

Procedural Guide for Pro Se Litigants



THIS INFORMATION IS PROVIDED MERELY AS A GUIDE TO PRO SE LITIGANTS. YOU SHOULD NOT RELY ON THIS INFORMATION ALONE. MOREOVER, ANY COMPLAINT MAY BE SUBJECT TO DISMISSAL ON A VARIETY OF GROUNDS.

July 28, 2009

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

PROCEDURAL GUIDE FOR PRO SE LITIGANTS

Generally, subject matter jurisdiction is based on one or more of the following: (1) A civil action in which the United States or an agency or department thereof is named as a defendant; (2) a civil action which arises under the Constitution, laws or treaties of the United States; or (3) when diversity of citizenship exists and the amount in controversy exceeds \$75,000.00.

A civil action is commenced by filing a complaint with the court. You must submit an original and four copies for the court and one copy for each defendant you name. For example, if you named two defendants you must submit the original and six copies of the complaint. You should also keep an additional copy of the complaint for your own records. All copies of the complaint must be identical to the original.

Pursuant to Rule 8 of the Federal Rules of Civil Procedure, the complaint should contain (1) a short plain statement of the basis of the court's jurisdiction, (2) a short plain statement of the claim, and (3) a demand for judgment for the relief sought. Rule 10 directs that the names of all the parties be included in the title of the action. See the attached basic format to be followed in drafting your complaint.

Your complaint must be legibly handwritten or typewritten on 8 ½" x 11" paper. You, the plaintiff, must sign the last page of your complaint as well as all other pleadings and documents you submit for filing with the court.

In order for your complaint to be filed, it must be accompanied by the filing fee of \$350.00. If you are indigent and unable to pay the filing fee, you may petition the court to proceed *in forma pauperis*. A blank petition for this purpose is attached. An original and one copy of the petition should be submitted with your complaint.

Rule 4 of the Federal Rules of Civil Procedure, as revised effective December 1, 1993, governs service of a complaint. If a summons is presented to the Clerk, and it is in proper form, it will be issued and the summons will be mailed to you. You will be responsible for the prompt service of the summons and complaint upon defendants in accordance with the procedures set forth in F.R.Civ.P. 4. If you are permitted to proceed *in forma pauperis*, the United States Marshal may complete service upon the defendants. The United States Marshal may require you to give additional information to enable the Marshal to complete service of the summons and complaint upon defendants.

If you are notified that the *in forma pauperis* petition is denied by the court, you will be required to pay the filing fee in order for the complaint to be filed and your action to be commenced.

CAMDEN CLERK'S OFFICE

Mitchell H. Cohen U.S. Courthouse
One John F. Gerry Plaza, P.O. Box 1297
Fourth & Cooper Streets, Room 1050
Camden, New Jersey 08101

NEWARK CLERK'S OFFICE

Martin Luther King Jr. Federal Bldg.
& U.S. Courthouse
50 Walnut Street, P.O. Box 419
Newark, New Jersey 07101

TRENTON CLERK'S OFFICE

Clarkson S. Fisher U.S. Courthouse
402 East State Street
Room 2020
Trenton, New Jersey 08608

The United States District Court, District of New Jersey Web Site can be found at: www.njd.uscourts.gov

**TRIBUNAL FEDERAL DE DISTRITO
DISTRITO DE NUEVA JERSEY**

GUÍA DE PROCEDIMIENTO PARA LITIGANTES PRO SE

Por lo general, la jurisdicción federal se aplica sobre un asunto cuando hay una o más de las siguientes bases: (1) una acción civil en la cual los Estados Unidos o una agencia o departamento del mismo es nombrada como uno de los demandados; (2) una acción civil que surge de acuerdo con la Constitución, leyes o tratados de los Estados Unidos; o (3) cuando existe diversidad de ciudadanía y la cantidad de la controversia excede de \$75,000.

Una acción civil se inicia con la presentación de una demanda ante el tribunal. Tiene que someter un original y cuatro copias para el tribunal y una copia para cada uno de los demandados nombrados. Por ejemplo, si usted nombra dos acusados, tiene que someter el original y seis copias de la demanda. También debe guardar una copia adicional de la demanda para su propio archivo. Todas las copias de la demanda tienen que ser idénticas al original.

De conformidad con la Regla 8 del Reglamento Federal de Enjuiciamiento Civil, la demanda debe contener: (1) una exposición breve y sencilla de la base para la jurisdicción del tribunal, (2) una exposición breve de la reclamación, y (3) una solicitud de sentencia por el reparo judicial que se trata de obtener. La Regla 10 ordena que los nombres de todas las partes se incluyan en el título de la acción. Véase el formato básico adjunto que usted ha de seguir al redactar su demanda.

Su demanda debe ser escrita a mano de modo legible o escrita a máquina en papel de 8 ½" x 11". Usted, el demandante, tiene que firmar la última página de su demanda, así como todos los otros documentos y presentaciones que deposite en el tribunal para que sean registrados.

Para que su demanda sea registrada, tiene que ir acompañada de la cuota de registro de \$350.00. Si carece de recursos y no puede pagar la cuota de registro, puede presentarle una petición al tribunal para que se le permita proceder *in forma pauperis*. Para este propósito se adjunta una petición en blanco que debe completar. Debe someter un original y una copia de esta petición junto con su demanda.

La Regla 4 del Reglamento Federal de Enjuiciamiento Civil (F.R.Civ.P. 4.), modificada con vigor a partir del 1 de diciembre de 2007, rige la notificación de la demanda. Si se le presenta al Secretario del Tribunal una notificación de la incoación de un proceso civil, y está en forma adecuada, se expedirá y las citaciones se las enviarán a usted por correo. Usted será responsable de la notificación puntual de las citaciones de comparecencia y la demanda a los demandados de acuerdo con el procedimiento establecido en F.R.Civ.P. 4. Si le dan permiso para proceder *in forma pauperis*, puede ser que el Alguacil Federal completará la notificación a los demandados. El Alguacil de los Estados Unidos puede requerir que usted le suministre información adicional para poder completar la notificación de las citaciones y la demanda a los demandados.

Si le avisan que su petición para proceder *in forma pauperis* ha sido denegada por el tribunal, se requerirá que usted pague la cuota de registro para que la demanda sea registrada y pueda comenzar su acción civil.

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Clarkson S. Fisher U.S. Courthouse
402 East State Street
Room 2020
Trenton, New Jersey 08608

El Web Site del Tribunal Federal del Distrito de New Jersey puede encontrarse en: www.njd.uscourts.gov

ATTACHMENTS:

1. **Glossary of Terms**
2. **Sample Complaint**
3. **Consent to receive documents electronically/Privacy Notice**
4. **Administrative Office Forms:**

Form Number	Description
JS 44	Civil Cover Sheet
AO 440	Summons in a Civil Action
AO 398	Notice of Lawsuit
AO 399	Waiver of Service
AO 239	Application to Proceed <i>In Forma Pauperis</i> (non-prisoner)

5. Federal Rules of Civil Procedure:

Rule Number	Description
Rule 3	Commencement of Action
Rule 4	Summons
Rule 5	Service of Filing of Pleadings & Other Papers
Rule 6	Time
Rule 7	Pleadings Allowed; Form of Motions
Rule 8	General Rules of Pleading
Rule 9	Pleading Special Matters
Rule 10	Form of Pleadings
Rule 11	Signing of Pleadings, Motions, Other Papers
Rule 12	Defenses and Objections
Rule 13	Counterclaim and Cross-Claim
Rule 14	Third-Party Practice
Rule 15	Amended and Supplemental Pleadings
Rule 16	Pretrial Conference
Rule 26	General Provisions Governing Discovery

6. **District of New Jersey Local Civil Rules:**

a. **FILING OF PAPERS, FORM OF PLEADINGS:**

Rule Number	Description
Rule 5.1	Service of Filing of Pleadings & Other Papers
Rule 8.1	Pleading Damages
Rule 10.1	Form of Pleadings
Rule 11.1	Signing of Pleadings
Rule 11.2	Verification of Petitions
Rule 38.1	Jury Demand

b. **PAYMENT OF FEES:**

Rule Number	Description
Rule 54.3	Prepayment of Clerk's and Marshal's Fees

c. **INFORMATION AS TO DISCOVERY:**

Rule Number	Description
Rule 26.1	Discovery

d. **CASE ALLOCATION AND JUDGE ASSIGNMENT:**

Rule Number	Description
Rule 40.1	Allocation and Assignment of Cases

e. **DISMISSAL OF INACTIVE CASES:**

Rule Number	Description
Rule 41.1	Dismissal of Inactive Cases

**f. MOTION PRACTICE, EMERGENCY APPLICATIONS,
HABEAS PETITIONS**

Rule Number	Description
Rule 7.1	Application and Motion Practice
Rule 7.2	Affidavits and Briefs
Rule 37.1	Discovery Motions
Rule 56.1	Summary Judgment Motions
Rule 65.1	Applications for Emergency Relief
Rule 78.1	Motion Days
Rule 79.2	Briefs Part of Public Record
Rule 81.2	Habeas Corpus Motions under 28 U.S.C. §2255 in Non-Death Penalty Cases
Rule 81.3	Habeas Corpus Motions under 28 U.S.C. §2255 in Death Penalty Cases

7. Court's Appendices:

Appendix Letter	Description
Appendix F	Transcript Rates
Appendix K	Schedule of Fees

GLOSSARY

ADVERSARY PROCESS —the method courts use to resolve disputes; through the adversary process, each side in a dispute presents its case as persuasively as possible, subject to the rules of evidence, and an independent fact finder, either judge or jury, decides for one side or the other.

ANSWER —the formal written statement by a defendant responding to a complaint and setting forth the grounds for defense.

APPEAL —a request, made after a trial, asking another court (usually the court of appeals) to decide whether the trial was conducted properly. To make such a request is “to appeal” or “to take an appeal.”

ARRAIGNMENT (a-RAIN-ment) —a proceeding in which an individual who is accused of committing a crime is brought into court, told of the charges, and asked to plead guilty or not guilty.

BANKRUPTCY —refers to federal statutes and judicial proceedings involving persons or businesses that cannot pay their debts and thus seek the assistance of the court in getting a “fresh start.” Under the protection of the bankruptcy court, debtors may “discharge” their debts, perhaps by paying a portion of each debt.

BENCH TRIAL —a trial without a jury, in which the judge decides the facts.

BRIEF—a written statement submitted by the lawyer for each side in an appellate case that explains to the judges why they should decide the case in favor of that lawyer’s client.

CASE LAW —the law as laid down in the decisions of the courts; the law in cases that have been decided.

CHAMBERS —the offices of a judge.

CHIEF DISTRICT JUDGE —the judge who has primary responsibility for the administration of the district court, but also decides cases; chief judges are determined by seniority.

CLERK OF COURT —an officer appointed by the court to work with the chief judge in overseeing the court’s administration, especially to assist in managing the flow of cases through the court.

COMPLAINT—a written statement by the person starting a lawsuit; the complaint states the wrongs allegedly committed by the defendant.

CONTRACT —an agreement between two or more persons that creates an obligation to do or not to do a particular thing.

COUNSEL —a lawyer or a team of lawyers; the term is often used during a trial to refer to lawyers in the case.

COURT —an agency of government authorized to resolve legal disputes. Judges sometimes use “court” to refer to themselves in the, third person, as in “the court has read the pleadings.

COURT REPORTER —a person who makes a word-for-word record of what is said in court and produces a transcript of the proceeding if requested to do so.

COUNTERCLAIM —a counter-demand made by defendant against the plaintiff. It is not a mere denial of plaintiff's allegations, but rather asserts an independent cause of action the purpose of which is to oppose or deduct from plaintiff's claim.

COURTROOM DEPUTY or CLERK —a court employee who assists the judge by keeping track of witnesses, evidence, and other trial matters.

CROSS-CLAIM - a pleading which asserts a claim arising out of the same subject matter as the original complaint against a co-party. For example, a co-defendant may file a cross-claim against another co-defendant for contribution for any damages assessed against the cross-claimant.

CROSS- (and RE-CROSS-)

EXAMINATION —questions asked by lawyers of witnesses called by their opponents.

DAMAGES —money paid by defendants to successful plaintiff in civil cases to compensate the plaintiffs for their injuries.

DEFENDANT —in a civil suit, the person complained against; in a criminal case, the person accused of the crime.

DIRECT (and RE-DIRECT)

EXAMINATION —questions asked by lawyers of witnesses they have asked to come to court in order to bring out evidence for the fact finder.

DISCOVERY —lawyers' examination, before trial, of facts and documents in possession of the opponents, to help the lawyers prepare for trial.

EN BANC —French for "in the bench" or "full bench." The term refers to a session in which the entire membership of the court participates in the decision rather than the regular quorum. The U.S. courts of appeals usually sit in panels of three judges, but for important cases may expand the bench to a larger number, and they are then said to be sitting en banc.

EVIDENCE —information in testimony or in documents that is presented to persuade the fact finder (judge or jury) to decide the case for one side or the other.

FELONY —a crime that carries a penalty of more than a year in prison.

GOVERNMENT—as it is used in federal criminal cases, "government" refers to the lawyers in the U.S. attorney's office who are prosecuting the case.

