United States District Court
Middle District of Tennessee

Pro Se Handbook
for Nonprisoner Federal Civil Actions

INTRODUCTION

The United States District Court for the Middle District of Tennessee ("the Court") has prepared this Handbook to assist individuals who want to file federal **civil** lawsuits without an attorney. The Court calls this type of person a "**pro se**" **litigant**. Pro se is a Latin phrase meaning "for himself" or "for herself."

This Handbook is meant primarily to help the pro se **plaintiff**—the person who files the lawsuit. However, pro se **defendants**—the people being sued—also will find useful information in this Handbook.

The purpose of this Handbook is to provide the pro se litigant with a practical and informative resource for litigating a **case** in federal court. But, you should never rely entirely on this Handbook. You should not cite this Handbook as legal authority in any court **pleadings** or documents.

The Court may take actions contrary to information contained in this Handbook.

> This Handbook is not intended for people who want to defend themselves in a **criminal** case without an attorney.

If you are representing yourself and you are a prisoner, refer to the Court's Pro Se Prisoner Handbooks that are available on the Court's website and upon request from the Clerk's Office.

Throughout this Handbook, words that appear in **bold** the first time they appear are defined in the Glossary, which you can find at the end of the Handbook. The Glossary contains definitions of the common legal terms related to a lawsuit.

The United States District Court for the Middle District of Tennessee has a Clerk's Office in the Nashville courthouse, which is located at 801 Broadway, Nashville TN 37203. If, after reading this Handbook, you still have questions about court procedures, you may contact the Clerk's Office at (615) 736-5498 and select Option 1 for case information. The toll-free number is (866) 720-8663. However, the Clerk's Office staff and other employees of the Court cannot give you legal advice of any kind in person, over the telephone, by mail, or by e-mail.

The Court's website is https://www.tnmd.uscourts.gov/. The website contains links to the Federal Rules of Civil Procedure, the Local Rules of this Court, and other useful information. All of the forms mentioned in this Handbook can be found under the Pro Se/Self Representation section of the website.

A Word of Caution

- **Rule 11 of the Federal Rules of Civil Procedure** states that you must sign every pleading (for example, the **complaint** and the **answer**), **motion**, and other paper you **file** with the Clerk's Office and provide your address, e-mail address, and telephone number on each filing. Rule 11 also states that, by presenting a pleading, written motion, or other paper to the Court, you are certifying that

  (1) it is not presented for an improper purpose, such as to harass someone;

  (2) your legal **claims** are supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law;

  (3) the facts you allege have evidentiary support or likely will have evidentiary support after a reasonable opportunity for investigation; and

  (4) any denials of factual **allegations** are warranted on the evidence or are reasonably based on a belief or lack of information.

  In other words, when you file a lawsuit, you are representing to the Court that you believe you have a valid legal claim, you are not filing the lawsuit to harass any defendant, and you have reason to believe that what you say in the complaint is true.

  If, after reviewing your complaint, the Court determines that you have filed your lawsuit for an improper or unnecessary reason, the Court may impose **sanctions** against you, including ordering you to pay a fine to the Court or to pay the legal fees of the person you sued. It is important to keep in mind that Rule 11 applies to all documents you file in your case.

- Filing a lawsuit means that you will incur costs. You will have to pay these costs even if the Court waives the filing fee and the U.S. Marshal Service **serves** your **summons** and complaint for you. Costs may include postage, copying costs, and **deposition** and transcript costs. In certain types of cases, you may be required to pay the legal fees of the winning party if you lose. In all cases, if you lose, you may be required to pay some of the costs the winning party incurred in the course of the lawsuit, such as witness fees and copying expenses. In many cases, these fees and costs add up to thousands of dollars. For more information about costs that you may have to pay if you lose your case, see Federal Rule of Civil Procedure 54 and 28 U.S.C. § 1920.

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GENERAL INFORMATION

Tips for All Pro Se Litigants

1. Read all papers you get from the Court and from the other parties without delay. It is important that you know what is going on in your case and what deadlines have been set. If you receive certified mail from the Court, be sure you pick it up. You will not be excused for missing a deadline because you did not pick up or open mail from the Court.

2. Meet every deadline. If you cannot meet a deadline, you must file a motion for an extension of time before the deadline passes. If you do not meet a deadline, the Court may rule against you or even dismiss your case.

3. Use your own words and be as clear as possible in everything you file. Be straightforward and specific about your claims.

> You do not need to "sound like a lawyer."

4. Keep a record of everything related to your lawsuit. Keep paper or electronic copies of everything you file with the Court. You also should keep copies of everything you receive from the Court and from the opposing parties.

5. If possible, have someone else read your papers before you file them. Make sure the other person understands what you are saying in your papers; if he or she does not understand, try to explain yourself more clearly. Often, the Court decides cases only **on the papers** that are filed, without the parties appearing in court. You want to present your best case in everything that you file.

6. Be sure the Court always has your correct address and telephone number. If your contact information changes, it is your responsibility to contact the Clerk's Office immediately. The Court may dismiss your case if you fail to keep the Court and other parties informed of any changes. Do not expect the Court to locate you. It is always a good idea to notify the Court if you think you are going to be in transit for a period of time. As soon as you reach a more permanent location, you should contact the Clerk's Office to check on the status of your case and update the Clerk's Office with your new address.

7. Always include identifying information about your case on any paperwork you submit to the Court. This includes the case number, the case name, and the names of the judges, once you receive that information.

8. Remove certain sensitive information from documents submitted to the Court for filing. Everything you file with the Court will be included in the electronic **docket** of your case and will be available to the public. For that reason, you should consult Federal Rule of Civil Procedure 5.2, which addresses privacy concerns. Protect your privacy by leaving out Social Security and taxpayer identification numbers, names of minor children, dates of birth, and complete financial account numbers. The Clerk's Office will not remove such information for you.

9. Do not contact the judge. The judge will not respond to or act on your letters. If you want the judge to take action in your case, you need to file a motion. Likewise, you are not permitted to speak with the judge or the judge's law clerks by telephone. Any questions about the status of your case should go to the Clerk's Office.

10. The Court's rules for counting time are very specific. To determine how to count the number of days until something is due in your case, you should refer to Federal Rule of Civil Procedure 6 and Local Rule 6.01.

Organization of the Federal Courts

It will be helpful for you to understand the organization of the federal courts. The federal court system is comprised of courts on three different levels: the district courts, the circuit courts of appeal, and the United States Supreme Court.

The first level is the district courts. District court is where your **action** will begin and where it will be decided first. Congress has divided the country into ninety-four judicial districts. Tennessee has three districts: the Eastern District of Tennessee, the Middle District of Tennessee, and the Western District of Tennessee. This Handbook covers actions in the Middle District of Tennessee. The rules of procedures of other federal district courts may be different. The Middle District of Tennessee is divided into three divisions: Nashville, Columbia, and Cookeville. A civil action, or case, may be filed in any **division** based on where the events addressed in the action took place.

The second level, the federal appeals courts, are referred to as circuit courts. There are thirteen United States Courts of Appeals. The United States Court of Appeals for the Sixth Circuit considers **appeals** from the federal district courts in Tennessee, Kentucky, Michigan, and Ohio. The Sixth Circuit Court of Appeals can be contacted at:

Office of the Clerk
United States Court of Appeals for the Sixth Circuit
540 Potter Stewart U.S. Courthouse
100 E. Fifth Street
Cincinnati, Ohio 45202-3988
Telephone: (513) 564-7000

The third and final level is the United States Supreme Court. It has the authority to choose which cases it considers. The United States Supreme Court considers only a small percentage of the cases it is asked to review. The United States Supreme Court can be contacted at:

Supreme Court of the United States
One First Street N.E.
Washington, DC 20543

Remember, the federal courts are different than the state courts. Be careful not to send papers to the federal courts than you mean to send to the state courts, and vice versa.

What the Clerk's Office Can and Cannot Do for You

If you file a case in federal court, you will interact with the Clerk's Office of the Court. The Clerk's Office maintains a record, or docket, for every case that is filed. The docket is a chronological summary of all events in a case.

The Clerk's Office can:

- Mail you a copy of your docket sheet
- Send you copies of forms
- Check on the status of your action
- Make copies of requested Court documents upon receipt of copying fees
- Confirm that your filings have been received by the Court

The Clerk's Office cannot:

- Recommend a legal course of action
- Suggest ways to help you win your case
- Give you "inside information" about judges or other Court personnel
- Explain the result of taking or not taking an action in a case
- Tell you the proper court in which to file your complaint
- Tell you which form to use
- Tell you who to name as defendants
- Look up case law for you
- Interpret statutes, case law, or rulings for you
- Provide you with the reasons for a judge's decision
- Calculate response times or deadlines
- Tell you when a judge will respond to a motion or enter a ruling in a case

Remember: employees of the Clerk's Office **cannot** give legal advice.

Computer terminals are available for use by pro se litigants in Room 803 in the Clerk's Office, located on the 8th floor of the United States Courthouse, 801 Broadway, Nashville, Tennessee.

CHAPTER 1

BEFORE FILING A FEDERAL LAWSUIT

Filing a lawsuit does not mean that you will get the result you want or expect. Lawsuits can be expensive, time-consuming, and stressful. Before you decide to file a lawsuit in federal court, you may want to consider other ways to solve your dispute or problem. For example, try talking to the person you think has harmed you. You also might consider mailing a letter to the person stating your concerns. You may be able to come to an agreement about how to move forward without involving the court system.

You should ask yourself the following questions before you file a case in federal court.

1. Does the law recognize my injury?

A lawsuit requires an injury that the law recognizes and for which the law provides a remedy. Not every wrong done to you states a legal claim. You may have a legal claim if someone personally harmed you in a real, concrete way.

You must have suffered the harm already, or must be about to suffer the harm imminently, meaning that you will actually suffer the harm in the immediate future without court intervention. The harm need not be physical or economic.

You must assert your own personal legal interests. Typically, a person may not sue to assert someone else's rights.

2. Will my claims be timely if I file a lawsuit now?

There are very strict deadlines for lawsuits called **statutes of limitation**. A statute of limitation tells you the amount of time you have to file a particular claim after the harm takes place. Usually a claim must be filed within a certain period of time after an injury occurs or the plaintiff discovers it. If you miss the deadline that applies to your case, the Court may dismiss your case—*even if you file only one day late*. In certain extraordinary circumstances, the Court may extend (or "toll") the statute of limitations for your claim.

To find out the deadline for your claim, you must research the law that sets the statute of limitations for the kinds of claims you want to bring.

3. Is federal court the appropriate place to file my lawsuit?

A court must have **jurisdiction**, or the authority, to decide a particular case. There are two court system systems in the United States: the state court system and the federal court system.

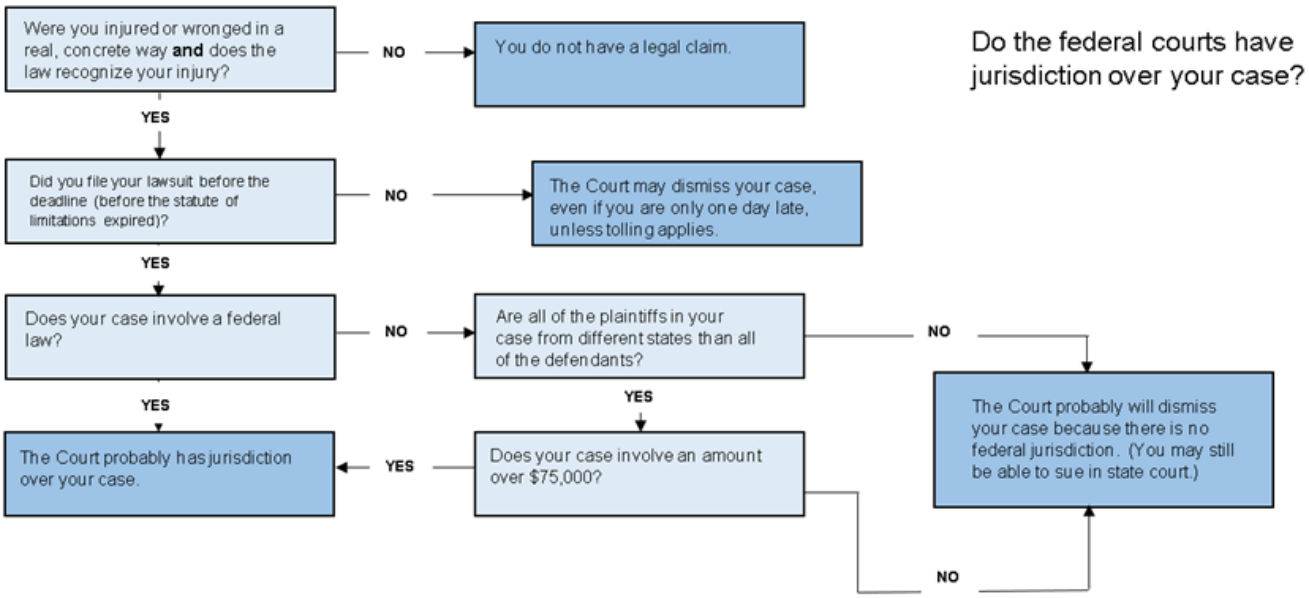
In Tennessee, the state courts are courts of general jurisdiction, which means that they can hear and decide almost any kind of legal controversy between two or more parties. Tennessee state courts hear cases relating to divorce, child custody, inheritance, and real estate matters in accordance with the laws of the state of Tennessee. They also handle state criminal cases, contract disputes, traffic violations, and personal injury cases.

Federal courts, on the other hand, only have limited jurisdiction to hear certain types of cases and controversies. Federal courts have jurisdiction when a case presents a federal question or when there is diversity of the parties.

When a case is brought under federal law—not state law—the federal court has **federal question jurisdiction**. Examples of claims that fall under the Court's federal question jurisdiction are civil rights claims under 42 U.S.C. § 1983, federal tax matters, and Title VII discrimination claims.

Diversity jurisdiction exists when the plaintiff and the defendant live in different states, or a state and a foreign country, and the **amount in controversy** is worth more than $75,000. For example, if you live in Tennessee and you file a lawsuit against a defendant who lives in Georgia, there would be diversity of parties. But, if you sue for only $5,000 in damages, your case would not meet the amount in controversy requirement.

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.

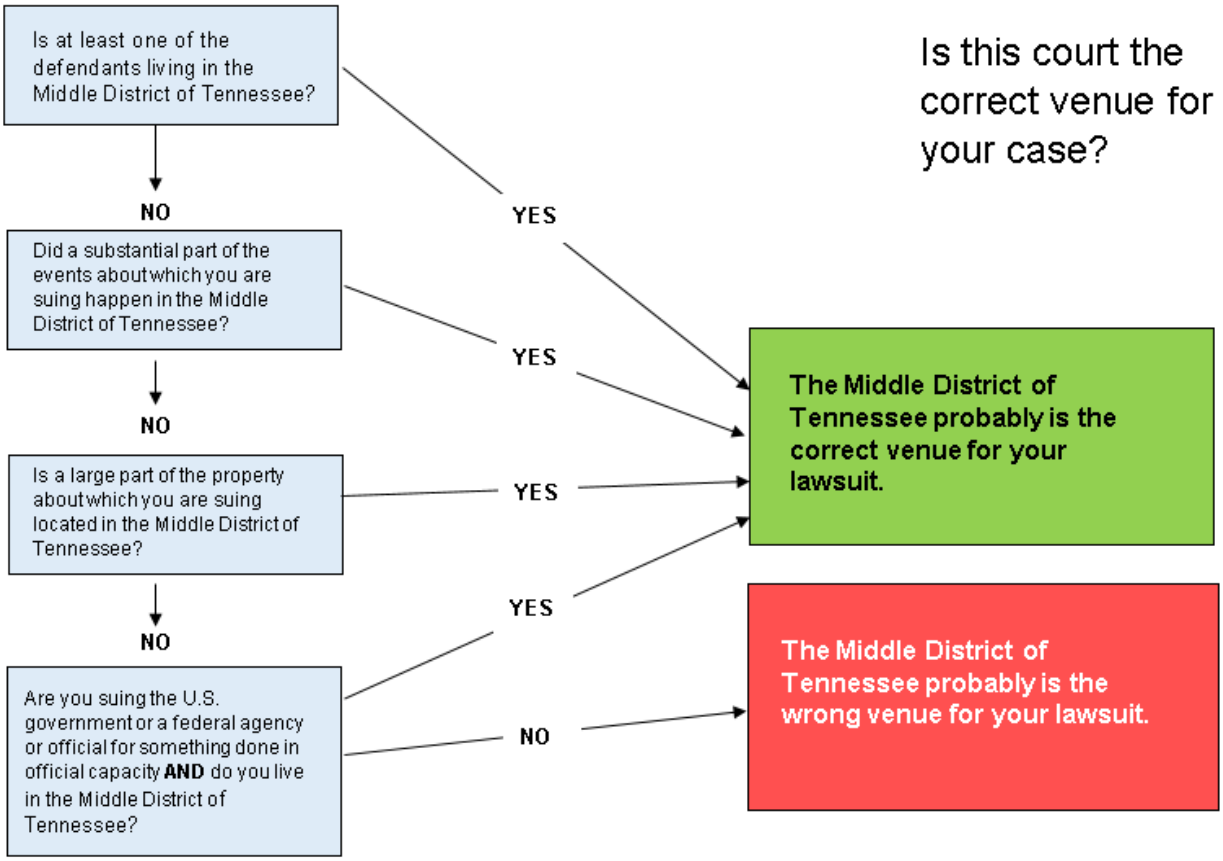


4. Is the Middle District of Tennessee the appropriate federal court in which to file my lawsuit?

If you decide that your claim may be brought in a federal court because there is either a federal question, or there is diversity of citizenship and the amount in controversy is more than $75,000, you must next determine in *which* federal court to file. In order to decide a case, a court must have **venue**—that is, some geographical relationship either to the litigants or to the subject matter of the dispute. 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 U.S.C. § 1391.

The right venue for your case is the district where:

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



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

There are three United States District Courts in Tennessee: Eastern, Middle, and Western. Generally, you may only file an action in the Middle District of Tennessee if the actions or inactions that you believe violated your rights occurred within the boundaries of this district.

Here is a list of the counties that are located within the Middle District of Tennessee to help you determine whether you should file your lawsuit in this district or another district:

Cannon	Giles	Marshall	Smith
Cheatham	Hickman	Maury	Stewart
Clay	Houston	Montgomery	Sumner
Cumberland	Humphreys	Overton	Trousdale
Davidson	Jackson	Pickett	Wayne
DeKalb	Lawrence	Putnam	White
Dickson	Lewis	Robertson	Williamson
Fentress	Macon	Rutherford	Wilson

5. Am I able to name the proper defendants?

When determining the proper defendants to your lawsuit, there are several factors to consider.

You must allege that each person or entity you are suing engaged in wrongful conduct that caused you harm. Therefore, you should only name a defendant if you are able to describe his or her actions or inactions that you believe harmed you and how you believe those actions or inactions harmed you.

You must identify individuals by their names whenever possible. Avoid suing groups of unidentified people such as “the human resources department” or “the medical staff.”

If you need to file your lawsuit before you find out the name of someone you want to name as a defendant, you can call that defendant “John Doe” or “Jane Doe” in your complaint. But, it is your responsibility to find out his or her name; an unnamed defendant cannot be served. If a defendant cannot be served, you will not be able to win your lawsuit against that person.

