UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

_____
Plaintiff

v.

_____
Civil Action No.

_____
Defendant

COMPLAINT

* Attach additional pages as needed.

Date _____

Signature _____

Print Name _____

Address _____

City, State, Zip _____

Telephone _____

PRO SE HANDBOOK
FOR CIVIL SUITS

UNITED STATES DISTRICT COURT
Northern District of Texas

(Revised December 1, 2018)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Office of the Clerk

Karen Mitchell
Clerk of Court

TO PRO SE LITIGANTS:

It is my honor to serve the judges, attorneys, and members of the public who use our services. This manual is intended to provide helpful information to *pro se* litigants on civil cases.

You are reminded that litigation in federal court is a complex process. You must follow the Federal Rules of Civil Procedure and the Local Rules of this Court. We strive to provide all customers with accurate assistance on available forms and filing procedures, but the Clerk's Office cannot give legal advice regarding the prosecution or defense of any case.

Please see our website at www.txnd.uscourts.gov for additional information, including instructions on electronic case filing. (Non-prisoner *pro se* litigants may participate unless prohibited by the presiding judge.) You will also find answers to some of the most Frequently Asked Questions.

We welcome your feedback on this manual and our services.

Karen Mitchell
Clerk, United States District Court
Northern District of Texas

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1. Introduction

A. Overview

The Court has prepared this manual for you as someone who is interested in filing a lawsuit or must appear in a lawsuit *pro se*, or without a lawyer. ("*Pro se*" is Latin phrase meaning "for himself" or "for herself.") It will help you understand the basics of the legal process but will not teach you about the law. For that, you must do your own research. This manual is not a substitute for having your own lawyer. You are urged to hire a lawyer, if possible.

Chapter 2 will help you decide whether you should file your lawsuit here. If you do, Chapters 3 through 10 will explain how to file it, and how it will proceed once you do. At the end, there is a glossary of legal terms that may be unfamiliar to you.

Please visit our website at www.txnd.uscourts.gov for access to the Local Rules (LR) and Federal Rules of Civil Procedure (FRCP), court forms, and Electronic Case Filing information. (When you register for electronic filing, you may file documents from the convenience of your home, and you will receive email notification when the opposing side files a document or the Court enters an order, as soon as its entered on the docket.)

If, **after reading this Handbook and reviewing the materials available on our website**, you still have questions about your case, you may wish to contact the Clerk's Office. Please understand that **court employees may not give legal advice.** This means they cannot interpret rules or a judge's order, calculate a deadline, give advice on how to proceed, or speculate on the outcome of a matter.

B. Locations and Office Hours

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The Clerk's Office has seven divisional offices, which are open Monday through Friday, except legal holidays. Their locations and public office hours are shown below:

Abilene - Division 1
341 Pine Street, Room 2008
Abilene, Texas 79601-5928
Phone (325) 677-6311
8:30 a.m. - 12:00 p.m., 1:00 p.m. - 4:30 p.m.

Amarillo - Division 2
205 S.E. Fifth Street, Room 133
Amarillo, Texas 79101-1559
Phone (806) 468-3800
8:30 a.m. - 12:00 p.m., 1:00 p.m. - 4:30 p.m.

Dallas - Division 3
1100 Commerce Street, Room 1452
Dallas, Texas 75242-1310
Phone (214) 753-2200
8:30 a.m. - 4:30 p.m.

Fort Worth - Division 4
501 West 10th Street, Room 310
Fort Worth, Texas 76102
(817) 850-6600
8:30 a.m. - 4:30 p.m.

Lubbock - Division 5
1205 Texas Avenue, Rom 209
Lubbock, Texas 79401-4091
(806) 472-1900
8:30 a.m. - 12:00 p.m., 1:00 p.m. - 4:30 p.m.

San Angelo - Division 6
33 East Twohig Street, Room 202
San Angelo, Texas 76903-6451
(325) 655-4506
8:30 a.m. - 12:00 p.m., 1:00 p.m. - 4:30 p.m.

Wichita Falls - Division 7
1000 Lamar Street, Room 203
Wichita Falls, Texas 76301-3431
(940) 767-1902
8:30 a.m. - 12:00 p.m., 1:00 p.m. - 4:30 p.m.

If you mail a filing to the Court, address your envelope to the *Hon. Karen Mitchell, Clerk of Court*, at the correct divisional office.

C. Legal Holidays

The District Clerk's Office is closed on the following holidays:

- New Year's Day
- Martin Luther King, Jr.'s Birthday
- George Washington's Birthday (commonly referred to as President's Day)
- Memorial Day
- Independence Day
- Labor Day
- Columbus Day
- Veterans Day
- Thanksgiving Day
- Christmas Day

If the Clerk's Office is closed by the Court on any other day, or due to inclement weather, closure information will be posted on the Court's website at www.txnd.uscourts.gov.

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2. Questions to Ask Before Filing a Lawsuit

Filing a lawsuit does not necessarily mean that you will get the result you want. There are five important questions to ask before you file a lawsuit in federal court. There are other questions you may also need to consider, depending on your case, but the list below is a good place to start.

A. Does the law recognize my injury?

A lawsuit requires a legal injury that the law recognizes and for which it provides a remedy. Many things that are "wrong" are not illegal. Which statute or court decision do you think that the defendant has violated? After you have determined that you have a legal claim, you must decide whether this court is the proper court to hear your lawsuit.

B. Have I waited too long to file a lawsuit?

The "statute of limitations" sets a time limit within which a lawsuit can properly be filed. If the deadline has passed before you file suit, the Court may dismiss your case. Whether your claim is barred by a statute of limitations is a question that may require legal research on your part.

