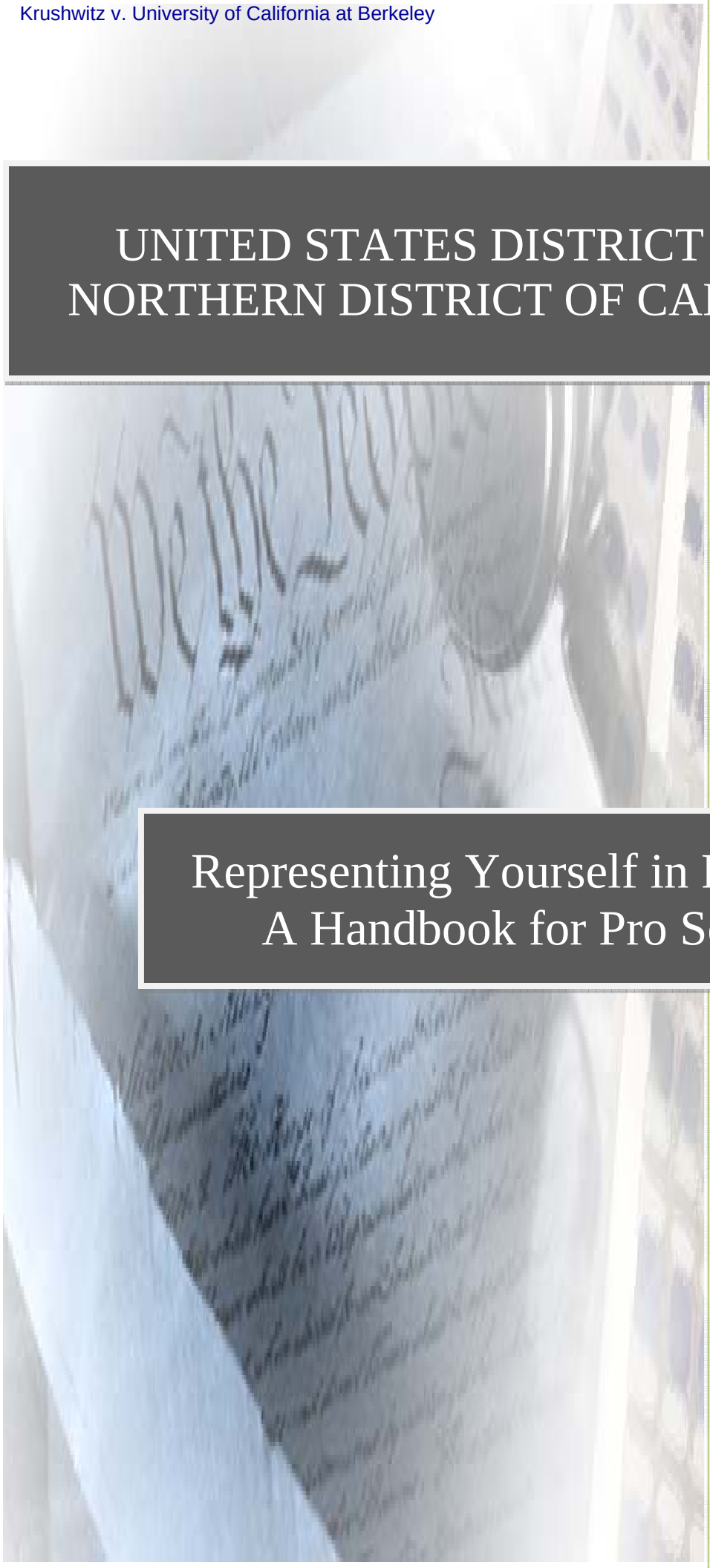

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Representing Yourself in Federal Court: A Handbook for Pro Se Litigants

RICHARD WIEKING
CLERK OF COURT

August 2011

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INTRODUCTION

This handbook is to help people proceeding with civil lawsuits in federal court without legal representation. If you do not have a lawyer, you are handling a case "**pro se**," meaning "for oneself." Representing yourself in a lawsuit can be complicated, time consuming, and costly. Failing to follow court procedures can mean losing your case. For these reasons, you are urged to retain a lawyer if at all possible. Chapter 2 gives suggestions on finding a lawyer.

This Handbook explains civil lawsuit procedures, but it does not teach you about the law. It is only a summary and it does not cover all procedures that may apply. Do not rely entirely on this Handbook. Make sure you read the applicable federal and local court rules yourself. To learn about the law, you will need to do research at a law library or online. It is up to you to find answers to your questions through your own research.

This Court (the United States District Court for the Northern District of California) has a Clerk's Office in the San Francisco, San Jose and Oakland courthouses. Clerk's Office staff can help you with court procedures, but they cannot give you any legal advice. For example, they cannot help you decide what to do in your lawsuit, tell you what the law means, or even advise you when documents are due.

There are ***Legal Help Centers*** in the San Francisco and San Jose Courthouses where you can get help with your lawsuit. If you make an appointment at a Center, an attorney can help you prepare documents and give some limited legal advice. This attorney will not be your lawyer and you will still be representing yourself. See Chapter 2 for details about the Legal Help Centers.

Tips for Pro Se Litigants

There is a lot to learn about representing yourself in federal court, but these are some especially important pointers:

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

CHAPTER 1
What should I think about before filing a lawsuit?

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

To be heard in federal court, your case has to meet all of these requirements:

1. ***You must have a legal claim.***

You have a legal claim if (a) someone broke a law, **AND**, as a result, (b) you were personally harmed. You usually cannot sue on the basis of someone else being harmed.

2. ***You must start your case before the deadline.***

   a. There are very strict deadlines for lawsuits called the **statute of limitations**. If you miss the deadline, the Court may be required to dismiss your case—even if you are only a day late.

   b. To know the deadline for your case, you can:

      i. Talk to a lawyer.

      ii. Ask the federal courthouse ***Legal Help Center***. (See Chapter 2 for details about the Legal Help Centers.)

      iii. Go to a law library. Ask how to research the statute of limitations for your case.

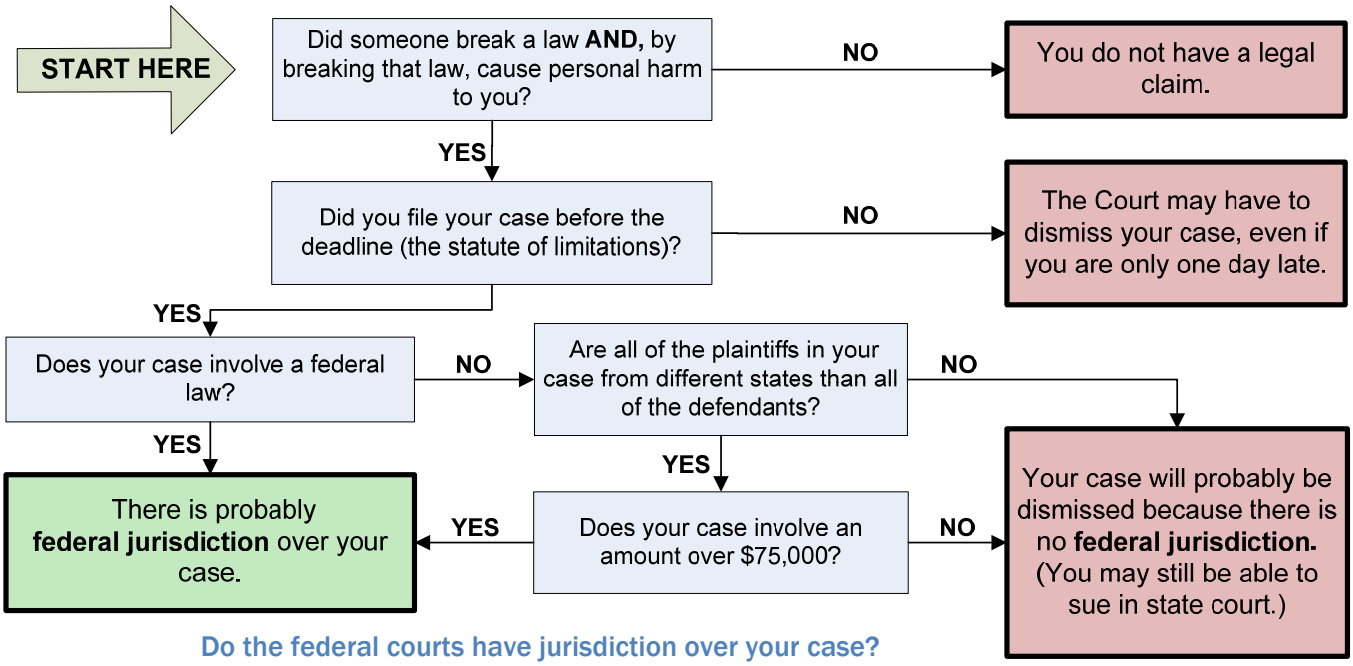
3. ***You must be suing in the right court.***

   a. Federal courts can only decide certain kinds of cases:

      i. Cases involving federal law—not state law.

      ii. **Diversity Jurisdiction**, cases in which the plaintiff and the defendant live in different states **AND** the suit is for more than $75,000.

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



Do the federal courts have jurisdiction over your case?

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

   A federal court in California cannot hear your case if it does not have power over the person or organization you are suing, meaning the Court lacks **personal jurisdiction** over the defendant. This Court can hear your case if the defendant:

   - Lives in California; **OR**
   - Did something in California that is the reason for your lawsuit; **OR**
   - Agreed to be sued in California; **OR**
   - Was personally served a copy of your complaint in California; **OR**
   - Has done things that have had significant effects in California.

5. ***You must sue in the right federal district for your case.***

   a. This Court's jurisdiction is the Northern District of California, which includes these counties:

      Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Sonoma.

   b. The rules about suing in the right court are called "**venue**" rules. Our legal system has venue requirements so that it is not overly difficult for all parties to get to the courthouse. You can read the venue statute at 28 U.S.C. § 1391.

   c. The right **venue** for your case is the district where:

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

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

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

   Some people and organizations cannot be sued. This happens when a person's job entitles him or her to partial or complete **immunity**. For example, the federal government, state governments, judges and many government officials usually have immunity in civil cases. If you try to sue someone with immunity in federal court, the judge will dismiss your case.

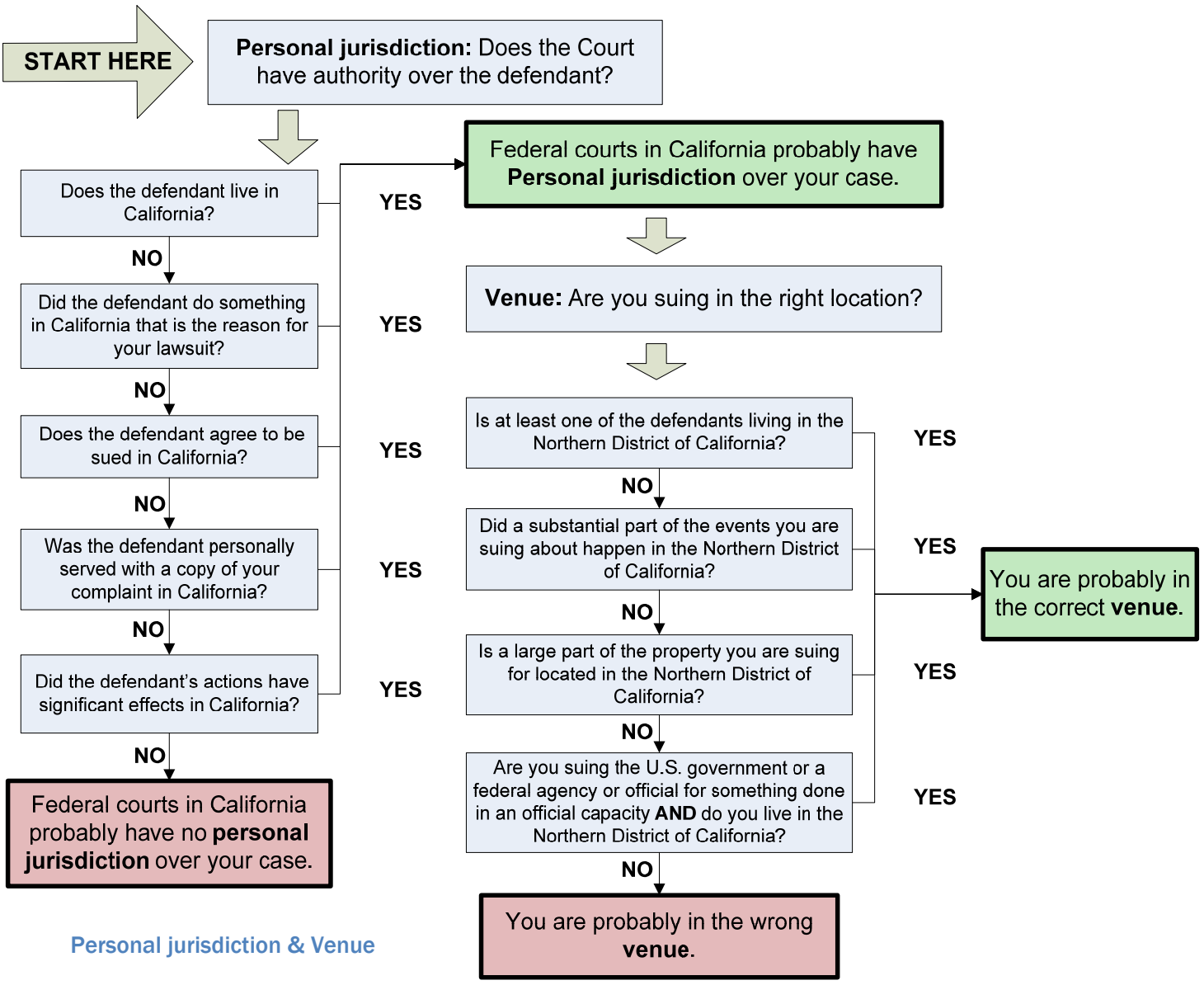
   To find out if the person or organization you are suing has immunity, you can:

   a. Talk to a lawyer.

   b. Ask the federal courthouse ***Legal Help Center*** (please go to Chapter 2 for details).

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

If you meet **ALL** six of these requirements, you can probably sue in federal court.



Personal jurisdiction & Venue

Alternatives to Suing

Even if you do have the right to sue, you should carefully consider **alternatives to suing.** Lawsuits can be costly, time-consuming, and stressful and can consume time and attention that might instead be directed to effective alternatives. Some alternatives include:

Gathering Information

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

Working Things Out

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

Going to Governmental or Private Agencies

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

- The Equal Employment Opportunity Commission (or an equivalent state or local agency) to address employment discrimination;
- The local police review board or office of citizens' complaints to hear complaints about police conduct;
- A consumer protection agency or the local district attorney's office to investigate consumer fraud; **AND**
- The Better Business Bureau or private professional associations (e.g., associations of contractors, accountants, securities dealers, architects and engineers, etc.) to hear business-related complaints.

Using a Small Claims Court

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

Alternative Dispute Resolution

Dispute resolution services—such as mediation or arbitration—may be faster and less expensive than taking a case to court. Mediation encourages parties to communicate clearly and constructively to find common ground or to identify solutions that can serve the parties' real interests. Many counties have free or low cost agencies that can assist you in finding a provider of alternative dispute resolution services. A listing can be found at the California Bar's website, http://www.calbar.ca.gov/Public/Pamphlets/ResolveaDispute.aspx.

There are also alternative dispute resolution options for parties who have filed lawsuits in this Court. Please refer to Chapter 14.

CHAPTER 2
Finding a Lawyer

This handbook is designed to help those without an attorney, but it is no substitute for having your own lawyer. Effective representation requires an understanding of:

1. The law that applies to your case;
2. The court procedures you have to follow;
3. The strengths and weaknesses of your arguments and the other party's arguments.

Misunderstanding just one of the above can make you lose your case. Because of this, the Court encourages you to find a lawyer, if at all possible.

How can I find a lawyer?

The following resources may be helpful:

- Certified legal referral services that help people find lawyers, such as:

  Bar Association of San Francisco Lawyer Referral & Information Service: (415) 989-1616, Monday-Friday, 8:30 a.m. - 5:30 p.m.

- The California State Bar website: http://www.calbar.ca.gov/Public/LawyerReferralServicesLRS.aspx. Search for certified legal referral services by county.
- The State Bar's Lawyer Referral Services Directory: (866) 442-2529 (toll free in California)
- The State Bar's pamphlet (available in English and Spanish) called "How Can I Find and Hire the Right Lawyer?" http://www.calbar.ca.gov/Public/Pamphlets/HiringaLawyer.aspx

What are the federal courthouse Legal Help Centers and how can they help me?

The Court has established Legal Help Centers in the San Francisco and San Jose courthouses where people who are representing themselves in federal court cases can get advice from experienced attorneys. There is no fee for this service.

The federal courthouse Legal Help Center attorney can give you:

- information to help you understand the federal court processes and procedures that you need to follow;
- explanations of court orders and other paperwork;
- answers to your legal questions; and
- referrals to appropriate legal, social, and government services.

If you seek help from the Legal Help Center, you will still represent yourself. The lawyer at the Legal Help Center cannot be your lawyer. If you have tried to find a lawyer but have not found one, the Legal Help Center may be able to help you.

Consultations with the federal courthouse Legal Help Center are by appointment only:

San Francisco Courthouse Legal Help Center:

The Center is located on the 15th Floor, room 2796. To make an appointment, please call (415) 782-9000, extension 8657 or visit the Center to sign up in person.

San Jose Courthouse Legal Help Center:

The Center is located on the 4th Floor, Rooms 4093 & 4095. To make an appointment, please call (408) 297-1480.

Please visit the Court's website, http://www.cand.uscourts.gov, or call the phone numbers listed above for current office hours, forms and policies for both Legal Help Centers.

What is "pro bono" representation?

In a limited number of cases, the Court may ask a lawyer to step in for all or part of the case and represent a pro se litigant without charge. An attorney who represents someone for free is called "**pro bono**" counsel. The Court will sometimes appoint pro bono counsel for just part of a case. For example, the Court might appoint pro bono counsel for a settlement conference in which it believes a lawyer could help negotiate a settlement.

For more information about court appointment of pro bono counsel, see this Court's General Order Number 25 (available at http://cand.uscourts.gov/generalorders).

CHAPTER 3
How do I research the law?

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

1. **Procedural rules** describe the different steps required to pursue a lawsuit. You must follow these four sources of rules to have the Court consider your case:
    a. **Federal Rules of Civil Procedure**: These apply in every federal court in the country. Review them at any law library or online:
        - http://www.uscourts.gov/RulesAndPolicies/FederalRulemaking/Overview/CivilRules.aspx
        - http://www.law.cornell.edu/rules/frcp/overview.html
    b. **Federal Rules of Evidence**: These rules define the types of evidence that a federal court considers to be "**admissible**." You can only prove your case to the Court using admissible evidence. Review these rules early in your case at a law library or online:
        - http://www.uscourts.gov/RulesAndPolicies/FederalRulemaking/Overview/EvidenceRules.aspx
        - http://www.law.cornell.edu/rules/fre/overview.html
    c. **Local Rules of the United States District Court for the Northern District of California**: These are procedural rules that build on the Federal Rules of Civil Procedure and apply only in this Court. Review them:
        - Online: http://www.cand.uscourts.gov/localrules **OR**
        - At the Clerk's Office **OR**
        - At the federal courthouse ***Legal Help Center*** (see Chapter 2 for details) **OR**
        - By written request (with a self-addressed 10"x14" envelope with $8.40 in postage on it) to: Local Rules/Clerk, U.S. District Court
450 Golden Gate Avenue
San Francisco, California 94102
    d. **Judges' Standing Orders**: These are the judges' particular rules for cases assigned to them. Normally, the Clerk's Office will provide you with a copy of these when you file the complaint. You can also find them on your judge's web page on the Court's website: http://www.cand.uscourts.gov/judges or you can contact the judge's courtroom deputy.
2. **Substantive law** describes what you must prove to establish your claims. Each subject of a claim has a different set of laws that you need to learn. For example, different laws apply to an employment discrimination case than a real estate case.

    To find the substantive law that applies to your claims—for example, the law regarding employment discrimination or social security benefits—you will need to visit a **law library**. A law librarian can show you where to find the specific law that you need. Some public law libraries in the Northern District are listed below. Find some statutes and cases online for free on sites such as FindLaw (http://www.findlaw.com/casecode/).

To look up unfamiliar **legal terms**, use:

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

Public Law Libraries in the Northern District of California (by county)

ALAMEDA COUNTY

1. Bernard E. Witkin Alameda County Law Library (two locations) http://www.acgov.org/law/

Oakland Main Library
125 Twelfth Street
Oakland, CA 94607
Phone: (510) 208-4800

Hayward Branch Library
224 W. Winton Avenue
Hayward, CA 94544
Phone: (510) 670-5230

2. University of California Law Library http://www.law.berkeley.edu/library.htm
Boalt Hall, Berkeley, CA 94720; Phone: (510) 642-4044

CONTRA COSTA COUNTY

Contra Costa County Public Law Library (three locations) http://www.cccpllib.org/

Main Branch
A.F. Bray Courts Building
1020 Ward Street, 1st Floor
Martinez, CA 94553
Phone: (925) 646-2783

Richmond Branch
Superior Court Building
100 37th Street, Rm. 237
Richmond, CA 94805
Phone: (510) 374-3019

Pittsburg Branch
Superior Court Building
100 Center Drive, Rm. 1045
Pittsburg, CA 94565
Phone: (925) 252-2800

SAN FRANCISCO COUNTY

1. San Francisco Law Library (three locations) http://www.sflawlibrary.org/

Civic Center Law Library
401 Van Ness Avenue, Rm 400
San Francisco, CA 94102
Phone: (415) 554-6821

Financial District Branch
Monadnock Building
685 Market Street, Suite 420
San Francisco, CA 94105
Phone: (415) 882-9310

Courthouse Reference Room
Civic Center Courthouse
400 McAllister Street, Rm. 512
Phone: (415) 551-3647

2. Hastings College of the Law Library http://library.uchastings.edu/library/index.html
200 McAllister Street, 4th Floor, San Francisco, CA 94102; Phone: (415) 565-4750

MONTEREY COUNTY

Monterey County Law Library (two locations) http://www.mtrylawlib1.com/

Monterey Branch
Monterey Courthouse
1200 Aguajito Road, Rm. 202
Monterey, CA 93940
Phone: (831) 647-7746

Salinas Branch
Federal Office Building
100 West Alisal, Suite 144
Salinas, CA 93901
Phone: (831) 755-5046

DEL NORTE COUNTY

Del Norte County Law Library
County Courthouse
450 H Street
Crescent City, CA 95531
Phone: (707) 464-8115

HUMBOLDT COUNTY

Humboldt County Law Library
812 4th Street, Rm. G04
Eureka, CA 95501
Phone: (707) 476-2356
http://co.humboldt.ca.us/law-library/

LAKE COUNTY

Lake County Law Library
175 3rd Street
Lakeport, CA 95453
Phone: (707) 263-2205
http://www.co.lake.ca.us/Government/Directory/Law_Library.htm

MARIN COUNTY

Marin County Law Library
20 North San Pedro Road, Suite 2015
San Rafael, CA 94903
Phone: (415) 499-6355

MENDOCINO COUNTY

Mendocino County Law Library
100 North State Street, Rm. 307
Ukiah, CA 95482
Phone: (707) 463-4201
http://www.pacificsites.com/~lawlib/

NAPA COUNTY

Napa County Law Library
Historic Courthouse
825 Brown Street
Napa, CA 94559
Phone: (707) 299-1201
http://www.napalawlibrary.com/

SAN BENITO COUNTY

San Benito County Law Library
San Benito Courthouse
440 Fifth Street
Hollister, CA 95023
Phone: (831) 636-9525

SANTA CLARA COUNTY

Santa Clara County Law Library
360 N. First Street
San Jose, CA 95113
Phone: (408) 299-3568
http://www.sccll.org/

SANTA CRUZ COUNTY

Santa Cruz Law Library
701 Ocean Street, Room 070
Santa Cruz, CA 95060
Phone: (831) 420-2205
http://lawlibrary.org/

SAN MATEO COUNTY

San Mateo County Law Library
Cohn-Sorenson Law Library Building
710 Hamilton Street
Redwood City, CA 94063
Phone: (650) 363-4913
http://www.smcll.org

SONOMA COUNTY

Sonoma County Law Library
2604 Ventura Avenue
Santa Rosa, CA 95403
Phone: (707) 565-2668
http://www.sonomacountylawlibrary.org/

CHAPTER 4
How do I draft a complaint?

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

What does a complaint look like?

Formal documents that you submit to the court are called "**pleadings**." A complaint is one type of pleading. Pleadings are written on "**pleading paper**," which is letter-sized paper that has the numbers 1 through 28 running down the left side. You can download a pleading-paper template and complaint forms online at http://cand.uscourts.gov/civillitpackets.

