

United States District Court for the District of Montana

A Pro Se Guide for Filing in the United States District Court for the District of Montana

Instructions for filing a civil action on your own behalf

Disclaimer

This handbook is informational only. The United States District Court for the District of Montana clerk's office staff are prohibited from giving legal advice pursuant to 28 U.S.C § 955. This handbook, including all files and hyperlinks therein contained, is a guide for self-represented litigants. It is not legal advice and should not be considered as legal advice. The court will not answer questions about the handbook's content or how it may pertain to an individual case, except as required by law. Those seeking guidance concerning a federal action should consult with an attorney. The handbook does not, is not intended to, shall not be construed to, and may not be relied upon to create or to limit any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal. Do not cite this handbook in filings with the court; cite the applicable rules and law.

Warning to Incarcerated or Detained Persons: Please note that some parts of this handbook will not apply to actions filed by incarcerated or detained persons. Detained litigants are often required to comply with different statutes and rules. These rules may include—but are not limited to—the use of court-approved forms where applicable and the exhaustion of administrative remedies prior to filing suit.

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Table of Contents

REPRESENTING YOURSELF.	<u>1</u>
Introduction.	<u>1</u>
Rules You Must Follow.	<u>2</u>
Federal Rules of Civil Procedure.	<u>2</u>
Local Rules.	<u>2</u>
Federal Rules of Evidence.	<u>2</u>
Responsibilities of the Pro Se Litigant.	<u>3</u>
State court v. Federal court:	<u>3</u>
State courts.	<u>4</u>
Federal courts.	<u>4</u>
Federal Question.	<u>4</u>
Diversity.	<u>4</u>
Common Types of Pro Se Cases.	<u>4</u>
Habeas Corpus.	<u>5</u>
Civil Rights.	<u>5</u>
Employment Discrimination.	<u>5</u>
Social Security.	<u>5</u>
Other Issues to Consider.	<u>5</u>
Statute of Limitations.	<u>5</u>
Frivolous or harassing lawsuits.	<u>6</u>
Costs and Attorneys Fees.	<u>6</u>
Change of address.	<u>6</u>
CLERK OF COURT’S OFFICE.	<u>7</u>
Hours of Operation.	<u>7</u>
Locations.	<u>7</u>
Security.	<u>8</u>
Court Staff.	<u>9</u>
FILING YOUR CASE.	<u>10</u>

United States District Court for the District of Montana Pro Se Handbook

Documents to File.	<u>10</u>
Paid Cases.	<u>10</u>
In Forma Pauperis Cases.	<u>10</u>
Habeas Petitions.	<u>10</u>
Filing Fees.	<u>11</u>
Methods of Payment.	<u>11</u>
In Forma Pauperis.	<u>11</u>
Non-Prisoners.	<u>11</u>
Prisoners.	<u>11</u>
Screening.	<u>12</u>
Preparation of Documents.	<u>12</u>
Privacy.	<u>14</u>
ELECTRONIC FILING SYSTEM (CM/ECF).	<u>15</u>
Consent to Electronic Service.	<u>15</u>
Request to File by E-Mail:	<u>16</u>
Service Agreements between Parties.	<u>16</u>
Application of Three-Day Mailing Rule.	<u>16</u>
Checking the Status of Your Case.	<u>16</u>
Public Terminals.	<u>17</u>
PACER (“Public Access to Court Electronic Records”).	<u>17</u>
SERVICE OF SUMMONS AND COMPLAINT.	<u>18</u>
Definition of Service:	<u>18</u>
Timing of Service.	<u>18</u>
Responsibility for Service.	<u>19</u>
Paid Cases.	<u>19</u>
Personal Service.	<u>19</u>
Waiver of Service.	<u>19</u>
IFP Cases.	<u>19</u>
Proof of Service.	<u>19</u>
PRETRIAL PROCESS.	<u>20</u>
Case assignment.	<u>20</u>
Screening of Prisoner and IFP Complaints.	<u>20</u>
Magistrate Judges.	<u>21</u>
Referral.	<u>21</u>

United States District Court for the District of Montana Pro Se Handbook

Consent.	<u>21</u>
Defendant’s Response to the Complaint.. . . .	<u>22</u>
Defendant may file an answer.	<u>22</u>
Defendant may file a motion to dismiss.	<u>22</u>
Defendant may file nothing.	<u>22</u>
Preliminary Pretrial Conference/Scheduling Order.	<u>23</u>
Discovery.. . . .	<u>23</u>
Types of Discovery.. . . .	<u>23</u>
Deposition.. . . .	<u>23</u>
Interrogatories.. . . .	<u>23</u>
Requests for Production.. . . .	<u>23</u>
Requests for admission.. . . .	<u>23</u>
Subpoenas.. . . .	<u>24</u>
Commencement of Discovery.. . . .	<u>24</u>
Discovery is Not Generally Filed.. . . .	<u>24</u>
Discovery Motions.	<u>24</u>
Discovery Responses.	<u>25</u>
Objections to Discovery	<u>25</u>
Sealed documents.	<u>25</u>
Motions Generally.. . . .	<u>25</u>
Types of Motions.	<u>26</u>
Motion for Appointment of Counsel.	<u>26</u>
Motion for Leave to Amend.	<u>26</u>
Motion to Dismiss.. . . .	<u>27</u>
Motion for Summary Judgment.	<u>27</u>
Motion for Reconsideration.	<u>29</u>
Motion in Limine.	<u>29</u>
TRIAL PROCESS.	<u>30</u>
Basic courtroom rules.	<u>30</u>
Types of Trials.. . . .	<u>30</u>
Bench trial.. . . .	<u>30</u>
Jury trial.	<u>30</u>
Voir Dire.	<u>30</u>
Opening statement.. . . .	<u>31</u>
Evidence presentation.. . . .	<u>31</u>
Resting your case.	<u>31</u>

United States District Court for the District of Montana Pro Se Handbook

Defense and rebuttal. [31](#)
Closing argument. [31](#)
Jury instructions. [31](#)
Verdict. [32](#)
Judgment. [32](#)

FILING AN APPEAL. [33](#)

RESOURCES. [34](#)
 Tips for Self-Represented Litigants. [34](#)
 Terminology. [36](#)

I. REPRESENTING YOURSELF

A. Introduction

1. If you can afford to hire a lawyer to represent you or can find low-cost or free professional legal help, you are strongly encouraged to do so. If you do not have a lawyer and want to proceed with a case in federal court, you have the right to represent yourself and file your case without an attorney, which is known as proceeding as a “pro se litigant.” “Pro se” is a Latin term, meaning “on one’s own behalf” and a “litigant” is someone who either is suing someone or is being sued in court. The right to appear pro se in a civil case in federal court is contained in a statute, 28 U.S.C. § 1654.
2. There are certain limitations to self-representation, such as:
 - a. Corporations, partnerships, unincorporated associations, and unions must be represented by an attorney.
 - b. A pro se litigant may not represent a class in a class action.
 - c. A non-attorney parent may not represent a child, except to appeal the denial of the child’s social security benefits.
3. In a civil case (the only type of case an individual can start in federal court), you do not have a constitutional right to free legal representation. If you start a civil case without a lawyer, you should be prepared to pursue it to completion on your own. If you decide to represent yourself, the court will treat you the same as it would an attorney. You will be expected to state your issues clearly and concisely, meet all deadlines, and follow the court rules.

