

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA**

PRO SE LITIGANT GUIDE

OFFICE OF THE CLERK

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INTRODUCTION

This guide is designed to assist you if (1) you want to file a lawsuit in the federal court or you have an active role, either as a plaintiff or defendant, in a case that you or someone else has filed already in federal court, and (2) you have elected to proceed without the assistance of a trained and licensed attorney.

Some basic definitions that you need to be aware of regarding commonly used “terms” in civil actions pending before this court are as follows:

Plaintiffs and defendants in court cases are generally referred to as the “parties” or “litigants.” The plaintiff asserts a claim or right protected by law against the defendant; the defendant denies the claim or right, and the court determines whether the asserted claims or rights have substance or merit. The majority of the litigants who appear in this court are represented by an attorney who has been trained in the law and is familiar with the applicable court rules and procedures. Parties or litigants who are not represented by licensed attorneys, who elect to represent themselves, generally are referred to as “pro se parties” or “pro se litigants.” Likewise, plaintiffs or defendants who represent themselves generally are referred to as “pro se plaintiffs” or “pro se defendants.”

This guide will not answer all your questions about what you need to do to represent yourself effectively as a pro se litigant. The guide outlines the basic steps that are required to properly file a civil action or lawsuit with this court. It also provides some general guidance on the next steps in the process of litigating the action once you have filed it with the clerk of court. However, you are responsible for learning about and following the procedures that govern the court process. Although the staff of the Clerk’s Office can provide pro se litigants with general information concerning court rules and procedures, they are forbidden as a matter of law from providing legal advice from interpreting and applying court rules or otherwise participating directly or indirectly in any action.

A WORD OF CAUTION: Self-representation carries certain responsibilities and risks that pro se litigants should be aware of before they proceed. The court encourages all individuals who are thinking about proceeding pro se or engaging in self-representation to carefully review the risks associated with self-representation and to inform themselves of the potential consequences.

WARNING: Rule 11 of the Federal Rules of Civil Procedure prohibits the filing of lawsuits that are clearly frivolous or filed merely to harass someone. If after reviewing your complaint, the court determines that you have filed a lawsuit for an improper or clearly unnecessary purpose, it may impose sanctions against you including ordering you to pay the legal fees of the person or persons against whom you filed the lawsuit.

SECTION I
IMPORTANT ISSUES YOU SHOULD
CONSIDER BEFORE DECIDING TO
REPRESENT YOURSELF IN AN ACTION
BEFORE THE FEDERAL COURT

A. IS THE FEDERAL COURT THE APPROPRIATE COURT TO HEAR YOUR DISPUTE?

The United States District Court for the Western District of North Carolina is one of 94 trial courts in the federal court system. In the State of North Carolina there are three United States District Courts which are the Eastern, Middle and Western Districts. Each district is divided by the counties of which it is statutorily comprised. The United States District Court for the Western District of North Carolina is divided into three (3) divisions: Asheville, Charlotte, and Statesville. The divisions are comprised by the county as follows:

ASHEVILLE DIVISION: If the defendant(s) reside in, or if the action on which the lawsuit is based occurred in one of the following counties, it is an Asheville Division Case: Avery, Buncombe, Burke, Cherokee, Clay, Cleveland, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey.

CHARLOTTE DIVISION: If the defendant(s) reside in, or if the action on which the lawsuit is based occurred in one of the following counties, it is a Charlotte Division Case: Anson, Gaston, Mecklenburg and Union.

STATESVILLE DIVISION: If the defendant(s) reside in, or if the action on which the lawsuit is based occurred in one of the following counties, it is a Statesville Division Case: Alexander, Alleghany, Ashe, Caldwell, Catawaba, Iredell, Lincoln, Watauga and Wilkes.

The Clerk's staffed offices located in the cities of Asheville, Charlotte and Statesville are available to accept and file new lawsuits, pleadings, hold court proceedings and carry out the assigned duties and business of the court during the hours of 8:30 A.M. to 12:30 P.M and 1:30 P.M. to 4:00 P.M., Monday through Friday.

