Representing Yourself in the Eastern District Of New York: A Manual for *Pro Se* Litigants

2025

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INTRODUCTION

Welcome to the United States District Court for the Eastern District of New York. The Eastern District of New York was established on February 25, 1865, by legislation signed by President Abraham Lincoln. The first session of the court was held in the Brooklyn County Courthouse on March 22, 1865. Today, the Eastern District of New York sits in downtown Brooklyn and in Central Islip, New York. The addresses are:

United States District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

United States District Court for the Eastern District of New York
100 Federal Plaza
Central Islip, NY 11722

Official website: (www.NYED.uscourts.gov)

This manual was prepared as a guide for persons who are representing themselves either as plaintiffs or as defendants in lawsuits before the United States District Court for the Eastern District of New York. [1] It is intended as an informative and practical resource and guide to understanding the basic practices, rules, and procedures of the court. A glossary which explains some of the words used in this manual begins on page 133. This

[1] This manual was adapted by the Second Circuit Library in partnership with the Eastern District of New York from the Southern District of New York's *A Manual for Pro Se Litigants Appearing Before the United States Court for the Southern District of New York* (2007) and *Representing Yourself At Trial* (2011) and the Northern District of New York's *Pro Se Handbook: The Manual for the Litigant filing a Lawsuit without Counsel* (2024) for use by the Eastern District of New York.

manual should not be considered the last word, nor should it be your only resource. This manual is intended to be a procedural aid to help you navigate filing and litigating a lawsuit in federal court.

It is important to note that every time a person feels injured does not mean that the perceived wrong or injury is recognized at law. What you have experienced may not be a "cause of action" and therefore there may be no remedy recognized at law, or at least none recognized under federal law.

This manual describes court procedures and rules but does not take the place of the Federal Rules of Civil Procedure, Federal Rules of Evidence, the Local Civil Rules of the United States District Courts for the Southern and Eastern Districts of New York, or the Individual Practices of the judges of this court, or any other bodies of law. The information contained in this manual applies only to civil cases in this district court, and does not pertain to bankruptcy proceedings, habeas corpus petitions, or criminal matters.

The statements and materials presented in this manual are for educational purposes only, and do not constitute legal advice. This manual is not intended to be a substitute for the advice and assistance of a licensed attorney. This manual does not supersede any order from the court or federal, state, or local rule.

You should keep in mind that the law is constantly changing, and the information contained in these pages may not be complete or up to date. The laws and rules to which this manual refers may have changed since the manual's publication, and there may be new laws or rules applicable to your case. It is your responsibility to verify the accuracy of any information on which you intend to rely.

Before Filing A Lawsuit

There are eight (8) important questions you should consider before filing your case in federal court. This is not an exhaustive list, there may be other considerations not listed here. Even if you answer "yes" to all these questions there is still a possibility that you may not ultimately prevail in your lawsuit.

1. Have I suffered a real, concrete, specific injury or wrong that is actual or imminent?
2. Was the injury likely caused by the defendant? Can the injury be redressed by judicial relief (*i.e.* court remedies)?
3. Does the federal district court have jurisdiction to hear my claim?
4. Is the Eastern District of New York the proper venue for my action?
5. Will my claim be timely if I file it now?
6. Am I able to name the proper defendant(s) for my action?
7. Will I be able to establish sufficient facts to support my claim(s)?
8. Have I exhausted all other available remedies?

What Does It Mean to Proceed Pro Se?

Litigants or parties representing themselves in court without the assistance of a licensed attorney are known as "self-represented litigants" or "*pro se* litigants." The phrase "*pro se*" is Latin for "in one's own behalf." Individuals in court cases are generally referred to as "plaintiffs" or "defendants." The plaintiff is the person bringing the lawsuit who alleges a claim based on a right protected by law. The defendant is the person who allegedly violated that claim or right. Most individuals appearing before a court, also known as "litigants" or "parties," are represented by licensed attorneys who practice law, have appeared before the court, and are familiar with the rules and procedures of the court.

Under United States law, you are permitted to file and conduct cases in federal court *pro se*, 28 U.S.C. § 1654. U.S.C. refers to the United States Code, which contains all federal laws. Any individual who is before the court without an attorney is considered *pro se.* There

are limitations on the right to self-representation. A person planning to initiate or defend an action on behalf of a corporation or partnership may not appear *pro se* and must be represented by an attorney, even if there are only one or two shareholders in the corporation. Attempting to do so will lead to the dismissal of your case the case. A *pro se* litigant may not bring a class action (that is, an action on behalf of others). Furthermore, a non-attorney parent generally may not appear *pro se* on behalf of his/her child, unless it is to appeal the denial of that child's Social Security benefits.

The Decision to Proceed Pro Se

Individuals considering representing themselves are encouraged to carefully evaluate the risks associated with proceeding *pro se*. Litigation is extremely costly, time-consuming, and complex, even if the case seems "simple". Although the *Pro Se* Office, court personnel, and library staff may explain basic procedures and provide standard forms, they are prohibited from giving legal advice. They cannot advise you on whether to bring a certain action, what remedies you should seek, or how you should conduct a trial. It is likely that your opponent will be represented by an attorney; therefore, you could be at a serious disadvantage. A *pro se* litigant is subject to the same rules of law and evidence as individuals represented by an attorney. The court cannot make exceptions for *pro se* parties.

This manual provides information to consider before filing a lawsuit, as well as procedural information for filing and litigating a lawsuit in the United States District Court for the Eastern District of New York. The following chapters provide general information about the Eastern District of New York, outline the structure of the court system, give an overview of litigation from the inception of an action through trial, and explain basic court rules and procedures.

THE *PRO SE* OFFICE

General Information

The Clerk's Office for the Eastern District of New York provides support for *pro se* litigants. This unit of the Clerk's Office will be referred to as the "*Pro Se* Office" in this manual.

The *Pro Se* Office acts as a central resource for the Eastern District of New York on all *pro se* matters. While its employees accept all papers to be filed in *pro se* cases and may answer general questions regarding court procedures, they are not permitted to give advice on legal strategy, to represent litigants in court, or to participate in any discussion with *pro se* litigants regarding the merits of a particular case. The City Bar Justice Center's Federal *Pro Se* Legal Assistance Project in Brooklyn and the Hofstra University Federal *Pro Se* Legal Assistance Program in Central Islip provide limited-scope legal services to *pro se* litigants with cases in the Eastern District of New York. See more about *pro se* legal assistance programs beginning on page 21.

Contact Information

The *Pro Se* Office is located within the Clerk's Office on the first floor of the courthouses at 225 Cadman Plaza East in Brooklyn and at 100 Federal Plaza in Central Islip. The Clerk's Office is open to the public Monday through Friday, 8:30 a.m. to 4:45 p.m. The Clerk's Office is closed on weekends and federal holidays. *Pro Se* Office hours may vary, please check with Clerk's Office in either Brooklyn or Central Islip for current hours of operation. The Clerk's Office mailing addresses and phone numbers are:

United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

(718) 613-2665

United States District Court
Eastern District of New York
100 Federal Plaza
Central Islip, NY 11722

(631) 712-6060

The Clerk's Office cannot accept collect calls. No appointment is needed to speak to Clerk's Office staff, in person or on the telephone.

It is your responsibility to ensure the court is always able to contact you regarding your case. Therefore, you must immediately notify the *Pro Se* Office in writing of any change of your address (a letter to the *Pro Se* Office is satisfactory but must identify the name of your case and docket number, as well as your new address). If you fail to do so, the judge may dismiss your case.

Accepting Papers

The *Pro Se* Office accepts papers submitted by *pro se* litigants, beginning with the filing of the complaint and ending with the filing of a notice of appeal. Papers can be filed with the *Pro Se* Office in person, by mail, or by electronic delivery to the Clerk's Office using the court's program; the *Pro Se* Office does not accept faxes or email. Instructions for electronic submission of *pro se* documents can be found on the Eastern District of New York's website (www.NYED.uscourts.gov). The *Pro Se* Office files the original papers in the court's electronic case filing system, called CM/ECF. CM/ECF stands for Case Management/Electronic Case Files which is the online filing system for the federal courts. Electronic filing and service is discussed in more detail on page 56.

Once your case is assigned a judge and a case number, which is known as the docket number, the judge's initials and docket number must appear on all papers submitted to the *Pro Se* Office. The docket number consists of a "1:" or "2:" to indicate whether the case is in

Brooklyn or Central Islip, followed by the last two digits of the year in which the case was filed, followed by "CV" to designate its status as a civil case or "CR" to designate its status as a criminal case, a four- or five-digit number, and the initials of the judge assigned to your case. For example: 1:25-CV-4567 (MKB) is the 4,567th civil case filed in the year 2025 and the case is assigned to the Honorable Margo K. Brodie in the Brooklyn courthouse.

In addition, all documents after the complaint must be served on the opposing party and must be accompanied by proof of service. For more information about proof of service see the sections "Service of The Summons and Complaint" on page 49 and "Service and Filing of Pleadings and Court Papers After Service of the Complaint: Rule 5" on page 56.

Other Pro Se Office Functions

The *Pro Se* Office staff is employed by the court and must remain neutral. Therefore, like all other court employees, the *Pro Se* Office staff may not give legal advice, draft papers for *pro se* litigants, fill out forms, serve papers, act as interpreters, or notarize documents.

The *Pro Se* Office staff can provide *pro se* litigants with general instructions concerning court rules and procedures. However, they are prohibited from interpreting those rules or the law, evaluating facts, calculating deadlines, or otherwise participating, directly or indirectly, in any particular case. Remember that no matter how much a court employee may want to help you with your case, that employee is prohibited from giving you any assistance other than basic procedural information.

Keep in mind that all questions concerning the status of your case should be addressed to the *Pro Se* Office rather than to a judge's chambers. It is improper for any party in a lawsuit to contact the judge directly about the case outside the hearing of another party (this is called "*ex parte"* communication with the judge and is prohibited).

Forms Available from the Pro Se Office

The *Pro Se* Office has numerous forms which are available to litigants free of charge. These include forms for filing complaints, forms for filing prisoner civil rights complaints, forms for filing social security complaints, forms for filing habeas corpus petitions, forms to apply for waiver of the required filing fee based on demonstrated financial need, applications for the court to request counsel, motion instructions, and appeal forms. Many forms are included in this manual, and other forms may be obtained from the Eastern District's website's *Pro Se* Forms page (https://www.NYED.uscourts.gov/pro-se-forms).

Additional forms may be found on the website of the United States Courts (www.USCourts.gov).

THE COURT SYSTEM

The country's legal structure is made up of state and federal court systems, which function independently. Certain matters may only be brought in federal court, while other matters may only be brought in state court.

State Courts

State courts possess general (unlimited) jurisdiction, that is, they have the power to hear all cases except those over which another court has exclusive authority. Most cases brought in this country are filed in state courts. These cases include but are not limited to disputes involving contracts, personal injury, automobile accidents, landlord-tenant, foreclosures, divorce, child custody matters, and other issues involving state laws.

The organization of the state court system differs from state to state. Very broadly, in New York, the trial court with general jurisdiction over both civil and criminal matters is the New York Supreme Court. That court may hear any matter except cases filed against the State, which must be brought in the New York State Court of Claims. Appeals from the state trial court are typically heard in the Appellate Divisions of the Supreme Court. New York's highest appeals court is the Court of Appeals, which is located in Albany.

Federal Courts

Federal courts have the power to hear only certain types of cases. Unless the case involves a violation of federal law, or the parties are citizens of different states and the amount of damages in question is more than $75,000, a federal court does not have the power to hear the case, and the case cannot be brought in federal court. Even if these requirements are met, the federal court still might not be able to hear the case if a legal rule like sovereign immunity, the domestic relations exception, or another rule that limits

court involvement limits the court's power to decide it. For more information refer to the section on "Jurisdiction and Venue" beginning on page 30.

Organization of Federal Courts

The federal court system is made up of courts on three (3) different levels. The first level is the district courts, which are the trial courts in the federal system. In the district courts, cases are tried, evidence including witness testimony is presented, and a jury may be present. Congress has divided the country into 94 federal judicial districts, with each state having at least one (1) district. Larger states, like New York, have more than one district. Each district has at least one (1) federal court in it.

The federal appeals courts, the second level, are referred to as circuit courts. The United States Court of Appeals for the Second Circuit (often called "The Second Circuit") hears appeals from all district courts in the states of New York, Connecticut, and Vermont.

The United States Supreme Court, the third and highest level, hears select cases from the Circuit Courts of Appeal and is the only federal court that can hear appeals from state courts. But, since the Supreme Court has the authority to select which cases it chooses to hear, it hears only a small percentage of the cases it is asked to review.

GENERAL INFORMATION ABOUT THE EASTERN DISTRICT OF NEW YORK

District Judges/Magistrate Judges

As discussed further below, this manual focuses on two (2) types of judges in district court: United States District Judges and United States Magistrate Judges. District Judges are appointed by the President with the approval of the United States Senate, pursuant to Article III of the United States Constitution, for life terms. United States Magistrate Judges are appointed by the Board of Judges of the District Court, for renewable terms of eight (8) years. Most civil cases in the Eastern District of New York are assigned randomly to a District Judge and a Magistrate Judge at the time the complaint is filed. In this district, Magistrate Judges often handle civil pre-trial matters in most cases. The Magistrate Judge's role is described in the section on "Magistrate Judges" on pages 66-69 below.

Proper Courthouse Conduct

Always be courteous to all court employees, whether they are judges, court security officers, courtroom deputies, secretaries, law clerks, librarians, or *pro se* clerks.

Things to Remember When You Go to the Courthouse

- Weapons, contraband, and other illegal items are forbidden.
- Cell phones, cameras, radios, recording devices, and computers are not allowed and must be "checked" with the court's Security Office.
- Dress properly. Suits, ties, and other formal wear are not necessary, but professional attire is preferred. Shorts, halters, tank tops, any clothing exposing the midriff or underclothing, beachwear, flip-flops, or t-shirts with inappropriate or potentially offensive graphics or words are not recommended.
- Organize your papers and your thoughts.

At the Pro Se Office . . .

- Be polite and listen carefully to the staff.
- Do not be afraid to ask questions, but please be mindful that the staff cannot provide legal advice.
- Follow instructions. Please do not argue with the *Pro Se* Office staff.
- Have your fees ready for payment. Fees can be paid by credit card, certified check, personal check, money order, or cash (if paying in person).

In the Courtroom . . .

- Be prompt. Notify the judge's chambers or the courtroom deputy if you will be late or cannot attend a hearing, conference, or trial date.
- When the judge or jury enters or leaves the courtroom, you should stand up.
- Refer to the judge as "Your Honor" or "Judge."
- When addressing the judge, always stand, speak clearly, and be courteous and polite.
- Be organized and prepared with your argument. Present your argument in a clear and concise manner.
- If it is not your turn to speak or the judge has not posed a question to you, do not interrupt opposing counsel or the judge. Raise your hand if you need to get the judge's attention.
- Do not make any gestures, facial expressions, or audible comments as a sign of approval or disapproval of the testimony of a witness or of a statement or ruling by the judge.

Rules of Procedure

If you are going to handle your own case in federal court, you should have a basic understanding of the procedural rules governing your case. There are four (4) types of rules and procedures controlling your case:

1. Federal Rules of Civil Procedure (cited as "Fed. R. Civ. P.")
2. Federal Rules of Evidence (cited as "Fed. R. Evid.")
3. Local Rules of the United States District Courts for the Southern and Eastern Districts of New York (cited as the "Local Rules")

4. Individual Practices of the judge assigned to your case

The Local Rules for the Eastern District of New York are available on the Court's website (www.NYED.uscourts.gov). The *Pro Se* Office cannot access the website for you or print/download information from it. In addition, the Local Rules may be found in the law libraries of the Brooklyn and Central Islip courthouses and in most public law libraries in a book published by Thomson West entitled "McKinney's New York Rules of Court – Federal." The Federal Rules of Civil Procedure and the Federal Rules of Evidence may be found in law libraries or accessed online at (www.USCourts.gov). Individual Practices are available on the court's website.

Legal Research

It is important to recognize that laws, rules, and procedures change over time. While this manual is designed to assist you in going forward with your *pro se* litigation, it does not address in any way the substantive law that applies in your case. This is the area that attorneys are knowledgeable about and, if you represent yourself, you must know or become familiar with. While not required, you may wish to do legal research concerning your case.

Your first stop should be a law library that is open to the public. In New York, each county has at least one (1) public access law library. The law library will have several different resources you can use to research the law of your case, as well as trial procedure. At the law library, you can access legal information based on the topic of law, the statutes, and the case law. Below is a list of law libraries open to the public. This list is subject to change. Consult the internet or call the listed telephone number for more information. Note that United States Courts libraries in Brooklyn and Central Islip cannot in any way assist incarcerated individuals.

Brooklyn *John R. Bartels Library* US Courts Library, United States Courthouse 225 Cadman Plaza East, Room 313S Brooklyn, NY 11201 T: (718) 613-2320	**Central Islip** *Central Islip Branch Library* US Courts Library, United States Courthouse 100 Federal Plaza, 10th Floor Central Islip, NY 11722 T: (631) 712-6190
Kings County *Supreme Court- Law Library, Brooklyn* 360 Adams Street, Room 349 Brooklyn, NY 11201 T: (347) 296-1144	**Suffolk County (Central Islip)** *Supreme Court Law Library, Central Islip* John P. Cohalan, Jr. Courthouse 400 Carleton Avenue, 4th Floor Central Islip, NY 11722 T: (631) 740-3961
Queens County *Law Library of Queens* 88-11 Sutphin Boulevard, Room 65 Jamaica, NY 11435 T: (718) 298-1206	**Suffolk County (Riverhead)** *Supreme Court Law Library, Riverhead* Arthur M. Cromarty Court Complex 210 Center Drive, 1st Floor Riverhead, NY 11901 T: (631) 852-1887
Richmond County *Richmond County Law Library* 25 Hyatt Street, Room 515 Staten Island, NY 10301 T: (718) 675-8711	**Nassau County** *Supreme Court Law Library* 100 Supreme Court Drive, 2nd Floor Mineola, NY 11501 T: (516) 493-3200

Depending on the particulars of your case, your local public library may also have information that could be helpful to you. You may also use the internet to conduct legal research. While there are many helpful legal websites on the internet, you should beware that not all websites or AI chatbots provide accurate information. Therefore, you must be cautious when reviewing information found online. A few helpful resources can be found online here:

- Federal Rules of Civil Procedure (USCourts.gov)

- Eastern District of New York Local Rules (NYED.uscourts.gov)
- Individual Practices of Judges (NYED.uscourts.gov)
- United States Code (USCode.house.gov)

If you do not have a computer, these internet resources are generally available on computers at your local public library.

Interpreters

The federal courts are not obligated to provide an interpreter free of charge to a litigant in a civil case who is unable to speak in English. You may arrange to hire a certified court interpreter, at your own expense, by contacting the court's Interpreter's Office at (718) 613-2390 in Brooklyn or (631) 712-2395 in Central Islip. If you are unable to afford a certified court interpreter, the judge, at his/her discretion, may permit you to use a relative or friend to act as an informal interpreter during pretrial proceedings (but not at trial). If you wish to utilize this option, you should ask the judge for permission to have the informal interpreter appear with you in court by writing a letter to the judge (through the *Pro Se* Office) in advance and sending a copy to your adversary. If the judge grants your request, introduce the person by name and relationship to you to both the judge and your adversary at the next proceeding. All papers must be submitted in English. Free translation services, such as Google Translate (https://translate.google.com/), are available on the internet.

Interpreters for the hearing-impaired (American Sign Language) are available for conferences, hearings, and trial free-of-charge upon request in advance. Contact the Court's Interpreter's Office to arrange for an American Sign Language interpreter.

ALTERNATIVES TO SELF-REPRESENTATION

Introduction

A party may appear in federal court represented by counsel or may represent himself/herself *pro se*. 28 U.S.C. § 1654. It is advisable to proceed with an attorney because experienced legal counsel, familiar with the rules of procedures and the substantive law, can greatly increase your chances of successfully resolving your case.

The Sixth Amendment to the Constitution grants all persons accused of a crime the absolute right to counsel in criminal proceedings only. There is no constitutional right to counsel in civil proceedings.

Hiring an Attorney

Before you choose an attorney to hire, you should ask yourself three (3) questions:

1. Does the attorney practice the type of law involved in your case?

Many attorneys specialize in certain types of law only, such as criminal law, matrimonial law, landlord-tenant law, employment law, trusts and estates law, or tax law. An attorney whose practice is primarily in a specific area of the law may not be familiar with the area of law in your case and therefore may not be an effective advocate for you. In addition, many attorneys practice primarily in either federal or state court and may be unfamiliar with the rules and procedures in the other.

2. How does the attorney expect to be paid?

There are two (2) types of fee arrangements you may make with an attorney: hourly rate and contingency fee. An **hourly rate** fee allows the attorney to bill you for the amount of hours she/he works on your case. This type of arrangement may be beneficial to you if you have funds available to pay for an attorney and if the case is not too complex. Under this arrangement, at the time of your first meeting or retention of the attorney, the attorney must inform you of the hourly rate she/he intends to charge you, as well as the hourly rate for the work of any partners, associates, and support staff such as paralegals.

Be sure to inquire as to whether the rates are different for "in-court" time and "out-of-court" time. This arrangement usually requires a "retainer," that is, an amount of money, to be paid to the attorney before work begins on the case. A retainer is a sum of money from which the attorney will draw his/her expenses and fee charges.

A **contingency fee** does not generally require a financial retainer but rather is based on the agreement that the attorney will claim a percentage, such as 33%, of any monies awarded to you at the end of the case. Be sure to inquire as to what percentage of the award the attorney will take.

Whether the case is on an hourly fee or contingency fee basis, you will be responsible for the out-of-pocket costs of the litigation, such as postage, photocopying, transcript costs, etc. All arrangements regarding the fees to be paid to an attorney (including the percentage of any recovery) should be spelled out in the retainer agreement or letter of engagement that you sign when you hire the attorney. Always obtain and keep a copy of the retainer agreement for your records.

3. Are you comfortable with the attorney?

The relationship between attorney and client is unique. It is basic that the free flow of information between an attorney and his/her client is not interfered with in any way. The attorney may need to know details of your life, as well as those of your family, friends, and colleagues; therefore, you must feel comfortable when dealing with your attorney. You also should consider whether the attorney can accommodate you or others involved in your case, for example, a person who does not speak English, who is disabled, or who is a child.

Choosing an attorney may be as easy as an internet search, but a referral to a lawyer from someone you know who has personal knowledge of the lawyer will likely be more reliable. You may also wish to contact the local bar associations listed below for referrals.

New York State Bar Association 1 Elk Street Albany, New York 12207 (518) 463-3200 (http://www.NYSBA.org/)	**New York City Bar Association** 42 West 44th Street New York, New York General: (212) 382-6600 Referral: (212) 626-7373 (http://www.NYCBar.org/)
Brooklyn Bar Association 123 Remsen Street Brooklyn, NY 11201 General: (718) 624-0675 Referral: (718) 624-0843 (https://LRS.BrooklynBar.org/)	**Queens County Bar Association** 88-14 Sutphin Boulevard, 3rd Floor Jamaica, NY 11435 (718) 291-4500 (https://www.QCBA.org/)
Nassau County Bar Association 15th and West Streets Mineola, NY 11501 General: (516) 747-4070 Referral: (516) 747-4832 (https://www.NassauBar.org/need-a-lawyer/)	**Suffolk County Bar Association** 560 Wheeler Road Hauppauge, NY 11788 Email: lris@scba.org (https://SCBA.community.lawyer/)

Other bar associations may be found via the internet. In addition, organizations such as The Legal Aid Society, (http://www.Legal-Aid.org/), LawHelp/NY, (http://www.LawHelp.org/ny), and Legal Services of Long Island (https://legalservicesli.org/) may be helpful. Other public interest organizations may be willing to represent you in certain types of cases without a fee.

Remember to keep a detailed record of all the efforts you make to find an attorney to represent you. This will help to organize your search and will provide evidentiary support for any application to the court to request *pro bono* counsel if you wish to make such an application later.

Request For Pro Bono Counsel by the Court

Unlike in criminal cases in which the defendant is guaranteed the right to counsel if she/he cannot afford an attorney, there is no right to counsel in civil cases, nor do the federal courts have any funds to pay attorneys in civil cases. If you are unable to hire an attorney, you may ask the judge to request counsel to represent you for free. These attorneys are called *pro bono* attorneys. The Eastern District maintains a panel of attorneys who volunteer to represent, at no charge, parties whose request for *pro bono* counsel has been granted by the judge. These panels are comprised of attorneys who are from private firms, who are solo practitioners, or who are law school students supervised by attorneys at law school clinics. The names of the panel members are not available to the public. You should understand that there are many more people in need of attorneys than there are volunteer attorneys willing to represent them.

For the judge to properly consider a request for *pro bono* counsel, there must already be a lawsuit in this District. The judge cannot request a lawyer to represent someone to discuss the possibility of filing a lawsuit.

To request *pro bono* counsel, you must complete and submit both (1) an application for the court to request counsel, and (2) an application to proceed *in forma pauperis*. Sample forms are included in this manual and are available on the Eastern District's website (www.NYED.uscourts.gov), and from the *Pro Se* Office. Even if the judge has previously granted your application for *in forma pauperis* status, a new application is required when requesting *pro bono* counsel, since the opposing party may dispute your need for a *pro bono* attorney or the financial information you submitted earlier in the case may have changed.

The judge will consider the following factors in deciding whether to grant your request for *pro bono* counsel: whether your case appears to have merit, that is, whether you are likely to succeed in your lawsuit; whether the legal issues are complex or simple; your current financial status insofar as it is relevant to your inability to hire counsel; what attempts you have made to try to hire an attorney; your statement describing your need for an attorney, including facts regarding the degree of your education, whether you have difficulty communicating in English, any disabling conditions which may affect your ability to proceed on your own behalf, or family circumstances which may have an effect on your ability to represent yourself.

A copy of your request for *pro bono* counsel must be served on the opposing party and the original must be filed with the *Pro Se* Office along with proof of service (described on page 55). The judge will review the information. The decision whether to grant your request for *pro bono* counsel is entirely within the judge's discretion pursuant to 28 U.S.C. § 1915(e)(1).

Even if the judge grants your request for *pro bono* counsel, you will receive a *pro bono* attorney only if a member of the panel volunteers to take the case. There is no guarantee you will actually get an attorney. The judge cannot force an attorney to take a particular case. Remember, unless or until an attorney files a "Notice of Appearance" officially notifying the judge and the other parties that she/he is your counsel of record, you are responsible for your own case. If an attorney cannot be found to volunteer his/her services, you must continue to represent yourself. Unless the judge says otherwise, your case will proceed through the litigation process while the *Pro Se* Office searches for a volunteer lawyer.

Mediation Advocacy Program

The Eastern District's Mediation Advocacy Program offers unrepresented litigants an opportunity to obtain a *pro bono* attorney for the purpose of mediation in matters involving employment discrimination and claims arising under 42 U.S.C. § 1983 (Section 1983). Examples of Section 1983 claims include: claims of false arrest, excessive force, or unreasonable search and seizure. Both parties must consent, and the judge must refer the case to the program. This program is discussed in the section entitled "Settlement and Mediation" on pages 113-117 below.

Attorneys' Fees and Costs

Some laws allow an attorney – whether retained by the party or appearing for the party on a *pro bono* basis – to claim a fee for legal services if the attorney wins the case or negotiates a favorable settlement. Litigants who represent themselves are not entitled to attorneys' fees but may be eligible for reimbursement of costs and expenses if they win their case. The award of attorneys' fees and costs is within the judge's discretion and is a separate issue from the amount of damages to which the party is entitled. Below are some examples of the types of cases which provide for attorneys' fees:

- Civil rights cases – *See* 42 U.S.C. § 1988(b)
- Employment discrimination cases – *See* 42 U.S.C.§ 2000e-5(k)
- Fair Labor Standard Act cases – *See* 29 U.S.C. §§ 216(b), 626
- Social Security Disability appeals – *See* 28 U.S.C. § 2412

Federal Pro Se Legal Assistance Program (Brooklyn) – City Bar Justice Center

The Federal Pro Se Legal Assistance Project is staffed by attorneys from the City Bar Justice Center. This program provides free, confidential, limited-scope legal services to *pro se* litigants with cases in the Eastern District of New York who cannot afford to hire an

attorney. The program is only available to litigants who are not incarcerated. The City Bar Justice Center provides services such as brief legal counseling; advising litigants about potential federal claims; interpreting and explaining federal law and procedure; and reviewing draft pleadings and correspondence with the court. This program can assist with a variety of federal legal issues including civil rights, employment discrimination, and disability discrimination.

The City Bar Justice Center's Federal Pro Se Legal Assistance Project is located in room 108 N, on the first floor of the Brooklyn federal courthouse at 225 Cadman Plaza East. The program can assist individuals with civil federal claims arising in any of the counties of the Eastern District of New York. To get help from this project, you may complete the online intake form on the City Bar Justice Center's website (https://www.citybarjusticecenter.org/projects/federal-pro-se-legal-assistance-project/), or call 212-382-4729 and leave a message.

Federal Pro Se Legal Assistance Program (Central Islip) – Hofstra University

The Federal Pro Se Legal Assistance Program (the Hofstra Program) provides free information, advice, and limited-scope legal assistance to *pro se* litigants with civil cases in the Eastern District of New York. The program is staffed by members of Hofstra University law school, including an attorney, law professor, and law students. The program is not available to individuals who are incarcerated. The Hofstra Program can assist with explaining federal court rules and procedures; brief legal counseling; advising you about potential federal claims prior to filing suit; and reviewing and editing draft pleadings and correspondence with the court.

The Hofstra Program is located in room 124 B of the Central Islip Courthouse at 100 Federal Plaza. The Hofstra program meets with *pro se* litigants by appointment. To schedule an appointment, visit the office to fill out an intake form, or email PSLAP@hofstra.edu, or call 631-297-2575.

LITIGATION OVERVIEW

Most cases never go to trial and are either settled or dismissed prior to trial. The litigation process that occurs before trial is often more important than the trial itself. The following is an overview of steps involved in litigating your case. Refer to the chart on the next page for a brief description of each numbered step in the chart below. The remainder of this manual explains each step of the litigation process in greater detail.

STEPS TO LITIGATING YOUR CASE

1. File Complaint

2. Service of Process

3. Responsive Document – Yes or No

    a. Yes – Answer– **Go to Step 4**
    b. Yes – Motion to Dismiss, OR Extension of time, OR Summary Judgment
        i. Response by Opposing Party
        ii. Reply by Movant
        iii. Decision of Judge
    c. No – Move for Default Judgment

4. Conferences – May take place throughout the process. Types of conferences include Scheduling Conferences, Settlement Conferences, and Pretrial Conferences

5. Discovery

6. Trial

7. Judgment – Dissatisfied? **Go to Step 8**

8. Appeal

1. Filing the Complaint	The plaintiff is the person who files the lawsuit. The defendant is the person or entity being sued. A complaint should clearly inform the court in a brief and concise way of the reason(s) the plaintiff is bringing the lawsuit including the laws the plaintiff claims the defendant has violated, the parties involved, and the relief the plaintiff seeks. The filing of the complaint begins a civil lawsuit. Also, to begin a lawsuit, the plaintiff must either pay a $405 filing fee or file an *in forma pauperis* application asking the court to waive the filing fee. See pages 37-39 below.
a) Receiving a Docket Number	Once the case has been processed, the court will assign it a docket number and a judge. This number will identify the case in this court and must be put on all future documents submitted to this court. Before taking any further action or filing any additional papers, parties must wait until the court gives the case a docket number. See page 6 above.

2. Service of Process	This is the method by which a plaintiff officially notifies a defendant that a lawsuit has been filed against him/her and that there is a limited time within which to respond. Service of process requires that the defendant be served with a copy of the summons and complaint, according to very specific rules, within 90 days from the date of filing the complaint. **Note: 90 days runs from the filing of the complaint, not the summons.** The summons informs the defendant that she/he has been named in an action and has 21 days to respond (60 days if the defendant is the federal government). Appropriate proof that the defendant has been served must be filed with the *Pro Se* Office. See pages 49-55 below.

3. Responsive Document – Yes or No	After service of process, the defendant will either: file an answer, file a motion, or do nothing.
a) Yes, Answer	The answer is a formal response to the complaint by the defendant, including any denials of and defenses to the allegations in plaintiff's complaint. See pages 60-65 below.
b) Yes, Motion	A motion is a party's formal application asking the judge to do something. There are many different types of motions that can be brought by either party and can be made at any time. The opposing party must respond to a motion within a set time period. See pages 63 and 101-112 below.
c) No Response	If the defendant fails to answer or move to dismiss the complaint, the plaintiff may seek entry of default judgment against the defendant. After obtaining a "Certificate of Default" from the Clerk of Court, plaintiff can make a motion for a default for the judge to decide.

