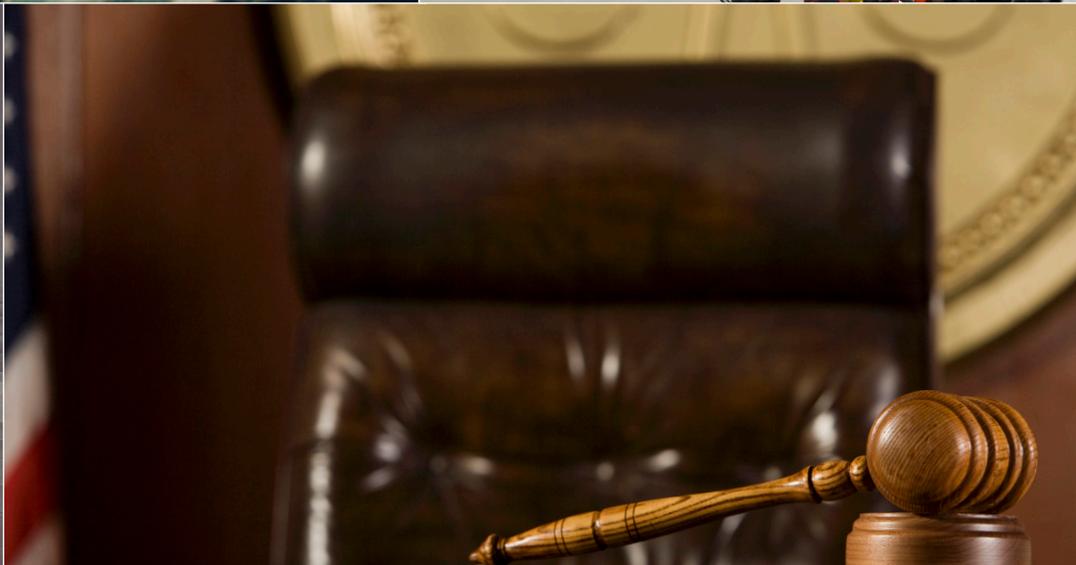




# A Journalist's Guide to the Federal Courts



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A  
**Journalist's Guide**  
to the  
**Federal Courts**

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Washington D.C. 20544  
[www.uscourts.gov](http://www.uscourts.gov)

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# Introduction



Federal judges and the journalists who cover them share an important goal: They want the public to receive accurate and understandable information about the federal courts and their work.

The media perform an important and constitutionally protected role by informing and educating the public. The media also serve a time-honored role as the public's watchdog over government institutions, including the courts. Likewise, courts uphold many of the legal protections that enable

journalists to perform their jobs. *A Journalist's Guide to the Federal Courts* is intended to assist reporters who cover appellate, district, and bankruptcy courts – the cases, the people, and the process. It also offers basic information for journalists writing about the federal court system as a whole. The guide does not discuss the Supreme Court of the United States. Go to the Supreme Court website (<https://www.supremecourt.gov/>) for helpful resources.

The *Guide* is intended to help working reporters perform their professional duties; it is not a comprehensive overview of the federal courts. The U.S. Courts website offers additional online resources about the federal Judiciary (<http://www.uscourts.gov/about-federal-courts>).

The *Guide* does not constitute a statement of Judicial Conference policy and is not binding on any federal court or its judges or employees. Individual courts have varied approaches to media relations. Journalists should familiarize themselves with the customs, practices, and rules of the courts they cover.

In addition to this *Guide*, you may consult [www.uscourts.gov](http://www.uscourts.gov) and the Office of Public Affairs at the Administrative Office of the U.S. Courts, (202) 502-2600. Search for specific court location and website information using the Court Locator (<http://www.uscourts.gov/court-locator>).

# Federal Court: Media Basics

Federal courts are public institutions, and with rare exceptions, members of the media and public can enter any courthouse and courtroom. However, whether you're reporting about a high-profile case or the federal courthouse is part of your beat, the Judiciary has distinct differences from the other branches of the federal government, which often affect a reporter's experience. Here are some notable differences:

- **Legal terms.** Reporters don't need a law degree to cover the federal courts, but it is essential to understand and be able to translate legal jargon and procedures for readers or viewers. When in doubt, check the Glossary of Legal Terms (<http://www.uscourts.gov/glossary>).
- **Each court is unique.** While some rules and statutes govern all federal courts, circuits and districts have substantial autonomy to determine local rules and practices. Understanding the rules will inform your coverage and ease your newsgathering.
- **Impartiality.** Federal judges adhere to strict ethics guidelines and recuse themselves from cases that constitute a conflict of interest or in which their impartiality might reasonably be questioned. Cases are assigned to judges randomly in appellate, district, and bankruptcy courts to ensure fairness and integrity.
- **Official proceedings, not interviews.** In keeping with ethics rules, federal judges do not grant interviews about active cases. Judges "speak" through comments made in open court or through written decisions. Reporters must rely on the official case proceedings as their primary information source.

## **MEDIA ACCESS IN BRIEF**

Journalists have the same access to courthouses and court records as other members of the public. This access is governed by a mix of federal laws, federal judicial policy, and circuit or district courts' local rules and practices.

**Court documents.** Most documents are filed electronically in appellate, district, and bankruptcy courts, and are available through the Public Access to Court Electronic Records service, better known as PACER ([www.pacer.gov](http://www.pacer.gov)). PACER documents also can be read at no cost from a public terminal in the clerks' offices. A list of

documents not available to the public can be found at Accessing Court Documents on page 11.

**Interviews.** Judges, court staff, and jurors may not discuss active cases. The clerk's office usually is a court's designated point of contact with the media.

**Courthouse security.** Members of the public must pass through a metal detector and agree to any additional requested screening by court security officers to enter a federal courthouse. Some courts permit expedited entry of reporters with recognized credentials. The clerk of court can tell you if this is available.

**Courtroom access.** Most court proceedings are open to the public on a first come, first served basis. When in doubt, consult with the clerk's office before a trial or hearing to learn whether there are special media arrangements, such as reserved courtroom seating or a separate media room.

**Closed sessions.** Certain proceedings are always closed to the public and media. By rule, only a witness, attorneys for the government, and a court reporter may be present when a grand jury sits, and jury deliberations and attorney-client meetings also occur in private. These rules are designed to protect the integrity of the process and preserve the right to a fair and impartial trial. Proceedings that deal with classified information, trade secrets, and ongoing investigations often are closed. Judges also may meet privately with the attorneys in chambers.

Most pretrial hearings are open to the public, but either party may file motions asking the judge to close certain proceedings. Media organizations may choose to file an opposing motion when this occurs.

**Off limit areas.** Journalists should not cross from the public gallery into the well of the courtroom, which is generally marked by a short rail, without permission from the judge or a court employee. Throughout the courthouse, journalists should obey posted restrictions and instructions from court security officers. Failure to obey courthouse rules may result in sanctions.

Journalists should not cross from the public gallery into the well of the courtroom, which is generally marked by a short rail, without permission from the judge or a court employee.

## RECORDING AND BROADCASTING

The use of cameras in federal courtrooms is governed by the Judicial Conference of the United States and Federal Rules of Criminal Procedure. Find the full history of Judiciary policy on cameras at <http://www.uscourts.gov/about-federal-courts/cameras-courts>.

In specific instances, such as investitures, naturalizations, or other ceremonial proceedings, a judge may permit the public and media to take photographs and conduct video and audio recording inside a courthouse. And by local rule, the Second and Ninth Circuit Courts of Appeals will consider media requests to record or broadcast an appellate proceeding. Guidelines are available at the Second ([http://www.ca2.uscourts.gov/media\\_information.html](http://www.ca2.uscourts.gov/media_information.html)) and Ninth Circuit ([https://www.ca9.uscourts.gov/news\\_media/](https://www.ca9.uscourts.gov/news_media/)) websites.

Outside these limited exceptions, the media may not photograph, videotape, or record live federal court proceedings.

Courts of appeals may provide audio or video recordings of appellate hearings, and rules are available on each circuit's website. The Ninth Circuit website provides live, streaming video of oral arguments.

In addition, three district courts in the Ninth Circuit – the District Court for the Northern District of California, the District Court of Guam, and the District Court for the Western District of Washington – provide court-recorded video of some civil trials. These videos, authorized by Judicial Conference policy, can be seen at Cameras in Courts (<http://www.uscourts.gov/about-federal-courts/cameras-courts>).



Even in courts that permit cell phones and other electronic devices, trial-related activity may not be recorded.

Some district and bankruptcy court proceedings use audio recording instead of a court reporter, and those recordings are available to the public for a fee (See Exhibits, Transcripts, and Courtroom Audio on page 22). A judge also may permit courtroom video and audio recording for security purposes, and for other purposes of judicial administration, but these recordings are not available to the public.

It is important to note that the prohibition on recording includes the use of cell phones and other personal electronic devices, even in courthouses where the public is permitted to carry such devices. Journalists must not record or photograph trial-related activity, either in the courtroom or in areas where closed-circuit audio or video is available. Violation of this rule can result in significant court sanctions.

Under local rules, courts may specify areas away from the courtroom where cameras can be used for interviews and TV reports. These areas usually are outside the courthouse, on or just outside federal court property.

## **ELECTRONIC DEVICES**

Circuits and districts set local rules on whether the public and media may bring portable electronic communication devices (such as cell phones, laptops, and tablets) into their courthouses, and where and whether such devices may be used. For guidance on personal electronic devices, consult the local court's rules or administrative/standing orders on its website, or contact the clerk's office.

Even if a court generally permits electronic devices, individual judges still may prohibit them inside courtrooms. Judges also may limit the applications that may be used on such devices. For example, even if devices are permitted by court rules, a judge may prohibit live blogging or use of social media applications inside the courtroom.

# Courthouse Contacts

Only a few federal courts have public information officers (PIOs) who interact with the news media on a daily basis. Absent a PIO, media interested in district court cases should contact the clerk of court or division manager (or district executive in those courts that have such a position). These employees either can help directly or can refer reporters to the court's designated media contact.

While these court employees will assist media regarding access and process, they are not a substitute for covering a hearing. Ethical restrictions and the sheer quantity of cases prevent court staff from giving reporters substantive updates about courtroom proceedings.

In cases before a court of appeals, media should start with the circuit executive or clerk of court. Bankruptcy case inquiries should be directed to the bankruptcy court clerk.

In many instances, answers to reporter questions can be found on court websites, through electronic case files in PACER, or at [www.uscourts.gov](http://www.uscourts.gov).

## JUDGES

Journalists are likely to encounter four categories of federal judges. District court judges, who oversee most federal trials, and court of appeals judges, who hear appellate cases in panels, are appointed for life under Article III of the Constitution. They often are referred to as "Article III judges." Magistrate judges handle many district court pretrial proceedings, while bankruptcy judges exclusively handle bankruptcy cases. Magistrate and bankruptcy judges have fixed terms but may be reappointed. See Judges and Judicial Administration on page 41.

Under the Code of Conduct for United States Judges (<http://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges>), all judges must "avoid public comment on the merits of pending or impending actions" in cases before them or on appeal. Don't call judges, or their judicial assistants and law clerks, with questions about a case.

