

A GUIDE FOR *PRO SE* CIVIL LITIGANTS



REPRESENTING YOURSELF IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

Effective February 13, 2017



FOREWORD BY THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

This Guide for *Pro Se* Civil Litigants (hereinafter “Guide”) is intended to assist *pro se* litigants in pursuing their civil claims in the United States District Court for the Southern District of Ohio. It provides *pro se* litigants with a brief, but helpful overview of how to proceed in our Court.

Litigants must be careful to fully comply with the Federal Rules of Civil Procedure, the District Court’s Local Rules, the applicable General Orders, and the pretrial and trial procedures of each individual Judge. You can find these online (www.ohsd.uscourts.gov), in a law library, or in the Clerk’s Office. You must read and understand these rules and procedures in order to participate in the important work of the Court. **These rules and procedures may change from time-to-time, and it is your responsibility to comply with the then-applicable rules and procedures.**

This Guide has been prepared by the District Court with assistance from the Northern Kentucky University Salmon P. Chase College of Law and the Court’s *Pro Se* Committee. The Court wishes to express its appreciation to both groups for their initiative and dedication in this endeavor.



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COMPANY NAME HERE

I. INTRODUCTION

This Guide is intended to help individuals involved in a civil action in our Court—the United States District Court for the Southern District of Ohio—and who are not represented by licensed attorneys, but instead are representing themselves. A plaintiff or defendant who represents himself or herself is called “*pro se*.” Under the law, you can only speak for yourself. You cannot speak for another person, company, or organization in Court unless you are a licensed attorney.

This Guide is intended as a general overview of civil practice and procedure in our Court. This Guide does not relieve you of your responsibility to comply with the Federal Rules of Civil Procedure, the Local Rules, General Orders, and/or procedures for each Judge. It is your responsibility to know these rules if you choose to represent yourself in federal court.

The website for this Court is www.ohsd.uscourts.gov. On the Court’s website is a tab marked “Representing Yourself” where you can find links to information, including this handbook, Federal Rules of Civil Procedure, and Local Rules, that will assist you in litigating your case. Additionally, you can obtain information and forms from the Clerk’s Office, which is located inside the Courthouse. Please note, however, that the Clerk’s Office employees and the Judges’ staff are prohibited from giving you legal advice.

The District Court for the Southern District of Ohio is divided into two divisions. The **Eastern Division** includes counties in the eastern half of the state with the Courthouse located in Columbus. The **Western Division** includes counties in the western half of the state with Courthouses located in both Cincinnati and Dayton. The phone numbers and addresses for the three Courthouses are as follows:

Cincinnati:	Columbus:	Dayton:
United States District Court Office of the Clerk Potter Stewart U.S. Courthouse 100 East Fifth Street, Room 103 Cincinnati, Ohio 45202 Telephone: (513) 564-7500	United States District Court Office of the Clerk Joseph P. Kinneary U.S. Courthouse 85 Marconi Boulevard, Room 121 Columbus, Ohio 43215 Telephone: (614) 719-3000	United States District Court Office of the Clerk Federal Building 200 West Second Street, Room 712 Dayton, Ohio 45402 Telephone: (937) 512-1400

II. SEEKING COUNSEL

1. Appointed Counsel: In a civil action, you are not entitled to have counsel appointed by the Court. In exceptional circumstances though, the Judge may appoint counsel. If you would like the Judge to appoint counsel after your case is filed, you should file a motion requesting the appointment of counsel. In the motion, you must explain why you need counsel and why you have been unable to obtain counsel.
2. Hiring Counsel: As you have no right to appointed counsel in a civil action, you should seek legal counsel before filing your lawsuit. Experienced legal counsel can greatly increase your chances of being successful.

You can call the lawyer referral service, operated by the local bar association, which may be able to refer you to an attorney who would be willing to represent you at a reduced rate or without charge (this is known as “*pro bono*”). The contact information for the local lawyer referral services are as follows:

Cincinnati Bar Association Lawyer Referral Service (513) 381-8359 or
(888) 628-2577
<http://www.cincybar.org/careers/marketing-your-practice/lawyer-referral-service.php>

Columbus Bar Association Lawyer Referral Service (614) 221-0754 or
(877) 560-1014
http://www.cbalaw.org/CBA_PROD/Main/Resources/Public/LRS.aspx

Dayton Bar Association Lawyer Referral Service (937) 222-7902
<http://www.daybar.org/membership/lawyer-referral-service/>

There are other affordable options for legal assistance, including Legal Aid societies, that can assist you in obtaining the services of an attorney at a reduced cost.

3. Warning Regarding Frivolous Lawsuits: Frivolous lawsuits cost the Court time and money and delay legitimate cases from being heard. If you are found to have filed a lawsuit solely to harass someone or to cause them to incur unnecessary legal expenses or for any improper purpose, the Court may impose sanctions against you. Sanctions may include ordering you to pay a fine to the Court, ordering you to pay the legal fees of the persons against whom you filed the lawsuit, or requiring you to meet certain conditions prior to filing a complaint.

In some circumstances, the winning party may ask that you be ordered to pay his/her attorney’s fees or certain costs incurred during litigation. These costs can include things such as deposition transcripts, witness fees, and copy expenses. In many cases, these costs can add up to thousands of dollars. Before filing suit, you should consider the consequences of losing.

III. BASIC PROCEDURES

This section describes the basic procedures you need to follow when you decide to bring a civil lawsuit in the United States District Court for the Southern District of Ohio on your own behalf. There are four bodies of rules and procedures controlling how your civil case must be filed and processed in the United States District Court for the Southern District of Ohio. One is called the **Federal Rules of Civil Procedure** (hereinafter the “Fed. R. Civ. P.”). These procedures are available online and in law libraries. Another is the **Local Rules of the United States District Court for the Southern District of Ohio** (hereinafter the “Local Rules”). Copies of the local rules can be obtained from the Clerk’s Office or the Court’s website under the “Local Rules” tab. Third, there are **General Orders** which supplement the Local Rules. Some of the General Orders are applicable to all three Courthouses, while others apply only in one city. The General Orders can be found under the “General Orders” tab on the Court’s website. Finally, the Judges assigned to your case may have **individual pretrial and trial procedures**. The Judge’s individual procedures can be obtained from the Clerk’s Office or on the Court’s website under the individual judge’s name in the “Judges” tab.

A. FILING A LAWSUIT

1. Preparing the Complaint: The first step in filing a lawsuit is to prepare a complaint. The Court has forms for preparing a complaint, including a general form for *pro se* cases and specific forms for prisoner *pro se* cases, employment discrimination cases, and Social Security disability appeals. These forms are available on the Court’s website under the “Forms” tab on the homepage.

If you choose to prepare your own complaint, please include the following information:

a. Caption: The top of the first page should contain the case caption, which includes the name of the Court, the names and addresses of all parties, and a blank space for the case number. The case number will be assigned once the complaint is filed with the Court. The case caption should appear as follows:

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
[] DIVISION AT []

[Plaintiff's Name 123 Street Name City, State Zip Code], Plaintiff, vs.	: : : :	Case No. _____ COMPLAINT
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[Defendant #1's Name 456 Street Name City, State Zip Code] [Defendant #2's Name 789 Street Name City, State Zip Code], Defendants.	: : : :	
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b. Name and Addresses of the Parties: You should list on page 1 of your complaint, the name and address of the person filing the complaint (the plaintiff) and the names and addresses of all individuals or entities against whom you are seeking relief (the defendants).

c. Body of the Complaint: The body of the complaint shall contain numbered paragraphs. First, the complaint should state why this Court has jurisdiction over the case. This Court has limited authority to hear cases. It can only hear cases that fall into the following four categories:

- (1) those presenting a question involving the United States Constitution;
- (2) those involving questions of federal law;
- (3) those where the United States of America is a party; and
- (4) those involving a dispute among residents of different states when the amount in controversy is more than \$75,000.

If your complaint does not fall under any of these categories, you cannot file it in this Court. *Pro se* litigants often file the following types of federal cases: a denial of civil rights under 42 U.S.C. § 1983; employment discrimination under 42 U.S.C. § 2000e, *et seq.*; and inmates challenging the conditions of their confinement. This Court generally does not have jurisdiction over the following types of cases: divorce, child custody, adoption, and probate matters.

Further, your complaint must state the facts supporting your claims: what happened, where it happened, when it happened, how it happened, and who was involved.

