

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

INSTRUCTIONS FOR FILING A COMPLAINT BY *PRO SE* PRISONERS

These instructions contain important information for *pro se* prisoners seeking to file a civil action in the United States District Court for the Middle District of Pennsylvania. The instructions describe the paperwork that must be completed, your obligations if you do file a complaint, and the potential consequences of filing multiple complaints under the Prison Litigation Reform Act, 42 U.S.C. § 1997e.

Read these instructions before you proceed further. By submitting a complaint to the Clerk of Court for filing, you acknowledge that you have read, understand, and agree to follow the instructions below.

A. Procedural Instructions

1. ***Filing fees.*** The Clerk of Court will not file a civil complaint unless the person seeking relief pays the entire filing fee (currently \$350.00) and an administrative fee (currently \$55.00) in advance, or the person is granted *in forma pauperis* status pursuant to 28 U.S.C. § 1915. If you submit the full filing fee and administrative fee along with your complaint, you do not need to complete the Application to Proceed *In Forma Pauperis* included with this packet. If, however, you do not have enough funds to pay the fees up front, you must seek the court's permission to proceed *in forma pauperis*.
2. ***Proceeding in forma pauperis.*** If you cannot afford to pay the filing and administrative fees up front, you may seek permission to proceed in what is called "*in forma pauperis*" status. This filing status, if granted, waives the administrative fee and allows you to proceed in a civil lawsuit by making installment payments toward the filing fee. To apply to proceed *in forma pauperis*, you must complete the following forms, each of which is included in this packet:
 - a. Complaint Form to Be Used by a *Pro Se* Prisoner
 - b. Application to Proceed *In Forma Pauperis*

By completing these forms, you agree to allow the court to collect an initial partial filing fee that is 20% of the greater of (1) the average monthly deposits in your prison account for the past six months or (2) the average monthly balance in your prison account for the past six months. After the initial partial filing fee is paid, the institution in which you are housed will continue to withdraw monthly payments from your prison account in the amount of 20% of the preceding month's deposits until the \$350.00 filing fee is paid in full.

Your obligation to pay the full filing fee will continue regardless of the outcome of your case, even if your complaint is dismissed before the defendants are served.

3. ***Waiver forms.*** You must submit two forms to have your complaint served on the defendant(s) you are suing: a Notice of Lawsuit and Request for Waiver form (also known as “AO 398”) and a Waiver of Service of Summons form (also known as “AO 399”). A copy of each form is included with this packet. You will not be required to complete a Summons form (also known as “USM 285”) unless instructed by the court. You must complete one Notice of Lawsuit and Request for Waiver form and one Waiver of Service of Summons form for each defendant that you are suing. For the Notice of Lawsuit and Request for Waiver form, you should complete only the caption section (the top part of the page) and the “To:” and “Address:” lines. For the Waiver of Service of Summons form, you should complete only the caption section. The caption section of each form should match the caption section of your complaint. If you have not yet been assigned a case number, which will be the case for any new complaint, leave that portion of the caption blank and the Clerk of Court will fill in the case number for you. The only sections that will change from one form to the next are the “To:” and “Address:” lines on the Notice of Lawsuit and Request for Waiver form (where you identify the specific defendant that the form should be sent to and where it should be sent), since you must complete a separate form for each defendant.

4. ***Filing instructions.*** To file your case, you must mail the following items to the Clerk of Court:
 - a. Complaint Form to Be Used by a *Pro Se* Prisoner
 - b. Either the \$350.00 filing fee and \$55.00 administrative fee or the Application to Proceed *In Forma Pauperis*
 - c. One Notice of Lawsuit and Request for Waiver form for each defendant
 - d. One Waiver of Service of Summons form for each defendant

The Clerk’s Office mailing addresses are:

Scranton	Harrisburg
United States District Court Middle District of Pennsylvania 235 N. Washington Avenue P.O. Box 1148 Scranton, PA 18501	United States District Court Middle District of Pennsylvania Sylvia H. Rambo U.S. Courthouse 1501 North 6th Street, Suite 101 Harrisburg, PA 17102
Williamsport	Wilkes-Barre
United States District Court Middle District of Pennsylvania U.S. Courthouse & Federal Office Building 240 West Third Street, Suite 218 Williamsport, PA 17701	United States District Court Middle District of Pennsylvania Max Rosenn U.S. Courthouse 197 South Main Street Wilkes-Barre, PA 18701

B. General Instructions

1. **Legibility.** Your complaint must be legibly handwritten or typewritten on the attached form complaint. All questions must be answered concisely in either the proper space provided on the form or on clearly labeled additional pages. Do not write on the back of any page.
2. **Signature.** You must sign your complaint where indicated on the last page of the form. If there are multiple plaintiffs, the complaint must be signed by each plaintiff.
3. **Attachments.** You are not required to submit exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office together with your complaint. Only documents which clearly relate to and support the factual allegations of your complaint are permitted. Be sure to explain the relevance of any attached documents in your complaint.
4. **Copies of filings.** The court will not return the original of your complaint or any attached document, application to proceed *in forma pauperis*, or other filing to you. Be sure to keep a copy of all filings for your records. Regardless of *in forma pauperis* status, copies of filed documents are not free of charge. Any requests for copies must include payment of \$0.10 per page and must include a self-addressed, stamped envelope.