4. Any individual acting without an attorney must appear personally and may not delegate that duty to any other person who is not a member of the bar of this court.

B. Rules You Must Follow: Before you file a case, you should begin by reviewing the local and federal rules that govern the filing of a case in this court. A self-represented person is bound by the federal rules and all applicable local rules. Sanctions for failing to follow these rules, include but are not limited to entry of default judgment or dismissal with prejudice. Local Rule 83.8(a).

www.mtd.uscourts.gov/local-rules

1. **Federal Rules of Civil Procedure:** The Federal Rules of Civil Procedure (“Fed.R.Civ.P.”) are the rules that all parties are expected to use during their case and in preparation for and during a trial in Federal court. You can view the Federal Rules of Civil Procedure at www.law.cornell.edu/rules/frcp.
2. **Local Rules:** Each District in the federal system also maintains Local Rules that augment or refine the Federal Rules of Civil Procedure. You should familiarize yourself with the Local Rules for the District of Montana (“LR”) which may be obtained at: www.mtd.uscourts.gov/local-rules or upon request from the clerk’s office.
3. **Federal Rules of Evidence:** The Federal Rules of Evidence (“Fed.R.Evid.”) are the rules that describe the allowability and proper use of witness testimony, documents, and other evidence in a civil trial. You can view a copy of the Federal Rules of Evidence at www.law.cornell.edu/rules/fre. As you build your case, you will need to verify that you will be permitted to present the evidence on which you are relying to the court. Not everything that was said during the course of a dispute that gives rise to a civil action is admissible in court. Documents that cannot be authenticated may not be admissible. It is therefore important to closely review the Federal Rules of Evidence and ensure that your evidence will be permitted by

the court.

- C. Responsibilities of the Pro Se Litigant:** The following list of responsibilities is not intended to be exhaustive, and only provides a few examples of the manner in which pro se litigants are expected to conduct themselves when pursuing an action in this court.
1. You are required to diligently prosecute your lawsuit and prepare for trial. This includes, but is not limited to, responding to discovery requests and motions. If the case goes to trial, it will also be your responsibility to present your case in court.
 2. You must follow established procedures and orders issued by the court and if you do not your case may be subject to dismissal. Do not expect correspondence or orders from the court instructing you how to pursue your case.
 3. The original signed version of all pleadings must be filed with the court; your name must be typed or printed and signed on the last page of every pleading.
 4. Pursuant to Fed.R.Civ.P. 5, you are required to serve each litigants' attorney (or the defendant, if that defendant is also appearing pro se) with copies of all pleadings and motions filed with the court. www.law.cornell.edu/rules/frcp/rule_5
 5. You should retain a copy of all documents submitted to the court for your records. Neither the court nor the clerk's office will provide copies to you free of charge. There are fees associated with providing copies of filed documents.
 6. You must keep the court and opposing counsel advised of any change of address.
- D. State court v. Federal court:** There are two court systems in the United States: state courts and the federal courts.

1. **State courts:** State courts typically hear matters relating to civil, criminal, domestic (divorce and child custody), adoption, probate, name change, landlord-tenant dispute, and property in accordance with the laws of each state. You can learn more about Montana State Courts at <https://courts.mt.gov/>.
2. **Federal courts:** Matters typically heard by the federal courts involve violation of federal laws, social security benefits, other federal benefits, decisions by a federal agency, admiralty and maritime matters, United States patent, trademark, copyright matters, bankruptcy proceedings, and proceedings against ambassadors, consuls, and ministers. Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties.
 - a. **Federal Question:** Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties including claims brought under 42 U.S.C. § 1983 against state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]” is a federal question case.
 - b. **Diversity:** Under 28 U.S.C. § 1332, a case in which a citizen of one state sues a citizen of another state or nation and the amount in controversy is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same state as any plaintiff.

For more information about federal courts see:

www.uscourts.gov/about-federal-courts.

- E. Common Types of Pro Se Cases:** Below are some examples of cases that may be filed pro se. In some of these cases, it is necessary to exhaust all other available remedies before you can pursue a claim in federal court. This means that you must take all steps available to you in either the administrative agency, institution, or in the state

court system to address your grievance or complaint.

1. **Habeas Corpus:** Petitions filed by people in prison or jail challenging their convictions or sentences under 28 U.S.C. §§ 2254 and 2255. If you are a state prisoner seeking a writ of habeas corpus under 28 U.S.C. § 2254 you must first exhaust state court remedies.
2. **Civil Rights:** Civil rights claims may be filed under the federal statute, 42 U.S.C. § 1983. If you are a prisoner bringing a civil rights action under 42 U.S.C. § 1983 you must first seek relief through available prison grievance procedures.
3. **Employment Discrimination:** Cases alleging harm from employment discrimination may be brought under 42 U.S.C. § 2000(e). If you are filing an employment discrimination case (race or color, religion, sex, national origin or age) under Title VII of the Civil Rights Act of 1964 you normally need a Notice of Right to Sue from the Equal Employment Opportunity Commission (EEOC).
4. **Social Security:** Social security complaints may be filed to seek judicial review of final administrative action by the Commissioner of Social Security. If you are appealing a decision of a federal agency, such as the Social Security Administration, you must have a final decision from the Commissioner of Social Security.

F. Other Issues to Consider

1. **Statute of Limitations:** The period of time set by law in which a lawsuit must be filed is called the “statute of limitations.” This period of time usually begins when the injury occurs or a right has been violated. If you fail to bring your claim within the timeframe allowed by a specific statute, your lawsuit may be dismissed.

2. **Frivolous or harassing lawsuits:** The Federal Rules of Civil Procedure, Fed.R.Civ.P. 11(b), prohibits the filing of lawsuits that are clearly frivolous or filed just to harass someone. If the judge determines that you have filed a lawsuit for an improper or unnecessary reason, sanctions may be imposed against you, including ordering that you pay the legal fees of the party you sued. www.law.cornell.edu/rules/frcp/rule_11
3. **Costs and Attorneys Fees:** If you lose your case, the winning party may ask that you be ordered to pay attorney fees. The winning party is also entitled to seek certain costs incurred during the lawsuit which can include deposition transcript fees, witness fees, copy expenses, etc. These fees may add up to thousands of dollars. It is very common for a winning party to seek costs from the losing party.
4. **Change of address:** Pursuant to Local Rule 5.3, if your e-mail, post office box, or physical mailing address changes while an action is pending you must promptly file with the court and serve upon all other parties a written Notice of Change of Address specifying the new address for service. All subsequent pleadings, motions or other documents filed must reflect the new contact information. If the court does not have your current address and phone number, you may miss important information and deadlines outlined in a court order.

