



REPRESENTING YOURSELF AS A *PRO SE* LITIGANT GUIDE

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GLOSSARY OF TERMS

I. INTRODUCTION

A. THE PURPOSE OF THIS GUIDE

The information in this Guide is provided for individuals who are representing themselves in civil actions in the District of Vermont without the assistance of an attorney. Plaintiffs and Defendants generally are referred to as parties or litigants. Parties who choose to represent themselves are referred to as *pro se* parties or *pro se* litigants. *Pro se* is a Latin phrase meaning “for yourself.”

This Guide cannot take the place of an attorney’s legal advice. Nor will it answer all of your questions about what you need to do to represent yourself as a *pro se* litigant. It is intended only as an informative and practical resource.

B. RESPONSIBILITIES OF THE *PRO SE* LITIGANT

As a *pro se* litigant, you have certain responsibilities and take on certain risks. You must make sure that all documents filed with the court comply with the Federal Rules of Civil Procedure (Fed. R. Civ. P.) and the Local Rules of Procedure for the District of Vermont. The fact that you do not have an attorney does NOT relieve you of this obligation. **Please note that court staff cannot provide you with legal advice, or tell you what you “should” or “could” do in any given situation.**

The following list of responsibilities is not intended to be exhaustive, and only provides a few examples of the manner in which *pro se* litigants are expected to conduct themselves when pursuing an action in this court:

1. You are required to diligently prosecute your lawsuit. Unless and until you obtain an attorney to represent you, it is your responsibility to do everything necessary to prepare your case for trial. This includes, but is not limited to, responding to discovery requests and motions. If the case goes to trial, it will also be your responsibility to present your case in court.
2. Do not expect any correspondence or orders from the court instructing you how to pursue your lawsuit. If you fail to follow established procedures, your case may be subject to dismissal.
3. You are required to serve each defendant’s attorney (or the defendant, if that defendant is also appearing *pro se*) with copies of all pleadings and motions filed with the court. Likewise, the defendant or the defendant’s attorney is required to

serve you with copies of all pleadings and motions filed on behalf of the defendant.

4. You must keep the court and the defendant advised of any change in your address or telephone number. This is done by providing a Notice of Change of Address in writing. Failing to do so immediately may result in the imposition of sanctions, which may include the dismissal of your case.

5. You should retain a copy of all documents submitted to the court for your records. The court or Clerk's Office cannot provide copies to you free of charge. There are fees associated with providing photocopies.

As a *pro se* litigant, you are representing yourself and can present only your own claims and defenses. Under the law, you generally cannot speak for another person or an entity such as a company or business. A *pro se* litigant also may not authorize another person who is not an attorney to appear for them. This includes a spouse or relative, or another party.

Rule 11 of the Federal Rules of Civil Procedure prohibits filing lawsuits that are clearly frivolous or filed with the intent to harass another individual. If, after reviewing your complaint, the court determines that you have filed a lawsuit for an improper or clearly unnecessary purpose, it may impose sanctions against you. Those sanctions may include ordering you to pay a fine to the court or pay the legal fees of the person or persons against whom you filed the lawsuit.

C. ALTERNATIVES TO PROCEEDING *PRO SE*

Most people who file and pursue litigation in this court retain an attorney who is admitted to both the Vermont Bar and the bar of this court, practices law, has appeared in court, and is familiar with the rules of procedure for court processes. Some attorneys may be willing to accept a reduced fee. Other attorneys may be willing to accept your case on a contingent fee basis, which means the attorney would receive a fee based upon a percentage of your recovery if you win your case, and would receive nothing aside from expenses if you do not prevail. Finally, in some limited circumstances, the other side may be required to pay your attorney's fees and costs if you win your case. These

circumstances are generally limited to cases in which attorney fees are provided for either by contract or statute.

If you would prefer to have an attorney represent you but you are unable to retain one, you may want to consider contacting the following services which, in some cases, can provide, or refer you to, free or low cost legal assistance:

Vermont Bar Association Lawyer Referral Service

(800) 639-7036

email: lwelcome@vtbar.org

South Royalton Legal Clinic

(802) 831-1500

Vermont Legal Aid

(800) 889-2047

www.vtlegalaid.org

PLEASE NOTE: If you are represented by an attorney, you may not file pleadings in your case unless the court grants a motion allowing you to file a *pro se* pleading, or you are filing a motion related to the status of your counsel. All other filings must be submitted by your attorney.

D. ELECTRONIC CASE FILING INFORMATION

The court has the capacity to accept pleadings filed electronically through the Internet. A non-prisoner who is a party to a civil action and who is not represented by an attorney may submit an Electronic Case Filing (ECF) registration form. Registration forms are available on the court's website under CM/ECF "Instructions/Information." Prior to submitting an application, you should confirm that you meet the system requirements needed to file and receive electronic documents, and review the on-line User Manual and Administrative Procedures. By registering to file electronically you are also consenting to be served electronically, and you will no longer receive court documents by mail.