Many judges participate in bar association programs and other public events, and you may introduce yourself in such settings. Some judges also will talk informally to

journalists about non-case-related matters. If you are new to covering a federal court, it is appropriate to call a judge's chambers and ask whether you can drop by to introduce yourself. Profiles of newly appointed judges, new chief judges, and stories about courthouse projects and innovations are not uncommon. Judges may talk with reporters for these types of stories, but they are not obligated to do so. Some federal judges also may discuss procedural aspects of a case, while others decline to be interviewed by journalists on virtually any topic. Biographical information on many judges can be found on a court's website. Brief biographies of every Article III judge can be found at <https://www.fjc.gov/history/judges>.

To learn more about federal judges, see Judges and Judicial Administration on page 41.

## CLERK OF COURT'S OFFICE

The clerk of court's office (or "clerk's office") performs a wide range of administrative duties, including management of the flow of cases. As the court's official custodian of the record, the clerk can assist members of the public and media accessing court records. The clerk also is responsible for providing courtroom deputy clerks, who support judges in the courtroom.

The clerk of court, or his or her staff, is an excellent source for routine procedural information, but not for questions of substance or law. Clerks also do not interpret documents or courtroom proceedings.

## LAWYERS

For questions of legal substance, start with the lawyers in the case. The media are free to request interviews with prosecutors and defense lawyers, during or after a trial. However, the attorneys have no obligation to speak with the media, and in fact may decline to do so because of ethical or strategic considerations. The same is true of plaintiff's and defense counsel in a civil case.

If the attorneys trying the case decline to talk with you, you may call lawyers who have handled similar cases, or professors at a local law school.

**Federal prosecutors.** A U.S. attorney's office (<http://www.usdoj.gov/usao/offices/index.html>), which is the local prosecutor's office for the

For questions of legal substance, start with the lawyers in the case. If they won't talk, call lawyers who have handled similar cases, or professors at a local law school.

U.S. Department of Justice, tries major criminal cases in district court. This function is part of the executive branch, not the judicial branch. The U.S. attorney, who runs the office, is nominated by the President and confirmed by the U.S. Senate for a four-year term.

Assistant U.S. attorneys ordinarily serve as the government's lawyers in criminal and civil cases. In criminal cases, they often are joined at the courtroom's counsel table by the lead law enforcement agent who investigated the case. Assistant U.S. attorneys sometimes are assisted by counsel from other federal agencies if the case involves an investigation begun by those agencies.

**Defense counsel.** The right to counsel for criminal defendants is guaranteed by the Sixth Amendment of the Constitution. When a criminal defendant cannot afford a lawyer, the court will appoint either a federal public defender, who is a full-time government lawyer, or a Criminal Justice Act (CJA) panel attorney. Panel attorneys are private lawyers who receive an hourly fee from funds Congress provides the Judiciary for this purpose. About 90 percent of defendants in federal court are represented by court-appointed lawyers. Learn more about the federal defender and CJA system at <http://www.uscourts.gov/services-forms/defender-services>.

The defense almost always sits at the table farthest from the jury box. Unless they choose to represent themselves, criminal defendants who can afford it are represented by private counsel.

**Attorneys in civil cases.** There is no constitutional right to counsel in civil cases. In most civil cases that do not involve a government entity, the parties will engage private counsel, although a litigant may be self-represented. Some clerks will, at the direction of the court, assist a litigant in securing counsel who might take a case pro bono (without charging a fee).

In criminal cases, the defense almost always sits at the table farthest from the jury box.

## JURORS

U.S. citizens 18 years or older may qualify to serve on a federal court jury. Judges and attorneys use a process called voir dire to select the jurors who will participate in a case. Typically, 12 jurors are selected for criminal cases and six to eight jurors for civil cases. Jury selection is generally open to media.

During the selection process and trial, jurors usually are identified by number and not name. Jurors are strictly prohibited from discussing cases that are in progress, and you should not contact them, their families, or their close friends. You also should not speak about an active case if you know you are in a juror's presence. Improper interaction with a juror can result in his or her dismissal from a panel. It also can lead to a mistrial, and a judge may choose to impose court sanctions against the responsible journalist.

Unless otherwise ordered by the court, once a trial concludes, you are permitted to speak with jurors, should they choose to do so. The release of juror names is governed by each court's jury plan, which is available either on the court's website or upon written request. Further, by law, a court's chief judge may seal jurors' identities even after a case concludes.

In high-profile cases, judges may have court security personnel escort jurors out of the courthouse to protect them from media attention. You may request, through your contact person in the clerk's office, that the judge ask jurors who are willing to speak to the media to meet at a specified location inside or outside the courthouse after the trial has concluded. That gives journalists the access they want, while providing a controlled environment in which the jurors may feel comfortable. However, jurors have no obligation to speak with the media.

## OTHER DISTRICT COURT PERSONNEL

Numerous other personnel are present in courtroom proceedings, although they do not have an official role in answering media questions.

**Courtroom deputy clerks** generally sit in front of the judge's bench or to the side. In addition to maintaining case files, the courtroom deputy clerk calls cases at the beginning of a hearing, swears in witnesses during trials, and receives exhibits introduced into evidence during a trial.

**Law clerks** work for judges, assisting them with legal research and writing. A law clerk performs most of his or her work in the judge's chambers but also may sit near the bench during court proceedings. Ethical restrictions prohibit law clerks from disclosing any confidential information or commenting on pending actions. It is not unusual for judges to prohibit their law clerks from talking with the media.

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**Court reporters** are responsible for recording transcripts of proceedings. They typically do so by using a stenographic machine, or by speaking into an audio recording hood, which looks like a mask. They typically are court employees, and are paid a salary for recording hearings and trials and providing transcripts to the judge and clerk of court. Court reporters sit in front of the judge, facing the attorneys. Information on how to obtain transcripts is available in Exhibits, Transcripts, and Courtroom Audio on page 22.

In cases that use audio recording instead of court reporters, electronic court recorder operators oversee the electronic sound recording equipment and create electronic log notes of proceedings.

**Court-appointed interpreters**, under the Court Interpreters Act, are present in criminal and civil cases instituted by the United States for defendants and witnesses who speak only or primarily a language other than English. Sign language interpreters also are appointed in such cases when hearing-impaired defendants or witnesses cannot fully understand proceedings or communicate with counsel or the judge. A judge also may appoint a sign language interpreter in proceedings not initiated by the federal government.

**Security personnel** of two types typically are present in a federal courthouse, although neither is employed by the federal Judiciary:

- **Deputy U.S. marshals** are responsible for the custody and transportation of prisoners and the safety of witnesses, jurors, and the judge. Two or more deputy marshals are present whenever a detained criminal defendant is in the courtroom. The deputies usually wear business attire during court proceedings.
- **Court security officers** are responsible for the public's safety in the courthouse. Also known as CSOs, they staff the metal detectors, and at least one CSO generally is present at every civil and bankruptcy hearing. CSOs are contract employees and dress in blue blazers and gray pants.

Deputy marshals and CSOs report to a United States marshal (<http://www.usdoj.gov/marshals>), who oversees the security of the district court, as well as that district's Witness Protection Program and the apprehension of federal fugitives. The President appoints, and the Senate confirms, a U.S. marshal for each federal court district. Marshals report to the U.S. attorney general.

# Accessing Court Documents

The vast majority of documents in federal courts - appellate, district, and bankruptcy - are filed electronically. The media and public may view most of these filings.

## ONLINE ACCESS

Most documents in federal courts - appellate, district, and bankruptcy - are filed electronically, using a system called Case Management/Electronic Case Files (<http://www.uscourts.gov/courtrecords/electronic-filing-cmefc>) (CM/ECF). The media and public may view most filings found in this system via the Public Access to Court Electronic Records service, better known as PACER. Reporters who cover courts should consider establishing a PACER account and becoming familiar with the system. Users can open an account and receive technical support at [www.pacer.gov](http://www.pacer.gov).

Documents not available to the public are discussed in Sealed Documents and Closed Hearings on page 13. Even in public court documents, however, some information is not available. Federal rules require that anyone filing a federal court document must redact certain personal information in the interest of privacy, including Social Security or taxpayer identification numbers, dates of birth, names of minor children, financial account information, and in criminal cases, home addresses.

Once case information has been filed or updated in the CM/ECF system, that information is immediately available through PACER. Some courts provide free automatic case notification through Really Simple Syndication (RSS) feeds or through read-only CM/ECF access. In courts where RSS is available (<https://www.pacer.gov/psco/cgi-bin/links.pl>), PACER users can opt to receive automatic notification of case activity, summarized text, and links to the document and docket report.

For cases that draw substantial media and public interest, some courts have created special sections of their websites, called “Cases of Interest” or “Notable Cases,” where docket entries, court orders, and sometimes, trial exhibits may be posted. Some courts also use an email/text alert service during high-profile cases, to alert reporters to major filings and other information.

## OLDER DOCUMENTS

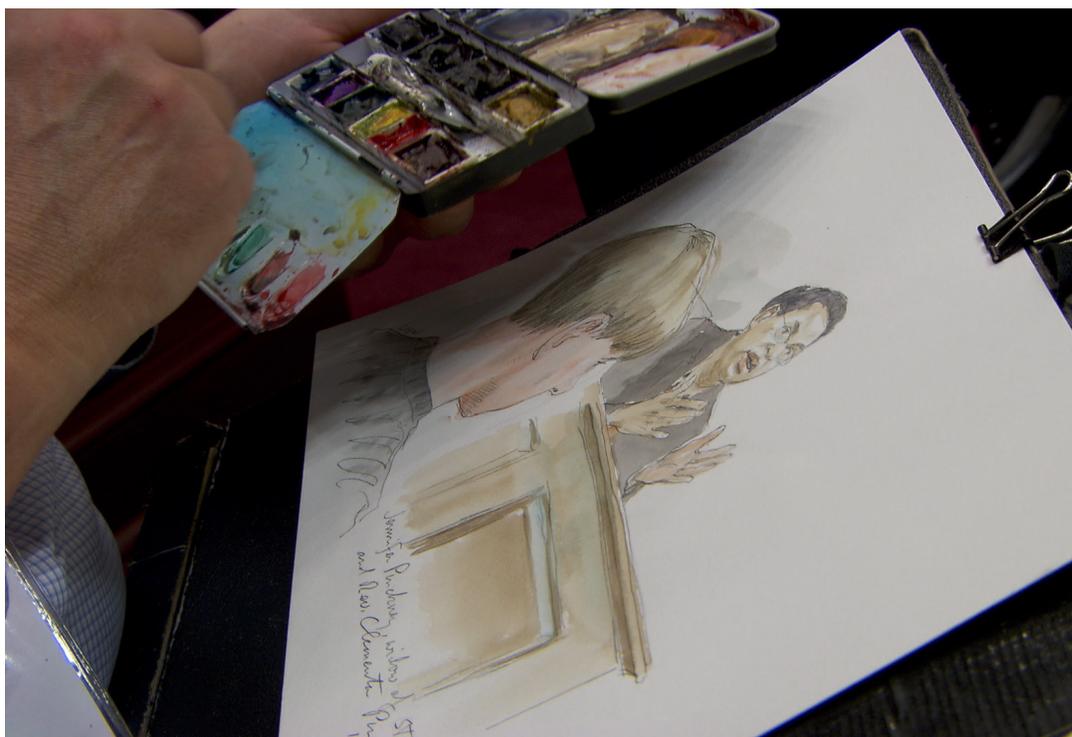
Most documents and docket sheets for cases that opened before 1999 are in paper format and therefore may not be available online. Paper files on closed cases eventually are transferred to the National Archives and Records Administration (NARA), or they are destroyed in accordance with a records retention schedule approved by both the Judicial Conference of the United States and NARA.