4. Conferences	A conference is a court proceeding where the attorneys and *pro se* parties appear before the judge to discuss issues in the case. Conferences are scheduled at the judge's discretion. **Scheduling Conferences** may occur to discuss discovery issues, deadlines, pretrial motions, settlement, and to set a date for trial. **Status or Discovery Conferences** are called to make sure the case is progressing properly and to resolve any discovery disputes. **Pretrial Conferences** are called prior to trial to narrow the issues to be tried, discuss possible issues during trial, enter stipulations, encourage settlement, and resolve any other trial related matters. **Settlement Conferences** discuss ways to resolve the dispute. See pages 70-71.
5. Discovery	Discovery is the process during which the parties exchange information and gather evidence that may later be introduced at trial. This process involves various discovery methods, such as depositions, document requests, and interrogatories. See pages 73-100 below. Discovery generally starts after the defendant files the answer, occurs between the parties, and does not involve the judge unless there is a dispute.

6. Trial	A presentation of the case before a judge and jury, or a judge without a jury. This includes jury selection, opening statements, testimony of witnesses, offering exhibits into evidence, motions, objections, closing arguments, and jury instructions. See pages 118-124 below.
7. Judgment	A final and official disposition in your case, by jury verdict, judge's decision, or after trial.
8. Appeal	If you lose your case (if a final judgment is entered against you), you may appeal to the United States Court of Appeals for the Second Circuit by filing a timely "Notice of Appeal" with the Eastern District's *Pro Se* Office. See pages 125-132 below.

JURISDICTION AND VENUE

Before starting an action in this court by filing a complaint, you should ask yourself two questions (1) can the federal court properly hear this case (jurisdiction) and, (2) if so, is the Eastern District of New York the appropriate district court in which to file this case (venue).

The term "jurisdiction" refers to the power of a particular court to hear a certain kind of case. State courts, which are courts of general jurisdiction, can hear nearly all types of cases, even those arising under federal law. Federal courts, on the other hand, are courts of limited jurisdiction, and may only hear two (2) types of cases.

Federal Question Jurisdiction, 28 U.S.C. § 1331

28 U.S.C. § 1331 states that "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." This is called federal question jurisdiction. A federal question arises when the complaint claims that federal law – either a provision of the federal Constitution, a statute passed by Congress, or a treaty ratified by the United States – has been violated. If a case is based on a violation of federal law, it generally does not matter how much or how little money is sought.

The following are examples of some of the typical federal question cases which properly may be brought under 28 U.S.C. § 1331. This manual cannot list every type of case that can be brought in federal court, but the following shows common examples of federal question cases.

Violations of Civil Rights by Prison Personnel or Challenges to Prison Conditions or Policies – Incarcerated individuals who believe their civil rights have been

violated by prison personnel or who are subject to prison conditions or policies that constitute "cruel and unusual punishment" under the Eighth Amendment to the United States Constitution, may be able to file an action in federal court. Pretrial detainees may file their claim under the 14th Amendment of the Constitution.

These claims are generally filed under the federal civil rights statutes, 42 U.S.C. § 1983. Before filing this type of claim in federal court, the Prison Litigation Reform Act ("PLRA") requires that prisoners must first fully exhaust their prison's internal administrative grievance procedures, including all available internal prison-system appeals. A form for filing a case under § 1983 and describing the grievance requirement under the PLRA is included in this manual.

Violation of Civil Rights by the Police or Other Law Enforcement Personnel - A person who believes his/her civil rights have been violated by police or other law enforcement personnel in violation of the Constitution, such as claims of excessive force, false arrest, or malicious prosecution, may file a lawsuit under the federal civil rights statute, 42 U.S.C. § 1983.

Employment Discrimination - If a person believes that, because of prohibited discrimination and/or retaliation, she/he has been denied a job or promotion, is being harassed at work, or was fired, she/he may be able to bring a lawsuit in federal court. This is a federal question case because federal laws prohibit employment discrimination based on race, color, sex, religion, national origin, age, or disability. *See*: 42 U.S.C. §§ 2000e to 2000e-17; 29 U.S.C.§§ 621 - 634; 42 U.S.C. §§ 12101 -12117. These statutes require a party first to pursue his/her administrative remedies with the Equal Employment Opportunity Commission (EEOC) and (except for age discrimination claims) obtain a notice of right to

sue letter before filing this type of claim in federal court. A form for an employment discrimination case is included in this manual.

Social Security Appeals - A party who has previously filed a claim with the Commissioner of Social Security for disability benefits and/or Supplemental Security Income under the Social Security Act, and is dissatisfied with the Commissioner's decision, may file a lawsuit seeking federal court review of the Social Security Appeals Council denial of the claim, pursuant to 42 U.S.C. § 1383(c)(3). These are cases where federal courts review the administrative record from the Social Security Administration, and as such special litigation procedures must be followed. The form with instructions for filing a Social Security appeal case is included in this manual or may be obtained from the *Pro Se* Office or from the Eastern District of New York's website.

Diversity Jurisdiction, 28 U.S.C. § 1332

Generally, even if a lawsuit involves a matter typically handled in state court, if the lawsuit is between citizens of different states and the amount of damages in question exceeds $75,000, the case may be filed in federal district court based on diversity of citizenship. In such a diversity of citizenship case, the plaintiff need not claim a violation of federal law; but to satisfy the statutory basis for federal court jurisdiction, there must be completely diverse citizenship of all plaintiffs and all defendants, and there must be more than $75,000 in dispute.

Complete diversity, the first requirement, means that at the time the action is commenced, the plaintiff may not be a citizen of the same state as any defendant. If there is more than one plaintiff or more than one defendant, all plaintiffs must be citizens of different states from all defendants. If the defendant is a corporation, citizenship is based

on the state of incorporation and the state where it has its principal place of business. If complete diversity does not exist, the federal court lacks subject matter jurisdiction and, as a result, the action will be dismissed.

The second element required to invoke the court's diversity jurisdiction is that the amount in controversy must be greater than $75,000, exclusive of interest and costs. The amount in controversy refers to the dollar amount the plaintiff is attempting to recover in actual damages from the defendant. It is very important that this allegation as to the amount of damages be made in good faith. If the required dollar amount is not met, the case cannot be heard in federal court, even if complete diversity of citizenship exists.

As an example, assume a citizen of New York is involved in an automobile accident. She/he sustained substantial injuries requiring extended hospitalization and follow-up treatments. Medical expenses total $100,000, and the injuries also caused the plaintiff pain and suffering. The New York citizen decides to file a lawsuit against the driver of the other car, a citizen of New Jersey, who she/he believes negligently caused the accident. This type of case, a personal injury claim, is governed by state law and is ordinarily heard in state court. However, since the parties are citizens of different states and the amount in controversy exceeds $75,000, a federal district court can hear the case because federal jurisdiction is present due to the diversity of citizenship. As a second example, assume that the New York citizen wants to sue both the New Jersey driver of the car and the car's owner, who is a New York citizen. In that example, there would not be complete diversity of citizenship (since plaintiff and one defendant are citizens of New York), and so the case could not be brought in federal court but could be brought in state court.

Venue: In Which Federal Judicial District Should I File My Case?

The term "venue" refers to the geographic location of the federal court in which a lawsuit properly may be brought. The federal district courts have very strict rules on where an action may be filed. Failure to comply with these rules may result in a transfer of the case to another federal court or dismissal of the case on the basis of improper venue. Therefore, the following venue rules should be read very carefully to determine where to file an action.

Organization of Federal Judicial Districts

There are four (4) federal judicial districts in New York: the Eastern, Southern, Northern, and Western Districts. Each district covers specific counties.

The following counties are located in the **Eastern District:** Kings (Brooklyn), Nassau, Queens, Richmond (Staten Island), and Suffolk. The **Southern District of New York** covers the counties of Bronx, Dutchess, New York (Manhattan), Orange, Putnam, Rockland, Sullivan, and Westchester. Thus, New York City is the only city in the country to be split between two federal districts. The **Northern District** covers the counties of Albany, Broome, Cayuga, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, Rensselaer, Saint Lawrence, Saratoga, Schenectady, Schoharie, Tioga, Tompkins, Ulster, Warren, and Washington. The **Western District** covers the counties of Allegany, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates.

Generally, in order to determine proper venue for a case, you must know the county where you reside, where the defendant(s) reside, and where the claim arose. In general, the following rules will be used to determine the correct federal district court in which to file an action.

Venue for a Federal Case:

The law of venue for civil federal cases is, 28 U.S.C. § 1391(b). From this statute, considerations for where a civil action may be brought are:

1. Where the defendants live: If all the people or companies you're suing live in the same state, you can file the case in any federal court in that state.
2. Where the events happened or property is located: If most of the important events related to your case happened in a certain place, or if the property involved is located there, you can file the case in a federal court in that area.

If neither of the above applies, you can file the case in any federal court where at least one (1) of the people or companies you're suing is located, as long as the court has the authority to hear the case.

Selected Venue Provisions for Common Statutes

- **Social Security Appeal** - 42 U.S.C. § 405(g) provides that such an action shall be brought in the district court for the district where plaintiff resides. For example, if you live in Brooklyn, a Social Security Appeal can be brought in the Eastern District.
- **Employment Discrimination Action** - 42 U.S.C. § 2000e-5(f)(3) provides that such an action can be brought in the district where the plaintiff worked (or applied for work), where the company keeps its employment records, or in any district in the state in which the alleged discrimination occurred.
- **Federal Tort Claims Act Action** - 28 U.S.C. § 1402(b) provides that such an action may be brought "only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred."

- **Freedom of Information Act Action** - 5 U.S.C. § 552(a)(4)(B) provides that an action may be brought in "the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia."

Assignment of Cases: Brooklyn Courthouse or Central Islip Courthouse

The United States District Court for the Eastern District of New York has two (2) courthouses: the Theodore Roosevelt United States Courthouse located in downtown Brooklyn, and the Alfonse M. D'Amato United States Courthouse located in Central Islip. Cases are assigned by the court to either the Brooklyn or Central Islip courthouses pursuant to the local "Rules for the Division of Business for the Eastern District of New York." Usually, if the claim arose in Kings (Brooklyn), Queens, or Richmond (Staten Island) counties, the lawsuit will be assigned to the Brooklyn courthouse; if the claim arose in Nassau or Suffolk counties, the case will be assigned to the Central Islip courthouse.

COSTS OF FILING AN ACTION IN THIS COURT

The filing fee for all civil actions is currently $405 (except petitions for writs of *habeas corpus*, for which there is a $5 filing fee). The Eastern District of New York does not accept payment of partial filing fees. The filing fee should be paid in cash, by credit card, online at pay.gov, or by personal check, certified check, or money order, made payable to the "Clerk, U.S. District Court."

In Forma Pauperis

A plaintiff unable to pay the filing fee must submit an application to waive the filing fee based on financial hardship. This is called applying for *in forma pauperis* (IFP) status and is authorized by 28 U.S.C. § 1915(a)(1).

In order to file for IFP status you must submit to the *Pro Se* Office a sworn statement which details certain financial information when your complaint is filed. The determination whether to grant or deny the IFP application is made by a judge, based on demonstrated financial need. A sample *in forma pauperis* application is included at the end of this manual. Note that this is a sworn statement and, as such, you are subject to the penalties for perjury if you make a false statement on this application. You should answer each question on the IFP application truthfully – do not leave any question blank. If you answer "no" or "zero" for each question, the judge may find the request implausible unless you explain your circumstances.

If the judge grants your application to proceed *in forma pauperis*, IFP status waives only the cost of the filing fee and the cost of service of the summons and complaint by the United States Marshals Service. The grant of IFP status does not waive any other costs

involved in the litigation. For example, costs for copies or witness fees cannot be waived and must be paid by the litigant.

Since a judge must rule on each IFP application as it is received, the *Pro Se* Office cannot tell you how long this will take. The judge makes every effort to decide IFP applications as expeditiously as possible.

Incarcerated Individuals

In April 1996, the Prison Litigation Reform Act ("PLRA") became law. The PLRA amends the *in forma pauperis* statute and requires prisoners to pay the full filing fee when bringing a civil action, even if granted IFP status. 28 U.S.C. § 1915(b)(1). The act defines "prisoner" as any person "incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program." According to this definition, someone on pretrial release may not be considered a 'prisoner' under this statute.

Prisoners must submit both an application for IFP status and a "Prisoner Authorization Form", which authorizes the institution with custody of the prisoner to withhold and forward payments from his/her prison account to the Clerk of Court until the entire statutory filing fee is paid in full, even if his/her case is dismissed. Thus, a prisoner may be granted IFP status, but she/he must ultimately pay the full filing fee. A copy of the Prisoner Authorization Form is included at the end of this manual.

Schedule of Fees

These fees are up to date as of the writing of this manual but are subject to change. The most recent filing fees are available on the Eastern District of New York's website (www.NYED.uscourts.gov).

Filing civil complaint	$405.00
Filing *habeas corpus* petition	$5.00
Filing notice of appeal	$605.00
Photocopies of documents in court file	$0.50/per page
Document certification	$12.00

WRITING AND FILING THE COMPLAINT

This section contains information and instructions for use by the *pro se* plaintiff for writing and filing a complaint.

In order for you to properly initiate an action in the Eastern District, you must write a complaint and submit it with the required $405 filing fee (or an application to proceed *in forma pauperis*) to the *Pro Se* Office. It is very important that you retain copies of all documents you submit in the litigation.

Instructions for starting an action in this federal court are included in this manual. Additionally, the *Pro Se* Office and the court's website have complaint forms for certain types of actions, including prisoner civil rights actions brought under 42 U.S.C. § 1983; employment discrimination actions under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, or the Americans with Disabilities Act; Social Security disability appeals under the Social Security Act, as well as a general complaint form that may be used for any complaint not within one of the other categories. Many of these forms are also included at the end of this manual.

Writing the Complaint

Your complaint must be typed or printed legibly in English on 8½ x 11-inch paper, double spaced, using one side of the page only, and must contain your original, not photocopied, signature. If there is more than one plaintiff, each plaintiff must sign the complaint.

The following sections describe the elements that must be included in a properly drafted complaint. These elements should appear in your complaint in the order listed

below. You should use these instructions along with the specific or general complaint form included in this manual.

Use of Artificial Intelligence ("AI")

While you may use ChatGPT or other artificial intelligence tools to assist with writing your complaint or response to motions and court orders, you must review your submission before filing with the court. Pursuant to Rule 11 of the Federal Rules of Civil Procedure, you must verify the content of your submission and affirm under penalty of perjury that your submission is true and accurate. As a *pro se* litigant, you do not need to cite to cases, but if you do cite to cases provided by AI, you must verify those citations. Use of fake citations may lead to sanctions, including dismissal of the action. In addition, information submitted to ChatGPT or other AI is not confidential.

Contents of the Complaint

Caption

The first page of your complaint must begin with a caption. The top of the caption should state the name of the court in which the action is being filed, that is, the United States District Court for the Eastern District of New York, followed by the names of all plaintiffs and defendants:

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

_____
_____
_____

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-against-

_____
_____
_____

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

Complaint for a Civil Case

Case No. _____
(to be filled in by the Clerk's Office)

Jury Trial: ☐ Yes ☐ No
(check one)

If you do not know the name of any defendant, you may refer to that defendant as John Doe or Jane Doe, giving his or her position and, if known, the place and time that the incident occurred, and as much other information as will help to identify who the person is. For example, if the defendant is a prison correction officer, he may be identified in the complaint as "Correction Officer John Doe who was on duty at Metropolitan Detention Center in A Block at 8:00 p.m. on January 6, 2025." Although John Doe's real identity will need to be determined in order to serve the complaint, it is permissible to find out a defendant's identity after the complaint is filed, through the discovery process or at the direction of the judge.

The proper defendants must be named in the caption. For example, a lawsuit brought under 42 U.S.C. § 1983 requires that all defendants named in the complaint have some direct personal involvement in the alleged incident. It would be incorrect for you to name the prison superintendent as a defendant simply because she/he is in charge of the prison. In employment discrimination cases, the named defendant generally is the company-employer and must be identical to the defendant named in the Notice of Right to Sue letter issued by the Equal Employment Opportunity Commission. In Social Security actions, the correct defendant is the "Commissioner of Social Security." In actions under the Federal Tort Claims Act, the only correct defendant is the "United States."

The first section of the body of the complaint should also identify all defendants and briefly describe who they are and their involvement in the claim alleged.

Jury Demand

In certain kinds of cases, the plaintiff is entitled to a jury trial. However, this right may be lost if you do not request it within a certain time period. Generally, you may demand a jury trial in writing up until 14 days after service of the defendant's answer. Fed. R. Civ. P. 38. If this deadline has passed, the judge has discretion to grant a jury trial if you make a motion explaining the reasons why you did not make the jury demand earlier. The easiest way for you to ensure the right to a jury trial, if the type of case so allows, is to make the demand at the time the complaint is submitted. If you wish to request a jury trial, you should write "jury trial demanded" on the first page of the complaint, to the right of the caption, or check the "Yes" box, as shown on page 42.

Subject Matter Jurisdiction

The next section of the body of your complaint must contain allegations that provide a basis for the court to assume jurisdiction over the subject matter of your case. This is referred to as subject matter jurisdiction. For example, in a lawsuit alleging employment discrimination, it is correct to state "This action arises under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e." You are not required to know the precise statute under which you seek relief, but you must provide sufficient facts to enable the court to determine the legal basis for the claim; if you do not, the complaint will be dismissed. For more information about jurisdiction, refer to the section of this manual entitled "Jurisdiction and Venue," on pages 30-36 above.

Venue

This section of the body of your complaint must contain a statement explaining why the Eastern District of New York is the proper federal court in which to file the lawsuit. For example, it is correct to state that "the Eastern District of New York is the proper venue for this lawsuit because the cause of action arose in Kings County," which is located in the Eastern District of New York. Refer to page 34 of the section of this manual entitled "Jurisdiction and Venue" for the list of counties within the Eastern District in order to ensure that your lawsuit is filed in the correct court.

Statement of Facts, Rule 8

This section of your complaint must contain a brief factual description of the event or events upon which your claim is based. The facts of the case should be described in chronological order, giving dates and times of each important event, as precisely as possible. The statement of facts should also include a brief description of what each

defendant did or failed to do, and how each defendant's act or failure to act caused you injury, as well as a description of any physical or emotional injury you sustained and what medical treatment, if any, was required. The facts also can include the names of other persons involved, dates, and locations of the events described. You should be as specific as possible regarding the facts. For instance, if you do not remember the precise date that something occurred, it may be narrowed down by stating "on or around the fifth day of April 2024."

You should describe each event in a separate, numbered paragraph. Rule 8 of the Federal Rules of Civil Procedure requires only that you provide enough facts to put the defendant on notice of what your claim is, but you should be sure to provide sufficient facts to allow the judge to determine the precise nature of the claim you are raising, especially if you do not state the statute or law that you allege has been violated.

Keep in mind that all lawsuits are subject to a statute of limitations period, which is the time limit within which a lawsuit must be brought. The statute of limitations is set by the substantive law, and you can find it through legal research. Generally, the time period begins to run at the time the injury or incident occurs, but you must do legal research to be sure your complaint is timely. If your complaint is filed in federal court within the statute of limitations period, then the lawsuit is timely. If your complaint is filed after the statute of limitations period has run out, your lawsuit may be dismissed. Also, if one of the defendants was a "John Doe," the timeliness of your lawsuit may be based on the date when that individual is actually named as a defendant and served with process.

Incarcerated Individuals – Exhaustion

Under the Prison Litigation Reform Act, incarcerated individuals must exhaust their administrative remedies in the prison where the complained of incident or condition occurred or is taking place before filing a complaint in federal court. This means that an incarcerated person must first file a grievance with prison officials and appeal any adverse decision through every available level of the prison grievance process. Once the individual has exhausted prison administrative remedies, she/he may file a complaint in federal court. When filing that lawsuit, an incarcerated person should include in the complaint information on whether and how she/he exhausted the claims in the prison grievance system. A form for prisoner complaints for use in federal court is included in this manual.

Relief Sought

This section of the complaint describes what you want the judge to do if you win. The judge has the power to grant different types of remedies, also called relief. She/he may order the defendant to compensate you by paying a specific amount of money. The judge may order the defendant to do or to discontinue certain acts; this type of remedy is called injunctive relief. The judge has the power to declare that the defendant violated your rights or that a certain statute is invalid; this type of remedy is called declaratory relief.

Signature

At the very end of your complaint, you should type or print your name, address, and telephone number, and sign and date the complaint. Incarcerated individuals also should sign a statement as to when they handed their complaint to prison officials for mailing to the court.

Exhibits

You may attach exhibits to your complaint if they are necessary to support the facts alleged in your complaint. They should be marked as exhibits (exhibit 1, exhibit 2, etc.) and be referred to in the text of the complaint. It is inappropriate to send the court a pile of documents which are not specifically mentioned in the complaint. However, if the document is relevant to the facts in the complaint, you can include it and explain its relevance in the Statement of Facts section of your complaint. For example, you should attach your EEOC Notice of Right to Sue letter to your employment discrimination complaint in a Title VII action. In a suit by a person in custody, you should attach to your complaint documents showing that you exhausted prison grievance procedures. You generally should not attach documents to the complaint that are merely evidence supporting your claims; you will produce those documents during discovery (discussed on pages 73-100 of this manual) but need not attach such documents to your complaint.

Remember, you should make and keep copies of all papers, including exhibits, that you submit to the court.

Filing the Complaint

After you have drafted the complaint and carefully reviewed it, the next step is for you to file it with the court through the *Pro Se* Office. You may file it in person or by mail, by submitting the signed original (including any exhibits) to the *Pro Se* Office.

At the time of filing, you also must submit either the civil filing fee or an application for a waiver of the filing fee, referred to as a request for *in forma pauperis* (IFP) status. The procedure to apply for a waiver of the filing fee is explained in the section of this manual on "Costs of Filing an Action in This Court," at pages 37-39 above.

If you pay the filing fee, you may be required to fill out a summons. A copy of a blank summons and civil cover sheet is included in this manual.

If you submit your complaint to the *Pro Se* Office by mail, you must enclose a signed original and either the filing fee or a request for its waiver. The *Pro Se* Office will review the papers and mail you notification of any incomplete or missing information or documents.

Once the case has been assigned a civil docket number and a judge, the *Pro Se* Office will issue you a package containing additional documents and instructions on how you should proceed further.

SERVICE OF THE SUMMONS AND COMPLAINT

The Federal Rules of Civil Procedure require that the summons and complaint be served on all the defendants in the case. This process is referred to as effecting service of process. These procedures must be followed exactly. If the defendants are not properly served with the summons and complaint, the case may be dismissed. Proper service of the summons and complaint within 90 days from the filing of the complaint is a crucial first step in your lawsuit.

Summary

Once you are in possession of the summons containing the signature of the Clerk of Court and the court's seal, each defendant must be served with a separate copy of the summons and complaint. The information on the summons should not be crossed out, added to, erased, or whited-out because it is a federal criminal offense to change or alter a summons. After every defendant is served, the back of the original summons must be completed indicating how service was made. The original summons (the one with the court's raised seal) along with any other proof of service (such as a process server's affidavit) is returned to the *Pro Se* Office for filing.

Parties Permitted to Serve Process: Rule 4(c)

Any person 18 years or older who is not a party to the lawsuit (that is, not a plaintiff or a defendant) may serve the summons and complaint. Fed. R. Civ. P. 4(c)(2). If a party to the action serves the summons and complaint (except by mail as discussed below), such service is improper, and therefore invalid. As the plaintiff, you must arrange for service of process, as follows:

For fee paid cases (cases where you have paid the filing fee): Professional process servers are listed in the *New York Law Journal* or can be found online. Professional process servers may be costly. You are not required to hire a professional to make service if you have a trusted family member or friend willing to serve the papers for you. Remember, the person must be 18 years or older and not a party to the lawsuit to qualify as an appropriate server.

The remainder of this section will refer to the person who serves process as the "process server," whether that person is a professional process server or someone else.

For IFP cases: If your case has not been dismissed and you have been granted *in forma pauperis* ("IFP") status (see page 37 above), and you have provided accurate addresses for the named defendants, the United States Marshals Service will serve the summons and complaint for you without prepayment of service fees.

Forms Required for Service

Once you are in possession of the original summons (the original has the raised seal of the court) you will need to make a copy of the summons and the complaint for each defendant.

Remember, the original summons must not be served on the defendant. After service is accomplished and the process server has completed the back of the original summons stating how service was made, the original summons (along with any other proof of service) must be returned promptly to the *Pro Se* Office for filing. Where the Marshals Service served defendants, the Marshals Service will return the proof of service by filing a form on the docket.

Time Limits for Service: Rule 4(m)

You have 90 days from the date the complaint is filed to serve the defendants. Fed. R. Civ. P. 4(m). If the summons and complaint are not served within the 90-day time period, the judge may dismiss your lawsuit. If you are unable to serve all defendants within this 90-day time limit, you may request in writing (sent to the *Pro Se* Office) that the judge give you additional time, stating the reasons why you need more time. The judge has discretion to grant a request for more time if made for "good cause" and can set a new date by which the defendants must be served.

Frequently, the judge will issue an order directing you to explain why the defendants have not yet been served. If you fail to respond to such an order, or if you do not have a sufficient explanation for the delay in service, the judge may dismiss your lawsuit. If you have IFP status and the Marshals Service failed to serve one or more defendants within the 90-day period, you should include this information in your response to the judge's order.

Rules for Service: Rule 4

Rule 4 of the Federal Rules of Civil Procedure provides for several methods of service. Fed. R. Civ. P. 4(e)(1) authorizes use of the methods of service described in state law. The United States Marshals Service ordinarily will attempt to serve individuals, government officials, organizations, corporations, or partnerships by mail before attempting personal service. If the defendant does not return the acknowledgment of mail service, the Marshals Service will serve the defendant by personal service. The Marshals Service is not permitted to effect service on a foreign state.

The method to be used in a particular case differs depending on the type of defendant being served. For example, the rules governing service of process on an adult are

different from the rules for service on a minor child or on a corporation. Fed. R. Civ. P. 4(e)-(j).

Waiver of Service of Summons: Rule 4(d)

A plaintiff may choose an alternative to serving the defendants with the summons and complaint: offering the defendants the option to waive service of the summons. Fed. R. Civ. P. 4(d). This option provides an inexpensive, efficient alternative to effecting service, and can be used by you whether you have paid the filing fee to start the action or have been granted IFP status. To serve under the waiver of service provision, you must mail via first-class mail or other reliable means, to the defendant's address the following: a copy of the complaint, two (2) copies of the waiver of service form, and a return, self-addressed, postage-paid envelope. Service occurs only if the defendant signs and returns the waiver of service form. If you have not received this signed form from the defendant within 30 days (60 days if the defendant is outside of the United States) after the date of mailing to the defendant, then you must have process served by one of the other allowed methods.

Service upon Individuals: Rule 4(e)

If the person being served is a competent adult over the age of 18, the process server may serve the defendant, pursuant to Rule 4(e)(2), by:

- Delivering a copy of the summons and complaint personally to the defendant
- Leaving copies at the defendant's dwelling with a person of suitable age and discretion currently residing at the defendant's dwelling
- Delivering copies to an agent authorized by appointment or by law to receive service of process

Thus, if a mentally competent adult is being served, the summons and complaint may be delivered to the defendant personally, left at the defendant's home address with a suitable

person who is competent to accept process, or delivered to the defendant's agent. If none of these methods are effective, as a last resort, New York state law authorizes the "nail and mail" method of service, which authorizes the process server, after making multiple attempts at service at different times of the day, to tape a copy of the summons and complaint to the door of the defendant's home or office and to mail a copy by certified mail, return receipt requested, to the defendant's home address. N.Y. Civil Practice Law & Rules § 308(4). However, the "nail and mail" method of service is a method of last resort and is not proper unless the process server has made multiple attempts at personal service at different hours of the day (after or before business hours) and attempted to locate the defendant at both their home and their place of business.

Service upon Corporations and Associations: Rule 4(h)

Service may be made on a business corporation or partnership by the process server personally delivering the summons and complaint to an officer or other person authorized by the company to receive process. A receptionist or secretary may not be authorized by the company to accept service of process, even if she/he receives other mail or packages. To determine who is authorized to accept service of process, the process server should call the company to ask who is authorized or designated to accept service of process for the company. The process server also may find this information by searching the records of the Division of Corporations on the New York State Department of State's website (www.dos.state.ny.us) or by calling (518) 473-2492.

Service may be made on the New York Secretary of State, in Albany, as an agent of a corporation or business entity if the corporation is incorporated or licensed to do business in New York State. Detailed information on service of process on the Secretary of State can

be found on the New York Department of State's website (https://dos.ny.gov/service-processnotice-claim).

Service upon the United States and its Agencies or Officials: Rule 4(i)

If the United States government is a defendant, the summons and complaint must be delivered to the United States Attorney for the Eastern District of New York or to an employee of that office who is authorized to received process on its behalf. The next step is to mail a copy of the summons and complaint to the Attorney General of the United States, U.S. Department of Justice, 950 Pennsylvania Avenue N.W., Washington, D.C. 20530-0001, by registered or certified mail. Fed. R. Civ. P. 4(i)(1)(B). If the lawsuit is against a United States government official or agency, the procedure described above must be followed, and a copy of the summons and complaint must also be sent to the official and to the chief of the agency or other person authorized to receive process on the agency's behalf. For example, in an action brought against the Department of Health & Human Services, process must be served on the U.S. Attorney for the Eastern District of New York, the Attorney General in Washington, D.C., and the Secretary of the Department of Health & Human Services, or the person authorized by the agency to receive service.

Service upon State or Local Governments: Rule 4(j)

In a lawsuit brought against New York State, a copy of the summons and complaint must be delivered to an assistant attorney general at an office of the attorney general or to the attorney general within the state. N.Y. Civil Practice Law & Rules § 307. In a lawsuit against the City of New York, the summons and complaint must be delivered to The Law Department of the City of New York, Office of the Corporation Counsel. N.Y. Civil Practice Law & Rules § 311(2). If a state or local government official is a defendant, the official must

be served, along with the chief of the agency or other person authorized to receive process on the agency's behalf.

Proof of Service: Rule 4(l)

After service has been made, the person(s) who served process must complete the return of service on the back of the original summons where it says "Proof of Service," affirming under penalties of perjury that service has been made and describing the details of the service. Once the original summons with proof of service is completed, it must be filed promptly with the *Pro Se* Office. In addition, if the waiver of service of summons and complaint have been served by mail, the signed waiver of service form executed by the defendant must be submitted to the *Pro Se* Office as proof that service was effected.

SERVICE AND FILING OF PLEADINGS AND COURT PAPERS AFTER SERVICE OF THE COMPLAINT: RULE 5

All court papers served after the filing and service of the complaint, and all letters to the judge, must be served on each defendant. Fed. R. Civ. P. 5. If an attorney has appeared for a defendant, that attorney must be served instead of serving the party. All parties listed in the caption must be served. Parties in default need not be served unless new or additional claims are asserted against them. Fed. R. Civ. P. 5(a)(2).

Anyone 18 years or older, including a party to the lawsuit, may serve the other side. Thus, after the complaint, you may serve motions, letters, and other court papers. Service of court papers (other than the complaint) and letters may be made by hand delivery or regular or priority mail.

Once an attorney has appeared for a party, service of court papers and letters is to be made to the attorney rather than the party.

Proof of service of court papers (other than the complaint) and letters should be in the form "I certify under penalty of perjury that I have served a copy of the attached [name of document] upon, [give the lawyer's name] whose address is: [attorney's address]" and be signed and dated by whoever made the service. A form for an Affirmation of Service is included in this manual.

Consent to Electronic Service

Once you have filed your complaint, you may choose to receive electronic notification of court issued filings in your case. By registering for electronic notification, you will be waiving your right to receive service of court issued documents such as notices, decisions, opinions, memoranda and orders, judgments, and appeal instructions in paper form by

mail. Instead, you will be sent notices of electronic filing via email. To be eligible for electronic service you must (1) not be incarcerated, (2) have a valid email address, and (3) have regular access to a computer. It is also recommended that you create a Public Access to Electronic Court Records (PACER) account (https://pacer.uscourts.gov/).

Because you will be receiving court-issued documents only in electronic form, you must maintain a valid email address and regularly check your email. Electronic service does not allow you to file documents electronically and does not mean that you can serve documents by email to the opposing party. You must continue to file with the court all documents regarding your case in paper copy or via the court's electronic document submission program and to serve the opposing party. Although you will receive electronic notices of what your adversary(s) files, your adversary must still serve you with a paper copy.

The form to consent to electronic notification of court issued documents can be obtained from the *Pro Se* office or the court's website and is included in this manual.

AMENDED COMPLAINTS

If you have failed to state important facts or legal claims in the original complaint, discover a new and significant fact, or want to add additional defendants or provide the real name of a John Doe defendant, you will need to file an amended complaint. If there is information from your original complaint that you want the court to know, be sure to restate that in your amended complaint.