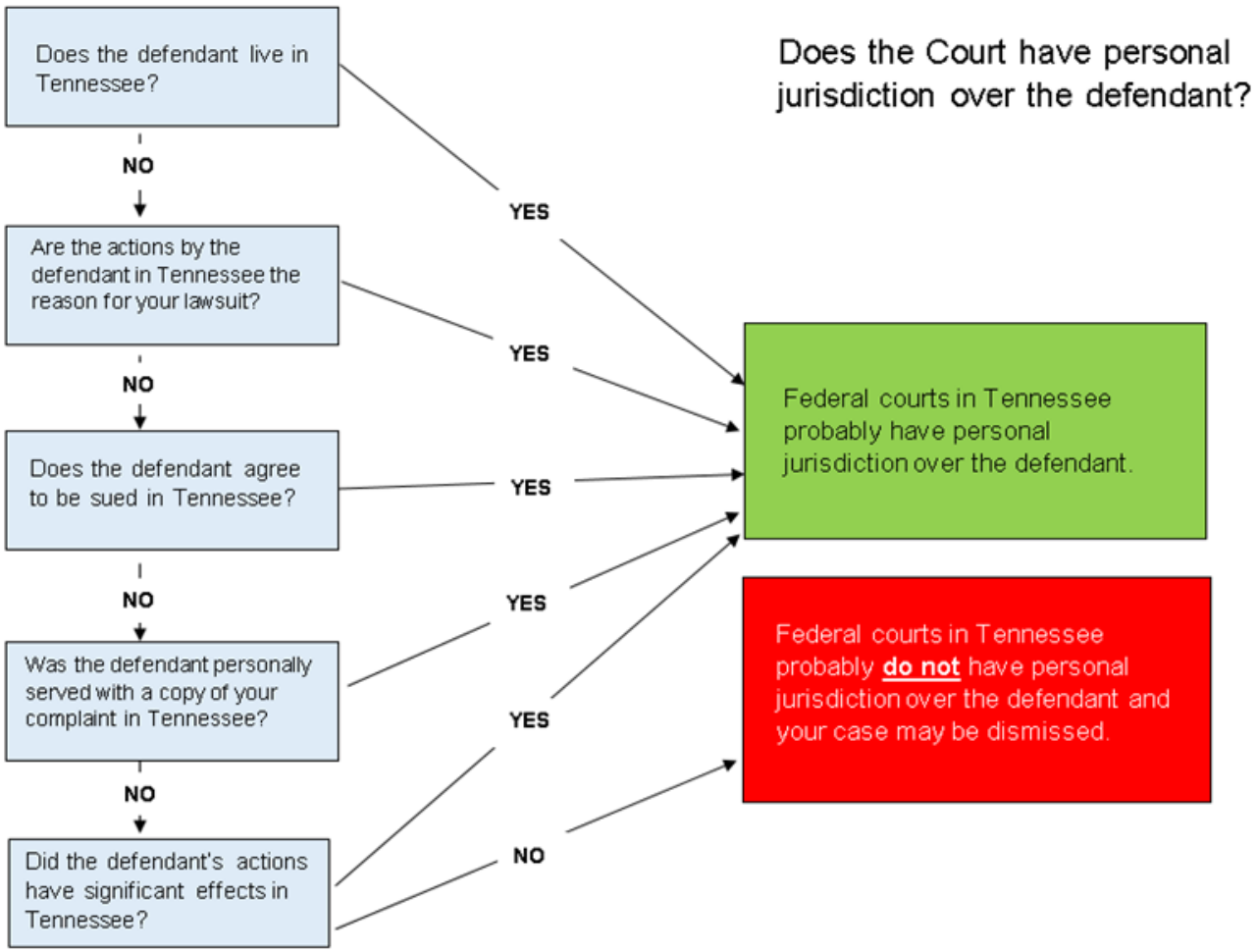
There also may be other legal **defenses** that a defendant can assert which will protect him or her from liability. For example, the federal government, state governments, judges, and many governmental officials often have immunity in civil cases. A judge is not liable for money damages for actions taken in the process of deciding a case. Similarly, prosecutors are immune from liability for actions they take in prosecuting or failing to prosecute individuals. If you name

persons who have immunity as defendants to your case, the Court may dismiss these defendants from your case.

6. Does the Court have personal jurisdiction over the defendants?

The Court can only hear cases involving defendants under the Court's power. A federal court in Tennessee cannot hear your case if it does not have power over the person or entity you are suing, meaning the Court lacks **personal jurisdiction** over the defendant. The Middle District of Tennessee can hear your case if the defendant:

- Lives in Tennessee;
- Did something in Tennessee that is the reason for your lawsuit;
- Agreed to be sued in Tennessee; or
- Has done things that have had significant effects in Tennessee.



7. Do I have facts and evidence to support my case?

The person who brings a claim in federal court has the "**burden of proof**." That means the burden is on the plaintiff to prove that the defendant caused the plaintiff harm. In order to win a case, a plaintiff must be able to present facts that support his or her claims. You cannot simply say that a defendant caused you harm or violated your rights and expect to win your case.

Such facts should include who each defendant is, specifically what he or she did or did not do that you believe was wrongful, when the incident took place, and where the incident happened. You also should be able to identify how each defendant's actions or inactions caused you harm. It is not enough to list a defendant's name in the **caption** of the complaint. If the main part (or "body") of the complaint does not say what a person listed in the caption did wrong, the Court can dismiss that person from your case.

In addition, you need to be able to identify any **witnesses** you believe support your claim. You also may need to present documents or other evidence to support your claims.

Remember, Rule 11 of the Federal Rules of Civil Procedure prevents persons from filing lawsuits that have no factual or legal support. You can be sanctioned by the Court if you violate Rule 11.

8. Do I need to exhaust administrative remedies?

Sometimes you are required to **exhaust** certain remedies before you can pursue a claim in federal court.

If you want to appeal the decision of a governmental agency, the law may require you to complete all of the administrative procedures established by the agency for appealing its ruling before you file a federal lawsuit. For example, if you want to appeal the decision of the Social Security Administration denying your social security benefits, you can only do so after the Commissioner of the Social Security Administration issues a final decision on your application. A form to appeal a decision of the Commissioner of Social Security is available at:

- https://www.ssa.gov/forms/ssa-561.html

Another situation in which you must complete administrative procedures before you can file a federal lawsuit is an employment discrimination case. If you believe you have been illegally discriminated against by your employer, you may wish to bring a lawsuit against that employer under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, or the Age Discrimination in Employment Act. However, before you can file such a lawsuit, you must first file a complaint either with the Equal Employment Opportunity Commission ("EEOC") or the Tennessee Human Rights Commission ("THRC"), and obtain from the EEOC or the THRC what is called a "right-to-sue letter." Only if you properly file a complaint with the EEOC or THRC and receive a right-to-sue letter from the agency may you then file a complaint in federal court based on the allegations you made in your complaint to the EEOC or THRC. If you are filing such a complaint, you should attach a copy of the right-to-sue letter to your complaint. An employment discrimination complaint form is available from the Clerk's Office and on this Court's website at:

- http://www.uscourts.gov/forms/civil-pro-se-forms

In conclusion, it is important that you consider these eight questions before you file a lawsuit in federal court. Know that, even if you answer "yes" to all eight of these questions and you believe you should win your lawsuit, there is no guarantee you will win. The judge and/or jury decide the outcome of all cases filed in federal court.

If your case needs to be filed in a different court, you should contact the Clerk's Office of that court for information regarding local rules and procedures for filing your case.

CHAPTER 2

FINDING A LAWYER

This Handbook is designed to help persons who are litigating in federal court without an attorney. However, this Handbook is no substitute for having your own lawyer. The Court encourages you to find an attorney, if possible. There may be alternatives to representing yourself if you are unable to afford an attorney.

Obtaining an Attorney on a Contingency Basis

Some attorneys may be willing to accept your case on what is called a **contingency** basis, which means that the attorney would receive a fee based upon a percentage of your recovery if you win you case. The attorney would get nothing if you do not win. Before accepting cases on a contingency basis, attorneys carefully screen cases and reject many of them. If you would like assistance finding an attorney who may consider taking your case on a contingency basis, there are lawyer referral services that may be willing to help you. For a list of Lawyer Referral Services located within the Middle District of Tennessee, visit:

https://www.nashvillebar.org/index.cfm?pg=NeedAnAttorneyContactUs

The Court does not endorse any of the attorneys to whom you may be referred.

In addition, there are attorneys and organizations, such as legal aid societies, that may be willing to represent you "**pro bono**," meaning free of charge. If you need help finding a lawyer, you may want to contact the Legal Aid Society at 1-800-238-1443 or at their website:

https://las.org/

Another option is the Tennessee Alliance for Legal Services helpline at (844) 435-7486 or at their website:

https://www.tals.org/

The Court does not endorse the services of any attorney or legal services organization.

Appointment of Counsel by the Court

You are allowed to ask the Court to appoint **counsel** for you. But, be aware that there is an important difference between criminal and civil cases. A defendant in a criminal prosecution is entitled to legal counsel under the United States Constitution; therefore, the Court must provide an attorney to a criminal defendant if he or she is unable to afford an attorney.

However, a party to a civil case is not entitled to an attorney, even if that person is unable to afford an attorney. The appointment of counsel for a civil litigant is a matter within the discretion of the district judge and only occurs in exceptional circumstances.

If you file a motion asking the Court to appoint counsel for you, the Court will consider factors such as whether your case has merit, whether you seem to be able to handle the case yourself without an attorney, and how complex your case is. If the Court finds that your case shows the exceptional circumstances where appointing a lawyer is appropriate, the Court will find pro bono counsel to represent you free of charge.

CHAPTER 3

RESEARCHING THE LAW

Once you have decided to represent yourself in this Court, you must be prepared to do your own legal research beyond the assistance provided in this Handbook.

There are two kinds of law that you will need to review to represent yourself: procedural rules and substantive law.

1. **Procedural rules** describe the different procedures, or steps, required to pursue a lawsuit. You must follow these four sources of rules:

   Federal Rules of Civil Procedure: These rules govern the filing of civil lawsuits in federal court. They apply in every federal court in the country. You can find these rules at a law library or online at:

   - http://www.uscourts.gov/rules-policies/current-rules-practice-procedure

   Federal Rules of Evidence: These rules define what kind of proof the Court will consider in deciding your case. You only can prove your case to the Court using **admissible evidence**. Review these rules at a law library or online at:

   - http://www.uscourts.gov/rules-policies/current-rules-practice-procedure

   Local Rules of the United States District Court for the Middle District of Tennessee: These rules apply only in this Court and are in addition to the Federal Rules of Civil Procedure and Evidence. These rules are available at the Clerk's Office, or online at:

   - https://www.tnmd.uscourts.gov/court-info/local-rules-and-orders/local-rules

   Judges' Standing Orders: These Orders are individual judges' special rules that apply in all cases assigned to that judge. The Clerk's Office can provide you with a copy of these standing orders upon request. You also can find a judge's standing orders on the Court's website under each judge's name at:

Chief Judge Waverly D. Crenshaw, Jr.:
https://www.tnmd.uscourts.gov/content/chief-district-judge-crenshaw
Judge Aleta. A. Trauger:
https://www.tnmd.uscourts.gov/judge_trauger
Judge William L. Campbell, Jr.:
https://www.tnmd.uscourts.gov/content/district-judge-campbell
Judge Eli Richardson:
http://www.tnmd.uscourts.gov/content/district-judge-richardson
Magistrate Judge Joe B. Brown:
https://www.tnmd.uscourts.gov/content/magistrate-judge-brown
Magistrate Judge Chip Frensley:
https://www.tnmd.uscourts.gov/content/magistrate-judge-frensley
Magistrate Judge Barbara D. Holmes:
https://www.tnmd.uscourts.gov/content/magistrate-judge-holmes
Magistrate Judge Alistair E. Newbern:
https://www.tnmd.uscourts.gov/content/magistrate-judge-newbern

Your case may be assigned to a visiting judge. Information for all visiting judges in the Middle District of Tennessee can be found on the Court's website under "Judges" or you can contact the Clerk's Office and ask for the information.

Procedural rules are amended frequently. Be sure you use the most current version of the rules.

2. Substantive law, or authority, is the law that controls the resolution of your particular type of claim. Each claim you may present has a particular body of law that you need to know. For example, different laws apply to a contract claim than to an employment discrimination claim. To find the substantive law that applies to your case, you will need to visit a law library or conduct online legal research.

Primary authority is authority on which the Court relies to reach its decision. You should use it before any other authority. There are two sources of primary authority: statutory authority and case authority.

- Statutory authority consists of constitutions, codes, statutes, and ordinances of either the United States, individual states, counties, or municipalities.
- Case authority consists of court decisions. You should try to cite court decisions from the United States Supreme Court or the same jurisdiction where your case is filed (here, that is the United States Court of Appeals for the Sixth Circuit and district court cases from the Middle District of Tennessee). When a judge decides a particular case, that decision becomes **precedent**, which means that it becomes an example or authority to be used at a later time for similar cases.

Secondary authority is found in legal encyclopedias, legal texts, treatises, and law review articles. You can use secondary authority to get a broad overview of the area of law you need to know and as a tool for finding primary authority. This type of authority generally does not control the Court's decision.

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.

Libraries

Each Tennessee county has at least one public library that may help you as you research your case. In addition, you may want to visit a **law library** near you that is open to the public. Law libraries are staffed by professionals who are experienced in helping attorneys and non-attorneys conduct legal research. A law librarian can help show you where to find the specific law that you need.

Some universities may permit you to conduct research in their law libraries. For example, visitors are allowed at the Vanderbilt University law library, but only on certain days and times.

Vanderbilt University- Alyne Queener Massey Law Library
131 21st Ave S, Nashville, TN 37203
(615) 322-2568
Visitor policy: http://www.library.vanderbilt.edu/law/visitors/

Any federal pro se litigant is also welcome to use the U.S. Courts library during normal business hours:

Harry Phillips Memorial Library for the U.S. Courts
A830 Estes Kefauver Federal Building and U.S. Courthouse
110 Ninth Avenue South
Nashville, Tennessee 37203
(615) 736-7492

Internet Legal Resources

There are many free resources available on the Internet that contain legal materials relevant to your action. There also are several fee-based Internet databases that lawyers and other legal professionals use to conduct their legal research. You are not required to conduct research using fee-based databases.

Below is a table of some Internet resources along with a brief description of what each site offers as of the publication date of this Handbook.

The Court does not endorse any legal research website or database.

Name	Website	Description	Cost
American Law Sources Online	www.lawsource.com/also	Database of primary authority searchable by citation and links to secondary authority	Free
Bloomberg Law	www.bloomberglaw.com	Large database of primary and secondary	Paid subscription (free trial

		authority	available)
Fastcase	www.fastcase.com	Large database of primary authority	Paid subscription (free trial available)
Findlaw	www.findlaw.com	Links to online legal resources; includes state and federal primary authority	Free (with some forms available for purchase)
Google Scholar	Scholar.google.com	Searchable versions of published state and federal court opinions and some secondary authority	Free (some secondary sources are hosted on fee-based websites)
Hein Online	www.heinonline.org	Extensive database of secondary authority	Paid subscription
Legal Information Institute	www.law.cornell.edu/lii/get_the_law (Note the use of underscore characters in place of spaces in "get_the_law")	Searchable text versions of the U.S. Constitution, the Federal Rules, U.S. Code, select Supreme Court decisions, and links to many other sources	Free (note the option of fee-based "Ask A Legal Question" service)

		of primary resources	
Lexis Nexis	www.lexis.com	Extensive searchable databases of primary and secondary authority	Paid subscription or pay-per-use
Loislaw	www.fastcase.com/loislaw/	Large database of primary and secondary authority	Paid subscription (free trial available)
Public Library of Law	www.plol.org	Searchable database of select Supreme Court cases, Circuit Courts of Appeals cases, state cases (from 1997 to present), along with some state and federal statutory authority; also tutorials on "Finding a Case" and "Searching Statutes"	Free (with links to fee-based sponsor, Fastcase)
The Supreme Court	www.supremecourt.gov	Searchable versions of United States Supreme Court opinions	Free

		published since 1991, as well as all recent opinions that have not been published yet	
THOMAS	www.congress.gov//	Searchable database of modern federal legislative history and bill text	Free
Versus Law	www.versuslaw.com	Large database of federal and state case law and other primary authority	Paid subscription (depending on your needs, possibly more affordable than Lexis or Westlaw)
Westlaw	www.westlaw.com	Extensive searchable databases of primary and secondary authority	Paid subscription or pay-per-use
Tennessee Bar Association	Legal Links | Tennessee Bar Association	Links to many Tennessee-specific resources, including the Tennessee Code	Free

Citing Authority

Every reference to a law, rule, or case is called a **citation**. There are standards for **citing** authority in your legal documents. These standards exist so that the Court can find the authority on which the parties rely. The most common source for these standards is *The Bluebook: A Uniform System of Citation* (Twentieth Edition), published and distributed by The Harvard Law Review Association. It is commonly referred to as *The Bluebook*. You can find all of the information required for proper citation format in *The Bluebook*.

The Court will not dismiss your case if you are unable to obtain a copy of *The Bluebook* or because you do not cite authority according to *The Bluebook* format. You should do your best to tell the Court where the look for the authority on which you rely. Local Rule 7.01(d) contains instructions for citing legal sources in your legal **brief**.

Here are some examples of frequently cited sources using correct *Bluebook* format:

United States Supreme Court decision:

Strickland v. Washington, 466 U.S. 668 (1984).

Sixth Circuit decision:

Tucker v. Palmer, 541 F.3d 652 (6th Cir. 2008).

Tennessee Supreme Court decision:

State v. White, 114 S.W.3d 469 (Tenn. 2003).

Tennessee Court of Criminal Appeals decision:

State v. Watkins, No. M2013-0212-CCA-R3-CD, 2014 WL 2547710 (Tenn. Crim. App. June 4, 2014), *perm. app. denied* (Tenn. Aug. 18, 2016).

United States Constitution:

U.S. Const. amend. VIII.

United States Code:

42 U.S.C. § 1983.

Tennessee Statute:

Tenn. Code Ann. § 39–13–202.

CHAPTER 4

GETTING STARTED—WRITING THE COMPLAINT

The first official step in starting a lawsuit is to prepare and file a complaint with the Clerk's Office.

A lawsuit may be referred to as "the case" or "the action." These words are just different ways of referring to a lawsuit.

What Is a Complaint?

A complaint is the document that a plaintiff files to begin a lawsuit. The complaint tells the Court and the defendant the reason for filing the lawsuit and what relief the plaintiff wants.

The person filing the lawsuit is known as the plaintiff. The person, business, or entity (such as a city, state, or municipality) against whom the lawsuit is being filed is the defendant. The plaintiff and defendants also are called parties or litigants. You should identify parties as either the plaintiff or defendant on all pleadings and documents filed with the Court. You may find it helpful to use these terms along with the party's name (for example, "Plaintiff Smith" or "Defendant Jones") in documents you prepare, especially if there are many parties to the lawsuit.

All papers filed with the Court must meet the requirements that are set forth in Federal Rules of Civil Procedure 8 and 10 and in Local Rule 7.03. You do not have to type your complaint, but the Court must be able to read it if you handwrite it. It is easier for the Court to read and copy papers that are written in ink, but the Court will not dismiss your complaint because you write it using a pencil. All written pleadings to this Court must be on 8 ½ x 11 paper with reasonable margins and double spacing. If you write too close to the bottom the page, the Court may not be able to read what you wrote due to the electronic file stamp. Please use only one side of the paper. You should number all pages at the bottom.

Review the full text of Local Rule 7.03 and Federal Rules of Civil Procedure 8 and 10 before you start drafting your complaint. The Court will take into consideration that you are a pro se litigant and untrained in drafting legal documents, but you need to make your best effort to follow the rules.

A form may help you draft your complaint. You can obtain many different kinds of form complaints from the Clerk's Office.

In addition, here are some resources for common types of complaints:

Employment discrimination:

- Complaint - Title VII | Middle District of Tennessee | United States District Court

Social Security benefits:

- Complaint for Review of Social Security Decision

General complaint and civil rights:

- https://www.tnmd.uscourts.gov/forms/complaint-general
- Pro Se Forms | Middle District of Tennessee | United States District Court
- How To File A Complaint | CRT | Department of Justice

Other complaint forms are available in law libraries. Forms do not give legal advice. Using a form does not guarantee that what you file will be legally or factually correct or sufficient. Forms are no substitute for the advice of a lawyer. If it is possible for you to find an attorney who will represent you, the Court urges you to do so.

What Information Must Be In A Complaint?

The complaint must contain all of the following information:

- A caption;
- A jury demand;
- A jurisdictional statement;
- A statement of venue;
- The names and addresses of the parties;
- Your claims;
- Facts supporting the claims;
- A request for relief; and

- The signature of each plaintiff.

These requirements are described in more detail below.

