UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

PRO SE CIVIL GUIDEBOOK

November 2025

This Guidebook is intended to be an informative and practical resource for understanding the basic procedures of the court. The statements in this Guidebook do not constitute legal advice. DO NOT CITE THIS GUIDEBOOK AS AUTHORITY. This Guidebook does not take the place of the Federal Rules, this District's Local Rules, or the individual practices of the judges of this court. All parties using this Guidebook remain responsible for complying with all applicable rules of procedure. If there is any conflict between this Guidebook and the applicable rules, the rules govern.

INTRODUCTION

This Guidebook is intended to help you understand the procedures you must follow if you represent yourself in this District. **This Guidebook, however, is not legal advice**. Furthermore, you cannot rely on this Guidebook alone, because it does not address every situation that might arise in your case, and it does not offer any information about the specific issues in your lawsuit.

The court encourages you to review this Guidebook together with the Federal Rules of Civil Procedure and the District of Minnesota's Local Rules, which are available online. A printed copy of the most recent version of the Local Rules may be obtained from the Clerk's Office by request.

This Guidebook is organized in the sequence that a lawsuit typically proceeds through the court and is written in a question-and-answer format. The Table of Contents below identifies each question that is addressed by this Guidebook.

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CHAPTER ONE: GENERAL INFORMATION

What is the Clerk's Office?

The Clerk's Office maintains the court's records. This is where you will file the documents that will be reviewed by the judge. The Clerk's Office cannot give you legal advice or tell you when a judge might make a decision in your case, but the Clerk's Office can tell you whether a particular document has been filed and can provide copies of documents in the court record at a cost of $.50 per page (payable in advance).

How do I contact the Clerk's Office?

You may contact the Clerk's Office at the following address and phone number:

United States District Court for the District of Minnesota
Clerk's Office
300 South Fourth Street, Suite 202
Minneapolis, MN 55415

(612) 664-5000

What does it mean to file documents with the Clerk's Office?

By filing a document with the Clerk's Office, you ensure that the document becomes part of the official record in your case. This record allows you and the other parties and the judges to be certain of what documents have been presented in a case.

Your complaint and any other documents you submit at the beginning of your case must be filed by mailing them to the Clerk's Office at the address provided above or by personally delivering them during business hours to the Clerk's Office at any of the District of Minnesota's four federal courthouses during business hours. After receiving

your documents, the Clerk's Office will record (or "docket") your papers and send them to the judge assigned to your case. The Clerk of Court will assign a case number upon opening any new proceeding. All documents that you later file in that case should be labeled clearly with that case number.

After the complaint has been filed, you may continue to file documents by mailing them or delivering them to the Clerk's Office. Or you may (if you prefer) request permission from the Clerk's Office to file documents in your case electronically. An application to file documents electronically can be found on the District of Minnesota's website; that application also contains information regarding the rules you must follow to file documents electronically. You must get permission to file electronically, but once you get permission, you must continue to file electronically unless you let the Clerk's Office know you no longer wish to do so. When you request permission to file documents electronically, you are also agreeing to **receive** electronically any documents that are filed by other parties or the court, so paper copies of those documents will no longer be sent to you.

Filing documents with the Clerk's Office is not always the same as **serving** documents on the other parties to the lawsuit. The requirements for serving a summons and complaint are found in Rule 4 of the Federal Rules of Civil Procedure. The requirements for serving other types of documents are found in Rule 5 of the Federal Rules of Civil Procedure.

What is a district judge?

Both a district judge and a magistrate judge are assigned to most cases. A federal district judge is a judicial officer appointed by the President under Article III of the United States Constitution. District judges are authorized to make any decision in your lawsuit. Some decisions, such as whether a claim or party should be dismissed, may be made only by the district judge unless all of the parties have consented to those decisions being made by a magistrate judge. Other decisions, such as those regarding scheduling and discovery, may be made by either the district judge or the magistrate judge.

What is a magistrate judge?

A magistrate judge has some, but not all, of the powers of a district judge. Magistrate judges may (among other things) set deadlines and enter orders on scheduling and discovery. Magistrate judges may also issue Reports and Recommendations on issues that will ultimately be decided by the district judge, such as whether claims or parties should be dismissed from the lawsuit. You may object to any order or to any portion of a Report and Recommendation entered by a magistrate judge in your case, and your objection will be reviewed by a district judge. Local Rules 72.1 and 72.2 and 28 U.S.C. § 636 explain more about the role of magistrate judges.

What does it mean that a party is "under oath" or that a document is "filed under oath"?

To be "under oath" means that you have promised that the statements you have made are true and complete to the best of your knowledge. Statements made under oath

may include written statements, such as those found in your answers to interrogatories or in an affidavit filed with the court; or oral statements, such as testimony offered in a deposition or at trial. The consequences for making knowingly false statements under oath are severe and may include dismissal of your case, monetary penalties, or criminal prosecution for perjury.

Can anyone see the documents filed in my lawsuit?

Usually, yes. With limited exceptions, members of the public have the right to see any documents filed in your action, and you have the right to see documents filed in any civil action.

If you believe that a document you want to file has sensitive information and that other people should not be able to see the document, you must request that the document be sealed. Local Rule 5.6 explains how you may request that a document be filed under seal. **You must follow Local Rule 5.6 if you want a document to be filed under seal.** However, even if a document is filed under seal, both the judge and the opposing parties in your case will be able to see the document.

A few particularly sensitive facts **must always be omitted** from any documents you file with the court. Under Rule 5.2 of the Federal Rules of Civil Procedure, you must identify children only by their initials, never by their names. If it is necessary to refer to a social security number, a taxpayer identification number, or a financial account number, you must use only the last four digits of that number. It is your responsibility to ensure this information cannot be found in a document filed with the court. In other words, filing

documents containing this information under seal is not sufficient to comply with Rule 5.2.

Can I use artificial intelligence to help me prepare documents?

You may use generative artificial intelligence services such as ChatGPT or Copilot to assist you in researching or preparing documents, but be aware that such tools often produce factually or legally inaccurate content. You are responsible for the accuracy and quality of legal documents that you submit to the court, regardless of whether those documents were prepared by or with the assistance of artificial intelligence, and you can be sanctioned for submitting inaccurate or frivolous information generated by or with the assistance of artificial intelligence. Those sanctions may include dismissal of your lawsuit, monetary sanctions, or restrictions on your ability to file new lawsuits in the District of Minnesota. Additional information about artificial intelligence may be found on the District of Minnesota's website.

CHAPTER TWO: STARTING YOUR LAWSUIT

What is a lawsuit?

A lawsuit (sometimes referred to as a civil action) is a proceeding brought by a person or a legal entity (such as a corporation or government) seeking relief against another person or legal entity. In most lawsuits, the person or entity bringing the lawsuit is called the "plaintiff," while the person or entity being sued is called the "defendant." By bringing a lawsuit, a plaintiff alleges that they have been harmed by the defendant's unlawful behavior. If the defendant is found by the court to have unlawfully harmed the plaintiff, then the defendant may be ordered to provide relief for that harm—for example, by paying monetary damages to the plaintiff or by stopping the activity that is harming the plaintiff.

How do I start a lawsuit?

A lawsuit typically begins by filing a complaint with the Clerk's Office. The complaint is a legal document in which you tell the judge and the defendant or defendants why you believe the defendant(s) have violated the law in a way that has injured you. More information about how to prepare a complaint is provided below.

Other types of cases, such as habeas corpus cases, begin with the filing of a petition with the Clerk's Office rather than the filing of a complaint. This Guidebook does not provide information about habeas litigation, but the court has prepared other Guidebooks on habeas corpus and post-conviction proceedings that may be found on the

District of Minnesota's website. Paper copies of these Guidebooks may be requested from the Clerk's Office.

How do I write a complaint?

Rule 8 of the Federal Rules of Civil Procedure requires that a complaint include three things: (1) a short and plain statement about why the federal court has jurisdiction over the lawsuit (more information about the meaning of "jurisdiction" is provided below); (2) a short and plain statement showing that the plaintiff is entitled to relief; and (3) a demand for the specific type of relief that the plaintiff is seeking.

In addition, a complaint should include the following: (1) a caption that clearly and specifically identifies each plaintiff and defendant; (2) a statement as to whether you would like the lawsuit to be tried before a jury, if the lawsuit goes to trial; (3) a statement about why the District of Minnesota (rather than a federal court located somewhere else) is the correct venue for the lawsuit; and (4) the signature of each plaintiff.

General complaint forms are available in the Clerk's Office and on the District of Minnesota's website to help you organize the information necessary for bringing your lawsuit. You do not have to use a complaint form, but the form may make writing a complaint easier for you.

What does "jurisdiction" mean?

If the law permits a court to hear a certain type of case, the court is said to have "subject matter jurisdiction" over that type of case. The court system in the United States consists of state courts and federal courts. The United States District Court for the District

of Minnesota is a federal court. Federal courts are authorized under the law to hear only certain types of cases. If the court does not have subject matter jurisdiction over your lawsuit, it cannot consider the merits of your lawsuit and it must dismiss the case.

The two most common types of lawsuits that federal courts are authorized to hear are those where:

- At least one of the plaintiff's claims arises under the Constitution, laws, or treaties of the United States (28 U.S.C. § 1331). This is often referred to as "federal question jurisdiction."

- None of the plaintiffs lives in the same state as any of the defendants, and the amount in controversy exceeds $75,000 (28 U.S.C. § 1332). This is often referred to as "diversity jurisdiction." "Amount in controversy" refers to the dollar value of what the plaintiff wants the court to award or do.

Your complaint must include a jurisdictional statement that explains why the court has subject matter jurisdiction over your lawsuit. For example, you might state that the court has federal question jurisdiction over your lawsuit because one of your claims arises under the Americans with Disabilities Act, a federal law. Failure to include a jurisdictional statement could result in dismissal of your complaint.

What is "venue"?

"Venue" means the place where the lawsuit is filed. Most lawsuits in federal court must be filed in a specific venue. Usually, the proper venue is either the court that is located in the district where the defendants live or the court that is located in the district where the defendants took the actions that you believe violated the law. A venue statement in a complaint explains why you believe the particular district—in this case,

the District of Minnesota—is the proper federal court for deciding your lawsuit. More information about proper venue may be found at 28 U.S.C. § 1391.

How much detail should I include in the complaint?

Rule 8(a)(2) of the Federal Rules of Civil Procedure states that a complaint needs to contain "a short and plain statement of the claim showing that the pleader is entitled to relief." You should include enough detail in your complaint that the judge and the defendants can understand what you believe happened and how you were harmed, and to plausibly show that you are entitled to relief from the defendants you have named. You do not need to state every bit of detail that you can remember, and you do not need to include all your evidence, but you must provide some description of how **each** defendant violated the law. Think of a complaint as you would a short story: the complaint should include enough detail that someone who has never read the story can understand what has happened, but not so much information that the reader does not understand what is important in the story and what is not.

You must include factual allegations to support your legal conclusions. Legal conclusions alone are not enough for your lawsuit to go forward. For example, "the defendant breached a contract with me" is a legal conclusion. "I sold the defendant my car and they never paid me what they agreed to pay" is a factual allegation. Wherever possible, present your story in terms of factual allegations, then state the legal basis for your claims (more on this below).

Some claims—fraud, for example—must be pleaded with more detail than the "short and plain statement" requirement of Rule 8(a). Under Rule 9(b) of the Federal Rules of Civil Procedure, a claim of fraud must be stated with "particularity," which means you must state the "who, what, when, where, and why" of your claim.

What is a "claim" (or a "count")?

A claim, also called a count, is an assertion in a complaint that a defendant or defendants violated a specific law. If you know the specific law that you believe the defendants violated, you should identify that law. If you believe the defendant violated the law but are not sure specifically which law was violated, you should describe as best you can the area of law upon which your complaint is based.

A complaint may contain multiple counts, but Rule 10(b) of the Federal Rules of Civil Procedure requires you to state each count separately. Usually, these statements appear later in the complaint, after you have explained who the parties are, why the court has jurisdiction, and the factual allegations that are the basis for your lawsuit, but before your request for relief.

What is a "request for relief"?

A "request for relief" is a statement of what you want the judge to order the defendant to do if you win your lawsuit. For example, you may request that you be awarded money or that the defendant be ordered to stop doing something that is unlawful. You may request more than one type of relief.

Why do I have to sign the complaint (and every other document in the lawsuit)?

Rule 11(a) of the Federal Rules of Civil Procedure requires that every document filed or served in a lawsuit be signed by the lawyer for the party that is filing the document or, if the party is not represented by a lawyer, signed by the party himself or herself. If the document is being filed on behalf of more than one unrepresented party, then each unrepresented party must sign the document. For example, if a complaint names two plaintiffs who are not represented by an attorney, then each plaintiff must sign the complaint. The same is true for any other documents that are filed with the court or served on the other side on behalf of both unrepresented plaintiffs. In other words, you cannot sign a document for another plaintiff, even if you have their permission to do so.

Your signature on the complaint represents that the statements included in the complaint are true to the best of your knowledge. Under Rule 11, you may be fined, or your case may be dismissed, if you are found to have included allegations that you knew or had reason to know were false.

What besides a complaint is needed to begin my lawsuit?

Along with your complaint, you **must** also submit a civil cover sheet and either the $405.00 filing fee or, if you cannot afford to pay that filing fee, an application to proceed *in forma pauperis*. (This document is sometimes called an "IFP application.") You also **may** submit other documents discussed in your complaint as exhibits to support the

allegations in your complaint. For example, if you allege that the defendant is in breach of a contract, you may wish to include a signed copy of the contract as an exhibit to the complaint. But you are not required to file your evidence when you file your complaint, and regardless, you should not attach copies of any documents that you do not discuss in your complaint.

What is a civil cover sheet?

The civil cover sheet is a form provided by the Clerk's Office that is used to gather information about the nature of your lawsuit. You must file a civil cover sheet when you begin a new lawsuit.

How can I pay the filing fee?

The District of Minnesota charges a $405.00 filing fee to begin a new lawsuit. The court will accept payment by check, VISA, MasterCard, Discover, or American Express. Checks should be made payable to the "Clerk of Court."

What if I cannot afford the fee for filing a new complaint?

If you cannot afford the $405.00 filing fee, you must file an *in forma pauperis* application. By completing an *in forma pauperis* application, you represent to the court that payment of the filing fee would either be impossible or would amount to a substantial hardship. If the court agrees that you are unable to pay the filing fee, you will be excused from that requirement, unless you are a prisoner.

Prisoners who are unable to afford the $405.00 filing fee may also apply for *in forma pauperis* status but cannot be excused from paying the filing fee entirely. Instead, a prisoner who qualifies financially for *in forma pauperis* status must still pay $350.00. This is paid in installments over time, with the first of those installments due at the beginning of the case. The amount of that initial payment is calculated under 28 U.S.C. § 1915(b) based on the average deposits to and balance of the prisoner's facility trust account for the six months preceding the filing of the lawsuit. For the remaining installments, prison or jail officials will be directed to withdraw money from the prisoner's facility trust account and send that money to the court as funds become available. The court cannot waive this obligation.