Rule 15 of the Federal Rules of Civil Procedure allows a plaintiff to amend their complaint one (1) time within 21 days of serving the original complaint or at any point before the defendant answers the complaint, without the judge's permission.

If you want to file a **second** amended complaint, you must obtain either the defendant's written consent and/or the judge's permission.

If the defendant has already filed an answer, you must obtain either the defendant's written consent or the judge's permission in order to amend the complaint.

In either situation where you need the judge's permission, you must make a motion requesting the judge's permission to amend the complaint. You must attach to the motion a copy of your proposed amended (or second amended) complaint. See pages 101-112 below for a further discussion of motions.

Filing and Service of Amended Complaint

If the amended complaint does not include any new defendants and is made before any defendant has been served, the amended complaint must first be filed with the *Pro Se* Office and served on each defendant with the original summons in accordance with Fed. R. Civ. P. 4, as discussed on pages 49-55 above.

If new defendants have been added before any defendant has been served, the amended complaint must first be filed with the *Pro Se* Office. An amended summons will be signed and stamped by the Clerk's Office for service on the defendants. The amended summons and the amended complaint must be served on each defendant in accordance with Rule 4, as described in the prior section (pages 49-55 above). Once service is completed, the original amended summons and any other proof of service must be returned promptly to the *Pro Se* Office for filing.

If the complaint is amended after some defendants have been properly served with the original complaint and summons but before other defendants have been properly served (or if new defendants have been added), all the defendants who had previously been properly served should be sent, by ordinary first-class mail, a copy of the amended complaint. If counsel has appeared for a defendant, it should be mailed to the attorney. The amended complaint must then be filed with the *Pro Se* Office with an Affirmation of Service as proof of service attached to it. The remaining defendants must be served with the amended complaint and the summons in accordance with Rule 4, as described in the section of this manual entitled "Service of the Summons and Complaint" (pages 49-55 above). After service on the remaining defendants, the original summons and any other proof of service must be returned promptly to the *Pro Se* Office for filing.

ANSWER

The prior sections of this manual are largely directed to the *pro se* plaintiff. This section is largely directed to the *pro se* defendant. Thus, references to "you" means the *pro se* defendant. This section also provides information for the *pro se* plaintiff regarding what to expect from any defendant in response to the complaint.

After the plaintiff has served a copy of the summons and complaint on the defendant (see pages 49-55 above), the defendant must file an answer or make a motion to dismiss the complaint.

An Answer

An answer is a formal written response to the plaintiff's complaint in which the defendant responds to all the allegations in the complaint and sets forth any defenses to all or part of plaintiff's claims. In your answer, you must deny each statement in the complaint that is untrue and admit each statement that is true. Therefore, it is important that you (the defendant) read the complaint carefully. A form for an answer is included in this manual.

Responses to the Complaint's Allegations

You should answer each paragraph in the complaint in a separate, correspondingly numbered paragraph in the answer. For example, paragraph 3 of the answer should respond to paragraph 3 of the complaint. In addition, each sentence in each paragraph of the answer should correspond, as closely as possible, to the order of the sentences in that paragraph of the complaint. For example, if paragraph 2 of the complaint alleges: "Defendant is an officer of X company. The principal place of business of X Co. is in Queens, New York," an appropriate response might be a statement in paragraph 2 of the answer

that "The defendant admits that he is the president of X company. Defendant denies that X Co.'s principal place of business is in Queens, New York."

You (defendant) may not have enough information to admit or deny an allegation contained in the complaint. In that case, you (defendant) should state that, due to a lack of sufficient information or knowledge, you are unable to admit or deny the allegations contained in a certain numbered paragraph of the complaint.

Defenses

In addition to responding to the allegations in the complaint, your answer to the complaint should raise any defenses that you (defendant) have to the complaint. In general, the defendant has a defense to a lawsuit if, even assuming the truth of the allegations in the complaint, the law does not permit the plaintiff to win the case. For example, assume that in 2024, plaintiff filed a complaint under 42 U.S.C. § 1983, alleging civil rights violations that occurred in 2019. Since, in New York, claims under § 1983 must be filed within three (3) years of the occurrence of the event, the claim based on the 2019 occurrence is barred by the statute of limitations. Defendant's answer would assert an affirmative defense of the statute of limitations.

Under Rule 12(b) of the Federal Rules of Civil Procedure, certain defenses are waived if they are not asserted in the answer or in a pre-answer motion. For example, suppose that a defendant believes that venue, which is the particular place where the complaint was filed, is improper. The defendant must assert a defense of improper venue in the answer or in a pre-answer motion. If the defendant fails to raise this defense in the answer or pre-answer motion, she/he will be unable to raise this defense at all.

Counterclaims

In addition to any defenses the defendant may have, the defendant may raise a counterclaim in the answer. A counterclaim is a claim that the defendant has against the plaintiff and arises out of the same transaction or occurrence stated in the complaint. A counterclaim must be included in the defendant's answer, or it is waived. For example, if the plaintiff has sued the defendant for breach of contract, the defendant may counterclaim, as a separate allegation, that it was the plaintiff who breached the contract and therefore the plaintiff owes the defendant a sum of money.

Cross-Claims Against Other Defendants

An answer may also contain a cross-claim, where a defendant makes a claim against another defendant who the plaintiff named in the complaint. If you believe that another defendant is responsible for all or some of the damages claimed by the plaintiff, you may file a cross-claim against the other defendant. In other words, a cross-claim is a lawsuit by one defendant against another defendant within the original lawsuit based on the same dispute. If the plaintiff has named only one defendant in the complaint, there can be no cross-claim.

Third-Party Claim

The answer also may contain a third-party claim, under Rule 14 of the Federal Rules of Civil Procedure, in which the defendant alleges that new parties to the lawsuit, called third parties, are responsible for the relief sought by the plaintiff. For example, if plaintiff alleges that defendant caused plaintiff's injuries, and the defendant claims it was not his/her fault but someone else's fault – someone who is not already a defendant in the lawsuit – the defendant can assert a third-party claim against that new party. A third-

party summons will be issued by the *Pro Se* Office and the defendant's claim against that new, third-party must be served just like a complaint. See pages 49-55 above.

Motion to Dismiss

Although most of a defendant's defenses to a complaint are stated in the answer, a defendant has the option of asserting certain defenses in a motion to dismiss before filing the answer. Certain defenses must be asserted in a motion to dismiss, or they are lost. A motion is an application to the judge asking that the judge take some particular action. The procedure for making a motion is explained fully in the section of this manual entitled "Motions" (pages 101-112 below).

Under Rule 12 of the Federal Rules of Civil Procedure, a motion to dismiss the complaint may contain the following arguments:

- The court lacks the power to decide the subject matter of the case
- The court lacks personal jurisdiction over the defendant
- Venue is not proper, so the plaintiff's case should not be in the Eastern District of New York
- Service of process on the defendant was not proper
- The complaint fails to state a claim which the law will recognize as enforceable
- The plaintiff has failed to join a needed party.

Motions to dismiss under Rule 12 are explained more fully in the section of this manual entitled "Motions" (pages 105-108 below).

It is very important for the plaintiff to respond to a motion to dismiss; otherwise, the case may be dismissed without the plaintiff having an opportunity to present an argument to the judge. If the motion to dismiss is granted, plaintiff's complaint is dismissed, and the case is over. If the motion to dismiss is denied, the defendant must answer the complaint.

Time Limitations to Respond to a Complaint

The defendant must respond to the complaint by filing an answer or a motion to dismiss within 21 days after being served (60 days if the defendant is the United States or an agent thereof). A defendant (other than the United States) that has waived service under the procedure in Federal Rule of Civil Procedure 4(d) (discussed on page 51 above) has 60 days after sending the waiver to file an answer or motion to dismiss.

If no response to the complaint is filed within the required time period, the plaintiff should file a motion for a default judgment. A request for a Certificate of Default is included in this manual.

If the defendant's answer contains a counterclaim, the plaintiff must respond to the counterclaim within 21 days after being served.

If a defendant is served with an answer from another defendant that contains a cross-claim, that defendant must serve a response within 21days. The response to a cross-claim or counterclaim follows the same format as an answer.

Unless the answer contains a counterclaim, the plaintiff is neither required nor permitted to file any further pleading in response to the answer.

If the defendant makes a motion to dismiss the complaint, the plaintiff has 14 days after service of the motion to respond to the motion.

Extension of Time to Respond to the Complaint

If more time is needed to respond to the complaint (by answer or motion to dismiss), a defendant may request an extension of time to respond to the complaint. Prior to asking the judge for an extension of time, the defendant should ask the plaintiff or his/her attorney

to stipulate, that is, agree, to an extension of time to file the response to the complaint. If plaintiff does not consent, the defendant must ask the judge for an extension of time.

Procedure for Filing the Answer or Motion to Dismiss the Complaint

Once the defendant has prepared the answer or motion to dismiss, a copy must be served on the plaintiff (plaintiff's attorney if an attorney has appeared for the plaintiff), either by personal delivery or ordinary mail. The next step for the *pro se* defendant is to attach an affidavit of service to the original answer (or motion) and file it with the *Pro Se* Office. Be sure to check the judge's Individual Practices to confirm if courtesy copies are required at this stage.

Failure to File a Response to a Complaint: Default Judgments

If a defendant who has been properly served fails to respond to the complaint (by answer or motion), the plaintiff may request a default judgment for the relief requested in the complaint. A default judgment can be entered by the judge against a defendant who has been properly served and has failed to respond to the complaint. A form for use in preparing a motion for a default judgment is included in this manual.

A defendant who has defaulted may file a motion to vacate the default judgment under Rule 60 of the Federal Rules of Civil Procedure. The judge may set aside a default judgment if the defendant shows good cause for having defaulted.

MAGISTRATE JUDGES

There are two (2) types of judges in the district court for the Eastern District of New York (and the other federal district courts): United States District Judges and United States Magistrate Judges. As noted above, United States District Judges are appointed for life terms by the President with the approval of the United States Senate pursuant to Article III of the Constitution. United States Magistrate Judges are appointed by the Board of District Judges of the Eastern District of New York for terms of eight (8) years and may be reappointed at the expiration of the term. Magistrate Judges are judicial officers who are authorized, pursuant to 28 U.S.C. § 636, to conduct any and all proceedings in civil cases, including a jury or non-jury trial, and to order the entry of a final judgment with consent of both parties.

When the complaint is filed and a case is assigned a docket number and a District Judge, a Magistrate Judge is "designated" at random as well. In this district, the Magistrate Judge is typically referred to for all or part of your case.

The parties' consent is not needed for the District Judge to refer the case to the Magistrate Judge for non-dispositive purposes (that is, for purposes other than trial or final decisions on dispositive motions). Referring cases to the Magistrate Judge is a fairly common practice and is within the discretion of the District Judge. District Judge's often refer a case to the Magistrate Judge for general pretrial supervision (that is, to supervise discovery, set schedules, and try to settle the case). Other references may be for supervision of discovery, or for settlement purposes. Where a case is referred to a Magistrate Judge for general pretrial purposes, that means all pretrial issues regarding scheduling, requests for extensions of time, discovery proceedings and disputes, the schedule for the filing of

motions, and settlement, all should be addressed to the Magistrate Judge; letters about such matters should not be sent to or copied to the District Judge.

Rules 72 and 73 of the Federal Rules of Civil Procedure, Local Rule 72.1, and 28 U.S.C. § 636 describe the Magistrate Judge's role in civil lawsuits.

A United States Magistrate Judge should be addressed, orally and in writing, as Judge or Magistrate Judge.

Consent to Proceed Before a Magistrate Judge for All Purposes Including Trial

If all parties to the lawsuit consent, the lawsuit may be heard for all purposes by the Magistrate Judge, pursuant to 28 U.S.C. § 636(c). That means the Magistrate Judge will not only set the schedule and resolve all discovery disputes, but also that the Magistrate Judge will decide all motions and conduct the trial of the case, with a jury if either party is entitled to and has requested a jury trial. A "Consent to Proceed Before a Magistrate Judge" form is included in this manual.

There are a number of benefits to consenting to proceed before a Magistrate Judge for all purposes. Perhaps the greatest benefit is time. District Judges are required to give priority to felony criminal trials, which often are lengthy and complicated. If you consent to proceed before the Magistrate Judge, you may find that your lawsuit proceeds with greater speed than if the case were before the District Judge. Because Magistrate Judges are not affected by the scheduling requirements imposed by felony criminal cases, generally the pretrial and discovery conferences and trial will occur sooner, and on a specified date, before the Magistrate Judge. Your legal rights are the same before the District Judge or the Magistrate Judge. You have the same right to a jury in a trial before a Magistrate Judge as

you would have in a trial before a District Judge. Any party may withhold its consent to proceed before a Magistrate Judge without adverse substantive consequences.

In cases where the parties have consented to proceed before the Magistrate Judge for all purposes, the Magistrate Judge issues orders and opinions, and any appeal from the Magistrate Judge's decision proceeds directly to the United States Court of Appeals for the Second Circuit. This manual discusses "Appeals" on pages 125-132 below.

Orders Issued by the Magistrate Judge

In cases where the parties have not consented to proceed before the Magistrate Judge for all purposes, and the case has been referred by the District Judge to the Magistrate Judge, the Magistrate Judge may issue an order (or opinion) on any issue (such as a discovery dispute) that does not dispose of a claim or defense of a party. If you disagree with the Magistrate Judge's order, you must serve and file objections within 14 days. Objections should be sent to the *Pro Se* Office for filing. If you do not object to the Magistrate Judge's order within that 14-day period, you may not later object to the order. The District Judge will consider any objections filed but will set aside or modify the Magistrate Judge's order only if it is clearly erroneous or contrary to law. Note, however, that you are required to obey any order of a Magistrate Judge even if you have filed objections, unless you obtain a stay of the order from the Magistrate Judge or the District Judge.

For matters that do dispose of a claim or defense – such as a motion to dismiss or a motion for summary judgment – if the parties do not consent to the referral of the matter to the Magistrate Judge for all purposes, the Magistrate Judge will not issue an order on the matter, but instead will issue a Report & Recommendation to the District Judge.

Objections to a Magistrate Judge's Report & Recommendation

If you disagree with the Magistrate Judge's Report & Recommendation, you must object in writing to any or all of the contents of the Report & Recommendation within 14 days of service of the Report & Recommendation. You must serve all parties with your objections, attach a completed Affirmation of Service, and file all objections with the *Pro Se* Office. All objections should be captioned "Objections to Report & Recommendation." You must clearly connect your objections to specific recommendations and explain why you object to any particular recommendation. The other side may respond to your objections within 14 days after being served.

The District Judge will make a final decision, relying on the Magistrate Judge's Report & Recommendation and the parties' objections. The District Judge may adopt the Magistrate Judge's findings in full or in part or may decline to adopt the Report & Recommendation and issue an entirely new decision. If the District Judge's decision results in a final disposition of your case, you may appeal to the United States Court of Appeals for the Second Circuit. See the section of this manual on "Appeals."

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

PRETRIAL CONFERENCES

The judge may schedule a number of pre-trial conferences in your case.

A pre-trial conference typically is held in the judge's courtroom with the parties or their lawyers present. If the *pro se* party is incarcerated, the conference may be held by telephone. Generally, there are no witnesses to give testimony, and no evidence submitted. Rather, the *pro se* party, opposing counsel, and the judge meet to discuss and resolve scheduling or discovery issues or other matters. Scheduling of conferences is not automatic; it is up to the judge whether and when to hold conferences.

Once the defendant has filed an answer to the complaint, the judge may schedule an initial case management conference, also known as a Rule 16 conference or scheduling conference. Later conferences may be held to deal with changes to the schedule, to try to settle the case, or to resolve discovery disputes.

The Initial Case Management Conference: Rule 16

The initial case management conference often is the first opportunity for you and opposing counsel to meet with the judge and briefly describe the nature of your claims and the defendant's defenses. The judge will discuss discovery and the parties' discovery plan (if there is one), and whether the case can be settled at an early date. The judge may enter a scheduling order setting deadlines for amendment of the pleadings, motions, and the completion of discovery.

At least 21 days before the initial case management conference, you should meet (in person or by telephone) with opposing counsel to discuss settlement, develop a proposed discovery schedule and plan, and arrange for service of initial disclosures pursuant to Rule 26(a)(1) (as described on pages 73-75 below). Fourteen (14) days after this conference

between the parties, the parties are to submit a joint discovery plan to the judge. Fed. R. Civ. P. 26(f). That plan will be discussed at the initial case management conference. In some cases, the judge will approve the discovery plan without holding a conference.

Discovery Conferences

Unless the individual practices of the judge presiding over discovery require a different procedure, no motion filed under the Federal Rules of Civil Procedure 26, 27, or 45 will be heard unless the moving party has first requested an informal conference with the court by letter-motion for a pre-motion discovery conference, and that request has either been denied or the discovery dispute has not been resolved as a result of the conference, see Local Civil Rules 37.2. The Local Civil Rules emphasize that you should consult the individual practices of the judge presiding over your case for more information.

The Final Pretrial Conference

After discovery has been completed and the judge has ruled on any summary judgment motions or other pretrial motions, the judge generally will schedule a Final Pretrial Conference to discuss trial-related matters, including the number of days needed for trial, the identity of trial witnesses and identification of trial exhibits, and any objection to the other side's witnesses or exhibits, as revealed by the Pretrial Order required by Rule 26(a)(3) of the Federal Rules of Civil Procedure.

Behavior at All Conferences

When attending a conference, all parties should show respect for the judge by dressing neatly and being on time. A conference may be held in the courtroom or in a conference room. If the conference is held in the courtroom, the judge will sit on the bench and the parties will sit at the tables. Generally, when the tables are side-by-side, the

plaintiff sits at the table closest to the jury box; where the tables are in front of each other, the plaintiff sits at the front table. The judge's courtroom deputy will direct you where to sit. At times, particularly where the *pro se* party is incarcerated or does not live in the New York area, the judge may hold a conference on the telephone.

Whenever you speak to the judge, you should stand. It is customary to begin by saying "Good [morning or afternoon], Your Honor, my name is [your name] and I am the [plaintiff or defendant] in this case." Whether in the courtroom or in a conference room, whenever you speak to the judge, it is customary to refer to the judge as "Your Honor."

After introductions, you should be prepared to answer the judge's questions completely. The other side also will have the opportunity to answer the judge's questions. You should not interrupt the person who is speaking, and you should never interrupt the judge when she/he is speaking. When the judge is finished asking questions, she/he usually will ask if the parties have anything else they want to discuss.

DISCOVERY: INTRODUCTION & INITIAL DISCLOSURES

Introduction to Discovery

Discovery is the process of collecting the evidence necessary to support a claim or defense. During discovery, you may uncover relevant facts and identify documents and witnesses whose testimony can establish those facts. You may obtain evidence from the other parties to the litigation (the plaintiff and defendant), non-parties, and public records.

The discovery process is designed to go forward between the parties, with minimal involvement by the judge. Only if the parties have disputes or disagreement about the proper scope of discovery and cannot resolve the problems themselves, will the dispute be raised before the judge. Fed. R. Civ. P. 5 provides that discovery requests and responses should not be filed unless directed to do so by the judge. Therefore, discovery requests, responses and produced documents should be sent only to the parties to the case and not to the *Pro Se* Office for filing. In short, unless the Court orders otherwise, discovery documents should not be filed on the docket.

As with all papers in your case, you should keep copies of all discovery materials that you serve on other parties and that you receive from the other parties.

Mandatory Initial Disclosures: Rule 26(a)(1)

At the very beginning of the lawsuit, unless the case is in a category that is excluded, each party must automatically provide certain information and documents to all other parties, without the need for a request. This is referred to as "initial disclosures."

Rule 26(a)(1)(B) excludes nine (9) categories of lawsuits from initial disclosures. In general, *pro se* prisoner cases, Social Security appeals, and habeas corpus proceedings are excluded from initial disclosures, but all other *pro se* cases are required to make initial

disclosures. For example, a *pro se* plaintiff who is not in prison and who is suing a police officer claiming false arrest must provide initial disclosures to defense counsel. As another example, a *pro se* plaintiff alleging employment discrimination under Title VII must make initial disclosures. In contrast, an incarcerated *pro se* litigant alleging excessive force by correction officers is exempt from initial disclosures.

The Content of Initial Disclosures

Initial disclosures are information that you must provide early in the case to all other parties to the case, without a request from your adversary. Your initial disclosures must be served within 14 days after the Rule 26(f) meet and confer conference, unless: (1) the parties stipulate (agree) to a different time, (2) the judge orders a different time, or (3) a party objects during the conference that initial disclosures are not appropriate under the circumstances of the lawsuit and states the objection in the proposed discovery plan.

You must provide the following initial disclosure information to all other parties in the lawsuit. Fed. R. Civ. P. 26(a)(1)(A):

1. The name and, if known, the address and telephone number of each individual likely to have information that you may use to support your claims or defenses and the type of information each of those individuals have.
2. A copy of all documents (including emails or other electronically stored information) that is in your possession or control that you may use to support your claims or defenses.
3. A calculation of the damages you are claiming. You also must provide documents that support your calculation of damages, including documents showing the nature and extent of any injuries.
4. The defendant must provide copies of any insurance agreements which may apply to any award of damages in the lawsuit.

In summary, your mandatory initial disclosures must identify your witnesses, provide copies of all documents that you have that you believe support your case, and provide a calculation of the damages you claim.

Your initial disclosures must be made in writing, must be signed by you, and must be served on all other parties, but it should not be filed with the *Pro Se* Office.

You must serve your initial disclosures on all other parties to the lawsuit even if you have not completed your investigation of the case. You must serve your initial disclosures even if you think that the other party's initial disclosures are inadequate, or even if the other party failed to provide any initial disclosures at all. In all aspects of discovery, you must comply with your disclosure and discovery obligations even if you believe the other party has not complied with their discovery obligations.

If, after providing initial disclosures, you learn that your information is incomplete or incorrect, you must promptly supplement or correct your initial disclosures.

If you fail to comply with your initial disclosure obligation, you generally will not be allowed to use witnesses or documents that you did not disclose to the other party. For example, if you identify yourself and Jordan Parker as your witnesses, you will not be able to call Alex Monroe to testify for you at trial or on a motion. Similarly, if you fail to provide copies of certain documents to the other party, you generally will not be allowed to offer them into evidence at trial or on a motion.

SCOPE OF DISCOVERY IN GENERAL: RULE 26(B)

Rule 26(a)'s mandatory initial disclosures are automatic – you must make the disclosures described in the prior section without any request from the other party. Discovery under Rule 26(b) of the Federal Rules of Civil Procedure is different – unless you ask the other party in writing for documents or information, the other party need not give it to you.

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

You must review Rules 26 through 37 and Rule 45 of the Federal Rules of Civil Procedure, which provide the primary methods for pretrial discovery, and the Eastern District's corresponding Local Civil Rules. In particular, Local Rule 26.3 provides uniform definitions of certain general terms that apply to all discovery requests.

Although the scope of discovery under the Federal Rules is quite broad, there are some limitations. You are not permitted to seek discovery of privileged or otherwise protected information or of documents which an attorney prepared for trial or in anticipation of litigation. The most common privilege is the attorney-client privilege, which applies to a party that is (or was) represented by an attorney. A party that asserts a claim of privilege in objection to discovery must follow the procedures outlined by Local Civil Rule 26.2.

In addition, the judge may limit discovery in a specific case, in particular when a party unreasonably seeks information that has already been provided, or that is already

available from some other source which is more convenient, less burdensome, or less expensive; or the party has had ample opportunity to obtain the information by discovery; or the proposed discovery is outside of the scope permitted by Rule 26(b)(1).

Rule 26(e)(1) of the Federal Rules of Civil Procedure imposes a duty on you to supplement or correct your responses to any discovery request in a timely manner if you later learn that the response is incomplete or incorrect.

In cases that must comply with the initial disclosures under Rule 26(a), discovery under Rule 26(b) cannot begin until the parties have had their Rule 26(f) meet and confer conference, unless all parties agree that discovery can begin earlier, or the judge orders earlier discovery. For cases that are exempt from mandatory initial disclosures under Rule 26(a)(1)(B), including lawsuits of incarcerated *pro se* litigants, discovery generally may begin as soon as a defendant has filed an answer.

Methods of Discovery: Introduction

The Federal Rules of Civil Procedure provide the following methods of discovery: (1) interrogatories (Rule 33), (2) requests for production of documents (including electronically stored information) (Rule 34), (3) requests for mental or physical examinations (Rule 35), (4) requests for admissions (Rule 36), and (5) depositions (Rules 30 and 31). Each method is designed to obtain different types of information. These discovery methods may be used in any order or at the same time. Some methods are less costly than others. Some discovery methods are more "user-friendly" as a practical matter for a *pro se* party. The following sections discuss these discovery methods.

DISCOVERY: INTERROGATORIES (RULE 33)

Interrogatories are written questions that you may ask any other party to the case. Interrogatories may only be used to discover information from parties to the litigation. You may not use interrogatories to obtain information from non-parties. You also may not direct the interrogatories to a specific employee of a corporate party; the corporation determines who will answer the interrogatories on its behalf.

You may serve no more than 25 interrogatories on any one party, unless the judge gives you permission to serve more. You cannot avoid the 25-interrogatory limit by asking several questions within one interrogatory. If an interrogatory has separate subparts, each subpart is counted as an interrogatory. You may serve different interrogatories on different parties. For example, if there is more than one defendant, you may serve up to 25 interrogatories on each defendant. Each written question or subpart counts as one interrogatory.

You should not use interrogatories merely to identify documents that the opposing party may have. Document requests (described in the next section, on pages 81-83 below) are a better way to obtain documents (and electronically stored information) from the other side. Unlike interrogatories, document requests are not limited to 25 questions. You should not waste your limited number of interrogatories by using them to obtain documents.

Answers and Objections to Interrogatories

If the other party sends you interrogatories, you must respond to the interrogatories in a sworn, signed statement within 30 days. Fed. R. Civ. P. 33(b). If you need more time to respond to interrogatories served on you, you may request an extension of time from the party that served the interrogatories; if that party will not agree to give you more time to

answer the interrogatories, you may file a motion with the *Pro Se* Office asking the judge to give you additional time to respond.

You must answer each interrogatory separately and fully, unless you have an objection to the interrogatory. You may respond by answering an entire interrogatory question or by objecting to the question or part of the question. If you object to part of a question, you must answer the rest of that interrogatory question. You must state any objections in writing, including the reasons for your objection. If you do not understand what is being asked of you, you should first try to discuss it with the other party, rather than objecting.

If the other party believes that your objection is incorrect or unreasonable, she/he may make a motion to the judge under Rule 37(a) of the Federal Rules of Civil Procedure, requesting an order directing you to answer the interrogatory. Before any such motion is made, however, the parties must discuss the request and the objection to try to resolve the dispute before bringing it to the judge's attention.

You must answer an interrogatory with all the information that you have available. Under Rule 33(d) of the Federal Rules of Civil Procedure, you must look for the answer to an interrogatory question if it can be found in your records or some other available place. It is inappropriate for you to answer "I don't know" to an interrogatory if the information needed to answer the question is available to you.

If the answer to a question can be found by examining, organizing, or summarizing business records, and it would take the same effort for both you and the person asking the question to do this, you can point out where the information is located. Under Rule 33(d) of the Federal Rules of Civil Procedure you must identify the records in sufficient detail to

permit the serving party to locate and identify the documents where the answer can be found. You also must give the serving party a reasonable opportunity to review and copy the documents after service of the answers or at a date agreed to by the parties, unless otherwise ordered by the judge.

Interrogatories are an inexpensive way for you to discover information relating to your lawsuit. The only real cost is for postage to mail the request to counsel for the opposing party.

Court Prepared Interrogatories in Certain Prisoner Pro Se Actions (Local Civil Rule 33.2)

Under Local Civil Rule 33.2, the court has prepared form discovery requests (combining interrogatories and document requests) for use in *pro se* prisoner cases alleging excessive force, inmate against inmate violence, or disciplinary due process violations where punishment was confinement in the segregated housing unit (SHU) for more than 30 days, and where the events occurred while the prisoner was in custody of the New York City Department of Correction or the New York State Department of Corrections & Community Supervision.

The defendants must respond to this standard request within 120 days of service of the complaint. The defendants must serve their response on the *pro se* plaintiff and file a copy with the *Pro Se* Office.

The Local Civil Rule 33.2 interrogatories and document requests are the only discovery permitted during that 120-day period. After that period, if you believe that you need additional follow-up information from the defendant(s), you may serve the defendant with additional interrogatories or document requests.

DISCOVERY: REQUESTS FOR PRODUCTION OF DOCUMENTS (RULE 34)

Under Fed. R. Civ. P. 34, you may request production of any document (or electronically stored information, such as emails) containing information relevant to issues in the lawsuit. You may use this discovery method to obtain documents (such as records, letters, contracts), electronically stored information (such as emails), and other tangible items (such as physical things). Document requests can be served on any person, including individuals or organizations that are not parties to the lawsuit (but if the request is to a non-party, a subpoena will be required – see page 82 below).

The document request must be made in writing, and it must contain a description of the documents you want, as well as the date, time, place, and manner for their production. If you have placed your medical or mental health condition in issue in the lawsuit (such as by claiming physical injury, emotional distress, or pain and suffering), the defendant may ask you to complete and return a release or authorization so that the defendant can obtain medical or other "private" records and information from a non-party such as your doctor.

Response to Document Requests

If the opposing party serves a document request on you, you must respond to the document request within 30 days after its service upon you, unless otherwise agreed by the parties or ordered by the judge. In the response, you may agree to produce the requested documents, or object to all or part of the request. If you object, you also must provide the reasons for your objection. You must produce documents to the parts of the request to which you did not object.

You must produce the documents in the manner that you usually keep them, or you must organize and label them to correspond with the categories in the document request.

You must supplement your response if you later discover more documents called for by the document request.

You should number all the documents you produce, keep a copy of the numbered documents, and keep a record of what documents you produced and when. That way, if the other side claims you did not produce a document, you have proof that you did produce it.

Document Requests to Non-Parties (Rules 34 and 45)

You may request documents from a person or organization that is not a party to the case. You first should request the information informally, such as by writing a letter. By doing so you may avoid the expense of obtaining a subpoena. If this informal method is not successful, under Rule 34(c) of the Federal Rules of Civil Procedure, you may formally request the documents from a non-party through a subpoena under Rule 45 of the Federal Rules of Civil Procedure.

Rule 45 sets out the procedures for issuing, serving, opposing, and responding to subpoenas. A subpoena is issued by the Clerk of Court, upon application by a party, requiring a non-party to appear for a court proceeding (such as a deposition or trial) or to produce documents at a specific time and place. There are two (2) types of subpoenas: a *subpoena duces tecum* which commands a person to produce relevant documents, and a *subpoena ad testificandum* which compels a witness to appear at a judicial proceeding, such as a deposition or trial.

If you as a *pro se* party need a subpoena, the subpoena will be issued by the *Pro Se* Office. The *Pro Se* Office of the Eastern District of New York may issue a subpoena even if the deposition of document production will take place in another district.

A copy of the subpoena must be personally served (hand delivered) by a person who is not a party to the lawsuit and is at least 18 years old, on the individual that is being asked to produce the requested information. For subpoena's requiring a person's attendance, the person issuing the subpoena must advance the witness compensation. Compensation for the witness includes a $40 attendance fee and compensation for travel to and from the courthouse. *See* 28 U.S.C. § 1821. The Marshals Service will not serve subpoenas. There are no fees for document subpoenas, but the party receiving the subpoena may charge for copying the documents.

The Eastern District has no funds to pay the subpoena fee for a *pro se* party (whether or not IFP status was granted) and cannot waive the subpoena fee. If you cannot afford to pay this subpoena fee, you cannot subpoena a non-party.

A copy of the subpoena also must be served on all the parties in the lawsuit. You must provide other parties with copies of all documents that you obtain in response to a subpoena to a non-party.

You must take reasonable steps to avoid imposing an undue burden or expense on the non-party receiving the subpoena for production of documents.

Response to a Subpoena

Under Rule 45(d)(2)(A), a non-party that receives a *subpoena duces tecum* is not required to appear in person for the document production, unless she/he has been subpoenaed to appear for a deposition, hearing, or trial at the same time and place. The non-party simply can send you the requested documents. A non-party that has been served with a *subpoena duces tecum* for production of documents may ask the judge to quash the subpoena. A motion to quash a subpoena is a request to vacate or void the subpoena, so that

the non-party no longer must obey it. If the judge grants the motion to quash, the non-party no longer is required to produce the requested documents. If the subpoenaed person files a motion to quash your subpoena, you may oppose the motion. See the discussion of discovery motions on page 108 below.

In addition, a non-party that has been served with a subpoena for production of documents generally has 14 days to serve any written objections to the subpoena under Rule 45(d)(2)(B). Once an objection has been made to a request, if you still want the documents, you must make a motion or application to the judge (through the *Pro Se* Office) to order production of the requested documents from the non-party.