1. **Caption.** Every document that you file with the Court, including the complaint, should have a caption at the top of the first page. Rule 10(a) of the Federal Rules of Civil Procedure explains what needs to be in the caption. The format for a caption is as follows:

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
_____DIVISION
(NASHVILLE, COLUMBIA, OR COOKEVILLE)

_____
(YOUR FULL NAME)
PLAINTIFF,
v.

Civil Action No. _____
District Judge's Name
Magistrate Judge's Name

_____
(LIST EACH AND EVERY PERSON
YOU WISH TO SUE, BY NAME)
DEFENDANT(S).

When you first submit a complaint, you will not know the civil action number or the names of the assigned judges, so you can leave those spaces blank in the caption. A **case administrator** will assign your case a number when your complaint is accepted for filing. Once your action is assigned a civil action number, you should include that number on every document pertaining to your lawsuit that you file with the Court.

2. **Jury Demand.** In certain kinds of cases, the parties are entitled to a jury trial. A jury demand is a statement of whether or not you want a trial by jury. Generally, you may demand a **jury trial** in writing up until fourteen days after service of the defendant's answer to your complaint. See Federal Rule of Civil Procedure 38. If you do not demand a jury trial in a timely manner, you will waive your right to a jury trial. The best way to ensure your right to a jury trial is to make the demand when you file your complaint by writing the words "jury trial demanded" on the first page of your complaint. You may decide that you do not want a jury trial; in that case, the judge will decide the facts of

your case at a **bench trial**, if a trial is held. Remember, you are not entitled under the law to a jury trial in every type of lawsuit.

3. **Body.** The main portion of your complaint is called the "body." Federal Rule of Civil Procedure 10 requires that each paragraph in the body of the complaint be numbered consecutively.

Your first paragraph should state the basis for the Court's jurisdiction over your claim. For example, you might state that the Court has federal question jurisdiction over your lawsuit because your claim arises under Title VII (a federal employment discrimination law).

Your second paragraph should state why the Middle District of Tennessee is the proper venue for your action. For example, you might state that venue is appropriate in this district because it is where the defendants live or where the defendants violated the law.

Next, you should include one paragraph for each party to the action; in each of those paragraphs, you should state the full name, title, and address of each party.

Once you have completed the above paragraphs, you should state your claim(s) against the defendant(s). Your claims are your legal causes of action. Federal Rule of Civil Procedure 8 requires that complaint contain a "short and plain statement of the claim showing that the pleader is entitled to relief." You should state each claim in a separate section of the body of your complaint.

Be sure to include facts to support your claims. For each claim, you should specify (1) the alleged wrongful action or inaction; (2) the date on which the action or inaction occurred; (3) the names of each individual who participated in the action or inaction; (4) the location of where the alleged incident occurred; and (5) the connection between the action or inaction and your claim.

In other words, the body of the complaint is the time to present the facts of your case: what happened, where it happened, how it happened, and who was involved.

4. **Request for Relief.** This section should explain what you want the Court to do if you win your lawsuit. For example, you can ask the Court to order the defendant to pay you money, to give you your job back, or to enter an order directing that a defendant stop or start doing something.

5. **Plaintiff's Signature.** Federal Rule of Civil Procedure 11 requires that every plaintiff must sign and date his or her complaint. If there is more than one plaintiff, each

plaintiff must sign the complaint. When you sign your complaint, you are certifying to the Court that you are filing your complaint in **good faith**. This certification means that you believe:

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

If your complaint does not meet these standards, the Court can sanction you and require you to pay fines. See Rule 11 of the Federal Rules of Civil Procedure.

6. Exhibits. You may choose to submit one or more **exhibits** along with your complaint. However, you must set forth all of your claims in the body of your complaint. You cannot just include the exhibits as a means of setting forth your claims. You do not need to submit as exhibits all papers that might be important to your case. If you choose to submit exhibits, you should reference those exhibits by page number in the body of your complaint. Also, you should submit only copies of documents rather than originals because the Court will not return your originals to you. Please note that in appropriate cases a copy of your right-to-sue letter should be attached to the complaint when filing with the Court.

Can I Change the Complaint After I File It?

Changing a complaint after it already has been filed with the Court is known as "**amending**" the complaint.

Under Rule 15(a)(1)(A) of the Federal Rules of Civil Procedure, you can amend your complaint one time within 21 days after serving the complaint on the defendant.

Under Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure, if you have not already amended your complaint, you may do so within 21 days after the defendant files an answer or a Rule 12(b), (e) or (f) motion to dismiss, whichever is earlier. You do not need permission from the presiding judge or from the defendant to amend the complaint once under either Rule 15(a)(1)(A) or 15(a)(1)(B).

If you want to amend your complaint more than 21 days after the defendant answers or files a motion to dismiss, you may do so if the opposing party consents or if the Court gives you permission. You can get permission to file an amended complaint by filing a motion explaining why you need to do so. Write your amended complaint and

attach it to the motion to amend. If the Court grants the motion, you will be allowed to file the amended complaint.

An amended complaint completely replaces the complaint that came before it, so any claims or defendants not included in an amended complaint may not be considered part of the lawsuit—even if they were in the first complaint.

How Much Does It Cost To File A Complaint?

A $400 **filing fee** ($350 filing fee plus a $50 administrative fee) is required when filing a civil complaint in federal court. If you are paying in cash, the exact amount is required. You are not allowed to pay by personal check. However, money orders and cashier's checks are accepted. All money orders and cashier's checks should be made payable to: "Clerk, United States District Court." Credit cards also are accepted. If you are paying with a credit card, you must present an acceptable form of identification.

What If I Can't Afford The Filing Fee?

If you cannot afford to pay the filing fee and administrative fee, the Court may waive these fees for you. To request a waiver of fees, you must complete an **application to proceed in forma pauperis**, which sometimes is called "an **IFP application**" or "**an application to proceed without prepaying fees or costs**," and file the application with the Court. The application form is available at the Clerk's Office and on the Court's website at:

Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) | United States Courts

How Do I Complete An IFP Application?

You will need to provide information about your sources of income, including governmental aid; your household expenses; your assets, including bank accounts and personal property; your debts; your employment history; persons who rely on you for support; and other personal information. If you are married, you must provide the same information about your spouse.

Fill out the IFP application accurately and completely. If you leave any part of the form blank, or don't provide all of the required information, the Court may not grant your IFP application. If you provide information that is false or misleading, the Court may impose sanctions, or a monetary penalty, on you.

Remember to sign and date the IFP application before filing it with the Court.

The Court will review your IFP application and determine whether you are unable to pay the filing fee and the costs of service of process. Sometimes the Court will order you to provide more information about your finances.

If the Court approves your IFP application, the Court will waive the $400 fee, and your case will proceed. That means you will not have to pay any part of the $400 filing fee.

If the Court denies your IFP application, you must pay the $400 fee for your case to proceed.

The Court will review your IFP application and mail you a written decision.

In cases where the plaintiff has been given permission to proceed in forma pauperis, 28 U.S.C. § 1915 requires the Court to dismiss the plaintiff's case if, at any time, the Court determines that (1) the plaintiff's allegations of poverty are untrue; (2) the action is frivolous or malicious; (3) the plaintiff has failed to state a claim upon which relief can be granted; or (4) the plaintiff is seeking monetary relief against a defendant who is immune from such relief. Under this law, the Court may dismiss some of your claims and defendants. The Court also may dismiss your entire case.

Important: Pro se litigants proceeding in forma pauperis are not exempt from other fees and costs in their action. For example, even if you are proceeding in forma pauperis in this Court, you are still responsible for copying expenses and deposition or transcript costs.

CHAPTER 5

FILING YOUR COMPLAINT AND OTHER PAPERS WITH THE COURT

Throughout this Handbook, you will find references to the act of "filing" papers. Filing your complaint and other papers means getting those papers to the Clerk's Office. After receiving your papers, the Clerk's Office will record your papers on the docket and send them to the judge assigned to your case. The Clerk's Office keeps track of everything that is filed in a case.

How Do I File Papers With The Court?

You can file papers in four different ways:

1. Filing By Mail

You may mail a signed original document to the Court for filing. To obtain a file-stamped copy by return mail, you must include in your mailing an extra copy of your document with a self-addressed, stamped envelope.

2. In-Person Filing

You may bring a signed original document to file in person. The Clerk's Office of the United States District Court for the Middle District of Tennessee is located in the Estes Kefauver Federal Building and U.S. Courthouse. It is open from 8:00 a.m. to 5:00 p.m., Monday through Friday, except for Federal and other Court holidays. For a list of holidays observed by the Court, visit: https://www.tnmd.uscourts.gov/hours-and-holidays.

The Estes Kefauver Federal Building and U.S. Courthouse is located at:

801 Broadway
Nashville, TN 37203

The Clerk's Office is located in Room 800, which is on the 8th floor.

There is no free parking for Court visitors. A limited number of metered parking spots are available on 9th Avenue between the Estes Kefauver Federal Building and U.S. Courthouse and the Frist Art Museum. Paid parking is available in nearby surface lots.

All visitors to the Estes Kefauver Federal Building and U.S. Courthouse, including children, must pass through security checkpoints. As part of this

process, persons may be asked to remove their belts or jewelry. Personal belongings will be scanned through a metal detector. No weapons are permitted in the building. Pocket knives also are not allowed.

3. Filing In Person After Hours Using the Drop Box

You may file signed original documents in person even if you cannot get to the Clerk's Office between 8:00 a.m. and 5:00 p.m. The Clerk's Office maintains an outside depository, or **drop box**, that can be used to file most documents before and after regular business hours. Documents in the drop box will be retrieved at 8:00 a.m. each working day and stamped "filed" with the date of the last preceding business day. For example, documents retrieved on Monday morning are considered filed on the preceding Friday.

4. E-Filing

E-filing, or electronic filing**,** is the process of using the Internet to file documents from your computer.

E-filing offers many advantages, including convenient access to Court records, time savings, elimination of postage expenses, and less administrative work.

Pro se litigants must get permission from the Court to join the e-filing system. If you receive permission, you must complete training on electronic filing provided by Court personnel. Training is offered at the courthouse on a regular basis. Please see the Court's website at www.tnmd.uscourts.gov for a current training schedule or call (615) 695-2888.

If the Court permits you to e-file and you satisfactorily complete your training, you will be able to file documents in your case online at the Court's **Electronic Case Filing (ECF)** website and view case dockets and documents through the **Public Access to Court Electronic Records (PACER**) website.

To establish a PACER account, contact PACER at (800) 676-6856 or visit Public Access to Court Electronic Records. There is a small fee to view documents in PACER.

More details about e-filing can be found in Local Rule 5.02.

After the initial complaint is filed, you do not have to pay any additional fees to file most documents with the Court. Other fees of the Court are listed on the Court's website.

Serving Every Filing

For every document that you file with the Court, you must also **serve** a copy on every other party in the action. Your filing must include a **certificate of service** as the last page of everything you file. The certificate of service must state that you served every other party, how you served each party, and on what date you served that party. If you fail to follow these instructions, your filing may be rejected and your case may be dismissed. See Local Rule 5.01 and Federal Rule of Procedure 5 for more information. There are special rules for serving a complaint, discussed below.

What Do I File With My Complaint To Start My Case?

Once you have prepared your complaint, you must file it with the Court in order to begin your lawsuit. You must submit the following with your signed complaint:

- **Civil Cover Sheet.** The civil cover sheet is a form provided by the Clerk's Office that is used to gather information about the nature of your lawsuit. The civil cover sheet form is available at the Clerk's Office and on the Court's website at:

  Pro Se Forms | Middle District of Tennessee | United States District Court

- **Payment.** Pay $400 ($350 filing fee and $50 administrative fee) or complete an Application to Proceed in District Court Without Prepaying Fees or Costs ("IFP Application");

- **Summons.** If you paid the $400 fee, you must complete and file a summons form (AO 440) for each defendant. The summons form is available at the Clerk's Office and on the Court's website at:

  https://www.uscourts.gov/sites/default/files/ao440.pdf

  Your lawsuit will not proceed until you serve the summons and the complaint on the defendants. However, if you are proceeding IFP, the Court will direct the U.S. Marshal to serve the defendants for you after you complete AO Forms 285 and 440. For more information about how service of process works and what you are required to do, see Chapter 7.

- **Copy of the complaint**. If you want the Clerk's Office to stamp as filed a copy of the complaint for you, bring a copy of your complaint or pay to have it copies at the Clerk's Office.

Remember, pro se litigants proceeding in forma pauperis are not exempt from other fees and costs in their action. For example, even if you are proceeding in forma pauperis in this Court, you are still responsible for copying expenses, postal charges, and transcript fees.

CHAPTER 6

ONCE MY CASE IS ASSIGNED TO A JUDGE, WHAT NEXT?

After you have filed your complaint and paid your filing fee (or the Court has granted your IFP application), the Clerk assigns a number to your case and randomly assigns your case to two judges—a district judge and a magistrate judge. You cannot choose your judges.

District Judges Versus Magistrate Judges

District judges are appointed by the President of the United States and confirmed by the United States Senate pursuant to Article III of the Constitution. 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. It is common for a magistrate judge to handle pre-trial matters (to supervise **discovery**, set schedules, and attempt to settle the case) and other parts of the case assigned to the magistrate judge by the district judge.

Consent To Proceed Before A Magistrate Judge

If all of the parties agree, you may consent to have your whole case heard by the magistrate judge. After a district judge orders the transfer of a case, a magistrate judge may conduct any and all proceedings in the case, including the trial. If the case is appealed, it will go directly to the Sixth Circuit Court of Appeals.

There are a number of benefits to consenting to proceed before a magistrate judge. District judges are required to give priority to federal criminal trials, which often are lengthy and complicated. By consenting to proceed before a magistrate judge, you may find that your lawsuit moves along more quickly.

You are not required to consent to a magistrate judge. Regardless of whether you consent to have your case decided by a magistrate judge or request reassignment of your case to a district judge, the rules and procedures used to decide your case will be the same. See 28 U.S.C. § 636(c)(4) for the standard to move to withdraw to consent.

Orders Entered By A Magistrate Judge

In all cases where the parties have not consented to proceed before the magistrate judge for all purposes, the magistrate judge may enter an order on any **non-**

dispositive matter, which is a matter that does not dispose of a claim, party, or defense, assigned by the district judge. If you disagree with the magistrate judge's order, you may ask the district judge to review it within 14 days. The district judge will set aside or modify the magistrate judge's order only if it is clearly erroneous or contrary to law.

For **dispositive** matters—those that dispose of a claim, party, or defense assigned by the district judge—the magistrate judge will not enter an order on the matter, but will enter a **Report and Recommendation** to the district judge.

Objections To A Magistrate Judge's Report And Recommendation

If you disagree with the magistrate judge's Report and Recommendation, you must object in writing within 14 days of the filing of the Report and Recommendation. All objections should be entitled "Objections to Report and Recommendation." You must connect your objections to specific recommendations and explain why you object to any particular recommendation. Your opposing party then will have 14 days to respond to your objections. If your opposing party files objections, you will have 14 days after the objections are filed to respond.

The district judge will make a final decision after reading the magistrate judge's Report and Recommendations and the objections and responses. The district judge may adopt the magistrate judge's findings in full or in part, or may decline to adopt the Report and Recommendation and enter an entirely new decision. If the district judge's decision results in a final disposition of your case, you may appeal to the United States Court of Appeals for the Sixth Circuit.

You can find further information regarding the Report and Recommendation process at 28 U.S.C. § 636(b)(1)(C), in Federal Rule of Civil Procedure 72, and in Local Rule 72.02.

CHAPTER 7

WHAT ARE THE RULES FOR SERVING A COMPLAINT?

You are required to let the defendants know that you have filed a case against them in federal court. The way that you notify the defendants is through "**service of process**" or "**service**." It is critical that you serve your papers on the other parties in exactly the way the law requires. If you do not serve your complaint properly on the defendant, the Court may dismiss your case against that party.

It is important to know that there are different rules for serving a complaint for plaintiffs who paid the filing fee and for plaintiffs who are proceeding in forma pauperis (who did not pay the filing fee). These rules are complicated, so pay close attention to each step to be sure you serve the defendants properly or else your case may be dismissed.

If The Court Granted Your Application To Proceed In Forma Pauperis, the Court will direct the United States Marshal Service to serve your complaint on the defendants against whom the action proceeds at no cost to you.

However, a U.S. Marshal will serve only those defendants for whom you have submitted two properly completed forms: "Process Receipt and Return" (AO 285) and "Summons in a Civil Action" (AO 440). These forms are available from the Clerk's Office and are often referred to as "a service packet."

It is your responsibility to make sure that all of the defendants have been served. The most common reason service is not done properly is that the plaintiff did not provide the correct address for a defendant on the required AO forms. You may contact the Clerk's Office to check on the status of service.

You can skip pages 38-44 of this Handbook if you are proceeding IFP and the U.S. Marshal Service is serving your complaint for you.

If You Paid The Civil Filing Fee, you have two options to serve your complaint.

Option 1: You can serve your complaint and a summons on each defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

You must get a form titled "Summons in a Civil Action" (AO 440) from the Clerk's Office. The summons is a document that demands the defendant to respond to the complaint. You also can get a summons form on the Court's website:

https://www.tnmd.uscourts.gov/forms/summons-civil-action-ao-440

Complete a summons form for each defendant. You need an original summons form and two copies for each defendant in your case.

Give your summons (or, if more than one defendant, summonses) to the Clerk to be issued. Include a self-addressed, stamped envelope so the Court can return the issued summons(es) to you.

If you completed your summons(es) properly, the Clerk will sign, seal, and **issue the summons(es)** to you. For each defendant, the Clerk will keep a copy and return two copies to you.

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

Some litigants hire a professional process server to serve the summons and complaint on each defendant, but you are not required to hire a professional. Any person who is at least 18 years old and not a party to the lawsuit may serve a summons and complaint. Read Federal Rule of Civil Procedure 4(c)(2) for more information.

You need to serve your complaint and a summons on each defendant. Keep your other copy of the summons until service is complete. Once service is complete, fill out the second page of the summons, the Proof of Service, and file it with the Court. This way, you can prove you served each defendant according to the law.

Option 2: You can ask each defendant to waive service in person and accept service by mail.

Instead of arranging for service in person of the summons and the complaint, you may choose to seek a waiver of service from the defendant(s).

Waiving service means agreeing to give up the right to service in person and instead accepting service by mail. If a defendant waives service, you will not have to go to the trouble and/or expense of serving that defendant.

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

- "Notice of a Lawsuit and Request to Waive Service of A Summons" form (AO 398); and
- "Waiver of the Service of Summons" form (AO 399).

You can get these forms from the Clerk's Office or download them from the Court's website at:
https://www.uscourts.gov/forms/notice-lawsuit-summons-subpoena/notice-lawsuit-and-request-waive-service-summons

https://www.uscourts.gov/forms/notice-lawsuit-summons-subpoena/waiver-service-summons

To request a waiver of service, complete and send the two forms listed above to the defendant by first class mail along with a copy of the complaint, an extra copy of the "Notice of a Lawsuit and Request to Waive Service" form, and a self-addressed, stamped envelope.

If the defendant agrees to waive service, you need the defendant to sign and send back to you the "Waiver of the Service of Summons" form, which you then file with the Court. See Rule 4(c) and (d) of the Federal Rules of Civil Procedure.

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 you send the request (or 60 days if the defendant is outside the United States).

If the defendant sends you back the signed waiver of service, service on that defendant is complete. 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 be sure to save a copy for your files.

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.

If the defendant does not agree to waive service, you must complete service as required by Rule 4 within the proper time limits.

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

If a defendant located within the United States does not return a signed waiver of service by the due date you set, you must arrange to serve that defendant in one of the other ways approved by Rule 4 of the Federal Rules of Civil Procedure.