GRAND JURY —a body of citizens who listen to evidence of criminal activity presented by the government in order to determine whether there is enough evidence to justify filing an indictment. Federal grand juries consist of 23 persons and serve for about a year.

HEARSAY —evidence that is presented by a witness who did not see or hear the incident in question but heard about it from someone else. Hearsay evidence is usually not admissible as evidence in the trial.

IMPEACHMENT—(1) the process of charging someone with a crime (used mainly with respect to the constitutional process whereby the House of Representatives may IMPEACH high officers of the government for trial in the Senate); (2) the process of calling something into question, as in "impeaching the testimony of a witness."

INDICTMENT (in-DITE-ment) —the formal charge issued by a grand jury stating that there is enough evidence that the defendant committed the crime to justify having a trial; used primarily for felonies.

INFORMATION —a formal accusation by a government attorney that the defendant committed a misdemeanor.

INSTRUCTIONS —the judge's explanation to the jury, before it begins deliberations, of the questions it must answer and the law governing the case.

JUDGE —a government official with authority to decide lawsuits brought before courts.

JUDICIAL REVIEW —this term typically refers to the authority of a court, in a case involving either a law passed by a legislature or an action by an executive branch officer or employee, to determine whether the law or action is inconsistent with a more fundamental law, namely the Constitution, and to declare the law or action invalid if it is inconsistent. Although judicial review is usually associated with the United States Supreme Court, it can be, and is, exercised by all courts. Judicial review sometimes means a form of appeal to the courts for review of findings of fact or of law by an administrative body.

JURISDICTION —(1) the legal authority of a court to hear and decide a case; (2) the geographic area over which the court has authority to decide cases.

LAWSUIT —an action started by a plaintiff against a defendant based on a complaint that the defendant committed a crime or failed to perform a legal duty.

LITIGANTS-see **PARTIES**.

MAGISTRATE —in federal court, the U.S.

magistrate is a judicial officer who assists the district judges in getting cases ready for trial. Magistrates also may decide some criminal trials and may decide civil trials when both parties agree to have the case heard by a magistrate instead of a judge. More generally, the term refers to various public officers, often judicial officers with less authority than federal magistrates.

MISDEMEANOR —usually a petty offense, a less serious crime than a felony.

OPINION —a judge's written explanation of a decision in a case. An **OPINION OF THE COURT** explains the decision of the court or of a majority of the judges. A **DISSENTING OPINION** is an explanation by one or more judges of why they believe the decision or opinion of the court is wrong. A **CONCURRING OPINION** agrees with the decision of the court but offers further comment.

ORAL ARGUMENT —in appellate cases, an opportunity for the lawyers for each side to summarize their position for the judges and answer the judges' questions.

PANEL —(1) in appellate cases, a group of three judges assigned to decide the case; (2) in the process of jury selection, the group of potential jurors brought in for voir dire.

PARTIES —the plaintiff(s) and defendant(s) to a lawsuit and their lawyers.

PETIT JURY (or TRIAL JURY) —a group of citizens who hear the evidence presented by both sides at trial and determine the facts in dispute. Federal criminal juries consist of 12 persons (sometimes with 1 or 2 alternate jurors in case 1 of the 12 cannot continue). Federal civil juries usually consist of 6 persons, with alternates. “Petit” is French for “small,” thus distinguishing the trial jury from the larger grand jury.

PLAINTIFF —the person who files the complaint in a civil lawsuit.

PLEA —in a criminal case, the defendant’s statement pleading “guilty” or “not guilty” of the charges.

PLEADINGS —in a civil case, the written statements of the parties stating their position about the case.

PRECEDENT (PRE-sa-dent) —a court decision in an earlier case with facts similar to a dispute currently before a court.

PRETRIAL CONFERENCE —a meeting of the judge and lawyers to decide which matters are in dispute and should be presented to the jury, to review evidence and witnesses to be presented, to set a timetable for the case, and sometimes to discuss settlement of the case.

PRO SE (pro SAY) —a Latin term meaning “on one’s own behalf”; in courts, it refers to persons who try their own cases without lawyers. A person who does that is sometimes called “a Pro Se.”

PROSECUTE —to charge someone with a crime or a civil violation and seek to gain a criminal conviction or a civil judgment.

RECORD —a written account of all the acts and proceedings in a lawsuit.

REMAND —when an appellate court sends a case back to a lower court for further proceedings.

REVERSE —when an appellate court sets aside the decision of a lower court because of an error. A REVERSAL is often followed by a remand.

SETTLE —in legal terminology, when the parties to a lawsuit agree to resolve their differences among themselves without having a trial.

SIDEBAR —a conference between the judge and lawyers held out of the earshot of the jury and spectators.

STATUTE —a law passed by a legislature.

SUMMARY JUDGMENT —a decision made on the basis of statements and evidence presented for the record without any need for a trial. It is used when there is no dispute as to the facts of the case and one party is entitled to judgment as a matter of law.

TESTIMONY —evidence presented orally by witnesses during trials or before grand juries.

TRANSCRIPT —a written, word-for-word record of what was said, either in a proceeding such as a trial or during some other conversation, as in a “transcript” of a telephone conversation.

UPHOLD —when an appellate court does not reverse a lower court decision.

U.S. ATTORNEY —a lawyer appointed by the President, in each judicial district, to prosecute cases for the federal government.

VERDICT —a petit jury’s decision.

VOIR DIRE (VWAHR DEER)—the process by which judges and lawyers select a petit jury from among those eligible to serve. “Voir dire” is a legal phrase meaning “to speak the truth.”

WITNESS —a person called upon by either side in a lawsuit to give testimony before the court or jury.

Name of Court:

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Title of Action:

Your Name,

Plaintiff,

Civil Action No. _____

(To be supplied by the Court)

-vs-

The title must include
all defendants,

COMPLAINT

Defendant(s).

PARTIES

State your (Plaintiff) name and address.

State names and addresses of all Defendants.

JURISDICTION

A short plain statement of the grounds upon which the court's jurisdiction depends.

CAUSE OF ACTION

Make a short plain statement setting forth the facts of your case.

DEMAND

State briefly exactly what you want the court to do for you.

(Signature of Plaintiff)

FORMAT FOR A COMPLAINT

Do not submit this form. This is to be used as a Guide only.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Pro se (Non Prisoner)
Consent & Registration Form to Receive Documents Electronically

Pursuant to Fed. R. Civ. P. 5(b), and Fed. R. Civ. P. 77(d), Local Civil Rule 5.2 and the Court's Electronic Case Filing Policies and Procedures, documents may be served through the court's transmission facilities by electronic means. Documents that are not permitted to be served electronically are pleadings that are to be served with process under Fed.R.Civ.P. 4.

I _____ hereby consent to receive service of documents and notice of electronic filings via the Court's electronic filing system to the extent and in the manner authorized by the above rules and waiving the right to receive notice by first class mail pursuant to Fed.R.Civ.P. 5(b)(2)(D) and Fed.R.Civ.P. 77(d).

Pursuant to Local Civil Rule 10.1, I will promptly notify the Court if there is a change in my personal data, such as name, address, and/or e-mail address. I will promptly notify the Court to request cancellation of electronic service.

Litigants who have consented to receive documents electronically will be sent a **Notice of Electronic Filing** via e-mail. Upon receipt of the notice, they are permitted **one "free look"** at the document by clicking on the hyperlinked document number. The one "free look" will expire 15 days from the date the notice was sent. After the "free look" is used or expires, the document can only be accessed through PACER (**P**ublic **A**ccess to **C**ourt **E**lectronic **R**ecords.) It is recommended that litigants establish a PACER account. This can be accomplished by visiting the PACER web site at <http://pacer.psc.uscourts.gov>. PACER is an automated system that allows an individual to view, print, and download documents for a fee.

My e-mail address is: _____

My case number is: _____

Signature of Litigant

Mailing Address

City, State, Zip Code

Telephone Number

Date: _____

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PRIVACY NOTICE

Please be advised that documents filed in cases pending in the United States District Court for the District of New Jersey are available to the public via the Court's electronic access system **PACER** (Public Access to Court Electronic Records.) PACER is an automated system that, for a fee, allows an individual to view, print and download court docket information over the internet.

The court requires the **filer** of a document to redact the following personal identifiers from the document:

- 1) Social Security Numbers to the last four digits;
- 2) financial account numbers to the last four digits;
- 3) names of minor children to the initials
- 4) dates of birth to the year; and
- 5) home addresses to the city and state - Parties filing pro se must include their complete mailing address for purposes of sending notices, orders, etc.

The filer of the document has the sole responsibility for redacting this information from the document. The Clerk will NOT review each filing for redaction.

In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above may file an unredacted document under seal. Litigants shall file a Notice of Motion to permit the unredacted documents containing personal identifiers to be filed under seal.

Because filings will be available electronically and may contain information implicating not only privacy but also personal security concerns, the court encourages counsel and **pro se litigants** to exercise caution when filing a document that contains any of the following information:

- 1) any personal identifying number, such as a driver's license number;
- 2) medical records, treatment and diagnosis
- 3) employment history;
- 4) individual financial information;
- 5) proprietary or trade secret information;
- 6) information regarding and individual's cooperation with the government;
- 7) information regarding the victim or any criminal activity;
- 8) national security information;
- 9) sensitive security information as described in 49 U.S.C. § 114(s).

It is the responsibility of the filer to be sure that all documents and pleadings comply with the rules of this Court in connection with the redaction of personal identifiers.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p>I. (a) PLAINTIFFS</p> <p>(b) County of Residence of First Listed Plaintiff _____</p> <p>(c) Attorney's (Firm Name, Address, Telephone Number and Email Address) _____</p>	<p>DEFENDANTS</p> <p>County of Residence of First Listed Defendant _____</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known) _____</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;"></td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</td> <td style="width: 45%;"></td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify) _____
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): _____

Brief description of cause: _____

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____ CHECK YES only if demanded in complaint: **JURY DEMAND:** Yes No

VIII. RELATED CASE(S) (See instructions): JUDGE _____ DOCKET NUMBER _____

Explanation: _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases. Provide a brief explanation of why the cases are related.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
for the

_____)	
Plaintiff)	
v.)	Civil Action No.
_____)	
Defendant)	

Summons in a Civil Action

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within ___ days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, whose name and address are:

If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Name of clerk of court

Date: _____

Deputy clerk's signature

(Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States allowed 60 days by Rule 12(a)(3).)

Proof of Service

I declare under penalty of perjury that I served the summons and complaint in this case on _____,
by:

(1) personally delivering a copy of each to the individual at this place, _____
_____; or

(2) leaving a copy of each at the individual's dwelling or usual place of abode with _____
who resides there and is of suitable age and discretion; or

(3) delivering a copy of each to an agent authorized by appointment or by law to receive it whose name is
_____; or

(4) returning the summons unexecuted to the court clerk on _____; or

(5) other (*specify*) _____

_____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

Date: _____

Server's signature

Printed name and title

Server's address

UNITED STATES DISTRICT COURT
for the

Plaintiff
v.
Defendant
Civil Action No.

Notice of a Lawsuit and Request to Waive Service of a Summons

To:
(Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within ___ days (give at least 30 days or at least 60 days if the defendant is outside any judicial district of the United States) from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date

Signature of the attorney or unrepresented party
Printed name
Address
E-mail address
Telephone number

UNITED STATES DISTRICT COURT
for the

Plaintiff
v.
Defendant
Civil Action No.

Waiver of the Service of Summons

To:
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date

Signature of the attorney or unrepresented party
Printed name
Address
E-mail address
Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

UNITED STATES DISTRICT COURT
for the

Plaintiff/Petitioner)	
v.)	Civil Action No.
Defendant/Respondent)	

APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS
(Long Form)

Affidavit in Support of the Application	Instructions
<p>I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested. I declare under penalty of perjury that the information below is true and understand that a false statement may result in a dismissal of my claims.</p> <p>Signed: _____</p>	<p>Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.</p> <p>Date: _____</p>

- For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly income amount during the past 12 months		Income amount expected next month	
	You	Spouse	You	Spouse
Employment	\$	\$	\$	\$
Self-employment	\$	\$	\$	\$
Income from real property <i>(such as rental income)</i>	\$	\$	\$	\$
Interest and dividends	\$	\$	\$	\$
Gifts	\$	\$	\$	\$
Alimony	\$	\$	\$	\$
Child support	\$	\$	\$	\$

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Retirement (such as social security, pensions, annuities, insurance)	\$	\$	\$	\$
Disability (such as social security, insurance payments)	\$	\$	\$	\$
Unemployment payments	\$	\$	\$	\$
Public-assistance (such as welfare)	\$	\$	\$	\$
Other (specify):	\$	\$	\$	\$
Total monthly income:	\$	0.00	\$	0.00
		0.00	\$	0.00
			\$	0.00
			\$	0.00

2. List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$
			\$

4. How much cash do you and your spouse have? \$ _____

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
		\$	\$
		\$	\$
		\$	\$

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Assets owned by you or your spouse	
Home (<i>Value</i>)	\$
Other real estate (<i>Value</i>)	\$
Motor vehicle #1 (<i>Value</i>)	\$
Make and year:	
Model:	
Registration #:	
Motor vehicle #2 (<i>Value</i>)	\$
Make and year:	
Model:	
Registration #:	
Other assets (<i>Value</i>)	\$
Other assets (<i>Value</i>)	\$

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
	\$	\$
	\$	\$
	\$	\$

7. State the persons who rely on you or your spouse for support.

Name (or, if under 18, initials only)	Relationship	Age

AO 239 (01/09) Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form)

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment <i>(including lot rented for mobile home)</i> Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No	\$	\$
Utilities <i>(electricity, heating fuel, water, sewer, and telephone)</i>	\$	\$
Home maintenance <i>(repairs and upkeep)</i>	\$	\$
Food	\$	\$
Clothing	\$	\$
Laundry and dry-cleaning	\$	\$
Medical and dental expenses	\$	\$
Transportation <i>(not including motor vehicle payments)</i>	\$	\$
Recreation, entertainment, newspapers, magazines, etc.	\$	\$
Insurance <i>(not deducted from wages or included in mortgage payments)</i>		
Homeowner's or renter's:	\$	\$
Life:	\$	\$
Health:	\$	\$
Motor vehicle:	\$	\$
Other:	\$	\$
Taxes <i>(not deducted from wages or included in mortgage payments) (specify):</i>	\$	\$
Installment payments		
Motor vehicle:	\$	\$
Credit card <i>(name):</i>	\$	\$
Department store <i>(name):</i>	\$	\$
Other:	\$	\$
Alimony, maintenance, and support paid to others	\$	\$

AO 239 (01/09) Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form)

Regular expenses for operation of business, profession, or farm <i>(attach detailed statement)</i>	\$	\$
Other <i>(specify)</i> :	\$	\$
Total monthly expenses:	\$ 0.00	\$ 0.00

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes No If yes, describe on an attached sheet.

