A LEGAL SELF-HELP HANDBOOK

for

District of Columbia Prisoners

at

Rivers Correctional Institution

Second Edition

DC PRISONERS PROJECT
WASHINGTON LAWYERS' COMMITTEE FOR CIVIL RIGHTS AND URBAN AFFAIRS
Revised 2007

INTRODUCTION

This booklet will help you defend your legal rights. It is written with you in mind–a person serving a sentence imposed in the District of Columbia and currently confined at the Rivers Correctional Institution ("RCI") in Winton, North Carolina.

The DC Prisoners Project is the only organization devoted to advocating for the legal rights of DC prisoners. Unfortunately, we do not have the money or legal staff to represent every prisoner with regard to his or her individual problems–particularly those, like you, confined far from the District of Columbia. We recognize that the vast majority of you have no access to an attorney. We prepared this booklet to provide you with general information about your legal rights and how to enforce those rights.

This booklet will **NOT** help you challenge your criminal conviction or your sentence under District of Columbia or federal laws. You may contact the DC Public Defender Service for assistance in preparing papers that challenge your sentence or conviction in a criminal case. Courts have the authority to issue different kinds of writs. The most common writs are for habeas corpus and mandamus. This booklet is **NOT** designed to assist with writs of habeas corpus to challenge your sentence or conviction.

This is also not a legal research manual with elaborate discussion of case law and detailed explanations of how to correctly cite cases. Publications like the *Jailhouse Lawyers' Manual*, which can assist you with the extensive body of law on prisoners' rights, may be available in your prison library or can be obtained (often for free) from the publisher.[1]

This booklet is not intended to serve as legal advice and cannot include all of the considerations that go into filing and litigating a lawsuit. In addition, laws and rules can change. This booklet should be used as a guide for you to consider in pursuing your own claims. Please let us know if you find this booklet helpful, if additional subjects should be covered, or if you learn that the prison or court rules have changed in ways that effect the information provided in this booklet.

This booklet is not intended to replace the advice of any attorney.
This document does not represent legal advice by the
D.C. Prisoners' Project, and it does not create an attorney client relationship.
Please rely on your own research!

[1] The *Jailhouse Lawyers' Manual* (JLM), Sixth Edition, is $25 per volume, or $45 for both volumes purchased together (which is highly recommended). A Spanish version (SJLM) is available for $15. Shipping is included in these prices, but first-class shipping costs an additional $5 per book. To purchase JLM or SJLM, send a check or money order payable to Columbia Human Rights Law Review to: Columbia Human Rights Law Review, Attn: JLM Order, 435 W. 116th St., New York , NY 10027.

AN IMPORTANT WORD ABOUT THE KINDS OF COMPLAINTS YOU CAN BRING

You may be used to hearing about Eighth Amendment or Constitutional claims. You will notice that this booklet does not discuss those types of claims at all. That is because they generally are not available to you at RCI.

As you know, you are in the custody of the Federal Bureau of Prisons ("BOP"). The BOP contracts with Geo Group to house you at RCI. The District of Columbia has nothing to do with it.

You may have heard of 42 USC § 1983. That law allows you to sue for violations of federal law (including constitutional violations) when you are in state custody or DC custody. 42 USC § 1983 only applies to prisoners in state custody or in prisons that have contracted with a state (or DC). It doesn't apply to people, like you, in federal custody.

You may also have heard of *Bivens* suits. People whose constitutional rights are violated by agents or employees of the federal government are allowed to sue the wrongdoers for money in federal court. The first such case was *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and that case is the reason such suits are know as *Bivens* actions. The Supreme Court has said that *Bivens* suits cannot be brought against companies that contract with the federal government. So you can't file a *Bivens* suit against Geo Group. The Fourth Circuit, where you are, has ruled that you also cannot bring *Bivens* suits against individual employees of RCI. *See Holly v. Scott* 434 F. 3d 287 (4th Cir. 2006).

The combined effect of all these laws and court cases is that there appears to be no way to bring a constitutional lawsuit for money for things that happen at RCI. You can still bring a suit for injunctive relief.[2] D.C. Prisoners' Project is challenging that rule, but we have not been able to change the law so far.

If you write to the court with a request, the clerk may send you forms for lawsuits under 42 USC § 1983 or Bivens. But to file a successful lawsuit against an officer or employee at RCI, you need to bring a case under North Carolina tort law. There are no forms for tort claims – you will have to draft your own Complaint, but more on that, later (see page 7, "Preparing Your Complaint").

[2] If you do try to bring a case for injunctive relief under the Constitution in federal court, please be aware of all the requirements of the Prison Litigation Reform Act (PLRA). Also be aware that the prison system can always moot out your case by transferring you to another prison.

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WHAT TO DO BEFORE YOU FILE A LAWSUIT

Anyone can file a lawsuit for any reason. But filing a lawsuit and getting what you want out of a lawsuit are two very different things. In order for a lawsuit to be successful, you must have two things:

(1) a valid claim under the law
(2) proof of your claim.

The lack of one of these two things is by far the biggest reason why many lawsuits filed by prisoners fail. This section identifies some of the things you should think about before deciding whether to file a lawsuit and the things you should do before filing any lawsuit.

Should I File a Lawsuit?

There are many things to think about before you decide to file a lawsuit. Do you have a claim recognized under the law? Can you prove your claim? If you win, will you receive any money? If you get money, will it make up for the cost and hassle of the lawsuit? Will filing a lawsuit make things better for you or others? Could someone retaliate against me?

When you have a problem, try to decide what you want before you file a lawsuit. Is it something that a court must order? Is there another way to get what you want? Although you can only sue to enforce your own rights, if your case could improve the lives of others, a lawsuit can be a forceful tool for change.

To begin with, you should understand the difference between a "grievable problem" and a "legal claim." A grievable problem is one you might encounter, such as prison rules that you find unfair, a prison official who is openly disrespectful, or food that is unappetizing – anything that you believe is wrong and that can and should be corrected. You can file a grievance (administrative remedy) about a grievable problem.

A legal claim is a grievable problem that a court can do something about because it is against the law. You can try to correct such problems by speaking with prison officials, pursuing RCI's written grievance procedures or writing letters to individuals or organizations responsible for overseeing RCI. If you are unsuccessful, and you believe your grievable problem is also a legal claim, you can file a lawsuit.

A Few Words of Caution

Litigation is expensive. To file a lawsuit in a North Carolina superior court, you must pay a filing fee of $95.00. (Federal actions are more expensive - $350 to file a civil action, $455 to file an appeal.) Serving the defendants with a summons and a copy of the Complaint (as required by the rules of civil procedure) may also have a financial cost. (People found to be incapable of paying

these fees may be allowed to proceed as a "pauper" by filing a motion and a notarized affidavit with the court at the same time the Complaint is filed.)

Litigation involves complicated procedural rules (such as the requirement that administrative remedies must have been exhausted before a legal claim can be filed). Additionally, there are very demanding legal standards that require proof of malicious infliction of nonjudicial punishment, deliberate indifference to a substantial risk of serious harm, or a knowing deprivation of the basic necessities of life.

These and other factors (such as the attitudes of jurors) mean that, in litigation, the deck is stacked against prisoners. Generally, a person is better off trying to resolve problems and complaints informally by talking to prison staff or through administrative procedures such as the administrative remedy process. Litigation should be reserved for serious or life-threatening matters that cannot otherwise be resolved.

BEGINNING THOUGHTS

What do I need to do before I file a lawsuit?

1. Exhaust your administrative remedies

For federal claims, you are required to exhaust all available administrative remedies. *See* 42 U.S.C. § 1997e(a). Courts have interpreted this requirement very strictly.

As of the date of this booklet, RCI used its own grievance procedure and required you to follow the BOP procedure for some additional steps. This may change at any time, so be sure that you have used all of the prison grievance procedures available to you. Make sure you file appeals each time you are denied or you don't get what you want (or the time for an answer passes and you have not gotten an answer or a request for an extension). Use every appeal until no more appeals are available. Always keep copies.

Although this requirement does not apply to state law claims, it is almost always better to exhaust your administrative remedies anyway. It increases your chance for a successful resolution of the problem, helps to make a paper trail, and shows that you tried to do everything by the rules. It can also provide insight into what the defendants will say in response to a lawsuit.

2. Keep written records and gather evidence

The difference between winning and losing a lawsuit often depends on the evidence you have. Keep copies of everything and make notes of important events. Talk to people who may have witnessed the events to find out what they saw and heard. Ask whether they would be willing to be a witness and provide notarized, written statements (affidavits). Gather these affidavits as soon as possible. As a general rule, you need not attach evidence to your Complaint, but you must gather evidence as it happens so that you will have it for later.

3. Become informed about your rights

You do not need to be a lawyer to file a lawsuit or to enforce your rights. But the help of a knowledgeable person greatly increases your chance to win.

_42 U.S.C. §1983_ and _Bivens_ Actions are not Available to Prisoners at RCI

RCI is operated by the Geo Group under contract with the Federal Bureau of Prisons. _42 U.S.C. §1983_ is only applicable to state actors and does not apply to the federal government and _Bivens_ is not applicable to employees of a private contractor like the Geo Group. Do not bring one of these kinds of cases. YOU WILL LOSE.

Review the Appendix. Also, read all you can about the area of law in which you are filing claim.

4. Beware of "Writ Sellers" and bad "Jailhouse Lawyers"

Most prisons have a number of people who are known for helping other inmates write Complaints and responding to motions. These people, sometimes called "writ writers," or "legal assistants," typically have no formal legal training. However, because they have had prior experience filing lawsuits *pro se*, they can be helpful in formatting the Complaint, complying with filing requirements and translating some of the legal terms. This booklet is designed to help you file a lawsuit by yourself, but you might also be able to get some help from fellow inmates with prior experience.

On the other hand, be careful of inmates or others who encourage you to file a lawsuit or ask you to pay them money to file a lawsuit on your behalf. There are individuals who have collected thousands of dollars from others for filing losing lawsuits.

Any outside agency or firm that asks you to pay money to get a "*pro se*" Complaint that you can then file yourself is practicing law without a license and is most likely trying to sell something not worth the money or time.

When Should I File My Lawsuit?

Don't wait to file any longer than necessary. Generally speaking, the sooner you file your lawsuit, the better. It may take a while to exhaust RCI's prisoner grievance procedures, but you should try to file your Complaint as soon afterwards as possible. If not, your claim could become "stale," your evidence could grow cold, be lost or destroyed, you could lose track of witnesses, or even worse, your claim could be barred by the statute of limitations.

The statute of limitations is just that – a statute (law) that prevents a lawsuit from being considered if it is filed too long after the claim "accrues," which just means when the event happened. The length of time you are permitted to wait before filing a lawsuit depends on the type of claim and the state law.

Most tort claims against Geo Corp, its employees, and its contractors in North Carolina state court must be filed **within three years** from when the event happened. N.C. Gen. Stat. § 1-52(16) (personal injury or damage to property); § 1-52(19) (assault, battery, or false imprisonment).

For these kinds of claims in federal court, you generally have 3 years from when the event happened to file as well. In North Carolina, statutes of limitations **ARE NOT** tolled (suspended) during incarceration; they begin to run immediately and you cannot wait until you are released to file suit. N.C. Gen. Stat. § 1-17

The bottom line is that you should file a lawsuit as soon as possible after exhausting the grievance procedure.

Who Should I Sue?

In general, you should consider suing all people and entities that have the ability to provide you with the relief you want. Keep in mind that courts routinely dismiss claims against the President of the United States or high ranking officials sued in their personal capacity. Naming individuals who are technically responsible but who were not personally involved in violating your rights does nothing more than make your Complaint look weak. Rather, consider suing high ranking officials in their official capacity and focus on individuals who took an active role in causing your injury or entities that have the power to correct the problem. With these general principles in mind, a few entities require special treatment.

The GEO Group and RCI

RCI **should not be named** as a defendant because it is a building, not a company. RCI is owned and operated by the GEO Group, Inc. (formerly Wackenhut Corrections Corporation). RCI is not owned or operated by the District of Columbia, the State of North Carolina or the Bureau of Prisons.

Unlike federal, state and municipal prison owners, the GEO Group can be held liable for the common law torts of any of its employees. This is known as the doctrine of *respondeat superior*: that the company is liable for any injuries caused by its employees while they act within the scope of their employment. This is important because employees may not be able to pay your damages (money), but their employer can.

In a state court action for damages resulting from the actions of any employee at RCI, consider naming the GEO Group as a defendant under the doctrine of *respondeat superior*. The GEO Group is incorporated and has its principal place of business in Florida.

If you name the GEO Group as a defendant, you should serve a copy of the Complaint and summons on the GEO Group's agent for service of process. "Serving" is the process of officially giving someone a copy of a Complaint. Serving corporations is discussed on page 18.

Suing Subcontractors

Geo Group may contract with some other companies to provide things like food service or medical care. You may want to sue these companies. Before you serve a copy of the Complaint and summons on those defendants, you will have to figure out what address to send the papers to. Usually, corporations designate an agent for service of process. That information should be on file with the state.

Suing Individuals

You may want to sue individual people who hurt you. That is fine. Don't name everyone under the sun. Try to pick only those people directly involved in what happened to you, those who could have stopped or prevented it, or those people who have the power to fix it.

Suing the State of North Carolina

The State of North Carolina is not involved in your confinement. Do not sue it.

PREPARING YOUR COMPLAINT

A "Complaint" is a paper that begins a lawsuit. You may decide to use a form, like the one in the Appendix of Forms, or you can write one from scratch. This section assumes that you are writing one from scratch, but it applies equally to forms.

If at all possible, you should type or neatly write your Complaint on white paper that is of the standard size: 8½ inches by 11 inches. Most courts require it be typewritten, but it would be unconstitutional to enforce this rule if you do not have easy access to a typewriter. Courts give no greater consideration to a Complaint that is typewritten than one that is neatly handwritten.

Also, it is good to number every paragraph in your Complaint. This is not necessary if you are using a pre-printed form, but if you are drafting a Complaint from scratch, each paragraph below the caption should be numbered.

As for the organization of your Complaint, there are a number of examples and Complaint forms in the Appendix to this handbook that you should consider in drafting your Complaint. Whether you are using a form or are preparing your Complaint from scratch, be sure to include the following six things:

1) a caption,
2) a statement about jurisdiction and venue,
3) a statement of facts,
4) a list of claims,
5) a "prayer for relief," and
6) your signature.

Each of these parts of a Complaint is described more fully below.

1. Caption

Every paper sent to a court for filing should include a caption on the very first page. A caption does three things: it identifies the court, the parties and the paper being filed.

a. **Identify the Court**: Across the very top of the first page of every paper file you should identify the name of the court

- ⇨ If you are filing a Complaint in the local North Carolina state court, type or write across the top of the first page:

STATE OF NORTH CAROLINA
IN THE GENERAL COURT OF JUSTICE
COUNTY OF HERTFORD
SUPERIOR COURT DIVISION

- ⇨ If you are filing a Complaint in federal court, type or write across the top of the first page:

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

b. **Identify the Case:** Below the name of the court, draw a line down the middle of the page. Look in the Appendix for examples.

- ⇨ If you are suing in North Carolina State court write or type:
  ___- CVS-_____

- ⇨ If you are suing in Federal District Court write or type:
  No. __:____-CV-___(_)

If this is your Complaint, the Clerks Office will fill in the case number. If this is a paper in a case already pending, you should include the case number.

Then put your name, identified as "Plaintiff" followed by a "v." (for "versus") followed by the names of all of the defendants you are suing. You should list your address and the address of each defendant immediately beneath the respective party. Later, you only have to list the first plaintiff and the first defendant.

c. **Identify the Paper:** If this is the Complaint, for example, write or type the word "COMPLAINT" in all capital letters below the names of the parties. In later papers, give the paper a title that is short and explains what you are doing. You might call it a "Motion to Order Defendants to Produce Discovery" or an "Opposition to Defendants' Motion for Summary Judgment."

2. Statement of Jurisdiction and Venue

This must be near the front of the Complaint because the judge will want to know why you are filing your Complaint in his or her court.

Jurisdiction

- ⇨ *Federal*

In order for a Federal court to have jurisdiction over your claim, for causes of action based on state law (federal law claims generally are not available while at RCI), you have to show that:

(1) All the defendants are citizens of states that are different (diverse) from yours. If you lived in DC before you went to prison, you are a citizen of the District of Columbia, unless you have done something special to change your place of residence (like marry a woman who lives in a different place). So, you have to show that **none of the defendants** you are suing are citizens of the same place you are. In other words, generally, that none of the defendants are from DC.

AND

(2) You must be suing for more than $75,000 in damages (based on a good faith belief such damages are appropriate). This can include punitive damages, attorneys fees (if any) and injunctive relief.

Geo Group, which is a citizen of Florida, will be the most common defendant. Guards and other employees are probably citizens of North Carolina (possibly Virginia). So a federal court will have jurisdiction over a D.C. prisoner's claim **if** you are suing for **more than $75,000**. If, however, **any** defendant is a citizen of DC, there is no diversity, and no federal jurisdiction.

If both of the above conditions are met, cite 28 U.S.C. § 1332 as the basis for the court's jurisdiction in your Complaint.

⇨ *State of North Carolina*

State courts have jurisdiction over cases arising within the state and involving its constitution or laws. Therefore you **will always be able to** establish jurisdiction over your claims in state court.

The Superior Court has jurisdiction if the amount in controversy exceeds $10,000. District Court has jurisdiction if the amount in controversy is less than $10,000. A special division of District Court, the Small Claims Division, will handle cases if you request a magistrate and the amount in controversy is less than $5,000.

The Court has jurisdiction over people served a copy of the lawsuit if you follow:

N.C. Gen. Stat. § 1A-1, Rule 4 (j)(1)(service of the summons and Complaint on a person);
N.C. Gen. Stat. § 1A-1, Rule 4 (j)(6)(service of summons and Complaint over a corporation)[3];
N.C. Gen. Stat. § 1-75.4(1)(b) if the Defendants were natural persons living in North Carolina when service of process was made; or
N.C. Gen. Stat. § 1-75.4(5)(b) if the case arises out of services actually performed for the Plaintiff by the Defendant within North Carolina.

Read these rules carefully. Figure out which ones apply. Then follow the directions. See the Appendices for the rules.

[3] Pursuant to N.C. Gen. Stat. § 1A-1, Rule 4 (j)(1), jurisdiction over a corporation is obtained "by delivering a copy of the summons and of the Complaint to an officer, director, or managing agent of the corporation;" by delivering a copy of the summons and Complaint to "an agent authorized by appointment or by law to be served or to accept service of process;" or by "mailing a copy of the summons and of the Complaint, registered or certified mail, return receipt requested, addressed to [such an] officer, director or agent."

Venue

Venue is the location in which you can properly file your lawsuit. In general, federal venue is in any federal district where one of the defendants lives or where the claims arose. Thus, venue is generally proper in the U.S. District for the Eastern District of North Carolina if the defendant is Geo Group or other defendants providing services at RCI .

If you are filing a Complaint in state court, jurisdiction and venue are much simpler to allege. Simply identifying the basis of your claim, the amount that you seek in damages (if any), and the county in which the defendants live or the claims happened should satisfy the court that jurisdiction and venue are proper. For instance, venue would be proper in Hertford County, North Carolina, if that is where the cause of action arose (where the bad thing happened) (N.C. Gen. Stat. § 1-77(2)), or if that is where the Defendants live, (N.C. Gen. Stat. § 1-82).

If you are seeking to file a Complaint in Small Claims court, you should state that you are not seeking damages in excess of the jurisdictional maximum amount ($5,000). If you are seeking damages between $5,000 and $10,000, you should file in District Court. If you are asking for more than $10,000, you will need to file in Circuit Court.

3. Statement of Facts

A short, clear statement of facts is the most important part of your Complaint. Anyone can draft a Complaint, but only you have an understanding of the facts. Take your time in drafting the statement of facts, with an eye toward making it complete and persuasive.

Do not fill this section with pages of legal analysis or case citations that get in the way of the description of what happened. In your statement of facts, use plain English to explain what happened to you, describing key events in detail. Be sure to include facts about how you were harmed by defendants' actions.

Keep these general rules in mind:

- **Don't over-sell:** State facts that you know to be true or have objective reasons to believe to be true. Describing your "hunch" that defendants conspired to injure you will undermine your Complaint if you don't have facts to back it up.
- **Be brief:** By sticking to the facts, you can make your statement of facts shorter without losing any important information. While the specifics of an incident that you are complaining about may be important to talk about in detail, leave background facts out of the Complaint.
- **Avoid bad facts:** There are two sides to every story. Facts regarding your misconduct or defendants' possibly reasonable excuses need not be presented in your Complaint. However, if bad facts are necessary for a complete picture of your claims, it may be better to set them out in the beginning than to wait for them to come out later.

4. Listing of Claim(s)

This is the legal part of your Complaint. Set out each claim in a separate section that is titled with the claim. Each section can summarize the facts that support the claim or simply "incorporate by reference" the paragraphs of the Complaint covering the statement of facts. List every claim that you think may reasonably apply to your case. For a listing of claims commonly asserted by prisoners, see the Appendices regarding Common Law claims.

5. Relief

Your Complaint should have a section titled "Relief." In it, include all of the things you want the Court to do. Possibilities include:

- **Damages.** You may seek money to compensate you for your loss (compensatory damages) and, in certain circumstances, you can request money as a punishment for defendants' actions (punitive damages). You do not have to say how much money you want unless the court's jurisdiction depends on a minimum or maximum amount. Even then, you can request damages "in excess of $75,000" or "of less than $5,000."