B. IS THERE AN ALTERNATIVE TO APPEARING PRO SE (REPRESENTING YOURSELF) THAT IS AFFORDABLE?

Most people who file and pursue litigation in the federal court employ a licensed attorney who practices law, has appeared in court, and is familiar with the rules of procedures that govern court process. If you would prefer to have an attorney to represent you, but you are unable to afford one, you should consider contacting the local bar association whose staff can explain the various options for obtaining and paying for legal services.

If you cannot find an attorney to represent you, you have the right to pursue your claim in the court by appearing pro se. Be aware that appearing as a pro se litigant,

you are representing only yourself and presenting only your claims or defenses. Under the law, you cannot speak for another person, a company, or other entity, such as a club or association that includes other individuals. When you appear pro se, you must follow the same rules and procedures that licensed attorneys who practice in this court must follow. Generally, judges hold pro se litigants to the same standards of professional responsibility as trained attorneys.

C. IF YOU PLAN TO REPRESENT YOURSELF, WHERE CAN YOU GO TO REVIEW THIS COURT'S RULES OF PROCEDURE AND APPLICABLE FEDERAL LAWS?

As a pro se litigant, you should be familiar with the appropriate sets of federal rules of procedure. These rules set forth the general procedural requirements for litigating cases in all federal courts. As a pro se litigant in a civil case, you should be familiar with the Federal Rules of Civil Procedure and the Federal Rules of Evidence. If you are a pro se defendant in a criminal case, you should be familiar with the Federal Rules of Criminal Procedure and Federal Rules of Evidence. Federal laws are located in the United States Code which is abbreviated as "U.S.C." These rules and laws could be available in your local public or county government libraries.

As a pro se litigant, you also should be familiar with the District Court Rules of Practice, commonly referred to as the "Local Rules," which apply specifically to the court proceedings in this court. The local rules cover the general procedure of any action filed in the Western District of North Carolina.

The local rules can be reviewed at a public law library and are located in the North Carolina Rules of Court – Federal published by West Publishing or the Annotated Rules of North Carolina available in the North Carolina Statutes published by Michie. The local rules are available for purchase in each of the Clerk's staffed offices for a fee of \$10.00 or can be downloaded at no charge from the court's website, www.ncwd.uscourts.gov. The website can also be used to obtain forms, review case dockets, and obtain directions to all courthouses located within our district.

D. HOW DO YOU START A NEW CASE?

FILE A COMPLAINT: The Plaintiff or person bringing the lawsuit to court files a complaint. Sample complaint forms are available on the court's website, as well as in each divisional office. Your complaint may be typed or handwritten. You should make sure that your complaint is legible and can be easily read by the judge.

The complaint can be filed by hand-delivering it or mailing it to any of the Clerk's staffed offices in this district. The addresses and telephone numbers for each staffed office are as follows:

U.S. District Court Clerk, Western District of North Carolina, Asheville Division, 100 Otis St., Rm. 309, Asheville, NC 28801, Phone: 828-771-7200.

U.S. District Court Clerk, Western District of North Carolina, Charlotte Division, 401 W. Trade St., Rm. 210, Charlotte, NC 28202, Phone: 704-350-7400.

U.S. District Court Clerk, Western District of North Carolina, Statesville Division, 200 W. Broad St., Rm. 303, Statesville, NC 28677, Phone 704-883-1000.

The case will be filed and assigned to the correct divisional office regardless of which office receives the complaint for filing. This case assignment is determined in the Western District of North Carolina as stated previously in Section I and is based on the defendant's county of residence or the place where the incident is alleged to have occurred.

Whether you deliver or mail your complaint to the court, you must submit:

- 1) The original of the complaint along with any copies you would like returned. Enclose a self-addressed, postage-paid envelope for any copies you have included for return.
- 2) The \$400.00 filing fee (unless you are proceeding in forma pauperis as discussed in Sections I(G) and V of this Guide). The complaint outlines a problem or reason for the lawsuit, also known as the cause of action. This complaint is given a case number and assigned to a district judge.