C. Notices

1. **Federal and local rules notice.** *Pro se* prisoners must comply with the Federal Rules of Civil Procedure, the Federal Rules of Evidence, and the Local Rules of Court. Included with this packet are copies of the rules of procedure that arise most often in *pro se* prisoner civil cases. Although this packet includes copies of certain rules for your reference, you are responsible for reviewing and following all of the Federal Rules of Civil Procedure, the Federal Rules of Evidence, and the Local Rules of Court.
2. **Privacy notice.** Federal Rule of Civil Procedure 5.2 and Local Rule of Court 5.2(d) and (e) address the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court *may not* contain: an individual's full Social Security number or full birth date, the full name of a person known to be a minor, or a complete financial account number. A filing may include only: the last four digits of a Social Security number, the year of an individual's birth, a minor's initials, and the last four digits of a financial account number.
3. **Change-of-address notice.** Local Rule of Court 83.18 requires *pro se* plaintiffs to keep the court informed of their current address. If your address changes while your lawsuit is being litigated, you must immediately inform the court of the change in writing. By signing and submitting the complaint form, you agree to provide the Clerk's Office with any changes to your address where case-related papers may be served, and you

acknowledge that your failure to keep a current address on file with the Clerk's Office may result in dismissal of your case.

4. ***Exhaustion notice.*** Under the Prison Litigation Reform Act, you are required to exhaust all remedies in your prison's grievance system that are available to you before filing suit. This generally means that you must file a grievance and, if it is denied, appeal it through all available levels of review. Your case may be dismissed if you fail to exhaust administrative remedies. However, you are not required to plead or show that you have exhausted your claim in your complaint.
5. ***"Three Strikes" notice.*** Review your case carefully before filing. If your case is dismissed, it may affect your ability to file future civil actions while incarcerated without prepaying the full filing fee. Under what is known as the "Three Strikes Rule" of the Prison Litigation Reform Act, a prisoner who has had three or more civil actions or appeals dismissed as frivolous, malicious, or for failure to state a claim cannot file a new action without first paying the full filing fee, unless the prisoner is in imminent danger of serious bodily injury.
6. ***Damages notice.*** If your case proceeds and you are awarded compensatory damages against a correctional facility or an official or agent of a correctional facility, the damage award will first be used to satisfy any outstanding restitution orders that may be pending. Before payment of any compensatory damages, reasonable attempts will be made to notify the victims of the crime for which you were convicted concerning payment of those damages. Any outstanding restitution orders must be paid in full before any part of the damages award goes to you.

CIVIL COMPLAINT FORM TO BE USED BY A *PRO SE* PRISONER

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

_____	:	
_____	:	
Full Name of Plaintiff	:	Inmate Number
	:	Civil No. _____
v.	:	(to be filled in by the Clerk's Office)
	:	
_____	:	(___) Demand for Jury Trial
Name of Defendant 1	:	(___) No Jury Trial Demand
	:	
_____	:	
Name of Defendant 2	:	
	:	
_____	:	
Name of Defendant 3	:	
	:	
_____	:	
Name of Defendant 4	:	
	:	
_____	:	
Name of Defendant 5	:	
(Print the names of all defendants. If the names of all	:	
defendants do not fit in this space, you may attach	:	
additional pages. Do not include addresses in this	:	
section).	:	

I. NATURE OF COMPLAINT

Indicate below the federal legal basis for your claim, if known.

- ___ Civil Rights Action under 42 U.S.C. § 1983 (state, county, or municipal defendants)
- ___ Civil Rights Action under Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971) (federal defendants)
- ___ Negligence Action under the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346, against the United States

II. ADDRESSES AND INFORMATION

A. PLAINTIFF

Name (Last, First, MI)

Inmate Number

Place of Confinement

Address

City, County, State, Zip Code

Indicate whether you are a prisoner or other confined person as follows:

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☐ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner

B. DEFENDANT(S)

Provide the information below for each defendant. Attach additional pages if needed.

Make sure that the defendant(s) listed below are identical to those contained in the caption. If incorrect information is provided, it could result in the delay or prevention of service of the complaint.

