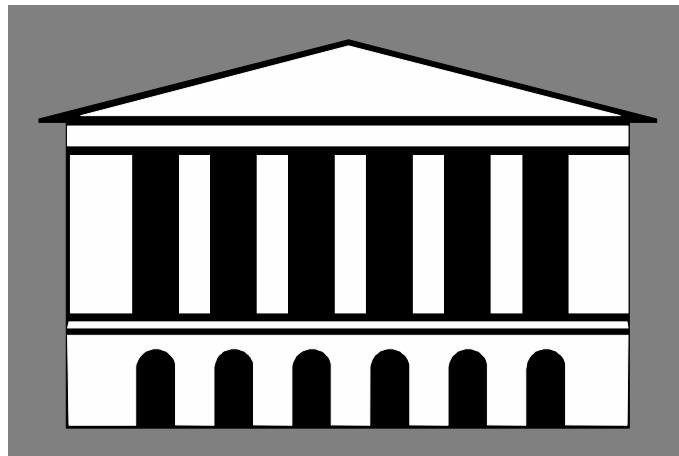


**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA**



**INFORMATION ON
REPRESENTING YOURSELF
IN A CIVIL ACTION**

REVISED 7/11/2003

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GENERAL INFORMATION ABOUT THE COURT

BUSINESS HOURS:

The Clerk's Office is open to the public from 9:00 a.m. until 4:30 p.m., Monday through Friday, except for federal holidays.

DIVISIONS:

Court is scheduled and filings are accepted at the following locations:

COLUMBIA

Strom Thurmond Courthouse
1845 Assembly Street
Columbia, SC 29201-2431

CHARLESTON

Hollings Judicial Center
Meeting Street at Broad
Charleston, SC 29401
Post Office Box 835
Charleston, SC 29402

FLORENCE

McMillan Federal Building
401 West Evans Street
Florence, SC 29501
Post Office Box 2317
Florence, SC 29503

GREENVILLE

Clement F. Haynsworth Federal Building
300 East Washington Street
Greenville, SC 29601
Post Office Box 10768
Greenville, SC 29603

Court is scheduled at the following locations, but filings are *not* accepted in these locations as they are not staffed: **AIKEN, ANDERSON, BEAUFORT, SPARTANBURG.**

Court is *not* held in the following locations and filings are *not* accepted there: **GREENWOOD, ORANGEBURG, ROCK HILL.**

NOTICE TO *PRO SE* PARTIES¹

YOU ARE NOT ENTITLED TO HAVE COUNSEL APPOINTED TO REPRESENT YOU IN A CIVIL ACTION. The Government of the United States does *not* appropriate funds for attorneys to represent parties in civil cases.² Also, the Clerk of Court does not have the authority to appoint counsel in civil cases, and court staff cannot recommend individual attorneys. Whenever a civil case is brought by a *pro se* party, the judges of this court outline proper procedure so that the *pro se* party will not be deprived of a fair opportunity to present his or her case.³

The South Carolina Bar has recognized that many people feel that legal services are not readily available to them, or need assistance finding legal counsel. To respond to these needs, the South Carolina Bar established a lawyer referral service.

Callers to this service are referred to lawyers who have indicated that they will handle a particular type of legal matter. These lawyers have also agreed to consult with referred clients for 30 minutes for a charge of no more than \$25.00.

If the lawsuit is important enough for you to invest your time in it, it may be worthwhile for you to consult a lawyer who is willing to handle your type of case. Additionally, given the fact that the fee for filing a lawsuit in this court is \$150.00, you may save money by consulting one of these attorneys before proceeding in this court (if time allows).

Nothing above should be read as intending to discourage or prohibit you from bringing a lawsuit on your own behalf without an attorney. You may even file a lawsuit on your own behalf and, at any time thereafter, choose to have a lawyer represent you. The Clerk of Court is obligated to file any lawsuit which is in the proper form and accompanied by the

¹ *Pro se* literally means, "For one's own behalf" – in this case, a person who does not retain a lawyer and appears for him/herself in court. A "party" is someone who is participating in the lawsuit, usually either the "plaintiff" or the "defendant." The **Glossary** at the end of this manual contains definitions of other commonly used terms.

² "Civil" cases are those that are not criminal.