C. Who are the right defendants?

You may only sue defendants whom you believe are responsible for the wrong you have suffered. When you write your complaint, include facts (such as specific dates, names, and events) that support the relief you seek against **each** person you have sued. Listing a name in the caption of the complaint is not enough. If the main part (or "body") of the complaint does not say what a person listed in the caption did wrong, that person could be dismissed from your case.

D. What facts and evidence support my case?

The person who brings a claim in federal court, known as the "plaintiff," has the "burden of proof." That means the plaintiff must establish that some injury under law actually happened. You should not sue someone whom you will not be able to show violated your rights. You need facts to support your claims, and evidence, such as medical or police reports, a witness who saw what happened, or other proof is helpful.

E. Have I exhausted administrative remedies?

If you want to appeal the decision of a governmental agency, the law may require you to complete **all** of the agency's administrative procedures for appealing its rulings **before** you file a lawsuit.

For example, the denial of an application for social security benefits can be appealed to a federal court only after a final decision on the application is issued by the Commissioner of the Social Security Administration. Similarly, a claim of employment discrimination must be filed with the Equal Employment Opportunity Commission (EEOC) or its partner state agencies before a claim may proceed in federal court. Time limits often apply, so you are encouraged to visit an agency's website to learn more information or access available forms. For your convenience, the Social Security Administration's website is www.ssa.gov, and the EEOC's website is www.eeoc.gov. You may be able to find other agencies' websites easily through the federal government's information website www.info.gov or by calling (800) FED-INFO (800.333.4636).

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3. Jurisdiction - Should I file my complaint in the U.S. District Court, Northern District of Texas?

There are two different court systems in the United States: state courts and federal courts. Before you file a case in *federal* court, first make sure it has **jurisdiction** over your potential lawsuit, which means the power to hear and decide certain cases.

State courts may hear almost any type of case, including civil, domestic (divorce, child custody, and child support), probate and property disputes. However, federal courts, such as the U.S. District Court for the Northern District of Texas, may only hear *certain* types of cases. For a federal court to have jurisdiction over your case, one of the following must apply:

- Your claim is that a *federal* law or the U.S. Constitution has been violated ("Federal Question" jurisdiction);

- You intend to sue the United States government ("U.S. Government Defendant" jurisdiction); or

- You are a citizen of a different state than the defendant(s) **and** you claim to be owed at least $75,000 ("Diversity" jurisdiction).

If you believe that a federal court will have jurisdiction over your case, you must file your case in the right *district*. Each state has one or more federal district courts. Texas has four - the Northern District, the Eastern District, the Western District, and the Southern District.

Each district has one or more divisional offices that serve specific counties within the district. The seven divisions in the Northern District of Texas serve the 100 counties below:

- **Abilene Division -** Callahan, Eastland, Fisher, Haskell, Howard, Jones, Mitchell, Nolan, Shackelford, Stephens, Stonewall, Taylor, and Throckmorton;

- **Amarillo Division -** Armstrong, Brisco, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Roberts, Randall, Roberts, Sherman, Swisher, and Wheeler;

- **Dallas Division -** Dallas, Ellis, Hunt, Johnson, Kaufman, Navarro, and Rockwall;

- **Fort Worth Division** - Commanche, Erath, Hood, Jack, Palo Pinto, Parker, Tarrant, and Wise;

- **Lubbock Division -** Bailey, Borden, Cochran, Crosby, Dawson, Dickens, Floyd, Gaines, Garza, Hale, Hockley, Kent, Lamb, Lubbock, Lynn, Motley, Scurry, Terry, and Yoakum;

- **San Angelo Division -** Brown, Coke, Coleman, Concho, Crockett, Glasscock, Irion, Menard, Mills, Reagan, Runnels, Schleicher, Sterling, Sutton, and Tom Green; and

- **Wichita Falls Division -** Archer, Baylor, Clay, Cottle, Crockett, Foard, Hardeman, King, Knox, Montague, Wichita, Wilbarger, and Young.

Generally, your lawsuit should be filed in the division where the defendant resides or where the facts giving rise to your lawsuit occurred.

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4. Basics for Filing a Case in the Northern District of Texas

A. What are the Federal and Local Rules of Civil Procedure?

Every plaintiff and defendant must follow the rules of the court in which the case is filed. In the Northern District of Texas there are several sets of rules you must follow.

Some rules apply in every federal court in the country. They include the Federal Rules of Civil Procedure (FRCP), which control everything from the filing of the complaint to the jury's verdict. Other national rules include the Federal Rules of Evidence, which control what evidence may be used to decide the case; and Federal Rules of Appellate Procedure (FRAP), which control how you can appeal the judge's decisions if you disagree with them. Copies of these rules can be found on the United States' Courts website at http://www.uscourts.gov/rules-policies. Due to budget constraints, we are unable to provide copies of these rules.

In addition to the rules that apply in all *federal* courts, this Court also has Local Rules and Judge Specific Requirements that you must follow. The numbering system of the Local Rules corresponds with the numbering system of the Federal Rules for easy reference. It is important to remember that, as a pro se litigant, **you are responsible for knowing and following the court's Local Rules and procedures.** These rules are available on the court's website at http://www.txnd.uscourts.gov/civil-rules. We can provide you a copy upon your request. The judges' specific requirements are found at the following link: http://www.txnd.uscourts.gov/judge-specific-requirements.