  North Carolina State courts require that if the amount you are asking for is more than $10,000, you simply say that you are demanding relief "in excess of ten thousand dollars.":

  > In all negligence actions, and in all claims for punitive damages in any civil action, wherein the matter in controversy exceeds the sum or value of ten thousand dollars ($10,000), **the pleading shall not state the demand for monetary relief, but shall state that the relief demanded is for damages incurred or to be incurred in excess of ten thousand dollars ($10,000).** N.C. Gen. Stat. § 1A-1, Rule 8(a)(2).

- **Issue Declarations.** The Court can be asked to declare that a law or regulation has been broken or that your rights have been violated. This is not always necessary, but is sometimes included as a requirement to obtaining the relief you want.

- **Equitable Relief.** The Court can order the parties to take certain actions or not to take certain actions. Be careful to ask for equitable relief only from an individual or institution that can actually provide it. (A guard can't change an operational procedure, but the warden or GEO Group can.)

- **A Catch-All.** Consider asking for "such other and further relief the Court deems justified." If you do not ask for relief, many courts will not grant it. When you draft your Complaint, it is sometimes difficult to imagine all the possible remedies to your problem. By including this catch-all phrase, you provide the Court the ability to order a remedy that satisfies your concerns.

6. Request for a Jury Trial

If you want a jury if you go to trial, ask for that right in the Complaint. If you do not, you may not be able to get a jury later.

7. Signature

Unless you are represented by an attorney, you ***must*** sign your own Complaint. Be sure that at least one of the Complaints that you mail to the court includes your **original signature** (not a photocopy of your signature). Signing in blue ink helps the court recognize an original signature.

8. Attachments

Attach copies of all your completed grievances and the responses you receive. Keep the originals for your records in case you need them later. If the last prison response does not state that all administrative remedies have been exhausted, consider including a copy of RCI's grievance procedures or your affidavit (or, in federal court, a sworn declaration) that all administrative remedies available to you have been exhausted. You don't have to attach other evidence. Proof of exhaustion is enough.

Note: To be of use in court, a written statement must (1) be made on personal knowledge, (2) set forth such facts as would be admissible in evidence, and (3) show that the person making the statement (the affiant) is competent to testify to the matters stated in the affidavit. Additionally, the affidavit must be signed and dated, and must be notarized by a notary public.[4] Finally, in order that the witness may be located if his testimony should be needed in the future, it is important that a permanent address be given (either that of the declarant's spouse or a family member through whom he can be located). In this regard, a prison I.D. number, a social security number, and/or a date of birth, can often be helpful.

[4] Under 28 U.S.C. Section 1746, many of the purposes for which a notary public is required to formalize a written document can be equally satisfied for use in a federal court by a declaration. However, the declaration must be signed and dated, and must contain the following phrase: "I declare under penalty of perjury that the foregoing is true and correct."

SHOULD I SUE IN STATE OR FEDERAL COURT?

Assuming you meet the jurisdictional requirements and have a choice of whether to sue in State or Federal court, which should you choose?

Several things may make State court more attractive to you:

(1) It's cheaper to file than in Federal court.
(2) State courts are used to handling North Carolina state claims.
(3) If you aren't suing for more than $75,000, and if you don't have diversity jurisdiction, you can't sue in Federal Court. (Diversity jurisdiction may exist when the parties are from different states, for example. See the discussion beginning on page 8 under "Jurisdiction.")

On the other hand there are several other factors which might make it better to sue in federal court:

(1) Judges in North Carolina are elected. Federal Judges are appointed for life and don't have to worry about being voted out of office for unpopular rulings in favor of prisoners.
(2) Federal Judges deal with a wider variety of cases and interests.
(3) Federal Judges have more resources at their disposal. In particular, they are likely to have more law clerks that are available to do research, and have the interest and the opportunity to examine an issue more thoroughly, potentially resulting in a more favorable outcome for prisoners.
(4) Federal Judges are generally better versed in the law governing prisoner rights.

Only you can make the decision about where to file.

42 U.S.C. §1983 and *Bivens* Actions are not Available to Prisoners at RCI

RCI is operated by the Geo Group under contract with the Federal Bureau of Prisons. *42 U.S.C. §1983* is only applicable to state actors and does not apply to the federal government and *Bivens* is not applicable to employees of a private contractor like the Geo Group. Do not bring one of these kinds of cases. YOU WILL LOSE.

FILING A COMPLAINT IN FEDERAL COURT

A civil action in federal court is begun by filing your Complaint. If you give your paper a different title or no title at all (see the discussion of "caption" in "Preparing Your Complaint"), the court may send it back to you or write the word "Complaint" on the front.[5]

> ***42 U.S.C. §1983* and *Bivens* Actions are not Available to Prisoners at RCI**
>
> **RCI is operated by the Geo Group under contract with the Federal Bureau of Prisons. *42 U.S.C. §1983* is only applicable to state actors and does not apply to the federal government. *Bivens* is not applicable to employees of a private contractor like the Geo Group. Do not bring one of these kinds of cases. YOU WILL LOSE.**

Paying the Filing Fee

It costs $350 to file a Complaint in federal court. There is no charge for filing other papers. If you cannot afford to pay the filing fee up front, you can file a request to proceed without prepayment of the filing fee, also known as a motion to proceed *in forma pauperis* (IFP). You have to show you cannot afford to pay the filing fee without hurting your ability to meet the basic necessities of life.

RCI is supposed to provide all of the necessities of life. Courts differ about the amount of money an inmate can have and still be allowed to proceed IFP. Typically, if you do not have substantially more than $350 in your inmate trust fund account, you qualify to proceed without prepayment of the filing fee.

Keep in mind that even if you are granted IFP status in federal court, **you ultimately will still have to pay the filing fee**. Monthly installments will be taken out of your inmate trust fund account and sent to the federal court. You must allow prison officials to make this deduction or your Complaint will be dismissed.

Aside from not having to pay the entire $350 filing fee up front, the two biggest advantages to proceeding IFP are that:

(1) the district court will arrange for and pay to have all the defendants served with a summons and Complaint; and
(2) you will be eligible to receive appointment of counsel without the need to establish that you cannot afford to hire an attorney.[6]

[5] There is one other type of civil proceeding that federal courts handle that may sound familiar – a petition for a writ. A writ is an order that commands someone to do something. Federal courts have the authority to issue different kinds of writs. The most common writs are for habeas corpus and mandamus. This booklet **is not** designed to assist with writs of habeas corpus to challenge your sentence or conviction.

There are some disadvantages to proceeding IFP:

(1) You will be required to comply with all of the pre-filing requirements of the PLRA, 28 U.S.C. § 1915(b), such as allowing the court to look at your prison account and allowing the prison to forward money from your account to the court; and
(2) The filing of your Complaint will be delayed from 1 to 3 weeks or more while the court considers your application to proceed IFP and whether the Complaint complies with the PLRA;

If you want to file your Complaint IFP you will need to submit to the court:

(1) A completed and signed form to request to proceed IFP. (A copy of this form is included in Appendix D).
(2) A certified copy of your inmate trust fund account with your income and average balance over the past six months. You can get a copy of this account from the Finance Office at RCI.
(3) A completed and signed authorization form that permits RCI to withdraw up to $350 from your account.

[6] There is no constitutional right to have counsel appointed in a civil case. The appointment of counsel in civil cases before the federal court is discretionary, and is allowed only when exceptional circumstances are present. *Whisenant v. Yuam*, 739 F.2d 160 (4th Cir. 1984); *Cook v. Bounds*, 518 F.2d 779 (4th Cir. 1975). Exceptional circumstances exist where: (1) the case is complex; and (2) the plaintiff is unable effectively to present his case without the assistance of counsel. *Whisenant*, 739 F.2d 160, 163. There is also an understood requirement that the case have merit.

FILING A COMPLAINT IN NORTH CAROLINA STATE COURT

The general framework for preparing a Complaint, described above, applies to lawsuits filed in any state court. Every state has its own procedures that should be followed. Here is some general information about filing Complaints in North Carolina.

1. Organization of the court system

For civil actions, the North Carolina state court system is made up of four levels:

- District Courts, where some trials are held (Small Claims Court is a sub-part of the District Court);
- Superior Courts, where other trials are held;
- One Court of Appeals, where appeals are heard by three judge panels; and
- One Supreme Court, where appeals from the Appellate Courts are heard.

The fee for filing a Complaint varies depending on the division in which you file your Complaint. Listed below is a summary of the types of cases each court hears and the appropriate filing fee (effective as of 7/1/07):

- Superior Court (claims greater than $10,000): $ 109*
- District Court (claims of $10,000 or less): $ 89*
- Small Claims Court (claims of $5,000 or less): $ 75*

*Plus $15 for each item of civil process (the summons and Complaint) served by the sheriff. (Service fees are not collected from people who are permitted to proceed *in forma pauperis* – that is, as a poor person.)

Filing Fees change often so check before filing.

2. Where to file your Complaint

Regardless of how much money you ask for in damages, mail your Complaint to:

Clerk of Superior Court
Hertford County Courthouse
King Street
P.O. Box 86
Winton, NC 27986

3. What to file with your Complaint

In order to begin your lawsuit, you must file your Complaint with three things:

- A completed "civil action cover sheet;"
- A completed summons for each defendant named in the Complaint; and
- The filing fee **or** a completed "Petition to sue as an indigent."

Forms for each of these are included in Appendix E.

SERVING THE DEFENDANTS WITH YOUR COMPLAINT

Filing your Complaint with the court is only the first step. The defendants you have named in your lawsuit must also receive "service of process"–the term for officially notifying the defendants that they have been sued by providing each of them a copy of the Complaint and a summons. If you filed your Complaint in federal court and have been allowed to proceed *in forma pauperis*, the court is responsible for seeing that all defendants receive service of process. *See* Fed. R. Civ. P. 4(c)(2). Otherwise, you must serve all defendants.

The rules for service of process must be followed carefully. The Federal Rules of Civil Procedure and the North Carolina rules governing service of process are roughly the same. This section summarizes some of the more important features of these rules, but you should review the relevant rules themselves before attempting to serve the defendants. Read Fed. R. Civ. P. 4 and N.C. R. Civ. P. 4, both of which can be found in Appendix C.

The summons

Generally, service of process requires sending a copy of the Complaint and a summons to each defendant. A "summons" is a formal document that is signed by the Clerk. You must use the proper summons form for the court in which you file your Complaint. A copy of the federal summons form is included in Appendix D, and the summons form for North Carolina state courts is included in Appendix E. These forms are not effective until signed by the Clerk of the court.

You should copy the appropriate form once for each defendant and complete the portions of the form that you can (i.e., caption of Complaint, name and address of the defendant to be served with the summons) and send to the Clerk's Office with your Complaint. If properly completed and your Complaint is not summarily dismissed, the Clerk will sign the summons and return it to you.

Serving the Summons and Complaint

Being incarcerated limits your ability to serve the defendants, but it is not impossible. Generally, service can be made personally or by certified mail. Personal service (handing a copy of the summons and Complaint to each defendant) can be made by a friend or you can hire a process server. A list of process servers is included in Appendix F.[7] Certified mail is acceptable so long as you receive a return receipt showing service on the proper person.

Regardless of how you serve each defendant, you are responsible for filing with the court a copy of the summons with the back page (called the "return of service") properly completed, showing that the summons and Complaint were served on the defendant named in the summons.

You serve the summons and Complaint at the address listed in your Complaint for each defendant. For individuals, you should list their home or work address. There are special rules, however, for serving corporations and government agencies:

[7] D.C. Prisoners' Project has no information as to the quality of these process servers. We provide this list simply as a service to you.

- Corporations receive service of process on the corporation's "registered agent for service of process" or a corporate officer or managing or general agent. The identity of the registered agent for service of process can be obtained from the Secretary of State in which the corporation is incorporated. For the Geo Group, the current registered agent for service of process to whom you can serve your summonses and complaint is:

  John J. Bulfin
  Senior VP and Secretary
  The Geo Group, Inc.
  621 NW 53rd Street, Suite 700
  Boca Raton, FL 33487

If you are not filing IFP, it can be difficult to serve all of the defendants. If it seems like a lot of trouble, don't give up. Defendants may waive all of the technical requirements of service if they actually receive a copy of the Complaint and have sufficient time to answer. If you file in Federal Court, there is a form you can send to the defendants asking them to waive the technical requirements of service. That form is in Appendix D. You can ask the court to appoint someone to serve the defendants for you by filing a motion, but don't delay in getting the defendants served.

In federal court you have **120 days** from the date the Complaint is filed in which to serve all of the defendants. Fed. R. Civ. P. 4(m). In North Carolina courts, you **only have 60 days** from the date the summons is "issued" (i.e., signed by the clerk) in which to serve all of the defendants. N.C. R. Civ. P. 4(c). You can move for an extension of these deadlines, but you have to explain the efforts you have made to serve all of the defendants. N.C. R. Civ. P. 4(d).

Serving papers other than the Complaint

Every piece of paper that you file with the court must also be sent to all of the defendants. However, only the Complaint requires service by the cumbersome methods detailed above. Once a defendant has filed something with the court, you should mail copies of your filings **to any attorney** that has filed an appearance on behalf of any defendant. Include this information in a "certificate of service" attached to the end of every paper you file. *See* Filing and Responding to Motions at page 20.

THE DEFENDANTS' ANSWER & YOUR RESPONSE

A defendant's response to a Complaint is called an "Answer." An Answer must respond to every factual allegation of the Complaint or else the allegation is deemed to be admitted. In addition, an answer must assert most affirmative defenses (such as failure to properly serve the Complaint, lack of personal jurisdiction, or statute of limitations) or else the defense is waived.

In federal court, defendants have 20 days to file an answer from the date the summons is received. In North Carolina state courts, all defendants have 30 days to answer. Extensions to the time to answer are routinely sought and routinely granted by the courts. However, there are several reasons why a defendant will not file an answer at all:

- Defendant moves to transfer the case. Technically, this kind of motion does not substitute for an answer, but many defendants file a motion to transfer without filing an answer. While you must respond to defendant's motion, you should demand that an answer be filed.
- Defendant moves to dismiss the Complaint, for "summary judgment" or for "judgment on the pleadings." These are motions asking the judge to say they win without going to trial. Although the defendant *may* file an answer with one of these motions, these motions substitute for an answer and the defendant will not be required to answer until the motion is denied.

  When one of these motions is filed instead of an answer, consider whether you should file an amended Complaint to correct any obvious errors identified in the motion.

No reply to an answer

When a defendant files an answer, you do not need to file any response unless the answer contains a counterclaim (that is, a claim against you), or the court orders you to file a reply. *See* Fed. R. Civ. P. 7(a). When a defendant files a motion instead of an answer, you must respond to the motion or else the court may grant the motion as conceded. The following section discusses how to file and respond to motions.

FILING AND RESPONDING TO MOTIONS

A "motion" is a request for the court to do something. In general, if you want the court to do something, you must file a motion. Title your motion "Plaintiff's Motion for _____" filling in the blank with what you want the court to do. Listed below are some motions that you may wish to file at some point during your case, with a brief description of the standards you must meet to have ~~it~~ the motion granted. This is not a complete list of all motions. As a *pro se* litigant, you should not worry about formal names. Rather, try to use simple English to convey your request.

Motion to Proceed *In Forma Pauperis*: use one of the forms in the Appendices or draft your own that contains:
(a) a complete listing of your assets (money and property);
(b) a listing of your debts; and
(c) a statement that you cannot afford to pay the filing fee or other fees associated with your case.

Motion for Appointment of Counsel: Unlike criminal cases, you do not have the right to an attorney in a civil case. Different courts have different standards for granting this discretionary relief. Generally, your motion should explain:
(a) the merits of your case and how it may help you and others;
(b) why you can't pay for an attorney;
(c) your efforts to find an attorney to represent you without payment; and
(d) the difficulty you will have in representing yourself because of the complexity of the legal issues, the amount of factual discovery needed, your lack of education, your difficulties with the English language or any disabilities which will make it hard for you to prosecute your case.

Motion for Extension of Time: If you need more time to respond to a motion or to comply with a court order, do not hesitate to ask for a reasonable extension of time. Try to file the request before the deadline. Brief extensions are routinely granted, particularly when it is the first request for an extension and has been filed before the original deadline passed.

You will increase your chances of obtaining an extension if you explain to the court why you are having difficulty filing a response in the time allowed (e.g., a lockdown, administrative detention, limitations on the use of the library) and explain why you will be able to respond within the extension you request.

Responding to Defendants' Motions

If you agree with the defendant's motion, you can simply not respond and allow the court to grant it or you can file a notice that you consent to defendant's motion. Consenting may speed up the court's decision on the motion. It also shows that you are fair and reasonable. However, you will probably disagree with most motions filed by a defendant.

You have a limited amount of time to respond to any motion, but the amount of time varies depending on the court and the type of motion. Check the local rules of the court to determine how

much time you have to respond. If you cannot figure out how much time you have to respond, try to respond as quickly as you are able and include a section in your response detailing any unusual difficulty you had in filing your response if it takes you more than two weeks.[8]

When you receive a motion, read the motion carefully and try to read all statutes, rules or cases cited in the motion. See if they say what the defendants say they do. See if the cases are really about situations like yours. Before starting to write your response, take some time to list the things in the motion with which you agree and disagree. If you disagree with the legal standards involved, you will need to research the laws and cases cited in the motion to challenge them.

If you disagree with the facts, you may need to submit evidence to support your side. Try to make your points plainly without overstating your case. You don't have to use big words – in fact, it's better not to. And make your sentences short and simple.

The two motions that defendants most often file against prisoners are motions to dismiss and motions for summary judgment. Although similar motions, the standards that must be met to have these two motions granted are very different:

Motion to Dismiss: This kind of motion looks only at the allegations of your Complaint and argues that it is somehow defective. The defendant typically argues that your Complaint does not state a legal claim. In making such a motion, the defendant will ordinarily identify the claims made in your Complaint and the standards for stating those claims.

In responding to this kind of motion, identify all claims that the defendant did not address (or may have overlooked) and explain how you have met the standards for stating the claims in your Complaint. For those claims that were addressed, consider whether the defendant has a point. Abandoning weak or baseless claims can enhance your credibility with the Defendant(s) and the court. Otherwise, explain to the court the reason that your claims should be considered. Do not hesitate to amend your Complaint to include allegations that will clarify or state another claim or identify other defendants. You amend a Complaint by asking the court's permission in your own motion and by submitting a new, better written Complaint.

Motion for Summary Judgment: This is the kind of motion in which the Defendant(s) argues that you don't have enough evidence to prove your point. In response, you can argue either that the motion ignores questions of fact, that you have evidence to prove your claims, or that you need time to get the evidence that will prove your claims. (Sometimes you can argue all of these). You should file all evidence that you have to support your claims in response to a motion for summary judgment. In particular, you should prepare a sworn statement that you sign, either as an affidavit or, when allowed, a sworn declaration, that states the evidence to which you would testify if the court held a hearing.

[8] For purposes of meeting filing deadlines in *federal* court, an inmate's legal papers are considered "filed" as of the date they are delivered to a prison official for mailing. *Houston v. Lack*, 487 U.S. 266, 270-271 (1988)("inmate mailbox rule").

Signing Documents to be Filed in Court

The Rules of Civil Procedure (both State & Federal) require that every document filed with the court bear the name, address, and signature of the person who files it. See, for example, Fed. R. Civ. P. 11, NC R. Civ. P. 11. Please be aware that your signature on such a pleading constitutes a "certificate that to the best of [your] knowledge, information, and belief formed after a reasonable inquiry, [the document] is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation."

The Certificate of Service

You **must** mail a copy of every paper you file with the court to all defendants and include a statement that you have done so in the paper itself. Fed. R. Civ. P. 5, NC R. of C. P. 5. This is commonly called the "certificate of service" and it is usually the last page of every document filed. You can simply include a statement below your signature that "I mailed a copy of this paper to counsel for all parties on [date]." However, the rules of civil procedure technically require a little more[9], and attorneys typically take a more formal approach to the requirements of this rule, such as the following:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of [title of your paper being filed] was served by first class mail, postage prepaid, on the date indicated below upon the following counsel of record:

[Name and address of counsel]

_____ _____

Date Your name

[9] "Service by mail shall be complete upon deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service. . . A certificate of service shall accompany every pleading and every paper [filed in court]. The certificate shall show the date and method of service or the date of acceptance of service and shall show the name and service address of each person upon whom the paper has been served. . . ." N.C. Gen. Stat. § 1A-1, N.C. Rule of Civil Procedure 5(b)

DISCOVERY

Discovery is anything that you do to obtain evidence to support your case. Informal discovery includes talking with witnesses, copying information from newspapers or other public sources, and keeping careful notes of things that you have seen or heard that are relevant to your claims. You should begin informal discovery long before you file your Complaint.

Formal discovery is a legal process which provides a few different ways to obtain evidence from defendants. You can ask for discovery of anything that is relevant to your case. There are four key types of discovery:

> Interrogatories: these are a list of questions directed to the defendant. Fed. R. Civ. P. 33; N.C. R. Civ. P. 33.
> Document Requests: these are a list of documents you want from a defendant. Fed. R. Civ. P. 34; N.C. R. Civ. P. 34.
> Requests for Admissions: these are a list of facts to which you believe a defendant may admit. Fed. R. Civ. P. 36; N.C. R. Civ. P. 36.
> Depositions: this is an interview of a witness taken under oath and recorded by a stenography or video camera. Fed. R. Civ. P. 30; N.C. R. Civ. P. 30. You can also do a deposition with written questions. Fed. R. Civ. P. 31; N.C. R. Civ. P. 31.