³ See Roseboro v. Garrison, 528 F.2d 309, 310 (4th Cir. 1975).

appropriate fee or *in forma pauperis* application,⁴ regardless of whether the plaintiff is represented by a lawyer.

The South Carolina Bar Association Lawyer Referral Service can be contacted at:

950 Taylor Street
Columbia, SC 29201
1-800-868-2284

NOTICE OF RIGHT TO CONSENT TO THE EXERCISE OF CIVIL JURISDICTION BY A MAGISTRATE JUDGE AND APPEAL OPTION⁵

In the District Court you have the option of having a United States Magistrate Judge conduct any or all proceedings in your civil case, including a jury or non-jury trial, through to the entry of a final judgment.

Upon filing your case in the District Court for South Carolina, it will be initially referred to a Magistrate Judge. However, your decision to consent, or not to consent, to the referral of your case to a United States Magistrate Judge for *all* proceedings is entirely voluntary. In addition, only if *all* the parties to the case consent to such reference to a Magistrate Judge will the reference occur.

An appeal from a judgment entered by a Magistrate Judge may be taken directly to the United States Court of Appeals for the Fourth Circuit in the same manner as an appeal from any other judgment of a district court.

LARRY W. PROPES
CLERK

[The form for consenting to the Magistrate Judge conducting all proceedings in the case is enclosed in the packet entitled, "FORMS FOR FILING CASES *PRO SE* IN THE UNITED STATES DISTRICT COURT, DISTRICT OF SOUTH CAROLINA." See **FORM H.**]

⁴ See page 8 for more information.

⁵ See Title 28, Chapter 43, Section 636 of the United States Code.

INFORMATION ON FILING⁶ A CIVIL ACTION ON YOUR OWN BEHALF

*The following information is provided to give you some help with court procedures and requirements. An additional packet (FORMS FOR FILING CASES PRO SE IN THE UNITED STATES DISTRICT COURT, DISTRICT OF SOUTH CAROLINA), with forms referred to herein, is available from the Clerk's Office and our website (www.scd.uscourts.gov). Each case filed with the court is unique and must satisfy certain legal standards. You should not rely on this information to identify those standards. You should be especially mindful that there are certain time limits within which a lawsuit must be brought, or in which to answer lawsuits brought by others. **Failure to observe those time limits will be harmful and may result in the case being decided against you.** You are encouraged to seek the assistance of an attorney to ensure that your case is properly prepared and filed.*

- ▶ These instructions are designed to help you understand basic court procedures in civil actions. **COURT STAFF CANNOT GIVE YOU LEGAL ADVICE!**
- ▶ These instructions do not cover all circumstances or all types of cases. It is your responsibility to comply with the Federal Rules of Civil Procedure (FRCP), the Local Rules of this District, and any statutes and rules that may apply to your particular case.

Legal Resources

This manual contains references to both the FRCP and the Local Rules. These Rules govern the way civil actions proceed in the United States District Courts located in South Carolina. The FRCP are available for viewing (but not check-out) at the library of the University of South Carolina School of Law (located in Columbia), which is open to the public. The Clerk's Office also has a book of these Rules available for viewing at the Intake Section.

Both the FRCP and the Local Rules are available for viewing on the public access computer terminal in the Intake Section of the Clerk's Office. You may also view the FRCP from the court's website: www.scd.uscourts.gov The Local Rules are also available for viewing at the court's website. In addition, there are internet sites devoted to providing legal material on-line.

⁶ "Filing" is discussed on pages 8-10.

How to prepare a "complaint"

The first step in filing a lawsuit is to prepare a "complaint." The person filing the complaint is the "plaintiff." The party whose actions are being complained about is the "defendant." The court has a form for filing a complaint, which is located in the packet entitled, "**FORMS FOR FILING CASES *PRO SE* IN THE UNITED STATES DISTRICT COURT, DISTRICT OF SOUTH CAROLINA**" (the "*Pro Se* Forms"). The complaint form is **FORM A**. You are not required to use this form, but may find it helpful.

If you prepare your own complaint, it must be either legibly handwritten or typed, double-spaced. All pages should be 8-½ x 11. The first page should begin with the case "caption."⁷ The caption includes the name of the court, the names of all the parties,⁷ and a space for the case number. (Court staff will fill in the case number once a number has been assigned.)