Additionally, you should state the legal basis of your claims, but you do not need to cite specific cases. Finally, you must state the relief you are seeking (*e.g.*, money damages or a Court Order prohibiting particular conduct).

d. Signature: At the end of the complaint, you must sign and date the complaint. Underneath your signature, type or print your full name, address, and phone number. Please note that your signature, address, and phone number must always appear on all documents you file with the Court.

e. Privacy Protection: Do not include any sensitive information in documents filed with the Court. If you must include personal information, personal identifiers must be redacted (blackened out) as follows:

- i. minor children must not be identified by their full names, but by their initials (*e.g.*, A.B., C.D.);
- ii. financial account numbers must be redacted except for the last four digits (*e.g.*, xxxx-xxxx-1234);
- iii. Social Security and taxpayer-identification numbers must be redacted except for the last four digits (*e.g.*, xxx-xx-1234); and
- iv. dates of birth must include the year only (*e.g.*, X/X/1980).

Please see the Court's privacy warning at <http://www.ohsd.uscourts.gov/redaction-privacy-warning> for more information.

3. Filing the Complaint: Once you have prepared your complaint, it must be filed in the Clerk's Office. Before filing, you should consider the following procedures regarding copies, filing fees, the civil cover sheet, and summons forms.

a. Copies: You must file the original complaint with the Court and provide the Court with a copy for each Defendant you name. (If the defendant is the United States, an agency of the United States, or an officer or employee of the United States who is being sued for acts or omissions related to his/her employment, you must provide 3 copies of the complaint.) You should also keep a copy of the complaint for your own records.

b. Filing Fee: Generally, you must pay a filing fee when you file your complaint. The current filing fee for a complaint is \$400.00. Other fees can be found on the Court's website under the "Fees and Payments" tab. Payment is due when you file the complaint. You may pay by cash, check, cashier's check, money order, or credit card. Checks and money orders must be made payable to "Clerk, U.S. District Court." Please see the Court's website for more payment processing information.

If you cannot afford to pay the filing fee, you must complete and file an “Application/Motion to Proceed Without Payment of Fees (*In Forma Pauperis*) and Affidavit in Support Thereof.” (The process is different if you are a prisoner, as explained below.) You can obtain an *In Forma Pauperis* (“IFP”) application on the Court’s website or from the Clerk’s Office. The IFP application asks you to provide information about your (and your spouse’s) finances (*e.g.*, your income, assets and liabilities). In filling out the IFP application, you must answer all questions truthfully and completely. You must sign the statement under penalty of perjury. If the Court later discovers that the IFP application was not truthful, or if your financial condition changes, you may be required to pay the filing fee to proceed with your lawsuit.

To apply for IFP status, you must present the following documents to the Clerk’s Office:

1. Application to Proceed In Forma Pauperis
2. Civil Cover Sheet (JS44)
3. Original complaint with copies for service on each of the Defendants (**See Section III.B.**)
4. All service forms (Summons and USM 285 or Waiver of Service of Summons) (**See Sections III.B and VII.**)

The Court’s approval of your IFP application only means that you are not required to pay filing and service fees. You are still required to pay photocopying fees.

If your IFP application is denied, you must pay the **full** filing fee.

c. Filing Fee for Prisoners: If you are a prisoner, under the Prison Litigation Reform Act, you are required to pay the **full** filing fee for **any** civil action. If you do not have enough money to pay the filing fee, the Court will collect an initial filing fee (to the extent funds exist), and you will be required to pay monthly installments thereafter until the full filing fee is paid. For more information, see the “Application and Affidavit by an Incarcerated Person to Proceed Without Prepayment of Fees,” which can be found on the Court’s website under the “Forms” tab. You must also submit a certified copy of your prison trust fund account statement for the six-month period immediately preceding the filing of the complaint.

d. Civil Cover Sheet: You must also complete a Civil Cover Sheet (Form JS44). This form is used to help the Clerk’s Office open your case and gather statistical information. The form is available on the Court’s website or in the Clerk’s Office. Complete the form as best as you can. If you do not know how to answer, then leave that space blank.

e. Summons: If you are proceeding IFP, you need to prepare a summons for each Defendant named in your lawsuit. The summons form (AO 44) is available on the Court’s website or from the Clerk’s Office. You must:

- 1) fill out the case caption;
- 2) provide the name and address where the defendant is to be served with the complaint; and
- 3) provide your name and address.

Do NOT complete the Proof of Service portion of the summons form until service of process has been completed. Section VII of this Guide shows you how to fill out a summons form and a USM 285 form.

3. Where to File the Complaint: Actions must be filed in the appropriate court—Cincinnati, Columbus, or Dayton. Local Rule 82.1 lists the counties corresponding to each of the three Courthouses. A map can be found in Section VIII of this Guide and also on the court’s website under the “Court Information” tab.

4. The Court’s Review of the Complaint: The Court will review your complaint when it is filed. In IFP cases, the summons will not be issued until after the Judge reviews the complaint. If the Court determines, based upon the facts stated in your complaint, that you will not be successful in your case (*e.g.*, you fail to state a claim upon which relief may be granted, your lawsuit is frivolous or malicious, or the Defendant is immune from liability), the Court can dismiss your case at that stage. See 28 U.S.C. § 1915(e)(2). Likewise, the Court can dismiss your complaint at any time if you were granted IFP status, and the Court later determines your allegation of poverty was untrue.

B. SERVICE OF PROCESS

After the complaint is filed, the next step is “service of process”—the procedure that officially notifies the Defendant that a lawsuit has been filed against him/her. At this time, the defendant receives a copy of the complaint so that he/she knows what the lawsuit is about. Further, the summons notifies the defendant when they must respond to the complaint. Under Federal Rule of Civil Procedure 4, every named Defendant must be served with the complaint within 90 days from the filing date (or, if you applied for IFP, from the date the Court ruled on your IFP application). **If you do not properly complete service of process within the 90-day deadline, your case may be dismissed.**

If you are suing a company, you must make service as provided in Fed. R. Civ. P. 4(h).

The way to accomplish service of process may be different depending on whether you paid the filing fee or the Court granted you IFP status. Additionally, if you are filing a lawsuit against a federal agency or employee, there are different rules.

1. Proceeding IFP: If your IFP application was approved, the U.S. Marshal Service will complete service of process on your behalf. However, you are responsible for completing and providing the Clerk’s Office with the appropriate service forms.

You must present a set of the following service documents for **each** named Defendant:

1. A copy of the complaint you filed for each Defendant;
2. One summons form for each Defendant; and
3. One U.S. Marshal Form 285 for each Defendant.

These forms can be found on the Court's website or obtained from the Clerk's Office. Section VII of this Guide also shows how to fill out these forms.

Once the forms are properly completed and filed, the Clerk's Office will officially issue the summons (*e.g.*, an authorized Court employee signs the form and embosses it with the Court's official seal). The Clerk's Office will then deliver the summons and other materials to the U.S. Marshal Service who will serve the Defendants on your behalf. You will be notified when service has been accomplished.

2. Not Proceeding IFP: If you paid the full filing fee, you are responsible for serving each named Defendant within **90 days**.

a. Waiver of Service: The Court prefers that, before attempting service of process, you request that Defendants waive service of process. To complete this process, you must complete two forms: "Notice of a Lawsuit and Request to Waive Services of Summons" (Form "AO 398") and "Waiver of Service of Summons" (Form "AO 399"). These forms are available at the Clerk's Office or on the Court's website. Section VII of this Guide explains how to fill out these forms.

Next, you must send the following set of documents to each named Defendant:

1. A copy of the complaint you filed;
2. One completed AO 398 Notice of Lawsuit Form;
3. Two completed AO 399 Waiver Forms; and
4. One self-addressed stamped envelope (for the Defendant's return of Form AO 399).

Please be advised that the waiver of service rule does not apply if the United States is named as a Defendant.

When you receive the signed waiver of service of summons form from the defendant in the mail, you must file this document with the Court.

b. Service of Process If There is No Waiver of Service: If the defendant does not return the waiver of service form within the specified time, you must notify the Clerk in writing, prepare a summons for each Defendant, and ask the Clerk's Office to issue those summonses that you prepared.

You may also accomplish service of process by “personal service.” This is when the summons and complaint are hand-delivered to the Defendant. You, as the plaintiff, cannot personally serve the defendants. However, another person can personally serve the defendants so long as he or she is at least 18 years of age and not a Plaintiff or Defendant in the case. Alternatively, you can hire a private process server to serve the defendants for a fee.

