

REPRESENTING YOURSELF IN A CIVIL CASE: A GUIDE FOR THE PRO SE LITIGANT



DISCLAIMER: THIS GUIDE IS NOT LEGAL ADVICE AND IS NOT A SUBSTITUTE FOR HIRING AN ATTORNEY TO REPRESENT YOU.

TABLE OF CONTENTS

Introduction	3
District Website.....	3
Definitions of Common Legal Terms.....	4
The District, Clerk's Office, and General Information.....	6
Filing a Civil Case: What You Must Do to Get Started	10
Defending a Civil Case: What You Must Do to Respond.....	14
The District's Fee Schedule	15
Forms/Rules	15

WARNING: Rule 11 of the Federal Rules of Civil Procedure prohibits you from filing a lawsuit that is clearly frivolous or filed merely to harass someone. If after reviewing your complaint, the court determines that you have filed a lawsuit for an improper or clearly unnecessary purpose, it may impose sanctions against you. Other rules of civil procedure allow that if you lose your case, you may be required to pay some of the costs that the winning party incurred in the lawsuit.

INTRODUCTION

This guide is intended to help a person who wants to file or defend a civil case in the United States District Court for the Eastern District of North Carolina (“the District”) without an attorney. This guide is not intended for prisoner litigation.

Someone who represents herself or himself in a lawsuit is often referred to as a *pro se* party or *pro se* litigant (pronounced "pro say"). If you are a *pro se* litigant, this guide may aid you in understanding some of the legal words you are likely to hear as your case proceeds. It also explains basic steps in the court process and refers you to a few legal resources you may wish to consult. This guide will not answer all your questions about what you need to do to represent yourself. This guide is not legal advice and is not a substitute for an attorney. Also, you should keep in mind that this guide is not binding and that the judge may have different practices or preferences that you must follow. It is strongly recommended that you seek the assistance of a lawyer to make sure your case is properly prepared and filed. Unlike in a criminal case, the court will not provide an attorney for you simply because you cannot afford representation.

The staff of the Clerk's Office, or deputy clerks, can answer general questions about procedures. They are not allowed to fill out any forms for you or to give you free copies of documents. The deputy clerks cannot give you legal advice. This means, for example, that the Clerk's staff cannot do any of the following:

- recommend a legal course of action or suggest ways to help you win your case;
- predict how or when a district or magistrate judge may decide any issue;
- interpret the meaning of any judicial order;
- interpret the law or federal or local rules;
- calculate response times or deadlines; or
- conduct legal research.

The rules and procedures that a party must follow in a civil case may be difficult to understand. You should seriously consider the risks of representing yourself and the benefits of obtaining professional legal assistance. If you decide to represent yourself, you are responsible for learning about and following the Federal Rules of Civil Procedure, the Local Rules of Practice and Procedure, and the law. The court generally expects you to follow its rules and the law, even though you are not a lawyer.

WEBSITE

The District’s website address is: <http://www.nced.uscourts.gov/>. The website contains the Federal Rules of Civil Procedure, the Local Rules of Practice and Procedure, and other useful information. You will also find samples of all of the forms mentioned in this guide on the website.