Defendant 1:

Name (Last, First)

Current Job Title

Current Work Address

City, County, State, Zip Code

Defendant 2:

Name (Last, First)

Current Job Title

Current Work Address

City, County, State, Zip Code

Defendant 3:

Name (Last, First)

Current Job Title

Current Work Address

City, County, State, Zip Code

Defendant 4:

Name (Last, First)

Current Job Title

Current Work Address

City, County, State, Zip Code

Defendant 5:

Name (Last, First)

Current Job Title

Current Work Address

City, County, State, Zip Code

III. STATEMENT OF FACTS

State only the facts of your claim below. Include all the facts you consider important. Attach additional pages if needed.

- A. Describe where and when the events giving rise to your claim(s) arose.

- B. On what date did the events giving rise to your claim(s) occur?

- C. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what?)

[illegible]

IV. LEGAL CLAIM(S)

You are not required to make legal argument or cite any cases or statutes. However, state what constitutional rights, statutes, or laws you believe were violated by the above actions. If you intend to assert multiple claims, number and set forth each claim in separate paragraphs. Attach additional pages if needed.

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

V. INJURY

Describe with specificity what injury, harm, or damages you suffered because of the events described above.

VI. RELIEF

State exactly what you want the court to do for you. For example, you may be seeking money damages, you may want the court to order a defendant to do something or stop doing something, or you may be seeking both types of relief. If you are seeking monetary relief, state your request generally. Do not request a specific amount of money.

VII. SIGNATURE

By signing this complaint, you represent to the court that the facts alleged are true to the best of your knowledge and are supported by evidence, that those facts show a violation of law, and that you are not filing this complaint to harass another person or for any other improper purpose.

Local Rule of Court 83.18 requires *pro se* plaintiffs to keep the court informed of their current address. If your address changes while your lawsuit is being litigated, you must immediately inform the court of the change in writing. By signing and submitting the complaint form, you agree to provide the Clerk's Office with any changes to your address where case-related papers may be served, and you acknowledge that your failure to keep a current address on file with the Clerk's Office may result in dismissal of your case.

Signature of Plaintiff

Date

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

<i>Plaintiff</i>	:	Civil Action No.
v.	:	
<i>Defendant</i>	:	

APPLICATION TO PROCEED *IN FORMA PAUPERIS*

Instructions:

The Clerk will not file a civil complaint unless the person seeking relief pays the entire filing fee (currently \$350) and an administrative fee (currently \$55) in advance, or the person applies for and is granted *in forma pauperis* status pursuant to 28 U.S.C. §1915. **A prisoner who seeks to proceed *in forma pauperis* must submit to the Clerk: (1) a completed affidavit of poverty and (2) a copy of the trust fund account statement (or institutional equivalent) for the prisoner for the six month period immediately preceding the filing of the complaint, obtained from and certified as correct by the appropriate official of each prison at which the prisoner is or was confined for the preceding six months. See 28 U.S.C. § 1915(a)(2).**

Upon entry of an order granting a prisoner's application to proceed *in forma pauperis*, the Court will direct the agency having custody of the prisoner to deduct an initial partial filing fee equal to 20% of the greater of the average monthly deposits to the prison account or the average monthly balance in the prison account for the six-month period immediately preceding the filing of the complaint, as well as monthly installment payments equal to 20% of the preceding month's income credited to the account for each month that the balance of the account exceeds \$10.00, until the entire filing fee has been paid. See 28 U.S.C. § 1915(b). **A prisoner who is granted leave to proceed *in forma pauperis* is obligated to pay the entire filing fee regardless of the outcome of the proceeding and is not entitled to the return of any payments made toward the fee.**

The prisoner must complete all questions in the following affidavit, sign and date the affidavit, sign and date the authorization, and then obtain the signature of the appropriate prison official who certifies the prison account statement. After the appropriate prison official certifies your prison trust fund account statement(s), you must attach the prison account statement(s) to this application, for each prison or jail wherein you were incarcerated during the previous six months. If your application to proceed *in forma pauperis* is incomplete, then the Court may enter an order denying your application without prejudice and administratively close the case.

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested.