A prisoner who has filed three or more lawsuits or appeals that were dismissed on the grounds that they were frivolous, malicious, or failed to state a claim upon which relief may be granted may not proceed *in forma pauperis* unless the prisoner can show that they are under imminent danger of serious physical injury. A prisoner ineligible to proceed *in forma pauperis* must pay the entire $405.00 filing fee before their lawsuit may proceed.

Finally, *in forma pauperis* status does not excuse a litigant (whether a prisoner or non-prisoner) from many other costs of litigation, such as court reporter costs.

How will I find out what judge has been assigned to my case?

When you file your complaint, the Clerk's Office will assign a file number to the case. The file number will include the initials of the district judge and magistrate judge

who have been assigned to handle it. In addition, you will receive a document that gives you the names of the assigned judges. Under some circumstances (such as where there is a conflict of interest, another related case on the docket, or a retirement), a different judge or judges may be substituted at some point in the case. If that happens, you will receive a notice telling you who the new judge is.

Can I change my complaint after I file it?

Yes. Changing a document that has already been filed with the court is known as "amending" the document. If you wish to add new factual allegations, claims, or defendants, you must amend your complaint. The process to amend complaints is governed by Rule 15 of the Federal Rules of Civil Procedure and by Local Rule 15.1. In most situations, a plaintiff must first ask the court for permission to amend their complaint by filing a motion. A copy of the proposed amended complaint must always be filed with a motion to amend. The proposed amended complaint should not include just the changed or additional information, but instead must "stand on its own" and include every factual allegation and claim that the plaintiff intends to litigate. If permission is granted, the proposed amended complaint will entirely replace the original complaint.

What do I do after I file my complaint?

If you have paid the filing fee for your lawsuit, you will next have to serve a copy of the complaint along with a "summons" on each defendant. A summons is a document informing a party that a lawsuit has been filed against them and that they must respond

to the allegations and claims in the complaint. The rules for serving the summons and complaint can be found in Rule 4 of the Federal Rules of Civil Procedure.

If you are proceeding *in forma pauperis*, officers of the court will serve your summons and complaint for you. You will be asked to supply information regarding where the defendants are located so that the complaint and summons can be served.

May the defendant be asked to waive service of the summons and complaint?

Defendants may sometimes be asked if they will "waive"—that is, not require—formal service of the summons and complaint and will instead agree to receive the documents by mail. Under Rule 4 of the Federal Rules of Civil Procedure, you can ask for a waiver of service from any defendant **except**:

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

Rule 4(d) of the Federal Rules of Civil Procedure explains how to seek waiver of service. Waiver forms may be requested from the Clerk's Office or found on the District of Minnesota's website. In general, waiver of service is less costly and less burdensome than formal service for all parties and should be sought wherever possible.

What happens if the defendant declines to waive service?

If a defendant does not sign and return the waiver-of-service form, then the plaintiff will need to follow the rules for formal service set out in Rule 4 of the Federal Rules of Civil Procedure. But if the defendant who declined to accept service by mail is located in the United States, then the plaintiff may ask the judge to order the defendant to pay for the costs of serving the summons and complaint. Refer to Rule 4(d)(2) of the Federal Rules of Civil Procedure for more information.

How do I serve the summons and complaint?

Rule 4 of the Federal Rules of Civil Procedure governs service of the summons and complaint. Rule 4 can be complicated but must be followed carefully. The defendant may insist that the summons and complaint be served correctly before the lawsuit may proceed.

The easiest way to serve a complaint is to hire a professional process server. If you do not want to or cannot afford to hire a process server, you can also ask a friend, family member, or any other person over 18 years old to personally serve the summons and complaint for you. **You may not deliver the summons and complaint yourself.**

Rule 4 sets out different service requirements for different kinds of defendants. For example, the requirements for serving a person can be found in Rule 4(e); the requirements for business entities in Rule 4(h); the requirements for federal governmental entities and employees in Rule 4(i); and the requirements for state and

municipal governmental entities and employees in Rule 4(j). Each defendant must be served in the manner that Rule 4 requires for that particular type of defendant.

A plaintiff appealing the denial of a claim for benefits by the Social Security Administration does not need to carry out formal service of process. The government will be automatically notified of the lawsuit when it is filed, and no further service is necessary.

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

Rule 4(m) of the Federal Rules of Civil Procedure requires you to serve each defendant or obtain a waiver of service within 90 days after the complaint is filed in the Clerk's Office. If you do not meet that deadline and you do not show the judge that you had a good reason for not serving a defendant by the deadline, the judge may dismiss all claims against any defendant who was not served.

How can I make sure that I know about everything that happens in my lawsuit?

The court maintains a summary record of every document filed in every case. This is called the "docket." Although every document that is filed in a lawsuit must be served on all of the parties, sometimes mistakes are made, or documents get lost in the mail. For this reason, you should keep a copy of everything you file and everything you receive from the court or the other parties. In addition, it is a good idea to check the docket regularly to make sure that (1) every document you have filed has been entered on the docket; (2) you have received copies of every document that everyone else has filed; and

(3) you are aware of every order that the court has issued. To see the docket, you must either visit the Clerk's Office and use the public computer terminals, or use PACER, which stands for "Public Access to Court Electronic Records." Anyone can obtain a PACER login and password, but in most circumstances, PACER charges 10 cents for every page you download. If you have been granted permission to file electronically, you will receive email notification and electronic access to each new document or entry filed on the docket, but you should download it when you access it for the first time, as in most instances you will be required to pay the PACER charges for any additional accesses. Note that if you receive email notification and electronic access to a document, any deadlines for responding to or complying with that document begin to run the day the notification is sent, even if you do not look at it immediately. If you are not filing electronically or do not have a PACER account, you can call or visit the Clerk's Office for information about the docket in your case.

If you have a question about the schedule for a hearing or court conference, you should call the specific judge's chambers. Contact information for each judge's chambers may be found on the District of Minnesota's website. Otherwise, calls and emails to the judge's chambers are strongly discouraged unless the judge has specifically given permission for or requested such communications. There are three reasons for this. First, calls and emails are not part of the official file. Second, neither the judge nor the judge's staff is allowed to give you legal advice. Third, neither the judge nor the judge's staff is allowed to talk with you about the merits of your case outside of the presence of the other side, except in connection with a mediated settlement conference.

CHAPTER THREE: ANSWERS, MOTIONS TO DISMISS, AND COUNTERCLAIMS

What happens after the summons and complaint are served?

After the summons and complaint have been properly served on the defendant, the defendant must respond to the complaint. That response may take one or more of several forms (this is not an exhaustive list):

- An **answer**, in which the defendant responds to each of the allegations and claims raised in the complaint.
- A **motion to dismiss**, in which the defendant argues the lawsuit should not proceed for one or more reasons—for example, the federal court does not have jurisdiction or the complaint does not show that the plaintiff is entitled to relief.
- A **motion for a more definite statement**, in which the defendant argues the complaint has too little information upon which to respond.
- A **counterclaim**, in which the defendant raises its own claims for relief against the plaintiff.

How long does the defendant have to respond to the complaint?

A defendant generally must respond to the complaint within 21 days after they have been properly served with the complaint. A defendant who has waived service of process, however, is entitled to 60 days in which to respond to the complaint. Federal governmental defendants are also entitled to 60 days in which to respond. Other response deadlines may be found in Rule 12 of the Federal Rules of Civil Procedure.

The time limits for responding to an amended complaint are different. Under Rule 15(a)(3) of the Federal Rules of Civil Procedure, a defendant must serve a response to an amended complaint within the time remaining to respond to the original complaint,

or within 14 days after being served with the amended complaint, whichever period is longer.

The court may alter these deadlines upon request of a party or wherever the court may feel an adjustment to be appropriate. Read carefully any orders entered by the court for amended deadlines.

What happens if the defendant does not respond to the complaint?

If the plaintiff has properly served the defendant with the complaint and the defendant does not timely respond, the defendant is considered to be in "default." The plaintiff is then entitled to ask the court for a default judgment against the defendant. That default judgment may order the defendant to provide relief to the plaintiff, such as monetary damages, just as if the claims in the complaint had been fully litigated and the plaintiff had succeeded at trial.

Rule 55 of the Federal Rules of Civil Procedure discusses the rules for obtaining a default judgment. First, you must file a request for entry of default with the Clerk of Court. The request for entry of default must include proof that the defendant has been properly served with the complaint and show when that service occurred. If the request for entry of default shows that the defendant has been properly served with the summons and complaint and has not filed a written response to the complaint within the required time, the Clerk will enter default against the defendant. Under Rule 55(c) of the Federal Rules of Civil Procedure, once the Clerk enters default, the defendant is not permitted to respond to the complaint without first filing a motion to set aside the default.

After the Clerk has entered default against the defendant, the plaintiff must still file a motion for default judgment against the defendant in order to obtain relief. Rule 55(b) explains how to obtain a default judgment. With the motion, the plaintiff must file an affidavit proving the amount of damages suffered and requested in the complaint. Under Rule 54(c) of the Federal Rules of Civil Procedure, the court cannot enter a default judgment that awards more money than was asked for in the complaint. The court also cannot give any type of relief other than what was specifically asked for in the complaint.

Once default is entered, the defendant is considered to have admitted every fact stated in the complaint, except for the amount of damages. The defendant can still oppose a motion for default judgment, however, by attacking the complaint. For example, the defendant could argue that the facts stated in the complaint do not constitute a violation of any law. The defendant may also oppose a motion for default judgment by presenting evidence that the plaintiff did not suffer the amount of damages that she asked the court to award.

Special rules apply if the plaintiff is seeking a default judgment against any of the following parties:

- A minor or incompetent person (see Rule 55(b));
- The United States government or its officers or agencies (see Rule 55(d));
- A foreign country (see 28 U.S.C. § 1608(e)); and
- Servicemen or women (see United States Code, 50 Appendix U.S.C. § 521).

Under Rule 55(c), the court may set aside an entry of default for good cause, or may set aside a default judgment for any of the grounds for relief from a final judgment provided in Rule 60(b) of the Federal Rules of Civil Procedure.

What is an answer to the complaint?

An answer is a formal response to each allegation in the complaint. It is customary to write the answer in the same numbered paragraph style as the complaint. For example, paragraph one of the answer should respond only to paragraph one of the complaint, paragraph two of the answer should respond only to paragraph two of the complaint, and so forth.

Rule 8(b) of the Federal Rules of Civil Procedure requires the defendant to admit or deny each statement in the complaint. If the defendant does not have enough information to determine whether the statement is true or false, the defendant must state that they do not have enough information to admit or deny that statement. If only part of a statement in the complaint is true, the defendant must admit that part and deny the rest. Generally, under Rule 8(b)(6), a defendant is considered to have admitted every statement that they do not specifically deny, except for the amount of damages.

Rules 8(c) and 12(b) of the Federal Rules of Civil Procedure require the defendant to also state all affirmative defenses they may have to the plaintiff's claims. Each defense should be listed in a separate paragraph at the end of the answer. Generally, if a defendant does not state an affirmative defense in the answer, the defendant may not rely on that defense or try to present evidence about that defense later in the lawsuit. Because

failing to list a defense in an answer could have dramatic consequences, great care should be exercised in preparing an answer.

Each defendant must sign their answer (or have their lawyer sign their answer), and the answer must be served upon all other parties in the lawsuit. If there are multiple defendants, they may file one joint answer or each may respond to the complaint separately.

Does the plaintiff have to respond to the answer after it is filed?

The plaintiff should not file a reply to the defendant's answer unless directed to do so by the judge. Under Rule 8(b)(6) of the Federal Rules of Civil Procedure, all statements in an answer are automatically denied by the other parties to the lawsuit. If the defendant files a counterclaim, however, the plaintiff should file an answer to the counterclaim or a motion to dismiss the counterclaim. More information on counterclaims is provided below.

Can the defendant amend the answer after filing it?

Yes, although as with amended complaints, a defendant must usually first request permission of the court before filing an amended answer. Refer to Rule 15(a) of the Federal Rules of Civil Procedure and Local Rule 15.1 for more details.

What is a counterclaim?

A counterclaim is a claim brought by the defendant against the plaintiff. Rule 13 of the Federal Rules of Civil Procedure explains some of the requirements for filing

counterclaims. A counterclaim should not be mixed into the statements and defenses of the answer, but may be included as a separate section at the end of the defendant's answer or may be filed as a separate document.

What are the requirements for counterclaims?

There are two types of counterclaims under Rule 13 of the Federal Rules of Civil Procedure: compulsory counterclaims and permissive counterclaims. A compulsory counterclaim is a claim by a defendant against a plaintiff that is based on the same events or transactions as the plaintiff's claim against the defendant. A defendant **must** file a compulsory counterclaim at the same time his answer is filed or risk losing the ability to ever sue the plaintiff for that claim. (Some exceptions to that general requirement are listed in Rule 13(a)).

A permissive counterclaim is a claim by a defendant against a plaintiff that is not based on the same events or transactions as the plaintiff's claim against the defendant. For example, if the plaintiff sues the defendant for breaching a contract, the defendant's claim that the plaintiff breached the same contract is a compulsory counterclaim. By contrast, the defendant's claim that the plaintiff owes him money due to an unrelated car accident that occurred six months after the alleged breach of contract would be a permissive counterclaim.

If the defendant wants to file a permissive counterclaim, the defendant should file it as early as possible in the lawsuit, but there is no rule requiring that it be filed at the

same time as the answer. By not filing a permissive counterclaim, the defendant does not lose the ability to sue the plaintiff for that claim in a separate action at another time.

The court has subject matter jurisdiction over a compulsory counterclaim if the court has subject matter jurisdiction over the plaintiff's claim against the defendant. But the court can only decide a permissive counterclaim if there is an independent basis for the court's subject matter jurisdiction over the permissive counterclaim. This means that the defendant can bring a permissive counterclaim only if the court would have subject matter jurisdiction over that claim if it were brought as a separate lawsuit.

Counterclaims should be written using the same format used to write a complaint. All the rules that apply to writing a complaint also apply to writing a counterclaim.

If a counterclaim is filed, does the plaintiff have to respond to it?

Yes. Because a counterclaim acts as a complaint against the plaintiff, the plaintiff must file and serve a written response to it. Rule 12(a)(1)(B) of the Federal Rules of Civil Procedure requires the plaintiff to file and serve an answer to a counterclaim within 21 days after being served with the counterclaim. Alternatively, the plaintiff may file and serve a motion challenging some aspect of the counterclaim, such as a motion to dismiss the counterclaim pursuant to Rule 12(b) of the Federal Rules of Civil Procedure.

What is a motion to dismiss?

In a motion to dismiss, the moving party argues that there are legal problems with the substance of the complaint (or counterclaim), or with the way it was filed or served, and that because of those problems, some or all of the case should not be allowed to move

forward. A motion to dismiss may seek to dismiss the entire complaint or counterclaim, or only some of the claims or counts.

Rule 12(b) of the Federal Rules of Civil Procedure lists the grounds that can be raised in a motion to dismiss. These are the most common:

- **Motion to dismiss for lack of subject matter jurisdiction.** The moving party argues the court does not have the legal authority to hear the kind of lawsuit that the plaintiff filed.

- **Motion to dismiss for lack of personal jurisdiction over the defendant.** The defendant argues they have so little connection with the district in which this case was filed that the court has no legal authority to hear the claims against him.