Sample caption for complaint:

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA	
David Smith,	Civil Action No. _____
Plaintiff,	
v.	
James Jones; Acme Products, Inc.,	
Defendants.	

The body of the complaint is made up of numbered paragraphs. Explain the facts of your claim,⁸ the legal basis of your claim, why you believe this court has jurisdiction of your claim (*i.e.*, why you brought the suit in this particular court), and what relief you want. **It is not necessary to include case names or statute numbers.**

⁷ The use of "et al." is not acceptable in the caption of the complaint.

⁸ The "claim," or "cause of action," is the set of facts upon which the party relies to ask the court for "relief." "Relief," or "remedy," is the assistance or benefit that the party seeks from the court.

At the end, sign and date the complaint. Underneath your signature, type or print your full name, address, phone number, and fax number (if you have one). This information must appear on every “pleading,”⁹ “motion,”¹⁰ or other paper you file with the court.

Answering the Rule 26.01 Interrogatories

The Rules of the United States District Court require that parties provide information at the beginning of a case. These are called “Rule 26.01 Interrogatories.” You must answer these questions in writing when you file your Complaint.

The questions contain a number of legal terms that you may not know. To assist you in answering these Interrogatories, the following general explanations are provided.

Personnel of the United States District Court are strictly prohibited from providing legal advice to parties in cases pending before the Court. Therefore, it is very important that you read these explanations carefully and answer the questions accurately to the best of your knowledge.

Questions

- (A) State the full name, address and telephone number of all persons or legal entities who may have a subrogation interest in each claim and state the basis and extent of said interest.**

Explanation: (See the “Glossary” for a formal definition.) A “subrogation interest” is a legal term that describes a situation in which someone has paid money to you or on your behalf for damages caused by another person. For example, if you suffer injury in a car wreck caused by another person and your insurance company pays your medical bills, then your insurance company would have a “subrogation interest” equal to its payments made for your bills if you sue and recover money for those bills from the other driver.

⁹ “Pleadings” consist of the complaint, an “answer” (to the complaint); a “reply” (to a counterclaim); an answer to a cross-claim; a third-party (party other than the plaintiff or defendant) complaint; and a third-party answer. See FRCP Rule 7(a). The pleadings set forth the parties’ formal allegations of their respective claims and defenses.

¹⁰ A “motion” is an application made to the judge, generally to obtain a ruling or an order directing something to be done.

When you answer Question (A), list the name, address and telephone number of any person or organization that has made payments on your behalf as described above.

(B) As to each claim, state whether it should be tried jury or non jury and why.

Explanation: A legal action consists of claims, defenses and counter-claims. These are important concepts for lawyers. In representing yourself, you may not be able to identify separate claims in your case. Therefore you need to decide simply whether you want your case to be tried before a jury or before a judge alone (a non-jury trial).

Your answer to Question (B) will **not** automatically guarantee the trial of your choice. There are legal issues that bear on the type of trial, including issues raised by the defendant(s). To answer the Interrogatories, all you need to do is provide one of the two following responses and briefly state why you want a jury trial or a non-jury trial:

“I want a jury trial” or “I want a non jury trial”

(C) State the basis for asserting the claim in the division in which it was filed (or the basis of any challenge to the appropriateness of the division).

Explanation: The United States District Court for the District of South Carolina consists of **Divisions**. These **Divisions** are identified and explained at the website of the Court, <http://www.scd.uscourts.gov/Resources/division.asp>. The **Division** to which your case will be assigned depends upon a number of factors and legal determinations.

In order to answer Question (C), you need to provide to the Court the following information:

- (1) the County or Counties in which the defendant(s) reside(s) or does or do business;
- (2) the County or Counties in which the event(s) happened that led to your claim; and
- (3) the County in which you resided when the event(s) happened that led to your claim.

(D) Is this action related in whole or in part to any other matter filed in this District, whether civil or criminal? If so, provide:

- (1) a short caption and the full case number of the related action;
- (2) an explanation of how the matters are related; and

(3) a statement of the status of the related action.

Please disclose any cases which may be related regardless of whether they are still pending.

Note: Counsel should disclose any cases which may be related regardless of whether they are still pending. Whether cases are related such that they should be assigned to a single judge will be determined by the Clerk of Court based on a determination of whether the cases: arise from the same or identical transactions, happenings or events; involve the identical parties or property; or for any other reason would entail substantial duplication of labor if heard by different judges.

