more information, contact the library.]

Multnomah County Law Library
1050 SW Sixth Ave Avenue, Suite 180
Portland, OR 97204
503-988-3394
E-mail: librarian@multlawlib.org
http://multlawlib.org

United States Court of Appeals for the Ninth Circuit Library
Pioneer Courthouse
700 SW Sixth Avenue, Suite 109
Portland, OR 97204
503-833-5310

United States District Court for the District of Oregon, Library
Mark. O. Hatfield U.S. Courthouse
1000 SW Third Avenue, Suite 7A40
Portland, OR 97204
503-326-8140
[open to the general public by appointment only]

GREATER PORTLAND AREA

Clackamas County Law Library
Alden E. Miller Law Library
821 Main Street, Room 101
Oregon City, OR 97045
503-655-8248
E-mail: lawlibrary@clackamas.us
https://www.clackamas.us/lawlibrary

Clark County Law Library
1200 Franklin Street
Vancouver, WA 98660
564-397-2268
E-mail: lawlibrary@clark.wa.gov
https://www.clark.wa.gov/law-library

Washington County Law Library
111 NE Lincoln Street
Suite 250-L
Hillsboro, OR 97124
503-846-8880
E-mail: lawlibrary@washingtoncountyor.gov
http://www.co.washington.or.us/lawlibrary

SALEM

State of Oregon Law Library
1163 State Street
Salem, OR 97301
503-986-5640
E-mail: state.law.library@ojd.state.or.us
http://www.oregon.gov/SOLL

Willamette College of Law, J.W. Long Law Library
245 Winter Street SE
Salem, OR 97301
503-375-5300
E-mail: law-ref@willamette.edu
http://www.willamette.edu/wucl/longlib

APPENDIX B: LEGAL AID SERVICES

Disability Rights Oregon
503-243-2081
https://droregon.org
Disability Rights Oregon provides individual representation in qualifying cases.

Legal Aid Services of Oregon
https://lasoregon.org

By Region:
- Albany: 541-926-8678
- Central Oregon Regional Office (Crook, Deschutes, Jefferson): 541-385-6944
- Douglas County: 541-673-1181
- Klamath Falls Regional Office (Klamath, Lake): 541-273-0533
- Lincoln County: 541-265-5305
- Pendleton Regional Office (Gilliam, Morrow, Umatilla, Union, Wallowa, Wheeler): 541-276-6685
- Portland Regional Office (Clackamas, Hood River, Multnomah, Sherman, Wasco): 503-224-4086
- Salem Regional Office (Marion, Polk): 503-581-5265

By Program:
- Eviction Defense Project: 888-585-9638
- Farmworker Program: 1-800-662-6096
- Native American Program: 503-223-9483
- Oregon Homeowner Legal Assistance Project: 855-503-2598
- Public Benefits: 800-530-5292
- Tax Clinic: 1-800-228-6958
- Wildfire Disaster Relief Program: 844-944-2428

Oregon Law Help
https://oregonlawhelp.org/
This site contains a list of resources and information for the state of Oregon, including links to legal aid organizations.

Oregon State Bar
503-684-3763 or 800-452-7636 (8 a.m. to 5 p.m. Monday-Friday)
https://www.osbar.org/public/ris/

Lawyer Referral Service: Provides the name and telephone number of a lawyer who can help you with your legal matter and who is close to the location where assistance is needed. The first in-office consultation is $35 or less; this fee may be more if you are not in Oregon and cannot meet with the lawyer in person. Any additional fees must be arranged between you and the lawyer.

Modest Means Program: The Modest Means Program is available for family law, criminal defense, and landlord/tenant matters at the trial court level. Eligibility is based upon type of legal matter, applicant income and assets, and availability of participating attorneys. If you qualify for the program, the Modest

Means attorney will charge you a reduced rate for any additional legal work provided to you beyond the initial consultation.

Military Assistance Panel: The Military Assistance Panel matches deployed service members and their dependents with lawyers willing to provide up to two hours of legal advice at no charge. Lawyer volunteers have been trained to provide legal assistance relating to the Service members' Civil Relief Act (SCRA) and are also able to help with a wide range of other legal matters.