- **Motion to dismiss for improper venue.** The defendant argues the lawsuit was filed in the wrong place.

- **Motion to dismiss for insufficiency of service of process.** The defendant argues the plaintiff did not properly serve the summons and complaint on the moving party.

- **Motion to dismiss for failure to state a claim.** The moving party argues that even if everything stated in the complaint or counterclaim is true, it still does not establish that the moving party violated the law. This type of motion is not based on an argument about the truth or accuracy of the facts alleged in the complaint or counterclaim, but only on the sufficiency of those alleged facts to support the claim for relief.

Should I respond to a motion to dismiss?

Yes. If you do not, your claims may be dismissed. In your response, you should explain why your complaint should not be dismissed. Requirements for responses and all other briefs filed with the court are set out in Local Rule 7.1.

What happens after the judge decides the motion to dismiss?

If the motion to dismiss is granted, the judge can grant the motion "without prejudice" or "with prejudice." If the judge grants a motion to dismiss without prejudice, it means there is a legal problem with the complaint or counterclaim, but the claimant (the person who filed the complaint or the counterclaim) may be able to fix that problem in a different lawsuit. If the judge grants the motion to dismiss with prejudice, it means there are legal problems with the complaint or counterclaim that cannot be fixed. Any claim that is dismissed with prejudice cannot be litigated again, either in that lawsuit or in any other lawsuit (unless the judge's decision is overturned on appeal).

If the judge denies a motion to dismiss, or dismisses only part of the complaint or counterclaim but leaves other claims in effect, the party who filed the motion must file and serve an answer within 14 days after receiving notice of the court's order, as provided by Rule 12(a)(4) of the Federal Rules of Civil Procedure,

What is a motion for a more definite statement?

Rule 12(e) of the Federal Rules of Civil Procedure permits a defendant to file and serve a motion for a more definite statement before filing an answer to the complaint. In a motion for a more definite statement, the defendant argues that the complaint is so vague, ambiguous, or confusing that the defendant cannot respond to it. The motion must contain an explanation of how the complaint is defective and ask for the details that are needed for the defendant to respond to the complaint.

If the court orders a more definite statement, the plaintiff must comply with the order by the deadline given by the court. If the plaintiff fails to provide a more definite statement as ordered, the court may choose to strike the complaint. If the plaintiff does comply with the order, then, under Rule 12(a)(4)(B) of the Federal Rules of Civil Procedure, the defendant must file and serve a written response to the complaint within 14 days after the defendant receives the more definite statement from the plaintiff. The defendant's written response may be an answer or another motion under Rule 12 of the Federal Rules of Civil Procedure. If the court denies the motion for a more definite statement, the defendant must file and serve a written response to the complaint within 14 days after receiving notice of the court's order.

CHAPTER FOUR: HOW MOTION PRACTICE AND HEARINGS ARE CONDUCTED

What is a motion?

A motion is a formal request made to the judge. A motion is usually filed with a memorandum of law (or "brief") explaining why you believe the request should be granted. The motion may also be supported by documents or other exhibits.

How is motion practice conducted?

You can file motions, briefs, and supporting documents in three ways: (1) bring the appropriate documents to the Clerk's Office to file in person; (2) mail the documents to the Clerk's Office for filing; or (3) file electronically on the court's electronic CM/ECF docketing system (if you have received permission to do so).

Usually, the following occurs when a motion is filed:

First, one party files a motion explaining what they want the judge to do and why the judge should do it. The motion must be filed with a memorandum of law (also called a "brief") that explains why the judge should grant the motion. The party who files a motion is referred to as the "moving party" or "movant."

Next, the party who opposes the motion—referred to as the "responding party" or "opposing party"—must file a response memorandum explaining why they believe the judge should not grant the motion. The responding party does not need to file a motion of their own.

Then, **for dispositive motions only**—that is, motions that ask for a claim or party to be dismissed from the litigation—the moving party may, but is not required to, file a reply memorandum in which they reply to the arguments made in the responding party's memorandum of law. A motion to dismiss and a motion for summary judgment are examples of dispositive motions. Local Rule 7.1(c)(6) lists other examples. After the reply is filed or the deadline for filing the reply has passed, neither party may file any more documents about the motion without first getting permission from the judge.

For **nondispositive motions**—for example, motions about discovery or scheduling—the moving party is not permitted to file a reply memorandum without first getting permission from the judge.

After the papers relating to the motion are filed, the judge can decide the motion based solely on the arguments in the papers or can hold a hearing. If the judge holds a hearing, each side will have an opportunity to talk to the judge about the arguments in their papers. The judge then has the option to announce her decision in the courtroom (a ruling from the bench), or to further consider the motion after the hearing (taking the motion under advisement). If the judge takes the motion under advisement, the parties will receive a written decision sometime after the hearing.

What are the requirements for motion papers?

Both the Federal Rules of Civil Procedure and the District of Minnesota's Local Rules provide requirements for filing motion papers. In addition to requiring most motions to be in writing, Rule 7(b)(2) of the Federal Rules of Civil Procedure states that

all of the court's rules about captions and the format of documents apply to motions and documents filed in support of motions. Rule 11 of the Federal Rules of Civil Procedure requires parties to sign their motions and supporting documents. Rule 11 also states that whenever a party submits a motion to the court, the party is certifying that there is a reasonable legal basis for the motion, that it is not being submitted for improper purposes, and that it is not based on factual contentions that the party knows are false or that the party did not fairly investigate. You should read Rule 11 before signing and filing any motion or other papers with the court.

Local Rule 7.1 gives a detailed set of requirements for serving, filing and responding to motions. Under Local Rule 7.1, motions are broken into two types: "nondispositive" motions and "dispositive" motions. Nondispositive motions are usually handled by the magistrate judge, and dispositive motions are usually handled by the district judge (although there are some exceptions).

Usually, a dispositive motion seeks to end the case or dismiss a claim. Typical dispositive motions include motions to dismiss and motions for summary judgment, although motions for injunctive relief and post-trial and post-judgment motions are also treated as dispositive motions under Local Rule 7.1.

Typical nondispositive motions include motions to compel discovery, motions to amend the case schedule, and most motions to amend pleadings. If after reviewing the local rules you are still not sure whether a motion is dispositive or nondispositive, or which judge it should be directed to, you may call the magistrate judge's or district judge's chambers to ask.

What do I have to do before filing a motion?

No matter what kind of motion you are planning to file, carefully read both Local Rule 7.1 **and** the scheduling order in your case before you proceed. Any of the deadlines and procedures established by Local Rule 7.1 may have been altered by the district judge or magistrate judge in your case. If so, this will usually be discussed in the scheduling order. If there appears to be a difference between the deadlines or procedures in the scheduling order and those in Local Rule 7.1, what is in the scheduling order will generally govern the case. But if you are uncertain, check with the chambers for the judge who will be handling the motion.

Before you may file any motion except a motion for summary judgment or a motion for a temporary restraining order, Local Rule 7.1(a) requires you to "meet and confer" with the opposing party and make a "good faith effort to resolve the issues raised by the motion." The meeting can be in person or it can be over the phone, but it must involve a live conversation with the other side, not just an exchange of letters or emails. If you give the opposing party a **reasonable** opportunity to meet with you about the issues and they refuse or are not available to meet before you file your motion, you can go ahead and file your motion, but you must then meet with the opposing party as soon as you can after the motion is filed. But waiting until the last minute and then calling or sending an email right before you file the motion is **not** giving them a reasonable opportunity to meet and confer with you, so be sure you plan ahead to allow time to arrange that meeting or phone call. The judge may deny your motion if you have not complied with the requirement to meet and confer.

Keep notes about any attempts you make to meet with the opposing party and keep notes about any agreements you make when you meet with the opposing party. You must file a "meet-and-confer statement" with your motion to show that you have complied with Local Rule 7.1(a), and those notes will help you prepare that statement.

After you have met and conferred (or attempted to meet and confer) with the opposing party, you must contact the applicable judge's chambers. If you are filing a nondispositive motion, you must contact the magistrate judge's chambers and ask for a hearing date before you file your motion. If you are filing a dispositive motion, you must contact the district judge's chambers. The district judge's chambers will instruct you when to file your motion and supporting documents and may give you a hearing date.

The parties may jointly request that a motion be decided without a hearing. A judge may also cancel a hearing and decide the motion on the written papers alone. But you should comply with the briefing deadlines you were previously given or calculate the filing deadlines under Local Rule 7.1 based on the hearing date you originally received, even if the hearing is canceled before your motion is filed.

Under Local Rule 7.3, you may request that a motion hearing be held remotely (for example, by telephone conference call or by Zoom) by (a) filing and serving a letter requesting a remote hearing, and (b) contacting the judge's chambers after the letter is filed to coordinate the request.

What is a notice of hearing?

A notice of hearing must be filed and served with every motion, even if no hearing is scheduled when the motion is filed. The notice of hearing informs all parties in the lawsuit what kind of motion is being filed, whether a hearing date is scheduled, and if so, the date and location of the hearing. A notice-of-hearing form is available on the District of Minnesota's website.

What are affidavits, declarations, and exhibits?

Affidavits, declarations, and exhibits provide evidentiary support for your motion. Affidavits and declarations are written statements made by a witness who swears to the truth of the statements. Either may be used to support a motion. They serve the same purpose and carry the same weight; the only difference is that the witness's signature on an affidavit is verified by a notary public, while the witness's signature on a declaration does not need to be notarized so long as the document includes a statement that the witness swears under penalty of perjury that the contents of the declaration are true to the best of his or her knowledge. Affidavits or declarations in support of a motion must be filed along with the motion.

Exhibits are documents or other materials that are relevant to your motion and that you want the court to consider in connection with your motion. In general, if you wish to file exhibits, you should number each of them and file them with an affidavit or declaration that identifies each exhibit, states what it is and where it came from, and that what you are filing is a true and correct copy of the original. However, in situations where

such explanation is not necessary or useful, you can file them with an index in the form of a title page that identifies each exhibit.

In your memorandum supporting your motion, you should refer specifically to your affidavits, declarations, and exhibits. You should explain what information is in them that is important to your position and where the court can find that information within the affidavit, declaration, or exhibit. You should not expect the court to search through your documents to find the information for itself.

Under Local Rule 7.1(l), you must not attach your affidavits, declarations, and exhibits to the motion itself if you are filing electronically; instead, the affidavits or declarations must be filed separately, although the exhibits may be attached to the affidavit or declaration that identifies them.

What is a meet-and-confer statement?

When you file certain kinds of motion, you must also file and serve a meet-and-confer statement. Under Local Rule 7.1(a), the statement must (1) certify that the moving party met and conferred, or reasonably attempted to meet and confer, with the opposing party; and (2) state whether the parties agree on the resolution of all or part of the motion and, if so, whether the agreed-upon resolution should be included in a court order. A meet-and-confer statement form is available on the District of Minnesota's website. Local Rule 7.1 sets forth the types of motions for which a meet-and-confer statement is required. More about the obligation to meet and confer is contained in the section above on "What do I have to do before filing a motion?"

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

The judge expects all parties to be diligent in the lawsuit, including meeting all deadlines. However, Rule 6(b) of the Federal Rules of Civil Procedure allows (but does not require) the judge to give a party extra time to respond to a motion if there is good reason.

If you wait until after the original deadline passes before asking for extra time, you must file a formal motion requesting that the deadline be extended, and you must show that excusable neglect caused you to miss the deadline. If you request additional time before the original deadline passes, you may either file a formal motion or make a more informal request, such as through a letter to the court. You should always inform the other party that you will be requesting additional time before making your request with the court.

How do I serve on the other side motions and other documents that I file with the court?

The following discussion applies only to documents that you file with the court **other than the summons and complaint**. This includes motions (or responses to motions) and related documents. Serving the summons and complaint is different, and is discussed above in the section titled "*How do I serve the summons and complaint?*" Serving discovery and responses to discovery is also different, as discussed in Chapter Five below.

Rule 5 of the Federal Rules of Civil Procedure establishes the rules for serving documents other than the original summons and complaint. Under Rule 5, if the other

party is represented by counsel or has been granted permission to file documents with the court electronically, then that party is served electronically when you file **unsealed** documents with the court and the Clerk's Office files them electronically. However, for documents filed under seal, or for any documents served on a party who is unrepresented and who has not been granted permission to file documents with the court electronically, you must serve them by one of the following methods:

- Handing it to the person;
- Leaving it at the person's office with a clerk or other person in charge, or if no one is in charge, by leaving it in a conspicuous place in the office;
- If the person has no office, or the office is closed, leaving it at the person's home with someone of suitable age and discretion who lives there;
- Mailing a copy to the person's last known address; or
- Delivering a copy by any other method that the person you are serving has consented to in writing (for example, parties will often agree to accept service by email).

If the person being served is represented by an attorney, then service of sealed documents must be made on the attorney rather than the person (unless the court orders specifically that service be made on the person rather than the attorney).

What is a hearing?

A hearing is a court proceeding in which the parties discuss issues with the judge and have their arguments on the important issues heard by the judge. Sometimes witnesses may testify or evidence may be presented, but that depends on the legal issues the judge is covering at the particular hearing.

How do I prepare for a hearing?

Before the hearing, take time to review all the papers that have been filed for the hearing. The judge will expect you to be able to answer questions about the issues that are being addressed at the hearing. Bring with you to court any papers that you might need to answer the judge's questions. If possible, find out in advance how much time the judge has set aside for the hearing and how much time each party will have to make their argument, so that you can take that into account when you plan what you will say. In addition, if the hearing will be in person, make sure you check where the hearing will be held (which courthouse and which courtroom), and allow plenty of time to get to the courthouse, park, get through courthouse security, and find your way to the courtroom before the hearing begins.

What does a courtroom look like?

Although each courtroom is different, the courtroom is generally arranged as follows:

- In the front of the courtroom is a large desk area where the judge sits. This area is called "the bench."
- In front of the judge and over to one side is a chair where witnesses sit when they testify. This area is called the "witness box."
- In front of the judge, there will often be a person seated in front of a small machine. This person is the court reporter. The court reporter uses the machine to create a record of everything that is said at the hearing. The judge may use a digital recorder instead of a court reporter to record the hearing.
- There will often be another person seated in front of the judge. This person is the courtroom deputy, who assists the judge. If you need to show a document to the

judge during a hearing, you should hand the document to the courtroom deputy, who will then hand it to the judge.

- There may be other court staff members seated off to the side.
- In the center of the courtroom in front of the bench is a stand with a microphone. This area is where lawyers and parties must stand when they speak to the judge.
- At one side of the courtroom, against the wall, there are two rows of chairs. This area is called the "jury box," where jurors sit during a trial. During a hearing, court staff members may be sitting in the jury box.
- In the center of the courtroom, there will be several long tables with several chairs around them. This area is where lawyers and the parties sit during a hearing and during trial. Some judges have rules regarding which party must sit at which table so you should check your judge's practice pointers or ask their courtroom deputy to find out if they do.
- In the back of the courtroom are several rows of benches where anyone can sit and watch the hearing or trial. Almost every court proceeding is open to the public.

How should I behave at a hearing?