DISCOVERY: PHYSICAL AND MENTAL EXAMINATIONS (RULE 35)

If your physical or mental condition is at issue in your lawsuit, the defendant may ask you to submit to a physical or mental examination under Rule 35 of the Federal Rules of Civil Procedure. The examination must be done by a suitable licensed or certified examiner, such as a doctor or psychiatrist. Generally, the party that requested the examination must pay for it.

For example, if you allege that you sustained serious injury in a car accident, and the defendant driver of the car denies that you were injured or injured as severely as you claim, the defendant might seek to have you submit to a doctor's examination to determine the extent of your physical injury. The defendant would make arrangements with a doctor and would pay all costs incurred in getting the examination. As another example, if you claim that you were discriminated against by your employer and as a result you suffered severe emotional distress, the defendant employer might seek a mental examination of you by a psychiatrist.

Unlike other discovery methods, a mental or physical examination may be obtained only by agreement of the parties or by the party seeking the examination filing a motion for the judge to decide. Any motion must (1) explain the need for the examination, (2) specify the time, place, manner, conditions, and scope of the proposed examination, and (3) identify the person(s) who will conduct the examination. The motion must be served on all parties. If a motion is made and granted by the judge, the person to be examined must be notified in writing of the time and place of the examination, the name of the person performing it, and the procedure to be performed.

Once the Rule 35 examination is completed, you may request a copy of the examination report. If you make this request, you must provide any similar reports about the same condition, unless you can prove that the information is not available. Requesting and providing these prior reports waives any doctor-patient privilege regarding the physical or mental condition at issue.

DISCOVERY: REQUESTS FOR ADMISSION (RULE 36)

A request for admission is a discovery method, under Rule 36 of the Federal Rules of Civil Procedure, by which a party is asked to stipulate (that is, agree) that certain facts are true, or certain documents are authentic. You can also use a request for admission to ask someone to agree on how the law applies to a fact. Requests for admission are intended to relieve parties of the time and costs associated with proving facts that will not be disputed at trial.

Requests for admission may only be served on other parties to the litigation. If a party admits something under this discovery method, that fact will be treated as proved.

An admission is only for the purposes of that lawsuit and is not an admission for any other lawsuit or any other purpose. An admission in a lawsuit cannot be used against that party in any other proceeding. Any matter that is admitted is treated as if it has been proven for the purpose of the rest of the lawsuit, unless the judge allows the answering party to withdraw or change the admission.

Unlike other discovery devices where generally you are trying to learn information, a Request for Admission is best used to obtain agreement on facts you already have learned from the other side. For example, a request to admit that the defendant police officer beat up the plaintiff or used excessive force on the plaintiff is not likely to be admitted by the defendant. In contrast, a request to admit that the only police officers present at the incident were Officers Quinn, Emerson, and Brooks is likely to be admitted. Also, a request to admit that a document is authentic generally will eliminate a challenge to its admission into evidence.

Responding to a Request for Admission

If the other party serves you with a request for admission, you must admit or deny the request, object to the request, or state in detail the reasons why you cannot admit or deny the request. If you cannot admit or deny a particular request in total, you must admit the part that is true and either deny or explain why you cannot admit the rest. You only may state that you lack knowledge or sufficient information to permit admission or denial after making a reasonable inquiry.

If you fail to answer a request for admission, that constitutes an admission. If you do not deny or object to a request for admission within 30 days after its service, the request is deemed admitted. Thus, it is crucial for you to affirmatively deny all requests not believed to be true. At the same time, you should not hesitate to admit facts that are true.

Under Rule 37(c)(2) of the Federal Rules of Civil Procedure, if a responding party denies or otherwise fails to admit the genuineness of a document or the truth of a fact in a request for admission and the requesting party later proves that the fact is true or the document authentic, the requesting party may file a motion requesting the judge to order the other party to pay reasonable expenses incurred in proving the matter, including attorneys' fees. A *pro se* party is not entitled to attorneys' fees. The judge must grant the motion unless she/he finds that (1) the request for admission was objectionable under Rule 36(a), (2) the requested admission was not important, (3) the answering party had reasonable grounds to fail to admit the matter, or (4) there was other good reason for the failure to admit.

DISCOVERY: DEPOSITIONS (RULES 27-32)

A deposition is a procedure in which the testimony of a party or of a non-party witness is taken under oath about their knowledge of certain facts in a lawsuit. It is taken before trial, a question-and-answer format is used, and it generally is recorded by a stenographer (a court reporter), but it also can be recorded by electronic means (videotape or audiotape).

Prior to noticing or taking a deposition, you should review Rules 28 and 30(b) of the Federal Rules of Civil Procedure which explain the recording of a deposition, the role of an officer in recording a deposition, and other relevant information.

The process of questioning a party or witness at a deposition is called "deposing" a person or "taking a deposition." The person answering the questions is referred to as the deponent. The deponent answers all questions under oath, which means that she/he swears under penalty of law that all the answers she/he gives are true. The deponent can be any person who may have information about the lawsuit, including parties, non-parties, eyewitnesses, or expert witnesses.

A deposition taken by a party represented by counsel generally occurs in a conference room in that lawyer's office. A deposition taken by a *pro se* party can occur in the opposing lawyer's conference room. If necessary, arrangements can be made through the court to have the deposition at a room in the courthouse (subject to availability). If you are suing individuals or organizations that do not live or work in New York, you generally are required to take the deposition where the person lives or works.

A deposition is taken before a person authorized to administer oaths, such as a court reporter, notary public, or other authorized officer as specified in Rule 28. It is the duty of

the party conducting the deposition to arrange for the court reporter or other authorized officer (and audiotape or videotape operator if the deposition is to be audiotaped or videotaped). At the very start of the deposition, the court reporter or other notary public will swear in the deponent, that is, have the deponent swear to tell the truth.

The questions and answers in a deposition must be recorded. The party taking the deposition may choose the method for recording the deposition and is responsible for paying the cost of the recording. A deposition may be taken by stenographic means (with a court reporter or court stenographer who will later provide a written record called a transcript of the deposition), or by non-stenographic methods (audiotape or videotape), unless otherwise ordered by the judge. Where the deposition is recorded by audiotape or videotape, it generally will be necessary for you to have a written transcript prepared from the audiotape or videotape, before it can be used in connection with a motion, conference, or trial.

A party may conduct a deposition over the telephone by written stipulation of the parties or by obtaining the judge's permission.

Rule 30(a) allows all the plaintiffs, or all the defendants, to take no more than ten (10) depositions, absent the judge's permission for more. For example, if there are two (2) defendants, and the first defendant has taken seven (7) depositions and the second defendant has taken three (3) depositions, neither defendant may take any more depositions without the judge's permission.

Generally, a party does not need the judge's permission to take a deposition. However, under Rule 30(a) of the Federal Rules of Civil Procedure, a party must seek the judge's permission when: (1) the deponent is in prison, (2) the party's side of the lawsuit has already taken ten (10) depositions, and the parties have not stipulated in writing that the

party can take more, or (3) the deponent has already been deposed in the same case, and the other parties have not stipulated in writing that the deponent can be deposed again.

You initiate the process of taking a deposition by writing and serving a "Notice of Deposition" on all parties to the lawsuit within a reasonable time before the deposition is scheduled. This notice should contain:

1. The case caption including the docket number (described on page 6 above).
2. The date, time, and place where the deposition will be held. If you intend to conduct the deposition at the Eastern District Courthouse in Brooklyn or Central Islip, you should ask the judge ahead of time about reserving a space.
3. The name and address of the deponent. Where information is sought from an organization, such as a corporation or a government agency, and you do not know who within the organization has the desired information, Rule 30(b)(6) of the Fed. R. Civ. P. allows you to name the organization as the deponent and describe the subject or subjects you want to discuss at the deposition. The organization must then designate the person(s) to testify on its behalf and the subject on which each person will testify.
4. The method by which the deposition will be recorded, such as stenographic, audiotape, or videotape. A *pro se* party who is taking a deposition by audiotape at the courthouse should contact the judge in advance to assist with coordinating any needed A/V services.

A copy of the notice of deposition must be served (mailed or delivered) to each deponent and all parties in the case, or if a party is represented by counsel, to counsel. The notice of deposition should not be filed with the *Pro Se* Office.

Under Rule 30(d)(1) of the Federal Rules of Civil Procedure, unless otherwise agreed by the parties or ordered by the judge, a deposition is limited to one (1) day of no more than seven (7) hours. The party requesting the deposition, the deponent, the deponent's attorney, and the parties to the lawsuit and their attorneys may attend a deposition (Local Rule

30.3). A person whose presence is shown to be essential to the presentation of a party's case also may be permitted to attend a deposition. For example, it may be necessary to arrange for an interpreter to be present where there is a language issue. The officer of a corporate party also has the right to attend a deposition. The corporate party may designate one person to represent the organization as a party representative and another person to be the representative deponent under Rule 30(b)(6). Finally, a court reporter or another person who will administer the oath and record the testimony will be present at a deposition. The judge is not present at the deposition.

Under Rule 30(c), any party to the action may ask questions at a deposition. Generally, the party who requested the deposition asks all his/her questions first and then the other parties' attorneys may ask questions. A non-party deponent's attorney may also ask questions at the deposition.

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

Objections at the Deposition

Under Rule 30(c), the deponent (or their attorney) is entitled to state objections to: (1) the qualification of the officer taking the deposition, (2) the manner the deposition is being taken, (3) particular questions asked at the deposition, or (4) the conduct of any party at the deposition. Any objection made should be noted on the record of the deposition, but the deposition should continue until it is concluded.

An objection during a deposition must be stated concisely and made in a non-argumentative and non-suggestive manner. Fed. R. Civ. P. 30(c)(2). You only may refuse to answer a question to preserve a privilege, to enforce a limitation previously ordered by the judge, or to present a motion to the judge under Rule 30(d)(4). Otherwise, you should state the objection for the record, but you should answer the question. Later, you can bring the objection to the judge's attention for a ruling.

Fed. R. Civ. P. 30(d)(3) allows a deponent or a party at any time during the deposition to motion that the deposition should be stopped, that certain questions should not be answered, or that some other limitation should be placed on the way the deposition is being taken. The deponent or the party making the motion must show that the deposition is being conducted in bad faith or in an unreasonable manner to annoy, embarrass, or oppress the deponent or party.

Deposition of a Non-Party

If you wish to take the deposition of a non-party to the lawsuit, you must serve the deponent with a subpoena in accordance with Rule 45 of the Federal Rules of Civil Procedure. As discussed above, a subpoena is a document requiring a person to appear for a trial or a deposition or to produce documents at a specific time and place (see pages 82-84).

The same form is used for a deposition subpoena as for a subpoena *duces tecum*. A *pro se* party can obtain a subpoena from the *Pro Se* Office. A subpoena must be personally served (hand delivered) by a person who is not a party to the lawsuit and is at least 18 years old, on the deponent, along with the witness fees and travel expenses as provided in Fed. R. Civ. P. 45(b)(1).

Under 28 U.S.C. § 1821, you must pay a non-party deponent $40 per day for deposition testimony. If you request a deposition of a non-party, you also are responsible for the non-party deponent's reasonable travel expenses.

The court does not have funds to pay subpoena fees on behalf of a *pro se* party, nor can the court waive the subpoena fee, even if you were granted *in forma pauperis* status. If you cannot afford to pay the non-party deponent subpoena fee and travel fee, you cannot subpoena the deponent for a deposition.

Motions to Quash a Subpoena

A non-party deponent served with a subpoena may ask the judge to quash the subpoena. As discussed above, a motion to quash a subpoena is a request to vacate or void the subpoena, so that the person no longer must obey it. If the judge grants the motion to quash, the subpoena will not be responded to.

You must take reasonable steps to avoid imposing an undue burden or expense on any person you subpoena for a deposition pursuant to Rule 45(c) of the Federal Rules of Civil Procedure. A non-party deponent may seek to get a subpoena quashed if it imposes an undue burden or expense. In addition, if a deposition subpoena requires a non-party deponent to travel more than 100 miles from his/her home or work address, and the non-party objects, the judge must either quash or modify the subpoena under Fed. R. Civ. P. 45(d)(3)(A).

Request for Production of Documents at a Deposition

Under Rule 30(b)(2) of the Federal Rules of Civil Procedure, you may serve a request for document production along with a notice of deposition, if the deponent is a party. If you want a non-party deponent to bring documents to the deposition, you must serve the

deponent with a subpoena *duces tecum*, along with the notice of deposition. Under Fed. R. Civ. P. 30(b)(1), you must list in both the notice of deposition and the subpoena *duces tecum* the documents you want the non-party deponent to bring to the deposition.

You should review Rule 34 of the Federal Rules of Civil Procedure which states the procedure for requests for document production, and Rule 45 of the Federal Rules of Civil Procedure which discusses the requirements and procedures for a subpoena. The requirements for requests for production of documents are discussed at pages 81-84 above.

Failure to Appear for a Noticed Deposition

Under Fed. R. Civ. P. 30(g), if you notice a deposition and fail to attend the deposition, the judge may order you to pay the reasonable expenses of all parties and their attorneys who attended the deposition. If you request the deposition of a non-party deponent and fail to serve a subpoena and the non-party deponent fails to show up, the judge may order you to pay the reasonable expenses of all parties and their attorneys who attended the deposition.

If the other side notices your deposition and you fail to appear, the judge can impose a variety of sanctions on you, including monetary sanctions and dismissal of your case. Therefore, if you are unable to attend a deposition on the date it is scheduled, you must notify the opposing attorney before the scheduled deposition date.

Procedures After a Deposition is Taken

Before the deposition is completed, a party or deponent may request that the deponent have the right to review the transcript or recording of the deposition. The transcript of a stenographic recorded deposition is usually provided by the court reporter or stenographer. The person who transcribes the recording of a deposition taken by audiotape

or videotape must certify that the transcript is a true record of the deponent's testimony. The original transcript, and any audiotape or videotape, is held by the party that noticed the deposition and should be carefully protected against loss or destruction.

Under Rule 30(e) of the Federal Rules of Civil Procedure, once a transcript of a deposition is available, the deponent has 30 days to review the transcript and to make changes in form or substance. For your deposition, if you make changes upon reviewing the deposition transcript, you must sign a statement listing the changes and the reasons for making them. The court reporter having control of the transcript must attach your list of changes to the official deposition transcript. The deposition transcript itself is not altered. Once the review period expires, pursuant to Fed. R. Civ. P. 30(f), the court reporter will certify that the deponent was duly sworn, and that the deposition is a true record of the testimony given by the deponent.

Deposition transcripts are to be kept by the parties and should not be filed with the court unless the judge otherwise directs.

Deposition Costs May Make Them Impractical for a Pro Se

Deposition related expenses are probably the major expense of a lawsuit. Usually, a court reporter will charge an appearance fee and a per-page charge for the transcript. The fee may be $4.40 per page or more for the original transcript. If you plan to take a deposition using a court reporter, you should call several different reporting agencies to find out their prices prior to scheduling the deposition. Again, you are responsible for the costs for the deposition, even if you were granted *in forma pauperis* status.

DISCOVERY DISPUTES AND SANCTIONS (RULE 37)

Over the court of litigation, parties may have disagreements about disclosure and discovery. All parties must conduct discovery in good faith and attempt to resolve between themselves all differences that may arise before seeking assistance from the judge. If the parties are unable to resolve discovery disputes after making efforts to do so, however, it may be appropriate and necessary to seek the judge's intervention.

If you cannot resolve discovery disputes by discussing them with the other side, Local Civil Rule 37.2 requires that you request a conference with the judge for the purpose of resolving the disputed issue. You do this by writing a letter to the judge, serving it on opposing counsel, and delivering the letter to the *Pro Se* Office. Some judges will conduct the discovery conference in the courtroom; others will do it on the telephone; others will not hold a conference. See pages 70-72 above discussing conferences with the judge. If the judge denies your request for a conference or the discovery dispute is not resolved at the conference, you may file a motion for a protective order, a motion to compel discovery, or a motion for discovery sanctions.

For any of these three types of motions, the motion must include a certification that you have tried to confer in good faith with all persons involved to resolve the matter without judicial intervention. The motion also must include an explanation of the dispute, what you would like the judge to do, and the reasons why the judge should grant your motion.

Motion for a Protective Order (Rule 26(c))

A protective order is an order limiting the scope of discovery or directing that discovery proceed in a certain way. A motion for a protective order is usually filed before

the discovery is due. A motion for a protective order must be filed with the judge before whom the lawsuit is pending, except for when the motion involves a deposition taking place outside of the Eastern District. In that case, the motion for a protective order may be filed in the federal district court in the district where the deposition is to be taken.

Motion to Compel or for Sanctions (Rule 37)

There are two (2) motions which may be appropriate when disputes arise over initial disclosures or the response, or lack of response, to a discovery request: (1) a motion to compel, or (2) a motion for sanctions. A motion to compel is a motion asking the judge to order a party to make initial disclosures, answer a discovery request, or provide more information in response to a discovery request. A motion for sanctions asks the judge to punish a party for failing to make required initial disclosures, refusing to answer a discovery request, or refusing to obey an earlier order compelling him/her to answer a discovery request.

Rule 37 of the Federal Rules of Civil Procedure sets forth the requirements for filing a motion to compel. Under Fed. R. Civ. P. 37(a)(1), a motion to compel other parties to make initial disclosures or to respond to discovery must be filed with the judge before whom the lawsuit is pending. A motion to compel a non-party to respond to discovery must be filed in the federal district court in the district where the discovery is being taken.

If the judge grants a motion to compel, the judge must require the person against whom the motion was filed to pay reasonable expenses involved in making the motion, including attorneys' fees, unless the judge finds that: (1) the motion was filed without the moving party first making a good faith effort to obtain the disclosure or discovery without judicial intervention, (2) the opposing person's failure to comply or objection to a discovery

request was substantially justified, or (3) other circumstances exist which would make an award of expenses unjust. A *pro se* litigant is not entitled to an award of attorneys' fees.

Under Rule 37 of the Federal Rules of Civil Procedure, a motion for discovery sanctions may be brought when a party or person fails to: (1) provide required initial disclosures, (2) obey a judge's order to respond to a discovery request, (3) admit the genuineness of a document or the truth of a fact which is later proved genuine or true, (4) appear for a deposition for which proper notice was received, (5) answer interrogatories, (6) respond to a request for production of documents, or (7) participate in a Rule 26(f) meet and confer conference.

Discovery Sanctions

A judge granting a motion for discovery sanctions may issue any order that is appropriate to address the dispute. Rule 37(b)(2) of the Federal Rules of Civil Procedure authorizes the judge to issue any of the following types of orders:

1. An order resolving certain issues or facts in favor of the party who made the motion
2. An order refusing to allow a delinquent party to support or oppose certain claims or defenses, or prohibiting that party from introducing certain evidence
3. An order striking certain claims or parts of claims from the case, or staying the lawsuit until the order is obeyed, or dismissing the lawsuit or a part of the lawsuit, or issuing a judgment of default against a delinquent party
4. An order holding the delinquent party or person in contempt of court for failing to obey an order, except an order to submit to a physical or mental examination

In addition, if a party fails to make required initial disclosures under Fed. R. Civ. P. 26(a), that party cannot use the non-disclosed information at trial, at a hearing, or in any motion, unless the judge finds that the failure to disclose was harmless.

If the judge grants a motion for discovery sanctions, the judge must require the delinquent party to pay reasonable expenses, including attorneys' fees, caused by the disobedience, unless the judge finds that the disobedience was substantially justified or that other circumstances exist making an award of expenses unjust. *Pro se* litigants, like all other litigants, are subject to sanctions under Fed. R. Civ. P. 37.

MOTION PRACTICE

A motion is a formal request asking the judge to do something. Rule 7(b) of the Federal Rules of Civil Procedure requires all motions to be made in writing, except for motions made during a hearing or trial, which may be oral or written. When a motion is filed, the following process usually occurs. First, one party (the "moving party") files a motion (described below) explaining what it wants the judge to do and why the judge should do it. Second, the opposing party files papers opposing the motion, explaining why the judge should not grant the motion. Third, the moving party may file reply papers responding to the arguments made in the opposition papers. After the reply papers, neither side may file any more documents without permission from the judge. After all the motion papers are filed, the judge may decide the motion based solely on the arguments in the papers, or the judge may hold a conference where each side may appear in the judge's courtroom and state his/her arguments to the judge in person. This is referred to as "oral argument." If the judge does not hold a conference, she/he will issue a written decision at a later date. If the judge holds a conference she/he may announce the decision in the courtroom or she/he may further consider the motion and issue a written decision at a later date.

Motions consist of a Notice of Motion (required), one or more Affidavits (required), and a Memorandum of Law or Brief (optional for *pro se* litigants). The Notice of Motion is a brief statement to the other parties and the judge telling them what type of motion you are filing. It should state the name of the motion to the right of the caption, for example: "PLAINTIFF'S MOTION TO COMPEL DISCOVERY." The Notice of Motion should give a brief statement of what you want the judge to do.

An Affirmation or Affidavit is a written statement signed under penalty of perjury or before a notary public by a person with personal knowledge that what she/he writes is true.

If you are the moving party, an Affidavit or Affirmation is your statement to the judge explaining why you are seeking relief and why you are entitled to it. If you are the opposing party, you should explain in your Affidavit or Affirmation why the judge should not grant the motion. Affidavits or Affirmations should contain only facts and not legal arguments, which may be presented in a separate Memorandum of Law. The first page of the Affidavit or Affirmation must contain the caption of the case, and include, under the docket number, the name of the document, for example: "AFFIDAVIT OF JORDAN PARKER IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL DISCOVERY" or "AFFIRMATION OF ALEX MONROE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT." The Affidavit or Affirmation should consist of a series of numbered paragraphs, with each paragraph containing a different fact. At the end of your Affidavit or Affirmation, you must state that you "declare under penalty of perjury that the foregoing is true and correct," date it, and sign it before a Notary Public (if one is available). If a Notary Public is not available, you may submit your papers in Affirmation form, by the statement that you "declare under penalty of perjury that the foregoing is true and correct." False statements in an Affidavit or Affirmation are punishable for perjury.

An opposition to a motion consists of an Affidavit or Affirmation in opposition to the motion (required) and a Memorandum of Law (optional for *pro se* litigants). The Affidavit or Affirmation should be in the form described above. A Reply to a motion also consists of an Affidavit and a Memorandum of Law (optional for *pro se* litigants). A Reply Affidavit should contain facts responding to the opposition papers; the moving party should not "save" facts to include in the reply. Affidavits should be titled appropriately, for example "REPLY AFFIDAVIT OF JORDAN PARKER IN SUPPORT OF PLAINTIFF'S MOTION TO

COMPEL DISCOVERY." Forms and instructions for a motion and the opposition to a motion are included in this manual.

Motion Timing

Different types of motions are appropriate at different stages of your case. Before making any motion, you should check your judge's Individual Practices or Rules to determine whether you are required to request a pre-motion conference or take some other step before making your motion. Before filing motion papers with the *Pro Se* Office, all motion papers must be served on all parties in your case and must contain an Affirmation of Service stating that you have served the papers on the other parties. A sample Affirmation of Service form is included in this manual.

If you are opposing a motion or filing a reply, you must consult Local Civil Rule 6.1 to determine how much time you have to serve and file your papers. Local Civil Rule 6.1 sets one schedule for discovery motions and another for every other motion. For a discovery motion, the opposition must be served within seven (7) days after service of the moving papers, and any reply must be served within two (2) days after service of the opposition. For any other type of motion, the opposition must be served within 14 days after service of the moving papers, and any reply must be served within seven (7) days after service of the opposition. Under Rule 6(d) of the Federal Rules of Civil Procedure, an extra three (3) days may be added to each of the above deadlines if the papers being responded to were served by any method other than hand delivery. For example, if a defendant moves to dismiss your complaint and serves the motion on you by mail, you have 17 days, rather than 14, to serve your opposition. Fed. R. Civ. P. 6(a) explains how to calculate time. Days should be counted excluding the day of the event that triggers the period and must count every day including Saturdays, Sundays, and legal holidays. If the last day of the period is a Saturday, Sunday,

or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

Extension of Time

If you need more time to meet a deadline to respond to the other party's motion, you may enter into an agreement with the opposing party to do so. You should contact the opposing party's lawyer, inform the lawyer that you need more time, tell the lawyer how much time you need, and ask if the lawyer agrees to your proposed new deadline. The lawyer may prefer a shorter extension, and you may need to negotiate over the length of the extension. Once you have agreed on a new deadline, you and the opposing party's lawyer usually will sign a stipulation (a written agreement) and send it to the judge for approval.

If the opposing party refuses to agree to an extension of time, you may write a letter to the judge through the *Pro Se* Office, informing the judge of your opposing party's position and asking the judge to grant you an extension. Rule 6(b) of the Federal Rules of Civil Procedure allows the judge to give you extra time to make or respond to a motion if you show a good reason why you need it. Under Rule 6(b), the judge may grant extra time with or without a motion or notice to the other parties if you make the request before the original deadline passes. If you wait until after the original deadline has passed before asking for extra time, you must make a motion and show that an exceptional reason caused you to miss the deadline. You also may try to file your papers after the deadline has passed without making a motion for permission to do so, but the judge is not obliged to consider your late papers.

Urgent Matters

A motion can raise an urgent issue that needs to be decided very quickly. In these circumstances, you may stipulate with your adversary or ask the judge for an expedited motion schedule. If there is a genuine emergency, you may make a motion seeking preliminary relief without notice to the opposing party (*ex parte*), which is brought to the judge's attention by an order to show cause. *Ex parte* motions seek extraordinary relief and therefore are rare and must comply with special requirements. Unlike other *pro se* papers, which are liberally interpreted by the judge with the understanding that you are not a lawyer, a request for an order to show cause must make a very specific showing or else the judge may deny the request for failing to comply with Rule 65 of the Federal Rules of Civil Procedure.

Common Types of Motions

There are different types of motions that can be made at any stage of your case. Some motions, such as motions to dismiss or motions for summary judgment, are "dispositive," which means that the granting of the motion ends certain claims or the entire case. These motions are usually made by defendants. Other motions, such as motions to compel compliance with discovery requests, are "non-dispositive," which means that the outcome of the motion will not itself end the case. The following are descriptions of the most common types of motions.

Motion to Dismiss the Complaint

In a motion to dismiss the complaint, the defendant argues that there are legal defects with the way the complaint was written, filed, or served. If you are a *pro se*

defendant and you file this motion, you do not need to file your answer to the complaint until after the judge decides your motion.

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.* When asserting this ground, the defendant argues that the Eastern District of New York does not have the legal authority to hear the type of claim asserted in the complaint. Although this ground may be asserted at any time, it is better to make a motion asserting it as soon as the jurisdictional problem becomes apparent. If the motion is granted on this ground, the case is dismissed, and the litigation is over. The judge also may dismiss a complaint for lack of subject matter jurisdiction *sua sponte*, that is, on his/her own without being asked by the opposing party to do so.
2. *Lack of personal jurisdiction over the defendant(s).* When asserting this ground, the defendant argues that she/he has so little connection with the Eastern District of New York that the court has no legal authority to hear the plaintiff's case against that defendant. This ground for dismissal must be asserted as soon as possible, either in the defendant's answer or in a motion to dismiss.
3. *Improper venue*. When asserting this ground, the defendant argues that the Eastern District of New York is the incorrect federal court for this lawsuit.
4. *Improper summons* and *improper service of process*. When asserting these grounds, the defendant argues that the plaintiff did not prepare the summons correctly or did not properly serve the summons on the defendant.
5. *Failure to state a claim upon which relief may be granted*. When asserting this ground, the defendant argues that even if everything stated in the complaint were true, the defendant did not cause injury to the plaintiff that the law recognizes as an injury. A motion to dismiss for failure to state a claim is not appropriate if the defendant wants to argue that the facts alleged in the complaint are not true. Instead, the defendant in a motion to dismiss the complaint for failure to state a claim assumes that the facts alleged in the complaint are true but argues that those facts do not constitute a violation of any law.

6. *Failure to join an indispensable party under Rule 19.* When asserting this ground, the defendant argues that the plaintiff failed to sue someone who must be included in the lawsuit before the judge can decide the issues raised in the complaint.

Under Rule 12(a)(4), if the judge denies a motion to dismiss in whole or in part, the defendant must file an answer within 14 days after the judge's decision of the motion. If the judge grants the motion, she/he may do so "with leave to amend," which gives the plaintiff an opportunity to correct the problems with the complaint by filing an amended complaint. The judge may grant a motion to dismiss in part, which means that the plaintiff may continue the case only with the claims that were not dismissed. If the judge grants the motion to dismiss in whole or in part "with prejudice," it means that the legal problems in plaintiff's complaint cannot be corrected, and the plaintiff may not raise these claims in any new complaint. If the judge grants the motion in whole or in part "without prejudice," the plaintiff may attempt to cure the deficiencies and raise the claims in an amended complaint or a new lawsuit. If the defendant files a motion to dismiss, the plaintiff must oppose the motion or risk having the case dismissed. If the motion to dismiss identifies deficiencies in the allegations of the complaint, the plaintiff may, in addition to opposing the motion, file an amended complaint curing any of the deficiencies.

A motion to dismiss the complaint under Fed. R. Civ. P. 12 generally should not refer to any evidence, documents, or facts that were not contained in the complaint. If a defendant submits evidence outside the complaint in its motion to dismiss, the motion may be converted to a motion for summary judgment. In such a situation, Local Civil Rule 12.1 requires the defendant provide the *pro se* plaintiff with the notice set forth in Local Civil Rule 12.1 that the motion may be considered a summary judgment motion. Summary judgment motions are explained more fully below.

Discovery Motion

If the parties disagree over discovery, you first must try to resolve the dispute without contacting the judge. You may negotiate with the opposing party in person, by telephone, or by letter. After your discussion, you or opposing counsel may confirm your oral discussions by writing a letter summarizing the issues on which you agree or disagree.

If you cannot come to an agreement or compromise on discovery with the opposing party, you (or they) may wish to file a motion asking the judge for assistance. Before you file a motion, however, Local Civil Rule 37.2 requires that you first write a letter to request a conference with the judge to discuss the discovery dispute; your letter should describe briefly the dispute and your position. See the discussion of conferences on pages 70-72 above. If your request for a conference is denied, or your dispute is not resolved during the conference, you may file your discovery motion. You also should check your judges' Individual Practices or Rules to see whether she/he has additional requirements for motions concerning discovery disputes.

In your discovery motion, you must: (1) demonstrate to the judge that you attempted to negotiate with your opposing party, but were unable to resolve your dispute on your own, (2) list the specific disagreements over discovery that you are having with your opposing party, and (3) state clearly and concisely why you believe the judge should resolve the discovery dispute in your favor.

Summary Judgment Motion

A motion for summary judgment decides a case without a trial because the material (that is, important) facts are not in dispute. A summary judgment motion can be filed by either the plaintiff or the defendant. When a plaintiff files a motion for summary judgment,

she/he tries to show that the undisputed facts prove that the defendant violated the plaintiff's rights. When a defendant files a motion for summary judgment, she/he tries to show the opposite: that the undisputed facts prove that the defendant did not violate the plaintiff's rights. When the defendant files a motion for summary judgment, the defendant essentially tells the judge that no trial is necessary because, based on all the evidence, there is no dispute over the material facts of the case and in applying the law to those undisputed facts, no reasonable jury could find in favor of the plaintiff. The moving party may assert that the parties agree about the facts or that the other side does not have any evidence to support its version of the facts.

The judge will grant summary judgment only if the evidence is so one-sided that a jury could not reasonably find in favor of the opposing party. In deciding a motion for summary judgment, the judge must consider all the admissible evidence from both parties. Because summary judgment means that there is no chance to hear live witnesses and decide who is credible, the judge must interpret the evidence in the light most favorable to the party who is opposing the motion.

If the judge grants a motion for summary judgment, the lawsuit is over. If the judge denies a motion for summary judgment, the case will go to trial (unless the parties settle the case). By denying summary judgment, the judge does not decide that she/he believes one side over the other. Rather, denying summary judgment means that there is a real dispute about the important facts that will have to be decided in a trial.

Not every motion for summary judgment is intended to end the entire case. A motion for summary judgment may be brought to end the whole lawsuit, or it may be brought to decide some but not all the claims.

Rule 56 of the Federal Rules of Civil Procedure explains the requirements for filing a motion for summary judgment. Some judges require a pre-motion conference before a party may file a summary judgment motion. You should consult your judge's Individual Practices or Rules to determine if your judge has any special requirements applicable to summary judgment motions.