Problem Solvers: Problem Solvers offers free legal information and advice to children between the ages of 13 and 17. Volunteer attorneys agree to provide a free 30-minute consultation.

GLOSSARY

Term	Definition
Action	Another term for **lawsuit** or **case**.
Admissible evidence	Evidence that can properly be introduced at trial for the judge or jury to consider in reaching a decision; the Federal Rules of Evidence govern the admissibility of evidence in federal court.
ADR (alternative dispute resolution)	Methods by which a complaint can be resolved outside of traditional court proceedings.
Adjourn, adjournment	To bring a proceeding to an end, such as a court calendar or trial.
Affidavit	A statement of fact written by a witness, which the witness affirms to be true before a notary public.
Affirmative defenses	Allegations included in the answer that, under legal rules, defeat all or a portion of the plaintiff's claim.
Allegation	An assertion of fact in a complaint or other pleading.
Amend (a document)	To alter or change a document that has been filed with the Court, such as a complaint or answer, by filing and serving a revised version of that document. Certain documents cannot be amended without prior approval of the Court.
Amended pleading (complaint or answer)	A revised version of the original complaint or answer that has been filed with the Court.
Amount in controversy	The dollar value of how much the plaintiff is asking for in the complaint.
Answer	The written response to a complaint. An "answer on the merits" challenges the complaint's factual accuracy.
Appeal	To seek formal review of a district court judgment by the Court of Appeals.
Application to Proceed Without Prepayment of Fees or Costs (*In Forma Pauperis*) (IFP)	A form filed by the plaintiff asking permission to file the complaint without paying the filing fee or costs at the start of the case. The plaintiff must establish an inability to pay the whole fee. The Application to Proceed Without Prepayment of Fees or Costs (*In Forma Pauperis*) is available at the Clerk's Office and on the Court's website.
Bench	The large desk in the courtroom where the judge sits.
Bench trial	A trial in which the judge, rather than the jury, determines the law, the facts, and the verdict of the lawsuit. A bench trial is also known as a "court trial."
Breach	Failure to perform a legal obligation.
Brief	A document filed with the Court arguing for or against a motion.
Burden of proof	Under legal rules, one party or the other bears responsibility for proving or disproving one or more elements of a claim. What must be proven or disproven is the burden of proof.
Caption	A formatted heading on the first page of every document filed with the Court, listing the parties, the name of the case, and other identifying information. The specific information that must be included in the caption is explained in Federal Rule of Civil Procedure 10(a) and this Court's Local Rules 3, 7, 10, and 15.
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.
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 his or her duties as a juror for other reasons.
Chambers	The private offices of an individual judge and the judge's "chambers staff"— usually a judicial assistant and law clerks.
Citation	A reference to a law, rule, or case.
Civil cover sheet	The civil cover sheet gathers general, statistical information about the case and is filed with the complaint. It is also known as the JS 44 form. The civil cover sheet is available at the Clerk's Office and on the Court's website.
Claim	A statement made in a complaint, in which the plaintiff(s) argue that the defendant(s) violated the law in a specific way.
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.
Confer, conferral	In most instances, parties are required to communicate and make a good faith effort to resolve issues or disputes before filing a motion with the court. *See* Local Rule 7-1.
Counsel	Attorney(s); lawyer(s).
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	A person specially trained and licensed to record testimony in the courtroom or, in the case of depositions, another location.
Courtroom deputy (CRD)	A Court employee who assists the judge in the courtroom and usually sits at a desk in front of the judge.
Court trial	A trial in which the judge, rather than the jury, determines the law, the facts, and the verdict of the lawsuit. A court trial is also known as a "bench trial."
Crossclaim	A new claim bringing a new party into the case or asserting a claim against a co-party (by a plaintiff against a co-plaintiff or by a defendant against a co-defendant).
Cross-examination	The opposing party's questioning of a witness following direct examination, generally limited to the topics covered during the direct examination.
Damages	The money that can be recovered in the courts by the plaintiff for the plaintiff's loss or injury due to the defendant's violation of the law.
Deliberate	The process in which the jury discusses the case in private and makes a decision about the verdict. *See also* **jury deliberations**.
De novo review	A court's complete review and re-determination of the matter before it from the beginning; for example, a District Judge's de novo review of a Magistrate Judge's **Findings and Recommendations** includes considering the same evidence reviewed by the Magistrate Judge and reaching an independent conclusion.