Any search for older paper documents should begin by contacting the court where the case was filed. As a secondary source, such documents may be available from NARA.

## USER FEES

User fees are charged to access documents in PACER, and the current fee structure is available at Electronic Public Access Fee Schedule (<http://www.uscourts.gov/services-forms/fees/electronic-public-access-fee-schedule>). Fees are billed quarterly, and all fees are waived if the bill does not exceed a specified limit in a billing quarter.

Written opinions are published on court websites and are available for free on PACER. Many courts also publish free, text-searchable opinions on the Federal Digital System, or FDsys (<https://www.gpo.gov/fdsys/browse/collection.action?collectionCode=USCOURTS>), operated by the U.S. Government Publishing Office.



Electronic records can be viewed in the clerk of court’s office for free, as can any paper records that have not been destroyed or transferred to the National Archives. But per-page fees are charged for printing or copying court documents in the clerk’s office.

## SEALED DOCUMENTS AND CLOSED HEARINGS

Some documents are not ordinarily available to the public. As noted in Privacy Policy for Electronic Case Files (<http://www.uscourts.gov/rules-policies/judiciary-policies/privacy-policy-electronic-case-files>), these include unexecuted summonses or warrants; pretrial bail and presentence reports; juvenile records; documents containing information about jurors; and various filings, such as expenditure records, that might reveal the defense strategies of court-appointed lawyers.

In certain circumstances, judges have the authority to seal additional documents or to close hearings that ordinarily would be public. Reasons can include protecting victims and cooperating informants, and avoiding the release of information that might compromise an ongoing criminal investigation or a defendant’s due process rights.

Some examples:

- Courts sometimes seal documents that contain sensitive material, such as classified information affecting national security or information involving trade secrets.
- Criminal case documents and hearing transcripts are sometimes sealed to protect cooperating witnesses from retaliation.
- The Federal Rules of Civil Procedure provide for protective orders during discovery to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.
- Bankruptcy court records are public, but under the Federal Rules of Bankruptcy Procedure, the court may withhold certain commercial information, any “scandalous or defamatory matter,” or information that may create an undue risk of identity theft or other injury.

Generally, when a party to a case moves to seal a document or to close a hearing, a record of the motion can be found in PACER. As noted

When a party to a case moves to seal a document or to close a hearing, a record of the motion can be found in PACER. Media organizations sometimes file motions opposing such requests.

in Media Access in Brief on page 2, media organizations sometimes file motions opposing such requests.

Civil litigants may ask judges to issue a protective order forbidding parties from disclosing any information or materials gathered during discovery. Deposition records often remain in the custody of the lawyers, and the media do not have a right of access to discovery materials not filed with the court.

When a civil case is settled, that fact is usually apparent from the public record. However, the terms of settlement and any discovery records may remain confidential.

The Federal Judicial Center provides comprehensive explanations of these issues in two downloadable booklets: *Sealing Court Records and Proceedings: A Pocket Guide* (<https://www.fjc.gov/content/sealing-court-records-and-proceedings-pocket-guide-0>) and *Confidential Discovery: A Pocket Guide on Protective Orders* (<https://www.fjc.gov/content/confidential-discovery-pocket-guide-protective-orders-0>).

# District Courts

There are 94 federal judicial districts. All but three of these districts have lifetime-appointed Article III judges.

The United States district courts are the trial courts of the federal court system. Within limits set by Congress and the Constitution, district courts have jurisdiction to hear nearly all categories of federal civil and criminal cases.

The vast majority of all civil and criminal cases are filed in state courts. Sometimes a case can be filed under similar statutes in either state or federal court.

There are 94 federal judicial districts. All but three of these districts have lifetime-appointed Article III judges. Judges serve 10-year terms in three territorial districts: the U.S. Virgin Islands, Guam, and the Northern Mariana Islands.

Find a list of all federal court districts and their geographical boundaries at <https://www.law.cornell.edu/uscode/text/28/part-I/chapter-5>.

## REPORTING ON CRIMINAL CASES

Criminal cases involve an allegation by the government that an individual or entity violated the criminal laws of the United States. Read additional information about criminal cases at <http://www.uscourts.gov/about-federal-courts/types-cases/criminal-cases>. Except where noted in Sealed Documents and Closed Hearings on page 13, and in Older Documents on page 12, criminal case records are available in PACER.

## Investigations and Related Documents

Although a defendant may be arrested during the commission of a crime, most criminal cases that attract media attention begin with a federal investigation. Generally, this involves the U.S. attorney's office in coordination with a law enforcement agency, such as the FBI, the Drug Enforcement Administration, or the Securities and Exchange Commission.

Most investigations remain confidential, with prosecutors and investigators presenting evidence in closed session to a grand jury. A magistrate judge or district judge may authorize search warrants, also in closed hearings. Warrant applications remain sealed until after a search is conducted - and sometimes until after an arrest is made or an investigation is closed.

Courthouse beat reporters may find it useful to review unsealed warrants regularly, as the application documents can provide an early window into the facts of a criminal investigation. In particular, a supporting affidavit - written by the lead law enforcement agent to supply the judge with evidence of probable cause - offers a detailed account of the allegations. The one-page warrant application includes information about the defendant.

Clerk's offices maintain search warrant applications in widely varied ways. Ask local courthouse staff for the easiest way to review these documents routinely. However, some courts do not keep them at all, instead returning them to the U.S. attorney's office.

## Grand Juries and Indictments

In most felony cases, prosecutors present evidence to a grand jury. Grand juries are composed of 16 to 23 citizens, who hear a wide range of criminal cases and decide whether there is evidence to justify indictments sought by federal prosecutors. Grand juries are seated for up to 18-month terms, but their service can be extended an additional six months if needed by an order from a district judge.

Extensive information on grand juries is available in the *Handbook for Federal Grand Jurors* (<http://www.uscourts.gov/sites/default/files/grand-handbook.pdf>). Grand juries are formally supervised by a district judge, often the chief judge, but for all practical purposes, they function from day to day under the auspices of the U.S. attorney's office. Only prosecutors present evidence before a grand jury, and neither the accused nor his or her lawyer is present when a grand jury meets.

To return an indictment, a minimum of 12 members of a grand jury must find probable cause. Grand jurors are prohibited from discussing case-related information with the media or others.

Grand jury indictments are returned to the district court - usually to a magistrate judge - in a closed court hearing, and often are sealed

Indictments describe the crimes allegedly committed by defendants. They are a road map to what the prosecution intends to prove at trial.

until after an arrest is made. Indictments list the offenses allegedly committed by defendants and describe the facts supporting those allegations. An indictment is a road map to what the prosecution intends to prove at trial.

### **Felony Preliminary Proceedings**

The defendant's arrest, when it follows a felony indictment, begins a series of three preliminary proceedings in open court. They are the initial appearance, the detention hearing, and the arraignment. The first two always are before a magistrate judge.

The **initial appearance** must take place "without unnecessary delay," under Rule 5 ([https://www.law.cornell.edu/rules/frcrmp/rule\\_5](https://www.law.cornell.edu/rules/frcrmp/rule_5)) of the Federal Rules of Criminal Procedure (<http://www.uscourts.gov/rules-policies/current-rules-practice-procedure>), and it typically occurs within hours of an arrest. The defendant is advised of the charges, his or her rights are explained by the judge, and counsel is appointed if the defendant cannot afford a lawyer.

The prosecutor also is asked whether the government will seek to detain a defendant pending trial. If the answer is no, the magistrate judge will determine any conditions of release and order the defendant freed. If the prosecution seeks to hold the defendant, a detention hearing will be scheduled for three days after the initial appearance, in accordance with the Bail Reform Act of 1984.

The **detention hearing** determines whether the accused must be held in jail until trial. Prior to the hearing, a pretrial services officer files a report with the judge, based on interviews with the defendant, family members, and others who have relevant information.

The report, which recommends whether the defendant should be released and under what conditions, is not public, and it is not binding on the magistrate judge. But if the judge releases a defendant pending trial, the conditions of release are listed in a court order, which is public.

During the detention hearing, both sides may present evidence and cross-examine the other side's witnesses.

Federal law requires that individuals be released on personal recognizance or unsecured appearance bond (that is, without putting up any money or other asset as security) unless, under the Bail

Under the Bail Reform Act, a defendant must be released unless there is a serious flight risk or danger to the community.

Reform Act, the judge determines “that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.”

If the judge determines that a person presents a flight risk or a danger to the community, the judge still may order release subject to certain restrictions, such as requiring a secured bond, forfeiture of passport, electronic monitoring, or home confinement. The Bail Reform Act requires that a judge choose “the least restrictive” conditions that protect the community and ensure the defendant’s appearance in court.

Under certain circumstances, a judge is to presume that a defendant cannot be released safely. These include cases that involve an act of terrorism, federal drug offenses carrying a penalty of 10 years or more in prison, possession of a firearm during a crime of violence or drug trafficking crime, or certain offenses involving minors. The accused may present evidence at the detention hearing to rebut the presumption that detention is necessary.

Once a magistrate judge has ordered the detention or release of a defendant, either party can obtain a review of that decision by a district judge. Detention orders also may be appealed to the court of appeals after a district judge’s ruling.

The **arraignment** is a formal reading of the charges. In response, the accused is expected to enter a plea of guilty or not guilty. At this time, the accused may request a jury trial or a bench trial before a judge. Some judges also schedule the trial date and dates for motion hearings at the arraignment.

## **Criminal Complaints and Informations**

A defendant can be arrested without an indictment. When an arrest is made during the alleged commission of a crime, the lead investigator submits a written criminal complaint.

In addition, a federal prosecutor may, without going to the grand jury, file charges in a document called a “criminal information.” An information sets forth the same kinds of allegations and facts that would be contained in an indictment.

When there is no indictment, one additional early proceeding is required: the preliminary examination hearing, in which the prosecution must convince a judge that there is probable cause to proceed with the case. A defendant may choose to waive the preliminary examination hearing. If the judge finds probable cause, or if the defendant waives the hearing, the judge will require the defendant to appear for further proceedings.

## Pretrial Motions

The prosecution and defense often file pretrial motions, asking the judge to decide specific issues before the trial begins. Certain motions must be made before trial or the issue will be deemed waived.

Some common pretrial motions that may be filed by the defense:

- Motions to dismiss the charges
- Motions for access to the prosecution's evidence
- Motions to suppress certain pieces of evidence, for instance evidence found as a result of a search that may have violated the individual's Fourth Amendment rights
- Motions to relocate the trial through a change of venue, claiming, for instance, that pretrial publicity in the local news media will make it impossible to select an impartial jury in the original venue
- Competency motions asking a judge to postpone the trial on the grounds that a defendant is not able to understand the proceedings or to assist in his or her defense - essential elements of a fair trial. If such a motion is granted, all trial activity ceases, and there is no determination of guilt or innocence. A trial may occur at a later date if the defendant's legal competence is restored through medical or other treatment

Judges must approve the terms of any plea agreement. Before accepting a guilty plea, the judge must be satisfied that it is voluntary and legally appropriate.

This phase of a case is known as motion practice. A judge may decide motions based purely on written briefs, or set a hearing if oral argument of the issues or evidence from witnesses will aid in a decision.

