United States District Court

Middle District of Tennessee

Pro Se Handbook

For Prisoner Civil Rights Actions

Use this Handbook if:

- You are a pre-trial detainee, inmate of a county jail, or prisoner in a facility operated by the state or federal government or a private company and
- You feel that a state or federal actor has violated your rights under the United States Constitution or laws of the United States.

Some examples of allegations raised in prisoner civil rights cases are conditions of confinement claims, medical care claims, excessive force claims, and retaliation claims.

INTRODUCTION

The United States District Court for the Middle District of Tennessee ("the Court") has prepared this Handbook to assist prisoners who **file** federal **civil** rights lawsuits without an attorney. Individuals who are representing themselves in court are called "**pro se**" **litigants**.

As used in this Handbook, the term "prisoner" includes pre-trial detainees, prisoners in privately operated prisons, inmates of county jails, and prisoners in facilities operated by the state and federal government.

The specific types of **cases** for which this Handbook will be most helpful are pro se civil rights cases filed by prisoners in the United States District Court for the Middle District of Tennessee under:

- 42 U.S.C. § 1983 ("Section 1983") and/or
- *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971) ("*Bivens*").

If you feel that a federal or state actor has violated your civil rights and you want to sue that individual or entity, you may want to file an **action** under 42 U.S.C. § 1983 or *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971). If your complaint concerns the actions of state actors, you should file it under Section 1983. If your claims concern the actions of federal actors, you should file it under *Bivens*. Some examples of common civil rights **claims** concern prisoner medical treatment and the conditions of confinement.

If you want to challenge your conviction or sentence, you should *not* file a Section 1983 or *Bivens* action. Likewise, if you want to challenge parole procedures, your sentence computation, or the loss of credits, you should *not* file a Section 1983 or *Bivens* action. You must file a petition for a writ of habeas corpus. Information about habeas actions can be found in the Court's Pro Se Handbooks for actions filed under 28 U.S.C. §§ 2241, 2254, and 2255.

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

If you are representing yourself but you are not a prisoner, refer to the Court's Pro Se Nonprisoner Handbook that is available on the Court's website and upon request from the Clerk's Office.

This Handbook does not cover all actions that can be filed in federal court. 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.

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.

For those prisoners with access to the Internet, 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 legal resources. All of the district court forms mentioned in this Handbook can be found under the Pro Se/Self Representation section of the website. In addition, if you are viewing this Handbook on the Internet, you can use the hyperlinks to view forms, Local Rules, and other useful information.

If you do not have access to the Internet, you may call the Clerk's Office to ask general questions about filing cases in the Middle District of Tennessee. You can reach the Clerk's Office at (615) 736-5498. Select Option 1 for case information. The toll-free number is (866) 720-8663.

You also may contact the Clerk's Office by mail. The address for the Clerk's Office is Clerk's Office, U.S. District Court, Middle District of Tennessee, 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. 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.

IMPORTANT: BEFORE YOU PROCEED

► **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 (if you have one), and telephone number on each filing. Rule 11 also states that, by filing a pleading, written motion, or other paper, 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 reason, the Court may impose **sanctions** against you, including ordering you to pay a fine 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.

- When you file a federal lawsuit, you become responsible for the entire filing fee *regardless of the outcome of your case*. That means, even if you later decide to voluntarily dismiss your case, you will not be entitled to a refund or be able to stop collections out of your prison trust account. Likewise, even if your case is dismissed early on and you do not agree with the outcome, you will not be able to get your money back or be able to stop collections out of your prison trust account. Prison officials will keep collecting fees from your account even if you are transferred to another prison until the full amount is paid.

- The Prison Litigation Reform Act (PLRA) is a law that applies to lawsuits brought by prisoners in federal court regarding prison conditions. The PLRA places important limitations on the ability to file **in forma pauperis** (without prepaying the filing fee) and on what steps you must take before you can file a federal lawsuit, among other issues, that are addressed more fully in this Handbook.

- If a prisoner files a civil action or **appeal** that the Court dismisses because the action was frivolous, malicious**,** or failed to state a claim upon which relief can be granted, the prisoner accrues a "strike" under the PLRA. Once a prisoner accrues three strikes, the prisoner cannot bring a new civil action in forma pauperis**.** This rule is known as the Three Strikes Rule. The only exception to this rule is if the prisoner is in "imminent danger of serious physical harm." The Three Strikes Rule does not apply to habeas actions.

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GENERAL INFORMATION

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 Is The Clerk's Office?

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.

What The Clerk's Office Can And Cannot Do For You

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.

What Does It Mean to File Documents 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 the document with a self-addressed, stamped envelope.

2. In-Person Filing

Because you are incarcerated, you may ask a trusted family member or friend to bring a signed original document to the Clerk's Office to file in person for you.

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 ask a trusted family member or friend to file your signed original documents in person even if that person 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 is the process of using the Internet to file documents from your computer. Although some federal district courts permit e-filing by prisoners, the Court is not aware of any e-filing programs at any local jail or prison.

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 filing a complaint, discussed later in this Handbook.

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 or from 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 can also 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.

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	Free

		links to secondary authority	
Bloomberg Law	www.bloomberglaw.com	Large database of primary and secondary authority	Paid subscription (free trial 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)
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.	Free (note the option of fee-based "Ask A Legal Question" service)

		Code, select Supreme Court decisions, and links to many other sources of primary resources	
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 published since 1991, as well as all recent opinions that have not been published yet	Free
THOMAS	www.congress.gov//	Searchable database of modern federal legislative history and bill text	Free
Tennessee Bar Association	www.tba.org/info/legal-links	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 to 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.