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

At the time you file your complaint and pay the filing fee, you can get as many summonses as you need from the Clerk's Office. You also can get the summonses later. A summons form also is available on the Court's website at:

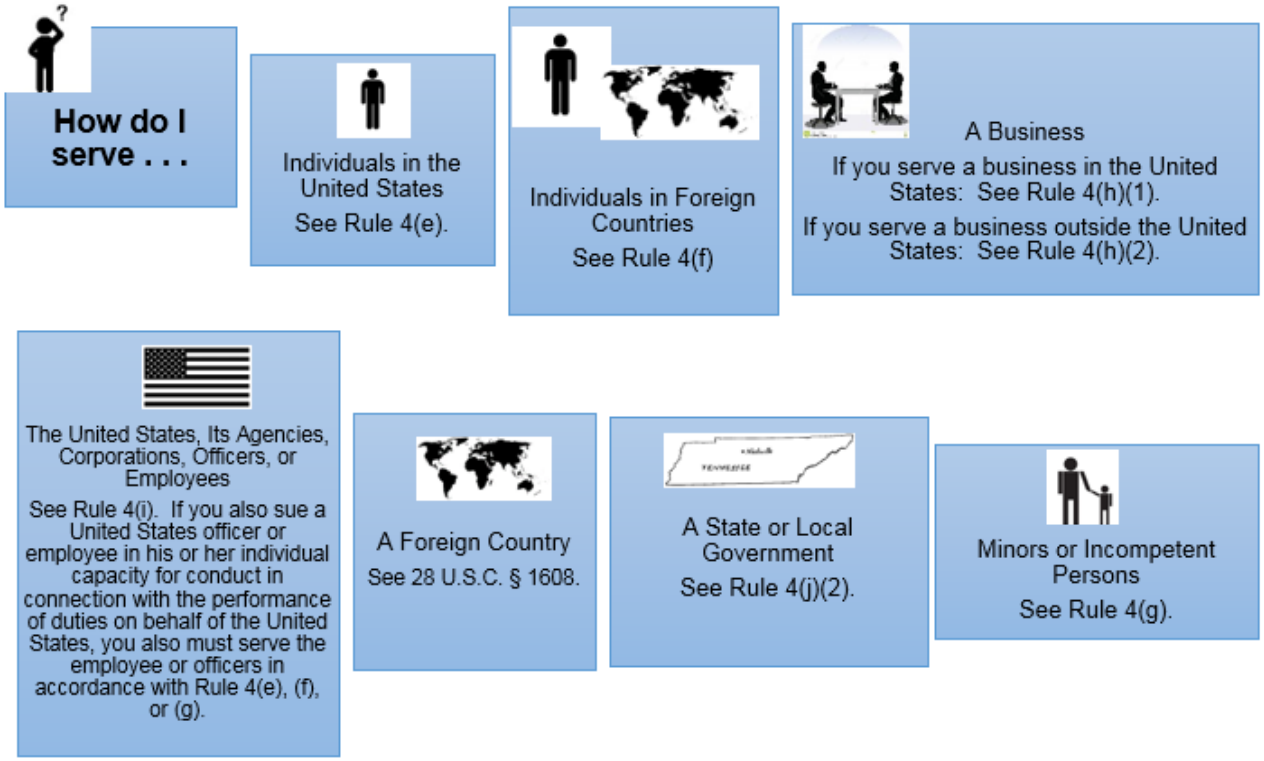
Summons in a Civil Action | United States Courts.

Remember, if you are proceeding in forma pauperis, you can skip this section and go straight to page 45.

How Do I Serve the Defendants?

Rule 4(c)(2) of the Federal Rules of Civil Procedure 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. However, the person should not be a potential party or a potential **witness** in the case.

There are different rules for serving the summons and complaint on individuals, businesses, and government entities or officials. You must determine the proper way to serve each defendant with a copy of the complaint and summons. The proper methods of service are found in Federal Rule of Civil Procedure 4.



Individuals in the United States?

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

- Hand delivery to the defendant;
- Hand delivery to a person of suitable age and discretion who lives at the defendant's home;
- Hand delivery to an agent authorized by the defendant or by law to receive service of process for the defendant; or
- Sending to a registered user by filing it with the Court's electronic-filing system or sending it by other electronic means to which the person consented in writing.

Remember, if you are proceeding in forma pauperis, you can skip this section and go straight to page 45.

Individuals In Foreign Countries?

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

A Business?

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

A business in the United States:

- Hand delivery to an officer of the business, a managing or general agent for the business, or any other agent authorized by the defendant to accept service of process;
- Hand delivery to any other agent authorized by law to receive service of process for the defendant and, if the law authorizing the agent to receive service of process requires it, you must also mail a copy of the summons and complaint to the defendant; or
- Any other method approved by Tennessee law or the law of the state in which the business is served. You can read Tennessee's laws on serving corporations, partnerships, and unincorporated associations in Tennessee Rule of Civil Procedure 4.04(3). Rule 4.04(4) provides for service on businesses outside of Tennessee.

Remember, if you are proceeding in forma pauperis, you can skip this section and go straight to page 45.

A business outside the United States:

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

The United States, Its Agencies, Corporations, Officers, Or Employees?

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

The United States:

- Hand delivery to the United States Attorney for the Middle District of Tennessee; or
- Hand delivery to an assistant United States Attorney (or to a specially-designated clerical employee of the United States Attorney); or
- Service by registered or certified mail addressed to the civil process clerk at the office of United States Attorney General's office and both of the following:
  - Mail a copy of all served documents by registered or certified mail to the Attorney General of the United States in Washington, D.C.; and
  - If your lawsuit challenges the validity of an order of a United States officer or agency but you have not named that officer or agency as a defendant, also send a copy by registered or certified mail to the officer or agency.

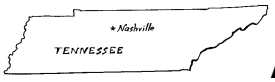
A United States agency or corporation (or a United States officer or employee sued only in his or her official capacity):

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

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

- Serve the United States in the manner described above; and

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



A State or Local Government:

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

Minors or Incompetent Persons:

Rule 4(g) of the Federal Rules of Civil Procedure provides that service on a minor or incompetent person in the United States must be made according to the law of the state where the person is served. You can find Tennessee law for service of process on minors and incompetent persons at Tennessee Rule of Civil Procedure 4.04(2).

Remember, if you are proceeding in forma pauperis, you can skip this section and go straight to page 45.

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

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

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

Rule 5 of the Federal Rules of Civil Procedure sets the rules for serving documents other than the original complaint. If the party you served has a lawyer, then you must serve that party's lawyer. If the other party does not have a lawyer, you must serve the party.

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

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

CHAPTER 8

HOW CAN I KNOW WHAT IS HAPPENING IN MY CASE?

Now that you've filed your complaint, paid the filing fee or received in forma pauperis status, and served the defendant(s), you will want to know how to find out what is happening in your case.

How To Review The Docket

The docket is a digital record maintained by the Court for each case that includes the names and addresses of all the attorneys and unrepresented parties and, 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 your case docket regularly to ensure that:

- Every document you filed has been entered on the docket. It may take 24 hours 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 the Court has entered.

If you have been granted permission to file electronically, you will receive an e-mail notification and electronic access to each new document or entry filed on the docket.

If you have a question about the docket in your case, you may call a case administrator in the Clerk's Office with questions about specific documents in your case. Do not call the judge or the judge's chambers.

Where Can I Access An Electronic Docket?

You may access an electronic docket using the computer terminals in the Nashville courthouse during the hours the Clerk's Office is open, or you may do so from any computer with Internet access if you have a **PACER account**.

How Do I Start Viewing Dockets And Documents With PACER?

PACER stands for "Public Access to Court Electronic Records." It is a service of the United States Courts.

PACER users can:

- Review dockets online.
- Print or download a **.pdf** copy of a docket. (PDF means Portable Document Format.)
- 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 United States party/case index at https://pcl.uscourts.gov/search.

To view documents and obtain docket information:

Visit the PACER system at www.pacer.gov. If you do not have access to computer, you may use the public computers in the U.S. Courthouse to obtain docket information.

You must register to become a PACER user before you can use any version of the PACER system:

Register online at Registration Wizard 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 log-in information. If you do not provide your credit card information at the time of registration, you will receive log-in instructions by mail. Please allow two weeks for delivery.

PACER Fees:

- There are no registration costs.
- Internet access to PACER is billed at $.10 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 $15.00 in a quarter, fees for that quarter are waived. If your usage exceeds $15.00, you will be charged.

- An order designated as a written opinion by the judge is free to view.
- If you also register as an e-filer with the Court's **Electronic Case Filing (ECF)** system, each time a document is e-filed 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. This "free look" is only for the first time you open the document. Warning: You will be charged for later viewings of the document. Therefore, you should print or save an electronic copy of the document the first time open the document.
- The PACER fee information in this Handbook 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 - Frequently Asked Questions.

Obtaining a PACER fee exemption:

In forma pauperis status does not automatically grant you free access to PACER. 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. 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 the PACER system 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 (currently $15.00).

Information available through PACER:

PACER contains docket information for Middle District of Tennessee civil and criminal cases filed since 2005 and many civil and criminal cases filed before 2005. Once case information has been updated in the Middle District'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. The Court can help you with ECF questions, but cannot help with problems with your PACER account.

Copies Made At The Courthouse

If you need a copy of a document from your case, you may print documents from the public computers outside of the Clerk's Office for a fee $.10 per page. Clerk's Office personnel will make copies for you for a fee of $.50 per page. The Clerk's Office will provide a copy of the docket in your case free of charge unless you abuse this privilege.

Communicating With The Court

The only way the Court can take action on your case is for you to file a formal, written motion. Do not send letters to the judge or to the Clerk's Office. The judge will not respond to or act upon your letters. Litigants are not permitted to telephone the judge or the judge's law clerks.

CHAPTER 9

FILING AND SERVING DOCUMENTS ELECTRONICALLY

The docket and all documents in a case are maintained in an electronic format so that they can be viewed on a computer. Attorneys are required to file documents electronically ("**e-file**"). Pro se litigants are not required to e-file, but may choose to do so (see "What are the pros and cons of e-filing?" below). As a pro se litigant, the judge in your case must give permission for you to register for e-filing.

What Are The Technical Requirements For E-filing?

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

- A computer, Internet access, and e-mail on a daily basis so you can e-file your documents and receive notifications from the Court.
- A scanner to scan documents that are only in paper format (like exhibits).
- A word-processing program to create your documents (such as Microsoft Word).
- A **.**pdf reader and a .pdf writer which enable you to convert word processing documents into .pdf format. Only .pdf documents are accepted for e-filing. Adobe Acrobat is the most common program used. The reader (Adobe Acrobat) is free, but the writer is not. Some word processing programs come with a .pdf writer already installed.

More information and resources regarding these technical requirements are available on the Court's website in Administrative Order No. 167, Administrative Practices and Procedures for Electronic Case Filing, available at:

CM/ECF Case Info | Middle District of Tennessee | United States District Court

What Are The Pros And Cons Of E-filing?

Pros:

1. You can e-file from any computer.

2. You will not have to go to the courthouse or pay for postage to file your court papers.

3. You have until midnight on the day your filing is due to e-file (instead of 5:00 pm for physical delivery to the Clerk's Office with paper filings).

4. You will not need to serve the other parties with paper copies if the other side is registered to e-file and will be served electronically.

5. You likely will 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.

Cons:

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

2. You may require some training in:

- How to convert documents to .pdf and to work with .pdf documents.
- How to log into and use the ECF system to file documents.

Free training on using ECF is available in person at the U.S. Courthouse. The Court requires ECF training for all new users.

3. You will not receive documents on paper, so you will be responsible for checking your e-mail every day to make sure you read filings and court orders. You will need to print out all documents yourself.

4. Even if you do not register to receive documents electronically, you can access court records online through PACER.

How Do I Start E-Filing With ECF?

Pro se litigants must get prior permission from the Court to start e-filing. You can request permission by filing a motion for permission to join the e-filing system. You must complete training on e-filing provided by Court personnel. Training is offered at the courthouse on a regular basis. Please see the Court's website at www.tnmd.uscourts.gov for a current training schedule or call (615) 694-2888 or (866) 720-TNMD, or (866) 720-8663. If you receive permission to e-file in one case, that does not mean the Court gives you permission to e-file in another case. You must seek permission by the Court to e-file in each case.

The ECF Help Desk can help answer your technical questions, but will not be able to help you file. You can reach the Help Desk by calling (615) 695-2888 or (866)

720-TNMD. The Help Desk will answer your questions from 8:00 am to 5:00 pm, Monday – Friday.

CHAPTER 10

FOR DEFENDANTS— I'VE BEEN SUED IN FEDERAL COURT. WHAT NOW?

When Happens When A Complaint Is Served?

When you are served with a complaint and summons, you become a defendant in a lawsuit. Defendants must file a written response to the lawsuit within a limited time after being served. Under Rule 12 of the Federal Rules of Civil Procedure, there are two ways for a defendant to respond to a federal lawsuit. You can:

1. File an answer to the complaint, or

2. File a motion challenging some aspect of the complaint.

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

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

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

If you need additional time to respond to the complaint, you can file a motion asking for an extension of time to respond.

When Rule Applies	Federal Rule Number	Deadlines
General Rule	12(a)(1)(A)(i)	Once served with a summons and complaint, a defendant must file a written response to the complaint **WITHIN 21 DAYS**, unless a different time is specified in an applicable United States statute.
If Service Is Waived	4(d)(3) and 12 (a)(1)(A)(ii)	A defendant can be granted extra time to file a complaint **IF** the plaintiff has chosen this method of service **AND** the defendant returns a signed waiver of service within the amount of time specified in the plaintiff's request for waiver of service. Defendants within the United States have **60 DAYS** from the date the request of waiver was sent to file a response to the complaint. Defendants outside the United States have **90 DAYS** from the date the request for waiver of service was sent.
U.S. Defendants Sued In Official Capacity	12(a)(2)	The United States, an agency of the United States, or an officer or employee of the United States sued in his or her official capacity must file a written response to the complaint **WITHIN 60 DAYS** after the United States Attorney is served, whichever is later.
U.S. Defendants Sued In Individual Capacity	12(a)(3)	Any officer or employee of the United States sued in his or her individual capacity for acts or omissions occurring in connection with the performance of duties on behalf of the United States must file a written response to the complaint **WITHIN 60 DAYS** after he or she was served, or **WITHIN 60 DAYS** days after the United States Attorney is served, which is later.
After An Amended Complaint Has Been Filed	15(a)(3)	A defendant must respond to an amended complaint either: 1. Within the time remaining to respond to the original complaint; **OR** 2. Within 14 days after being served with the amended complaint, whichever period is later.

How Do I Prepare An Answer To A Complaint?

An answer is a written response to the complaint. An answer 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. Your answer should include a numbered response to each numbered paragraph of the plaintiff's complaint. Rule 8 of the Federal Rules of Civil Procedure governs answers. There are several requirements:

1. **For each numbered paragraph in the complaint, state what you admit and what you deny.** In other words, you state which parts of the complaint you agree are true and which parts you dispute.

    - If you feel that you do not have enough information to determine if a statement is true or false, you can say so in your answer.
    - If only part of a statement is true, you should admit to that part and deny the rest.
    - If you do not deny a statement, it is considered the same as admitting to it. See Rule 8(b)(6) of the Federal Rules of Civil Procedure.

2. **Include any factual or legal defenses, if there are any that apply.** **Affirmative defenses** are legal theories that defeat all or a portion of a plaintiff's **claim**. Examples of affirmative defenses include: **fraud**, illegality, and **statute of limitations**. For a list of affirmative defenses, see Rule 8(c) of the Federal Rules of Civil Procedure.

    - As the defendant, you are responsible for raising any affirmative defenses that can help you in the lawsuit. At trial, you will have the **burden of proving** the truth of any affirmative defenses.
    - Each affirmative defense should be listed in a separate paragraph at the end of the answer.
    - Any affirmative defense not listed in the answer is waived, meaning you cannot bring it up later in the lawsuit.

3. **Include a prayer for relief.** The **prayer for relief** states what **damages** or other relief you believe the Court should award to the plaintiff (usually, the defendant says the plaintiff should receive nothing).

4. **Sign and date your answer.** If there is more than one defendant, each defendant must sign his or her answer.

5. **Serve your answer.** The answer must be served upon all other parties to the lawsuit. Defendants may file one joint, or combined, answer or may each respond to the complaint separately.

May I Make Claims Against The Plaintiff In My Answer?

No, you may not assert claims against the plaintiff in the answer. The answer should only respond to the claims raised by the plaintiff in the complaint.

To make 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. You must file certain types of counterclaims at the same time you file the answer or the counterclaims are considered waived and cannot be raised later, according to Rule 13(a) of the Federal Rules of Civil Procedure. Also see the section "How do I file a counterclaim?" below.

What If I Want To Change My Answer After I File It?

If less than 21 days have passed since you served the answer: you may amend, or change, your answer anytime within 21 days after it is served on the plaintiff without getting permission from the Court or from the plaintiff. See Rule 15(a)(1) of the Federal Rules of Civil Procedure.

If more than 21 days have passed since you served the answer, you must get written permission from the plaintiff to amend your complaint.

If the plaintiff does not agree to let you to amend your answer, you can file a motion with the Court asking for permission to amend your answer. Write your 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.

An amended answer will replace the original answer. Answers must be amended in accordance with Local Rule 15.01.

Once The Answer Is Filed, Does the Plaintiff Have To Respond To It?

No, unless the judge directs it. Under Rule 8(b)(6) of the Federal Rules of Civil Procedure, all statements in an answer are automatically denied by the other parties to the lawsuit. However, the plaintiff must file an answer to a counterclaim if one is served.

How Do I File A Counterclaim?

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

1. **Compulsory counterclaims:** These are the defendant's claims against the plaintiff that are based on the same events, facts, or transactions as the plaintiff's claim against the defendant. For example, if the plaintiff sues the defendant for a **breach** of contract, the defendant's claim that the plaintiff breached the same contract is a **compulsory counterclaim**.

    - A 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 probably will be unable to bring that claim later.

    - If the Court already has **subject matter jurisdiction** over the plaintiff's claims against you, the Court also will have jurisdiction over your compulsory counterclaim.

2. **Permissive counterclaims:** These are the defendant's claims against the plaintiff that are not based on the same events, facts, or transactions as the plaintiff's claim against the defendant. In the above example, the defendant's claim that the plaintiff owes him or her money under a different contract would be a **permissive counterclaim.**

    - No rule governs the time for filing a permissive counterclaim, but you should file it as early as possible in the lawsuit.

    - You must have an independent basis for **subject matter jurisdiction** over the permissive counterclaim.

- If a defendant does not file a permissive counterclaim, the defendant does not lose the ability to sue the plaintiff for that claim at another time in a separate lawsuit.

You should prepare counterclaims using the same format as a complaint. All of the rules that apply to writing a complaint also apply to writing a counterclaim. 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 I File A Counterclaim, Does The Plaintiff Have to Respond to It?

Since a counterclaim is a complaint against the plaintiff, the plaintiff must file a written response to it. 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 claims that the third party is responsible in whole or in part for any harm that the plaintiff has suffered. A crossclaim also can be used by a plaintiff against a co-plaintiff or by a defendant against a co-defendant. Like a compulsory counterclaim, a crossclaim must be based on the same series of events as the original complaint. Crossclaims are covered by Rule 13(g) and (h) of the Federal Rules of Civil Procedure.

How Can I Use A Motion To Challenge The Complaint?

Instead of filing an answer, you may have the option to challenge the complaint by filing one of the motions specified in Rule 12 of the Federal Rules of Civil Procedure. If you file a Rule 12 motion, you will not need to file your answer until after the Court decides your motion. A Rule 12 motion must be filed by the same deadline as an answer.

About Rule 12 Motions To Dismiss

In a **motion to dismiss** the complaint, sometimes called a Rule 12 motion, the defendant argues that there are problems with the way the plaintiff wrote, filed, or served the complaint, or what the complaint alleges. A plaintiff can file a motion to dismiss a counterclaim. Rule 12(b) of the Federal Rules of Civil Procedure lists the following **defenses** that you can raise in a motion to dismiss the complaint or any individual claim:

1. Lack of subject matter jurisdiction: The defendant argues that the Court does not have the legal authority to hear the kind of the lawsuit the plaintiff filed.

2. Lack of personal jurisdiction over the defendant: The defendant argues that he or she has so little connection with the district in which the plaintiff filed the case that the Court has no legal authority to hear the case.

3. Improper venue: The defendant argues that the plaintiff filed the lawsuit in the wrong geographical location, or place.

4. Insufficiency of process or insufficiency of service of process: The defendant argues that the plaintiff did not prepare the summons correctly or did not correctly **serve** the defendant.

5. Failure to state a claim upon which relief can be granted: The defendant argues that, even if everything stated in the complaint or counterclaim is true, the defendant did not violate the law.

6. 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.