10. Have you paid — or will you be paying — an attorney any money for services in connection with this case, including the completion of this form? Yes No

If yes, how much? \$ _____
 If yes, state the attorney's name, address, and telephone number:

11. Have you paid — or will you be paying — anyone other than an attorney *(such as a paralegal or a typist)* any money for services in connection with this case, including the completion of this form? Yes No

If yes, how much? \$ _____
 If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of these proceedings.

13. Identify the city and state of your legal residence.

Your daytime phone number: _____

Your age: _____ Your years of schooling: _____

Last four digits of your social-security number: _____

FEDERAL RULES OF CIVIL PROCEDURE

Rule 3. Commencement of Action

1. A civil action is commenced by filing a complaint with the court.

Rule 4. Summons

1. (a) Contents; Amendments.

(1) Contents.

A summons must:

(A) name the court and the parties;

(B) be directed to the defendant;

(C) state the name and address of the plaintiff's attorney or — if unrepresented — of the plaintiff;

(D) state the time within which the defendant must appear and defend;

(E) notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint;

(F) be signed by the clerk; and

(G) bear the court's seal.

(2) Amendments.

The court may permit a summons to be amended.

(b) Issuance.

On or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the plaintiff for service on the defendant. A summons — or a copy of a summons that is addressed to multiple defendants — must be issued for each defendant to be served.

(c) Service.

(1) In General.

A summons must be served with a copy of the complaint. The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule **4(m)** and must furnish the necessary copies to the person who makes service.

(2) By Whom.

Any person who is at least 18 years old and not a party may serve a summons and complaint.

(3) By a Marshal or Someone Specially Appointed.

At the plaintiff's request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. The court must so order if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915 or as a seaman under 28 U.S.C. § 1916.

(d) Waiving Service.

(1) Requesting a Waiver.

An individual, corporation, or association that is subject to service under Rule 4(e), (f), or (h) has a duty to avoid unnecessary expenses of serving the summons. The plaintiff may notify such a defendant that an action has been commenced and request that the defendant waive service of a summons. The notice and request must:

(A) be in writing and be addressed:

(i) to the individual defendant; or

(ii) for a defendant subject to service under Rule 4(h), to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process;

(B) name the court where the complaint was filed;

(C) be accompanied by a copy of the complaint, 2 copies of a waiver form, and a prepaid means for returning the form;

(D) inform the defendant, using text prescribed in Form 5, of the consequences of waiving and not waiving service;

(E) state the date when the request is sent;

(F) give the defendant a reasonable time of at least 30 days after the request was sent — or at least 60 days if sent to the defendant outside any judicial district of the United States — to return the waiver; and

(G) be sent by first-class mail or other reliable means.

(2) Failure to Waive.

If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant:

(A) the expenses later incurred in making service; and

(B) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

(3) Time to Answer After a Waiver.

A defendant who, before being served with process, timely returns a waiver need not serve an answer to the complaint until 60 days after the request was sent — or until 90 days after it was sent to the defendant outside any judicial district of the United States.

(4) Results of Filing a Waiver.

When the plaintiff files a waiver, proof of service is not required and these rules apply as if a summons and complaint had been served at the time of filing the waiver.

(5) Jurisdiction and Venue Not Waived.

Waiving service of a summons does not waive any objection to personal jurisdiction or to venue.

(e) Serving an Individual Within a Judicial District of the United States.

Unless federal law provides otherwise, an individual — other than a minor, an incompetent person, or a person whose waiver has been filed — may be served in a judicial district of the United States by:

(1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or

(2) doing any of the following:

(A) delivering a copy of the summons and of the complaint to the individual personally;

(B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

(f) Serving an Individual in a Foreign Country.

Unless federal law provides otherwise, an individual - other than a minor, an incompetent person, or a person whose waiver has been filed - may be served at a place not within any judicial district of the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does

not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:

(i) delivering a copy of the summons and of the complaint to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

(g) Serving a Minor or an Incompetent Person.

A minor or an incompetent person in a judicial district of the United States must be served by following state law for serving a summons or like process on such a defendant in an action brought in the courts of general jurisdiction of the state where service is made. A minor or an incompetent person who is not within any judicial district of the United States must be served in the manner prescribed by Rule 4(f)(2)(A), (f)(2)(B), or (f)(3).

(h) Serving a Corporation, Partnership, or Association.

Unless federal law provides otherwise or the defendant's waiver has been filed, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served:

(1) in a judicial district of the United States:

(A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or

(B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and — if the agent is one authorized by statute and the statute so requires — by also mailing a copy of each to the defendant; or

(2) at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).

(i) Serving the United States and Its Agencies, Corporations, Officers, or Employees.

(1) United States.

To serve the United States, a party must:

(A)

(i) deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought — or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk — or

(ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney's office;

(B) send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and

(C) if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

(2) Agency; Corporation; Officer or Employee Sued in an Official Capacity.

To serve a United States agency or corporation, or a United States officer or employee sued only in an official capacity, a party must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer, or employee.

(3) Officer or Employee Sued Individually.

To serve a United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf (whether or not the officer or employee is also sued in an official capacity), a party must serve the United States and also serve the officer or employee under Rule 4(e), (f), or (g).

(4) Extending Time.

The court must allow a party a reasonable time to cure its failure to:

(A) serve a person required to be served under Rule 4(i)(2), if the party has served either the United States attorney or the Attorney General of the United States; or

(B) serve the United States under Rule 4(i)(3), if the party has served the United States officer or employee.

(j) Serving a Foreign, State, or Local Government.

(1) Foreign State.

A foreign state or its political subdivision, agency, or instrumentality must be served in accordance with **28 U.S.C. § 1608**.

(2) State or Local Government. A state, a municipal corporation, or any other state-created governmental organization that is subject to suit must be served by:

(A) delivering a copy of the summons and of the complaint to its chief executive officer; or

(B) serving a copy of each in the manner prescribed by that state's law for serving a summons or like process on such a defendant.

(k) Territorial Limits of Effective Service.

(1) In General.

Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant:

(A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located;

(B) who is a party joined under **Rule 14** or **19** and is served within a judicial district of the United States and not more than 100 miles from where the summons was issued; or

(C) when authorized by a federal statute.

(2) Federal Claim Outside State-Court Jurisdiction.

For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if:

(A) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and

(B) exercising jurisdiction is consistent with the United States Constitution and laws.

(l) Proving Service.

(1) Affidavit Required.

Unless service is waived, proof of service must be made to the court. Except for service by a United States marshal or deputy marshal, proof must be by the server's affidavit.

(2) Service Outside the United States.

Service not within any judicial district of the United States must be proved as follows:

(A) if made under Rule 4(f)(1), as provided in the applicable treaty or convention; or

(B) if made under Rule 4(f)(2) or (f)(3), by a receipt signed by the addressee, or by other evidence satisfying the court that the summons and complaint were delivered to the addressee.

(3) Validity of Service; Amending Proof.

Failure to prove service does not affect the validity of service. The court may permit proof of service to be amended.

(m) Time Limit for Service.

If a defendant is not served within 120 days after the complaint is filed, the court — on motion or on its own after notice to the plaintiff — must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f) or 4(j)(1).

(n) Asserting Jurisdiction over Property or Assets.

(1) Federal Law.

The court may assert jurisdiction over property if authorized by a federal statute. Notice to claimants of the property must be given as provided in the statute or by serving a summons under this rule.

(2) State Law.

On a showing that personal jurisdiction over a defendant cannot be obtained in the district where the action is brought by reasonable efforts to serve a summons under this rule, the court may assert jurisdiction over the defendant's assets found in the district. Jurisdiction is acquired by seizing the assets under the circumstances and in the manner provided by state law in that district.

Rule 5. Service and Filing of Pleadings and Other Papers

1. (a) Service: When Required.

(1) In General.

Unless these rules provide otherwise, each of the following papers must be served on every party:

- (A) an order stating that service is required;
- (B) a pleading filed after the original complaint, unless the court orders otherwise under Rule 5(c) because there are numerous defendants;
- (C) a discovery paper required to be served on a party, unless the court orders otherwise;
- (D) a written motion, except one that may be heard ex parte; and
- (E) a written notice, appearance, demand, or offer of judgment, or any similar paper.

(2) If a Party Fails to Appear.

No service is required on a party who is in default for failing to appear. But a pleading that

asserts a new claim for relief against such a party must be served on that party under **Rule 4**.

(3) Seizing Property.

If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an appearance, answer, or claim must be made on the person who had custody or possession of the property when it was seized.

(b) Service: How Made.

(1) Serving an Attorney.

If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) Service in General.

A paper is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address — in which event service is complete upon mailing;

(D) leaving it with the court clerk if the person has no known address;

(E) sending it by electronic means if the person consented in writing — in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served; or

(F) delivering it by any other means that the person consented to in writing — in which event service is complete when the person making service delivers it to the agency designated to make delivery.

(3) Using Court Facilities.

If a local rule so authorizes, a party may use the court's transmission facilities to make service under Rule 5(b)(2)(E).

(c) Serving Numerous Defendants.

(1) In General.

If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that:

- (A) defendants' pleadings and replies to them need not be served on other defendants;
- (B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and
- (C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.

(2) Notifying Parties.

A copy of every such order must be served on the parties as the court directs.

(d) Filing

(1) Required Filings; Certificate of Service.

Any paper after the complaint that is required to be served — together with a certificate of service — must be filed within a reasonable time after service. But disclosures under Rule 26(a)(1) or (2) and the following discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing: depositions, interrogatories, requests for documents or tangible things or to permit entry onto land, and requests for admission.

(2) How Filing Is Made — In General.

A paper is filed by delivering it:

- (A) to the clerk; or
- (B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.

(3) Electronic Filing, Signing, or Verification.

A court may, by local rule, allow papers to be filed, signed, or verified by electronic means that are consistent with any technical standards established by the Judicial Conference of the United States. A local rule may require electronic filing only if reasonable exceptions are allowed. A paper filed electronically in compliance with a local rule is a written paper for purposes of these rules.

(4) Acceptance by the Clerk.

The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice.

Rule 6. Computing and Extending Time; Time for Motion Papers

1. (a) Computing Time.

The following rules apply in computing any time period specified in these rules or in any local rule, court order, or statute:

(1) Day of the Event Excluded.

Exclude the day of the act, event, or default that begins the period.

(2) Exclusions from Brief Periods.

Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days.

(3) Last Day.

Include the last day of the period unless it is a Saturday, Sunday, legal holiday, or— if the act to be done is filing a paper in court— a day on which weather or other conditions make the clerk's office inaccessible. When the last day is excluded, the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or day when the clerk's office is inaccessible.

(4) "Legal Holiday" Defined.

As used in these rules, "legal holiday" means:

(A) the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day; and

(B) any other day declared a holiday by the President, Congress, or the state where the district court is located.

(b) Extending Time.

(1) In General.

When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) Exceptions.

A court must not extend the time to act under **Rules 50(b)** and **(d)**, **52(b)**, **59(b)**, **(d)** and **(e)**, and **60(b)**, except as those rules allow.

(c) Motions, Notices of Hearing, and Affidavits.

(1) In General.

A written motion and notice of the hearing must be served at least 5 days before the time specified for the hearing, with the following exceptions:

(A) when the motion may be heard ex parte;

(B) when these rules set a different time; or

(C) when a court order — which a party may, for good cause, apply for ex parte — sets a different time.

(2) Supporting Affidavit.

Any affidavit supporting a motion must be served with the motion. Except as **Rule 59(c)** provides otherwise, any opposing affidavit must be served at least 1 day before the hearing, unless the court permits service at another time.

(d) Additional Time After Certain Kinds of Service.

