

# PRACTICE IN FEDERAL COURT

## A Guide for New Lawyers

*by Palmer G. Vance, II<sup>1</sup>*

The fundamentals of practice and procedure in state and federal court are quite similar. Differences between the two systems are often subtle, but an understanding of these differences is essential to the successful federal practitioner. To the extent possible, this chapter will not repeat the basic information contained in the chapters on civil and criminal procedure. Rather, it will concentrate on providing information specific to practice and procedure in the United States District Courts for the Eastern and Western Districts of Kentucky and, to a lesser extent, the United States Court of Appeals for the Sixth Circuit.<sup>2</sup> While much of this information is applicable to other courts as well, the practitioner should always investigate local practice and procedure when appearing in a new forum. Due to space limitations, this is necessarily a general treatment of the subject, but it should provide the new practitioner with either the information needed or directions on where to look to find that information.

### **I. Admission to Practice**

It is very simple to become admitted to practice before the federal courts in Kentucky. Both the Eastern and Western Districts, as well as the Sixth Circuit, provide for ad-

mission by application. Copies of the application forms for the Eastern and Western Districts may be found in the appendix to this chapter. To request the application forms for the Sixth Circuit contact the court clerk's office in Cincinnati.

To gain admission in either district court, an attorney must be admitted to practice in Kentucky.<sup>3</sup> The attorney must also be sponsored by a member in good standing of that court's bar. The application for admission must be accompanied by the sponsor's affidavit and an application fee (currently \$35.00). Both districts permit attorneys to be admitted by mail without appearing in court to take the oath of admission. However, the federal judges in both districts welcome the opportunity to swear in new attorneys, and the new practitioner may wish to appear in person with their sponsor to take the oath of admission. This is an excellent opportunity for a new attorney to be introduced to the judge.

### **II. General Information and Practice Pointers**

#### **A. Federal Rules of Procedure**

The beginning point for practice in the federal district courts in Kentucky is with the various rules of the court. As in every federal court, the Federal Rules of Civil Procedure,

the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence are applicable. In addition, special rules may apply to certain cases, such as the Rules Governing Section 2254 (Habeas Corpus) Cases in the United States District Courts. Practice before the Sixth Circuit necessarily involves the Federal Rules of Appellate Procedure.

#### **B. Local Rules**

Particularly important to practice in the Eastern and Western Districts are the local rules of the courts. Fortunately for practitioners, the courts have promulgated Joint Local Rules which apply in both districts. Copies of the Joint Local Rules for the Eastern and Western Districts of Kentucky are available from all court clerk's offices in each district.

As with any set of procedural rules, it is critically important that practitioners become familiar with the rules and their applicability and effect. It is always wise to review applicable rules each time they are relevant to a particular case.

The Joint Local Rules govern several aspects of practice before the courts which are not covered in the various federal rules of procedure. Examples include:

1. Criteria for determining the jury division where a complaint should be filed;
2. Instructions for preparation of

process;

3. Guidelines for motion practice, including guidelines for resolution of discovery disputes and time periods for filing responses to motions;
4. Page limitations and citation requirements for briefs and memoranda;
5. Guidelines for discovery practice; and,
6. Special rules for Social Security cases.

There are many other provisions contained in the Joint Local Rules and a new lawyer expecting to practice in federal court would be well-advised to review all of the rules before beginning practice. All judges and magistrate judges will expect each lawyer practicing before them to be intimately familiar with the Joint Local Rules.

If practicing before the Sixth Circuit Court of Appeals, the practitioner should review both the Rules of that court and its Internal Operating Procedures. Copies of both are available from the court clerk's office in Cincinnati.

### **C. Courtroom Decorum**

Federal courts are often more formal than their state counterparts. Although formality may vary depending upon the judge, attorneys in the Eastern District will always be expected to stand when addressing the court or opposing counsel or when questioning a witness. In the Western District, attorneys must use the podium when questioning witnesses. In both instances, the judge may permit an attorney to move about the courtroom, but leave of court should always be requested.

Some of the judges require that

all exhibits be handled by the court security officers and do not ordinarily permit attorneys to approach a witness testifying from the witness stand. It is always wise to obtain a scouting report on the level of formality a particular judge expects. In the alternative, it is better to err on the side of being too formal, than to be too informal in court.