What Happens After the Judge Rules on a Motion to Dismiss?

If the Court denies a motion to dismiss, the defendant must file an answer to the complaint within 14 days after receiving notice that the Court denied the motion. See Rule 12(a)(4) of the Federal Rules of Civil Procedure.

If the Court grants the motion to dismiss, the Court can grant the motion with "leave to amend" or "with prejudice," as explained below:

1. "With leave to amend" means there is a problem with the complaint that the plaintiff may be able to fix. The Court will give the plaintiff a certain amount of time to fix the problem.

- 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 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 Rule 15(a)(3) of the Federal Rules of

Civil Procedure. The defendant can either file an answer or file another motion under Rule 12 of the Federal Rules of Civil Procedure.

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

- If the Court dismisses the entire complaint "with prejudice," then the case is over.
- If the Court dismisses some, but not all, claims "with prejudice," then the defendant must file an answer to the remaining claims within the time specified in the Court's Order.

About Motions For A More Definite Statement

If the complaint is so vague, ambiguous, or confusing that the defendant is unable to answer it, Rule 12(e) of the Federal Rules of Civil Procedure provides that the defendant may file a **motion for a more definite statement**. 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 Court gives the plaintiff 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

Rule 12(f)(2) of the Federal Rules of Civil Procedure permits the defendant to file a **motion to strike** from the complaint any "redundant, immaterial, impertinent, or scandalous matter." A defendant may use this motion to attack portions of a complaint rather than the entire complaint or even entire claims. Any matter that is stricken will not be considered by the Court.

What If I Do Not Respond To The Complaint?

If a defendant has been served properly with a complaint but fails to respond 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 and Default Judgments

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

An entry of default is different than a default judgment. The entry of default comes first.

1. The plaintiff begins by filing a **request for entry of default** together with proof (usually in the form of a **declaration** with a proof of service attached) that the defendant has been served with the complaint and has failed to answer or file one of the motions permitted under Rule 12 of the Federal Rules of Civil Procedure within the required amount of time.

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 the Clerk enters default, the defendant is considered to have admitted to every fact stated in the complaint, except for the amount of damages.

2. Once the Clerk has entered default against the defendant, the plaintiff may then file a **motion for default judgment** supported by a declaration proving the amount of damages claimed in the complaint against the defendant. Under Rule 54(c), the Court cannot enter a default judgment that awards the plaintiff more 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. § 521

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

Obtaining Relief From A Default Or Default Judgment

A defendant against whom default or a default judgment has been entered may file a motion to set aside the default or default judgment. See Rule 55(c) of the Federal Rules of Civil Procedure. The motion must explain in detail a defendant's reasons for failing to respond to the complaint.

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."

CHAPTER 11

MOTIONS – HOW DO I ASK THE COURT TO DO THINGS?

A motion is a formal request you make to the judge for some sort of action in your case. Local Rules 7.01, 15.01, and 56.01 address motions and include important information about deadlines for filing and responding to motions. In general, you do not need a motion for clerical things like changing your address on the docket or requesting copies.

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
At any time:	Motion for an extension of time Motion for a hearing Motion for a settlement conference

What Are The Requirements For Motions?

Rules 7(b) and 11 of the Federal Rules of Civil Procedure and Local Rules 7.01, 15.01, and 56.01 set forth the requirements for motions. If you do not make your best effort to follow these rules, the Court may refuse to consider your motion.

You must make your motion in writing.

All of the Court's rules about captions and the formats of documents apply to motions. Refer to Local Rule 7.01 for specific instructions about motion papers

You must sign the motion to meet the requirements of Rule 11 of the Federal Rules of Civil Procedure. Rule 11 forbids parties to file motions that have no legal basis or are based on too little investigation or on facts known to be false.

Local Rule 7.01(a)(2) requires that all motions asking the Court to resolve a legal issue be accompanied by a memorandum of law citing supporting law, which is sometimes called a brief. Local Rule 7(d) contains instructions for citing legal sources in your briefs. The memorandum of law, or legal brief, in response to a motion shall not exceed 25 pages unless the Court gives you permission to file a longer brief. See Local Rule 7(a)(2). The judge may order a different page limit.

In the Middle District of Tennessee, there is no "motion day." All motions are submitted in writing and will be decided by the Court without hearings unless otherwise ordered by the Court. See Local Rule 78.01.

How Do I Oppose (Or Not Oppose) Motions?

Local Rule 7.01(a)(3) requires a party who opposes a motion to file a response to the motion no later than 14 days after service of the motion. An exception to this rule is a **motion for summary judgment**. Parties opposing a motion for summary judgment have 21 days after service of the motion to file a response. A different deadline—longer or shorter—may be set the judge.

If you do not file a response to a motion, the Court assumes you do not oppose the motion. See Local Rule 7.01(a)(3).

If you do not oppose a motion, meaning that you do not disagree with what the moving party is asking for, you do not need to file anything. You may, however, file a very short response stating that you do not oppose the motion. The motion then will be granted.

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

Rule 6(b) of the Federal Rules of Civil Procedure allows the Court to give you extra time to respond to a motion under certain circumstances. If you file a motion asking for extra time before the original deadline passes, the Court can grant extra time with or without notice to the other parties. If you wait until after the original deadline passes before asking for extra time, you must file a motion and explain why you missed the deadline. The Court may extend the time if you failed to act because of excusable neglect.

Am I Allowed to File a Reply Brief?

A **reply brief** is a brief filed by the **moving party** after, and in response to, the **non-moving party**'s response to the motion. If you are the moving party, you are not required to file a reply brief.

Local Rule 7.01(a)(4) provides that reply briefs may be filed within 7 days after service of the response and shall not exceed 5 pages.

If you file a reply brief, do not repeat the arguments you made in your motion, except as necessary to explain why you believe the arguments in the **opposition brief** are wrong.

Reply briefs cannot include new arguments in support of your motion. This rule exists because the opposing party is not allowed to file a response to a reply brief, and it would be unfair to include arguments to which the opposing party cannot respond. The Court may rule on a motion before a reply is filed.

What Happens Once All of the Papers Relating to a Motion Are Filed?

Once all of the papers relating to a motion are filed, the judge can decide the motion based solely on the arguments in the papers, or the judge can hold a hearing. If the judge holds a hearing, each side will have an opportunity to make arguments to the judge. The judge may announce a decision in the courtroom (ruling from the bench) or wait until a later date, after further considering the motion and the parties' arguments (taking the motion under advisement). If the judge takes the motion under advisement, the parties will receive a written decision sometime after the hearing. Generally, the Court will decide motions without holding a hearing.

CHAPTER 12

PREPARING FOR COURT APPEARANCES

Not all pro se litigants will have a court appearance. However, if you are required to appear in court, there are certain things you should keep in mind.

How Should I Dress And Behave In Court?

- Dress appropriately. There is no specific dress for attending court in the Middle District of Tennessee. However, you should dress appropriately, which means that you should dress in a manner that will not distract from the proceedings or show disrespect for the Court.
- Food and beverages are not permitted in the courtroom.
- Be on time. Allow time for finding a parking place, going through security, and finding the right courtroom.
- Be sure your cell phone is turned off.
- Do not take pictures in the courtroom.
- The tables in the courtroom are marked for plaintiff and defendant. You should sit at the table marked for your role.
- When the judge enters the courtroom, you must stand and remain standing until the judge sits down or gives you permission to sit down.
- When you speak to the judge, call the judge "Your Honor."
- Never interrupt the judge when he or she is speaking.
- You are not allowed to leave the courtroom during the proceedings without the judge's approval.

Where Do I Park?

There is no free parking for Court visitors. A limited number of metered parking spots are available on 9th Avenue in between the Estes Kefauver Federal Building and U.S. Courthouse and the Frist Art Museum. Paid parking is available in nearby surface lots. Be careful not to park in restricted areas or your vehicle may be towed. If you are using a ride service, the better place to be dropped off and picked up is the 9th Avenue

South entrance (between the U.S. Courthouse and the Frist Art Museum), not the Broadway entrance.

Security

All visitors, including children, to the Estes Kefauver Federal Building and U.S. Courthouse must pass through security checkpoints, similar to airport security. Persons may be asked to remove their shoes, belts, or jewelry. Your belongings will be scanned through a metal detector. No weapons are permitted in the building. Pocket knives also are not allowed.

How Is A Courtroom Arranged and Where Will I Be?

Although each courtroom is slightly different, the courtroom generally is arranged as follows.

The **bench** is the 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 typing on a small machine. The court reporter uses the machine to make a record of everything that is said in a hearing or trial.

The **courtroom deputy** assists the judge. You may be asked to check in with the courtroom deputy before the judge comes into the courtroom.

There may be other court staff members present.

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

The **jury box** is located against the wall, at one side of the courtroom. This is where jurors sit during a trial.

In the center of the courtroom, there will be a plaintiff's table and a defendant's table with a number of chairs at each table. Lawyers and the parties, including pro se parties, sit at these tables during hearings and trials. The plaintiff sits at the table that is closer to the jury box.

There are several rows or benches in the back of the courtroom where anyone can sit and watch the hearing or trial.

How Do I Get a Copy of the Court Reporter's Transcript of a Hearing?

If a court reporter was present at the hearing, then you may obtain a copy of the transcript by contacting the court reporter directly. In order to determine which court reporter attended your hearing, you can contact the Clerk's Office or look at the minute entry of the hearing (the Court's summary of the hearing) on the case docket.

If there was not a court reporter at the hearing, which is more typical for hearings before magistrate judges, you may contact the Clerk's Office and request that the recording of the hearing be transcribed. The Court will arrange for the transcription of the hearing, but you must pay for that service. The rates for purchasing transcripts are established by the Judicial Conference and can be found here:

https://www.tnmd.uscourts.gov/sites/tnmd/files/Administrative_Order_27-TranscriptFees-3-22-2018.pdf

CHAPTER 13

WHAT HAPPENS AT A COURT HEARING?

What Is A Hearing?

A **hearing** is a formal court proceeding in which the parties present their arguments to the judge and answer the judge's questions about the motion or other matter being heard. At a court hearing, you appear before a judge who will be deciding issues that arise in your case. Sometimes witnesses can be presented at these hearings; that depends on the legal issues the Court is considering at that particular hearing. A hearing is not the same as a trial.

How Should I Prepare For A Hearing?

Review all papers that have been filed regarding the hearing.

Expect to answer questions about issues that are being addressed at the hearing.

Organize all your papers so that you can find things easily when you need to answer the judge's questions.

Bring a pen and paper to take notes.

Telephonic Hearings

Sometimes the judge will hold a hearing telephonically, meaning over the telephone instead of requiring you to appear in person at the courthouse. A **telephonic hearing** is just like any other court hearing; all of the same rules apply. The Court will give you instructions on how to call in to a telephone conference before it takes place.

CHAPTER 14

PRE-TRIAL ACTIVITIES

If the Court does not dismiss a case on a Rule 12 motion, the next step is for the parties to engage in pre-trial activities.

A district judge or a magistrate judge may hold an **initial case management conference**. Typically, but not always, the initial case management conference is scheduled by a magistrate judge a short time after the answer is filed. During the initial case management conference, the presiding judge will set a schedule for the phases of litigation, including amending the pleadings, discovery, filing **dispostive motions**, and a trial date. Each judge has his or her preferences for the initial case management conference. These preferences are listed on the Court's website under the "Judges" section. You should consult this information before your initial case management conference.

The Court will send out a notice setting the date for the initial case management conference. The notice will include instructions about what each party must do and file before the conference.

Initial Disclosures

Before the parties begin discovery, they must provide each other with certain types of information; this information is called **initial disclosures**. Initial disclosures, covered in detail in Federal Rule of Civil Procedure 26(a)(1), are required in all civil cases except those listed in Rule 26(a)(1)(B), such as actions for review of administrative agency action (like social security appeals), petitions for habeas corpus, actions brought by pro se prisoners, and actions to enforce arbitration awards. In all other types of cases, you will have to serve initial disclosures on the other parties early in the case. Even though you may not have investigated fully the case yet, you are required to make the initial disclosures based on the best information available to you. If you fail to disclose relevant information, the Court may later bar you from using that information in your case.

Make sure you know the date by which you have to serve the initial disclosures**.** The Court will give you this date during your initial case management conference or by order after your initial case management conference.

Form:	Initial disclosures must be in writing, signed, and served on all other parties to the lawsuit but NOT filed with the Court. Your signature certifies that the disclosures are complete and correct as of the time they are made, to the best of your knowledge.
Required Content:	1. The name and (if known) address and telephone number of each individual likely to have information that you may use to support your claims and defenses, unless that information will be used solely for **impeachment**; 2. The type of information each individual has; 3. Copies or a description by category and location of all documents or other things that you have in your possession that you might use to support your claims or defenses, unless they will be used solely for impeachment; 4. Calculation of damages you claim to have suffered, including all documents that support your calculation; 5. Any Insurance agreements that may cover an award of damages in the lawsuit. You do not need to disclose documents that contain **privileged information**.
Adding to/Changing a Disclosure:	1. If you realize that there is additional or different information to disclose, you must let the other side know right away. If you do not disclose information in a timely manner, you may not be able to use that evidence later in the case. 2. If you need to *add* information to your disclosure, serve on the other side a document titled "Supplemental Initial Disclosure" in the same format as your original initial disclosure that includes the new information. 3. If you need to *change* information you already have

	disclosed, serve on the other side a document titled "Amended Initial Disclosure" in the same format as your original initial disclosure that includes all information you need to change.

Final Pre-Trial Conference

The district judge or the magistrate judge will set a date for a pre-trial conference that will happen at the end of your case.

At a final pre-trial conference, the parties and the judge (usually the district judge) will discuss which facts in the case are undisputed, the issues to be tried, and anything else the judge believes may expedite the trial. The parties also will be expected to discuss (1) disclosure of all witnesses; (2) the listing and exchange of all exhibits; (3) **motions in limine** and objections to evidence; (4) all outstanding motions; (5) an itemized statement of damages; (6) their estimates of the length of the trial; and (7) jury selection. The judge will then issue a final pre-trial order.

Alternate Dispute Resolution

If the parties indicate an interest in settling the case, or if the district judge or magistrate judge determines that settlement negotiations would be appropriate, the Court may refer the case for a judicial settlement conference, mediation, or other methods of **alternative dispute resolution** in accordance with Local Rules 16.02 through 16.05. Alternate dispute resolution is a process by which a neutral third party, such as a judge or mediator, helps the parties try to reach an agreement and settle their case. If your case is referred for one of these methods of alternative dispute resolution, you will be required to participate and will receive further direction from the Court as to what is expected.

CHAPTER 15

DISCOVERY – HOW DO I GET EVIDENCE TO PROVE MY CASE?

What is Discovery?

Discovery is the process by which the parties exchange information about the issues in their case before the trial. See Rules 26-37 of the Federal Rules of Civil Procedure. There are six main types of discovery: depositions, interrogatories, requests for production of documents and/or other items, request for admissions, mental examinations, and physical examinations. Each type is discussed below.

Typically, each party in the action will seek some discovery; therefore, if you file an action, you will need to seek information from the parties you are suing as well as provide information to them. For example, by filing an action in which your medical condition or treatment is an issue, at least some of your medical records will be relevant to the case and likely will be sought in discovery. You will need to provide written consent authorizing release of the relevant medical records to opposing counsel.

It is important for you to know that the costs of discovery remain the responsibility of each party, regardless of whether either party has been granted permission to proceed in forma pauperis.

You may use the methods of discovery in any order or at the same time. What methods the other party uses does not determine what methods you may use.

When Can Discovery Begin?

Discovery begins after the initial case management conference or after the Court has entered a scheduling order. The scheduling order you receive from the Court will provide discovery deadlines. You will not be able to take discovery beyond the date set by the Court. Either party can seek additional time, but there is no guarantee the Court will grant such a request. If you need additional time, you must ask for it by motion.

What Are The Limits on Discovery?

Federal Rule of Civil Procedure 26(b)(1) states that the parties may obtain discovery regarding any non-privileged matter that is relevant to the claim or defense of any party to an action. You may request any material that is reasonably likely to lead to the discovery of admissible evidence relevant to a claim or defense.

Privileged information is a small category of information consisting mostly of confidential communications, such as those between a doctor and a patient or an attorney and client. Legal rules protect privilege information from disclosure during trial. You are not required to provide privileged information to any other party.

Limits imposed by the Court. The Court can limit the use of any discovery method if the Court finds:

- The discovery seeks information that is provided already or is available from more convenient and less expensive sources;
- The party seeking discovery has had multiple chances to get the requested information;
- The burden or expense of the proposed discovery is greater than its likely benefit; or
- The information sought is privileged or otherwise confidential information.

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

Depositions

A deposition is a question-and-answer session that takes place before the trial outside of Court. Rule 30 of the Federal Rules of Civil Procedure covers depositions in detail. The person answering the questions is the "**deponent**." The deponent can be any person who may have information about the lawsuit, including witnesses, **expert witnesses**, or other parties to the lawsuit. During a deposition, the deponent answers all questions under oath, meaning he or she swears that his or her answers are true. All questions and answers are recorded during a deposition by a court reporter. Court reporters change a per-page fee to transcribe the testimony and prepare a transcript.

Do I Need The Court's Permission To Take A Deposition?

Usually, you do not need the Court's permission to take a deposition *except* in the following situations:

- The deponent is in prison;

- Your side of the lawsuit already has taken 10 other depositions and the other parties have not agreed that you may take more (see Rule 30(a) of the Federal Rules of Civil Procedure for more detail);
- The deponent already has been deposed in the same case, and the other parties have not agreed in writing that the deponent may be deposed again; and/or
- The deponent is expected to leave the United States and therefore will be unavailable for deposition after the pre-trial scheduling order is issued.

How Do I Arrange A Deposition?

Consult with opposing counsel to choose a convenient time and location for the deposition. You must take into account the convenience of the lawyers, the parties, and the witnesses.

Give written notice of the deposition to the deponent in a reasonable amount of time before the deposition**.** This written document is called the **notice of deposition**.

Serve the notice of deposition on all parties and the deponent, even if you already have discussed the deposition with all persons involved. The notice of deposition may be served by any of the methods listed in Rule 5(b) of the Federal Rules of Civil Procedure.

What do I include in the notice of deposition?

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

- The time and place where the deposition will be held;
- The name and address of the deponent;
- If you name a business or government agency as a deponent, then the notice must tell you the name of the person who will testify on its behalf;
- The method by which the deposition will be recorded; and
- Your address and signature pursuant to Rule 26(g)(1).

If you do not know the name of deponent, you must describe the person well enough that the other side can identify the person you wish to depose. For example, you may not know a witness's name, but you know that she was the "police officer on duty after 12:00 p.m. on October 16, 2019." If you do not know which person at

business or government agency has the information you need, Rule 30(b)(6) of the Federal Rules of Civil Procedure allows you to name the business or government agency as the deponent and describe the subjects you want to discuss at the deposition. The business or government agency then must tell you the persons who will testify on its behalf and the subjects on which each person will testify.

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

Under Rule 45 of the Federal Rules of Civil Procedure:

- You do not need a **subpoena** to depose someone who is a party to the lawsuit.
- Any deponent who is not a party to the lawsuit (called non-party deponents or non-party witnesses) must be served with a subpoena to compel their attendance. You can get a blank subpoena from the Clerk's Office or the Court's website for any cases pending in the Middle District of Tennessee at:

  All Forms | Middle District of Tennessee | United States District Court
- A subpoena may be served on the deponent by any person who is not a party to the lawsuit and who is at least 18 years of age.
- A subpoena must be hand-delivered to the deponent along with the fees for one day's attendance and mileage required by law. Under 28 U.S.C. § 1821, a non-party deponent must be paid $40 per day for deposition testimony.
- You must pay for a non-party deponent's travel expenses under 28 U.S.C. § 1821 and 41 C.F.R. 301-10.303. You do not have the pay the travel expenses until the deponent provides you with a receipt or other evidence of the actual travel cost. In addition, you must pay any necessary toll charges and parking fees that were incurred when attending the deposition.

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

After being served with a subpoena, a person can ask the judge to **quash a subpoena.** If the judge quashes the subpoena, the judge would enter an order that the person does not have to obey the subpoena or appear at the deposition. The Court may quash a subpoena if there is undue burden or expense required for the deponent to appear at the deposition. The Court must quash a subpoena if it requires a non-party deponent to travel more than 100 miles from his or her home or business address to the deposition. See Federal Rule of Civil Procedure 45(c)(1).