II. INITIATING A LAWSUIT

A. JURISDICTION

The United States District Court for the District of Vermont is a federal trial court. Federal courts only have jurisdiction, or legal authority, to hear certain types of cases. As is the case in all federal trial courts, this court is generally authorized only to hear disputes that fall into the following four categories:

1. those that deal with a question involving the United States Constitution;
2. those that involve questions of federal law (as opposed to state law, unless there is a state law claim substantially related to a federal claim being made, in which case it may be presented to this court for possible consideration);
3. those that involve the United States as a party, whether as a plaintiff or defendant; and
4. those that involve a dispute among residents of different states with an amount in controversy exceeding \$75,000.

If your complaint does not fall under any of these categories, the federal court may not be the appropriate venue to pursue your claims. It will be your burden to demonstrate that your case belongs in federal court.

B. HOW TO FILE A CASE

A civil action is initiated upon the filing of a Complaint. The following documents must be filed:

1. One (1) Original Complaint. The complaint is the document that the plaintiff files to initiate a lawsuit. A complaint does not need to be typewritten, but must be legible if handwritten. It must be submitted on 8 ½" x 11" paper. The complaint should contain:
 - a. a caption or heading specifying the court in which it is being filed. All plaintiffs and defendants must be listed in the caption of the complaint.
 - b. a title, i.e. "Complaint."
 - c. numbered paragraph(s) for *each* plaintiff containing the name and address of that plaintiff.

d. numbered paragraph(s) for *each* defendant containing the name and address of that defendant. You must indicate whether each defendant is being sued in his/her individual capacity, official capacity, or both.

e. a numbered paragraph stating why this court has jurisdiction, or legal authority, to decide the case.

f. numbered paragraph(s) containing a statement of facts that are alleged to have caused the damage claimed. These allegations, or claims, should include a short and plain statement of the facts and why you contend you are entitled to relief. There should be a separate numbered paragraph for each factual allegation made. The statement of facts should include a description of what the defendant(s) did or failed to do and how those acts or omissions caused injury or damage, as well as a description of any injury sustained and what medical treatment, if any, was required. Names, dates, and events should be described accurately. Failure to allege facts demonstrating that each defendant was personally involved in and/or responsible for the alleged incident or harm may result in dismissal of that defendant or the case.

g. the date, with an **original** signature, followed by your complete mailing address and telephone number. You should exercise care to assure that all statements are true and accurate.

A sample complaint is attached to this Guide as Appendix A.

Only the ORIGINAL complaint is filed with the court. The original complaint should be **mailed** to:

U.S. District Court
P.O. Box 945
Burlington, VT 05402-0945

or, **delivered by hand** to:

U.S. District Court
11 Elmwood Avenue
P.O. Box 945
Burlington, VT 05402

U.S. District Court
151 West Street
P.O. Box 607
Rutland, VT 05702

A COPY of the complaint should be served upon each named defendant. It is suggested that you also keep a copy of the complaint for your own records.

2. A Civil Cover Sheet (Form JS-44) with an **original** signature must accompany the complaint. Instructions for completing this form may be found on the second page of the JS-44. **A blank Form JS-44 is attached at the back of this Guide. JS-44 Forms are also available on the court's website (www.vtd.uscourts.gov) or at any Clerk's Office location.**
3. Completed Summons or Waiver of Service forms for each defendant (these are discussed further in Section C below).
4. Notice of *Pro Se* Appearance form with an **original** signature. A Notice of *Pro Se* Appearance form is available on the court's website (www.vtd.uscourts.gov).
5. Filing Fee or Motion to Proceed *In Forma Pauperis*. The current filing fee is \$405. A credit card, money order, cashier's check, or personal checks are acceptable forms of payment. Currently, cash is also accepted but only at the Burlington location. Checks and money orders should be made payable to Clerk, U.S. District Court.

If you are unable to afford the filing fee and service costs, you may ask the court to waive those fees and costs. To request this, you must file an Application for Leave to Proceed *In Forma Pauperis* and supporting affidavit. An affidavit is a document that you will need to swear under oath is true and accurate. The application and affidavit must be typewritten or legibly handwritten. You must sign both the application and affidavit. **Blank application and affidavit forms are available on the court's website (www.vtd.uscourts.gov) or at any Clerk's Office location.**

If you choose to file an Application for Leave to Proceed *In Forma Pauperis*, the ORIGINAL application and supporting affidavit must be filed with the complaint, civil cover sheet, notice of *pro se* appearance, and appropriate service forms. All documents will be forwarded to the assigned judge for review. The judge will review the merits of any complaint sought to be filed *in forma pauperis* to assure that the complaint is not frivolous. If the judge determines that all or part of the complaint is frivolous and should be dismissed, an order will be issued and the case may be closed.