The Joint Local Rules have provisions governing which persons are permitted inside the bar of the courtroom. In addition, certain electronic devices, such as cameras and tape recorders are not permitted in federal courthouses. This includes portable dictation equipment, so make certain that hand held tape recorders do not inadvertently appear in the courthouse.

## **III. Civil Practice**

### **A. Jurisdiction**

The jurisdiction of federal courts in civil cases is covered in every first year Civil Procedure course in law school. However, it is worth restating the basics.

United States District Courts have essentially two types of subject matter jurisdiction. Federal question jurisdiction is governed by 28 U.S.C. 1331 which provides that the district courts shall have original jurisdiction of all civil actions which arise under the Constitution, laws, or treaties of the United States. Diversity jurisdiction is governed by 28 U.S.C. 1332 which provides that the district courts shall have original jurisdiction of all civil actions between citizens of different states, including foreign states. For a district court to exercise its diver-

sity jurisdiction the amount in controversy in the case must exceed \$50,000, excluding interest and costs.

There are other, more specialized jurisdiction statutes, including, among others, those governing admiralty, civil rights, and antitrust cases. However, the vast majority of civil cases in the federal courts in Kentucky are brought under either 1331 or 1332.

### **B. Venue**

While jurisdiction determines whether a court has the inherent power to hear a particular case, venue is concerned with where the case may be filed. Venue is governed by 28 U.S.C. 1391.

In diversity cases, venue is appropriate in any judicial district where all of the plaintiffs reside, or where all of the defendants reside, or where the claim arose. In federal question cases, venue is appropriate in any judicial district where all of the defendants reside or where the claim arose. Note that in federal question cases, the residence of the plaintiffs is not a factor in determining venue.

Assuming venue is appropriate in either the Eastern or Western District of Kentucky, the case must then be filed in the appropriate venue within the district. The Eastern District is divided into six jury divisions--Ashland, Covington, Frankfort, Lexington, London and Pikeville. The Western District is divided into four jury divisions--Bowling Green, Louisville, Owensboro and Paducah. These jury divisions are not statutory and may be changed by order of the court. The counties currently as-

signed to the jury divisions in each district are set out in Joint Local Rule 2.

Joint Local Rule 4(b)(1) governs the assignment of civil actions to the appropriate jury division and provides that the clerk of the court shall make the assignment at the time the action is filed. When preparing to file a complaint in either the Eastern or Western District be certain to check this rule to determine the proper jury division for filing.

### **C. Filing a Complaint**

The attorney filing a complaint must provide the clerk's office with the original and enough copies for service upon all of the named defendants. The attorney is also responsible for preparing the applicable process forms which accompany the complaint when it is served on the defendants. The clerk's office maintains blank copies of these forms and they should be acquired before the complaint is filed so that the completed forms may be presented to the clerk for signing and sealing at the time the complaint is filed. If some or all of the defendants are to be served via the Kentucky Secretary of State's office, the attorney filing the complaint is responsible for preparing the necessary documents for service by certified mail, and must provide the clerk's office with the necessary envelopes for the mailing.

In addition to preparing the process forms, the attorney filing the complaint will also be required to complete a Civil Cover Sheet. This form is also provided by the clerk's office and elicits relevant information about the case including the basis for the court's jurisdiction and

the nature of the suit. Copies of the Summons in a Civil Action and the Civil Cover Sheet may be found in the appendix to this chapter.

The filing fee is currently \$120 for a civil action. This fee is subject to revision and it is wise to check with the clerk's office prior to filing a complaint to determine the applicable fees. A complete listing of fees for other types of filings is available in the clerk's office.

Service of process may be accomplished in much the same manner as in state court. Review Federal Rule of Civil Procedure 4 for the requirements.

### **D. Removal from State Court**

Often a plaintiff will file a case in state court which can be removed to federal court. This usually occurs when there is diversity of citizenship between the parties, but it can occur in federal question cases as well.

Determination of whether an action is removable to federal court is made under 28 U.S.C. 1441. The procedure for removal is contained in 28 U.S.C. 1446. Removal must occur within 30 days after the defendant receives a copy of the complaint, or within 30 days after the action otherwise becomes removable. Remember that a case can never be removed more than one year after the action was commenced.