For prisoners who are representing themselves, the most important discovery tools are interrogatories and requests for documents. Defendants generally admit little or nothing, and courts will not ordinarily permit prisoners to conduct depositions.

Typically, courts do not allow the parties to serve discovery on each other until after some initial conference is held or a motion to dismiss is denied. *See* Fed. R. Civ. P. 26(a)(1)(E)(iii) (action filed by prisoner *pro se* is exempt from initial disclosures, discovery planning conference). Formal discovery is mailed to defendants, but it is not filed with the court unless it is being attached to a motion or a response to a motion.

If you get to the point where you are in discovery, feel free to write the D.C. Prisoners' Project for more advice.

TRIAL

The vast majority of civil cases are settled by the parties or decided by the judge without a trial. Only if there are disputed issues of fact and the parties cannot agree to a settlement will a civil case go to trial.

How to conduct a trial is beyond the scope of this booklet. There are numerous rules governing witnesses, whether you have a right to a jury, how the jury is chosen, and how evidence is admitted (and objected to) during the trial.

If you are going to go to trial, ask again for the court to appoint an attorney for you.

Please write us. We cannot make any promises, but maybe we can find you help.

OTHER RESOURCES

North Carolina Prisoner Legal Services (NCPLS) is a non-profit law firm that serves North Carolina prisoners. For a fee, NCPLS provides representation to federal prisoners in select cases challenging illegal convictions and sentences, or in cases where serious injury resulted from constitutional violations. You can contact NCPLS by writing to P.O. Box 25397, Raleigh, NC 27611.

The Public Defender Service for the District of Columbia has several divisions that may be able to help you. The Community Defender Division houses the Institutional Services Program (ISP) and the Community Re-entry Program (CRP). The ISP monitors conditions in the BOP and protects the legal rights of prisoners and the CRP responds to the legal and social needs of those returning home from prison. You can reach the Community Defender Program at 680 Rhode Island Avenue, NE, Suite H-5, Washington, DC 20002. The telephone is (202) 824-2801.

The Special Litigation Division of the Public Defender Service addresses systematic criminal justice issues, including trial practices and the like. The main Trial Division represents people in criminal trials. The Parole Division represents people in revocation of parole hearings. You can reach these divisions by writing 633 Indiana Ave., NW, Washington, DC 20004. The phone number is (202) 628-1200.

APPENDIX A:

GLOSSARY OF TERMS

Affidavit – a statement made under oath and signed by the author in the presence of a notary public. Federal and District of Columbia courts allow **sworn declarations** (see below) in place of affidavits due to the difficulty in locating a notary public.

Allegations – statements of fact made by a party, but not proven.

Alternative Dispute Resolution ("ADR") – a process by which the parties to a lawsuit attempt to reach a settlement outside the formal court process. ADR typically involves working with a mediator, a person who works with the parties to resolve their differences mutually. This is a useful process that is not ordinarily available in prisoner litigation because of the power dynamics between guards and prisoners. (Officers are often concerned that compromise will undermine their authority over prisoners.)

Answer – the defendant's response to (and usually a denial of) the plaintiff's Complaint. The answer admits or denies the claims in the plaintiff's Complaint.

Appeal – a legal action that seeks review of a lower court decision.

Appellant – the side that lost and has filed an appeal.

Appellee – generally, the side that won and whose victory is appealed by the losing side.

Burden of Proof – the duty to prove disputed facts. In civil cases the burden is on the plaintiff to prove the facts by a "preponderance" of the evidence (that is, the plaintiff's version of the facts is more likely than the defendant's).

Civil – not criminal. In a civil action, one person or entity is suing another, usually for money damages. Civil cases do not seek the deprivation of anyone's life or liberty.

Clerk of Court – the person responsible for the paper flow and other administrative functions of a court.

Common Law – law that comes from judicial decisions, not from some legislative act. Sometimes called case law.

Complaint – the document filed in court that begins a lawsuit. A Complaint contains the plaintiff's factual allegations and claims against the defendant.

Continuance – the postponement of an action pending in court to another date.

Damages – money awarded for an injury or loss due to the wrongful act or negligence of another.

De Facto – Latin, meaning in fact or actually.

Defendant – In a civil action, the person or organization that the lawsuit is filed against. If you file a lawsuit, the people you sue are the defendants.

Dismissal with Prejudice – prevents an identical lawsuit from being filed later.

Dismissal without Prejudice – allows a later filing of the same claims.

Dispositive motion – a motion that disposes of the case. Dispositive motions include motions to dismiss, for summary judgment, and for judgment on the pleadings.

Evidence – documents, objects or testimony admitted in a trial to prove certain facts.

Habeas Corpus – Latin for "you have the body." Most often, a writ of habeas corpus is a judicial order forcing a prisoner's warden to produce a prisoner for testimony (*ad testificandum*) or to justify the prisoner's continued confinement (*ad subjiciendum*).

In Camera – in a judge's chambers, outside the presence of the jury, the public, and usually, the lawyers.

In Forma Pauperis – Latin for "as a pauper." You must pay the filing fee and other court fees unless the court designates you as too poor to pay. Courts sometimes substitute the English phrase "as an indigent" for *in forma pauperis*.

Injunction – a court order preventing someone from taking some action, or requiring someone to act. A preliminary injunction is sometimes issued to prevent "irreparable harm" while the judge determines whether a permanent injunction is justified.

Judgment – the decision of a judge or jury resolving a dispute and determining the rights and obligations of the parties.

Jurisdiction – the power and authority of the court to hear certain cases.

Litigation – a controversy in a court.

Moot – not subject to a court ruling because the controversy has not actually arisen, or has ended. When all of the relief sought by the plaintiff is unavailable or has been obtained outside the litigation, the case is moot.

Motion – a document filed with the court seeking to obtain a ruling or an order from the court that is favorable to the party filing the motion.

Notice – a written statement designed to notify the court and the other parties of information about the case.

Party – the plaintiff or defendant in a case. The plaintiff is the party who files the lawsuit and the defendant is the party who is being sued.

Plaintiff – the person who files a lawsuit. If you file a Complaint in court, you are the plaintiff.

Preponderance of Evidence – evidence as a whole which shows the fact is more likely than not.

Pro bono – Latin phrase meaning "for the good," a short-hand reference to "pro bono publico" (in the public interest). Legal assistance or representation that is provided free of charge.

Pro se – Latin phrase meaning "for himself." A party to a lawsuit that is not represented by an attorney. If you file a lawsuit on your own, you are acting *pro se*.

Res judicata – Latin phrase meaning "a matter adjudged." This is legal doctrine that requires courts to accept certain final judgments by other courts as binding on them. It is the civil equivalent of double jeopardy and prevents you from suing twice for the same relief from the same defendants when you lost the first time "on the merits."

Respondeat superior – Latin phrase meaning "let the master answer." This is a legal doctrine that requires an employer to answer to and pay any judgment for the torts (or civil wrongdoing) of its employees.

Service of process – the way that defendants are officially notified that they have been sued. Requires the delivery of a summons and Complaint to the defendant.

Statute of Limitations – a law that sets the time within which a lawsuit must be filed. The deadline can vary, depending on the type of lawsuit.

Summary judgment – the granting of judgment for a party before trial.

Summons – a document issued by the Clerk of Court that is served on the defendant with the initial Complaint and orders the defendant to answer.

Sworn declaration – a statement of fact or facts that is signed by the person making the statement. A sworn declaration substitutes for an affidavit, but does not need to be verified by a notary public. *See* 28 U.S.C. § 1746. A declaration may be used in federal court in the same way that an affidavit can be used in state court, as evidence of the matters stated in the document. (However, a declaration cannot be used in state court – an affidavit verified by a notary public is required.)

Tort – a civil wrong. An injury against a person or property.

Venue – the particular county or district in which the court with jurisdiction may hear the case.

APPENDIX B:

SUMMARY OF NORTH CAROLINA STATE TORTS

The types of claims prisoners most commonly file are called "torts." These claims fall into two major categories–intentional torts and negligence. Each kind has certain things that must be proven in order to win.

A. Intentional Torts

Intentional torts require proof that the defendant intended to cause harm. Because intent is a mental state, it can be difficult to prove. However, courts will consider evidence of the defendant's words and actions to prove intent.

1. Assault or battery

An "assault" is a legal term for a threat to use force that causes you to have a reasonable fear of offensive contact. A "battery" is the legal term used for a beating or other offensive touching. To succeed in a claim of battery, you must prove that you suffered: (1) a harmful or offensive contact from defendant; (2) defendant's intent to harm or offend; and (3) an injury caused by the contact. *See Redding v. Shelton's Harely Davidson, Inc.*, 139 N.C. App. 816 (N.C. App. Ct. 2000) (citing 1 W. Haynes, *North Carolina Tort Law* § 4-2 (1989)). Once you prove your part, the defendant will try to prove that he has as a defense of mitigation or justification for the battery. For example, the defendant could argue that he was provoked, his actions were privileged (because he was acting as a correctional officer), or that he acted in self defense.

A police officer or prison guard is allowed to use force so long as the "means employed are not in excess of those which [he] reasonably believes [are] necessary." *Etheredge v. District of Columbia,* 635 A.2d 908, 916 (D.C. 1993). The officer's judgment is to be reviewed "from the perspective of a reasonable officer on the scene," with allowance for the officer's need to make quick decisions under potentially dangerous circumstances. *Id*. This standard is similar to the excessive force standard applied in the constitutional context. An officer has the privilege to commit what, at common law, would be an assault (the threat of physical force), unless "the threatened use of force is clearly excessive." *Jackson v. District of Columbia,* 412 A.2d 948, 956 (D.C. 1980).

2. Intentional Infliction of Emotional Distress

The elements of a claim of Intentional Infliction of Emotional Distress are "(1) extreme and outrageous conduct by the defendant (2) which is intended to and does in fact cause (3) severe emotional distress." *Guthrie v. Conroy*, 152 N.C. App. 15 (2002) (quoting *Waddle v. Sparks*, 331 N.C. 73, 82, 414 S.E.2d 22, 27 (1992)); *Jackson v. District of Columbia,* 412 A.2d 948, 956-57 (D.C. 1980). "A claim for intentional infliction of emotional distress exists 'when a defendant's conduct exceeds all bounds usually tolerated by decent society[.]'" *Watson v. Dixon*, 130 N.C. App. 47, 52-53, 502 S.E.2d 15, 19-20 (1998), *on reh'g*, 132 N.C. App. 329, 511 S.E.2d 37 (1999), *aff'd*, 352 N.C. 343, 532 S.E.2d 175 (2000) (quoting *Stanback v. Stanback*, 297 N.C. 181, 196, 254 S.E.2d 611, 622 (1979)). Conduct is extreme and outrageous when it is "so outrageous in

character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Briggs v. Rosenthal*, 73 N.C. App. 672, 677, 327 S.E.2d 308, 311, *cert. denied*, 314 N.C. 114, 332 S.E.2d 479 (1985). Remember, the bottom line is that you have to show that you are not talking about just insults or even threats, but something so out of bounds that it is unquestionably outrageous.

B. Negligent Torts

1. Negligence

Negligence is when someone doesn't do what they are legally supposed to do and it hurts you somehow. In legal language, this is called the breach of a legal duty owed by the defendant that proximately causes injury to the plaintiff. *Tise v. Yates Construction Co.*, 345 N.C. 456, 480 S.E.2d 677 (1997). You could allege negligence in hiring, negligence in supervision, negligence in care, or another type of negligence.

To win, a plaintiff must show: (1) that defendant failed to take proper care in something they were supposed to do for you; (2) the lack of care caused your injury; and (3) a person of ordinary carefulness should have known that plaintiff's injury was probable under the circumstances. *Lavelle v. Schultz*, 120 N.C. App. 857, 859-60, 463 S.E.2d 567, 569 (1995). *See also Gordon v. Garner*, 127 N.C. App. 649, 661, 493 S.E.2d 58, 65 (1997). "A duty is defined as an obligation, recognized by the law, requiring the person to conform to a certain standard of conduct, for the protection of others against unreasonable risks." *Davis v. N.C. Dept. of Human Resources*, 121 N.C. App. 105, 112, 465 S.E.2d 2, 6 (1995). To establish that negligence was a cause of the injury suffered, a plaintiff must establish that the injury would not have occurred **but for** the defendant's negligence. *See Rorrer v. Cooke*, 313 N.C. 338, 361, 329 S.E.2d 355, 369 (1985) (concerning legal malpractice).

Establishing that defendant should have known that plaintiff would be injured (that the injury was "foreseeable") can be difficult. North Carolina uses the *Foster* rule where there were other incidents similar to the one that injured plaintiff. In *Foster,* a woman sued a shopping mall claiming that it was negligent and liable for her injuries suffered when she was assaulted in the parking lot. The woman submitted evidence of thirty-one crimes at the shopping mall in the year before her assault. The North Carolina Supreme Court found that those other crimes proved the shopping mall knew a crime could occur on its property. *Foster v. Winston-Salem Joint Venture*, 303 N.C. 636, 642, 281 S.E.2d 36, 40 (1981). *See also Murrow v. Daniels*, 321 N.C. 494, 502, 364 S.E.2d 392, 398 (1988); *Sawyer v. Carter*, 71 N.C. App. 556, 322 S.E.2d 813 (1984); *Brown v. N.C. Wesleyan College*, 65 N.C. App. 579, 583, 309 S.E.2d 701, 703 (1983); *Urbano v. Days Inn*, 58 N.C. App. 795, 798-99, 295 S.E.2d 240, 242 (1982). You can make an argument similar to this case, showing that whatever happened to you have foreseeable because it had happened to other men before.

2. Malpractice

Malpractice is the negligence of a trained professional. Any professional who does not meet his or her legal duty to you and hurts you has committed malpractice.

When you are injured because of the negligence of your physician or another health care provider, it is called medical malpractice. This includes any law suit based on North Carolina law (whether in state court or in federal court under diversity jurisdiction) that is "for damages for personal injury or death arising out of the furnishing or failure to furnish professional services in the performance of medical, dental, or other health care by a health care provider." N.C. Gen. Stat. § 90-21.11.

Unfortunately, when you file a lawsuit for medical malpractice in North Carolina (or in federal court based on North Carolina law), you need to certify that you have a medical expert who will testify that the care you got was not up to standard. *See* NC Rule of Civil Procedure 9(j); N.C. Gen. Stat. § 90-21.12; *Wall v. Stout*, 310 NC 184, 311 S.E.2d 571 (1984). Realistically, this probably means that it is impossible for a prisoner to bring a *pro se* medical malpractice suit in North Carolina.

However, there are two possibilities of ways that you may be able to get around this requirement. If, after looking at your facts and the law, you still want to try to bring a medical malpractice claim against the health professionals at Rivers or against GEO Group, you have two choices. You can either try to prove that your situation is one of *Res Ipsa Loquitur*, or you can argue that the requirements in 9(j) are unconstitutional.

a. Res Ipsa Loquitor

The phrase, "*res ipsa loquitur*" is Latin and means "the thing speaks for itself." It means that the negligence is so obvious that you do not need an expert, because only someone's negligence could have caused the accident.

In other words, you must show, based on basic common sense, that absolutely no specialized knowledge is necessary to show that a doctor's conduct was negligent. This is a very hard standard to meet. Here are some situations from North Carolina cases where courts have used *res ipsa loquitur* to infer negligence:

- A doctor leaving surgical instruments in the patient's body. Tice v. Hall, 310 N.C. 589, 313 S.E.2d 565 (1984); Mitchel v. Saunders, 219 N.C. 178, 182, 13 S.E.2d 242, 244 (1941); Pendergraft v. Royster, 203 N.C. 384, 166 S.E. 285 (1932); Hyder v. Weilbaecher, 54 N.C. App. 287, 283 S.E.2d 426 (1981).

- The death of a child following a tonsillectomy, Jackson v. Mountain Sanitarium, 234 NC 222, 67 S.E.2d 57 (1951).

- A patient's hand burned during ear surgery, Schaffner v. Cumberland County Hosp. Sys., Inc. 77 N.C. App. 689, 692-93, 336 S.E.2d 116, 118-19 (1985).

- A patient suffered nerve damage in hand following hysterectomy, Parks v. Perry, 68 N.C. App. 202, 207, 314 S.E.2d 287, 290 (1984).

As you can see, those cases are very extreme. If you are going to try to argue *res ispa loquitur*, you should argue that your case is just as extreme. Generally, most medical treatment involves some risk and no doctor can ever guarantee that everything will go right. Medicine is also a very technical and scientific field. All medicines have side effects. Every procedure has risk. It is only in the most obvious case that a jury could use their own common sense to understand what happened, and those are the only cases that you can use *res ipsa loquitur*.

b. Constitutional Argument against 9(j)

In most cases, you won't be able to use *res ipsa loquitur.* If you want to file a medical malpractice lawsuit about something that happened at Rivers, you will have to argue that Rule 9(j) in unconstitutional, under both the North Carolina and United States Constitutions. This is a very complicated argument and not one that is likely to be well-received by the North Carolina Courts. You will have to be responsible for your own research on this topic.

3. Contributory Negligence

Under the law of North Carolina, the doctrine of "contributory negligence" is a complete defense to a claim of negligence or medical malpractice. Under this legal principle, if the injured person is responsible in *any way* for her injury then she is *completely* barred from any recovery. *See Cobo v. Raba*, 347 N.C. 541, 495 S.E.2d 362, 365 (1998). Using this doctrine, the defendants could be expected to argue that your conduct was somehow responsible for the injury you suffered. If the defendants prove that you were even partly responsible, you will be completely barred from recovering any money to compensate you for your injury.

APPENDIX C:
RULES AND FORMS FOR FILING IN FEDERAL COURT

1. A selection of Local Civil Rules from the Eastern District of North Carolina
2. A selection of relevant forms from the Eastern District of North Carolina

RULES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA
CIVIL RULES

Rule 1.1. Scope and citation of local rules.

These local rules of practice shall govern the conduct of the United States District Court for the Eastern District of North Carolina except when the conduct of this court is governed by federal statutes and rules. A judge or magistrate judge, for good cause and in his or her discretion, may alter these rules in any particular case. These rules shall be cited: These rules shall be cited: "Local Civil Rule ...., EDNC."

Rule 3.1. Subsequent litigation by parties proceeding in forma pauperis.

A plaintiff who has proceeded unsuccessfully in forma pauperis and had the costs of that litigation taxed against him must demonstrate that he has paid or made a reasonable effort to pay those costs prior to being authorized to proceed again in forma pauperis.

Rule 3.2. Denial of in forma pauperis applications.

In all civil actions in which the court denies a plaintiff's motion to proceed in forma pauperis, the plaintiff shall be allowed 30 days to pay the requisite filing fee. If the plaintiff fails to pay the filing fee, the clerk shall redesignate the action as a miscellaneous case and close the matter without further order from the court.

Rule 5.1. Filing and service of papers by conventional means.

Unless otherwise specifically provided for, the original and one copy of all pleadings and other papers required to be filed or served shall be filed in the office of the clerk in Raleigh, Greenville or Wilmington regardless of the division to which the case is assigned. The original and three copies of all pleadings shall be filed in actions assigned to three judge panels. In all cases, whenever a pleading (subsequent to the complaint) or other paper is required to be filed with the clerk or with the court, a copy thereof shall be served upon opposing parties as provided in *FED. R. CIV. P. 5(b)*.

Rule 6.1. Motions for an extension of time to perform act.

All motions for an extension of time to perform an act required or allowed to be done within a specified time must show good cause, prior consultation with opposing counsel and the views of opposing counsel. The motion must be accompanied by a separate proposed order granting the motion.

Rule 7.1. Motion practice.

(a) Time for Filing.

Unless otherwise ordered by the court, all motions in civil cases, except those relating to the admissibility of evidence at trial, must be filed on or before 30 days following the conclusion of the period of discovery. If an extension of the original period of discovery is approved by the court, the time for filing motions is automatically extended to 30 days after the new date unless otherwise ordered by the court.

(b) General Requirements.

All motions shall be concise and shall state precisely the relief requested. Motions shall conform to the general motions requirements, standards and practices set forth in the applicable Federal Rules of Civil Procedure and in Local Rule 10.1.

(c) Motions Relating to Discovery and Inspection.

No motions to compel discovery will be considered by the court unless the motion sets forth, by item, the specific question, interrogatory, etc. with respect to which the motion is filed, and any objection made along with the grounds supporting or in opposition to the objection. Counsel must also certify that there has been a good faith effort to resolve discovery disputes prior to the filing of any discovery motions.

(d) Supporting Memoranda.

Except for motions which the clerk may grant as specified in Local Rule 77.2, all motions made other than in a hearing or trial shall be filed with an accompanying supporting memorandum in the manner prescribed by Local Rule 7.2(a). Where appropriate, motions shall be accompanied by affidavits or other supporting documents.

(e) Responses to Motions.

Any party may file a written response to any motion. The response may be a memorandum in the manner prescribed by Local Rule 7.2(a) and may be accompanied by affidavits and other supporting documents. When the response is not a memorandum, the written response shall be accompanied by a supporting memorandum in the manner prescribed by Local Rule 7.2(a) and, when appropriate, by affidavits and other supporting documents.