Local Civil Rule 56.1(a) requires that the moving party include in his/her summary judgment motion a list of all the undisputed material facts. This is called a "Local Rule 56.1 Statement." If the moving party fails to submit this statement, the judge may deny the motion. Local Rule 56.1(b) requires the opposing party to include a "correspondingly numbered paragraph responding to each numbered paragraph in the statement of the moving party, and if necessary, additional paragraphs containing a separate, short and concise statement of additional material facts as to which it is contended that there exists a genuine issue to be tried." Each material fact must be followed by a citation to admissible evidence, as set forth in Fed. R. Civ. P. 56(e). In other words, if you are the *pro se* plaintiff responding to the defendant's Local Rule 56.1 Statement, you must respond paragraph by paragraph to the defendant's Rule 56.1 Statement, either admitting or disputing the statement, and if you believe that a fact is in dispute, include a citation or reference to the evidence to support your claim (for example, a citation to a paragraph of an affidavit, or to the page of a deposition transcript, or to a particular document).

Local Civil Rule 56.2 requires any party represented by counsel that files a summary judgment motion against a *pro se* litigant to serve the *pro se* litigant with a copy of the Notice required by Local Civil Rule 56.2, along with the summary judgment motion. The Notice explains to the *pro se* litigant what a summary judgment motion is and the importance of opposing it with affidavits or other admissible evidence.

Typically, motions for summary judgment are made after the close of discovery. If the opposing party files a motion for summary judgment before the close of discovery and you need more discovery in order to show why summary judgment should not be granted, you may respond by including in your opposition a statement that you cannot respond to the motion because you need discovery. *See* Fed. R. Civ. P. 56(d). You must show what specific facts you need, why those facts will defeat summary judgment, and why you need discovery to get those facts. You must be specific and describe exactly what sort of information you need from discovery, and why. If the summary judgment motion is filed after the close of discovery, you generally may not request further discovery.

Motions Made During or After Trial

Motion for Judgment as a Matter of Law

Under Rule 50(a) of the Federal Rules of Civil Procedure, a party may make a motion for a judgment as a matter of law during the trial, but after at least one side has presented its direct case, asking the judge to decide the case without submitting it to the jury. The purpose of such a motion is to resolve one or more claims or defenses or to end the case entirely where there is not enough legally sufficient evidence for a reasonable jury to find against the moving party. Defendants may make this motion after the plaintiff has presented all its evidence, or either party may make this motion after both parties have presented all their evidence.

If the judge denies a motion under Rule 50(a), a party may renew the motion for judgment as a matter of law under Rule 50(b) after the verdict, within 28 days after entry of the judgment. The moving party must clearly show that there was insufficient evidence to support the verdict.

Motions Challenging an Order of Final Judgment

There are a few types of motions to challenge an order or final judgment, all of which are described as "motions for reconsideration" or "motions for reargument." Each of these motions is appropriate in particular circumstances and has its own requirements. They are discussed in the section of this manual on "Appeals" on pages 125-132 below.

SETTLEMENT AND MEDIATION

Your case does not have to go to trial to be resolved. Most cases are resolved before trial either through motions or through Alternative Dispute Resolution ("ADR"). Two common forms of ADR in *pro se* cases are settlement negotiation and mediation.

Settlement Negotiation

Settlement is a compromise between parties in a civil case. A settlement may occur at any time and ends the lawsuit. The parties may discuss settling the case without the judge being present or the parties may ask for the judge to supervise the settlement discussions. The parties may start settlement discussions on their own, or the judge may direct the parties to start settlement discussions. Frequently, the District Judge will ask the Magistrate Judge to supervise settlement discussions. The judge will not act as your attorney and will not force either party to settle. It is up to each party to decide whether and on what terms they are willing to settle the case.

You should consider any serious offer of settlement. There is no guarantee that even if your case goes to trial the jury will find in your favor. Moreover, even if the jury does find in your favor, there is no guarantee that you will be awarded the amount of damages you asked for in your complaint. A *pro se* party is at a disadvantage in litigation against a party represented by an attorney.

In preparation for negotiating with the opposing party, if you are the plaintiff, you should consider what is the maximum amount that you realistically could obtain if you went to trial and won before the jury. There is no incentive for the defendant to pay you that amount in settlement; cases almost never settle unless you are willing to compromise, that is, to accept less than you might if you won your case. Conducting legal research on

verdicts in similar cases can help you to get an idea of what is likely or possible as an award for damages in your case. Your likelihood of success depends upon the evidence you have or can develop during discovery. The issue is not so much what really happened but what you are able to prove through admissible evidence. Keep in mind that both parties will be making their own best guess as to your likelihood of winning the case and the amount that the jury might award you. If you do not settle the case, you risk that your case may be dismissed on a motion (such as a summary judgment motion) or that the jury may rule for the defendant, in which case you would get nothing. A settlement eliminates the cost, delay, and effort of the litigation, and the risk that you will lose the case and get nothing.

If you reach a settlement with the other party, the settlement should be reduced to a written agreement (usually prepared by the lawyer for the party represented by counsel). Oral settlement agreements, particularly those reached in open court, are also valid and enforceable. You must review the written settlement agreement carefully to be sure that you understand it and that it correctly states what you agreed to. Both parties will sign the settlement agreement. The settlement generally includes a separate release waiving your right to bring any other lawsuit or proceeding in federal or state court related to the claims presented in your lawsuit.

If a settlement is reached, the parties will submit a "Stipulation and Order of Dismissal" to the judge to dismiss the lawsuit as settled.

Settlement of Lawsuits of Incarcerated Individuals

If you are in custody, you should be aware of New York's "Son of Sam" Law, found in N.Y. Executive Law § 632-a. The "Son of Sam" Law requires that whenever a person (who is incarcerated or on any form of supervised release) convicted of certain crimes receives

money in excess of $10,000, including from settlement of a lawsuit (or a judgment in a lawsuit), notification must be given to the Crime Victim's Board and by the Board to the victims of the crime. The victims of the crime then have a period of time in which they can file a lawsuit for damages against the person, during which time the money is held by the Crime Victim's Board. If you settle for an amount below $10,000, the "Son of Sam" Law does not apply.

Mediation Advocacy Program for Self-Represented Parties

Mediation involves a meeting between the plaintiff, defendant, each party's counsel, and a neutral third party (the mediator), in an attempt to reach a voluntary, negotiated resolution.

Mediation provides an opportunity to discuss the issues raised in the complaint, to determine the parties' main concerns, and to speak calmly and openly about the important issues. The purpose of mediation is to resolve the dispute by reaching a mutually satisfactory agreement, by carefully exploring not only the relevant evidence and law, but also the parties' underlying interests, needs, and priorities.

The mediator is a neutral third party who aids settlement discussions. The mediator is an experienced lawyer who has been trained and certified by the Eastern District. The mediator serves to improve communication between the parties, to assist each party in understanding their opponent's position, and to facilitate discussion of the key issues. She/he conducts the meetings, defines the issues and may suggest the possibilities of resolution. The mediator does not represent either party, make decisions, issue findings, or determine who is right and wrong. The mediator may not be a witness, consultant, or attorney in any future proceedings relating to the dispute.

The Eastern District of New York has a program to offer limited-scope representation for the sole purpose of mediation to *pro se* parties in employment discrimination cases and claims arising under 42 U.S.C. § 1983 (Section 1983) including but not limited to claims of false arrest, excessive force, unreasonable search and seizure, and cases involving conditions of confinement. The judge may refer the case to the Mediation Advocacy Program, where the ADR Administrator will attempt to locate limited-scope counsel for the *pro* se party. While representation is not guaranteed, every effort is made to locate counsel. The ADR Administrator will share the contact information of the *pro bono* attorney who is able to offer limited-scope representation for the purpose of mediation with the *pro se* party. The *pro se* party will contact the attorney, and, if the parties agree to work together, the attorney will file a notice of appearance on the record.

There are advantages to this mediation program for the *pro se* plaintiff:

- *Saves time.* Mediation reduces the delays caused by the increasing number of cases being filed with the courts. Mediation also may allow the parties to avoid lengthy discovery proceedings and arrive at a quick resolution.
- *An opportunity to meet with an attorney.* An attorney is assigned to you to review your case. The attorney can discuss with you whether or not to settle and if so, for how much money.
- *Fair.* The mediator does not have any interest in the case, and therefore the mediator can conduct sessions in an unbiased manner, giving both parties time to explain their situation and perspective.
- *Confidential.* Any information disclosed during mediation cannot be used against either party in the litigation and will not be revealed to anyone, including the judge assigned to the case.
- *Less formal setting.* The high success rates of mediation can be attributed to a more flexible and comfortable setting for participants to explain their point of view.

- *Cost effective.* While Eastern District of New York's panel mediators are compensated at a reduced rate, parties who cannot pay may apply to the judge for a waiver of the fee.

The Mediation Advocacy Program Process

At any time after the defendant has been served with the summons and complaint, the parties may express their interest in mediation to the judge, or the judge may ask the parties if they are interested in mediation. If the parties are interested in pursuing mediation and the judge determines that the case is appropriate for mediation, the case may be referred to mediation.

The primary goal of mediation is to communicate quickly and effectively each party's view of the case and reach a resolution. Mediation concludes when the parties reach an agreeable resolution for some or all of the issues. If a resolution is reached, the parties will sign a settlement agreement, which is a binding contract, and the litigation will be dismissed. If the mediator decides that resolution is impossible, the case will return to the litigation process. The attorney appointed to represent a *pro se* litigant in mediation is not responsible for the case once mediation has ended and does not work on the underlying litigation.

TRIAL – A BRIEF OVERVIEW

If your lawsuit has not been settled or dismissed on a motion, it will proceed to trial. At trial, the plaintiff attempts to prove that she/he is entitled to the relief sought, and the defendant attempts to prove the opposite. For a more in-depth look at the trial process, see the Southern District of New York's *Trial Ready Manual*, which can be made available to you from the *Pro Se* Office at the request of the judge.

The Role of the Judge During Trial

The judge presides over (supervises) the trial from the bench (the elevated desk in the courtroom where the judge sits). The functions of the judge during trial are:

- Maintaining order while the trial proceeds
- Determining whether evidence is admissible
- If the trial is before a jury (jury trial), instructing the jury regarding the law before the jury deliberates (meets to consider and decide, based on the judge's instructions and the evidence presented, which party should win)
- If the trial is a bench trial (no jury), determining which party should win based on the law and the evidence presented

The Stages of a Trial

Jury Selection

If the case is to be tried by a jury, the first stage of the trial is jury selection, called *voir dire*, where the judge asks potential jurors questions to determine if a particular potential juror will be able to decide the case impartially.

Either party may challenge whether a potential juror can serve on the jury. There are two (2) types of challenges to a potential juror's suitability to serve on the jury:

- *Peremptory challenge*: challenge to the suitability of a certain number of jurors given without a reason. Each side (plaintiff or defendant) is generally given three (3) peremptory challenges under 28 U.S.C. § 1870.
- *Challenge for cause*: challenge to the suitability of a certain juror that a party believes will be unable to objectively consider the facts of the case due to a pre-existing prejudice or bias. There is no limit to the number of challenges for cause a party can make. The party making such a challenge must articulate a reason to the judge for having a juror excused for cause, and it is the judge who must decide whether the challenged juror should serve on the jury.

In most civil cases, eight (8) jurors are chosen. Once the courtroom deputy swears in these jurors, the jury is considered "impaneled." All eight (8) jurors will participate in deliberations. There are no alternate jurors. While one or more jurors may be excused during trial (for illness or other reasons), no less than six (6) jurors will decide a case unless the parties agree to have a lower number of jurors.

Judge's Statements to the Jury

Once the jurors are sworn in, the judge will inform them of what they will be required to do to decide the case. The judge will inform the jurors that:

- The jury determines the facts of the case, not the law of the case. A jury determines the facts by measuring the credibility of the evidence presented during the trial. The jury must follow the law as instructed by the judge.
- The jurors cannot discuss the case with anyone, including each other, until the presentation of evidence is concluded, and the judge instructs the jurors on the law and instructs them to deliberate.
- The jurors must keep an open mind and not form an opinion until each party has concluded presenting their case. Jurors cannot research or investigate any of the allegations or testimony on their own but must rely on the evidence presented at trial and the judge's instructions.

- The judge will instruct the jury as to what is and what is not evidence. The judge also will instruct the jury as to which party has the burden of proof.

Opening Statements

After the jurors have been sworn in and the judge has spoken to the jurors about their role during the trial, the trial will begin with opening statements by each party. The plaintiff will make his/her opening statement first, the defendant second. An opening statement is not considered evidence to be considered by the jury. The purpose of an opening statement is to tell, in a narrative (story) form, the issues in the case and the facts a party intends to prove in support of his/her claims. During your opening statement, however, you are not allowed to argue your case or discuss the law. To be considered by the jury, any facts mentioned in the opening statement must be addressed (that is, proved) at trial through testimony or documentary evidence. If you fail to prove a fact mentioned in your opening statement, the opposing party's lawyer may highlight this in his/her closing argument to show the weakness of your case.

Presentation of Evidence

The actual presentation of evidence occurs after the opening statements have been completed. Evidence is the "proof" that a judge allows a party to present to the jury. Examples of evidence include the testimony of a witness while under oath, and documents or other exhibits presented to the jury during trial. Parties commonly use the material and information received during discovery as evidence.

Certain rules have been established which must be followed during a trial to prohibit improper information or documents from being admitted as evidence. These rules are called the Federal Rules of Evidence and must be referred to in order to determine whether

certain evidence is admissible. They are available in most law libraries and can be viewed on the United States Courts' website (http://www.USCourts.gov/).

Direct and Cross Examination of Witnesses

- *Direct examination*. When you question your own witness, it is called direct examination. Only non-leading questions are allowed during direct examination. Examples of non-leading questions are questions that begin with the words: who, what, when, where, how, or why.
- *Cross examination*. Once a party has presented and questioned his/her witness, the opposing party is entitled to question that witness about the matters of his/her testimony during direct examination. This form of questioning is called *cross examination*. Both leading and non-leading questions are acceptable during cross examination. Questions are limited to issues raised in *direct examination.*
- *Redirect examination (redirect).* If, after cross examination is completed, a party has additional questions to ask his/her witness about issues that were raised during that witness's cross examination, that party may ask non-leading (who, what, when, where, how, or why) questions in what is called *redirect examination*.
- *Recross examination (recross).* Recross examination is cross examination by the opposing party with questions based on the witness's answers during redirect examination.

Objections

An "objection" is a way of attempting to prevent inadmissible evidence from being presented to the jury. If you believe that the opposing party is attempting to introduce improper evidence or is asking improper questions of a witness, you must stand and object, stating to the judge the reasons for your objection, that is, why such evidence and/or question is improper. You can make objections when the opposing party is: (1) questioning a witness, (2) seeking to admit a document into evidence, or (3) presenting their opening or closing statements. Whether or not evidence is admissible is a decision made solely by the

judge. You must state the reason for your objection to ensure that the issue can be raised on appeal.

In order to determine the admissibility of certain disputed evidence, the judge may have a conference with the *pro se* party and the opposing party's attorney to discuss why the particular evidence may or may not be admissible. This conference is called a "sidebar" or a "bench conference." A record is made of the proceeding by the court reporter, but it is conducted out of the hearing of the jury.

Closing Statements (also known as Closing Arguments)

After all the evidence is presented, both sides have the right to make closing statements. The closing statements are a party's final chance to address the jury before the judge instructs the jurors on the law, and they begin deliberations. In the closing statements, the *pro se* party and the opposing attorney each summarize the evidence presented, explain to the jury how the evidence is relevant to the issues in the trial, and tell the jury why, based on all the evidence they have heard and seen at trial, they should return a decision favorable to their side. The closing statements also give the parties the opportunity to provide the jurors with a clear and coherent narrative or story of what happened using the testimony and other evidence that was admitted during trial. During closing statements, you are not permitted to include personal opinions about the facts or the evidence and must be careful not to do so.

Jury Instructions (also known as Jury Charge)

After the closing statements, the judge will instruct the jury on the relevant law, how this law must be applied to the facts of the case, and the specific questions the jury will be required to decide. As a general rule, the judge's instructions to a jury will: (1) inform the

members of the jury of their role in the case, (2) explain which party has the burden of proof, (3) explain the role of the evidence presented, the weight to be given to various types of evidence, and the permissible and impermissible inferences to be drawn from the evidence, (4) explain any limitations on the use of certain evidence, and (5) set out the elements of each claim and any defenses.

Proposed Jury Instructions

Prior to trial, each party may prepare proposed jury instructions and submit them to the judge in writing for consideration, as specified by the judge or by the judge's Individual Practices or Rules. There are several reference books available in a law library that provide model jury instructions on areas of law frequently dealt with by trial courts. Keep in mind, however, that the judge is not obligated to use either party's proposed jury instructions.

Objections to Jury Instructions

Once the judge has prepared the jury instructions, she/he usually will give each party a copy to review. Each party will be asked if it has any objections. If making an objection, you should identify the instruction that you are referring to, explain the basis for your objection, and offer an alternative instruction.

Jury Deliberation

Jury deliberation begins when the judge has completed instructing the jury and the jury is sent to a room to discuss the case. Jury deliberation is the process whereby the jury evaluates the evidence and draws conclusions, with the goal of reaching a verdict. No one, including the judge or the parties, is permitted to witness the jury deliberations. During jury deliberations, the jurors are not permitted to speak to anyone, other than each other, about the case. In addition to following the judge's jury instructions while deliberating, the

jury must answer a set of "yes or no" questions which will be given to the jury in what is called a verdict form.

Verdict

Once the jury has reached a decision, one of the jurors, known as the foreperson, will inform the judge. The jury's decision is called the verdict. Unless the parties otherwise agree, the jury's verdict must be unanimous, and no verdict can come from a jury of fewer than six (6) jurors. The jurors will return to the courtroom, and the judge will ask the foreperson if the jury has reached a verdict. If the foreperson says yes, the judge will ask to see the verdict form and then ask the foreperson to confirm the jury's answer to each of the questions on the verdict form. You also may ask the judge to poll the jury, that is, to have each juror state that this is their verdict.

If you believe that the verdict was incorrect, you may appeal the decision. The procedure for doing so is outlined in the section of this manual entitled "Appeals" on pages 125-132.

Judgment

After the judge (bench trial) or the jury (jury trial) has issued a verdict, a document entitled "Civil Judgment," or "Judgment" is prepared by the Judgment Clerk. The judgment is prepared whether you won or lost your case. The judgment closes your case in the Eastern District and starts your time to appeal.

If you win at trial, you may be able to recover from your opponent, in addition to any monetary damages you may have won, some or all of the costs you spent to bring or defend your lawsuit. If you lose at trial, the defendant may be able to get a judgment for costs against you. Local Civil Rule 54.1 provides more details regarding this request. A *pro se* party, however, cannot be awarded attorneys' fees.

APPEALS

A final decision by the judge may be reviewed by a higher federal court, the appeals court, if the losing party files a "Notice of Appeal." Appeals from cases in the Eastern District of New York are heard by the United States Court of Appeals for the Second Circuit ("Second Circuit"). Grounds for an appeal usually consist of allegations that the judge made an error either in interpreting the law or in a procedural ruling during the case. Any error must have been sufficiently significant so that the judge or jury reached an incorrect decision because of the error.

In general, only final orders or judgments from the district court may be appealed. *See* 28 U.S.C. § 1291. This kind of appeal is called an "appeal as of right." In order to appeal, a final order or judgment should be entered on the docket of your case. A final order or judgment is the document which announces the final decision with respect to your case (that is, whether you won or lost) and closes the case with the district court.

Procedure in the Second Circuit is governed by the Federal Rules of Appellate Procedure (Fed. R. App. P.) and the Local Rules and Internal Operating Procedures of the Court of Appeals for the Second Circuit. You can find these rules on the Second Circuit's website, (https://www.ca2.uscourts.gov/), or in a law library. You have 30 days from the date that the final order or judgment was entered on the docket to file a Notice of Appeal in the Eastern District's *Pro Se* Office. If one of the parties in your case is the United States, United States Agency, or an officer or employee of the United States, you have 60 days to file a Notice of Appeal. (Fed. R. App. P. 4). A Notice of Appeal is a one-page document containing your name, a description of the final order or judgment (or part thereof) being appealed, and the name of the court to which the appeal is taken (the Second Circuit). A

packet of information on appeals, including the Notice of Appeal form, is included in this manual.

Once you file a Notice of Appeal, the district court no longer has jurisdiction over your case and all questions regarding the case, or the Second Circuit's procedures, should be addressed to the Clerk of the Second Circuit.

Your Notice of Appeal should be filed in the Eastern District *Pro Se* Office as soon as possible within the required time period. If, however, the time for filing has passed and you still wish to appeal, you should file in the Eastern District *Pro Se* Office both a Notice of Appeal and a Motion for an Extension of Time to File a Notice of Appeal ("Motion"). In that motion, you must explain to the judge why she/he should allow you to appeal despite the lateness of your Notice of Appeal. A combined Notice of Appeal and Motion for an Extension of Time to File a Notice of Appeal form, are included in this manual. If the judge grants your motion, the appeal will be forwarded to the Second Circuit. If the judge denies your Motion for an Extension of Time to File a Notice of Appeal, the motion still will be forwarded to the Second Circuit so that it may determine whether to grant your motion.

Even if you proceeded *pro se* in the district court, you may ask the Second Circuit to request *pro bono* counsel for you for appeal. You must include a financial affidavit with this motion to the Second Circuit even if you were granted *in forma pauperis* status in the district court. *See* Second Circuit Local Rule 24.1 and Fed. R. App. P. 4.

Appeal Fees

The current fee for filing your Notice of Appeal is $605. You may pay the $605 fee at the Eastern District *Pro Se* Office. The filing fee should be paid in cash, by credit card,

online at pay.gov, or by personal check, certified check, or money order, made payable to the "Clerk, U.S. District Court."

If you are unable to pay the $605 filing fee, you may request that the judge grant you *in forma pauperis* (IFP) status and waive the appeal fee. You do this by submitting to the Eastern District *Pro Se* Office, along with your Notice of Appeal, an application to proceed *in forma pauperis* on appeal. If IFP status had been granted by a District Judge at the start of your case in the district court and was not revoked in the court's final order or judgment, then your IFP status still is in effect and no fee nor application to waive the fee is necessary. If, however, IFP status has been revoked or denied by the judge, a new IFP application must be filed with the Eastern District *Pro Se* Office, which will forward your IFP application to the Second Circuit for a ruling. IFP status may be revoked by a judge's ruling that an appeal will not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3).

To ensure the efficient processing of your Notice of Appeal, you should either pay the $605 fee or, if you are unable to do so, you should submit to the Eastern District *Pro Se* Office an application to proceed *in forma pauperis* on appeal regardless of your initial IFP status. If the application is unnecessary because your IFP status still is in effect, the *Pro Se* Office will return it to you.

Interlocutory Appeals

Generally, only final decisions by the judge can be appealed to the Second Circuit. In some limited circumstances, you may appeal a non-final decision while your case is ongoing. These types of appeals are called "interlocutory appeals." The limited circumstances in which you may seek an interlocutory appeal are set forth in 28 U.S.C. § 1292. For example, under § 1292(a)(1), you may bring an interlocutory appeal to the Second Circuit from a

judge's order granting, denying, or modifying injunctive relief. Also, the judge may allow you to appeal to the Second Circuit before the case is fully resolved if, under § 1292(b), the judge certifies, in writing, that the decision being appealed "involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation…" 28 U.S.C. § 1292(b).

If you are bringing an interlocutory appeal under § 1292(a), you must file a Notice of Appeal in the Eastern District *Pro Se* Office within ten (10) days of the date of the entry on the docket of the order being appealed. This kind of interlocutory appeal will be processed and transmitted to the Second Circuit like an appeal as of right because the judge's permission to take this kind of appeal is not required.

If you are bringing an interlocutory appeal under § 1292(b), you must file a Notice of Appeal within ten (10) days of the date of the entry on the docket of the order being appealed and attach to that Notice of Appeal an Affirmation seeking the judge's permission to take the appeal. Your affirmation must explain to the judge why she/he should certify a question of law under § 1292(b) so that his/her order can be appealed immediately to the Second Circuit, rather than waiting to appeal until the end of the case. The *Pro Se* Office will forward this submission to the judge; if she/he certifies a question of law raised in your Notice of Appeal and Affirmation, the interlocutory appeal will be processed and transmitted to the Second Circuit. If the judge declines to certify a question of law raised in your Notice of Appeal and Affirmation, those documents will be sent to the Second Circuit anyway so that the Second Circuit can decide whether or not it will hear your interlocutory appeal.

As with an appeal from a final judgment, your Notice of Appeal for an interlocutory appeal must be accompanied by either the $605 filing fee or an *in forma pauperis* application.

Alternatives to Appeals

There are some alternatives to an appeal that are available to you:

Motion for a New Trial or to Alter or Amend the Judgment (Rule 59)

Under Rule 59(a) of the Federal Rules of Civil Procedure, you may file a motion in the Eastern District *Pro Se* Office, to be decided by the judge in your case, to request a new trial. Under Rule 59(e), you may file a motion to alter or amend a final judgment entered in your case. In order to file a timely Rule 59 motion under Rule 59(a) or Rule 59(e), you must file it in the *Pro Se* Office within 28 days of the date of the entry of the final judgment on the Eastern District docket. If you file a timely Rule 59 motion with the *Pro Se* Office, your time to file a Notice of Appeal (in order to appeal your case to the Second Circuit as of right) does not begin to run until the judge decides your Rule 59 motion. Fed. R. App. P. 4(a)(4). If you submit your Rule 59 motion at the same time you submit your Notice of Appeal, the Notice of Appeal will not be filed until the judge decides your Rule 59 motion. If you submit a Rule 59 motion after you have filed a Notice of Appeal, you should notify the Second Circuit, and your appeal will be stayed (paused) until the motion is decided by the Eastern District.

Motion for Reconsideration (Local Civil Rule 6.3)

You may file a motion for reconsideration in order to challenge any determination by a judge. The motion, which will be decided by the judge on your case, must be filed with the *Pro Se* Office and served on the opposing party within 14 days of the date of the entry on

the docket of the order being challenged. The motion must be accompanied by a Memorandum of Law, no longer than ten (10) pages. The Memorandum of Law should concisely describe the matters or controlling cases that you contend the judge overlooked.

Motion for Relief from Judgment or Order (Rule 60)

If you want the judge to correct a clerical mistake made in an order or judgment, you should file a Rule 60(a) motion before your appeal is docketed in the Second Circuit. *See* Fed. R. Civ. P. 60(a). Rule 60(b) governs all other motions for relief from a judgment or order. Such motions must be filed within a reasonable time and not later than one (1) year after the judgment being challenged. Under Rule 60(b), the judge may grant relief from a judgment for a valid reason: (1) a mistake, inadvertence, surprise, or excusable neglect, (2) newly discovered evidence, (3) fraud, misrepresentation, or misconduct by the other party, (4) the judgment is void (*i.e.*, if the court had no legal authority to make the decision, like if it didn't have jurisdiction), (5) the judgment has been satisfied, released, or discharged, (6) any other reason that justifies relief. Filing a Rule 60(b) motion does not extend your time to appeal the final order or judgment of your case to the Second Circuit. If you want to file a motion for relief under Rule 60(b) and you also intend to appeal to the Second Circuit as of right from the final order or judgment, you must file your Notice of Appeal in the Eastern District *Pro Se* Office within 30 days of the date of the entry of the final order or judgment. You may file your Rule 60(b) motion in the *Pro Se* Office at the same time you file your Notice of Appeal or after. The judge will review your Rule 60(b) motion and, if she/he intends to grant it, will notify the Second Circuit so that the case can be returned to the Eastern District. If the judge denies your Rule 60(b) motion, your appeal will proceed in the Second Circuit.

Proceedings on Appeal Before the Second Circuit

The Second Circuit is an appellate court. As such, there is no trial, no jurors, and no witnesses. Testimony is not heard, and the parties themselves need not be present during the appeal. In the Second Circuit, a panel consisting of three (3) judges is typically assigned to hear an appeal. The Second Circuit will only consider issues that the district court (here the U.S. District Court for the Eastern District of New York) considered, based on the record from your case in the Eastern District. Generally, a party may not submit additional evidence (documents or testimony) to the Second Circuit that was not part of the file in the Eastern District. If you want to have the record on appeal corrected or to add or supplement documents to the record, you must file a motion in the Eastern District pursuant to Rule 10(e) of the Federal Rules of Appellate Procedure. If the motion to correct or modify the record is denied in the Eastern District of New York, you may also make the motion to the Second Circuit.

In addition to the Eastern District record, which will be forwarded to the Second Circuit, the Second Circuit will consider a party's legal position as set forth by an appellate brief. The party bringing the appeal, called the "appellant", and the party against whom the appeal is brought, called the "appellee", each will be allowed to submit briefs to the Second Circuit. An appellate brief contains a litigant's legal and factual arguments as to why the Second Circuit should find in their favor. Fed. R. App. P. 28.1.

The Second Circuit may allow oral argument, where both appellant and appellee (or their attorney if they have one) are able to argue, in person, before a three-judge panel of the Second Circuit, why the Second Circuit should rule in their favor.

Once the Second Circuit reaches a decision on the appeal, both the appellant and the appellee will receive a copy of that decision in the mail.

Questions regarding Second Circuit procedures should be addressed to the Second Circuit Clerk's Office. The Eastern District *Pro Se* Office cannot answer questions regarding Second Circuit procedure.

The Clerk's Office of the Second Circuit Court of Appeals is located in the Thurgood Marshall United States Courthouse at 40 Foley Square in Manhattan. There is no *Pro Se* Office in the Second Circuit. The mailing address for the Second Circuit is:

United States Court of Appeals for the Second Circuit

Thurgood Marshall United States Courthouse

40 Foley Square

New York, NY 10007

The telephone number of the Clerk's Office is (212) 857-8500.

GLOSSARY OF LEGAL TERMS

Action	A case or lawsuit.
ADR	Stands for "alternative dispute resolution." Generally, this refers to different methods parties can use to settle a case.
Adjourned	Postponed or moved to a later date.
Affidavit	A written statement of facts confirmed by oath of the person making it, before a notary public or other officer having authority to administer oaths. *See* **Affirmation**, **Declaration**.
Affirmation	A written statement of facts confirmed by the pledge of the person making it and subjecting that person to penalties of perjury for any false statements. The signature of a notary public is not needed for an affirmation. *See* **Affidavit**, **Declaration**.
Affirmation of Service	A document attached to any document submitted to the court in which a party attests that a copy of the document was sent to (served on) all other parties in the case. A copy of the Affirmation of Service is not sent to the other parties; it is attached only to the document submitted to the court. Sometimes referred to as a "Certificate of Service". *See* Rule 5 of the Federal Rules of Civil Procedure.
Allegation	A claim or statement of what a party intends to prove; the facts as one party claims they are.
Amendment	Changing, altering, or correcting a document.
Answer	The defendant's written statement responding to a complaint, setting forth the grounds for his/her defense.
Appeal	A review by a higher court of the judgment or decision of a lower court. Appeals from the United States District Court for the Eastern District of New York are heard by the United States Court of Appeals for the Second Circuit.
Appellant	The party who appeals the lower court's decision.
Appellee	The party against whom the appeal is taken.

Application to proceed *in forma pauperis*	A written request by a plaintiff, who cannot pay the filing fee for a lawsuit, asking the judge to waive the filing fee. A party filing a notice of appeal also may file an "application to proceed *in forma pauperis* on appeal," to request that the filing fee to file an appeal be waived.
Bench trial	A trial conducted without a jury. In a bench trial, the judge determines the law, the facts, and the outcome of the lawsuit.
Brief	Also called a **Memorandum of Law**. A written statement of a party's legal position including a summary of the facts, a statement of the questions of law involved, and the arguments and legal authorities upon which the party relies.
Caption	The caption is the title of the action. It includes the names of the plaintiff(s) (the parties bringing the action) and the names of the defendant(s) (the parties being sued) separated by the word "against" or the letter "v." for "versus". The caption must appear on the top left-hand corner of all papers submitted to the court and include the name of the court, for this District that is the United States District Court for the Eastern District of New York. *See* Rule 10 of the Federal Rules of Civil Procedure.
Case Management Conference	The meeting in which the judge, after discussion with the parties, sets a schedule for various events in the case. *See* Rule 16 of the Federal Rules of Civil Procedure.
Certificate of Service	A certificate attached to any document submitted to the court in which a party attests that a copy of the document was sent to (served on) all other parties in the case. A copy of the Certificate of Service is not sent to the other parties; it is attached only to the document submitted to the court. Sometimes referred to as an **Affirmation of Service**. *See* Rule 5 of the Federal Rules of Civil Procedure.