C. SERVICE OF THE SUMMONS AND COMPLAINT

If you have paid the filing fee and are not seeking to proceed *in forma pauperis*, service documents will be issued to you. You are responsible for having the complaint served on the named defendants. You have 90 days from the date the complaint is filed

to effect service upon the named defendants. Should you fail to effect service within the specified time frame, your case may be dismissed.

If you are seeking to proceed *in forma pauperis* and your application is granted by the court, the complaint will be filed. The court will order the Clerk's Office in cooperation with the U.S. Marshal's Service to serve the complaint on the defendants. Please note that *in forma pauperis* status only waives the filing and service fees. Copying, mailing, and other expenses are not waived and you are responsible for these fees and expenses.

If your application to proceed *in forma pauperis* is denied, the complaint will **NOT** be filed, nor will summons(es) and/or waiver(s) be issued without prepayment of the filing fee. An order will be issued by the assigned judge requiring payment of the filing fee within a set period of time. Upon receipt of the filing fee, the complaint will be filed and service documents will be issued. **Failure to pay the filing fee within the specified time frame could result in dismissal and the case will be closed.**

Service of the complaint, pursuant to Fed. R. Civ. P. 4, may be accomplished in either of two ways:

By Summons:

Pursuant to Rule 4(c)(1), a summons shall be served together with a copy of the complaint. A plaintiff who has paid the filing fee is responsible for service of a summons and complaint within the time allowed, and shall furnish the person effecting service with the necessary copies of the summons and complaint. **A sample summons is attached to this Guide as Appendix B.** Plaintiffs proceeding *in forma pauperis* must also provide the person effecting service (the U.S. Marshal's Service) with the information necessary to locate and serve a defendant. If a defendant is the United States, any federal government agency, or any federal official, the defendant must be served by summons only as no waiver of service is available.

By Waiver of Service:

Pursuant to Rule 4(d), the plaintiff may notify a defendant of the commencement of an action and request that the defendant waive service of a summons. The notice and

request shall be in writing (forms to be used: Waiver of Service and Notice of Lawsuit); shall be through first-class mail or other reliable means; shall be accompanied by a copy of the complaint and shall identify the court in which it has been filed; shall set forth the date on which the request is sent; shall allow the defendant a reasonable time to return the waiver (which shall be thirty (30) days from the date on which the request is sent, or sixty (60) days from that date if the defendant is located outside the United States); and shall provide the defendant with an extra copy of the notice and request. **A sample notice and waiver is attached to this Guide as Appendix C.**

D. FILING REQUIREMENTS - FORMAT OF FILINGS

The term “filing” generally refers to all documents filed with the court. All filings must be on 8 ½” x 11” paper unless filed electronically; shall be submitted in English, unless an accurate translation is furnished; should have no less than 1” margins; and should be consecutively numbered at the bottom center of each page and double-spaced. They must be stapled or otherwise attached but shall not be permanently bound. Although it is preferable that filings be typewritten, handwritten documents are acceptable. For the court to fully understand any claims, however, care should be taken with handwritten documents to ensure they are legible.

All motions or other requests for action by the assigned judge shall be submitted in proper filing format, and not in the form of a letter (general correspondence). Such filings must contain the following:

1. the caption of the case, which includes the name of the court, the parties, and the complete civil action number assigned to the case (once assigned);
2. a title describing the contents of the filing;
3. clearly identified parties on whose behalf the filings are made;
4. a dated, original signature of each plaintiff, with the words “*pro se*” following the signature; and
5. the plaintiff’s address and telephone number (if any);

6. a certificate of service (for filings other than the original complaint or petition). Pursuant to Fed. R. Civ. P. 5(a), every motion, correspondence or other document filed after the original complaint has been served, unless it is being filed *ex parte* (without the knowledge or notice to the opposing party), must be served upon each of the parties who have appeared in the case. Each such filing must contain a certificate of service that states the name and address of the attorney or party served, method of service, and the date of service. This lets the court know that the other parties have been served with a copy of the same document filed with the court.

A sample certificate of service is available on the court's website under *Pro Se* Information, and is attached to this Guide as Appendix D.

III. PRELIMINARY REVIEW OF *PRO SE* COMPLAINTS AND PETITIONS

A. NON-PRISONER *PRO SE* COMPLAINTS – FILING FEE PAID

When a non-prisoner plaintiff files a *pro se* complaint and pays the filing fee, the court may dismiss the case on its own, at any time, if the action is frivolous.