When attending a hearing, it is customary to show respect for the court by dressing nicely, as if you were going to a job interview. The judge will expect you to be on time. It is much better to arrive at the hearing early than to arrive even a few minutes late. Allow yourself extra time to find a place to park, get through courthouse security, and find the correct courtroom.

Often the judge has several hearings scheduled around the same time. When you enter the courtroom, you should sit in the benches in the back of the courtroom until your case is announced. If your hearing is the only one, you may sit at one of the tables in the center of the courtroom instead of waiting at the back of the courtroom.

When the judge enters the courtroom, you must stand and remain standing until the judge gives you permission to sit down, which usually happens when the judge sits down. After your case is announced, the judge will likely invite each side to present their argument. When it is your turn, go to the stand with the microphone in front of the bench. You can bring with you any papers that you may need to refer to during the hearing. When you get to the stand, state your name, and indicate whether you are the plaintiff or the defendant. For example, "Good [morning or afternoon] Your Honor, my name is [your name] and I am the [plaintiff or defendant] in this case."

When you speak to the judge, it is customary to refer to the judge as "Your Honor" instead of using the judge's name. When the judge asks questions, answer the questions directly. Speak slowly and clearly, both so that the judge and the other side can understand what you are saying and so that an accurate record of the hearing can be made by the court reporter.

How does a motion hearing work?

Each judge will have their own practice regarding how hearings are conducted. That said, each party will usually be permitted an opportunity to explain why the motion should or should not be granted. During your explanation, you should assume the judge has read all the papers filed, and you should try not to repeat all the arguments that you made in your motion or opposition papers. Instead, simply highlight the most important parts. It is not appropriate to make new arguments that are not in the papers you filed

with the court, unless you have a very good reason why you could not have included the argument in your papers.

The judge may ask questions before you begin your argument and may also ask questions during or after your argument. If the judge asks a question, always stop, wait for the judge to finish asking the question, and answer the judge's question completely. When you are finished answering the question, you can go back and finish the other points you wanted to make.

When one party is speaking, the other party should sit at the table. Never interrupt the other party, even if you disagree with what they are saying. Instead, always wait your turn to speak. While waiting, you may take notes to help you respond to what the other party says.

Be aware that the judge will probably set a time limit for each side's argument. Sometimes the judge will allow some additional time, but when the judge says time is up and no more time will be allowed, you should stop talking and sit down.

How do I get a copy of the court reporter's transcript of a hearing?

If a court reporter was present at the hearing, then you may obtain a copy of the transcript by contacting the court reporter directly. You may contact the Clerk's Office or look at the minute entry of the hearing (the court's summary of the hearing) on the case docket to determine which court reporter attended the hearing and their contact information. If there was not a court reporter at the hearing, you may contact the judge's chambers and request that a transcript be made from the recording of the hearing.

You are responsible for paying for any hearing transcript that you request unless you are proceeding *in forma pauperis* **and** the court cannot review your case without access to the transcript. The rates for purchasing transcripts are established nationally and cannot be changed by the judge.

After a transcript is prepared by a court reporter, the court reporter must file it with Clerk's Office. Most transcripts are filed on the court's electronic case filing system, but access to that transcript is restricted for a period of 90 days under Local Rule 80.1, and only parties who have purchased a copy of the transcript from the court reporter will have access to the transcript during that period.

CHAPTER FIVE: DISCOVERY

The defendant has filed an answer—what happens next?

The magistrate judge assigned to your case will likely schedule an initial case management conference, also known as a "Rule 16 conference" (in reference to Rule 16 of the Federal Rules of Civil Procedure). A case management conference is a meeting at which the judge, with the help of the parties, sets a schedule for the case. Not all cases will have an initial case management conference, but if one is scheduled, it will usually be held a short time after the answer is filed. It may be held in person or by phone or remotely, depending on the judge's preference. At the conference, the magistrate judge will usually set a schedule for completing discovery (that is, exchanging information that could be used as evidence), deadlines for filing different types of motions, and a trial ready date. Additional conferences may be held as the case goes on to review the progress of the case and, if necessary, revise the schedule.

How should I prepare for the case management conference?

The magistrate judge will send out a notice setting the date for the initial case management conference. Pay close attention to the directions in the notice, because it will state what each party must do and send to the judge before the conference, and it will set deadlines for those tasks. In most cases, the notice will order the parties to meet with each other before the initial case management conference to discuss their views on the case schedule and discovery. This meeting is referred to as a "Rule 26(f) conference" because Rule 26(f) describes what the parties should discuss with each other. Rule 26(f) may be

found in the Federal Rules of Civil Procedure. The parties then prepare and file a joint report, sometimes called a "Rule 26(f) report," using a form prescribed by the judge in the notice of the initial case management conference.

Each party may also be asked to submit a letter describing the party's position on settlement of the case. Unlike the Rule 26(f) report, which would go to the court and all parties, the settlement position letter would typically be sent only to the magistrate judge and would remain confidential between the magistrate judge and that party.

After the initial case management conference, or at some early point in the case if there is no initial case management conference, the magistrate judge will issue a scheduling order. The order will not only set the various deadlines for managing your case but may also include limitations on the discovery that may be conducted in the case (more about discovery below). It will often also contain important information about the expectations and procedures of the specific judges assigned to the case. Thus, you should read the scheduling order very carefully when you receive it.

After the magistrate judge issues a scheduling order, the discovery schedule cannot be extended or modified without making a written motion and showing good cause for the extension. This procedure is described in Local Rule 16.3.

What are initial disclosures?

Rule 26(a) of the Federal Rules of Civil Procedure lists three types of "disclosures" that you must provide to the other parties at different times during the lawsuit, even if the other parties do not request the information. Those disclosures are (1) initial

disclosures; (2) expert disclosures; and (3) pretrial disclosures. Initial disclosures are discussed here. Information about expert disclosures and pretrial disclosures is provided later in this Guide.

In most cases, Rule 26(a)(1) requires each party to serve initial disclosures on the other parties within 14 days after the Rule 26(f) conference unless the parties agree to a different deadline or the court sets a different deadline in the scheduling order. Parties do not have to request initial disclosures from each other; the obligation to provide them is set by the rules. Initial disclosures are required in every case unless exempted by Rule 26 or otherwise ordered by the court.

Content: Unless your case falls within one of the categories listed in Rule 26(a)(1)(B), you must serve the following information on the other parties in your lawsuit:

- The name and, if known, the address and telephone number of each individual likely to have information that you may use to support your claims and defenses, unless that information will be used solely for impeachment. You also must identify the type of information that each individual has. "Information used solely for impeachment" is information that is used only to attack the believability or credibility of a witness, rather than information used to prove your position directly.

- A copy, or a description by category and location, of all documents or other things that you have in your possession or control that you may use to support your claims or defenses, unless they will be used solely for impeachment.

- If you are the plaintiff, you must provide a calculation of each category of damages you claim to have suffered. You also must make available to the other parties, for inspection and copying, all documents and other things that support your calculation, including documents and other things showing the nature and extent of your injuries. You do not, however, need to disclose documents and other things that are privileged or otherwise protected from disclosure.

- If you are the defendant, you must make available to the other parties for inspection and copying any insurance agreement that may apply to any award of damages in the lawsuit.

Form: Under Rule 26(a)(4) and (g) of the Federal Rules of Civil Procedure, the initial disclosures must be made in writing and be served on all of the other parties to the lawsuit. However, you do not file your initial disclosures with the Clerk's Office. They must be signed by you and must include your address. By signing the disclosures, you are certifying to the court that the disclosures are complete and correct as of the time you make them, to the best of your knowledge.

Additional requirements: Your initial disclosures must be based on the information that is reasonably available to you. You must serve your initial disclosures even if:

- You have not fully completed your investigation of the case;
- You think another party's initial disclosures are inadequate; or
- Another party has not made any initial disclosures.

Rule 26(e)(1) of the Federal Rules of Civil Procedure imposes on you a duty to supplement your initial disclosures if you learn that the information you disclosed is incomplete or incorrect, unless the additional information has otherwise been made known to the other parties during the discovery process or in writing.

What is discovery?

"Discovery" is the process by which parties request and exchange information—both favorable and unfavorable—about the facts and issues in their case before trial. The different ways to ask for and get this information are described below.

What is the scope of discovery?

Under Rule 26 of the Federal Rules of Civil Procedure, parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case. Something is "relevant" if it could make a fact that impacts the outcome of the action more or less likely to be true. Whether discovery is "proportional to the needs of the case" takes into account the importance of the issues at stake, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the likelihood that the discovery will resolve the issues, and whether the burden of the proposed discovery outweighs its likely benefit.

What are the most common types of discovery?

Here are the most common types of discovery tools used in litigation. Each one is described in more detail in the sections below.

"Depositions" are question-and-answer sessions conducted before trial where the witness is questioned under oath as if they were before a judge. The answers to those questions may be used as evidence later in the case. In general, a party can seek to depose any person or company that has relevant information about the case, including any other

party. However, special rules apply to taking the deposition of a person who is incarcerated. A company may be deposed through representatives who are familiar with the information and practices of the company.

"Interrogatories" are written questions served on another party to a lawsuit. Those questions must be answered in writing and under oath. The person answering the interrogatories is required to sign a verification to the truthfulness of the answers provided.

"Requests for production" are written requests for documents, electronically stored information, or tangible things that you think another party has in their possession that would provide information about the issues in the lawsuit. If that party has the requested documents, electronically stored information, or tangible thing in their possession, that party must produce the documents, electronically stored information, or tangible thing to you or provide a good reason why the documents, information, or thing cannot be provided.

"Requests for admissions" are statements of fact you request another party to admit are true. Admissions may help to clarify or narrow the aspects of the lawsuit that remain in dispute.

A mental examination is an examination of a person's mental condition by a mental health expert. A physical examination is an examination of a person's physical condition.

In general, you should not combine or mix these different types of discovery requests into a single document; rather, each type of discovery request should be in a

separate document. For example, if you serve interrogatories and requests for production of documents, the interrogatories should be in one document and the requests for production should be in a separate document.

Are there any limits to discovery?

Yes. As discussed above, any party may ask for another party to disclose any non-privileged matter that is both **relevant** to the claim or defense of any party to the lawsuit and **proportional** to the needs of the case. Importantly, this is not limited to just the information the party thinks will be favorable to their case; it also includes information that may weaken the party's position. However, a judge can limit the use of any discovery method if the judge finds that:

- The discovery exceeds limitations set by the Federal Rules, the local rules, or the court's orders, unless the judge concludes there is a good reason to relax those limitations;
- The discovery unreasonably seeks information that has already been provided or that is already available from some other source that is more convenient, less burdensome, or less expensive;
- The party seeking discovery has already had enough chances to get the information sought;
- The burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount of money the parties are fighting over, the parties' resources, the importance of the issues in the litigation, and the importance of the proposed discovery in resolving the issues; or
- The discovery was not requested within the deadlines set by the court's scheduling order.

Sometimes you might request information from another party and get a response that says it will not provide the information because it is "privileged." A privileged

matter is something—often a communication—that the law protects from disclosure because of the context in which the communication occurred or the purpose for which the document was created. Typical privileges include the lawyer-client privilege, the work product privilege (generally, material an attorney prepared in anticipation of litigation), or the doctor-patient privilege. A privileged document or communication does not need to be disclosed unless the judge orders otherwise.

A party from whom you have requested information might also say that it will not provide the information because it is considered private or confidential by law, or is covered by a confidentiality agreement. The topic of discovery into confidential information is discussed below.

In addition to certain categories of information that may be limited, there are some limits to how many requests for information you can make. These limits are discussed in the more detailed explanation of each method of discovery below.

When can discovery begin?

Rule 26(d) of the Federal Rules of Civil Procedure states that discovery cannot begin until the parties have had their initial pretrial conference, unless:

- Earlier discovery is allowed by another part of the Federal Rules of Civil Procedure;
- A judge issues an order that lets you take earlier discovery; or
- All parties agree that discovery can be taken earlier.

After discovery has begun, however, you should not delay in preparing the requests you want to serve on the other side. Discovery must be completed by the

deadline in the scheduling order, and you must allow the other side enough time to respond and produce the information you have requested before the deadline set by the judge for completion of discovery. And, if you want to be able to review documents and other written discovery responses from the other side before you take a deposition, for example, you will need to make sure that you have enough time to receive and review that information before the deposition. The judge may not be willing to give you additional time if you wait until close to the deadline to start your discovery and were not diligent in using the time allowed by the scheduling order.

If you think you will need additional time for discovery, do not wait until after the discovery completion deadline has passed before you ask the judge to consider giving the parties more time for discovery. Raise the issue as soon as you realize that the time allotted in the scheduling order will not be enough, and explain to the judge in your motion how you have used the time so far, why that time has not been adequate, what is left to be done, and how much more time you will need. See Local Rule 16.3.

Each party conducts discovery according to the same deadlines—that is, neither the plaintiff nor the defendant must wait for the other to complete the discovery process before they begin requesting information.

How do I serve discovery requests on the other side?

Interrogatories, requests for production, requests for admissions, and deposition notices, as well as responses and objections to those discovery requests, may be served

by any of the methods listed in Rule 5(b) of the Federal Rules of Civil Procedure or by any other method through which the parties have agreed to receive service.

Under Rule 26(g)(1) of the Federal Rules of Civil Procedure, you must sign all disclosures, discovery requests, and discovery responses, and provide your address, email address, and telephone number. When you sign these documents, you are affirming that to the best of your knowledge, the disclosures, requests, and responses are correct and consistent with the rules and are not being used for any improper purpose.

Do I file discovery requests or responses with the Clerk's Office?

You should not file discovery requests or responses with the Clerk's Office unless they are relevant to a motion that you or the other side has filed. In that situation, you should file the relevant requests or responses along with your motion or your response to the other side's motion.

Do I have to give the other side confidential information? What is a protective order?

During the discovery process, the parties ask each other for information that will assist them in preparing their case. Some of that information may be viewed as confidential or private by the party responding to the discovery request, but if the information is relevant, it may still have to be produced.

If a party anticipates that some of the information it will have to produce is confidential, it may propose that the court enter a "protective order" to govern how the parties treat each other's confidential information. For example, a protective order might

prohibit a party from using the other party's confidential information for any purpose other than the lawsuit and from disclosing the other party's confidential information to anyone not involved in the lawsuit. Usually, the terms of a protective order will apply to both sides equally and impose obligations on each side regarding the treatment of any information designated as confidential. The District of Minnesota has a template stipulation for a protective order that you may use or adapt.

Often, protective orders are negotiated among the parties and then an agreed protective order is proposed to the court. If another party wants you to consider agreeing to a protective order, it will usually send you a draft and ask if you have any objections to it or any suggested revisions. You are not obligated to agree to such an order, but you should read the draft carefully, ask about any terms or provisions that seem confusing, think about whether you may be producing information that could be protected by the order, and tell the other side if you have any concerns or want to suggest any revisions. If you can reach agreement with the other side on a draft protective order, the other side will submit it to the judge. It is in the judge's discretion to decide whether to enter it as submitted, modify it, or decline to enter it at all.

If a protective order is entered and you want certain information that you produce in discovery to be treated as confidential as prescribed by the order, you must follow the requirements of the order to clearly designate the information as confidential. You cannot assume the other side will know that you consider something confidential if you do not designate it properly.