Declaration	A written statement signed under penalty of perjury by a person who has personal knowledge that what he or she states is true; declarations may contain only facts, and may not contain law or argument. The person who signs a declaration is called a **declarant**.
Default	A defendant's failure to file an answer or other response within the required amount of time, after being properly served with the complaint.
Default judgment	A judgment entered against a defendant who fails to respond to the complaint.
Defendant	The person, company, or government agency against whom the plaintiff makes claims in the complaint.
Defendant's table	The table where the defendant sits, usually the one further from the jury box.
Defenses	The reasons given by the defendant why the plaintiff's claims should be dismissed.
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**.
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 Federal Rule of Civil Procedure 26(a), which must include the parties' views about, and proposals for, how discovery should proceed in the lawsuit.
Dispositive	Bringing about a final determination.
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 Oregon has several divisions among which the Court's caseload is divided: Portland, Eugene, Medford, and Pendleton.
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 administrator," a court staff member who enters documents and case information into the court docket.
Drop box	A secure depository where documents can be left for filing by the Clerk of Court when the Clerk's Office is closed to the public. The drop box is available only when the Court is open to the public.
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.
Exhibits	Documents or other materials that are presented as evidence at trial or as attachments to motions or declarations.
Federal question jurisdiction	Federal courts are authorized to hear lawsuits in which at least one of the plaintiff's claims arises under the Constitution, laws, or treaties of the United States.
Federal Rules of Civil Procedure	The procedural rules that apply to every federal district court in the United States.
Federal Rules of Evidence	The rules for submitting, considering, and admitting evidence in the federal courts.
Filing	The process by which documents are submitted to the Court and entered into the case docket.
Filing fee	The amount of money the Court charges the plaintiff to file a new lawsuit.
Findings of Fact and Conclusions of Law	A statement issued by a judge explaining what facts he or she has found to be true and the legal consequences to be included in the judgment; it concludes a bench trial once all evidence has been submitted and all arguments have been presented.
Findings and Recommendations	In non-consent cases assigned to a Magistrate Judge, the Magistrate Judge files a report of factual and legal findings, and recommendation(s) about how the issue(s) should be resolved.
Fraud	The act of making a false representation of a past or present fact on which another person relies, resulting in injury (usually financial).
FRCP 26 Agreement	A form that may be filed with the Court when the parties agree to forgo the initial disclosures required by Federal Rule of Civil Procedure 26(a)(1).
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.
Hearing	A formal proceeding before the judge for the purpose of resolving one or more issues.
Hearsay	An out of court statement offered to prove the truth of the matter asserted in the statement.
***In forma pauperis* (IFP)**	*See* **application to proceed *in forma pauperis*.**
In propria persona	Often shortened to "*pro se*;" representing oneself; Latin for "in his or her own person."
Initial disclosures	The information that parties must disclose to each other under Rule 26(1)(a) of the Federal Rules of Civil Procedure. *See* FRCP 26 Agreement.
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.
Issue summons	What the Clerk of Court must do before a summons is valid for service on a defendant.
Joint alternative dispute resolution (ADR) report	Unless exempt, Local Rule 16-4(d) requires all parties to confer regarding ADR and to file a joint report within 150 days of initiation of a lawsuit. The Joint ADR Report form is available on the Court's website.
Judge's copy	A paper copy of a case document delivered to the Court for the judge's use. *See* Local Rule 5-8.
Judgment	A final document issued by the Court stating which party wins on each claim. Unless there are post-judgment motions, the entry of judgment closes the case.
Jurisdiction	*See* **diversity jurisdiction** and **subject matter jurisdiction**.
Jury box	The rows of seats, usually located against a side wall in a courtroom and separated from the well of the courtroom by a divider, where the jury sits during a trial.
Jury deliberations	The process in which the jury, after having heard all the evidence, closing arguments from the parties, and instructions from the judge, meets in private to decide the case.
Jury instructions	The judge's directions to the jury about its duties, the law that applies to the lawsuit, and how it should evaluate the evidence.
Jury selection	The process by which the individual members of the jury are chosen.