Here are some resources for different types of complaints:

1. Employment discrimination or social security benefits:
    a. Clerk's Office;
    b. The federal courthouse ***Legal Help Center*** (see Chapter 2 for details);
    c. Online:
        - http://www.cand.uscourts.gov/civilforms
        - http://topics.law.cornell.edu/wex/Employment_discrimination
        - http://www.nolo.com/legal-encyclopedia/workplace-rights/
        - http://www.nolo.com/legal-encyclopedia/social-security-appeal-denied-claims-30167.html
2. General and civil rights:
    a. The federal courthouse ***Legal Help Center***(see Chapter 2 for details);
    b. Online:
        - http://cand.uscourts.gov/civillitpackets
        - http://www.ce9.uscourts.gov/jc2010/references/prose/Complaint_Forms_CAC.pdf (Change "Central District of California" on the caption page to "Northern District of California" so you can use the forms in this Court.)
        - http://www.justice.gov/crt/complaint/
3. Other complaint forms are available in law libraries. Some books that contain complaint forms are:
    - California Forms of Pleading and Practice
    - West's Federal Forms
    - Federal Procedural Forms
    - Lawyer's Edition
    - American Jurisprudence Pleading and Practice Forms

The following is an example of what you will need to include in your complaint caption page:

Sample Complaint Caption Page

Pleadings are formal documents submitted to the Court. A **complaint** is a type of pleading and is written on pleading paper. **Pleading paper** is letter-sized paper with the numbers 1-28 running down the left side.

Fill in your **personal information**: name, address, telephone number, fax number (if any) and e-mail address.

General Rules:
1. Number each page of your complaint.
2. Type "Complaint" in the footer.
3. Number each paragraph.

John Doe
123 Main Street
San Francisco, CA 94102
(415) 555-1234
(415) 555-1235 (FAX)

Jane Jones
127 Main Street
San Francisco, CA 94102
(415) 555-6789
(415) 555-6700 (FAX)

Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

JOHN DOE and JANE JONES,

Plaintiffs,

vs.

JOHN SMITH and SMITH CONSTRUCTION CO.,

Defendants.

Case No. _____

COMPLAINT

DEMAND FOR JURY TRIAL

Jurisdiction explains why this Court has the power to decide your case. See 28 U.S.C. §§1331, 1332.

Intradistrict Assignment should state the division of the United States District Court for the Northern District of California—specifically, San Francisco/Oakland, San Jose, or Eureka—to which you believe the case should be assigned.

Venue explains why the Northern District of California is the proper location for your lawsuit.

1. **Jurisdiction.** This court has jurisdiction over this complaint because it arises under the laws of the United States.

2. **Venue.** Venue is appropriate in this court because both of the defendants reside in this district, and a substantial amount of the acts and omissions giving rise to this lawsuit occurred in this district.

3. **Intradistrict Assignment.** This lawsuit should be assigned to the San Francisco Division of this Court because a substantial part of the events or omissions which give rise to this lawsuit occurred in Marin County.

4. Plaintiffs John Doe ("Doe") and Jane Jones ("Jones") are construction workers…

Parties identifies who the parties are in the case.

Other Information To Include:

Statement of facts explains the important facts in your case. It tells the Court how the defendant violated the law and how you received your subsequent injuries.

Claims is where you list your legal claims. For each claim, there should be a separate section (Claim 1, Claim 2, etc.) where you identify the specific law that you allege the defendant violated.

Request for relief states what you want the Court to do.

Demand for jury trial is best included at the end of your complaint. In some cases, you may choose not to have a jury trial; in that event, a judge will decide your case.

The **plaintiff's signature** is included at the end of the complaint. Your signature certifies to the Court that you are filing your complaint in good faith.

What information must be in a complaint?

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

1. **Caption Page**

    a. On the first page of your complaint, list your name, address, telephone number, fax number (if any), and email address.

    b. List the names of the defendants and the title of the document ("**Complaint**").

    c. Write "Demand for Jury Trial" if you want your case to be heard by a jury.

2. **Subject Matter Jurisdiction**

    The first numbered paragraph in your complaint (labeled "**Jurisdiction**") should explain why this Court has the power to decide this kind of case. As discussed in Chapter 1, a federal court can hear a case based on:

    Federal question jurisdiction (a violation of federal law)—for more information, read 28 U.S.C. § 1331; **OR**

    Diversity jurisdiction (when all plaintiffs and all defendants are citizens of different states disputing more than $75,000)—for more information, read 28 U.S.C. § 1332.

3. **Venue**

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

4. **Intradistrict Assignment**

    The following paragraph (labeled "**Intradistrict Assignment**") should state the division of the United States District Court for the Northern District of California—specifically, San Francisco/Oakland, San Jose, or Eureka—to which you believe the case should be assigned. The Court's venue rules are set forth in Civil Local Rule 3-2. Generally, cases from each county within the district are assigned as follows:

    San Francisco/Oakland: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, or Sonoma; and cases from Del Norte, Humboldt, Lake and Mendocino in which all parties do not consent to have their case heard by the Eureka magistrate judge.

    San Jose: Santa Clara, Santa Cruz, San Benito, or Monterey;

    Eureka: Del Norte, Humboldt, Lake and Mendocino (this venue requires all parties to consent to the jurisdiction of the United States magistrate judge – see Chapter 6).

5. **Parties**

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

6. **Statement of Facts**

    This section should explain the important facts in your case in numbered paragraphs. It should explain to the Court how the defendant violated the law and how you have been injured.

    If you refer to any documents in this section, you can attach them to the complaint as **exhibits**.

7. **Claims**

    This section should list your legal **claims**. If possible, you should include a separate section for each claim (Claim 1, Claim 2, etc.) identifying the specific law that you allege the defendant violated.

8. **Request for Relief**

   This section should explain what you want the Court to do. For example, you can ask the Court to order the defendant to pay you money or to give you your job back. Each type of relief you request should be in a separate numbered paragraph.

9. **Demand for Jury Trial**

   If you want a **jury trial**, you can request it at the end of your complaint or in a separate document. It is best to include this in your complaint because, if you do not request a jury trial within 10 days of filing your complaint, you may give up your right to a jury trial.

   You may decide you do not want to have a jury trial; in that event, the judge will decide the facts of your case at trial, if a trial is held.

10. **Plaintiff's Signature**

    At the end of the complaint, sign your name.

    When you sign your name, you are certifying to the court that you are filing your complaint in **good faith**. This means that you believe:

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

    If you do not meet all of these requirements, the Court can require you to pay fines for harassment, frivolous arguments, or a lack of factual investigation. See Rule 11 of the Federal Rules of Civil Procedure.

CHAPTER 5
How do I file papers with the Court?

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

General rules for manual filing

For all methods but **electronic filing** ("e-filing"), the following rules apply:

1. ***File documents in the proper Court division for your case.***

   You may file your complaint in any courthouse except Eureka. Thereafter, papers must be filed in the courthouse where the assigned judge holds chambers. Refer to "**Intradistrict Assignment**" in Chapter 4 for a more complete explanation.

2. ***Have the correct number of copies.***

   You should bring the signed original document and two copies of the signed original.

3. ***Give the clerk the original document (the one you actually signed) and two copies of the signed original.***

   One copy must be marked "CHAMBERS" on the caption page. This chambers copy goes to the judge. The Clerk will return the third copy to you for your file.

4. ***Keep an extra copy*** of every document you file.

How do I file documents?

You can file documents in four different ways:

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

   a. ***Filing documents in person during normal business hours***

   The Clerk's Office in each division of the court is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, except for federal and other court holidays.

San Francisco:	450 Golden Gate Avenue, 16th floor; phone: (415) 522-2000
Oakland:	1301 Clay Street, Suite 400 South; phone: (510) 637-3530
San Jose:	280 South First Street; phone: (408) 535-5363

   The **Eureka** courthouse does not accept documents for filing. Paper filings for cases assigned to the Eureka division should be brought to the San Francisco Clerk's Office.

   Again, remember to bring two extra copies of the signed original document. When you file a document, the Clerk's Office will stamp it with the filing date. One of the extra copies should be marked "CHAMBERS" on the caption page; this copy will be sent to the judge. The other will be handed back to you. Keep all copies of court papers in an organized way for your own reference.

   b. ***Filing documents in person after hours using the drop box***

   You can file your documents in person even if you are unable to go to the Clerk's Office between 9:00 a.m. and 4:00 p.m. The Clerk's Office maintains a drop box that can be used to file most documents before and after regular business hours. See Civil Local Rule 5-3. The drop boxes are open Monday through Friday at the hours below, except on federal holidays:

San Francisco:	6:00–9:00 a.m. and 4:00–6:00 p.m. next to the Clerk's Office, 16th floor

Oakland:	7:00–9:00 a.m. and 4:00–5:00 p.m. first floor lobby
San Jose:	7:30–9:00 a.m. and 4:00–5:00 p.m. next to the Clerk's Office, 2nd floor

- Before putting a document in the drop box, ***follow the instructions that are posted next to the drop box*** explaining how to date-stamp, label and identify your documents.
- If you would like a file-stamped copy, provide an extra copy of the document with a self-addressed, stamped envelope, or an envelope marked "FOR MESSENGER PICKUP BY: (NAME)."
- The drop box may not be used to file any papers regarding a matter that is scheduled for hearing within 7 calendar days.
- If you use the drop box to file a complaint, you must include a check or money order for the $350 filing fee, made payable to "Clerk, United States District Court." Do not enclose cash.

2. **Fax Filing**: Although this Court will accept fax copies for filing, you cannot fax the documents directly to the Court. Instead, you fax the documents to a "fax filing service" that will then file your documents in person at the Clerk's Office. There is a charge for this service. Civil Local Rule 5-2 provides detailed rules about this process. To find a fax filing service, consult resources such as http://www.rapidlegal.com.

   a. You must arrange for the fax filing service to give the Court a copy of the faxed document, which must be marked "CHAMBERS" on the caption page. This chambers copy will be given to the judge.

   b. When you file a document by fax, keep the original document and a record of the fax transmission in your file until the end of the case.

3. **Filing by Mail**: Mail the sign original document and a chambers copy to the Court for filing. To obtain a file-stamped copy by return mail, you must provide an extra copy with a self-addressed, stamped envelope.

San Francisco: **Clerk's Office**
United States District Court
450 Golden Gate Avenue, 16th Floor
San Francisco, CA 94102

Oakland: **Clerk's Office**
United States District Court
1301 Clay Street, Suite 400 South
Oakland, CA 94612

San Jose: **Clerk's Office**
United States District Court
280 South 1st Street
San Jose, CA 95113

The **Eureka** courthouse does not accept documents for filing. Paper filings for cases assigned to the Eureka division should be mailed to the San Francisco Clerk's Office.

4. **E-Filing**: **E-filing** is the process of using the internet to file and deliver documents to the Court and other parties. It offers many advantages to you by giving you convenient access to Court records and saving time.

   Pro Se litigants must first get permission from the Court in order to join the e-filing system. This is explained in Chapter 7 under "Can I serve and file documents electronically?" If you receive permission, you can file documents (other than the complaint) online at the Court's Electronic Case Filing (ECF) website and view documents at the Public Access to Court Electronic Records (**PACER**) website: https://ecf.cand.uscourts.gov/cand/index.html and http://www.pacer.gov. More information on e-filing can be found in Chapter 8.

How is filing a complaint different from other papers?

When filing a complaint, you must:

1. ***Fill out a Civil Cover Sheet.*** Obtain a copy of the form at the Clerk's Office or at the Court's website (http://www.cand.uscourts.gov/civilforms). Instructions for filling out the Civil Cover Sheet are on the form.
2. ***File the original complaint plus two copies.*** (If your complaint contains claims relating to patents, copyrights, or trademarks, you must file the original complaint plus three copies.)
3. ***Arrive at the Clerk's Office before 3:30 p.m.*** because it takes more time for the Clerk to file complaints than other documents.
4. ***Pay $350.00 to file your complaint.*** After the initial complaint is filed, you do not have to pay any additional fees to file most documents with the Court. The Clerk's Office accepts payment in cash (exact change required), check or money order made payable to "Clerk, U.S. District Court," or credit card (Visa, MasterCard, American Express, and Discover Card accepted; credit card payments must be made in person).

What if I can't afford the $350.00 fee for filing a new complaint?

If you cannot afford the $350.00 filing fee, you may file an **Application to Proceed In Forma Pauperis** ("**IFP**"). If you are not a prisoner, you can get this form at either the Clerk's Office or at the Court's website (http://www.cand.uscourts.gov/civilforms). If you are a prisoner, there is a different form available online (http://cand.uscourts.gov/prisresources). In both cases, you will have to tell the Court information about your income, your current employment, and your general financial situation. You can find out more information about filing IFP by reading 28 U.S.C. § 1915.

If you are not a prisoner and the Court finds that you cannot afford to pay the $350.00 fee, the Court will not require you to pay the filing fee in order to proceed with your lawsuit and may waive other costs. ***Be cautious:*** the fee waiver does not necessarily mean you will never have to pay. You may still be obligated to pay later on in your lawsuit.

If your IFP application is denied, you will be required to pay the fee.

If you are a prisoner and you are unable to pay the full filing fee at the time of filing, you must submit:

1. An affidavit that includes a statement of all assets you possess, **AND**
2. A certified copy of your trust fund account statement (or institutional equivalent) for the six-month period immediately before you file the lawsuit; you may obtain this from the trust account office at each prison at which you have been confined during the six-month period.

If the Court determines that you are unable to pay the full filing fee at the time of filing, you will be granted IFP status. Even if you have complied with § 1915(a) and the Court has granted you IFP status, if you are a prisoner you will still be required to pay the full amount of the filing fee.

Prisoners' filing fees are collected through an "installment plan":

1. First, the Court will assess and collect an initial partial filing fee;
2. After payment of the initial partial filing fee, you will be required to make monthly payments of 20% of the preceding month's income credited to your account.

While the Court can ***assess*** the initial fee even if there are no funds in your account at the time of assessment, the Court can only ***collect*** this fee "when funds exist." Your prison trust account office is responsible for forwarding to the Court payments from your account each time there is more than $10.00 in your account, until the entire filing fee is paid.

CHAPTER 6
Once my case is assigned to a judge, what do I do?

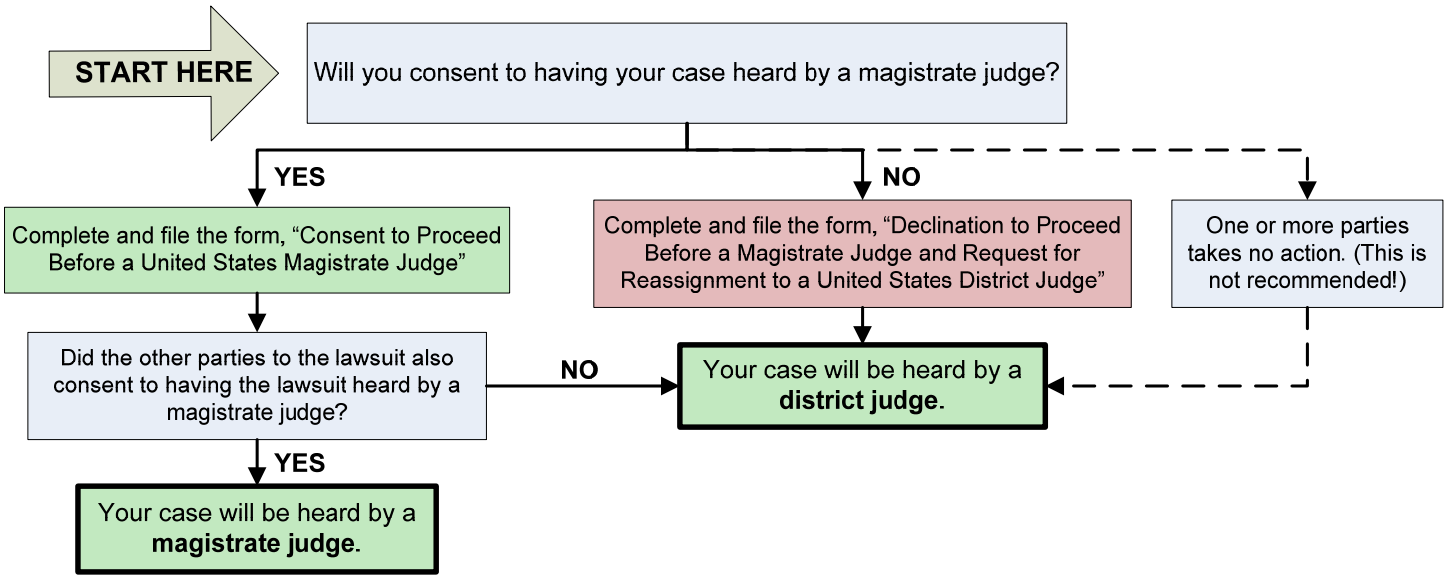
After the complaint is filed and the fee paid, the Clerk assigns a number to the case and assigns the case to a judge. The judge's initials are added to the case number.

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

Magistrate judges are appointed by the district judges of the Court and serve eight-year terms. They may (and often do) serve more than one term.

Rule 73 of the Federal Rules of Civil Procedure states that a magistrate judge may conduct a civil action, proceeding, trial, or non-jury trial only if all plaintiffs and all defendants **consent** to have the case decided by a magistrate judge.

Understanding the rules for consent assignment to a magistrate judge . . .



If your case is assigned to a **magistrate judge**, the Clerk's Office will give you a notice explaining that your case has been assigned to a magistrate judge, along with two forms: (1) one for consenting to have your case decided by a magistrate judge (called "Consent to Proceed Before a United States Magistrate Judge") and (2) one for requesting reassignment of your case to a district court judge (called "Declination to Proceed Before a Magistrate Judge and Request for Reassignment to a United States District Judge"). ***It is very important that you complete and file with the Court one of these forms indicating whether you consent to have your case decided by a magistrate judge or instead would like your case to be reassigned to a district judge.***

The magistrate judge may also issue a separate order or send a letter asking you to submit either a consent form or a request for reassignment by a specific date.

If you fail to return either form, the Court will assume that you do not consent to having your case decided by a magistrate judge and will eventually reassign the case to a **district judge**. You should not wait to complete the form, however, as this may delay your case because a magistrate judge cannot rule on most pending motions without the consent of all parties. The federal court ***Legal Help Centers*** can help you with this process (see Chapter 2).

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

that plaintiff or defendant does not consent to having a magistrate judge decide the case. Once a party has consented, however, the party may not later in the case withdraw consent and request reassignment to a district judge.

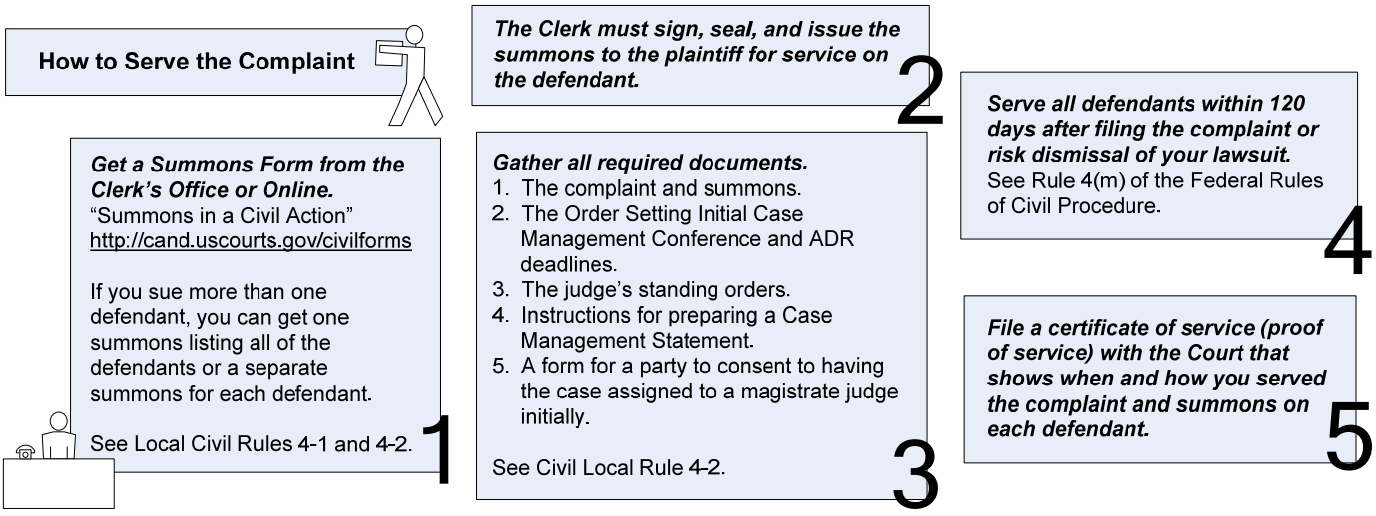
You are not required to consent to a magistrate judge. Regardless of whether you consent to have your case decided by a magistrate judge or request reassignment of your case to a district judge, the rules and procedures used to decide the case will be the same.

Even if a district judge is the presiding judge in your case, he or she may refer parts of the case, such as discovery disputes (discussed in later chapters), to a magistrate judge for ruling. Some rulings made by the magistrate judge can be appealed to the district judge. See Chapter 19.

A magistrate judge may also be assigned to serve as a **settlement judge** with the power to set settlement conference dates, order parties to attend settlement conferences, and order the production of documents or other evidence.

CHAPTER 7
What are the requirements for serving documents on the other parties to the lawsuit?

You must give the other parties to your lawsuit a copy of every document that you file with the Court. This is referred to as "**serving**" the other parties. It is critical that you serve your papers to the other parties in exactly the way the law requires. The rules for serving the complaint are different from the rules for serving other documents. If the complaint is not properly served on the defendant, the case will not proceed and can be dismissed by the Court.



What are the rules for serving the complaint?

In order to serve the complaint, you must first get a **summons** from the Court. You can get a form titled "Summons in a Civil Action" from the Clerk's Office or at the Court's website. The Clerk must sign, seal, and "**issue**" the summons to the plaintiff for service on the defendant. If you sue more than one defendant, you can get one summons listing all of the defendants or get a separate summons for each one. See Civil Local Rules 4-1 and 4-2.

Rule 4 of the Federal Rules of Civil Procedure states that the complaint must be served within 120 days after filing, or the Court can dismiss your lawsuit. The rule describes different ways to serve a complaint ("**service of process**"). The requirements differ based on what kind of defendant you are serving and where that defendant is located.

Generally, Rule 4(c)(2) of the Federal Rules of Civil Procedure allows any person who is at least 18 years old and not a party to the case to serve a summons and complaint. Under Rule 4(c)(3), the United States Marshal can only serve your summons and complaint for you if you are proceeding **in forma pauperis** (that is if the Court finds that you cannot afford to pay the Court's filing fee). You can find more information about proceeding in forma pauperis in Chapter 5 and in 28 U.S.C. § 1915.

How do I submit a summons to the Clerk of Court for "issuance"?

After filling out your summons form completely, you must present it to the Clerk for signature and seal before it is valid to serve on the defendants. You can submit a summons form to the Court in person, using the drop box, or by mail, but **NOT** by fax filing. If you submit a summons form to the Court by mail or by using the drop box, include a self-addressed, stamped envelope so that the Court can return the issued summons to you. For more information, review Rule 4(b) of the Federal Rules of Civil Procedure.

What if I filed in forma pauperis?

If your "**Application to Proceed in Forma Pauperis**" is approved, then the Court will issue the summons and forward it to the United States Marshal to serve on the defendants at no cost to you. For more information on how to file an "Application to Proceed in Forma Pauperis," see Chapter 5.

How do I get summonses if I did not file in forma pauperis?

At the time you file your complaint and pay the filing fee, you can obtain as many summonses as you need from the Clerk's Office. You can also obtain the summonses later if you wish.

What documents do I need to serve on the defendant(s)?

You are required to serve **ALL** of the following documents on each defendant:

1. The complaint;
2. The summons issued by the Clerk of the Court;
3. The Order Setting Initial Case Management Conference and ADR deadlines;
4. The Standing Orders of the judge to whom your case is assigned, which may include instructions for preparing a Case Management Statement;
5. A form for consent to assignment or request for reassignment (if the case is assigned to a magistrate judge);

For information, read Civil Local Rule 4-2.

Is there a time limit for serving the complaint and summons?

Yes. Rule 4(m) of the Federal Rules of Civil Procedure requires that you **EITHER**:

- Obtain a waiver of service from each defendant, **OR**
- Serve each defendant within 120 days after the complaint is filed.

If you do not meet this deadline, the Court may dismiss all claims against any defendant who was not served. The dismissal would be "**without prejudice**," however, which means that you could file a new complaint in which you assert the same claims. If you did so, you will have another 120 days to try to serve the complaint and summons.

How can I get the defendant to waive service?

Waiving service means agreeing to give up the right to service in person and instead accepting service by mail. If a defendant waives service, you will not have to go to the trouble and/or expense of serving that defendant. If the defendant agrees to waive service, you need the defendant to sign and send back to you a form called a "**waiver of service**," which you then file with the Court.

You can ask for a waiver of service from any defendant **EXCEPT**:

- A minor or incompetent person in the United States **OR**
- The United States government, its agencies, corporations, officers or employees **OR**
- A foreign, state, or local government

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

- A notice of a lawsuit and request to waive service of a summons **AND**
- A waiver of the service of summons form.

You can obtain a copy of these forms from the Clerk's Office or the Court's website (http://www.cand.uscourts.gov/civilforms).

To request a waiver of service, you should send those forms to the defendant by first-class mail along with a copy of the complaint, summons, and other required documents, plus an extra copy of the request to waive service and a self-addressed, stamped envelope. In choosing a due date on the form, you must give the defendant a reasonable amount of time to return the waiver of service—at least 30 days from the date the request is sent (or 60 days if the defendant is outside the United States).

If the defendant sends you the signed waiver of service, you do not need to do anything else to serve that defendant. Just file the defendant's signed waiver of service form with the Court. Be sure to save a copy for your files.