(1) Non-Discovery Motions:.

Responses and accompanying documents shall be filed within 20 days after service of the motion in question unless otherwise ordered by the court or prescribed by the applicable Federal Rules of Civil Procedure.

(2) Discovery Motions:.

Responses and accompanying documents relating to discovery motions shall be filed within 10 days after service of the motion in question unless otherwise ordered by the court.

(f) Replies.

(1) Non-Discovery Motions:.

Replies to responses are discouraged. However, Except as provided in Local Rule7.1(f)(2), a party desiring to reply to matters initially raised in a response to a motion or in accompanying supporting documents shall file the reply within 10 days after service of the response, unless otherwise ordered by the court.

(2) Discovery motions:.

Replies are not permitted in discovery disputes. See Local Rule 26.1(d).

(g) Subsequently Decided Authority.

A suggestion of subsequently decided controlling authority, without argument, may be filed at any time prior to the court's ruling and shall contain only the citation to the case relied upon if published or a copy of the opinion if the case is unpublished.

(h) Affidavits.

Ordinarily, affidavits will be made by the parties and other witnesses and not by counsel for the parties. However, affidavits may be made by counsel for a party if the sworn facts are known to counsel or counsel can swear to them upon information and belief, and

(1) the facts relate solely to an uncontested matter; or

(2) the facts relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the facts; or

(3) the facts relate solely to the nature and value of the legal services rendered for the party by such counsel or counsel's law firm; or

(4) the refusal to accept the affidavit would work a substantial hardship on the party and the court finds that its acceptance of the affidavit would not be such as to require that counsel or counsel's law firm be disqualified from continuing to appear for the party.

(i) Hearings on Motions.

Hearings on motions may be ordered by the court in its discretion. Unless so ordered, motions shall be determined without hearing.

Rule 7.2. Supporting memoranda.

(a) Form and Content.

A memorandum shall be in the form prescribed by Local Rule 10.1 and shall contain:

(1) a concise summary of the nature of the case;

(2) a concise statement of the facts that pertain to the matter before the court for ruling;

(3) the argument (brevity is expected) relating to the matter before the court for ruling with appropriate citations in accordance with Local Rules 7.2(b), (c) and (d);

(4) copies of any decisions in cases cited as required by Local Rules 7.2(c) and (d); and

(5) where the supporting memorandum opposes a motion for summary judgment a short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.

(b) Citation of Published Decisions.

Published decisions cited should include parallel citations (except for U.S. Supreme Court cases), the year of the decision, and the court deciding the case. The following are illustrations:

(1) State Court Citation: *Smith v. Jones, 238 N.C. 162, 77 S.E.2d 701 (1953).*

(2) District Court Citation: *Smith v. Jones, 141 F. Supp. 248 (E.D.N.C. 1956).*

(3) Court of Appeals Citation: *Smith v. Jones, 237 F.2d 597 (4th Cir. 1956).*

(4) United States Supreme Court Citation: *Smith v. Jones, 325 U.S. 196 (1956).* United States Supreme Court cases should be cited only to the United States Reports except that if a petition for certiorari or an appeal was filed in the United States Supreme Court, the disposition of the case in that court should always be shown. For example: *Carson v. Warlick, 238 F.2d 724 (4th Cir. 1956),* cert. denied, *353 U.S. 910(1957).*

(c) Citation of Decisions Not Appearing in Certain Published Reports.

Decisions published outside the West Federal Reporter System, the official North Carolina reports and the official United States Supreme Court reports (e.g. CCH Tax Reports, Labor Reports, U.S.P.Q., reported decisions of other states or other specialized reporting services) may be cited if the decision is furnished to the court and to opposing parties or their counsel when the memorandum is filed.

(d) Citation of Unpublished Decisions.

Unpublished decisions may be cited only if the unpublished decision is furnished to the court and to opposing parties or their counsel when the memorandum is filed. The unpublished decision of a United States District Court may be considered by this court. The unpublished decision of a United States Circuit court of Appeals will be given due consideration and weight but will not bind this court. Such unpublished decisions should be cited as follows: United States v. John Doe, 5:94-CV-50-F (E.D.N.C. January 7, 1994) and United States v. Norman, No. 74-2398 (4th Cir. June 27, 1975).

(e) Length of Memoranda.

Except as otherwise provided by Local Rule 26.1(d), memoranda in support of or in opposition to a motion (other than a motion regarding discovery) shall not exceed 30 pages in length excluding the certificate of service page, without prior court approval. Memoranda in support of or in opposition to a

discovery motion shall not exceed 10 pages in length, excluding the certificate of service page, without prior court approval. Reply memoranda (where allowed) shall not exceed 10 pages in length, excluding the certificate of service page, without prior court approval. These limitations apply to memoranda submitted in connection with an appeal in a bankruptcy proceeding.

Rule 10.1. Forms of pleadings, motions and documents.

All pleadings, motions, discovery procedures, memoranda and other papers filed with the clerk or the court shall:

(a) be double-spaced on single-sided, standard letter size (81/2 x 11) paper, with all typed matter appearing in at least 11 point font size with a one inch margin on all sides;

(b) state the court and division in which the action is pending;

(c) bear, except for initial filing, the case number assigned by the clerk;

(d) contain the caption of the case;

(e) if applicable, state the title of the pleading, motion, discovery procedure or document and the federal statute or rule number under which the party is proceeding;

(f) contain the individual name, firm name, address, telephone number, fax number and State Bar identification, where applicable, of all attorneys who appear for the filing party, including an attorney making a special appearance pursuant to Local Rule 83.1(e);

(g) bear the date when signed by counsel;

(h) be signed by counsel as required by Local Rule 83.1(d). Local Rule 83.1(d) counsel may submit for filing a facsimile copy of the signature of out of state counsel on pleadings provided that a signature page with all original signatures is submitted to the court within two business days after the original filing;

(i) on all documents, the signature of parties and counsel shall be followed, on the line immediately below, by the typed or printed name in the exact form as the signature. In preparation of documents for signature by a judge or magistrate judge, a blank space shall be provided below the signature line in which the name may be typed or printed; and

(j) have each page numbered sequentially. The following forms are examples to be followed:

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. ..:....-CV-....(..)

JAMES T. SMITH,	)
Plaintiff	)
	) OFFER OF JUDGMENT
vs.	) *FED.R. CIV. P. 68*
	)
AARON R. JONES et al.,	)
Defendants	)

(Closing)
This ... day of January, 2002.

.....
John B. Counselor
Attorney for Defendant
Abbot, Ball and Counselor
Attorneys at Law
200 Main Street

Post Office Box 50
Raleigh, North Carolina 27602
(919) 878-8787
FAX (919) 878-8000
State Bar No. .....

Rule 10.2. Form of Exhibits to Motions.

Exhibits containing double-sided documents are not permitted and will not be considered by the court. Condensed deposition transcripts are discouraged.

Rule 11.1. Frivolous or delaying motions.

Where the court finds that a motion is frivolous or filed for delay, costs may be assessed against the party or counsel filing such motion.

Rule 11.2. Sanctions.

If an attorney or any party fails to comply in good faith with any local rule of this court, the court in its discretion may impose sanctions.

Rule 26.1. Discovery.

(a) Discovery Materials Not to Be Filed Unless Ordered or Needed.

Discovery materials, including but not limited to disclosures and objections required under *FED. R. CIV. P. 26*, depositions upon oral examination and interrogatories, requests for documents, notices to take a deposition, expert witness designations, expert witness reports, requests for admissions, and answers and responses thereto are not to be filed unless by order of the court or for use in the proceedings. All such papers must be served on other counsel or parties entitled to service of papers filed with the clerk. The party taking a deposition or obtaining any material through discovery is responsible for its preservation and delivery to the court if needed or so ordered.

Conducting Discovery.

In all civil actions, the parties shall schedule and conduct discovery in accordance with the order entered pursuant to *FED. R. CIV. P.16*. All discovery shall be propounded so as to allow the respondent sufficient time to answer prior to the time when discovery is scheduled to be completed. To shorten discovery time, it is expected that discovery procedures will proceed concurrently. After the time for completing discovery has expired, further discovery may proceed only by order of the court and may, in no event, interfere with the conduct of either the final pre-trial conference or the trial.

(c) Numbering Discovery Procedures.

Each time a particular discovery procedure is used, it shall be sequentially numbered (e.g., "First Set," "Second Set," "First Request," "Second Request," etc.) so that it will be distinguishable from a prior procedure.

(d) Discovery Disputes - Expedited Briefing Schedule.

Any motion relating to a discovery conflict shall be handled on an expedited basis:

(1) Memoranda in support or in opposition to a discovery motion shall not exceed 10 pages in length, excluding the certificate of service page, and shall comply with Local Rule 7.1(d).

(2) Responses and accompanying documents relating to discovery motions shall be filed within 10 days after service of the motion in question unless otherwise ordered by the court.

(3) Replies are not permitted in discovery disputes.

(4) In any instance in which oral argument is scheduled, counsel may be given the option of oral presentations by telephone in lieu of a live appearance.

(e) Other Discovery Matters.

(1) Through appropriate written discovery, a party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in an action or to indemnify or reimburse for payments made to satisfy the judgment. The discovery permitted shall include inspection and copying of such agreement pursuant to *FED. R. CIV. P. 34*. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this subparagraph, an application for insurance shall not be treated as part of an insurance agreement.

(2) In accordance with *FED. R. CIV. P. 16(b)*, this court will routinely issue a request for a discovery plan and will thereafter enter a scheduling order. The planning meeting of counsel required by *FED. R. CIV. P. 26(f)* and the report of counsel contemplated by said rule are a mandatory part of the process of formulating a scheduling order. A report in accordance with F.R.CIV. P. Form 35 shall be sufficient to comply with *FED. R. CIV. P. 26(f)*, although the parties may include greater detail or additional topics. If the parties cannot agree on a joint report, each party shall file a separate Rule 26(f) report setting forth its position on disputed matters. The parties may include in their report an agreement to mediate and a proposed time table for conducting that mediation.

Rule 30.1. Deposition exhibits.

The parties are encouraged to mark all deposition exhibits consecutively during discovery without reference to the deposition taken or the party using the exhibit.

Rule 32.1. Depositions for use at trial.

Depositions de bene esse may be taken outside of the period of discovery.

Rule 33.1. Form of interrogatories, responses and objections.

All interrogatories shall be served on opposing counsel. Counsel are encouraged to serve three copies of all interrogatories on counsel for the respondent and provide sufficient space following each question in which the respondent may state the response. If the space provided is not sufficient, additional pages shall be attached. An objection to an interrogatory shall be made by stating the objection and the reason therefore in the space provided for the response. Alternative methods of facilitating a response, such as requiring interrogatories on a diskette, may be agreed to by counsel. The requirement for use of cover sheets in all instances is eliminated.

Rule 39.2. Late developments in the case.

Counsel shall immediately inform the court, opposing counsel and counsel in the next succeeding two cases on the calendar of any settlement or of any developments of an emergency which may necessitate a motion for continuance.

Rule 73.1. Consent of parties to civil trial jurisdiction of magistrate judges.

(a) Unless the judge to whom a civil action is assigned directs otherwise, the clerk shall routinely assign to a magistrate judge cases in which all parties consent to the exercise of civil trial jurisdiction pursuant to *28 U.S.C. § 636*(c).

(b) Appeals from a judgment of a magistrate judge pursuant to *28 U.S.C. § 636*(c)(4) shall lie to the judge to whom the case was originally assigned.

Rule 77.2. Orders and judgments.

The clerk or deputy clerk is authorized to enter the orders and judgments listed below without further direction of the court. However, such action may be suspended, altered or rescinded by the court for cause shown.

(a) Consent orders for substitution of attorneys.

(b) Orders enlarging time periods in civil actions authorized to be entered by the court by *FED. R. CIV. P. 6(b).*

(c) Orders extending for a reasonable amount of time the period within which an act must be performed under the local rules of this court.

(d) Consent order dismissing an action, except in bankruptcy proceedings and in cases to which *FED. R. CIV. P. 23(c)* and *FED. R. CIV. P. 66* apply.

(e) Orders canceling liability on bonds.

(f) Orders changing the time of opening and adjourning court in the absence of the judge.

(g) Judgments by default as provided for in *FED. R. CIV. P. 55(a)* and *55(b)(1).*

(h) Orders authorizing service of process by a person other than a United States Marshal pursuant to *FED. R. CIV. P. 4(c).*

(i) Certification of law students and supervising attorneys pursuant to Local Rule 83.2.

(j) Any other motion, rule or order which may be granted of course or without notice.

(k) Pursuant to the provisions of *28 U.S.C. § 956,* the clerk or a deputy clerk, when there is need to serve a complaint and attachment upon a vessel, or any other process incident to admiralty and maritime claims, either in rem or in personam, are empowered to grant and enter an order authorizing any sheriff or any deputy sheriff, or other suitable person, to serve all such process.

Rule 83.3. Change of address.

All attorneys and pro se parties must notify the court in writing within 10 days of any change of address. Failure to notify the court in a timely manner of an address change may result in dismissal of the action or the imposition of such other relief that the court deems just and proper.

Rule 83.5. Correspondence.

Correspondence addressed to the court shall indicate that copies have been transmitted to all other parties and failure to transmit the same to all other parties may result in sanctions by the court. Such correspondence shall not become a part of the record in the case.

Rule 100.3. Civil contempt.

(a) Rights of Contemnor.

In all cases of civil contempt, the contemnor shall have due notice of the contempt charges, opportunity to reply to the charges and notice of the date and place of hearing in open court from which the public shall not be excluded.

(b) Summary Contempt Proceedings.

In contempt proceedings where the court may act summarily, the contemnor shall have the right to defend against the charges and to offer evidence in the form of affidavits. The movant shall have the right to offer similar evidence.

(c) Plenary Contempt Proceedings.

In contempt proceedings where the court may not act summarily, the presentation of evidence is governed by *Rule 1101 of the Federal Rules of Evidence.* In no case of civil contempt, however, shall the parties be entitled to trial by jury, but rather the district judge before whom the matter is tried shall find the facts and enter a judgment or order in accordance with the provisions of the Federal Rules of Civil Procedure applicable to non-jury cases.

UNITED STATES DISTRICT COURT

District of _____

Plaintiff

V.

Defendant

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES AND AFFIDAVIT

CASE NUMBER:

I, _____ declare that I am the (check appropriate box)

G petitioner/plaintiff/movant G other

in the above-entitled proceeding; that in support of my request to proceed without prepayment of fees or costs under 28 USC §1915 I declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief sought in the complaint/petition/motion.

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

1. Are you currently incarcerated? G Yes G No (If "No," go to Part 2)

   If "Yes," state the place of your incarceration _____

   Are you employed at the institution? _____ Do you receive any payment from the institution? _____

   Attach a ledger sheet from the institution(s) of your incarceration showing at least the past **six** months' transactions.

2. Are you currently employed? G Yes G No

   a. If the answer is "Yes," state the amount of your take-home salary or wages and pay period and give the name and address of your employer.

   b. If the answer is "No," state the date of your last employment, the amount of your take-home salary or wages and pay period and the name and address of your last employer.

3. In the past 12 twelve months have you received any money from any of the following sources?

a.	Business, profession or other self-employment	G Yes	G No
b.	Rent payments, interest or dividends	G Yes	G No
c.	Pensions, annuities or life insurance payments	G Yes	G No
d.	Disability or workers compensation payments	G Yes	G No
e.	Gifts or inheritances	G Yes	G No
f.	Any other sources	G Yes	G No

If the answer to any of the above is "Yes," describe, on the following page, each source of money and state the amount received and what you expect you will continue to receive.

4. Do you have **any** cash or checking or savings accounts? G Yes G No

   If "Yes," state the total amount. _____

5. Do you own any real estate, stocks, bonds, securities, other financial instruments, automobiles or any other thing of value? G Yes G No

   If "Yes," describe the property and state its value.

6. List the persons who are dependent on you for support, state your relationship to each person and indicate how much you contribute to their support.

I declare under penalty of perjury that the above information is true and correct.

Date _____ Signature of Applicant _____

NOTICE TO PRISONER: A Prisoner seeking to proceed without prepayment of fees shall submit an affidavit stating all assets. In addition, a prisoner must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

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✎JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ❒ 1 U.S. Government Plaintiff
- ❒ 3 Federal Question (U.S. Government Not a Party)
- ❒ 2 U.S. Government Defendant
- ❒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ❒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury

PERSONAL INJURY
- ❒ 362 Personal Injury - Med. Malpractice
- ❒ 365 Personal Injury - Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

CIVIL RIGHTS
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 444 Welfare
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 440 Other Civil Rights

PRISONER PETITIONS
- ❒ 510 Motions to Vacate Sentence

Habeas Corpus:
- ❒ 530 General
- ❒ 535 Death Penalty
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition

FORFEITURE/PENALTY
- ❒ 610 Agriculture
- ❒ 620 Other Food & Drug
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 630 Liquor Laws
- ❒ 640 R.R. & Truck
- ❒ 650 Airline Regs.
- ❒ 660 Occupational Safety/Health
- ❒ 690 Other

LABOR
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Mgmt. Relations
- ❒ 730 Labor/Mgmt.Reporting & Disclosure Act
- ❒ 740 Railway Labor Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 840 Trademark

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 810 Selective Service
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 875 Customer Challenge 12 USC 3410
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 892 Economic Stabilization Act
- ❒ 893 Environmental Matters
- ❒ 894 Energy Allocation Act
- ❒ 895 Freedom of Information Act
- ❒ 900Appeal of Fee Determination Under Equal Access to Justice
- ❒ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

❒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from another district (specify) ❒ 6 Multidistrict Litigation ❒ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity)**:

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

❒ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:

JURY DEMAND: ❒ Yes ❒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Print | Save As... | Export as FDF | Retrieve FDF File | Reset

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity**. Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

✎AO 398 (Rev. 12/93)

NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

TO: (A) _____

as (B) _____ of (C) _____

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the (D) _____ District of _____ and has been assigned docket number (E) _____.

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within (F) _____ days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth at the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this _____ day of _____, _____.

_____

Signature of Plaintiff's Attorney
or Unrepresented Plaintiff

A—Name of individual defendant (or name of officer or agent of corporate defendant)
B—Title, or other relationship of individual to corporate defendant
C—Name of corporate defendant, if any
D—District
E—Docket number of action
F—Addressee must be given at least 30 days (60 days if located in foreign country) in which to return waiver

WAIVER OF SERVICE OF SUMMONS

TO: _____
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I, _____, acknowledge receipt of your request
(DEFENDANT NAME)

that I waive service of summons in the action of _____,
(CAPTION OF ACTION)

which is case number _____ in the United States District Court
(DOCKET NUMBER)

for the _____ District of _____.

I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after _____,
(DATE REQUEST WAS SENT)

or within 90 days after that date if the request was sent outside the United States.

_____ _____
(DATE) (SIGNATURE)

Printed/Typed Name: _____

As _____ of _____
(TITLE) (CORPORATE DEFENDANT)

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

UNITED STATES DISTRICT COURT

_____ District of _____

SUMMONS IN A CIVIL ACTION

V.

CASE NUMBER:

TO: (Name and address of Defendant)

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

an answer to the complaint which is served on you with this summons, within _____ days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

CLERK

DATE

(By) DEPUTY CLERK

RETURN OF SERVICE

Service of the Summons and complaint was made by me(1)	DATE
NAME OF SERVER *(PRINT)*	TITLE

Check one box below to indicate appropriate method of service

☐ Served personally upon the defendant. Place where served:

☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left:

☐ Returned unexecuted:

☐ Other (specify):

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL $0.00

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____ _____
Date *Signature of Server*

_____
Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

Issued by the

UNITED STATES DISTRICT COURT

DISTRICT OF

SUBPOENA IN A CIVIL CASE

V.

Case Number:[1]

TO:

☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

[1] If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

DATE PLACE

SERVED

SERVED ON (PRINT NAME) MANNER OF SERVICE

SERVED BY (PRINT NAME) TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to comply production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in who behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the mmmdemanding party to contest the claim.

APPENDIX D:
RULES AND FORMS FOR FILING IN NORTH CAROLINA COURTS

1. A selection of Rules of Civil Procedure for the State of North Carolina
2. Civil Cover Sheet
3. Application to proceed *in forma pauperis* and related papers for prisoners
4. Summons
5. Motion Cover Sheet

STATE OF NORTH CAROLINA

A Selection of the Rules of Civil Procedure.

Article 2.

Commencement of Action; Service of Process, Pleadings, Motions, and Orders.

Rule 3. Commencement of action.

(a) A civil action is commenced by filing a complaint with the court. The clerk shall enter the date of filing on the original complaint, and such entry shall be prima facie evidence of the date of filing.

A civil action may also be commenced by the issuance of a summons when

(1) A person makes application to the court stating the nature and purpose of his action and requesting permission to file his complaint within 20 days and

(2) The court makes an order stating the nature and purpose of the action and granting the requested permission.

The summons and the court's order shall be served in accordance with the provisions of Rule 4. When the complaint is filed it shall be served in accordance with the provisions of Rule 4 or by registered mail if the plaintiff so elects. If the complaint is not filed within the period specified in the clerk's order, the action shall abate. (b) The clerk shall maintain as prescribed by the Administrative Office of the Courts a separate index of all medical malpractice actions, as defined in G.S. 90-21.11. Upon the commencement of a medical malpractice action, the clerk shall provide a current copy of the index to the senior regular resident judge of the district in which the action is pending. (1967, c. 954, s. 1; 1987, c. 859, s. 2.)