DEFINITIONS OF COMMON LEGAL WORDS

*AS DEFINED BY THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

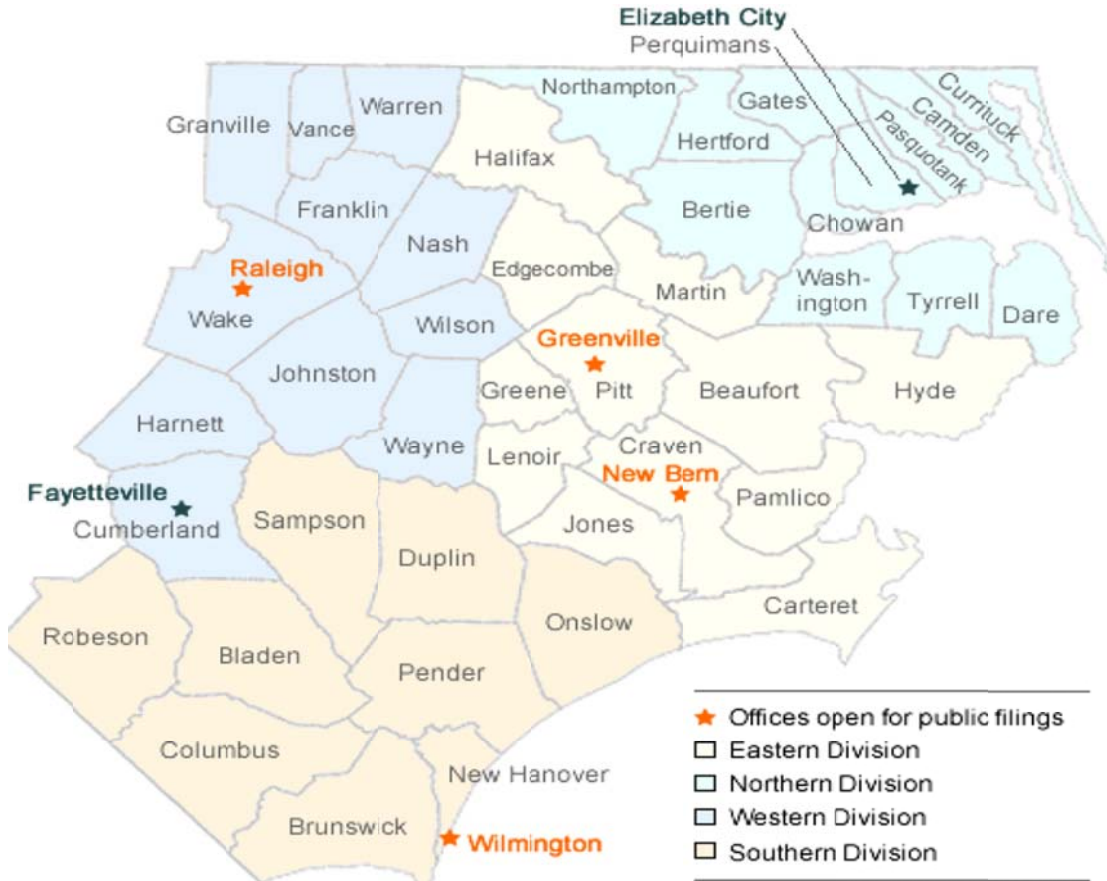
[HTTP://WWW.USCOURTS.GOV/COMMON/GLOSSARY.ASPX](http://www.uscourts.gov/common/glossary.aspx)

Answer	The formal written statement by a defendant in a civil case that responds to a complaint, articulating the grounds for defense.
Brief	A written statement submitted in a trial or appellate proceeding that explains one side's legal and factual arguments.
Clerk of Court	The court officer who oversees administrative functions, especially managing the flow of cases through the court. The clerk's office is often called a court's central nervous system.
Complaint	A written statement that begins a civil lawsuit, in which the plaintiff details the claims against the defendant.
Counsel	Legal advice; a term also used to refer to the lawyers in a case.
Damages	Money that a defendant pays a plaintiff in a civil case if the plaintiff has won. Damages may be compensatory (for loss or injury) or punitive (to punish and deter future misconduct).
Default judgment	A judgment awarding a plaintiff the relief sought in the complaint because the defendant has failed to appear in court or otherwise respond to the complaint.
Defendant	An individual (or business) against whom a lawsuit is filed.
Discovery	Procedures used to obtain disclosure of evidence before trial.
District judge	A federal judge who is appointed under Article III of the Constitution. Article III judges are nominated by the President and confirmed by the Senate.
Docket	A log containing the complete history of each case in the form of brief chronological entries summarizing the court proceedings.
File	To place a paper in the official custody of the clerk of court to enter into the files or records of the case.
<i>In forma pauperis</i>	"In the manner of a pauper." Permission given by the court to a person to file a case without payment of the required court fees because the person cannot pay them.
Interrogatories	A form of discovery consisting of written questions to be answered in writing and under oath.
Judgment	The official decision of a court finally resolving the dispute between the parties to the lawsuit.
Jurisdiction	The legal authority of a court to hear and decide a certain type of case. It also is used as a synonym for venue, meaning the geographic area over which the court has territorial jurisdiction to decide cases.
Lawsuit	A legal action started by a plaintiff against a defendant based on a complaint that the defendant failed to perform a legal duty which resulted in harm to the plaintiff.
Litigation	A case, controversy, or lawsuit. Participants (plaintiffs and defendants) in lawsuits are called litigants.