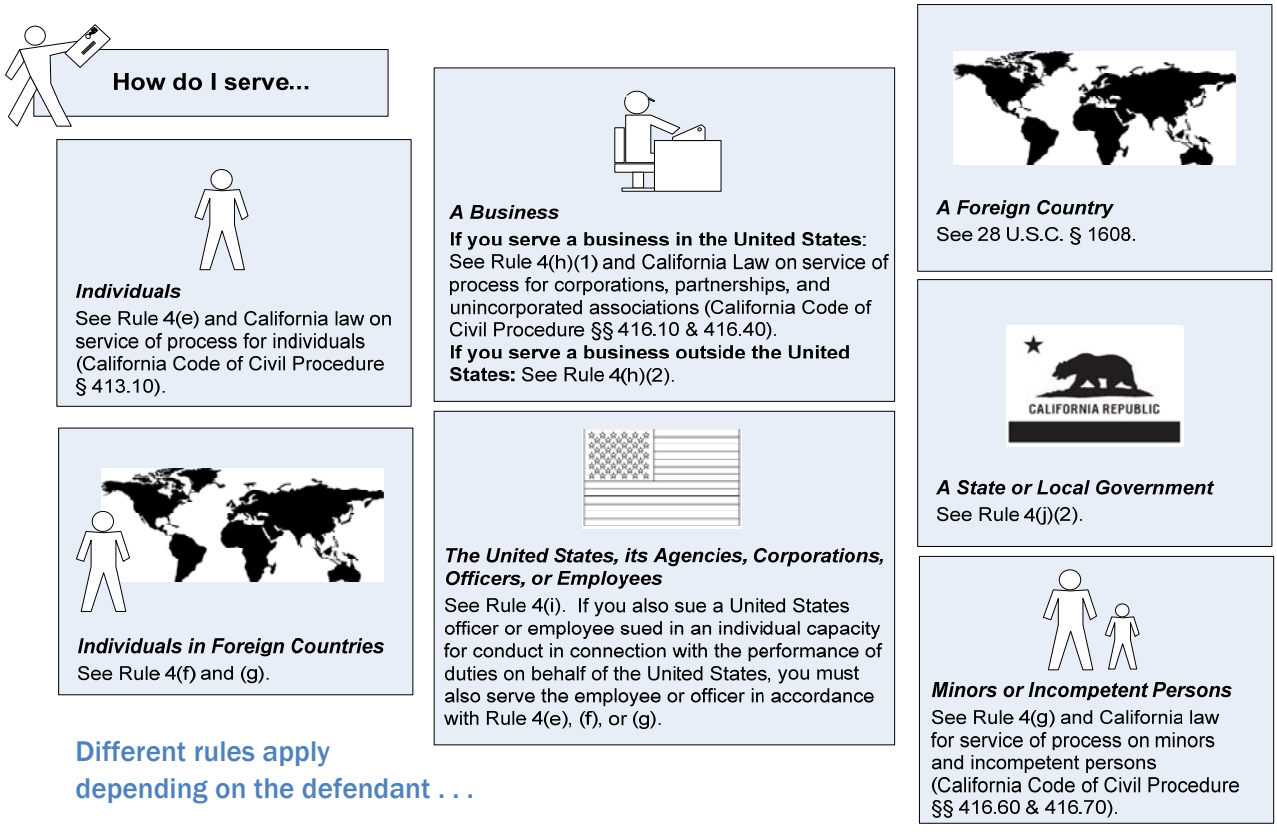
Review Rule 4(c) & (d) of the Federal Rules of Civil Procedure for the rules regarding service and waiver of service.

What if I requested a waiver of service and the defendant doesn't send it back?

If the defendant does not return a signed waiver of service by the due date, you need to arrange to serve that defendant in one of the other ways approved by Rule 4 of the Federal Rules of Civil Procedure. You may ask the Court to order the defendant to pay your costs for that service.

How do I serve ...

Rule 4(c)(2) provides that ***you may not serve the defendant yourself.*** You must have someone else who is at least 18 years old serve the defendant with the complaint and summons. You may hire a professional "**process server**" (process servers are listed in the Yellow Pages and online at http://www.napps.org/) or you can have a friend, family member, or any other person over 18 years old serve the complaint and summons for you. Following are the rules for serving different kinds of defendants:



Different rules apply depending on the defendant . . .

Individuals in the United States?

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

- Hand deliver the summons and complaint to the defendant; **OR**
- Hand deliver the summons and complaint to the defendant's home and leave them with another responsible person who lives there; **OR**
- Hand deliver the summons and complaint to an agent authorized by the defendant or by law to receive service of process for the defendant; **OR**
- Serve the summons and complaint by any other method approved by California law or the law of the state where the defendant is served. California law on service of process can be found in the California Code of Civil Procedure beginning at § 413.10. California law generally allows service by:
    - Hand delivery to the defendant; **OR**
    - Hand delivery to someone else at the defendant's home or place of business followed by a mailing of a copy to the defendant at that address (see Cal. Code of Civil Procedure § 415.20); **OR**
    - Service by mail accompanied by an acknowledgement of receipt (see Cal. Code of Civil Procedure § 415.30); **OR**
    - Service by publication in a newspaper (subject to the Court's approval, see Cal. Code of Civil Procedure § 415.50).

Individuals in foreign countries?

Under Rule 4(f) of the Federal Rules of Civil Procedure, unless prohibited by federal law, an individual in a foreign country may be served by a means that is reasonably calculated to give notice. See also Rule 4(g).

A business?

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

To serve a business in the United States, you may serve the complaint and summons by:

- Hand delivery to an officer of the business, a managing or general agent for the business, or any other agent authorized by the defendant to accept service of process; **OR**
- Hand delivery to any other agent authorized by law to receive service of process for the defendant **AND**, if the law authorizing the agent to accept service of process requires it, you must also mail a copy of the summons and complaint to the defendant; **OR**
- You may also serve the complaint and summons according to California law or the law of the state in which the business is served. California's laws on serving corporations, partnerships, and unincorporated associations can be found in the California Code of Civil Procedure §§ 416.10 and 416.40. Section 415.40 provides for service on businesses outside California.

To serve a business outside the United States, you use any method described in Rule 4(f) except personal delivery.

The United States, its agencies, corporations, officers, or employees?

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

To serve the United States, do **ONE** of these:

- Hand deliver the complaint and summons to the United States Attorney for the Northern District of California; **OR**
- Hand deliver the complaint and summons to an assistant United States Attorney (or to a specially-designated clerical employee of the United States Attorney); **OR**
- Send a copy of the summons and complaint by registered or certified mail addressed to the civil process clerk at the office of the United States Attorney for the Northern District of California

AND BOTH of the following:

- Send a copy of the summons and complaint by registered or certified mail to the Attorney General of the United States in Washington, D.C.; **AND**
- If your lawsuit challenges the validity of an order of a United States officer or agency but you have not named that officer or agency as a defendant, then send a copy of the summons and complaint by registered or certified mail to the officer or agency.

To serve a United States agency or corporation (or a United States officer or employee sued only in an official capacity), you must:

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

To serve a United States officer or employee sued in an individual capacity for conduct in connection with the performance of duties on behalf of the United States, you must:

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

A state or local government?

- Hand deliver a copy of the summons and complaint to the chief executive officer of the government entity you wish to serve; **OR**
- Serve the summons and complaint according to the law of the state in which the state or local government is located.

Minors or incompetent persons?

Rule 4(g) of the Federal Rules of Civil Procedure provides that service on a minor or incompetent person in the United States must be made according to the law of the state where the person is served. California law for service of process on minors and incompetent persons can be found at California Code of Civil Procedure §§ 416.60 and 416.70.

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

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

What is a certificate of service?

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

- The date service was completed; **AND**

- The place where service was completed; **AND**
- The method of service used; **AND**
- The names and street address or e-mail address of each person served; **AND**
- The documents that were served; **AND**
- The dated signature of the person who actually served the complaint and summons.

For example, if you hired a **process server**, the certificate of service must be signed by the process server. The person who served the documents must swear under penalty of perjury that the statements in the certificate of service are true. See Rule 5(d) of the Federal Rules of Civil Procedure and Civil Local Rule 5-6.

How do I serve other documents?

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

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

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

For every document that you serve on other parties, you need to file a **certificate of service**.

Can I file and serve documents electronically?

After the complaint is filed and the case is opened, the docket and all documents in the case are maintained in an electronic format so that they can be viewed on a computer. Attorneys are required to file documents electronically. Parties representing themselves are not required to e-file, but many find it more convenient to do so (see "What are the pros and cons of e-filing?" below).

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

1. **A computer, the internet, and email** on a daily basis so you can e-file your documents and receive notifications from the Court.
2. **A scanner** to scan documents that are only in paper format (like exhibits).
3. **A printer/copier** because each documents that you e-file will also need to be sent to the judge in hard copy (the judge's copy is called the "**chambers copy**").
4. **A word-processing program** to create your documents.
5. **A .pdf reader and a .pdf writer**, which enables you to convert word processing documents into .pdf format. Only .pdf documents are accepted for e-filing. Adobe Acrobat is the most common

program used. The reader (Adobe Acrobat Reader) is free, but the writer is not. Some word processing programs come with a .pdf writer already installed.

Pro se litigants must obtain the judge's permission to e-file

To begin e-filing, you must first submit a **motion for permission to e-file** to the judge assigned to your case. You can find a sample motion for permission to e-file at http://www.cand.uscourts.gov/civillitpackets. Once the judge's order granting permission has been entered on the docket, you can register with **ECF** (the Court's Electronic Case Filing system) to get a login and password. You must also register with **PACER**, the Public Access to Court Electronic Records system. ECF allows you to ***submit*** documents to the Court electronically. PACER allows you to ***retrieve*** documents from the Court.

Your registration process will be different from that of an attorney. To learn how to register with both systems, read the sections "How do I start e-filing with ECF?" and "How do I start viewing dockets and court documents with PACER?" at the end of this chapter.

What are the pros and cons of e-filing?

Pros*:*

1. You can e-file from any computer.
2. You have until midnight on the day your filing is due to e-file (instead of 4:00 p.m.).
3. You can access available court documents any time from any computer.
4. You will not have to go to the courthouse to file your court papers or mail/fax them.
5. You will not need to serve the other parties with paper copies.

Cons*:*

1. If you do not already have all the hardware and software required to e-file, there may be some initial cost.
2. You may require some training:
    a. You will need to learn how to convert documents to .pdf and to work with .pdf documents.
    b. You may need to complete an e-filing tutorial and classes before logging into and using the ECF system to file documents.
3. You will not receive documents in paper, so you will be responsible for checking your e-mail every day to make sure you read filings and court orders. You will need to print out all documents yourself.

If you need assistance obtaining permission to e-file or have questions about e-filing in general, ask the federal courthouse ***Legal Help Center***. Contact details for the Legal Help Centers are in Chapter 2.

How do I start e-filing with ECF?

1. ***To submit documents to the Court or update your ECF account:***

    Visit the Northern District of California's **ECF** system at https://ecf.cand.uscourts.gov/cand/index.html. ECF stands for "Electronic Case Filing." Choose Self-Representing from the menu.

2. ***Register to become an ECF user.***

    - Click on the "Registration" button on the left-hand menu once you visit the website (https://ecf.cand.uscourts.gov/cand/newreg/index.html). The website will give you a very thorough list of instructions once you identify yourself as a pro se litigant. ***Please read and follow the instructions carefully.*** It will explain that you **MUST** fill out the form

electronically and return **BOTH** an ink-signed original to the Clerk's Office **AND** an e-mailed form to ECFREG@cand.uscourts.gov.

- There are no registration costs.
- For e-filing itself, there are generally no fees. There may be fees associated with certain documents, which you can check by reviewing the Court's Fee Schedule Summary (http://www.cand.uscourts.gov/courtfees).

How do I start viewing dockets and court documents with PACER?

1. ***PACER users can:***
   - Review the docket online.
   - Print a copy of the docket.
   - Download docket information for later review.
   - Search by case number, party name, or for all cases filed within a specified range of dates.
   - Search for specified parties in federal court cases nationwide by U.S. party/case index at https://pcl.uscourts.gov/search.
2. ***To view documents and obtain docket information:***
   - Visit the PACER system at http://www.pacer.gov. PACER stands for "Public Access to Court Electronic Records."
   - If you do not have a computer, you can use the public computers in the Clerk's Office in the San Francisco, Oakland and San Jose courthouses to obtain docket information.
3. ***You must register to become a PACER user*** before you can use any version of the PACER system:
   a. Register online at http://www.pacer.gov/register.html **OR** call (800) 676-6856 to obtain a PACER registration form by mail.
      - If you provide your credit card information at the time of registration, you will receive an e-mail with instructions on how to retrieve your login information.
      - If you do not provide your credit card information at the time of registration, you will receive login instructions by mail. Please allow two weeks for delivery.

   b. Fees
      - There are no registration costs.
      - Internet access to PACER is billed per page of information responding to your query. It will either be calculated by using a formula based on the number of actual pages of the document **OR** it will be billed by how much electronic information (bytes) is extracted.
      - You will be billed quarterly by the PACER Service Center.
      - The charge for any single document is capped at $2.40, the equivalent of 30 pages. The cap does not apply to name searches, reports that are not case-specific, and transcripts of federal court proceedings.
      - If your usage does not exceed $10.00 in a quarter, fees for that quarter are waived. If your usage exceeds $10.00, you will be required to pay.
      - An order designated as a written opinion by the judge is free to view.

- Once you are registered as an e-filer and a document is e-filed in your case, you will receive a "**Notice of Electronic Filing**" e-mail, which will allow you to view the document for free one time. This "**free look**" is only for the first time you open the document. ***Be cautious***: you will be charged for subsequent viewings of the document. You should therefore print or save an electronic copy of the document during your initial viewing.
- ***The PACER fee information in this Handbook changes frequently and is current only as of the publication date on the cover.*** Refer to PACER's FAQ on fees for the most current information (http://www.pacer.gov/psc/faq.html).

4. ***If you cannot afford to pay the PACER access fees, you may file a motion with the court asking to be excused from paying the fees.*** (**In forma pauperis** status does not automatically grant you free access to PACER).
    a. Your motion must show that it would be an unreasonable burden for you to pay the fees and that it would promote public access to electronic court docket information if you were permitted to use the PACER system without paying a fee.
    b. If the Court **GRANTS** your motion, you should send a copy of the Court's order to:
    PACER Service Center
    P.O. Box 780549
    San Antonio, Texas
    78278-0549
    c. If the Court **DENIES** your motion, you must pay the PACER fees you incur above the maximums noted in the previous section while using the PACER system.
5. ***PACER contains docket information for the Northern District of California:***
    - For all civil and miscellaneous cases filed since August 1990;
    - For all criminal cases filed since August 1991; and
    - For a small number of cases filed before August 1990.
6. ***Case information appears on PACER in real time.*** Once case information has been updated in the Northern District's Electronic Case Filing system, it is available on PACER.
7. ***If you have problems with your PACER account,*** please call the PACER Service Center at (800) 676-6856.
8. ***If you have problems with the Northern District of California's ECF operations,*** please call us at (866) 638-7829. We cannot help with problems with your PACER account.

CHAPTER 8
How can I make sure that I know about everything that is happening in my case?

How do I review the docket?

The "**docket**" is a computer file for each case. It is maintained by the Court and includes:

- The names and addresses of all the attorneys and unrepresented parties.
- The title of every document filed.
- The date each document was filed and entered into the docket in chronological order.

To prevent mistakes and to ensure that documents are not lost in the mail, you should check the case **docket** regularly to ensure that:

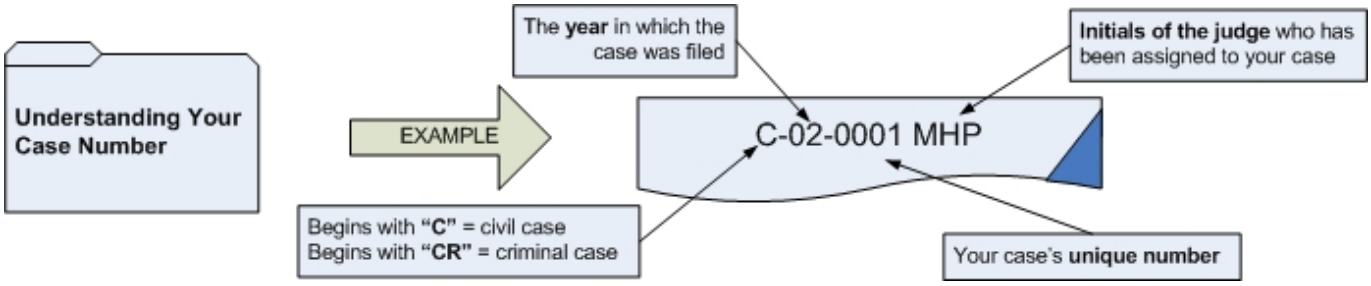
- Every document you filed has been entered on the docket. (It may take up to two working days for a paper filing to be scanned and entered on the electronic docket.)
- You have received copies of every document that everyone else has filed.
- You are aware of every order that the Court has issued.

You may call the publicly listed **courtroom deputy** for your judge if you have a specific question about your case (such as a question about scheduling). You may call the **docket clerk** for questions about the docket or specific documents filed in the case. **DO NOT** call the judge, the judge's chambers, or the judge's other staff.

Where can I access the electronic docket?

You may access the electronic docket using the computer terminals available in the San Francisco, Oakland, and San Jose Clerk's Offices, or you may do so from any computer with internet access if you have a **PACER** account. Refer to Chapter 5 and 7 for more information on how to register for this Court's **Electronic Case Filing** system (**ECF**) and PACER.

You will need your case number to look up case information . . .



ELECTRONIC ACCESS TIP: The above format is how your case number will appear on court documents. ECF and PACER will not recognize this format. **When typing a case number into ECF or PACER, use numbers only, like this: 02-0001.** A short menu showing multiple cases may come up. Choose your case and proceed.

What are some e-filing tips that I should follow?

1. Once you sign up for ECF, make sure your account has two e-mail addresses listed. By including a secondary e-mail address, you can ensure the receipt of your documents and have a back-up copy if necessary.
2. All registered participants of the ECF system receive a "**Notice of Electronic Filing**" e-mail for every document filed in their cases. That NEF provides one "free look" at each e-filed documents. This "free look" is only available the first time you open a file sent to your e-mail.

You will be charged for any subsequent viewings. Your free look will expire after two weeks. Make sure that you are able to check your e-mail everyday in order to save and/or print any documents you receive.

3. When you receive a Notice of Electronic Filing, save the documents to your computer's local hard drive **OR** print it out immediately. This way, you will be able to keep everything organized for your own files, and you can avoid future access costs.
4. When you e-file, none of the files you upload will be saved in the ECF system until you hit the **SUBMIT** button.
5. The **ECF Help Desk** can help answer your technical questions, but they will not be able to help you e-file. You can contact them by e-mailing ecfhelpdesk@cand.uscourts.gov or by calling (866) 638-7829. The Help Desk will answer your questions during their support hours, which are from 9:00 a.m.–4:00 p.m., Monday through Friday.

How do I review the case file?

You may come to the Clerk's Office during business hours to view and make copies from the case file, but it is important to note that only **manually filed** (paper/hard copy) documents are placed in the physical court file. The court file will therefore contain only documents that were not e-filed. All other documents are available only via the electronic docket.

1. ***Visit the Clerk's Office during business hours in the courthouse where your lawsuit is being litigated.*** For example, if the judge who is assigned to your case is in San Francisco, you must visit the Clerk's Office in the San Francisco courthouse to view your case file.
2. ***Request your case file.*** Any case file you request will be made available to you at the time you request it, unless someone else is already using the file. You do not need to call ahead.
3. ***Bring your case number with you.*** The case number is stamped on the caption page (Ex: C-02-0001 MHP). If you do not have the case number, you can find it by looking up the names of the parties on the PACER system.
4. ***Bring a valid government-issued picture identification card.***
    a. **Acceptable identification cards include:** state driver's license, a California identification card, a U.S. passport, or a federal/state/county/city employee card.
    b. **Not accepted:** credit cards, car keys, or student identification cards.
5. ***You CANNOT take the case file outside the Clerk's Office.*** You must look at the case file while you are in the Clerk's Office.
6. ***If you need to make a copy of a document from the case file:***
    a. Copy machines are available for your use in the Clerk's Office at a small cost. Clerk's Office personnel will also copy small orders for you, for a slightly higher cost.
    b. In San Francisco or San Jose, the Court's designated copy service can do your copying for you. It is an efficient option for lots of copying, but allow for additional time.

After a case is over, the case files are archived at the Federal Records Center in San Bruno, California. To determine if a case has been archived, contact the Clerk's Office in the location where the case was litigated.

CHAPTER 9
How do I respond to a complaint?

What happens when a complaint is served?

If you are served with a complaint, you become a **defendant** in the lawsuit. You will be required to file a written response with the Court. Under Rule 12 of the Federal Rules of Civil Procedure, there are two general ways to respond. You can:

1. File an answer to the complaint, **OR**
2. File a motion challenging some aspect of the complaint. If you file a motion, you may still have to file an answer but only after the Court rules on your motion.

It is very important that you respond to the complaint by the deadline, or else the plaintiff can seek a **default judgment** against you, which means that the plaintiff has won the case. See Rule 55 of the Federal Rules of Civil Procedure and the section titled "What does it mean to win by default judgment?"

How much time do I have to respond to the complaint?

Generally, the summons will specify how much time you have to respond. However, the time you have to file a response to a complaint depends on who you are and how you were served. These are covered in the Federal Rules of Civil Procedure:

When it applies...	*Rule*	*What the rule says about time . . .*
General rule	12(a)(1)(A)(i)	Once served with a summons and the complaint, a defendant must file a written response to the complaint **within 21 days**, unless a different time is specified in a United States statute.
If service is waived	4(d)(3) and 12(a)(1)(A)(ii)	A defendant can be granted extra time to file a complaint if he or she returns a signed waiver of service within the amount of time specified in the plaintiff's request for a waiver of service. Defendants within the United States have **60 days** from the date the request for waiver of service was sent to file a response to the complaint. Defendants outside the United States have **90 days** from the date the request for waiver of service was sent.
US defendants sued in official capacity	12(a)(2)	The United States, an agency of the United States, or an officer or employee of the United States sued in an official capacity, must file a written response to the complaint **within 60 days** after the United States Attorney is served.
US defendants sued in individual capacity	12(a)(3)	Any officer or employee of the United States sued in an individual capacity for acts or omissions occurring in connection with the performance of duties on behalf of the United States must file a written response to the complaint within 60 days after he or she was served, or within 60 days after the United States Attorney is served, whichever is later.
After an amended complaint has been filed	15(a)(3)	A defendant must respond to an amended complaint either: 1. Within the time remaining to respond to the original complaint, **OR** 2. Within 14 days after being served with the amended complaint, whichever period is later.

If you need additional time to respond to the complaint, the parties can agree to extend the deadline for responding as long as the new deadline does not interfere with any dates or deadlines set by the Court. Once the parties file a written agreement to extend the deadline, it becomes effective automatically. You do not need to receive the Court's approval. See Civil Local Rule 6-1.

How do I prepare an answer to a complaint?

An "**answer on the merits**" challenges the complaint's factual accuracy or the plaintiff's legal entitlement to relief based on the facts set forth in the complaint. The format of your answer must track the format of the complaint. It should include a numbered response to each numbered paragraph of the plaintiff's complaint. Rule 8(b)(1) of the Federal Rules of Civil Procedure governs answers. A sample "answer packet" is available on the Court's website at http://cand.uscourts.gov/civillitpackets. There are several requirements to consider:

1. ***For each sentence in the complaint, you must state what you admit and what you deny.***
    - If you feel that you do not have enough information to determine if a statement is true or false, you can state that in your answer.
    - If only part of a statement is true, you should admit to that part and deny the rest.
    - If you do not deny a statement, it is considered the same as admitting to it. See Rule 8(b)(6) of the Federal Rules of Civil Procedure.
2. ***Include affirmative defenses, if there are any that apply.*** **Affirmative defenses** are new factual allegations that, under legal rules, defeat all or a portion of the plaintiff's claim. Some examples of affirmative defenses include: fraud, illegality, and the statute of limitations. See Rule 8(c) of the Federal Rules of Civil Procedure.
    - As the defendant, you have the responsibility to raise any defenses that can help you in the lawsuit. At trial, you will have the burden of proving their truth.
    - Each defense should be listed in a separate paragraph at the end of the answer.
    - Any defense not listed in the answer is waived, meaning it cannot be brought up later in the lawsuit.
3. ***Include a prayer for relief.*** This states what damages or other relief you believe the Court should award to the plaintiff (usually, the defendant suggests that the plaintiff receive nothing).
4. ***Sign and date your answer.***

Can I make claims against the plaintiff in my answer?

You may not assert claims against the plaintiff in the answer. In order to assert claims against the plaintiff, you must file a **counterclaim**. You may, however, include the counterclaim after your answer and file both as a single document. Under Rule 13(a) of the Federal Rules of Civil Procedure, certain types of counterclaims must be filed at the same time the answer is filed or they are considered waived and cannot be raised later. See the section "How do I file a counterclaim?" below.

Can I amend the answer after I file it?

If* LESS THAN *21 days has passed since you served the answer:

Under Rule 15(a) of the Federal Rules of Civil Procedure, you can **amend** your answer anytime within 21 days after it is served on the plaintiff. You do not need permission from the court or from the plaintiff.

If* MORE THAN *21 days has passed since you served the answer:

There are two ways to amend your answer even after 21 days have passed since your answer was served on the plaintiff:

- Obtain written permission from the plaintiff; **OR**
- File a motion with the Court asking permission to amend your answer. You should draft your new amended answer and attach it to the motion to amend. The motion to amend should state specifically what you have changed in your answer and that you are requesting permission from the Court to change your answer as attached. Once you receive the Court's approval, then you will be allowed to file the amended answer. To learn more about how to file motions, see Chapter 10.