When a party may or must act within a specified time after service and service is made under **Rule 5(b)(2)(C)**, **(D)**, **(E)**, or **(F)**, 3 days are added after the period would otherwise expire under **Rule 6(a)**.

Rule 7. Pleadings Allowed; Form of Motions and Other Papers

1. (a) Pleadings.

Only these pleadings are allowed:

(1) a complaint;

(2) an answer to a complaint;

(3) an answer to a counterclaim designated as a counterclaim;

(4) an answer to a crossclaim;

(5) a third-party complaint;

(6) an answer to a third-party complaint; and

(7) if the court orders one, a reply to an answer.

(b) Motions and Other Papers

(1) In General.

A request for a court order must be made by motion. The motion must:

- (A) be in writing unless made during a hearing or trial;
- (B) state with particularity the grounds for seeking the order; and
- (C) state the relief sought.

(2) Form.

The rules governing captions and other matters of form in pleadings apply to motions and other papers.

Rule 8. General Rules of Pleading

1. (a) Claims for Relief.

A pleading that states a claim for relief must contain:

- (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
- (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
- (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(b) Defenses; Admissions and Denials.

(1) In General.

In responding to a pleading, a party must:

- (A) state in short and plain terms its defenses to each claim asserted against it; and
- (B) admit or deny the allegations asserted against it by an opposing party.

(2) Denials — Responding to the Substance.

A denial must fairly respond to the substance of the allegation.

(3) General and Specific Denials.

A party that intends in good faith to deny all the allegations of a pleading — including the jurisdictional grounds — may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) Denying Part of an Allegation.

A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) Lacking Knowledge or Information.

A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) Effect of Failing to Deny.

An allegation — other than one relating to the amount of damages — is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(c) Affirmative Defenses.

(1) In General.

In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

accord and satisfaction; arbitration and award; assumption of risk; contributory negligence; discharge in bankruptcy; duress; estoppel; failure of consideration; fraud; illegality; injury by fellow servant; laches; license; payment; release; res judicata; statute of frauds; statute of limitations; and waiver.

(2) Mistaken Designation.

If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(d) Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.

(1) In General.

Each allegation must be simple, concise, and direct. No technical form is required.

(2) Alternative Statements of a Claim or Defense.

A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the

pleading is sufficient if any one of them is sufficient.

(3) Inconsistent Claims or Defenses.

A party may state as many separate claims or defenses as it has, regardless of consistency.

(e) Construing Pleadings.

Pleadings must be construed so as to do justice.

Rule 9. Pleading Special Matters

1. (a) Capacity or Authority to Sue; Legal Existence.

(1) In General.

Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) a party's capacity to sue or be sued;

(B) a party's authority to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.

(2) Raising Those Issues.

To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.

(b) Fraud or Mistake; Condition of Mind.

In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

(c) Conditions Precedent.

In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.

(d) Official Document or Act.

In pleading an official document or official act, it suffices to allege that the document was legally issued or the act legally done.

(e) Judgment.

In pleading a judgment or decision of a domestic or foreign court, a judicial or quasi-judicial tribunal, or a board or officer, it suffices to plead the judgment or decision without showing jurisdiction to render it.

(f) Time and Place.

An allegation of time or place is material when testing the sufficiency of a pleading.

(g) Special Damages.

If an item of special damage is claimed, it must be specifically stated.

(h) Admiralty or Maritime Claim.

(1) How Designated.

If a claim for relief is within the admiralty or maritime jurisdiction and also within the court's subject-matter jurisdiction on some other ground, the pleading may designate the claim as an admiralty or maritime claim for purposes of **Rules 14(c)**, **38(e)**, and **82** and the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. A claim cognizable only in the admiralty or maritime jurisdiction is an admiralty or maritime claim for those purposes, whether or not so designated.

(2) Designation for Appeal.

A case that includes an admiralty or maritime claim within this subdivision (h) is an admiralty case within **28 U.S.C. § 1292(a)(3)**.

Rule 10. Form of Pleadings

1. (a) Caption; Names of Parties.

Every pleading must have a caption with the court's name, a title, a file number, and a **Rule 7(a)** designation. The title of the complaint must name all the parties; the title of other pleadings, after naming the first party on each side, may refer generally to other parties.

(b) Paragraphs; Separate Statements.

A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence — and each defense other than a denial — must be stated in a separate count or defense.

(c) Adoption by Reference; Exhibits.

A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.

Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

1. (a) Signature.

Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name — or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) Representations to the Court.

By presenting to the court a pleading, written motion, or other paper — whether by signing, filing, submitting, or later advocating it — an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) Sanctions.

(1) In General.

If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) Motion for Sanctions.

A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under **Rule 5**, but it must not be filed or be presented to the court if the challenged paper, claim, defense,

contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) On the Court's Initiative.

On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) Nature of a Sanction.

A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(5) Limitations on Monetary Sanctions.

The court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) Requirements for an Order.

An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(d) Inapplicability to Discovery.

This rule does not apply to disclosures and discovery requests, responses, objections, and motions under **Rules 26 through 37**.

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

1. (a) Time to Serve a Responsive Pleading.

(1) In General.

Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer:

(i) within 20 days after being served with the summons and complaint; or

(ii) if it has timely waived service under **Rule 4(d)**, within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States.

(B) A party must serve an answer to a counterclaim or crossclaim within 20 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 20 days after being served with an order to reply, unless the order specifies a different time.

(2) United States and Its Agencies, Officers, or Employees Sued in an Official Capacity.

The United States, a United States agency, or a United States officer or employee sued only in an official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the United States attorney.

(3) United States Officers or Employees Sued in an Individual Capacity.

A United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the officer or employee or service on the United States attorney, whichever is later.

(4) Effect of a Motion.

Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 10 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 10 days after the more definite statement is served.

(b) How to Present Defenses.

Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) improper venue;

(4) insufficient process;

- (5) insufficient service of process;
- (6) failure to state a claim upon which relief can be granted; and
- (7) failure to join a party under **Rule 19**.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) Motion for Judgment on the Pleadings.

After the pleadings are closed — but early enough not to delay trial — a party may move for judgment on the pleadings.

(d) Result of Presenting Matters Outside the Pleadings.

If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under **Rule 56**. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) Motion For a More Definite Statement.

A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 10 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) Motion To Strike.

The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

- (1) on its own; or
- (2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 20 days after being served with the pleading.

(g) Joining Motions.

- (1) Right to Join.

A motion under this rule may be joined with any other motion allowed by this rule.

- (2) Limitation on Further Motions.

Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) Waiving and Preserving Certain Defenses.

(1) When Some Are Waived.

A party waives any defense listed in Rule 12(b)(2)-(5) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by **Rule 15(a)(1)** as a matter of course.

(2) When to Raise Others.

Failure to state a claim upon which relief can be granted, to join a person required by **Rule 19(b)**, or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under **Rule 7(a)**;

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) Lack of Subject-Matter Jurisdiction.

If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(i) Hearing Before Trial.

If a party so moves, any defense listed in Rule 12(b)(1)-(7) — whether made in a pleading or by motion — and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

Rule 13. Counterclaim and Crossclaim

1. (a) Compulsory Counterclaim.

(1) In General.

A pleading must state as a counterclaim any claim that — at the time of its service — the pleader has against an opposing party if the claim:

(A) arises out of the transaction or occurrence that is the subject matter of the opposing party's

claim; and

(B) does not require adding another party over whom the court cannot acquire jurisdiction.

(2) Exceptions.

The pleader need not state the claim if:

(A) when the action was commenced, the claim was the subject of another pending action; or

(B) the opposing party sued on its claim by attachment or other process that did not establish personal jurisdiction over the pleader on that claim, and the pleader does not assert any counterclaim under this rule.

(b) Permissive Counterclaims.

A pleading may state as a counterclaim against an opposing party any claim that is not compulsory.

(c) Relief Sought in a Counterclaim.

A counterclaim need not diminish or defeat the recovery sought by the opposing party. It may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party.

(d) Counterclaim Against the United States.

These rules do not expand the right to assert a counterclaim — or to claim a credit — against the United States or a United States officer or agency.

(e) Counterclaim Maturing or Acquired After Pleading.

The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading.

(f) Omitted Counterclaim.

The court may permit a party to amend a pleading to add a counterclaim if it was omitted through oversight, inadvertence, or excusable neglect or if justice so requires.

(g) Crossclaim Against a Coparty.

A pleading may state as a crossclaim any claim by one party against a coparty if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action. The crossclaim may include a claim that the coparty is or may be liable to the crossclaimant for all or part of a claim asserted in the action against the crossclaimant.

(h) Joining Additional Parties.

Rules 19 and **20** govern the addition of a person as a party to a counterclaim or crossclaim.

(i) Separate Trials; Separate Judgments.

If the court orders separate trials under **Rule 42(b)**, it may enter judgment on a counterclaim or crossclaim under **Rule 54(b)** when it has jurisdiction to do so, even if the opposing party's claims have been dismissed or otherwise resolved.

Rule 14. Third-Party Practice

1. (a) When a Defending Party May Bring in a Third Party.

(1) Timing of the Summons and Complaint.

A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must, by motion, obtain the court's leave if it files the third-party complaint more than 10 days after serving its original answer.

(2) Third-Party Defendant's Claims and Defenses.

The person served with the summons and third-party complaint — the “third-party defendant”:

(A) must assert any defense against the thirdparty plaintiff's claim under **Rule 12**;

(B) must assert any counterclaim against the third-party plaintiff under **Rule 13(a)**, and may assert any counterclaim against the third-party plaintiff under **Rule 13(b)** or any crossclaim against another third-party defendant under **Rule 13(g)**;

(C) may assert against the plaintiff any defense that the third-party plaintiff has to the plaintiff's claim; and

(D) may also assert against the plaintiff any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

(3) Plaintiff's Claims Against a Third-Party Defendant.

The plaintiff may assert against the third-party defendant any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

The third-party defendant must then assert any defense under **Rule 12** and any counterclaim under **Rule 13(a)**, and may assert any counterclaim under **Rule 13(b)** or any crossclaim under **Rule 13(g)**.

(4) Motion to Strike, Sever, or Try Separately.

Any party may move to strike the third-party claim, to sever it, or to try it separately.

(5) Third-Party Defendant's Claim Against a Nonparty.

A third-party defendant may proceed under this rule against a nonparty who is or may be liable to the third-party defendant for all or part of any claim against it.

(6) Third-Party Complaint In Rem.

If it is within the admiralty or maritime jurisdiction, a thirdparty complaint may be in rem. In that event, a reference in this rule to the “summons” includes the warrant of arrest, and a reference to the defendant or third-party plaintiff includes, when appropriate, a person who asserts a right under Supplemental Rule C(6)(a)(i) in the property arrested.

(b) When a Plaintiff May Bring in a Third Party.

When a claim is asserted against a plaintiff, the plaintiff may bring in a third party if this rule would allow a defendant to do so.

(c) Admiralty or Maritime Claim.

(1) Scope of Impleader.

If a plaintiff asserts an admiralty or maritime claim under **Rule 9(h)**, the defendant or a person who asserts a right under Supplemental Rule C(6)(a)(i) may, as a thirdparty plaintiff, bring in a third-party defendant who may be wholly or partly liable — either to the plaintiff or to the third-party plaintiff — for remedy over, contribution, or otherwise on account of the same transaction, occurrence, or series of transactions or occurrences.

(2) Defending Against a Demand for Judgment for the Plaintiff.

The third-party plaintiff may demand judgment in the plaintiff's favor against the third-party defendant. In that event, the third-party defendant must defend under **Rule 12** against the plaintiff's claim as well as the third-party plaintiff's claim; and the action proceeds as if the plaintiff had sued both the third-party defendant and the third-party plaintiff.

Rule 15. Amended and Supplemental Pleadings

1. (a) Amendments Before Trial.

(1) Amending as a Matter of Course.

A party may amend its pleading once as a matter of course:

(A) before being served with a responsive pleading; or

(B) within 20 days after serving the pleading if a responsive pleading is not allowed and the action is not yet on the trial calendar.

(2) Other Amendments.

In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(3) Time to Respond.

Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 10 days after service of the amended pleading, whichever is later.

(b) Amendments During and After Trial.

(1) Based on an Objection at Trial.

If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) For Issues Tried by Consent.

When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move — at any time, even after judgment — to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(c) Relation Back of Amendments.

(1) When an Amendment Relates Back.

An amendment to a pleading relates back to the date of the original pleading when:

(A) the law that provides the applicable statute of limitations allows relation back;

(B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out — or attempted to be set out — in the original pleading; or

(C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule **15(c)(1)(B)** is satisfied and if, within the period provided by **Rule 4(m)** for serving the summons and complaint, the party to be brought in by amendment:

(i) received such notice of the action that it will not be prejudiced in defending on the merits; and

(ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

(2) Notice to the United States.

When the United States or a United States officer or agency is added as a defendant by amendment, the notice requirements of Rule **15(c)(1)(C)(i)** and (ii) are satisfied if, during the stated period, process was delivered or mailed to the United States attorney or the United States attorney's designee, to the Attorney General of the United States, or to the officer or agency.

(d) Supplemental Pleadings.

On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

Rule 16. Pretrial Conferences; Scheduling; Management

1. (a) Purposes of a Pretrial Conference.