To remove an action to federal court, all defendants must consent to its removal. Removal is accomplished by filing a notice of removal in district court which contains a short and plain statement of the grounds for removal. The notice of removal must also attach copies of

all process, pleadings, and orders which have been served on the defendant in the state court action. Removal is ordinary made to the jury division containing the county where the action was filed. After filing the notice of removal, the removing party is required to serve copies of the notice on all adverse parties and with the clerk of the court from which the case was removed.

### **E. Discovery**

Since the Kentucky Rules of Civil Procedure are substantially similar to the Federal Rules, discovery practice in federal court is much the same as in state court. However, practitioners should be aware that amendments to the Federal Rules of Civil Procedure which impact upon discovery practice were pending before Congress at the time of this writing. Final action should occur some time before the end of 1993. Again, it is always wise to review the applicable rules before proceeding with discovery.

The Joint Local Rules have several provisions relating to discovery practice. For example, certain discovery documents do not have to be filed with the court clerk. These include interrogatories, requests for production of documents, and requests for admissions. However, the answers to these discovery requests must be filed with the clerk. In addition, requests for admission must be filed if no response is filed within the time provided by Fed. R. Civ. P. 36.

The Joint Local Rules limit each party to 30 interrogatories and thirty requests for admission to another party. Each subpart is counted as a

separate interrogatory or request. To exceed this number, the attorney must request leave of court.

Often disputes among the parties will arise during the course of discovery. Joint Local Rule 6(a)(2) requires that the parties make a good faith effort to resolve any discovery dispute before seeking court intervention. If it is necessary to file a motion for a discovery order, the party filing the motion must attach a certification of counsel that counsel have conferred and have been unable to resolve the dispute.

Early in the course of the litigation, usually after the pleadings are joined, most judges in both the Eastern and Western Districts now either require the parties to file status reports or attend a status conference. The information gleaned from these reports or conferences permit the judge to establish a schedule for the progression of the litigation. This will usually include deadlines for the completion of discovery and the filing of dispositive motions, and may include dates for pretrial conferences and the trial. Although these deadlines are not set in stone, practitioners are advised to seek extensions of the deadline as soon as they appear necessary. Judges do not look kindly on motions for an extension of time which are filed on the day of the applicable deadline or after the deadline has expired.

#### **F. Motion Practice**

The two most important differences between motion practice in state court and federal court are the absence of a motion hour or rule day and the time limits for the filing of responses and replies in opposition and support of motions. Unlike

in state court, most federal judges in Kentucky do not have a regular time set aside for hearing motions. Rather, the vast majority of all motions in federal court are decided on the written briefs. While a party can request a hearing on a given motion, the judges simply do not have the time to conduct hearings on most motions. Indeed, it will often be several weeks, or even months, after a motion becomes ripe before a judge will issue a ruling. The burgeoning federal criminal docket has reduced the amount of time judges have for consideration of civil cases.

The Joint Local Rules set time limits for responding to motions and for replying to the response. A party has fifteen days to respond to a motion. The party filing the motion has eleven days after the response is filed to file any reply memorandum in support of the motion. The reply memorandum is limited to those matters newly raised in the response.

All motions, except for routine motions such as for an extension of time, must be accompanied by a supporting memorandum. Memoranda supporting or opposing a motion are limited to 40 pages. Reply memoranda are limited to 15 pages. Memoranda which exceed 15 pages must contain an introduction, a statement (or counterstatement) of points and authorities, a statement (or counterstatement) of the case, an argument, and a conclusion.

All motions filed in district court must be accompanied by a proposed order. The clerk is required by the Joint Local Rules to refuse to accept any motion for filing if it does not attach a proposed order.

Given the heavy docket, it is advisable to keep motions and memo-

randa as brief as possible. Most judges will greatly appreciate memoranda which come directly to the point and do not waste time and space on irrelevant asides. Editorial comments about the merits of the opposing argument or the character of opposing counsel should be avoided at all costs. These comments appear much too often and are neither appreciated nor welcomed by the court.

#### **G. Trial**

A civil trial in federal court is basically conducted in the same manner as in state court. Differences in trial procedure usually result from the personal preference of the judge. If an attorney is unsure as to the procedure before a particular judge, it is essential to learn the appropriate procedure before the trial begins.