Jury trial	A trial in which a jury weighs the evidence and determines what happened, the Court instructs the jury on the law, and the jury applies the law to the facts and determines who wins the lawsuit.
Law library	A special library containing only legal materials, usually staffed by a specially-trained librarian.
Lectern	The stand for holding papers in front of the **bench** in the courtroom where an attorney or *pro se* party making arguments on a motion stands and speaks to the judge.
Litigants	The parties to a lawsuit.
Local rules	Specific federal court rules that set forth additional requirements to the Federal Rules of Civil Procedure; for example, the Local Rules of the United States District Court for the District of Oregon explain some of the additional procedures that apply only to this Court. Available on the Court's website at www.ord.uscourts.gov.
Magistrate Judge	A judicial officer who is appointed by the Court for an 8-year, renewable term and has some, but not all, of the powers of a District Judge. A Magistrate Judge may handle civil cases from start to finish if all parties consent. In non-consent cases, a Magistrate Judge may hear motions and other pretrial matters subject to review by a District Judge.
Manual filing	A filing of a paper document at the Clerk's Office instead of by electronic filing/e-filing.
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.
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.
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 problem with the current trial.
Motion for an extension of 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 for a protective order	A party's request that the Court issue an order protecting a party (or non-party witness) from having to disclose certain information to the opposing party because the requested information is designed to annoy, oppress, or create an undue burden or expense, or because the request demands embarrassing information, or valuable private information like a trade secret. *See* Federal Rule of Civil Procedure 26(c).
Motion for default judgment	Asks the Court to grant judgment in favor of the plaintiff because the defendant failed to file an answer to the complaint. If the Court grants the motion, the plaintiff wins the case.
Motion for judgment as a matter of law	Argues that the opposing party's evidence is so legally deficient that no jury could reasonably decide the case in favor of that party. The defendant may bring such a motion after the plaintiff has presented all evidence, and after all the evidence has been presented, either party may bring such a motion; if the Court grants the motion, the case is over.
Motion for reconsideration	Asks the Court to consider changing a previous decision.
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 Federal Rule of Civil Procedure 60(b).
Motion for sanctions	Asks the Court to impose a penalty on a party; for example, in the context of discovery, a motion for sanctions asks the Court to punish a person for failing to make required disclosures, refusing to respond to a discovery request, or refusing to obey a court order to respond to a discovery request.
Motion for summary judgment	Asks the Court to decide a lawsuit without a trial because the evidence shows that there is no real dispute about the key facts.
Motion *in limine*	A motion asking the judge to settle an issue relating to the trial, usually argued shortly before the beginning of trial.