Explanation: Although Question (D) is lengthy, the information required is quite simple. If your present case involves facts or parties that were involved in another civil or criminal case in this Court you must provide the information called for by (1)(2) and (3). For (1) provide the names of the plaintiffs and the defendants as well as the case number for each of your prior cases. For (2) explain how any prior cases are related to your current case. For (3) state whether or not the prior action is still pending (open), closed or on appeal – if you know. It does not matter if the case is still open or has ended.

How to prepare the “summons”

Along with your complaint, you must submit a “summons” form for each defendant named in the complaint. There is a summons form included in the *Pro Se* Forms (**FORM E**); to obtain additional forms, you may either copy the form provided or contact the Clerk’s Office. Fill in the caption, leaving the case number blank. Where the form says, “**YOU ARE HEREBY SUMMONED** and required to serve upon PLAINTIFF’S ATTORNEY (name and address),” you should write your name and address.¹¹

The number of days a defendant will have to answer the complaint will vary depending on the type of claim and the defendant. The court will fill in the correct number of days the defendant has for filing an answer.

NOTE: THE TIME FOR FILING AN ANSWER RUNS FROM THE DATE THE COMPLAINT AND SUMMONS ARE *SERVED*,¹² NOT FROM THE DATE THE SUMMONS IS ISSUED.

The cost for filing a lawsuit

¹¹ Although this form has two pages, you do not need to fill in the “Return of Service” until after service has been “effected.”

¹² For an explanation of “service,” see pages 11-12.

The cost for filing a lawsuit is \$150.00 and must be paid when the complaint is filed. If paying by check or money order, the payee should be the "Clerk, United States District Court." The court cannot accept credit cards.

If you are unable to pay the filing fee, you may file an "Application to Proceed without Prepayment of Fees and Affidavit." This form is also referred to as an "Application to Proceed *In Forma Pauperis*"¹³ or an "IFP Application." It is included in the *Pro Se* Forms (**FORM C**). If you file this Application with the complaint, you will not be required to pay the filing fee at that time. **HOWEVER, IF THE COURT DENIES YOUR APPLICATION, YOU WILL BE REQUIRED TO PAY THE FILING FEE BEFORE BEING ALLOWED TO PROCEED WITH YOUR LAWSUIT.**

When completing the form, it is very important that you truthfully answer all questions relating to your income, assets, and liabilities. If you fail to provide complete and accurate information, your request may be denied. If, during the course of the lawsuit, the court discovers the Application was not truthful, or if your financial condition changes, the court may withdraw the permission to proceed IFP and require payment.

How to "file" your lawsuit – in five steps

1) COMPLAINT

Provide the court with --

- the original complaint, and:
 - ▶ a copy for the court
 - ▶ a copy for each defendant named in the complaint
 - ▶ a copy for yourself, if you would like to have the court stamp the copy

If a defendant is either an agency of the United States, or an officer or an employee of the United States who is being sued for acts or omissions related to his/her employment, you must also provide the following:

- ▶ a copy for the United States Attorney General
- ▶ a copy for the United States Attorney in Columbia, South Carolina

EACH COPY MUST BE IDENTICAL TO THE ORIGINAL.

¹³ "*In forma pauperis*" means literally, "in the character or manner of a pauper." It describes the permission given to a person unable to pay the filing fee to proceed without paying the costs or fees of the court.

2) SUMMONS

Provide to the court a summons for each defendant named in the complaint.

If a defendant is either an agency of the United States, or an officer or an employee of the United States who is being sued for acts or omissions related to his/her employment, you must also provide a summons for:

- ▶ Attorney General of the United States
5111 Main Justice Building
10th Street & Constitution Avenue, NW
Washington, D.C. 20530

- ▶ United States Attorney for the District of South Carolina
1441 Main Street
Suite 500
Columbia, SC 29201

3) CIVIL COVER SHEET (*see Pro Se* Forms, **FORM B**).

This is simply an informational form used by the court when opening your case. Fill in as much information as you know and sign it.

4) ANSWERS TO RULE 26.01 INTERROGATORIES

5) PAYMENT OF THE FILING FEE *OR* THE IFP APPLICATION

PLEASE LET THE CLERK KNOW IF AN EMERGENCY SITUATION EXISTS WHEN YOU FILE A DOCUMENT.