Voir dire practices will vary depending upon the judge. Some judges prefer to conduct most of the voir dire themselves. Other judges will leave most of the voir dire to the attorneys. In the Eastern and Western Districts most civil juries will consist of six jurors. However, the judge may impanel one or more additional jurors to ensure that at least six are available to consider the case. The use of alternates is no longer permitted by Fed. R. Civ. P. 48. Consequently, if jurors are not excused during the trial for illness or any other reason, all jurors who remain at the close of trial, so long as it is not less than six nor more than twelve, will participate in the decision.

One major difference the attorney may encounter in federal court is the order of the closing argument.

In state court, the defendant delivers the first closing with the plaintiff going last. Most federal judges ask the plaintiff to give the first argument. The defendant follows, and the plaintiff is then permitted to give a rebuttal argument, if the attorney has reserved rebuttal time. Another difference may involve the reading of the jury instructions. While in state court the instructions are read before the closing arguments, many federal judges read the instructions after the closing arguments. Again, it is wise to know in advance which practice a particular judge will follow.

#### **H. Magistrate Judges**

Both the Eastern and Western Districts have several full-time United States Magistrate Judges. The Magistrate Judges are invaluable resources for the judges and the practitioner.

Given the increasing criminal docket in federal court, parties in civil cases can move their cases along more quickly by consenting to practice the case before a Magistrate Judge. This consent must be in writing, and the clerk's offices have forms available for this purpose. There are several advantages in consenting to trial before a Magistrate Judge. These include the opportunity for an earlier trial date. Since a Magistrate Judge cannot conduct criminal trials, his or her docket is often less crowded and a civil trial date is unlikely to be bumped in favor of another proceeding. When the parties consent to a Magistrate Judge conducting all proceedings in a civil case, they may choose between an appeal to the district judge or a direct appeal to the Sixth Circuit. If the appeal is to the district judge then

any further review by the Sixth Circuit will be discretionary.

The parties may also consent to have a Magistrate Judge consider particular motions in cases without a complete transfer. In addition, a judge may refer dispositive motions to Magistrate Judges for issuance of a report and recommendation. The parties then have the opportunity to file objections to the report and recommendation with the presiding judge.

Magistrate Judges are also used in civil cases to conduct settlement conferences and other types of pre-trial management, including rulings on non-dispositive motions. For the general duties of Magistrate Judges review 28 U.S.C. 636.

### **IV. Criminal Practice**

#### **A. Preliminary Proceedings**

A criminal proceeding may begin with the filing of a complaint against the defendant. The complaint must contain the essential facts constituting the offense charged. If the complaint demonstrates that there is probable cause to believe that an offense has been committed, then a warrant of arrest is issued by an appropriate judicial officer.

Once in custody, the defendant makes an initial appearance before the Magistrate Judge. At that time, the defendant is entitled to a preliminary examination by the Magistrate Judge who will determine whether there is probable cause to believe that an offense has been committed. The finding of probable cause may be based in whole or in part on hearsay evidence, and the defendant is given the opportunity to

introduce evidence. If the Magistrate Judge determines that probable cause exists, the defendant must be held to answer in district court. If the Magistrate Judge determines that probable cause is lacking, the complaint must be dismissed and the defendant discharged. However, this dismissal does not prevent the United States from instituting a subsequent prosecution for the same offense.

If the Magistrate Judge determines that the defendant must be held to answer in district court and orders the defendant detained, the defendant is entitled to a detention hearing. Release conditions are governed by 18 U.S.C. 3142, and are beyond the scope of this chapter.

#### **B. Indictment or Information**

There are two methods of bringing formal charges against a criminal defendant in federal court. A federal grand jury may return an indictment against the defendant. In that instance, the United States Attorney presents testimony and evidence to the grand jury and asks the grand jury to return the indictment charging specific criminal violations. Grand jury proceedings are secret, but indictments are returned to a United States Magistrate Judge in open court. However, the Magistrate Judge may seal the indictment until the defendant is in custody or has been released pending trial.

An information is similar to an indictment, but it does not come from a grand jury. Rather, an information is a charge made by the United States Attorney. Defendants have a constitutional right to have their case presented to a grand jury. However, a charge may proceed by infor-

mation if the defendant waives indictment in open court after having been advised of the nature of the charge and of the right to indictment.

An indictment may be returned or an information filed against a person who has been charged in a complaint as discussed above. However, a person who has not been arrested and has made no previous court appearance in relation to the charges may also be charged by indictment or information.