Tips for Pro Se Prisoner 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.

4. Keep a record of everything related to your lawsuit. Keep paper copies of everything you file with the Court. If you cannot make a copy, use carbon paper or handwrite a copy. You also should keep copies of everything you receive from the Court and from the opposing parties.

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

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, rewrite your papers to 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 be sure you 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.

If you want the judge to respond to you, don't send a letter. File a motion and say exactly what you want the Court to do and why.

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.

11. Prisoners are entitled to the **Prison Mailbox Rule**. That means once a prisoner places a legal paper in the prison's internal mail system, the paper is considered filed. To be sure you get the benefit of the mailbox rule, you should sign your papers and state that you are delivering your papers to the facility's internal mail system on a particular date.

How Should I Prepare For A Court Appearance?

If possible, bring a pen and paper with you so that you can take notes.

When the judge enters the courtroom, you must stand and remain standing until the judge sits down.

When you speak to the judge, call the judge "Your Honor."

Never interrupt the judge when he or she is speaking.

How Is A Courtroom Arranged?

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 special machine. The court reporter makes 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 stands when speaking to the judge.

The **jury box** is located against the wall at one side of the courtroom. It 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 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.

What Is A Hearing?

A **hearing** is a formal court proceeding in which the parties present their arguments to the judge and answer the judge's questions about the motion or other matter being

heard. Sometimes **witnesses** can be presented at these hearings. A hearing is not the same as a trial.

How Should I Prepare For A Hearing?

Review all papers that have been filed for 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.

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 judge will give you instructions on how to call in to a telephonic hearing before it takes place.

"NEED TO KNOW" INFORMATION ABOUT PRISONER CIVIL RIGHTS ACTIONS

Who would want to file a federal civil rights action?

A prisoner who believes that his or her civil rights have been violated may want to seek relief by filing a civil rights action in federal court. To bring a civil rights case in federal court, a prisoner must file a complaint that alleges:

- a violation of a right protected by the United States Constitution or created by a federal statute
- by a person acting under color of state law (such as a state prison employee).

Under 42 U.S.C. § 1983, a person who acts under color of state law to violate another person's constitutional rights may be liable for money damages and/or injunctive relief.

There is no federal statute that allows a prisoner to seek relief for violation of his or her constitutional rights caused by a person acting under color of federal law (such as a federal prison employee). As a result, the United States Supreme Court in a case called *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), determined that there is an implied cause of action for violation of constitutional rights by a federal actor. That is why we call those actions "*Bivens* actions."

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

Can I ask for money damages in a civil rights case?

Yes. You may ask for compensatory damages, which represent the money value of the harm or injury caused by the violation of your civil rights. If you are able to prove that your rights were violated, but not that you suffered any financial loss or harm that can be compensated by money, you may receive nominal damages. Nominal damages are a small award (usually $1.00) that recognizes the legal wrong.

There are some defendants against whom you may not recover money damages.

What other relief may I seek in a civil rights case?

You may ask for injunctive relief, such as asking the Court to order the defendant to start or stop doing something.

Can I ask to be released from prison in a civil rights case?

Probably not. It is almost always inappropriate for a prisoner in a civil rights action to seek reversal of his or her conviction and release from prison. If you want the Court to overturn your conviction, shorten your sentence, or release you from prison, you should file a habeas action. The Court has prepared Handbooks for habeas actions under 28 U.S.C. §§ 2241, 2254, and 2255.

Even if a prisoner is seeking only money damages, he or she cannot bring a civil rights claim that challenges the validity of his or her conviction or sentence. In other words, if you believe that you were wrongly convicted based on the false testimony of a police officer, you cannot sue the police officer for money damages in a civil rights action unless your conviction already has been set aside in a prior case.

Am I allowed to file more than one civil rights action?

Yes, but remember the Three Strikes Rule. Each time a prisoner files a civil action or appeal that the Court dismisses because it was frivolous, malicious, or failed to state a claim upon which relief can be granted, the prisoner accrues a "strike" under the Prison Litigation Reform Act. Once a prisoner accrues three strikes, the prisoner cannot bring a new civil action in forma pauperis and must pay the filing fee when the action is filed. The only exception to this rule is if the prisoner is in "imminent danger of serious physical harm." The Three Strikes Rule does not apply to habeas actions.

Is there a form for filing a civil rights action?

Yes. The Clerk's Office can provide you with a form complaint for filing a federal civil rights action, or you can find the form on the Court's website at:

https://www.uscourts.gov/forms/pro-se-forms/complaint-violation-civil-rights-prisoner

You are not required to use the form.

Is there a fee for filing a civil rights action?

The filing fee is $350. There also is an administrative fee of $50, for a total of $400.

What things should I consider before filing a federal civil rights action?

Filing a lawsuit does not mean that you will get the result you want or expect. Lawsuits can be expensive, time-consuming, and stressful. Ask yourself the following questions before you file a Section 1983 or *Bivens* case in federal court.

1. Have I exhausted my administrative remedies?

To "properly exhaust" a claim about prison conditions under the Prison Litigation Reform Act, you must raise the claim in an internal grievance and pursue that grievance through every available level of appeal in the grievance system *before* you file a lawsuit.

Under 42 U.S.C. § 1983, incarcerated persons are required to ask for relief through the grievance system in their prison or jail before filing suit. You must **exhaust** all the levels of the grievance system available to you.

You should be aware that, if you do not exhaust all available administrative remedies before you file you complaint, a defendant may seek to dismiss your complaint on that basis.

2. 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.