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

B. What Should I Put in My Complaint?

A civil case in federal court starts when you file your Complaint. FRCP 8(a) and 10 require you to:

1. List the names, address, and telephone number of each plaintiff, and the name and address of each defendant;

2. Say why you believe this court has the power to decide your case (*i.e.*, that it has jurisdiction over your lawsuit);

3. Explain why you believe that each defendant violated the law and is responsible for your injuries;

4. Number each paragraph in your complaint and limit, as much as possible, each paragraph to a single set of circumstances;

5. State what legal injuries you claim to have suffered and what persons are responsible for each such legal injury;

6. Clearly state what you are asking the Court to do if you prevail; and

7. Sign it at the bottom. (Each plaintiff must sign. See "signature block" instructions in Section C below.)

You are not required to use a particular form of complaint, but the Clerk's Office has a Complaint form on the court's website that you may use.

If you wish to demand a jury trial, you may file it as a separate document or request it in the Complaint. (Checking the "Jury Demand" box on the Civil Cover Sheet is not sufficient to request a jury trial.) If you request it in the Complaint, the title of the Complaint must also state ". . . And Jury Demand." There is no fee to file a jury demand.

C. Civil Case Filing Requirements

You must sign all documents that you file with the Clerk. *See* FRCP 11(a). Each document should include a "block" of information underneath your signature that includes your typed or printed name, address, telephone number, and fax number, if available. If you register for Electronic Case Filing, which you may do as soon as you file your complaint, and electronically file future documents over the Internet, you must add your email address to the bottom of this "signature block." To sign a document that you will electronically file, you may print, sign, and scan your document before filing, use an electronic graphical signature, or represent your signature as "s/ Typed Name," above the "signature block" of information.

In addition to preparing your Complaint, the Local Rules require you to submit a:

- Civil Cover Sheet, which helps the Clerk enter statistical data correctly;

- a separately signed certificate of interested persons, which is a list of all legal entities that are financially interested in the outcome of the case (The judge needs this information to determine if he or she may preside over the case or must ask the Clerk to assign another judge to avoid a conflict of interest.);

- a Summons in a Civil Case form for each named defendant (If the filing fee was

not paid, the Clerk cannot issue a summons until the judge grants you the right to proceed *in forma pauperis*, or "without payment of fee," and directs the clerk to issue the summons.

These forms are available on the court's website.

When you deliver or mail your complaint to the Clerk (filing by fax is never permitted absent judge approval), a deputy clerk will assign it a case number and a judge. If the division has more than one district judge, the Clerk will use a computerized system to randomly select the judge. If the district judge automatically seeks the help of a magistrate judge, the Clerk must "refer" the case. If there is more than one magistrate judge in the division, the Clerk will use the same the system to randomly select the magistrate judge. In those divisions, the Clerk has been ordered to follow a random assignment method and cannot "give" anyone a specific judge.

Please see the Court's website at www.txnd.uscourts.gov under Filing/Filing Procedures for more information on Civil Case procedures.

D. How Much Does It Cost?

The fee to file almost any non-prisoner civil action in federal court is $400.00. If you believe you cannot afford to pay the filing fee, you may file an Application to Proceed *In Forma Pauperis* and *Declaration in Support* (see Section 12). If the judge grants your application, you will be allowed to proceed without prepayment of the fee. Copies of these forms are available on the court's website.

E. Service of Process

You must carefully follow FRCP 4 to effectively serve a defendant. The rule specifically states, "Any person who is at least 18 years old **and not a party** may serve a summons and complaint [emphasis added]." This means that you, as the plaintiff, may not serve the defendant.

Generally, a copy of the Complaint is served under a Summons issued by the Clerk. To issue the Summons, the Clerk must sign, date, and emboss or append the Court's seal. Rule 4(c)(2) provides for personal service by anyone 18 years of age or older, who is NOT a party to the suit.

Common types of service are described below.

- **Service by the United States Marshal -** If you are granted *in forma pauperis* status, the judge may order the U.S. Marshal to complete service for you. You will still be required to prepare the Summons form and the USM Form 285, and provide necessary copies of your Complaint for service.

- **Service by mail** - You may, under FRCP 4(e)(1), follow Texas state law to serve

process. Rule 106 of the Texas Rules of Civil Procedure law permits a person who is at least 18 years old and not a party to a case to mail a Summons and copy of the Complaint to each defendant by registered or certified mail, return receipt requested.

- **Service through the Secretary of State** - For service on companies formed or registered in Texas through the Secretary of State, please refer to the Texas Long Arm Statute. *See* section 17.041 of the Texas Civil Practice and Remedies Code.

- **Service on the United States** - FRCP 4(I) governs service on the United States of America, the Attorney General, and the agencies, officers, employees, and corporations of the United States. The United States Attorney's Office may be served either in person or via registered or certified mail by a person who is at least 18 years old and not a party to the case. The mailing address for service is:

  Civil Process Clerk
  U.S. Attorney for the Northern District of Texas
  Division Name
  Address
  City, State & Zip Code

- **Waiver of Service** - FRCP 4(d) says that a defendant has a duty to avoid unnecessary expenses of serving the summons. You must send the defendant a Notice of Lawsuit and Request for Waiver of Service of Summons form, two copies of a Waiver of Service of Summons form, a copy of the complaint, and a prepaid means for returning the form. The defendant must be given a reasonable time of at least 30 days after the request was sent – or at least 60 days if sent to the defendant outside any judicial district of the United States, to return the executed Waiver of Service of Summons form to you. Waiver of service is accomplished when the defendant consents to the waiver and completes and returns a waiver form. The defendant may decline to waive service using the same form.

F. What is the Electronic Case Filing System (ECF)?

Cases filed in the Northern District of Texas are maintained electronically through the court's Electronic Case Filing (ECF) system. The electronic version of the docket and associated documents comprise the official record of the court. Remote access to the record is granted through the court's ECF system or the federal judiciary's Public Access to Court Electronic Records (PACER) system.