Challenge	An objection to the seating of a prospective juror for a trial. A "challenge for cause" is a challenge to a juror for which cause, or a reason is alleged. A "peremptory challenge" is a challenge to a juror without alleging any cause or reason; a limited number of peremptory challenges are allowed on each side in any case.
Charge to the Jury	The judge's instructions to the jury concerning the law that applies to the case
Cite or Citation	A reference to a law, rule, judicial decision, or piece of evidence.
Civil Action	Every lawsuit other than a criminal action.
Claim	A statement made by a plaintiff in a complaint that the defendants violated the law. Sometimes referred to as a **Count** or a "Cause of Action."
Clerk of Court	The court official who is responsible for filing papers, keeping the records and the court seal, issuing process, entering judgments and orders, and providing certified copies of documents from the record.
Closing Arguments	Also called "summation." After the presentation of all evidence at trial, a statement made to the judge and jury before deliberations begin in which each party summarizes the evidence presented at trial and asks that the law be applied in his/her favor.
Complaint	The first document filed in a lawsuit, in which the plaintiff tells the judge and the defendants what happened, how the defendants violated the law, how the plaintiff was injured and what relief or damages the plaintiff wants. *See* Rules 8 and 9 of the Federal Rules of Civil Procedure.
Conviction	A judgment of guilt against a criminal defendant.
Costs	An amount of money awarded to the successful party (and recoverable from the losing party) solely as reimbursement for certain expenses in prosecuting or defending the suit.
Counsel	Attorney or lawyer.

Count	A statement made by a plaintiff in a complaint that the defendants violated the law. Sometimes referred to as a **Claim** or a "Cause of Action."
Counterclaim	A claim made by a defendant against a plaintiff.
Court of Appeals	A federal court which may review decisions by the District Court. The Court of Appeals is higher than the District Court but under the United States Supreme Court. Appeals from the Eastern District of New York are heard by the United States Court of Appeals for the Second Circuit.
Court Reporter	A person authorized to record testimony either in the courtroom or at a deposition. The court reporter uses a small typewriter-like machine to record testimony as she/he hears it in "shorthand" which is then transcribed. Any request for transcripts must be made to the court reporter. Sometimes referred to as a **Court Stenographer**.
Court Stenographer	A person authorized to record testimony either in the courtroom or at a deposition. *See* **Court Reporter**.
Courtesy Copy	An extra copy of a court filing that is sent to the judge's chambers.
Courtroom Deputy	A court employee who assists the judge in the courtroom by swearing in the jury and witnesses, marking evidence, and attending to the jury. In addition, the courtroom deputy is often in charge of keeping the judge's calendar and handling administrative tasks for the judge.
Cross claim	A claim by one defendant against a co-defendant.
Cross-Examination	After a witness has given direct testimony, the opposing party may examine or question the witness to verify, refute or to further develop the testimony.

Damages	Monetary compensation which may be recovered by a plaintiff who has suffered a loss or injury through the unlawful act, omission, or negligence of the defendants. "Compensatory damages" or "actual damages" are damages awarded to a plaintiff to pay for the actual losses suffered by the plaintiff (for instance, medical expenses). "Punitive damages" are damages awarded in addition to actual damages when the defendant has acted with malice, fraud, or recklessness to "punish" the defendant.
Declaration	A written statement confirmed by the pledge of the person making it and subjecting that person to penalties of perjury for any false statements. The signature of a notary public is not needed for a declaration. *See* **Affirmation**, **Affidavit**.
Default Judgment	A judgment entered for the plaintiff when a defendant who has been served with a summons and complaint fails to answer or otherwise respond to the complaint. *See* Rule 55 of the Federal Rules of Civil Procedure.
Defendant	The person being sued by the plaintiff. The person the plaintiff claims injured him/her. Also, the party who is accused in a criminal case.
Deposition	A question-and-answer session done under oath, before trial outside of court, in which a party asks a person (either a party or a non-party) questions about the facts or issues of the case. A deposition is oral (verbal) testimony. The opposing party must be notified when any deposition is scheduled so that she/he also can ask questions. Deposition testimony may be used as evidence to support a motion (such as a summary judgment motion), at trial, or to obtain other discovery. *See* Rule 30 of the Federal Rules of Civil Procedure.
Dicta	Comments made by a judge in an opinion that are not necessary to the decision in the case. Sometimes referred to as "obiter dictum." Opposite of the **Holding**.

Disclosures, Initial	Information you must automatically give to the other parties, even if they do not ask for it. *See* Rule 26(a)(1) of the Federal Rules of Civil Procedure. *See* **Initial Disclosures**.
Discovery	The process by which the parties to a lawsuit gather information about the facts and issues of the case. Discovery is conducted between the parties by exchanging information such as documents, it may include obtaining information from non-parties. Standard discovery methods are interrogatories, depositions, requests for admissions, requests for production of documents, and physical and mental examinations. *See* Rules 26 to 37 and 45 of the Federal Rules of Civil Procedure.
Diversity of Citizenship	One of two types of cases in which federal district courts have jurisdiction to hear. Diversity exists if none of the plaintiffs are citizens of any state in which any defendant is a citizen, and the actual amount in controversy exceeds $75,000. *See* 28 U.S.C. § 1332.
Docket	The computer file, maintained by the court, listing the activity in each case. It contains an index of each document filed with the court and every order issued by the judge, as well as other information. Each separate piece of information on the docket is called a "docket entry". The "docket sheet" is the print-out of the docket. You may view your docket online using Public Access to Electronic Court Records (PACER) website.
Docket Number	The case number. A docket number is made up of a two-digit number (to signify the year), followed by the case type (either CV for civil cases or CR for criminal cases), followed by a four- or five-digit case number and followed by the judge's initials in parentheses. For example, 25-CV-4567 (MKB) is the docket number for the 4,567th civil case filed in the year 2025, and the case is assigned to Judge Margo K. Brodie.

Document	Any writings, drawings, graphs, charts, photographs, computer records, or other electronically stored information, pictures, maps, etc. Denotes any record such as deeds, agreements, title papers, receipts, and other written instruments or data compilations used to prove a fact.
Entry of Judgment	Recording the judgment on the docket. A party's right to appeal starts from entry of judgment.
Evidence	Any kind of matter, presented through witnesses, records, or documents to prove or disprove a fact.
Ex Parte	Latin for "from one party." Communication between one party and the judge, without the other parties being notified or present. Except in very limited circumstances, *ex parte* communication with the judge is not permitted.
Exhibits	Documents or other materials used as evidence at trial or for motions.
Federal Question	One of two types of cases which federal district courts have jurisdiction to hear. In federal question cases, the plaintiff's claims involve the interpretation and application of the Constitution or laws of the United States. *See* 28 U.S.C. § 1331
Federal Rules of Appellate Procedure	The rules that govern appeals to the United States Courts of Appeals. Cited as: Fed. R. App. P.
Federal Rules of Civil Procedure	The rules that govern civil proceedings in the federal district courts. Cited as: Fed. R. Civ. P.
Federal Rules of Evidence	The rules that govern admission of evidence in the federal district courts. Cited as: Fed. R. Evid.
File or Filing	A document that is properly prepared and submitted to the court for placement in the court's record/file. All papers from a *pro se* party are to be submitted to the *Pro Se* Office for filing.

Good Faith	Acting in good faith means having honest intentions. For example, negotiating in good faith means coming to the bargaining table with an open mind and a sincere desire to reach an agreement.
Hearing	A formal proceeding, similar to a trial, in which evidence is submitted, and witnesses are heard with one or more legal issues to be determined. Hearings are typically open to the public and held in the courtroom.
Hearsay	A statement made outside of court by someone other than a witness offered to prove the truth of the matter asserted. Hearsay usually is not admissible in evidence. *See* Rules 801 to 805 of the Federal Rules of Evidence.
Holding (of a case)	The court's official decision on a legal issue. The binding rule or principle from a decision. In legal research, the holding of a case will tell you whether the case supports your position. Opposite of **Dicta**.
***In Forma Pauperis* [IFP]**	Latin for "in the manner of a pauper." The permission given to a person unable to afford the court's filing fee to sue (or appeal) without payment of court fees.
Initial Disclosures	The disclosures the parties in certain cases must serve, automatically, without request from the opposing party. *See* Rule 26(a)(1) of the Federal Rules of Civil Procedure.
Injunction	A temporary or permanent order from a court that requires someone to either do something or stop doing something. It's used to prevent harm or maintain the status quo while a legal case is being decided.
Interlocutory Appeal	Generally, only final decisions by the judge can be appealed to Court of Appeals. In some limited circumstances, you may appeal a non-final decision while your case is ongoing. *See* 28 U.S.C. § 1292.

Interrogatories	A discovery tool in which written questions are asked by one party and served on an opposing party who must answer them in writing under oath. *See* Rule 33 of the Federal Rules of Civil Procedure.
Judge's Individual Practices or Rules	The rules, unique to each individual judge, that supplement the Federal Rules of Civil Procedure and the Local Civil Rules of the Court.
Judgment	The official decree of the court determining the rights and obligations of the parties in a case. A judgment officially closes the case and triggers the parties' right to appeal. *See* Rules 54 to 58 of the Federal Rules of Civil Procedure.
Judgment, declaratory	A type of relief a plaintiff may request in the complaint in which the plaintiff asks the court to clearly define who has what legal rights.
Judgment, default	Default judgement is entered in favor of the plaintiff when a properly served defendant has failed to respond to the complaint.
Judgment, summary	A decision by the judge to end a lawsuit, before trial, based on evidence presented in affidavits and exhibits, when there is no dispute as to the material (important) facts of the case.
Jurisdiction	The court's power or legal authority to hear and decide a case.
Jury	A certain number of persons, called jurors, selected according to law and sworn to decide matters of fact and declare the truth about matters laid before them at a trial. Eight (8) jurors are typically selected to decide a civil case, but in no event may less than six (6) jurors be selected.
Jury Instructions	Also called the "jury charge." The rules the judge gives to the jury to explain what their role is, how to view the evidence, and the law that applies to the case. Before the trial begins, the parties must submit to the judge proposed jury instructions that the judge can use to prepare the instructions she/he will read to the jury during the trial.

Jury Selection	The process by which the jury is selected for a case. In federal district court, the judge, not the attorneys, asks prospective jurors a series of questions, called **Voir Dire** to ascertain the jurors' abilities to sit on the jury. The parties may submit a set of proposed voir dire questions to the judge for consideration.
Jury Trial	A trial in which a jury is selected to consider the facts in a case and determine what actually happened. The judge will instruct the jury as to the law and the jury will apply the law to the facts and render a decision as to who wins the case.
Litigant	A party to a lawsuit.
Local Civil Rules	A set of rules of a specific federal court that supplements the Federal Rules of Civil Procedure. The Local Rules of Eastern District of New York are available on the court's website.
Mandamus	Latin for "we command." A court order that commands a government official, agency, or lower court to do something they are legally required to do. It's used when someone isn't doing their duty, and there's no other easy way to make them act.
Material Fact	A fact that makes a difference or is significant, important, or essential to the case.
Mediation	A method of alternative dispute resolution [**ADR**] in which the parties appear before a neutral mediator who tries to help the parties reach a mutually agreeable settlement.
Memorandum of Law	A written statement of a party's legal arguments presented to the judge. Sometimes referred to as a **Brief** or "legal brief."
Mistrial	A trial result of which cannot stand because of some fundamental error. When a mistrial is declared, there is no decision on the merits of the case, and the trial must start again with the selection of a new jury.
Moot	Having no practical significance. For example, a motion for an extension of time may be considered moot if the judge had already given the party more time.

Motion	A formal request that the judge issue a specific order. Motions are usually submitted in writing, but in certain limited circumstances, such as at a hearing or at trial, the motion may be made orally.
Motion for Default Judgment	A motion made by the plaintiff when the defendant has failed to answer or otherwise respond to the complaint after being served. *See* Rule 55 of the Federal Rules of Civil Procedure.
Motion for Extension of Time	A motion made by either party for additional time to do something.
Motion for Judgment as a Matter of Law	In a jury trial, a motion made by either party before the case is submitted to the jury arguing that the opposing party's evidence is so legally deficient that no jury could reasonably decide the case in the opposing party's favor. *See* Rule 50 of the Federal Rules of Civil Procedure.
Motion for Judgment on the Pleadings	A motion made by either party requesting that the judge rule in his/her favor based solely on the pleadings (complaint and answer). *See* Rule 12(c) of the Federal Rules of Civil Procedure
Motion for New Trial	A motion made by either party arguing that a new trial should be held because of an error in the trial. *See* Rule 59 of the Federal Rules of Civil Procedure.
Motion for Reconsideration	A motion made by either party asking the judge to consider changing a prior decision based on either misinformation, mistake, fraud, new information, or other stated reasons. *See* Rule 60 of the Federal Rules of Civil Procedure.
Motion for Sanctions	A motion made by either party arguing that a person should be punished by the judge because of certain conduct during the litigation. The punishment imposed can be monetary in nature or can result in a document or evidence being struck from the record, or the case being dismissed.

Motion for Summary Judgment	A motion made by either party (but most frequently by the defendant), generally at the close of discovery, arguing that there are no **Material Facts** in dispute and that based on the law, the moving party should win. *See* Rule 56 of the Federal Rules of Civil Procedure.
Motion *In Limine*	*In limine* is Latin for "at a threshold." A pretrial motion made by either party to obtain rulings on the admission of certain evidence prior to the trial.
Motion to Amend or Alter the Judgment	A motion made by either party after the entry of judgment arguing that a mistake was made in the judgment that should be corrected. *See* Rule 59 of the Federal Rules of Civil Procedure.
Motion to Compel	A motion made by either party asking the judge to order a party or non-party to make disclosures, to answer discovery requests, or to provide a more detailed response to discovery requests. Before the motion is made, the party is required to try to resolve the dispute informally and request a pre-motion conference. *See* Rule 37 of the Federal Rules of Civil Procedure.
Motion to Dismiss	A motion made by a defendant arguing that there are legal problems with the way the complaint is written, filed, or served and asking that the judge dismiss some or all the claims. *See* Rule 12 of the Federal Rules of Civil Procedure.
Motion to Strike	A motion made by either party arguing that a document or testimony, or a portion of such, should be deleted from the official court record.
Notice of Appeal	A notice filed with the district court, and served on the other parties to the suit, stating that a party is appealing. The Notice of Appeal contains no legal arguments but serves only to identify the party taking the appeal and the order or judgment being appealed. Filing the notice of appeal with the *Pro Se* Office in the district court is the first step in an appeal.

Notice of Deposition	Notification made in writing to the witness, as well as all parties in the case, of your intention to depose the witness. The notice must be made a reasonable time in advance of the deposition. The notice must include all the information required by Rules 26 and 30 of the Federal Rules of Civil Procedure.
Nunc pro tunc	Latin for "Now for Then." Retroactively ordered by the judge. For example, the judge may order a copy of a document which had been lost in the mail to be filed *nunc pro tunc* as of the date the original should have been received.
Objections to Report & Recommendation	A statement from a party explaining why she/he believes a Magistrate Judge's **Report & Recommendation** should not be adopted by the District Judge. *See* 28 U.S.C. § 636.
Opening Statement	In a trial, the first opportunity the parties have to address the jury and the judge and inform them of what she/he intends to prove using evidence.
Opinion	The judge's written decision, which typically includes a statement of facts, points of law, and an analysis applying the law to the facts.
Opposing Party	Your adversary. The party you are suing or who is suing you. In the context of a motion, the party against whom the motion is made.
Order to Show Cause	A judge's order directing a party to explain why the party did or failed to do something, or why the judge should or should not grant some relief.
Overrule (an objection)	If one party has an objection to testimony or evidence being submitted, the judge may overrule the objection and permit the testimony or evidence to proceed. Opposite of **Sustain.**
PACER	"Public Access to Electronic Court Records." Docket information is made available to the public on the internet through the PACER website. *See* **Docket.**
Perjury	A deliberate false or misleading statement made under oath.

Plaintiff	The party who brings or starts a lawsuit by filing a complaint asking for the enforcement of a right or the recovery of relief from a wrong.
Prayer for Relief	The last section of the complaint stating what damages the plaintiff wants and what else the plaintiff wants the judge to do. For example, injunctive or declaratory relief. *See* **Relief.**
Pretrial Conference	A conference with the judge attended by the parties (or counsel) to clarify the issues, to set a schedule for discovery, motions and further proceedings, and to discuss settlement. *See* Rule 16 of the Federal Rules of Civil Procedure.
Prima Facie	Latin for "at first sight." A *prima facie* case presents enough evidence for the plaintiff to win the case barring any defenses or additional evidence presented by the defendant.
Privilege	In legal terms, privilege refers to a special right that allows someone to refuse to disclose certain information in a legal case. "Attorney-client privilege" prevents the attorney from disclosing confidential communications between him/her and the client. The "doctor-patient privilege" prevents the doctor from disclosing confidential medical information. Privilege protects certain communications from being used as evidence.
Pro Bono	Latin for "for the good." Legal services provided free of charge, usually for persons unable to afford a lawyer.
Pro Se	Latin for "in one's own behalf." Representing oneself in court, without an attorney.
Proof of Service	A document which confirms that another document was served on the parties. Proof of service for the summons and complaint is located on the back of the summons. An **Affirmation** or **Certificate of Service** may be used as proof of service for all other documents.
Protective Order	A judge's order prohibiting or limiting a party from continuing with a legal procedure. For example, limiting certain types of discovery as overly burdensome.

Quash the Subpoena	An application by a non-party witness to the judge so that she/he need not appear for a deposition and/or to produce documents at the date, time, and place listed in the subpoena.
Redirect Examination	At trial, after the opposing party has cross-examined a witness, the party who originally called the witness to testify may ask the witness questions regarding any of the answers given on **Cross-Examination**.
Referring Judge	The District Judge who refers all or some portion of the case to Magistrate Judge.
Remand	To send back. The act of the appeals court sending a case back to the district court for further action.
Remedy	The solution or action a court orders to fix a legal problem or to enforce a right. It can include things like money awarded for damages, an order to do something or stop doing something, or other forms of legal help to address a wrong. *See* **Relief.**
Relief	The assistance or **remedy** a court provides to a person who brings a lawsuit. It can include various forms of help, such as compensation for damages, an order to stop certain actions (like an injunction), or other solutions to resolve a legal issue. *See* **Prayer for Relief.**
Reply	The response used to oppose a motion.
Report & Recommendation	A Magistrate Judge's decision on a matter referred to him/her in which the Magistrate Judge advises the District Judge how the matter should be decided. The District Judge will review the report & recommendation and any objections and either adopt, reject, or modify it. *See* 28 U.S.C. § 636.
Request for Admission	A discovery tool in which one party asks another party in writing to admit the truth of any statement, the authenticity of a document, or to admit the application of law to any fact. *See* Rule 36 of the Federal Rules of Civil Procedure.

Request for Waiver of Service	A method by which the plaintiff asks the defendant to forgo formal service of the summons and complaint. If the defendant agrees to waive service, she/he is granted an automatic extension of time to respond to the complaint. *See* Rule 4 of the Federal Rules of Civil Procedure.
Res Judicata	Latin for "a matter judged." The principle that a matter generally may not be relitigated once it has been decided on the merits.
Reversal	The act of an appellate court overturning a decision of a lower court because of an error.
Sanction	A punishment or penalty, monetary or in another form, the judge may impose on a person in certain circumstances. For example, the judge may impose a sanction upon a party that violates an order, fails to appear at a scheduled proceeding, or files frivolous complaints or motions. *See* Rules 11 and 37 of the Federal Rules of Civil Procedure.
Service	Providing a copy of a document to other parties. *See* Rule 5 of the Federal Rules of Civil Procedure.
Service of Process	Providing a copy of the summons and complaint to the defendant as required by Rule 4 of the Federal Rules of Civil Procedure. Service must be done by a person over the age of 18 years who is not a party to the lawsuit. A trusted family member or friend may serve the summons and complaint or a professional process server may be hired. *See* Rule 4 of the Federal Rules of Civil Procedure.
Side Bar	A conference in which the judge calls the parties to one side of the bench, outside of the jury's hearing, to discuss an issue during trial.
Standing	A party's right to make a legal claim.

Standing Order	A judge's order that applies to lawsuits or certain circumstances that are heard by that judge. A standing order of the court is an order issued by the Chief Judge to deal with a recurring situation that the Federal Rules of Civil Procedure and the Local Civil Rules do not address. Standing orders have the full effect and power as all other judicial orders.
Statute of Limitations	Laws requiring that a lawsuit be filed within a certain amount of time after the injury. Some federal laws specify what their statute of limitations is. If federal law does not specify the statute of limitations, then the federal courts will use the statute of limitations from the state law which is most closely related.
Stipulation	A written agreement voluntarily signed by parties in a case.
Strike	To delete a document or testimony, or any portion of such, from the official court record. Also, to remove a potential juror from the jury.
Subject Matter Jurisdiction	The power of the court to hear certain types of cases. The federal district court has subject matter jurisdiction over **Federal Question** cases and **Diversity of Citizenship** cases. *See* 28 U.S.C. §§ 1331, 1332.
Subpoena	Latin for "under penalty." A court document commanding a non-party to appear for trial or a deposition or produce documents on a specific date, time, and place. The same form is used for a **Subpoena *ad testificandum*** and **Subpoena *duces tecum***. *See* Rule 45 of the Federal Rules of Civil Procedure.
Subpoena *ad testificandum*	A court document commanding a non-party to appear for trial or a deposition on a specific date, time, and place. *See* Rule 45 of the Federal Rules of Civil Procedure.
Subpoena *duces tecum*	A court document commanding a non-party to produce documents listed in the subpoena on a specific date, time, and place. *See* Rule 45 of the Federal Rules of Civil Procedure.

Summons	A document notifying the defendant that an action has been commenced against him/her in the court, and that she/he is required to appear and answer the complaint.
Sustain (an objection)	To agree with the objection. If a party objects to some evidence and the judge sustains the objection, the evidence will not be admitted, or the question will not be answered. Opposite of **Overrule.**
Temporary Restraining Order ("TRO")	An order prohibiting a person from acting in a way 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 a short time until a hearing can be held. *See* Rule 65 of the Federal Rules of Civil Procedure.
Testimony	Evidence given by a witness under oath at a deposition or at trial, or in an affidavit.
Transcript	The typewritten transcription of the court reporter's shorthand notes of the proceedings in a trial, hearing, or deposition.
United States Code (U.S.C.)	Federal laws are compiled in the United States Code. Cited as: U.S.C.
Vacate	To invalidate or cancel a prior order so that it no longer has any effect.
Venue	The specific court in which a lawsuit is filed.
Verdict	The decision or finding made by the jury upon matters or questions submitted to them at the trial.
Voir Dire	The preliminary examination of potential jurors to determine their competency and impartiality to serve on a case. In federal court, the judge generally asks each potential juror a series of questions designed to reveal any bias the juror may have that would prevent him/her from being fair and impartial.
Waiver of Service	The defendant's agreement to forgo formal service of the summons and complaint. *See* **Request for Waiver of Service**; *see* Rule 4 of the Federal Rules of Civil Procedure.

With Prejudice	Action taken with the loss of all rights. A dismissal of the lawsuit with prejudice prohibits the plaintiff from filing another complaint raising those same claims.
Without Prejudice	Action taken with the right to reassert the same matter at a future date. For example, a dismissal of the claims without prejudice permits the plaintiff to file another complaint raising those same claims. Sometimes, the judge will also grant the plaintiff "leave to amend" or "leave to replead" his/her allegations
Witness	A person who has personal knowledge regarding the relevant facts of the case.
Writ	A written command, issued from the court, requiring the performance of a specific act.

LIST OF FORMS

Application to proceed *in forma pauperis* (without paying fees)

General civil complaint

Civil cover sheet

Summons in a civil action

Application for the court to request counsel

Civil rights complaint 42 U.S.C. § 1983 – Prison Litigation Reform Act & Authorization

Employment discrimination complaint

Social security appeals – instructions

Social security appeals – complaint form

Affirmation of service

Consent to receive electronic notification of filings

Answer to a complaint

Request for certificate of default

Consent to proceed before a Magistrate Judge

Local Civil Rule 33.2 interrogatories and request for production of documents in inmate cases

Motions – instructions and form

Opposition to motions –instructions and forms

Appeals – instructions and forms for filing an appeal and extension of time

UNITED STATES DISTRICT COURT

for the

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

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

Affidavit in Support of the Application

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested. I declare under penalty of perjury that the information below is true and understand that a false statement may result in a dismissal of my claims.

Signed: _____

Instructions

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Date: _____

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Regular expenses for operation of business, profession, or farm *(attach detailed statement)*	$	$
Other *(specify)*:	$	$
Total monthly expenses:	**$ 0.00**	**$ 0.00**

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

❒ Yes ❒ No If yes, describe on an attached sheet.

10. Have you spent — or will you be spending — any money for expenses or attorney fees in conjunction with this lawsuit? ❒ Yes ❒ No

If yes, how much? $ _____

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

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

Your daytime phone number: _____

Your age: _____ Your years of schooling: _____

Print Save As... Add Attachment Reset

About These Forms

1. **In General.** This and the other pleading forms available from the www.uscourts.gov website illustrate some types of information that are useful to have in complaints and some other pleadings. The forms do not try to cover every type of case. They are limited to types of cases often filed in federal courts by those who represent themselves or who may not have much experience in federal courts.

2. **Not Legal Advice.** No form provides legal advice. No form substitutes for having or consulting a lawyer. If you are not a lawyer and are suing or have been sued, it is best to have or consult a lawyer if possible.

3. **No Guarantee.** Following a form does not guarantee that any pleading is legally or factually correct or sufficient.

4. **Fee:** The filing fee is **$405,** payable to the Clerk of the Court, USDC, EDNY by certified check, bank check, personal check, money order or cash (if paying in person). If the filing fee is paid, the U.S. Marshal will not be directed to serve the defendants and plaintiff will be responsible for service of process on defendants. Service of the summons and complaint can be made by anyone over the age of 18 who is not a party to the action.

5. **Variations Possible.** A form may call for more or less information than a particular court requires. The fact that a form asks for certain information does not mean that every court or a particular court requires it. And if the form does not ask for certain information, a particular court might still require it. Consult the rules and caselaw that govern in the court where you are filing the pleading.

6. **Examples Only.** The forms do not try to address or cover all the different types of claims or defenses, or how specific facts might affect a particular claim or defense. Some of the forms, such as the form for a generic complaint, apply to different types of cases. Others apply only to specific types of cases. Be careful to use the form that fits your case and the type of pleading you want to file. Be careful to change the information the form asks for to fit the facts and circumstances of your case.

7. **No Guidance on Timing or Parties.** The forms do not give any guidance on when certain kinds of pleadings or claims or defenses have to be raised, or who has to be sued. Some pleadings, claims, or defenses have to be raised at a certain point in the case or within a certain period of time. And there are limits on who can be named as a party in a case and when they have to be added. Lawyers and people representing themselves must know the Federal Rules of Civil Procedure and the caselaw setting out these and other requirements. The current Federal Rules of Civil Procedure are available, for free, at www.uscourts.gov.

8. **Privacy Requirements.** Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns over public access to electronic court files. Under this rule, papers filed with the court should not contain anyone's full social-security number or full birth date; the name of a person known to be a minor; or a complete financial-account number. A filing may include only the last four digits of a social-security number and taxpayer identification number; the year of someone's birth; a minor's initials; and the last four digits of a financial-account number.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

_____

_____

_____

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-against-

_____

_____

_____

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

Complaint for a Civil Case

Case No. _____

(to be filled in by the Clerk's Office)

Jury Trial: ☐ Yes ☐ No
(check one)

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name _____

Street Address _____

City and County _____

State and Zip Code _____

Telephone Number _____

E-mail Address _____

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name _____

Job or Title _____
(if known)

Street Address _____

City and County _____

State and Zip Code _____

Telephone Number _____

E-mail Address _____
(if known)

Defendant No. 2

Name _____

Job or Title _____
(if known)

Street Address _____

City and County _____

State and Zip Code _____

Telephone Number _____

E-mail Address _____

(if known)

Defendant No. 3

Name _____

Job or Title _____

(if known)

Street Address City _____

and County State _____

and Zip Code _____

Telephone Number _____

E-mail Address _____

(if known)

Defendant No. 4

Name _____

Job or Title _____

(if known)

Street Address City _____

and County State _____

and Zip Code _____

Telephone Number _____

E-mail Address _____

(if known)

II. Basis for Jurisdiction

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation and the amount at stake is more than $75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal court jurisdiction? *(check all that apply)*

☐ Federal question ☐ Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

A. If the Basis for Jurisdiction Is a Federal Question

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

_____

_____

_____

B. If the Basis for Jurisdiction Is Diversity of Citizenship

1. The Plaintiff(s)

a. If the plaintiff is an individual

The plaintiff, *(name)* _____, is a citizen of the State of *(name)* _____.

b. If the plaintiff is a corporation

The plaintiff, *(name)* _____, is incorporated under the laws of the State of *(name)* _____, and has its principal place of business in the State of *(name)* _____.

(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)

2. The Defendant(s)

a. If the defendant is an individual

The defendant, *(name)* _____, is a citizen of the State of *(name)* _____. *Or* is a citizen of *(foreign nation)* _____.

b. If the defendant is a corporation

The defendant, *(name)* _____, is incorporated under the laws of the State of *(name)* _____, and has its principal place of business in the State of *(name)* _____. *Or* is incorporated under the laws of *(foreign nation)* _____, and has its principal place of business in *(name)* _____.

(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)

3. The Amount in Controversy

The amount in controversy—the amount the plaintiff claims the defendant owes or the amount at stake—is more than $75,000, not counting interest and costs of court, because *(explain)*:

_____

_____

_____

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

_____

_____

_____

_____

_____

IV. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

_____

_____

_____

_____

_____

V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: _____, 20__.

Signature of Plaintiff _____

Printed Name of Plaintiff _____

Revised 02.13.2025; Effective 02.17.2025

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	**PERSONAL INJURY** ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice **PERSONAL INJURY** ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability **PERSONAL PROPERTY** ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other **LABOR** ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act **IMMIGRATION** ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 **INTELLECTUAL PROPERTY RIGHTS** ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark ☐ 880 Defend Trade Secrets Act of 2016 **SOCIAL SECURITY** ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) **FEDERAL TAX SUITS** ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit (15 USC 1681 or 1692) ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/ Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY	**CIVIL RIGHTS**	**PRISONER PETITIONS**			
☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/ Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	**Habeas Corpus:** ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty **Other:** ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement			

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

- ☐ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

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

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of $150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration ☐

I, _____, counsel for_____, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- ☐ monetary damages sought are in excess of $150,000.00 exclusive of interest and costs,
- ☐ the complaint seeks injunctive relief, or
- ☐ the matter is otherwise ineligible for the following reason:

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more or its stocks. Add an additional page if needed.

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 3 in Section VIII on the front of this form. Rule 3(a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 3(a) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case involves identical legal issues, or the same parties." Rule 3 further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (b), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NEW YORK EASTERN DISTRICT DIVISION OF BUSINESS RULE 1(d)(3)

If you answer "Yes" to any of the questions below, this case will be designated as a Central Islip case and you must select Office Code 2.

1. Is the action being removed from a state court that is located in Nassau or Suffolk County? ☐ Yes ☐ No
2. Is the action—not involving real property—being brought against United States, its officers or its employees AND the majority of the plaintiffs reside in Nassau or Suffolk County? ☐ Yes ☐ No
3. If you answered "No" to all parts of Questions 1 and 2:
   a. Did a substantial part of the events or omissions giving rise to claim or claims occur in Nassau or Suffolk County? ☐ Yes ☐ No
   b. Do the majority of defendants reside in Nassau or Suffolk County? ☐ Yes ☐ No
   c. Is a substantial amount of any property at issue located in Nassau or Suffolk County? ☐ Yes ☐ No
4. If this is a Fair Debt Collection Practice Act case, was the offending communication received in either Nassau or Suffolk County? ☐ Yes ☐ No

(*Note, a natural person is considered to reside in the county in which that person is domiciled; an entity is considered a resident of the county that is either its principal place of business or headquarters, of if there is no such county in the Eastern District, the county within the District with which it has the most significant contacts*).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☐ Yes ☐ No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐ Yes (If yes, please explain) ☐ No

I certify the accuracy of all information provided above.

Signature: _____

UNITED STATES DISTRICT COURT

for the

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

SUMMONS IN A CIVIL ACTION

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

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

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

BRENNA B. MAHONEY
CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

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

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

Print Save As... Reset

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

Plaintiff,

-against-

Defendant(s).
----------X

APPLICATION FOR THE COURT TO REQUEST COUNSEL

_____CV_____ ( )

1. Name of applicant _____

2. Explain why you feel you need a lawyer in this case. (Use additional paper if necessary.)

_____

_____

_____

3. Explain what steps you have taken to find an attorney and with what results. (Use additional paper if necessary.)

_____

_____

_____

4. If you need a lawyer who speaks in a language other than English, state what language you speak:

_____

5. I understand that if a lawyer volunteers to represent me and my lawyer learns that I can afford to pay for a lawyer, the lawyer may give this information to the Court. I understand that if the Court grants this application in a complaint against the Commissioner of Social Security, the pro bono attorney, if successful, has the statutory right to request that the Court award a fee of up to 25% of the accrued Social Security or Supplemental Security Income Benefits. See 42 U.S.C. § 406.