### **C. Arraignment**

The arraignment is conducted in open court and a formal arraignment consists of reading the indictment or information to the defendant or stating the substance of the charge and calling on the defendant to enter a plea to the charge or charges. The defendant may plead guilty, not guilty, or nolo contendere. Usually, if an defendant intends to plead not guilty, formal arraignment will be waived as a time-saving measure. If bond is appropriate, the amount and terms will be set at the arraignment.

If the defendant desires to plead guilty, the Federal Rules of Criminal Procedure outline the process for taking the plea. Ordinarily, the court will read the indictment or information to the defendant and ask the defendant to state what facts lead the defendant to believe that the crime was committed as charged.

Guilty pleas are entered in the vast majority of all criminal cases in the Eastern and Western Districts of Kentucky. While the pleas are not always entered at the time of the arraignment, after defense counsel and the United States Attorney have the opportunity to discuss the case, a guilty plea usually results. If the defendant

has already pleaded not guilty but wishes to change the plea, the attorney need only file a motion for re-arraignment. The court will take the guilty plea at the re-arraignment and will follow the same procedure outlined in Fed. R. Crim. P. 11.

### **D. Pre-trial Procedure**

Most of the judges in the Eastern and Western Districts have standard pretrial orders which are entered in criminal cases. These orders govern reciprocal discovery between the parties and set forth the obligations for disclosure of information by the government under applicable caselaw and statute.

The Joint Local Rules require that motions and supporting memoranda in criminal cases be filed within 11 days after arraignment, or, if there has been no arraignment when a trial date is set, not later than 11 days after the defendant receives notice of the trial date. An opposing memorandum must be filed within eleven days from the date of service of the motion, and any reply memorandum must be filed within eleven days of the date of service of the opposing memorandum. Extensions of these deadlines are only available upon motion made to the court. The parties may not extend the deadlines by agreement.

### **E. Trial**

The Speedy Trial Act mandates that the trial of a defendant pleading not guilty begin within 70 days from the date the indictment or information was filed or the date of the defendant's first appearance before a judicial officer whichever comes last. The Act sets forth certain periods of time which are excludable from the 70 day period.

Although the trial may take place more than 70 days after the arraignment or first appearance, it can only do so to the extent there have been excludable days. The guidelines for excludable time are contained in 18 U.S.C. 3161.

Jury trials are the norm in criminal proceedings. However, in certain circumstances a criminal matter may be tried to the court without a jury. Alternate jurors are still used in criminal trials, and the court may seat up to six alternates.

The voir dire process is much the same as in civil trials. In criminal trials, the prosecution is required to give the first closing argument, but has the opportunity for rebuttal. Depending upon the judge, the instructions may be read before or after the closing arguments.

### **F. Sentencing**

Unlike in state court, sentencing in federal court is exclusively the province of the trial judge. Sentence is imposed under the United States Sentencing Guidelines. The Sentencing Guidelines are complicated, and the law governing them is constantly modified through court decisions. A new practitioner handling criminal cases in federal court would be well-advised to either spend a significant amount of time studying the Sentencing Guidelines or should take a seminar in the subject.

### **G. Magistrate Judges**

In criminal matters either full-time or part-time Magistrate Judges are used for several types of proceedings as outlined above. This principally includes initial appearances and probable cause hearings, detention hearings, receipt of



returned indictments from the grand jury, and other pretrial hearings. In addition, the Magistrate Judges have jurisdiction over a petty offense (misdemeanor) docket and may conduct all proceedings in misdemeanor cases.

## **V. Appellate Practice**

The United States Court of Appeals for the Sixth Circuit sits in Cincinnati and is composed of judges from Kentucky, Michigan, Ohio and Tennessee. Kentucky is currently represented by Judges Boyce Martin and Danny Boggs of Louisville, Judge Eugene Siler of London, and Senior Judge Pierce Lively of Danville.

As mentioned previously, practice before the Sixth Circuit is governed by the Federal Rules of Appellate Procedure, the Rules of the Sixth Circuit, and the Internal Operating Procedures of the Sixth Circuit. These rules detail the steps necessary to perfect and pursue an appeal in this court. An in depth discussion is beyond the scope of this chapter, but there are several excellent resources available in addition to the rules, including "Oral Argument in the Sixth Circuit," 19 Toledo Law Review 229 (1988).