If for any reason you need to file a document after regular office hours, a drop box has been placed at each of the courthouses in Columbia, Charleston, Florence, and Greenville. The drop boxes have marked thereon the words, "Clerk's office, U.S. District Court, Filing after 5:00 p.m. Only." Documents placed in a drop box will be considered to have been filed on that business day.

Documents can be filed in any division in the district that accepts filings. However, to expedite processing, please file your documents according to the following list:

<u>If your case arises out of an action that occurred in or near:</u>	<u>then file your case in:</u>
Aiken (Division 1)	Columbia
Anderson (Division 8)	Greenville

Beaufort (Division 9)	Charleston
Charleston (Division 2)	Charleston
Columbia (Division 3)	Columbia
Florence (Division 4)	Florence
Greenville (Division 6)	Greenville
Greenwood (Division 8)	Greenville
Orangeburg (Division 5)	Columbia
Rock Hill (Division 0)	Columbia
Spartanburg (Division 7)	Greenville

What the court does

If you submit the appropriate number of copies of the necessary forms, a case will be “opened.” Opening a case involves assigning a case number and a magistrate judge; entering basic information on the court’s computerized docketing system; and making up a file folder. Once your complaint is assigned a case number, everything you receive from the court about your case will have the case number on it.

Once a case is opened, it is sent to the assigned magistrate judge for his/her review. Only after the magistrate judge has reviewed the case, determined that all the required forms have been submitted, and found the case to have a legal and factual basis, will the case be allowed to proceed and the summons(es) “issued.” A plaintiff will usually hear from the court with regard to his/her case within a month after its filing.

Although you have the right of access to this court, you do *not* have the right to proceed on a “frivolous” claim. THE COURT HAS THE ABILITY, AND THE DUTY, UNDER BOTH STATUTORY AND CASE LAW, TO DISMISS A CLAIM IT DEEMS TO BE FRIVOLOUS.¹⁴

¹⁴ Under 28 U.S.C. § 1915(e)(2)(B), a district court may dismiss a case brought IFP upon a finding that the action “fails to state a claim on which relief may be granted” or is “frivolous or malicious.” A finding of frivolity can be made where the complaint “lacks an arguable basis either in law or in fact.” Denton v. Hernandez, 504 U.S. 25, 31 (1992). Hence, under § 1915(e)(2)(B), a claim based on a meritless legal theory may be dismissed on motion of the court. Neitzke v. Williams, 490 U.S. 319 (1989); Allison v. Kyle, 66 F.3d 71 (5th Cir. 1995).

Service

“Service of Process” refers to the procedure of notifying a defendant that a lawsuit has been filed, what it is about, and the time for filing an answer. Service must be accomplished as specified in FRCP Rule 4 and Local Rule 4.01. *A case cannot proceed against a defendant who has not been served!*

Generally, service requires giving each defendant the summons issued by the court, a copy of the complaint, a copy of Rule 26.01 Answers, and copies of any motions filed along with the complaint. This is called “effecting” service.

If you pay the filing fee, you will be responsible for effecting service. The summons(es) will be returned to you, along with the copy(ies) of the complaint for the defendant(s). The two most common ways to effect service are (i) certified mail and (ii) personal delivery. Certified mail involves sending the defendant the required documents via certified mail, “Restricted Delivery – show to whom, date and address of delivery.”

Personal delivery involves directly giving the defendant the required documents. Service may be made by anyone who is at least 18 years old and not a party in the case. There are many private “process servers” who will serve legal papers for a fee. They are listed in the telephone book.

NOTE: If the defendant is a company that does business in this state, service should be made on the “registered agent” for the company. The registered agent is a person or company with a South Carolina address who is authorized to accept service on behalf of the company. You can find out if a company has a registered agent by contacting the office of the South Carolina Secretary of State, Division of Business Filings, (803) 734-2489.

FRCP Rule 4 requires certain parties to cooperate in saving costs of service of the summons and complaint. Thus, these documents can, in some cases, be served via a “Waiver of Service of Summons.” Service in this manner is accomplished by the plaintiff providing a defendant with a “Notice of Lawsuit and Request for Waiver”; two (2) copies of a “Waiver of Service of Summons” (for the defendant’s response); and a copy of the complaint and the Rule 26.01 Answers. The Notice and Waiver forms can be found in the *Pro Se* Forms (**FORM F** and **FORM G**). If you send a defendant these forms, you must also include a self-addressed, stamped envelope (or other means of “cost-free” return).