Magistrate judge	A judicial officer of a district court who conducts initial proceedings in criminal cases, decides criminal misdemeanor cases, conducts many pretrial civil and criminal matters on behalf of district judges, and decides civil cases with the consent of the parties.
Moot	Not subject to a court ruling because the controversy has not actually arisen, or has ended.
Motion	A request by a litigant to a judge for a decision on an issue relating to the case.
Plaintiff	A person or business that files a formal complaint with the court.
Pleadings	Written statements filed with the court that describe a party's legal or factual assertions about the case.
Sanction	A penalty or other type of enforcement used to bring about compliance with the law or with rules and regulations.
Service of Process	The delivery of writs or summonses to the appropriate party.
Settlement	Parties to a lawsuit resolve their dispute without having a trial. Settlements often involve the payment of compensation by one party in at least partial satisfaction of the other party's claims, but usually do not include the admission of fault.
Summary Judgment	A decision made on the basis of statements and evidence presented for the record without a trial. It is used when it is not necessary to resolve any factual disputes in the case. Summary judgment is granted when – on the undisputed facts in the record – one party is entitled to judgment as a matter of law.

THE DISTRICT, CLERK'S OFFICE, AND GENERAL COURT INFORMATION

The United States District Court for the Eastern District of North Carolina ("the District") covers the forty-four counties shown on this map. The District is divided into four divisions – Eastern, Western, Northern, and Southern. Court is held in six cities in the District: Elizabeth City, Fayetteville, Greenville, New Bern, Raleigh, and Wilmington.



Northern Division

Bertie
Camden
Chowan
Currituck
Dare
Gates
Hertford
Northampton
Pasquotank
Perquimans
Tyrrell
Washington

Eastern Division

Beaufort
Carteret
Craven
Edgecombe
Greene
Halifax
Hyde
Jones
Lenoir
Martin
Pamlico
Pitt

Western Division

Cumberland
Franklin
Granville
Harnett
Johnston
Nash
Vance
Wake
Wayne
Warren
Wilson

Southern Division

Bladen
Brunswick
Columbus
Duplin
New Hanover
Onslow
Pender
Robeson
Sampson

WHAT ARE THE LOCATIONS AND BUSINESS HOURS OF THE OFFICES OF THE CLERK OF COURT?

The headquarters of the **Clerk of Court** (“Clerk”) is in Raleigh. The Clerk also has staffed offices in Greenville, New Bern, and Wilmington. The Clerk’s Offices are open Monday through Friday, with the exception of federal holidays or by order of the court. You may obtain complaint packets, forms, and information about procedures, fees, and rules at any staffed office and on the District’s website.

GREENVILLE	NEW BERN	RALEIGH	WILMINGTON
U.S. Courthouse 201 South Evans St., Room 209 Greenville, NC 27858	U.S. Post Office & Courthouse 413 Middle Street New Bern, NC 28560	<u>Physical address:</u> Terry Sanford Federal Building & Courthouse 310 New Bern Avenue Raleigh, NC 27601 <u>Mailing Address:</u> PO Box 25670 Raleigh, NC 27611	Alton Lennon Federal Building & Courthouse 2 Princess Street Wilmington, NC 28401
(252) 830-6009 8:30 a.m. – 4:30 p.m.	(252) 638-8534 8:00 a.m. – 5:00 p.m.	(919) 645-1700 8:30 a.m. – 4:30 p.m.	(910) 815-4663 8:30 a.m. – 4:30 p.m.

HOW DO YOU FIND INFORMATION ABOUT THE STATUS OF YOUR CASE?

Most documents filed with the court are filed electronically. The clerk’s office is responsible for uploading documents filed by pro se parties into the Case Management/Electronic Case Files (“CM/ECF”) system. The Clerk’s Office maintains a record, or **docket**, for every case. The CM/ECF system allows public access to the court’s docket. You may review the docket on a public access terminal at the Clerk’s offices in Greenville, New Bern, Raleigh, and Wilmington. The deputy clerks may limit the time that you are allowed to use the public access terminal. Depending on their availability, Clerk’s Office staff may help you find information about your case on the public access terminal. You may also obtain case information through the federal judiciary’s Public Access to Court Electronic Records (“PACER”). PACER is available to anyone who registers for an account at <http://www.pacer.gov/>. The Clerk’s Office will also provide basic docket information over the phone.

HOW MUCH DOES IT COST TO FILE A LAWSUIT?

The filing fee for initiating a lawsuit in any U.S. District Court is \$350.00. Payment may be made in cash, by personal check, or money order made payable to Clerk, U.S. District Court. You may also pay by credit card. American Express, Mastercard, and Visa are accepted.