## **VI. Opportunities for Practice in Federal Court**

The new lawyer interested in federal practice will find several opportunities available to gain valuable court experience. These usually occur through court appoint-

ment.

### **A. Civil Cases**

In civil cases the courts do not have the authority to appoint counsel unless the attorney being appointed is willing to take such a case. The cases involved are usually pro se, that is the plaintiff has filed the case without benefit of counsel. Many of these are civil rights cases for which a fee could be paid if the plaintiff prevails in the action. Other cases are strictly pro bono, although the attorney may be reimbursed for some expenses. The new practitioner interested in voluntary appointments in these cases should advise the clerk's office.

### **B. Habeas Corpus Cases**

The courts are authorized to make appointments of counsel to assist state and federal prisoners with habeas corpus challenges to their conviction or sentence. When a habeas corpus proceeding warrants appointment of counsel, the attorney will likely be presented with very interesting issues, often of a constitutional nature. Attorneys are compensated at the same rate as for an appointment in a criminal case under the Criminal Justice Act.

If an attorney is interested in habeas corpus appointments but does not wish to take appointments in criminal cases, the attorney should make the clerk's office aware of this preference. Some judges are willing to maintain a separate list of counsel who will only take habeas corpus cases.

### **C. Criminal Cases**

The Criminal Justice Act (CJA) provides for the appointment of counsel to represent indigent defendants in district without a federal

public defender. Neither the Eastern nor the Western Districts in Kentucky have federal public defenders. Appointed counsel under the CJA are paid an hourly rate for both in-court and out-of-court work.

In the Eastern District, attorneys wishing to be placed on the CJA appointment list must complete an application for the jury division in which the attorney wishes to receive appointments. The clerk then sends these applications to the Kentucky Bar Association for a determination of the applicant's standing. If the applicant is in good standing with the KBA, the name is sent to the appropriate judge who will then enter an order placing the applicant on the CJA list. The appointments are rotated among the attorneys on the list as much as possible.

The process in the Western District is similar with an application being required in the Louisville Division. In the other divisions, the interested attorney should simply send a letter to the appropriate clerk's office. The interested attorney will then be either interviewed by a Magistrate Judge or simply reviewed, depending upon the jury division. Once the process is complete, the applicant's name will be placed on the appointment list.

Appointments are also available to represent indigent defendants in the Sixth Circuit. For information on these appointments, contact the clerk's office in Cincinnati.

## **VII. Final Thoughts**

This chapter is, by necessity, a brief treatment of federal practice and procedure in Kentucky. It is hoped that this information will as-

sist the new practitioner in learning the basics of federal court practice. However, there is no substitute for experience and with experience will come the familiarity and skill which will transform the new practitioner into a veteran of federal court.\*

\*The author gratefully acknowledges the assistance provided by the seminar materials and outline prepared by United States Circuit Judge Eugene E. Siler, Jr., and United States Magistrate Judge Peggy E. Patterson for their seminar on Federal Court Practice for the 1992 Kentucky Bar Association Convention.

<sup>1</sup>The author is an associate in the Louisville office of Boehl, Stopher & Graves, and is a former law clerk to United States District Judge Joseph M. Hood of the Eastern District of Kentucky.

<sup>2</sup>Practice before the United States Bankruptcy Court and rare beasts such as the United States Tax Court, the Court of Federal Claims, and others, is beyond the scope of this chapter.

<sup>3</sup>Limited admissibility is permitted for one case (*pro hac vice*), but the Local Rules require that an attorney admitted for a limited purpose associate with local counsel.

<sup>4</sup>Personal jurisdiction is beyond the scope of this chapter.



# 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 file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

an answer to the complaint which is herewith served upon you, within \_\_\_\_\_ days after service of this summons upon 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.

\_\_\_\_\_  
CLERK

\_\_\_\_\_  
DATE

\_\_\_\_\_  
BY DEPUTY CLERK

## RETURN OF SERVICE

Service of the Summons and Complaint was made by me <sup>1</sup>	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
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## 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.

## 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

### DEFENDANTS

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

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

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

### II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

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

### III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

### IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.

### V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

### VI. 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

Appeal to District Judge from Magistrate Judgment

☐ 7

### 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

# 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 firm name, address, telephone number, and attorney or 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 is 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. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause.