If you file an amended answer, Civil Local Rule 10-1 requires you to file an entirely new answer and not simply the changes you made to the original. The caption for your amended answer should read "FIRST AMENDED ANSWER," and if you have included a counterclaim, it should read "FIRST AMENDED ANSWER AND COUNTERCLAIM."

Once the answer is filed, does the plaintiff have to file a response to it?

No. Under Rule 8(b)(6) of the Federal Rules of Civil Procedure, all statements in an answer are automatically denied by the other parties to the lawsuit.

How do I file a counterclaim?

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

1. **Compulsory counterclaims**: These are the defendant's claims against the plaintiff that are based on the same events, facts, or transactions as the plaintiff's claim against the defendant. For example, if the plaintiff sues the defendant for a breach of contract, the defendant's claim that the plaintiff breached the same contract is a **compulsory counterclaim**.
    a. A compulsory counterclaim generally must be filed at the same time the defendant files his or her answer. See Rule 13(a).
    b. If you fail to include a compulsory counterclaim with your answer, you will generally be unable to bring that claim later.
    c. If the Court already has subject-matter jurisdiction over plaintiff's claim against you, the Court will also have jurisdiction over your compulsory counterclaim.
2. **Permissive counterclaims**: These are the defendant's claims against the plaintiff that are **NOT** based on the same events, facts, or transactions as the plaintiff's claim against the defendant. In the above example, the defendant's claim that the plaintiff owes him or her money under a different contract would be a **permissive counterclaim**.
    a. No rule governs when you have to file a permissive counterclaim.
    b. You must have an independent basis for subject matter jurisdiction over the permissive counterclaim.

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

Once a counterclaim is filed, does the plaintiff have to file a response to it?

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

What if I want to include a new party?

Under Rule 13(g) & (h) of the Federal Rules of Civil Procedure, a **cross-claim** brings a new party into the case and essentially blames that third party for any harm that the plaintiff has suffered. Like a compulsory counterclaim, a cross-claim must be based on the same series of events as the original complaint.

How can I use a motion to challenge the complaint?

Once you are served with a complaint, you have a limited amount of time to file a written response to the complaint. You will eventually need to file an **answer** (unless the case is dismissed), but you initially may have the option to challenge the complaint by filing one of the **motions** specified in Rule 12 of the Federal Rules of Civil Procedure instead of an answer. If you file a Rule 12 motion, you will not need to file your answer until after the Court decides your motion.

To learn more about how to file a motion, see Chapter 10 on "What is a motion and how do I write or respond to one?" You can also find instructions and forms and download a "motion packet" at http://cand.uscourts.gov/civillitpackets.

What is a motion to dismiss the complaint?

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

1. ***Lack of subject matter jurisdiction***: the defendant argues that the Court does not have the legal authority to hear the kind of lawsuit that the plaintiff filed.
2. ***Lack of personal jurisdiction over the defendant***: the defendant argues that he or she has so little connection with the district in which the case was filed that the Court has no legal authority to hear the case.
3. ***Improper venue***: the defendant argues that the lawsuit was filed in the wrong geographical location.
4. ***Insufficiency of process or insufficiency of service of process***: the defendant argues that the plaintiff did not prepare the summons correctly or did not correctly serve the defendant.
5. ***Failure to state a claim upon which relief can be granted***: the defendant argues that even if everything in the complaint is true, the defendant did not violate the law.
6. ***Failure to join an indispensable party under Rule 19***: the defendant argues that the plaintiff failed to sue someone who must be included in the lawsuit before the Court can decide the issues raised in the complaint.

Under Rule 12(a)(4) of the Federal Rules of Civil Procedure, if the Court denies a motion to dismiss, the defendant must file an answer within 14 days after receiving notice that the Court denied the motion. If the Court grants the motion to dismiss, it can grant the motion with "**leave to amend**" or "**with prejudice**," as explained below:

1. ***"Leave to amend"*** means there is a problem with the complaint that the plaintiff may be able to fix.
    a. The Court will set a time by which the plaintiff must submit an **amended complaint** to the Court.
    b. Once the defendant is served with the amended complaint, he or she must file a written response within the time the Court orders or by the deadline set forth in Rule 15(a)(3). The defendant can either file an answer or file another motion under Rule 12 of the Federal Rules of Civil Procedure.
2. ***"With prejudice"*** means there are legal problems with the complaint that cannot be fixed. Any claim that is dismissed "with prejudice" is eliminated permanently from the lawsuit.

a. If the Court dismisses the entire complaint "with prejudice," then the case is over.

b. If some, but not all, claims are dismissed "with prejudice," then the defendant must file an answer to the remaining claims, within the time specified in the Court's order.

What is a motion for more definite statement?

Under Rule 12(e), the defendant argues in a **motion for a more definite statement** that the complaint is so vague, ambiguous or confusing that the defendant is unable to answer it. The motion must identify the confusing portions of the complaint and ask for the details needed to respond to it. A motion for a more definite statement must be made before a responsive pleading (usually an answer) is filed.

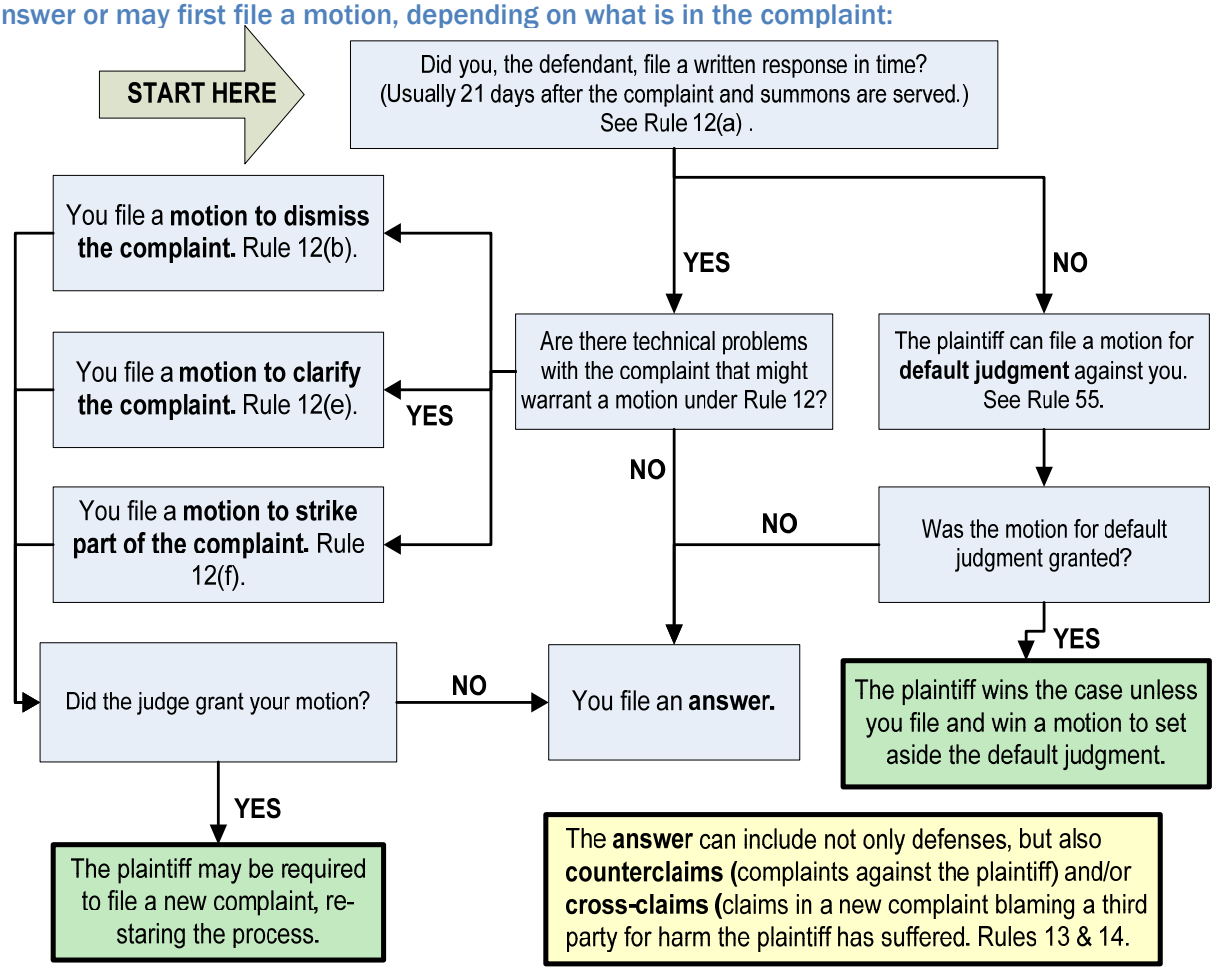
If the Court **GRANTS** a motion for a more definite statement, the defendant must file a written response to the complaint within 14 days after receiving the new complaint from the plaintiff. Rule 12(a)(4)(B). The written response can be either an answer or another motion.

If the Court **DENIES** the motion for a more definite statement, then the defendant must file a written response to the complaint within 14 days after receiving notice of the Court's order.

What is a motion to strike?

Rule 12(f) permits the defendant to file a **motion to strike** from the complaint any redundant, immaterial, impertinent, or scandalous matter.

Under Rule 12 of the Federal Rules of Civil Procedure, the defendant may file an answer or may first file a motion, depending on what is in the complaint:



What does it mean to win by default judgment?

If a defendant has been properly served with a complaint but fails to file an answer in the required amount of time, then that defendant is considered in "**default**." Once the defendant is in "default," the plaintiff can ask the Court for a **default judgment**, which means that the plaintiff has won the case and may take steps to collect on the judgment against the defendant. Rule 55 of the Federal Rules of Civil Procedure provides for a two-step process:

1. The plaintiff **MUST** file a **request for entry of default** with the Clerk and include proof (usually in the form of a **declaration**) that the defendant has been served with the complaint.
2. If the Clerk approves and enters default against the defendant, then the defendant is no longer able to respond to the complaint without first filing a motion asking the Court to set aside the default. See Rule 55(c). Once default is entered, the defendant is considered to have admitted to every fact stated in the complaint except for the amount of damages.
3. Once the Clerk has entered default against the defendant, then the plaintiff must file a **motion for default judgment** supported by:
    a. A declaration showing that the defendant was served with the complaint but did not file a written response within the required time for responding; **AND**
    b. A declaration proving the amount of damages claimed in the complaint against the defendant. Under Rule 54(c), the Court cannot enter a default judgment that awards the plaintiff more (money, relief, etc.) than was specifically asked for in the complaint.

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

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

The defendant can oppose the motion for default judgment by challenging the legal sufficiency of the complaint. For example, he or she can argue that the facts stated do not amount to a violation of the law or that the amount of damages claimed by the plaintiff is incorrect.

What is a motion to set aside default or default judgment?

Under Rule 55(c) of the Federal Rules of Civil Procedure, the Court will **set aside an entry of default** for good cause. The Court may **set aside a default judgment** only for the reasons listed in Rule 60(b).

You will need to file a motion that explains in detail your reasons for failing to respond to the complaint. To learn about the requirements for motions, see Chapter 10.

CHAPTER 10
What is a motion and how do I write or respond to one?

A motion is a formal request you make to the judge for some sort of action in your case. Most motions are brought by parties, but certain motions can be brought by non-parties.

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

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

Motion for appointment of counsel

Motion for extension of time to file document

Motion to appear by telephone

Motion for sanctions

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

In connection with filing a complaint:

Motion to amend/correct

In response to a complaint:

Motion to dismiss

Motion for a more definite statement

Motion to strike

Motion to set aside default judgment

During Discovery:

Motion to compel deposition/document production/response to interrogatories

Motion for a protective order

Before and during trial:

Motion for summary judgment

Motion in limine

Motion for judgment as a matter of law

After trial or judgment:

Motion to set aside the verdict

Motion to amend or vacate the judgment

What is the timeline of a motion?

1. **Filing.** A party files a motion explaining what he or she wants the Court to do and why. The party who files a motion is the "moving party." The other parties are "non-moving parties." A party who does not want the motion to be granted is the "opposing party."
2. **Opposition**. The opposing party files an opposition brief explaining why it believes the Court should not grant the moving party's motion.
3. **Reply**. The moving party files a **reply brief** in which it responds only to the arguments made by the opposing party's opposition brief. After this is done, neither party can file any more documents about the motion without first getting permission from the Court.

4. **Hearing**. After the motion and the briefs are filed, the Court can decide the motion based entirely on the arguments in the papers, or it can hold a **hearing**. If the Court holds a hearing, each party will be given a chance to talk to the court about the arguments in their papers. The Court then announces its decision in the courtroom or sends the parties a written decision.

What are the requirements for motion papers?

1. Rules 7(b) and 11(b) of the Federal Rules of Civil Procedure and Civil Local Rules 7-1 through 7-10 set the requirements for motions. If you do not make your best effort to follow these rules, the Court may refuse to consider your motion.
    a. A motion should be made in writing. While you may be able to make verbal ("**speaking motions**") during a hearing or trial, the Court may still ask you to put your motion in writing.
    b. All of the Court's rules about captions and the format of documents apply to motions. See Chapter 4. Civil Local Rule 7-2(b) requires that motions be no more than 25 pages long (excluding declarations and exhibits). Motions that are longer than 25 pages may not be accepted or the extra pages might not be read.
    c. If you are the moving party, include your name, address, e-mail, and phone number. You must also sign the motion to meet the requirements of Rule 11 of the Federal Rules of Civil Procedure. Rule 11 forbids parties to file motions that have no legal basis or are based on too little investigation or on facts known to be false.
    d. You can find detailed instructions and forms on filing a motion at http://cand.uscourts.gov/civillitpackets. The file is called "Motion Packet."
2. Civil Local Rules 7-2 and 7-5 require that all motions contain the following:
    a. **Name of the motion**:

    State the name of the motion, for example: "PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT."

    b. **Hearing date and time**:

    Under the case number, type the date and time that the Court has available to hold a hearing on the motion. (See "How do I choose a hearing date?" below in this chapter.) Under Civil Local Rule 7-3, this date must be at least 35 days after the motion is filed. It will normally be the assigned judge's regular civil law and motion day and time (for example, Wednesdays at 2:30pm).

    c. **Notice of motion**:

    The first paragraph must include the notice of motion as well as the date and time of the hearing. The notice of motion is a statement to the other parties telling them what type of motion you have filed and when you have asked the Court to hold a hearing on the motion.

    d. **Statement of purpose**:

    In the second paragraph, give a brief statement of what you want the Court to do.

    e. **Memorandum of points and authorities**:

    The **memorandum of points and authorities** (or "**brief**") provides your statement of facts and legal arguments explaining why the Court should grant your motion. If the brief is longer than 10 pages, Civil Local Rule 7-4(a) requires there to be both a table of contents and a **table of authorities** – a list of all the laws, rules, and cases that you have mentioned and the page numbers where they can be found in the brief.

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

f. **Declaration(s)**:

If your motion depends on facts, you must also provide the court with evidence that those facts are true by filing one or more "**declarations**." A declaration is a written statement signed under penalty of perjury by a person who has personal knowledge that what he or she states in the declaration is true. A declaration includes **ONLY** facts, and may not contain any law or argument.

i. The first page of each declaration must include the name of the document, for example: "DECLARATION OF JOHN SMITH IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT."

ii. The declaration should be made up of numbered paragraphs.

iii. You must include the following language at the end of the declaration:

- ***If the declaration is being signed in the United States***—it must state: "I declare under penalty of perjury that the foregoing is true and correct. Executed on (insert the date the document is signed)."
- ***If the declaration is being signed outside of the United States***—the language must read: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (insert the date the document is signed)."

iv. The person whose statements are included in the declaration must sign and date it.

g. **Proposed order**: You should include with your motion a **proposed order** for the Court to sign that spells out what will happen if the Court grants your motion. The first page of the order should include the title: "[PROPOSED] ORDER." At the end of the order, you must include a line space for the Court's signature. If the Court grants your motion, it may sign your proposed order or it may write its own order.

How do I choose a hearing date?

1. ***Check your judge's standing order to find out which day of the week your judge holds hearings.***

   a. Unless required by the judge's standing order, you do **NOT** need to contact the judge to reserve a hearing date.

   b. Civil Local Rule 7-2(a) requires that all motions be filed and served on the other parties no less than 35 days before the hearing date.

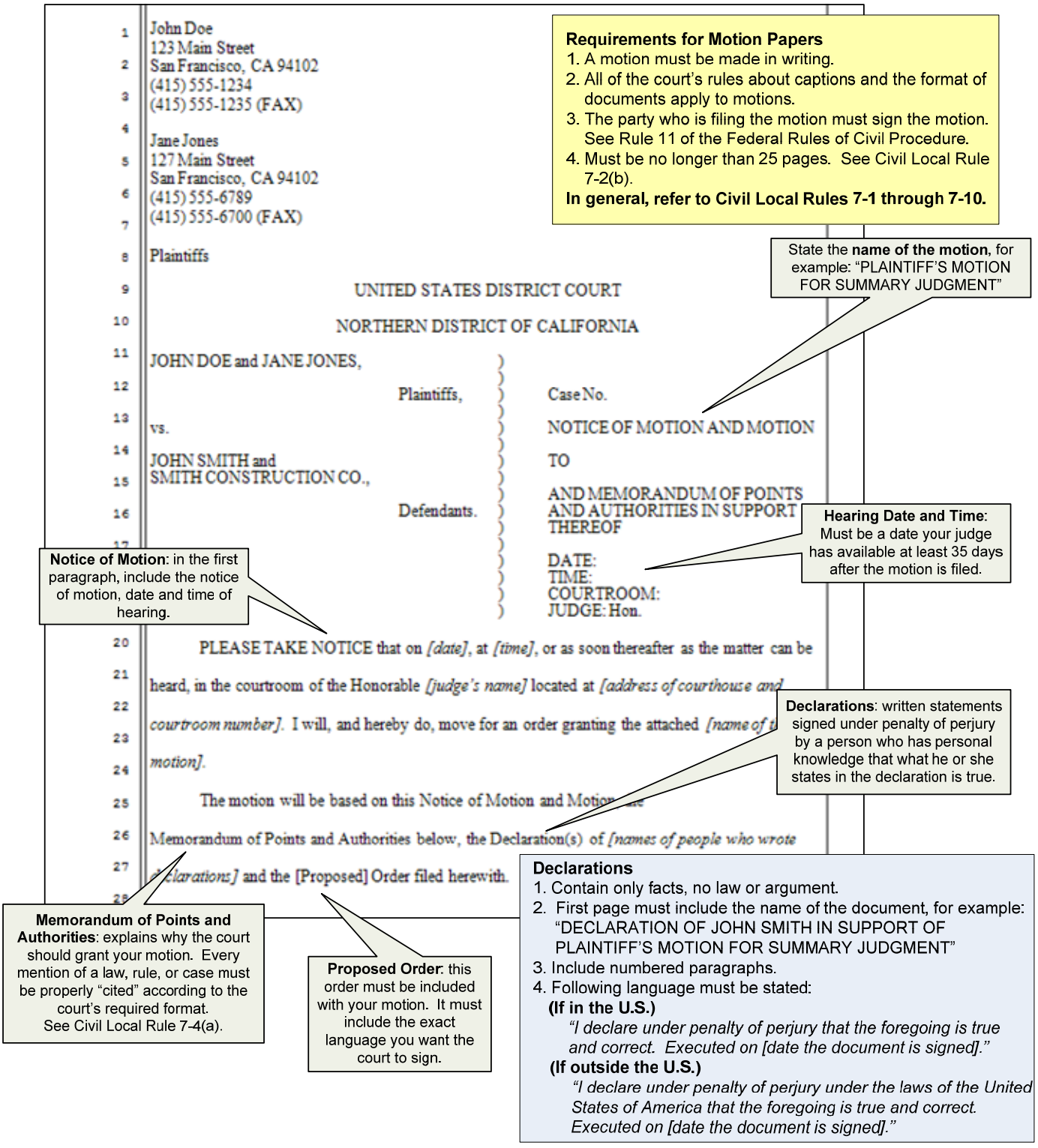
2. ***Call the other party's attorney and try to agree on one or more dates when both of you are available.***

   a. You should then put the hearing date in your notice of motion.

   b. If the Court is unable to hear the motion on that date or if the opposing party's attorney has a good excuse as to why he or she cannot be there, the Court will set a new hearing date.

   c. If you are e-filing the motion, the ECF system will automatically offer you available dates for your judge.

Your motion should look something like this. . .



John Doe
123 Main Street
San Francisco, CA 94102
(415) 555-1234
(415) 555-1235 (FAX)

Jane Jones
127 Main Street
San Francisco, CA 94102
(415) 555-6789
(415) 555-6700 (FAX)

Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JOHN DOE and JANE JONES,
Plaintiffs,
vs.
JOHN SMITH and SMITH CONSTRUCTION CO.,
Defendants.

Case No.

NOTICE OF MOTION AND MOTION TO AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

DATE:
TIME:
COURTROOM:
JUDGE: Hon.

PLEASE TAKE NOTICE that on *[date]*, at *[time]*, or as soon thereafter as the matter can be heard, in the courtroom of the Honorable *[judge's name]* located at *[address of courthouse and courtroom number]*. I will, and hereby do, move for an order granting the attached *[name of t motion]*.

The motion will be based on this Notice of Motion and Motion Memorandum of Points and Authorities below, the Declaration(s) of *[names of people who wrote declarations]* and the [Proposed] Order filed herewith.

Requirements for Motion Papers
1. A motion must be made in writing.
2. All of the court's rules about captions and the format of documents apply to motions.
3. The party who is filing the motion must sign the motion. See Rule 11 of the Federal Rules of Civil Procedure.
4. Must be no longer than 25 pages. See Civil Local Rule 7-2(b).

In general, refer to Civil Local Rules 7-1 through 7-10.

State the **name of the motion**, for example: "PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT"

Hearing Date and Time: Must be a date your judge has available at least 35 days after the motion is filed.

Notice of Motion: in the first paragraph, include the notice of motion, date and time of hearing.

Declarations: written statements signed under penalty of perjury by a person who has personal knowledge that what he or she states in the declaration is true.

Memorandum of Points and Authorities: explains why the court should grant your motion. Every mention of a law, rule, or case must be properly "cited" according to the court's required format. See Civil Local Rule 7-4(a).

Proposed Order: this order must be included with your motion. It must include the exact language you want the court to sign.

Declarations
1. Contain only facts, no law or argument.
2. First page must include the name of the document, for example: "DECLARATION OF JOHN SMITH IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT"
3. Include numbered paragraphs.
4. Following language must be stated:

(If in the U.S.)
"I declare under penalty of perjury that the foregoing is true and correct. Executed on [date the document is signed]."

(If outside the U.S.)
"I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on [date the document is signed]."

What are the requirements for opposition briefs?

1. **Civil Local Rules 7-3(a) and 7-4(b) require opposition briefs (which may not exceed 25 pages) to be filed and served no later than 14 days after the motion is filed.**

2. Under the case number, put the title: "OPPOSITION TO [name of motion]" and the date and time the moving party has chosen for the hearing.
3. Do not include a notice of motion.
4. The memorandum of points and authorities should explain the reasons why the motion should be denied, with citations to appropriate law and facts.
5. The proposed order must contain the language that you want the court to sign denying the motion.
6. If you do not oppose the motion, Civil Local Rule 7-3(b) requires you to file a **statement of nonopposition** with the Court no later than the date the opposition brief is due. It can be very short, like this: "Plaintiff does not oppose defendant's motion to compel production of documents."

What are the requirements for reply briefs?

1. Civil Local Rules 7-3(c) and 7-4(b) require reply briefs to be filed and served no later than 7 days after the opposition brief is due and not to exceed 15 pages.
2. Under the case number, put the title: "REPLY BRIEF IN SUPPORT OF [name of motion]" and the date and time the moving party has chosen for the hearing.
3. Do not include a notice of motion or a proposed order.
4. The **memorandum of points and authorities** should discuss only the arguments made in the opposition brief. Do not repeat the arguments you made in the motion, except to the extent necessary to explain why you believe the arguments in the opposition brief are wrong.
5. The reply brief may not include new arguments in support of your motion. (Because the opposing party is not allowed to file a response to a reply brief, it would be unfair to include new arguments.)

What if the motion is urgent and needs to be decided in less than 35 days?

Sometimes a motion raises an urgent issue that needs to be decided very quickly. There are three ways in which to get a hearing date that is less than 35 days from the day your motion is filed.

1. Stipulation to shorten time: Civil Local Rules 6-1(b) and 6-2 state that if both parties agree that the matter should be heard quickly, you may submit a **stipulation** for the Court's approval. A stipulation is a written agreement signed by all of the parties to the lawsuit or their attorneys. Along with the stipulation, you must also file a **declaration** (see section on "What are the requirements for motion papers?") that:
    a. Explains why you are requesting that the motion be heard on a faster schedule.
    b. States all previous schedule changes in the case.
    c. Describes the effect the proposed schedule change would have on the case.
    d. Under Civil Local Rule 7-11, a **proposed order** may be submitted with the stipulation. The proposed order can include a paragraph at the end of the stipulation (after the signatures), stating: "PURSUANT TO STIPULATION, IT IS SO ORDERED," with spaces for the date and the signature of the judge. The judge may grant, deny, or modify your request.
2. Motion to shorten time: If the parties cannot agree that the motion is urgent, you can file a **motion to shorten time** under Civil Local Rule 6-3(a) asking the Court to hear a specific motion on a faster schedule.