II. CLERK OF COURT'S OFFICE

- A. Hours of Operation:** The clerk of court's offices are open to the public, Monday through Friday from 8:00 a.m. to 5:00 p.m.
- B. Locations:** Where you file your case depends on the county in which the claim arose or where the defendant(s) reside. *See* Local Rule 3.2.

1. James F. Battin Federal Courthouse
2601 2nd Avenue North
Billings, MT 59101
Clerk's office (406) 247-7000

File in the Billings Division if your claim arose in or the defendants reside in: Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Garfield, Golden Valley, McCone, Musselshell, Park, Petroleum, Powder River, Prairie, Richland, Rosebud, Stillwater, Sweetgrass, Treasure, Wheatland, Wibaux, and Yellowstone Counties.

2. Mike Mansfield Federal Courthouse
400 N. Main
Butte, MT 59701
Clerk's office (406) 497-1279

File in the Butte Division if your claim arose in or the defendants reside in: Beaverhead, Deer Lodge, Gallatin, Madison, and Silver Bow Counties.

3. Missouri River Federal Courthouse
125 Central Avenue West
Great Falls, MT 59404
Clerk's office (406) 727-1922

File in the Great Falls Division if your claim arose in or the defendants reside in: Blaine, Cascade, Chouteau, Daniels, Fergus, Glacier, Hill, Judith Basin, Liberty, Phillips, Pondera, Roosevelt, Sheridan, Teton, Toole, and Valley Counties.

United States District Court for the District of Montana Pro Se Handbook

4. Paul G. Hatfield Federal Courthouse
901 Front Street
Helena, MT 59626
Clerk's office (406) 441-1355

(Public filings are not taken over the counter at this location.)

File in the Helena Division if your claim arose in or the defendants reside in: Broadwater, Jefferson, Lewis & Clark, Meagher, and Powell Counties.

(Montana State Prison is in Powell County. File claims arising at MSP in Helena.)

5. Russell Smith Federal Courthouse
201 E. Broadway
Missoula, MT 59802
Clerk's office (406) 542-7260

File in the Missoula Division if your claim arose in or the defendants reside in: Flathead, Granite, Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders Counties

C. Security: The federal court is a public forum and members of the public are welcome to visit any federal courthouse during business hours. Except for sealed proceedings or unless otherwise ordered by the presiding judge, all courtroom proceedings are open to the public. If you plan to visit a federal courthouse, please note the following:

1. You must present a government-issued photo identification and pass through security screening upon arrival at the courthouse.
2. You should not bring a cell phone, computer, tablet or other electronic device, as they are prohibited by Local Rule 1.3(d).
3. Cameras are prohibited in federal courthouses except during naturalization ceremonies.
4. No weapons of any type, drugs, or other illegal items are allowed. Mace and pepper spray are not allowed in federal courthouses.
5. Although there is no prescribed dress code, visitors and

witnesses are expected to dress appropriately.

6. Food and drink are prohibited in courtrooms.

D. Court Staff

1. Court staff CAN answer general questions and give general information about how the court works. They can also provide you with the required forms to open a new case.
2. Court staff CANNOT:
 - a. Give legal advice. This policy applies to all parties, including attorneys.
 - b. Tell you whether or not you should file a new case or what words you should use in your court pleadings.
 - c. Talk to the judge for you or let you talk to the judge outside of court.
 - d. Compute deadlines in your case or explain orders entered by the court.
 - e. Interpret rules, statutes or other law, or interpret any substantive matters contained in this handbook.
 - f. Tell you what documents you should file.
 - g. Predict how or when the judge might rule on your case.
 - h. Recommend a course of action.
 - i. Interpret the meaning or effect of any court order or judgment.
 - j. Assist or do legal research for you.

III. FILING YOUR CASE

- A. Documents to File:** To file a civil case, you must give the clerk of court's office the following documents at the same time. You can mail them or deliver them in person. You must submit all documents on paper as the clerk's office will not accept fax filings or other electronic means for filing without prior permission from the clerk's office. All forms discussed below are available at the following link: www.mtd.uscourts.gov/forms.
1. **Paid Cases:** To file a civil complaint when you are paying the full fee, you must provide the following:
 - a. Complaint
 - b. Filing Fee of \$400.00. This amount is set by Congress and cannot be changed by the court.
 2. **In Forma Pauperis Cases:** To file a complaint without paying the filing fee (proceeding in forma pauperis), you must provide the following:
 - a. Complaint
 - b. Application to Proceed without Prepayment of Fees or Costs. Non-prisoners should use the long form application and prisoners should use the short form application.
 - c. Six-month Certified Copy of Prison Trust Account Statement (prisoners only)
 3. **Habeas Petitions:** To file a habeas corpus petition pursuant to 28 U.S.C. § 2254, you must provide the following:
 - a. Petition
 - b. Filing Fee (\$5.00) or an Application to Proceed without Prepayment of Fees or Costs (short form).

B. Filing Fees

1. **Methods of Payment:** The clerk's office accepts the following forms of payment: credit cards (Visa, MasterCard, American Express and Discover cards), checks (personal, business, cashier, or certified), and money orders. Checks and money orders must be made payable to: Clerk, U.S. District Court.
2. **In Forma Pauperis:** If you are unable to pay the costs of a civil action, you may ask to proceed in forma pauperis (IFP) by filing an application to proceed in district court without prepaying fees or costs. Non-prisoners should use the long form application and prisoners should use the short form application. These forms are available from the clerk's office and on the court's website. When completing these forms, you must answer all of the questions relating to income, assets, and liabilities. If you do not provide complete and accurate information, the judge may deny your request or require you to provide additional information.
 - a. **Non-Prisoners:** If the judge grants your application, you will not be required to pay the filing fee but the clerk's office will not issue the summons until the judge has ruled on the request to proceed IFP and screened the complaint under 28 U.S.C. §1915(e)(2). If the judge denies your request, you will be allowed a reasonable opportunity to pay the fee.
 - b. **Prisoners:** If the judge determines that you are unable to pay the full filing fee at the time of filing, you will be granted leave to proceed in forma pauperis (IFP status). Prisoners, however, are still required to pay the full filing fee in installments even if granted IFP status. Prisoners' filing fees are collected through the following installment plan:
 - (1) First, the judge will assess and collect an initial partial filing fee;
 - (2) After payment of the initial partial filing fee, you will be required to make monthly payments of

20% of the preceding month's income credited to your account.