Motion to amend or alter the judgment	After entry of judgment, asks the Court to correct what a party argues is a mistake in the judgment.
Motion to compel	Asks the Court to order a person to make disclosures, or to respond to a discovery request, or to provide more detailed disclosures or a more detailed response to a discovery request.
Motion to dismiss	Asks the Court to dismiss certain claims in the complaint, due to procedural defects.
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 witness	A person who is not a party to the lawsuit but who has relevant information.
Notice of electronic filing (NEF)	An e-mail generated by CM/ECF 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.
Notary public	A public officer who is authorized by the state or federal government to administer oaths and to attest to the authenticity of signatures.
Objection	The formal means of challenging evidence on the ground that it is not **admissible**.
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, even if a party has requested oral argument.
Opening statement	At the beginning of the trial, after the jury has been selected, if it is a jury trial, the parties have an opportunity to make individual opening statements, in which they can describe the issues in the case and state what they expect to prove during the trial.
Opposing party	In the context of motions, the party against whom a motion is filed; more generally, the party on the other side.
Opposition, opposition Brief	A filing that consists of a **brief**, often accompanied by **evidence**, filed with the court containing facts and legal arguments that explain why the Court should deny the motion.
Overrule an objection	During examination of witnesses at trial, if a party objects to evidence being admitted or a question being asked, the judge may overrule the objection. This means that the evidence will be admitted or the question may be asked, unless the judge later sustains a different objection.
PACER	"Public Access to Electronic Court Records" is a public internet database where federal docket information is stored. The web address is: www.pacer.gov.
Peremptory challenge	During jury selection, after all of the jurors challenged for cause have been excused, the parties will have an opportunity to request that additional jurors be excused without having to give any reason for the request.
Perjury	A false statement made under oath, punishable as a crime.
Permissive counterclaim	A claim by the defendant against the plaintiff that is not based on the same events or transactions as the plaintiff's claim against the defendant.
Pleadings	Formal documents that are filed with the court, especially initial filings such as complaints and answers.
Plaintiff	The person who filed the complaint and claims to be injured by a violation of the law.
Plaintiff's table	In the center of the courtroom, there are two long tables and chairs where the lawyers and parties sit during hearings and trial; the table nearest the jury box is usually the plaintiff's.
Prayer for relief	The last section of a complaint, in which the plaintiff tells the Court what the plaintiff wants from the lawsuit, such as money damages, an injunction, or other relief.
Pretrial conference	A hearing shortly before trial where the judge discusses the requirements for conducting trial and resolves any final issues that have arisen before trial.
Privileged information	Information that is protected by legal rules from disclosure during discovery and trial.
***Pro bono* representation**	Legal representation by an attorney that is free to the person represented.
Pro se	A Latin term meaning "for oneself." A ***pro se*** litigant is a party without a lawyer handling a case in court.
Procedural rules	The rules parties must follow for bringing and defending against a lawsuit in court.
Process server	A person authorized by law to serve the **complaint** and **summons** on the defendant.

Proof of service	A document attached to each document filed with the Court (or filed separately at the same time as the document) in which the filer affirms that he or she has served the document on other parties.
Protective order	A court order, based upon good cause shown, prohibiting or restricting the release of information.
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.
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.
Request for admission	A discovery request that a party admit a material fact or element of a claim.
Request for entry of default	After a good faith effort to confer, 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 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.
Rule 16 Conference	A scheduling and planning conference with the parties and assigned judge where the parties discuss the discovery and pretrial scheduling order, and any relevant issues listed in Federal Rule of Civil Procedure 16(b) and (c). *See* Local Rule 16-2.
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 Federal Rules of Civil Procedure 4 and 5.
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 Federal Rule of Civil Procedure 5.
Sidebar	A private conference beside the judge's bench between the judge, and the lawyers (or self- represented parties) to discuss any issue out of the jury's hearing.
Speaking motion	A motion first made in the courtroom without motion papers being filed first.
Standing Orders	Court orders setting out rules and procedures, in addition to those found in the Federal Rules of Civil Procedure and the Local Rules. Available on the Court's website at www.ord.uscourts.gov.
Statute of limitations	A legal time limit by which the plaintiff must file a complaint; after the time limit, the complaint may be dismissed as **time-barred**.
Strike	To order claims or parts of documents "stricken" or deleted so that they cannot be part of the lawsuit or proceeding.
Subject matter jurisdiction	A federal court has **subject matter jurisdiction** only as defined by Congress over cases arising under the Constitution, treaties, or laws of the United States and diversity cases in which the parties are from different states and the amount in controversy is greater than $75,000.

Subpoena	A document issued by the 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.
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.
Supplemental Rules for Social Security Actions Under 42 U.S.C. § 405(g)	Procedural rules that apply to cases seeking district court review of the final decision of the Commissioner of Social Security.
Sustain an objection	To affirm that an objection is correct, and evidence should be excluded.
Table of authorities	The list of references to law that should be included with every brief more than 20 pages long.
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 Federal Rule of Civil Procedure 5.
With prejudice	If a court dismisses claims in your complaint with prejudice, you may not file another complaint in which you assert those claims again.
Without prejudice	Dismissal without prejudice is sometimes also referred to as dismissal "with leave to amend" because you are permitted to file an amended complaint or other document.
Witness	A person who has personal or expert knowledge of facts relevant to a lawsuit.
Witness box	The seat in which a witness sits when testifying in court, usually located to the side of the **bench**.