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

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

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

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

A **subpoena duces tecum**, sometimes called a subpoena for the production of evidence, is a document requiring the person served to provide copies of papers, books, or other things. It is a discovery tool that can be used with a deposition or by itself. Under Rule 30(b)(2) of the Federal Rules of Civil Procedure, you must list the documents you want the deponent to bring to the deposition in both the **notice of deposition** and the subpoena duces tecum.

How long can a deposition last?

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

Does the deponent have to answer all questions asked?

Generally, yes, even if there is an objection to the question. Under Rule 26(b)(1) of the Federal Rules of Civil Procedure, you may ask questions about any non-privileged matter that is relevant to the claim or defense of any party. A question is relevant if it appears reasonably calculated to lead to the discovery of admissible evidence.

Under Rule 30(c)(2), the deponent is entitled to state any legal objections he or she has to any question. Certain types of objections are considered proper, such as:

- The question is vague;
- The question is actually a series of questions;
- The question is argumentative; and/or

- The question asks for information that you are not legally able to give.

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

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

Who is allowed to ask the deponent questions?

Any party may ask questions at the deposition. Typically, counsel asks the questions if the party is represented.

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

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

Interrogatories

Interrogatories are formal written questions sent by one party to another party to the lawsuit. You cannot send interrogatories to non-parties. Interrogatories must be answered in writing under oath. The rules and procedures governing interrogatories are contained in Rule 33 of the Federal Rules of Civil Procedure and in Local Rule 33.01. You must answer each interrogatory separately and fully, in writing and under oath, unless you object to it. You must state any objections in writing and include the reason for the objection. The objections should be signed by the party's lawyer, unless the party does not have a lawyer. Interrogatories must be answered within 30 days after they are served. Parties are required to supplement, or add to, their answers to

interrogatories as additional information becomes available as provided by Federal Rule of Civil Procedure 26(e)(1).

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

Under Rule 33(a) of the Federal Rules of Civil Procedure, you may serve up to 25 interrogatories on the same party without the Court's permission. Under Local Rule 33.01(b), subparts of a question are counted as additional questions for purposes of the overall number. If you want to serve more than 25 interrogatories on one party, you must first file a motion asking the Court's permission and follow the procedure set forth in Local Rule 33.01(b).

What kinds of questions can I ask in interrogatories?

As per Rule 26(b)(1) of the Federal Rules of Civil Procedure, parties may use interrogatories to ask about any non-privileged matter that is relevant to any party's claim or defense. A question is relevant if it appears reasonably calculated to lead to the discovery of admissible evidence.

Are there any requirements for the form of interrogatories?

Yes. You should write out each interrogatory in a separately numbered paragraph. Rule 26(g)(1) of the Federal Rules of Civil Procedure requires you to sign the interrogatories and state your address, e-mail address, and telephone number.

How do I answer interrogatories?

- You must respond to interrogatories within 30 days.
- In accordance with Local Rule 33.01(a), you must respond in the space provided or rewrite each interrogatory in full before you state your response or objection.
- When answering a question, you must answer with all available information, which means all information a party can remember without doing research. If the information can be found in your personal or business records, or in some other place that is available to you, then you must look for the answer.
- If you need more than 30 days to answer interrogatories, you can request more time from the other party. If the other party refuses, you can file a motion with the Court to ask for more time.
- You must answer each interrogatory separately and fully, in writing and under oath, unless your object to it.

- If you object to only part of a question, then you must answer the rest of the question.
- You must state any objections in writing and include the reason for the objection.
- You must sign your answers.
- It is not appropriate to answer, "I don't know" if the answer is available to you.
- If you learn later that your answer is incomplete or incorrect, you must let the other side know by supplementing (adding to) your original answer. You can send a letter to the other parties that states which interrogatory you are supplementing and what new or different information you have. If you do not follow this rule, you risk the Court imposing sanctions against you. See Rule 26(e)(1) of the Federal Rules of Civil Procedure .

Request for Document Production

In a **request for production of documents**, one person asks the other person to turn over documents, including electronically stored information (for example, e-mails), about the issues in the lawsuit. The person asking for the documents must describe them in enough detail that the other person knows which documents are being requested. Document requests can be served on any person, not just parties to the lawsuit. Rules 34(a) and (b) of the Federal Rules of Civil Procedure explain how to request documents from a party to the lawsuit. Rules 34(c) and 45 explain how to request documents from someone who is not a party to the lawsuit.

How do I get documents from the other parties?

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

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

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

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

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

Each request for document production should be numbered separately and signed in accordance with Rule 26(g)(1). There is no limit to the number of requests, as long as they are not unreasonable or unduly burdensome. A request for document production from a party to the lawsuit may be served by any of the methods listed in Rule 5(b) of the Federal Rules of Civil Procedure.

How do I respond to a request for document production served on me?

The party who has been served with the request must give a response within 30 days after the request is served unless the Court authorizes additional time or the person asking for the document agrees to give you more time.

With respect to each item requested, the response must state that you will allow inspection of requested documents or will send copies of those documents, unless you object to the request.

If you object to the request, you must state the reasons for that objection and state whether you are withholding any documents on the basis of that objection.

If you object to only part of the request, you must state your objection to that part and state whether you are withholding any documents on that basis and permit inspection of the rest.

Documents produced for inspection must be presented either as they are kept in the usual course of business or organized and labeled so that they correspond with the categories in the request.

Documents must be produced by the time specified in the request or another reasonable time frame specified in the response.

If you discover more documents that respond to the request after you have provided some documents, you must provide these additional documents promptly and no later than 30 days before trial. See Rule 26(e)(2) of the Federal Rules of Civil Procedure.

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

If the person or business from which you want documents is not a party to the lawsuit, you need to follow Rules 34(c) and 45 of the Federal Rules of Civil Procedure. Under Rule 34(c), you can ask the Court to compel a person who is not a party to the lawsuit to produce documents and items or submit to an inspection.

Rule 45 sets out the rules for issuing, serving, protesting, and responding to subpoenas, including subpoenas duces tecum, which are subpoenas requesting the production of documents and items at a specific time and place.

The same form is used for both a subpoena duces tecum and a deposition subpoena. If you want a non-party to produce documents at a deposition, you can fill out a single subpoena form directing the person to appear at the deposition and to bring specific documents to the deposition. Or, you can serve a deposition subpoena and a subpoena duces tecum separately so that the deponent will appear for a deposition at one time and produce documents at a different time.

For production of documents or inspection for cases pending in the Middle District of Tennessee, you can get a blank subpoena form from the Clerk's Office or online at:

All Forms | Middle District of Tennessee | United States District Court

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

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

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

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

time or place. See Rule 45(d)(2)(A). For example, the person can simply send documents instead of having you show up to inspect them.

Requests for Admission

In a **request for admission**, one party writes out statements that it wants the other side to admit are true. Rule 36 of the Federal Rules of Civil Procedure establishes the requirements for requests for admission. Requests for admission may be served by any of the methods listed in Rule 5(b) of the Federal Rules of Civil Procedure, including service by mail.

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

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

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

How do I respond to a request for admission served on me?

You should respond in the space provided or rewrite each request for admission followed by your answer.

Your answer must admit or deny the request or explain in detail why you cannot admit or deny the request. You can admit part of the statement and deny the rest.

If you can only admit or deny part of the request, then you must admit or deny that part and then explain why you cannot admit or deny the other part of the request.

If you do not know the answer, then you may state that you do not have enough information to admit or deny the requested information but only after you have made a reasonable search for information that would allow you to admit or deny the request.

Any matter that is admitted is treated as proven within the context of that particular lawsuit. But an admission in one lawsuit cannot be used against that party in another lawsuit.

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

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

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

Duty to supplement responses

If a party discovers that the responses the party already has submitted are incomplete or incorrect, then that party is required under Rule 26(e)(1) of the Federal Rules of Civil Procedure to supplement promptly the earlier responses and no later than 30 days before trial.

Physical or Mental Examinations

When the mental or physical condition of a party, or a person under the custody or legal control of a party, is at issue in a lawsuit, Rule 35 of the Federal Rules of Civil Procedure allows the Court to order that person to submit to a **physical or mental examination**. The examination must be done by someone qualified, like a physician or psychiatrist. The party who requested the examination must pay for it. The examiner is not responsible for treating the person and any communications with the examiner are not confidential.

Unlike other discovery procedures, physical or mental examinations can be obtained only by filing a motion with the Court or by agreement of the parties. If a motion is filed, it must:

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

What happens to the results of the examination?

If the Court orders a mental or physical examination, the party or other person who is to be examined has the right to request a detailed written report from the examiner explaining the examiner's findings, including the results of all tests made, diagnoses, and conclusions.

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

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

CHAPTER 16

WHAT IF PROBLEMS ARISE DURING THE DISCOVERY PROCESS?

The discovery process is designed to go forward between the parties with minimal involvement by the Court. However, it is not uncommon for parties to disagree about disclosures or discovery. There are several ways to get help from the Court when these disputes arise.

Confirm which judge will be handling your discovery dispute. If your case is proceeding before a **district judge**, the district judge may refer your discovery dispute to a **magistrate judge**. If your case is proceeding before a magistrate judge, the magistrate judge may handle your discovery dispute.

First, you must try to resolve the dispute on your own. The best way is through an in-person meeting or, if that is not possible, a telephone call. You also may try to resolve the issue by letter or e-mail.

The next step is to request a discovery telephone conference with the magistrate judge. The magistrate judge will help you try to resolve the dispute. The magistrate judge may ask you to file a statement of your disagreement before you talk.

What If I Receive A Discovery Request And I Believe It Is Inappropriate Or Too Burdensome?

If you receive a discovery request and you believe it is inappropriate or too burdensome, you may file a **motion for a protective order** under Rule 26(c) of the Federal Rules of Civil Procedure. A **protective order** is an order limiting discovery or requiring discovery to proceed in a certain way. For example, a protective order may say that you do not have to respond to a discovery request that is overboard.

A motion for a protective order must be filed in either the court where the lawsuit is being heard or in the federal district court where a deposition in which an issue arises is being taken.

A motion for a protective order must include:

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

What If A Party Does Not Respond To My Disclosure Or Discovery Request, Or The Response Is Lacking?

You may file **motion to compel** asking the Court to order a person to make disclosures, to respond to a discovery request, or to provide more detailed disclosures. See Rule 37 of the Federal Rules of Civil Procedure and Local Rule 37.01 for the requirements for motions to compel.

How Do I File A Motion To Compel?

Under Federal Rule of Civil Procedure 37(a)(2), a motion to compel a party to make disclosures or to respond to discovery must be filed in the court where the lawsuit is pending. A motion to compel a non-party to respond to discovery must be filed in the court in the district where the discovery is being taken.

A motion to compel must include:

- A certification that you have tried in good faith to resolve the problem without help from the Court;
- An explanation of the dispute and what you want the Court to do;
- If the problem involves discovery, the portion of the deposition, interrogatory, requests for documents, or requests for admissions to which you object followed by the complete response of the objection; and
- An explanation of the facts and law that make it appropriate for the Court to grant your motion.

Who Pays For Expenses Of Making A Motion To Compel?

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

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

Under What Circumstances May I Ask For Discovery Sanctions?

A motion for sanctions may be brought only if a person fails to:

- Provide the required disclosures;
- Obey a court order to respond to a discovery request;
- Appear for a deposition that has been properly noticed;
- Answer interrogatories that have been properly served; or
- Respond to a properly served request for document production or inspection.

In addition, a motion for sanction must be:

- Filed as a separate motion; and
- Made as soon as possible after you learn about the circumstances that made the motion appropriate.

A motion for sanctions must contain:

- A certification that you have made a good faith attempt to resolve the problem without help from the Court;
- An explanation of the dispute and what you want the Court to do;
- An explanation of the facts and law that support your motion;
- Competent declarations that explains the facts and circumstances that support the motion;
- Competent declarations that describe in detail the efforts you made to secure compliance without intervention by the Court; and
- If attorney fees are requested, a declaration itemizing in detail the otherwise unnecessary expenses, including attorney fees, directly caused by the alleged violation, and a justification for any attorney-fee hourly rate claimed.

What Are The Court's Options For Discovery Sanctions?

If the Court grants a motion for sanctions, the Court may enter any order authorized by Rule 37(b)(2) of the Federal Rules of Civil Procedure, including:

1. An order resolving issues of fact in favor of the party who made the motion;

2. An order refusing to allow the disobedient person to support certain claims or defenses, or prohibiting that party from introducing certain evidence;

3. An order striking certain documents or parts of documents from the case, or staying the lawsuit until the order is obeyed, or dismissing the lawsuit or any part of the lawsuit, or rendering a default judgment against the disobedient party; or

4. An order holding the disobedient party in **contempt of Court** for failing to obey an order, except an order to submit to a physical or mental examination.

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

Who Pays The Cost Of A Motion For Sanctions?

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

CHAPTER 17

WHAT IS A MOTION FOR SUMMARY JUDGMENT?

A motion for summary judgment asks the Court to decide a lawsuit without having a trial because the parties do not dispute the key facts of the case and, based on those undisputed facts, one party is entitled to judgment as a matter of law. Usually, the parties do not agree about the facts. However, when the parties agree about the facts or if one party does not have any evidence to support its view of what happened, the Court can decide the legal issue or issues based upon the papers that are filed by the parties.

Either the plaintiff or the defendant may move for summary judgment pursuant to Federal Rule of Civil Procedure 56. When a plaintiff files a motion for summary judgment, the plaintiff is trying to show that the undisputed facts prove that the defendant violated the law. When a defendant files a motion for summary judgment, the defendant is trying to show that the undisputed facts prove the defendant did not violate the law. Most summary judgment motions are filed by defendants.

Important Things To Know About Summary Judgment

A motion for summary judgment can address all the claims in a lawsuit or can address one or more individual claims. Generally, a party must get permission from the Court before filing a summary judgment motion that does not resolve the whole case. If the summary judgment motion addresses the whole lawsuit, and the Court grants summary judgment, the case is over.

The Court will only grant summary judgment 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, but 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 settle.

When Will The Court Grant A Motion For Summary Judgment?

Under Rule 56(a) of the Federal Rules of Civil Procedure, the Court will grant summary judgment if:

The evidence presented by parties in their papers shows that there is no real dispute about any material fact; and

The undisputed facts show that the party who filed the motion should prevail under the law.

What Evidence Does The Court Consider For Summary Judgment?

Every fact upon which you rely must be supported by admissible evidence. The Court only considers admissible evidence provided by the parties. For example, admissible evidence may include declarations, **affidavits**, deposition transcripts, business records, or medical records.

You should file copies of the evidence 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 you think is important. You should remember that, by making it easier for the Court to find this information, you are ensuring that this information receives full consideration by the Court.

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 again with, or in response to, the summary judgment motion.

Affidavits As Evidence On Summary Judgment

An affidavit is a statement of fact written by a witness and signed under oath before a notary public. A declaration is a written statement of fact and is signed under penalty of perjury. Penalty of perjury means that a person could be prosecuted for lying under oath. Affidavits and declarations may be used as evidence in supporting or opposing a motion for summary judgment. Think of them as written versions of a person's testimony if he or she was in court on the witness stand. Under Rule 56(c) of the Federal Rules of Civil Procedure, 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 personally observing the events in question);
- State facts that are admissible as evidence; and
- Show that the person making the statement is competent to testify to the facts contained in the statement.

All documents referred to in an affidavit or declaration must be attached to it as exhibits.

A declaration or affidavit based on **hearsay** is not admissible in federal court. Hearsay is "second hand" evidence or a witness's statement about a fact that is based on something the witness heard from someone else. For example, a person stating that he was told by someone else that the defendant ran the red light would be hearsay. Documents can be hearsay, too, so the hearsay rules in Rules 801-807 of the Federal Rules of Evidence apply. See these rules for more information, including the many exceptions to the prohibition on hearsay.

Also, keep in mind that, even if a document is admissible under the hearsay rules, a document might not be admissible for other reasons.

How Do I Authenticate My Evidence?

Some of your evidence in support of your summary judgment motion, or in response to a summary judgment motion, may be in the form of documents such as letters, records, e-mails, contracts, etc. You can submit these documents as exhibits to your motion. You must be able to prove your exhibits are genuine. Simply attaching a document to your papers does not make it admissible. Any exhibit that is submitted as evidence must be authenticated before the Court can consider it.

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**" (such as government publications and newspapers).

See Rules 901 and 902 of the Federal Rules of Evidence for more about evidence authentication.

What Is A Statement Of Undisputed Material Facts?

Local Rule 56.01(b) requires that a statement of undisputed material facts be filed along with a motion for summary judgment. The **statement of undisputed material facts** is a separate document, containing statements in numbered paragraphs of the significant facts as to which the moving party contends there is no dispute. In other words, the moving party is saying that these particular facts are ones on which all parties agree. In preparing a statement of undisputed material facts, the moving party (the party filing the motion) must support the facts listed in his or her statement of undisputed material facts with an accurate citation to the record where that fact is established (such as depositions, answers to interrogatories, admissions, affidavits, and other documents).

The party opposing a motion for summary judgment must include a Local Rule 56.01(c) statement in which he or she responds to the moving party's statement of undisputed material facts. The opposing statement must mirror the moving party's statement of undisputed material facts by admitting and/or denying each of the moving party's assertions in matching numbered paragraphs. The opposing statement should be a short and concise statement of the facts over which a dispute exists. The opposing party must support any denial with a specific citation to the record where the asserted factual issue arises (such as depositions, answers to interrogatories, admissions, affidavits, and other documents). If the opposing party fails to contest any of the facts contained in the moving party's statement of undisputed material facts, those facts are deemed admitted. See Local Rule 56.01(f).

If the opposing party moves for summary judgment and you do not respond in opposition, summary judgment, if appropriate, will be entered against you. If partial summary judgment is granted against you, the portions of your case as to which summary judgment was granted will be dismissed; there will be no trial as to these portions of your complaint. If summary judgment is granted as to your entire complaint, your case will be dismissed and there will not be a trial as to any of the claims asserted in your complaint.

When Can A Motion for Summary Judgment Be Filed?

Either party 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.

What If A Summary Judgment Motion Has Been Filed Against Me And I Need More Time Or Discovery To Respond To It?

The party opposing a summary judgment motion has 21 days after service of the motion to serve a response unless a different deadline has been set by the Court.

If the opposing party files a motion for summary judgment before you have finished discovery and you need more discovery in order to show why the Court should not grant summary judgment, you can file a request under Rule 56(d) of the Federal Rules of Civil Procedure for additional time to conduct discovery. Your request must be filed on or before the deadline for opposing the motion for summary judgment. 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 18

WHY ISN'T MY CASE GOING TO TRIAL?

Today, most federal civil cases never actually go to trial. There are various reasons that a case can end before trial. The most common reasons are discussed below.

Dismissal by the Court After 28 U.S.C. § 1915 Screening

If your case is not going to trial, the Court may have dismissed your case sua sponte, or on the Court's own initiative. In cases where the plaintiff has been given permission to proceed in forma pauperis, 28 U.S.C. § 1915 requires the Court to dismiss the plaintiff's case if, at any time, the Court determines that (1) the plaintiff's allegations of poverty are untrue; (2) the action is frivolous or malicious; (3) the plaintiff has failed to state a claim upon which relief can be granted; or (4) the plaintiff is seeking monetary relief against a defendant who is immune from such relief.

Rule 12(b)(6) Motion to Dismiss and Rule 12(c) Motion for Judgment on the Pleadings

A Federal Rule of Civil Procedure 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted is very similar to a Federal Rule of Civil Procedure 12(c) motion for judgment on the pleadings. Both motions argue that, even if all the facts the plaintiff has alleged are true, the plaintiff has not stated a valid claim under the law. The essential difference is the time as which each motion is made: a 12(b)(6) motion to dismiss is made by the defendant after the complaint has been served but before the defendant has filed an answer; a 12(c) motion is made after the defendant already has filed an answer. If either motion is granted in full, the case will be dismissed.