    The motion to shorten time can be no longer than five pages and must be accompanied by a a **declaration** that:

    - Explains in detail why the motion should be heard on a faster schedule; **AND**

- Describes the efforts you have made to get a stipulation from the other parties; **AND**
- Identifies the harm to you if the motion is not heard on a faster schedule; **AND**
- If relevant, describes your efforts to comply with Civil Local Rule 37-1, which requires parties to negotiate with each other to try to resolve discovery disputes before filing a motion; **AND**
- Describes the nature of the dispute addressed in the motion and briefly summarizes the position each party has taken; **AND**
- Discloses all previous schedule adjustments in the case; **AND**
- Describes the effect the requested schedule adjustments would have on the case.

You must deliver a copy of the motion to shorten time, the declaration and a proposed order to all other parties the day the motion is filed (unless the motion is e-filed).

The opposition to a motion to shorten time must be filed no later than the third court day after the motion is received, unless the Court sets another schedule. The opposition must be no longer than five pages and must be accompanied by a declaration explaining the basis for the opposition. The objecting party must deliver a copy of its opposition brief to all other parties on the day the opposition is filed (unless the motion is e-filed).

There is no reply brief on a motion to shorten time.

The Court may grant, deny, or modify the requested time change or schedule the motion for additional briefing or a hearing. It is rare for a hearing to be held on motions of this kind.

3. Ex Parte Motion: An **ex parte motion** is a motion that is filed without giving notice to the opposing party. You may file an ex parte motion **ONLY** if a statute, federal rule, local rule, or standing order authorizes the filing of such a motion **AND** you have complied with all the requirements.

What if I need more time to respond to a motion?

Rule 6(b) of the Federal Rules of Civil Procedure allows the Court to give you extra time to respond to a motion only for a good reason. If you make the request before the original deadline passes, the Court can grant extra time with or without a motion or notice to the other parties. If you wait until after the original deadline passes before asking for extra time, you must make a motion and show that a good reason for missing the deadline.

You can also file a **stipulation to extend time**, under Civil Local Rules 6-1(b) and 6-2. The same rules for stipulations to shorten time also apply to stipulations to extend time, with one exception: a stipulation to extend time that affects a hearing or other proceeding that has already been scheduled on the Court's calendar must be filed no later than 10 days before the scheduled event.

You can also file a **motion to extend time** under Civil Local Rule 6-3. The requirements are similar to those for motions to shorten time.

CHAPTER 11
What happens at a court hearing?

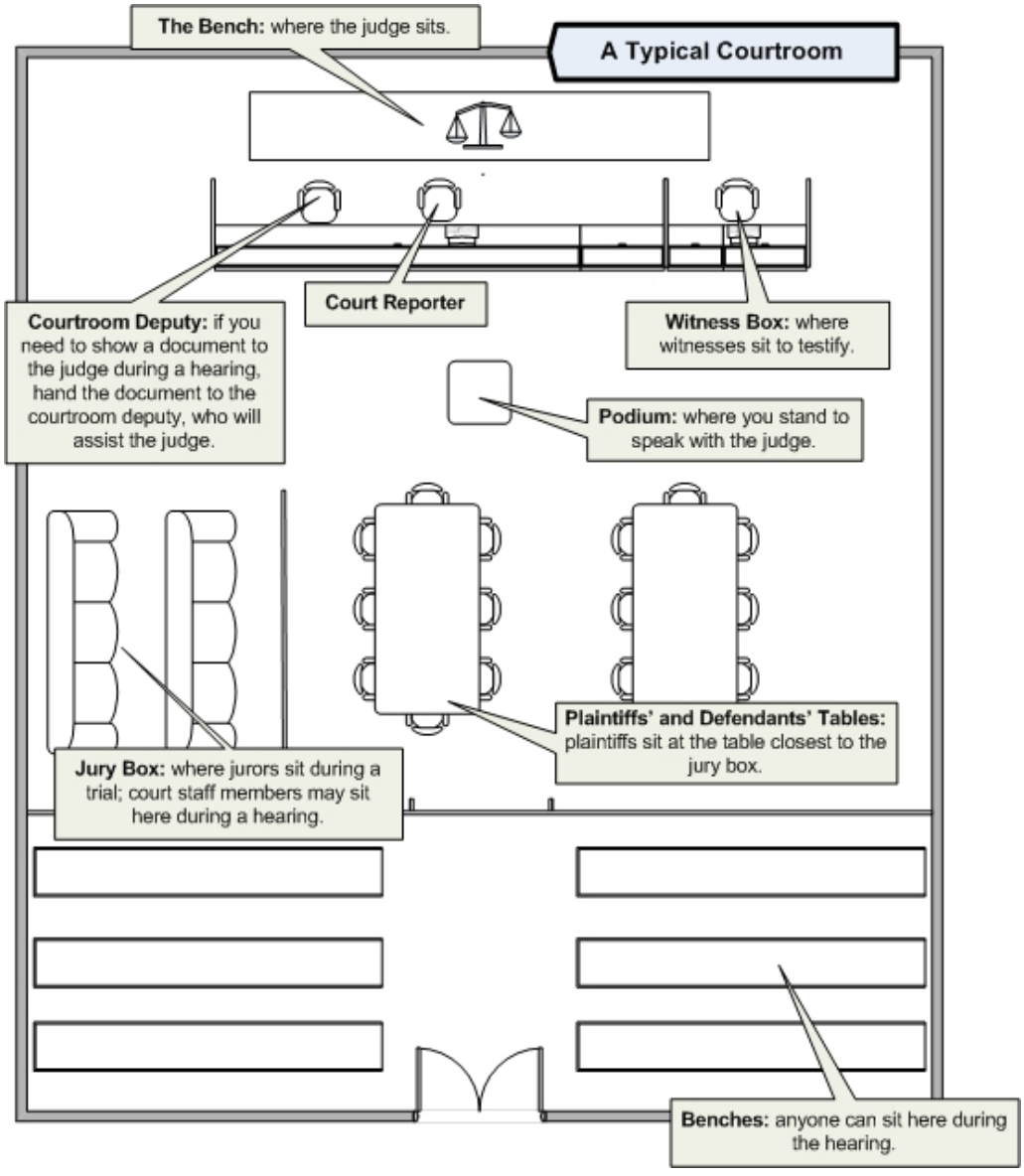
What is a hearing?

A **hearing** is a formal court proceeding where the parties discuss issues with the judge and have their arguments heard by the judge. Sometimes witnesses can be presented at these hearings.

What do I do before a hearing?

1. Review all papers that have been filed for the hearing.
2. Expect to answer questions about issues that are being addressed at the hearing.
3. Bring any papers that might be needed to answer the judge's questions.

What does a courtroom look like?



The **bench** is a large desk where the judge sits in the front of the courtroom.

The **witness box** is the seat next to the bench where witnesses sit when they testify.

The **court reporter** is the person seated in front of and below the bench writing on a special machine. The court reporter makes a record of everything that is said at the hearing.

The **courtroom deputy** assists the judge. If you need to show a document to the judge during a hearing, you should hand the document to the courtroom deputy, who will then hand it to the judge. You will often be asked to check in with the courtroom deputy before the judge comes into the courtroom.

In the center of the courtroom in front of the bench is a **podium** or **lectern** with a microphone. This is where lawyers and parties who do not have lawyers must stand when they speak to the judge.

The **jury box** is located against the wall, at one side of the courtroom. This is the jury box, where jurors sit during a trial. During a hearing, court staff members may be sitting in the jury box.

In the center of the courtroom, there will be **plaintiffs' and defendants' tables** with a number of chairs around them. This is where the lawyers and the parties sit during hearings and trials. The plaintiffs sit at the table that is closest to the jury box. The defendants sit at the table next to the plaintiffs.

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

How should I dress and behave at a hearing?

- Dress nicely and conservatively.
- Be on time.
- You should sit in the benches in the back of the courtroom until your case is announced. The courtroom deputy may ask "counsel" to come forward and check in. You should check in with the courtroom deputy after the attorneys do. If your hearing is the only one scheduled, you may sit at the plaintiffs' or defendants' table in the center of the courtroom. The courtroom deputy will tell you where to sit.
- When the judge enters the courtroom, you must stand and remain standing until the judge sits down.
- When you hear your case announced, approach the bench. You can bring up any papers that you may need to refer to during the hearing. The courtroom deputy will tell the parties to "state your appearances." Step up to the microphone and say:

  > "Good [morning or afternoon], your Honor, my name is [your name] and I am the [plaintiff or defendant] in this case."

- When you speak to the judge, refer to the judge as "Your Honor."

How does a motion hearing work?

First, the party who filed the motion has a chance to argue why the motion should be granted. Then, the opposing party will argue why the motion should be denied. Finally, the party who filed the motion has an opportunity to explain why he or she believes the opposing party's argument is wrong.

What to remember for the hearing:

- ***Do not repeat all the points made in your motion or opposition papers.*** Highlight the most important points.
- ***You cannot make new arguments that are not in the papers you filed with the Court,*** unless you have a very good reason why you could not have included the argument in your papers.
- You can refer to notes during your argument. It is more effective to speak to the judge rather than read an argument that you have written down ahead of time, but you may find it helpful to write down your key points to refer to if necessary.

- You should step aside to allow the other side to use the lectern when it is the other side's turn to speak or the judge has asked the other side a question.
- When one party is speaking at the lectern, the other party should sit at the table or remain standing at least a few feet away, giving the speaker some space. ***Never interrupt the other party.*** Always wait until it is your turn to speak.
- The judge may ask you questions before your argument and may ask questions throughout your argument. ***If the judge asks a question, always stop your argument and answer the judge's question completely.*** When you are finished answering the question, you can go back and finish the other points you wanted to make. Always answer the judge's questions completely and never interrupt the judge when he or she is speaking.
- If the judge asks you a question when you are seated at the table or away from the lectern, stand and walk up to the lectern before you answer the question.

General advice for hearings

Be sure to have a pen and paper with you so that you can take notes.

When the hearing is over, you should either leave the courtroom or return to one of the benches in the back of the courtroom to watch the rest of the hearings.

If you need to discuss something with opposing counsel before or after your hearing, you must leave the courtroom and discuss the matter in the hallway.

CHAPTER 12
Initial disclosures: what are they and when do they happen?

Before the parties begin **discovery** (the formal process of information exchange governed by certain procedural rules covered in Chapter 15), they are required to hand over to each other certain types of information. This is called an "**initial disclosure**." Federal Rule of Civil Procedure 26(a) lists three types of disclosures which you must provide to the other parties at different times during the course of the lawsuit: **initial disclosures**, **expert disclosures**, and **pretrial disclosures**. Expert disclosures and pretrial disclosures are covered in Chapter 18, "What happens at trial?"

Initial disclosures, covered in detail in Rule 26(a)(1), are the earliest of the three disclosures. In most civil cases, initial disclosures are required except those listed in Rule 26(a)(1)(B). Such cases include: actions for review of administrative agency action (like social security appeals), petitions for habeas corpus, actions brought by pro se prisoners and actions to enforce arbitration awards. In all other types of cases, you will have to serve initial disclosures on the other parties early in the case. Even though you may not yet have fully investigated the case, you are **REQUIRED** to make initial disclosures based on the best information available to you.

Make sure that you know the date by which you have to serve the initial disclosure. You can download an "Initial Disclosures" packet at http://cand.uscourts.gov/civillitpackets.

Initial Disclosures: Disclosures you have to serve early in the case	
Timing	Must be served within 14 days after your Rule 26(f) **meet and confer** (which, in turn, normally takes place at least 21 days before your **initial case management conference**. See "Why do I have to meet and confer?" in Chapter 13), **UNLESS**: 1. Parties stipulate to a different time; **OR** 2. The Court orders a different time; **OR** 3. One party objects during the conference that initial disclosures are not appropriate under the circumstances of the lawsuit, and states the objection in the Rule 26(f) discovery plan.
Required Content	1. Name and, if known, address and telephone number of each individual likely to have information that you may use to support your claims and defenses, unless that information will be used solely for impeachment (information used to attack the credibility of a witness rather than to prove your case); 2. Type of information each individual has; 3. Copies or a description by category and location of all documents or other things that you have in your possession that you might use to support your claims or defenses, unless they will be used solely for impeachment; 4. Calculation of damages you claim to have suffered, including all documents that support your calculation (you do not need to disclose documents that are privileged or otherwise protected; see Chapter 15); 5. Insurance agreements that may cover an award of damages in the lawsuit.
Form	Initial disclosures must be in writing, signed and served on all other parties to the lawsuit ***but not filed with the Court.*** Your signature certifies that the disclosure is complete and correct as of time it is made, to the best of your knowledge.

CHAPTER 13
What is a case management or status conference and how do I prepare for it?

A **case management conference** (often called by its abbreviation, "**CMC**") is scheduled upon the filing of every case; its purpose is for the judge and the parties to set a schedule for the case. No issues or claims are decided at the case management conference.

A **status conference** or **further case management conference** is a subsequent case management conference that the judge holds to check in with the parties about the status of the case. It is a chance for the parties to tell the judge about the progress of their case and any problems they have had in preparing for trial or in meeting the original schedule. See Civil Local Rule 16-10(c).

A **pretrial conference** is held shortly before trial at which the judge and the parties discuss the procedures for the upcoming trial.

When is the initial case management conference?

Under Civil Local Rule 16-2(a), the plaintiff is given a copy of an **Order Setting Initial Case Management Conference** when the complaint is filed. The plaintiff serves this order on the defendants along with the **complaint** and **summons**. The order sets the date for the initial case management conference, which is usually held around 90 days after the complaint is filed.

Does every case have a case management conference?

No. Certain types of cases listed in Civil Local Rules 16-4, 16-5, 16-6 & 16-7 do not have CMCs, including social security appeals, bankruptcy appeals, student loan cases and prisoner petitions.

What should I do before the initial case management conference?

Parties are expected to "**meet and confer**"—that is, talk by phone or in person to try to agree on a number of issues, including:

1. Developing a plan for how and when **discovery** will be completed;
2. Selecting an **ADR** process: arbitration, mediation, early neutral evaluation or settlement conference (see Chapter 14);
3. Preparing a **joint case management statement** which tells the Court the results of the parties' discussions and complies with all parts of the judge's standing order.

Civil Local Rules 16-1 – 16-10 and Rules 16(b) & 26(f) of the Federal Rules of Civil Procedure contain detailed rules about CMCs. You should also review the judge's standing orders, which may contain additional rules.

Why do I have to meet and confer?

The meet-and-confer process saves time by requiring the parties to agree on as much as possible and to understand each other's positions. Under Rule 26(f) of the Federal Rules of Civil Procedure, unless the case is in one of the categories listed in Rule 26(a)(1)(E), all parties **MUST** meet and confer at least 21 days before the case management conference to:

1. Discuss the nature and basis of their claims.
2. Discuss whether there is a way to resolve the case early through settlement.
3. Arrange for initial disclosure of information by both sides as required by Rule 26(a)(1), including:
    a. The exchange of names and contact information of every person who is likely to have information about the issues; **AND**
    b. Listing certain documents described in Rule 26(a).
4. Develop a proposed discovery plan.

What is the proposed discovery plan?

The **proposed discovery plan** is a proposal that the parties make to the Court about how each party thinks discovery should be conducted in the case. Discovery is covered in detail in Chapter 15. The Court will review the plan and discovery will proceed as the judge sets out in the case management order.

The parties must make a good faith effort to agree on a joint proposed discovery plan, which should include each party's views and proposals about:

- Any changes that should be made in the timing, form, or content of disclosures under Rule 26(a), including a statement as to when **initial disclosures** under Rule 26(a)(1) were made or will be made;
- The subjects, timing, and particular issues for discovery;
- Limitations on discovery (number of depositions, limits on document requests, etc.) ; **AND**
- Other orders that should be entered by the Court under Rule 26(c) or Rule 16(b) and (c).

What is the case management statement?

Civil Local Rule 16-9 requires the parties to file a **joint case management statement** and **proposed case management order** as one document on the form approved by the Court. This form can be found:

- At the Clerk's Office, along with instructions for filling out the form (a copy is given to the plaintiff when the complaint is filed);
- Online at http://cand.uscourts.gov/civilforms, titled "Joint Case Management Statement and Proposed Order"; or
- In Appendix A to the Civil Local Rules.

This form must be filed no later than seven days before the case management conference, unless the judge orders otherwise. See Civil Local Rule 16-9 and Rule 26(f) of the Federal Rules of Civil Procedure.

The joint case management statement and proposed order should be prepared and filed jointly by all of the parties. If preparing a joint statement is not possible because of some special hardship, then the parties may file separate case management statements. The separate statements must describe the undue hardship that prevented them from preparing a joint statement. It is better for the parties to file a joint statement because it gives the parties more control in determining their schedule.

What happens at the initial case management conference?

The judge will ask about the case management conference statement and other issues that may arise with the parties. The judge is also likely to ask about the form of **Alternative Dispute Resolution** most appropriate for your case. You must attend the case management conference in person, unless you file a written request to participate in the conference by telephone. Requests to participate by telephone must be filed and served no later than five days before the conference or at the time stated in your judge's standing order. See Civil Local Rule 16-10(a). Be prepared to discuss all aspects of your case with the judge.

What is the case management order?

During or after the case management conference, the judge will issue a **case management order**, which will set a schedule for the rest of the case, unless it is changed later by the judge.

What should I do before other conferences with the judge?

If the judge schedules a subsequent case management conference, Civil Local Rule 16-10(d) requires the parties to file a joint supplemental case management statement at least 10 days before the conference. The joint statement must report:

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

Your judge's standing order may require other things as well. You can find a form for the joint supplemental case management statement and proposed order at Appendix B to the Civil Local Rules. You must attend the subsequent case management conference in person, unless the judge permits you to appear by telephone. Be prepared to discuss all aspects of the case with the judge.

Chapter 14
What is "Alternative Dispute Resolution" (ADR)?

It is the mission of the Court to do everything it can to help parties resolve their disputes as fairly, quickly and efficiently as possible. **Alternative Dispute Resolution** (**ADR**) can save time and money by helping parties work out their differences without formal litigation. ADR also can lead to resolutions that are more creative and better tailored to the parties' underlying interests.

The cases filed in our Court present a broad range of issues and circumstances. The Court offers a wide selection of non-binding ADR options—each of which provides a different kind of service—so that parties can use the procedure that best fits the particular circumstances of their case.

Most civil cases are assigned at filing to the **ADR Multi-Option Program** (ADRMOP) governed by ADR Local Rule 3. This assignment is included as a part of the Initial Case Management Scheduling Order. In the ADRMOP, unless they are excused by the assigned judge, the parties must participate in one non-binding ADR process offered by the Court or, with the assigned judge's permission, in an ADR process offered by a private provider.

Each side **MUST**:

1. Read the handbook entitled "Dispute Resolution Procedures in the Northern District of California," which is available on the Court's ADR website (or from the Clerk's Office if you do not have access to the Internet); **AND**
2. Discuss the available ADR options provided by the Court and private entities; **AND**
3. Consider whether the case might benefit from any of the available ADR options.

Each party must then certify that it has complied with these requirements by filing an **ADR Certification** by the date specified in the Initial Case Management Scheduling Order. See ADR Local Rule 3-5(b). If the parties are able to agree to an ADR process, they must file a Stipulation and Proposed Order Selecting ADR Process with their ADR Certification. This form can be found in Appendix C to the ADR Local Rules. If the parties are unable to reach an agreement about which ADR process might work best for the case, they must file, along with their ADR Certification, a Notice of Need for ADR Phone Conference. A form of this notice may be found in Appendix D to the ADR Local Rules. After the parties file a Notice of Need for ADR Phone Conference, the Court's ADR staff will schedule a telephone conference with an ADR legal staff member who will help the parties make a decision about which ADR process to use.

If the parties have not stipulated to an ADR process before their case management conference, they will discuss ADR with the judge who may refer them to one of the Court's ADR processes. Please refer to ADR Local Rule 3-5(c)(2) for more detail.

The Court sponsors four major ADR processes, which are explained more fully in the "Dispute Resolution Procedures in the Northern District of California" handbook:

Settlement Conference: In a settlement conference, a judge other than your assigned judge (ordinarily a magistrate judge), meets with the parties to help them negotiate a settlement of all or part of the dispute. Settlement conferences are generally the best fit for pro se litigants because a judge who has experience working with unrepresented parties conducts the process.

The Court offers a special settlement program for appropriate prisoner civil rights cases in which a magistrate judge holds the settlement conference in the prison in which the prisoner is housed. Any party to such an action may file a request for referral to the "Pro Se Prisoner Early Settlement Program" for the assigned judge's consideration.

Mediation: In mediation, a specially trained lawyer meets with the parties to help them negotiate a mutually satisfactory agreement resolving all or part of the dispute. Mediators focus not only the relevant evidence and law, but also the parties' underlying interests, needs and priorities.

Early Neutral Evaluation: In Early Neutral Evaluation, a specially trained lawyer who is an expert in the subject matter of the case provides the parties with a non-binding assessment of the merits, and may also help with settlement discussions. The goals of Early Neutral Evaluation (ENE) are to improve direct communication between the parties about their claims and supporting evidence; to provide a "reality check" for parties and lawyers; to identify and clarify the central issues in dispute; to assist with discovery and motion planning or with an informal exchange of key information; and to help with settlement discussions, when requested by the parties.

Non-binding Arbitration: In arbitration, the parties present their case to a specially trained lawyer who issues a non-binding decision, called an "award." Procedures are less formal than in court, and the goal is to provide the parties with a decision on the merits that is faster and less expensive than trial. The award becomes the final judgment in the case if all parties accept it; otherwise it may serve as a starting point for settlement discussions.

We urge you to consider using an ADR process in any civil case, at any time. The Court's professional ADR staff, which includes attorneys with expertise in ADR procedures, is available to help you select a suitable option or to customize an ADR procedure to meet your needs. Our ADR processes, which are governed by the Court's ADR Local Rules, are available in every civil case, even if your case is not assigned to the ADRMOP at filing. We have committed substantial resources to our ADR programs because we are confident that litigants who use them can save significant money and time and will often obtain more satisfying results.

For more information, to view and/or download a copy of the Dispute Resolution Procedures in the Northern District of California handbook or the ADR Local Rules, to obtain forms or read more about the Court's ADR Program, please visit our website at http://www.adr.cand.uscourts.gov.

CHAPTER 15
What is discovery?

"**Discovery**" is the process in which a party finds out information about the issues in his or her case before the trial. There are six ways to ask for and receive this information: **depositions**, **interrogatories**, **requests for documentation**, **request for admissions**, **mental examinations**, and **physical examinations**.

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

When can discovery begin?

If your case is listed under Rule 26(a)(1)(B) of the Federal Rules of Civil Procedure, Civil Local Rule 16-7 states that discovery cannot begin until the judge sends out a **case management order** setting deadlines for discovery. Such cases include: actions for review of administrative agency action (like social security appeals), petitions for habeas corpus, actions brought by pro se prisoners and actions to enforce arbitration awards.

In **ALL** other cases, Rule 26(d) of the Federal Rules of Civil Procedure states that discovery cannot begin until the parties have had their Rule 26(f) **meet and confer**, **UNLESS**:

- Earlier discovery is allowed by another part of the Federal Rules of Civil Procedure; **OR**
- The Court issues an order that allows earlier discovery; **OR**
- All parties agree that discovery can be taken earlier.

As noted above, all parties may conduct discovery at the same time.

Are there any limits to discovery?

Yes.

1. **Privileged information**. This is a small category of information consisting mostly of confidential communications such as those between a doctor and patient, or an attorney and client.
2. **Limits imposed by the Court.** The Court can limit the use of any discovery method if it finds:
    - The discovery seeks information that is already provided or is available from more convenient and less expensive sources; **OR**
    - The party seeking discovery has already had multiple chances to get the requested information; **OR**
    - The burden or expense of the proposed discovery is greater than its likely benefit; **OR**
    - Some information requested may be privileged or protected by various confidentiality agreements.

There are also limits to how many requests you can make, discussed in the following detailed explanations of each method of discovery. Rule 26(b) covers discovery scope and limits in detail.

Depositions

A **deposition** is a question-and-answer session that takes place outside of Court but is recorded by a court reporter. Rule 30 of the Federal Rules of Civil Procedure covers depositions in detail. One party to a lawsuit asks another person—either a party or a witness—who is under oath, questions about the issues raised in the lawsuit. The person answering the questions under oath is the "**deponent**." The deponent can be any person who may have information about the lawsuit, including eye witnesses, expert witnesses, or other parties to the lawsuit. A deposition may also be taken by telephone or by means of written questions. At a deposition:

1. The deponent answers all questions under oath, meaning he or she swears that his or her answers are true.
2. The questions and answers of the deposition must be recorded by audio, audio-visual or stenographic means by a court reporter. See Rule 28.
3. The party taking the deposition must pay the cost of recording the deposition.

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

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

- The deponent is in prison; **OR**
- Your side of the lawsuit has already taken 10 other depositions and the other parties have not stipulated that you may take more (refer to Rule 30(a) for more detail); **OR**
- The deponent has already been deposed in the same case and the other parties have not stipulated in writing that the deponent may be deposed again; **OR**
- You want to take a deposition before the parties have their Rule 26(f) **meet and confer** and the other parties will not agree to let you take the early deposition. A motion is not required if the deponent is expected to leave the United States and therefore will be unavailable for deposition after the Rule 26(f) meeting.

How do I arrange a deposition?

Under Civil Local Rule 30-1:

1. ***Consult with opposing counsel to choose a convenient time for the deposition.*** The convenience of the lawyers, the parties, and the witnesses must be taken into account, if possible.
2. ***Pick a convenient time for the deposition and give written notice of the deposition to the deponent.*** This document is known as the "**notice of deposition**."
3. ***Serve the notice of deposition*** on all parties.