On the back of the summons form, the person who serves the summons must record his or her name, the name of the person whom he or she served, and the date and time of the service. This section is referred to as the “Proof of Service.” Service of process is not complete until the Proof of Service is filed with the Court.

If the above service methods are not available, please consult Fed. R. Civ. P. 4 and Local Rule 4.2.

3. Service on the United States: If you name as a Defendant the United States, a United States agency, or an officer or employee of the United States (who is being sued for acts or omissions related to his/her employment), you must serve the complaint and summons on three individuals: the named Defendant; the Attorney General of the United States in Washington, D.C.; and the United States Attorney for the Southern District of Ohio.

Please be advised that the waiver of service rule does not apply to the United States. Formal service upon the federal government or any of its agencies can be accomplished by certified mail (return receipt required) with the properly executed summons. Local Civil Rule 4.2 more fully explains the process for service by certified mail.

C. JUDGES

Your case will be randomly assigned to both a District Judge and a Magistrate Judge. You cannot choose which Judges hear your case. Usually, your case will first be reviewed by a Magistrate Judge.

Motions that might dispose of your case (*e.g.*, motions to dismiss or motions for summary judgment) are referred to as “dispositive motions.” When a dispositive motion is filed, the Magistrate Judge may issue a “Report and Recommendation” to the District Judge, recommending that the motion be either granted or denied. When a Magistrate Judge issues a Report and Recommendation, you have **14 days** to file written objections. The District Judge will then independently review the briefs and evidence in the record, the Magistrate Judge’s Report and Recommendation, and your written objections. Following that review, the District Judge will rule on the motion.

You may be asked to consent to Magistrate Judge jurisdiction. If you and the other side consent, the Magistrate Judge will have final decision-making authority in all matters in your case and will preside over the trial if the case proceeds to that stage.

D. AFTER SERVICE OF PROCESS

Once the defendant is served, several things may happen: the defendant may file an answer, the defendant may file a motion, or the defendant may do nothing.

1. Defendant Files an Answer: The defendant must file an answer to your complaint within **21 days** after service of the complaint or **60 days** if the defendant waived service of a summons. The federal government has **60 days** to file an answer. The answer admits or denies the facts you state in your complaint and asserts any applicable defenses.

Further, the defendant may assert a claim against you (referred to as a “counterclaim”). If a counterclaim is filed, you must file an answer or a motion in response to the counterclaim within **21 days**.

2. Defendant Files a Motion: There are different types of motions the defendant may file before filing an answer. The defendant may try to get your case dismissed immediately. The different types of motions are listed in Fed. R. Civ. P. 12.

If the defendant files a motion to dismiss your complaint, you will have **21 days** in which to file a written response. Such a response is usually captioned as “Plaintiff’s Memorandum in Opposition to Defendant’s Motion to Dismiss.”

After you file your memorandum in opposition to the motion to dismiss, the defendant will have an opportunity to file a reply memorandum. At that point, the briefing is finished, and you are prohibited from submitting additional briefs unless you first obtain permission from the Court (which is known as “leave of Court”). In some cases, the Court will ask to hear oral argument regarding a motion to dismiss. Usually, however, the Court will rule on a motion to dismiss without hearing oral arguments.

If the motion is denied, your case will proceed, and the defendant must file his/her answer within **14 days** after the Court’s ruling. If the motion is granted, some or all of your claims may be dismissed by the Court. If all of your claims are dismissed, your case is over. You then have the option of filing an appeal challenging the dismissal, which is explained more fully below in Section III.K.

3. Defendant Files Nothing: If the defendant does not file anything within the deadline for filing a response, he or she is in “default.” You may request the Clerk to enter a default into the Court record. After a default is entered by the Clerk, you may file a motion for default judgment. Default judgment is a judgment awarding the Plaintiff the relief sought in the complaint because the Defendant failed to respond to the complaint or otherwise make an appearance in Court. See Fed. R. Civ. P. 55.

E. REQUIREMENTS FOR FILING DOCUMENTS

1. Format: Although the Court accepts handwritten motions and memoranda, Judges find it easier to read typed documents. If you file handwritten documents, please make sure they are legible. The Local Rules set forth other requirements: the document must be printed on 8 ½" x 11" paper; and the length of your memoranda must be 20 pages or less unless the Court first grants you permission to file a longer brief. Local Rule 5.1. Additionally, the filing must contain the caption of the case and a title describing the purpose of the filing.
2. Date and Signature: All documents filed with the Court must be dated and signed, with the name of the signer printed or typed under the signature line.
3. Certificate of Service: Each time you file something with the Court, you must make sure that the other side (either the Defendant's attorney, or if none, the defendant) receives a copy. See Fed. R. Civ. P. 5(d); Local Rule 5.2. Likewise, you will receive a copy of all documents filed by the other parties. In this Court, there is no need for you to mail a copy to a Defendant who is represented by an attorney because the attorney will receive electronic notification of your filing once your pleading is docketed by the Clerk's Office. Therefore, you only need to mail a copy of your filings to unrepresented parties.

There must be a "Certificate of Service" at the end of every document you file with the Court verifying that you have served the document on the other side. The Certificate of Service must contain: (1) the names of the individuals you are serving; (2) how the documents are being served (via electronic filing or by mail); (3) the mailing or delivery address, if service is done by mail or personal delivery; (4) the date you served the documents; and (5) your signature verifying service. There is an example of a Certificate of Service in Section X of this Guide.

F. DEADLINES FOR FILINGS

1. Filing Deadlines in Response to a Motion: If the opposing side files a motion against you, you must respond within **21 days** from the date set forth in the Certificate of Service attached to the motion. If the 21st day falls on a weekend or holiday, your deadline is automatically moved to the next work day. Failure to file a memorandum in opposition to a motion may be cause for the Court to grant the motion.

If you file a motion, and the opposing side files a memorandum in opposition, you have **14 days** from the date set forth in the Certificate of Service to file a reply memorandum.

After a reply memorandum is filed, the briefing is completed. You cannot file another document responding to the motion unless you ask the Court for permission, i.e., "leave of Court."

2. Additional Days for Mailing: Three days are automatically added to all deadlines when the document is served by mail. Fed. R. Civ. P. 6(d). **Your failure to timely respond to a motion may be cause for the Court to dismiss your case.**
3. Motions for Extension of Time: If you need more time to prepare and file a memorandum in opposition or reply memorandum, you may file a motion for an extension of time. In the motion, you must explain why an extension of time is necessary. Further, you must specify how much additional time is needed (*e.g.*, 1 week or 10 days).
4. Meeting Filing Deadlines for Non-Prisoners: For non-prisoners, the Clerk's Office must receive the filing on or before the stated deadline. You CANNOT meet the deadline merely by sending a document for filing on or before the stated deadline. Therefore, if you are worried about meeting a deadline, if possible, you should physically bring the document to the Clerk's Office for filing.
5. Meeting Filing Deadlines for Prisoners: There is a special rule for prisoners called the "prison mailbox rule": If you are a prisoner, you meet the filing deadline by mailing the document on or before the deadline. In other words, if the Court receives a prisoner's filing after the deadline, but the document was mailed *before* the deadline, the Court will consider it as being timely filed.

G. PRETRIAL STAGE

1. Changes in Address and/or Phone Number: At all times, the Court must have your current mailing address and phone number on record so that it can mail you Court documents and contact you to schedule Court proceedings, if necessary. Therefore, if your address or phone number changes, you must promptly notify the Court, in writing, of your new contact information. **If you fail to keep the Court informed of your current address/telephone number, your case may be dismissed for lack of prosecution.** Likewise, you must promptly notify the other side, in writing, of changes to your address and/or telephone number.
2. "Meet and Confer" with the Opposing Side: The Judge assigned to your case may order the parties to meet, either in person or by phone, to discuss the case and prepare a proposed schedule. On the other hand, the Court may order you to file your own proposed case schedule without meeting with the opposing side.

The Court may set a scheduling conference, which will likely occur over the telephone. The Court will then issue a Scheduling Order, which will set deadlines for filing certain motions and discovery and may also schedule a pretrial conference and trial dates.