In any action, the court may order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as:

- (1) expediting disposition of the action;
- (2) establishing early and continuing control so that the case will not be protracted because of lack of management;
- (3) discouraging wasteful pretrial activities;
- (4) improving the quality of the trial through more thorough preparation, and;
- (5) facilitating settlement.

(b) Scheduling.

(1) Scheduling Order.

Except in categories of actions exempted by local rule, the district judge — or a magistrate judge when authorized by local rule — must issue a scheduling order:

- (A) after receiving the parties' report under **Rule 26(f)**; or
- (B) after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference or by telephone, mail, or other means.

(2) Time to Issue.

The judge must issue the scheduling order as soon as practicable, but in any event within the earlier of 120 days after any defendant has been served with the complaint or 90 days after any defendant has appeared.

(3) Contents of the Order.

- (A) *Required Contents.* The scheduling order must limit the time to join other parties, amend the pleadings, complete discovery, and file motions.

(B) *Permitted Contents*. The scheduling order may:

- (i) modify the timing of disclosures under **Rules 26(a)** and **26(e)(1)**;
- (ii) modify the extent of discovery;
- (iii) provide for disclosure or discovery of electronically stored information;
- (iv) include any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced;
- (v) set dates for pretrial conferences and for trial; and
- (vi) include other appropriate matters.

(4) **Modifying a Schedule.**

A schedule may be modified only for good cause and with the judge's consent.

(c) Attendance and Matters for Consideration at a Pretrial Conference.

(1) **Attendance.**

A represented party must authorize at least one of its attorneys to make stipulations and admissions about all matters that can reasonably be anticipated for discussion at a pretrial conference. If appropriate, the court may require that a party or its representative be present or reasonably available by other means to consider possible settlement.

(2) **Matters for Consideration.**

At any pretrial conference, the court may consider and take appropriate action on the following matters:

- (A) formulating and simplifying the issues, and eliminating frivolous claims or defenses;
- (B) amending the pleadings if necessary or desirable;
- (C) obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence;
- (D) avoiding unnecessary proof and cumulative evidence, and limiting the use of testimony under Federal Rule of Evidence 702;
- (E) determining the appropriateness and timing of summary adjudication under **Rule 56**;
- (F) controlling and scheduling discovery, including orders affecting disclosures and discovery under **Rule 26** and **Rules 29 through 37**;
- (G) identifying witnesses and documents, scheduling the filing and exchange of any pretrial briefs, and setting dates for further conferences and for trial;

- (H) referring matters to a magistrate judge or a master;
- (I) settling the case and using special procedures to assist in resolving the dispute when authorized by statute or local rule;
- (J) determining the form and content of the pretrial order;
- (K) disposing of pending motions;
- (L) adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;
- (M) ordering a separate trial under **Rule 42(b)** of a claim, counterclaim, crossclaim, thirdparty claim, or particular issue;
- (N) ordering the presentation of evidence early in the trial on a manageable issue that might, on the evidence, be the basis for a judgment as a matter of law under **Rule 50(a)** or a judgment on partial findings under **Rule 52(c)**;
- (O) establishing a reasonable limit on the time allowed to present evidence; and
- (P) facilitating in other ways the just, speedy, and inexpensive disposition of the action.

(d) Pretrial Orders.

After any conference under this rule, the court should issue an order reciting the action taken. This order controls the course of the action unless the court modifies it.

(e) Final Pretrial Conference and Orders.

The court may hold a final pretrial conference to formulate a trial plan, including a plan to facilitate the admission of evidence. The conference must be held as close to the start of trial as is reasonable, and must be attended by at least one attorney who will conduct the trial for each party and by any unrepresented party. The court may modify the order issued after a final pretrial conference only to prevent manifest injustice.

(f) Sanctions.

(1) In General.

On motion or on its own, the court may issue any just orders, including those authorized by **Rule 37(b)(2)(A)(ii)-(vii)**, if a party or its attorney:

- (A) fails to appear at a scheduling or other pretrial conference;
- (B) is substantially unprepared to participate — or does not participate in good faith — in the conference; or
- (C) fails to obey a scheduling or other pretrial order.

(2) Imposing Fees and Costs.

Instead of or in addition to any other sanction, the court must order the party, its attorney, or both to pay the reasonable expenses — including attorney's fees — incurred because of any noncompliance with this rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

Rule 26. Duty to Disclose; General Provisions Governing Discovery

1. (a) Required Disclosures.

(1) Initial Disclosures.

(A) *In General.* Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information — along with the subjects of that information — that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy — or a description by category and location — of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(iii) a computation of each category of damages claimed by the disclosing party — who must also make available for inspection and copying as under **Rule 34** the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(iv) for inspection and copying as under **Rule 34**, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(B) *Proceedings Exempt from Initial Disclosure.* The following proceedings are exempt from initial disclosure:

(i) an action for review on an administrative record;

(ii) a forfeiture action in rem arising from a federal statute;

(iii) a petition for habeas corpus or any other proceeding to challenge a criminal conviction or sentence;

(iv) an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;

(v) an action to enforce or quash an administrative summons or subpoena;

- (vi) an action by the United States to recover benefit payments;
- (vii) an action by the United States to collect on a student loan guaranteed by the United States;
- (viii) a proceeding ancillary to a proceeding in another court; and
- (ix) an action to enforce an arbitration award.

(C) *Time for Initial Disclosures — In General.* A party must make the initial disclosures at or within 14 days after the parties' Rule 26(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in this action and states the objection in the proposed discovery plan. In ruling on the objection, the court must determine what disclosures, if any, are to be made and must set the time for disclosure.

(D) *Time for Initial Disclosures — For Parties Served or Joined Later.* A party that is first served or otherwise joined after the Rule 26(f) conference must make the initial disclosures within 30 days after being served or joined, unless a different time is set by stipulation or court order.

(E) *Basis for Initial Disclosure; Unacceptable Excuses.* A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) Disclosure of Expert Testimony.

(A) *In General.* In addition to the disclosures required by Rule 26(a)(1), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705.

(B) *Written Report.* Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report — prepared and signed by the witness — if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

- (i) a complete statement of all opinions the witness will express and the basis and reasons for them;
- (ii) the data or other information considered by the witness in forming them;
- (iii) any exhibits that will be used to summarize or support them;
- (iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;
- (v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and

(vi) a statement of the compensation to be paid for the study and testimony in the case.

(C) *Time to Disclose Expert Testimony.* A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or a court order, the disclosures must be made:

(i) at least 90 days before the date set for trial or for the case to be ready for trial; or

(ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B), within 30 days after the other party's disclosure.

(D) *Supplementing the Disclosure.* The parties must supplement these disclosures when required under Rule 26(e).

(3) Pretrial Disclosures.

(A) *In General.* In addition to the disclosures required by Rule 26(a)(1) and (2), a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:

(i) the name and, if not previously provided, the address and telephone number of each witness — separately identifying those the party expects to present and those it may call if the need arises;

(ii) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and

(iii) an identification of each document or other exhibit, including summaries of other evidence — separately identifying those items the party expects to offer and those it may offer if the need arises.

(B) *Time for Pretrial Disclosures; Objections.* Unless the court orders otherwise, these disclosures must be made at least 30 days before trial. Within 14 days after they are made, unless the court sets a different time, a party may serve and promptly file a list of the following objections: any objections to the use under **Rule 32(a)** of a deposition designated by another party under Rule 26(a)(3)(A)(ii); and any objection, together with the grounds for it, that may be made to the admissibility of materials identified under Rule 26(a)(3)(A)(iii). An objection not so made — except for one under Federal Rule of Evidence 402 or 403 — is waived unless excused by the court for good cause.

(4) Form of Disclosures.

Unless the court orders otherwise, all disclosures under Rule 26(a) must be in writing, signed, and served.

(b) Discovery Scope and Limits.

(1) Scope in General.

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense — including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(C).

(2) Limitations on Frequency and Extent.

(A) *When Permitted.* By order, the court may alter the limits in these rules on the number of depositions and interrogatories or on the length of depositions under **Rule 30**. By order or local rule, the court may also limit the number of requests under **Rule 36**.

(B) *Specific Limitations on Electronically Stored Information.* A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(C) *When Required.* On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:

- (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
- (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
- (iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

(3) Trial Preparation: Materials.

(A) *Documents and Tangible Things.* Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:

- (i) they are otherwise discoverable under Rule 26(b)(1); and
- (ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) *Protection Against Disclosure.* If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.

(C) *Previous Statement.* Any party or other person may, on request and without the required showing, obtain the person's own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and **Rule 37(a)(5)** applies to the award of expenses. A previous statement is either:

- (i) a written statement that the person has signed or otherwise adopted or approved; or
- (ii) a contemporaneous stenographic, mechanical, electrical, or other recording — or a transcription of it — that recites substantially verbatim the person's oral statement.

(4) Trial Preparation: Experts.

(A) *Expert Who May Testify.* A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If Rule 26(a)(2)(B) requires a report from the expert, the deposition may be conducted only after the report is provided.

(B) *Expert Employed Only for Trial Preparation.* Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

- (i) as provided in **Rule 35(b)**; or
- (ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(C) *Payment.* Unless manifest injustice would result, the court must require that the party seeking discovery:

- (i) pay the expert a reasonable fee for time spent in responding to discovery under Rule 26(b)(4)(A) or (B); and
- (ii) for discovery under (B), also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the expert's facts and opinions.

(5) Claiming Privilege or Protecting Trial- Preparation Materials.

(A) *Information Withheld.* When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

- (i) expressly make the claim; and
- (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed — and do so in a manner that, without revealing information itself privileged or

protected, will enable other parties to assess the claim.

(B) *Information Produced.* If information produced in discovery is subject to a claim of privilege or of protection as trialpreparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

(c) Protective Orders.

(1) In General.

A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending — or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (A) forbidding the disclosure or discovery;
- (B) specifying terms, including time and place, for the disclosure or discovery;
- (C) prescribing a discovery method other than the one selected by the party seeking discovery;
- (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;
- (E) designating the persons who may be present while the discovery is conducted;
- (F) requiring that a deposition be sealed and opened only on court order;
- (G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and
- (H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

(2) Ordering Discovery.

If a motion for a protective order is wholly or partly denied, the court may, on just terms, order that any party or person provide or permit discovery.

(3) Awarding Expenses.

Rule 37(a)(5) applies to the award of expenses.

(d) Timing and Sequence of Discovery.

(1) Timing.

A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order.

(2) Sequence.

Unless, on motion, the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice:

(A) methods of discovery may be used in any sequence; and

(B) discovery by one party does not require any other party to delay its discovery.

(e) Supplementation of Disclosures and Responses.

(1) In General.

A party who has made a disclosure under Rule 26(a) — or who has responded to an interrogatory, request for production, or request for admission — must supplement or correct its disclosure or response:

(A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(B) as ordered by the court.

(2) Expert Witness.

For an expert whose report must be disclosed under Rule 26(a)(2)(B), the party's duty to supplement extends both to information included in the report and to information given during the expert's deposition. Any additions or changes to this information must be disclosed by the time the party's pretrial disclosures under Rule 26(a)(3) are due.

(f) Conference of the Parties; Planning for Discovery

(1) Conference Timing.

Except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B) or when the court orders otherwise, the parties must confer as soon as practicable — and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16(b).

(2) Conference Content; Parties' Responsibilities.

In conferring, the parties must consider the nature and basis of their claims and defenses and the

possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 26(a)(1); discuss any issues about preserving discoverable information; and develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report outlining the plan. The court may order the parties or attorneys to attend the conference in person.

(3) Discovery Plan.

A discovery plan must state the parties' views and proposals on:

(A) what changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement of when initial disclosures were made or will be made;

(B) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

(C) any issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

(D) any issues about claims of privilege or of protection as trial-preparation materials, including — if the parties agree on a procedure to assert these claims after production — whether to ask the court to include their agreement in an order;

(E) what changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed; and

(F) any other orders that the court should issue under Rule 26(c) or under **Rule 16(b)** and **(c)**.

(4) Expedited Schedule.

If necessary to comply with its expedited schedule for Rule 16(b) conferences, a court may by local rule:

(A) require the parties' conference to occur less than 21 days before the scheduling conference is held or a scheduling order is due under Rule 16(b); and

(B) require the written report outlining the discovery plan to be filed less than 14 days after the parties' conference, or excuse the parties from submitting a written report and permit them to report orally on their discovery plan at the Rule 16(b) conference.

(g) Signing Disclosures and Discovery Requests, Responses, and Objections.

(1) Signature Required; Effect of Signature.

Every disclosure under Rule 26(a)(1) or (a)(3) and every discovery request, response, or objection must be signed by at least one attorney of record in the attorney's own name — or by the party personally, if unrepresented — and must state the signer's address, e-mail address, and

telephone number. By signing, an attorney or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry:

(A) with respect to a disclosure, it is complete and correct as of the time it is made; and

(B) with respect to a discovery request, response, or objection, it is:

(i) consistent with these rules and warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;

(ii) not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

(iii) neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action.

(2) Failure to Sign.

Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney's or party's attention.

(3) Sanction for Improper Certification.

If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney's fees, caused by the violation.

LOCAL CIVIL RULES

Civ. RULE 5.1 SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a) Service of all papers other than the initial summons and complaint shall be made in the manner specified in Fed. R. Civ. P. 5(b).