B. NON-PRISONER *PRO SE* COMPLAINTS – *IN FORMA PAUPERIS*

When a non-prisoner plaintiff files a *pro se* complaint and is granted *in forma pauperis* status, the assigned judge will conduct a preliminary review upon opening of the case. After such review, the judge will either:

1. Direct that the complaint, or claims alleged therein, be served on one or more of the defendants named in the action. The judge may assign a person to effect service. As noted above, it is the plaintiff's responsibility to provide accurate names and addresses for each party to be served; or

2. Issue a ruling (or in cases where referred to the magistrate judge, a report and recommendation will be issued) finding that all or part of the complaint must be dismissed for one or more of the following reasons:

- a. the allegation of poverty is untrue;
- b. the action is frivolous or malicious;
- c. the action fails to state a claim upon which relief may be granted;
- d. the action seeks monetary relief against a defendant who is immune from such relief;

e. the complaint fails to establish the subject matter jurisdiction in this court; or

3. Grant the plaintiff leave to file an amended pleading in accordance with the judge's ruling.

C. PRISONER COMPLAINTS

When an incarcerated plaintiff files a *pro se* complaint seeking redress from a governmental entity, officer or employee, regardless of whether the plaintiff has paid the filing fee in full or is granted *in forma pauperis* status, the assigned judge will conduct a preliminary review. After such review, the judge will either:

1. Direct that the complaint, or claims alleged therein, be served on one or more of the defendants named in the action. The judge may assign a person to effect service. Again, it is the plaintiff's responsibility to provide accurate names and addresses for each party to be served; or

2. Issue a ruling (or in cases where referred to the magistrate judge, a report and recommendation) finding that all or part of the complaint be dismissed because:

a. the action is frivolous or malicious;

b. the action fails to state a claim upon which relief may be granted;

c. the action seeks monetary relief against a defendant who has immunity from such relief;

d. the complaint fails to establish the subject matter jurisdiction of this court; or

3. Grant the plaintiff leave to file an amended pleading in accordance with the judge's ruling.

If a prisoner is proceeding *in forma pauperis*, the filing fee will be collected from the prisoner's prison trust account as set forth in 28 U.S.C. § 1915. THESE FUNDS WILL BE COLLECTED UNTIL THE FILING FEE IS PAID IN FULL, EVEN IF THE COMPLAINT IS DISMISSED OR WITHDRAWN.

D. HABEAS CORPUS PETITIONS UNDER 28 U.S.C. § 2254

A person in *state* custody who wants to challenge the validity of the judgment that caused him or her to be confined may file a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Pursuant to Rule 4 of the Rules Governing § 2254 Cases, the petition will be reviewed by the magistrate judge to determine whether the petitioner has sufficiently stated a claim upon which relief may be granted. If the magistrate judge finds that the claims made in the petition do not entitle the petitioner to relief, the magistrate judge will issue a report and recommendation recommending that the district judge dismiss the petition. Otherwise, the magistrate judge will order that the petition be answered by the respondent(s) or will take other action as appropriate, such as ordering that the petition be amended.

E. 28 U.S.C. § 2255 (HABEAS CORPUS) MOTIONS

A person in *federal* custody may challenge his or her conviction or sentence by filing a motion under 28 U.S.C. § 2255. Pursuant to Rule 4 of the Rules Governing § 2255 Proceedings, the motion will ordinarily be forwarded to the magistrate judge to determine whether the defendant has sufficiently stated a claim upon which relief may be granted. If the magistrate judge finds that the claims made in the motion do not entitle the defendant to relief, the magistrate judge will issue a report and recommendation recommending that the district judge deny the motion. Otherwise, the magistrate judge will order that the motion be answered by the United States Attorney or will take other action as appropriate.

IV. PROCEEDINGS AFTER SERVICE

A. ANSWER

Generally. A defendant's answer should contain a separate response to each numbered allegation in the complaint, either admitting or denying each allegation. The answer should also state any defenses to the complaint. A defendant may choose to file a motion to dismiss the complaint instead of filing an answer. If a defendant fails to answer or otherwise defend the complaint in a timely fashion, the plaintiff may ask the Clerk of Court to enter a Clerk's Entry of Default pursuant to Fed. R. Civ. P. 55 and

Local Rule 55(a)-(b). The Clerk may enter a default, which means the plaintiff has allegedly prevailed on the claims made in the complaint.

Answer Deadlines. If service is made on the defendant(s) by summons, the defendant(s) will have twenty-one (21) days from the date of service of the complaint to file an answer or motion under Fed. R. Civ. P. 12. If the United States, a federal official or a federal agency is a defendant, the answer/motion deadline is sixty (60) days from the date of service.