Rule 4. Process.

(a) Summons – Issuance; who may serve. – Upon the filing of the complaint, summons shall be issued forthwith, and in any event within five days. The complaint and summons shall be delivered to some proper person for service. In this State, such proper person shall be the sheriff of the county where service is to be made or some other person duly authorized by law to serve summons. Outside this State, such proper person shall be anyone who is not a party and is not less than 21 years of age or anyone duly authorized to serve summons by the law of the place where service is to be made. Upon request of the plaintiff separate or additional summons shall be issued against any defendants. A summons is issued when, after being filled out and dated, it is signed by the officer having authority to do so. The date the summons bears shall be prima facie evidence of the date of issue.

(b) Summons – Contents. – The summons shall run in the name of the State and be dated and signed by the clerk, assistant clerk, or deputy clerk of the court in the county in which the action is commenced. It shall contain the title of the cause and the name of the court and county wherein the action has been commenced. It shall be directed to the defendant or defendants and shall notify each defendant to appear and answer within 30 days after its service upon him and further that if he fails so to appear, the plaintiff will apply to the court for the relief demanded in the complaint. It shall set forth the name and address of plaintiff 's attorney, or if there be none, the name and address of plaintiff. If a request for admission is served with the summons, the summons shall so state.

(c) Summons – Return. – Personal service or substituted personal service of summons as prescribed by Rule 4(j)(1) a and b must be made within 60 days after the date of the issuance of summons. When a summons has been served upon every party named in the summons, it shall be returned immediately to the clerk who issued it, with notation thereon of its service.

Failure to make service within the time allowed or failure to return a summons to the clerk after it has been served on every party named in the summons shall not invalidate the summons. If the summons is not served within the time allowed upon every party named in the summons, it shall be returned immediately upon the expiration of such time by the officer to the clerk of the court who issued it with notation thereon of its nonservice and the reasons therefor as to every such party not served, but failure to comply with this requirement shall not invalidate the summons.

(d) Summons – Extension; endorsement, alias and pluries. – When any defendant in a civil action is not served within the time allowed for service, the action may be continued in existence as to such defendant by either of the following methods of extension:

(1) The plaintiff may secure an endorsement upon the original summons for an extension of time within which to complete service of process. Return of the summons so endorsed shall be in the same manner as the original process. Such endorsement may be secured within 90 days after the issuance of summons or the date of the last prior endorsement, or

(2) The plaintiff may sue out an alias or pluries summons returnable in the same manner as the original process. Such alias or pluries summons may be sued out at any time within 90 days after the date of issue of the last preceding summons in the chain of summonses or within 90 days of the last prior endorsement.

(f) Summons – Date of multiple summonses. – If the plaintiff shall cause separate or additional summonses to be issued as provided in Rule 4(a), the date of issuance of such separate or additional summonses shall be considered the same as that of the original summons for purposes of endorsement or alias summons under Rule 4(d).

(g) Summons – Docketing by clerk. – The clerk shall keep a record in which he shall note the day and hour of issuance of every summons, whether original, alias, pluries, or endorsement thereon. When the summons is returned, the clerk shall note on the record the date of the return and the fact as to service or non-service.

(h) Summons – When proper officer not available. – If at any time there is not in a county a proper officer, capable of executing process, to whom summons or other process can be delivered for service, or if a proper officer refuses or neglects to execute such process, or if such officer is a party to or otherwise interested in the action or proceeding, the clerk of the issuing court, upon the facts being verified before him by written affidavit of the plaintiff or his agent or attorney, shall appoint some suitable person who, after he accepts such process for service, shall execute such process in the same manner, with like effect, and subject to the same liabilities, as if such person were a proper officer regularly serving process in that county.

(h1) Summons – When process returned unexecuted. – If a proper officer returns a summons or other process unexecuted, the plaintiff or his agent or attorney may cause service to be made by anyone who is not less than 21 years of age, who is not a party to the action, and who is not related by blood or marriage to a party to the action or to a person upon whom service is to be made. This subsection shall not apply to executions pursuant to Article 28 of Chapter 1 or summary ejectment pursuant to Article 3 of Chapter 42 of the General Statutes.

(i) Summons – Amendment. – At any time, before or after judgment, in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to substantial rights of the party against whom the process issued.

(j) Process – Manner of service to exercise personal jurisdiction. – In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 1-75.4, the manner of service of process within or without the State shall be as follows:

(1) Natural Person. – Except as provided in subsection (2) below, upon a natural person by one of the following:

a. By delivering a copy of the summons and of the complaint to him or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt.

(2) Natural Person under Disability. – Upon a natural person under disability by serving process in any manner prescribed in this section (j) for service upon a natural person

and, in addition, where required by paragraph a or b below, upon a person therein designated.

a. Where the person under disability is a minor, process shall be served separately in any manner prescribed for service upon a natural person upon a parent or guardian having custody of the child, or if there be none, upon any other person having the care and control of the child. If there is no parent, guardian, or other person having care and control of the child when service is made upon the child, then service of process must also be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

b. If the plaintiff actually knows that a person under disability is under guardianship of any kind, process shall be served separately upon his guardian in any manner applicable and appropriate under this section (j). If the plaintiff does not actually know that a guardian has been appointed when service is made upon a person known to him to be incompetent to have charge of his affairs, then service of process must be made upon a guardian ad litem who has been appointed pursuant to Rule 17

(6) Domestic or Foreign Corporation. – Upon a domestic or foreign corporation by one of the following:

a. By delivering a copy of the summons and of the complaint to an officer, director, or managing agent of the corporation or by leaving copies thereof in the office of such officer, director, or managing agent with the person who is apparently in charge of the office.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director or agent to be served as specified in paragraphs a and b.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, or agent to be served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt.

(7) Partnerships. – Upon a general or limited partnership:

a. By delivering a copy of the summons and of the complaint to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to any general partner or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf, delivering to the addressee, and obtaining a delivery receipt; or by leaving copies thereof in the office of such general partner, attorney-in-fact or agent with the person who is apparently in charge of the office.

b. If relief is sought against a partner specifically, a copy of the summons and of the complaint must be served on such partner as provided in this section (j).

(8) Other Unincorporated Associations and Their Officers. – Upon any unincorporated association, organization, or society other than a partnership by one of the following:

a. By delivering a copy of the summons and of the complaint to an officer, director, managing agent or member of the governing body of the unincorporated association, organization or society, or by leaving copies

thereof in the office of such officer, director, managing agent or member of the governing body with the person who is apparently in charge of the office.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent or member of the governing body to be served as specified in paragraphs a and b.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or member of the governing body to be served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt.

(9) Service upon a foreign state or a political subdivision, agency, or instrumentality thereof shall be effected pursuant to 28 U.S.C. § 1608.

(j2) Proof of service. – Proof of service of process shall be as follows:

(1) Personal Service. – Before judgment by default may be had on personal service, proof of service must be provided in accordance with the requirements of G.S. 1-75.10(1).

(2) Registered or Certified Mail or Designated Delivery Service. – Before judgment by default may be had on service by registered or certified mail or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the serving party shall file an affidavit with the court showing proof of such service in accordance with the requirements of G.S. 1-75.10(4) or G.S. 1-75.10(5), as appropriate. This affidavit together with the return or delivery receipt signed by the person who received the mail or delivery if not the addressee raises a presumption that the person who received the mail or delivery and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service of process or was a person of suitable age and discretion residing in the addressee's dwelling house or usual place of abode. In the event the presumption described in the preceding sentence is rebutted by proof that the person who received the receipt at the addressee's dwelling house or usual place of abode was not a person of suitable age and discretion residing therein, the statute of limitation may not be pleaded as a defense if the action was initially commenced within the period of limitation and service of process is completed within 60 days from the date the service is declared invalid. Service shall be complete on the day the summons and complaint are delivered to the address.

(3) Publication. – Before judgment by default may be had on service by publication, the serving party shall file an affidavit with the court showing the circumstances warranting the use of service by publication, information, if any, regarding the location of the party served which was used in determining the area in which service by publication was printed and proof of service in accordance with G.S. 1-75.10(2).

(j4) Process or judgment by default not to be attacked on certain grounds. – No party may attack service of process or a judgment of default on the basis that service should or could have been effected by personal service rather than service by registered or certified mail. No party that receives timely actual notice may attack a judgment by default on the basis that the statutory requirement of due diligence as a condition precedent to service by publication was not met.

(j5) Personal jurisdiction by acceptance of service. – Any party personally, or through the persons provided in Rule 4(j), may accept service of process by notation of acceptance of service together with the signature of the party accepting service and the date thereof on an original or copy of a summons, and such acceptance shall have the same force and effect as would exist had the process been served by delivery of copy and summons and complaint to the person signing said acceptance.

(k) Process – Manner of service to exercise jurisdiction in rem or quasi in rem. – In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for the exercise of jurisdiction in rem or quasi in rem as provided in G.S. 1-75.8, the manner of service of process shall be as follows:

(1) Defendant Known. – If the defendant is known, he may be served in the appropriate manner prescribed for service of process in section (j), or, if otherwise appropriate section (j1); except that the requirement for service by publication in (j1) shall be satisfied if made in the county where the action is pending and proof of service is made in accordance with section (j2).

(2) Defendant Unknown. – If the defendant is unknown, he may be designated by description and process may be served by publication in the manner provided in section (j1), except that the requirement for service by publication in (j1) shall be satisfied if made in the county where the action is pending and proof of service is made in accordance with section (j2). (1967, c. 954, s. 1; 1969, c. 895, ss. 1-4; 1971, c. 962; c. 1156, s. 2; 1975, cc. 408, 609; 1977, c. 910, ss. 1-3; 1981, c. 384, s. 3; c. 540, ss. 1-8; 1983, c. 679, ss. 1, 2; 1989, c. 330; c. 575, ss. 1, 2; 1995, c. 275, s. 1; c. 389, ss. 2, 3; c. 509, s. 135.1(e), (f); 1997-469, s. 1; 1999-456, s. 59; 2001-379, ss. 1, 2, 2.1, 2.2.)

Rule 5. Service and filing of pleadings and other papers.

(a) Service of orders, subsequent pleadings, discovery papers, written motions, written notices, and other similar papers – When required. – Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment and similar paper shall be served upon each of the parties, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(a1) Service of briefs or memoranda in support or opposition of certain dispositive motions. – In actions in superior court, every brief or memorandum in support of or in opposition to a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment, or any other motion seeking a final determination of the rights of the parties as to one or more of the claims or parties in the action shall be served upon each of the parties at least two days before the hearing on the motion. If the brief or memorandum is not served on the other parties at least two days before the hearing on the motion, the court may continue the matter for a reasonable period to allow the responding party to prepare a response, proceed with the matter without considering the untimely served brief or memorandum, or take such other action as the ends of justice require. The parties may, by consent, alter the period of time for service. For the purpose of this two-day requirement only, service shall mean personal delivery, facsimile transmission, or other means such that the party actually receives the brief within the required time.

(b) Service – How made. – A pleading setting forth a counterclaim or cross claim shall be filed with the court and a copy thereof shall be served on the party against whom it is asserted or on the party's attorney of record. With respect to all pleadings subsequent to the original complaint and other papers required or permitted to be served, service with due return may be made in the manner provided for service and return of process in Rule 4 and may be made upon either the party or, unless service upon the party personally is ordered by the court, upon the party's attorney of record. With respect to such other pleadings and papers, service upon the attorney or upon a party may also be made by delivering a copy to the party or by mailing it to the party at the party's last known address or, if no address is known, by filing it with the clerk of court. Delivery of a copy within this rule means handing it to the attorney or to the party, leaving it at the attorney's office with a partner or employee, or by sending it to the attorney's office by a confirmed telefacsimile transmittal for receipt by 5:00 P.M. Eastern Time on a regular business day, as evidenced by a telefacsimile receipt confirmation. If receipt of delivery by telefacsimile is after 5:00 P.M., service will be deemed to have been completed on the next business day. Service by mail shall be complete upon deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(c) Service – Numerous defendants. – In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the

defendants and replies thereto need not be made as between the defendants and that any crossclaim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. – All pleadings subsequent to the complaint shall be filed with the court. All other papers required to be served upon a party, including requests for admissions, shall be filed with the court either before service or within five days thereafter, except that subpoenas, objections to subpoenas under Rule 45(c)(3), depositions, interrogatories, requests for documents, and answers and responses to those requests may not be filed unless ordered by the court or until used in the proceeding. Briefs and memoranda provided to the court may not be filed with the clerk of the court unless ordered by the court. The party taking a deposition or obtaining material through discovery is responsible for its preservation and delivery to the court if needed or so ordered. With respect to all pleadings and other papers as to which service and return has not been made in the manner provided in Rule 4, proof of service shall be made by filing with the court a certificate either by the attorney or the party that the paper was served in the manner prescribed by this rule, or a certificate of acceptance of service by the attorney or the party to be served. Such certificate shall show the date and method of service or the date of acceptance of service.

(e) (1) Filing with the court defined. – The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

(2) Filing by telefacsimile transmission. – If, pursuant to G.S. 7A-34 and G.S. 7A-343, the Supreme Court and the Administrative Officer of the Courts establish uniform rules, regulations, procedures and specifications for the filing of pleadings or other court papers by telefacsimile transmission, filing may be made by the transmission when, in the manner, and to the extent provided therein. (1967, c. 954, s. 1; 1971, c. 538; c. 1156, s. 2.5; 1975, c. 762, s. 1; 1983, c. 201, s. 1; 1985, c. 546; 1991, c. 168, s. 1; 2000-127, s. 1; 2001-379, s. 3; 2001-388, s. 1; 2001-487, s. 107.5(a); 2004-199, s. 5(a).)

Rule 6. Time.

(a) Computation. – In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, including rules, orders or statutes respecting publication of notices, the day of the act, event, default or publication after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday when the courthouse is closed for transactions, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday when the courthouse is closed for transactions. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

(b) Enlargement. – When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order. Upon motion made after the expiration of the specified period, the judge may permit the act to be done where the failure to act was the result of excusable neglect. Notwithstanding any other provisions of this rule, the parties may enter into binding stipulations without approval of the court enlarging the time, not to exceed in the aggregate 30 days, within which an act is required or allowed to be done under these rules, provided, however, that neither the court nor the parties may extend the time for taking any action under Rules 50(b), 52, 59(b), (d), (e), 60(b), except to the extent and under the conditions stated in them.

(c) Unaffected by expiration of session. – The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a session of court. The continued existence or expiration of a session of court in no way affects the power of a court to do any act or take any proceeding, but no issue of fact shall be submitted to a jury out of session.

(d) For motions, affidavits. – A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than five days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and except as otherwise provided in Rule 59(c), opposing affidavits shall be served at least two days before the hearing. If the opposing affidavit is not served on the other parties at least two days before the hearing on the motion, the court may continue the matter for a reasonable period to allow the responding party to prepare a response, proceed with the matter without considering the untimely served affidavit, or take such other action as the ends of justice require. For the purpose of this two-day requirement only, service shall mean personal delivery, facsimile transmission, or other means such that the party actually receives the affidavit within the required time.

(e) Additional time after service by mail. – Whenever a party has the right to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three days shall be added to the prescribed period.

(f) Additional time for Address Confidentiality Program participants. – Whenever a person participating in the Address Confidentiality Program established by Chapter 15C of the General Statutes has a legal right to act within a prescribed period of 10 days or less after the service of a notice or other paper upon the program participant, and the notice or paper is served upon the program participant by mail, five days shall be added to the prescribed period. (1967, c. 954, s. 1; 2000-127, s. 5; 2002-171, s. 2; 2003-337, s. 2.)

Article 3.

Pleadings and Motions.

Rule 7. Pleadings allowed; form of motions.

(a) Pleadings. – There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a crossclaim, if the answer contains a crossclaim; a third-party complaint if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. If the answer alleges contributory negligence, a party may serve a reply alleging last clear chance. No other pleading shall be allowed except that the court may order a reply to an answer or a third-party answer.

(b) Motions and other papers. –

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial or at a session at which a cause is on the calendar for that session, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) A motion to transfer under G.S. 7A-258 shall comply with the directives therein specified but the relief thereby obtainable may also be sought in a responsive pleading pursuant to Rule 12(b).

(c) Demurrers, pleas, etc., abolished. – Demurrers, pleas, and exceptions for insufficiency shall not be used.

(d) Pleadings not read to jury. – Unless otherwise ordered by the judge, pleadings shall not be read to the jury. (1967, c. 954, s. 1; 1971, c. 1156, s. 1; 2000-127, s. 2.)

Rule 8. General rules of pleadings.

(a) Claims for relief. – A pleading which sets forth a claim for relief, whether an original claim, counterclaim, crossclaim, or third-party claim shall contain

(1) A short and plain statement of the claim sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved showing that the pleader is entitled to relief, and

(2) A demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded. In all negligence actions, and in all claims for punitive damages in any civil action, wherein the matter

in controversy exceeds the sum or value of ten thousand dollars ($10,000), the pleading shall not state the demand for monetary relief, but shall state that the relief demanded is for damages incurred or to be incurred in excess of ten thousand dollars ($10,000). However, at any time after service of the claim for relief, any party may request of the claimant a written statement of the monetary relief sought, and the claimant shall, within 30 days after such service, provide such statement, which shall not be filed with the clerk until the action has been called for trial or entry of default entered. Such statement may be amended in the manner and at times as provided by Rule 15.

(b) Defenses; form of denials. – A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part of or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, he may do so by general denial subject to the obligations set forth in Rule 11.

(c) Affirmative defenses. – In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, truth in actions for defamation, usury, waiver, and any other matter constituting an avoidance or affirmative defense. Such pleading shall contain a short and plain statement of any matter constituting an avoidance or affirmative defense sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court, on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of failure to deny. – Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading to be concise and direct; consistency. –

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of pleadings. – All pleadings shall be so construed as to do substantial justice. (1967, c. 954, s. 1; 1975, 2nd Sess., c. 977, s. 5; 1979, ch. 654, s. 4; 1985 (Reg. Sess., 1986), c. 1027, s. 56; 1989 (Reg. Sess., 1990), c. 995, s. 1.)

Rule 9. Pleading special matters.

(a) Capacity. – Any party not a natural person shall make an affirmative averment showing its legal existence and capacity to sue. Any party suing in any representative capacity shall make an affirmative averment showing his capacity and authority to sue. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) Fraud, duress, mistake, condition of the mind. – In all averments of fraud, duress or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions precedent. – In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) Official document or act. – In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. – In pleading a judgment, decision or ruling of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment, decision or ruling without setting forth matter showing jurisdiction to render it.

(f) Time and place. – For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special damage. – When items of special damage are claimed each shall be averred.

(h) Private statutes. In pleading a private statute or right derived therefrom it is sufficient to refer to the statute by its title or the day of its ratification if ratified before January 1, 1996, or the date it becomes law if it becomes law on or after January 1, 1996, and the court shall thereupon take judicial notice of it.

(i) Libel and slander. –

(1) In an action for libel or slander it is not necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the claim for relief arose, but it is sufficient to state generally that the same was published or spoken concerning the plaintiff, and if such allegation is controverted, the plaintiff is bound to establish on trial that it was so published or spoken.

(2) The defendant may in his answer allege both the truth of the matter charged as defamatory, and any mitigating circumstances to reduce the amount of damages; and whether he proves the justification or not, he may give in evidence the mitigating circumstances.

(j) Medical malpractice. – Any complaint alleging medical malpractice by a health care provider as defined in G.S. 90-21.11 in failing to comply with the applicable standard of care under G.S. 90-21.12 shall be dismissed unless:

(1) The pleading specifically asserts that the medical care has been reviewed by a person who is reasonably expected to qualify as an expert witness under Rule 702 of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care;

(2) The pleading specifically asserts that the medical care has been reviewed by a person that the complainant will seek to have qualified as an expert witness by motion under Rule 702(e) of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care, and the motion is filed with the complaint; or

(3) The pleading alleges facts establishing negligence under the existing common-law doctrine of res ipsa loquitur.

Upon motion by the complainant prior to the expiration of the applicable statute of limitations, a resident judge of the superior court for a judicial district in which venue for the cause of action is appropriate under G.S. 1-82 or, if no resident judge for that judicial district is physically present in that judicial district, otherwise available, or able or willing to consider the motion, then any presiding judge of the superior court for that judicial district may allow a motion to extend the statute of limitations for a period not to exceed 120 days to file a complaint in a medical malpractice action in order to comply with this Rule, upon a determination that good cause exists for the granting of the motion and that the ends of justice would be served by an extension. The plaintiff shall provide, at the request of the defendant, proof of compliance with this subsection through up to ten written interrogatories, the answers to which shall be verified by the expert required under this subsection. These interrogatories do not count against the interrogatory limit under Rule 33.

(k) Punitive damages. – A demand for punitive damages shall be specifically stated, except for the amount, and the aggravating factor that supports the award of punitive damages shall be averred with

particularity. The amount of damages shall be pled in accordance with Rule 8. (1967, c. 954, s. 1; 1995, c. 20, s. 10; c. 309, s. 2; c. 514, s. 3; 1998-217, s. 61; 2001-121, s. 1.)

Rule 10. Form of pleadings.