In support of this application, I answer the following questions under penalty of perjury:

1. **If incarcerated.** I am being held at:

I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for any institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. **If not incarcerated.** If I am employed, my employer's name and address are:

My gross pay or wages are: \$_____, and my take-home pay or wages are: \$_____ per_____.
(specify pay period)

3. **Other Income.** In the past 12 months, I have received income from the following sources (check all that apply):

- | | | | |
|-----|--|------------------------------|-----------------------------|
| (a) | Business, profession, or other self-employment | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (b) | Rent payments, interest, or dividends | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (c) | Pension, annuity, or life insurance payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (d) | Disability, or worker's compensation payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (e) | Gifts, or inheritances | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (f) | Any other sources | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

4. Amount of money that I have in cash or in a checking or savings account: \$_____

5. Any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value that I own, including any item of value held in someone else's name (describe the property and its approximate value):

6. Any housing, transportation, utilities, or loan payments, or other regular monthly expenses (describe and provide the amount of the monthly expense):

7. Names (or, if under 18, initials only) of all persons who are dependent on me for support, my relationship with each person, and how much I contribute to their support:

8. Any debts or financial obligations (*describe the amounts owed and to whom they are payable*):

DECLARATION: I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

<hr/> <p style="text-align: center;"><i>Date</i></p>	<hr/> <p style="text-align: center;"><i>Applicant's signature</i></p>
	<hr/> <p style="text-align: center;"><i>Printed name</i></p>

AUTHORIZATION: I understand that the filing fee for this civil complaint is \$350.00, and that I am obligated to pay the full filing fee regardless of the outcome of the proceedings.

I request and authorize the agency holding me in custody to calculate and disburse funds from my trust account (or institutional equivalent) in the amount specified by 28 U.S.C. § 1915(b)(2).

This Authorization shall apply to any other agency into whose custody I may be transferred.

<hr/> <p style="text-align: center;"><i>Date</i></p>	<hr/> <p style="text-align: center;"><i>Applicant's signature</i></p>
	<hr/> <p style="text-align: center;"><i>Printed name</i></p>

CERTIFICATION OF PRISONER'S INSTITUTIONAL ACCOUNT BALANCE: An authorized prison official must complete the certification below and furnish a certified copy of your institutional account statement showing all deposits, withdrawals, and balances for the prior six-month period, to be filed with this application.

I certify that the prisoner named herein has the sum of \$_____ on account at _____ correctional institution, where he is presently confined.

I further certify that during the prior six-month period, the prisoner's average monthly account balance was \$_____; and that the average amount deposited monthly in the account during the prior six-month period was \$_____.

<hr/> <p style="text-align: center;"><i>Signature and Title of Authorized Prison Official</i></p>	<hr/> <p style="text-align: center;"><i>Date</i></p>
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UNITED STATES DISTRICT COURT

for the

Plaintiff

v.

Defendant

)
)
)
)
)

Civil Action No. _____

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

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

Address: _____
(Address of the defendant or - if the defendant is a corporation, partnership, or association - address of an officer or authorized agent)

Why are you getting this?

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

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

What happens next?

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

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

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

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

Date: _____

Signature of the attorney or unrepresented party

Printed name

Address

E-mail address

Telephone number

UNITED STATES DISTRICT COURT
for the

Plaintiff)	
v.)	
Defendant)	Civil Action No.

WAIVER OF THE SERVICE OF SUMMONS

To: _____
(Name of the plaintiff's attorney or unrepresented plaintiff)

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

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

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

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

Date: _____

Signature of the attorney or unrepresented party

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

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

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

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

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

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

EXCERPTS FROM LOCAL RULES OF COURT

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LR 5.2 Documents to be Filed with the Clerk.

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- (d) A filed document in a case (other than a social security case) shall not contain any of the personal data identifiers listed in this rule unless permitted by an order of the court or unless redacted in conformity with this rule. The personal data identifiers covered by this rule and the required redactions are as follows:

1. **Social Security Numbers.** If an individual's Social Security Number must be included in a document, only the last four digits of that number shall be used;
2. **Names of minor children.** If the involvement of a minor child must be mentioned, only that child's initials shall be used;
3. **Dates of birth.** If an individual's date of birth must be included, only the year shall be used;
4. **Financial account numbers.** If financial account numbers must be included, only the last four digits shall be used.

...

...

LR 5.4 Service and Filing of Discovery Material.

- (a) The parties in *pro se* cases, Health and Human Services cases (Social Security Appeals), and U.S. Government loan cases shall not be obligated to meet and confer prior to instituting discovery. Discovery shall commence no later than thirty (30) days from the date the complaint is served upon the defendant(s).
- (b) Interrogatories, requests for disclosures, requests for documents, requests for admissions, and answers and responses thereto shall be served upon other counsel and parties but shall not be filed with the court except as authorized by a provision of the Federal Rules of Civil Procedure or upon an order of the court. The party responsible for serving a discovery request shall retain and become the custodian of the original response. Proof of service or certificates of service of discovery material shall not be filed separately with the clerk. The original transcript or recording of any deposition upon oral examination shall be retained by the party who arranged for the transcript or the recording.