Prisoners, like private citizens, cannot bring **criminal** prosecutions or demand that prosecutors or the Court do so; that decision is up to federal and state prosecutors.

3. 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 for the statute of limitations for the kinds of claims you want to bring.

4. 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.

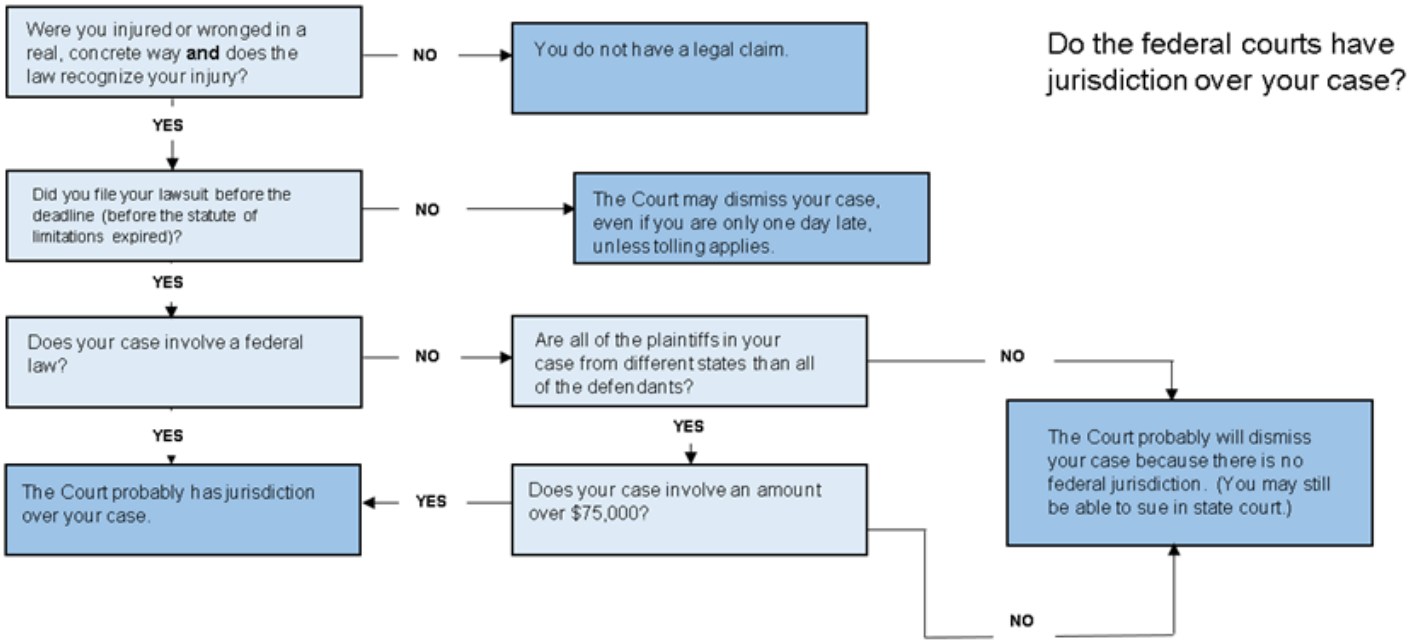
In Tennessee, the state courts are courts of general jurisdiction, which means that they can hear and decide almost any kind of legal controversy between two or more parties. Tennessee state courts hear cases relating to divorce, child custody, inheritance, and real estate matters in accordance with 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 and *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).

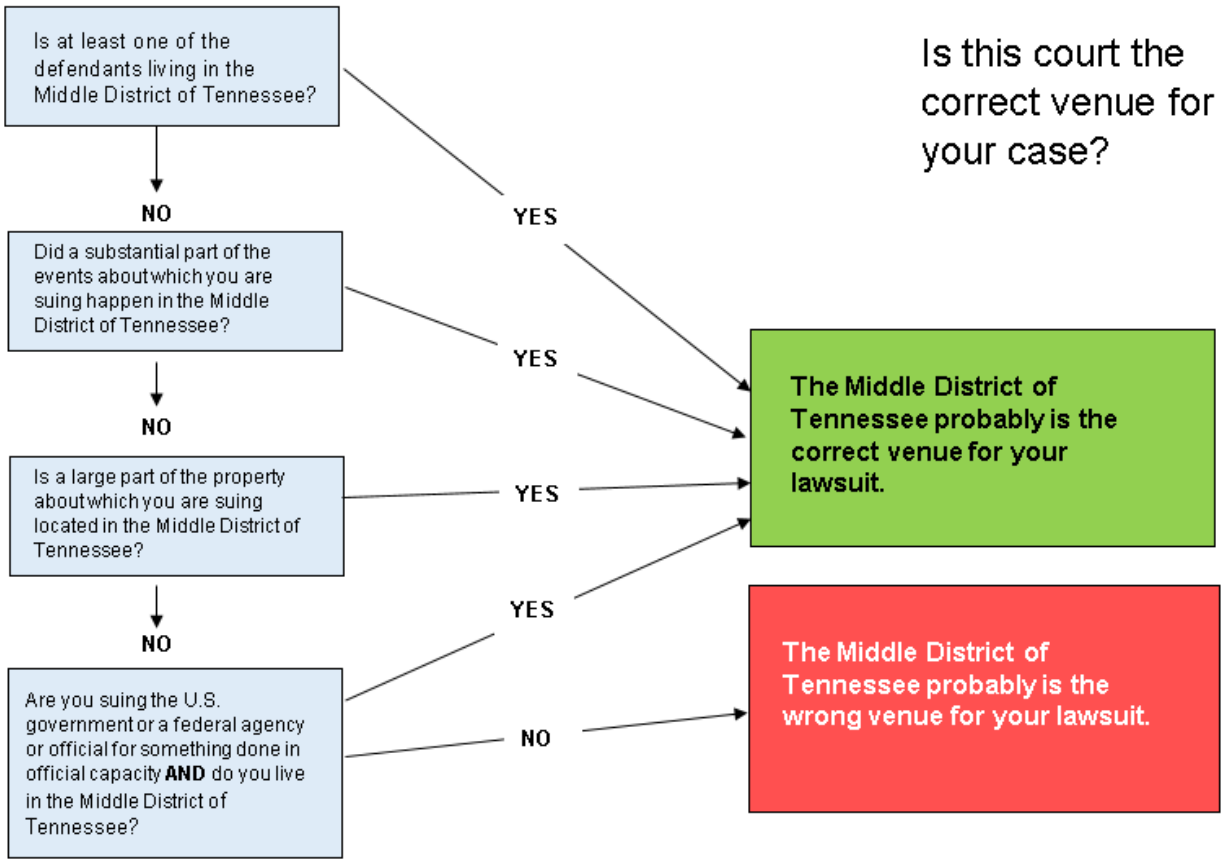
Diversity jurisdiction exists when the plaintiff and the defendant live in different states, or a state and a foreign country, and the **amount in controversy** is worth more than $75,000. For example, if you live in Tennessee and you file a lawsuit against a defendant who lives in Alabama, there would 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.