## Guilty Pleas

Nearly 90 percent of federal criminal cases are resolved by a guilty plea. Many of these cases involve a plea agreement: The defendant pleads guilty and forgoes a trial in exchange for the prosecutor's dropping some charges and/or recommending a more lenient sentence. During the plea bargaining process, prosecutors often require defendants to waive the right to appeal a conviction.

Ultimately, a judge must approve the terms of a plea agreement. Two documents are filed with the court at the plea hearing: the plea agreement, outlining the specific charges to which the defendant

pleads guilty, and a statement of facts describing what the defendant admits to doing. Both generally are available only after the hearing has concluded.

During the hearing, the judge will conduct a plea colloquy in which the defendant is informed of the nature of the charges to which he or she is pleading guilty and the rights that are being waived. Before accepting the plea, the judge must be satisfied that a guilty plea is voluntary and legally appropriate.

If the defendant pleads guilty, a sentencing hearing is scheduled. If he or she does not plead guilty, the case will proceed to trial.

## COVERING CRIMINAL TRIALS

### The Jury

The right to a trial by jury in federal criminal cases is guaranteed by the Sixth Amendment to the Constitution.

Extensive background on juries (<http://www.uscourts.gov/services-forms/jury-service>) is available. In addition, most district courts post a jury plan on their websites, which explains how potential jurors are selected from the community, as well as the court's policy on whether and when to release jurors' names.

By law, the courts seek to empanel juries that are a "fair cross-section" of the community. This starts with a "jury wheel," a traditional term that dates to when prospective jurors' names were drawn from a revolving container. Today, the jury wheel is an automated database filled with names randomly selected from a source list or source lists, for use in further random selection of possible jurors for qualification and summoning. The number of names included in a court's jury wheel is proportional to the number of registered voters in each county comprising the district or jury division within the district.

During jury selection, often called voir dire, the judge, the lawyers, or both will question prospective jurors about their backgrounds, and potential biases that may hinder their ability to be impartial. In federal court, often only the judge will question potential jurors; counsel can request that specific questions be asked.

Voir dire is critical to ensuring an impartial jury. Prospective jurors may be struck from the panel in two ways. Lawyers may exercise a "challenge for cause," claiming the juror cannot be impartial. If the judge agrees, the potential juror is excused. Lawyers also may exercise "peremptory challenges," allowing them to remove jurors without stating a reason. The number of available peremptory challenges varies by case type, pursuant to statute and the Federal Rules of Criminal Procedure (<http://www.uscourts.gov/rules-policies/current-rules-practice-procedure>).

In death penalty and other complex cases, jury selection can take several weeks.

During voir dire, a party may object to another party's exercise of a peremptory challenge on grounds that the party tried to exclude a potential juror based on race, ethnicity, or gender. Such objections are known as "Batson challenges," referring to *Batson v. Kentucky*, a 1986 Supreme Court decision that ruled such exclusions unconstitutional.

Unless the parties agree otherwise, the jury consists of 12 persons. The court may impanel up to six alternates to replace any jurors who become disqualified or otherwise are unable to perform their duties.

In death penalty and other complex cases, jury selection can take as long as several weeks. In some courts, judges handling a high-profile trial will have hundreds or, in rare instances, even thousands of potential jurors fill out an extensive questionnaire. A manageable number of eligible jurors are then called in each day to be questioned individually.

On the final day of jury selection, the qualified pool of jurors is called in to the courtroom, and both sides exercise their peremptory challenges until the jury is seated. In capital cases, each side is allowed a greater number of peremptory challenges, in accordance with the Federal Rules of Criminal Procedure (<http://www.uscourts.gov/rules-policies/current-rules-practice-procedure>).

For exceptional cases, a judge may decide there is a need to sequester a jury - that is, keep all jurors in the court's protection until the trial concludes.

As noted in Jurors on page 8, journalists should not contact a juror before a case is concluded. Even where a court permits the release of jurors' names after the trial, a judge may order that jurors in a specific case remain anonymous.

Juror payment amounts are set by federal statute, and current rates are available at Juror Pay (<http://www.uscourts.gov/services-forms/jury-service/juror-pay>). Jurors also are reimbursed for reasonable transportation expenses and parking fees, and a judge may authorize an additional \$10 a day if a proceeding lasts more than 10 days. Federal law does not require an employer to pay jurors during a trial, but the Jury Act forbids any employer from firing, intimidating, or coercing any permanent employee because of his or her federal jury service.

## Opening Statements

At the beginning of a criminal trial, lawyers are limited to telling the jury what they believe the evidence will show. Thus, this is an opening statement, not an argument.

Prosecutors go first because they bear the burden of proving beyond a reasonable doubt that the defendant committed the offense(s) he or she has been charged with. Defense counsel are not obligated to make an opening statement or present any evidence, since the defendant is presumed innocent. Defense counsel may choose to make an opening statement at the conclusion of the initial set of prosecution witnesses, as opposed to at the start of trial. Reporters usually want to be present for opening statements. Not only do they hear a road map of the case the lawyers intend to present, but they often can get quotes that are useful to their coverage.

Defense counsel are not obligated to speak to the jury or present evidence, since the defendant is presumed innocent.

## Witnesses

Some individual judges or local rules of court require the prosecution to file a list of potential witnesses prior to trial, along with a list of exhibits that may be entered into evidence. Reporters may ask the clerk of court's office before the trial whether either list will be available to the public.

Prosecution witnesses take the stand first. Each will be asked questions by the prosecutor and can be cross-examined by the defense lawyer. If a witness is cross-examined, the prosecution is permitted a "redirect," asking the witness only questions related to the topics discussed during cross-examination.

You may speak to witnesses after they are excused by the court, unless the judge indicates the witness is subject to recall to the stand later in the trial. The witness, however, is not obligated to answer your questions, and often may be advised by counsel not to do so.

## Exhibits, Transcripts, and Courtroom Audio

Trial exhibits that are admitted into evidence become part of the public record. Subject to logistical considerations, they usually are available through the clerk of court's office to inspect and copy. You also can request a copy of an exhibit from the party that introduced it. In some courts this is necessary, because parties retain custody of exhibits even after they have been introduced into evidence.



In high-profile cases, courts may work with the parties to make extra copies of exhibits that the news media can review, or the court may decide to post exhibits on its website. The presiding judge has some discretion in this area, so he or she might deny public access to certain evidence until after the conclusion of the trial.

Transcripts of courtroom proceedings are not produced unless ordered by a party, a member of the public, or the court. However, by statute, every session of the court is recorded in some format.

Written transcripts are produced by a court reporter or transcriber. As noted in the Federal Court Reporting Program (<http://www.uscourts.gov/services-forms/federal-court-reporting-program>) webpage, under Judicial Conference policy these transcripts are not available on PACER until 90 days after they are delivered to the clerk's office.

During this 90-day period, transcripts are available at the clerk's office for inspection only, or may be purchased from the court reporter or transcriber. The maximum per-page fee is set by the Judicial Conference, and each district sets a local rate subject to that maximum. A few courts have special exceptions to set their transcript rates higher.

After the 90-day period, transcripts can be viewed, downloaded, or printed for 10 cents per page on PACER. Additionally, the transcript is available for inspection

and copying in the clerk's office under the same terms and conditions as any other official public document in the case file.

In most bankruptcy cases, and also in some district court cases (especially proceedings involving magistrate judges), the official record is kept through digital audio recordings. When this is the case, under Judicial Conference policy, the presiding judge may choose to make a copy of the recordings available through PACER.

Copies of such digital audio recordings also may be purchased from the clerk's office. The current rate is available in the miscellaneous fee schedules for district courts (<http://www.uscourts.gov/services-forms/fees/district-court-miscellaneous-fee-schedule>) and for bankruptcy courts (<http://www.uscourts.gov/services-forms/fees/bankruptcy-court-miscellaneous-fee-schedule>), which are set by the Judicial Conference. Courts may make these recordings available via tape, CD, email, and/or digital download. When a court reporter is employed to create a transcript, there is no public entitlement to the reporter's personal backup recording.

### **Motion to Acquit**

After the prosecution's last initial witness, the defense often makes a Rule 29 motion. Named after Federal Rule of Criminal Procedure 29, the motion asks the judge to acquit the defendant because the prosecution's evidence is insufficient to sustain a conviction. This motion also may be made after the conclusion of testimony by defense witnesses.

These motions are not granted often, but when they are, the defendant goes free. The prosecution cannot appeal such a ruling and the defendant cannot be tried again in federal court on the same charges because of the constitutional protection against "double jeopardy." If, however, the judge grants a Rule 29 motion after the jury reaches a guilty verdict, prosecutors can then appeal the judge's acquittal.

### **Closing Arguments**

Unlike during the opening statement, prosecutors and defense lawyers are permitted to make an argument after the completion of testimony. That is, they may marshal facts in an attempt to prove or disprove the government's allegations.

The prosecution goes first, followed by the defense and a rebuttal by the prosecution. Because the prosecution has the burden of proof, it gets the final word. Reporters will want to be present for this portion of the trial.

Jury instructions can have enormous impact on the verdict. Prosecutors and defense counsel each may ask the judge to include specific language.

## **Jury Instructions, Deliberations, and the Verdict**

Before deliberations, the judge will give the jury its final instructions, a step that can have enormous impact on the verdict. Both sides may request in writing that specific language be included in the instructions. Once the judge finalizes proposed instructions, both sides review them in advance. Any objections must be submitted on the record before the jury begins deliberation. While jury instructions typically are given in open court and can be tedious to listen to, they spell out the matters the jurors are to consider and those they are not. In complex or high-profile cases, reporters may find it useful to be present.

Jury deliberations are private; nobody other than the jurors may be present during this process. Jurors have two responsibilities: to determine the facts based on the evidence presented during the trial and to apply the relevant law that the judge provides during the jury instructions. During deliberations, the jurors may have questions about the evidence or the instructions. If they do, they give a note to the deputy marshal or the appropriate person designated by the court, who takes it to the judge. The judge then calls the lawyers back into court to discuss what the answer to the note should be, calls the jurors back into the courtroom, and gives them the answer, provided it does not deal with issues outside the scope of the case or require the judge to interpret the facts for the jurors.

Criminal juries must reach a unanimous verdict of guilty “beyond a reasonable doubt” or not guilty. After thorough deliberation, the jury may report to the judge that it is deadlocked and unable to reach a verdict. At this point, the judge may give the jury what is known as the Allen charge. Named after an 1896 U.S. Supreme Court case, the Allen charge urges jurors to reconsider their positions, as well as those of other jurors, and resume their deliberations in an effort to reach a verdict. If they attempt to do so but still report that they are deadlocked, the judge may declare a mistrial.

In most federal courthouses, once a jury has reached a verdict, it is announced as soon as all the lawyers can get to the courtroom. Reporters may have as little as 15 minutes’ warning. Inquire before the trial how members of the media will be notified when a verdict has been reached. Reporters will want to be present for the reading of the verdict.



### **Post-Verdict Interviews**

Any media interviews must be arranged directly with lawyers and their clients. In high-profile cases, some type of media availability is common for prosecutors and defense lawyers, in or near court property, once a trial is completed. Rules regarding cameras are set by the court. You also are free to speak to jurors after the verdict is read. As noted in Jurors on page 8, they are not obligated to grant interviews. Similarly, lawyers and their clients are free to determine whether they wish to talk with the media or not.