What is the duty to preserve?

All parties to a lawsuit must keep documents, electronically stored information, and tangible things that they have reason to believe are relevant to the claims or defenses in the lawsuit. This means not only that material that could be relevant to your lawsuit must not be thrown away or deleted, but also that the material must not be altered or modified. This is known as the "duty to preserve." The duty to preserve arises even if the other side has not yet asked for the information; in fact, the duty may arise even before the lawsuit is filed if a party reasonably anticipates that there will be a lawsuit and that the material will be relevant to that litigation. The duty to preserve applies not only to materials you think would help you prove your case, but also to relevant materials that might be unfavorable to you. More information about the duty to preserve electronically stored information that may be on your devices on "in the cloud" is provided below in the section "How do I preserve electronically stored information?"

Alteration or destruction of relevant evidence after the duty to preserve has arisen is sometimes referred to as "spoliation of evidence." If spoliation occurs, the other party may ask the court to impose costs, penalties, or sanctions on the party that failed to preserve the evidence. Those penalties could be even more severe if it turns out that the party altered or destroyed evidence on purpose in order to keep unfavorable evidence out of the hands of the opposing party. Under some circumstances, spoliation of evidence can even result in the lawsuit being dismissed.

What is an interrogatory?

An interrogatory is one way to gather information about the facts in your case. Interrogatories are written questions sent by one party to another party, and these questions must be answered under oath. Interrogatories can only be served on parties to the lawsuit. Rule 33 of the Federal Rules of Civil Procedure provides the rules for serving and responding to interrogatories.

How many interrogatories can I serve?

Rule 33(a)(1) of the Federal Rules of Civil Procedure provides that a party cannot serve more than 25 interrogatories on another party without getting permission from the court. In some cases, however, the judge might set a higher or a lower limit in the scheduling order if the judge believes it would be consistent with the fair and efficient management of the case.

You should write out each interrogatory in a separately numbered paragraph. Parties cannot get around the limit by combining several questions into a single interrogatory. If you do that, each question will be counted as a separate interrogatory toward your limit.

How do I answer interrogatories served on me?

A responding party can answer the interrogatory or object to the question (or both). Each interrogatory must be answered separately and completely in writing and signed under oath unless it is objected to. Your sworn answers to interrogatories can be

used by the other side as evidence in the case for purposes of motions and at trial. Any objections also must be stated in writing and must include the reasons for the objection. If you object to only part of a question, then you must answer the rest of the question.

Under Rule 33(b)(2) of the Federal Rules of Civil Procedure, a party must respond to interrogatories within 30 days unless the court has set a shorter or longer time for responding or the parties have agreed to another date. A party who responds to interrogatories must sign the responses personally, under oath, even if the party has a lawyer. If the party has a lawyer and the responses include any objections, the lawyer must also sign the responses.

Under Rule 33(d), if the answer to an interrogatory can be found in your personal or business records or some other place that is available to you, then you must look for the answer. You cannot avoid answering the interrogatory just because you do not remember the answer off the top of your head. But if the burden of finding the answer in those records would be about the same for you as for the party who served the interrogatories, you may, if you choose, answer the interrogatory by telling the other party about the records in which the answer can be found and then allow that party to look through those records. You must identify the records in sufficient detail to permit the party who served the interrogatories to find the answer in the records. You must also give the party who served the interrogatories a reasonable opportunity to review and copy those records.

Do I have to supplement my answers to interrogatories if I remember or learn something new?

Rule 26(e)(1) of the Federal Rules of Civil Procedure imposes a duty on all parties to supplement their answers to interrogatories if they learn that the response is incomplete or incorrect. If you have already answered an interrogatory, but later you learn something that changes your answer, you must let the other parties know by supplementing (adding to or changing) your original answer. You can do this by sending a supplemental answer to the other parties that states which interrogatory you are supplementing and what new or different information you have. Any supplemental interrogatory answers must also be signed under oath.

What are requests for production? How do I get documents from an opposing party to look at or use as evidence?

Under Rule 34(a) of the Federal Rules of Civil Procedure, any party can serve on another party:

- Requests for the production of documents or electronically stored information seeking to inspect and copy such documents or electronically stored information that are in another party's possession, custody, or control;

- Requests for the production of tangible things (for example, physical items that are not documents), in order to inspect and copy, test, or sample things that are in another party's possession, custody, or control; or

- Requests for the inspection of property, seeking entry onto property controlled or possessed by the other party for the purposes of inspecting and measuring, surveying, photographing, testing, or sampling the property or any designated object on that property.

A request for production must list the items or categories of items that you want to inspect. You should number each request for production separately. Describe each item or category in enough detail that it is reasonably easy for the other party to figure out what you want. For example, it is not sufficiently detailed to ask the other side to produce "every document that is relevant to my case," but it might be sufficiently detailed to ask for "All documents in my Human Resources file" or "All documents and communications that relate to the negotiation of the contract dated July 1, 2024, signed by Plaintiff and Defendant"(if those topics are relevant to the case). The request for production must specify a reasonable time, place, and manner for making the inspection or production and for performing any related acts such as copying. You may also specify the form in which you would like the other side to produce any electronically stored information.

The parties will usually agree to send each other copies of the requested materials by a certain date by mail or email, rather than producing the originals for the requesting party to inspect and copy. If, however, there is some reason that the inspection of original documents or things is necessary, then you can request a physical inspection of the original.

How many requests for production can I serve?

The Federal Rules of Civil Procedure do not limit the number of requests for production that a party may serve. The judge may, however, impose a limit on document

requests in the scheduling order or if the judge concludes the number of requests served by a party was unreasonably burdensome.

How do I respond to a request for production served on me?

There are two parts to a response to a request for production: (1) the written response and (2) any documents that are produced.

Under Rule 34(b)(2) of the Federal Rules of Civil Procedure, the party who has received a request for production must serve a written response on the party who made the requests within 30 days after the request is served, unless the court has set a shorter or longer time for responding or the parties have agreed to another date. In the written response, you must separately identify and respond to each request. Each response must state that you will allow inspection of the requested documents or will send copies of those documents to the requesting party, unless you state an objection to the request.

If you state an objection, you must also state whether there are any documents you are refusing to produce based on that objection. If your objection applies to only part of the request, you must be clear about what part of the request you object to, and you must provide the documents or other materials that respond to the rest of the request. If you are not able to provide everything you intend to produce at the same time you serve your written responses, you must state in your written responses a reasonable date when you will produce those documents and other materials.

When you search for the documents that respond to a request for production, you must think carefully and search diligently in all the places where it is reasonably likely

you would have information or materials that are covered by the request. This might include any place in your home, office, or garage where such information is likely to be, as well as any other places under your control (e.g., a storage unit) where you might keep such information or where another person or business is storing your information for you. In addition, you must not just search for paper documents and other physical items, but also for any information that may be electronically stored on devices such as your computer, phone, tablet, or other devices. The meaning of electronically stored information and how it should be handled in discovery is discussed in more detail below.

Before you produce any information or documents in response to discovery requests, you may review each item and (if needed) clearly label any confidential information pursuant to the protective order in the case. In addition, it is best for all parties (including you) if you separately number each page of each document so that it can be easily identified. One common method is to use a prefix that identifies the party producing the document (e.g., "Plaintiff" or "Defendant" or perhaps the last name of the party or the name of the company), followed by a series of numbers, with each page labeled with the next number in order. This is sometimes referred to as a "Bates stamp" or a "Bates number." Examples include: PLAINTIFF-00001, PLAINTIFF-00002, PLAINTIFF-00003, or SMITH-00001, SMITH-00002, SMITH-00003, or ABCCOMPANY-00001, ABCCOMPANY-00002, ABCCOMPANY-00003. You can hand-write the numbers on the documents or, if you have agreed with the other side that you will produce copies of your documents as pdfs, most pdf-editing software makes it easy to apply such labels to the images. You should keep a record of all documents you have produced.

Rule 34(b)(2)(E)(i) requires that a party who produces documents or electronically stored information in response to a request for production must either produce them as they are kept in the usual course of business, or organize and label them to correspond with the categories in the request(s) to which they respond.

Do I have to supplement my responses to requests for production if I find something more?

Rule 26(e)(1) of the Federal Rules of Civil Procedure requires parties to supplement their responses to a request for production if they learn that the response is incomplete or incorrect, including if you find more documents or create more documents that respond to the request. One way to do this is by sending the other side a letter listing these additional documents and enclosing copies. As with the documents you already produced, be sure to identify any of the supplemental documents that should be kept confidential, and if you had labeled and numbered the previous documents, be sure to label and number the supplemental documents, starting with the next number in line.

What is "electronically stored information"?

"Electronically stored information" (sometimes called "ESI") refers to information and documents that are stored in electronic form on a device (for example, a computer, tablet, or cellphone) or "in the cloud." Every request for production covers both physical and electronically stored information, even if the phrase "electronically stored information" is not used. Electronically stored information is treated just like paper

documents and is subject to discovery if it is relevant and proportional to the issues in your case.

How do I preserve electronically stored information?

The duty to preserve includes not only relevant physical documents and materials but also relevant electronically stored information. Common types of electronically stored information include emails, text messages, social media posts, Microsoft Word and Excel documents, databases, photos, website content, and pdfs. This information may be stored on a personal computer or a large computer network, on portable storage media like thumb drives or backup drives, or on personal mobile devices like cellphones. The information might also be found "in the cloud" in accounts that a party can access by logging in, such as an email account, WhatsApp messages, or Facebook, TikTok, or Instagram posts.

If any of this electronically stored information is relevant to your lawsuit, it must be preserved. That means, **first**, that you must figure out where you might have such information. Just like you must think carefully about all the places you may have relevant paper documents or other physical things, you must think about all the places and ways that relevant electronic information might be stored. This includes devices and portable storage media as well as online accounts; apps installed or used on your phone or other device; and websites where you create, post, or access your information.

Second, you must not delete or alter any relevant electronically stored information, and you should take steps to prevent it from being deleted. For example, if

you have relevant emails, photos, or social media posts in a particular account, you should not change or delete them or delete the account. Similarly, you should not delete relevant texts, voice mails, or call logs on your phone; change or delete relevant documents on your computer; or alter or erase audio or video files. You may even need to take steps to prevent accidental alteration or deletion of relevant files or documents. If you are thinking of buying a new phone, tablet, or computer and there might be relevant documents, texts, or photos on your old device, you must make sure any relevant files are transferred to your new device without any modification, or preserved intact in some other way, or you should keep your old device (and remember your password for it). In other words, you should not discard, "wipe," or trade in your old device until you are confident the relevant files have been preserved successfully. If you are concerned about the cost of taking these steps, you may wish to meet and confer with the other side to try to reach an agreement about preservation that is proportional to the needs of the case. If you are not able to reach such an agreement, you may need to file a motion with the court to seek relief.

In addition, unlike paper, an electronically stored document or file often contains not just the visible contents of that document or file (such as, for example, the actual letter, email, memo, photo, or accounting statement) but also information about the document or file. Depending on the type of document, this might include information regarding the date and time the document was created, sent, received, or modified; who authored, received, or modified the document; and perhaps even what changes were made over the life of the document. This information is called "metadata." The metadata of a document

is a part of that document and must not be removed or altered. Printing a document or saving the document in another form (such as a pdf) will not preserve the metadata and therefore may not be sufficient to meet your duty to preserve relevant electronically stored information.

How do I produce relevant electronically stored information?

Rule 34(b)(2)(E) of the Federal Rules of Civil Procedure requires you to produce electronically stored information "in a form or forms in which it is ordinarily maintained" or in a form or forms that is "reasonably usable," unless the requesting party specifies a particular form of production in their request. Unless the parties agree to something else, electronically stored information should be produced either in the form in which it was maintained (for example, a Word document would be produced in Word, an Excel spreadsheet would be produced in Excel, and so on), or in another form that is reasonably usable by the person receiving the information. Generally, you can produce the electronically stored information by attaching the files to an email to counsel for the requesting party.

The parties can agree to produce and receive electronically stored information in a form other than the form in which it is maintained. This may be particularly appropriate for emails, text messages, or social media posts. For example, the parties might agree that providing pdfs of emails, or screenshots or other images of text messages or Instagram or Facebook posts that are relevant to your lawsuit, is sufficient even though the form in which the information is produced (an image) is different from the form in which the

information is maintained. When electronically stored information is provided in a form other than the original form, however, you should continue to maintain the information in its original form in case there is ever a dispute about whether the information in the form you have provided matches the original version. For example, even if the parties agree that a screenshot of a Facebook post will be sufficient for purposes of discovery, you should not delete the Facebook post.

To avoid unnecessary burden and expense, you should try to reach an agreement with the other party about the form in which you will each produce your relevant electronic files and documents. The Rule 26(f) conference is a good time to discuss that issue. If the parties do not reach an agreement and the party who makes a request for electronically stored information specifies a particular form in which they would like the information to be produced, the responding party can then either produce it in the form requested or, in their written responses, object to that requested form and state the form in which they will instead produce the electronically stored information. If you are concerned that the form in which you would like to produce electronically stored information will not be reasonably usable to the other party, ask to meet and confer with them to discuss what a reasonably usable form might be. And if the other side produces documents and information in a form that you can't use, ask them to produce the information in a form that you can access and use.

You may find other useful information about how to deal with discovery of electronically stored information in the document entitled "Discussion of Electronic

Discovery at Rule 26(f) Conferences: A Guide for Practitioners," which can be found on the District of Minnesota's website.

What is a request for admission?

A request for admission is a request to another party to agree to a fact that you believe to be true. Requests for admission can only be served on other parties to the lawsuit. If a party admits a statement of fact requested under this procedure, the judge will treat that fact as having been proved for the purpose of future motions and at trial.

Rule 36 of the Federal Rules of Civil Procedure establishes the requirements for requests for admission. To write a request for admission, write out a statement of fact you believe to be true, and ask the other party to admit that the statement is true. Or, write out a statement about the application of any law to any fact and ask the other party to admit that the law applies to the fact as you stated. You must be precise and use the correct terms and phrases. Each request for admission must be stated separately and should be numbered.

How many requests for admission may I serve?

The Federal Rules of Civil Procedure do not limit the number of requests for admission that you may serve. The judge, however, may impose a limit on requests for admission in the scheduling order or if the judge concludes the number of requests was unreasonably burdensome.

What happens if a party does not respond to a request for admission by the deadline?

The party who receives a request for admission has 30 days to respond under Rule 36(a)(3) of the Federal Rules of Civil Procedure. That time can be increased or decreased by agreement of the parties or if the judge orders a different time for responding. If no response is served by the deadline, all of the requests for admission are **automatically considered to be admitted**, even if you might have had legitimate objections or you believe the statements in the requests are not actually true.

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

In general, when you answer a request for admission, you should write out each request for admission followed by your answer. An answer to a request for admission must either admit or deny the request or explain in detail the reasons why the answering party cannot truthfully admit or deny it. If you are unable to simply admit or deny a particular request in its entirety, then you must admit the part that is true and deny (or explain why you cannot admit) the rest. In some cases, you may not know the answer. In those cases, you must conduct a reasonable search for the information. If, after that investigation, you still do not have enough information or knowledge to admit or deny the request, your response should state that, after a reasonable search for the information, you still do not have enough information to admit or deny the request.