If service is being performed by waiver, the defendant(s) will have sixty (60) days after the request for waiver of service was sent, or ninety (90) days if the request was sent outside of the United States, to file an answer or motion under Fed. R. Civ. P. 12. The United States, any federal government agency, or federal official cannot accept service by waiver.

When the assigned judge has ordered an answer to a petition or motion filed pursuant to Rule 4 of the Rules Governing § 2254 Proceedings or Rule 4 of the Rules Governing § 2255 Proceedings, the order will set forth the response deadline.

B. MOTIONS

A motion is a request to the court for an order directing certain action.

Every motion should include the case caption, state the specific reason(s) for the request made, and state what relief or action the movant is requesting. Motions must be submitted separately from other filings and contain the word “motion” in the title. A motion should also include, or have attached, a memorandum of law explaining why the party filing the motion is entitled to relief, with appropriate legal citations. A memorandum filed in support of a non-dispositive motion (a motion whose decision does not dismiss a party or claim), or in opposition to a non-dispositive motion, shall not exceed fifteen (15) pages. A memorandum filed in support of a dispositive motion (for example, a motion to dismiss or a motion for summary judgment), or in opposition to a dispositive motion, shall not exceed twenty-five (25) pages. Reply memoranda shall not exceed ten (10) pages.

Motions can be decided without oral argument (hearing). Parties may make a written request for oral argument, but the decision whether to hold oral argument is within the discretion of the presiding judge.

Motions often require a great deal of time and effort from the court. For this reason, motions should not be made frivolously as such filings could result in sanctions from the court.

C. DISCOVERY

Generally. Discovery is the process of collecting the evidence necessary to support a claim. Evidence may be gathered from the opposing party, from non-parties, or from public records. **The parties shall not file the discovery materials with the court unless ordered to do so, and should file only a certificate of service indicating when the discovery was served upon the opposing party.** Motions to the court regarding discovery disputes are governed by Fed. R. Civ. P. 37 and Local Rule 26(d).

Initial Disclosures. In cases brought by persons who are not incarcerated and/or not seeking habeas corpus relief, Fed. R. Civ. P. 26(a) requires the disclosure of certain materials and information to the adverse party without a discovery request or separate court order. The specific materials and information to be disclosed, as well as the deadlines for disclosure, are contained in the rule and should be carefully reviewed. Failure to comply with discovery rules and orders in a case may result in the dismissal of an action and/or other sanctions. *Pro se* prisoner cases and habeas corpus filings are exempt from the requirement of initial disclosures.

Depositions. A deposition is a procedure in which testimony of any witness, whether or not a party, is taken under oath and recorded before the trial begins. The witness, called the deponent, is questioned by the party who asked for the deposition, and then the adverse party may also ask questions. The rules and procedures governing depositions are located at Fed. R. Civ. P. 27 through 32.

Interrogatories. Up to twenty-five (25) written questions, called interrogatories, may be used to discover information from parties in the action. Permission from the court can be sought to request additional interrogatories. Each interrogatory shall be

answered separately and fully, in writing, and under oath. If an interrogatory is objected to, the objecting party shall state the reasons for the objection and shall answer to the extent the interrogatory is not objectionable. The answers are to be signed under oath by the person making them and the objections signed by the attorney or *pro se* party making them. The interrogatories shall be answered within thirty (30) days after they are served, unless an alternative deadline is agreed upon by the parties. Parties are required to supplement their answers to interrogatories as additional information becomes available as provided by Fed. R. Civ. P. 26(e)(1). The rules and procedures governing interrogatories are contained in Federal Rule of Civil Procedure 33.

Production of Documents. Pursuant to Fed. R. Civ. P. 34, a written request to produce records, letters, contracts, or other materials, inspect or copy a document, or permit entry upon designated land or other property in the possession or control of the party upon whom the request is served, may be served on any party. The request shall specify a reasonable time, place, and manner of making the inspection or performing the related acts. The party upon whom the request is served shall serve a written response within thirty (30) days, unless an alternative deadline is agreed upon by the parties. The response shall state whether the inspection or related activities will be permitted as requested. If the request is objected to, the reasons for the objection shall be stated. The requesting party may seek, by filing a motion to compel, a court order requiring production. A person not a party to the action may be compelled to produce documents or things as provided in Fed. R. Civ. P. 45.

Requests for Admission. Pursuant to Fed. R. Civ. P. 36, a party may serve upon any other party a written request to admit the truth of certain matters within the scope of Fed. R. Civ. P. 26(b)(1). The matter is admitted unless, within thirty (30) days after service of the request, the party to whom the request is directed serves upon the requesting party a written answer or objection signed by the party. Failure to answer constitutes an admission. The party who requests the admission may file a motion with the court to determine the sufficiency of the answers or objections. The court may order an answer, amendments to answers given, or even that the matter be deemed admitted.