Note: This method of service cannot be used with a person who is not “competent”¹⁵ or who is an “infant.”¹⁶

The defendant must return the executed Waiver of Service of Summons form to the plaintiff within thirty (30) days of the date the Notice of Lawsuit and Request for Waiver of Service was mailed to the defendant. The defendant’s answer is due sixty (60) days from the date the plaintiff mailed the Waiver. (The deadlines are calculated from the date of mailing, *not* from the date of receipt.)

The person who effects service must file with the court a “return of service.” This is a statement made under oath that service was effected, and explaining when service was made and by what method.

If you file an IFP Application and the court grants it, the court will arrange for the United States Marshals Service to effect service for you. You will be sent the proper forms (USM-285), which you will need to fill out for each defendant. Only one defendant’s name should appear on each form. You must provide the particular defendant’s complete address on each individual form. The “TYPE OF PROCESS” is “Civil.” You should write *your* name and address where the form says, “SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW”. **The providing of sufficient, accurate, and complete information on the Forms USM-285 is YOUR responsibility!**

⊕IF SERVICE IS NOT EFFECTED WITHIN 120 DAYS FROM THE DATE THE COMPLAINT IS FILED, THE CASE MAY BE DISMISSED.

What happens after service is effected

Once a defendant is served, several things may happen. The defendant may file an answer, file a motion or, perhaps, do nothing. If a defendant files an answer, the judge will issue a scheduling order. A scheduling order sets deadlines for doing or filing certain things in the case. It may include deadlines for completing discovery,¹⁷ filing motions, and/or filing status reports.

¹⁵ A person is “competent” when he/she is of legal age and without mental disability or incapacity.

¹⁶ An “infant” is a person who is a minor.

¹⁷ “Discovery” refers to the process of obtaining facts and information about the case from the other party in order to prepare for trial. *See* pages 15-16; FRCP Rules 26-37; Local Rules 26.01-37.02.

There are a number of different motions which may be filed before an answer is filed. If the motion is a routine request for an extension of time in which to answer, it will most likely be granted unless you promptly file an opposition, giving a good reason why it should not be granted. For other, more involved motions, unless directed otherwise, you will be allowed more time to file a response.

If a defendant does not file something within the time for filing a response, you may ask the court to enter a default judgment under FRCP Rule 55.

ⓈIF YOU HAVE A CHANGE OF ADDRESS WHILE YOUR CASE IS PENDING, YOU MUST SO NOTIFY THE COURT AND ALL PARTIES IN WRITING. FAILURE TO DO SO MAY RESULT IN DISMISSAL OF YOUR CASE!

Filing other documents

Everything you send to the court (other than your initial documents) should have the case number on it. You may use a shortened version of the case caption on everything other than the complaint. The shortened version includes the name of the first plaintiff, the name of the first defendant, and, of course, the case number.

If you are filing a motion or memorandum (other than those that relate to discovery), you must file the original and a copy with the court. *Do not* file any motions or memoranda that are longer than 35 pages unless you receive special permission from the court; most motions and memoranda should be considerably shorter. You must sign every pleading, motion and memorandum that you file.

At no time should any communication about or filing in your case be sent directly to a judge. If you want to ask the court to do something, you must file a motion. All pleadings and motions should be filed with the Clerk of Court and a copy should be mailed to each attorney representing a defendant, or directly to a defendant if he/she does not have an attorney.

There are certain matters about which you should try to reach an agreement with the opposing party before asking the court to issue an order. If you want an extension of time in which to file something or are having a disagreement about discovery, try to speak first with counsel for the other party *before* filing a motion.

All documents must be on 8-½" by 11" paper, double-spaced. It is acceptable to use "et al." in all documents except the complaint. The documents should be titled, *e.g.*, "Answer"; "Motion." Any affidavits (sworn statements) should be separate from any other document and, in addition to the caption, should include the name of the person swearing to the affidavit.

You must include a certificate of service¹⁸ on everything you file (after your complaint) showing when you mailed copies and to whom they were sent. The certificate of service appears at the end of the pleading or motion. You do *not* need to state in the certificate of service that copies were sent to the Clerk of Court.