Any matter that is admitted is treated as if it has been proved for the purpose of the rest of the lawsuit, unless the judge allows the answering party to withdraw or change the admission.

What if a party does not admit a fact stated in a request for admission and the other side later proves it was true?

Under Rule 37(c)(2) of the Federal Rules of Civil Procedure, if a party fails to admit a fact in a request for admission and the other party later proves that the fact is true, the requesting party may file a motion requesting the judge to order the answering party to pay the reasonable expenses incurred in making that proof, including attorney's fees. The judge will grant the motion unless she finds that:

- The request was objectionable under Rule 36(a);
- The admissions were not important;
- The party who did not admit the matter had reasonable ground to believe that they might prevail on that matter; or
- There was another good reason for the failure to admit.

After a party has responded to a request for admission, that party is under an ongoing duty to correct any omission or mistake in that response. If a party later obtains information that changes their response, Rule 26(e)(1) of the Federal Rules of Civil Procedure requires them to supplement that earlier response if it is incomplete or incorrect.

What is a deposition and how does it work?

A deposition is a question-and-answer session in which a person (called a "witness" or "deponent") testifies under oath during the discovery process. One party to a lawsuit asks another person questions about issues raised in the lawsuit. As with other discovery, the questions asked at a deposition can cover any non-privileged matter that is relevant to the claim or defense of any party and proportional to the needs of the case.

Rule 30 of the Federal Rules of Civil Procedure explains the procedures for taking a deposition. Usually, the deposition is conducted in person, but if the parties agree or the court orders, the deposition can be conducted remotely.

When you ask someone questions in a deposition about their knowledge of the case, that process is called "deposing the person" or "taking a deposition." The deponent can be any person who may have information about the lawsuit, including eyewitnesses, expert witnesses, or another party to the lawsuit. The deponent answers all questions under oath, which means that they swear all the answers are true.

The questions and answers in a deposition must be recorded. The party taking the deposition (the one asking the questions and seeking information) may choose whether the deposition will be recorded only in writing or will also be videotaped. The written record of a deposition is called the "transcript" of the deposition. The person who records what everyone says is usually referred to as a "court reporter." Rule 30(b) of the Federal Rules of Civil Procedure explains the ways the deposition can be recorded, the role of a court reporter in recording the deposition, and other important details. The person taking

the deposition must pay the cost of recording the deposition, but each party must pay for their own copy of the transcript or videotape.

How many depositions may I take?

Rule 30(a) of the Federal Rules of Civil Procedure states that a party may take no more than ten depositions. The judge, however, may set a higher or lower limit in the scheduling order.

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

You usually do not need the judge's permission to take a deposition. However, under Rule 30(a) of the Federal Rules of Civil Procedure, you do need the judge's permission to take a deposition under any of the four following situations:

- The deponent is in prison.
- The plaintiff or defendant—or the plaintiffs and defendants as a group, if there is more than one plaintiff or defendant—seeks to conduct more depositions than Rule 30 or the scheduling order allows.
- The deponent has already been deposed in the same case, and the other parties have not agreed in writing that the deponent may be deposed again.
- You want to take a deposition before the judge issues a pretrial scheduling order, and the other parties will not agree in writing to let you take the early deposition. However, this exception has its own exception: you may not need to get the judge's permission for an early deposition if your notice of deposition contains a certification with supporting facts that the deponent is expected to leave the United States and therefore will be unavailable for deposition in this country after the pretrial scheduling order is issued.

How do I arrange for a deposition?

You should consult with the attorneys for the other parties to choose a convenient time and location for the deposition. After you have determined the time and location for the deposition, you must give written notice of the deposition to the deponent and to all of the other parties in your lawsuit in a reasonable amount of time before the deposition. This document is referred to as the "notice of deposition." You must serve the notice of deposition on all the parties and the deponent (if the deponent is not a party), even if you have already discussed the deposition with everyone involved.

What do I say in a notice of deposition?

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

- The time and place where the deposition will be held.
- The name and address of the deponent, if known. If you do not know the name of the deponent, you must describe the person well enough so that the other side can identify the person you wish to depose (for example, you may not know a witness's name, but know that they were "the store manager who was on duty at 6:00 p.m. on June 16, 2024").
- The method by which the deposition will be recorded (for example, whether by video deposition or by a court reporter).
- Your address and signature.

Rule 30(b)(6) of the Federal Rules of Civil Procedure also allows you to name a business, government agency, or other entity (rather than a particular individual within that entity) as the deponent and to describe with reasonable specificity the subjects you

want to inquire about at the deposition. This is known as a "Rule 30(b)(6) deposition." The entity you name must then choose and produce for the deposition a person or persons who will testify about those subjects. The choice of witnesses is up to the entity, but the witness or witnesses must be reasonably prepared to testify about all the information known by or reasonably available to the entity about those subjects (not just the witness's own personal knowledge), and the answers they give on those subjects will ordinarily be binding on that entity for purposes of motions or at trial.

Do I need to get a subpoena to take a deposition?

You do not need a subpoena to depose a party. However, if the deponent is not a party to the lawsuit (known as a "non-party deponent" or a "non-party witness"), you must serve the deponent with a subpoena. More information about to how to get and use a subpoena is provided below.

How long can a deposition last?

Under Rule 30(d)(1) of the Federal Rules of Civil Procedure, a deposition may last no longer than one day for seven hours, absent agreement of the parties or permission from the court for additional time. The seven hours is counted as the time on the record, not including reasonable breaks that may be taken during the day.

Does the deponent have to answer all questions?

Under Rule 30(c)(2) of the Federal Rules of Civil Procedure, the deponent (through their attorney, if the deponent is represented) is entitled to state certain legal objections

they have to any question. They may, for example, object to the form of a question—for example, that the question is vague, or the question is really several questions strung together, or the question is argumentative—or they may object that the question asks for privileged information that the law does not require them to give. In most cases, the deponent still must answer the question, even if there is an objection. Under Rule 30(c)(2), the deponent may refuse to answer a question **only** in the following three situations:

- When answering would violate a privilege, such as the attorney-client or doctor-patient privilege;
- When the judge has already ordered that the question does not have to be answered; or
- To allow the objecting party to file a motion under Rule 30(d)(3).

In rare circumstances, Rule 30(d)(3) of the Federal Rules of Civil Procedure allows a deponent or a party to file a motion arguing that the deposition should be stopped, that certain questions should not be answered, or that some other limitation should be placed on the way in which the deposition is being taken. The deponent or the party making the motion must show that the deposition is being conducted in bad faith or in an unreasonable manner to annoy, embarrass, or oppress the deponent or party.

Who is allowed to ask the deponent questions?

Under Rule 30(c) of the Federal Rules of Civil Procedure, any party (through their attorney, if they are represented) may ask questions of the deponent at the deposition in the order that they would at trial. In general, this means that the party who noticed the

deposition asks all their questions first. Then, any other party may ask questions, including the attorney for the deponent.

Can the deponent make corrections in the transcript after the deposition?

Under Rule 30(e) of the Federal Rules of Civil Procedure, after the court reporter notifies the deponent that the deposition transcript is complete, the deponent then has 30 days to review the deposition transcript and to make corrections, typically on the basis that the court reporter made a mistake in transcribing the testimony. To make corrections, the deponent must sign a statement listing the corrections and the reasons for making them. This is known as an "errata sheet." The original transcript is not actually changed, but the court reporter must attach the list of corrections to the official deposition transcript.

If I serve a notice of deposition on a party, are they required to show up for the deposition?

In general, if a deposition has been properly noticed, the deponent must show up unless the deponent and the party who noticed their deposition agree that the deposition will be canceled or postponed, or the deponent files a motion asking the court for an order stating that the person or organization whose deposition was noticed does not need to appear for it, or needs to appear only if certain conditions or limitations are met. This is often called a "motion for protective order." Such a motion should be filed **before** the deposition is scheduled to begin.

Like with any other motion, the person whose deposition has been noticed must attempt to confer with the party who noticed the deposition to try to reach an agreement. However, if no agreement is reached, then with rare exceptions (such as a last-minute emergency that makes it impossible for the deponent either to file a timely motion or to attend the deposition), the deponent cannot simply fail to appear, even if they have told the other side that they object to the deposition. It is the deponent's responsibility to file a motion before the deposition asking the court for an order relieving him of the obligation to attend. If a motion is timely filed, the deposition will not proceed until the court rules on the motion. But a deponent who does not show up for the deposition and did not file a motion prior to the deposition may be subject to sanctions, including, for example, having to pay attorney's fees, court reporter costs, and other expenses of the party that noticed the deposition.

Of course, this also applies if the other side serves a notice to take your deposition. You must show up at the designated place and time unless you either reach an agreement with the other side to cancel or postpone it, or you file a timely motion with the court asking the court to grant a protective order.

How do I get documents or testimony from persons or entities who are not parties to the lawsuit?

If the person or business you want documents or testimony from is not a party to the lawsuit, you need to use a subpoena. A subpoena is a document issued by the Clerk's Office on behalf of the court that requires a non-party, at a specific time and place, to produce documents, electronically stored information, or things; to permit an inspection

of premises; or to appear and testify. Rule 45 of the Federal Rules of Civil Procedure sets out the rules for issuing, serving, protesting, and responding to subpoenas.

There are two available forms for a subpoena. One directs the person to appear for a deposition and may, if you choose, also require that person to bring documents, electronically stored information, or other things with them for you to inspect at the time of the deposition. The other form only requires the person to produce documents, electronically stored information, or other things, or to permit an inspection of premises, but does not require them to appear for a deposition. You may choose one subpoena or the other, depending on what information you need for the lawsuit, or you may serve them separately, so that the person will make the production at one time and appear for a deposition at a different time.

You can obtain a blank subpoena from the Clerk's Office or on the District of Minnesota's website. Unrepresented parties must have the subpoena signed by a deputy clerk in the Clerk's Office.

Rule 45(c) explains where the subpoena may command a person to either appear or produce other discovery. A subpoena may command a person to attend a trial, hearing, or deposition only at a location:

- within 100 miles of where the person resides, is employed, or regularly transacts business in person;
- within the state where the person resides, is employed or regularly transacts business in person, **if** the person is a party or a party's officer; or
- within the state where the person resides, is employed, or regularly transacts business in person, **if** the person is commanded to attend a trial and would not incur substantial expense.

A subpoena may command the production of documents, electronically stored information, or tangible things at a place within 100 miles of where the subpoena recipient resides, is employed, or regularly transacts business in person. A subpoena may also command the inspection of premises at the premises to be inspected.

Finally, Rule 45(d)(1) of the Federal Rules of Civil Procedure requires that you take reasonable steps to avoid imposing an undue burden or expense on any person that you subpoena.

How do I serve a subpoena?

Under Rule 45(b)(1) of the Federal Rules of Civil Procedure, a subpoena may be served by any person who is at least 18 years old and not a party to the lawsuit. Service requires delivering a copy to the named person, and if that person's attendance is required, paying the fees for one day's attendance and the mileage allowed by the law. In addition, if the court has entered a protective order governing how confidential documents will be handled in your case, Local Rule 5.6 requires you to include a copy of that protective order with the subpoena.

You are also required to notify the other parties in your case about any subpoena. If you subpoena someone for a deposition, you must serve a copy of the deposition notice on the other parties to the lawsuit at the same time you serve the subpoena so that the other parties can attend and ask questions if they wish. But if the subpoena also (or only) commands the production of documents, electronically stored information, tangible things, or inspection of premises before trial, a copy of the subpoena (and deposition

notice, if any) must be served on all other parties **before** the subpoena is served on the subpoena recipient.

Under 28 U.S.C. § 1821, a non-party deponent must be paid $40 per day for deposition testimony. If the non-party deponent travels to the deposition by mass transit, such as by bus or by train, you also must pay the deponent's actual travel expenses, as long as they take the shortest practical route and travel at the most economical rate reasonably available. You do not have to pay the travel expenses until the deponent provides you with a receipt or other evidence of the actual travel cost. If the non-party deponent does not travel to the deposition by bus, train, or other common carrier, then you must pay a mileage fee. The mileage fee is set in 28 U.S.C. § 1821 and 41 C.F.R. § 301-10.303 and is available at www.gsa.gov. You must also pay any necessary toll charges and parking fees that were incurred when attending the deposition.

What if the person (or entity) who receives the subpoena believes it is objectionable?

If the person on whom you serve a subpoena believes some or all of your requests are inappropriate, they may serve written objections to your requests. For example, the subpoena recipient may object that the subpoena does not provide an adequate time to comply, or that the request for documents or testimony goes beyond what is relevant or proportional to the needs of the case, or that complying with the subpoena would impose undue burden or expense. The objections must be served within the time set for complying with the subpoena or within 14 days, whichever is shorter.

If the subpoena recipient objects to the subpoena, you must confer with them in good faith. If you cannot reach agreement, you may file a motion asking the court for an order compelling them to comply with the subpoena. This motion must be filed in the jurisdiction where the subpoena recipient resides. The subpoena recipient also has the option of filing a motion asking the judge to "quash" the subpoena. A motion to quash a subpoena asks the court to order that the person does not need to do some or all of what the subpoena commanded. Under some circumstances—for example, if the subpoena requires the subpoena recipient to do something beyond the geographical limits outlined in Rule 45(c) of the Federal Rules of Civil Procedure—the court **must** quash the subpoena. And even if the court decides to order them to comply with the subpoena, Rule 45(d) gives the court the power to take steps to assure that they will not be subjected to undue burden or expense.

If the subpoena recipient timely objects to a notice of deposition included with the subpoena, and if those objections cannot be resolved by conferring with you in good faith, you may file a motion with the court to compel them to attend the deposition. The motion must be filed in the jurisdiction where the subpoena recipient resides, even if that isn't the same court where your case is pending. If you do nothing and the subpoena recipient fails to show up for their deposition after having objected (even if they do not file a motion of their own), you may have no basis for seeking sanctions from the court. However, if you file a motion to compel and the motion is granted but the subpoena recipient still does not attend, they could be subject to sanctions for failing to show up for the deposition.

Can I be required to submit to a physical or mental examination?

When the mental or physical condition of a party (or a person under the custody or legal control of a party) is at issue in a lawsuit, Rule 35 of the Federal Rules of Civil Procedure allows the judge to order that person to submit to a physical or mental examination. The examination must be done by a suitably licensed or certified examiner, such as a physician or psychiatrist. The party who requested the examination must pay for it.

A court order is required for a mental or physical examination unless the other party agrees to the examination without an order. Unlike other discovery procedures, mental or physical examinations can be obtained only by filing a motion with the court, or by agreement of the parties. If a motion is filed, all of the ordinary rules for filing motions apply. The motion must contain:

- An explanation why there is a need for the examination;
- The time, place, manner, conditions, and scope of the proposed examination; and
- Identity of the person or persons who will conduct the examination.

What happens to the results of the examination?

The party or other person who is to be examined has the right to request a detailed written report from the examiner explaining the examiner's findings, including the results of all tests made, diagnoses, and conclusions. If an examiner does not produce a report, the judge can exclude the examiner's testimony at trial.