D. SUMMARY JUDGMENT

A motion for summary judgment is filed by a party pursuant to Fed. R. Civ. P. 56 when there are undisputed issues of fact as to part or all of the case. The moving party must state that they are entitled to succeed on some or all of the issues in the case and state the reasons why they should succeed. If the court finds that there is no genuine issue of material fact as to one or more of the issues, that issue may be determined by the court's ruling on the motion.

A memorandum with appropriate legal citations must be filed with a summary judgment motion. The moving party must also file a statement of *undisputed* facts as set forth in Local Rule 56(a), and support for factual positions must be supported by citations to particular parts of the record, including affidavits, depositions, answers to interrogatories, documents, or other materials, all of which must be admissible evidence.

In opposing a motion for summary judgment, the opposing party must also file a legal memorandum, as well as a statement of *disputed* facts as set forth in Local Rule 56(b). It is not enough for the responding party to merely deny the facts in the other party's motion. The responding party must instead cite to the court admissible evidence, such as affidavits, depositions, answers to interrogatories, documents, or other materials, which show that the facts are in dispute.

E. TRIAL

A trial is the examination of evidence and applicable law by a judge or a jury who then decides what facts to accept, applies the law to those facts, and determines the result in the case. At a trial, the plaintiff attempts to prove the claims in support of the relief requested, and the opposing party attempts to prove the opposite. Each party will have the opportunity to present their side of the case. At the conclusion of the evidence, if the case was tried before a jury, the jury will render its verdict. If there was no jury and a bench trial was held, the judge will render a decision. Often, a decision rendered by a judge will be issued at a future date in the form of a written order. Of course, at any time before trial, if the matter is determined by motion, settlement, or otherwise, no trial will be necessary.

V. PROCEEDINGS AFTER TRIAL

A. JUDGMENT

Once all issues in the case have been determined, a document entitled “Judgment” shall be entered by the Clerk’s Office and the case will be closed.

B. BILL OF COSTS

The party that ultimately wins a lawsuit may be awarded certain costs of litigation. These costs are assessed by the court and must be paid by the losing party. If the plaintiff wins the case, a Bill of Costs may be filed against the defendant(s). If the plaintiff loses, however, the defendant(s) may file a Bill of Costs against the plaintiff. These costs, which are explained more fully at 28 U.S.C. § 1920, include expenses such as deposition costs, money for printing, witness fees, and costs incurred for summonses and subpoenas. Even if the plaintiff was granted leave to file *in forma pauperis*, costs may be assessed if the defendant prevails.

C. APPEAL

If you intend to appeal the decision or verdict of the judge or jury, you should carefully review the Federal Rules of Appellate Procedure (Fed. R. App. P.).

If a party believes a jury verdict or decision rendered by the court was incorrect, the appeal is usually decided by the United States Court of Appeals for the Second Circuit in New York, New York. An appeal of a decision is commenced by filing a Notice of Appeal in this court. The Notice of Appeal should contain a description of the party or parties taking the appeal, a description of the judgment or order or the part of the order or judgment appealed from, and the name of the court to which the appeal is taken. If more than one party wishes to appeal the decision or verdict, each party must file a separate notice of appeal. **A sample Notice of Appeal is attached to this Guide as Appendix E.**

The fee for filing a Notice of Appeal is \$455 unless the person filing the appeal has been granted *in forma pauperis* status. Unless the district court certifies that the appeal was not taken in good faith, a non-incarcerated party who has previously been granted *in forma pauperis* status in the case need not file a new motion to proceed *in*

forma pauperis on appeal. Fed. R. App. P. 24(a)(3). Conversely, an incarcerated litigant seeking to appeal *in forma pauperis* must file a new motion requesting permission to do so regardless of whether the litigant was previously granted *in forma pauperis* status by the district court. 28 U.S.C. § 1915(b)(1); Fed. R. App. P. 24(a)(3)(B).

Unless the United States or an officer or agency of the United States is a party to the action, the Notice of Appeal in a civil case must be filed within thirty (30) days from the date of entry of the judgment that is being appealed. If the United States or an officer or agency of the United States is a party to the action, the Notice of Appeal must be filed within sixty (60) days from the date of entry of the judgment. The date of entry signifies the entry of the judgment onto the district court's docket. The date an order or opinion is signed is not necessarily the same day that it will be reduced to a judgment or entered onto the court's docket. The parties should consult Fed. R. Civ. P. 58 to determine the date judgment is deemed to be entered in their case.

The appellate court will generally only consider issues the district court has considered, so it is important to make your argument on an issue to the district court prior to appealing the issue. Upon receipt of the Notice of Appeal, the appellate court will notify the parties of any orders issued or schedules set in the case.