(a) Caption; names of parties. – Every pleading shall contain a caption setting forth the division of the court in which the action is filed, the title of the action, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

Rule 12. Defenses and objections; When and how presented; by pleading or motion; motion for judgment on pleading.

(a) (1) When Presented. – A defendant shall serve his answer within 30 days after service of the summons and complaint upon him. A party served with a pleading stating a crossclaim against him shall serve an answer thereto within 30 days after service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 30 days after service of the answer or, if a reply is ordered by the court, within 30 days after service of the order, unless the order otherwise directs. Service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court:

a. The responsive pleading shall be served within 20 days after notice of the court's action in ruling on the motion or postponing its disposition until the trial on the merits;

b. If the court grants a motion for a more definite statement, the responsive pleading shall be served within 20 days after service of the more definite statement.

(2) Cases Removed to United States District Court. – Upon the filing in a district court of the United States of a petition for the removal of a civil action or proceeding from a court in this State and the filing of a copy of the petition in the State court, the State court shall proceed no further therein unless and until the case is remanded. If it shall be finally determined in the United States courts that the action or proceeding was not removable or was improperly removed, or for other reason should be remanded, and a final order is entered remanding the action or proceeding to the State court, the defendant or defendants, or any other party who would have been permitted or required to file a pleading had the proceedings to remove not been instituted, shall have 30 days after the filing in such State court of a certified copy of the order of remand to file motions and to answer or otherwise plead.

(b) How Presented. – Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, crossclaim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

(1) Lack of jurisdiction over the subject matter,
(2) Lack of jurisdiction over the person,
(3) Improper venue or division,
(4) Insufficiency of process,
(5) Insufficiency of service of process,
(6) Failure to state a claim upon which relief can be granted,
(7) Failure to join a necessary party.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. The consequences of failure to make such a motion shall be as provided in sections (g) and (h). No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. Obtaining an extension of time within which to answer or otherwise plead shall not constitute a waiver of any defense herein set forth. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6), to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) Motion for judgment on the pleadings. – After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary hearings. – The defenses specifically enumerated (1) through (7) in section (b) of this rule, whether made in a pleading or by motion, and the motion for judgment on the pleadings mentioned in section (c) of this rule shall be heard and determined before trial on application of any party, unless the judge orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for more definite statement. – If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the judge is not obeyed within 20 days after notice of the order or within such other time as the judge may fix, the judge may strike the pleading to which the motion was directed or make such orders as he deems just.

(f) Motion to strike. – Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 30 days after the service of the pleading upon him or upon the judge's own initiative at any time, the judge may order stricken from any pleading any insufficient defense or any redundant, irrelevant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of defenses in motion. – A party who makes a motion under this rule may join with it any other motions herein provided for and then available to him. If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in section (h)(2) hereof on any of the grounds there stated.

(h) Waiver or preservation of certain defenses. –

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (i) if omitted from a motion in the circumstances described in section (g), or (ii) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a necessary party, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. (1967, c. 954, s. 1; 1971, c. 1236; 1975, c. 76, s. 2.)

Rule 15. Amended and supplemental pleadings.

(a) Amendments. – A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within 30 days after service of the amended pleading, unless the court otherwise orders.

(d) Supplemental pleadings. – Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which may have happened since the date of the pleading sought to be supplemented, whether or not the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefor. (1967, c. 954, s. 1.)

Article 5.

Depositions and Discovery.

Rule 26. General provisions governing discovery.

(a) Discovery methods. – Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery scope and limits. – Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. – Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence nor is it grounds for objection that the examining party has knowledge of the information as to which discovery is sought.

The frequency or extent of use of the discovery methods set forth in section (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under section (c).

(2) Insurance Agreements. – A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this subsection, an application for insurance shall not be treated as part of an insurance agreement.

(3) Trial Preparation; Materials. – Subject to the provisions of subsection (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subsection (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's consultant, surety, indemnitor, insurer, or agent only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court may not permit disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation in which the material is sought or work product of the attorney or attorneys of record in the particular action.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (i) a written statement signed or otherwise adopted or

approved by the person making it, or (ii) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation; Experts. – Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subsection (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

a. 1. A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

2. Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (b)(4)c [(b)(4)b] of this rule, concerning fees and expenses as the court may deem appropriate.

b. Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivision (b)(4)a2 of this rule; and (ii) with respect to discovery obtained under subdivision (b)(4)a2 of this rule the court may require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(c) Protective orders. – Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the judge of the court in which the action is pending may make any order which justice requires to protect a party or person from unreasonable annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (i) that the discovery not be had; (ii) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (iii) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (iv) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (v) that discovery be conducted with no one present except persons designated by the court; (vi) that a deposition after being sealed be opened only by order of the court; (vii) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (viii) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and timing of discovery. – Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery. Any order or rule of court setting the time within which discovery must be completed shall be construed to fix the date after which the pendency of discovery will not be allowed to delay trial or any other proceeding before the court, but shall not be construed to prevent any party from utilizing any procedures afforded under Rules 26 through 36, so long as trial or any hearing before the court is not thereby delayed.

(e) Supplementation of responses. – A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (i) the identity and location of persons having knowledge of discoverable matters, and (ii) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (i) he knows that the response was incorrect when made, or (ii) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(f) Discovery conference. – At any time after commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court may do so upon motion by the attorney for any party if the motion includes:

(1) A statement of the issues as they then appear;

(2) A proposed plan and schedule of discovery;

(3) Any limitations proposed to be placed on discovery;

(4) Any other proposed orders with respect to discovery; and

(5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Each party and his attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by Rule 16.

(f1) Medical malpractice discovery conference. – In a medical malpractice action as defined in G.S. 90-21.11, upon the case coming at issue or the filing of a responsive pleading or motion requiring a determination by the court, the judge shall, within 30 days, direct the attorneys for the parties to appear for a discovery conference. At the conference the court may consider the matters set out in Rule 16, and shall:

(1) Rule on all motions;

(2) Establish an appropriate schedule for designating expert witnesses, consistent with a discovery schedule pursuant to subdivision (3), to be complied with by all parties to the action such that there is a deadline for designating all expert witnesses within an appropriate time for all parties to implement discovery mechanisms with regard to the designated expert witnesses;

(3) Establish by order an appropriate discovery schedule designated so that, unless good cause is shown at the conference for a longer time, and subject to further orders of the court, discovery shall be completed within 150 days after the order is issued; nothing herein shall be construed to prevent any party from utilizing any procedures afforded under Rules 26 through 36, so long as trial or any hearing before the court is not thereby delayed; and

(4) Approve any consent order which may be presented by counsel for the parties relating to parts (2) and (3) of this subsection, unless the court finds that the terms of the consent order are unreasonable.

If a party fails to identify an expert witness as ordered, the court shall, upon motion by the moving party, impose an appropriate sanction, which may include dismissal of the action, entry of default against the defendant, or exclusion of the testimony of the expert witness at trial.

(g) Signing of discovery requests, responses, and objections. – Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state his address. The signature of the attorney or party constitutes a certification that he has read the request, response, or objection and that to the best of

his knowledge, information, and belief formed after a reasonable inquiry it is: (1) consistent with the rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee. (1967, c. 954, s. 1; 1971, c. 750; 1975, c. 762, s. 2; 1985, c. 603, ss. 1-4; 1987, c. 859, s. 3.)

Rule 29. Stipulations regarding discovery procedure.

Unless the court orders otherwise, the parties may by written stipulation (i) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (ii) modify the procedures provided by these rules for other methods of discovery. (1967, c. 954, s. 1; 1975, c. 762, s. 1.)

Rule 30. Depositions upon oral examination.

(a) When depositions may be taken. – After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Rule 4(e), except that leave is not required (i) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (ii) if special notice is given as provided in subsection (b)(2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in Rule 45, provided that no subpoena need be served on a deponent who is a party or an officer, director or managing agent of a party, provided the party has been served with notice pursuant to subsection (b)(1) of this rule. The deposition of a person confined in prison or of a patient receiving in-patient care in or confined to an institution or hospital for the mentally ill or mentally handicapped may be taken only by leave of court on such terms as the court prescribes.

(b) Notice of examination; general requirements; place of examination; special notice; nonstenographic recording; production of documents and things; deposition of organization. –

(1) A party desiring to take the deposition of any person upon oral examination shall give notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice. The notice shall be served on all parties at least 15 days prior to the taking of the deposition when any party required to be served resides without the State and shall be served on all parties at least 10 days prior to the taking of the deposition when all of the parties required to be served reside within the State. Depositions of parties, officers, directors or managing agents of parties or of other persons designated pursuant to subsection (b)(6) hereof to testify on behalf of a party may be taken only at the following places:

A resident of the State may be required to attend for examination by deposition only in the county wherein he resides or is employed or transacts his business in person. A nonresident of the State may be required to attend for such examination only in the county wherein he resides or within 50 miles of the place of service except that a judge, as defined by subdivision (h) of this rule, may, upon motion showing good cause, require that a party who selected the county where the action is

pending as the forum for the action or an officer, director or managing agent of such a party, or a person designated pursuant to subsection (b)(6) hereof to testify on behalf of such a party present himself for the taking of his deposition in the county where the action is pending. The judge upon granting the motion may make any other orders allowed by Rule 26(c) with respect thereto, including orders with respect to the expenses of the deponent.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (i) states that the person to be examined is about to go out of the county where the action is pending and more than 100 miles from the place of trial, or is about to go out of the United States, or is bound on a voyage to sea, and will be unavailable for examination unless his deposition is taken before expiration of the 30-day period, and (ii) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification.

If a party shows that when he was served with notice under this subsection (b)(2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) Unless the court orders otherwise, testimony at a deposition may be recorded by sound recording, sound-and-visual, or stenographic means. If the testimony is to be taken by other means in addition to or in lieu of stenographic means, the notice shall state the methods by which it shall be taken and shall state whether a stenographer will be present at the deposition. In the case of a deposition taken by stenographic means, the party that provides for the stenographer shall provide for the transcribing of the testimony taken. If the deposition is by sound recording only, the party noticing the deposition shall provide for the transcribing of the testimony taken. If the deposition is by sound-and-visual means, the appearance or demeanor of deponents or attorneys shall not be distorted through camera techniques. Regardless of the method stated in the notice, any party or the deponent may have the testimony recorded by stenographic means.

(5) A party deponent, deponents who are officers, directors or managing agents of parties and other persons designated pursuant to subsection (b)(6) hereof to testify on behalf of a party may not be served with a subpoena duces tecum, but the notice to a party for the deposition of such a deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34, except as to time for response, shall apply to the request. When a notice to take such a deposition is accompanied by a request made in compliance with Rule 34 the notice and the request must be served at least 15 days earlier than would otherwise be required by Rule 30(b)(1), and any objections to such a request must be served at least seven days prior to the taking of the deposition.

(6) A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. It shall not be necessary to serve a subpoena on an organization which is a party, but the notice, served on a party without an accompanying subpoena shall clearly advise such of its duty to make the required designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone. For the purposes of this rule and Rules 28(a), 37(a)(1) and 45(d), a deposition taken by telephone is taken in the district and the place where the deponent is to answer questions propounded to him.

(c) Examination and cross-examination; record of examination; oath; objections. – Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Rule 43(b). The person before whom the deposition is to be taken shall put the deponent on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the deponent. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subsection (b)(4) of this rule. If requested by one of the parties, the testimony shall be transcribed.

All objections made at the time of the examination to the qualifications of the person before whom the deposition is taken, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted upon the deposition by the person before whom the deposition is taken. Subject to any limitations imposed by orders entered pursuant to Rule 26(c) or 30(d), evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party who served the notice of taking the deposition, and he shall transmit them to the person before whom the deposition is to be taken who shall open them at the deposition, propound them to the witness and record the answers verbatim.

(d) Motion to terminate or limit examination. – At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, a judge of the court in which the action is pending or any judge in the county where the deposition is being taken may order before whom the examination is being taken to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of a judge of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Submission to deponent; changes; signing. – The sound-and-visual recording, or the transcript of it, if any, the transcript of the sound recording, or the transcript of a deposition taken by stenographic means, shall be submitted to the deponent for examination and shall be reviewed by the deponent, unless such examination and review are waived by the deponent and by the parties. If there are changes in form or substance, the deponent shall sign a statement reciting such changes and the reasons given by the deponent for making them. The person administering the oath shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent. The certificate shall then be signed by the deponent, unless the parties by stipulation waive the signing or the deponent is ill or cannot be found or refuses to sign. If the certificate is not signed by the deponent within 30 days of its submission to him, the person before whom the deposition was taken shall sign the certificate and state on the certificate the fact of the waiver or of the illness or absence of the deponent or the fact of the refusal or failure to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though the certificate were signed unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification and filing by person administering the oath; exhibits; copies; notice of filing. –

(1) The person administering the oath shall certify that the deponent was duly sworn by him and that the deposition is a true record of the testimony given by the deponent. This certificate shall be in writing and accompany the sound-and-visual or sound recording or transcript of the deposition. He shall then place the deposition in an envelope or package endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall personally deliver it or mail it by first class mail to the party taking the deposition or his attorney who shall preserve it as the court's copy.

Documents and things produced for inspection during the examination of the deponent shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party,

except that (i) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (ii) if the person producing the materials requests their return, the person before whom the deposition is taken shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the person administering the oath shall furnish a copy of the deposition to any party or to the deponent.

(3) The clerk shall give prompt notice of the filing of a deposition to all parties.

(g) Failure to attend or to serve subpoena; expenses. –

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the judge may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the judge may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(h) Judge; definition. –

(1) In respect to actions in the superior court, a judge of the court in which the action is pending shall, for the purposes of this rule, and Rule 26, Rule 31, Rule 33, Rule 34, Rule 35, Rule 36 and Rule 37, be a superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or G.S. 7A-48 in that county.

(2) In respect to actions in the district court, a judge of the court in which the action is pending shall, for the purposes of this rule, Rule 26, Rule 31, Rule 33, Rule 34, Rule 35, Rule 36 and Rule 37, be the chief district judge or any judge designated by him pursuant to G.S. 7A-192.

(3) In respect to actions in either the superior court or the district court, a judge of the court in the county where the deposition is being taken shall, for the purposes of this rule, be a superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or G.S. 7A-48 in that county, or the chief judge of the district court or any judge designated by him pursuant to G.S. 7A-192. (1967, c. 954, s. 1; 1973, c. 828, s. 1; c. 1126, ss. 1, 2; 1975, c. 762, s. 2; 1977, c. 769; 1983, c. 201, s. 2; c. 801, ss. 1, 2; 1987 (Reg. Sess., 1988), c. 1037, s. 42; 1995, c. 353, ss. 1-3; 1995 (Reg. Sess., 1996), c. 742, s. 4.)

Rule 31. Depositions upon written questions.

(a) Serving questions; notice. – After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45 provided that no subpoena need be served on a deponent who is a party or an officer, director or managing agent of a party, provided the party has been served with notice pursuant to this rule. Such a deposition shall be taken in the county where the witness resides or is employed or transacts his business in person unless the witness agrees that it may be taken elsewhere. The deposition of a person confined in prison or of a patient receiving in-patient care in or confined to an institution or hospital for the mentally ill or mentally handicapped may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (i) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (ii) the name or descriptive title and address of the officer before whom the deposition is to

be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Person to take responses and prepare record. – A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the person designated in the notice to take the deposition, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the deponent in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him.

(c) Notice of filing. – When the deposition is filed the clerk shall promptly give notice thereof to all parties. (1967, c. 954, s. 1; 1975, c. 762, s. 2.)

Rule 33. Interrogatories through parties.

(a) Availability; procedures for use. – Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

A party may direct no more than 50 interrogatories, in one or more sets, to any other party, except upon leave granted by the Court for good cause shown or by agreement of the other party. Interrogatory parts and subparts shall be counted as separate interrogatories for purposes of this rule.

There shall be sufficient space following each interrogatory in which the respondent may state the response. The respondent shall: (1) state the response in the space provided, using additional pages if necessary; or (2) restate the interrogatory to be followed by the response.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. An objection to an interrogatory shall be made by stating the objection and the reason therefor either in the space following the interrogatory or following the restated interrogatory. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon the defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(b) Scope; use at trial. – Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(c) Option to produce business records. – Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. (1967, c. 954, s. 1; 1971, c. 1156, s. 4.5; 1975, c. 99; c. 762, s. 2; 1987, c. 73, c. 613, s. 1.)

Rule 34. Production of documents and things and entry upon land for inspection and other purposes.

(a) Scope. – Any party may serve on any other party a request (i) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (ii) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure. – The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

There shall be sufficient space following each request in which the respondent may state the response. The respondent shall: (1) state the response in the space provided, using additional pages if necessary; or (2) restate the request to be followed by the response. An objection to a request shall be made by stating the objection and the reason therefor either in the space following the request or following the restated request.

(c) Persons not parties. – This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land. (1967, c. 954, s. 1; 1969, c. 895, s. 8; 1973, c. 923, s. 1; 1975, c. 762, s. 2; 1987, c. 613, s. 2.)

Rule 35. Physical and mental examination of persons.

(a) Order for examination. – When the mental or physical condition (including the blood group) of a party, or of an agent or a person in the custody or under the legal control of a party, is in controversy, a judge of the court in which the action is pending as defined by Rule 30(h) may order the party to submit to a physical or mental examination by a physician or to produce for examination his agent or the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of examining physician. –

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After such request and delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that he is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if a physician fails or refuses to make a report the court may exclude his testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in

that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

(3) This subsection applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subsection does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician in accordance with the provisions of any other rule. (1967, c. 954, s. 1; 1975, c. 762, s. 2.)

Rule 36. Requests for admission; effect of admission.

(a) Request for admission. – A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. If the request is served with service of the summons and complaint, the summons shall so state.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 60 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why he cannot admit or deny it.

There shall be sufficient space following each request in which the respondent may state the response. The respondent shall:

(1) State the response in the space provided, using additional pages if necessary; or

(2) Restate the request to be followed by the response. An objection to a request shall be made by stating the objection and the reason therefor either in the space following the request or following the restated request.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) Effect of admission. – Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding. (1967, c. 954, s. 1; 1975, c. 762, s. 2; 1981, c. 384, ss. 1, 2; 1987, c. 613, s. 3.)

Rule 37. Failure to make discovery; sanctions.

(a) Motion for order compelling discovery. – A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Appropriate Court. – An application for an order to a party or a deponent who is not a party may be made to a judge of the court in which the action is pending, or, on matters relating to a deposition where the deposition is being taken in this State, to a judge of the court in the county where the deposition is being taken, as defined by Rule 30(h).

(2) Motion. – If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question shall complete the examination on all other matters before he adjourns the examination in order to apply for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

(3) Evasive or Incomplete Answer. – For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) Award of Expenses of Motion. – If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to comply with order. –

(1) Sanctions by Court in County Where Deposition Is Taken. – If a deponent fails to be sworn or to answer a question after being directed to do so by a judge of the court in the county in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) Sanctions by Court in Which Action Is Pending. – If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under section (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f) a judge of the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

a. An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

b. An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

c. An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

d. In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

e. Where a party has failed to comply with an order under Rule 35(a) requiring him to produce another for examination, such orders as are listed in subdivisions a, b, and c of this subsection, unless the party failing to comply shows that he is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on failure to admit. – If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (i) the request was held objectionable pursuant to Rule 36(a), or (ii) the admission sought was of no substantial importance, or (iii) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (iv) there was other good reason for the failure to admit.

(d) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. – If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (i) to appear before the person who is to take his deposition, after being served with a proper notice, or (ii) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (iii) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subdivisions a, b, and c of subsection (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this section may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

(e), (f) Reserved for future codification purposes.

(g) Failure to participate in the framing of a discovery plan. – If a party or his attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by Rule 26(f), the court may, after opportunity for hearing, require such party or his attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure. (1967, c. 954, s. 1; 1973, c. 827, s. 1; 1975, c. 762, s. 2; 1985, c. 603, ss. 5-7; 2001-379, s. 5.)

Rule 45. Subpoena.

(a) Form; Issuance. –

(1) Every subpoena shall state all of the following:

a. The title of the action, the name of the court in which the action is pending, the number of the civil action, and the name of the party at whose instance

b. A command to each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated records, books, papers, documents, or tangible things in the possession, custody, or control of that person therein specified.

c. The protections of persons subject to subpoenas under subsection (c) of this rule.

d. The requirements for responses to subpoenas under subsection (d) of this rule.

(2) A command to produce evidence may be joined with a command to appear at trial or hearing or at a deposition, or any subpoena may be issued separately.

(3) A subpoena shall issue from the court in which the action is pending.

(4) The clerk of court in which the action is pending shall issue a subpoena, signed but otherwise blank, to a party requesting it, who shall complete it before service. Any judge of the superior court, judge of the district court, magistrate, or attorney, as officer of the court, may also issue and sign a subpoena.

(b) Service. –

(1) Manner. – Any subpoena may be served by the sheriff, by the sheriff's deputy, by a coroner, or by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to that person or by registered or certified mail, return receipt requested. Service of a subpoena for the attendance of a witness only may also be made by telephone communication with the person named therein only by a sheriff, the sheriff's designee who is not less than 18 years of age and is not a party, or a coroner.

(2) Service of copy. – A copy of the subpoena served under subdivision (1) of this subsection shall also be served upon each party in the manner prescribed by Rule 5(b). This subdivision does not apply to subpoenas issued under G.S. 15A-801 or G.S. 15A-802.