5. 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. Below 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

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

6. 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 (including cities, states, and municipalities) 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 Montgomery County Sheriff's Office personnel" or "the medical staff."

A common error by pro se prisoners in filing federal civil rights actions is listing several defendants in the complaint but failing to describe what each defendant did or did not do and how those actions or inactions harmed the plaintiff.

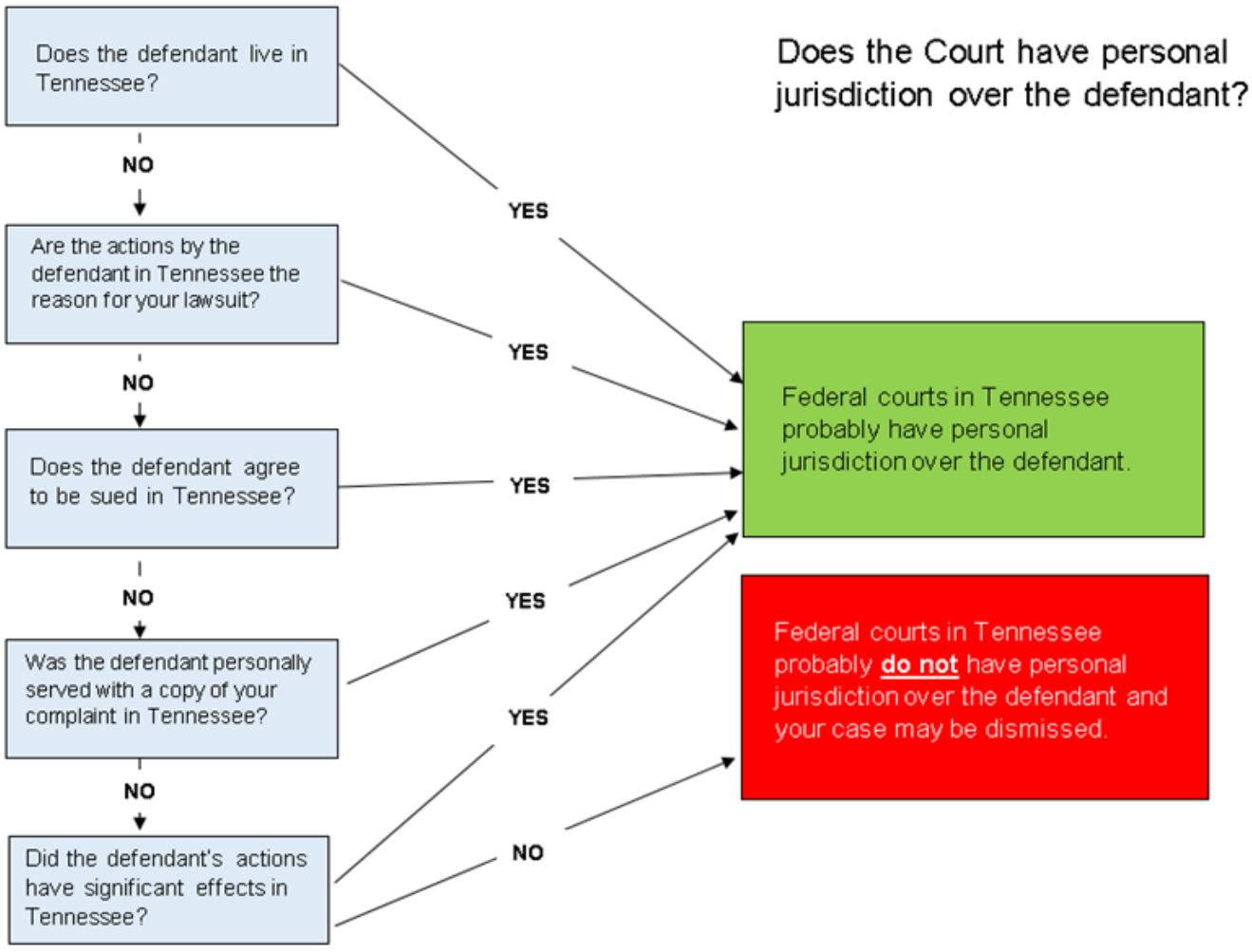
If you want or need to file your lawsuit before you can find out the name of someone you want to name as a defendant, you can call that defendant "John Doe" or "Jane Doe" in your complaint. But, it is your responsibility to find out his or her name as soon as possible. The Court cannot **serve process** on a defendant without knowing his or her name. 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.