3. **Screening:** Complaints submitted by persons proceeding in forma pauperis and complaints submitted by prisoners suing a governmental entity or employee must be reviewed by the judge before the defendants are required to answer. *See* 28 U.S.C. §§ 1915(e)(2), 1915A(a); 42 U.S.C. § 1997e(c). The judge will review your claims and dismiss your complaint before it is served on defendants if: (1) your allegation of poverty is untrue; (2) the action is frivolous or malicious; (3) your complaint does not state a claim upon which relief may be granted; or (4) you sue a defendant for money damages and that defendant is immune from liability for money damages. After the judge completes the review process, you will receive an order explaining the findings and any further action you may or must take. The review process may take a few months; each case receives the judge's individual attention. If you have been granted permission to proceed in forma pauperis you should not attempt to serve defendants, pursue discovery, or request entry of default judgment prior to the completion of this review process. The clerk's office will not issue summons until the judge has completed this review process.

C. Preparation of Documents

1. Any document you want a judge to read must be filed with the clerk's office. Anything mailed directly to a judge might be discarded without ever reaching the judge. **NO LETTERS TO THE COURT AND/OR JUDGE ARE PERMITTED.**
2. Refer to Appendix C of the Local Rules for an example of how to format the first page of each document you want filed. www.mtd.uscourts.gov/local-rules Remember to include your name, address, and phone number on each document submitted and consecutively number your pages at the bottom of each page. Pursuant to Fed.R Civ.P. 11, you must sign each

pleading. www.law.cornell.edu/rules/frcp/rule_11

3. The federal court's case files are maintained in electronic form. Any paper documents you send to the clerk for filing will be scanned and converted to digital images. The image will be identical to the paper document and cannot be altered. After your document is scanned, it can be viewed on the internet, downloaded, saved on a hard or portable drive, emailed, and printed.
4. After your paper documents have been scanned, they will be discarded. If you want the documents returned to you, you must include a self-addressed envelope with sufficient postage for their return.
5. The electronic version of your document is the court's official record of that document. To ensure that your documents can be read in electronic form:
 - a. Use only 8½ x 11 white unlined paper.
 - b. Write on only one side of the paper. Do not submit double-sided pages.
 - c. Type or neatly write by hand in blue or black ink.
 - d. Use one-inch margins at the top, bottom, left, and right sides of each page.
 - e. Double-space all typewritten material in 14-point font size. Quoted material and footnotes may be single spaced. If you are handwriting your documents, leave a bit of space between lines of handwriting.
 - f. Do not use highlighters. Once the document is scanned, the part that appeared in highlights on paper may be blacked out and unreadable in the electronic version.
 - g. Do not staple or otherwise bind the pages of a document together. You may paper-clip or clamp pages together if you are submitting more than one document at a time.

D. Privacy

1. Because your documents will be available on the internet, you must not include sensitive information in any document filed with the court unless such inclusion is necessary and relevant to the case. www.law.cornell.edu/rules/frcp/rule_5.2
2. Before you file a document, you must partially redact the following personal identifiers:
 - a. Social Security Numbers: use only the last four digits.
 - b. Names of minor children: use only the first and last initials.
 - c. Dates of birth: use only the year of birth.
 - d. Taxpayer-identification numbers: use only the last four digits.
 - e. Financial account numbers: use only the last four digits.

IV. ELECTRONIC FILING SYSTEM (CM/ECF)

Documents filed in your case are stored electronically on the court's electronic filing system (CM/ECF). Attorneys are required to register in CM/ECF. Self-represented litigants may not file electronically in CM/ECF. *See* Local Rule 1.4(d).

A. Consent to Electronic Service

1. A self-represented litigant may consent in writing to have filings in their case served on them electronically if they have an e-mail address. Electronic service eliminates the delay associated with service by United States mail.
2. If you would like to receive service of documents from the court and other parties by electronic means, you must complete and return the "Consent to Electronic Service" form to the clerk's office. This form is available at the clerk's office or at the following link: www.mtd.uscourts.gov/forms. Local Rule 83.8(d) provides the process to request this permission.
3. Your consent to electronic service is not retroactive; you will not be granted electronic access to documents filed prior to the court's receipt of your completed consent form. If you do not consent to electronic service, all documents will be served on you via the United States mail.
4. In some instances, electronic access is not available for voluminous documents or other filings which may not be readily converted to electronic format.

5. Each time a document is e-filed in your case, you will receive a “Notice of Electronic Filing” e-mail, which will allow you to view the document for free one time. This “free look” is only for the first time you open the document. Be careful because you will be charged for subsequent viewings of the document. You should therefore print or save an electronic copy of the document during your initial viewing.
- B. Request to File by E-Mail:** Consent to electronic service will not give you the ability to file your documents electronically but you have the option of asking the clerk’s office for permission to file via e-mail. You must complete and return the “Pro Se Request to File by Email Per L.R. 83.8” form available from the clerk’s office and at www.mtd.uscourts.gov/forms. Permission must be in writing and filed in the record of the case. Local Rule 83.8(c) provides the process to request this permission.
- C. Service Agreements between Parties:** Pursuant to Fed.R.Civ.P. 5(b)(2)(E), a self-represented litigant may agree with one or more other parties to receive and/or effect service by other electronic means. www.law.cornell.edu/rules/frcp/rule_5
- D. Application of Three-Day Mailing Rule:** When a party may or must respond to a document within a specified time period, three days are added to the end of the response time when the party receives the document by mail but not when the party receives it electronically via ECF.
- E. Checking the Status of Your Case:** The docket is a computer file maintained by the court for each case that includes the names and addresses of all the attorneys and unrepresented parties, in chronological order, the title of every document filed along with the filing date, who filed it, and other information. You should check the case docket regularly to ensure that your documents have been filed and you have received all documents filed by other parties and the court. There are two ways to access the electronic docket.

1. **Public Terminals:** You may access the electronic docket using the public computer terminals in the clerk's office in the Billings, Butte, Great Falls, or Missoula courthouses during the hours the clerk's offices are open.
2. **PACER ("Public Access to Court Electronic Records")**
PACER is a service of the United States courts which allows users to obtain case and docket information online from federal appellate, district, and bankruptcy courts. www.pacer.gov
 - a. PACER will not allow you to file documents in your case. It is only designed for viewing documents that have been previously filed.
 - b. There are no registration costs associated with PACER but internet access to PACER is billed at 10 cents per page of information. An order designated as a written opinion by the judge, however, is free to view. The PACER Service Center bills quarterly and sends a statement by mail or email. Fees are waived when usage is less than \$15.00 for the quarter. The PACER fee information provided above changes frequently. Refer to PACER's FAQ on fees for the most current information. www.pacer.gov/psc/hfaq.html
 - c. You must register to become a PACER user before you can use the PACER system. Register online at <https://pacer.psc.uscourts.gov/pscof/regWizard.jsf>.
 - d. If you have problems with your PACER account, please call the PACER Service Center at (800) 676-6856.