Summary Judgment

Your case will not go to trial if the Court granted summary judgment. As discussed in the previous chapter, a trial is necessary only when there are disputed issues of material fact. If the Court grants a motion for summary judgment, the case will be over, and the Court will enter judgment in favor of the party who moved for summary judgment. No trial will be held. If the Court grants a motion for partial summary judgment, the issues that are in dispute will go to trial and those issues on which summary judgment was granted will not go to trial.

Settlement

A settlement is an agreement between the plaintiff and the defendant to resolve the lawsuit. Parties can discuss settlement at any time and do not need court intervention to settle a case. The responsibility for negotiating a settlement rests with the parties. The Court may choose to conduct a settlement conference. If a case is settled, the Court will enter an order dismissing the case. The parties may ask for a judicial settlement conference, where a Magistrate Judge will help them try to reach an agreement, or referral to a pro bono mediator. The parties also may also hire a private mediator to work with them.

Failure To Prosecute

A case will continue to go forward only if the plaintiff is actively pursuing his or her lawsuit. Federal Rule of Civil Procedure 41(b) permits courts to dismiss actions when the plaintiff fails to prosecute, or pursue, the case. Local Rule 41.01 provides that the Court shall dismiss a case where a plaintiff has failed to take any action in his or her case "for an unreasonable period of time."

A plaintiff can fail to prosecute his or her case in different ways. For example, if a plaintiff fails to provide the Court with an updated address after he or she has moved, or if a plaintiff fails to serve the summons and complaint on the defendant, the Court may dismiss the plaintiff's case for failure to prosecute. The Court also may dismiss a case if the plaintiff fails to comply with a court order, such as an order directing the plaintiff to submit a document.

Default Judgment

If a defendant fails to defend himself or herself in a case, the plaintiff may obtain a default judgment against the defendant. Federal Rule of Civil Procedure 55 governs default judgments. If the plaintiff obtains a default judgment, the case will not go to trial.

CHAPTER 19

WHAT HAPPENS AT TRIAL?

The last stage of a civil action in district court is a trial. Very few cases make it this far, as most cases are resolved before trial, either by the parties or by the Court.

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

There are two types of trials: jury trials and bench trials.

In a jury trial, a jury reviews the evidence presented by the parties and decides which evidence to believe. The Court will instruct the jury about the law, and the jury will apply the law to the facts and determine who wins the lawsuit. 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.

The time frame for seeking a jury trial is set forth in Rule 38 of the Federal Rules of Civil Procedure.

In a bench 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 on time);
- 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.

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

In a case management order, the Court will establish deadlines by which you have to make certain disclosures to the other side before trial.

Expert Disclosures. You are required to give the other party information about any expert witnesses you intend to have present evidence at trial. An expert witness is a person who has scientific, technical, or other specialized knowledge that can help the Court or jury understand the evidence. If you hired an expert witness to give testimony in your case or if the expert witness is your employee, the disclosure must include a

written report prepared and signed by the expert witness unless there is a Court order or the parties agree to a different plan.

Content:	Under Rule 26(a)(2)(B), the expert report must contain: 1. A complete statement of all opinions the expert witness intends to give at trial plus the basis and reasons for those opinions; 2. Data or other information considered by the expert witness in forming those opinions; 3. Any exhibits to be used as a summary or support for those opinions; 4. Qualifications of the expert witness, including a list of all publications written by the witness in the preceding 10 years; 5. Compensation to be paid for the study and testimony of the expert witness; and 6. A list of all other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.
Form:	Expert disclosures must be in writing, signed, and served on all other parties to the lawsuit, but not filed with the Court.
Duty to Supplement:	Rule 26(e)(1) & e(2) require you to supplement your expert disclosures if you learn that the information you disclosed is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

Pre-Trial Disclosures. You are required to disclose certain information about **witnesses** and **evidence** that you will present at trial. See Federal Rule of Civil Procedure 26(a)(3).

Content:	The following information about witnesses, documents, and other exhibits you may use at trial should be included in your pre-trial disclosures: 1. Name, address, and telephone number of each witness.

	Identify separately: a. The witnesses you intend to present at trial, b. The witnesses you might present at trial, if the need arises. 2. The identities of the witnesses whose testimony you expect to present at trial by means of a deposition other than by live testimony. 3. Identification of each document or exhibit that you may use at trial. Identify separately: a. The exhibits you intend to present at trial, and b. The exhibits you might present at trial, if the need arises. 4. You do not have to disclose evidence offered only to **impeach** the other side's witnesses.
Form:	Pre-trial disclosures must be in writing, signed, and served on all parties to the lawsuit and filed with the Court. Your signature certifies that the disclosure is complete and correct as of the time it is made, to the best of your knowledge.

Final Pre-Trial Conference And Order

Prior to the trial, a pre-trial conference is held between a magistrate judge or district judge and the parties or their attorneys to determine:

- What disclosures each party is required to make and when;
- What exhibits and witnesses each side might use during the trial;
- The approximate length of time that will be necessary for the trial; and
- The ground rules the Court will utilize before, during, and after the trial.
- During or after the conference, the Court will enter an order, sometimes called a "final pre-trial order," which sets out the above.

When Does the Trial Start?

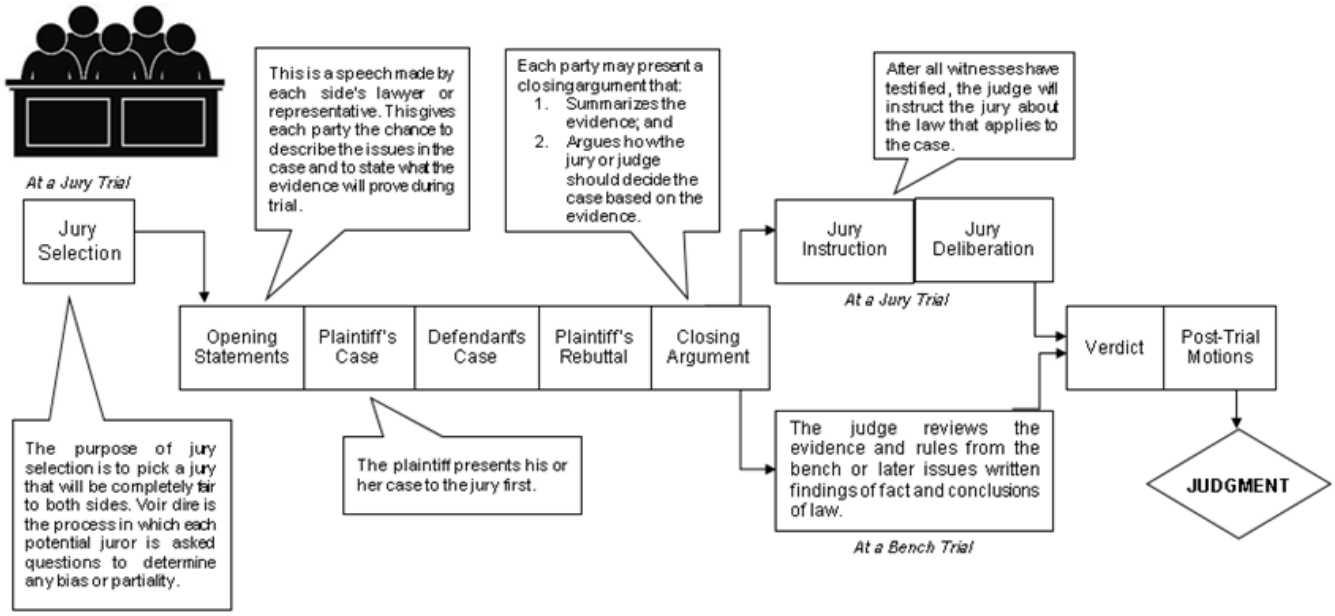
The judge who will try the case sets the date on which the trial will begin.

How Do I Prepare For Trial?

When preparing for a trial, there is a lot of work to do and a lot of documents to be filed. This Handbook is not intended to guide you through all the details and complicated issues that you will encounter when preparing for trial. Local Rule 39.01 sets forth trial procedures for the Middle District of Tennessee. You should read this Rule carefully as well as:

- Review the final pre-trial order and be sure you meet all the deadlines set forth for filing documents, copies of exhibits, objections to exhibits, and proposed **jury instructions**.
- File any **motions in limine**. A motion in limine asks the Court to decide whether specific evidence can be used at trial. You might find yourself opposing the other side's motion in limine or filing your own motion in limine. Either way, you will find Rules 103 and 104 of the Federal Rules of Evidence helpful.
- Arrange for all of your witnesses to be present at trial. If a witness does not want to come to trial, you can serve that witness with a trial subpoena. A trial subpoena is a court document that requires a person to come to Court and give testimony on a particular date. Generally, the same rules that apply to subpoenas for deposition witnesses also apply to trial subpoenas.

Once a trial has begun, it usually takes place in the following order: **jury selection** (if not a bench trial), **opening statements**, plaintiff's **evidence**, defendant's evidence, **closing arguments**, and **jury deliberations**.



Jury Selection

The goal of jury selection is to select a jury that can serve for the whole trial and be fair and impartial. Jurors are selected through a process called **voir dire**, during which each potential juror is asked a series of questions either by the parties or the judge, or both. The questions are designed to bring out any biases that the juror may have that would prevent fair and impartial service on that jury.

There are three ways a potential juror can be excused:

- Once questioning is completed, the Court will excuse any jurors the Court believes will not be able to perform their duties as jurors because of financial or personal hardship or other reasons;
- *Challenge for Cause***.** The plaintiff and defendant may challenge a potential juror "for cause" if the party believes that the potential juror is not qualified or cannot be fair; and
- *Peremptory Challenges.* After all of the potential jurors that have been challenged for cause have been excused, the parties have an opportunity to use peremptory challenges to dismiss a limited number of additional jurors without having to give any reason. However, a party's reason cannot be discriminatory.

After the jury is chosen, the judge will read general instructions to the jury about their duties as jurors, about how to deal with evidence, and about the law that applies in the lawsuit they are about to hear.

Opening Statements

Next, each party may present an opening statement. The opening statement is a speech made by each party in a case. The purposes of the opening statement are for both parties to describe the issues in the case, state what they expect to prove during the trial, and help the jury understand what to expect and what each side considers important. An opening statement is not a legal argument. Think of the opening statement as a roadmap of the evidence the party believes will come out at trial. The plaintiff presents his or her opening statement first. The Court will determine how long opening statements can be.

Proof

After the opening statements, the plaintiff presents his or her side of the case.

Direct Examination: The plaintiff begins by asking a witness 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.

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

The plaintiff will present all of his or her evidence before the defendant has a turn to put on his or her own case.

The defendant's case progresses in the same way.

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

Before it can be considered by the jury or judge, evidence presented by either party during trial must be admissible. The Federal Rules of Evidence are a very detailed set of rules for the admissibility of evidence.

If one party tries to present evidence that is not allowed under the Federal Rules of Evidence or under the judge's rulings on the parties' motions in limine, or if one party asks improper questions, the opposing party may object. If the opposing party does not object, the judge may allow the improper evidence to be presented or the improper question to be asked, and 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?

State your objection to the judge. You may object while the other party is presenting evidence. For example: "Objection, your honor, that is inadmissible hearsay."

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

The judge may ask you to come up to the bench, away from the jury's hearing, to discuss the issue with you quietly (called a "**side bar**" conference).

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?

After the plaintiff has presented all of his or her evidence, under Rule 50(a) of the Federal Rules of Civil Procedure in a jury trial either party can make a **motion for judgment as a matter of law**. A motion for judgment as a matter of law is a request to the judge to determine the outcome of the case without a 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 the plaintiff's evidence, even if true, could not persuade a reasonable jury to decide in the plaintiff's favor (defendant's motion).

If a judge grants a motion for judgment as a matter of law, the case is over.

What Is Rebuttal?

Rebuttal is the final stage of presenting evidence in a trial. After each side has presented its evidence, the judge may permit the plaintiff to present **rebuttal testimony**. In the rebuttal stage, 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 because he was not wearing his glasses . Not all cases have a rebuttal.

What Happens After Both Sides Have Finished Presenting Their Evidence?

After all evidence has been presented, either party may make a motion for judgment as a matter of law under Rule 50(a) of the Federal Rules of Civil Procedure. If the Court grants a motion for judgment as a matter of law, the trial is over.

Otherwise, the Court next hears closing arguments. Each party may present a closing argument**.** A closing argument summarizes the evidence and argues how the jury (or, in a bench trial, the judge) should decide the case based on that evidence. Time limits are sometimes set by the Court for closing arguments.

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

After closing arguments, in jury trials, the judge instructs the jury about the law and the jury's duties. This is called "the charge to the jury."

The jury then 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. The decision of the jury must be unanimous, which means that all jurors must agree.

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

The Court next enters a written judgment announcing the verdict and stating the remedies that will be ordered. The judgment is the official decision of how the case ended. If a defendant owes money to the plaintiff, the judgment will list the exact amount owed. When the Court enters the judgment on the jury verdict, the case usually

is over unless one of the parties files a post-judgment motion or an appeal to the United States Court of Appeals for the Sixth Circuit.

In a Bench Trial, What Does the Judge Do After Closing Arguments?

The judge will **adjourn** (end) the trial after closing arguments. The judge then will review the evidence and issue **findings of fact and conclusions of law**. Some judges rule from the bench immediately and other judges prepare a written document after the bench trial. In both instances, the judge will explain what facts the judge found to be true, what the legal consequences of those facts are, and what. remedies, if any, that the judge orders. When the Court enters judgment, the case is over, unless one of the parties files a post-judgment motion or an appeal to the United States Court of Appeals for the Sixth Circuit.

What Happens After the Trial Is Over?

The prevailing, or winning, party is entitled to a judgment against the losing party for certain costs. For more information about these costs generally, see Federal Rule of Civil Procedure 54 and 28 U.S.C. § 1920. AO Form 133 (Rev. 12/09) can be used to prepare a bill of costs.

Local Rule 54.01 provides specific instructions regarding costs in this Court. For example, if the parties cannot agree on costs, the prevailing party must file a **bill of costs** with supporting documentation with the Clerk of Court within 30 days of the entry of judgment in the case. The prevailing party must serve a copy of the bill of costs on opposing counsel. The opposing party may file objections to the bill of costs within 14 days of being served with the bill of costs. See Local Rule 54.01 for more information.

The law permits the Clerk to tax certain costs sought by the prevailing party unless an objection is filed by the opposing party. For specific information about taxation of costs, see Local Rule 54.01(a).

The prevailing party also may seek an award of attorney's fees and related nontaxable expenses from the losing party. The specific instructions for filing a motion for an award of attorney's fees and how to respond to a motion for an award of attorney's fees can be found in Local Rule 54.01 (b),(c).

Mistrial

If a jury is unable to reach a verdict, the judge declares a **mistrial**. That means the case is not decided, and it may be tried again at a later date before a new jury. A jury that cannot reach a verdict sometimes is referred to as a "hung jury." Remember,

this Handbook concerns federal civil actions only; there are different procedures for mistrials in federal criminal actions.

CHAPTER 20

I DON'T LIKE THE RESULT IN MY CASE. WHAT CAN I DO?

If you believe the judge or jury made a mistake in your lawsuit, there are several different motions you can file after a final judgment has been entered ("post-judgment motions") in your case. In addition, you can appeal the final judgment, which is covered later in this Handbook.

Renewed Motion for Judgment as a Matter of Law

After a jury trial, if you believe the jury made a serious mistake and you made a motion for judgment as a matter of law during trial that the Court denied, you may make a **renewed motion for judgment as a matter of law** under Rule 50(b) of the Federal Rules of Civil Procedure. You only can make a renewed motion if you made a motion for judgment as a matter of law during the trial 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 its decision 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 matter of law, the Court may:

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

Motion For A New Trial

After a jury trial or 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 reweighs 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 consider newly discovered evidence that is properly before the Court.
- 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 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 if 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, the Court can take additional testimony, amend the findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

A motion for a new trial, whether jury or bench, must be filed no later than 28 days after the entry of final judgment. See Rule 59(b) of the Federal Rules of Civil Procedure.

Motion To Amend Or Alter The Judgment

Either party can 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. The motion can be granted if:

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

A motion to amend or alter the judgment must be filed no later than 28 days after the entry of final judgment. See Rule 59(e) of the Federal Rules of Civil Procedure.

Motion For Relief From Judgment Or Order

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

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

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

- Mistake, inadvertence, surprise, or excusable neglect;
- Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- Fraud, misrepresentation, or other misconduct by an opposing party;
- The judgment is void;
- 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 judgment. The Court will grant relief under this last category only under extraordinary circumstances.

A motion based on the first three reasons must be made without one year after the judgment or order was entered. A motion based on the other three reasons must be made within a reasonable time.

CHAPTER 21

APPEALS

What Is An Appeal?

If the final decision in your case is unfavorable to you, you may wish to appeal. Appeals from cases in the Middle District of Tennessee are considered by the United States Court of Appeals for the Sixth Circuit.

With some exceptions, only final orders or judgments from the district court may be appealed. 28 U.S.C. § 1291. This kind of appeal is called an appeal "as of right."

Just as the Federal Rules of Civil Procedure set forth the procedures for litigating a lawsuit in this Court, the Federal Rules of Appellate Procedure set forth the procedures for litigating an appeal in the Sixth Circuit. See Federal Rules of Appellate Procedure Rules 3-6. You can access the Federal Rules of Appellate Procedure and the Sixth Circuit Rules here:

http://www.ca6.uscourts.gov/rules-and-procedures

Is there ever a time I can appeal before final judgment is entered in my case?

In some limited circumstances, you may appeal a non-final decision while your case is ongoing. For example, you may be able to an interlocutory appeal. The limited circumstances in which you may seek an interlocutory appeal are set forth in 28 U.S.C. § 1292. If you choose to file an interlocutory appeal, you must file your notice of appeal in the district court where the decision you are appealing was filed. In addition, by way of the collateral order doctrine, you also may appeal from an interlocutory order that conclusively determines an issue wholly separate from the merits of the action and that is unreviewable on appeal from a final judgment.

Is there a time frame within which I must file my appeal?

Yes. An appeal must be filed within 30 days after entry of judgment. An exception is a case involving a party who is the United States, a federal agency, or federal employee; in that instance, an appeal must be filed within 60 days after entry of judgment.

If you miss the deadline, you may file a motion for extension of time. Under certain limited circumstances, the district court may extend the time for filing a notice of appeal. This deadline is jurisdictional, meaning there are only a few limited

circumstances in which the Court may grant an extension. See Federal Rule of Appellate Procedure 4(a). However, there is no guarantee your motion will be granted so you should make every effort to meet the deadline.

Where do I file my appeal?

The notice of appeal must be filed in the district court where the judgment you are appealing was entered.

How do I file my appeal?

A notice of appeal is a one-page document containing your name, a description of the final order or judgment being appealed, and the name of the court to which the appeal is taken (here, the Sixth Circuit Court of Appeals). You can get a blank notice of appeal form at this website or from the Clerk's Office:

http://www.ca6.uscourts.gov/court-forms

How much does it cost to appeal?

The fee for filing a notice of appeal is $505.00. If you cannot afford to pay the filing fee, you may file an application to proceed in forma pauperis or without prepayment of the fee (IFP application). Even if the district court permitted you to proceed without prepayment of the fee, you must file another application for the appeal. You can get an application to proceed without prepayment of the fee here:

https://www.ca6.uscourts.gov/sites/ca6/files/documents/forms/IfpForm4.pdf

What if the district court denies my IFP application?

Under Federal Rule of Appellate Procedure 24(a)(5), if the district judge denies your motion to proceed IFP on appeal, you may file a motion to proceed IFP in the Sixth Circuit Court of Appeals. You must apply within 30 days after service of the Court's notice that it denied your application to proceed IFP on appeal.

Am I entitled to an attorney if I file an appeal?

No. There is no statutory or constitutional right to counsel on appeal in civil actions. However, you are permitted to file a motion seeking the appointment of counsel. This motion must be filed in the Sixth Circuit Court of Appeals, not in the district court.

What happens after I file a notice of appeal?