SERVE THE COMPLAINT: Each defendant or person whom the plaintiff claims is responsible for the problem must be notified of the lawsuit through a process that is specified under law. The responsibility for notifying each defendant rests with the plaintiff and is referred to as service of process. The provisions for service of process are described in Rule 4 of the Federal Rules of Civil Procedure. If the service of process requirements are not followed correctly, the case can be dismissed for failure to effect proper service of process.

A summons must be served on each defendant along with a copy of the complaint. You can obtain the standard summons form from the Clerk's Office or the Court's website at www.ncwd.uscourts.gov. After you complete this summons form, Clerk's staff will officially issue the summons; this means that an authorized court employee will sign the form and emboss it with the official seal of the court.

FILE AND SERVE THE RESPONSE: Once the defendant(s) has been served with a summons and a copy of the complaint, the defendant(s) must file with the court an answer or some other response within the specified number of days. Under the rules governing service of process, each defendant is required to provide a copy of the response to the plaintiff.

Once each defendant has filed a response, the case is considered at issue.

E. WHAT HAPPENS WHEN A CASE IS AT ISSUE?

1. WDNC Pro Se Settlement Assistance Program.

Once the case is at issue, you will be given the opportunity to participate in the WDNC Pro Se Settlement Assistance Program (“Program”). Through the Program, volunteer attorneys provide free legal assistance to pro se parties regarding settlement of their cases. In particular the volunteer attorney, who is appointed by the Judge presiding over the case, will assist you in preparing for the settlement conference and will participate in the settlement conference with you. While the assistance that is provided by the Program attorney is free, you will be required to pay a portion of the costs of mediation, including the mediator’s fee, unless the Court determines that you are indigent or you reach some other agreement with the other party or parties to your case regarding payment of these costs.

If a settlement is reached, the volunteer attorney will assist in drafting a settlement agreement and other documents that may need to be filed with the Court in order to close the case. If a settlement is not reached after diligent efforts, the volunteer attorney’s participation in the case will end.

Your participation in the Program is entirely voluntary. Once the case is at issue, the Clerk will send you a form asking whether you wish to participate in the Program. You will only be assigned a volunteer attorney if you choose to participate in the Program and return the form to the Clerk’s office within fourteen (14) days from the date on which you received it. If you choose not to participate, you may still be required to attend a settlement conference as directed by the Court.

2. Pretrial Order and Case Management Plan.

If your case does not settle through the Program, or if you choose not to participate in the Program, your case will proceed to a pretrial conference. Local Civil Rule 16.1 governs the pretrial conference procedures for this district. You and the other parties (with and without attorneys) are required to confer as provided by Federal Rule of Civil Procedure 26(f) and conduct an “Initial Attorney’s Conference” within 14 days of joinder of the issues. Within seven (7) days of the conference the parties shall complete and file the “Certification of Initial Attorney’s Conference Form” which shall include a proposed discovery plan. The conference serves as the guideline for the court in issuing a scheduling order. Once the Certification of Initial Attorney’s Conference Form has been filed, the assigned judge will enter a Pretrial Order unless the parties request a pretrial conference with the court. If requested, the pretrial conference should be held within fourteen (14) days of the filing of the discovery plan. Once the scheduling order is in place then the case may proceed in accordance with the deadlines established within the order and the Federal Rules of Civil Procedure.

CIVIL CASE ASSIGNED TO A DISTRICT JUDGE

Your case will be assigned to a district judge. Under the authority of Local Civil Rule 72.1, your case also could be referred to a magistrate judge for assistance in managing the case and conducting certain proceedings. You have the opportunity to consent to jurisdiction of the magistrate judge to manage and hear all proceedings on your case including final disposition of your claims. At case opening, a package will be provided to you which will contain a form entitled “**Notice, Consent, and Reference of a Civil Action to a Magistrate Judge.**” The case will be reassigned to the magistrate judge only if all parties consent. The **Notice, Consent, and Reference of a Civil Action to a Magistrate Judge** form should be served on all defendants along with the service of the summons and complaint as set forth in Local Civil Rule 73.1.