V. SERVICE OF SUMMONS AND COMPLAINT

A. Definition of Service:

1. You are required to let all defendant(s) named in your complaint know that you have filed a case against them in federal court. If you have paid the filing fee, you may request the clerk's office to issue summons to each defendant listed on your complaint. A summons is a document which demands the defendant respond to the complaint. You must fill out the required fields on the summons form before submitting it to the court. The clerk's office cannot issue summonses without this information. The summons form is available at the clerk's office or at the following link: www.mtd.uscourts.gov/forms.
2. The original summons form will then be returned to you for service on the defendant(s). It is your responsibility to ensure that each defendant receives a copy of the certified summons form, a copy of your complaint, and any other documents. This process is called "service" or "serving the defendant."
3. The rules for serving the original complaint are different from the rules for serving other papers. If the complaint is not properly served on the defendants your case may not proceed. The requirements for serving the complaint are established in Fed.R.Civ.P. 4. www.law.cornell.edu/rules/frcp/rule_4

- B. Timing of Service:** Generally, defendant(s) must be served within 90 days after the complaint has been filed, as established by Fed.R.Civ.P. 4(m). www.law.cornell.edu/rules/frcp/rule_4

C. Responsibility for Service

1. **Paid Cases.** If you paid the filing fee, you are solely responsible for arranging to have the summons, complaint, and supporting documents served on the defendants within the timeframe allowed by Fed.R.Civ.P. 4(m) (90 days after the complaint is filed).
 - a. **Personal Service:** The most common way of accomplishing service is through personal delivery (handing the summons, complaint, and any other required document to the defendant) by any person who is at least 18 years old and not a party to the lawsuit.
 - b. **Waiver of Service:** You may ask the defendant(s) to waive service of summons under Fed.R.Civ.P. 4(d) using the forms attached to Fed.R.Civ.P. 4. www.law.cornell.edu/rules/frcp/rule_4 or on the Court's website at www.mtd.uscourts.gov/forms.
2. **IFP Cases.** If your request to proceed in forma pauperis is granted and if you have provided sufficient information regarding the defendant(s)'s addresses, the summons will be served by the U.S. Marshal or the clerk's office when the judge so directs after review of the complaint as required by 28 U.S.C. 1915(e)(2).

D. Proof of Service: The person who serves the summons and complaint must complete the "Proof of Service" section on the back of the summons form, as established by Fed.R.Civ.P. 4(1). The original must then be filed with the court. This document will act as evidence that the defendant(s) have been properly served.

VI. PRETRIAL PROCESS

Once your case has been opened, you must file all documents either in paper form or by e-mail if given permission. In addition, you must serve the defendant(s) copies of all documents filed, as established by Fed.R.Civ.P. 5.

www.law.cornell.edu/rules/frcp/rule_5

Each case is unique and may or may not follow the steps outlined below. This information is intended as a general guideline and not as the schedule for any particular case.

- A. Case assignment:** Once the required documents are submitted, the clerk's office will randomly assign a case number and judge to your case. You cannot request a particular judge. A failure to include the case number on all documents may result in a delay in processing.
- B. Screening of Prisoner and IFP Complaints**
 1. Complaints submitted by persons proceeding in forma pauperis and complaints submitted by prisoners suing a governmental entity or employee must be reviewed by the judge before the defendants are required to answer. *See* 28 U.S.C. §§ 1915(e)(2), 1915A(a); 42 U.S.C. § 1997e(c). The judge will review the complaint and dismiss it before it is served on defendants if: (1) the allegation of poverty is untrue; (2) the action is frivolous or malicious; (3) the complaint fails to state a claim upon which relief may be granted; or (4) a defendant sued for money damages is immune from liability for money damages.
 2. After the judge completes the review process, you will receive an order explaining the findings and any further action you may or must take. The review process may take a few months; each

case receives the judge's individual attention. If you have been granted permission to proceed in forma pauperis you should not attempt to serve defendants, pursue discovery, or request entry of default judgment prior to the completion of this review process.

C. Magistrate Judges

1. **Referral:** Magistrate judges are appointed to assist in the management of cases. Your case will be assigned to a district judge and automatically referred to a magistrate judge. The court does not need the consent of the parties to make this referral.
2. **Consent:**
 - a. Pursuant to 28 U.S.C. 636(c), Fed.R.Civ.P. 73, and L.R. 73.1, the parties may consent to have a magistrate judge exercise jurisdiction over the case and conduct trial, entry of judgment, and post-judgment proceedings. You are free to withhold consent to the magistrate judge's exercise of jurisdiction without adverse substantive consequences. However, the withholding of consent may have the adverse procedural consequences of a delay in trial due to speedy trial considerations in criminal cases.
 - b. In accord with Fed.R.Civ.P. 73(b) and L.R. 73.1, neither the Article III judge nor the magistrate judge will be informed of whether you consented to the assignment of the case to a magistrate judge unless all parties have consented.
 - c. With the court's scheduling order, if not before, you will receive a "Consent to Exercise of Jurisdiction by a United States Magistrate Judge" form to indicate whether you consent to assignment of the case to a magistrate judge.
 - d. If all parties consent, the magistrate judge will have identical jurisdictional authority to a United States

District Judge, including the authority to:

- (1) Schedule, hear, and decide all dispositive and non-dispositive matters;
 - (2) Schedule, hear, and decide interlocutory matters;
 - (3) Conduct jury or non-jury trials;
 - (4) Enter final orders and judgment; and
 - (5) Decide all post-trial motions.
- e. If the parties consent, the decision of the magistrate judge is final and is directly appealable to the United States Court of Appeals for the Ninth Circuit. *See* 28 U.S.C. § 636(c)(3) and Fed.R.Civ.P. 73(c).
www.law.cornell.edu/rules/frcp/rule_73
- f. If all parties do not consent to have a magistrate judge assume complete jurisdiction over the case, the magistrate judge may not rule on dispositive motions or issue a final judgment. Instead, the magistrate judge will issue a document entitled “Findings and Recommendations” which will then be reviewed by a district judge.

D. Defendant’s Response to the Complaint: Once a defendant is properly served, several things may happen:

1. **Defendant may file an answer:** If the defendant files an answer, the assigned judge may schedule a preliminary pretrial conference or simply issue a scheduling order. The scheduling order sets deadlines for how the case will proceed including deadlines for filing disclosures, completing discovery, and filing motions.
2. **Defendant may file a motion to dismiss:** If a motion is filed, you will be allowed 21 days to file a response, or as otherwise directed by the judge.
3. **Defendant may file nothing:** If the defendant files nothing within the time for filing a response, you may request entry of default and default judgment under Fed.R.Civ.P. 55.