6. I understand that if my answers on my Request to Proceed *In Forma Pauperis* are false, my case may be dismissed.

7. **I declare under penalty of perjury that the forgoing is true and correct.**

Dated: _____ _____

Signature

rev. 7/08

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

Plaintiff,

-against-

Defendant(s).

----------X

REQUEST TO PROCEED *IN FORMA PAUPERIS* IN SUPPORT OF THE APPLICATION FOR THE COURT TO REQUEST COUNSEL

_____CV_____ ( )

I, _____ (print or type your name) am the plaintiff/defendant in the above-entitled case and I hereby request to proceed *in forma pauperis* and without being required to prepay fees or costs or give security. I state that because of my poverty I am unable to pay the costs of said proceeding or give security therefor, and that I believe I am entitled to redress.

1. If you are presently employed, give the name and address of your employer and state the amount of earnings per month.

_____

_____

2. If you are not presently employed, state the date you were last employed and your earnings per month at that time. **You must answer this question even if you are incarcerated.**

_____

_____

3. Have you received, within the past twelve months, any money from any source? If so, name the source and the amount of money you received.

_____

a) Are you receiving any public benefits? ☐ No ☐ Yes, $_____

b) Do you receive any income from any other source? ☐ No ☐ Yes, $_____

4. Do you have any money, including money in a checking or savings account? If so, how much?

_____

5. Do you own any apartment, house or building, stocks, bonds, notes, automobiles or other valuable property? If the answer is yes, describe the property and state its approximate value.

☐ No ☐ Yes, $_____

6. Do you pay for rent or for a mortgage? If so, how much each month?

☐ No ☐ Yes, $_____

7. List the person(s) that you pay money to support and the amount you pay each month.

_____

_____

8. State any special circumstances which the Court should consider.

_____

_____

_____

I understand that the Court may dismiss this case if I give a false answer to any question in this declaration.

I understand that if the Court grants this application in a complaint against the Commissioner of Social Security, the pro bono attorney, if successful, has the statutory right to request that the Court award a fee of up to 25% of the accrued Social Security or Supplemental Security Income Benefits. See 42 U.S.C. § 406.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____ _____

Signature

rev. 7/08

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
---------- X

Plaintiff,

-against-

AFFIRMATION OF SERVICE

_____CV_____ ( )

Defendant(s).
---------- X

I,_____ (print or type your name), **declare under penalty of perjury** that I have served a copy of the attached Application for the Court to Request Counsel upon the defendant(s) or the attorney for defendant(s) _____

_____

whose address is: _____

by _____
(describe how you served document: For example - personal delivery, mail, overnight express, etc.)

Dated: _____

_____
Signature

_____
Address

_____

_____
City, State & Zip Code

rev. 7/08

INSTRUCTIONS FOR FILING A CIVIL RIGHTS COMPLAINT

Attached is a complaint form for filing an action under 42 U.S.C. § 1983. Observe the following instructions for completing the complaint:

1. Caption: It is very important, if possible, that you state the first and last name of each defendant and badge number, if appropriate. You are required to furnish the correct name and address of each person so that service of process upon each defendant can be made.

2. Contents: The form should be fully completed. It can be typewritten or handwritten. It must be legible. If you need more space to answer a question, attach a separate sheet of 8 ½ by 11 paper to your complaint. You are required to state facts, such as the date and location of the events. You need not make legal arguments or cite to cases. The complaint must have an original (not photocopied) signature by each plaintiff. The complaint need not be notarized.

3. Copies: You must send the Court the original complaint and two exact copies (a complete set of three). You should keep another copy for your records. Copies can be xeroxed, handwritten or typewritten, but all copies must be identical to the original.

4. Fee: The filing fee is **$405,** payable to the Clerk of the Court, USDC, EDNY by certified check, bank check, personal check, money order or cash (if paying in person). If the filing fee is paid, the U.S. Marshal will not be directed to serve the defendants and plaintiff will be responsible for service of process on defendants. Service of the summons and complaint can be made by anyone over the age of 18 who is not a party to the action. See Fed. R. Civ. P. 4. If you are granted *in forma pauperis* status and are a prisoner, the filing fee is **$350** and is payable in installments.

5. Inability to Pay the Fee: If you cannot pay the fee, you may apply to the Court to proceed *in forma pauperis* (IFP) pursuant to 28 U.S.C § 1915 by completing the attached form. If there is more than one plaintiff, each plaintiff must provide a separate declaration in support of the request to proceed *in forma pauperis*. If you are a prisoner, you must also complete the attached Prisoner Authorization form.

6. Prison's Grievance Procedures: Prisoners filing an action in federal court regarding prison conditions must first exhaust administrative procedures (such as the prison's grievance procedures). See 42 U.S.C. § 1997e(a). Your case may be dismissed if you have not exhausted your administrative remedies before filing your action in federal court.

When you have completed the forms, mail the original and 2 copies to the:

United States District Court
Eastern District of New York
225 Cadman Plaza East, Brooklyn, NY 11201
Attention: Pro Se Office

or

United States District Court
Eastern District of New York
100 Federal Plaza, Central Islip, NY 11722
Attention: Pro Se Office

Keep this page and a copy of the complaint for your records. You may call 718-613-2665 in Brooklyn or 631-712-6060 in Central Islip if you have questions on how to file your complaint.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

_____

_____

_____
Plaintiff,

[Insert full name of plaintiff/prisoner]

CIVIL RIGHTS COMPLAINT
42 U.S.C. § 1983

JURY DEMAND

YES_____ NO _____

-against-

_____

_____

_____

_____

_____

_____
Defendant(s).

[Insert full name(s) of defendant(s). If you need additional space, please write "see attached" and insert a separate page with the full names of the additional defendants. The names listed above must be identical to those listed in Part I]

I. **Parties**: (In item A below, place your name in the first blank and provide your present address and telephone number. Do the same for additional plaintiffs, if any.)

A. Name of plaintiff _____

If you are incarcerated, provide the name of the facility and address:

_____

_____

_____

Prisoner ID Number: _____

If you are not incarcerated, provide your current address:

_____

_____

_____

Telephone Number: _____

B. List all defendants. You must provide the full names of each defendant and the addresses at which each defendant may be served. The defendants listed here must match the defendants named in the caption on page 1.

Defendant No. 1

_____
Full Name

_____
Job Title

_____

_____
Address

Defendant No. 2

_____
Full Name

_____
Job Title

_____

_____
Address

Defendant No. 3

_____
Full Name

_____
Job Title

_____

_____
Address

Defendant No. 4 _____
Full Name

_____
Job Title

_____

_____
Address

Defendant No. 5 _____
Full Name

_____
Job Title

_____

_____
Address

II. Statement of Claim:

(State briefly and concisely, the facts of your case. Include the date(s) of the event(s) alleged as well as the location where the events occurred. Include the names of each defendant and state how each person named was involved in the event you are claiming violated your rights. You need not give any legal arguments or cite to cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. You may use additional 8 ½ by 11 sheets of paper as necessary.)

Where did the events giving rise to your claim(s) occur? _____

_____

_____

When did the events happen? (include approximate time and date) _____

_____

_____

Facts: (what happened?) _____

II.A. Injuries. If you are claiming injuries as a result of the events you are complaining about, describe your injuries and state what medical treatment you required. Was medical treatment received?

_____

_____

_____

III. Relief: State what relief you are seeking if you prevail on your complaint.

_____

_____

_____

_____

_____

_____

_____.

I declare under penalty of perjury that on _____, I delivered this
(date)
complaint to prison authorities at _____to be mailed to the United
(name of prison)
States District Court for the Eastern District of New York.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

_____
Signature of Plaintiff

_____
Name of Prison Facility or Address if not incarcerated

_____

_____

_____
Address

_____
Prisoner ID#

UNITED STATES DISTRICT COURT

for the

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

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

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested.

In support of this application, I answer the following questions under penalty of perjury:

1. *If incarcerated.* I am being held at: _____. If employed there, or have an account in the institution, I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for any institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. *If not incarcerated.* If I am employed, my employer's name and address are:

My gross pay or wages are: $ _____, and my take-home pay or wages are: $ _____ per *(specify pay period)* _____.

3. *Other Income.* In the past 12 months, I have received income from the following sources *(check all that apply)*:

(a) Business, profession, or other self-employment	☐ Yes	☐ No
(b) Rent payments, interest, or dividends	☐ Yes	☐ No
(c) Pension, annuity, or life insurance payments	☐ Yes	☐ No
(d) Disability, or worker's compensation payments	☐ Yes	☐ No
(e) Gifts, or inheritances	☐ Yes	☐ No
(f) Any other sources	☐ Yes	☐ No

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

4. Amount of money that I have in cash or in a checking or savings account: $ _____.

5. Any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value that I own, including any item of value held in someone else's name *(describe the property and its approximate value)*:

6. Any housing, transportation, utilities, or loan payments, or other regular ~~monthly expenses~~ *(describe and provide the amount of the monthly expense)*:

7. Names (or, if under 18, initials only) of all persons who are dependent on ~~me for support, my~~ relationship with each person, and how much I contribute to their support:

8. Any debts or financial obligations *(describe the amounts owed and to whom they are payable)*:

Declaration: I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

Date: _____

_____
Applicant's signature

_____
Printed name

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PRISONER AUTHORIZATION

Case Name: _____ vs. _____
(Enter full name of plaintiff(s)) *(Enter full name of defendant(s))*

Docket Number: _____ -CV- _____ ( )
(Enter the docket number if available; if filing with your complaint, leave blank)

The Prison Litigation Reform Act ("PLRA" or "Act") amended the *in forma pauperis* statute (28 U.S.C. § 1915) and applies to your case. Under the PLRA, you are required to pay the full filing fee when bringing a civil action if you are currently incarcerated or detained in any facility. If you do not have sufficient funds in your prison account at the time your action is filed, the Court must assess and collect payments until the entire filing fee of **$350** has been paid, **no matter what the outcome of the action.**

SIGN AND DATE THE FOLLOWING AUTHORIZATION:

I, _____ *(print or type your name)*, request and authorize the facility institution or agency holding me in custody to send to the Clerk of the United States District Court for the Eastern District of New York, or, if this matter is transferred to another district court, to the Clerk of the transferee court, a certified copy of my prison account statement for the past six months. I further request and authorize the facility or agency holding me in custody to calculate the amounts specified by 28 U.S.C. § 1915(b), to deduct those amounts from my prison trust fund account (or institutional equivalent), and to disburse those amounts to the United States District Court for the Eastern District of New York. This authorization shall apply to any facility or agency into whose custody I may be transferred, and to any other district court to which my case may be transferred and by which my *in forma pauperis* application may be decided.

I UNDERSTAND THAT BY SIGNING AND RETURNING THIS NOTICE TO THE COURT, THE ENTIRE COURT FILING FEE OF $350 WILL BE PAID IN INSTALLMENTS BY AUTOMATIC DEDUCTIONS FROM MY PRISON TRUST FUND ACCOUNT EVEN IF MY CASE IS DISMISSED.

_____ _____
Signature of Plaintiff Date Signed

Prisoner I.D. Number(s) _____

Name of Current Facility _____

About These Forms

1. **In General.** This and the other pleading forms available from the www.uscourts.gov website illustrate some types of information that are useful to have in complaints and some other pleadings. The forms do not try to cover every type of case. They are limited to types of cases often filed in federal courts by those who represent themselves or who may not have much experience in federal courts.

2. **Not Legal Advice.** No form provides legal advice. No form substitutes for having or consulting a lawyer. If you are not a lawyer and are suing or have been sued, it is best to have or consult a lawyer if possible.

3. **No Guarantee.** Following a form does not guarantee that any pleading is legally or factually correct or sufficient.

4. **Fee:** The filing fee is **$405,** payable to the Clerk of the Court, USDC, EDNY by certified check, bank check, personal check, money order or cash (if paying in person). If the filing fee is paid, the U.S. Marshal will not be directed to serve the defendants and plaintiff will be responsible for service of process on defendants. Service of the summons and complaint can be made by anyone over the age of 18 who is not a party to the action.

5. **Variations Possible.** A form may call for more or less information than a particular court requires. The fact that a form asks for certain information does not mean that every court or a particular court requires it. And if the form does not ask for certain information, a particular court might still require it. Consult the rules and caselaw that govern in the court where you are filing the pleading.

6. **Examples Only.** The forms do not try to address or cover all the different types of claims or defenses, or how specific facts might affect a particular claim or defense. Some of the forms, such as the form for a generic complaint, apply to different types of cases. Others apply only to specific types of cases. Be careful to use the form that fits your case and the type of pleading you want to file. Be careful to change the information the form asks for to fit the facts and circumstances of your case.

7. **No Guidance on Timing or Parties.** The forms do not give any guidance on when certain kinds of pleadings or claims or defenses have to be raised, or who has to be sued. Some pleadings, claims, or defenses have to be raised at a certain point in the case or within a certain period of time. And there are limits on who can be named as a party in a case and when they have to be added. Lawyers and people representing themselves must know the Federal Rules of Civil Procedure and the caselaw setting out these and other requirements. The current Federal Rules of Civil Procedure are available, for free, at www.uscourts.gov.

8. **Privacy Requirements.** Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns over public access to electronic court files. Under this rule, papers filed with the court should not contain anyone's full social-security number or full birth date; the name of a person known to be a minor; or a complete financial-account number. A filing may include only the last four digits of a social-security number and taxpayer identification number; the year of someone's birth; a minor's initials; and the last four digits of a financial-account number.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

_____

_____

_____

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-against-

_____

_____

_____

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

Complaint for Employment Discrimination

Case No. _____

(to be filled in by the Clerk's Office)

Jury Trial: ☐ Yes ☐ No
(check one)

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name _____

Street Address _____

City and County _____

State and Zip Code _____

Telephone Number _____

E-mail Address _____

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name _____

Job or Title (if known) _____

Street Address _____

City and County _____

State and Zip Code _____

Telephone Number _____

E-mail Address (if known) _____

Defendant No. 2

Name _____

Job or Title (if known) _____

Street Address _____

City and County _____

State and Zip Code _____

Telephone Number _____

E-mail Address (if known) _____

C. Place of Employment

The address at which I sought employment or was employed by the defendant(s) is:

Name _____

Street Address _____

City and County _____

State and Zip Code _____

Telephone Number _____

II. Basis for Jurisdiction

This action is brought for discrimination in employment pursuant to *(check all that apply)*:

☐ Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (race, color, gender, religion, national origin).

(Note: In order to bring suit in federal district court under Title VII, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)

☐ Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621 to 634.

(Note: In order to bring suit in federal district court under the Age Discrimination in Employment Act, you must first file a charge with the Equal Employment Opportunity Commission.)

☐ Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112 to 12117.

(Note: In order to bring suit in federal district court under the Americans with Disabilities Act, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)

☐ Other federal law *(specify the federal law)*:

_____

☐ Relevant state law *(specify, if known)*:

_____

☐ Relevant city or county law *(specify, if known)*:

_____

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

A. The discriminatory conduct of which I complain in this action includes *(check all that apply)*:

☐ Failure to hire me.
☐ Termination of my employment.
☐ Failure to promote me.
☐ Failure to accommodate my disability.
☐ Unequal terms and conditions of my employment.
☐ Retaliation.
☐ Other acts *(specify)*: _____

(Note: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court under the federal employment discrimination statutes.)

B. It is my best recollection that the alleged discriminatory acts occurred on date(s)

_____

C. I believe that defendant(s) *(check one)*:

☐ is/are still committing these acts against me.

☐ is/are not still committing these acts against me.

D. Defendant(s) discriminated against me based on my *(check all that apply and explain)*:

☐ race _____

☐ color_____

☐ gender/sex _____

☐ religion _____

☐ national origin _____

☐ age. My year of birth is _____. *(Give your year of birth only if you are asserting a claim of age discrimination.)*

☐ disability or perceived disability *(specify disability)*

_____

E. The facts of my case are as follows. Attach additional pages if needed.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

(Note: As additional support for the facts of your claim, you may attach to this complaint a copy of your charge filed with the Equal Employment Opportunity Commission, or the charge filed with the relevant state or city human rights division.)

IV. Exhaustion of Federal Administrative Remedies

A. It is my best recollection that I filed a charge with the Equal Employment Opportunity Commission or my Equal Employment Opportunity counselor regarding the defendant's alleged discriminatory conduct on *(date)*

_____

B. The Equal Employment Opportunity Commission *(check one)*:

☐ has not issued a Notice of Right to Sue letter.

☐ issued a Notice of Right to Sue letter, which I received on *(date)*

_____.

(Note: Attach a copy of the Notice of Right to Sue letter from the Equal Employment Opportunity Commission to this complaint.)

C. Only litigants alleging age discrimination must answer this question.

Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding the defendant's alleged discriminatory conduct *(check one)*:

☐ 60 days or more have elapsed.

☐ less than 60 days have elapsed.

V. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

_____

_____

_____

_____

_____

_____

VI. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: _____, 20__.

Signature of Plaintiff _____

Printed Name of Plaintiff _____

United States District Court
Eastern District of New York

INSTRUCTIONS FOR SEEKING JUDICIAL REVIEW OF A FINAL DECISION OF THE COMMISSIONER OF SOCIAL SECURITY

1. **Caption:** The caption is in the top left corner on the first page of the complaint. You, as the person filing the complaint, are the plaintiff. You must add your name, or if you are filing on behalf of a minor child, your name on behalf of the minor child's name.

2. **Contents**: The form must be completed and contain an original signature. The complaint does not have to be notarized. If you file the complaint by email, you may sign the complaint by typing "/s/ [Your Name]."

3. **Serving the Complaint**: You do not need to serve the complaint. The Court will notify the Social Security Administration ("SSA") that your complaint has been filed.

4. **The Commissioner's Answer**. The Commissioner has 60 days from the date it is notified of your complaint to file and serve its answer. Its answer will be a copy of the administrative record from the SSA proceedings.

5. **Plaintiff's Brief.** After the answer has been filed, you have 30 days to file a brief with the court and serve a copy on the Commissioner. Your brief must include the reasons why you disagree with the Commissioner's decision and you must refer to the pages in the administrative record that support your argument. The brief must be no longer than 25 pages.

6. **The Commissioner's Brief.** Within 30 days of receiving your brief, the Commissioner must file a brief in opposition to your request. If you do not file a brief, the Commissioner must file this within 30 days after your brief was due.

7. **Plaintiff's Reply.** If you want to file a reply to the Commissioner's brief, you must do so within 14 days of receiving it, whether you filed an initial brief or not. Your reply must be no longer than 10 pages. If you want to file a longer reply then you must ask permission from your judge 7 days before the deadline.

BROOKLYN
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201
(718) 613-2665

CENTRAL ISLIP
United States District Court
Eastern District of New York
100 Federal Plaza
Central Islip, NY 11722
(631) 712-6060

If you did not file an initial brief, you may file a brief in opposition to the Commissioner's (of up to 25 pages) within 14 days of receiving the Commissioner's brief. No further briefing will be permitted.

8. **Extensions of Time.** If you or the Commissioner need an extension of time to meet the deadlines described in #4-#7, you and the assigned SSA attorney must contact each other and discuss a schedule. The assigned SSA attorney will be identified on the docket sheet; alternatively, you may call the Commissioner's office at **212-264-3650** and ask which attorney is assigned to your case. If you and the assigned attorney agree on the schedule, the attorney will file the new proposed schedule with the court. You must file documents by the deadlines set in the supplemental rules unless the Court grants an extension before the due date.
9. **Language**: All papers must be submitted in English. All court proceedings will be held in English. If you have difficulty understanding or writing in English, you should ask a relative or friend to help you prepare your papers, and you should bring someone to act as your interpreter whenever you come to court.

The instructions for completing an application to proceed without prepayment of the filing fees are as follows:

1. **Fees**: The filing fee is $405.00, which is payable to the "Clerk of Court, USDC, EDNY," by certified check, bank check, money order, major credit card, or cash (credit cards or cash may only be used if your complaint is submitted in person). Personal checks are *not* accepted.
2. **Inability to pay the filing fees**: If you can't afford the filing fees, you may ask for permission to proceed without prepaying the fees by completing an Application to Proceed Without Prepaying Fees or Costs ("IFP Application") and including it with your complaint. The caption of this IFP Application should be identical to the caption on the complaint.

The Pro Se Office will assist you with any questions you may have regarding the Court's procedures and forms, but the Pro Se Office staff cannot write or complete any of the forms which are necessary to file the complaint or to proceed with the case. The Pro Se Office is open from Monday through Friday, 8:30 a.m. to 5:00 p.m. (except federal and court holidays). Pro Se Office United States District Court Eastern District of New York 225 Cadman Plaza East Brooklyn, NY 11201 (718) 613-2665

These instructions should not be submitted with your complaint.

SOCIAL SECURITY / SUPPLEMENTAL SECURITY INCOME

IMPORTANT INFORMATION CONCERNING YOUR COMPLAINT FOR SOCIAL SECURITY OR SUPPLEMENTAL SECURITY INCOME

PLEASE KEEP THIS INFORMATION SHEET

Filing the Complaint

(1) The cost of filing an action is **$405.** If you cannot afford to pay the fee, you may ask the Court to waive the fee by completing an application to proceed *in forma pauperis*. You must submit three (3) copies of the complaint, along with a copy of the Appeals Council letter and any other attachments for each copy of the complaint.

(2) The complaint is a fill-in-the-blanks form that is not difficult to complete. If necessary, you should ask a friend or relative for help in preparing your papers. It is most important that you (a) submit the complaint to the Court's Pro Se Office within **60 days** from the date you received the Appeals Council letter and (b) attach a copy of the Appeals Council letter to the complaint.

(3) If you have not received an Appeals Council letter from the Social Security Administration, it may mean that you have not exhausted all your administrative remedies within the agency. If you received the Appeals Council letter much later than the date stamped on the letter, you should also include a copy of the postmark from the envelope.

(4) All papers must be in English.

(5) The Pro Se Office will assist you with any questions you may have regarding the Court's procedures and forms, but the Pro Se Office staff cannot write or complete any of the forms which are necessary to file the complaint or to proceed with the case. The Pro Se Office is open from Monday through Friday, 8:30 a.m. to 5:00 p.m. (except federal and court holidays).

Pro Se Office
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201
(718) 613-2665

Continued

What it means to be *Pro Se*

By filing this action *pro se,* it means that you are representing yourself and that you do not have an attorney. The Court will **not** automatically **appoint an attorney** to represent you in this matter since this is a civil case. You have the right to represent *yourself* in court and the case will proceed without an attorney.

Request for Pro Bono Counsel

You may apply for an attorney from the Court's volunteer Pro Bono Panel by filing an "Application for the Court to Request Counsel" and by serving a copy of the application on the defendant's attorney. This form and information concerning the Pro Bono Panel is available from the Pro Se Office. Unfortunately, **there is no guarantee that an attorney will volunteer to take your case even if the Court grants your request.**

Private Attorneys

You may hire a private lawyer, however, you must arrange the terms and conditions of such legal representation. Please make sure you understand the terms, conditions and fees before you sign an agreement to hire your own lawyer. The Court cannot recommend any particular attorney, but you may call the Association of the Bar of the City of New York's **Legal Referral Service at (212) 626-7373 (English)** or **(212) 626-7374 (Spanish)** for referrals to lawyers who handle Social Security and/or SSI cases.

*****

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

---------- X

_____ :

(Your Name) : **COMPLAINT**

Plaintiff, :

-against- :

Commissioner of Social Security, :

Defendant. :

---------- X

Plaintiff respectfully alleges:

1. This is an action seeking court review of the decision of the Administrative Law Judge pursuant to section 205(g) and/or section 1631(c)(3) of the Social Security Act, as amended, 42 U.S.C. § 405(g) and/or § 1383(c)(3).

2. Plaintiff resides at _____

_____.

3. Defendant is the Commissioner of Social Security.

4. Plaintiff became entitled to receive disability insurance benefits and/or Supplemental Security Income benefits because of the following disability _____

_____.

5. The disability began on this date _____.

6. That the Bureau of Disability Insurance of the Social Security Administration disallowed plaintiff's application upon the ground that

plaintiff failed to establish a period of disability and/or upon the ground that plaintiff did not have an impairment or combination of impairments of the severity prescribed by the pertinent provisions of the Social Security Act to establish a period of disability or to allow disability insurance benefits or Supplemental Security Income benefits.

7. Subsequent thereto, plaintiff requested a hearing, and on _____[date of hearing], a hearing was held which resulted in a denial of plaintiff's claim on _____[date of Administrative Law Judge decision].

8. Thereafter, plaintiff requested review by the Appeals Council, and after its consideration, the decision of the Administrative Law Judge was affirmed on _____[date of Appeals Council letter]. Plaintiff received this letter on _____, thereby making the Administrative Law Judge's decision the "final decision" of the Commissioner, subject to Judicial Review pursuant to 42 U.S.C. § 405(g) and/or § 1383(c)(3). **IMPORTANT: ATTACH A COPY OF THE APPEALS COUNCIL LETTER TO THE BACK OF THIS COMPLAINT.**

9. The decision of the administrative law judge was erroneous, not supported by substantial evidence on the record and/or contrary to the law.

Wherefore, plaintiff respectfully prays that:

(a) A summons be issued directing defendant to appear before the Court;

(b) Defendant be ordered to submit a certified copy of the transcript of the record, including the evidence upon which the findings

and decision complained of are based;

(c) Upon such record, this Court should modify the decision of the defendant to grant monthly maximum insurance and/or Supplemental Security Income benefits to the plaintiff, retroactive to the date of the initial disability, or in the alternative, remand to the Commissioner of Social Security for reconsideration of the evidence; and,

(d) For such other and further relief as may be just and proper.

Dated: _____

_____
Plaintiff's Signature

XXX-XX-_____
Last 4 digits of Social Security Number

_____
Print Name

_____
Address

_____
City, State Zip Code

_____
Area Code and Telephone Number

EDNY Form Revised 4/10/2006

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

---------- X

Plaintiff,

-against-

Defendant.

---------- X

Affirmation of Service

_____CV_____ ( )

I, _____ , declare under penalty of perjury that I have served a copy of the attached _____

upon _____

whose address is: _____

_____

Dated: _____
, New York

_____
Signature

_____
Address

_____
City, State, Zip Code

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Pro Se Registration and Consent for Electronic Service of Orders and Notices Issued by the Court in Civil Cases

Please register me to receive service of documents and notices of electronic filings to my e-mail address via the Court's electronic filing system (ECF). By registering for electronic service, I affirm that:

- I understand that I **waive** my right to receive service of court issued documents by first class mail and that I will no longer receive paper copies of court issued documents such as notices, decisions, opinions, memoranda & orders, orders, judgments and appeal instructions.

  Initial here_____
- I understand that I will be sent notices of electronic filing via e-mail and upon receipt of a notice, I will be permitted one "free look" at the document by clicking on the hyperlinked document number, at which time I should print or save the document to avoid future charges. **The one 'free look' will expire in 15 days from the date the notice was sent.** After the "free look" is used or expired, the document can be accessed by me through PACER (Public Access to Court Electronic Records) and I may be charged to view the document.

  Initial here_____
- I understand that it is strongly recommended that I establish a PACER account by visiting the PACER website at www.pacer.gov, which account will allow me to view, print, and download documents at any time for a nominal fee.

  Initial here_____
- The email address I provided below is valid and I understand I am responsible for checking it on a regular basis. I will promptly notify the Court if there is any change in my personal data, such as name, address, or e-mail address.

  Initial here_____
- I understand that electronic service does **not** allow me to file documents electronically and does **not** mean that I can serve documents by e-mail to the opposing party. I must continue to file all communications regarding my case in paper copy with the Court and serve the opposing party.

  Initial here_____
- I understand that I must file a consent in each case in which I wish to receive electronic service and that electronic service is not available in Social Security or Immigration cases or for incarcerated litigants.

  Initial here_____

Date: _____ Signature: _____

Case No: _____ Print Full Name:_____

Telephone No.:_____ Email Address: _____

Home Address: _____

Return form to: U.S.D.C., E.D.N.Y. - Pro Se Dept.
225 Cadman Plaza East or 100 Federal Plaza
Brooklyn, NY 11201 Central Islip, NY 11722

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

***** SAMPLE*****

_____

_____ **ANSWER**

_____ ___ CV _____ ( ) (_)
NAME OF PLAINTIFF(S)

v.

_____

_____

_____
NAME OF DEFENDANT(S)

I

ADMISSIONS AND DENIALS

[State exactly which parts of the complaint you admit and which parts you deny. Refer to the complaint sentence by sentence or paragraph by paragraph, in the same order as the sentences or paragraphs appear in the complaint. Attach additional papers as necessary]

For example:

1. The defendant admits that he is a teacher at Brooklyn Technical High School in Brooklyn, New York. The defendant does not know whether the other information in paragraph 1 of the complaint is true or false.

2. The defendant denies that his principal place of business is in Queens County, New York.

3. The defendant admits the allegations in paragraph 3 of the complaint.

4. The defendant lacks sufficient knowledge or information to determine the truth of the allegations in paragraph 4 of the complaint.

II

DEFENSES

[State any legal theory that does not allow plaintiff to win the case. Attach additional papers as necessary].

For example:

FIRST DEFENSE:

The Court lacks subject matter jurisdiction over this action.

SECOND DEFENSE:

The statute of limitations bars this action in that the events described in the complaint occurred more than three years before the lawsuit was commenced.

WHEREFORE defendant asks this Court to dismiss the complaint and enter judgment in favor of defendant.

III
COUNTERCLAIMS

[Although you are not required to make a counterclaim, state any claims you have that entitle you to recover from the plaintiff that arise out of the same events or transactions stated in the complaint and/or any crossclaims against the other defendants that arise out of the same events or transactions stated in the complaint, and/or any third-party claims you have against third parties (that is, someone not already named in the lawsuit) that arise out of the same events or transactions in the complaint. Attach additional papers as necessary. See *Pro Se* Manual for further explanation.]

For example:

1. Plaintiff is the owner of a green and white Oldsmobile vehicle, New York License plate number 3G-R2D2.

2. On January 15, 2012, plaintiff was driving his Oldsmobile vehicle in a negligent manner and collided with defendant on Flatbush Avenue in Brooklyn, New York.

3. As a result of the collision, defendant was knocked down, had his arm broken, and suffered great pain.

4. As a result of the collision, defendant was prevented from teaching, his sole source of income, and incurred expenses for medical care, hospitalization and physical therapy in the sum of $50,000.

WHEREFORE defendant demands judgment against plaintiff in the sum of $50,000.

Signed this _____ day of _____, 20 _____.

Signature of Defendant _____

Address _____

_____

Telephone Number _____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

_____,
Plaintiff(s),

-against-

REQUEST FOR CERTIFICATE OF DEFAULT

-CV-

SAMPLE

_____,
Defendant(s).

----------X

TO: BRENNA B. MAHONEY
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Please enter the default of defendant(s),_____,

pursuant to Rule 55(a) of the Federal Rules of Civil Procedure for failure to plead or otherwise defend this action as fully appears from the court file herein and from the attached affirmation of

_____.

Dated:

By:_____
(Signature)
(Print Name of Plaintiff Pro Se)
(Address)
(Telephone Number)
(E-mail address)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

_____,

Plaintiff(s)

-against- **SAMPLE**

_____,

Defendant(s).

----------X

AFFIRMATION IN SUPPORT OF REQUEST FOR CERTIFICATE OF DEFAULT

CV - - ( )

_____hereby declares as follows:

1. I am the plaintiff in this action.

2. This action was commenced pursuant to_____.

3. The time for defendant(s),_____, to answer or otherwise move with respect to the complaint herein has expired.

4. Defendant(s),_____, has not answered or otherwise moved with respect to the complaint, and the time for defendant(s) _____ to answer or otherwise move has not been extended.

5. That defendant(s)_____is not an infant or incompetent. Defendant(s)_____is not presently in the military service of the United States as appears from facts in this litigation.

6. Defendant(s)_____is indebted to plaintiff, _____, in the following manner (state the facts in support of the claim(s)):

_____

_____

WHEREFORE, plaintiff_____requests that the default of defendant(s)_____be noted and a certificate of default issued.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information and belief, that the amount claimed is justly due to plaintiff, and that no part thereof has been paid.

Dated:

By:_____
(Signature)
(Print Name of Plaintiff Pro Se)
(Address)
(Telephone Number)
(E-mail address)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

_____,
Plaintiff(s),

CERTIFICATE OF DEFAULT

-against- **SAMPLE**

CV - - ( )

_____,
Defendant(s).

----------X

I, Brenna B. Mahoney, Clerk of Court of the United States District Court for the Eastern District of New York, do hereby certify that the defendant _____ has not filed an answer or otherwise moved with respect to the complaint herein. The default of defendant_____is hereby noted pursuant to Rule 55(a) of the Federal Rules of Civil Procedure.