What do I say in a notice of deposition?

Under Rule 30(b) and 26(g)(2) of the Federal Rules of Civil Procedure, the **notice of deposition** must include:

1. The time and place where the deposition will be held; **AND**
2. The name and address of the deponent (if this is not known, the deponent must be described well enough so that he or she can be identified by the other side; for example, "the store manager who was on duty after 6:00 pm"); **AND**
3. If you name a business or government agency as a deponent, then it must tell you the name of the person who will testify on its behalf; **AND**
4. The method by which the deposition will be recorded; **AND**
5. Your address and signature pursuant to Rule 26(g)(2).

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

Under Rule 45 of the Federal Rules of Civil Procedure:

- You do not need a subpoena to depose someone who is a party to the lawsuit.
- Only deponents who are not parties to the lawsuit (non-party deponents or non-party witnesses) must be served with a subpoena to compel their attendance.
- You can get a blank subpoena from the Clerk's Office for any deposition that will take place in the Northern District of California. For depositions taken outside of the Northern District of

California, a subpoena from the federal district court where the deposition will be taken is required.

- A subpoena may be served (hand-delivered) on the deponent by any person who is not a party to the lawsuit and who is at least 18 years of age.
- A subpoena must be hand-delivered to the deponent along with the fees for one day's attendance and mileage allowance required by law.
- You must pay for a non-party deponent's travel expenses under 28 U.S.C. § 1821 and 41 C.F.R. 301-10.303.

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

"**Quashing the subpoena**" means that the Court decides that the person does not have to obey the subpoena or appear at the deposition. The Court may quash a subpoena if there is undue burden or expense required for the deponent to appear at the deposition. The Court must quash a subpoena if it requires a non-party deponent to travel more than 100 miles to the deposition. See Rule 45(c)(1).

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

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

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

What do I need to do to prepare to have my deposition taken?

Depositions are very important because the **transcript** of your answers can be submitted as evidence to the Court. Answers you give in a deposition can have the same effect as if you had given those answers under oath in front of the judge. Here are some practical suggestions for helping depositions go smoothly:

- ***The deponent should review documents beforehand.*** Before the deposition, the deponent can prepare to remember events and answer questions about them by reviewing the documents exchanged during initial disclosures and discovery.
- ***The deponent may ask for unclear or confusing questions to be restated or clarified.*** During the deposition, it is acceptable for the deponent to ask for clarification before attempting to answer a question.
- ***The deponent should focus on answering the questions asked.*** Depositions go more smoothly when the deponent stays focused on the questions asked. If the questioner wants more information, he/she will ask another question.
- ***The deponent will have an opportunity at the end to put additional important information on the record.*** There may be information that the deponent thinks is important that did not come up in the question-and-answer portion of the deposition. At the end of the deposition, the deponent can state that information and ask the court reporter to write it down in the deposition transcript.

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

A **subpoena duces tecum** is a court order requiring someone to give another person copies of papers, books, or other things. It is a discovery tool that can be used with a deposition or by itself. Under Rule 30(b)(1), the documents you want the deponent to bring to the deposition must be listed in both the "**notice of deposition**" and the "**subpoena duces tecum**."

How long can a deposition last?

Under Rule 30(d)(2) of the Federal Rules of Civil Procedure, a deposition may last no longer than seven hours, unless more time is authorized by all parties or the Court.

Does the deponent have to answer all questions?

Under Rule 26(b)(1) of the Federal Rules of Civil Procedure, you may ask questions about any non-privileged matter that is relevant to the claim or defense of any party and appears reasonably likely to lead to the discovery of **admissible evidence**.

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

- The question is vague;
- The question is actually a series of questions all together (a "compound question");
- The question is argumentative;
- The question asks for information that you are not legally able to give.

In most of these cases, however, the deponent must still answer the question, after making the objection. Under Rule 30(d)(1), the deponent may refuse to answer a question **ONLY** when:

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

Who is allowed to ask the deponent questions?

Any party may ask questions at the deposition.

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

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

Interrogatories

Interrogatories are written questions sent by one party to any other party to the lawsuit and must be answered in writing and under oath. Rule 33 of the Federal Rules of Civil Procedure covers interrogatories in detail.

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

Under Rule 33(a), you may serve up to 25 interrogatories, including all subparts, on the same party without the Court's permission. If you want to serve more than 25 on one party, you must file a motion asking the Court's permission. See Civil Local Rule 33-3.

What kinds of questions can I ask?

Consistent with Rule 26(b)(1) of the Federal Rules of Civil Procedure, parties may use interrogatories to ask about any non-privileged matter that is relevant to any party's claim or defense.

Are there any requirements for the form of interrogatories?

Usually each interrogatory is written out with a separate number. Interrogatories must be signed in accordance with Rule 26(g)(2).

How do I answer interrogatories served on me?

- The interrogatories must be answered within 30 days.
- As the responding party, you can either answer the question, object, or both.
- When answering a question, a party must answer with all "available" information. This means information a party can remember without doing research, but if the information exists within your business records or other files, then you must look for the answer.
- If the burden of finding the answer is the same for you as for the party who served the interrogatory, then you may answer the interrogatory by simply telling the other side where the answer can be found. The burden then falls to the other party to find the answer. You must be specific; you cannot just say, "In the documents I gave you."
- If you need more than 30 days to answer, you can request more time from the other party. If the other party refuses, you can file a motion with the Court.
- Each interrogatory must be answered separately and fully in writing under oath, unless objected to.
- If you object to only part of a question, then you must answer the rest of the question.
- Any objections must be stated in writing and include the reasons for the objection. The objections should be signed by the party's lawyer, unless the party does not have a lawyer.
- Answers must be signed by the party whether or not the party has a lawyer.
- It is not appropriate to answer "I don't know" if the answer is available to you.
- If you learn later that your answer is incomplete or incorrect, you must let the other side know by supplementing your original answer. See Rule 26(e)(2).

Request for Document Production

In a **request for document production** you write out descriptions of documents you think another person has. These should be documents which you reasonably believe would have information in them about the issues in the lawsuit. Document requests can be served on any person, not just parties to the lawsuit.

How do I get documents from the other parties?

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

- **A request for production of documents**, seeking to inspect and copy any documents which are in that party's possession, custody, or control;
- **A request for production of tangible things** (i.e., physical things that are not documents), seeking to inspect and copy, test, or sample anything which is in that party's possession, custody, or control;
- **A request for inspection of property**, seeking entry onto property controlled or possessed by that party for the purposes of inspecting, measuring, surveying, photographing, testing, or sampling the property or any object on that property.

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

Each request for document production should be numbered separately and signed in accordance with Rule 26(g)(2). A request for document production from a party to the lawsuit may be served by any of the methods listed in Rule 5(b) of the Federal Rules of Civil Procedure.

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

1. The party who has been served with the request must give a response within 30 days after the request is served unless the Court has authorized more time. You can also ask the other side for more time to respond but the other side does not have to give it to you.
2. Civil Local Rule 34-1 states that you must rewrite each request in full before you state your response or objection.
3. The response may state that you will allow the inspection of each item and the related activities that were requested, or you may object if you have a proper basis for doing so.
4. If you object to the request, you must state the reasons for that objection.
5. If you object to only part of the request, you must state your objection to that part and permit inspection of the rest.
6. Documents produced for inspection must be presented **EITHER** as they are kept in the usual course of business **OR** organized and labeled so that they correspond with the categories in the request.
7. If you discover more documents that also respond to the request after you have provided some documents, you must also provide these additional documents promptly. See Rule 26(e)(2).

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

Rules 34(c) and 45 cover obtaining documents from persons not party to the lawsuit. Under Rule 34(c), you can ask the Court to compel a person who is not a party to the lawsuit to produce documents and items or submit to an inspection.

Rule 45 sets out the rules for issuing, serving, protesting, and responding to subpoenas, including **subpoenas duces tecum**, subpoenas requesting the production of documents and items.

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

You can get a blank subpoena form from the Clerk's Office for any production of documents or inspection that will occur in the Northern District of California. If the document or item is located outside our district, you will need to get the subpoena from the Court in the corresponding district.

Under Rule 45(b)(1) of the Federal Rules of Civil Procedure, a subpoena duces tecum may be served by any of the methods listed in Rule 5(b), including service by mail.

Under Rule 45(c)(1) of the Federal Rules of Civil Procedure, you must take steps to avoid imposing an undue burden or expense on the person receiving the subpoena duces tecum.

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

Under Rule 45(c)(20)(A), a person who has received a **subpoena duces tecum** does not have to appear in person at the time or place for the production of documents or inspection unless he or she also has been subpoenaed to appear for a deposition, hearing, or trial at the same time or place.

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

Requests for Admission

In a **request for admission**, one party asks, in writing, the other party to admit the truthfulness, for purposes of the lawsuit, of:

- Facts;
- The application of law to fact;
- Opinions about facts or the application of law to fact; **AND/OR**
- The genuineness of any described documents.

Requests for admission can only be used on other parties to the lawsuit.

The Court will consider anything admitted in response to a request for admission as proven.

Rule 36 of the Federal Rules of Civil Procedure governs requests for admission. Requests for admission may be served by any of the methods listed in Rule 5(b) of the Federal Rules of Civil Procedure, including service by mail.

Like depositions and interrogatories, requests for admission must be stated separately and numbered in order. They must also be signed and certified in accordance with Rule 26(g)(2).

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

Civil Local Rule 36-1 provides that responses to requests for admission must state each request in full before each response or objection. If a party objects to a request for admission, then that party must state their reasons for objection. Responses to requests for admission must be signed by the party or by the party's attorney.

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

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

1. Your answer must admit or deny the request or explain in detail why you cannot admit or deny the request truthfully.
2. If you can only admit or deny part of the request, then you must admit or deny that part and then explain why you cannot admit or deny the other part of the request.
3. If you do not know the answer, then you may state that you do not have enough information to admit or deny the requested information but only after you have made a reasonable search for information that would allow you to admit or deny the request.
4. Any matter that is admitted is treated as proven within the context of that particular lawsuit. But an admission in one lawsuit cannot be used against that party in any other proceeding.

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

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

- The request was objectionable under Rule 36(a); **OR**
- The admissions were not important; **OR**
- The party who did not admit the fact had reasonable ground to believe that it might prevail on that point; **OR**

- There were other good reasons for the failure to admit.

Duty to supplement responses

If a party discovers that the responses that party has already submitted are incomplete or incorrect, then that party is required under Rule 26(e)(2) of the Federal Rules of Civil Procedure to supplement the earlier responses promptly.

Physical and Mental Examinations

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

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

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

What happens to the result of the examination?

If the Court orders a mental or physical examination, the party or other person who is to be examined has the right to request a **detailed written report** from the examiner explaining the results of all exams.

Because a mental or physical examination may raise unforeseen issues the party that has obtained the examination may need to ask for other related information, such as medical records. The parties may request from each other similar reports of other examinations that they may possess.

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

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

CHAPTER 16
What can I do if there are problems with disclosures or discovery?

What is the first step?

Contact the other side and try to resolve the issue. Under Civil Local Rule 37-1(a), the Court will not hear any motions about disclosures or discovery unless the parties have previously tried to resolve all the issues on their own.

What if the parties can't resolve the problem, and discovery is still due?

If you receive a discovery request and you believe it is inappropriate or too burdensome, you may file a **motion for a protective order** under Rule 26(c) of the Federal Rules of Civil Procedure. A protective order is an order limiting discovery or requiring discovery to proceed in a certain way. A motion for a protective order must be filed in either the court where the lawsuit is being heard or in the federal district court in the district where a deposition in which an issue arises is being taken.

A motion for a protective order **MUST** include:

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

What if the parties are stuck on a problem in the middle of a discovery event?

A "**discovery event**" is any activity where you meet with the other side and expect to exchange discovery information. If a problem arises during this time and you believe that it would save a lot of time or expense if the problem were resolved immediately, Civil Local Rule 37-1(b) allows you to call the chambers of the judge who is assigned to handle discovery in your case to request that he or she address the problem through a telephone conference with the parties. This may be the district judge or it may be a magistrate judge to whom the district judge has referred discovery in your case. Before calling the judge's chambers, you must first try to resolve the problem on your own.

What do I do if they don't respond, or if the response is inadequate?

When a dispute arises over disclosures or discovery responses, there are **TWO** types of motions that may be appropriate:

1. **A motion to compel**: a motion asking the Court to order a person to make disclosures or to respond to a discovery request, or to provide more detailed disclosures. See Rule 37 of the Federal Rules of Civil Procedure and Civil Local Rule 37-2.
2. **A motion for sanctions**: a motion asking the Court to punish a person for failing to make required disclosures, refusing to respond to a discovery request, or refusing to obey a court order to respond to a discovery request. See Rule 37(b)-(f) of the Federal Rules of Civil Procedure and Civil Local Rule 37-3.

How do I file a motion to compel?

Under Rule 37(a)(1), **a motion to compel a party to make disclosures or to respond to discovery** must be filed in the court where the lawsuit is pending. A motion to compel a non-party to respond to discovery must be filed in the court in the district where the discovery is being taken.

A motion to compel **MUST** include:

1. A certification that you have, in good faith, tried to resolve the problem without help from the Court; **AND**
2. An explanation of the problem and what you want the Court to do; **AND**

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

Who pays for expenses of making the motion to compel?

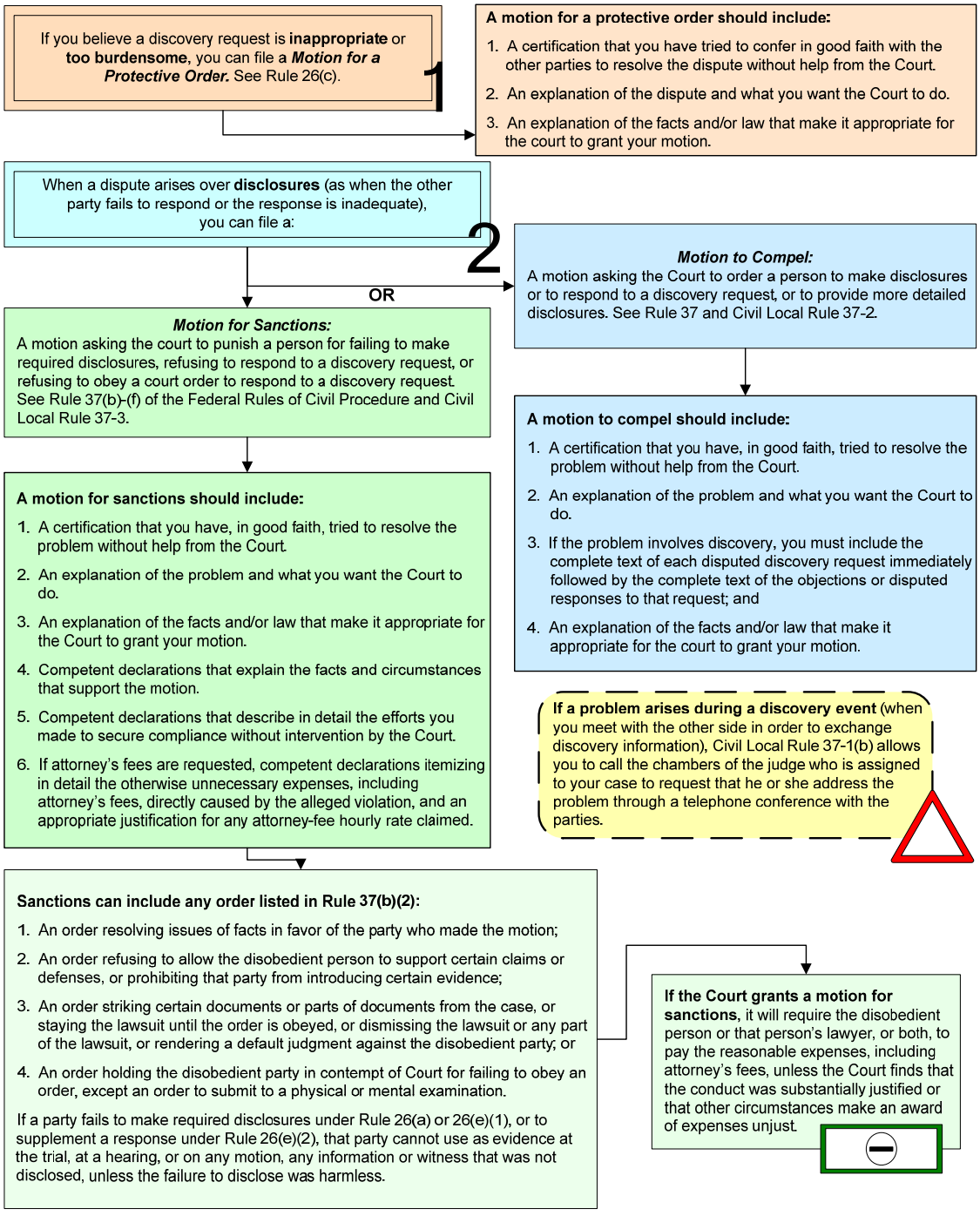
If the Court grants a motion to compel, the Court must make the person against whom the motion was filed pay the reasonable expenses involved in making the motion, including attorney's fees, **UNLESS** the Court finds that:

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

Under what circumstances can I ask for discovery sanctions?

1. **A motion for discovery sanctions** may be brought only if a person:
   - Fails to provide required disclosures**; OR**
   - Fails to obey a court order to respond to a discovery request**; OR**
   - Fails to appear for a deposition that has been properly noticed**; OR**
   - Fails to answer interrogatories that have been properly served**; OR**
   - Fails to respond to a request for document production or inspection that has been properly served.
2. A motion for discovery sanctions:
   - Must be filed as a separate motion; **AND**
   - Must be filed on the normal 35-day briefing schedule before a hearing; **AND**
   - Must be made as soon as possible after you learn about the circumstances that made the motion appropriate; **AND**
   - May not be filed more than 14 days after entry of judgment.
3. A motion for sanctions **MUST** include the following:
   - A certification that you have, in good faith, tried to resolve the problem without help from the Court; **AND**
   - An explanation of the problem and what you want the Court to do; **AND**
   - An explanation of the facts and law that make it appropriate for the Court to grant your motion; **AND**
   - Competent declarations that explain the facts and circumstances that support the motion; **AND**
   - Competent declarations that describe in detail the efforts you made to secure compliance without intervention by the Court; **AND**
   - If attorney's fees are requested, competent declarations itemizing in detail the otherwise unnecessary expenses, including attorney's fees, directly caused by the alleged violation, and an appropriate justification for any attorney-fee hourly rate claimed.

There are several motions parties may file during the discovery phase of a lawsuit:



What kinds of things will a Court do as a discovery sanction?

If the Court grants a motion for sanctions, it may issue any order authorized by Rule 37(b)(2), including:

1. An order resolving issues of fact in favor of the party who made the motion;
2. An order refusing to allow the disobedient person to support certain claims or defenses, or prohibiting that party from introducing certain evidence;

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

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

In general, if a party fails to make required disclosures under Rule 26(a) or 26(e)(1), or to supplement a response under Rule 26(e)(2), that party cannot use as evidence at the trial, at a hearing, or on any motion, any information or witness that was not disclosed. A party may be relieved of this restriction only by making a motion to the Court, unless the failure to disclose caused no harm to the other side's case. See Rule 37(c).

Who pays the cost of a motion for sanctions?

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

CHAPTER 17
What is a motion for summary judgment?

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

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

Rule 56 of the Federal Rules of Civil Procedure governs summary judgment motions.

Factors to consider in planning to make or defend a summary judgment motion

1. A motion for summary judgment can address the whole lawsuit or it can address one or more individual claims.
2. If the summary judgment motion addresses the whole lawsuit, and the Court grants summary judgment, the lawsuit is over.
3. Summary judgment will only be granted if under the evidence presented, a jury could not reasonably find in favor of the opposing party.
4. The Court considers all of the admissible evidence from both parties.
5. The Court considers evidence in the light most favorable to the party who does not want summary judgment.
6. Denying summary judgment means that there is a dispute about the facts, not that the Court believes one side over the other.
7. If the Court denies a motion for summary judgment, the case will go to trial unless the parties decide to compromise and end the case themselves through settlement.

Under what circumstances is a motion for summary judgment granted?

Under Rule 56(a), the Court will grant a motion for summary judgment if:

1. The evidence presented by parties in their papers shows that there is no real dispute about any "**material fact**" **AND**
2. The undisputed facts show that the party who filed the motion should prevail (that is, the undisputed evidence proves/disproves the plaintiff's legal claim).

How do I oppose a motion for summary judgment?

You may file an **opposition** to the motion for summary judgment in which you dispute the other side's version of the facts and present your own. The procedures for filing an opposition to the motion for summary judgment are the same as any other motion, and are described in Chapter 10, "What is a motion and how do I write or respond to one?" You can download an "Opposition to Motion Packet" with instructions at http://cand.uscourts.gov/civillitpackets.

What does each side need to do to succeed on summary judgment?

1. If the **PLAINTIFF** files a motion for summary judgment, the plaintiff **MUST**:
    a. ***Provide admissible evidence.*** **Evidence** includes things like sworn statements, medical records, and physical objects (evidence is "**admissible**" if federal law allows that evidence to be considered for the purpose for which it was offered) **AND**
    b. ***Show that the defendant does not have any admissible evidence that, if true, would prove any of the defendant's defenses to the plaintiff's claims.*** Usually, this is done by showing that the defendant has admitted not having any other evidence.
2. To counter the plaintiff's motion for summary judgment, the defendant must **EITHER**:
    a. Submit admissible evidence showing that there is a factual dispute about one or more elements of the plaintiff's claims or the defendant's defenses; **OR**
    b. Show that the plaintiff has not submitted sufficient evidence to prove one or more elements of the plaintiff's claims.
3. If the **DEFENDANT** files a motion for summary judgment, the defendant **MUST**:
    a. Show that the plaintiff does not have evidence necessary to prove one of the elements of the plaintiff's claim. For example, in a claim about a contract, one element that a plaintiff must prove is that the parties reached an agreement; another element is that each side agreed to provide something of value to the other. If the plaintiff cannot prove one of those elements, summary judgment may be granted in the defendant's favor on the plaintiff's claim for breach of contract; **OR**
    b. Show that there is no real factual dispute on any element of defendant's defenses against the plaintiff's claims. An **affirmative defense** is a complete excuse for doing what the defendant is accused of doing. For example, in a breach-of-contract case, evidence that it would have been illegal to perform the contract may be a complete defense.
4. To counter the defendant's motion for summary judgment, the plaintiff **MUST**:
    a. Submit admissible evidence showing that the plaintiff does have sufficient admissible evidence to prove every element of his or her claims, or that there is a factual dispute about one or more key parts of the claims; **AND**
    b. Submit admissible evidence showing that there is a factual dispute about one or more key parts of the defendant's defenses, if the defendant originally moved for summary judgment. The plaintiff can simply point out that the defendant has not put forward admissible evidence needed to prove at least one element of its defenses.

What evidence does the Court consider for summary judgment?

1. The Court only considers **admissible evidence** provided by the parties.
2. Every fact that you rely upon must be supported by evidence.
3. You should file copies of the evidence that you want the Court to consider when it decides a motion for summary judgment and refer to the evidence throughout your papers.
4. When you cite a document, you should point the Court to the exact page and line of the document where the Court will find the information that you think is important. The Court does not have to look at any evidence that is not mentioned in your briefs, even if you include it.
5. The Court will not search for other evidence that you may have provided at some other point in the case. You must present the evidence anew on the summary judgment motion.

Affidavits as evidence on summary judgment

An **affidavit** is a statement of fact written by a witness and signed under oath (sometimes called a "**declaration**"). An affidavit must be sworn before a **notary public**. Affidavits/declarations may be used as evidence in supporting or opposing a motion for summary judgment. Under Rule 56(c) of the Federal Rules of Civil Procedure and Civil Local Rule 7-5, an affidavit submitted in summary judgment proceedings **MUST**:

1. Be made by someone who has personal knowledge of the facts contained in the written statement (this means first-hand knowledge such as observing the events in question); **AND**
2. State facts that are admissible in evidence; **AND**
3. Show that the person making the statement is competent to testify to the facts contained in the statement.

Download blank declaration forms and a motion packet at http://cand.uscourts.gov/civillitpackets.

Hearsay and summary judgment

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

Authentication of exhibits and summary judgment

Some of your evidence may be in the form of documents such as letters, records, emails, contracts, etc. These documents are "**exhibits**" to your motion. Even if a document is admissible under the hearsay rules, a document may not be admissible for other reasons. Any exhibit that is submitted as evidence must be **authenticated** before it can be considered by the Court.

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

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

See Rules 901 and 902 of the Federal Rules of Evidence.

What is a statement of undisputed facts, and why would I file one?

A joint **statement of undisputed facts** is a list of facts that all parties agree are true, and it contains citations to the evidence that shows the judge that the facts are true. A statement is not a joint statement unless it is signed by all of the parties. All facts contained in a joint statement of undisputed facts will be taken as true by the Court.

A separate **statement of undisputed facts** is a list of the facts that one party believes are true and citations to that one party's evidence to support each fact. Facts contained in one party's separate statement of undisputed facts will be taken as true by the Court only if the evidence cited actually supports the truthfulness of the point in question and no other party has submitted evidence disputing it. Civil Local Rule 56-2 does not allow the submission of separate statements of undisputed facts without the Court's permission. Be sure to read your judge's standing order to see whether it addresses this subject.

When can a motion for summary judgment be filed?

1. A defendant may file a motion for summary judgment at any time, as long as the motion is filed before any deadline set by the Court for filing motions for summary judgment.
2. A plaintiff must wait at least 20 days after the complaint is filed before filing a motion for summary judgment, unless the defendant has already filed a motion for summary judgment by

that date. Most motions for summary judgment rely heavily on evidence obtained in discovery, which means that summary judgment motions are usually not filed until several months after the complaint is filed.