www.law.cornell.edu/rules/frcp/rule_55

- E. Preliminary Pretrial Conference/Scheduling Order:** Pursuant to Local Rule 16.1, the judge may schedule a preliminary pretrial conference. A preliminary pretrial conference is a meeting between the judge and the parties to narrow down the issues and resolve matters necessary to the disposition of the case, as established by Local Rule 16.1. Local Rule 16.2 requires the filing of a preliminary pretrial statement no later than seven days before the preliminary pretrial conference. Local Rule 16.2 sets forth all the information that is required in this statement. Alternatively, the judge may simply issue a scheduling order setting forth all deadlines for the case.
- F. Discovery:** To prepare a case for trial, the parties will conduct what is called “discovery.” Discovery is the pretrial process by which one party acquires potential evidence from the opposing party via written interrogatories, depositions, and requests to produce documents.
1. **Types of Discovery**
 - a. **Deposition.** A “deposition” is like an interview where you, the defendant(s), or other witnesses answer questions in person and under oath. It is usually recorded by audio recording, video recording, or by a court reporter, as established by Fed.R.Civ.P. 30. www.law.cornell.edu/rules/frcp/rule_30 You are solely responsible for the payment of fees associated with recording the depositions you schedule.
 - b. **Interrogatories.** “Interrogatories” are written questions that must be answered in writing and under oath, as established by Fed.R.Civ.P. 33. www.law.cornell.edu/rules/frcp/rule_33
 - c. **Requests for Production.** These are written requests for documents and tangible items. The term “document” can include all forms of items such as drawings, graphs, charts, photographs, etc., as established by Fed.R.Civ.P. 34. www.law.cornell.edu/rules/frcp/rule_34
 - d. **Requests for admission.** These are written requests

asking that you or the defendant(s) admit that certain facts are true or that certain documents are genuine, as established by Fed.R.Civ.P. 36.

www.law.cornell.edu/rules/frcp/rule_36

- e. **Subpoenas:** Subpoenas are used to require a witness to appear on a date certain to testify or produce documents. The judge may require you to file a motion explaining who is being subpoenaed and why before the subpoenas will be issued. You must also fully comply with Fed.R.Civ.P. 45.

www.law.cornell.edu/rules/frcp/rule_45

2. **Commencement of Discovery:** Pursuant to Local Rule 26.1(d) no party may begin discovery in a case brought without counsel until a scheduling order has been issued.
3. **Discovery is Not Generally Filed:** Pursuant to Local Rule 26.2(a) initial disclosures under Fed.R.Civ.P. 26(a)(1)(A), depositions, interrogatories, requests for documents, requests for admissions, answers, responses, and objections, expert disclosures, expert reports, notices of deposition, notices of service of subpoena, and certificates or notices indicating service of discovery documents on opposing parties are not routinely filed.
4. **Discovery Motions:** Local Rule 26.3(c) requires that all motions to compel or limit discovery must:
 - a. Set forth the basis for the motion.
 - b. Certify that the parties have conferred concerning all disputed issues before the motion is filed. This requirement can only be satisfied through direct dialogue and discussion in a face to face meeting, in a telephone conversation, or in detailed, comprehensive correspondence.
 - c. Attach, as an exhibit:
 - (1) the full text of the discovery sought; and
 - (2) the full text of the response.

5. **Discovery Responses:** Responses and objections to discovery requests must identify and quote each request in full immediately preceding any answer or objection.
 6. **Objections to Discovery**
 - a. When an objection is made to part of a discovery request, the remainder of the discovery request must be answered.
 - b. Failure to timely object to discovery requests constitutes a waiver of any objection.
- G. Sealed documents:** The rule regarding the presentation of a sealed document is established by Local Rule 5.2. If you would like to file a document that you want sealed from public view, you must first seek permission from the judge. www.mtd.uscourts.gov/local-rules
- H. Motions Generally**
1. Judges will not take informal action on your case and you should not attempt to communicate with the judge by informal means such as a letter. If you want the judge to take any action, you must make the request by filing a motion. For most motions, the opposing party can file a response and the party who filed the motion can then file a reply.
 2. Unless you are a self-represented prisoner, the text of the motion must state that all other parties have been contacted and state whether any party objects to the motion. *See* Local Rule 7.1(c)
 3. You do not need to file a motion to request a copy of the docket or to request copies of documents. You can simply write a letter to the clerk's office asking for these documents.
 4. Procedure
 - a. Motion: A motion, if opposed, must be accompanied by a brief in support filed at the same time as the motion but

- filed separately from the motion.
- b. Responses.
 - (1) Responses to motions to dismiss, for judgment on the pleadings, or for summary judgment must be filed within 21 days after the motion was filed.
 - (2) Responses to all other motions must be filed within 14 days after the motion was filed. Failure to file a response brief may be deemed an admission that the motion is well-taken.
 - (3) The moving party may file a reply within 14 days after the response was filed.
 - c. Exhibits to Motions: Only exhibits that are directly germane to the matter under consideration by the court may be filed. *See* Local Rule 7.2.

I. Types of Motions

1. **Motion for Appointment of Counsel:** If you cannot afford an attorney but would like to request that one be appointed to assist with your case, you may submit a “Motion for Appointment of Counsel.” Even if your motion is denied, your case may appear on the Court’s website in a list of cases in which litigants are seeking the assistance of counsel. Although this option is available, there is no right to representation in civil matters and no guarantee that the judge will appoint an attorney for you or that an attorney will volunteer to represent you. Unlike criminal cases, a judge cannot order a lawyer to represent a plaintiff in a typical civil lawsuit—a judge can merely request a lawyer to do so and only under “exceptional circumstances” after an evaluation of both the likelihood of success on the merits and your ability to articulate your claims pro se in light of the complexity of the legal issues involved.
2. **Motion for Leave to Amend:** If you need to make changes or add to your filings you must ask the judge for permission by filing a motion for leave to amend. You must attach a proposed pleading to a motion for leave to file a motion to amend. If

leave is granted, then you must promptly file the pleading. *See* Local Rule 15.1. The judge may set a deadline for filing amended pleadings in the scheduling order and you may not be allowed to amend your filings after that deadline passes.

3. **Motion to Dismiss:** A defendant may make a motion to dismiss a complaint for any of the reasons set forth in Fed.R.Civ.P. 12. www.law.cornell.edu/rules/frcp/rule_12. A motion to dismiss is generally addressed to defects on the face of the complaint, including lack of subject-matter jurisdiction, lack of personal jurisdiction, improper venue, insufficient process, insufficient service of process, failure to state a claim upon which relief can be granted, and failure to join a required party.
4. **Motion for Summary Judgment**
 - a. A motion for summary judgment can be filed pursuant to Fed.R.Civ.P. 56. www.law.cornell.edu/rules/frcp/rule_56 A motion for summary judgment asks the judge to decide a lawsuit without going to trial on the grounds that there is no dispute about the key facts of the case. A case must go to trial when the parties do not agree about the material facts. When the parties agree upon the facts or if one party does not have enough evidence to support its version of what happened, the judge can decide the issue based on the papers that are filed by the parties without going to trial. If summary judgment is not opposed, the judge may, but is not required to, grant the motion.
 - b. Fed.R.Civ.P. 56 tells you what you must do in order to oppose a motion for summary judgment. When a party you are suing makes a motion for summary judgment that is properly supported by declarations or other sworn testimony, you cannot simply rely on what your complaint says. Instead, you must set out specific facts in the record to contradict the facts shown in the other party's declarations and documents and show that there

is a genuine issue of material fact for trial. Evidence that supports or opposes a motion for summary judgment includes:

- (1) Affidavits or declarations. An affidavit or declaration states facts within the personal knowledge of the person signing the document. The document must be signed by the person, under penalty of perjury (declaration), and/or it may be signed and sworn to before a notary public (affidavit). A declaration under penalty of perjury must contain the words “I declare under penalty of perjury that the foregoing is true and correct” before the signature.
 - (2) Deposition transcripts. You may include all or a part of the transcript.
 - (3) Discovery. Answers to interrogatories or requests for production of documents exchanged during discovery.
 - (4) Admissions. Admissions obtained in the proceedings, including statements in the opposing party’s answer or other documents the opposing party has filed.
 - (5) Verified complaint. A verified complaint is one that has been signed under penalty of perjury by a party with first-hand knowledge of the facts.
- c. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, judgment will be entered against you and there will be no trial.
 - d. Local Rule 56.1(a) requires that a party filing a motion for summary judgment must also file a Statement of Undisputed Facts setting forth each fact on which the party relies to support the motion.
 - e. Local Rule 56.1(b) requires that a party opposing a motion for summary judgment must file a Statement of Disputed Facts which set forth verbatim the moving party’s Statement, states whether each fact is undisputed

or disputed, and if a fact is disputed, provides a pinpoint cite to a specific pleading, deposition, answer to interrogatory, admission or affidavit to oppose each fact. An example of a statement of disputed facts can be found in Appendix C to the Court's Local Rules.

www.mtd.uscourts.gov/local-rules

5. Motion for Reconsideration

- a. A motion for reconsideration asks the judge to consider changing a previous decision. Local Rule 7.3 requires that a motion for reconsideration be made BEFORE the trial court enters a final judgment. A party cannot file a motion for reconsideration without permission from the court. Therefore, before filing a motion for reconsideration, the party must file a motion for leave to file a motion for reconsideration. The motion must be limited to 2275 words or seven pages and must specifically meet at least one of the following two criteria:
 - (1) the facts or applicable law are materially different from the facts or applicable law the parties presented to the Court before entry of the order for which reconsideration is sought, and despite the exercise of reasonable diligence, the party applying for reconsideration did not know such fact or law before entry of the order; or
 - (2) new material facts emerged or a change of law occurred after entry of the order.
- b. A motion for leave to file a motion for reconsideration may not simply repeat arguments made previously to the court. If you file such a motion, the court may impose sanctions on you. *See* L.R. 7.3(c).

- 6. Motion in Limine:** A motion in limine is a motion asking the judge for an order or ruling limiting or preventing certain evidence from being presented by the other side at the trial.

VII. TRIAL PROCESS

A. Basic courtroom rules

1. Gum chewing, eating, drinking, sleeping, or loud talking are not permitted in the courtroom.
2. When the judge enters or departs the courtroom, you must stand up.
3. Call the judge “Your Honor” and speak loudly and clearly.
4. Personal electronic devices, including but not limited to tablets, cameras, phones, or laptop computers, whether capable of transmitting or recording or not, must not be used or possessed in any courthouse in the District of Montana.

B. Types of Trials: The United States court system has two types of trials, bench trials and jury trials.

1. **Bench trial:** A bench trial takes place in front of a judge. This means that the judge (and not a jury) will determine facts of the case presented at trial and enter a final decision at the end of the case.
2. **Jury trial:** A jury trial takes place before a group of citizens who have been sworn to hear all of the evidence, decide the facts of the case, and render a verdict at the end of the case.

C. **Voir Dire:** This is the process at the beginning of the trial when potential jurors are questioned to determine their suitability for jury service. The judge will conduct voir dire, and may allow the parties to

ask brief follow-up questions, or the judge may conduct all of the voir dire and not allow the parties to ask any questions.

- D. Opening statement:** An “opening statement” is an opportunity for the parties to explain the issues in dispute and summarize what they believe will be proven during the course of the trial through witness testimony and evidence admitted by the judge.
- E. Evidence presentation:** Following opening statements, the plaintiff, will begin by presenting evidence to the judge or jury. Evidence can be presented through witness testimony and physical evidence. Strict rules govern the kinds of evidence that may be admitted and is governed by the Federal Rules of Evidence www.law.cornell.edu/rules/fre and this Court’s Local Rules www.mtd.uscourts.gov/local-rules.
- F. Resting your case:** When the plaintiff finishes presenting all of their evidence, they will indicate to the judge that they have “rested” their case which means they are done presenting their evidence.
- G. Defense and rebuttal:** After the plaintiff rests their case, the defendant will have an opportunity to call witnesses and offer evidence to the judge or jury. The plaintiff may then offer evidence in rebuttal to explain or deny the defendant’s evidence.
- H. Closing argument:** After each side has rested, the next step is the presentation of “closing arguments.” A closing argument is an opportunity for each party to summarize the evidence presented during the trial before the judge or jury enters a final decision.
- I. Jury instructions (if applicable):** At the end of the presentation of evidence and after closing arguments in a jury trial, the judge will read the jury a set of legal standards, called “jury instructions.” These instructions are given to assist the jury in deciding whether the defendant should be held accountable for the plaintiff’s alleged harm. Model Civil Jury Instructions can be found on the Ninth Circuit’s website at: www3.ce9.uscourts.gov/jury-instructions/model-civil.

J. Verdict: If the case was tried before a jury, then once a decision has been reached by the jury, the verdict will be announced in open court with all parties present. If the case was tried before the court, the judge may enter a ruling immediately after the conclusion of the trial. Sometimes the judge will need additional time to consider the evidence before reaching a final decision.

K. Judgment:

1. If you win the case by default or at trial, the judge will direct the clerk's office to prepare a judgment indicating the amount of damages you have been awarded. The judgment will include the exact amount, in dollars and cents, and which defendant owes you how much money. The clerk's office will then prepare, sign, and file the judgment.
2. If you lose at trial or by summary judgment, the judge will direct the clerk's office to prepare a judgment stating that the defendant does not owe you any damages. The defendant may also request that the judge order you to pay costs and attorney fees associated with defending the case. The clerk's office will then prepare, sign, and file the judgment.