**V. 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 IV above, 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.

**VI. 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's decision.

**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 relating 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.

**United States District Court**  
**EASTERN DISTRICT OF KENTUCKY**

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IN RE: ADMISSION OF ATTORNEY TO PRACTICE — SPONSOR'S AFFIDAVIT AND MOTION

**SPONSOR'S AFFIDAVIT**

State of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_, being duly sworn, deposes and says:

That he was duly admitted to practice before the United States District Court for the Eastern District of Kentucky on \_\_\_\_\_.

That this affidavit is submitted in support of the application of \_\_\_\_\_ for admission to the Bar of the United States District Court for the Eastern District of Kentucky.

That he has read the application and believes the statements therein to be true and correct.

That he has known the applicant since \_\_\_\_\_ and that his opinion of the applicant's character, reputation and competency is that \_\_\_\_\_

That your deponent vouches for the personal and professional integrity of applicant.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Office Address)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

**SPONSOR'S MOTION**

(To be completed only where admission by mail is sought)

\_\_\_\_\_, sponsor for applicant who has indicated to sponsor his desire to be admitted to practice before this Court by a mail procedure rather than an appearance in open Court, moves that applicant be admitted as an attorney and counselor of this Court.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Office Address)

**United States District Court  
EASTERN DISTRICT OF KENTUCKY**

RE: APPLICATION FOR ADMISSION — AUTHORIZATION AND RELEASE

I, \_\_\_\_\_, whose Social Security Number is

\_\_\_\_\_, having filed an application for admission to the Bar of this Court consent to have an investigation made as to my moral character, professional reputation and fitness for the practice of law and such information as may be received reported to the admitting authority. I agree to give any further information which may be required in reference to my past record.

I also authorize and request, every person, firm, company, corporation, governmental agency, court, association or institution having control of any documents, records and other information pertaining to me, to furnish to the Clerk, United States District Court for the Eastern District of Kentucky any such information, including documents, records, bar association files regarding charges or complaints filed against me, formal or informal, pending or closed, or any other pertinent data, and to permit the said Clerk to inspect and make copies of such documents, records, and other information.

I hereby release and discharge, the state admission agency of the state(s) of my admission, its agents and representatives, and any person so furnishing information from any and all liability of every nature and kind arising out of the furnishing or inspection of such documents, records, and other information to or by the said Clerk.

I have read the foregoing document and have furnished all information fully and frankly. The information is complete and true of my own knowledge.

\_\_\_\_\_  
(Signature of Applicant)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_



United States District Court  
EASTERN DISTRICT OF KENTUCKY

The Application of

(Name)

(Mailing Address)

for Admission to Practice.

I hereby apply for admission to practice before the United States District Court for the Eastern District of Kentucky. I ask that my application and accompanying motion be considered and acted upon by any District Judge.

I represent that I am an attorney of good moral and professional character and eligible for admission to the Bar of this Court.

I have been admitted to practice before the following named Court or Courts on the date or dates respectively indicated:

I am a member in good standing of the Bar of each Court, as above indicated, to which I have been admitted. I have not been disbarred nor suspended from practice in any Court in any jurisdiction, nor disciplined in any fashion. (If there is any exception, the applicant shall so indicate, and attach a detailed explanation together with copies of any opinions, order or letters of discipline.)

I was born on \_\_\_\_\_ at \_\_\_\_\_  
(If not a citizen of the United States by birth, state date and place of naturalization. \_\_\_\_\_)  
Date: \_\_\_\_\_

(Signature of Applicant)

Home Address:

Telephone No. \_\_\_\_\_  
Office Address:

Telephone No. \_\_\_\_\_

State of \_\_\_\_\_  
County of \_\_\_\_\_

I, \_\_\_\_\_, do solemnly swear that I will demean myself as an attorney and counselor of this Court, uprightly and according to law; and that I will support the Constitution of the United States.

I do further swear that the statements in the foregoing application are true.

(Signature of Applicant)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(An applicant who chooses to affirm may alter the form so to read.)