A party who has obtained a court order or an agreement requiring an examination may also be entitled to related information. After the examiner issues a report, the requesting party may ask for information regarding any other examinations of the same person relating to the same condition.

What are expert disclosures?

In an "expert disclosure," you reveal to the other parties the identity of any expert witness you may use at trial. An "expert witness" is a person who has scientific, technical, or other specialized knowledge that can help the judge or the jury understand the evidence. Expert disclosures are required by Rule 26(a)(2) of the Federal Rules of Civil Procedure even if the other side does not ask for them.

If you hired the expert witness to give testimony in your case, the disclosure also must be accompanied by a written report prepared and signed by the expert witness, unless the judge orders otherwise, or the parties stipulate otherwise. This written report is usually referred to as an "expert report." You do not file your expert disclosures or expert report with the Clerk's Office; instead, you must provide it to the opposing party or parties.

Timing: Expert disclosures must be made by the date or dates identified in the scheduling order or other applicable order. If the judge does not set a date for expert disclosures and the parties do not agree to a date for expert disclosures, the disclosures must be made at least 90 days before the trial date or, if your expert disclosures are intended solely to contradict or rebut another party's previously disclosed expert

disclosures, your disclosures must be made no later than 30 days after the disclosure made by the other party.

Content: Under Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure, the expert report must contain:

- A complete statement of all opinions the expert witness intends to give at trial and the basis and reasons for those opinions;
- The facts or data considered by the expert witness in forming those opinions;
- Any exhibits to be used as a summary of, or in support of, the opinions;
- The qualifications of the expert witness, including a list of all publications authored by the witness within the preceding 10 years;
- A list of any other cases during the previous 4 years in which the witness has testified as an expert at trial or by deposition; and
- The compensation to be paid to the expert witness.

Form: Under Rules 26(a)(4) and 26(g) of the Federal Rules of Civil Procedure, expert disclosures must be made in writing and must be served on all other parties to the lawsuit. They must be signed by the party and the expert witness and must include the party's address. By signing the disclosure, you are certifying to the court that the disclosure is complete and correct as of the time it is made to the best of your knowledge.

Additional requirements: Under Rule 26(e)(1) of the Federal Rules of Civil Procedure, you have a duty to supplement your expert disclosures if you learn that the information you disclosed is incomplete or incorrect and if the additional information has not otherwise been made known to the other parties during the discovery process or in writing. If your expert is required to prepare an expert report under Rule 26(a)(2)(B), this

duty extends to supplementing both the expert report and any information provided by the expert during a deposition. Any supplement to your expert disclosures must be served no later than when your pretrial disclosures are due under Rule 26(a)(3).

Minnesota state law requires plaintiffs seeking relief for some kinds of professional negligence (such as medical malpractice) to disclose early in the litigation the expert opinion upon which the plaintiff intends to rely in order to prove the claim. Your claim could be dismissed if you fail to timely meet those Minnesota state law obligations, even if you comply with the federal rules.

What are pretrial disclosures?

In a "pretrial disclosure," each party files with the Clerk's Office and serves on the other parties certain kinds of information about evidence that party may present at trial, even if the other party has not asked for it. The requirements for pretrial disclosures are governed by Rule 26(a)(3) of the Federal Rules of Civil Procedure.

Timing: Pretrial disclosures must be made at least 30 days before trial, unless the judge enters an order setting a different deadline.

Content: The following information about evidence you may use at trial should be included in your pretrial disclosures:

- The name and, if not previously provided, the address and telephone number of each witness. You must identify separately the witnesses you intend to present at trial and those whom you may present at trial if the need arises.

- The identity of those witnesses whose testimony you expect to present at trial by means of a deposition, rather than having the witness testify in person. You must also serve a transcript of the relevant portions of the deposition testimony.

- An appropriate identification of each document or other exhibit, including summaries of other evidence that you may use at trial. You must identify separately the exhibits you intend to use at trial and those you may use if the need arises.

Evidence that will be used only for impeachment does not need to be included in the pretrial disclosures.

Form: Under Rule 26(a)(4) and 26(g) of the Federal Rules of Civil Procedure, pretrial disclosures must be made in writing and must be served on all the other parties to the lawsuit. They must be signed by the party and include the party's address. By signing the disclosure, you are certifying to the court that the disclosure (to the best of your knowledge) is complete and correct as of the time it is made.

What if I need more time than the rules provide to make required disclosures or respond to discovery requests?

If you are unable to respond by the deadline provided by the applicable rule, you must first ask the other party if they will agree to additional time (this is referred to as an extension), and if they will not agree, then you may file a motion asking the court to give you additional time. You should not wait until after the deadline has passed before you ask the other side for an extension, nor should you wait until the deadline has passed before you file your motion. If you file a motion, it should explain why you were unable to meet the deadline and how much additional time you need.

What can I do if there are problems or disagreements with the other side about disclosures or discovery?

It is common for parties to have disagreements about disclosures or discovery. There are several ways to get help from a judge (usually the magistrate judge) when these disputes arise, and some of those ways are discussed below. First, however, you must try to resolve the disagreement without the involvement of the court. Under Local Rule 7.1(a), before filing a motion, you must confer with the opposing party "in a good-faith effort to resolve" the discovery dispute.

If the dispute cannot be resolved, there are two types of motions that may be appropriate, depending on the situation: a motion to compel, or a motion for sanctions. Rule 37 of the Federal Rules of Civil Procedure explains the requirements for these two types of motions.

A motion to compel is a motion asking the judge to order a person to make disclosures, respond to a discovery request, or provide more detailed disclosures or a more detailed response to a discovery request. A motion to compel may include a request to reimburse the moving party's attorney's fees if the court agrees the discovery should be compelled and that the other side's objection or failure was not substantially justified.

A motion for discovery sanctions asks the court to impose consequences when any party or non-party fails to comply with a court order compelling discovery, or when a party fails to comply with its obligations to make or supplement disclosures required by Rule 26(a) (initial disclosures, expert witness disclosures, and pretrial disclosures), fails to serve responses to interrogatories or requests for production or inspection, fails to

admit a request that is later proven true, or fails to appear for a deposition. Rule 37 also provides for consequences where a party fails to preserve electronically stored information.

How do I file a motion to compel or for sanctions pertaining to discovery?

Under Rule 37(a)(2) of the Federal Rules of Civil Procedure, a motion to compel or for sanctions pertaining to disclosures or discovery from a party must be filed in the court where the lawsuit is pending. (As previously noted, a motion to compel or for sanctions relating to discovery from a non-party must be filed in the court in the district where the discovery is being taken.)

Like other motions, a motion to compel must comply with the filing requirements listed in Local Rule 7.1(a)-(b), but it must also include:

- An explanation of the dispute and what you want the judge to do;
- If the dispute involves discovery requests, the complete text of each disputed discovery request immediately followed by the complete text of the objections or disputed responses to that request; and
- An explanation of the facts and/or law that make it appropriate for the judge to grant your motion.

What might a judge impose as a discovery sanction?

If the judge grants a motion for sanctions, she may issue an order that is appropriate to address the problem. Rule 37(b)(2)(A) of the Federal Rules of Civil Procedure lists some of the types of orders that may be appropriate:

- An order resolving certain issues or facts in favor of the party who made the motion;

- An order refusing to allow the disobedient party to support certain claims or defenses or prohibiting that party from introducing certain evidence;

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

- An order holding the disobedient party in contempt of court for failing to obey an order, except an order to submit to a physical or mental examination.

In addition, if a party fails to make required disclosures under Rule 26(a) of the Federal Rules of Civil Procedure or fails to supplement a prior response under Rule 26(e), that party will be barred from using that information as evidence at the trial, hearing, or on any motion unless the failure to disclose was harmless. The judge may also order payment of reasonable expenses caused by the failure, inform the jury of the party's failure, or impose other sanctions.

CHAPTER SIX: MEDIATIONS AND SETTLEMENT CONFERENCES

What is a Mediation?

A mediation is a meeting between the parties and a neutral person, typically a lawyer or judge, who has experience in helping parties negotiate and resolve litigation. The neutral person is referred to as the "mediator." Each mediator may have their own approach to facilitating the parties' negotiations, but in most instances the mediation will involve some interactions among the parties and the mediator together and some with the mediator talking separately with each party and communicating each party's proposals or counterproposals to the other party or parties. Unless the mediator announces otherwise, anything you say to the mediator that you request to be kept confidential will not be repeated to the other side unless you give the mediator permission to do so. Additionally, except under rare circumstances, communications that occur during the mediation will not be disclosed to anyone outside the mediation or used in evidence at trial without the consent of the party who made the statement or other communication.

At a mediation, the mediator will typically try to make sure that each party is considering not only the reasons they think they have a winning case, but also the challenges, costs, and risks of their case. You may not agree with the mediator, but you should listen to the points they make as you consider whether the other side's proposal for settlement is one you can accept. Remember, however, that the mediator is not your

lawyer and nothing the mediator says to you, whether in the presence of the other side or in a separate private session with you, is legal advice.

What is a Settlement Conference?

Under Local Rule 16.5, the court may set a settlement conference before a magistrate judge. A settlement conference is a mediation in which a judge acts as the mediator and assists the parties in attempting to settle the case. The magistrate judge who holds the settlement conference will not be the same judge who tries the case, if it goes to trial.

If you are notified of a settlement conference, you **must** attend. Read the judge's order setting the settlement conference carefully and abide by any requirements and deadlines for providing information that the judge wants you to submit in advance. That information can be helpful to the magistrate judge in working with you to try to settle the case. Anything you say or send to the magistrate judge in connection with the settlement conference that you ask to remain confidential will not be shared with any other party at the settlement conference (or anyone outside the settlement conference) without your permission.

If a resolution is reached at the settlement conference, the magistrate judge may have the parties come into the courtroom to "put the settlement on the record" before they leave. In other words, the parties will state the terms of the settlement while the courtroom recorder is running so there is a record of those agreed terms. The parties may still prepare and sign a written agreement to memorialize the terms in detail, but the

recording will be available if there is some dispute about what the parties agreed to before the written agreement is finalized and signed.

You are not required to wait for a settlement conference to attempt to settle your case. Furthermore, you are not required to settle your case at the settlement conference. Whether or not you settle, and when, is your decision. Even though the mediator may be a magistrate judge, he or she cannot order you to accept a particular proposal. As long as you participate in the mediation in good faith, the judge will not "be mad at you" if you decide that you are not willing to settle the case on the terms the other side has offered. Like any mediator, the judge at your settlement conference will try to make sure you have considered both the strengths and the weaknesses of your case and the reasons why a settlement might make sense for you, but you should also remember that, like any mediator, the judge is not your lawyer and cannot give you legal advice about whether you should accept a proposal for settlement.

CHAPTER SEVEN: MOTIONS FOR SUMMARY JUDGMENT

What is a motion for summary judgment?

Generally, a jury determines the facts of a case while a judge determines the law. But under some circumstances, a judge may decide that there is no need for a trial because, based on all the evidence, there is no real dispute about the relevant facts and the outcome can be determined based on the law alone or because no reasonable jury could come to the opposite conclusion based on the evidence. A motion for summary judgment asks the court to make that decision.

In deciding a motion for summary judgment, the judge must consider all the admissible evidence submitted by both parties in connection with the motion. The judge must consider the submitted evidence in the light most favorable to the party that does not want summary judgment. This means that if evidence could be interpreted in more than one way or depends on evaluating the credibility of the witness, the judge must interpret the evidence in the way that favors the party who opposes summary judgment.

Rule 56 of the Federal Rules of Civil Procedure explains the requirements for filing motions for summary judgment. A motion for summary judgment may be directed at ending the whole lawsuit, or only at dismissing one or more individual claims. A motion for summary judgment may also be brought to decide if the defendant is liable (that is, violated the law), even if there is still a dispute over the amount of money or other kinds of damages that the plaintiff should get.

If a judge grants a motion for summary judgment, there will not be a trial on the issue on which summary judgment was granted. This may mean there would be no trial

at all, or that a trial would be held only on certain issues as to which the judge did not grant summary judgment. If the judge denies a motion for summary judgment, the case will go to trial unless the parties settle the case. By denying a party's motion for summary judgment, a judge is not saying the other party's case is more believable, but only that there is a real dispute about relevant facts and therefore a trial is required.

When can a motion for summary judgment be filed?

The scheduling order in your case usually will specify when motions for summary judgment may be filed. If so, you must follow those timing requirements. If the judge does not address the timing for motions for summary judgment in a scheduling order or other order, Rule 56(b) of the Federal Rules of Civil Procedure provides that any party may file a motion for summary judgment at any time until 30 days after the close of all discovery. However, many judges will not permit a party to file a motion for summary judgment until after all parties have completed discovery unless a party asks permission to file their motion early and can show why additional discovery would not be worthwhile.

The rules for filing dispositive motions, including Local Rule 7.1, apply to motions for summary judgment. You should also check the practice pointers for the district judge assigned to your case (available on the District of Minnesota's website) to see whether your judge has any specific rules for filing or opposing a motion for summary judgment. For example, many judges will not permit a party to file a motion for summary judgment

until after all parties have completed discovery unless a party asks permission to file their motion early and can show why additional discovery would not be worthwhile.

What if my opponent files a motion for summary judgment before I complete my discovery?

If a party files a motion for summary judgment before the time for discovery has ended but you believe you need more discovery in order to show why summary judgment should not be granted, Rule 56(d) of the Federal Rules of Civil Procedure allows you to respond to the summary judgment motion by filing an affidavit or declaration that you are not yet able to present facts that are essential to supporting your opposition to the summary judgment motion. In your affidavit or declaration under Rule 56(d), you must show what specific facts you need, why those facts will defeat summary judgment, and why you need discovery to get those facts. If the court finds your affidavit or declaration persuasive, the court may: (1) defer considering the motion for summary judgment or may deny the motion; (2) allow you time to conduct discovery or obtain affidavits or declarations that would assist you in opposing the motion for summary judgment; or (3) issue any other appropriate order. The court is unlikely to be receptive to your argument under Rule 56(d), however, if the time for discovery has already expired and you did not complete your discovery in the time allotted.

What evidence does the judge consider for summary judgment?

The judge must consider the admissible evidence submitted and cited by the parties for or against the motion for summary judgment. The judge may also consider

other materials in the record of the particular case. However, the judge does not have to search the record for other evidence that may have been filed by a party at some other point in the case. The judge also does not have to look at evidence that is not specifically discussed in the parties' briefs. And, the judge cannot consider evidence in the record of another case, even if that case involved the same parties. Therefore, you should file copies of all evidence that you want the judge to consider or you should make sure the evidence is contained, in admissible form, in other documents in the record in this particular case. Then, in your memorandum of law in support of or in opposition to the motion for summary judgment, you should refer specifically to that evidence, by document number, page number, and even line or paragraph number, explaining why each piece of evidence supports your argument.

Every fact that you rely upon must be supported by evidence. It is not enough to repeat your belief that a fact is true or to point to arguments you have written about in other papers you filed earlier; you need to show the judge the admissible evidence that supports what you have said.

Affidavits or declarations as evidence on summary judgment.