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

The Court can only hear cases involving people under the Court's power. A federal court in Tennessee cannot consider 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.



8. 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 violated the plaintiff's rights. In order to win a case, a plaintiff must present facts that support his or her claims. In other words, you cannot simply say that a defendant caused you harm or violated your rights and expect to win your case.

Before you file a lawsuit, be sure you can allege sufficient facts to support your claim that a defendant violated your rights. 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.

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.

Will the Court appoint an attorney for me if I file a civil rights action?

You may ask the Court to appoint an attorney 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.

A defendant in a criminal prosecution is entitled to an attorney by the U.S. Constitution. Therefore, if a defendant cannot afford an attorney, the Court must appoint one for the defendant. However, a party in a civil case is **not** entitled to an attorney, even if he or she cannot 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. A federal civil rights action is a civil action, even if a prisoner files it. The appointment of counsel in a civil case 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.

HOW TO BEGIN A CIVIL RIGHTS ACTION

How do I begin a civil rights lawsuit in federal court?

To begin a civil rights lawsuit in the Middle District of Tennessee, you must do the following:

- Complete and sign your complaint;
- Complete the Civil Cover Sheet form;
- 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");**
- File these documents with the Clerk's Office.

Keep a copy of your complaint for your records, if possible.

What is a complaint?

In order to bring a lawsuit in federal court, a plaintiff must file 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 against whom the lawsuit is being filed is the defendant. The plaintiff and defendant 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.

As a pro se litigant, you may not authorize another person who is not an attorney to appear for you. While you may receive help from other inmates, an inmate legal aid, or other non-attorneys in drafting your court documents, you must personally sign your complaint and all additional papers filed with the Court. If several prisoners file an action together, each prisoner must sign the complaint.

You are not required to type your complaint, but the Court must be able to read it if you handwrite it. Use only one side of the paper if you have enough paper. 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. You should number all pages. 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.

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 kinds of form complaints on the Court's website at:

https://www.tnmd.uscourts.gov/pro-se-forms

If you do not have access to the Internet, you can ask the Clerk's Office to mail you a form complaint for Section 1983 or *Bivens* cases.

You should be aware that forms do not give legal advice. Using a form does not guarantee that you will win your case. The forms are not a substitute for the advice of a lawyer.

What information must be in a complaint?

Caption. Every document that you file with the Court, including the complaint, should have a caption at the top of the first page. 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 each document pertaining to your lawsuit that you file with the Court.

Once you have a case number, put it on every paper you file with the Court. If you have more than one case, be sure you put the right case number on your papers. Doing so will save you a lot of time and trouble!

Jury Demand. A jury demand is a statement of whether or not you want a trial by jury. In certain kinds of cases, the parties are entitled to a jury trial. Generally, you may demand a **jury trial** in writing up until 14 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 demanded" on the first page of your complaint. You may 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.

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 42 U.S.C. § 1983.

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. Every factual allegation you make should be in a separate paragraph. 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.

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 move you to a lower bunk, or to enter an order directing that a defendant stop or start doing something.

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.

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.

Does it matter whether I name the defendants in their official or individual capacities?

Yes. The Court may treat lawsuits filed against state actors in their official capacities as lawsuits filed against the state. Lawsuits seeking money damages against the state may be barred by the Eleventh Amendment of the United States Constitution. State officials may be sued in their official capacities for injunctive relief.

On the other hand, individual capacity lawsuits seek to impose personal liability upon a government official for his or her actions taken under color of state law. Individual capacity lawsuits against state actors seeking money damages are not barred by the Eleventh Amendment.

If you want to sue a person in his or her individual capacity, you must state that in your complaint.

What is a 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. You must file a Civil Cover Sheet when you file your complaint.

How much does it cost to file a complaint?

A $400 fee ($350 filing fee plus a $50 administrative fee) is required when filing a civil complaint in federal court. The entire $400 is due at the time you file your complaint.

What if I can't afford the fee?

If you cannot afford to pay the full filing fee and administrative fee at the time you file your complaint, you can ask the Court to grant you in forma pauperis status. You will need to complete an **application to proceed in forma pauperis**, which sometimes is called "an application to proceed without prepaying fees or costs" or an "IFP application," and file the application with the Court. The application form is available from the Clerk's Office and on the Court's website at:

https://www.tnmd.uscourts.gov/forms/application-proceed-district-court-without-prepaying-fees-or-costs-short-form-prisoners-only

In addition to the application to proceed in forma pauperis, you will need to file a **certified** copy of your inmate trust account statement for the six months immediately preceding the filing of your complaint.

"Certified" means that the custodian has signed the statement. You cannot certify your own statement.

Once you complete and submit the IFP application and certified inmate trust account statement, the Court will review your application.

Remember, if you have three strikes under the Prison Litigation Reform Act, you cannot proceed in forma pauperis unless you are under imminent danger of serious physical harm.

If the Court approves your IFP application, it does not mean that you are excused from paying the filing fee. It means the Court will set up an installment plan that requires you to pay the filing fee *over time* in small payments that are deducted from your inmate trust account when you have enough money. But, if you are allowed to proceed in forma pauperis, you will not have to pay the administrative fee of $50 at any time.