### **Non-Capital Sentencing**

Whether there is a plea agreement or a trial that ends with a conviction, sentencing is generally scheduled for a later date. The court's probation office prepares a presentence investigation report on circumstances that may help the judge in determining a sentence. The report is based on conversations with the defendant and his or her family and friends, victims and their families, and others with relevant information. It is always filed under seal and accessible only to the judge, prosecutor, and defense counsel.

Since 1987, sentencing in federal court has been governed by the U.S. Sentencing Guidelines. They are set by the U.S. Sentencing Commission (<http://www.ussc.gov>), an independent agency in the judicial branch, created by Congress to make sentencing more consistent and proportionate. In January 2005, the Supreme Court ruled that the guidelines are merely advisory. Judges are urged to consider

Sentencing guidelines are advisory. Judges may impose a shorter or longer sentence, so long as it is reasonable and does not exceed the maximum prison term set by statute.

the guidelines but can depart from the guideline ranges, so long as the sentence is reasonable and does not exceed the maximum term set by statute for a particular crime.

The presentence report makes a recommendation based on how the guidelines rate the seriousness of the offense and on the defendant's criminal history. The judge is not required to follow the recommendations of the probation office or the parties, but if the judge rejects a sentence agreed to by the defense and prosecution, a defendant may withdraw a guilty plea. During the sentencing hearing, defendants are given a chance to tell the court anything they believe the judge should consider before the sentence is imposed.

### **Death Penalty Sentencing**

When a capital crime may have been committed, federal prosecutors must receive written authorization from the attorney general before they can seek the death penalty. Federal law provides for a two-part, or bifurcated, trial in a death penalty case. If a defendant is found guilty of a crime punishable by death, the same jury that convicted him or her will determine the sentence. During a second phase of the trial, known as the penalty phase, both sides can present witnesses and evidence. The prosecution presents aggravating circumstances to justify the death penalty, while the defense presents mitigating circumstances that support a sentence less than death. The jury has only two choices: execution or life in prison.

Death penalty cases are fairly rare in federal courts. When they do occur, a defendant is given two lawyers, including one who has specific expertise in capital trials, as well other resources to support the defense.

Access to evidence presented in the death penalty phase is the same as in other proceedings. See Exhibits, Transcripts, and Courtroom Audio on page 22.

## **COVERING CIVIL CASES**

Civil cases also are tried in district court. They begin when a plaintiff – the party seeking relief from an alleged wrong – files a complaint. The plaintiff can be an individual, organization, business, or governmental body. Allegations involve violations of civil laws and the Constitution, not criminal laws.

Except as noted in Sealed Documents and Closed Hearings on page 12, the complaint and virtually all related filings in civil cases are available through PACER. Read more background on civil cases at <http://www.uscourts.gov/about-federal-courts/types-cases/civil-cases>.

## Filing the Complaint

Federal courts are authorized to hear only civil cases that involve one or more of the following:

- Questions regarding the Constitution
- Questions of federal law (as opposed to state law)
- A dispute among residents of different states with an amount in controversy of more than \$75,000
- The U.S. government – including its agencies – as a plaintiff or defendant

A plaintiff must inform defendants about a complaint filed against them. This is called service of process.

Generally, a lawsuit must be filed in the jurisdiction where the defendant resides or where the claim arose. In cases based on diversity of citizenship (when the plaintiff and defendant are residents of different states), the lawsuit may be filed in the jurisdiction where the plaintiff or defendant resides.

## The Plaintiff's Claim

The complaint states the claim that the plaintiff is making – why the plaintiff believes he or she is entitled to relief. And it states the kind of relief sought. There are three principal forms of relief that a jury or judge can provide:

- **Declaratory judgment.** The court determines the rights of parties without ordering that anything be done or awarding monetary damages.
- **Injunction.** A court order requires the defendant to do a specific act or prohibits a defendant from doing a specific act. In emergencies, a temporary restraining order (TRO) can be issued without notifying the adverse party of the lawsuit. A TRO can last no more than 14 days and is meant to preserve the status quo until there is a hearing on the moving party's

Federal courts hear civil cases that involve federal laws or the Constitution. They also settle disputes in which the U.S. government is a party.

application for a preliminary injunction. A preliminary injunction is similar to a TRO, except that the adverse party must receive notice before the preliminary injunction is issued. The preliminary injunction (sometimes informally called a temporary injunction) stays in effect until a hearing can be held, or sometimes until after a trial. If the plaintiff is successful at trial, a permanent injunction is issued. Unlike TROs, there is no limitation on the duration of a preliminary injunction.

- **Monetary relief.** The two most common types of monetary relief are compensatory and punitive damages.

Compensatory damages are intended to compensate the plaintiff for an injury or loss. Special damages are a subset of compensatory damages; they represent the direct costs of the wrongdoing, such as hospital bills or wages lost during treatment. General damages are also the result of wrongdoing, but are subjective in amount, such as awards for the plaintiff's pain and suffering, or for mental anguish. There are also cases in which the defendant committed a wrong but the plaintiff suffered almost no harm; nominal damages, such as an award of \$1, might be made in such cases.

Punitive damages generally are available only if authorized by statute. They are awarded to punish the defendant and serve as a warning to others to refrain from similar conduct. Treble damages are a variation of punitive damages – triple the amount of the plaintiff's actual losses.

Some contracts anticipate a possible breach of the agreement and stipulate how much will be awarded in the event a party reneges on the deal; awards in these cases are called liquidated damages.

### **The Defendant's Answer**

Under federal rules, defendants generally have 21 days to file an answer after they are served with a complaint; the U.S. government has 60 or 90 days, depending on whether it has waived service. In other types of cases, such as those involving the Social Security Act or the Freedom of Information Act, other response deadlines apply.

Although most defenses to a complaint must be stated in the answer, a defendant can move to dismiss the complaint before filing an answer. Motions to dismiss typically make one or more of these arguments:

Punitive damages generally must be authorized by statute. They are awarded to punish the defendant and warn others to refrain from similar conduct.

- The court lacks the authority or jurisdiction to decide the case or to compel a defendant to appear.
- Service of process was defective.
- The complaint fails to state a claim that the law will recognize as enforceable.
- The plaintiff lacks standing, which means he or she is unable to show a connection to and harm from the matter that is the subject of the lawsuit. This can include failing to prove a distinct injury alleged to have resulted from a law or action.

### **Pretrial Proceedings**

After the defendant has filed an answer or a motion to dismiss the complaint, the judge holds a pretrial conference, sometimes referred to as a case management conference. A schedule for discovery is generally set at this conference, and a trial date is sometimes also scheduled.

Often in civil cases, parties file motions disputing whether a party is entitled to receive certain kinds of information before trial. Parties also may file a motion for summary judgment, which asks the judge to determine some or all of the issues in the case based on the information the parties present in briefs. These motions are in the case file. When either party files a pretrial motion, the judge may choose to hold a hearing. However, if the judge believes the motion contains sufficient information to decide an issue, no hearing is held.

Discovery may include documents, physical evidence, and other information relevant to the lawsuit. Discovery also may include statements obtained in depositions, a process in which persons involved in the dispute or with expertise relevant to the case are placed under oath and asked questions by the attorneys for both sides, much as they would be if they were on the witness stand in court. This testimony sometimes may be introduced as evidence during the trial.

Journalists do not have a right to attend depositions. They are not conducted in open court or in the presence of a judge. Evidence exchanged during discovery is not a part of the trial record.

A final pretrial hearing is held following the completion of discovery. This conference enables the judge and parties to understand exactly what issues will be important at the trial, and to work out possible solutions to problems before the trial. The judge usually requires that

Journalists do not have a right to attend depositions, which are not conducted in open court or in the presence of a judge. Evidence exchanged during discovery is not a part of the trial record.

the parties submit a pretrial order, in which the plaintiff and defendant provide the substantive and procedural framework for their respective cases as they expect to present them in trial.

### **Ending a Case Without a Trial**

The overwhelming majority of civil cases are resolved prior to trial - either through judicial order (for example, when the judge grants a dispositive motion filed by one of the parties) or through a settlement between the parties.

### **Summary Judgment**

A motion for summary judgment can be filed by the plaintiff or defendant at any time after the defendant's answer, and often is filed after discovery. Such motions ask a judge to decide all, or portions, of a case on two grounds: (1) that there are no disputes of fact that require a trial, and (2) that the law clearly favors a specific decision.

The parties' briefs typically include the motion for summary judgment, the opposing party's response, and a reply from the party that introduced the motion. If the judge grants the motion in whole, the case is over and judgment will be entered in favor of the party who moved for summary judgment. If the judge denies summary judgment, the entire case can go to trial. If the judge grants the motion in part, only those issues that remain in dispute will be tried.

Judges often encourage parties to resolve their dispute before trial. Cases can be settled during trial, including during jury deliberation.

### **Settlements**

The parties also may resolve their dispute by settlement, with or without court intervention. Parties frequently discuss settling their case during the final pretrial phase, and it is not uncommon for judges to strongly encourage them to resolve the dispute before trial. Cases can be settled during trial, including during jury deliberation.

The fact that a case was settled often is not a matter of public record. In many settlements, pieces of evidence, the terms of the settlement, and any monetary award may remain unavailable to the public. More information on this topic is available in Sealed Documents and Closed Hearings on page 13.

### **Civil Trials**

In civil trials, both the plaintiff and the defendant have the constitutional right to a jury trial. Civil juries consist of no fewer

than six and no more than 12 members, not including alternate jurors. All verdicts must be unanimous, unless the parties agree otherwise – an option not available in criminal cases. The plaintiff’s lawyer goes first in opening statements, followed by defense counsel, and the plaintiff’s witnesses appear first.

Once the plaintiff’s last witness has testified, the defendant may make a motion for a “directed verdict,” which is similar to a Rule 29 motion in a criminal case. This motion claims that the plaintiff has failed to prove one or more essential elements, and therefore the defendant is entitled to judgment in his or her favor as a matter of law.

As with criminal cases, lawyers for both sides may present closing arguments. In a jury trial, the judge will instruct jurors on the relevant laws to apply in their deliberations. These are parts of a trial that a journalist will want to attend.

Unlike criminal juries, which can find a defendant guilty only if the evidence is “beyond a reasonable doubt,” the standard for civil juries is a “preponderance of the evidence” – meaning that it is more likely than not that the plaintiff’s claims have been proven to be true.



# Appellate Courts and Cases

The nation's 94 federal judicial districts are organized into 12 regional circuits, each of which has a court of appeals. These courts hear appeals from the district courts located within their circuits, as well as appeals from decisions of federal administrative agencies and some original proceedings filed directly with the courts of appeals.