Under LR 5.1(e) and the court's ECF Administrative Procedures, you must file a Complaint on paper but must file any other pleading, motion, or other paper by electronic means, unless you have been excused from this requirement for cause by the presiding judge. These procedures include instructions on registration and electronic filing. Additionally, you should refer to FRCP 5.2 for the requirements to redact private information.

When a document is filed with the ECF system, the ECF system "serves" the document by emailing a Notice of Electronic Filing (NEF) with a hyperlink to the document to the case participants who are registered ECF users. Participants may open the document one time free of charge. This service is reflected in the NEF and may eliminate the requirement to include a certificate of service for the document. *See* FRCP 5.

Docket sheets and images of this and other federal courts' documents are also available for a small fee through the Judiciary's Public Access to Court Electronic Records (PACER) system. PACER registration is free, and most documents cost only $.10 per page to download, with a maximum charge of $3.00 per document. (Court transcripts are higher.) See the PACER website at www.pacer.gov to register or call the PACER Service Center at (800) 676-6856.

G. Consent to Proceed Before a Magistrate Judge

A magistrate judge may, upon the consent of all parties in a civil action, conduct any or all proceedings, including a jury or non-jury civil trial, and order entry of a final judgment pursuant to 28 U.S.C. § 636. If all parties involved in a case consent, the presiding district judge may enter an order of transfer, and reassign the case to a magistrate judge.

Your decision to consent, or not to consent, to the reassignment of the case to a magistrate judge is entirely voluntary and without any adverse consequences if you choose not to. Communicate your decision to the Clerk's Office using the docket event entitled Consent to Proceed Before a United States Magistrate Judge found in the ECF system.

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5. Motions - How Do I Ask the Judge to Do Things?

A. Compliance with Local Rule 7.1

A motion is an application or request made to the judge. Be aware of the Local Rules regarding motions practice (LR 7.1 and LR 56.1 - 56.7 for summary judgment motions). All motions must comply with the Local Rules or the court may "strike" or disregard them. Motions are used to seek various types of relief while a lawsuit is pending, such as a motion to amend pleadings or a motion to compel discovery. A note of caution: motions should only be filed when necessary; multiple or frivolous motions can result in penalties by the court.

Responses to motions must be filed with the Clerk's Office and served on the opposing party within 21 days after the motion was filed, and a reply must be filed and served within 14 days after the response was filed. Failure to file a response or reply within the time prescribed may subject the motion to summary ruling. Motions for summary judgment have additional limitations. *See* LR 56.2.

The court may modify any of the above schedules.

B. Other Papers Required to Accompany a Motion

In addition to the general requirements, other papers described below, may be required to accompany your motion:

1. Brief or Memorandum of Law

A brief in support must be filed in support of certain motions. *See* LR 7.1, LCrR 47.1; http://www.txnd.uscourts.gov/civil-rules. If the brief is included in the motion, the document should be titled "Motion and Brief in Support." Except by permission of the presiding judge, or as provided in LR 56.5(b), your brief must not exceed 25 pages (excluding the table of contents and table of authorities). (The opposing side may file a response with the same page limit. If you file a "reply," it must not exceed ten pages, and you must obtain the judge's permission to file any other document than those addressed in LR 7.1.)

Permission to file a brief in excess of this page limitation will be granted only for extraordinary and compelling reasons. *See* LR 7.2(c) and LCrR 47(c). A brief filed in a bankruptcy appeal must comply with the Federal Rules of Bankruptcy Procedure unless otherwise directed by the presiding judge.

A brief exceeding ten pages must contain a table of contents and a table of authorities, which must include an alphabetically arranged table of cases, statutes, and other authorities cited that must note the page location of all citations. *See* LR 7.2 (d) and LCrR 47.2 (d).

2. Appendix

Documentary or non-documentary evidence used to support or oppose a motion must be included in an appendix. *See* LR 7.1(i) for format requirements. The appendix must be assembled as a separate, self-contained document. Each page of the appendix must measure 8 1/2 x 11 inches, and each page must be numbered legibly in the lower, right-hand corner sequentially through the last page of the entire appendix. A non-documentary or oversized exhibit must be placed in a 9 x 12 inch envelope that is numbered as if it were a single page.

If a party's motion or response is accompanied by an appendix, the party's brief must include citations to each page of the appendix that supports each assertion regarding the documentary or non-documentary evidence used to support or oppose the motion. *See* LR 7.2(e).

3. Certificate of Conference

When you file some motions, you must contact the attorney for the defendant to discuss your motion and state defendant's position in a Certificate of Conference, usually found at the end of a motion. *See* LR 7.1(a,b), LCrR 47.1(a,b).

4. Proposed Order Granting the Motion

Except for an opposed motion that is submitted on paper, each motion must be accompanied by a proposed order that is set forth separately. An agreed proposed order must be

signed by the attorneys or parties. A proposed order for a motion filed with the court's ECF system must be submitted using the instructions found in the *Proposed Order* docket event.

C. No Oral Argument or Instant Ruling on Motions

Local Civil Rule 7.1(g) provides that, unless otherwise directed by the presiding judge, oral argument on a motion will not be held. It is not uncommon for district and magistrate judges to be in trial on other matters for the duration of the day. A file and a motion for emergency relief may not reach the judge until a break for lunch or the end of the day.

If your motion is not emergency in nature, it may be several days, or several weeks, before a ruling is forthcoming, depending on the deadlines for the opposing side to respond, the nature of the case, the judge's trial schedule, and the judge's docket load. Whether a motion be emergency or not in nature, the judge will typically review the record and pleadings on file and enter an order that will be provided to all parties of record.

There is no need to wait in the Clerk's Office for a ruling on an emergency motion. It is best to notify a supervisor that you have filed an emergency motion and place all of your contact information (including your mobile phone number, if available) on your pleadings. The supervisor will ensure that a deputy clerk contacts you immediately should the judge need to see you or a ruling is issued in your case.