(b) Except where otherwise provided by these Rules (or the Federal Rules of Civil Procedure), proof of service of all papers required or permitted to be served shall be filed in the Clerk's office promptly and in any event before action is taken thereon by the Court or the parties. The proof shall show the date and manner of service and may be by written acknowledgment of service, by certificate of a member of the bar of this Court, by affidavit of the person who served the papers, or by any other proof satisfactory to the Court. Failure to make the required proof of service does not affect the validity of the service; the Court may at any time allow the proof of service to be amended or supplied unless it clearly appears that to do so would result in material prejudice to the substantive rights of any party.

(c) Except in an emergency, no papers shall be left with or mailed to a Judge for filing, but all pleadings shall be filed with the Clerk of the Court.

(d) When papers are filed, the Clerk shall endorse thereon the date and time of filing.

(e) Parties shall furnish to the Clerk forthwith, upon demand, all necessary copies of any pleading, judgment or order, or other matter of record in a cause, so as to permit the Clerk to comply with the provisions of any statute or rule. Plaintiff or plaintiff's attorney upon filing a complaint, and defendant or defendant's attorney upon filing a notice of removal pursuant to 28 U.S.C. §1446, shall furnish to the Clerk a completed civil cover sheet and four (4) copies of such pleading in addition to any copies required to be filed under the Federal Rules of Civil Procedure. All such copies of the notice of removal shall also include a copy of all papers required to be filed under 28 U.S.C. §1446(a). Upon receipt, the Clerk shall transmit one copy to the Judges to whom the case is assigned.

(f) Any papers received by the Clerk without payment of such fees as may be fixed by statute or by the Judicial Conference of the United States for the filing thereof shall be marked "received" and the date and time of receipt shall be noted thereon.

Source: L.Civ.R. 5.1(a) - G.R. 9.A.; L.Civ.R. 5.1(b) - G.R. 9.B.; L.Civ.R. 5.1(c) - G.R. 8.D.; L.Civ.R. 5.1(d) - G.R. 8.C.; L.Civ.R. 5.1(e) - G.R. 8.E., G.R. 10.A.

Civ. RULE 8.1 PLEADING DAMAGES

A pleading which sets forth a claim for relief in the nature of unliquidated money damages shall state in the *ad damnum* clause a demand for damages generally without specifying the amount. Upon service of a written request by another party, the party filing the pleading shall within 10 days after service thereof furnish the requesting party with a written statement of the amount of damages claimed, which statement shall not be filed except on court order. Nothing stated herein shall relieve the party filing the pleading of the necessity of alleging the requisite jurisdictional amount in controversy, where applicable.

Source: G.R. 8.G.

Civ. RULE 10.1 FORM OF PLEADINGS

(a) The initial pleading, motion, or other paper of any party filed in any cause other than criminal actions in this Court shall state in the first paragraph the street and post office address of each named party to the case or, if the party is not a natural person, the address of its principal place of business. If a pleading, motion, or other initial paper submitted for filing in a case does not contain the street and post office address of counsel, their client(s) or unrepresented parties, it may be struck by the Clerk and returned to the submitting party by the Clerk unless a statement why the client's address cannot be provided at this time is presented. Counsel and/or unrepresented parties must advise the Court of any change in their or their client's address within five days of being apprised of such change by filing a notice of said change with the Clerk. Failure to file a notice of address change may result in the imposition of sanctions by the Court.

(b) All papers to be filed in any cause or proceeding in this Court shall be plainly printed or typewritten, without interlineations or erasures which materially deface them; shall bear the docket number and the name of the Judge assigned to the action or proceeding; and shall have endorsed upon the first page the name, office, post office address, and telephone number and the initials of their first and last name, and last four digits of the social security number of the attorney of record for the filing party. All papers shall be in black lettering on reasonably heavy paper size 8.5 x 11 inches; carbon copies shall not be used.

Source: L.Civ.R. 10.1(a) - G.R. 8.A.; L.Civ.R. 10.1(b) - G.R. 8.B.

Civ. RULE 11.1 SIGNING OF PLEADINGS

In each case, the attorney of record who is a member of the bar of this Court shall personally sign all papers submitted to the Court or filed with the Clerk.

Source: G.R. 8.B.

Civ. RULE 11.2 - VERIFICATION OF PETITIONS AND INITIAL CERTIFICATIONS

Except where otherwise provided by law, every petition shall be verified and, whenever possible, by the person on whose behalf it is presented. In case the same shall be verified by another, the affiant shall state in the affidavit the reasons such person does not make the verification and the affiant's authority for making it. The initial pleading, motion or other paper of any party filed in any case in this Court, other than a criminal action, shall be accompanied by a certification as to whether the matter in controversy is the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding, and, if so, the certification shall identify each such action, arbitration or administrative proceeding, and all parties thereto.

Source: G.R. 14.

Civ. RULE 38.1 JURY DEMAND

If a demand for jury trial under Fed. R. Civ. P. 38(b) is endorsed upon a pleading, the title of the pleading shall include the words "and Demand for Jury Trial" or the equivalent.

Source: G.R. 8.F.

Civ. RULE 54.3 PREPAYMENT OF CLERK'S AND MARSHAL'S FEES

(a) Except as otherwise directed by the Court, the Clerk shall not be required to enter any suit, file any paper, issue any process or render any other service for which a fee is prescribed by statute or by the Judicial Conference of the United States, nor shall the Marshal be required to serve the same or perform any service, unless the fee therefor is paid in advance. The Clerk shall receive any such papers in accordance with L.Civ.R. 5.1(f).

(b) In all actions in which the fees of the Clerk and Marshal are not required by law to be paid in advance, and in which a poor suitor or a seaman prevails either by judgment or settlement, no dismissal or satisfaction of judgment shall be filed or entered until all of the fees of the Clerk and Marshal are paid.
Source: G.R. 10.

Civ. RULE 26.1 DISCOVERY

(a) Discovery - Generally

All parties shall conduct discovery expeditiously and diligently.

(b) Meeting of Parties, Discovery Plans, and Initial Disclosures

(1) The requirements currently codified in Fed. R. Civ. P. 26(a) and (f) pertaining to required disclosures, meetings of parties, and submission of discovery plans, shall apply to all civil cases filed after December 1, 1993 and to all civil cases pending on December 1, 1993 that have not had their initial scheduling conference prior to January 20, 1994; except that these requirements shall not apply to those civil cases described in L.Civ.R. 72.1(a)(3)(C) in which scheduling conferences are not normally held, unless the judicial officer otherwise directs. The judicial officer may modify or suspend these requirements in a case for good cause.

(2) The initial meeting of parties as required in Fed. R. Civ. P. 26(f) shall be convened at least 21 days before the initial scheduling conference, and the proposed discovery plan under Fed. R. Civ. P. 26(f)(1)-(4) shall be generated at that meeting and delivered to the Magistrate Judge within 14 days after the meeting of parties. The parties shall submit their Fed. R. Civ. P. 26(f) discovery plan containing the parties' views and proposals regarding the following:

- (a) Any changes in timing, form, or requirements of mandatory disclosures under Fed. R. Civ. P. 26(a);
- (b) The date on which mandatory disclosures were or will be made;
- (c) The anticipated substantive scope of discovery, including both discovery relevant to the claims and defenses and discovery relevant to the subject matter of the dispute;
- (d) Whether any party will likely request or produce computer-based or other digital information, and if so, the parties' discussions of the issues listed under the Duty to Meet and Confer in L. Civ. R. 26.1(d)(3) below;
- (e) Date by which discovery should be completed;
- (f) Any needed changes in limitations imposed by the Federal Rules of Civil Procedure, local rule, or standing order;
- (g) Any orders, such as data preservation orders, protective orders, etc., which should be entered;

- (h) Proposed deadline for joining other parties and amending the pleadings;
- (i) Proposed deadline for completing discovery;
- (j) Proposed dates for filing motions and for trial;
- (k) Whether the case is one which might be resolved in whole or in part by voluntary arbitration (pursuant to L. Civ. R. 201.1 or otherwise), mediation (pursuant to L. Civ. R. 301.1 or otherwise), appointment of a special master or other special procedure.

The parties shall make their initial disclosures under Fed. R. Civ. P. 26(a)(1) within 10 days after the initial meeting of the parties, unless otherwise stipulated or directed by the Court. Such discovery plans and disclosures shall not be filed with the Clerk.

(c) Discovery Materials

(1) Initial and expert disclosure materials under Fed.R.Civ.P.26(a)(1) and 26(a)(2), transcripts of depositions, interrogatories and answers thereto, requests for production of documents or to permit entry onto land and responses thereto, and requests for admissions and answers thereto shall not be filed until used in a proceeding or upon order of the Court. However, all such papers must be served on other counsel or parties entitled thereto under Fed.R.Civ.P.5 and 26(a)(4).

(2) Pretrial disclosure materials under Fed.R.Civ.P.26(a)(3) shall be incorporated by reference into the order entered after any final pretrial conference under Fed.R.Civ.P.16(d).

(3) In those instances when such discovery materials are properly filed, the Clerk shall place them in the open case file unless otherwise ordered.

(4) The party obtaining any material through discovery is responsible for its preservation and delivery to the Court if needed or ordered. It shall be the duty of the party taking a deposition to make certain that the officer before whom it was taken has delivered it to that party for preservation and to the Court as required by Fed. R. Civ. P. 30(f)(1) if needed or so ordered.

(d) Discovery of Digital Information Including Computer-Based Information

(1) Duty to Investigate and Disclose. Prior to a Fed. R. Civ. P. 26(f) conference, counsel shall review with the client the client's information management systems including computer-based and other digital systems, in order to understand how information is stored and how it can be retrieved. To determine what must be disclosed pursuant to Fed. R. Civ. P. 26(a) (1), counsel shall further review with the client the client's information files, including currently maintained computer files as well as historical, archival, back-up, and legacy computer files, whether in current or historic media or formats, such as digital evidence which may be used to support claims or defenses. Counsel shall also identify a person or persons with knowledge about the client's information management systems, including computer-based and other digital systems, with the ability to facilitate, through counsel, reasonably anticipated discovery.

(2) Duty to Notify. A party seeking discovery of computer-based or other digital information shall notify the opposing party as soon as possible, but no later than the Fed. R. Civ. P. 26(f) conference, and identify as clearly as possible the categories of information which may be sought. A party may supplement its request for computer-based and other digital information as soon as possible upon receipt of new information relating to digital evidence.

(3) **Duty to Meet and Confer.** During the Fed. R. Civ. P. 26(f) conference, the parties shall confer and attempt to agree on computer-based and other digital discovery matters, including the following:

(a) Preservation and production of digital information; procedures to deal with inadvertent production of privileged information; whether restoration of deleted digital information may be necessary; whether back up or historic legacy data is within the scope of discovery; and the media, format, and procedures for producing digital information;

(b) Who will bear the costs of preservation, production, and restoration (if necessary) of any digital discovery.

Source: L.Civ.R. 26.1(a) - G.R. 15.E.1; L.Civ.R. 26.1(b) - G.R. 15.B.1-2; L.Civ.R. 26.1(c) - G.R. 15.G.

Civ. RULE 40.1 ALLOCATION AND ASSIGNMENT OF CASES

(a) **Allocation.** Each civil case shall be allocated by the Clerk of the Court to Camden, Newark or Trenton at the time it is commenced. The Clerk shall consider the residence of the defendant, the convenience of litigants, counsel and witnesses, and the place where the cause of action arose. The vicinage allocated shall be the location of trial and of all proceedings in the case, unless changed by order of the Court.

(b) Assignment

(1) After allocation, and subject to the supervision of the Chief Judge, each case shall be assigned forthwith to a Judge by the Clerk or the Deputy charged with such duty.

(2) If it appears that any matter requires immediate attention and the Judge to whom an action has been or would be assigned is not or will not be available, the Clerk or Deputy charged with such duty, under direction of the Chief Judge, shall assign the matter either permanently or temporarily to an available Judge.

(c) **Related Cases.** When a civil action: (1) relates to any property included in a case already pending in this Court; (2) grows out of the same transaction as any case already pending in this Court; or (3) involves the validity or infringement of any patent, copyright or trademark which is involved in a case already pending in this Court, counsel shall at the time of filing the action inform the Clerk of such fact. Whenever possible, such action shall be assigned to the same Judge to whom the pending related action is assigned.

(d) **Notice and Objection.** Promptly after allocation and assignment of a civil case, the Clerk shall notify both the parties or their counsel and the Judge of such allocation and assignment. Objections to either the allocation or the assignment of a civil case shall be made before the Chief Judge, on notice to opposing counsel and to the Judge to whom the case has been assigned.

(e) **Reallocation and Reassignment.** Disposition of any objections submitted under paragraph (d) above, and any other reallocation or reassignment of any case, shall be upon order of the Chief Judge.

Source: L.Civ.R. 40.1(a) - G.R. 11.A.; L.Civ.R. 40.1(b) - G.R. 11.B.; L.Civ.R. 40.1(c) - G.R. 11.C.; L.Civ.R. 40.1(d) - G.R. 11.D.; L.Civ.R. 40.1(e) - G.R. 11.F.