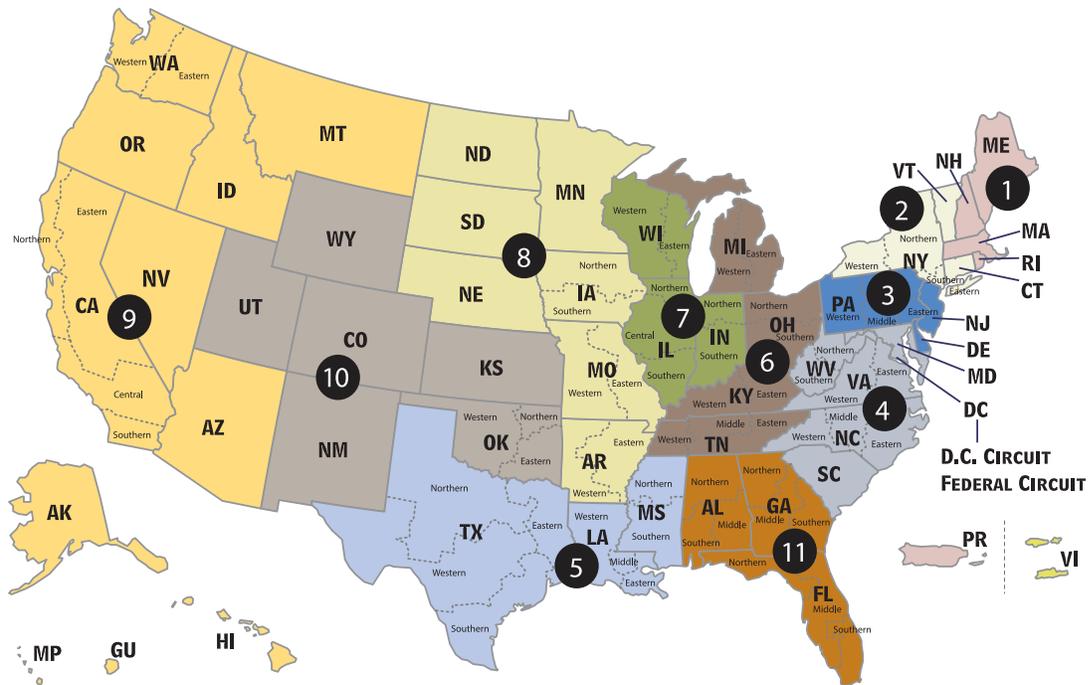
In addition, federal appellate courts hear cases that originated in state courts when they involve claims that a state or local law or action violates rights guaranteed under the U.S. Constitution. One important category is habeas corpus cases, which allege improper incarceration and form the basis of federal appeals of death penalties imposed by state courts.

The vast majority of courts of appeals decisions are final, and they are binding on lower courts within the same circuit.

Federal courts of appeals routinely handle more than 50,000 cases each year. Ten percent or fewer of those decisions are appealed to the Supreme Court, which in turn hears oral arguments in fewer than 100 cases annually. Thus, the vast majority of courts of appeals decisions are final, and they are binding on lower courts within the same circuit.

A 13th appellate panel, the Court of Appeals for the Federal Circuit, is a unique court. It is based in Washington, D.C., and has nationwide jurisdiction to hear appeals in specialized cases. The court hears appeals from the U.S. Court of International Trade, the U.S. Court of Federal Claims, and the U.S. Patent and Trademark Office. It exclusively hears certain types of cases appealed from the district courts, primarily those involving patent laws.

Download a map of the 12 regional circuits ([http://www.uscourts.gov/sites/default/files/u.s.\\_federal\\_courts\\_circuit\\_map\\_1.pdf](http://www.uscourts.gov/sites/default/files/u.s._federal_courts_circuit_map_1.pdf)). Read additional information about federal appellate courts at <http://www.uscourts.gov/about-federal-courts/court-role-and-structure/about-us-courts-appeals>.



## APPELLATE COURT SOURCES AND RESOURCES

From a journalist’s perspective, there are similarities between courts of appeals and district courts. For instance, both have clerks of court, whose staff manages the flow of cases through the court, maintains court records, and handles other administrative duties.

However, there are notable differences. Each circuit has a circuit executive who works closely with the chief judge to coordinate a wide range of administrative matters.

An important inquiry early in any journalist’s dealings with a federal court of appeals is to identify the person or persons within the court authorized to talk to the news media. Most courts of appeals do not have a public information officer, but most have designated a specific person to interact with the media. That can be the circuit executive, clerk of court, or some other staff member.

Oral arguments are open to the public. For information about digital recordings of oral arguments, audio or video, consult the court of appeals website.

Decisions, opinions, orders, and court calendars are available on courts of appeals websites, and also via PACER. Free, text-searchable opinions are available at FDsys (<https://www.gpo.gov/fdsys/browse/collection.action?collectionCode=USCOURTS>).

The losing party usually may appeal a trial court decision. Similarly, decisions made by most federal administrative agencies are subject to review by a court of appeals.

## THE APPEALS PROCESS

The losing party usually has the right to appeal a federal trial court decision to a court of appeals. Similarly, decisions made by most federal administrative agencies are subject to review by a court of appeals. Parties who contest decisions made in certain federal agencies – for example, disputes over Social Security benefits – may be required to seek review first in a district court rather than go directly to an appeals court.

In a civil case, either side may appeal the judgment, whether it results from a jury verdict or bench trial. Parties that settle a civil case relinquish their right to appeal.

In a criminal case, the defendant may appeal a conviction based on a guilty verdict, but the government may not appeal if a defendant is found not guilty. Either side in a criminal case may appeal a sentence that is imposed after a guilty verdict by arguing that the sentence violates the law, reflects an incorrect application of the sentencing guidelines, or improperly departs from the sentencing guidelines. When defendants plead guilty, they generally give up their right to appeal, except for claims they may have relating to their sentencing.

If the dissatisfied party in a district court case plans an appeal, the first step usually is to file a notice of appeal in the district court, which informs the court of appeals and other parties.

A litigant who files an appeal of district court decision is known as an appellant. The term petitioner is used for a litigant who files an appeal from an administrative agency or who appeals an original proceeding. The appellant (petitioner) bears the burden of showing that the trial court or administrative agency made a legal error that affected the district court's decision.

The court of appeals makes its decision based solely on the trial court's or agency's case record. The court of appeals does not receive additional evidence or hear witnesses. The court of appeals may review the factual findings made by the trial court or agency, but generally may overturn a decision on factual grounds only if the findings were "clearly erroneous."

## APPEALS RAISING CONSTITUTIONAL ISSUES

U.S. appellate courts have jurisdiction over cases that allege violations of federal constitutional rights, regardless of whether the alleged violations involve federal, state, or local governments. Thus, appeals based on constitutional grounds permit federal court review of state and local laws, practices, and court rulings, not just direct appeals of federal cases.

Constitutional cases include some of the most contentious issues considered by the federal Judiciary - freedom of speech and religion, the right to bear arms, search and seizure, right to counsel, and equal protection under the law, just to name a few. On certain hot-button issues, such appeals are likely to attract broad media interest.

## DEATH PENALTY APPEALS

Federal appellate courts also hear habeas corpus appeals involving death penalties issued by state courts, as well as by federal courts.

The substantive and procedural requirements for seeking federal habeas relief are largely governed by the Antiterrorism and Effective Death Penalty Act (AEDPA) and federal court decisions interpreting AEDPA. Despite significant legal barriers to obtaining federal habeas review under AEDPA, prisoners sentenced to death in state and federal courts almost always seek federal habeas corpus relief.

In these proceedings, a state prisoner (under 28 U.S.C. § 2254 at <https://www.law.cornell.edu/uscode/text/28/2254>) or a federal prisoner (under 28 U.S.C. § 2255 at <https://www.law.cornell.edu/uscode/text/28/2255>) asks a federal court to vacate or set aside his or her death sentence, alleging errors under the law.

## THREE-JUDGE PANELS

Appeals normally are decided by randomly assigned three-judge panels. The creation and scheduling of panels, and the assignment of specific cases to those panels, is handled by either the clerk of court's office or the circuit executive's office. Regional court of appeals rules determine when the names of the judges on a panel are made public. Judges play no role in panel assignments.

Constitutional cases include some of the most contentious matters considered by the federal Judiciary. Appeals on hot-button issues are likely to attract broad media interest.

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80 percent of  
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The appealing party, called the appellant, presents legal arguments to the panel in a written brief, seeking to convince the judges that the trial court or administrative agency committed substantial error and that the trial court's decision should therefore be reversed. The party who prevailed in the trial court, known as the appellee (or respondent for administrative agency appeals), argues in a reply brief that the trial court was correct or that any error made was not significant enough to affect the outcome.

More than 80 percent of federal appeals are decided solely on the basis of written briefs. Less than a quarter of all appeals are decided following oral argument, in which both sides discuss the legal principles in the dispute. Each side is given a specified amount of time, which varies by circuit, to present its case. Judges may interrupt to ask questions. These arguments are open to the public.

Sometime after the submission of briefs or after oral argument, the appellate panel will issue a decision, usually accompanied by an opinion explaining its rationale. A decision may be reached by a 3-0 or 2-1 vote. A decision will take into account and apply any relevant precedents - similar cases already decided by that court or by the Supreme Court. Written opinions are posted on a court's internet site.

The panel's decision concludes a case unless one of these actions happens:

- The judges send the case back to the trial court for additional proceedings (that is, remand the case)
- The court determines on its own that the matter should be reheard because of a potential conflict with a prior decision
- A party seeks a rehearing before the appellate panel
- A party seeks review before the full appeals court (called an en banc session) or
- A party seeks review in the Supreme Court

# Bankruptcy Courts and Cases

Federal courts have exclusive jurisdiction over bankruptcy cases. The primary purposes of the federal bankruptcy laws are to give a debtor, either a person or a business, a “fresh start” by relieving the debtor of most debts, and to give the debtor the opportunity to repay creditors in an orderly manner. A debtor may file bankruptcy under one of several chapters of the Bankruptcy Code, Title 11 of the United States Code.

There are 90 U.S. bankruptcy courts, which, by statute, are units of the U.S. district courts. Like district courts, bankruptcy courts have their own local rules, available on their websites. Bankruptcy Basics (<http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics>) offers a good explanation of bankruptcy law and bankruptcy court proceedings.

Learn more about the bankruptcy process at <http://www.uscourts.gov/services-forms/bankruptcy>.

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## ACCESSING BANKRUPTCY RECORDS

Bankruptcy court proceedings are open to the public except in an extraordinary circumstance, such as when the judge is considering a matter under seal. Documents filed in connection with a bankruptcy case are public (unless sealed) and can be viewed through PACER ([www.pacer.gov](http://www.pacer.gov)) or at the bankruptcy clerk’s office. Bankruptcy courts generally have their own clerks. In high-profile cases, the court may designate a public information officer.

Bankruptcy judges are authorized to use either contract court reporters (who are not employees of the court) or electronic sound recording equipment.

Most bankruptcy judges use digital audio recording as the method of making the official court record. For information on how to obtain copies of such recordings, see Exhibits, Transcripts, and Courtroom Audio on page 22.

Unlike district court cases, telephone and video court conferences are common in bankruptcy proceedings. This is because creditors and other interested parties are likely to be in many different locations, making it costly and impractical to assemble everyone in one court for what can sometimes be short proceedings.

It is important to note, however, that Judicial Conference policy does not grant journalists access to these telephone and video conferences. Such transmissions of a live court proceeding are authorized for purposes of judicial administration and are available only for parties in a case and their lawyers.

## **BANKRUPTCY PROCESS**

Most bankruptcy cases – more than 95 percent – are filed by consumers, as opposed to businesses. Bankruptcy generally provides two options: liquidation or reorganization.