Sample Certificate of Service:

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA	
David Smith,	C/A No. 0:01-000-12AB
Plaintiff,	
v.	
James Jones, et al.,	
Defendants.	
<u>Certificate of Service</u>	
I hereby certify that on this 1 st day of June, 2002, a copy of the foregoing Motion was mailed, postage prepaid, to Samuel Barrister, Esquire, 100 West Main Street, Columbia, South Carolina 29201, counsel for Defendant James Jones.	
_____ [signature]	

¹⁸ See FRCP Rule 5.

Discovery

Discovery is the process of obtaining information and evidence relevant to your case.¹⁹ A scheduling order may contain a deadline for the completion of discovery. There are many different ways to obtain discovery. The most common are: interrogatories (written questions), requests for production of documents, and depositions.²⁰ Most discovery requests are directed to the parties in the case, although under certain circumstances, discovery can be obtained from non-parties. Conduct of discovery is governed by FRCP Rules 26-37 and Local Rules 26.01-37.02.

When conducting discovery, be sure to make your requests promptly so that the party responding has sufficient time before the discovery deadline to answer or object. It is also important to respond to any discovery requests you receive by the deadline indicated unless the other party agrees, *in writing*, that you may have additional time. See Local Rules 29.01 and 37.01.

⊕ A party who does not respond to a discovery request may be subject to sanctions, which may include dismissal of your action if you are the plaintiff, or a judgment against you if you are the defendant.

Do not send copies of discovery requests or responses to the court for filing or for information unless: (i) you are directed by the court to do so, or (ii) you are filing the discovery document in support of or in opposition to a motion. See Local Rules 5.01 and 7.04. Send a ***copy*** of the request to the party expected to respond and keep the original. Send the ***original*** of any responses you provide to the party requesting discovery and keep a copy for your records.

¹⁹ There are some types of cases (social security appeals, for example) in which discovery does not occur.

²⁰ During a deposition, one party (if represented by a lawyer, through his/her/its lawyer) asks oral questions of the other party or of his/her/its witness. This testimony is given under oath and reduced to writing (a "transcript") in preparation for trial. The deposition is not taken in open court, but usually in a lawyer's office. The person who is deposed is called the "deponent."

Subpoenas.²¹

THE CLERK OF COURT CANNOT GIVE *PRO SE* PARTIES BLANK SUBPOENAS. If you want the court to issue subpoenas, you must submit a motion explaining who you want to subpoena and why. Please file the motion at least two weeks before you will need the subpoenas. You will need to have the subpoena served in accordance with FRCP Rule 45. Expenses related to the subpoena, such as witness fees, mileage costs and copying costs, are to be paid by the person requesting the subpoena. See FRCP Rule 45.

IF YOU LOSE!

BEFORE filing a lawsuit, you should consider the possible consequences of losing. Under some circumstances, the winning party may ask the court to order you to pay his/her/its attorneys' fees. The winning party is also entitled to seek certain costs that it incurs during the lawsuit, such as witness fees, copying costs, and the costs of deposition transcripts. In some cases, these costs can easily add up to thousands of dollars. It is common for a winning party to seek its costs from the losing party.

Appeals

You may appeal a final decision of this court to the United States Court of Appeals for the Fourth Circuit. See Federal Rule of *Appellate* Procedure 4 for applicable time limits. The filing fee for an appeal is \$255.00. If you cannot afford to pay the fee, you may file a motion for leave to proceed *in forma pauperis* on appeal. To file an appeal, you must file with the Clerk of *this* court a notice of appeal, along with one copy for the court and an additional copy for each attorney or other *pro se* party in the case. You must also submit to this court either the filing fee or a motion for leave to proceed IFP. A form notice of appeal is available from the Clerk, but a sample is set forth below.

²¹ A subpoena is a command to appear at a certain time and place to give testimony upon a certain matter. A subpoena duces tecum requires production of books, papers and other things.

Sample Notice of Appeal:

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

David Smith, C/A No. 0:01-000-12AB
Plaintiff,
v.
James Jones, et al.,
Defendants.

Notice of Appeal

Notice is hereby given that the plaintiff in the above-captioned case hereby appeals to the United States Court of Appeals for the Fourth Circuit from the Judgment entered in this action of the 15th day of December, 2002.