H. DISCOVERY

1. General Information: Discovery is the process of getting information about the case, the identity of the witnesses, and copies of any relevant documents from the other parties. The purpose of discovery is to prepare for trial. Discovery does not begin until the Court issues a Scheduling Order in your case and ends upon the discovery deadline in the Scheduling Order. The parties generally conduct discovery on their own and do not involve the Court. To that end, the parties should try to resolve their discovery disputes by themselves. However, if the parties are unable to reach an agreement, the parties may contact the Court for help. The Court will sometimes schedule a status conference to discuss the discovery issues.

The most common forms of discovery are depositions, interrogatories, requests for production of documents, and requests for admissions. See the Glossary of Terms Section in Section IV of this Guide for definitions. You should review Federal Rules of Civil Procedure 26 through 37. You should also review Local Rules 26.1 through 37.1.

Most discovery requests are directed to the parties in the case, but under certain circumstances, discovery can be directed to non-parties. **Discovery requests and responses may not be filed with the Court unless they are used in the proceeding or the Court so orders.** See Fed. R. Civ. P. 5(d)(1); Local Rule 5.4.

2. Tips for Conducting Discovery:

- a. Be sure to make your discovery requests promptly so that the other party has enough time to answer or object before the discovery deadline;
- b. Respond to any discovery requests you receive. If you do not respond, you may be subject to Court sanctions, and eventually your case could be dismissed;
- c. Do not send copies of your discovery requests or responses to the Court unless the Court directs you to do so;
- d. When you are responding to a request for production of documents, you should keep the original documents for your records and send photo copies of the requested documents to the other side;
- e. Remember, there are certain documents and information that you must share with the opposing party in making your initial disclosures even if the opposing party has not requested them. See Fed. R. Civ. P. 26(a)(1); and
- f. You must comply with the Federal Rules, the Local Rules, and any specific discovery rules of the District Judge or Magistrate Judge assigned to your case.

I. KNOWING THE STATUS OF YOUR CASE

The Clerk's Office maintains an electronic docket of your case. The docket is a chronological summary of all filed documents and Court proceedings. You may review the docket on the public access terminals located outside the Clerk's Office. There is no cost for such a review. You may print copies of any record or document at the public

access terminal for \$0.10 per page. Additionally, you can obtain a paper copy of your docket from the Clerk's Office for \$0.50 per page.

Alternatively, if you have a personal computer and Internet access, you can register for the Court's automated PACER system and review your case docket directly on your computer. To register, you should visit the PACER website at <https://pacer.psc.uscourts.gov/pscof/regWizard.jsf>. Please note that you are billed at \$0.10 per page for viewing the documents on PACER. PACER users are not billed if their total is less than \$15.00 in any calendar year. There is also a maximum for any one document of \$3.00. The Government Printing Office website is a resource to get judicial opinions for free, from this and other courts.

Please note that the Clerk's Office staff does not know the reasons for a Judge's decision. Nor are they in a position to predict how or when the Judge will rule in a case. Further, they cannot give you legal advice or tell you which document you should file. However, the Clerk's Office staff may give you general information about Court rules, procedures and practices, and provide you with Court forms and instructions.

Additionally, you should know that you are prohibited from communicating with the Judge and his/her staff without the opposing side being present, and without the opposing side's knowledge and consent. This is referred to as "*ex parte* communication," and is prohibited. Telephone or personal contact with the Judge's personal staff should be limited to specific scheduling inquiries.

Any communication between you and the Judge should be in writing, and a copy of the communication shall be sent to the opposing side. If you would like the Court to take specific action, you should file a motion. (For motions related to disagreements about discovery, you must speak with the opposing side *before* filing a motion.) A motion should be supported by a summary of the law and relevant facts. You should be specific as possible about the order or action you would like the Court to take. If you would like to request oral argument on your motion, you must write "Oral Argument Requested" in the caption beneath the case number.

J. SUMMARY JUDGMENT

After the discovery process, you or the opposing party may file a motion for summary judgment which asks the Court to decide the case or a claim without proceeding to trial. The Court may grant the motion when there are no factual disputes between the parties, and the Court can decide the case or a claim as a matter of law. See Fed. R. Civ. P. 56.

All properly supported material facts in the motion are deemed admitted unless properly opposed by the opposing party. Therefore, in opposing a motion for summary judgment, it is not enough for you to merely deny the facts in the opposing party's summary judgment motion. Rather, you must present to the Court your own evidence—

such as affidavits, depositions, answers to interrogatories or others—that shows that the facts are in dispute.

If the Court grants the motion for summary judgment, your case is over. You can then decide whether you want to file an appeal.

If the Court denies the motion for summary judgment, your case will proceed to trial. You will receive additional instructions from the assigned Judge at that point.

K. APPEAL

If you lose your case, you can ask the United States Court of Appeals for the Sixth Circuit in Cincinnati to review this Court’s decision. Generally, the Sixth Circuit only reviews final, appealable Orders from this Court, not Orders entered by this Court while your case is still ongoing. The Sixth Circuit Court of Appeals will either affirm (agree with this Court), reverse (disagree with this Court), or remand the case back to this Court for further proceedings. This process is called an appeal.

A different set of rules control the procedures for appeals to the Sixth Circuit: the Federal Rules of Appellate Procedure (FRAP). Under FRAP 4, you must file a “Notice of Appeal” in **this** Court (the District Court) within **30 days** after the final order is entered (or within **60 days** if the Defendant is the United States, a United States agency, or a United States officer or employee sued in their official capacity). The form for a “Notice of Appeal” can be found on the Court’s website under the “*Pro Se* Litigants” tab, or from the Clerk’s Office. If you do not file a Notice of Appeal in time, your appeal may be dismissed.

The filing fee for an appeal is currently \$505.00. If you cannot afford to pay this filing fee, you may file a motion to proceed IFP in the Sixth Circuit. The form for a motion for IFP can be found on the Sixth Circuit’s website (www.ca6.uscourts.gov) under the “Forms” tab.

If you are not satisfied with the opinion of the Sixth Circuit Court of Appeals, you may ask for reconsideration by the panel of 3 appellate judges who heard your appeal (a motion for panel rehearing) or for consideration by the larger panel of Sixth Circuit Judges (a motion for rehearing *en banc*).

Finally, you may petition the Supreme Court of the United States in Washington, D.C. to accept the case for review. However, very few cases are taken for review. Once the U.S. Supreme Court has ruled on your case or denied your request for review, this is the end of your case.

IV. GLOSSARY OF TERMS

Admissible
Evidence:

The oral, written, or physical items of evidence that the Court allows to be introduced at trial to prove a case.

Admission/Request for Admission:	A discovery (information gathering) tool by which one party to the lawsuit asks another party to admit or deny the truth of certain important facts.
Affidavit:	A written statement of facts signed by the declarant (person giving the affidavit) under oath or affirmation in the presence of a notary public.
Answer:	A defendant's formal written response to a plaintiff's complaint that sets forth the defendant's response to the plaintiff's allegations and the grounds for the defendant's defense.
Appeal:	A request to a higher court to review the decision of a lower court.
Appellate Court:	A court that has the authority to review the decisions of lower courts when a party files an appeal. For example, the Sixth Circuit Court of Appeals is an appellate court.
Bench Trial:	A trial conducted before a judge and without a jury. In a bench trial, the judge decides both the issues of fact and law.
Brief:	A document used to submit a legal contention or argument to the Court that typically includes the important facts of the case, a statement of the questions of law involved, and the arguments and legal authorities relied upon. A brief is usually submitted in connection with an application, motion, trial, or appeal.
Causes of Action:	The facts and legal grounds that give rise to claims for relief against another party; they are stated in a complaint.

Certificate of Service:	A statement filed with the Court showing when you mailed copies of a document and to whom the copies were sent. The Certificate of Service appears at the end of a pleading or motion.
Civil Cover Sheet:	A form that asks questions about your case and is required when filing a new case. The Civil Cover Sheet form is available on our Court's website and in the Clerk's Office.
Claim for Relief:	The facts stated in a complaint upon which a party relies to ask the Court for relief.
Clerk of Court:	An officer appointed by the Court to oversee the Court's administration. The Clerk manages the processing of Court filings and keeps records of Court proceedings.
Complaint:	The pleading that starts a lawsuit. It is the first pleading filed with the Court. It contains a plaintiff's claims for relief, and must include (1) a statement of the Court's jurisdiction over the case and parties; (2) a statement of claims/causes of action against the defendant(s); and (3) request(s) for relief, such as monetary damages. Although you are not required to use a form, forms for filing a complaint are available on the Court's website and in the Clerk's Office.
Consolidation of Actions:	The Court's act of combining several cases for discovery or for trial when the actions involve the same parties and/or substantially the same issues and defenses.
Contempt of Court:	An act or failure to act that obstructs the administration of justice. A court has the power to punish this type of conduct with a fine and/or imprisonment.