<b>CHAPTERS OF THE BANKRUPTCY CODE</b>	
<b>Chapter</b>	<b>Description</b>
Chapter 7	Provides that non-exempt assets to be liquidated and proceeds distributed to creditors
Chapter 9	Covers local governments and instrumentalities
Chapter 11	Allows businesses to reorganize and continue operating. Also available to individuals whose debts exceed statutory limits for filing under Chapter 13
Chapter 12	Covers family farmers and fishermen
Chapter 13	Provides that debtors with regular income retain assets and obtain court-confirmed plans to pay off their creditors
Chapter 15	Applies to foreign corporations and individuals

Liquidation means selling a debtor’s assets, if there are any available, to pay creditors. Chapter 7 of the Bankruptcy Code is designed for this purpose, and is by far the most common form of bankruptcy. A petition can be filed by a business or individual. When a Chapter 7 case is filed, a trustee is appointed by the U.S. Trustee, a Justice Department entity, to administer the estate. Most cases filed under Chapter 7, however, are “no assets” cases, in which the debtor does not have assets available for distribution to creditors.

Reorganization involves obtaining a bankruptcy judge's approval of a plan for repayment over time of all or a portion of the debts owed to creditors. Chapters 11, 12, and 13 govern the reorganization of a debtor's financial affairs. In Chapter 12 and 13 cases, the presiding judge must approve the repayment plan. In Chapter 11 cases, which are frequently filed by corporations or other business entities, the plan of reorganization must be voted on by creditors and approved by the bankruptcy judge. Chapter 12 is a reorganization of assets for individual family farmers or fishermen. After Chapter 7, Chapter 13 cases are the most commonly filed bankruptcy cases.

In all cases, no matter what chapter a case is filed under, a meeting of creditors must be held. The debtor is required to attend this meeting, during which the trustee and creditors may ask questions regarding the debtor's financial affairs and the extent of the debtor's holdings. The case trustee, not a bankruptcy judge, presides over this hearing.

Chapter 9 of the Bankruptcy Code provides protection for financially distressed municipalities from creditors while a plan for adjusting debts is negotiated.

There are several types of bankruptcy proceedings that may interest journalists. The first is a hearing on first-day orders, which often is held in Chapter 11 cases. At this type of hearing, a bankruptcy judge is asked to approve important matters that determine how the debtor will operate while the case is pending.

Another proceeding of interest is the hearing on the confirmation of a Chapter 11 debtor's plan of reorganization. During this hearing, the debtor's lawyer seeks the judge's approval of the plan, and creditors have a chance to present their objections. Still another proceeding of interest is an adversary proceeding hearing – something of a mini-trial involving a particular issue related to the main bankruptcy case. For example, adversary proceedings can request injunctions, address environmental issues, and allege possible fraud by the debtor.

## **BANKRUPTCY APPEALS**

A bankruptcy judge's rulings can be appealed to the district court or, in certain circuits, to a bankruptcy appellate panel. Further appeals to a court of appeals and the Supreme Court are available. If certain statutory requirements are met, the court of appeals also has jurisdiction to authorize a direct appeal from a bankruptcy judge's ruling to the court of appeals.

In all bankruptcy cases, a meeting of creditors must be held. The debtor is required to attend and answer questions regarding the his or her financial affairs.

# Judges and Judicial Administration

## FEDERAL JUDGES

Article III of the Constitution governs the appointment, tenure, and payment of Supreme Court justices, and federal circuit and district judges. These judges, often referred to as “Article III judges,” are nominated by the President and confirmed by the U.S. Senate. Article III states that these judges “hold their office during good behavior,” which means they have a lifetime appointment, except under very limited circumstances. Article III judges can be removed from office only through impeachment by the House of Representatives and conviction by the Senate. The Constitution also provides that judges’ salaries cannot be reduced while they are in office. Article III judicial salaries are not affected by geography or length of tenure. All appellate judges receive the same salary, no matter where they serve. The same is true for district court judges.

Find brief biographies of all Article III judges (<http://www.fjc.gov/history/home.nsf/page/judges.html>) since the nation’s founding.

**Bankruptcy judges** are judicial officers of the district court who preside exclusively over bankruptcy proceedings. They are not Article III judges and are not appointed by the President. They are appointed to renewable 14-year terms by a majority of the judges of the U.S. Court of Appeals for their circuit.

The bankruptcy judge appointment process (<https://www.law.cornell.edu/uscode/text/28/152>) is set by Judicial Conference policy, in accordance with the Bankruptcy Amendments and Federal Judgeship Act. Unlike Article III judges, bankruptcy judges must meet eligibility criteria, including being a member of the bar in good standing. Circuits may appoint a merit selection panel, consisting of judges and other legal professionals, to review and recommend candidates for appointment.

Bankruptcy judges receive the same annual salary, no matter where they serve or how many years they have served.

**Magistrate judges** also are not Article III judges. By federal statute, they are appointed by a majority of the U.S. district judges in each judicial district for a renewable term of eight years. In addition, there are a small number of part-time magistrate judges who serve four-year terms.



The job title is magistrate judge, not magistrate.

Like bankruptcy judges, magistrate judges must meet specified eligibility criteria, including at least five years as a member in good standing of a state's or territory's highest court bar. They also must be vetted by a merit selection panel that consists of lawyers and non-lawyers from the community.

The precise duties of magistrate judges vary somewhat from district to district, but some duties are common to all courts. Magistrate judges authorize search and arrest warrants, and they hear preliminary matters in felony criminal cases, such as conducting probable cause hearings and deciding whether to set bail or order pretrial detention. As a result, a magistrate judge is usually the first federal judicial officer a defendant sees following arrest or indictment.

Magistrate judges hear cases involving petty offenses committed on federal lands, but felony trials are heard only by district judges.

In most districts, magistrate judges handle pretrial motions and hearings in civil cases. While most civil cases are tried by district judges, magistrate judges also may preside over civil trials if all parties consent.

Like other federal judges, all magistrate judges are paid the same salary, regardless of where they serve or their years of service.

Bankruptcy and magistrate judges take office only after they are vetted by selection panels and show that they meet specified professional credentials.

**Senior judges** are Article III judges who have met age and service requirements set by federal statute. Judges are eligible (but not required) to take senior status if they are at least 65 years old and have served at least 15 years on the bench, or any combination of age and years of service that equals 80. Regardless of age, judges must serve at least 10 years to qualify for senior status.

Senior judges continue to draw their salary but may choose to handle a reduced caseload. They are required to handle at least one-fourth of the caseload, or other duties, of an active judge to qualify for future salary increases. By taking senior status, even if maintaining a full caseload, a judge creates a vacancy on the court, to be filled by the nomination and confirmation process.

Because there is no mandatory retirement age for Article III judges, there is no requirement that they take senior status. Many continue to carry heavy workloads, and senior judges handle about 20 percent of the total district and appellate caseload.

**Visiting judges**, like senior judges, can help a court stay on top of its caseload. Visiting judges have long provided significant assistance to courts they visit. Federal law provides that Article III judges may sit by designation and assignment in any other federal court having a need for their services. They provide temporary assistance not only when a court's own judges must disqualify themselves, but also to help meet the caseload needs arising from vacancies, lack of sufficient judgeships, specific emergencies, and other workload imbalances.

Circuit chief judges must authorize intracircuit assignments, which allow judges to sit with another court within their circuit, and the Chief Justice of the U.S. Supreme Court must authorize intercircuit assignments, which allow a judge to sit in a circuit other than his or her home circuit.

## **FEDERAL COURT ORGANIZATION**

The federal Judiciary was established by Article III of the Constitution, and the organization of district and appellate courts is set out in Title 28 of the United States Code (<https://www.law.cornell.edu/uscode/text/28>).

In addition, federal judges and lawyers who practice in federal court follow the Federal Rules of Criminal Procedure, Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and Federal Rules of Evidence, which establish the general procedural requirements for litigating cases in federal courts. The rules are available at Current Rules of Practice & Procedure (<http://www.uscourts.gov/rules-policies/current-rules-practice-procedure>).

But federal courts have considerable autonomy. Each appellate, district, and bankruptcy court has its own set of local rules, addressing procedural matters not uniformly governed by federal statute, Judicial Conference policy, or the Federal Rules of Procedure. In some jurisdictions, individual judges also have a set of rules that govern cases in their courtrooms. Local rules and individual judges' rules are posted on court websites.

## JUDICIAL ADMINISTRATION

The Judiciary is a separate and independent branch of government. By statute, national Judiciary administrative policies are set by the Judicial Conference of the United States, which is made up of 26 judges, with the Chief Justice of the



Supreme Court presiding. The Judicial Conference meets twice a year. The meetings are not open to the public, but proceedings of the meetings are published and a news release is issued following each session. Find these resources at <http://www.uscourts.gov/about-federal-courts/governance-judicial-conference/about-judicial-conference>.

The Administrative Office of the U.S. Courts, located in Washington, D.C., is the national administrative arm of the Judiciary, providing a

broad array of professional, administrative, and program support services to judges and court staff. The Administrative Office's Public Affairs Office, (202) 502-2600, is a central point of contact for the news media. The Federal Judicial Center ([www.fjc.gov](http://www.fjc.gov)), also located in Washington, is the Judiciary's research and education agency (<http://www.uscourts.gov/about-federal-courts/judicial-administration>).

The Supreme Court has its own public information and administrative offices. The PIO number is (202) 479-3050. Learn more about judicial administration at (<http://www.uscourts.gov/about-federal-courts/judicial-administration>).

## CIRCUIT JUDICIAL COUNCILS

Every circuit has a circuit judicial council, which has a number of responsibilities relating to circuit-wide policies. The relevant statute provides the council with authority to “make all necessary and appropriate orders for the effective and

expeditious administration of justice within its circuit.” In addition to the chief judge, the council consists of an equal number of appellate and district judges. Read more details about the circuit judicial councils (<http://www.uscourts.gov/about-federal-courts/governance-judicial-conference>).

## CHIEF JUDGES

All appellate and district courts have chief judges. As provided by statute, the position is held by the longest-serving active judge from among those judges who are 64 years old or younger, have served for one year or more on the federal bench, and have not previously served as chief judge. The chief judge serves for a term of seven years or to age 70, whichever comes first, and handles budgetary and administrative matters that do not require the attention of all the judges. These include oversight of the senior court staff.

Chief judges can be good contacts for journalists, since they often serve as spokespeople for their courts regarding administrative matters.

Chief judges of courts of appeals have some additional authorities specified by statute. For example, to ensure the smooth and timely administration of cases, they may temporarily reassign district or appellate judges to other courts within a circuit, or ask the Chief Justice to authorize the use of visiting judges from other circuits.

Any person  
may file a  
complaint  
alleging judicial  
misconduct  
or disability.  
Dissatisfaction  
with a judge’s  
decision is  
not grounds  
for such a  
complaint.

## JUDICIAL DISCIPLINARY PROCESS

By federal statute, any person can file a complaint alleging that a judge has engaged in “conduct prejudicial to the effective and expeditious administration of the business of the courts,” or that a mental or physical disability makes a judge “unable to discharge all the duties” of being a judge. Learn more about the Judicial Conduct and Disability process (<http://www.uscourts.gov/judges-judgeships/judicial-conduct-disability>), including the rules relating to conduct and disability complaints, a graphical overview of the process, and frequently asked questions. In addition, every U.S. court website has a complaint form and additional information on how to file a complaint in that particular circuit. The complaint process is not for people who are dissatisfied with a particular judge’s decision.

The chief judge of a circuit receives any misconduct complaints involving judges in his or her circuit, conducts a preliminary review, and may dismiss the complaint if it lacks grounds for further action. Either the complainant or the affected judge may appeal the chief judge's order to the circuit judicial council.