APPENDIX A, SAMPLE COMPLAINT

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

Name(s) of Plaintiff(s)

v.

Case No.: (Clerk's Office to Complete)

Name(s) of Defendant(s)

COMPLAINT

(Indicate if Jury Demand is Requested)

PARTIES

1. Paragraph - Name and Address of Plaintiff. Add additional separately numbered paragraphs, one for each plaintiff, if there is more than one plaintiff.
2. Paragraph - Name and Address of Defendant. Add additional separately numbered paragraphs, one for each defendant, if there is more than one defendant.

JURISDICTION

3. Paragraph - One numbered paragraph containing the allegation of jurisdiction, that is, under what legal authority the case is filed in this court rather than in another court.

CLAIMS

4. Paragraph - Allegation(s)/claim(s) against the defendant(s). Write one separate, numbered paragraph for each allegation/claim.

RELIEF

The final closing paragraph should contain a statement of the relief being sought: that is, what the plaintiff wants the court to do to correct the situation. (This paragraph should not be numbered.) If different types of relief (for example, money damages,

reinstatement to a job, an order directing the defendant to do or stop doing something, etc.) are sought, they should be in separate paragraphs, preceded by capital letters A., B., C., etc.

Date: _____

Signature: _____

Name: (Typed or Printed) _____

Address: _____

Telephone No.: _____

APPENDIX B, SAMPLE SUMMONS

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
District of Vermont

Harry Smith,

Plaintiff

v.

John Jones, Maryanne Jones,
Ann Jones, and Cathy Jones,

Defendants

Civil Action No.: 2:00-cv-00

SUMMONS IN A CIVIL ACTION

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

John Jones
123 Vermont St.
Townname, VT 00000

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 plaintiff or plaintiff's attorney, whose name and address are:

Harry Smith, Pro se
234 Pine Ave.
Townline, VT 00000

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.

CLERK OF COURT

Date: December 30, 2009

Sally Clerk
Signature of Clerk or Deputy Clerk

APPENDIX C, SAMPLE NOTICE AND WAIVER

AO 398 (Rev. 01/09) Notice of a Lawsuit and Request to Waive Service of a Summons

UNITED STATES DISTRICT COURT

for the
District of Vermont

Harry Smith,

Plaintiff

v.

John Jones,

Defendant

)
)
)
)
)

Civil Action No. 2:00-cv-000

NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS

To: John Jones (individual capacity), 123 Vermont Street, Townname, VT, 00000

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

Why are you getting this?

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

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

What happens next?

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

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

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

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

Date: Today's Date

/s/ Harry Smith, Pro se

Signature of the attorney or unrepresented party

Harry Smith

Printed name

234 Pine Avenue
Town Line, VT 00000

Address

E-mail address

Telephone number

UNITED STATES DISTRICT COURT

for the
District of Vermont

Harry Smith,

Plaintiff

v.

John Jones,

Defendant

)
)
)
)
)

Civil Action No. 2:00-cv-000

WAIVER OF THE SERVICE OF SUMMONS

To: Harry Smith, Pro se

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

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

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

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

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

Date: _____

Signature of the attorney or unrepresented party

John Jones (individual capacity)

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

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

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

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

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

APPENDIX D, SAMPLE CERTIFICATE OF SERVICE

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Name(s) of Plaintiff(s)

v.

Case No.: _____

Name(s) of Defendant(s)

CERTIFICATE OF SERVICE

I, _____, representing myself, do hereby certify that on
this ____ day of , 20__ I served a copy of the foregoing on the opposing side by
mailing/hand delivering a copy thereof to (list the name and addresses of the person(s)
you sent a copy to):

Signature

Date:

APPENDIX E, SAMPLE NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Name(s) of Plaintiff(s)

v.

Case No.: _____

Name(s) of Defendant(s)

NOTICE OF APPEAL

Notice is hereby given that [name all parties taking the appeal], (plaintiffs)
(defendants) in the above-named case, hereby appeal to the United States Court of
Appeals for the Second Circuit (from the final judgment) (from an order (describing it))
entered in this action on the ____ day of _____, 20__.

Date: _____

Signature: _____

Name: (Typed or Printed) _____

Address: _____

Telephone No.: _____

I certify that a copy of the foregoing NOTICE OF APPEAL was mailed/hand delivered to
(name of defendant(s) or counsel for defendant(s) at (address) on (date).

Signature: _____

GLOSSARY OF TERMS

Admissible. Proper to be received. As applied to evidence, the term means that it is of such a character that the court or judge is bound to receive it; that is, allow it to be introduced.

Admissible evidence. As applied to evidence, the term means that the evidence introduced is of such a character that the court or judge is bound to receive it; that is, allow it to be introduced at trial.