Counsel:	A term used to refer to an attorney and lawyer.
Counterclaim:	A claim for relief/cause of action stated by the defendant(s) against the plaintiff(s) and is either contained in the defendant(s)' answer or in a separate pleading.
Court Reporter:	A person who records testimony at court proceedings or depositions. A transcript of the record is available to the parties upon payment of the court reporter's fee. (Some judges now record court proceedings electronically and without a Court Reporter. Transcripts are still available, however.)
Cross-claim:	Any claim for relief stated in a pleading by one party against a co-party. For example, one defendant may file a cross-claim against another defendant or one plaintiff may file against another plaintiff.
Damages:	Monetary compensation claimed by, or ordered by the Court to be paid to, a party as compensation for loss or injury.
Declarant:	One who has made a statement or declaration that the information contained in the statement is true.
Default Judgment:	A judgment entered against the defendant(s) for failure to file an Answer or otherwise respond to the plaintiff's complaint.
Defendant:	The party against whom a lawsuit is filed, i.e., the party sued in a complaint.
Defense:	A defendant's stated reason for why the plaintiff does not have a valid case or should not win.
Deposition:	Where one party (through a lawyer if represented) asks oral questions of the other party or a witness. The testimony is given under oath, recorded by a court reporter, and reduced to writing in preparation for trial. The deposition is typically not taken in open court, but in a lawyer's office. The plaintiff(s) and defendant(s) in a case are typically deposed.

Discovery:	The process of obtaining facts and information about the case from the other party in order to prepare for trial. Discovery may include interrogatories, requests for production of documents, requests for admissions, and depositions. The purposes of discovery are to (1) obtain and preserve information concerning the claims/causes of action, (2) clarify the factual and legal issues that are in dispute, and (3) obtain information that will lead to evidence admissible in court.
Dismissal:	An order disposing of a motion or lawsuit without going through trial.
Dispositive Motion:	A motion which, if granted, would end either part of a case or the whole case, such as a motion to dismiss or a motion for summary judgment.
District Judge:	A judicial officer in Federal District Court who is appointed for life by the President of the United States with confirmation by the United States Senate.
Diversity of Citizenship:	The basis of federal jurisdiction over cases between citizens of different states (such as when the plaintiff is from Ohio and the defendant is from Kentucky or Indiana), or between a citizen of a state and an alien (anyone who is not a citizen or national of the United States). Such jurisdiction exists only if the amount disputed by the parties is greater than an amount set by statute, which is currently \$75,000.
Docket:	A formal record containing brief entries of all Court proceedings.
<i>Et al.</i>	A Latin abbreviation that means “and others.”
<i>Ex Parte:</i>	A Latin phrase that means “from (by or for) one party” that refers to when one party to a lawsuit, or his/her attorney, communicates with the assigned Judge without the opposing side being present or without the knowledge and consent of the opposing side. Such contact with the Judge is prohibited.
Evidence:	Testimony, writings, or physical objects presented at the trial to prove or disprove a certain point or fact.

Expert/Opinion Witness:	A person who, by virtue of his/her education, training, and expertise is a specialist in a subject and who is asked to give an opinion in a trial or deposition. Expert/opinion witnesses usually are used to help the jury understand difficult and technical subjects with which the average person is not familiar.
Fact-Finder:	A person or a group of persons who determine the facts of a case. In a jury trial, the jurors are the fact-finders; in a bench trial, the Judge is the fact-finder.
Federal Courts:	The Courts of the United States, as distinguished from the courts of individual states. There are three levels of federal courts: the District Courts (such as this Court, the District Court for the Southern District of Ohio), the Courts of Appeal (such as the Sixth Circuit Court of Appeals in Cincinnati), and the Supreme Court in Washington, D.C.
Federal Question Jurisdiction:	The basis of federal jurisdiction over a case when the case involves the meaning or application of the Constitution of the United States (such as civil rights, violation of privacy, etc.), federal statutes (such as employment discrimination cases brought under Title VII of the Civil Rights Act of 1964), or treaties.
Federal Rules of Civil Procedure (Fed. R. Civ. P.):	A set of procedural rules governing all civil actions within the federal judicial system. In addition to this body of rules, each District Court usually has its own local rules.
Federal Rules of Evidence (Fed. R. Evid.):	A set of rules governing the introduction and use of evidence in federal civil and criminal actions.
Finding:	The decision reached by a Judge or jury on issues or facts.
Forum:	The site of the court in which a lawsuit was filed or in which a trial is conducted.
<i>In Forma Pauperis</i> (IFP):	A Latin phrase meaning “in the manner of a pauper.” <i>In Forma Pauperis</i> , or IFP, allows a poor person to sue without paying court fees. If a plaintiff is granted IFP status, he or she does not have to pay for filing and service fees, but still has to pay for photocopying fees.

Injunction:	A court order prohibiting a party from doing a particular act or requiring a party to perform a particular act. You must apply for the issuance of an injunction and show sufficient cause for it to be granted.
Interrogatories:	Interrogatories are a list of questions one party sends to another party as part of the discovery process. The recipient must answer the questions under oath.
John/Jane Doe:	A fictitious name used in legal proceedings before the real name is known. Unidentified corporations, partnerships, government entities, etc., may also be referred to in the complaint as “Doe Defendants.”
Joint and Several Liability:	Liability owed to a third party by two or more parties collectively or individually, regardless of a party’s individual share of responsibility.
Judge:	A public officer who presides over and administers the law in a court.
Judgment:	A court’s final determination of the rights and obligations of the parties in the case.
Jurisdiction:	The authority of a court to hear and determine a case. The authority of a Federal Court is found in the U.S. Constitution and the United States Code. Federal District Courts have jurisdiction over civil cases when: (1) a question of federal law is involved (federal question jurisdiction); (2) the United States is a party; or (3) the lawsuit is between people from different states, and the disputed amount is greater than an amount set by law, which is currently \$75,000 (diversity jurisdiction).
Jury:	A group of people selected and sworn to decide the merits of a lawsuit. A jury for civil trials consists of no fewer than 6 and no more than 12 members. Unless the parties otherwise agree, the verdict shall be unanimous.
Leave of Court:	When you request leave of Court, you ask the Court for permission to do something which is normally not allowed.

Magistrate Judge:	A judicial officer in the Federal District Courts who is appointed by the District Judges of the Court. A Magistrate Judge hears motions and other pretrial matters. With the consent of all parties, a Magistrate Judge has the authority to preside over the trial and enter final judgment.
Mediation:	An informal and confidential process to resolve a dispute in which a neutral third party (mediator) helps the parties reach an agreement. Any decision to enter into a settlement agreement is voluntary, and the parties do not lose their right to a trial if they do not reach an agreement. The mediator has no authority to make a decision or impose a settlement.
Motion:	An application made to the Court to obtain a ruling or order in favor of the moving party.
Party:	One who brings or defends against a lawsuit, typically either a plaintiff or a defendant.
Plaintiff:	The party who initiates a lawsuit by filing a complaint.
Pleading:	A written statement filed with the Court in which a party sets forth or responds to allegations, claims, denials, or defenses. The plaintiff's complaint and the defendant's answer are pleadings.
Preponderance of the Evidence:	The burden of proof in most civil cases, which is met when the greater weight of the evidence favors the one party's position over the others.
Pretrial Conference:	A meeting shortly before trial between the parties to a lawsuit, the attorneys appearing in the case, and the Magistrate Judge or a District Judge. During the conference, the Judge will discuss the requirements and expectations for trial. The Judge might also discuss other pertinent topics such as procedural matters, the trial schedule, or the possibility of settlement.