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

> You may be thinking: "Why should I bother asking for IFP status when I'm just going to have to pay the filing fee anyway in installment payments?"
>
> If you do not proceed IFP, you have to pay the entire filing fee up front, before you can file the case. In addition, plaintiffs proceeding IFP get the benefit of the U.S. Marshal Service serving their complaints and summonses. If you are not proceeding IFP, you have to serve the defendants yourself.

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

Remember, pro se prisoner 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.

How can I be sure the Court received my complaint?

You may call the Clerk's Office or request in writing that the Clerk notify you when your complaint was received and filed.

What if I want to change my 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).

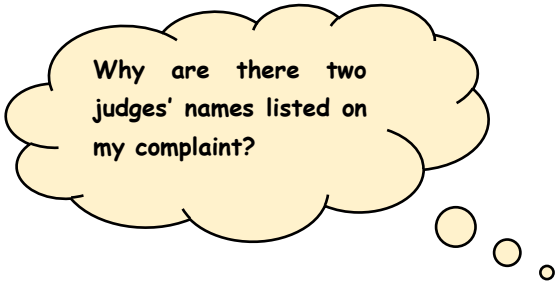
If you want to amend your complaint more than 21 days after the defendant answers or files a motion to dismiss, you may do so if the opposing party consents or if the Court gives you permission. You can get permission to file an amended complaint by filing a motion explaining why you need to do so. Write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

WHAT HAPPENS AFTER I FILE MY 42 U.S.C. § 1983 AND/OR *BIVENS* COMPLAINT?

1. You will receive a case number.

Your case will be assigned a case number. After you receive your case number, you should write it on all documents you send to the Court. Do not expect the Court to know in which action you want your papers filed. It is your responsibility to write your case number on your filings.



Your case will be assigned randomly 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 they 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.

Further information regarding the Report and Recommendation process may be found at 28 U.S.C. § 636(b)(1)(C), in Federal Rule of Civil Procedure 72, and in Local Rule 72.02.

2. The Court will review your complaint for any deficiencies.

After you receive your case number, the judge to whom your case is assigned will review your complaint to make sure you have filed it correctly. For example, the Court will make sure you signed your complaint, that you paid the filing fee or submitted an application to proceed in forma pauperis, and that your inmate trust account statement is certified (if you asked for pauper status).

The Court may enter a **deficiency order**. This order will tell you what you need to do and how long you have to do it. Failure to respond to a deficiency order within the time specified in the Court's order could lead to the dismissal of your case.

If you receive a deficiency order from the Court, you must respond to it or the Court might dismiss your case. A deficiency order means that something is missing that the Court needs, or something you submitted is not quite right. Be sure to follow the directions in the deficiency order by the deadline the Court gives you or ask the Court for an extension of time, ideally before the deadline passes.

3. If you are seeking permission to proceed in forma pauperis, the Court will rule on your application.

If the Court grants your application to proceed in forma pauperis, it does not mean that you do not have to pay the filing fee. It means that, instead of paying the entire $350 fee *all at once*, the Court will permit you to pay the fee *in installments* as provided in 28 U.S.C. § 1915.

Here's how it works: when there is enough money in your inmate trust account, the Court will assess an initial partial filing fee equal to twenty percent of the greater of (1) the average monthly deposits to your prison trust account; or (2) the average monthly balance in your prison trust account for the six-month period immediately preceding the filing of the complaint. After the payment of the initial partial filing fee, you will be required to make monthly payments of twenty percent of the preceding month's income credited to your inmate trust account each time the amount in your account exceeds ten dollars, until the entire fee has been paid.

The Court will send an order to your facility directing the custodian of your account to collect the fee as outlined above. You will receive a copy of the Court's order. If your facility fails to comply with the Court's order for some reason, it will not affect your case.

Why does the Court make some prisoners pay $400 and other prisoners pay $350 as the filing fee?

If a prisoner is granted IFP status, the Court assesses only the $350 filing fee. If a prisoner is not granted IFP status, he or she must pay the $350 filing fee and the $50 administrative fee.

4. The judge assigned to your case will screen your complaint under 28 U.S.C. § 1915A.

Pursuant to 28 U.S.C. § 1915A, the Court is required to screen a prisoner's complaint before service to determine if the prisoner has sued a defendant for damages who is immune from damages claims or if any of the prisoner's claims are frivolous, malicious, or fail to state a claim upon which relief may be granted.

This means that, after screening, the Court may dismiss some of your claims and some of your defendants. The Court also may dismiss your entire case.

There is no set amount of time for how long it will take the Court to screen your complaint.

After the Court has screened your complaint, you will receive a written ruling from the Court. The ruling will inform you if the Court dismissed any of your claims and, if so, why. The ruling also will inform you if the Court allowed any of your claims to proceed.

If the Court dismissed **ALL** of your claims at the screening stage, your complaint will not be served on the defendants, and your case is closed.

If the Court allowed **ANY** of your claims to proceed past initial screening for further development, you will receive additional information from the Court. It is very important for you to follow all of the Court's instructions and meet all of the deadlines given to you by the Court.

Your complaint will not be served on the defendants until it has been screened by the Court. You will not be allowed to pursue discovery or request entry of a **default judgment** before the Court has reviewed your complaint.

5. If the Court did not dismiss your entire complaint at the screening stage, the defendants who have not been dismissed must be served.

Now that the Court has allowed your case to proceed past the initial screening required by 28 U.S.C. § 1915A, you are required to let the remaining defendants know that you have filed a case against them in federal court. The way that you notify the defendants is called "**service of process**" or "**service**."