Affidavits and declarations are written statements of fact. They are written by an actual witness to those facts and are signed by the witness under penalty of perjury. Penalty of perjury means that a person could be prosecuted for lying under oath. An affidavit must be signed before a notary public, while a declaration need not be.

You may use either affidavits or declarations as evidence in supporting or opposing a motion for summary judgment. In a general sense, they are written versions

of what a person would testify to if they were in court on the witness stand. Rule 56(c) of the Federal Rules of Civil Procedure explains how affidavits and declarations are used for summary judgment. Under Rule 56(c)(4), any affidavits or declarations submitted by the parties on summary judgment must:

- be made by someone who has personal knowledge of the facts contained in the written statement;
- state facts that are admissible in evidence; and
- show that the person making the statement is competent to testify to the facts contained in the statement.

All documents referred to in an affidavit or declaration must be attached as exhibits to the affidavit or declaration. Generally, the affidavit or declaration should list and identify any attached documents and should state that the documents are true and correct copies of the originals. This is called "authenticating" the documents. Rules 901 and 902 of the Federal Rules of Evidence discuss the requirements for authentication.

You can find additional information about filing affidavits, declarations, and exhibits with a motion or response to a motion in the section "What are affidavits, declarations, and exhibits?"

Hearsay

Hearsay is the report of another person's words or certain actions by a witness to those words or actions offered to prove the truth of the words or actions. For example, a person swearing that they were told by someone else that the plaintiff hit the defendant first would be hearsay. Similarly, a person stating in an email that they heard from someone else that the plaintiff hit the defendant first would also be hearsay. A statement

in an exhibit to an affidavit or declaration supporting a motion for summary judgment may be disregarded by the judge on the ground that the statement is hearsay and would not be admissible at trial. There are many exceptions, however, to this prohibition on hearsay. The rules on the use of hearsay statements can be found in Rules 801 through 807 of the Federal Rules of Evidence.

CHAPTER EIGHT: TRIAL

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

There are two types of trials: jury trials and bench trials.

At a jury trial, a jury reviews the evidence presented by the parties, figures out which evidence to believe, and decides what it thinks actually happened. The judge will instruct the jury about the law, and the jury will then apply the law to the facts that they have found to be true and determine who wins the lawsuit.

For a jury trial to occur:

- The lawsuit must be a type of case that the law allows to be decided by a jury; and
- At least one of the parties must request a jury trial within the right timeframe. This timeframe is set forth in Rule 38 of the Federal Rules of Civil Procedure. A party that does not make a jury trial demand on time forfeits that right.

At a bench trial, there is no jury. The judge will determine the law, the facts, and the winner of the lawsuit. A bench trial is held when:

- None of the parties requested a jury trial (or did not ask at the right time);
- The lawsuit is a type of case that the law does not allow a jury to decide; or
- The parties have agreed that they do not want a jury trial.

When will my trial start?

Under Local Rule 39.1, the judge who will conduct your trial will notify you of your trial date at least 21 days before trial. Under Local Rule 6.1, you can file a written motion to continue the case, but it will only be granted if you show good cause for the

continuance. The judge who will conduct the trial will decide whether to grant the motion to continue.

What do I have to do to prepare for trial?

There is a lot of work to do when preparing for trial and a lot of documents to be filed. This Guidebook cannot help you through every detail and issue that might come up. If you find yourself preparing for a trial, you should look for additional resources at a law library.

Getting ready for trial is time-consuming, so be sure to read carefully the case-management order or any other order that sets a schedule for pretrial events and prepare to meet every deadline. When the judge sets a trial date, they usually send out an order setting pretrial deadlines for filing or submitting various documents associated with the trial. For example, the judge will probably set dates for submitting copies of exhibits, objections to exhibits, and proposed jury instructions, among other things. Usually, the judge also will set a date for a pretrial conference shortly before trial. Give yourself enough time to file all the necessary documents on or before the deadlines.

The trial judge will almost always enter an order setting out the pretrial deadlines for your case. If so, you must follow those deadlines. But if the judge does not enter such an order, Local Rule 39.1 requires you to file and serve the following documents at least 14 days before the trial date:

- Trial brief;
- Exhibit list on a form provided by the Clerk of Court;

- Witness list;
- List of deposition testimony;
- Motions in limine; and
- For jury trials: (1) proposed voir dire questions; (2) proposed jury instructions; and (3) proposed verdict form; and
- For non-jury trials: proposed findings of fact and conclusions of law.

In both jury and nonjury trials, all exhibits must be marked as described under Local Rule 39.1 and made available for examination and copying at least 14 days before trial. Additionally, a party objecting to deposition testimony for introduction at trial by the other party must serve and file objections at least 7 days before trial.

You also need to arrange for all your witnesses to be in court at the trial. If a witness does not want to come to trial, you can make them attend (if they are within the court's jurisdiction) by serving them with a subpoena. A subpoena to appear and testify at a trial is a document issued by the Clerk's Office that requires a person to show up at trial on a particular date. Generally, the same rules that apply to subpoenaing a witness to appear at a deposition also apply to trial subpoenas.

What is a motion in limine?

A motion in limine is a motion filed before the trial begins that asks the judge to decide ahead of time whether a party will be allowed to use specific evidence at trial. Rule 103, and the Federal Rules of Evidence more generally, help explain how to present questions about the admissibility of evidence to the court. A court order may set a deadline for filing and responding to motions in limine. The judge may also limit the

number of motions in limine you may file. Pay attention to these deadlines and limitations in your case.

What is a final pretrial conference?

At a final pretrial conference, the parties and the judge will discuss any topics the judge believes may make the trial go quicker, such as whether there are any undisputed facts. The parties will also be expected to discuss (1) disclosure of all witnesses; (2) the listing and exchange all exhibits; (3) motions in limine and objections to evidence; (4) all outstanding motions; (5) an itemized statement of damages; (6) their estimates of the length of the trial; and (7) jury selection. The judge will then issue a final pretrial order setting any deadlines for proceedings necessary before trial. Under Local Rule 16.6, a final pretrial conference will be held no earlier than 45 days before trial.

What happens during trial?

On the first day of trial, the judge will usually meet with the parties briefly to resolve any last-minute problems. Local Rule 39.2 describes some of the procedures you must follow during trial.

You must stand when you speak to the judge, either from counsel's table or from the stand with the microphone in front of the bench. Speak clearly and loudly enough to be heard. Stay at the stand with the microphone when you examine witnesses, unless you need to show an exhibit to a witness.

What is jury selection?

The purpose of jury selection is to pick a jury that can be completely fair to both parties. This is accomplished by a process called voir dire, during which potential jurors are asked a series of questions. Under Local Rule 39.2(b), the judge will typically ask the questions of the jurors. The questions are designed to learn of any biases or prior knowledge of the case or witnesses that a juror may have that would prevent the juror from being fair and impartial. The judge may also ask about circumstances that would make it particularly burdensome for a juror to serve in the case. Some of the questions may be taken from lists of questions that the parties give the judge before trial.

Once the questioning is complete, the judge will excuse (that is, send home) any jurors who the judge thinks believes will not be able to perform their duties as jurors. The parties also will have an opportunity to challenge jurors "for cause," that is, to argue that additional jurors should be excused because they cannot perform their duties as jurors. After all the jurors that have been challenged for cause have been excused, the parties have an opportunity to use "peremptory challenges" to request that additional jurors be excused without the party having to give any reason. The judge will give each party a certain number of peremptory challenges.

After the jury is chosen, the judge will read some instructions to the jury. These initial instructions tell the jurors about their duties, explain to the jurors how to deal with evidence, and give an explanation of the law that applies to the lawsuit that the jurors are about to hear.

What are opening statements?

After the jury is chosen, each party may present an opening statement. The opening statement is a speech that describes the issues in the case and explains what the party expects to prove during the trial. An opening statement is not a legal argument. It is also not testimony or evidence that the jury can rely upon in deciding the facts of the case. An opening statement is only a roadmap of the evidence the party believes will come out at trial. When you give your opening statement, do not refer to any evidence that the judge has already ruled is not admissible.

Under Local Rule 39.2, opening argument is limited to one hour, unless the judge orders otherwise.

In the trial, which party presents witnesses first?

After the opening statements, the plaintiff presents their side of the case. The plaintiff begins by "calling" their witnesses to the stand, one by one, and asking the witnesses questions. This is called direct examination. After the plaintiff finishes asking questions of a particular witness, the opposing party has the opportunity to cross-examine the witness by asking additional questions about the topics covered during the direct examination. If there are multiple defendants, each defendant may cross-examine the witness. Then, the plaintiff can ask questions about the topics covered in cross-examination. This is called redirect examination. Usually, a judge will allow this process to continue until both sides state that they have no further questions for the witness. The

plaintiff will present all their evidence before the defendant has a turn to present their own case and call their own witnesses.

What evidence is admissible at trial?

All the evidence that is presented by any party during trial must be admissible. The Federal Rules of Evidence provide very detailed rules for the admissibility of evidence.

If one party tries to present evidence that is not allowed under the Federal Rules of Evidence or tries to ask improper questions of a witness, the other party may object. It is the party's responsibility, not the judge's responsibility, to object to evidence that is not admissible. If the objection involves testimony, then the objection should, if possible, be made before the witness answers the improper question or states the improper evidence. If the objection is to a document, then the objection should be made at the time the document is offered into evidence by the other side. If the other party does not timely object, the judge may allow the evidence to be presented, and the other party may not be able to protest that decision on appeal.

The way to object is to stand and briefly state your objection. You should address your objection to the judge, not to the other party or their lawyer. Objections should be brief but must contain the basis for the objection. For example, a proper objection might be: "Objection, your honor, inadmissible hearsay." You should not give a long explanation or argument unless the judge specifically asks you to explain your objection. If the judge wants to discuss the objection, he or she may ask you and the other side to

come up to the bench where the judge sits, out of the hearing of the jury, to talk to you quietly. This is called a discussion at side bar. The judge will then either sustain or overrule the objection. If the judge sustains the objection, the evidence will not be admitted or the question may not be asked. If the judge overrules the objection, the evidence will be admitted or the question may be asked, unless the judge later sustains a different objection.

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

In a jury trial, after the plaintiff has presented all their evidence, the defendant may make a motion for judgment as a matter of law, requesting the judge to decide the outcome of the case without the need for the defendant to present any evidence. Rule 50(a) of the Federal Rules of Civil Procedure explains the procedures for making this motion.

A motion for judgment as a matter of law is granted if the plaintiff failed to provide enough evidence during their case to allow any reasonable jury to decide the matter in the plaintiff's favor. The judge may either rule on the motion when it is made or put off ruling until later. If the judge grants the motion for judgment as a matter of law, the trial is over.

When does the defendant get to present their case?

If the defendant does not file a motion for judgment as a matter of law, or if the motion is not granted at the time it is made, the defendant then presents his or her case.

The same procedures that were used during presentation of the plaintiff's case also apply while the defendant presents their case.

What is rebuttal?

After both sides have had a chance to present their case, the party who has the burden of proof (usually the plaintiff) may, but is not required to, try to undermine or explain the opposing party's evidence through "rebuttal evidence." Rebuttal may only be used to counter the other party's evidence. For example, a rebuttal witness might testify that the other party's witness could not have seen the events they testified to because the witness was not there at the time. But the plaintiff cannot use rebuttal to present their case over again or try to add something they had forgotten when presenting their case.

What happens after all parties have finished presenting their evidence?

After all witnesses have finished testifying, the judge will instruct the jury about the law that applies to the case. Sometimes, the judge will wait until after closing arguments to instruct the jury about the law.

Each party may present a closing argument. The purpose of the closing argument is to summarize the evidence and argue how the jury (or, in a bench trial, the judge) should decide the case based on that evidence. Under Local Rule 39.2, closing argument is limited to one hour, unless the judge orders otherwise.

CHAPTER NINE: POST-TRIAL MOTIONS AND APPEALS

What is a motion for reconsideration?

A motion for reconsideration is a request that the judge change his or her mind about a decision already made in a case. Under Local Rule 7.1(j), you must present compelling circumstances before you are permitted to file a motion for reconsideration of an order entered by the judge. A request to make such a motion must be in a letter, no more than two pages long, directed to the judge. You must send a copy of the letter to the other parties. A motion for reconsideration may be requested following the entry of any order. That said, requests for reconsideration are disfavored and are rarely granted.

What is a post-trial or post-judgment motion?

A post-trial or post-judgment motion is a request for relief from the court that just heard your case. The most common are motions for a new trial, which are governed by Rule 59 of the Federal Rules of Civil Procedure, and motions for relief from judgment, which are governed by Rule 60 of the Federal Rules of Civil Procedure.

What is an appeal?

An appeal is a request for another court—an appellate court—to review the decisions made by the judge or jury in your case. Generally (though not always), parties may not file a notice of appeal until after finally judgment is entered in their lawsuit. Almost all appeals from the judgments of the District of Minnesota must go to the United States Court of Appeals for the Eighth Circuit.

How do I file an appeal?

To start the appeal process, you file a notice of appeal in this court's Clerk's Office. Notice of Appeal forms are available from the Clerk's Office or on the District of Minnesota's website. Rule 3 of the Federal Rules of Civil Procedure governs how to file a notice of appeal.

A filing fee of $605.00 is owed and payable to this court upon filing a notice of appeal. If you have been granted *in forma pauperis* status in this court, however, you do not have to pay the appellate filing fee, unless otherwise ordered to do so by the judge in your case. If you were not granted *in forma pauperis* status when you filed your case in this court, but you cannot afford the appellate filing fee, you may file a motion to proceed *in forma pauperis* on appeal. Information about filing a motion to proceed *in forma pauperis* can be found above.

Under Rule 24(a)(5) of the Federal Rules of Appellate Procedure, if the district court denies your motion to proceed *in forma pauperis* on appeal, you may file a motion to proceed *in forma pauperis* in the appellate court within 30 days after service of the court's order denying your application to proceed *in forma pauperis* on appeal.

Prisoners who are unable to afford the $605.00 appellate filing fee may apply for *in forma pauperis* status but cannot be excused from paying the filing fee entirely. Instead, a prisoner who qualifies financially for *in forma pauperis* status must still pay the full amount of the appellate filing fee in installments over time, with the first of those installments due at the beginning of the case. The amount of that initial payment is calculated under 28 U.S.C. § 1915(b) based on the average deposits to and balance of the

prisoner's facility trust account for the six months preceding the filing of the lawsuit. For the remaining installments, prison or jail officials will be directed to withdraw money from the prisoner's facility trust account and send that money to the court as funds become available. The court cannot waive this obligation.

When do I have to begin my appeal?

Unless the United States or its officer or agency is a party, you must file your notice of appeal in this court within 30 days after the judgment or order appealed from is entered. If the United States or an officer or agency of the United States is a party, the notice of appeal must be filed within 60 days after the judgment or order appealed from is entered. For additional issues regarding the time for filing a notice of appeal, refer to Rule 4(a) of the Federal Rules of Appellate Procedure.

There are many other steps to beginning and proceeding with your appeal that can be found in the Eighth Circuit Local Rules and the Federal Rules of Appellate Procedure, but the appellate process is beyond the scope of this Guidebook. For more information, visit the Eighth Circuit's website.