Filing of Motions and Objections: Either party – the plaintiff or defendant – may request that the court take specific action related to the case. To do so, the party prepares a formal request or what is referred to as a motion. Motion practice is governed by Rule 7 of the Federal Rules of Civil Procedure along with LR 7.1. The party must sign the motion and submit it for filing to the Clerk of Court. A copy of the motion must also be sent to the opposing party or party’s attorney. The opposing party may file with the Clerk of Court, an opposition or response to the motion. This response sets forth the opposing party’s reasons why the court should deny rather than grant the motion.

The time within which to respond or reply to motions is set out in LR 7.1. The deadline for the filing of all motions within a civil action is generally set out in the pretrial order.

Motion Review: The district judge or magistrate judge may schedule a hearing on the motion or the judge may decide the motion without a hearing by issuing a written order that either grants, denies or partially grants or denies what the motion sought.

Dispositive vs. Nondispositive Motions: Motions fall into two (2) broad categories: dispositive and nondispositive. Dispositive motions, if granted, dispose of the case; nondispositive motions, if granted, affect the case but do not dispose of it. District judges have the authority to rule on both kinds of motions; magistrate judges are authorized to rule only on nondispositive motions on cases referred to them by district judges. If the parties have consented to jurisdiction of the magistrate judge as the presiding judge (*the judge to whom the case is assigned*), then the magistrate judge has full authority to rule on both kinds of motions the same as a district judge.

Magistrate Judge Memorandum & Recommendation: If a dispositive motion is filed in a case and referred to a magistrate judge, the magistrate judge is authorized to prepare a written Memorandum and Recommendation recommending that the motion be either granted or denied and stating the reason why. This Memorandum and Recommendation is filed on the case docket, served electronically on the district judge assigned to the case and counsel of record, and mailed to pro se litigants. As a party, you have a certain number of days within which to file objections to the Memorandum and Recommendation. All objections that are filed within the specified time are reviewed by the district judge along with the Memorandum and Recommendation. The district judge will issue an order that adopts, rejects or adopts

in part and rejects in part the magistrate judge's Memorandum and Recommendation. In the event the judge's order dismisses the complaint and the cause of action, the Clerk of Court will prepare and enter a judgment in the case. Such judgment is final and can be appealed only to the U.S. Court of Appeals for the Fourth Circuit located in Richmond, VA.

F. WHAT COURT FEES AND COSTS ARE YOU REQUIRED TO PAY?

The fee for filing most civil actions in any U.S. District Court is \$400.00. This may be paid in cash or by check. A list of the fees charged by the court for various services and materials is attached to this Guide. If you are unable to pay the filing fee, you may apply for permission to proceed in forma pauperis, which is Latin for "in the form of a pauper". Information on filing in forma pauperis is located in Section II of this Guide. An application form for filing in forma pauperis is available at each of the Clerk's Offices or from the website at www.ncwd.uscourts.gov. Completed applications are filed and reviewed by either a pro se law clerk or magistrate judge. If your application is denied, your case cannot proceed until the filing fee is paid unless the court orders otherwise at the time of ruling on the in forma pauperis application. Waiver of the filing fee by the court does not automatically waive the other costs associated with pursuing or litigating your case. For example if you need copies of documents filed in your case, the Clerk's Office is required to charge the standard rate of \$.50 per page. Other expenses you will incur include the costs of (1) preparing the documents you file with the court and (2) mailing or hand-delivering a copy of each document to the opposing party to satisfy the requirements of service.

G. HOW DO YOU SUBMIT DOCUMENTS TO THE COURT?

The court requires pro se parties to submit or file an original of each pleading with the Clerk of Court. Clerk's staff will file stamp the document, scan or image the document into a pdf document and electronically file the document on the court's electronic case docket. Notice of this electronic filing will be emailed to the assigned judge. Pro se parties may file pleadings with the court in person or by mail. For purposes of filing in person, the three staffed offices of this district and their addresses are found in Section I(D) of this Guide. Clerk's office hours are as follows 8:30 AM to 12:30 PM and 1:30 PM to 4:00 PM, Monday through Friday, except on federal holidays.