WHAT IF YOU CANNOT AFFORD TO PAY THE FILING FEE?

If you cannot afford to pay the filing fee, you may file an application to proceed **in forma pauperis** (“IFP application”) (**Form AO 239**).

The IFP Application asks you questions about your income and assets. You must follow the instructions completely, answer truthfully, and sign the application. The deputy clerk will send the IFP application, the **complaint**, and any other documents you submitted with the complaint to the assigned **district judge** or a **magistrate judge**.

After reviewing your IFP application, the judge may deny your request. If this happens, you have thirty days to pay the filing fee. Local Civil Rule 3.2 states that your case will be closed if you do not pay the filing fee on time. The judge may also find that your IFP application is incomplete. You must follow the judge’s instructions and respond within the time allowed.

If the judge allows you to proceed in forma pauperis, the deputy clerk will file your complaint. The judge will review your complaint to determine if it is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks relief against a **defendant** who is immune from such relief. This process is called a “frivolity review.” The judge may allow your case to proceed or dismiss some or all of your claims.

WHAT SHOULD THE COURT PAPERS LOOK LIKE?

Local Civil Rule 10.1 provides the format requirements for all documents filed with the court. Below is a summary only of some of the requirements.

Each document filed with the court:

- must be on standard sized (8 ½ x 11) paper with a one-inch margin on all sides
- must have a font size of 11 points or greater
- must contain the case number and the caption of the case
- must identify the title of the document (e.g., Complaint, Answer, Motion to Dismiss)
- must contain your original signature and date on the final page, followed by your typed or printed name (in the exact form as your signature), address, and telephone number
- must include a completed certificate of service

YOUR DOCUMENTS SHOULD BE TYPED OR WRITTEN NEATLY AND LEGIBLY.

YOU SHOULD ALWAYS MAKE A COPY OF EVERY DOCUMENT FOR YOUR OWN RECORDS.

Complaints, motions, briefs, or other documents sent to the judge or Clerk of Court in the form of a letter do not comply with the Federal Rules or Local Rules.

All documents filed with the court are identified by a caption. When you fill out your complaint, you must list the full names of all parties to the lawsuit in the caption, the case number, the division, and the title of the document. The case number is assigned by the Clerk's Office upon receipt of the case-opening documents. You must include the case number on all documents you file after the complaint. Local Civil Rule 40.1(c) explains how to select the right division.

SAMPLE CAPTION:

In the United States District Court For the Eastern District of North Carolina	
_____ Division	
No. _____	
A. Smith,)
Plaintiff,)
v.)
)
B. Jones, T. Johnson)
R. Thomas, and XYZ, Inc.,)
Defendants.)
	TITLE (e.g., Complaint, Answer or Motion to Dismiss)

SAMPLE CERTIFICATE OF SERVICE:

I certify that I have served a copy of (insert name of document – e.g. motion for an extension of time) on insert date by (insert method of service – e.g. U.S. Mail or certified mail, return receipt requested) on the following: (insert names of attorneys and any party who appears pro se).

Your signature
Your typed or printed name
Your complete address
Your telephone number

FILING A CIVIL CASE

WHAT DO YOU NEED TO GET STARTED?

To begin your lawsuit, you must file a **complaint**, civil cover sheet, disclosure of corporate affiliations (financial disclosure statement), and summons. You must also submit either the filing fee or an IFP application. You should complete each of these documents before you arrive at the Clerk's Office.

- (1) **Complaint** – The complaint explains the reason for your lawsuit. You are encouraged to type your complaint. Handwritten complaints must be legible.

The District provides forms for employment discrimination (EEOC) and general complaints, as well as other documents you need to get started. You may obtain these forms at any staffed Clerk's Office and on the District's website.

Please note that the complaint forms contain numbered paragraphs. If possible, each paragraph should cover a separate point of your case. You are required to identify all **defendants** by name and address, state the reasons why you believe the court has **jurisdiction**, the facts you believe are sufficient to support a claim against each defendant, the claim or causes of action you are bringing against each defendant, and the relief sought. If you are requesting a jury trial, you must include your request in your complaint. *Each* plaintiff must sign and date all documents, print her or his name, and provide a current address and telephone number.

***DO NOT** list a person's Social Security number, taxpayer-identification number, birth date, or financial-account number or the name of a minor child in your complaint or any other document filed with the court. If you believe that this personal identifying information is important to your case, you should list **only** the last four digits of any number, the year of the individual's birth, or the initials of the minor child. You should "black out" (redact) any personal identifying information before filing a document.*

You may file your papers by delivering or mailing them to any staffed Clerk's Office regardless of the division or judge to which the case is assigned. You may not file any documents by facsimile or e-mail without approval from the court.