What if my opponent files a motion for summary judgment before I have completed all the discovery that I need for my case?

If you need more discovery in order to provide more evidence to the Court showing why summary judgment should not be granted, you can file, on or before the deadline for opposing the motion, a request under Rule 56(d) of the Federal Rules of Civil Procedure for additional time to conduct discovery. Your request must be accompanied by an affidavit or declaration clearly setting out the reasons why you do not already have the evidence you need to defeat summary judgment and explaining exactly what additional discovery you need to take. You must also show how that discovery matters to the pending motion for summary judgment.

CHAPTER 18
What happens at trial?

What kind of disclosures do I have to give the other party before trial?

Prior to trial, you will have to give the other party information about any **expert witnesses** you intend to have present evidence at trial. Read Rule 26(a)(2) of the Federal Rules of Civil Procedure for more detailed information. You are also required to disclose certain information about witnesses and **evidence** that you will present at trial. See Rule 26(a)(3).

Expert Disclosures: disclosing your expert witnesses and their opinions

An **expert witness** is a person who has scientific, technical, or other specialized knowledge that can help the Court or jury understand the evidence. If you hired/specially employed the expert witness to give testimony in your case **OR** if the expert witness is your employee, the disclosure must include a written report prepared and signed by the expert witness (expert report) unless there is a Court order or the parties stipulate to a different arrangement.

Timing	Expert disclosures must be made by the deadline ordered by the Court. If a specific deadline is not set, disclosures must be made at least 90 days before the trial date. If your expert disclosures are intended solely to contradict or rebut another party's previously disclosed expert disclosures, your disclosures must be made no later than 30 days after the disclosure made by the other party.
Content	Under Rule 26(a)(2)(B), the expert report must contain: 1. A complete statement of all opinions the expert witness intends to give at trial, and the basis and reasons for those opinions; **AND** 2. Data or other information considered by the expert witness in forming those opinions; **AND** 3. Any exhibits to be used as a summary or support for those opinions; **AND** 4. Qualifications of the expert witness, including a list of all publications authored by the witness within the preceding 10 years; **AND** 5. Compensation to be paid for the study and testimony of the expert witness; **AND** 6. A list of all other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.
Form	Expert disclosures must be in writing, signed and served on all other parties to the lawsuit, ***but not filed with the Court.*** Your signature certifies that the disclosure is complete and correct as of time it is made, to the best of your knowledge.
Additional Requirements	Rule 26(e)(1) requires you to supplement your expert disclosures if you learn that the information you disclosed is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. Any supplement to your expert disclosures must be served no later than the time your pretrial disclosures under Rule 26(a)(3) (discussed below) are due.

Pretrial Disclosures: witness and exhibit lists

Timing	Witness and exhibit lists should be served on all parties ***and filed with the Court*** at least 30 days before trial, unless otherwise ordered by the Court.
Content	The following information about the witnesses, documents and other exhibits you may use at trial should be included in your pretrial disclosures: 1. Name, address, and telephone number of each witness. Identify separately: a. The witnesses you intend to present at trial, **AND** b. The witnesses you may present at trial, if the need arises. 2. The identities of the witnesses whose testimony you expect to present at trial by means of a deposition rather than live testimony. Can also include a transcript of the relevant portions of the deposition. 3. Identification of each document or exhibit that you may use at trial. Identify separately: a. The exhibits you intend to use at trial, **AND** b. Those which you may use if the need arises. 4. Witnesses and documents offered only to impeach the other side's witnesses need not be disclosed.
Form	Pretrial disclosures must be in writing, signed and served on all other parties to the lawsuit ***and filed with the Court***. Your signature certifies that the disclosure is complete and correct as of time it is made, to the best of your knowledge.

What is the difference between a jury trial and a bench trial?

In a **jury trial**, a jury reviews the evidence presented by the parties, figures out which evidence to believe, and decides what it thinks actually happened. The Court will instruct the jury about the law, and the jury will apply the law to the facts. A jury trial may be held when:

1. The lawsuit is a type of case that the law allows to be decided by a jury **AND**
2. At least one of the parties asked for a jury trial before the deadline for doing so. A party who does not make a demand for a jury trial on time forfeits that right. See Rule 38 of the Federal Rules of Civil Procedure.

At a **bench trial** (also sometimes known as a **court trial**), there is no jury. The judge will determine the law, the facts, and the winner of the lawsuit. A bench trial is held when:

1. None of the parties asked for a jury trial (or did not request one in time); **OR**
2. The lawsuit is a type of case that the law does not allow a jury to decide; **OR**
3. The parties have agreed that they do not want a jury trial.

When does the trial start?

The judge sets the date on which the trial will begin. Often, this happens at the **case management conference** but sometimes the trial date will not be chosen until later in the case. In this Court, trial is usually scheduled to begin within 18 months after the complaint is filed.

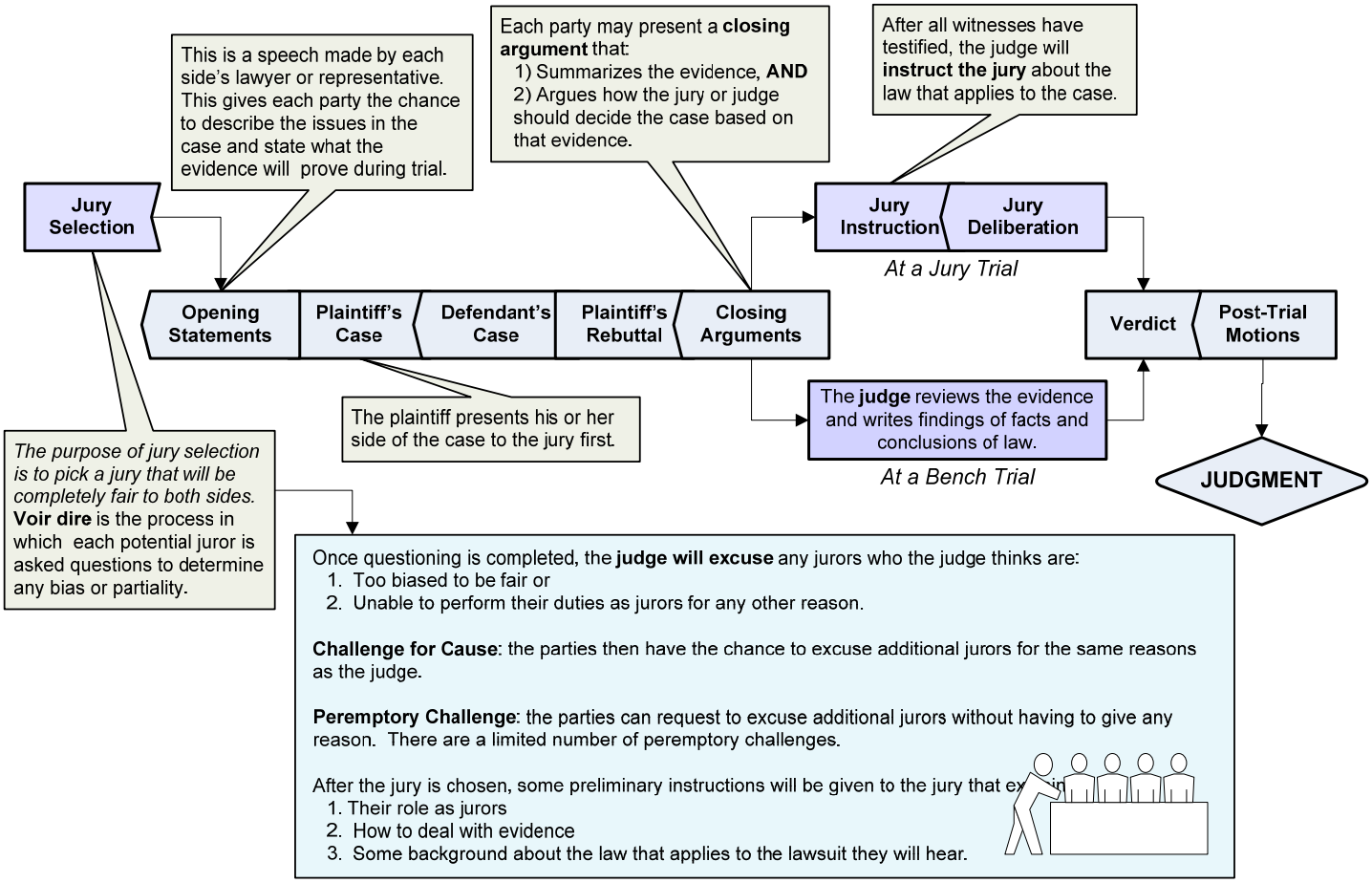
What do I have to do to prepare for trial?

When setting the trial date, the judge usually enters an order setting **pretrial deadlines** for filing or submitting various documents associated with the trial. For example, the judge will set dates for submitting copies of exhibits, objections to exhibits, and proposed jury instructions. If the judge does not, follow the deadlines set forth in the table on the preceding page. Usually, the judge will set a date for a **pretrial conference** shortly before trial, at which the judge and the parties will go over the procedure for the trial and resolve any final issues that have arisen before trial.

The Court's orders may also set a deadline ("cut-off date") for filing **motions in limine**. A motion in limine asks the Court to decide whether specific evidence can be used at trial. See Rules 103 and 104 of the Federal Rules of Evidence.

Besides submitting documents, you also need to arrange for all of your witnesses to be present at trial. If a witness does not want to come to trial, you can serve that witness with a "**trial subpoena**." A trial subpoena is a court document which requires a person to come to Court and give testimony on a particular date. Generally, the same rules that apply to subpoenas for deposition witnesses (see Chapter 15) also apply to trial subpoenas.

Timeline of a trial:



Jury Selection

The purpose of **jury selection** is to select a jury that can be fair and impartial. This is accomplished by a process called **voir dire**, during which each potential juror is questioned by the attorneys and the judge. The questions are designed to bring out any biases that the juror may have that would prevent

fair and impartial service on that jury. Sometimes the judge lets the lawyers for each party (or any party who does not have a lawyer) ask additional questions.

There are three ways a juror will be excused:

1. Once questioning is completed, the judge will excuse any jurors whom the judge believes will not be able to perform their duties as jurors for hardship or other reasons.
2. **Challenge for Cause**: the parties also will have an opportunity to convince the judge that other additional jurors should be excused because they are too biased to be fair, or cannot perform their duties as jurors for other reasons.
3. **Peremptory Challenges**: after all the jurors that have been challenged for cause have been excused, the parties have an opportunity to use peremptory challenges to request that additional jurors be excused. A peremptory challenge is used to excuse a juror without having to give any reason. The judge will give each party a certain number of peremptory challenges.

After the jury is chosen, the judge will read some **instructions** to the jury. These instructions tell the jurors about their duties as jurors, explain to them how to deal with evidence, and give some understanding about the law that applies to the lawsuit that they are about to hear.

Opening statements

The **opening statement** is a speech made by each side's lawyer or representative. The purpose of the opening statement is for each party to describe the issues in the case and state what they expect to prove during the trial. It helps the jury understand what to expect and what each side considers important. The opening statement must not mention any evidence or issues that the judge has excluded from the trial.

In the trial, which side puts on witnesses first?

After the opening statements:

1. **Plaintiff's Case**: the plaintiff presents his or her side of the case to the jury first.
    a. **Direct Examination**: the plaintiff begins by asking a witness all of his or her questions.
    b. **Cross-Examination**: the opposing party then has the opportunity to cross-examine the witness by asking additional questions about the topics covered during the direct examination.
    c. **Re-Direct Examination**: the plaintiff can ask additional questions, but only about the topics covered during the cross-examination. A judge will allow this process to continue until both sides state that they have no further questions for the witness.
2. **Defendant's Case**: the plaintiff will present all of his or her evidence before the defendant has a turn to put on his or her own case.

What if the other side wants to put on improper evidence?

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

How do you object?

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

2. ***Do not give long arguments unless the judge asks you to explain your objection.***
3. ***If the judge wants to discuss the objection, he or she may ask you to come up to the bench*** where the judge sits, away from the jury's view to talk to you quietly (called a "**side bar**").
4. ***The judge will either sustain or overrule the objection.***
    a. If the judge **sustains** the objection, the evidence will not be admitted or the question may not be asked.
    b. If the judge **overrules** the objection, the evidence will be admitted or the question may be asked.

What is a motion for judgment as a matter of law, and when can it be made?

Under Rule 50(a) of the Federal Rules of Civil Procedure, in a jury trial the plaintiff may make a **motion for judgment as a matter of law** after the plaintiff has presented all of his or her evidence. A motion for judgment as a matter of law is a request to the judge to decide the outcome of the case without assistance from the jury because enough facts have been shown to entitle one side to win. A motion for judgment as a matter of law brought by the defendant after the close of the plaintiff's evidence argues that the plaintiff failed to provide enough evidence that any jury could reasonably decide the in the plaintiff's favor.

When does the defendant get to present his or her case?

If a judge does not grant a **motion for judgment as a matter of law** or the judge puts off the ruling until a later time, the case moves forward. In that case, after the plaintiff has completed examining each of his or her witnesses, the defendant then presents all of the witnesses that support his or her defenses to the plaintiff's case.

What is rebuttal?

Rebuttal is the final stage of presenting evidence at trial. It begins after both sides have had a chance to present their cases. In the rebuttal stage, whichever party has the **burden of proof** (usually the plaintiff) tries to attack or explain the opposing party's evidence. This evidence is called rebuttal evidence. Rebuttal is limited to countering only what the other side argued as evidence; entirely new arguments may no be made during rebuttal. For example, a rebuttal witness might testify that the other party's witness could not have seen the events he reported to the Court. So, after the defendant has finished examining each of his or her witnesses, the plaintiff may call a new witness to show that one of those witnesses was not telling the truth.

What happens after both sides have finished presenting their evidence?

After all evidence has been presented, either party may make a motion for judgment as a matter of law under Rule 50(a) of the Federal Rules of Civil Procedure. If the Court grants a motion for judgment as a matter of law on all of the claims in the case, the trial is over. Otherwise, the Court next hears **closing arguments**. Each party may present a **closing argument** that summarizes the evidence and argues how the jury or, in a bench trial, the judge should decide the case based on that evidence. In jury trials, the judge then instructs the jury about the law and the jury's duties, and then the jury goes into the jury room to deliberate.

In a jury trial, what does the jury do after closing arguments?

After both sides make their closing arguments, the jury goes back to the jury room and discusses the case in private. This process is called "**deliberating**." The jury discusses the claims, the evidence and the legal arguments and tries to agree about which party should win on each claim. Because the decision of the jury must be unanimous in federal court trials, the jurors must continue to deliberate until they all agree.

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

The Court next issues a **written judgment** announcing the verdict and stating the remedies that will be ordered. When the judgment on a jury verdict is issued, the case is usually over. In some cases, one or more parties files post-trial motions. These can include a renewed motion for judgment as a matter of law or a motion for a new trial.

In a bench trial, what does the judge do after closing arguments?

The judge will end ("**adjourn**") the trial after closing arguments. The judge will review the evidence and write findings of facts and conclusions of law. The Court will then issue a written judgment stating the remedies that will be ordered. The Court's findings of fact and conclusions of law and judgment are usually mailed to the parties. When judgment is entered, the case is over unless the Court grants a motion for a new trial or one or more parties takes an appeal to the **Court of Appeals** — in our district, the United States Court of Appeals for the Ninth Circuit. See "What about an appeal?" in Chapter 19.

CHAPTER 19
What can I do if I think the judge or jury made a mistake?

There are a number of different procedures in the trial court that you can use if you believe the judge or jury made a serious mistake in your lawsuit. In addition, you can **appeal** the final judgment, which is not covered in detail in this Handbook. Information for pro se litigants is available on the website of the Ninth Circuit Court of Appeals at www.ca9.uscourts.gov/open_case_prose/.

What is a motion for reconsideration?

A **motion for reconsideration** asks the Court to consider changing a previous decision. A motion for reconsideration must be made **BEFORE** the trial court enters a judgment. See Civil Local Rule 7-9.

Under what circumstances can I file a motion for reconsideration?

A party can file a motion for reconsideration only after getting permission from the Court. Therefore, before filing a motion for reconsideration, the party must file a **motion for permission to file a motion for reconsideration**. The party seeking permission must show to the Court:

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

A motion for permission to file a motion for reconsideration may not simply repeat the same arguments that you made previously to the Court. If you file such a motion, the Court may impose sanctions against you.

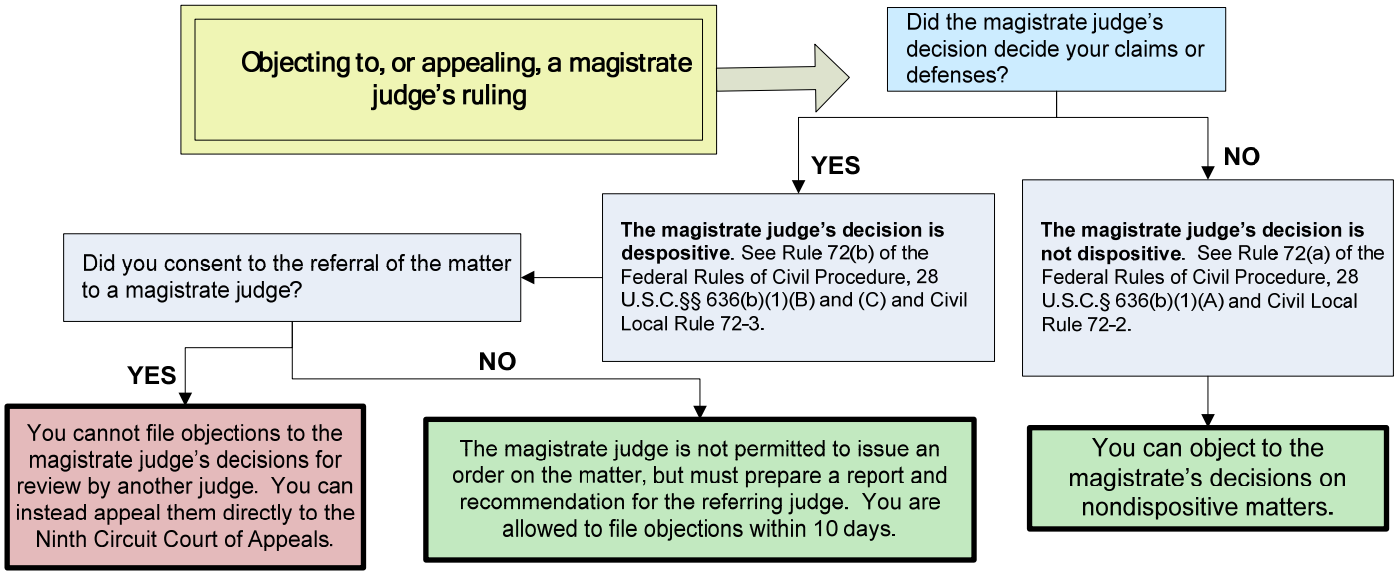
No response needs to be filed to a motion for permission to file a motion for reconsideration unless the Court requests it.

If the Court grants a motion for permission to file a motion for reconsideration, the motion will be scheduled for hearing on the normal 35-day motion schedule, unless the Court sets a different schedule. The parties may file opposition and reply briefs, as with any other motion.

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

What about review of a magistrate judge's order or report?

If the judge who is assigned to your case has referred a motion or discovery matter to a magistrate judge for a decision or for a report and recommendation, it is possible to appeal or object to the magistrate judge's order or **report and recommendation**. The parties can file objections to the magistrate judge's decision or report with the judge who referred the matter or appeal the decision to the Ninth Circuit Court of Appeals. The procedure depends on the type of matter that was referred to the magistrate judge.



Am I allowed to object to the magistrate judge's decisions in general, or just the final decision on the merits?

If the matter that was referred to the magistrate judge does not dispose of any party's claim or defense on the merits, it is described as a "**nondispositive matter**." You can object to the magistrate's decisions on nondispositive matters. See Rule 72(a) of the Federal Rules of Civil Procedure, 28 U.S.C. § 636(b)(1)(A), and Civil Local Rule 72-2.

A party's objections to the magistrate judge's order must be filed with the judge who referred the matter no later than 10 days after the party is served with a copy of the magistrate judge's order. The other party or parties need not file a response to the objections unless the referring judge sets a briefing schedule.

If the judge does not set a briefing schedule or deny the objections within 15 days after the objections are filed, the objections are automatically considered **denied**. If the referring judge requests the opposing party to respond to the objections, the referring judge must set aside, vacate, or change any part of the magistrate judge's order that he or she finds is clearly erroneous or contrary to law.

How do I get review of a magistrate judge's final decision on the merits of a claim?

A decision on the merits that disposes of an entire claim on the merits is called a "**dispositive matter**." What you do if you think that decision was in error depends on whether the parties **consented** earlier to the case being handled by a magistrate.

A magistrate can handle and decide dispositive issues like a judge only if the parties consented earlier in accordance with the rules, such as Rule 72(b) of the Federal Rules of Civil Procedure, 28 U.S.C. § 636(b)(1)(B) and (C), and Civil Local Rule 72-3. If the parties did not consent, the magistrate can only oversee discovery and make recommendations to the federal trial judge.

What if the parties did not consent to a magistrate judge?

If the parties did not consent to the referral of the matter to the magistrate judge, then Rule 72(b) of the Federal Rules of Civil Procedure, 28 U.S.C. § 636(b)(1)(B) and (C) and Civil Local Rule 72-3 apply. The magistrate judge is not permitted to issue an order on the matter, but must instead prepare a **report and recommendation** for the referring judge.

If you think the magistrate made an erroneous decision, you must file objections to the magistrate judge's report and recommendation with the judge who referred the matter no later than 10 days after

you were served with a copy of the magistrate judge's report. The opposing party may respond to your objections within 10 days after being served with them.

When filing objections or responses to objections, either party may also file a motion asking the judge to hear additional evidence not considered by the magistrate judge.

The referring judge then will make a "**de novo review**" of any portion of the magistrate's report to which an objection has been made, meaning that the judge will review the issues in those portions of the report from scratch and make his or her own decision. Unless the judge grants a motion to consider additional evidence not considered by the magistrate judge, the judge will consider only the evidence that was presented to the magistrate judge.

The judge may accept, reject, or modify the magistrate judge's recommendation, or send the matter back to the magistrate judge for further review with additional instructions.

What if the parties did consent to a magistrate judge?

If all of the parties consented to having a magistrate judge decide all issues in the lawsuit, you may not file objections to the magistrate judge's decisions for review by another judge of this Court. Instead, if you believe the magistrate judge made an error, your options are to file one of the motions listed in this section with the magistrate judge who made the original decision, or to file an appeal with the United States Court of Appeals for the Ninth Circuit.

What is a renewed motion for judgment as a matter of law?

After a jury trial, if you believe the jury made a serious mistake and you had made a motion for judgment as a matter of law earlier that was denied, you may make a **renewed motion for judgment as a matter of law** under Rule 50(b) of the Federal Rules of Civil Procedure. You can only make a renewed motion if you have made a motion for judgment as a matter of law at the close of all evidence.

A renewed motion for judgment as a matter of law must be filed no later than 10 days after entry of judgment. The renewed motion must argue that the jury erred in reaching the decision that it made because under all the evidence presented, no reasonable jury could have reached that decision.

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

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

What is the difference between a motion for a new trial and a motion to amend or alter the judgment?

1. After a jury trial or a bench trial, either party may file a **motion for a new trial**. A motion for a new trial asks for a complete re-do of the trial, either on every claim or on just some of them, because the first trial was flawed. The way the motion is handled differs slightly between bench and jury trials:
    a. ***After a jury trial***, the Court is permitted to grant a motion for a new trial if the jury's verdict is against the ***clear weight of the evidence***.
        i. The judge weighs the evidence and assesses the credibility of the witnesses. He or she does not have to view the evidence from the perspective most favorable to the party who won with the jury.
        ii. The judge will not overturn the jury's verdict unless, after reviewing all the evidence, he or she is definitely and firmly convinced that a mistake has been made.
        iii. If the Court grants the motion for a new trial, a new trial will be held with a new jury, and the trial is conducted as if the first trial had never occurred.

b. ***After a bench trial***, the Court is permitted to grant a motion for a new trial if the judge made a clear legal error or a clear factual error, or there is newly-discovered evidence that could have affected the outcome of the trial.

   If the Court grants the motion for a new trial, the Court need not hold an entirely new trial. Instead, it can take additional testimony, amend the findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

2. Either party can also file **a motion to alter or amend the judgment**. A motion to alter or amend the judgment asks the judge to change something in the final judgment because of errors during the trial. It is usually granted if:

   - The Court is presented with newly discovered evidence; **OR**
   - Has committed clear error; **OR**
   - If there is an intervening change in the controlling law.

Both types of motions must be filed no later than 10 days after entry of the judgment. See Rule 59 of the Federal Rules of Civil Procedure.

What is a motion for relief from judgment or order?

A **motion for relief from judgment or order** does not argue with the reason the Court decided the way it did. Instead, it asks the Court not to require the party to obey it. See Rule 60 of the Federal Rules of Civil Procedure.

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

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

- Mistake, inadvertence, surprise, or excusable neglect; **OR**
- Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); **OR**
- Fraud, misrepresentation, or other misconduct by an opposing party; **OR**
- The judgment is void; **OR**
- The judgment has been satisfied, released, or discharged, or a prior judgment upon which it has been based has been reversed or otherwise vacated, or it is no longer fair that the judgment should be applied; **OR**
- Any other reason justifying relief from the judgment. Relief will be granted under this last category only under extraordinary circumstances.