- (c) If relief is sought under any of the Federal Rules of Civil Procedure, a copy of the discovery matters in dispute shall be filed with the court contemporaneously with any motion filed under these rules by the party seeking to invoke the court's relief.
- (d) When documentation of discovery not previously in the record is needed for appeal purposes, upon an application and order of the court or by stipulation of counsel, the necessary discovery papers shall be filed with the clerk.

...

LR 7.1 Motions to be Written.

A motion must be written, and shall contain a certification by counsel for the movant that he or she has sought concurrence in the motion from each party, and that it has been either given or denied. No concurrence need be sought in *pro se* prisoner cases. A certificate of nonconcurrence does not eliminate the need for counsel to comply with Local Rule 26.3 relating to conferences between counsel in all discovery motions directed toward a resolution of the motion. Every motion shall be accompanied by a form of order which, if entered by the court, would grant the relief sought in the motion.

...

LR 7.3 Exhibits and Other Documents Substantiating Motions.

When allegations of fact are relied upon in support of a motion, all pertinent affidavits, transcripts, and other documents must be filed simultaneously with the motion and shall comply with Local Rule 5.1 (f).

LR 7.4 Motions for Summary Judgment.

For local rule regarding the filing of a motion for summary judgment, *see* LR 56.1. Briefing schedules under Local Rules 7.5, 7.6 and 7.7 are applicable to any brief filed in connection with a motion for summary judgment.

LR 7.5 Submission of Briefs Supporting Motions.

Within fourteen (14) days after the filing of any motion, the party filing the motion shall file a brief in support of the motion. If the motion seeks a protective order, a supporting brief shall be filed with the motion. If a supporting brief is not filed within the time provided in this rule the motion shall be deemed to be withdrawn. A brief shall not be required: (a) In support of a motion for enlargement of time if the reasons for the request are fully stated in the motion, (b) In support of any motion which has concurrence of all parties, and the reasons for the motion and the relief sought are fully stated therein, or (c) In support of a motion for appointment of counsel.

LR 7.6 Submission of Briefs Opposing Motions.

Any party opposing any motion, other than a motion for summary judgment, shall file a brief in opposition within fourteen (14) days after service of the movant's brief, or, if a brief in support of the motion is not required under these rules, within seven (7) days after service of the motion. Any party who fails to comply with this rule shall be deemed not to oppose such motion. Nothing in this rule shall be construed to limit the authority of the court to grant any motion before expiration of

the prescribed period for filing a brief in opposition. A brief in opposition to a motion for summary judgment and LR 56.1 responsive statement, together with any transcripts, affidavits or other relevant documentation, shall be filed within twenty-one (21) days after service of the movant's brief.

LR 7.7 Reply Briefs.

A brief in reply to matters argued in a brief in opposition may be filed by the moving party within fourteen (14) days after service of the brief in opposition. No further briefs may be filed without leave of court.

LR 7.8 Contents and Length of Briefs.

(a) Contents of Briefs.

Briefs shall contain complete citations of all authorities relied upon, including whenever practicable, citations both to official and unofficial reports. No brief may incorporate by reference all or any portion of any other brief. A copy of any unpublished opinion which is cited must accompany the brief as an attachment. The brief of the moving party shall contain a procedural history of the case, a statement of facts, a statement of questions involved, and argument. The brief of the opposing party may contain a counter statement of the facts and of the questions involved and a counter history of the case. If counter statements of facts or questions involved are not filed, the statements of the moving party will be deemed adopted. The brief of each party, if more than fifteen (15) pages in length, shall contain a table of contents, with page references, and table of citations of the cases, statutes and other authorities referred to therein, with references to the pages at which they are cited. A brief may address only one motion, except in the case of cross motions for summary judgment.

(b) Length of Briefs.

- (1) Unless the requirements of Local Rule 7.8 (b)(2) and (3) are met, no brief shall exceed fifteen (15) pages in length.
- (2) A brief may exceed fifteen (15) pages so long as it does not exceed 5,000 words. If a brief is filed in accordance with this subsection, counsel, or an unrepresented party, must include a certificate (subject to Fed. R. Civ. P. 11) that the brief complies with the word-count limit described in this subsection. The person preparing the certificate may rely on the word count feature of the word-processing system used to prepare the brief. The certificate must state the actual number of words in the brief.
- (3) No brief exceeding the limits described in this rule may be filed without prior authorization. Any motion seeking such authorization shall specify the length of the brief requested and shall be filed at least two (2) working days before the brief is due.

LR 7.10 Motions for Reconsideration.

Any motion for reconsideration or reargument must be accompanied by a supporting brief and filed within fourteen (14) days after the entry of the order concerned. This rule is not applicable to a motion to alter or amend a judgment under Fed. R. Civ. P. 59.