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6. Serving Documents

Do I have to give the defendant(s) copies of everything I file?

Yes. Even if you are proceeding *in forma pauperis* you must serve a copy of any other document you file upon the defendant's attorney (or upon the defendant if the defendant is *pro se*) as required by FRCP 5. If you and the opposing side are both ECF users, the ECF system will complete the service for you, and a Certificate of Service is not required. If either of you is not an ECF user, or if you learn that service sent through ECF did not reach the person, you must serve the document by other means and include a Certificate of Service or file one within a reasonable time after service. Sample language for a Certificate of Service is:

> On _(Date)_ I filed _("the foregoing document" or Document Name)_ with the clerk of court for the U.S. District Court, Northern District of Texas. I hereby certify that I have served the forgoing document on all counsel and/or *pro se* parties of record in a manner authorized by Federal Rule of Civil Procedure 5(b)(2).
>
> _Signature_____

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7. Discovery - How Do I Get Evidence to Help Me Prove My Case?

"Discovery" is the process by which parties exchange or acquire information about the issues in their case before trial. There are five main types of discovery. Each main type is discussed below:

A. Depositions: "Depositions" are question-and-answer sessions held before trial. In them, one party to a lawsuit asks another person questions about the issues raised in the lawsuit. FRCP 30 and 31 explain the procedures for taking a deposition. The person taking the deposition must pay the costs associated with it. If the person who will answer the questions is not a party to the lawsuit, FRCP 45 explains how they can be made to appear for questioning.

B. Interrogatories: "Interrogatories" are written questions served on another party to the lawsuit. These questions, unless subject to objections, must be answered under oath. FRCP 33 states the rules for serving interrogatories.

C. Requests for Production of Documents: In a "request for production of documents," one person asks the other person to turn over documents about the issues in the lawsuit. The person asking for the documents must describe them in enough detail that the other person knows which documents are being requested. FRCP 34 explains how to request documents from the other side in the lawsuit. If the person that you want documents from is not a party to the lawsuit, FRCP 34 and 45 explain how to request their documents.

D. Requests for Admission: In a "request for admission," one side writes out statements that it wants the other side to admit are true. FRCP 36 establishes the requirements for requests for admission.

E. Physical or Mental Examination: When the mental or physical condition of a party is at issue in a lawsuit, FRCP 35 allows the Court to order that person to submit to a physical or mental examination. The examination must be done by someone qualified, like a physician or psychiatrist. The party who requested the examination must pay for it.

Pursuant to LR 26.2, requests for discovery and discovery responses **should generally not be filed with the court**, however, discovery related documents may be filed if necessary for the court to resolve a discovery dispute or a pretrial motion.

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8. If I Can't Find a Lawyer, But I Want One, What Should I Do?

Even with this handbook, representing yourself in Court may be very difficult. That is why the Court encourages everyone to find a lawyer if possible.

There may be alternatives to representing yourself if you are without sufficient funds to hire a lawyer to assist you. There are attorneys and organizations, such as legal aid societies, that may be willing to represent you "pro bono," that is, free of charge or based on some other arrangement. Information about Legal Aid of NorthWest Texas may be found on their website at https://internet.lanwt.org/home. Information about the Dallas Volunteer Attorney Program may be found on their website at http://dallasvolunteerattorneyprogram.org/.

In a **civil** case, a party is **not entitled** by law to an attorney. A pro se litigant who has been found to be indigent (typically by the granting of an *in forma pauperis* application) and is unable to otherwise obtain counsel may ask by filing a written motion that the court request a lawyer to represent him or her. You should be aware, however, that there are many more litigants making that request than there are attorneys available to volunteer their services. Whether a lawyer is ultimately requested to represent a litigant depends on a number of factors.

Sometimes the judges may appoint an attorney for any number of different reasons or purposes. The attorney may be recruited to represent you at trial, to prepare a motion or brief for you, or to represent you at a settlement conference. What role such an attorney performs in any particular case is entirely within the discretion of the court.

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9. Sanctions - What Are They?

A sanction is a penalty or a punishment. Pro se litigants are subject to sanctions for some of the same reasons as licensed attorneys. When a party to a lawsuit presents a document to the court, FRCP 11 requires that party to verify the accuracy and reasonableness of that document. If a submission to the court is false, improper, or frivolous, the party filing such a document may be liable for monetary or other sanctions. Sanctions imposed could consist of a monetary penalty or an order to pay the opponent's attorney fees, which could be a substantial amount. The judge may also restrict a person from filing any future lawsuit until and unless certain conditions have been met.

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10. How Do I Appeal My Case?

A. General

A party dissatisfied with the outcome of a trial in a U.S. District Court may file a motion for new trial or a motion to alter or amend a judgment. The grounds a party must have to prevail on and the time limits for filing such motions are found in FRCP 59.

An appeal from a U.S. District Court shall be taken to the appropriate appellate court. Most appeals from a decision of this court proceed to the U.S. Court of Appeals for the Fifth

Circuit in New Orleans. An appeal taken prior to entry of final judgment may be considered prematurely filed.

To initiate an appeal, file a Notice of Appeal that identifies the court to which you are appealing, and the order that your are appealing, with the Clerk of the District Court (this office). FRAP 3(a) governs the time within which a notice of appeal must be filed. The Clerk's Office has the responsibility to notify the appeals court and all parties that a notice of appeal has been filed. Please review the Local Rules and Internal Operating Procedures of the Fifth Circuit Court of Appeals.

We will accept a Notice of Appeal without prepayment of any required fee, but a fee may later be ordered, or your appeal dismissed for failure to pay the required appellate filing fee. If you pay the fee to this office by check, make it payable to "Clerk, U.S. District Court.")