A motion based on the first three reasons must be made within one year after the judgment or order was entered. A motion based on the other three reasons must be made within a reasonable time.

What about an appeal?

All final judgments can be appealed to the United States Court of Appeals for the Ninth Circuit. Most orders issued before judgment ("**interlocutory orders**") cannot be appealed until a final judgment is entered. Some of the few interlocutory orders that can be appealed are listed under 28 U.S.C. § 1292.

Just as the Federal Rules of Civil Procedure set forth the procedures for litigating a lawsuit in this Court, the Federal Rules of Appellate Procedure set forth the procedures for litigating an appeal in the

Ninth Circuit. See Rules 3 through 6 of the Federal Rules of Appellate Procedure and Ninth Circuit Rules 3-1 through 5-2.

- Federal Rules of Appellate Procedure can be found at any law library or online at http://www.uscourts.gov/RulesAndPolicies/FederalRulemaking/RulesAndForms.aspx or http://www.law.cornell.edu/rules/frap
- The Ninth Circuit's Local Rules can be found at the Ninth Circuit Clerk's Office or online at http://www.ce9.uscourts.gov

Timing of appeals. Appeals must be filed within 30 days after entry of judgment or the appealable order. Exceptions to this rule are few. If you plan to appeal, it is very important to calendar this deadline and meet it.

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

Glossary

Action	Another term for **lawsuit** or **case**.
Admissible evidence	Evidence that can, under the Federal Rules of Evidence, properly be introduced at trial for the judge or jury to consider in reaching a decision; the Federal Rules of Evidence govern the admissibility of evidence in federal court.
Affirmative defenses	New factual allegations included in the answer that, under legal rules, defeat all or a portion of the plaintiff's claim.
ADR (alternative dispute resolution)	A Court-sponsored program offering methods by which a complaint can be resolved outside of traditional court proceedings. The Northern District's ADR Multi-Option Program (ADRMOP) uses four ADR processes: (1) arbitration; (2) early neutral evaluation; (3) mediation; and (4) settlement conference.
ADR Certification	A form you are required to sign, serve, and file with the Court affirming that you have read the Court's ADR handbook, discussed ADR options with the other parties, and considered whether your case might benefit from any form of alternative dispute resolution.
Affidavit	A statement of fact written by a witness, which the witness swears before a notary public.
Allegation	An assertion of fact in a complaint or other pleading.
Amend a document	To alter or change a document that has been filed with the Court by filing and serving a revised version of that document. Certain documents cannot be amended without prior approval of the Court.
Amended complaint	A revised version of the original complaint.
Amount in controversy	The dollar value of how much the plaintiff is asking for in the complaint.
Answer	The written response to a complaint. An "answer on the merits" challenges the complaint's factual accuracy.
Application to proceed in forma pauperis	A form filed by the plaintiff asking permission to file the complaint without paying the required fee due to inability to pay.
Arbitration	A form of alternative dispute resolution, overseen by a judge or arbitrator, in which the parties argue their positions in a trial-like setting that lacks some of the formalities of a full trial.
Arbitrator	The neutral third party who presides at arbitration, usually an attorney.
Bench	The large desk located at the front of the courtroom where the judge sits.
Bench trial	A trial (also known as a "court trial") in which the judge, rather than the jury, determines the law, the facts, and the verdict of the lawsuit.
Breach	Failure to perform a legal obligation.
Brief	A document filed with the Court arguing for or against a motion.
Burden of proof	Under legal rules, one party or the other bears responsibility for proving or disproving one or more elements of a claim. What must be proven or disproven is the burden of proof.

Caption	A formatted heading on the first page of every document filed with the Court, listing the parties, the name of the case, and other identifying information. The specific information that must be included in the caption is explained in Rule 10(a) of the Federal Rules of Civil Procedure and this Court's Civil Local Rule 3-4.
Caption page	The cover page of the document containing the caption. It is always the first page of any document a party to a lawsuit files with the Court.
Case	Another term for lawsuit or action.
Case file	A file in which the original of every document manually filed with the Court is kept. E-filed documents are generally not placed in the case file.
Case management conference	A court proceeding at which the judge, with the help of the parties, sets a schedule for various events in the case.
Case management order	The Court's written order scheduling certain events in the case.
Case management statement:	A statement filed by the parties providing information to be discussed at the case management conference.
Certificate of service	A document showing that a copy of a particular document–for example, notice of motion–has been mailed or otherwise provided to (in other words, "served on") all of the other parties in the lawsuit.
Challenge for cause	A request by a party that the Court excuse a juror whom they believe to be too biased to be fair and impartial, or unable perform their duties as jurors for other reasons.
Chambers	The private offices of an individual judge and the judge's "chambers staff" – usually an administrative assistant and law clerks.
Chambers copy	A copy of a document filed either manually or electronically with the Court for the judge's use.
Citation	A reference to a law, rule, or case.
Claim	A statement made in a complaint, in which the plaintiff(s) argue that the defendant(s) violated the law in a specific way; sometimes called a **count**.
Closing arguments	An oral statement by each party summarizing the evidence and arguing how the jury (or, in a **bench trial**, the judge) should decide the case.
Complaint	A legal document in which the plaintiff tells the Court and the defendant how and why the defendant violated the law in a way that has caused harm to the plaintiff.
Compulsory counterclaim	A **claim** by the defendant against the plaintiff that is based on the same events or transactions as the plaintiff's claim against the defendant.
Contempt of court	Acts found by the Court to be committed in willful violation of the Court's authority or dignity, or to interfere with or obstruct its administration of justice.
Continuance	A court-granted extension of time.
Counsel	Attorney(s); lawyer(s).

Count	See **claim**.
Counterclaim	A defendant's complaint against the plaintiff, filed in the plaintiff's case.
Court of appeals	A court which hears appeals from the district courts located within its circuit, as well as appeals from decisions of federal administrative agencies. This Court's decisions are appealed to the Ninth Circuit Court of Appeals.
Court reporter or stenographer	A person specially trained and licensed to record testimony in the courtroom or, in the case of depositions, another location.
Courtroom deputy	A Court employee who assists the judge in the courtroom and usually sits at a desk in front of the judge.
Cross-examination	The opposing party's questioning of a witness following direct examination. This is limited to the topics covered during the direct examination.
Damages	The money that can be recovered in the courts by the plaintiff for the plaintiff's loss or injury due to the defendant's violation of the law.
Deliberate	The process in which the jury discusses the case in private and makes a decision about the verdict. See also **jury deliberations**.
De novo review	A Court's complete review and re-determination the matter before it from the beginning; for example, a referring judge's de novo review of a magistrate judge's **report and recommendation** includes considering the same evidence reviewed by the magistrate judge and reaching an independent conclusion.
Declarant	A person making a **declaration**.
Declaration	A written statement signed under penalty of perjury by a person who has personal knowledge that what he or she states is true; declarations may contain only facts, and may not contain law or argument.
Default	A defendant's failure to file an answer or other response within the required amount of time, after being properly served with the complaint.
Default judgment	A judgment entered against a defendant who fails to respond to the complaint.
Defendant	The person, company or government agency against whom the plaintiff makes claims in the complaint.
Defendants' table	The table where the defendant sits, usually the one further from the jury box.
Defenses	The reasons given by the defendant why the plaintiff's claims should be dismissed.
Deponent	The person who answers the questions in a **deposition**; a deponent can be any person who may have information about the lawsuit, including one of the other parties to the lawsuit.
Deposing	The process of taking a **deposition**.

Deposition	A question-and-answer session, before trial and outside the courtroom, in which one party to the lawsuit asks another person, who is under oath, questions about the events and issues in the lawsuit.
Direct examination	The process during a trial in which a party calls witnesses to the witness stand and asks them questions.
Disclosures	Information that each party must automatically give the other parties in a lawsuit even.
Discovery	The formal process by which a party to a lawsuit asks other people to provide information about the events and issues in the case.
Discovery plan	The joint proposed discovery plan required by Rule 26(a) of the Federal Rules of Civil Procedure, which must include the parties' views about, and proposals for, how discovery should proceed in the lawsuit.
District judge	A federal judge who is nominated by the President of the United States and confirmed by the United States Senate to a lifetime appointment.
Diversity jurisdiction	A basis for federal court jurisdiction in lawsuits in which none of the plaintiffs live in the same state as any of the defendants and the amount in controversy exceeds $75,000.
Division	The Northern District of California has several divisions among which the Court's caseload is divided: San Francisco, Oakland, San Jose and Eureka.
Docket	The computer file for each case, maintained by the Court, listing the title of every document filed, the date of filing and docketing of each document and other information.
Docket clerk	Also known as "case systems administrator," a court staff member who enters documents and case information into the court docket.
Drop box	A secure depository where documents can be left for filing by the Clerk of Court when the Clerk's Office is closed to the public.
Electronic filing	Also known as "e-filing," the process of submitting documents to the Court for filing and serving them on other parties electronically through the internet. The United States Courts use an e-filing system called "Electronic Case Filing" or "ECF."
Element (of a claim or defense)	An essential component of a legal claim or defense.
Entry of default	A formal action taken by the Clerk of Court in response to a plaintiff's request when a defendant has not responded to a properly-served complaint; the Clerk must enter default against the defendant before the plaintiff may file a motion for default judgment.
Ex parte motion	A motion that is filed without notice to the opposing party.
Ex parte	Without notice to the other parties and without their being present (as in a written or telephone communication with the Court).
Exhibits	Documents or other materials that are presented as evidence at trial or as attachments to motions or declarations.

Expert disclosures	The disclosures required by Rule 26(a)(2) to the other parties of the identity of, and additional information about, any expert witnesses who will testify at trial.
Expert report	A written report signed by an expert witness that must accompany the expert disclosures for any expert witness; Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure lists what must be included in an expert report.
Expert witness	A person who has scientific, technical, or other specialized knowledge that can help the Court or the jury understand the evidence.
Federal question jurisdiction	Federal courts are authorized to hear lawsuits in which at least one of the plaintiffs' claims arises under the Constitution, laws, or treaties of the United States.
Federal Rules of Civil Procedure	The procedural rules that apply to every federal district court in the United States.
Federal Rules of Evidence	The rules for submitting, considering and admitting evidence in the federal courts.
Filing	The process by which documents are submitted to the Court and entered into the case docket.
Filing fee	The amount of money the Court charges to process and file a document.
Findings of fact and conclusions of law	A statement issued by a judge explaining what facts he or she has found to be true and the legal consequences to be included in the judgment; it concludes a bench trial once all evidence has been submitted and all arguments have been presented.
Fraud	A false representation of a past or present fact by a person, on which another person or persons rely, resulting in their injury.
Good faith	Having honesty of intention; for example, negotiating in good faith would be to come to the table with an open mind and a sincere desire to reach an agreement.
Grounds	The reason or reasons for requesting action by the Court.
Hearing	A formal proceeding before the judge for the purpose of resolving some issue; hearings are typically open to the public and held in a courtroom.
Hearsay	A statement made by someone other than the witness, offered to prove the truth of the matter asserted in the statement.
Impeachment	To call into question a witness' truthfulness.
Initial disclosures	The disclosures that the parties are required to serve within 14 days of their initial case management conference.
Interlocutory order	Court orders issued before judgment.
Interrogatories	Written questions served on another party in the lawsuit, which must be answered (or objected to) in writing and under oath.
Intradistrict assignment	The assignment by the Clerk's Office of a lawsuit to one of the Court's divisions (San Francisco, Oakland, San Jose or Eureka) under Civil Local Rule 3-4(b).

Judgment	A final document issued by the Court stating which party wins on each claim. Unless there are post-judgment motions, the entry of judgment closes the case.
Jury box	The two rows of chairs, usually located against a side wall in a courtroom, where the jury sits during a trial.
Jury deliberations	The process in which the jury, after having heard all the evidence, closing arguments from the parties, and instructions from the judge, meets in private to decide the case.
Jury instructions	The judge's advising the jury about their duties, the law that applies to the lawsuit, and how to approach the evidence.
Jury selection	The process by which the individual members of the jury are chosen.
Jury trial	A trial in which a jury weighs the evidence and determines what happened; the Court instructs the jury on the law, and the jury applies the law to the facts and determines who wins the lawsuit.
Litigants	The parties to a lawsuit.
Local Rules	Specific federal court rules that set forth additional requirements to the Federal Rules of Civil Procedure; for example, the Local Rules of the United States District Court for the Northern District of California explain some of the additional procedures that apply only to this Court.
Magistrate judge	A judicial officer that has some but not all of the powers of a federal judge; a magistrate judge may be designated by a district judge to hear motions and other pretrial matters, and preside over civil and misdemeanor criminal trials, with the consent of the parties.
Material fact	A fact that must be proven to establish and element of a claim or defense in the lawsuit.
Meet and confer	The parties' meeting and working together to resolve specific issues under Court rules or a Court order.
Memorandum of points and authorities	The part of a motion that contains the arguments and the supporting law to persuade the Court to grant motion; also referred to as a brief.
Mental or physical examination	If the physical or mental condition of a party (or a person under the custody or legal control of a party) is at issue in a lawsuit, the Court may order that person to undergo a physical or mental examination by medical professional, such as a physician or psychiatrist. Unlike other **discovery** procedures, physical or mental examinations may be obtained only by filing a motion with the Court, or by agreement of the parties.
Motion	A formal application to the Court asking for a specific ruling or order (such as dismissal of the plaintiff's lawsuit).
Motion for a more definite statement	Defendant argues that the complaint is so vague, ambiguous, or confusing that he or she cannot respond to it, and asks for additional details.
Motion for a new trial	Argues that another trial should be held because of a deficiency in the current trial.

Motion for default judgment	A motion asking the Court to grant judgment in favor of the plaintiff because the defendant failed to file an answer to the Complaint. If the court grants the motion, the plaintiff has won the case.
Motion for judgment as a matter of law	A motion arguing that the opposing party's evidence is so legally deficient that no jury could reasonably decide the case in favor of that party. The defendant may bring such a motion after the plaintiff has presented all evidence, and after all the evidence has been presented, either party may bring such a motion; if the Court grants the motion, the case is over.
Motion for permission to file a motion for reconsideration	A party must ask the Court for permission to file such a motion, which asks the Court basically to change its mind.
Motion for protective order	A motion which asks the Court to relieve a party of the obligation to respond to a discovery requestor grant more time to respond.
Motion for reconsideration	Asks the Court to consider changing a previous decision; cannot be filed without the permission of the Court.
Motion for relief from judgment or order	Asks the Court to rule that a judgment or order should not be given effect or should be changed for one of the reasons permitted by Rule 60(b) of the Federal Rules of Civil Procedure.
Motion for sanctions	Asks the Court to impose a penalty on a party; for example, in the context of discovery, a motion for sanctions asks the Court to punish a person for failing to make required disclosures, refusing to respond to a discovery request, or refusing to obey a court order to respond to a discovery request.
Motion for summary judgment	Asks the Court to decide a lawsuit without a trial because the evidence shows that there is no real dispute about the key facts.
Motion in limine	A motion, before trial, asking the judge to exclude specific evidence from the trial.
Motion to amend or alter the judgment	After entry of judgment, asks the Court to correct what a party argues is a mistake in the judgment.
Motion to compel	Asks the Court to order a person to make disclosures, or to respond to a discovery request, or to provide more detailed disclosures or a more detailed response to a discovery request.
Motion to dismiss	Asks the Court to deny certain claims in the Complaint, due to procedural defects.
Motion to extend time	A motion asking the Court to allow more time to file a brief or comply with a court order; also referred to as a continuance.
Motion to shorten time	Asks the Court to hear a motion on a shorter-than-usual schedule.
Motion to strike	A motion asking the Court to order certain parts of the complaint or other pleading deleted because they are redundant, immaterial, impertinent, or scandalous.
Moving party	The party who files a motion.

Non-binding arbitration	An **alternative dispute resolution** process in which a neutral third party (an arbitrator) gives a decision on the complaint after a hearing at which both parties have an opportunity to be heard; the parties are not required to abide by the decision.
Non-moving party	Usually used in the context of a motion for summary judgment; any party who is not bringing the motion.
Non-party deponent	A **deponent** who is not a party to the lawsuit.
Non-party witness	A person who is not a party to the lawsuit but who has relevant information.
Notice of deposition	Gives all of the information required under Rules 30(b) and 26(g)(2) of the Federal Rules of Civil Procedure, and must be served on opposing parties to a lawsuit.
Notary Public	A public officer who is authorized by the state or federal government to administer oaths and to attest to the authenticity of signatures.
Notice of motion	A statement in the first paragraph of a motion telling the other parties what type of motion you have filed and when you have asked the Court to hold a hearing on the motion.
Opening statements	At the beginning of the trial, after the jury has been selected, if it is a jury trial, the parties have an opportunity to make individual opening statements, in which they can describe the issues in the case and state what they expect to prove during the trial.
Opposing party	In the context of motions, the party against whom a motion is filed; more generally, the party on the other side.
Opposition brief	A statement filed with the court saying why the Court should deny the motion.
Overrule an objection	During examination of witnesses at trial, if a party objects to evidence being admitted or a question being asked, the judge may overrule the objection. This means that the evidence will be admitted or the question may be asked, unless the judge later sustains a different objection.
PACER system	"Public Access to Electronic Court Records" is an internet database where docket information is stored.
Peremptory challenge	During jury selection, after all of the jurors challenged for cause have been excused, the parties will have an opportunity to request that additional jurors be excused without having to give any reason for the request.
Perjury	A false statement made under oath, punishable as a crime.
Permanent case file	The compilation of the originals of every document filed with the Court .
Permissive counterclaim	A claim by the defendant against the plaintiff that is not based on the same events or transactions as the plaintiff's claim against the defendant.

Physical examination	If the physical or mental condition of a party (or a person under the custody or legal control of a party) is at issue in a lawsuit, the Court may order that person to have a physical or mental examination by a medical professional such as a physician or psychiatrist; unlike other **discovery** procedures, physical or mental examinations can be obtained only by filing a motion with the court, or by agreement of the parties.
Plaintiff	The person who filed the complaint and claims to be injured by a violation of the law.
Plaintiffs' table	In the center of the courtroom, there are two long tables and chairs where the lawyers and parties sit during hearings and trial; the table nearest the jury box is usually the plaintiff's.
Prayer for relief	The last section of a complaint in which the plaintiff tells the Court what the plaintiff wants from the lawsuit: money damages, a court order telling the defendant to do or not do something, or other relief.
Pretrial conference	A hearing shortly before trial where the judge discusses the requirements for conducting trial and resolves any final issues that have arisen before trial.
Pretrial disclosures	The disclosures required by Rule 26(a) (3) of the Federal Rules of Civil Procedure of certain information about evidence that you may present at trial (except for evidence that will be used solely for impeachment).
Privileged information	Information that is protected by legal rules from disclosure during discovery and trial.
Pro bono	Legal representation by an attorney that is free to the person represented.
Procedural law	The rules for bringing and defending against a lawsuit.
Process server	A person authorized by law to serve the **complaint** and **summons** on the defendant.
Proof of service	A document attached to each document filed with the court (or filed separately at the same time as the document) in which the filer affirms that he or she has served the document on other parties.
Proposed jury instructions	Documents the parties are required to submit that the judge may read, in whole or part, or in modified form, to the jury to instruct the jury on the law relevant to the lawsuit.
Protective order	A court order limiting discovery, either as to how discovery may be conducted or what can be discovered.
Quash a subpoena	After a motion, the Court's action vacating a subpoena so that it has no legal effect.
Rebuttal	The final stage of presenting evidence in a trial, presented by the plaintiff.
Rebuttal testimony	At trial, after defendants have completed examining each of their witnesses, plaintiffs can call additional witnesses solely to counter—or "rebut"—testimony given by the defendants' witnesses.

Re-direct examination	At trial, after the opposing party has cross-examined a witness, the party who called the witness may ask the witness questions about topics covered during the cross-examination.
Referring judge	A federal district judge who refers an issue or motion within a lawsuit to another judge, usually a magistrate judge.
Remedies	In the context of a civil lawsuit, remedies are actions the Court may take to redress or compensate a violation of rights under the law.
Renewed motion for judgment as a matter of law	A motion arguing that the jury must have made a mistake in its verdict because the evidence was so one-sided that no reasonable jury could have reached that decision.
Reply	Refers to both the answer to a counterclaim and the response to the opposition to a motion.
Reply brief	A document responding to the opposition to a motion.
Report and recommendation	After a federal district judge refers an issue for factual and legal findings by a magistrate judge, the magistrate judge files a report and recommendation containing those findings.
Request for entry of default	The first step for the plaintiff to obtain a **default judgment** by the Court against a defendant; directed to the Clerk of Court, the request must show that the defendant has been served with the **complaint** and **summons**, but has not filed a written response to the complaint in the required time.
Request for inspection of property	A discovery request served on a party in order to enter property controlled by that party for the purpose of inspecting, measuring, surveying, photographing, testing or sampling the property or any object on the property relevant to your lawsuit.
Request for production of tangible things	A discovery request served on a party in order to inspect, copy, test, or sample anything relevant to your lawsuit which is in the possession, custody, or control of another party to the lawsuit.
Request for waiver of service	A written request that the defendant accept the summons and complaint without formal service.
Requests for admission	A discovery request served on a party asking that the party admit in writing and under oath the truth of any statement, or to admit the applicability of a law to a set of facts.
Requests for (document) production	A discovery request served by a party requesting documents relevant to the lawsuit from another party.
Ruling from the bench	A Court's announcing its decision on a motion in the courtroom following the hearing on that motion.
Sanction	A punishment the Court may impose on a party or an attorney for violating the Court's rules or orders.
Self-authenticating	Documents that do not need any proof of their genuineness beyond the documents themselves, in order for them to be admissible evidence in accord with Rule 902 of the Federal Rules of Evidence.

Serve, service	The act of providing a document to a party in accord with the requirements found in Rule 5 of the Federal Rules of Civil Procedure.
Service of process	The formal delivery of the original complaint in the lawsuit to the defendant in accord with the requirements for service found in Rule 5 of the Federal Rules of Civil Procedure.
Settlement judge	A federal judge who holds settlement proceedings in a particular case.
Side bar	A private conference beside the judge's bench between the judge, and the lawyers (or self-represented parties to discuss any issue out of the jury's hearing.
Standing order	An individual judge's order which requiring procedures in addition to those found in the Federal Rules of Civil Procedure and the Civil Local Rules that apply to all cases before that judge. You can find them on the judge's webpage via: http://www.cand.uscourts.gov/judges.
Statement of non opposition	A party's notice that it does not oppose another party's motion.
Statement of undisputed facts	A list of facts filed in a summary judgment motions with citations to the evidence showing that those facts are true. The statement may be jointly prepared and filed by the parties; separate statements require a prior court order.
Status conference	A hearing the judge may hold during the course of the lawsuit to assess the progress of the case, or address problems the parties are having.
Statute of limitations	A legal time limit by which the plaintiff must file a complaint; after the time limit, the complaint may be dismissed as **time-barred**.
Stipulation	A written agreement signed by all the parties to the lawsuit or their attorneys.
Strike	To order claims or parts of documents "stricken" or deleted so that they cannot be part of the lawsuit or proceeding.
Subject matter jurisdiction	A Court's authority to decide a certain type of lawsuit.
Subpoena	A document issued by the Court requiring a non-party to appear for a court proceeding or deposition at a specific time and place or to make certain documents available at a specific time and place.
Subpoena duces tecum	A form of subpoena used to require a non-party deponent to bring specified documents to a deposition.
Substantive law	Determines whether the facts of each individual lawsuit constitute a violation of the law for which the Court may order a remedy.
Summary judgment	After a motion, a decision by the Court to enter judgment in favor of one of the parties without a trial, because the evidence shows that there is no real dispute about the **material facts**.
Summons	A document from the Court that you must serve on the defendant along with your original complaint to start your lawsuit.
Sustain an objection	To affirm that an objection is correct, and evidence should be excluded.

Table of authorities	The list of references to law that should be included with every brief more than 10 pages long.
Taking a motion under consideration (or under submission)	The Court's taking time to consider the motion and write an order after hearing arguments on the motion instead of ruling on the motion in the courtroom.
Transcript	The written version of what was said during a court proceeding or deposition as typed by a **court reporter** or **court stenographer**.
Trial subpoena	A type of **subpoena** that requires a witness to appear to testify at trial on a certain date.
Undisputed fact	A fact about which all the parties agree.
Vacate	To set aside a Court order so that the order has no further effect.
Venue	The geographic location where the lawsuit is filed.
Verdict	The jury's decision about the issues in the trial.
Verdict form	In a jury trial, the form the jury fills out to record the verdict.
Voir dire	Part of the jury selection process in which potential jurors are asked questions designed to reveal biases that would interfere with fair and impartial jury service; usually, the judge asks questions selected from a list the parties have submitted before trial, but sometimes the judge allows the lawyers for the parties (or parties without lawyers) to ask additional questions.
Waiver of service	A party's agreement that he or she does not require a document be provided in accord with the service requirements of Rule 5 of the Federal Rules of Civil Procedure.
With prejudice	As a final decision on the merits of the claim. If a court dismisses claims in your complaint with prejudice, you may not file another complaint in which you assert those claims again.
Without prejudice	Without a final decision on the merits which would prevent the claim from being re-filed. Dismissal without prejudice is sometimes also referred to as dismissal "with leave to amend" because you are permitted to file an amended complaint or other document.
Witness	A person who has personal or expert knowledge of facts relevant to a lawsuit.
Witness box	The seat in which a witness sits when testifying in court, usually located to the side of the **bench**.