Privileged Information:	Information that is protected by law from disclosure during discovery or trial. For example, confidential communications between persons in certain relationships, such as between an attorney and client, doctor and patient, and priest and penitent, might involve privileged information.
<i>Pro Bono</i> Representation:	Legal representation by an attorney that is free to the person represented.
<i>Pro Se</i> :	A Latin term meaning “for oneself.” A <i>pro se</i> party is not represented by an attorney.
Production of Documents:	During discovery, a party may ask another party to provide copies of documents in its possession that pertain to the case. This request for documents is formally called a request for production of documents.
Protective Order:	A Court Order limiting discovery. With Court approval, the parties may enter into an agreed or stipulated Protective Order.
Relief:	A general term for the outcome or benefit that the party seeks in a case.
Remand:	To send back. For example, an appellate court, such as the U.S. Court of Appeals for the Sixth Circuit, may remand or send a case back to a U.S. District Court for further proceedings.
Removal:	The transfer of a case from state court to federal court. Removal might occur when the plaintiff files a complaint in state court that presents a basis for federal court jurisdiction.
Sanction:	A penalty or punishment (fine or imprisonment) the court may impose on a party who violates the court’s rules or Orders.
Sealed:	Documents filed in a case are sealed when the public does not have access to them. Unless permitted by statute, parties cannot file documents under seal without leave of Court.

Scheduling Conference:	A meeting or telephone conference involving the attorneys, unrepresented parties, and a Magistrate Judge or District Judge to discuss case scheduling or other case-management matters.
Service of Process:	The delivery of a document in accordance with Rule 5 of the Federal Rules of Civil Procedure.
Settlement Agreement:	An agreement between opposing parties that resolves part or all of a case. Informal negotiations between the parties or more formal mediation can result in a settlement agreement.
Standing:	The right of a party to bring a claim to the court.
Statute of Limitations:	A law that sets a time limit by which the plaintiff must file a complaint. If you file a complaint after the statute of limitations expires, your case may be dismissed.
Statutory Agent:	A person or a company with an Ohio addresses who is authorized to accept service on behalf of a company or organization.
Stipulation:	An agreement between opposing parties. A stipulation may involve facts or issues of law in a case.
Subpoena:	A court Order compelling a witness to appear and testify in court or at a deposition.
Subpoena <i>Duces Tecum</i> :	A type of subpoena issued by a court to require a witness to produce at a deposition or a trial certain documents, papers, or items relevant to the case and in the witness' possession or control.
Summary Judgment:	Judgment rendered by the court in response to a motion that resolves some or all claims in a case before trial. Summary judgment is granted when there is no genuine dispute about the important facts and the moving party is entitled to judgment in his/her favor as a matter of law.
Summons:	A document accompanying a complaint that notifies the defendant about a lawsuit. A Summons commands the Defendant to answer. Summons must be served on the defendant, along with the complaint, to start a lawsuit.

Testimony:	Statements made by a witness or a party under oath during trial, a Court hearing, or a deposition.
Trial:	An examination and determination before a court of the issues and facts between parties to a lawsuit.
U.S. District Courts:	Federal trial courts, which have the power to hear and determine cases involving federal laws and/or actions between citizens of different states.
Venue:	Generally refers to the geographical location where the trial takes place. In the federal courts, the term means the district in which the lawsuit is brought. To decide the proper venue for civil cases, the Court usually considers where the action happened or where the parties to the lawsuit live or do business.
Verdict:	The jury's final decision about the issues presented during trial. The Judge (rather than a jury) issues the verdict at the end of a bench trial.
Voir Dire:	Part of the jury-selection process when potential jurors are asked questions designed to reveal biases that would interfere with fair and impartial jury service. The attorneys/parties and the Judge may ask questions during Voir Dire.
With or Without Prejudice:	When a lawsuit is dismissed with prejudice, the same lawsuit cannot be brought to a court again. When a lawsuit is dismissed without prejudice the same lawsuit may be brought again.
Work Product:	Work done by an attorney in the process of preparing for trial. An attorney's work product is usually privileged information and not obtainable through discovery.

V. IMPORTANT DEADLINES IN YOUR CASE

- 1) A complaint must be served upon the Defendant(s) within **90 days** after filing. Fed. R. Civ. P. 4.
- 2) An answer to the complaint is due within **21 days** after being served with the complaint and summons; within **60 days** if service has been timely waived (Fed. R. Civ. P. 4(d)) or if the Defendant is the United States; and within **90 days** if the Defendant lives outside any judicial district of the United States. Fed. R. Civ. P. 12.

- 3) A party may amend its complaint once without Court permission within **21 days** after serving it, or, if the pleading is one to which a responsive pleading is required, **21 days** after service of a responsive pleading or **21 days** after service of a motion under Rule 12(b), (e) or (f), whichever is earlier. Fed. R. Civ. P. 15.
- 4) Unless a court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within **14 days** after service of the amended pleading, whichever is later. Fed. R. Civ. P. 15.
- 5) An answer to a counterclaim or a cross-claim must be within **21 days** after service. Fed. R. Civ. P. 12.
- 6) All papers, after the complaint is filed, which are required to be served upon a party must be filed with the Court, together with a certificate of service, within a reasonable time after service. Fed. R. Civ. P. 5.
- 7) A memorandum in opposition to a motion is due within **21 days** after service of the motion, and a reply memorandum is due **14 days** after service of opposition papers. (Add **3 days** if you were served by mail.) Oral hearings on motions generally are not held, but can be requested. Local Rule 7.2.
- 8) Objections to the Magistrate Judge's Report and Recommendation are due within **14 days** after the issuance of the Report and Recommendation. Fed. R. Civ. P. 72. (Add **3 days** if you were served by mail.)
- 9) A preliminary pretrial or scheduling conference with the Magistrate Judge or the District Judge, if any, usually takes place within **90 days** after service of your complaint on Defendant(s). The parties' proposed calendar and discovery plan must be submitted beforehand. During the conference, pretrial motions and settlement may be discussed.
- 10) Deadlines for certain motions, discovery, identification of witnesses, and selection of pretrial conference and trial dates are set forth in the Scheduling Order.
- 11) Discovery requests (Interrogatories, Requests for Production of Documents, and Requests for Admissions) are not filed with the Court until they are used in the proceeding or the court orders them filed. Fed. R. Civ. P. 5(d)(1).
- 12) Responses to discovery requests are due within **30 days** after service. Fed. R. Civ. P. 33, 34 and 36. Responses to discovery requests are not filed with the court until they are used in the proceeding or the court orders them filed. Fed. R. Civ. P. 5(d)(1).

- 13) A motion to amend the Court's judgment must be filed within **28 days** after the entry of judgment. Fed. R. Civ. P. 59(e).
- 14) A Notice of Appeal must be filed in **this** Court within **30 days** after the entry of final judgment or within **60 days** if the United States is a party. FRAP 4. (You are not granted the 3 additional days, referenced in Paragraph 15, to file a Notice of Appeal. The Notice of Appeal must be filed 30 or 60 days from the entry of final judgment.
- 15) A motion requesting an extension of time must be filed **prior to** the deadline sought to be extended. Fed. R. Civ. P. 6(b).

VI. DO's AND DON'T's

A. WHEN ENTERING A FEDERAL BUILDING OR FEDERAL COURTHOUSE

- 1) No weapons, contraband, or other illegal items are allowed;
- 2) You must show a photo ID; and
- 3) Dress properly (be neat and clean).

B. WHEN YOU GO TO THE CLERK'S OFFICE

- 1) Have your information/case organized;
- 2) Present all documents (including copies) to be filed in the Clerk's Office;
- 3) Be polite and listen carefully to the Clerk's Office staff;
- 4) The Clerk's Office is here to assist you, but the staff is not permitted to give you legal advice;
- 5) Follow the instructions of the Clerk's Office, and do not argue with the Court personnel; and
- 6) Have your fees ready for payment. You can pay by cash, check, cashier's check, money order, or credit card. **If paying by cash, you must have exact change.**

C. WHEN YOU ARE IN COURT

- 1) No gum chewing, no eating, no smoking, no drinking, no reading newspapers or magazines, no sleeping, and no loud talking in the courtroom;
- 2) When the Judge enters or leaves the courtroom, you must stand up;
- 3) Call the Judge “Your Honor,” and speak clearly when addressing the Court;
- 4) When talking to the Judge, you should stand, and be courteous and polite;
- 5) Be prepared and organized with your argument;
- 6) When addressing the Judge, make your point once, avoid repeating yourself, and stick to the issue(s) pending before the Court;
- 7) When the opposing party is addressing the Judge, be quiet and respectful in the courtroom;
- 8) Cameras or picture taking with any device, tape recorders and radios are prohibited in the courtroom; and
- 9) Cell phones must be turned off during court proceedings. Parties have been fined by Judges for their phone ringing in the courtroom during a proceeding.