If you file an appeal to the Fifth Circuit Court of Appeals, you will be required to complete the Transcript Order Form for Appeal, even if a trial or hearing was not held.

This Court's staff does not have access to any appellate court's computer system. Questions about the status of your appeal before the Fifth Circuit Court of Appeals should be directed to their staff in New Orleans, Louisiana at (504) 310-7700. You may visit their website at www.ca5.uscourts.gov.

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11. Enforcement of a Judgment

A. Bill of Costs

A bill of costs is "a certified, itemized statement of the amount of costs owed by one litigant to another, prepared so that the prevailing party may recover the costs from the losing party." Black's Law Dictionary 173 (8th ed. 2004). If you prevail, file the Bill of Costs form no later than 14 days after the Clerk's Office entered judgment on the docket. *See* LR 54.1 and ECF Administrative Procedures Manual for filing instructions. The Bill of Costs should reflect the costs allowable, as shown on the form. The Clerk's Office does not monitor fees or costs incurred during a suit except the filing fees remitted to this Court.

Unless the Court specifies another date, the Clerk's Office will tax the costs 14 days after filing. If a Bill of Costs includes "other" costs, the Clerk will reduce those costs from the amount to be taxed, unless a judge has authorized the costs by order. If a party objects to a Bill of Costs, the Clerk's Office will not tax costs until ordered to do so by the presiding judge.

Please note that "taxing" consists only of stamping, signing, and sealing with the Court seal a filed Bill of Costs and placing it in the case record. The Clerk's Office is not responsible for collecting or assisting in the collection of costs. The Clerk's Office will mail a conformed copy to the party awarded costs upon that party's request.

B. Registration in Another District

To certify a judgment that has been entered in the Northern District of Texas for registration in another district, a person must submit a written request to the District Clerk's Office for preparation of a Certification of Judgment for Registration in Another District. The District Clerk's Office charges a $11.00 fee for the certification, plus $0.50 per page for a copy of the judgment.

The District Clerk's Office will prepare the certificate and notify the requesting party that it is ready to be mailed or available to be picked up. The requesting party is responsible for ensuring that all requirements of the district of intended registration have been met.

C. Registration in the Northern District

To register a judgment entered in another federal court with the Northern District of Texas, a person should obtain a Certification of Judgment for Registration in Another District from the court that entered the original judgment, and then deliver the completed certification to the Clerk's Office along with a $46.00 filing fee. The Clerk's Office will take the judgment and open it as a miscellaneous case.

D. Writ of Execution

A writ of execution is "a court order directing a sheriff or other officer to enforce a judgment, usually by seizing and selling the judgment debtor's property." Black's Law Dictionary 609 (8th ed. 2004). A party wishing to file a Writ of Execution must obtain the appropriate form online or from the District Clerk's Office. The party must submit the original completed form and one copy to the District Clerk's Office along with an original and one copy of the USM Form 285 (which is also available from the Marshals Service). If a USM Form 285 does not accompany the Writ of Execution, the District Clerk's Office will return the Writ to the requesting party. The District Clerk's Office does not assess a fee for filing a Writ of Execution. However, the Marshals Service does assess a fee for serving the Writ. Please contact the Marshals Service at (214) 767-0837 for more information.

While the Writ of Execution form is available online, the form cannot be submitted by electronic means, nor will the District Clerk's Office issue the Writ of Execution electronically at this time. The requesting party will be notified upon issuance of the Writ of Execution. If the requesting party wants a confirmed copy of the Writ, the party must submit a self-addressed, stamped envelope.

E. Abstract of Judgment

An abstract of judgment is "a copy or summary of a judgment that, when filed with the appropriate public office creates a lien on the judgment debtor's non-exempt property." Black's Law Dictionary 10 (8th ed. 2004). If you are the prevailing party and you need an Abstract issued, use the appropriate form obtained from the Clerk's Office. You may submit the form electronically using the *Request for Clerk to Issue Document* event. There is no fee for issuance. The Clerk's Office will mail as many conformed copies to you as you request.

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12. List of Available Forms

The forms listed below are among those available from the District Clerk's Office or can be found online at http://www.txnd.uscourts.gov/forms/prose.html:

A. Civil Complaint (General) and Civil Cover Sheet

B. Certificate of Interested Persons

C. Motion to Proceed *In Forma Pauperis*

D. Summons in a Civil Case

E. Motion for Appointment of Counsel

F. Notice of Appeal

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13. Glossary of Terms Used in Civil Litigation

A----------

Affidavit - A written statement of facts confirmed by the oath of the party making it, before a notary or officer having authority to administer oaths.

Affirmed - In the practice of the court of appeals, it means that the court of appeals has upheld the judgment of the trial court in one or more respects.

Answer - The formal written statement by a defendant responding to a civil complaint and setting forth the grounds for his or her defense.

Appeal - A request made after a trial by a party that has lost on one or more issues that a higher court (appellate court) review the trial court's decision to determine if it was correct. To make such a request is "to appeal" or "to take an appeal." One who appeals is called the "appellant;" the other party is the "appellee."

Appellate - About appeals; an appellate court has the power to review the judgment of a lower court (trial court or tribunal). For example, the U.S. circuit courts of appeals review the decisions of the U.S. district courts.

B----------

Bankruptcy - A legal process by which persons or businesses that cannot pay their debts can seek the assistance of the court in getting a fresh start. Under the protection of the bankruptcy court, debtors may discharge their debts, usually by paying a portion of each debt. Bankruptcy judges preside over these proceedings.

Bench trial - Trial without a jury in which a judge decides which party prevails.