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LR 8.1 Statement of Amount of Damages.

The demand for judgment required in any pleading in any civil action pursuant to Fed.R.Civ.P.8(a)(3) may set forth generally that the party claiming damages is entitled to monetary relief but shall not claim any specific sum where unliquidated damages are involved. The short plain statement of jurisdiction, required by Fed.R.Civ.P.8(a)(1), shall set forth any amounts needed to invoke the jurisdiction of the court but no other.

...

LR 15.1 Amended Pleadings.

(a) Proposed amendment to accompany the motion.

When a party files a motion requesting leave to file an amended pleading, the proposed amended pleading must be retyped or reprinted so that it will be complete in itself including exhibits and shall be filed on paper as a separate document or, in the Electronic Filing System, as an attachment to the motion. If the motion is granted, the clerk shall forthwith file the amended pleading. Unless otherwise ordered, an amended pleading that does not add a new defendant shall be deemed to have been served for the purpose of determining the time for response under Fed. R. Civ. P. 15(a), on the date the court grants leave for its filing. A party granted leave to amend its pleading, when the amended pleading would add a new defendant, shall file and effect service of the amended pleading within thirty (30) days after the date of the Order granting leave for its filing.

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LR 26.4 Discovery Proceedings, Closing of.

In the absence of a discovery deadline set forth in a court order, each party to a civil action shall complete all discovery proceedings within six (6) months of the date of the last pleading filed by that party. The word "pleading" shall have the same meaning in this rule as in Fed.R.Civ.P.7(a). After the expiration of the discovery deadline, the parties are deemed ready for trial.

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LR 33.1 Interrogatories and Answers or Objections, Form of Service.

When interrogatories are served upon another party pursuant to Fed.R.Civ.P.33, the original and two (2) copies thereof shall be served upon the party who is to answer such interrogatories. Interrogatories shall be prepared in such fashion that sufficient space is provided immediately after

each interrogatory or subsection thereof for insertion of the answer or objection and supporting reasons for the objection. If there is insufficient space to answer or object to an interrogatory, the remainder of the answer or objection shall follow on a supplemental sheet. The answers shall be under oath.

LR 33.2 Interrogatories, Supplemental Answers to.

Upon discovery by any party of information which renders that party's prior answers to interrogatories substantially inaccurate, incomplete or untrue, such party shall serve appropriate supplemental answers with reasonable promptness on all counsel or parties.

LR 33.3 Interrogatories, Number of.

Interrogatories to a party, as a matter of right, shall not exceed twenty five (25) in number. Interrogatories inquiring as to the names and locations of witnesses, or the existence, location and custodian of documents or physical evidence each shall be construed as one interrogatory. All other interrogatories, including subdivisions of one numbered interrogatory, shall be construed as separate interrogatories. If counsel for a party believes that more than twenty five (25) interrogatories are necessary, counsel shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional interrogatories. Counsel are expected to comply with this requirement in good faith. In the event a written stipulation cannot be agreed upon, the party seeking to submit additional interrogatories shall file a motion with the court showing the necessity for relief.

LR 36.1 Requests for Admission, Number of.

Requests for admissions to a party, as a matter of right, shall not exceed twenty five (25) in number. All requests for admissions, including subdivisions of one numbered request for admission, shall be construed as separate requests for admissions. If counsel for a party believes that more than twenty five (25) requests for admissions are necessary, counsel shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional requests for admissions. Counsel are expected to comply with this requirement in good faith. In the event a written stipulation cannot be agreed upon, the party seeking to submit additional requests for admissions shall file a motion with the court showing the necessity for relief.

LR 36.2 Requests for Admissions, Form of Objections to.

Objections to requests for admissions pursuant to Fed.R.Civ.P.36 shall identify and quote verbatim each request for admission to which objection is made and the supporting reasons for the objection.

LR 37.1 Discovery Abuse, Sanctions for.

In addition to the application of those sanctions specified in Local Rule 83.3, the court may impose upon any party or counsel such sanctions as may be just, including the payment of reasonable expenses and attorney's fees, if any party or attorney abuses the discovery process in seeking, making or resisting discovery. In an appropriate case, the court may, in addition to other remedies, notify the Attorney General of the United States in a public writing that the United States, through its officers or attorneys, has failed without good cause to cooperate in discovery or has otherwise abused the discovery process.

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LR 56.1 Motions for Summary Judgment.

A motion for summary judgment filed pursuant to Fed.R.Civ.P.56, shall be accompanied by a separate, short and concise statement of the material facts, in numbered paragraphs, as to which the moving party contends there is no genuine issue to be tried.