VII. GUIDANCE FOR COMPLETING SERVICE OF PROCESS FORMS

A. Guidance for Completing AO 440 Summons in a Civil Action

If you are filing a suit in federal court, you will need to complete **Form AO 440 Summons in a Civil Action**, a service of process form, for each Defendant you are suing. **Form AO 440 Summons in a Civil Action** is available on the Court’s website and in the Clerk’s Office. Guidance for completing this form for lawsuits filed in the Southern District of Ohio is offered below:

- | | |
|---------|---|
| Block 1 | Southern District of Ohio. |
| Block 2 | Your name. |
| Block 3 | First named Defendant. If you are naming multiple Defendants, put the abbreviation “ <i>et al.</i> ,” which means “and others,” after the first Defendant’s name. |

NOTE – The areas for Blocks 2 and 3 are the title/caption of your case. This title/caption must appear on all documents you submit to the Court and does not change.

Block 4 The name and address of the Defendant that you are serving.

NOTE – You must complete a separate summons for *each* Defendant in your case.

Block 5 Your name and address.

The remainder of this form will be completed by the Clerk’s Office.

You are required to submit the original and 3 copies of the summons for *each* Defendant that you are serving.

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

UNITED STATES DISTRICT COURT

for the

Block 1

Block 2

Plaintiff

v.

Block 3

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Block 4

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:

Block 5

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: _____

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

B. Guidance for Completing USM-285 Process Receipt and Return (IFP ONLY)

If you are proceeding *in forma pauperis* (IFP) and seek service of process by the U.S. Marshal, you will need to complete **Form USM-285 Process Receipt and Return**. **Form USM-285 Process Receipt and Return** is available on the Court’s website and in the Clerk’s Office. Guidance for completing this form is offered below. Additional guidance concerning the number of copies you must submit is contained in the INSTRUCTIONS FOR SERVICE OF PROCESS BY U.S. MARSHAL, which is attached to the form.

Block 1 Your name.

Block 2 First named Defendant, if you are naming multiple Defendants, put the abbreviation “*et al.*,” which means “and others.”

NOTE – The areas for Blocks 2 and 3 are the title/caption of your case. This title/caption must appear on all documents you submit to the Court and does not change.

Block 3 The name of the Defendant that you are serving.

Block 4 The address of the Defendant that you are serving.

Block 5 Your name and address.

Block 6 Your signature.

Block 7 Indicate by marking an X in one of the boxes whether you are the plaintiff or defendant.

Block 8 Your telephone number. This is important because it enables the Court to contact you.

Block 9 The date you complete the form.

USM-285 is a 5-part form. Fill out the form and print 5 copies. Sign as needed and route as specified below.

U.S. Department of Justice
United States Marshals Service

PROCESS RECEIPT AND RETURN

See "Instructions for Service of Process by U.S. Marshal"

PLAINTIFF	Block 1	COURT CASE NUMBER
DEFENDANT	Block 2	TYPE OF PROCESS
SERVE AT	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN Block 3	
	ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) Block 4	
SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW		Number of process to be served with this Form 285
Block 5		Number of parties to be served in this case
		Check for service on U.S.A.
SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available for Service):		

Fold

Fold

Block 7

Signature of Attorney other Originator requesting service on behalf of:	☐ PLAINTIFF ☐ DEFENDANT	TELEPHONE NUMBER	DATE
Block 6		Block 8	Block 9

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY-- DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of process indicated. (Sign only for USM 285 if more than one USM 285 is submitted)	Total Process	District of Origin	District to Serve	Signature of Authorized USMS Deputy or Clerk	Date
		No. _____	No. _____		
I hereby certify and return that I ☐ have personally served, ☐ have legal evidence of service, ☐ have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above on the on the individual, company, corporation, etc. shown at the address inserted below.					
☐ I hereby certify and return that I am unable to locate the individual, company, corporation, etc. named above (See remarks below)					
Name and title of individual served (if not shown above)				☐ A person of suitable age and discretion then residing in defendant's usual place of abode	
Address (complete only different than shown above)				Date	Time ☐ am ☐ pm
				Signature of U.S. Marshal or Deputy	
Service Fee	Total Mileage Charges including endeavors	Forwarding Fee	Total Charges	Advance Deposits	Amount owed to U.S. Marshal* or (Amount of Refund*)
					\$0.00

REMARKS:

PRINT 5 COPIES:

1. CLERK OF THE COURT
2. USMS RECORD
3. NOTICE OF SERVICE
4. BILLING STATEMENT*: To be returned to the U.S. Marshal with payment, if any amount is owed. Please remit promptly payable to U.S. Marshal.
5. ACKNOWLEDGMENT OF RECEIPT

PRIOR EDITIONS MAY BE USED

Form USM-285
Rev. 12/15/80
Automated 01/00

INSTRUCTIONS FOR SERVICE OF PROCESS BY U.S. MARSHAL

Please type or print legibly, insuring readability of all copies. DO NOT DETACH ANY COPIES. Submit one complete set of this form (USM-285) and one copy of each writ for each individual, company, corporation, etc., to be served or property to be seized or condemned. The applicable fees for such service(s) (T28, USC Sec. 1921 establishes the fees for service of process by the U.S. Marshal) may be required prior to said service.

For service of any process upon an officer or agent of the United States Government, submit a copy of the writ and a set of Form USM-285 for each officer or agent upon whom service is desired. Submit three (3) additional copies of the writs for service upon the Government of the United States. The U.S. Marshal will serve one (1) upon the U.S. Attorney and will forward two (2) to the Attorney General of the United States. (When the applicable box is checked, completion of the final signature block by the U.S. Marshal or his Deputy always certifies service on the U.S. Attorney and the Attorney General, regardless of whether other defendants on the writ were served.) Failure to provide any of the copies will delay service of the writ.

Complete all entries above the double line. Mark all applicable check boxes and use the "Special Instructions" to advise of any information that will assist the U.S. Marshal in expediting service.

If more than one writ and USM-285 is submitted on a single case, the U.S. Marshal will receipt for all of them on the first USM-285. You will receive for your records the last (No. 5) "Acknowledgment of Receipt" copy for all the USM-285 forms you submit. When the writ is served, you will receive the No. 3 Notice of Service copy. This copy will be identical to the return to the Clerk of the Court.

Upon completion of all services (if the Marshals fees were not requested or tendered in advance or if additional fees are indicated), you will receive a "Billing Statement" (copy 4 of USM-285) from the United States Marshal. (NOTE: Copy 4 should be returned, by you, to the U.S. Marshal, together with your payment of the amount owed.

Additional supplies of the USM-285 may be obtained from the Clerk of the U.S. District Court or U.S. Marshal, without cost.

C. Guidance for Completing Service Forms AO398 and AO399

If you are paying the filing fee or have been denied *in forma pauperis* (IFP) status, you will need to complete (1) **Form AO 398 Notice of a Lawsuit and Request to Waive Service of a Summons**, and (2) **Form AO 399 Waiver of the Service of Summons**. These forms are available on the Court’s website and in the Clerk’s Office. Guidance for completing these forms is offered below.

1. AO 398 Notice of Lawsuit and Request to Waive Service of a Summons

Block 1 Southern District of Ohio.

Block 2 Your name.

Block 3 First named Defendant.

NOTE – The areas for Blocks 2 and 3 are the title/caption of your case. This title/caption must appear on all documents you submit to the Court and does not change.

Block 4 Case number, which will be supplied by the Clerk’s Office.

Block 5 Name of the Defendant.

NOTE: You must complete a separate form for *each* Defendant in your case.

Block 6 Addressee must be given at least 30 days (60 if located in foreign country) in which to return the waiver.

Block 7 Your signature.

Block 8 Your printed name.

Block 9 Your address (typed or printed).

Block 10 Your email address.

Block 11 Your telephone number. This is important because it enables the Court to contact you.

Block 12 The date.

UNITED STATES DISTRICT COURT

for the

Block 1

Block 2

Block 3

Plaintiff

v.

Defendant

Civil Action No.

Block 4

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

To:

Block 5

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

Block 6

Why are you getting this?

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

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

What happens next?

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

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

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

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

Date:

Block 12

Block 7

Signature of the attorney or unrepresented party

Block 8

Printed name

Block 9

Address

Block 10

E-mail address

Block 11

Telephone number

Print

Save As...

Reset

2. AO399 Waiver of Service of Summons

Block 1 Southern District of Ohio.

Block 2 Your name.