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE

IN RE: ADMISSION TO PRACTICE BY WRITTEN MOTION

ORDER

This matter having come before the Court on Motion of the Applicant  
\_\_\_\_\_, to be admitted to practice before the  
United States District Court for the Western District of Kentucky, and the Court  
having determined after reviewing the sponsors affidavit that the Applicant  
is qualified to be admitted;

IT IS HEREBY ORDERED that \_\_\_\_\_ be admitted  
to practice before the United States District Court, Western District of  
Kentucky this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
JUDGE, UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY

OATH TO BE ADMINISTERED WHEN REQUEST FOR ADMISSION IS PERFECTED BY MAIL:

YOU DO SOLEMNLY SWEAR THAT YOU WILL DEMEAN YOURSELF AS SOLICITOR,  
COUNSELOR, ADVOCATE, PROCTOR AND ATTORNEY OF THIS COURT, AND THAT YOU  
WILL SUPPORT AND DEFEND THE CONSTITUTION OF THE UNITED STATES - SO HELP  
YOU GOD.

\_\_\_\_\_  
Applicant

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
My Commission Expires \_\_\_\_\_

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY

IN RE: ADMISSION OF ATTORNEY TO PRACTICE - SPONSOR'S AFFIDAVIT AND MOTION

SPONSOR'S AFFIDAVIT

State of \_\_\_\_\_

County \_\_\_\_\_

\_\_\_\_\_, being duly sworn, deposes and says:

That he was duly admitted to practice before the United States District Court for the Western District of Kentucky on \_\_\_\_\_.

That this affidavit is submitted in support of the application of \_\_\_\_\_ for admission to the Bar of the United States District Court for the Western District of Kentucky.

That he has read the application and believes the statements therein to be true and correct.

That your deponent vouches for the personal and professional integrity of the applicant and in his opinion is qualified to be admitted to practice before the Bar of the Western District of Kentucky.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_

My Commission Expires \_\_\_\_\_

SPONSOR'S MOTION

\_\_\_\_\_, sponsor for applicant who has indicated to sponsor his desire to be admitted to practice before this Court by mail procedure rather than an appearance in open Court, moves that applicant be admitted as an attorney and counselor of this Court.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_

UNITED STATES DISTRICT COURT

OFFICE OF THE CLERK

WESTERN DISTRICT OF KENTUCKY

JESSE W. GRIDER  
CLERK

231 U.S. COURTHOUSE BUILDING  
LOUISVILLE, KENTUCKY 40202

601 W. BROADWAY

IN RE: ADMISSION TO PRACTICE BY WRITTEN MOTION

IN REPLY TO YOUR INQUIRY ABOUT ADMISSION TO PRACTICE BEFORE THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY, PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE AND RETURN IT TO THIS OFFICE ALONG WITH THE ATTACHED SPONSOR'S AFFIDAVIT AND MOTION AND THE \$35.00 ADMISSION FEE.

NAME OF APPLICANT \_\_\_\_\_

HOME ADDRESS \_\_\_\_\_

OFFICE ADDRESS \_\_\_\_\_

OFFICE TELEPHONE \_\_\_\_\_ SOCIAL SECURITY NO. \_\_\_\_\_

DATE OF BIRTH \_\_\_\_\_ PLACE OF BIRTH \_\_\_\_\_

COLLEGE ATTENDED \_\_\_\_\_ DEGREE & DATE \_\_\_\_\_

LAW SCHOOL ATTENDED \_\_\_\_\_ DEGREE & DATE \_\_\_\_\_

DATE ADMITTED TO PRACTICE BEFORE SUPREME COURT OF KENTUCKY \_\_\_\_\_

OTHER STATE AND FEDERAL COURTS IN WHICH ADMITTED TO PRACTICE AND DATE OF  
ADMISSION \_\_\_\_\_

NAME OF SPONSOR \_\_\_\_\_

DATE ADMITTED \_\_\_\_\_ PHONE NO. \_\_\_\_\_

Pursuant to Local Rule 3(a) admission shall be perfected by the granting of a written motion for admission made by a member in good standing of this Court. Your Sponsor must complete the attached Affidavit and Motion. Upon acceptance by the Court and prepayment of the admission fee, said applicant shall be deemed admitted to the Western District of Kentucky. Please tender your check in the amount of \$35.00, payable to Clerk, U.S. District Court, at the time of submission of application and sponsor's motion. Upon admission, a certificate of admission and copy of the Local Rules will be mailed to you.