After a notice of appeal has been filed, the Clerk's Office transmits the appeal and the case file to the **Court of Appeals**, which opens a new file with a new case number. Once you file a notice of appeal, the district court no longer has jurisdiction over your case. Going forward, you should address all questions regarding your appeal to the Clerk of the Sixth Circuit. The Clerk's Office for the Sixth Circuit is located at:

United States Court of Appeals for the Sixth Circuit
540 Potter Stewart U.S. Courthouse
100 E. Fifth Street
Cincinnati, Ohio 45202-3988
Telephone: (513) 564-7000

GLOSSARY

Term	Definition
Action	Another term for lawsuit or case.
Admissible Evidence	Evidence that can be introduced properly at trial for the judge or jury to consider in reaching a decision. The Federal Rules of Evidence govern the admissibility of evidence in federal court.
ADR (Alternative Dispute Resolution)	A process by which a neutral third party, such as a judge or mediator, helps the parties try to reach an agreement and settle their case outside of court.
Adjourn	To bring a court proceeding to an end.
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	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.
Amended Pleading	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 seeking in the complaint.
Answer	A defendant's written response to the complaint. An answer "on the merits" challenges the complaint's factual accuracy.
Appeal	To seek formal review of a district court judgment by the Court of Appeals.
Application to Proceed In Forma Pauperis (IFP)	A form filed by the plaintiff asking permission to file a complaint or appeal without paying the filing fee; sometimes called "an application to proceed without prepaying fees or costs."
Application to proceed without prepaying fees or costs	See Application to Proceed In Forma Pauperis.
Bench	The large desk where the judge sits in front of the courtroom.

Bill of Costs	A document filed by the prevailing party in a civil case listing the costs the prevailing party intends to recover against the losing party pursuant to Federal Rule of Civil Procedure 54.
Breach	The failure to perform a legal obligation.
Brief	A document filed with the Court arguing for or against a motion; also called a "memorandum of law."
Burden of Proof	The obligation of a party to prove or disprove a fact or facts in dispute on an issue raised by a party in a case.
Caption	A formatted heading on the first page of every document filed with the Court that lists the parties, the case number, the court, and the judges.
Case	Another term for lawsuit or action.
Case Administrator	A court staff member who enters documents and case information into the court docket.
Case File	A file in which the original of every document manually filed with the Court is kept.
Case Management Conference	A court proceeding in which the judge, with the help of the parties, sets a schedule for various events in the case.
Case Management Order	The Court's written order scheduling certain events in the case.
Certificate of Service	A statement showing that a copy of a particular document has been mailed or otherwise provided to ("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 the party believes is too biased to be fair and impartial, or is 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 staff.
Citation, Cite, Citing	A reference to a law, rule, or case.
Civil Action	An action brought to enforce, redress, or protect a private right; compare to criminal action. This Handbook is intended for pro se litigants in federal civil actions only.
Claim	A legal cause of action.
Closing Arguments	An oral statement at trial by each party summarizing the evidence and arguing how the jury (or, in a bench trial, the judge) should decide the case.

Complaint	The document that a plaintiff files to begin a lawsuit; it tells the Court and the defendant the reason the plaintiff filed the lawsuit and what relief is desired.
Compulsory Counterclaim	A claim by a defendant against the plaintiff that is based on the same events or transactions as the plaintiff's claims against the defendant.
Contempt of Court	Acts found by the Court to be committed in willful violation of the Court's authority or dignity, or to interfere with or obstruct the administration of justice.
Contingency Basis	A fee arrangement between a client and attorney where the attorney will receive a fee based on the percentage of the plaintiff's recovery if the plaintiff wins the case; the attorney gets nothing if the plaintiff does not win.
Continuance	An extension of time ordered by the Court.
Counsel	Attorney; lawyer.
Counterclaim	A defendant's claim 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 Sixth Circuit Court of Appeals.
Court Reporter	The person seated in front of and below the bench typing on a special machine. The court reporter makes a record of everything that is said during court proceedings.
Courtroom Deputy	A court employee who assists the judge in the courtroom and usually sits at a desk in front of the judge.
Criminal Action or Case	A proceeding by which a person charged with a crime is brought to trial and either found not guilty or guilty and sentenced; compare to civil action. This Handbook is not intended for people who want to defend themselves in a criminal case without an attorney.
Crossclaim	A claim that brings a new party into the case and essentially blames that third party for any harm the plaintiff has suffered. A crossclaim also can be used by a plaintiff against a co-plaintiff or by a defendant against a co-defendant.
Cross-Examination	During trial, the opposing party's questioning of a witness following direct examination, generally limited to topics covered during the direct examination.
Damages	The money that a plaintiff can recover in court for the plaintiff's loss or injury caused by the defendant.
Declaration	A written statement signed under the 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.

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; the plaintiff wins the case without ever having the court consider the claims in the complaint.
Defendant	The person, company, or government agency against whom the plaintiff makes claims in the complaint; the person or entity being sued.
Defenses	Reasons given by the defendant why the plaintiff's claims should be dismissed.
Deficiency Order	An order from the Court telling a party that something is wrong with a court filing and how long the party has to fix it.
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 the court from the beginning.
Deponent	The person who answers questions during a deposition.
Deposition	A question-and-answer session that takes place before the trial outside of the courtroom in which one party to the lawsuit asks another person, who is under oath, questions about the events and issues in the lawsuit. The process of taking a deposition is called deposing.
Deposition Notice	A notice served on a deponent stating the time and place of the deposition.
Deposition Subpoena	The type of subpoena required if you want to depose someone who is not a party to a lawsuit.
Direct Examination	The process during a trial in which a party calls witnesses to the witness stand and asks them questions.
Disclosures	Information that each party must give the other party in a lawsuit.
Dispositive Motion	A motion that seeks a court order disposing of, or resolving, all or part of the claims in favor of the moving party without the need for further court proceedings.
Discovery	The process by which the parties exchange information about the issues in the case before the trial.
District Judge	A federal trial judge who was appointed by the President and confirmed by the Senate pursuant to Article III of the Constitution. District judges are appointed for life and cannot be removed unless impeached.

Diversity Jurisdiction	A basis for federal court jurisdiction where none of the plaintiffs lives in the same state as any of the defendants and the amount in controversy exceeds $75,000.
Division	The Middle District of Tennessee has three divisions among which the Court's caseload is divided: Nashville, Columbia, and Cookeville.
Docket	A computer file maintained by the Court that includes a chronological summary of everything that has happened in a case.
Drop Box	An outside secure depository maintained by the Court where documents can be left for filing by the Clerk of Court when the Clerk's Office is closed to the public.
Electronic Case Filing (ECF), E-Filing	The process of submitting documents to the Court for filing and serving them on other parties electronically through the Internet. The United States Courts use an e-filing system called "Electronic Case Filing" or "ECF."
Element	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.
Exhaust, Exhaustion	In federal civil actions, the requirement that a plaintiff must pursue his or her problem or concern through any and all required administrative processes before filing a federal lawsuit such as, in employment discrimination cases, filing a complaint with the Equal Employment Opportunity Commission (EEOC).
Exhibits	Documents or other materials that are presented as evidence at trial or as attachments to motions or declarations.
Expert Witness	A person who has scientific, technical, or other specialized knowledge that can help the court or the jury understand the evidence.
Federal Question Jurisdiction	A basis for federal court jurisdiction where at least one of the plaintiff's claims arises under federal law (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	The rules defining the type of evidence that a federal court can consider.

Evidence	
File, 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 federal civil lawsuit.
Findings of Fact and Conclusions of Law	In a bench trial, a statement issued by the judge that explains what facts he or she found to be true and what the legal consequences of those facts are.
Fraud	The act of making a false representation of a past or present fact on which another person relies, resulting in injury.
Good Faith	Having an honesty of intentions. For example, negotiating in good faith means to come to the table with an open mind and a sincere desire to reach an agreement.
Grounds	The reason or reasons for requesting action by the Court.
Hearsay	"Second-hand" evidence or a witness's statement about a fact that is based on something the witness heard from someone else and not on personal knowledge.
Hearing	A formal proceeding before a judge for the purpose of resolving one or more issues.
Immunity	Protection from being held liable for actions taken while performing the duties of specific jobs or for other reasons.
Impeach	To call into question a witness's truthfulness or credibility.
In Forma Pauperis (IFP)	See application to proceed in forma pauperis.
Initial Case Management Conference	A conference at the outset of a case to set a schedule for the litigation.
Initial Disclosures	Disclosures of basic information that the parties are required to serve within 14 days of their Initial Case Management Conference.
Interrogatories	Formal written questions sent by one party to another party to the lawsuit which must be answered (or objected to) in writing and under oath.
Issue Summons	The act of the Clerk of Court before a summons is valid for service on a defendant.
Judges' Standing	Individual judges' special rules that apply in all cases assigned to that judge. The Clerk's Office can provide you with a copy of standing orders upon

Orders	request or they can be found on the Court's website.
Jurisdiction	A court's power to decide a particular case.
Jury Box	Rows of seats, usually located against the wall at one side of the courtroom, where the jurors sit during a trial.
Jury Deliberations	The process by which the jury, after having heard all the evidence and 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 the jury's duties, the law that applies to the lawsuit, and how the jury should evaluate the evidence.
Jury Selection	The process by which the members of a 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 facts and determines who wins the lawsuit.
Law Library	A special library containing legal materials, usually staffed by a specially trained librarian.
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 Middle District of Tennessee explain procedures that apply only in that Court.
Magistrate Judge	A judge who is appointed by the Court for an 8-year, renewable term and has some, but not all, of the powers of a district judge. A magistrate judge may handle civil cases from start to finish if all parties consent. In non-consent cases, a magistrate judge may hear motions and other pretrial matters assigned by a district judge.
Manual Filing	A filing of a paper document at the Clerk's Office instead of by electronic filing/e-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.
Meet and Confer	A meeting between parties to work together to resolve dispute during litigation.
Mistrial	When the jury is unable to reach a verdict; the case must be tried again before a new jury. A jury which cannot reach a verdict is usually referred to as a

	"hung jury."
Motion	A formal application to the court asking for a specific ruling or order.
Motion for a More Definite Statement	A motion filed by the defendant arguing that the complaint is so vague, ambiguous, or confusing that the defendant is unable to answer it, and asking for additional details.
Motion for a New Trial	After the trial ends, a motion asking the Court for a complete re-do of the trial because the first trial was flawed.
Motion for a Protective Order	A motion that asks the Court to relieve a party of the obligation to respond to a discovery request or grant more time to respond.
Motion for Default Judgment	A motion by the plaintiff asking the Court to grant judgment in the plaintiff's favor because the defendant failed to file an answer to the complaint; if the court grants the motion, the plaintiff wins the case.
Motion for Judgment as a Matter of Law	A motion asking the judge to determine the outcome of the case without a jury because the opposing party's evidence is so legally deficient that no reasonable jury could decide the case in favor of that party.
Motion for Relief from Judgment or Order	A motion asking the Court to rule that a judgment or order should not be given effect or should be changed for one of the reasons permitted by Rule 60(b) of the Federal Rules of Civil Procedure.
Motion for Sanctions	A motion asking the Court to punish a person for failing to make the 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	A motion asking the Court to decide a lawsuit without going to trial because there is no dispute about key facts of the case.
Motion in Limine	A motion asking the Court to settle an issue relating to admissibility of evidence made shortly before the beginning of trial.
Motion to Amend or Alter the Judgment	A motion asking the Court to change something in the final judgment because of errors during the trial.
Motion to Compel	A motion asking the Court to order a person to make disclosures or to respond to a discovery request, or to provide more detailed disclosures.
Motion to Dismiss	A motion asking the Court to deny some or all claims in the complaint due to legal or procedural defects.
Motion to Extend Time	A motion asking the Court for more time to file a brief or to comply with a court order; also called a "continuance."
Motion to Set Aside Default/Default	A motion by a defendant against whom default or default judgment has been entered asking the Court if he or she may be allowed to appear in the suit and

Judgment	respond to the complaint.
Motion to Strike	A motion asking the Court to order certain parts of the complaint or other pleadings deleted because they are redundant, immaterial, impertinent, or scandalous.
Moving Party	The person who files a motion.
Non-Dispositive Motion	A motion that seeks a ruling to a question that comes up during litigation, the answer to which will not resolve any or all claims.
Non-Moving Party	Any party who is not bringing a motion.
Non-Party Deponent	A deponent who is not a party to the lawsuit.
Non-Party Witness	A person who is not a party to the lawsuit but who has relevant information.
Notice of Electronic Filing	An email generated by the ECF system that is sent to every registered attorney, party, and interested person associated with a case every time a document is filed.
Notice of Deposition	A notice that gives all of the information required under Rules 30(b) and 26(g)(1) of the Federal Rules of Civil Procedure and must be served on opposing parties to a lawsuit.
Notary Public	A public officer who is authorized by the state or federal government to administer oaths and to attest to the authenticity of signatures.
Objection	The formal means of challenging evidence on the ground that it is not admissible.
On the Papers	A decision made based on filings without a hearing in the courtroom.
Opening Statements	A speech made at the beginning of trial in which parties can describe the issues in the case and state what they expect to prove during the trial.
Opposing Party	A party who does not want a motion to be granted.
Opposition	A filing that consists of a brief, often accompanied by evidence containing facts and legal arguments that explain why the Court should deny a motion.
Overrule an Objection	A judge's denial of an objection made in a hearing.
PACER System	"Public Access to Electronic Court Records." An Internet database where docket information is stored.
Peremptory Challenge	A request that a juror be excused without having to give any reason for the request, so long as the reason is not discriminatory.

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.
Personal Jurisdiction	The Court's power over a person or entity.
Petitioner	The person who files a petition under 28 U.S.C. §§ 2241, 2254, or 2255.
Physical or Mental Examination	An order by the Court for a party to submit to a physical or mental examination by a medical professional such as a doctor or psychiatrist; unlike other discovery procedures, physical or mental examinations can be obtained only by filing a motion with the Court or by agreement of the parties.
Plaintiff	The person who files a lawsuit.
Pleadings	Formal documents that are filed with the Court, especially initial filings such as complaints and answers.
Prayer for Relief	The last section of the complaint in which the plaintiff tells the Court what the plaintiff wants from the lawsuit, such as money damages, an injunction, or other relief.
Precedent	A case that previously was decided and becomes an example or authority to be used at a later time for identical or similar cases.
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.
Primary Authority	The most accepted form of authority cited; it consists of statutory authority and court decisions.
Privileged Information	Information consisting mostly of confidential communications such as those between a doctor and patient or an attorney and client that is protected by legal rules from disclosure during a trial.
Pro Bono Representation	Legal representation by an attorney that is free to the person being represented.
Pro Se	A Latin term meaning "for himself" or "for herself." A pro se litigant is a person 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 the other parties.
Protective Order	A court order limiting discovery, either as to how discovery may be conducted or what can be discovered.
Quash a Subpoena	An order by the Court that vacates a subpoena so that it has no legal effect; the person served with the subpoena does not have to obey it.
Rebuttal	The final stage of presenting evidence in a trial by the plaintiff in response to the defendant's proof.
Rebuttal Testimony	Testimony given at trial, after the defendant has completed examining each of his or her witnesses. The plaintiff can call additional witnesses solely to counter or "rebut" testimony given by the defendant's witnesses.
Re-Direct Examination	An examination during trial, after the opposing party has cross-examined a witness; the party who called the witness may ask the witness questions about topics covered during the cross-examination.
Referring Judge	A federal district judge who refers an issue or motion within a lawsuit to another judge, usually a magistrate judge.
Referral Judge	A United States magistrate judge assigned to handle an issue, proceeding, or motion within a case assigned to a federal district judge.
Remedies	Actions the Court may take in a civil case 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	The answer to a counterclaim; also refers to the response to the opposition to a motion.
Reply Brief	A document responding to the opposition to a motion.
Report and Recommendation	A document prepared by a magistrate judge to the district judge containing factual and legal findings.
Request for Admission	A discovery request asking a party to admit a material fact or element of a claim.
Request for Entry of Default	The first step for a plaintiff to obtain a default judgment by the Court against a defendant; directed to the Clerk of Court, the request must show that the defendant has been served with the complaint and summons but has not filed a written response to the complaint in the required time.

Request for Inspection of Property	A discovery request served on a party seeking to enter property controlled by that party for the purpose of inspecting, measuring, surveying, photographing, testing, or sampling the property or any object on the property relevant to the lawsuit.
Request for Production of Documents	A discovery request served on 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 seeking to inspect, copy, test, or sample anything relevant to a lawsuit which is in the possession, custody, or control of another party to the lawsuit.
Request for Waiver of Service	A written request by the plaintiff asking the defendant to accept the summons and the complaint without formal service.
Requests for Admission	A discovery request asking a party to admit a material fact or an element of a claim.
Respondent	The person or entity the petitioner is suing in a habeas action.
Sanctions	A punishment the Court may impose on a party or attorney for violating the Court's rules or orders.
Secondary Authority	Authority found in legal encyclopedias, legal texts, treatises, and law review articles.
Self-Authenticating	Documents that do not need any proof of their genuineness beyond the documents themselves in order for them to be admissible evidence under Rule 902 of the Federal Rules of Evidence.
Serve, Service, Serving	The act of providing a document to a party in accordance with Rules 4 and 5 of the Federal Rules of Civil Procedure.
Service of Process	The formal delivery of the complaint in a lawsuit to the defendant in accordance with the requirements for service found in Rule 5 of the Federal Rules of Civil Procedure.
Settlement Conference	A proceeding usually held in a magistrate judge's chambers in which the judge works with the parties towards a negotiated resolution of part or all of the case.
Side Bar	A private conference beside the judge's bench between the judge and the lawyers (or pro se persons) to discuss an issue outside of the jury's hearing.
Standing Orders	An individual judge's orders setting out rules and procedures, in addition to those found in the Federal Rules of Civil Procedure and the Local Rules, that apply in all cases before that judge.

Statement of Undisputed Material Facts	A separate document, containing sentences in numbered paragraphs stating the significant facts as to which the moving party contends there is no dispute. Local Rule 56.01(b) requires that a statement of undisputed material facts be filed along with a motion for summary judgment.
Statute of Limitations	A legal deadline by which a plaintiff must file a complaint; after the deadline, the Court may dismiss the action as time-barred.
Stipulation	A written agreement signed by all the parties to a lawsuit or their attorneys.
Strike	The act of a judge ordering claims or parts of documents "stricken" or deleted so that they cannot be part of the lawsuit or proceeding.
Subject Matter Jurisdiction	The authority of a federal court as defined by Congress over cases arising under the Constitution, treaties, or laws of the United States or when the parties are from different states and the amount in controversy is greater than $75,000.
Subpoena	A document issued by the Court requiring a non-party to appear for a court proceeding or deposition at a specific time and place or to make certain documents available at a specific time and place.
Subpoena Duces Tecum	A form of subpoena used to require a non-party deponent to bring specified documents to a deposition.
Substantive Law	Authority, or the information used by a party to persuade a court to find in favor of that party.
Summary Judgment	A decision by the Court to enter judgment in favor of one party without a trial because the evidence shows that there is no real dispute about the material facts and the prevailing party is entitled to judgment as a matter of law.
Summons	A document from the Court that you must serve on the defendant along with your original complaint to start your lawsuit.
Sustain an Objection	A judge's ruling during trial after a party objects to the evidence being admitted or a question being asked; if the judge sustains the objection, it means the objection is correct, and the evidence will be not be admitted or the question will not be asked.
Telephonic Conference/ Telephonic Hearing	A hearing conducted over the telephone with the parties, their attorneys, and the judge.
Transcript	The written version of what was said during a court proceeding or a deposition as typed by a court reporter.
Trial Subpoena	A type of subpoena that requires a witness to appear to testify at trial on a

	certain date.
United States Code, U.S.C.	A document that contains the permanent public laws passed by the United States Congress.
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 a lawsuit is filed.
Verdict	The jury's final decision about the issues in a trial.
Verdict Form	The form the jury fills out to record the verdict in a jury trial.
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.
Waiver of Service	A defendant's written, signed statement that he or she agrees to give up the right to service in person and instead accepts service by mail.
With Prejudice	A dismissal where any claim that is dismissed is eliminated permanently from the lawsuit and cannot be brought in a new action.
Without Prejudice	A dismissal where a party is permitted to file an amended complaint or to bring the same claim in a different action; sometimes called a dismissal "with leave to amend."
Witness	A person with personal or expert knowledge of facts relevant to a lawsuit.
Witness Box	The seat next to the bench where witnesses sit when they testify in court.