It is important to know that there are different rules for serving a complaint for plaintiffs who paid the filing fee up front and plaintiffs who are proceeding in forma pauperis (who did not pay the filing fee up front). 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 against that party.

***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 40-43 of this Handbook if you are proceeding IFP and the U.S. Marshal Service is serving your complaint for you.

***If you paid all of the civil filing fee up front**, you have two options now that it's time 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?

A summons form is available on the Court's website at: http://www.uscourts.gov/forms/notice-lawsuit-summons-subpoena/summons-civil-action

Or, you can ask the Clerk's Office to mail you the summons forms you need.

How Do I Serve the Defendants?

Remember, if you are proceeding in forma pauperis, you can skip this section and go straight to page 44.

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.

Here are the rules for serving the most commonly sued defendants in Section 1983 and *Bivens* actions.

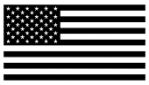
Individuals in the United States

Under Rule 4(e) of the Federal Rules of Civil Procedure, there are several 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; or
- Hand delivery to an agent authorized by the defendant or by law to receive service of process for the defendant.

Remember, if you are proceeding in forma pauperis, you can skip this section and go straight to page 44.



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;
- 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.

You also must do 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):

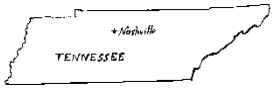
- Serve the United States in the manner described above; and

- 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.

Remember, if you are proceeding in forma pauperis, you can skip this section and go straight to page 44.



<u>A State or Local Government</u>:

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

6. After the service of process, each defendant will have a period of time to respond to your complaint.

Each defendant will either file an answer, file a motion, or do nothing.

An answer is a written response to the complaint by a defendant. 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. Under Federal Rule of Civil Procedure 12(a)(1)(A), a defendant must serve an answer: (1) within 21 days after being served with the summons and complaint; or (2) if the defendant has timely waived service under 4(d), within 60 days after the request for waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States. Unless directed to do so by the Court, you should not respond to an answer.

A motion is a formal request made by a party to the judge for some sort of action in the case. Instead of an answer, a defendant may file a motion challenging some aspect of the complaint for one of the reasons set forth in Federal Rule of Civil Procedure 12. 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.

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 a defendant files a motion, the defendant still will have to file an answer to your complaint but only after the Court rules on the defendant's motion.

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:

The plaintiff begins by filing a **request for entry of default** together with proof (usually in the form of a declaration with 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.

Once the Clerk has entered default against the defendant, the plaintiff then may 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)

A defendant against whom default or a default judgment has been entered may make a motion to set aside the default or default judgment. See Rule 55(c) of the Federal Rules of Civil Procedure. The Court will set aside an entry of default or a default judgment for good cause or for a reason listed in 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."

7. The parties will engage in pre-trial activities, including motion practice and discovery.

After the defendant has entered an appearance in your case, the case will move into the pre-trial stage.

The magistrate judge may hold an **initial case management conference**. During an initial case management conference, a magistrate judge sets a schedule for the phases of litigation, including amending the pleadings, **discovery**, filing **dispostive motions**, pre-trial motions, and a trial date.

Pro se actions brought by persons in the custody of the United States, a state, or a state subdivision are exempt from the initial disclosure requirements of Federal Rule of Civil Procedure 26(a)(1). That means these litigants do not have to comply with the initial disclosure requirements.

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.

What is Discovery?

Discovery is the process by which the parties exchange information about the issues in the 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.

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.

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.

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.

1. **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.

2. 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. 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. A deposition may be taken in person or by telephone. 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. A party must get permission from the Court to depose someone who is in prison.

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.

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

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.

Request 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 admitted.

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.

The discovery process is designed to go forward between the parties with minimal involvement by the Court. You are required to contact the other side and try to resolve any problems before asking the Court to get involved. See Local Rule 37.01.

8. The case may end without a trial.

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

Dismissal By The Court After 28 U.S.C. § 1915A Screening

The Court may have dismissed your case after conducting the initial screening required by 28 U.S.C. § 1915A. This statute requires the Court to screen a prisoner's complaint "before docketing"

or "as soon as practicable" to determine if (1) the action is frivolous or malicious; (2) the complaint fails to state a claim upon which relief can be granted; or (3) 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 in the opposing party's favor. 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. If the Court denies summary judgment, the case will be set for 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 been released from jail or prison, 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.

9. The case may go to trial.

The last stage of a civil action in district court is a trial. Very few cases make it this far.

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.