VIII. FILING AN APPEAL

- A. If you are not satisfied with the outcome of your case either by trial or dispositive motions, you may file an “appeal,” which is an application to a higher court for a review of the decision made by a judge or jury in a lower court. Appeals from this court fall within the jurisdiction of the United States Court of Appeals for the Ninth Circuit.
- B. Information for pro se litigants seeking to appeal to the Ninth Circuit Court of Appeals can be found at:
www.ca9.uscourts.gov/forms/pro_se_litigants.php.
- C. The Federal Rules of Appellate Procedure can be found at:
www.law.cornell.edu/rules/frap.
- D. Time limits associated with filing an appeal can be found in Federal Rules of Appellate Procedure, Rule 4.
www.law.cornell.edu/rules/frap/rule_4
- E. To file an appeal, you must file a “Notice of Appeal.” A form for filing a notice of appeal from a judgment or order of this court is available at www.ca9.uscourts.gov/forms/#case_opening. The Notice of Appeal must be filed with the Clerk of Court for the United States District Court for the District of Montana.
- F. The fee to file an appeal is \$505.00 unless the judge granted your Motion to Proceed in Forma Pauperis when your complaint was initially filed. However, it is ultimately the decision of the United States Court of Appeals for the Ninth Circuit to decide whether or not you will need to pay the filing fee in the Court of Appeals. If you paid the filing fee for your original case but you cannot afford to pay the appeal fee, you may file a Motion to Proceed in Forma Pauperis (IFP) along with your appeal. www.ca9.uscourts.gov/forms/

IX. RESOURCES

- A. Tips for Self-Represented Litigants:** There is a lot to learn about representing yourself in federal court, but these are some especially important pointers:
1. **Stay Informed:** Read everything you get from the court and the opposing party right away, including the papers you get from the clerk's office when you file. It is very important that you know what is going on in your case and when you have deadlines.
 2. **Meet every deadline:** If you do not know exactly how to do something, try to get help and do your best; it is more important that you turn things in on time than that you do everything perfectly. You can lose your case if you miss your deadlines. If you need more time to do something, ask the court in writing for more time by filing a motion for extension of time prior to your deadline.
 3. **Be Clear:** Use your own words and be as clear as possible. You do not need to try to sound like a lawyer. In your papers, be specific about the facts that are important to your lawsuit. Do not assume that you will be allowed to explain yourself in person in court. The judge may consider only your written papers when making decisions about your case.
 4. **Copies:** Keep a copy of all documents you send out. Know where your papers are so that you can use them when you need them to prove your case. If you want a file stamped copy, provide the clerk's office with an additional copy of your document. A self-addressed stamped envelope is required if done by mail.

5. **Address:** Be sure the court always has your correct address and correct e-mail address, if applicable. If your e-mail, post office box or physical mailing address changes while an action is pending, Local Rule 5.3 requires that you file with the court and serve upon all other parties a “Notice of Change of Address” specifying the new address for service.
6. **Notice of Case Opening/Case Number:** Within a week to ten days from the date you mail or deliver your complaint to the court, you should receive a “Notice of Case Opening.” The Notice will contain your case number and other information you may find useful. Please include your case number on all documents you send to the court.
7. **Mail from the Court:** For administrative reasons, you might receive court mail from any division. You should continue to send your mail to the clerk in the division where your case is filed.
8. **Letters to the Court:** Any document you want a judge to read must be filed with the clerk of court. Anything mailed directly to a judge might be discarded without ever reaching the judge. The judge will not consider requests made or information presented in letter form.
9. **Clerk of Court:** The clerk of court does not have the authority to take any action with respect to your case. Any request that the court grant relief, make a ruling, or take an action of any kind must be made in the form of a written motion. The clerk’s office cannot give you a time estimate on a resolution of your case/motion. Each case receives the presiding judge’s individual attention. As soon as an order is issued, a copy will be mailed to you. All court employees are forbidden by law from giving you legal advice.

B. Terminology: To familiarize you with words you will hear frequently, the following is a list of some legal terms and their definitions:

ANSWER: The formal written statement by a defendant in a civil case that responds to a complaint, articulating the grounds for defense.

CAPTION: The heading on a pleading, deposition, or other paper connected with your case, which shows the names of the parties, name of the court, and the docket number.

CM/ECF: Case Management/Electronic Case Filing.

COMPLAINT: The document a plaintiff files with the clerk of court to initiate a lawsuit. It contains a clear statement of the important information about the claim(s) of the plaintiff and identifies each defendant. *See* Fed. R. Civ. P. 8(a) www.law.cornell.edu/rules/frcp/rule_8.

COUNSEL: One who has been admitted as an attorney at law to assist his/her client with advice and pleads for him/her in open court.

DEFENDANT: The party that is being sued.

DOCKET: A log containing the complete history of each case in the form of brief chronological entries summarizing the court proceedings.

DOCKET NUMBER: Civil case/civil action number assigned to a case by the court when a new complaint is filed. The number includes the “CV” designation for a civil case; the last two digits of the calendar year in which the case is filed; the number of the case in the order filed during the calendar year; the designation of the division where filed (BLG-Billing; BU–Butte; GF–Great Falls; H–Helena; and M–Missoula); the initials of the district judge to whom the case is assigned; and the initial of the magistrate judge to whom the case is referred. Example: CV 18-00074-GF-BMM-JTJ.

EVIDENCE: Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case in favor of one side or

the other.

IN FORMA PAUPERIS: To proceed without prepayment of costs or fees for filing a complaint.

JUDGMENT: The official and authentic decision of a court adjudicating with finality the respective rights and claims of the parties to a suit.

JURISDICTION: The power or legal authority of the court to hear and decide a case.

LITIGANT: A party to a lawsuit.

LODGED: The clerk of court receives a document for safekeeping until a decision is rendered by the judge as to whether the document shall be filed.

MOTION: A request made to the court for the purpose of obtaining a ruling or order directing an act to be performed in favor of the applicant or movant.

NOTICE OF ELECTRONIC FILING (NEF): A receipt indicating a document has been transmitted to the court.

ORDER: An order is issued by a judge or a magistrate judge and usually directs the plaintiff or the defendant to do something. An order may also be issued to grant or deny a motion.

PDF: Portable Document Format. A document created with almost any word processing program can be converted to a .pdf. The .pdf conversion program takes a picture of the original document so the converted document can be opened across a broad range of hardware and software system, with layout, format, links and images intact. Only documents in .pdf format may be filed with the court using the CM/ECF system.

PLAINTIFF: The person who is filing the complaint against an individual, a corporation or company, or a government agency.

PRO SE: If you are filing a lawsuit on your own and will represent yourself, you

are proceeding pro se.

SERVICE OF PROCESS: The procedure by which a party to a lawsuit gives an appropriate notice of initial legal action to the defendant(s) in an effort to exercise jurisdiction over that person so as to enable that person to respond to the proceeding before the court.

SUMMONS: This is a formal command of the court, directed to the defendant(s), which informs the defendant(s) that an action has been brought against them and an answer is required. *See* Fed. R. Civ. P. 4 www.law.cornell.edu/rules/frcp/rule_4

WAIVER OF SERVICE OF SUMMONS: Pursuant to Fed.R.Civ.P. 4, service of summons can be waived by the defendant. The “Waiver of Service” with its companion form “Notice of Lawsuit and Request for Waiver of Service of Summons” can be mailed by a plaintiff to each defendant to request the defendant save costs by not requiring service of process.
www.law.cornell.edu/rules/frcp/rule_4

Please see the Glossary of Legal Terms (www.uscourts.gov/glossary) for additional definitions.