[signature]
David Smith
123 Lolly Lane
Columbia, SC 29203
(803) 555-6789

GLOSSARY

Affidavit: a sworn statement.

Answer: the response to the **complaint**.

Caption: appears on the top of the first page of any document submitted to the court. On the **complaint**, includes the name of the court, the names of all the **parties**, and a space for the case number. For documents other than the complaint, a shortened version can be used that includes the name of the first **plaintiff**, the name of the first **defendant**, and the case number.

Civil case: a case that is not criminal.

Cause of action: the set of facts upon which the **party** relies to ask the court for "relief." *See also claim.*

Certificate of service: statement filed with the court showing when you mailed copies of a document and to whom the copies were sent. The certificate of service appears at the end of the **pleading** or **motion**.

Claim: the set of facts upon which the **party** relies to ask the court for relief. *See also cause of action.*

Competent: as to a **party**, when he/she is of legal age and without mental disability or incapacity.

Defendant: the party whose actions are being complained about in the **complaint** by the **plaintiff**.

Deponent: the person who is **deposed**. *See deposition* below.

Deposition: where one party (if represented by a lawyer, through his/her/its lawyer) asks oral questions of the other party or of his/her/its witness. This testimony is given under oath and reduced to writing in preparation for trial. The deposition is not taken in open court, but usually in a lawyer's office.

Discovery: the process of obtaining facts and information about the case from the other **party** in order to prepare for trial.

Effect: as to **service**, providing the **party(ies)** to the case with copies of documents.

Entity: This legal term refers to any thing other than a natural person -- that is, an organization (such as a company, club, partnership, governmental agency).

Et al.: “and others.”

File: describes the process necessary to begin the case in the court. Also refers to the process of submitting a document to the court.

Frivolous: as to a lawsuit, lacking a factual and/or a legal basis.

In forma pauperis: literally, “in the character or manner of a pauper.”
Describes the permission given to a person to proceed without paying the costs or fees of the court.

Infant: a person who is a legal minor.

Interrogatories: written questions directed towards a **party**, usually as part of **discovery**.

Mediation: an informal and confidential process in which a neutral third party (mediator) facilitates settlement discussions between the parties. Any settlement is voluntary, and the parties lose none of their rights to trial by judge or jury in the absence of voluntary settlement. The mediator has no authority to make a decision or impose a settlement.

Motion: an application made to the judge, generally to obtain a ruling or an order directing something to be done.

Party: someone who is participating in the lawsuit, usually either the **plaintiff** or the **defendant**.

Plaintiff: the person filing the **complaint**.

Pleadings: documents that consist of the **complaint**, **answer**; **reply**; answer to a cross-claim; **third-party** complaint; and third-party answer. *See* FRCP Rule 7(a). The pleadings set forth the parties’ formal allegations of their respective claims and defenses.

Pro se: “For one’s own behalf”; a person who does not retain a lawyer and appears for him/herself in court.

Process servers: individuals who **serve** legal papers for a fee.

Registered agent: a person or company with a South Carolina address who is authorized to accept **service** on behalf of a company.

Relief: the assistance or benefit that the **party** seeks from the court. *See also* **remedy**.

Remedy: the assistance or benefit that the **party** seeks from the court. *See also* **relief**.

Reply: response to a counterclaim.

Return of Service: a statement made under oath and filed with the court that **service** of the **complaint** was **effected**, and explaining when service was made and by what method.

Scheduling order: document issued by the judge that sets deadlines for doing or **filing** certain things in the case. It may include deadlines for completing **discovery**, filing **motions**, and/or filing status reports.

Serve: to provide the other **party(ies)** with a copy of a document that has been **filed**. Each document filed with the court must be served on the other party(ies).

Service or Service of Process: as to the **complaint**, the procedure of notifying a **defendant** that a lawsuit has been filed, what it is about, and the time for filing an **answer**.

Subrogation: The right of one who has paid an obligation that another person or organization should have paid to be repaid by that person or organization who actually caused the damages.

Summons: form issued by the court and **served** by the **plaintiff** to inform the **defendant** that a case has been brought against the defendant.

Subpoena: a command to appear at a certain time and place to give testimony upon a certain matter.

Subpoena duces tecum: requires production of books, papers and other things.

Third-party: a **party** to the case other than the **plaintiff** or **defendant**.

Transcript: where sworn testimony is reduced to writing.