Civ. RULE 41.1 DISMISSAL OF INACTIVE CASES

(a) Civil cases, other than bankruptcy matters, which have been pending in the Court for more than 120 days without any proceedings having been taken therein must be dismissed for lack of prosecution by the Court (1) on its own motion, or (2) on notice from the Clerk to all parties who have appeared, unless

good cause is shown with the filing of an affidavit from counsel of record or the unrepresented party. Notice shall be provided by the Clerk of either action contemplated above under sub-paragraphs (1) and (2) to counsel, their client(s) and/or unrepresented persons who have appeared.

(b) When a case has been settled, counsel shall promptly notify the Clerk and the Court, thereafter confirming the same in writing. Within 15 days of such notification, counsel shall file all papers necessary to terminate the case. Upon failure of counsel to do so, the Clerk shall prepare an order for submission to the Court dismissing the action, without costs, and without prejudice to the right to reopen the action within 60 days upon good cause shown if the settlement is not consummated.

Civ. RULE 7.1 APPLICATION AND MOTION PRACTICE

(a) No Pre filing Applications

No applications will be entertained by a Judge or Magistrate Judge in any action until the action has been filed, allocated and assigned.

(b) All Motions

(1) Unless a Judge or Magistrate Judge advises the attorneys otherwise, all motions, regardless of their complexity and the relief sought, shall be presented and defended in the manner set forth in L. Civ. R. 7.1.

(2) The Notice of Motion and all papers in support of or in opposition to the motion, including briefs, must be filed with the Clerk.

(3) Motions filed electronically by ECF Registered Users shall also comply with the Policies and Procedures that govern Electronic Case Filing for the District of New Jersey.

(4) The procedure for requesting and scheduling oral argument is set forth in L. Vic. R. 78.1.

(c) Motion Dates

(1) The regular motion days for all vicinages are set forth in L.Civ.R. 78.1. All applications, other than applications under L.Civ.R. 65.1, by notice of motion or otherwise, shall be made returnable before the Judge or Magistrate Judge to whom the case has been assigned on the first motion day which is at least 24 days after the date of filing.

(2) If a motion is noticed for any day other than a regular motion day, unless such day has been fixed by the Court, the Clerk shall list the disposition of the motion for the next regular motion day and notify all parties of the change in date.

(d) Filing Motion Papers

(1) No application will be heard unless the moving papers and a brief, prepared in accordance with L.Civ.R. 7.2, and proof or acknowledgment of service on all other parties, are filed with the Clerk at least 24 days prior to the noticed motion date. The brief shall be a separate document for submission to the Court, and shall note the motion date on the cover page.

(2) The brief and papers in opposition to a motion, specifying the motion date on the cover page, with proof or acknowledgment of service thereof on all other parties, must be filed with the Clerk at least 14 days prior to the original motion date, unless the Court otherwise orders, or an automatic extension is obtained pursuant to L.Civ.R. 7.1(d)(5).

(3) If the moving party chooses to file papers in reply, those papers including a reply brief specifying the motion date on the cover page, with proof or acknowledgment of service thereof on all other parties, must be filed with the Clerk within seven calendar days after service of the opposition papers.

(4) In lieu of filing any brief pursuant to L.Civ.R. 7.1(d)(1), (2) or (3), a party may file a statement that no brief is necessary and the reasons therefor.

(5) The motion day of a dispositive motion may be adjourned once by a party opposing the motion, without the consent of the moving party, the Court, or the Clerk. To obtain the automatic extension a party must file with the Clerk, and serve upon all other parties, a letter invoking the provisions of this rule before the date on which opposition papers would otherwise be due under L. Civ. R. 7.1(d)(2). That letter shall set forth the new motion date, which shall be the next available motion date following the originally noticed date. All parties opposing the motion shall file their opposition papers at least 14 days prior to the new motion day, and the moving party shall file its reply papers, if any, at least seven calendar days prior to the new motion day. No other extension of the time limits provided in L.Civ.R. 7.1(d)(2) and (3) shall be permitted without an Order of the Court, and any application for such an extension shall advise the Court whether other parties have or have not consented to such request.

(6) No sur-replies are permitted without permission of the Judge or Magistrate Judge to whom the case is assigned.

(7) The Court may reject any brief or other paper not filed within the time specified.

(e) Preparation of Order

All filed motions shall have annexed thereto a proposed order. If the proposed order does not adequately reflect the Court's ruling, the prevailing party, if directed by the Court, shall submit an order within five calendar days of the ruling on the motion on notice to all other parties. Unless the Court otherwise directs, if no specific objection to that order with reasons therefor is received within seven calendar days of its receipt by the Court, the order may be signed. If such an objection is made, the matter may be listed for hearing at the discretion of the Court.

(f) Motions Regarding Additional Pleadings

Upon filing of a motion for leave to file an amended complaint or answer, a complaint in intervention, or other pleading requiring leave of Court, the moving party shall attach to the motion a copy of the proposed pleading or amendments and retain the original until the Court has ruled. If leave to file is granted, the moving party shall file the original forthwith.

(g) Courtesy Copies

In addition to the filing of all papers, including briefs, in support of or in opposition to a motion, the filer must submit forthwith to the Judge's or Magistrate Judge's chambers one courtesy copy of each filed paper or brief in paper form, unless otherwise directed by the judicial officer. These documents shall be clearly marked as courtesy copies.

(h) Cross-Motion

A cross-motion related to the subject matter of the original motion may be filed by the party opposing the motion together with that party's opposition papers and may be noticed for disposition on the same date as the original motion, as long as the opposition papers are timely filed. Upon the request of the original moving party, the Court may enlarge the time for filing a brief and/or papers in opposition to the cross-motion and adjourn the original motion date. The provisions of L.Civ.R. 7.1(d)(5) apply to dispositive cross-motions.

(i) Motions for Reconsideration

A motion for reconsideration shall be served and filed within 10 business days after the entry of the order or judgment on the original motion by the Judge or Magistrate Judge. A brief setting forth concisely the matter or controlling decisions which the party believes the Judge or Magistrate Judge has overlooked shall be filed with the Notice of Motion.

Source: L.Civ.R. 7.1(a) - G.R. 12.E.; L.Civ.R. 7.1(b)(1) - G.R. 12.C. (paragraph 1); L.Civ.R. 7.1(b)(2) - G.R. 12.C. (paragraph 4); L.Civ.R. 7.1(b)(3) - G.R. 12.C. (paragraph 3); L.Civ.R. 7.1(c) - G.R. 12.C. (paragraphs 5-8); L.Civ.R. 7.1(d)(1) - G.R. 12.C. (paragraph 9); L.Civ.R. 7.1(d)(2) - G.R. 12.H.; L.Civ.R. 7.1(e) - G.R. 12.C. (paragraph 10); L.Civ.R. 7.1(f) - G.R. 12.N.; L.Civ.R. 7.1(g) - G.R. 12.I.

Amended February 24, 2005

Civ. RULE 7.2 AFFIDAVITS AND BRIEFS

(a) Affidavits shall be restricted to statements of fact within the personal knowledge of the affiant. Argument of the facts and the law shall not be contained in affidavits. Legal arguments and summations in affidavits will be disregarded by the Court and may subject the affiant to appropriate censure, sanctions or both.

(b) Any brief shall include a table of contents and a table of authorities and shall not exceed 40 ordinary typed or printed pages (15 pages for any reply brief submitted under L.Civ.R. 7.1(d) (3) and any brief in support of or in opposition to a motion for reconsideration submitted under L.Civ.R. 7.1(i)), excluding pages required for the table of contents and authorities. Briefs of greater length will only be accepted if special permission of the Judge or Magistrate Judge is obtained prior to submission of the brief.

(c) All briefs shall be in black lettering on reasonably heavy paper size 8.5 x 11 inches. All margins shall be not less than one-inch on sides, top, and bottom.

(d) Each page of a brief shall contain double-spaced text and/or single spaced footnotes or inserts. Typeface shall be in 12-point non-proportional font (such as Courier New 12) or an equivalent 14-point proportional font (such as Times New Roman 14). If a 12-point proportional font is used instead, the page limits shall be reduced by 25 percent (e.g., the 40 page limit becomes 30 pages in this font). Footnotes shall be printed in the same size of type utilized in the text.

Source: L.Civ.R. 7.2(a) - G.R. 27.A.; L.Civ.R. 7.2(b) - G.R. 27.B.

Civ. RULE 37.1 DISCOVERY MOTIONS

(a) Conference to Resolve Disputes

(1) Counsel shall confer to resolve any discovery dispute. Any such dispute not resolved shall be presented by telephone conference call or letter to the Magistrate Judge. This presentation shall precede any formal motion.

(2) Cases in which a party appears *pro se* shall not be subject to L.Civ.R. 37.1(a)(1) unless the Magistrate Judge so directs. In such cases discovery disputes shall be presented by formal motion consistent with L.Civ.R. 37.1(b).

(b) Discovery Motions

(1) Discovery motions must be accompanied by an affidavit certifying that the moving party has conferred with the opposing party in a good faith effort to resolve by agreement the issues raised by the motion without the intervention of the Court and that the parties have been unable to reach agreement. The affidavit shall set forth the date and method of communication used in attempting to reach agreement.

(2) Discovery motions shall have annexed thereto copies of only those pertinent portions of depositions, interrogatories, demands for admission and responses, etc., which are the subject matter of the motion.

(3) L.Civ.R. 7.1 shall apply to discovery motions, except that the following schedule shall be followed. No such motion shall be heard unless the appropriate papers are received at the Clerk's office, at the place of allocation of the case, at least 24 days prior to the date noticed for argument. No opposition shall be considered unless appropriate answering papers are received at the Clerk's office, at the place of allocation of the case, and a copy thereof delivered to the Magistrate Judge to whom the motion is assigned, at least 14 days prior to the date originally noticed for argument, unless the Magistrate Judge otherwise directs. No reply papers shall be allowed except with the permission of the Magistrate Judge. Unless oral argument is to be heard under L.Civ.R. 37.1(b)(4), the Magistrate Judge may decide the motion on the basis of the papers received when the deadline for submitting opposition has expired.

(4) No oral argument shall be heard except as permitted expressly by the Magistrate Judge assigned to hear the motion. In the event oral argument is required, the parties shall be notified by the Court. Oral argument may be conducted in open court or by telephone conference, at the discretion of the Magistrate Judge. Any party who believes that a discovery motion requires oral argument shall request it in the notice of motion or in response to the notice of motion, and so notify the Court in writing at the time the motion or opposition thereto is filed.

Source: L.Civ.R. 37.1(a) - G.R. 15.E.2-3; L.Civ.R. 37.1(b) - G.R. 15.F.

Civ. RULE 56.1 SUMMARY JUDGMENT MOTIONS

(a) Statement of Material Facts Not in Dispute

On motions for summary judgment, the movant shall furnish a statement which sets forth material facts as to which there does not exist a genuine issue, in separately numbered paragraphs citing to the affidavits and other documents submitted in support of the motion. A motion for summary judgment unaccompanied by a statement of material facts not in dispute shall be dismissed. The opponent of summary judgment shall furnish, with its opposition papers, a responsive statement of material facts, addressing each paragraph of the movant's statement, indicated agreement or disagreement and, if not agreed, stating each material fact in dispute and citing to the affidavits and other documents submitted in

connection with the motion; any material fact not disputed shall be deemed undisputed for purposes of the summary judgment motion. In addition, the opponent may also furnish a supplemental statement of disputed material facts, in separately numbered paragraphs citing to the affidavits and other documents submitted in connection with the motion, if necessary to substantiate the factual basis for opposition. The movant shall respond to any such supplemental statement of disputed material facts as above, with its reply papers.

(b) Social Security Matters

In review of Social Security matters, briefs and administrative record submissions shall be governed by L.Civ.R. 9.1.

Source: G.R. 12.G.

Civ. RULE 65.1 APPLICATIONS FOR EMERGENCY RELIEF

(a) Any party may apply for an order requiring an adverse party to show cause why a preliminary injunction should not issue, upon the filing of a verified complaint or verified counterclaim or by affidavit during the pendency of the action. No order to show cause to bring on a matter for hearing will be granted except on a clear and specific showing by affidavit or verified pleading of good and sufficient reasons why a procedure other than by notice of motion is necessary. An order to show cause which is issued at the beginning of the action may not, however, serve as a substitute for a summons which shall issue in accordance with Fed. R. Civ. P. 4. The order to show cause may include temporary restraints only under the conditions set forth in Fed. R. Civ. P. 65(b).

(b) Applications for orders to show cause, and for consent and *ex parte* orders, shall be made by delivering the proposed orders and supporting papers to the Clerk, who shall promptly deliver each application to the Judge to whom the case has been assigned. No application will be entertained by a Judge in any action until the action has been filed, allocated and assigned.

(c) The order shall provide for service upon the opposing party of the order together with all supporting papers, as specified by the Court.

(d) All applications for provisional remedies or a writ of *habeas corpus* or any other emergency relief may be made at any time to the Judge to whom the case has been assigned.

Source: L.Civ.R. 65.1(a) - G.R. 12.A., paragraph 1; L.Civ.R. 65.1(b), sentence 1 - G.R. 12.A. (paragraph 2); L.Civ.R. 65.1(b), sentence 2 - G.R. 12.E.; L.Civ.R. 65.1(c) - G.R. 12.A., paragraph 3; L.Civ.R. 65.1(d) - G.R. 12.B.