- (2) Civil cover sheet (**Form JS 44**) – You must submit a completed civil cover sheet and a copy for each defendant.
- (3) Filing fee – You must submit the \$350 filing fee or a fully completed original Application to Proceed in District Court without Prepaying Fees or Costs with a copy for each defendant (**Form AO 239**).

- (4) Disclosure of Corporate Affiliations Statement – You must submit the original disclosure to the court with a copy for each defendant. See Federal Rule of Civil Procedure 7.1 and Local Civil Rule 7.3.
- (5) Summons (**Form AO 440**) – You must submit an original and two copies of the summons for each defendant.

Upon submission, the deputy clerk will review your filings for completion. A computer program assigns a case number and randomly selects the **district judge**. A **magistrate judge** may also be designated for your case.

HOW DOES THE DEFENDANT LEARN ABOUT THE LAWSUIT?

Each **defendant** must be notified about the lawsuit (served with process). Except in very limited circumstances, the case will not go forward against a defendant who has not been served. Rule 4 of the Federal Rules of Civil Procedure explains the steps and the time limit for securing proper service.

- (1) *IF YOU PAID THE FILING FEE*, the clerk will sign (issue) an original **summons** and one copy for each defendant. The clerk retains the original summons for the court's file and returns a signed copy to you.

It is your responsibility to serve each defendant properly. Improper service may result in the dismissal of your case. You may not serve the summons yourself. *Rather*, the summons, **complaint**, and financial disclosure statement may be served on each defendant as follows:

- Personal service by any person over the age of 18 who is not a party to the case.
- Certified mail, return receipt requested.
- Service by a United States Marshal or appointed person if the court grants your request.

You can also ask each defendant to waive service by sending a copy of the complaint, a Notice of Lawsuit and Request for Waiver of Service (**Form AO 398**), and a Waiver of Summons (**Form AO 399**). For the plaintiff, the benefit of waiving service is not having to pay the cost of serving the summons. A defendant who waives service is allowed extra time – 60 days - to respond to the complaint. The United States and some other parties cannot waive service.

- (2) *IF THE COURT GRANTS YOUR IFP APPLICATION AND ALLOWS YOUR CASE TO PROCEED*, the deputy clerk will file the complaint and issue the summons that you prepared. Typically, the judge will direct the clerk to forward the summons and complaint to the United States Marshals Service to serve each defendant. However, the court may

require you to serve the summons and complaint. You should follow the judge's instructions.

HOW IS SERVICE PERFECTED ON THE UNITED STATES, ITS AGENCIES, CORPORATIONS, OFFICERS OR EMPLOYEES?

You should read Rule 4(i) of the Federal Rules of Civil Procedure which explains this process.

(1) When the United States of America is a defendant (e.g., John Doe v. United States), you may perfect service:

- By either (a) sending the summons and complaint by registered or certified mail to the attention of the civil process clerk in the United States Attorney's Office in the district where the complaint is filed; or, (b) delivering the summons and complaint to the United States Attorney for the district where the complaint is filed; and
- By sending the summons and complaint by registered or certified mail to the United States Attorney General in Washington, D.C.
- If your complaint challenges the validity of an order of an officer or agency not listed as a party to your case, you must also serve the summons and complaint on the officer or agency that issued the order by registered or certified mail.

(2) When a federal officer, agency, or corporation is a defendant (e.g., John Doe v. Commissioner of Social Security; Jane Doe v. Internal Revenue Service), you may perfect service:

- By following the steps listed above to serve the United States Attorney and Attorney General; and
- By sending the summons and complaint by registered or certified mail to the federal officer, agency, or corporation named as a defendant.

You must file with the Clerk proof of service on each defendant, as explained in Rule 4(l) of the Federal Rules of Civil Procedure. IF YOU DO NOT PERFECT SERVICE WITHIN 120 DAYS FROM THE DATE THE COMPLAINT IS FILED, YOUR CASE MAY BE DISMISSED.

HOW DO YOU FILE A MOTION?