Block 3 First named Defendant.

NOTE: Blocks 2 and 3 represent the case caption. Your Name vs. Defendant, *et al.* (use *et al.* only if there is more than one Defendant)

Block 4 Case Number, which will be supplied by the Clerk's Office.

Block 5 Name of the Defendant.

NOTE: You must complete a separate form for each Defendant in your case.

Block 6 The date your notice is being sent.

Block 7 Your signature.

Block 8 Your printed name.

Block 9 Your address (typed or printed).

Block 10 Your email address.

Block 11 Your telephone number (very important).

Block 12 The date.

UNITED STATES DISTRICT COURT

for the

Block 1

Block 2

Plaintiff

v.

Block 3

Defendant

Civil Action No. Block 4

WAIVER OF THE SERVICE OF SUMMONS

To: Block 5

(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 Block 6, 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: Block 12

Block 7

Signature of the attorney or unrepresented party

Printed name of party waiving service of summons

Block 8

Printed name

Block 9

Address

Block 10

E-mail address

Block 11

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.

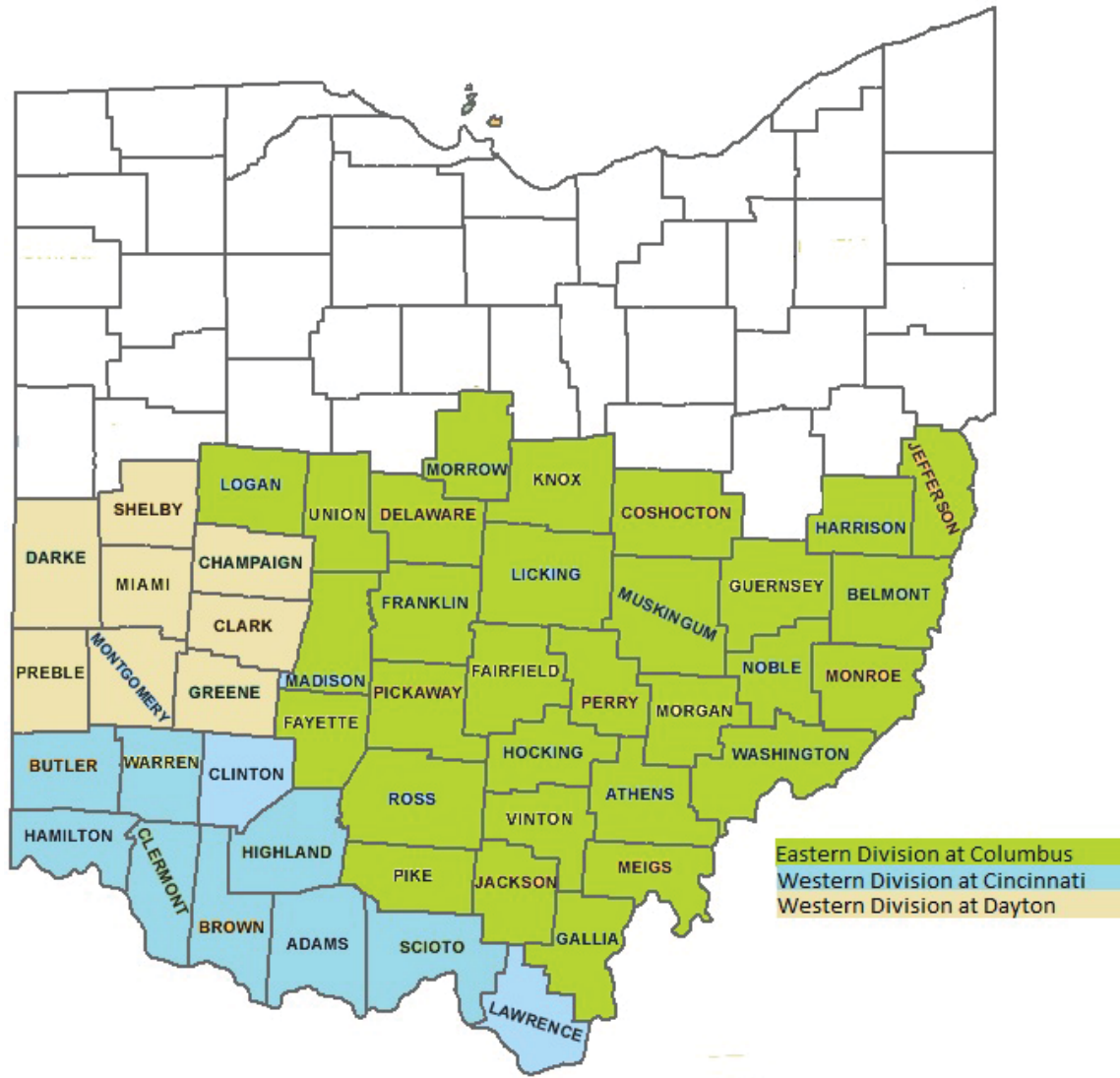
Print

Save As...

Reset

VIII. MAP OF OHIO

(Map can be found at: <http://www.ohsd.uscourts.gov/about-court>)



IX. PRIVACY WARNING

The United States District Court for the Southern District of Ohio provides for the following “Privacy Warning” to notify any litigant that the Clerk’s Office is not required to review filings for “personal identifiers.” Personal identifiers are such things as your Social Security Number, bank account numbers, date of birth, etc.

It is your responsibility to review your document and redact any information that should not be part of the public record. Remember, any document you file with the Court is a public document and can be viewed by not only parties to your lawsuit but anyone who chooses to go to the courthouse and look up your case on the Court’s public computer terminal.

The following is the privacy notice published by the Court and available from the Clerk’s Office:

Privacy Warning!

The Advisory Committee Note accompanying Federal Rule of Civil Procedure 5.2 states, “The clerk is not required to review documents filed with the court for compliance with this rule. The responsibility to redact filings rests with counsel and the party or non-party making the filing.”

When reviewing documents for electronic filing, be sure to review any attachments and/or exhibits for personal identifiers.

When you file a piece of paper with the Clerk’s Office, the Clerk’s Office will scan the document to make it electronic and file it in your case. Anyone with the ability to view electronic cases will be able to see your document. Make sure that you omit or “black out” parts of the below-listed identifiers so that individuals cannot see your entire personal information.

Personal identifiers include:

1. Social Security numbers
2. Financial account numbers
3. Dates of birth
4. Names of minor children
5. Home addresses (in criminal cases)

Only the last four digits of a Social Security number should be seen, for example, 123-45-6789 should be seen as XXX-XX-6789

Only the last four digits of a financial account number should be seen, for example, 12 3456789 10 11 should be seen as XX XXXXXXXX 10 11

Only the year of a date of birth should appear, for example, 1/23/45 should appear as X/XX/45

If a name of a minor child appears, John Doe, the name should be redacted to read, J.D. (Only the initials should be visible).

If a home address appears on a document in a criminal case, 1234 Main Street, Cincinnati, Ohio, the address should be redacted to read, Cincinnati, Ohio (only the city and state should be visible).

X. SAMPLE CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that on _____, 20__ (date), I mailed my _____ (name of pleading) to the Clerk of Courts for filing. Upon the Clerk's Office docketing of this pleading, notice of this filing will be sent through the Court's electronic filing system to all parties represented by attorneys who are registered users of the Court's electronic filing system as provided for in Fed.R.Civ.P. 5(b)(2)(E).

A copy of this pleading will be mailed, by ordinary United States Mail, postage pre-paid, to the following unrepresented party/parties this same day:

Party Name #1
Street Address
City, State Zip-Code

Party Name #2
Street Address
City, State Zip-Code

Your Signature
Your Printed Name
Pro Se Plaintiff

**XI.
Clerk's Offices
United States District Court
Southern District of Ohio**



Court's Website: <http://www.ohsd.uscourts.gov/>

Cincinnati:

U.S. District Court
Office of the Clerk
Potter Stewart US Courthouse
100 East Fifth Street, Room 103
Cincinnati, Ohio 45202
Telephone: (513) 564-7500

Columbus:

U.S. District Court
Office of the Clerk
Joseph P. Kinneary U.S. Courthouse
85 Marconi Boulevard, Room 121
Columbus, Ohio 43215
Telephone: (614) 719-3000

Dayton:

U.S. District Court
Office of the Clerk
Federal Building, Room 712
200 West Second Street
Dayton, Ohio 45402
Telephone: (937) 512-1400