You should retain for your own use a copy of all documents filed with the court. When you file documents in person, plan to bring your personal copy with you so Clerk's staff can file stamp it along with the court's original. If you mail your document and wish to have a file stamped copy returned, you should enclose an additional copy of the document along with a self-addressed, postage-paid envelope.

NOTE: When you submit a pleading to the court you also must mail or deliver a copy of the pleading to the defendant's attorney, or if the defendant has no attorney, to the defendant if he/she has made an appearance in the case. At the end of your pleading, you must include a certificate of service that states the date that you mailed or delivered a copy of the pleading to the defendant. A sample form for a certificate of service is attached to this Guide.

H. HOW DO YOU OBTAIN INFORMATION ABOUT THE STATUS AND PROGRESS OF YOUR CASE?

The Clerk's Office maintains an automated record or case docket for every case. This docket is a chronological summary of all significant events in the history of the case. For example, each time you file a pleading or appear for a hearing, an entry summarizing the event is added to the case docket. You may review the docket on the public access terminal located in the Clerk's offices. Alternatively, if you have a personal computer with access to the internet you can review your case docket on our website at www.ncwd.uscourts.gov using a program called PACER (Public Access to Electronic Case Records). Information is provided as to the charges and how to obtain a PACER login when you select the ECF/Pacer Login option on the website. If you wish to have a paper copy of your docket prepared for you, Clerk's staff will provide it for you at a cost of \$.50 per page.

Clerk's staff are prohibited from providing legal advice as they are not attorneys. Court staff cannot provide you with reasons for a judge's decision or the length of time it will take for an order to be entered on an outstanding motion.

I. IS IT POSSIBLE FOR YOU TO SPEAK DIRECTLY TO A JUDGE OR MEMBER OF HIS PERSONAL STAFF ABOUT YOUR CASE?

As a party appearing pro se, you are prohibited from all private or ex parte communication with the judge to whom your case is assigned. Ex parte communication occurs when one of the parties to a lawsuit exchanges information with the assigned judge (1) without the opposing party being present or (2) without the knowledge and consent of the opposing party. With few exceptions, because of this prohibition, a judge will refuse to speak or otherwise communicate ex parte with any party to a case that is assigned to him. Any communication between the assigned judge and a pro se litigant should be in writing with a copy of the communication sent either to the opposing party or that party's attorney. For example, a party appearing pro se should send to the opposing party a copy of any letter sent to the judge. Moreover, the letter to the judge should indicate that a copy has been sent to the opposing party. (Federal Rules of Civil Procedure (FRCP) Rule 5(d)).

SECTION II APPLICATION TO PROCEED IN FORMA PAUPERIS

As is noted earlier in this guide, filing a case in this court generally requires the plaintiff to pay a \$400.00 filing fee at the time the new case is filed. If you are unable to pay this fee, you may apply to have payment of the fee waived. You can apply for waiver of the fee only when your complaint accompanies the waiver application.

The application process requires that you complete and submit an Application To Proceed In Forma Pauperis. This application is available on the court's website www.ncwd.uscourts.gov or any of the Clerk's staffed offices. Brief instructions for completing the application are as follows:

At the top of the application, you must note the name of the case caption which consists of your name as plaintiff above the "v." And the name of the defendant(s) below the "v.". Clerk's staff will provide the case number.

You must answer all questions truthfully and completely. If you own real estate or automobiles that have outstanding mortgages or loans, you should be very specific about your debt balances so the district judge who reviews the application has accurate information as to the property's value. You also must sign the statement under penalty of perjury.

The completed application form should be submitted to the Clerk's Office. Clerk's staff will file, scan, and enter the application upon the electronic case docket for the court's review.

WAIVER APPLICATION DENIED IN ITS ENTIRETY: If a judge denies your waiver application in its entirety, you will be required to pay the \$400.00 filing fee. A copy of the judge's order will be mailed to you. When the filing fee is paid to the court it should be accompanied by a cover letter indicating the case number to which the fee should be applied.

WAIVER APPLICATION DENIED IN PART – PORTION OF FILING FEE ORDERED PAID: A judge may order that a portion of the filing fee must be paid within a specified period of time. If the partial filing fee is not paid by the court's deadline, then your case will be dismissed.