You may need to ask the judge to instruct the opposing party to do something connected to your case, or you may need to ask the judge to allow you to do something. When you request the court to take specific action, you do so by filing a **motion** with the Clerk. For example, you may ask the judge to direct the **defendant** to give you access to certain records during the **discovery** phase of your case, or ask the judge to grant you an extension of time to file a document. Another example is a dispositive motion, such as a motion to dismiss, motion for **summary judgment**, or motion for judgment on the pleadings. A dispositive motion may resolve an issue or end the case before trial.

Some of the court's basic procedural rules for motions are contained in Local Civil Rules 6.1, 7.1, 7.2 and 10.1. Local Civil Rule 7.2 limits the length of a brief in support of a motion or in response to a **motion** to 30 pages. You must file a separate motion requesting leave, or permission, to file a longer brief. The Local Civil Rules also set deadlines for the time to respond to motions.

As with all other documents filed with the court, you must provide a copy of the motion and memorandum to each party. These documents must include a certificate of service. Rule 5 of the Federal Rules of Civil Procedure tells you how to serve documents filed with the court after the original **complaint**.

Motions are usually decided by the court without a hearing requiring the parties to appear before the judge. If a judge decides to hold a hearing, the Clerk's Office will send you a notice of the date, time, and location of the hearing.

WHAT IF YOU MOVE WHILE YOUR CASE IS PENDING?

Local Civil Rule 83.3 requires you to provide written notice to the court of your new address within 14 days. The court may dismiss your case if you fail to file a timely change of address.

HOW CAN YOU DISMISS YOUR LAWSUIT?

Once you have filed your case, you must follow the court's orders and diligently pursue your action. If you change your mind and no longer would like to proceed, you may dismiss your action. Rule 41 of the Federal Rules of Civil Procedure explains voluntary and involuntary dismissals.

DEFENDING A CIVIL CASE

If you are served with a summons and a civil **complaint**, you may defend only yourself against the **plaintiff's** claims. Unless you are an attorney, you are not allowed to represent a corporation even if you are the owner or an officer. A corporation may only be represented by an attorney. Keep in mind that you should seriously consider obtaining professional legal assistance.

The Federal Rules of Civil Procedure set a deadline for you to **answer** or respond to a complaint. Typically, you must file an answer or responsive **motion** within 21 days after being served with the summons and **complaint**. If you receive a request to waive service, you must return the form to the plaintiff within 30 days of the date the Notice of Lawsuit and Request for Waiver was mailed to you. If you sign the "Waiver of Service," you are allowed 60 days from the date the plaintiff mailed the waiver to respond to the complaint. You may file your answer or responsive motion by mailing or bringing it to one of the staffed Clerk's offices.

Your response should include the case caption that appears on the complaint. The answer should state any defenses you have to the plaintiff's claims and admit or deny the allegations in the complaint. You should request a jury in your answer, if you would like a jury trial.

When you file your answer or responsive motion, you must also file a financial disclosure statement. See Federal Rule of Civil Procedure 7.1 and Local Civil Rule 7.3.

You must mail a copy of everything you file with the court to the plaintiff's attorney or the plaintiff (if he or she is pro se) and to any additional party. You must attach a certificate of service to these documents.

If you have been served with a summons and complaint or you were served with a complaint and agreed to waive service and you do not file an answer or other response, the plaintiff may ask the Clerk of Court to enter default and the Court to order a **default judgment** against you.

You are encouraged to read this guide completely because it contains additional information that you should know.

THE DISTRICT'S FEE SCHEDULE

Filing Fees

Civil Complaint or State Court Removal	\$350.00
Notice of Appeal to the Court of Appeals	\$455.00 – includes \$5 docketing fee
Miscellaneous Case, Out of District Subpoena, Registration of Foreign Judgment, Power of Attorney	\$39.00

Miscellaneous Fees

Photocopies made by Court personnel (per page)	\$ 0.50
Photocopies of documents printed from CM/ECF (per page)	\$ 0.10
Tape Reproductions	\$26.00
Record Searches (per name or item searched)	\$26.00
Certifications (each)	\$ 9.00
Exemplification of any document or page	\$18.00
Returned Check Fee	\$45.00

FORMS/RULES AVAILABLE AT THE CLERK'S OFFICES OR ON THE DISTRICT'S WEBSITE:

- Civil Cover Sheet (JS 44)
- Summons (AO 440)
- Notice of Lawsuit and Waiver Request (AO 398)
- Waiver of Service of Summons (AO 399)
- In Forma Pauperis Application (AO 239)
- Complaint [General]
- Complaint [Employment Discrimination]
- Financial Disclosure Statement
- Rule 4 of the Federal Rules of Civil Procedure