(c) Protection of Persons Subject to Subpoena. –

(1) Avoid undue burden or expense. – A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing an undue burden or expense on a person subject to the subpoena. The court shall enforce this subdivision and impose upon the party or attorney in violation of this requirement an appropriate sanction that may include compensating the person unduly burdened for lost earnings and for reasonable attorney's fees.

(2) For production of public records or hospital medical records. –

Where the subpoena commands any custodian of public records or any custodian of hospital medical records, as defined in G.S. 8-44.1, to appear for the sole purpose of producing certain records in the custodian's custody, the custodian subpoenaed may, in lieu of personal appearance, tender to the court in which the action is pending by registered or certified mail or by personal delivery, on or before the time specified in the subpoena, certified copies of the records requested together with a copy of the subpoena and an affidavit by the custodian testifying that the copies are true and correct copies and that the records were made and kept in the regular course of business, or if no such records are in the custodian's custody, an affidavit to that effect. When the copies of records are personally delivered under this subdivision, a receipt shall be obtained from the person receiving the records. Any original or certified copy of records or an affidavit delivered according to the provisions of this subdivision, unless otherwise objectionable, shall be admissible in any action or proceeding without further certification or authentication. Copies of hospital medical records tendered under this subdivision shall not be open to inspection or copied by any person, except to the parties to the case or proceedings and their attorneys in depositions, until ordered published by the judge at the time of the hearing or trial. Nothing contained herein shall be construed to waive the physician-patient privilege or to require any privileged communication under law to be disclosed.

(3) Written objection to subpoenas. – Subject to subsection (d) of this rule, a person commanded to appear at a deposition or to produce and permit the inspection and copying of records may, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, serve upon the party or the attorney designated in the subpoena written objection to the subpoena, setting forth the specific grounds for the objection. The written objection shall comply with the requirements of Rule 11. Each of the following grounds may be sufficient for objecting to a subpoena:

a. The subpoena fails to allow reasonable time for compliance.

b. The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the privilege or protection.
c. The subpoena subjects a person to an undue burden.
d. The subpoena is otherwise unreasonable or oppressive.
e. The subpoena is procedurally defective.

(4) Order of court required to override objection. – If objection is made under subdivision (3) of this subsection, the party serving the subpoena shall not be entitled to compel the subpoenaed person's appearance at a deposition or to inspect and copy materials to which an objection has been made except pursuant to an order of the court. If objection is made, the party serving the subpoena may, upon notice to the subpoenaed person, move at any time for an order to compel the subpoenaed person's appearance at the deposition or the production of the materials designated in the subpoena. The motion shall be filed in the court in the county in which the deposition or production of materials is to occur.

(5) Motion to quash or modify subpoena. – A person commanded to appear at a trial, hearing, deposition, or to produce and permit the inspection and copying of records, books, papers, documents, or other tangible things, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, may file a motion to quash or modify the subpoena. The court shall quash or modify the subpoena if the subpoenaed person demonstrates the existence of any of the reasons set forth in subdivision (3) of this subsection. The motion shall be filed in the court in the county in which the trial, hearing, deposition, or production of materials is to occur.

(6) Order to compel; expenses to comply with subpoena. – When a court enters an order compelling a deposition or the production of records, books, papers, documents, or other tangible things, the order shall protect any person who is not a party or an agent of a party from significant expense resulting from complying with the subpoena. The court may order that the person to whom the subpoena is addressed will be reasonably compensated for the cost of producing the records, books, papers, documents, or tangible things specified in the subpoena.

(7) Trade secrets; confidential information. – When a subpoena requires disclosure of a trade secret or other confidential research, development, or commercial information, a court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or when the party on whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship, the court may order a person to make an appearance or produce the materials only on specified conditions stated in the order.

(8) Order to quash; expenses. – When a court enters an order quashing or modifying the subpoena, the court may order the party on whose behalf the subpoena is issued to pay all or part of the subpoenaed person's reasonable expenses including attorney's fees.

(d) Duties in Responding to Subpoenas. –

(1) Form of response. – A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label the documents to correspond with the categories in the request.

(2) Specificity of objection. – When information subject to a subpoena is withheld on the objection that it is subject to protection as trial preparation materials, or that it is otherwise privileged, the objection shall be made with specificity and shall be supported by a description of the nature of the communications, records, books, papers, documents, or other tangible things not produced, sufficient for the requesting party to contest the objection.

(e) Contempt; Expenses to Force Compliance With Subpoena. –

(1) Failure by any person without adequate excuse to obey a subpoena served upon the person may be deemed a contempt of court. Failure by any party without adequate cause to obey a subpoena served upon the party shall also subject the party to the sanctions provided in Rule 37(d).

(2) The court may award costs and attorney's fees to the party who issued a subpoena if the court determines that a person objected to the subpoena or filed a motion to quash or modify the subpoena, and the objection or motion was unreasonable or was made for improper purposes such as unnecessary delay. (1967, c. 954, s. 1; 1969, c. 886, s. 1; 1971, c. 159; 1975, c. 762, s. 3; 1983, c. 665, s. 1; c. 722; 1989, c. 262, s. 1; 2003-276, s. 1.)

Article 7.

Judgment.

Rule 56. Summary judgment.

(a) For claimant. – A party seeking to recover upon a claim, counterclaim, or crossclaim or to obtain a declaratory judgment may, at any time after the expiration of 30 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) For defending party. – A party against whom a claim, counterclaim, or crossclaim is asserted or a declaratory judgment is sought, may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and proceedings thereon. – The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party may serve opposing affidavits at least two days before the hearing. If the opposing affidavit is not served on the other parties at least two days before the hearing on the motion, the court may continue the matter for a reasonable period to allow the responding party to prepare a response, proceed with the matter without considering the untimely served affidavit, or take such other action as the ends of justice require. For the purpose of this two-day requirement only, service shall mean personal delivery, facsimile transmission, or other means such that the party actually receives the affidavit within the required time.

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is genuine issue as to the amount of damages. Summary judgment, when appropriate, may be rendered against the moving party.

(d) Case not fully adjudicated on motion. – If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established.

(e) Form of affidavits; further testimony; defense required. – Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When affidavits are unavailable. – Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits made in bad faith. – Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees. (1967, c. 954, s. 1; 2000-127, s. 6.)

Rule 68. Offer of judgment and disclaimer.

(a) Offer of judgment. – At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted within 10 days after its service shall be deemed withdrawn and evidence of the offer is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer.

(b) Conditional offer of judgment for damages. – A party defending against a claim arising in contract or quasi contract may, with his responsive pleading, serve upon the claimant an offer in writing that if he fails in his defense, the damages shall be assessed at a specified sum; and if the claimant signifies his acceptance thereof in writing within 20 days of the service of such offer, and on the trial prevails, his damages shall be assessed accordingly. If the claimant does not accept the offer, he must prove his damages as if the offer had not been made. If the damages assessed in the claimant's favor do not exceed the sum stated in the offer, the party defending shall recover the costs in respect to the question of damages. (1967, c. 954, s. 1.)

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
☐ District ☐ Superior Court Division

Name Of Plaintiff	**PETITION TO SUE/APPEAL AS AN INDIGENT**
VERSUS	G.S. 1-110; 7A-228
Name Of Defendant	

AFFIDAVIT

(check one of the two boxes below)

☐ **Petition To Sue** - As the individual plaintiff in the above entitled action, I affirm that I am financially unable to advance the required costs for the prosecution of this action. Therefore, I now petition the Court for an order allowing me to bring suit in this action as an indigent.

☐ I am an inmate in the custody of the Department of Correction.
(**Note To Clerk:** *If this block is checked, this Petition must be submitted to a Superior Court Judge for disposition provided on the reverse.*)

☐ **Petition To Appeal** - As the individual appellant in the above entitled small claims action, I affirm that I am financially unable to pay the cost for the appeal of this action from small claims to district court. Therefore, I now petition the Court for an order allowing me to appeal this action to district court as an indigent.

(check one or more of the boxes below as applicable)

☐ I am presently a recipient of

☐ food stamps. ☐ Aid to Families With Dependent Children (AFDC). ☐ Supplemental Security Income (SSI).

☐ I am represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons, or I am represented by private counsel working on behalf of such a legal services organization. (Attach a letter from your legal services attorney or have your attorney sign the certificate below.)

☐ Although I am not a recipient of food stamps, AFDC, or SSI, nor am I represented by legal services, I am financially unable to advance the costs of filing this action or appeal.

SWORN AND SUBSCRIBED TO BEFORE ME		Date
Date	Signature	Signature Of Petitioner
Title Of Person Authorized To Administer Oaths		Name And Address Of Petitioner (Type Or Print)
Date Commission Expires **SEAL**		

CERTIFICATE OF LEGAL SERVICES/PRO BONO REPRESENTATION

I certify that the above named petitioner is represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons or is represented by private counsel working on behalf of or under the auspices of such legal services organization.

Date	Signature
Name And Address (Type Or Print)	

ORDER

Based on the Affidavit appearing above, it is ORDERED that:

☐ the petitioner is authorized to bring suit or to appeal in this action as an indigent.
☐ the petition is denied.

Date	Signature	☐ Assistant CSC ☐ Clerk Of Superior Court ☐ Judge ☐ Magistrate (for appeal only)

NOTE TO CLERK: *If the petitioner is NOT a recipient of food stamps, AFDC, SSI or is NOT represented by legal services or a private attorney on behalf of legal services, you may ask for additional financial information to determine whether the petitioner is unable to pay the costs.*

(Over)

ORDER - DOC INMATES

The undersigned superior court judge of this district finds that the petitioner is an inmate in the custody of the Department of Correction and that the complaint

☐ is not frivolous.
☐ is frivolous.

It is ORDERED that

☐ the petitioner is authorized to sue in this action as an indigent.
☐ the petitioner is not authorized to sue as an indigent.
☐ the action is dismissed.

Date	*Name Of Superior Court Judge (Type Or Print)*	*Signature Of Superior Court Judge*

CERTIFICATION

I certify that this Petition has been served on the party named by depositing a copy in a post-paid properly addressed envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.

Date	*Signature*	
		☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

NOTE: *G.S. 1-110(b) provides: "The Clerk of Superior Court shall serve a copy of the order of dismissal upon the prison inmate."*

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
☐ District ☐ Superior Court Division

Name Of Plaintiff 1

Tax ID/SSN

Name Of Plaintiff 2

Tax ID/SSN

Name Of Plaintiff 3

Tax ID/SSN

GENERAL
CIVIL ACTION COVER SHEET

☐ **INITIAL FILING** ☐ **SUBSEQUENT FILING**

Rule 5(b), Rules of Practice For Superior and District Courts

Name And Address Of Attorney Or Party, If Not Represented (complete for initial appearance or change of address)

VERSUS

Name Of Defendant 1

Attorney Bar No.

Tax ID/SSN | Summons Submitted ☐ Yes ☐ No

☐ Initial Appearance in Case ☐ Change of Address

Name Of Defendant 2

Name Of Firm

Tax ID/SSN | Summons Submitted ☐ Yes ☐ No

Tax ID No. | Telephone No. | FAX No.

Name Of Defendant 3

Counsel for
☐ All Plaintiffs ☐ All Defendants ☐ Only *(List party(ies) represented)*

Tax ID/SSN | Summons Submitted ☐ Yes ☐ No

☐ Jury Demanded In Pleading
☐ Complex Litigation

☐ Amount in controversy does not exceed $15,000
☐ Stipulate to arbitration

TYPE OF PLEADING

(check all that apply)

☐ Amended Answer/Reply (AMND-Response)
☐ Amended Complaint (AMND)
☐ Answer/Reply (ANSW-Response)
☐ Complaint (COMP)
☐ Confession of Judgment (CNFJ)
☐ Counterclaim vs. (CTCL)
☐ All Plaintiffs ☐ Only *(List on back)*
☐ Crossclaim vs. *(List on back)* (CRSS)
☐ Extend Statute of Limitations, Rule 9 (ESOL)
☐ Extend Time For Answer (MEOT-Response)
☐ Extend Time For Complaint (EXCO)
☐ Rule 12 Motion In Lieu Of Answer (MDLA)
☐ Third Party Complaint *(List Third Party Defendants on Back)* (TPCL)
☐ Other: *(specify)*

CLAIMS FOR RELIEF FOR:

☐ Administrative Appeal (ADMA)
☐ Appointment of Receiver (APRC)
☐ Attachment/Garnishment (ATTC)
☐ Claim and Delivery (CLMD)
☐ Collection on Account (ACCT)
☐ Condemnation (CNDM)
☐ Contract (CNTR)
☐ Discovery Scheduling Order (DSCH)
☐ Injunction (INJU)
☐ Medical Malpractice (MDML)
☐ Minor Settlement (MSTL)
☐ Money Owed (MNYO)
☐ Negligence - Motor Vehicle (MVNG)
☐ Negligence - Other (NEGO)
☐ Motor Vehicle Lien G.S. 44A (MVLN)
☐ Limited Driving Privilege - *Out-of-State Convictions* (PLDP)
☐ Possession of Personal Property (POPP)
☐ Product Liability (PROD)
☐ Real Property (RLPR)
☐ Specific Performance (SPPR)
☐ Other: *(specify)*

NOTE: *Small claims are exempt from cover sheets.*

Date

Signature Of Attorney/Party

NOTE: *The initial filing in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must either include a cover sheet or the filing must comply with G.S. 7A-34.1.*

No.	☐ Additional Plaintiff(s)	Tax ID/SSN

No.	☐ Additional Defendant(s) ☐ Third Party Defendant(s)	Tax ID/SSN	Summons Submitted
			☐ Yes ☐ No
			☐ Yes ☐ No
			☐ Yes ☐ No
			☐ Yes ☐ No
			☐ Yes ☐ No
			☐ Yes ☐ No
			☐ Yes ☐ No
			☐ Yes ☐ No

Plaintiff(s) Against Whom Counterclaim Asserted

Defendant(s) Against Whom Crossclaim Asserted

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
☐ District ☐ Superior Court Division

Name Of Plaintiff	
Address	**CIVIL SUMMONS**
City, State, Zip	☐ **ALIAS AND PLURIES SUMMONS**
VERSUS	G.S. 1A-1, Rules 3, 4
Name Of Defendant(s)	Date Original Summons Issued
	Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1	Name And Address Of Defendant 2

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and

2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)	Date Issued	Time ☐ AM ☐ PM
	Signature	
	☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court	

☐ ENDORSEMENT
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement	Time ☐ AM ☐ PM
Signature	
☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court	

NOTE TO PARTIES: *Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is $15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.*

(Over)

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

Date Served	*Time Served*	*Name Of Defendant*
	☐ AM ☐ PM	

☐ By delivering to the defendant named above a copy of the summons and complaint.

☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.

☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

☐ Other manner of service *(specify)*

☐ Defendant WAS NOT served for the following reason:

DEFENDANT 2

Date Served	*Time Served*	*Name Of Defendant*
	☐ AM ☐ PM	

☐ By delivering to the defendant named above a copy of the summons and complaint.

☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.

☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

☐ Other manner of service *(specify)*

☐ Defendant WAS NOT served for the following reason.

Service Fee Paid	*Signature Of Deputy Sheriff Making Return*
$	
Date Received	*Name Of Sheriff (Type Or Print)*
Date Of Return	*County Of Sheriff*

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
☐ District ☐ Superior Court Division

Name Of Plaintiff

VERSUS

Name Of Defendant

MOTION COVER SHEET

Rule 5(b), Rules of Practice For Superior and District Courts

Name And Address Of Attorney Or Party, If Not Represented (complete for initial appearance or change of address)

Name Of Firm

Tax ID No. | Telephone No. | FAX No.

Attorney Bar No.

☐ Initial Appearance in Case ☐ Change of Address

MOTION

Type of Motion *(For each motion, enter code for Type of Motion from list on*	**By** *(Identify Party)*	**Against** *(Identify Party)*
	☐ All	☐ All
	☐ All	☐ All
	☐ All	☐ All
	☐ All	☐ All
	☐ All	☐ All
	☐ All	☐ All
	☐ All	☐ All
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	☐ All	☐ All
	☐ All	☐ All

Date | Signature Of Attorney/Party

NOTE: *The initial filing in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must either include a cover sheet or the filing must comply with G.S. 7A-34.1.*

(Over)

TYPES OF MOTIONS

Add Additional Party (ADDP)
Amend (AMND)
Change Of Venue (CHVN)
Compel (CMPL)
Consolidation (CNSL)
Contempt (CNTP)
Continue (CNTN)
Default Judgment (DEFJ)
Deposition (DEPO)
Designate A Mediator (DSMD)
Disburse Funds (DFND)
Dismiss (Involuntary) (DISM)
Entry Of Default (EODF)
Ex Parte Restraining (EXPR)
Exempt From Arbitration (EXAR)
Exempt/Waive Mediation (EXMD)
Extension Of Time (EXTM)
Increase Bond (INBN)
In The Cause (INTC)
In Limine (ILIM)
Intervene (INTR)
Join (JOIN)
Judgment On Pleading (JOPL)
Jury View (JRVW)
Limit Deposition (LDEP)
Modification Of Alimony (MALI)
Modification Of Custody (MCUS)
Modification Of Support (MSUP)
Modification Of Visitation (MVIS)
More Definite Statement (Rule 12) (MDST)
New Trial (NTRL)
Objection Of Exemptions Claimed (OEXC)
Other (OTHR) *(Describe on front)*
Preliminary Injunction (PREL)
Quash (QUSH)
Release From Stay Of Execution (RSEX)
Sanctions (SANC)
Sever Issues Or Claims (SICL)
Show Cause (SHOW)
Special Practice In NC (ADMP)
Stay Of Execution (STEX)
Strike (STRK)
Summary Judgment (SUMJ)
Transfer (TRFR)
Temporary Restraining Order (TROR)
Vacate/Modify Judgment Or Order (VCMD)
Withdraw As Counsel (WDCN)

STATE OF NORTH CAROLINA

_____ County

File No.

In The General Court Of Justice
Superior Court Division

Name Of Plaintiff(s)

VERSUS

Name Of Defendant(s)

MOTION AND ORDER FOR CONTINUANCE (CIVIL SUPERIOR CASES)

INSTRUCTIONS: ***MOVING PARTY*** *must complete all information requested below. Copy of completed form must be faxed, mailed or hand delivered to opposing counsel or unrepresented party(ies) prior to deliver to* ***Senior Resident Superior Court Judge or his/her designee.*** *Upon receipt,* ***OPPOSING PARTY*** *must immediately communicate any objections to* ***Senior Resident Superior Court Judge or his/her***

Previous No. Of Continuances	Date Case Filed	Calendared Trial Date

Opposing Counsel	Copy(ies) Distributed To Opposing Counsel(s)/Party(ies) By	Date
	☐ U.S. Mail ☐ Facsimile ☐ Hand Delivery ☐ Atty Box	

Reason(s) For Continuance Request (attach additional sheet if necessary)

Requested Reschedule Date Or Carryover Date	Name And Address Of Movant
Has Client(s) Been Notified Of Continuance Request? *(not applicable if pro se)* ☐ Yes ☐ No	Telephone No.
Date	Signature Of Movant

TO BE COMPLETED BY JUDICIAL SUPPORT STAFF

Objection(s) received? *(attach written objections)* ☐ Yes ☐ No	Date Motion Received	Case Age: ☐ Less Than 12 Months ☐ 12 to 18 Months ☐ More Than 18 Months
Total No. Of Cases On Trial Calendar		Current Ranking Of This Case On Trial Calendar
Date Case Set On This Trial Calendar		Attorney input into trial setting? ☐ Yes ☐ No

Ruling: ☐ Denied ☐ Granted	Date Rescheduled	Counsel Notified Of Ruling By	Date

Date	Name Of Senior Resident Superior Court Judge/Designee (Type Or Print)	Signature Of Senior Resident Superior Court Judge/Designee

Original - Case File

File No.

COMPLAINT FOR MONEY OWED

G.S. 7A-216, 7A-232

Name And Address Of Plaintiff

Social Security No./Taxpayer ID No.

County | Telephone No.

VERSUS

Name And Address Of Defendant 1 ☐ Individual ☐ Corporation

County | Telephone No.

Name And Address Of Defendant 2 ☐ Individual ☐ Corporation

County | Telephone No.

Name And Address Of Plaintiff's Attorney

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division-Small Claims

1. The defendant is a resident of the county named above.
2. The defendant owes me the amount listed for the following reason:

Principal Amount Owed	$
Interest Owed *(if any)*	$
Total Amount Owed	$

(check one below)

☐ On An Account (attach a copy of the account)	Date From Which Interest Due		Interest Rate
☐ For Goods Sold And Delivered Between	Beginning Date	Ending Date	Interest Rate
☐ For Money Lent	Date From Which Interest Due		Interest Rate
☐ On a Promissory Note *(attach copy)*	Date Of Note	Date From Which Interest Due	Interest Rate
☐ For a Worthless Check *(attach a copy of the check)*			
☐ For conversion *(describe property)*			
☐ Other: *(specify)*			

I demand to recover the total amount listed above, plus interest and reimbursement for court costs.

Date | Signature Of Plaintiff Or Attorney

(Over)

INSTRUCTIONS TO PLAINTIFF OR DEFENDANT

1. The PLAINTIFF must file a small claim action in the county where at least one of the defendants resides.

2. The PLAINTIFF cannot sue in small claims court for more than $5,000.00 excluding interest and costs.

3. The PLAINTIFF must show the complete name and address of the defendant to ensure service on the defendant. If there are two defendants and they reside at different addresses, the plaintiff must include both addresses. The plaintiff must determine if the defendant is a corporation and sue in the complete corporate name. If the business is not a corporation, the plaintiff must determine the owner's name and sue the owner.