The papers opposing a motion for summary judgment shall include a separate, short and concise statement of the material facts, responding to the numbered paragraphs set forth in the statement required in the foregoing paragraph, as to which it is contended that there exists a genuine issue to be tried.

Statements of material facts in support of, or in opposition to, a motion shall include references to the parts of the record that support the statements.

All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party.

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LR 72.2 Appeals from Non-Dispositive Orders of Magistrate Judges.

Any party may appeal from a magistrate judge's order determining a non-dispositive pretrial motion or matter in any civil or criminal case in which the magistrate judge is not the presiding judge of the case, within fourteen (14) days after issuance of the magistrate judge's order, unless a different time is prescribed by the magistrate judge or a judge. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, a written statement of appeal which shall specifically designate the order, or part thereof, appealed from and the basis for any objection thereto. At the time the appeal is filed, the appellant shall also file a brief addressed to the issue raised by the objection to the order or part appealed from. Any party opposing the appeal shall file a responsive brief within fourteen (14) days after service of the appellant's brief. A brief in reply may be filed within seven (7) days after service of the opposing party's brief. A judge of the court shall consider the appeal and shall set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law. The judge may also reconsider *sua sponte* any matter determined by a magistrate judge under this rule.

LR 72.3 Review of Reports and Recommendations of Magistrate Judges Addressing Case Dispositive Motions.

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record

developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

EXCERPTS FROM FEDERAL RULES OF CIVIL PROCEDURE

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Rule 5.2. Privacy Protection for Filings Made with the Court

- (a) REDACTED FILINGS. Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing may include only:
 - (1) the last four digits of the social-security number and taxpayer-identification number;
 - (2) the year of the individual's birth;
 - (3) the minor's initials; and
 - (4) the last four digits of the financial-account number.

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Rule 7. Pleadings Allowed; Form of Motions and Other Papers

- (a) PLEADINGS. Only these pleadings are allowed:
 - (1) a complaint;
 - (2) an answer to a complaint;
 - (3) an answer to a counterclaim designated as a counterclaim;
 - (4) an answer to a crossclaim;
 - (5) a third-party complaint;
 - (6) an answer to a third-party complaint; and
 - (7) if the court orders one, a reply to an answer.
- (b) MOTIONS AND OTHER PAPERS.
 - (1) *In General*. A request for a court order must be made by motion. The motion must:
 - (A) be in writing unless made during a hearing or trial;
 - (B) state with particularity the grounds for seeking the order; and
 - (C) state the relief sought.
 - (2) *Form*. The rules governing captions and other matters of form in pleadings apply to motions and other papers.

Rule 8. General Rules of Pleading

- (a) CLAIM FOR RELIEF. A pleading that states a claim for relief must contain:
 - (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
 - (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
 - (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

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(d) PLEADING TO BE CONCISE AND DIRECT; ALTERNATIVE STATEMENTS; INCONSISTENCY.

- (1) *In General*. Each allegation must be simple, concise, and direct. No technical form is required.

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(d) CONSTRUING PLEADINGS. Pleadings must be construed so as to do justice.

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Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

- (a) SIGNATURE. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

- (b) REPRESENTATIONS TO THE COURT. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) SANCTIONS.

- (1) *In General*. If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.
- (2) *Motion for Sanctions*. A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.
- (3) *On the Court's Initiative*. On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

- (4) *Nature of a Sanction.* A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.
 - (5) *Limitations on Monetary Sanctions.* The court must not impose a monetary sanction:
 - (A) against a represented party for violating Rule 11(b)(2); or
 - (B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.
 - (6) *Requirements for an Order.* An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.
- (d) **INAPPLICABILITY TO DISCOVERY.** This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

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- (b) **HOW TO PRESENT DEFENSES.** Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:
 - (1) lack of subject-matter jurisdiction;
 - (2) lack of personal jurisdiction;
 - (3) improper venue;
 - (4) insufficient process;
 - (5) insufficient service of process;
 - (6) failure to state a claim upon which relief can be granted; and
 - (7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

- (c) **MOTION FOR JUDGMENT ON THE PLEADINGS.** After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.
- (d) **RESULT OF PRESENTING MATTERS OUTSIDE THE PLEADINGS.** If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.
- (e) **MOTION FOR A MORE DEFINITE STATEMENT.** A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the

court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

- (f) **MOTION TO STRIKE.** The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:
 - (1) on its own; or
 - (2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

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Rule 15. Amended and Supplemental Pleadings

- (a) **AMENDMENTS BEFORE TRIAL.**
 - (1) *Amending as a Matter of Course.* A party may amend its pleading once as a matter of course no later than:
 - (A) 21 days after serving it, or
 - (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.
 - (2) *Other Amendments.* In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.
 - (3) *Time to Respond.* Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

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Rule 18. Joinder of Claims

- (a) **IN GENERAL.** A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.