Brief - A written statement submitted by a party in a case that explains why the court should decide the case, or particular issues in a case, in that party's favor.

C----------

Chambers - A judge's office, typically including work space for the judge's law clerks and administrative assistant.

Case law - The law as reflected in the written decisions of the courts.

Chief Judge - The judge who has primary responsibility for the administration of a court; chief judges in the lower federal courts are determined by seniority, among other rules.

Clerk of the Court - An officer appointed by the judges of the court to assist in managing the flow of cases through the court, maintain court records, handle financial matters, and provide other administrative support to the court.

Common law - The legal system that originated in England and is now in use in the United States that relies on the articulation of legal principles in a historical succession of judicial decisions. Common law principles can be changed by legislation.

Complaint - A written statement filed by the plaintiff that initiates a civil case, stating the wrongs allegedly committed by the defendant and requesting relief from the court.

Contract - An agreement between two or more persons that creates an obligation to do or not to do a particular thing.

Counsel - Legal advice; a term also used to refer to the lawyers in a case.

Court - Government entity authorized to resolve legal disputes. Judges sometimes use "court" to refer to themselves in the third person, as in "the court has read the briefs."

Court reporter - A person who makes a word-for-word record of what is said in court, generally by using a stenographic machine, shorthand or audio recording, and then produces a transcript of the proceedings upon request.

D----------

Damages - Money paid by defendants to successful plaintiffs in civil cases to compensate the plaintiffs for their injuries.

Default judgment - A judgment rendered in favor of a party asserting a claim because of the defendant's failure to answer or appear to contest the claim.

Defendant - The person or organization against whom the plaintiff brings suit.

Deposition - An oral statement made before an officer authorized by law to administer oaths. Such statements are often taken to examine potential witnesses, to obtain discovery, or to be used later in trial. *See* discovery.

Discovery - The process by which lawyers learn about their opponent's case in preparation for trial. Typical tools of discovery include depositions, interrogatories, requests for admissions, and requests for documents. All of these devices help the lawyer learn the relevant facts and collect and examine any relevant documents or other materials.

Docket - A log maintained by the clerk containing the complete history of each case in the form of brief chronological entries summarizing the court proceedings, filings or other actions.

E----------

***En banc* -** "In the bench" or "as a full bench." Refers to court sessions with the entire membership of a court participating rather than the usual number. U.S. circuit courts of appeals usually sit in panels of three judges, but all the judges in the court may decide certain matters together. They are then said to be sitting "en banc" (occasionally spelled "in banc").

Equitable - Pertaining to civil suits in "equity" rather than in "law." In English legal history, the courts of "law" could order the payment of damages and could afford no other remedy. *See* damages. A separate court of "equity" could order someone to do something or to cease to do something. *See, e.g.*, injunction. In American jurisprudence, the federal courts have both legal and equitable power, but the distinction is still an important one. For example, a trial by jury is normally available in "law" cases but not in "equity" cases.

Evidence - Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case in favor of one side or the other.

F----------

Federal question jurisdiction - Jurisdiction given to federal courts in cases involving the interpretation and application of the U.S. Constitution, acts of Congress, and treaties.

File - To place a paper in the official custody of the clerk of court to enter into the files or records of a case.

G----------

Garnishment - A court order to collect money or property.

Guardian Ad Litem - A person, usually a parent, appointed by the court to represent a child.

H----------

Habeas corpus - A writ (court order) that is usually used to bring a prisoner before the court to determine the legality of his imprisonment. Someone imprisoned in state court proceedings can file a petition in federal court for a "writ of habeas corpus," seeking to have the federal court review whether the state has violated his or her rights under the U.S. Constitution. Federal prisoners can file habeas petitions as well. A writ of habeas corpus may also be used to bring a person in custody before the court to give testimony or to be prosecuted.

Hearsay - Statements by a witness who did not see or hear the incident in question but heard about it from someone else. Hearsay is usually not admissible as evidence in court.

I----------

Impeachment - The process of calling a witness's testimony into doubt. For example, if the attorney can show that the witness may have fabricated portions of his testimony, the witness is said to be "impeached."

***In forma pauperis* -** "In the manner of a pauper." Permission given by the court to a person to file a case without prepayment of the required court fees because the person cannot pay them.

Injunction - A court order prohibiting a defendant from performing a specific act, or compelling a defendant to perform a specific act.

Interrogatories - Written questions sent by one party in a lawsuit to an opposing party as part of pretrial discovery in civil cases. The party receiving the interrogatories is required to answer them in writing under oath.

Issue - 1. The disputed point between parties in a lawsuit; 2. To send out officially, as in a court issuing an order.

J----------

Judge - An official of the judicial branch with authority to decide lawsuits brought before courts. Used generically, the term judge may also refer to all judicial officers, including Supreme Court justices.

Judgment - The official decision of a court finally resolving the dispute between the parties to the lawsuit.

Jurisdiction - 1. The legal authority of a court to hear and decide a case; 2. The geographic area over which the court has authority to decide cases.

Jury - The group of persons selected to hear the evidence in a trial and render a verdict on matters of fact. *See also* grand jury.

Jury instructions - A judge's directions to the jury before it begins deliberations regarding the factual questions it must answer and the legal rules that it must apply.

Jurisprudence - The study of law and the structure of the legal system.

L----------

Lawsuit - A legal action started by a plaintiff against a defendant based on a complaint that the defendant failed to perform a legal duty which resulted in harm to the plaintiff.

Litigation - A case, controversy, or lawsuit. Participants (plaintiffs and defendants) in lawsuits are called litigants.

M----------

Magistrate Judge - A judicial officer of a district court who conducts many pretrial civil matters to move a case forward, and decides civil cases with the consent of the parties.