4. The PLAINTIFF may serve the defendant(s) by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, addressed to the party to be served or by paying the costs to have the sheriff serve the summons and complaint. If certified or registered mail is used, the plaintiff must prepare and file a sworn statement with the Clerk of Superior Court proving service by certified mail and must attach to that statement the postal receipt showing that the letter was accepted.

5. The PLAINTIFF must pay advance court costs at the time of filing this Complaint. In the event that judgment is entered in favor of the plaintiff, court costs may be charged against the defendant.

6. The DEFENDANT may file a written answer, making defense to the claim, in the office of the Clerk of Superior Court. This answer should be accompanied by a copy for the plaintiff and be filed no later than the time set for trial. The filing of the answer DOES NOT relieve the defendant of the need to appear before the magistrate to assert the defendant's defense.

7. Whether or not an answer is filed, the PLAINTIFF must appear before the magistrate.

8. The PLAINTIFF or the DEFENDANT may appeal the magistrate's decision in this case. To appeal, notice must be given in open court when the judgment is rendered, or notice may be given in writing to the Clerk of Superior Court within ten (10) days after the judgment is rendered. If notice is given in writing, the appealing party must also serve written notice of appeal on all other parties. The appealing party must PAY to the Clerk of Superior Court the costs of court for appeal within twenty (20) days after the judgment is rendered.

9. This form is supplied in order to expedite the handling of small claims. It is designed to cover the most common claims.

10. **The Clerk or magistrate cannot advise you about your case or assist you in completing this form. If you have any questions, you should consult an attorney.**

File No.

COMPLAINT TO RECOVER POSSESSION OF PERSONAL PROPERTY

☐ PLAINTIFF A SECURED PARTY
☐ PLAINTIFF NOT A SECURED PARTY

G.S. 7A-232; 25-9-609

Name And Address Of Plaintiff

Social Security No./Taxpayer ID No.

County | Telephone No.

VERSUS

Name And Address Of Defendant 1 ☐ Individual ☐ Corporation

County | Telephone No.

Name And Address Of Defendant 2 ☐ Individual ☐ Corporation

County | Telephone No.

Name And Address Of Plaintiff's Attorney

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division-Small Claims

WHEN PLAINTIFF IS A SECURED PARTY

The defendant is a resident of the county named above. I have a security interest in the personal property described in the attached security agreement. The total current value of this property is as shown below. The defendant has defaulted in the payment of the debt which the property secures or has otherwise breached the terms of the security agreement giving me the right to claim immediate possession of the property described below. I demand recovery of this property and reimbursement for court costs.

Description Of Personal Property In Which You Have a Secured Interest (Attach Copy Of Security Agreement)	Total Value Of Property To Be Recovered
	$

Date | Signature Of Plaintiff Or Attorney

WHEN PLAINTIFF IS NOT A SECURED PARTY

The defendant is a resident of the county named above. The defendant has in his/her possession the personal property described below which belongs to me. I am entitled to immediate possession of the property, but the defendant has refused on demand to deliver it to me. The defendant has unlawfully kept possession of this property since the date listed below and has therefore deprived me of its use. The damage due me for the loss of use and physical damage to the property is set out below. I demand recovery of this property and damages in the total amount set out below, plus interest and reimbursement for court costs.

Description Of Personal Property You Own Which Is In Possession Of Defendant	Total Value Of Property To Be Recovered
	$

Date Defendant Wrongfully Took Or Kept Property		
	Damage Due For Loss Of Use	$
	Physical Damage To Property	$
	Total Amount Of Damages	$

Date | Signature Of Plaintiff Or Attorney

Original-File Copy-Each Defendant Copy-Attorney/Plaintiff
(Over)

INSTRUCTIONS TO PLAINTIFF OR DEFENDANT

1. The PLAINTIFF must file a small claim action in the county where at least one of the defendants resides.

2. The PLAINTIFF cannot sue to recover property worth more than $5,000.00.

3. The PLAINTIFF must show the complete name and address of the defendant to ensure service on the defendant. If there are two defendants and they reside at different addresses, the plaintiff must include both addresses. The plaintiff must determine if the defendant is a corporation and sue in the complete corporate name. If the business is not a corporation, the plaintiff must determine the owner's name and sue the owner.

4. The PLAINTIFF may serve the defendant(s) by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, addressed to the party to be served or by paying the costs to have the sheriff serve the summons and complaint. If certified or registered mail is used, the plaintiff must prepare and file a sworn statement with the Clerk of Superior Court proving service by certified mail and must attach to that statement the postal receipt showing that the letter was accepted.

5. The PLAINTIFF must pay advance court costs at the time of filing this Complaint. In the event that judgment is rendered in favor of the plaintiff, court costs may be charged against the defendant.

6. The DEFENDANT may file a written answer, making defense to the claim, in the office of the Clerk of Superior Court. This answer should be accompanied by a copy for the plaintiff and be filed no later than the time set for trial. The filing of the answer DOES NOT relieve the defendant of the need to appear before the magistrate to assert the defendant's defense.

7. Whether or not an answer is filed, the PLAINTIFF must appear before the magistrate.

8. The PLAINTIFF or the DEFENDANT may appeal the magistrate's decision in this case. To appeal, notice must be given in open court when the judgment is entered, or notice may be given in writing to the Clerk of Superior Court within ten (10) days after the judgment is entered. If notice is given in writing, the appealing party must also serve written notice of appeal on all other parties. The appealing party must PAY to the Clerk of Superior Court the costs of court for appeal within twenty (20) days after the judgment is entered. A defendant who appeals also must post a bond to stay execution of the judgment within ten (10) days after the judgement is entered.

9. This form is supplied in order to expedite the handling of small claims. It is designed to cover the most common claims.

10. The Clerk or magistrate cannot advise you about your case or assist you in completing this form. If you have any questions, you should consult an attorney.

APPENDIX E:
NORTH CAROLINA PROCESS SERVERS

Name: Reynolds, Ruth A.
Address: Reynolds Professional Service, Inc.
P.O. Box 18585
Charlotte, NC 28218-0585
4801 East Independence Blvd., #700
Charlotte, NC 28205
Phone(s): (800) 814-8662, (704) 338-1775
Counties Served: States of SC, NC: York

Name: Hollen, Keith
Member Since: 2005
Address: Eagle Eye Detective Agency & Associates
1409 East Blvd., Ste. 110
Charlotte, NC 28203
Phone(s): (866) 376-2728, (704) 376-2728
Fax Number: (704) 376-2725
Counties Served: States of NC, SC

Name: Finnegan, Victor
Address: American Expediting Company
901 Suite G, North Tryon Street
Charlotte, NC 28206
Phone(s): (800) 965-2153, (704) 344-8929
Counties Served: State of NC

Name: Clark, Robert M. 'Monty'
Address: Clark & Associates, Private Investigative Services
P.O. Box 668971
Charlotte, NC 28266-8971
7519 Pawtuckett Road
Charlotte, NC 28214
Phone(s): (800) 297-4023, (704) 398-0025, (704) 576-4698
Counties Served: States of NC, SC; Mecklenburg, Stanley, Cabarrus, Union, Gaston, Catawba, Cleveland, Iredell, York, Lancaster

Name: Cochrane, Jeff
Address: Cochrane Investigations Inc.
9415 Errington Lane
Charlotte, NC 28227
Phone(s): (704) 545-6500
Counties Served: States of NC, SC

Name: Hughes, Nicholas
Address: Atlas Investigations
6420 Rea Road Suite 111
Charlotte, NC 28277
Phone(s): (704) 277-3661

Name: Casey, Mary A.
Address: Allways Express
P.O. Box 309
Gastonia, NC 28053
Phone(s): (704) 864-2437
Counties Served: State of NC

Name: Poindexter, Carlyle Taylor
Address: Poindexter & Associates, LLC
P.O. Box 37284
Raleigh, NC 27627
5 West Hargett Street, Suite 401
Raleigh, NC 27601
Phone(s): (800) 373-2804, (919) 859-5294
Counties Served: All counties where private service allowed; Investigative extension office in Cali, Colombia, South America

Name: Galvin, Patrick
Address: Galvin Process and Detective Agency
P.O. Box 97372
Raleigh, NC 27624
816 North Clift Drive
Raleigh, NC 27609
Phone(s): (919) 846-0021
Counties Served: State of NC

Name: Penny, Alice W.
Address: Paralegal Services of North Carolina
120 Penmarc Drive, Suite 118
Raleigh, NC 27603
Phone(s): (919) 821-7762
Counties Served: State of NC

Name: Tart, Lee W.
Address: Eastern North Carolina Investigative & Process Svc
P.O. Box Drawer 25038
Raleigh, NC 27611
1451 Old Goldsboro Road
Newton Grove, NC 28366
Phone(s): (910) 594-1833
Counties Served: Central & Eastern NC

Name: Branagan, John
Address: JB Investigative Services, LLC
P.O. Box 98175
Raleigh, NC 27624-8175
Phone(s): (919) 870-0902, (919) 880-5972
Counties Served: State of NC

Name: Deal, D. Charles
Address: American Process Service & Investigations, Inc.
P.O. Box 1900
Little River, SC 29566
Phone(s): (877) 233-9700, (843) 280-1300
Fax Number: (843) 280-2800
Counties Served: States of SC, NC

APPENDIX F:
BOCA RATON, FL PROCESS SERVERS

Name: Gutierrez, Maria J.
Address: Judicial Process & Support, Inc.
8930 State Rd. 84, No. 104
Davie, FL 33324
Phone(s): (800) 852-5002, (305) 347-3353, (305) 710-9174
Fax Number: (305) 347-3354
Counties Served: Dade, Broward, Palm Beach, Monroe

Name: Dennis-Leigh, David
Address: Advantage Services Company
P.O. Box 11229
Pompano Beach, FL 33061-7229
896 N. Federal Hwy., #812
Pompano Beach, FL 33062
Phone(s): (800) 924-6427, (954) 946-6483
Fax Number: (954) 942-1148
Counties Served: Broward, Palm Beach

Name: Levy, Jonathan
Address: Agency for Civil Enforcement Corporation
102 NE 2nd St., Suite 147
Boca Raton, FL 33432
Phone(s): (561) 447-7638
Fax Number: (561) 447-7639
Counties Served: Palm Beach, Miami-Dade, Broward

Name: Hammack, James W. 'Jim'
Address: Florida State Process Service, Inc.
2500 Hollywood Blvd., Ste. 207
Hollywood, FL 33020
Phone(s): (888) 945-8900, (954) 923-8800
Fax Number: (954) 923-8885
Counties Served: Dade, Broward, Palm Beach, Martin, Saint Lucie

APPENDIX G:
SAMPLE FEDERAL COURT COMPLAINTS

The parts in “handwriting” print are for you to change to fit your situation.

The regular print may also have to be changed, but generally should go in a Complaint.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

NAME OF PLAINTIFF, Pro Se RIVERS CORRECTIONAL INSTITUTION P.O. BOX 630 WINTON, NC 27986 Plaintiff, v. The Geo Group, Inc. 621 NW 53rd Street, Suite 700 Boca Raton, FL 33487 *Joe Guard(s), Employee(s) of Geo Group]* *ADDRESS(es)* Defendants.	No. __:____-CV-___(_)

COMPLAINT FOR BATTERY

COMES NOW PLAINTIFF, *John Prisoner,* and complains against Defendant[s] as follows:

PRELIMINARY STATEMENT

This is an action seeking monetary damages resulting from the battery of Plaintiff by Defendant[s].

JURISDICTION AND VENUE

This Court has jurisdiction over this matter pursuant to 28 U.S.C. 1332(a) since the amount in controversy exceeds $75,000 exclusive of interests and costs and there is diversity of citizenship.

Venue is proper in this judicial district pursuant to 28 U.S.C. 1391(a) because the events giving rise to this claim took place in this judicial district.

PARTIES

Plaintiff, *Joe PRisoner,* is an inmate at Rivers Correctional Institution (hereinafter "RCI"), located at 145 Parker's Fishery Road, Winton, North Carolina 27986. He entered the facility on *date.*

Defendant The Geo Group, Inc. is a business incorporated in Florida doing business in North Carolina and owns and operates the RCI in Winton, North Carolina.

Defendant[s], Joe Guard(s) is/are [an] employee[s] of The Geo Group, Inc.

FACTUAL ALLEGATIONS

DESCRIBE THE FACTS OF THE SITUATION. Tell the story of how you were attacked or assaulted in your own words, simply and clearly.

CLAIM FOR RELIEF

Defendant[s]_____ on _____, 20__, at _____, without the consent of the Plaintiff, intentionally acted to cause a *[harmful or offensive contact or the imminent apprehension of a harmful or offensive contact]* with the body of the Plaintiff.

Defendant[s], _____, [an] employee[s] of The Geo Group, Inc. was/were at the time of injury to the plaintiff acting within the scope of his/her/their employment, and was acting under its supervision and control.

As a result of Defendant's[s'] action, a harmful contact to the body of the Plaintiff directly/indirectly resulted.

As a result thereof, Plaintiff was injured, suffered great pain and anguish of body and mind, and was put to great expense for medical attendance and nursing.

PRAYER FOR RELIEF

WHEREFORE the plaintiff demands judgment against the defendant for damages and costs and all other relief as this Court deems necessary and proper.

JURY DEMAND

Plaintiff demands trial by jury of all issues triable by jury as of right.

Dated: Respectfully submitted,

By_____
[PLAINTIFF'S NAME], Pro Se

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

NAME OF PLAINTIFF, CI RIVERS CORRECTIONAL INSTITUTION P.O. BOX 630 WINTON, NC 27986 Plaintiff, v. The Geo Group, Inc. 621 NW 53rd Street, Suite 700 Boca Raton, FL 33487 Defendants.	No. __:____-CV-___(_)

COMPLAINT FOR NEGLIGENCE

COMES NOW PLAINTIFF, John Prisoner, and complains against Defendant[s] as follows:

PRELIMINARY STATEMENT

This is an action seeking monetary damages stemming from injury Plaintiff received as a result of Defendant's[s'] negligence.

JURISDICTION AND VENUE

This Court has jurisdiction over this matter pursuant to 28 U.S.C. 1332(a) since the amount in controversy exceeds $75,000 exclusive of interests and costs and there is diversity of citizenship.

Venue is proper in this judicial district pursuant to 28 U.S.C. 1391(a) because the events giving rise to this claim took place in this judicial district.

PARTIES

Plaintiff, John Prisoner, is an inmate at Rivers Correctional Institution (hereinafter "RCI"), located at 145 Parker's Fishery Road, Winton, North Carolina 27986. He entered the facility on date.

Defendant The Geo Group, Inc. is a business incorporated in Florida doing business in North Carolina and owns and operates the CI Rivers Correctional Institution in Winton, North Carolina.

Defendant[s], Joe Guard(s), is/are [an] employee[s] of The Geo Group, Inc..

FACTUAL ALLEGATIONS

DESCRIBE THE FACTS OF THE SITUATION. Describe that the defendants you named had to do something and by not showing normal care, you were hurt.

CLAIM FOR RELIEF

Defendant[s], Joe Guard, [an] employee[s] of The Geo Group, Inc, was/were at the time of injury to the plaintiff acting within the scope of his/their employment when he/they negligently [describe negligent act or omission].

As a result of Defendant's[s'] negligence, the plaintiff suffered bodily injuries and physical and mental pain. [If plaintiff incurred medical expenses or his earning power was permanently impaired, state that here as well.]

PRAYER FOR RELIEF

WHEREFORE Plaintiff demands judgment against Defendant[s] for damages, costs and and all other relief as this Court deems necessary and proper.

JURY DEMAND

Plaintiff demands trial by jury of all issues triable by jury as of right.

Dated:

Respectfully submitted,

By_____
[PLAINTIFF'S NAME], Pro Se

APPENDIX H:
SAMPLE STATE COURT COMPLAINTS

STATE OF NORTH CAROLINA
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
COUNTY OF HERTFORD
_ _- CVS-_____

John Prisoner, Pro Se RIVERS CORRECTIONAL INSTITUTION P.O. BOX 630 WINTON, NC 27986	)
Plaintiff,	)
v.	)
The Geo Group, Inc. 621 NW 53rd Street, Suite 700 Boca Raton, FL 33487	)
Defendants.	)

COMPLAINT
FOR THE INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

COMES NOW PLAINTIFF, John Prisoner, and complains against Defendant[s] as follows:

PRELIMINARY STATEMENT

This is an action seeking monetary damages resulting from Defendant's[s'] intentional infliction of emotional distress to Plaintiff.

JURISDICTION AND VENUE

This court has jurisdiction over Plaintiff's claims pursuant to N.C. Gen N.C. Gen Stat. § 1-75.4 and Stat. § 7A-243, because this is a civil action for damages that exceed $10,000.

Venue is proper in the Superior Court in and for Hertford County, North Carolina pursuant to N.C. Gen Stat. §§ 1-79, 1-80, and § 1-82.

There is an actual, justiciable controversy between Plaintiff and Defendant[s].

PARTIES

Plaintiff, John Prisoner, is an inmate at Rivers Correctional Institution (hereinafter "RCI"), located at 145 Parker's Fishery Road, Winton, North Carolina 27986. He entered the facility on date.

Defendant The Geo Group, Inc. is a business incorporated in Florida doing business in North Carolina and owns and operates the CI Rivers Correctional Institution in Winton, North Carolina.

Defendant[s], _____ is/are [an] employee[s] of The Geo Group, Inc..

FACTUAL ALLEGATIONS

DESCRIBE THE FACTS OF THE SITUATION. Tell what happened in your own words to show that the defendants who you named intentionally caused you emotional distress.

CLAIM FOR RELIEF

Defendant[s], Joe Guard, an employee of The Geo Group, Inc, was/were at the time of injury to the plaintiff acting within the scope of his/their employment.

Defendant's[s'] conduct toward Plaintiff was conducted in an intentional or reckless manner.

Defendant's[s'] conduct was outrageous and intolerable because it offended generally accepted standards of decency and morality.

Defendant's[s'] conduct caused the Plaintiff to suffer severe emotional distress.

PRAYER FOR RELIEF

WHEREFORE Plaintiff demands judgment against Defendant[s] for damages, costs and disbursements and all other relief as this Court deems necessary and proper.

JURY DEMAND

Plaintiff demands trial by jury of all issues triable by jury as of right.

.

Dated:

Respectfully submitted,

By_____
[PLAINTIFF'S NAME], Pro Se

STATE OF NORTH CAROLINA
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
COUNTY OF HERTFORD
_ _- CVS-_____

John Prisoner, RIVERS CORRECTIONAL INSTITUTION P.O. BOX 630 WINTON, NC 27986 Plaintiff, v. The Geo Group, Inc. 621 NW 53rd Street, Suite 700 Boca Raton, FL 33487 Joe Guard(s) [*ADDRESS(s)*] Defendants.	)

COMPLAINT FOR NEGLIGENCE

COMES NOW PLAINTIFF, John Prisoner, and complains against Defendant[s] as follows:

PRELIMINARY STATEMENT

This is an action seeking monetary damages stemming from injury Plaintiff received as a result of Defendant's[s'] negligence.

JURISDICTION AND VENUE

This court has jurisdiction over Plaintiff's claims pursuant to N.C. Gen N.C. Gen Stat. § 1-75.4 and Stat. § 7A-243, because this is a civil action for damages that exceed $10,000.

Venue is proper in the Superior Court in and for Hertford County, North Carolina pursuant to N.C. Gen Stat. §§ 1-79, 1-80, and § 1-82.

There is an actual, justiciable controversy between Plaintiff and Defendant[s].

PARTIES

Plaintiff, John Prisoner], is an inmate at Rivers Correctional Institution (hereinafter "RCI"), located at 145 Parker's Fishery Road, Winton, North Carolina 27986. He entered the facility on date.

Defendant The Geo Group, Inc. is a business incorporated in Florida doing business in North Carolina and owns and operates the RCI in Winton, North Carolina.

Defendant[s], Joe Guards(s), is/are [an] employee[s] of The Geo Group, Inc.

FACTUAL ALLEGATIONS

DESCRIBE THE FACTS OF THE SITUATION

CLAIM FOR RELIEF

Defendant[s], Joe Guards(s), [an] employee[s] of The Geo Group, Inc, was/were at the time of injury to the plaintiff acting within the scope of his/their employment when he/they negligently [describe negligent act or omission].

As a result of Defendant's[s'] negligence, the plaintiff suffered bodily injuries and physical and mental pain.

PRAYER FOR RELIEF

WHEREFORE Plaintiff demands judgment against Defendant[s] for damages, costs and disbursements and all other relief as this Court deems necessary and proper.

JURY DEMAND

Plaintiff demands trial by jury of all issues triable by jury as of right.

Dated: Respectfully submitted,

By_____
[PLAINTIFF'S NAME], Pro Se

D.C. PRISONERS' PROJECT
WASHINGTON LAWYERS COMMITTEE FOR CIVIL RIGHTS AND URBAN AFFAIRS
11 Dupont Circle, NW
Suite 400
Washington, DC 20036

PRISONER HELP LINE
(We accept collect calls)
(202) 775-0323

Please write us with suggestions for the next edition of this booklet or other booklets you would like to see.