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Rule 20. Permissive Joinder of Parties

- (a) **PERSONS WHO MAY JOIN OR BE JOINED.**
 - (1) *Plaintiffs.* Persons may join in one action as plaintiffs if:
 - (A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
 - (B) any question of law or fact common to all plaintiffs will arise in the action.

- (2) *Defendants*. Persons—as well as a vessel, cargo, or other property subject to admiralty process in rem—may be joined in one action as defendants if:
 - (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
 - (B) any question of law or fact common to all defendants will arise in the action.
- (3) *Extent of Relief*. Neither a plaintiff nor a defendant need be interested in obtaining or defending against all the relief demanded. The court may grant judgment to one or more plaintiffs according to their rights, and against one or more defendants according to their liabilities.
- (b) PROTECTIVE MEASURES. The court may issue orders—including an order for separate trials—to protect a party against embarrassment, delay, expense, or other prejudice that arises from including a person against whom the party asserts no claim and who asserts no claim against the party.

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Rule 33. Interrogatories to Parties

- (a) IN GENERAL.
 - (1) *Number*. Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(1) and (2).
 - (2) *Scope*. An interrogatory may relate to any matter that may be inquired into under Rule 26(b). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.
- (b) ANSWERS AND OBJECTIONS.
 - (1) *Responding Party*. The interrogatories must be answered:
 - (A) by the party to whom they are directed; or
 - (B) if that party is a public or private corporation, a partnership, an association, or a governmental agency, by any officer or agent, who must furnish the information available to the party.
 - (2) *Time to Respond*. The responding party must serve its answers and any objections within 30 days after being served with the interrogatories. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.
 - (3) *Answering Each Interrogatory*. Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.
 - (4) *Objections*. The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.
 - (5) *Signature*. The person who makes the answers must sign them, and the attorney who objects must sign any objections.

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Rule 36. Requests for Admission

(a) SCOPE AND PROCEDURE.

- (1) *Scope.* A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b)(1) relating to:
(A) facts, the application of law to fact, or opinions about either; and
(B) the genuineness of any described documents.
- (2) *Form; Copy of a Document.* Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying.
- (3) *Time to Respond; Effect of Not Responding.* A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. A shorter or longer time for responding may be stipulated to under Rule 29 or be ordered by the court.
- (4) *Answer.* If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.
- (5) *Objections.* The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request presents a genuine issue for trial.
- (6) *Motion Regarding the Sufficiency of an Answer or Objection.* The requesting party may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer be served. On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served. The court may defer its final decision until a pretrial conference or a specified time before trial. Rule 37(a)(5) applies to an award of expenses.

- (b) EFFECT OF AN ADMISSION; WITHDRAWING OR AMENDING IT. A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. Subject to Rule 16(e), the court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding.
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Rule 56. Summary Judgment

- (a) MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT. A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled

to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

- (b) **TIME TO FILE A MOTION.** Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.
- (c) **PROCEDURES.**
 - (1) *Supporting Factual Positions.* A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
 - (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
 - (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.
 - (2) *Objection That a Fact Is Not Supported by Admissible Evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.
 - (3) *Materials Not Cited.* The court need consider only the cited materials, but it may consider other materials in the record.
 - (4) *Affidavits or Declarations.* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.
- (d) **WHEN FACTS ARE UNAVAILABLE TO THE NONMOVANT.** If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:
 - (1) defer considering the motion or deny it;
 - (2) allow time to obtain affidavits or declarations or to take discovery; or
 - (3) issue any other appropriate order.
- (e) **FAILING TO PROPERLY SUPPORT OR ADDRESS A FACT.** If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:
 - (1) give an opportunity to properly support or address the fact;
 - (2) consider the fact undisputed for purposes of the motion;
 - (3) grant summary judgment if the motion and supporting materials — including the facts considered undisputed — show that the movant is entitled to it; or
 - (4) issue any other appropriate order.
- (f) **JUDGMENT INDEPENDENT OF THE MOTION.** After giving notice and a reasonable time to respond, the court may:
 - (1) grant summary judgment for a nonmovant;
 - (2) grant the motion on grounds not raised by a party; or
 - (3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.
- (g) **FAILING TO GRANT ALL THE REQUESTED RELIEF.** If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact — including an item of

damages or other relief — that is not genuinely in dispute and treating the fact as established in the case.

- (h) **AFFIDAVIT OR DECLARATION SUBMITTED IN BAD FAITH.** If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court — after notice and a reasonable time to respond — may order the submitting party to pay the other party the reasonable expenses, including attorney’s fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.