Affidavit. A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer such oath.

Citation. A reference to a law, rule, or case is called a citation.

Defendant. The person defending or denying; the party against whom relief or recovery is sought in an action or suit.

Deposition. The out-of-court oral testimony of a witness that is reduced to writing for later use in court or for discovery purposes. It is commonly used in litigation and is almost always conducted outside of court by the lawyers themselves (that is, the judge is not present to supervise the examination).

Discovery. The pre-trial phase in a lawsuit in which each party, through the law of civil procedure, can obtain evidence from the opposing party by means of discovery devices including requests for answers to interrogatories, requests for production of documents, requests for admissions and depositions. Discovery can be obtained from non-parties using subpoenas. When discovery requests are objected to, the requesting party may seek the assistance of the court by filing a motion to compel discovery.

Dismissal. The dismissal of an action, suit, motion, etc., is an order or judgment finally disposing of it by sending it out of court, though without a trial of the issues involved.

Dispositive. A dispositive motion is a motion seeking a court order entirely disposing of one or more claims in favor of the moving party without need for further trial court proceedings. "To dispose" of a claim means to decide the claim in favor of one or

another party. As a lawsuit may comprise numerous claims made by and against numerous parties, not every dispositive motion seeks to dispose of the entire lawsuit.

Evidence. Any species of proof, or probative matter, legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, concrete objects, etc., for the purpose of inducing belief in the minds of the court or jury as to their contention.

Ex parte. A Latin legal term meaning “from (by or for) one party”. An *ex parte* decision is one decided by a judge without requiring all of the parties to the controversy to be present. *Ex parte* means a legal proceeding brought by one person in the absence of and without representation or notification of other parties.

Habeas Corpus. A writ, or legal action, through which a prisoner can be released from unlawful detention, that is, detention lacking sufficient cause or evidence. The remedy can be sought by the prisoner or by another person coming to their aid. It has historically been an important legal instrument safeguarding individual freedom against arbitrary state action. It is a writ requiring a person to be brought before a judge.

In forma pauperis (IFP). IFP designation is given by both state and federal courts to someone who is without the funds to pursue the normal costs of a lawsuit. The status is usually granted by a judge without a hearing, and it entitles the person to a waiver of normal costs. While court-imposed costs such as filing fees are waived, the litigant is still responsible for other costs incurred in bringing the action such as deposition and witness fees.

Individual capacity. Referring to one’s status as a natural person, distinct from any other role. For example, an officer, employee or agent of a corporation (**Official capacity**), acting “in their individual capacity” is acting as himself, rather than as an agent of the corporation.

Interrogatories. A formal set of written questions propounded by one litigant and required to be answered by an adversary, in order to clarify matters of fact and help to determine in advance what facts will be presented at any trial in the case.

Judgment. A final finding, statement, or ruling, based on a considered weighing of evidence.

Jurisdiction. The power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties.

Motion. A procedural device to bring a limited, contested issue before a court for decision. A motion may be thought of as a request to the judge (or judges) to make a decision about the case. Motions may be made at any point in civil proceedings, although that right is regulated by court rules which vary from place to place. The party requesting the motion may be called the *movant*, or may simply be the *moving party*. The party opposing the motion is the *nonmovant* or *nonmoving party*.

Official capacity. See Individual capacity.

Perjury. The willful assertion as to a matter of fact, opinion, belief, or knowledge, made by a witness in a judicial proceeding as part of his evidence, either upon oath or in any form allowed by law to be substituted for an oath, whether such evidence is given in open court, or in an affidavit, or otherwise, such assertion being known to such witness to be false, and being intended by him to mislead the court, jury, or person holding the proceeding.

Petitioner. One who presents a petition to a court, officer, or legislative body. In legal proceedings begun by petition, the person against whom action or relief is prayed, or who opposes the prayer of the petition, is called the “**respondent**.”

Plaintiff. A person who brings an action; the party who complains or sues in a personal action and is so named on the record.

Relief. Deliverance from oppression, wrong, or injustice. In this sense it is used as a general designation of the assistance, redress, or benefit which a complainant seeks at the hands of a court, particularly in equity. It may be thus used of such remedies as specific performance, or the reformation or rescission of a contract.

Respondent. See Petitioner.

Sanction. Penalties imposed by courts.

Service of process. The delivery of copies of legal documents such as summons, complaint, subpoena, order to show cause (order to appear and argue against a proposed order), writs, notice to quit the premises and certain other documents, usually by personal delivery to the defendant or other person to whom the documents are directed.

Testimony. Evidence of a witness; evidence given by a witness, under oath or affirmation; as distinguished from evidence derived from writings, and other sources.

Verdict. The formal finding of fact made by a jury on matters or questions submitted to the jury by a judge.