Mistrial - An invalid trial, caused by fundamental error. When a mistrial is declared, the trial must start again with the selection of a new jury.

Motion - A request by a litigant to a judge for a decision on an issue relating to the case.

O----------

Opinion - A judge's written explanation of the decision of the court.

Oral argument - An opportunity for lawyers to summarize their position before the court and also to answer the judges' questions.

P----------

Panel - 1. In appellate cases, a group of judges (usually three) assigned to decide the case; 2. In the jury selection process, the group of potential jurors; 3. The list of attorneys who are both available and qualified to serve as court-appointed counsel for criminal defendants who cannot afford their own counsel.

Party - One of the litigants. At the trial level, the parties are typically referred to as the plaintiff and defendant. On appeal, they are known as the appellant and appellee, or, in some cases involving administrative agencies, as the petitioner and respondent.

Petit jury (or trial jury) - A group of citizens who hear the evidence presented by both sides at trial and determine the facts in dispute. Federal civil juries consist of at least six persons. *See also* Jury.

Plaintiff - The person who files the complaint and who asserts claims identifying legal injury to them in a civil lawsuit.

Pleadings - Written statements filed with the court which describe a party's legal or factual assertions about the case.

Precedent - A court decision in an earlier case with facts and legal issues similar to a dispute currently before a court. Judges will generally "follow precedent"- meaning that they use the principles established in earlier cases to decide new cases that have similar facts and raise similar legal issues. A judge will disregard precedent if a party can show that the earlier case was wrongly decided, or that it differed in some significant way from the current case.

Pretrial conference - A meeting of the judge and lawyers to plan the trial, to discuss which matters should be presented to the jury, to review proposed evidence and witnesses, and to set a trial schedule. Typically, the judge and the parties also discuss the possibility of settlement of the case.

Procedure - The rules for conducting a lawsuit; there are local rules, rules of civil procedure, criminal procedure, evidence, bankruptcy, and appellate procedure.

Pro per - A slang expression sometimes used to refer to a pro se litigant. It is a corruption of the Latin phrase "in propria persona."

Pro se - A Latin term meaning "on one's own behalf"; in courts, it refers to persons who present their own cases without lawyers.

R----------

Record - A written account of the proceedings in a case, including all pleadings, evidence, and exhibits submitted in the course of the case.

Remand - The act of an appellate court sending a case to a lower court for further proceedings.

Reverse - The act of an appellate court setting aside the decision of a trial court. A reversal is often accompanied by a remand to the lower court for further proceedings.

S----------

Service of process - The delivery of writs or summonses to the appropriate party.

Settlement - Parties to a lawsuit resolve their dispute without having a trial. Settlements often involve the payment of compensation by one party in at least partial satisfaction of the other party's claims, but usually do not include the admission of fault.

Statute - A law passed by a legislature.

Statute of limitations - A law that sets the deadline by which parties must file suit to enforce their rights. For example, if a state has a five year statute of limitations for breaches of contract, and John breached a contract with Susan on January 1, 1995, Susan must file her lawsuit by January 1, 2000. If the deadline passes, the "statute of limitations has run" and the party may be prohibited from bringing a lawsuit; i.e. the claim is "time-barred." Sometimes a party's attempt to assert his or her rights will "toll" the statute of limitations, giving the party additional time to file suit.

Subpoena - A command, issued under authority of a court or other authorized government entity, to a witness to appear and give testimony.

Subpoena duces tecum - A command to a witness to appear and produce documents.

Summary judgment - A decision made on the basis of statements and evidence presented for the record without a trial. It is used when it is not necessary to resolve any factual disputes in the case as to all or some of the claims.

T----------

Temporary restraining order - Prohibits a person from taking an action that is likely to cause irreparable harm. This differs from an injunction in that it may be granted immediately, without notice to the opposing party, and without a hearing. It is intended to last only until a hearing can be held. Sometimes referred to as a "T.R.O."

Testimony - Evidence presented orally by witnesses during trials or before grand juries.

Toll - *See* Statute of Limitations.

Tort - A civil wrong or breach of a duty to another person. The "victim" of a tort may be entitled to sue for the harm suffered. Victims of crimes may also sue in tort for the wrongs done to them. Most tort cases are handled in state court, except when the tort occurs on federal property (e.g., a military base), when the government is the defendant, or when there is diversity of citizenship between the parties.

Transcript - A written, word-for-word record of what was said, either in a proceeding such as a trial, or during some other formal conversation, such as a hearing or oral deposition.

Trustee - In a bankruptcy case, a person appointed to represent the interests of the bankruptcy estate and the unsecured creditors. The trustee's responsibilities may include liquidating the

property of the estate, making distributions to creditors, and bringing actions against creditors or the debtor to recover property of the bankruptcy estate.

U----------

Uphold - The appellate court agrees with the lower court decision and allows it to stand. *See* Affirmed.

U.S. Attorney - A lawyer appointed by the President in each judicial district to prosecute and defend cases for the federal government. The U.S. Attorney employs a staff of Assistant U.S. Attorneys who appear as the government's attorneys in individual cases.

V----------

Venue - The geographical location in which a case is tried.

Verdict - The decision of a trial jury or a judge that determines the guilt or innocence of a criminal defendant, or that determines the final outcome of a civil case.

Voir dire - The process by which judges and lawyers select a trial jury from among those eligible to serve, by questioning them to make certain that they would fairly decide the case. "Voir dire" is a phrase meaning "to speak the truth."

W----------

Witness - A person called upon by either side in a lawsuit to give testimony before the court or jury.

Writ - A formal written command or order, issued by the court, requiring the performance of a specific act.

Writ of certiorari - An order issued by the U.S. Supreme Court directing the lower court to transmit records for a case which it will hear on appeal.

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