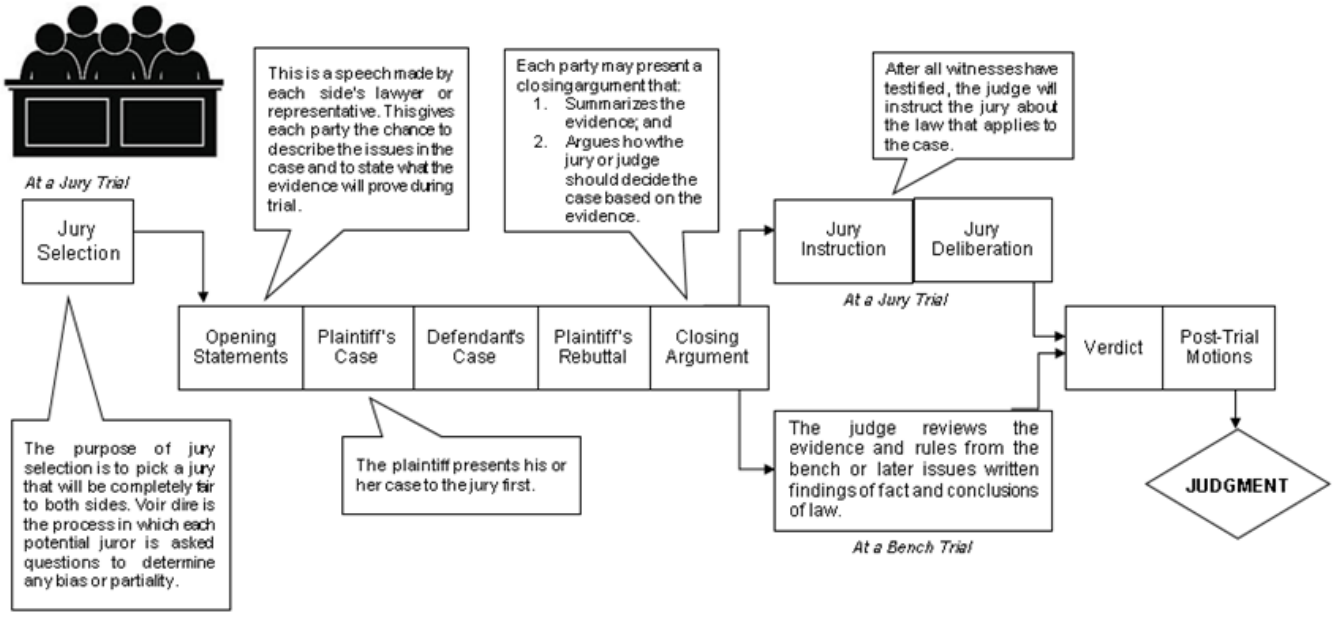
The deadline for seeking a jury trial is set forth in Rule 38 of the Federal Rules of Civil Procedure.

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.

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

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.

Once questioning is completed, the judge will excuse those jurors whom the judge 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" when the party believes that the potential juror is not qualified or cannot be fair.

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 give 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

The **opening statement** is a speech made by each side. 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. 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 admit improper evidence?

Before it can be considered by the jury or judge, evidence presented by both parties 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 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 do I make an objection?

State your objection to the judge. You may object while the other party is presenting evidence. For example: "Objection, your honor, 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. See "What Is a Motion for Judgment as a Matter of Law, and When Can It Be Made?" above. If the Court grants a motion for judgment as a matter of law, the trial is over.

Otherwise, the Court next hears **closing arguments**. Each party may present a closing argument that summarizes the evidence and argues how the jury or, in a bench trial, the judge should decide the case based on that evidence. 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. These instructions are called the jury instructions, or "the charge to the jury." You and defense counsel will be consulted on these instructions before the Court reads them 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 came out. If a defendant owes a plaintiff money, the judgment will list the exact amount, in dollars and cents. 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.

If the Court awards costs and/or attorney fees to the prevailing party, see Local Rule 54.01 for instructions.

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 others later prepare a written document explaining what facts the judge found to be true and what the legal consequences of those facts are. The judge also will issue a written judgment stating the remedies, if any, that he or she 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.

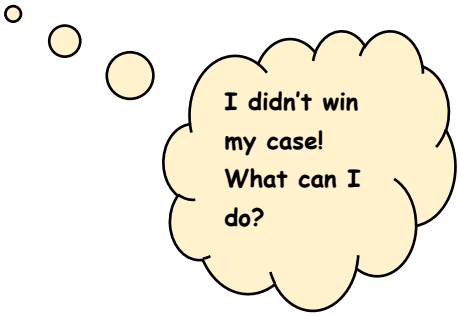
Mistrial

If a jury is unable to reach a verdict and the judge declares a **mistrial**, the case must be tried again before a new jury. A jury that cannot reach a verdict is usually referred to as a "hung jury."

If you believe the judge or jury made a mistake in your lawsuit, there are some 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. You can find more information about appeals later in this Handbook.

10. What if I don't like the result in my case?

Post-Judgment Motions



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 10 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; or
- 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 "do-over" 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. 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; or
- Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); or
- Fraud, misrepresentation, or other misconduct by an opposing party; or
- The judgment is void; or
- The judgment has been satisfied, released, or discharged, or a prior judgment upon which it has been based has been reversed or otherwise vacated, or it is no longer fair that the judgment should be applied; or
- Any other reason justifying relief from 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.

11. One of the parties may file 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 Rules 3 through 6 of the Federal Rules of Appellate Procedure. 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 from the Clerk's Office or online at:

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

Is there any reason why I should not appeal?

Remember, the Three Strikes Rule applies to appeals, so the denial of your appeal could count as a strike against you if the Court finds that your appeal was frivolous, malicious, or failed to state a claim upon which relief may be granted.

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 a prisoner application to proceed in forma pauperis or without prepayment of the fee (IFP application). You can get an application to proceed without prepayment of the fee from the Clerk's Office or online at:

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. But, 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.
Exhaust, Exhaustion	In federal civil rights actions, the requirement that a prisoner-plaintiff must pursue his or her problem or concern through the entire jail or prison grievance system before filing a federal lawsuit. To "properly exhaust" a claim about prison conditions under the Prison Litigation Reform Act, a prisoner must raise claims in an internal grievance and pursue that grievance through every available level of appeal in the grievance system *before* filing a lawsuit.
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.
Exhaustion	In federal civil rights actions, the requirement that a plaintiff must pursue his or her problem or concern through the entire jail or prison grievance system before filing a federal lawsuit.

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 Evidence	The rules defining the type of evidence that a federal court can consider.
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 Orders	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 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 Judgment	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 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 a plaintiff must serve on the defendant along with the original complaint to start a 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.