Civ. RULE 78.1 MOTION DAYS

(a) Except during vacation periods of the Court, the regular motion days for all vicinages are the first and third Monday of each month. Whenever a regular motion day falls on a holiday, the motion day becomes the following non-holiday. The Clerk shall publish a list of all regular motion days for each calendar year, and corresponding filing deadlines, on the web site of the Court and in appropriate legal publications.

(b) All motions and other applications will be decided on the papers submitted unless: (1) a party requests oral argument and the request is granted by the Judge or Magistrate Judge; or (2) the Court, sua sponte, directs that oral argument be held. Any request for oral argument shall be clearly marked on the first page of the notice of motion and/or the brief filed by the party making such request. If oral argument is to be heard, the Court will so notify the parties and designate the day and time of the argument.

Source: G.R. 12.C. (paragraph 2).

Civ. RULE 79.2 BRIEFS PART OF PUBLIC RECORD

Although not filed with the Clerk, all briefs, unless otherwise ordered by the Court, shall constitute parts of the public record, and it is the policy of the Court that counsel should, if reasonably feasible, provide to the media and members of the public access to a copy of the submitted briefs in pending actions for the purpose of review or copying at the requesting party's expense.

Source: G.R. 12.M.

Civ. RULE 81.2 PETITIONS FOR HABEAS CORPUS AND MOTIONS UNDER 28 U.S.C. § 2255 IN NON-DEATH PENALTY CASES.

(a) Unless prepared by counsel, petitions to this Court for a writ of *habeas corpus* and motions under 28 U.S.C. §2255 shall be in writing (legibly handwritten in ink or typewritten), signed by the petitioner or movant, on forms supplied by the Clerk. When prepared by counsel, the petition or motion shall follow the content of the forms.

(b) If the petition or motion is presented *in forma pauperis* it shall include an affidavit (attached to the back of the form) setting forth information which establishes that the petitioner or movant is unable to pay the fees and costs of the proceedings. Whenever a Federal, State, or local prisoner submits a civil rights complaint, petition for a writ of *habeas corpus*, or motion for relief under 28 U.S.C. §2255 and seeks *in forma pauperis* status, the prisoner shall also submit an affidavit setting forth information which establishes that the prisoner is unable to pay the fees and costs of the proceedings and shall further submit a certification signed by an authorized officer of the institution certifying (1) the amount presently on deposit in the prisoner's prison account and, (2) the greatest amount on deposit in the prisoner's prison account during the six-month period prior to the date of the certification. The affidavit and certification shall be in the forms attached to and made a part of these Rules as Appendix P. The Clerk shall reject any complaint, petition or motion which is not in full compliance with this requirement.

(c) If the prison account of any petitioner or movant exceeds \$200, the petitioner or movant shall not be considered eligible to proceed *in forma pauperis*.

(d) The respondent shall file and serve his or her answer to the petition or motion not later than 45 days from the date on which an order directing such response is filed with the Clerk, unless an extension is granted for good cause shown. The answer shall include the respondent's legal argument in opposition to the petition or motion. The respondent shall also file, by the same date, a certified copy of all briefs, appendices, opinions, process, pleadings, transcripts and orders filed in the underlying criminal proceeding or such of these as may be material to the questions presented by the petition or motion.

(e) Upon entry of an appealable order, the Clerk and appellant's counsel will prepare the record for appeal. The record will be transmitted to the Third Circuit Court of Appeals within five days after the filing of a notice of appeal from the entry of an appealable order under 18 U.S.C. §3731, 28 U.S.C. §1291 or 28 U.S.C. §1292(a)(1).

Civ. RULE 81.3 PETITIONS FOR HABEAS CORPUS AND MOTIONS UNDER 28 U.S.C. § 2255 IN DEATH PENALTY CASES.

(a) The following Local Civil Rule shall govern all petitions for a writ of habeas corpus and all motions under 28 U.S.C. § 2255 where the relief sought would affect a sentence of death previously imposed on the petitioner (hereinafter "capital case").

(b) Any petition for a writ of habeas corpus and any motion to vacate, set aside or correct a sentence under 28 U.S.C. § 2255 in a capital case must be accompanied by a cover sheet that lists:

(1) petitioner's full name and prisoner number; if prosecuted under a different name or alias that name must be indicated;

(2) name of person having custody of petitioner (warden, superintendent, etc.);

(3) petitioner's address;

(4) name of trial judge;

(5) court term and bill of information or indictment number;

(6) charges of which petitioner was convicted;

(7) sentence for each of the charges;

(8) plea entered;

(9) whether trial was by jury or to the bench;

(10) date of filing, docket numbers, dates of decision and results of any direct appeal of the conviction;

(11) date of filing, docket numbers, dates of decision and results of any state collateral attack on a state conviction including appeals;

(12) date of filing, docket numbers, dates of decision of any prior federal habeas corpus or § 2255 proceedings, including appeals; and

(13) name and address of each attorney who represented petitioner, identifying the stage at which the attorney represented the litigant.

(c) Any such petition or motion in a capital case:

(1) must list every ground on which the petitioner claims to be entitled to habeas corpus relief (or relief under 28 U.S.C. § 2255 for federal prisoners) followed by a concise statement of the material facts supporting the claims;

(2) must identify at what stage of the proceedings each claim was exhausted in state court if the petition seeks relief from a state court judgment;

(3) must contain a table of contents if the petition is more than 25 pages;

(4) may contain citation to legal authorities that form the basis of the claim.

(d) Petitioner must file, not later than 30 days after the date of the filing of the habeas corpus petition or the motion under 28 U.S.C. § 2255, in a capital case an original and one copy of a brief in support of the relief requested, which brief shall comply with the requirements of Local Civil Rule 7.2(b). The original brief shall be filed by the Clerk and the copy forwarded by the Clerk to the Judge assigned to the case.

(e) The petition/motion and brief together must not exceed 100 pages. Any such paper shall be served upon the respondent when it is filed with the Court.

(f) Within 60 days after being served with all papers, including the brief, filed by the petitioner/movant, the respondent shall file and serve a response which:

(1) must contain a table of contents if it is more than 25 pages;

(2) must include an original and one copy of a brief complying with the requirements of Local Civil Rule 7.2(b), which the Clerk shall file and process in the manner set forth in subsection (d) above; and

(3) must include a certified copy of all briefs, appendices, opinions, process, pleadings, transcripts and orders filed in the underlying criminal proceeding or such of these as may be material to the questions presented by the petition or motion.

(g) The response and brief required in sections (f) (1) and (2) above must not exceed 100 pages.

(h) Any reply to the response must be filed and served within 21 days of the filing of the response and may not exceed 30 pages.

(i) Upon motion (with notice to all adverse parties) and for good cause shown, the Judge may extend the page limits for any document.

(j) Upon motion (with notice to all adverse parties) and for good cause shown, the Judge may extend the time for filing any document. This provision does not enlarge the power of the Judge to extend the time for filing a petition under 28 U.S.C. § 2254 or a motion under 28 U.S.C. § 2255 beyond that permitted by applicable statutory and case law.

(k) All documents filed by any party under this rule must be succinct and must avoid repetition.

(l) Each petitioner in any habeas corpus proceeding or motion under 28 U.S.C. § 2255 in which the imposition of a death sentence is challenged shall file a "Certificate of Death Penalty Case" with the initial petition, motion or other pleading. This Certificate shall include the following information:

(1) names, addresses and telephone numbers of parties and counsel;

(2) if set, the proposed date of the execution of sentence; and

(3) the emergency nature of the proceedings.

(m) A Certificate of Death Penalty Case shall be filed with the Clerk by the United States Attorney for the District of New Jersey upon return of a verdict of death in a federal criminal case.

(n) Upon the entry of a warrant or order setting an execution date in any case within the geographical boundaries of this district, and in aid of this court's potential jurisdiction, the Clerk is directed to monitor the status of the execution and any pending litigation and to establish communication with all parties and relevant state and/or federal courts. Without further order of this Court, the Clerk may, prior to the filing

of a petition, direct parties to lodge with this court (1) relevant portions of previous state and/or federal court records, or the entire record, and (2) pleadings, briefs, and transcripts of any ongoing proceedings. To prevent delay, the case may be assigned to a Judge, up to 14 days prior to the execution date. The identity of the Judge assigned shall not be disclosed until a petition is actually docketed.

(o) The assignment of death-penalty cases among the Judges of this Court (whether before or after a petition is docketed) shall be as follows: If habeas relief from a State conviction is sought, the Clerk shall allocate the case to the vicinage which encompasses the county in which the capital sentence was imposed and assign the case to the next District Judge on that vicinage's list of Judges to receive such cases. If relief from a federal conviction arising in this District is sought under 28 U.S.C. § 2255, the case shall be assigned to the District Judge who presided at the capital sentencing or in his or her unavailability to the next District Judge on that vicinage's list of Judges to receive such cases.

(p) In accordance with Third Circuit L.A.R. Misc. 111.3(a), at the time a final decision is entered, the court shall state whether a certificate of appealability is granted, the court must state the issues that merit the granting of a certificate and must also grant a stay pending disposition of the appeal, except as provided in 28 U.S.C. § 2262.

(q) Upon entry of an appealable order, the Clerk and appellant's counsel will prepare the record for appeal. The record will be transmitted to the Third Circuit Court of Appeals within five days after the filing of a notice of appeal from the entry of an appealable order under 18 U.S.C. § 3731, 28 U.S.C. § 1291 or 28 U.S.C. § 1292(a) (1), unless the appealable order is entered within 14 days of the date of the scheduled execution, in which case the record shall be transmitted immediately by an expedited means of delivery.

**THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEW JERSEY**

The following transcription rates* were established pursuant to an Order In Re:
Amendment of Local Civil Rules Appendix F and effective December 3, 2007.

*Rates Per Page

Type of Transcript	Original	First Copy to Each Party	Each Additional Copy to the Same Party
Ordinary Transcript A transcript to be delivered within 30 calendar days after receipt of order.	\$3.65	\$0.90	\$0.60
14-Day Transcript A transcript to be delivered within 14 calendar days after receipt of order.	\$4.25	\$0.90	\$0.60
Expedited Transcript A transcript to be delivered within 7 calendar days after receipt of order.	\$4.85	\$0.90	\$0.60
Daily Transcript A transcript to be delivered following adjournment and prior to the normal opening hour of the Court on the following morning whether or not it actually be a court day.	\$6.05	\$1.20	\$0.90
Hourly Transcript A transcript of proceedings ordered under unusual circumstances to be delivered within two hours.	\$7.25	\$1.20	\$0.90
Realtime Transcript A draft unedited transcript produced by a certified realtime reporter as a byproduct of realtime to be delivered electronically during proceedings or immediately following adjournment.	\$3.05	\$1.20	—

It is the policy of this Court that in all cases in which a transcript is required for **APPELLATE REVIEW** and is ordered from a court reporter, in the absence of good cause supported by an affidavit, the transcript must be completed and filed with the Clerk of the District Court no more than forty-five (45) days from the date on which any deposit or prepayment required by the reporter was satisfied. The fee charged by court reporters for the appellate transcript shall be reduced by ten (10) percent if it is filed more than forty-five (45) days after financial arrangements have been settled and, if the transcript is outstanding more than sixty (60) days, the reporter shall be entitled to collect only eighty (80) percent of the original fee.

APPENDIX K. SCHEDULE OF FEES

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

Office of the Clerk

Schedule of Fees

The Clerk of the District Court is required to collect the following fees:

Commencing any civil case or proceeding other than an application for a writ of <i>habeas corpus</i>	\$350.00
Application for a writ of <i>habeas corpus</i>	5.00
Filing a notice or petition of appeal in any case-fee includes docket fee of the United States Court of Appeals	455.00
Filing a Notice of Appeal to District Judge from a Judgment of Conviction by a Magistrate Judge in a Misdemeanor Case	32.00
Certificate of Search Each Name--	26.00
Certifying any document or paper	9.00
Exemplification of any document or paper	18.00
Filing any paper not in a case or proceeding	39.00
Registration of foreign judgment	39.00
Admission of attorney to practice (including certificate)	200.00
Duplicate Attorney Certificate of Admission	20.00
Certificate of Good Standing to Practice	15.00
Admission to Appear <i>Pro Hac Vice</i> (each case)	150.00
Copies made by Clerk (does not include certification) Per Page-Photographic (Xerox) copies	\$.50
Cassette Tapes of Proceedings	26.00
Comparing copies prepared by applicant (does not include certification) Per Page--	2.00
Retrieval of a Court Record from Federal Record Center or National Archives	45.00
Check Paid into the Court Which is Returned for Insufficient Funds	45.00
Commencing a civil case under Title III of Cuban Liberty and Democratic Solidarity (Liberated) Act of 1996 (This fee is in addition to the fee for commencing a civil case)	5,431.00

**CHECKS AND MONEY ORDERS SHOULD BE MADE PAYABLE TO:
CLERK, UNITED STATES DISTRICT COURT**

May 1, 1987

Amended effective December 18, 1996; April 1, 1997; January 1, 1998; February 1, 2001; July 1, 2001,
October 1, 2002, November 1, 2003, June 1, 2004, February 7, 2005, March 22, 2005; April 9, 2006.