Dated: , New York
, 20___

BRENNA B. MAHONEY, Clerk of Court

By:_____
Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

_____,
Plaintiff(s),

-against-

MOTION FOR DEFAULT JUDGMENT
CV - - ( )

SAMPLE

_____,
Defendant(s).

----------X

Plaintiff_____hereby moves the Court pursuant to Federal Rule of Civil Procedure 55 (b) and Local Civil Rule 55.2 to enter default judgment in favor of plaintiff and against defendant(s)_____on the grounds that said defendants(s) failed to answer or otherwise defend against the complaint.

Dated:

_____
(Signature)

_____
Print Name of Plaintiff Pro Se

_____
Address

_____

TO: (Put Name and Address of
Each Defendant(s) or Defense Attorney)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

_____,

Plaintiff(s)

-against-

AFFIRMATION IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT

CV - - ( )

SAMPLE

_____,

Defendant(s).

----------X

_____hereby declares as follows:

1. I am the plaintiff in this action.

2. This action was commenced pursuant to_____.

3. The time for defendant(s),_____, to answer or otherwise move with respect to the complaint herein has expired.

4. Defendant(s),_____, has not answered or otherwise moved with respect to the complaint, and the time for defendant(s) _____ to answer or otherwise move has not been extended.

5.That defendant(s)_____default has been noted by the Clerk of Court. A copy of the Certificate is attached hereto.

6. Defendant(s)_____is indebted to plaintiff, _____, in the following manner (state the facts in support of the claim(s)):

_____

_____

_____

_____

WHEREFORE, plaintiff _____ requests that a default judgment be entered in favor of plaintiff _____ and against defendant(s) _____.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information and belief, that the amount claimed is justly due to plaintiff, that no part thereof has been paid, and that the disbursements sought to be taxed have been made in this action or will necessarily be made or included in this action.

Dated:

By: _____
(Signature)
(Print Name of Plaintiff Pro Se)
(Address)
(Telephone Number)
(E-mail address)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

_____,
Plaintiff(s),

AFFIRMATION OF SERVICE
CV - - ( )

-against-

_____,
Defendant(s).

----------X

I_____declare under penalty of perjury that I have served a copy of the attached _____

_____

upon_____

by mailing it to_____

_____

whose address is:_____

Dated:

_____
Signature

_____
Address

_____
City, States & Zip Code

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF NEW YORK

_____
Plaintiff
v. Civil Action No.

_____
Defendant

NOTICE OF OPTION TO CONSENT TO MAGISTRATE JUDGE JURISDICTION

A United States Magistrate Judge has been assigned to this case and is available to conduct all proceedings in this civil action (including presiding over a jury or non-jury trial) and to order the entry of final judgment. The judgment may then be appealed directly to the United States Court of Appeals like any other judgment of this Court. A Magistrate Judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case resolved by the assigned Magistrate Judge or you may withhold your consent without any adverse consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved in your case.

The parties through their signature (or that of their counsel) consent to have the assigned United States Magistrate Judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings, as indicated below:

Name of Party	Signature of Party (or Attorney)	Date

NOTE: Do not file this form on ECF unless all parties have consented.

(**For Court Use Only**)

IT IS ORDERED: All parties having consented, the assigned Magistrate Judge is authorized to conduct all proceedings in this case, and enter final judgment, pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73.

Date:

_____
District Judge Signature and Name

UNITED STATES DISTRICT COURT
EASTERN DISTRICTS OF NEW YORK

_____

_____
(In the space above enter the full name(s) of the plaintiff(s)/petitioner(s).)

____ Civ. _____ (___) (___)

- against -

PLAINTIFF'S LOCAL CIVIL RULE 33.2 INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

_____

_____

_____

_____
(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

Pursuant to Fed. R. Civ. P. 26(e), 33, 34 and 45, and Local Civil Rule 33.2, the defendants shall answer, under oath, the following interrogatories, and produce copies of the following documents, within 120 days of the service of the complaint on any named defendant, at the plaintiff's current address,[1] as indicated below.

These requests apply in Use of Force Cases, Inmate Against Inmate Assault Cases and Disciplinary Due Process Cases, as defined below, in which the events alleged in the complaint occurred while the plaintiff was in the custody of the Department of Correction of the City of New York, the New York State Department of Corrections & Community Supervision, or any other jail, prison or correctional facility operated by or for a city, county, municipal or other local governmental entity (collectively, the "Department").

DEFINITIONS

1. "Department" refers to the Department of Correction of the City of New York, New York State Department of Corrections & Community Supervision, and/or any other city, county, municipal or other local governmental entity that operates a jail, prison or correctional facility.

2. "Facility" refers to the correctional facility where the Incident is alleged to have occurred.

3. "Use of Force Case" refers to an action in which the complaint alleges that an employee of the Department, or Facility used physical force against the plaintiff in violation of the plaintiff's rights.

[1] Unless otherwise ordered by the Court, if within the 120-day period the defendant(s) moves for dismissal under Fed. R. Civ. P. 12(b) or 12(c), or moves for summary judgment on grounds which would be dispositive of the action *in toto*, defendants shall respond 30 days from denial of such motion in whole or in part.

4. "Inmate against Inmate Assault Case" refers to an action in which the complaint alleges that an employee of the Department or Facility was responsible for plaintiff's injury resulting from physical contact with another inmate.

5. "Disciplinary Due Process Case" refers to an action in which (i) the complaint alleges that an employee of the Department or Facility violated or permitted the violation of a constitutional right(s) in a disciplinary proceeding against plaintiff, and (ii) the punishment imposed upon plaintiff as a result of that proceeding was placement in a special housing unit for more than 30 days.

6. "Incident" refers to the event or events described in the complaint. If the complaint alleges a due process violation in the course of prison disciplinary proceedings, "Incident" also refers to the event or events that gave rise to the disciplinary proceedings.

7. "Identify," when applied to persons, shall mean:
   (i) full name and current or last known address for service; and
   (ii) for Department or Facility employees, badge number or numbers, if any;
   (iii) for former or present inmates, any and all inmate identification numbers, including "book and case," "DIN" and "NYSID" numbers.

8. "Identify," when used in connection with a civil or criminal proceeding shall mean: the case name, court, docket number and date of commencement.

INSTRUCTIONS

1. All defendants represented by the Office of the Corporation Counsel of the City of New York, the Office of the Attorney General or counsel for or appointed by the Department responsible for the Facility, are instructed to produce documents (or copies thereof) and provide information in the defendants' custody, possession or control and documents and information in the custody, possession or control of the Department or Facility. If the Department or Facility is not a party, documents and information shall be produced as if a Rule 45 subpoena had been served on the Department or Facility. All responses are subject to the requirements of Fed. R. Civ. P. 26(e). Documents so produced shall be Bates-stamped or otherwise numbered sequentially.

2. Whenever defendants or the non-party Department or Facility withhold any document or portion thereof that is responsive to any of the document requests for reasons of privilege or institutional security, counsel for defendants shall (i) obtain a copy of the document (including audio tape, videotape, electronic recording or photograph) from the appropriate agency or defendant and retain such document in defense counsel's office until the conclusion of the litigation; (ii) serve and file a (privilege) log in conformity with Fed. R. Civ. P. 26(b)(5) or Local Civil Rule 26.2, setting forth the reason for withholding the document; and (iii) make the withheld document available upon request to the Court. If the document is withheld for reasons of institutional discipline or security, rather than privilege, the document

shall also be made available to *pro bono* counsel, or to an interested attorney considering the Court's request for *pro bono* counsel, who shall maintain it in strict confidence. If security interests can be addressed by redacting a portion of the document, the redacted document shall be produced to plaintiff. Counsel for defendants may also take appropriate measures to ensure that Department letterhead, forms and stationery are not misused by plaintiff.

3. If any document responsive to this request exists in the form of a tape recording, video recording or other electronic recording it shall be preserved until the conclusion of the litigation. If a tape recording has not been transcribed, a copy of such tape or electronic recording shall be produced, subject to any state law or regulation barring access on grounds of security. If the tape, video or electronic recording is not produced to plaintiff, defense counsel shall retain the tape and make it available upon request to the Court, *pro bono* counsel or any *pro bono* attorney considering acceptance of the case. Any transcript shall be treated as any other responsive document.

4. The documents responsive to requests 8 through 11 shall be provided for a period of ten years prior to the filing of the complaint, shall be provided by the Department or Facility to defense counsel within the 120-day responsive period and shall be maintained in defense counsel's office until the conclusion of the litigation. Such documents shall be produced to the Court upon request or to *pro bono* counsel as provided in Instruction 2. If the case proceeds to trial and plaintiff is not represented, the Court shall address prior to trial the disclosure of such documents to plaintiff for use at trial. If the response to any of requests 8 through 11 is "None," that response shall be provided to plaintiff at the time these requests are responded to.

INTERROGATORIES AND DOCUMENT REQUESTS

1. With respect to any disciplinary proceeding in which plaintiff alleges the denial of a constitutional right, produce all documents concerning the proceeding, including: reports of infraction; notices of infraction; misbehavior reports; any records reflecting informal interviews with the plaintiff or opportunities for the plaintiff to object to the discipline or housing status related to the discipline; disciplinary hearing records; hearing transcripts;[2] infraction and/or hearing disposition sheets; notices of administrative appeal and any accompanying documents; and any decisions on administrative appeal.

2. Identify all Department and Facility employees who were present at, witnessed or investigated the Incident or who at or about the time of the Incident were assigned to work in the area where the Incident occurred (if such area is identifiable and discrete).

3. Identify all persons (including prisoners) other than Department and Facility employees who were present at the Incident.

[2] An untranscribed tape shall be treated as provided for in Instruction 3.

4. Produce any and all of the following documents in the custody, possession or control of the Department or Facility prepared by or at the direction of any employee of the City of New York, the State of New York or any other governmental entity in connection with the Incident: incident reports, intradepartmental memoranda (including memoranda sometimes referred to as "to/froms"), use of force reports, unusual incident reports, witness statements, injury to inmate reports, video or audio tapes, photographs, reports of infraction, notices of infraction, dispositions of any infraction, misbehavior reports including documents in the file of any inmate disciplined in connection with the incident.

5. Produce all files, including each closing memorandum and summary, made in the course of any completed investigation by the Department of Investigations, Inspector General or Internal Affairs Division (or similar groups) into the Incident. If the Incident or the conduct of defendants involved in the Incident is the subject of an ongoing investigation or a disciplinary proceeding, criminal investigation or outstanding indictment or information, discovery under this request shall be suspended until the termination thereof (whether by completion of the investigation without charges being brought or by disposition of such charges). A response shall be due thirty (30) days after such termination.

6. If Plaintiff alleges physical injury and has authorized release, produce records of all medical treatment provided to the plaintiff in connection with such injury or claim. If defendants seek to rely on plaintiff's pre-existing medical condition as a complete or partial defense to any claim raised in the complaint, produce all records relating to such pre-existing medical condition generated during plaintiff's present and any prior term of incarceration. (If plaintiff fails to provide a release authorizing disclosure of medical records, defendants may move to compel such release or to dismiss some or all of plaintiff's claims). If production is made hereunder, identify all medical care providers assigned to work in the Facility clinic on the date of the Incident and identify the signature or initials of each individual who has made an entry on reports or other writings prepared by the medical care provider regarding the Incident or regarding plaintiff's treatment.

7. If any defendant claims to have been physically injured in the Incident and is relying on the injury as a defense to the action, produce all records and claims of injury and all records of medical treatment provided to that defendant in connection with such injury. If defendant refuses to give consent to the release of medical records, defendant shall state whether defendant was treated at a prison facility, a clinic or by a private doctor and the date and place of each such treatment. If production is made hereunder, identify the signature or initials of each individual who has made an entry on reports or other writings prepared by the medical care provider regarding the Incident or regarding defendant's treatment.

8. For any defendant, other than for the Commissioner, any Deputy Commissioner or Assistant Commissioner, Warden and ranks above (and any similar positions for other Departments and Facilities), identify and produce all documents concerning any employment-related proceeding, whether administrative, civil or criminal, in

which the defendant was formally counseled, disciplined, punished, or criminally prosecuted or otherwise made the subject of remedial action in connection with having failed to make a report or having made a false statement of any kind.

9. In a Use of Force Case, identify and produce all documents concerning any employment-related proceeding, whether administrative, civil or criminal, in which any defendant was formally counseled, disciplined, punished, criminally prosecuted or otherwise made the subject of remedial action in connection with having used force on an inmate.

10. In an Inmate against Inmate Assault Case, identify and produce all documents concerning any employment-related proceeding, whether administrative, civil or criminal, in which any defendant was formally counseled, disciplined, punished or criminally prosecuted or otherwise made the subject of remedial action in connection with having failed to supervise inmates property or failed to fulfill any or his or her responsibilities involving inmate safety.

11. In a Disciplinary Due Process Case, identify and produce all documents concerning any employment-related proceeding, whether administrative, civil or criminal, in which any defendant was formally counseled, disciplined, punished, prosecuted or otherwise made the subject of remedial action in connection with that defendant's participation in or conduct of a disciplinary proceeding where it was alleged that the defendant violated a Department regulation or a constitutional right of an inmate.

12. Produce from the plaintiff's inmate file for the period of incarceration during which the Incident arose (and any other Facility file for plaintiff if any defendant intends to rely on any of its contents) all documents concerning any occasion that plaintiff was subject to discipline. If the disciplinary record is lengthy, the defendant may, in the first instance, produce a computer printout of plaintiff's inmate's disciplinary history.

INSTRUCTIONS FOR PREPARING A MOTION

A motion requests the Court to take action under a specific Federal Rule. For instance, a motion to amend your complaint is made under Rule 15 of the Federal Rules of Civil Procedure. Except for certain kinds of emergency motions, the Court cannot grant your motion until the defendants have been served with your motion and the summons and complaint. Therefore, generally, you should not submit a motion until after you have served defendant(s) with the summons and complaint.

To make a motion, you must do the following:

1. Write your motion. A motion consists of two parts:

    a. A notice of motion, which sets the "return date" date of the motion. You need not appear on the return date.

    b. An affidavit or affirmation explaining what you are seeking and why you are entitled to the relief. You may also submit a memorandum of law, but it is not necessary.

        i. An affidavit is a statement sworn to before a licensed notary public of the state. An affirmation is a sworn statement made under penalty of perjury. When using the affidavit/affirmation form, strike the terms which do not apply to the type of form you are submitting.

        ii. Your affidavit or affirmation should attach and refer to any relevant exhibits. You may also attach affidavits or affirmations from other people who have personal knowledge of relevant information regarding the motion.

        iii. You may also submit a memorandum of law to explain what the law is and how it applies to the facts of your case. However, any facts on which you rely must be in an affidavit or affirmation; it is not sufficient to put them in a memorandum of law. Similarly, the affidavit or affirmation should contain only facts. If you prepare a memorandum of law, you must send it to each defendant or his/her attorney(s).

2. Serve the papers by mail on the defendants or (if the defendant's attorney has filed papers in the case already) on the defendant's attorney. If there is more than one defendant or defendants are represented by different attorneys, you must serve a copy on each.

3. Send your motion papers to the Pro Se Office with an affirmation of service. (Form annexed).

When you write your motion papers, you should include the following:

The notice of motion should say that you will "move" on a certain day. This is the day the motion will be marked ready for decision by the judge. It generally must be at least fifteen business days after you have served the defendants with the motion papers (at least (5) business days for discovery motions). See Rule 6 of the Federal Rules of Civil Procedure.

Attached are two sets of forms for making a motion. The first set are sample illustration forms to refer to so you know how to fill out the blank notice of motion and affidavit/affirmation forms.

If you have any questions, contact the Pro Se Office at (718) 613-2665
(no collect calls).

Rev. 1/06

NOTE: This illustrates the FORM for an affidavit or affirmation.

NOTICE OF MOTION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

[Your Name] Plaintiff, -against- [Defendant's Name] Defendant(s).	NOTICE OF MOTION _____CV_____(ABC) [docket number][judge's initials]

PLEASE TAKE NOTICE that upon the annexed affidavit or affirmation _____(your name)_____ sworn to or affirmed _____(date)_____, 20_____ and upon the complaint herein, plaintiff will move this Court, _____(Judge's name)__, U.S.D.J., in room____, United States Courthouse, Brooklyn, New York,11201, on the___(day) day of_____(Month)_____, 20___, at (time) or as soon thereafter as counsel can be heard, for an order pursuant to Rule _____ of the Federal Rules of Civil Procedure granting

_____

_____

Dated: [county], New York

[date]_____

[your signature]___

[print your name]__

PLAINTIFF PRO SE___

[print your address]

_____

AFFIDAVIT/AFFIRMATION
IN SUPPORT OF MOTION

SAMPLE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

[Your Name], Plaintiff, -against- [Defendant's Name], Defendant(s).	AFFIDAVIT/AFFIRMATION ___ CV ___( )

STATE OF NEW YORK)
COUNTY OF) ss.:

_____, [BEING DULY SWORN] deposes and says [or: makes the following affirmation under the penalties of perjury]:

I,_____, am the plaintiff in the above-
(your name)
entitled action, and respectfully move this Court to issue an order _____
(state what you are seeking)

The reason why I am entitled to the relief I seek is the following:_____

_____

_____

_____

(You may use additional 8 ½ x 11 paper if needed)

WHEREFORE, I respectfully request that the court grant the within motion, as well as such other and further relief that may be just and proper.

Use this format below if preparing an affidavit (requires a notary public)

Sworn to me before this

day of ____, 20_____

_____

Your name

_____

Notary Public

OR:

WHEREFORE, I respectfully request that the court grant the within motion, as well as such other and further relief that may be just and proper.

Use this format below if preparing an affirmation

I declare under penalty of perjury that the foregoing is true and correct.

Executed on ___(Date)_____

Your Signature

Print your name

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Plaintiff,	
-against-	NOTICE OF MOTION
	_____CV____( )
Defendant(s).	

PLEASE TAKE NOTICE that upon the annexed affidavit or affirmation of _____, sworn to or affirmed _____, 20____ and upon the complaint herein, plaintiff will move this Court, _____, U.S.D.J., in room ___, United States Courthouse, Brooklyn, New York 11201, on the ___day of _____, 20___, at _____ or as soon thereafter as counsel can be heard, for an order pursuant to Rule _____ of the Federal Rules of Civil Procedure granting

_____

_____

_____

Dated:_____

_____

Plaintiff Pro Se

_____
Signature

_____
Print Name

_____
Address

_____

_____
Phone #

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Plaintiff,	AFFIDAVIT/AFFIRMATION
-against-	_____CV____( )
Defendant(s).	

STATE OF NEW YORK)
COUNTY OF) ss.:

I,_____, [being duly sworn] deposes and says [or: make the following affirmation under the penalties of perjury]:

I,_____, am the plaintiff in the above entitled action, and respectfully move this Court to issue an order _____.

The reason why I am entitled to the relief I seek is the following:_____

_____

_____

WHEREFORE, I respectfully request that the court grant the within motion, as well as such other and further relief that may be just and proper.

Sworn to before me this
day of _____, 20___

_____
Notary Public

_____
Signature

_____
Print Your name
Plaintiff Pro Se

OR: I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____ _____

Signature
Plaintiff Pro Se

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Plaintiff,	
-against-	Affirmation of Service
	_____CV_____( )
Defendants.	

I,_____, declare under penalty of perjury that I have served a copy of the attached Notice of Motion and Affirmation/Affidavit in support upon_____

_____

whose address is: _____

_____.

Dated:_____
, New York

_____
Signature

_____
Address

_____
City, State & Zip Code

_____
Telephone

INSTRUCTIONS FOR OPPOSING A MOTION

1 . A motion requests the Court to take action under a specific Federal Rule. To oppose a motion, you must prepare an affidavit or affirmation. You will title your submission as appropriate, for example: plaintiff s opposition to defendant's motion to dismiss or for summary judgment. A form is attached to these instructions. **DO NOT USE THIS FORM AS YOUR AFFIDAVIT OR AFFIRMATION**. *The form is only provided as a guide*. You should draft your own affidavit or affirmation in opposition to the motion.

An affirmation is a statement which is made under penalty of perjury. An affidavit is sworn to before a licensed notary public of the state. When using the affidavit/ affirmation form, only use the terms which apply to the type of form you are submitting.

2. If you are opposing a motion for summary judgment, your affidavit or affirmation should attach and refer to any relevant exhibits. You may also attach affidavits or affirmations from other people who have personal knowledge of relevant information regarding the motion.

3. You may also submit a memorandum of law to explain what the law is and how it applies to the facts of your case. However, any facts on which you rely must be in an affidavit or affirmation; it is not sufficient to state facts in a memorandum of law. Similarly, the affidavit or affirmation should contain only facts; do not include any references to the law in your affidavit or affirmation. If you prepare a memorandum of law, it must be sent along with your affirmation/affidavit to each defendant or his/her attorney(s).

4. Make a copy of the papers you have prepared for each defendant or his or her attorney. If several defendants share the same attorney, you need only make one copy for that attorney. **You must retain a copy of the opposition papers for yourself.**

5. Mail (or hand deliver) a copy of your opposition papers to the defendants or their attorney(s). First class mail is sufficient.

6. Complete an affirmation of service (see attached). Attach the affirmation of service to the original papers for filing with the court.

7. Unless your judge's individual rules specify otherwise, bring or mail the original opposition papers (with the affirmation of service attached) to the Pro Se Office at least (10) ten business days after service of the moving papers, (4) four business days if you are responding to a discovery motion. **REFER TO RULE 6 OF THE FEDERAL RULES OF CIVIL PROCEDURE (ATTACHED HERETO). YOU SHOULD ALSO REFER TO THE RULE REFERRED TO IN DEFENDANT'S MOTION.**

8. You should also submit an extra "courtesy" copy to the Pro Se Office for forwarding directly to the Judge. Please write "courtesy copy" in the upper right corner of the extra copy for the Judge.

9. If you need additional time to submit your opposition papers, try to obtain your adversary's consent. If possible, get their consent in writing. If the other side does not consent, you will need to write to the assigned judge to request an extension (also called enlargement) of time. You must request an extension of time before the deadline you are seeking to extend expires.

NOTE: This illustrates the FORM for an affidavit or affirmation in opposition to a motion. The CONTENT of your affidavit or affirmation depends on the facts of your case. Please draft your own affidavit or affirmation using this form as a guide.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
---------- X

_____,
[insert your name]
Plaintiff,

-against-

_____,
[insert name]
Defendants.

_____ CV _____ ( )
[insert docket number and judge's initials]

PLAINTIFF'S AFFIDAVIT/AFFIRMATION IN OPPOSITION TO DEFENDANT'S MOTION

---------- X

STATE OF NEW YORK)
SS.
COUNTY OF _____)

_____, affirms the following
[your name]

under penalty of perjury:

or

being duly sworn, deposes and says:

1. I am the plaintiff in this action, and I respectfully submit this affidavit/affirmation in opposition to the motion dated _____ ,_____, made by _____
[date of the motion] [name of moving party]

2. I have personal knowledge of facts which bear on this motion.

3. The motion should be denied because _____ [state the facts in detail which show that the relief requested in the motion is improper. Use as many pages as needed; number all your paragraphs. Review defendant's motion paragraph by paragraph. In your own separately numbered paragraphs, state the facts, providing dates. If you are opposing a summary judgment motion, you must attach relevant documents and refer to the documents in your opposition.] In view of the foregoing, it is respectfully submitted that the motion should be denied.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____
_____

_____
[signature]

_____
[type or print name]

_____

_____
Address

OR:

Sworn to me before this _____ day of _____, 20___
[sign before a licensed notary public of this state].

_____
[Signature]

_____
[Type or print name]

_____
Notary Public

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

_____,

Plaintiff,

_____ CV _____ ( )

-against-

PLAINTIFF'S AFFIDAVIT/AFFIRMATION IN OPPOSITION TO DEFENDANT'S MOTION

_____,

Defendants.

----------X

STATE OF NEW YORK)
SS.
COUNTY OF _____)

_____, affirms the following under penalty of perjury:

or

being duly sworn, deposes and says:

1. I am the plaintiff in this action, and I respectfully submit this affidavit/affirmation in opposition to the motion dated _____, _____, made by _____

2. I have personal knowledge of facts which bear on this motion.

3. The motion should be denied because _____

_____

_____

_____

_____

_____

_____

(You may use additional 8 1/2 x 11 paper if needed)

In view of the foregoing, it is respectfully submitted that the motion should be denied.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

_____
Signature, Pro Se Plaintiff

_____
Name

_____
Address

_____

OR:

Sworn to me before this
_____ day of _____, 20___

_____
Notary Public

_____
Signature, Pro Se Plaintiff

_____
Name

_____
Address

_____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

_____ X

Affirmation of Service

Plaintiff,

-against- _____CV_____ ( )

Defendants.

_____ X

I, _____ , declare under penalty of perjury that I have served a copy of the attached affirmation/affidavit in opposition to defendant's motion upon: _____ whose address is _____ _____.

Dated: _____
, New York

_____
Signature

_____
Address

_____
City, State & Zip code

_____
Telephone

Clerk's Office
United States District Court
Eastern District of New York

Dear Litigant:

Enclosed is the decision in your case. Please find a civil appeals packet with instructions.

PLEASE NOTE THE FOLLOWING TIME LIMITATION TO FILE AN APPEAL:

Rule 4(a)(1) of the Federal Rules of Appellate Procedure requires that, if the decision is appealable and you wish to appeal it, you MUST file a notice of appeal within **THIRTY (30)** days of the date of the entry of the judgment **SIXTY** (**60)** days if the United States or an officer or agency of the United States is a party.

ENTRY DATE
OF JUDGMENT:_____

BRENNA B. MAHONEY
CLERK OF COURT

By: _____
DEPUTY CLERK

[D01]

May 2011
NY-E

NOTICE TO LITIGANT
Filing a Notice of Appeal

Please be advised of the time limitations for filing a notice of appeal under the Federal Rules of Appellate Procedure (See Rule 4 below), and the necessity of filing a motion for extension of time within the 30-day extension period if the notice of appeal is untimely.

Rule 4. Appeal as of Right--When Taken

(a) Appeal in a Civil Case.

(1) Time for Filing a Notice of Appeal.

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.

(B) When the United States or its officer or agency is a party, the notice of appeal may be filed by any party within 60 days after the judgment or order appealed from is entered.

(C) An appeal from an order granting or denying an application for a writ of error coram nobis is an appeal in a civil case for purposes of Rule 4(a).

(2) Filing Before Entry of Judgment. A notice of appeal filed after the court announces a decision or order--but before the entry of the judgment or order--is treated as filed on the date of and after the entry.

(3) Multiple Appeals. If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) Effect of a Motion on a Notice of Appeal.

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not Granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment--but before it disposes of any motion listed in Rule 4(a)(4)(A)--the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal--in compliance with Rule 3(c)--within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

(5) Motion for Extension of Time.

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

(6) Reopening the Time to File an Appeal. The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

(7) Entry Defined.

(A) A judgment or order is entered for purposes of this Rule 4(a):

(i) if Federal Rule of Civil Procedure 58(a) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a); or

(ii) if Federal Rule of Civil Procedure 58(a) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

- the judgment or order is set forth on a separate document, or
- 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79(a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58(a) does not affect the validity of an appeal from

that judgment or order.

(b) Appeal in a Criminal Case.

(1) Time for Filing a Notice of Appeal.

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days after the later of:

(i) the entry of either the judgment or the order being appealed; or

(ii) the filing of the government's notice of appeal.

(B) When the government is entitled to appeal, its notice of appeal must be filed in the district court within 30 days after the later of:

(i) the entry of the judgment or order being appealed; or

(ii) the filing of a notice of appeal by any defendant.

(2) Filing Before Entry of Judgment. A notice of appeal filed after the court announces a decision, sentence, or order--but before the entry of the judgment or order--is treated as filed on the date of and after the entry.

(3) Effect of a Motion on a Notice of Appeal.

(A) If a defendant timely makes any of the following motions under the Federal Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 14 days after the entry of the order disposing of the last such remaining motion, or within 14 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion:

(i) for judgment of acquittal under Rule 29;

(ii) for a new trial under Rule 33, but if based on newly discovered evidence, only if the motion is made no later than 14 days after the entry of the judgment; or

(iii) for arrest of judgment under Rule 34.

(B) A notice of appeal filed after the court announces a decision, sentence, or order--but before it disposes of any of the motions referred to in Rule 4(b)(3)(A)--becomes effective upon the later of the following:

(i) the entry of the order disposing of the last such remaining motion; or

(ii) the entry of the judgment of conviction.

(C) A valid notice of appeal is effective--without amendment--to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).

(4) Motion for Extension of Time. Upon a finding of excusable neglect or good cause, the district court may--before or after the time has expired, with or without motion and notice--extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

(5) Jurisdiction. The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under Federal Rule of Criminal Procedure 35(a), nor does the filing of a motion under 35(a) affect the validity of a notice of appeal filed before entry of the order disposing of the motion. The filing of a motion under Federal Rule of Criminal Procedure 35(a) does not suspend the time for filing a notice of appeal from a judgment of conviction.

(6) Entry Defined. A judgment or order is entered for purposes of this Rule 4(b) when it is entered on the criminal docket.

(c) Appeal by an Inmate Confined in an Institution.

(1) If an inmate confined in an institution files a notice of appeal in either a civil or a

criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

(2) If an inmate files the first notice of appeal in a civil case under this Rule 4(c), the 14-day period provided in Rule 4(a)(3) for another party to file a notice of appeal runs from the date when the district court dockets the first notice.

(3) When a defendant in a criminal case files a notice of appeal under this Rule 4(c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the district court's docketing of the defendant's notice of appeal, whichever is later.

(d) Mistaken Filing in the Court of Appeals. If a notice of appeal in either a civil or a criminal case is mistakenly filed in the court of appeals, the clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted.

FORM 1

NOTICE OF APPEAL

* * * * * * * * * * *

UNITED STATES DISTRICT COURT
FOR THE
_____DISTRICT OF_____

_____
|
|
|
|
|
_____ |

NOTICE OF APPEAL

_____
Docket No.

Notice is hereby given that _____
(party)

hereby appeals to the United States Court of Appeals for the Second Circuit from the decision

(describe it)

entered in this action on the _____day of _____, 20____.

_____
Signature

_____
Printed Name

_____
Address

_____

(___)_____
Telephone No. (with area code)

Date:_____

NOTICE OF APPEAL FORM
(Form 1 is attached.)

NOTE:
You may use this form to take an appeal provided that it arrives in the office of the Clerk of the district court within 30 days of the date of entry of the decision 60 days if the United States or an officer or agency of the United States is a party.

FORM 2

NOTICE OF MOTION FOR EXTENSION OF TIME

* * * * * * * * * * * *

UNITED STATES DISTRICT COURT
FOR THE
_____DISTRICT OF_____

_____
|
|
|
|
|
_____ |

NOTICE OF MOTION FOR EXTENSION OF TIME

_____
Docket No.

Pursuant to FRAP 4(a)(5), _____respectfully
(party)
requests leave to file the within notice of appeal out of time. _____
(party)
desires to appeal the decision in this action on _____, but failed to file
(date)
a notice of appeal within the required number of days because: [Explain here the "excusable neglect" or "good cause" which led to your failure to file a notice of appeal within the required number of days.]

_____
Signature

_____
Printed Name

_____
Address

_____

(___)_____
Telephone No. (with area code)

Date:_____

MOTION FOR EXTENSION OF TIME
(Form 2 is attached.)

NOTE:
You may use this form, together with a copy of Form 1, if you are seeking to appeal a decision and did not file a copy of Form 1 within the required time. If you follow this procedure, these forms must be received in the office of the Clerk of the district court no later than 60 days from the date on which the decision was entered 90 days if the United States or an officer or agency of the United States is a party.

FORM 3

COMBINED NOTICE OF APPEAL AND MOTION FOR EXTENSION OF TIME

* * * * * * * * * * *

UNITED STATES DISTRICT COURT
FOR THE
_____DISTRICT OF _____

_____
|
|
|
|
|
_____ |

NOTICE OF APPEAL AND
MOTION FOR EXTENSION OF TIME

_____
Docket No.

1. Notice is hereby given that _____ hereby appeals
(party)
to the United States Court of Appeals for the Second Circuit from the decision entered in this action on _____. (Describe it).
(date)

2. In the event that this form was not received in the Clerk's Office within the required time _____respectfully requests the court to grant an extension of time in
(party)
accordance with FRAP 4(a)(5) for the following reasons which constitute "excusable neglect" or "good cause" (state reasons):

_____

_____

a. In further support of this request, _____ states that this
(party)
Court's decision was received on _____and that this form was mailed to the
(date)
court on _____.
(date)

_____
Signature

_____
Printed Name

_____
Address

_____

(___)_____
Telephone No. (with area code)

Date:_____

COMBINED NOTICE OF APPEAL AND EXTENSION OF TIME FORM
(Form 3 is attached.)

NOTE:
You may wish to use this form if you are mailing your notice of appeal and are not sure that the Clerk of the district court will receive it within 30 days of the date on which the decision was entered 60 days if the United States or an officer or agency of the United States is a party.