The chief judge also may appoint a special committee of judges to investigate the allegations and submit a report, including any recommendations, to the circuit judicial council. The council has a number of options, including dismissing the complaint or concluding that the judge who was the subject of the complaint already has taken corrective action.

While it is not common, the council can take disciplinary action, including private or public censure or reprimand, and temporary withholding of cases from the judge. If the council concludes that the judge engaged in conduct that might constitute grounds for impeachment, the council must refer the complaint to the Judicial Conference. Under certain circumstances, a judge may submit a petition for review to the Judicial Conference Committee on Judicial Conduct and Disability. This committee reviews council orders for errors of law, clear errors of fact, or abuse of discretion.

If the Judicial Conference finds possible grounds for impeachment, it submits a report to the House of Representatives. Only Congress has the authority to remove an Article III judge. This is done through a vote of impeachment by the House, and a trial and conviction by the Senate. As of September 2017, only 15 federal judges have been impeached, and only eight have been convicted. Three others resigned before completion of impeachment proceedings. A summary of federal judicial impeachments (<https://www.fjc.gov/history/judges/impeachments-federal-judges>) is available at the Federal Judicial Center's website.

By law and the related rules for judicial misconduct and disability complaints, consideration of a complaint is confidential. When final action has been taken on a complaint and it is no longer subject to review, courts of appeals place orders entered by the chief judge and the judicial council on the circuit court's website.

The Committee on Judicial Conduct and Disability similarly publishes all orders constituting final action on a complaint. The committee's orders are available at Judicial Conduct and Disability Orders (<http://www.uscourts.gov/rules-policies/judiciary-policies/ethics-policies/code-conduct-judicial-employees/judicial-conduct-disability-opinions>).

Statistics relating to judicial misconduct complaints can be found in Table 10 and Table S-22 (<http://www.uscourts.gov/statistics-reports/complaints-against-judges-judicial-business-2017>) of the annual Judicial Business report.

# Other Judiciary Entities

Nearly 90 percent of federal defendants are represented by court-appointed lawyers, under the Criminal Justice Act.

## CRIMINAL JUSTICE ACT DEFENSE SYSTEM (COURT-APPOINTED COUNSEL)

Most federal criminal defendants, including those who are employed at the time of their arrest, cannot afford the cost of paying for a criminal defense lawyer. Nearly 90 percent of federal defendants are represented by court-appointed lawyers, through Judiciary funding under the Criminal Justice Act (CJA).

Public representation ensures that all criminal defendants, regardless of their means, receive their right to counsel under the Sixth Amendment. It also protects the integrity of the proceedings, by creating a robust adversarial setting and holding the government to its burden of proof. Indirectly, the guarantee of a vigorous legal defense buttresses public confidence in the delivery of equal justice under the law.

Information about the federal defender system is available in the Guide to Judiciary Policy, Chapter 7 (<http://www.uscourts.gov/rules-policies/judiciary-policies/criminal-justice-act-cja-guidelines>), and the Criminal Justice Act, 18 U.S.C. § 3006A. Each district court is required by federal statute to formulate a district-wide plan for implementing the CJA; most CJA plans are available online.

Some key points:

- All criminal defendants charged with a felony or Class A misdemeanor are eligible for a court-appointed lawyer if their “net financial resources and income are insufficient to obtain qualified counsel.”
- By statute, eligible defendants “shall be represented at every stage of the proceedings,” from an initial appearance before the magistrate judge through appeal.
- The judge determines a defendant’s eligibility for appointed counsel. Depending on a court’s CJA plan, either the judge or

a separate administrator selects the lawyer. The defendant does not choose his or her attorney.

- In addition to counsel, the CJA pays for necessary defense resources, such as investigators and experts. In some cases, a defendant can afford to hire a lawyer, but requires the court to provide other professionals and services needed to support a defense.
- A defendant may waive the right to counsel and conduct his or her own defense. Even then, the court may appoint standby counsel, who will observe the case and step in as counsel if requested by the defendant. This protects the integrity of the proceedings and helps prevent legal errors that might disrupt the case.

### Who Provides Court-Appointed Counsel

The federal defense system functions as a hybrid system with two types of lawyers: full-time salaried defenders, and private attorneys who are appointed by the court to represent defendants at a set hourly rate.

Nearly every court district has a federal defender organization, a federal entity that acts as a counterpart to the local U.S. attorney's office. It is led by a chief defender and staffed by attorneys, investigators, paralegals, and support personnel. In some districts, full-time defenders work for community defender organizations, which are nonprofit organizations that receive grants from the federal Judiciary to defend those who cannot afford a lawyer.

The private lawyers, called panel attorneys, are available to handle CJA cases in which the local defender's office has a conflict of interest (for example, multi-defendant cases) or when the office's existing caseload prevents it from accepting more appointments.

### How CJA Cases Are Funded

Federal defender organizations receive individual budgets to fund their operations, including employee salaries. Specific case expenditures, such as expert fees, are funded from the office budget. In cases that require an unusually costly defense, such as a death penalty trial or other complex litigation, additional money can be provided by the Administrative Office of the U.S. Courts, which, along with the Judicial Conference Committee on Defender Services, oversees the national budget for the CJA program.

Federal public defenders are salaried government employees. Panel attorneys are private lawyers who are appointed to specific cases and paid an hourly rate.

Unlike federal defenders, panel attorneys are paid an hourly rate for CJA work. Hourly rates, which are set by the Judicial Conference of the United States within statutory limits established by Congress, are available at the Judiciary’s CJA Guidelines, § 230 (<http://www.uscourts.gov/rules-policies/judiciary-policies/cja-guidelines/chapter-2-ss-230-compensation-and-expenses>) (non-capital) and § 630 (<http://www.uscourts.gov/rules-policies/judiciary-policies/cja-guidelines/chapter-6-ss-630-compensation-appointed-counsel>)(capital).

Also unlike federal defenders, panel attorneys must have their compensation and expenses approved by the court. In addition, before obtaining other services, such as those of an investigator or expert witness, panel attorneys must get authorization from the presiding judge.

Defense costs in a specific case are not available to the public, or even to the prosecution, during the case, including any appeals. When a judge must authorize defense expenditures, such requests are made *ex parte*, with only defense counsel present.

Defense expenditures remain confidential because disclosure could compromise the defense by revealing legal strategy. Disclosure also may compromise the attorney-client privilege and other protections. The public or media may ask the presiding judge to lift a seal on defense-related expenditures—but only after all judicial proceedings are concluded, including appeals. In practice, most costs related to a trial, including money spent on the criminal investigation and prosecution, are unavailable to the public.

## **The CJA and Death Penalty Cases**

Federal death penalty prosecutions are large-scale cases that are costly to prosecute, investigate, and defend.

Because of their complexity and potential severity, death penalty trials have special provisions for court-appointed counsel, which are spelled out in Volume 7, Chapter 6, of the CJA Guidelines (<http://www.uscourts.gov/rules-policies/judiciary-policies/criminal-justice-act-cja-guidelines>). These include the following:

- The appointment of two lawyers, “at least one of whom is experienced in and knowledgeable about the defense of death penalty cases.” Attorneys versed in death penalty defense also are known as “learned counsel.” If necessary for adequate representation, more than two attorneys may be appointed.
- A higher rate of hourly compensation, which is available in the CJA Guidelines at § 630 (<http://www.uscourts.gov/rules-policies/judiciary-policies/cja-guidelines/chapter-6-ss-630-compensation-appointed-counsel>), Compensation of Appointed Counsel in Capital Cases.

In addition to death penalty trials, other capital representation in the federal courts includes post-conviction proceedings, in which an individual who has been sentenced to death, either in state or federal court, is seeking to vacate or set aside his or her death sentence. These are often referred to as “habeas corpus” proceedings, and the individual seeking relief is referred to as the petitioner. Financially eligible persons are entitled to the appointment of one or more qualified attorneys in these capital habeas proceedings.

## PROBATION AND PRETRIAL SERVICES OFFICERS

Probation and pretrial officers are federal law enforcement officers who help protect the community by investigating and supervising federal defendants and offenders.



They play a critical role, serving as the “eyes and ears” of the federal courts by providing critical pretrial, presentence, and post-conviction reports to judges. They also supervise defendants awaiting trial and people returning to the community after incarceration.

Key parts of an individual’s community

supervision process are not public. Pretrial and presentence reports are directed solely to the judge and the parties, and are not public. A supervision officer’s case files also are not public. Court orders setting out terms of supervised release generally are reflected in the judgment forms, which are available through PACER.

Media inquiries regarding specific cases or supervision officers should begin with the local probation or pretrial services chief. Local offices can be found through the Court Locator (<http://www.uscourts.gov/court-locator>). Inquiries about policies or procedure at the national level should be directed to the Administrative Office of the U.S. Courts’ Office of Public Affairs (<http://www.uscourts.gov/contact-us>).

Probation and pretrial services officers make up nearly one-quarter of the Judiciary’s workforce, and they are organized by court district. Every district has a probation chief, and some also have a separate pretrial services chief. The chiefs report directly to a district court’s chief judge.

Pretrial services and probation officers play many distinct roles throughout the judicial process:

- **Pretrial services and presentence investigations.** Following an arrest or indictment, pretrial services officers investigate defendants' backgrounds, to help judges set bail and terms of pretrial release. The pretrial report recommends whether to release or detain the defendant before trial, and addresses whether the defendant is likely to stay out of trouble and return to court as required.

Probation officers prepare a presentence investigation report, which recommends sentencing options under the federal sentencing guidelines, addresses the offense's impact on the victim, and determines the offender's ability to pay fines and restitution. It also recommends release conditions, by which the court can govern an offender's movement and behavior in the community, as well as any rehabilitative programming that an offender may need.

Although probation and pretrial services officers make recommendations to the court, judges make final decisions governing bail, sentencing, and supervised release, after receiving feedback from the prosecution and defense counsel.

- **Community supervision.** Pretrial services officers supervise defendants who have been released to the community pending trial and sentencing. Probation officers supervise persons sentenced to probation and post-incarceration offenders who are returning to the community.

Supervision consists of monitoring offenders' behavior in the community, enforcing court-ordered restrictions on behavior, and providing interventions authorized by the court.

Monitoring is the process of collecting information about the behaviors and activities of an offender to ensure that conditions of supervision are being met. Monitoring is done through phone calls and personal contact with people under supervision; their family, friends, and associates; and other agencies.

Individuals also are monitored through various supervision tools, such as location and computer monitoring, law enforcement notification systems, and investigative databases.

Post-incarceration offenders who have left prison are supervised in the community by federal probation officers.

Restrictions are actions that limit an individual's liberty and reduce the likelihood of criminal behavior while under supervision. Restrictions may include court-imposed limits on traveling, associating with certain people, and consuming alcohol or controlled substances.

Interventions are programs and services that officers provide to offenders (or refer offenders to) that are designed to help offenders remain crime free. These include drug, mental health, and other counseling, and employment and vocational services.

Read about the duties of probation and pretrial services officers at <http://www.uscourts.gov/services-forms/probation-and-pretrial-services/probation-and-pretrial-officers-and-officer> and about community supervision, including location monitoring, at <http://www.uscourts.gov/services-forms/probation-and-pretrial-services/probation-and-pretrial-services-supervision>. Locate information about probation and pretrial supervision caseloads at <http://www.uscourts.gov/statistics-reports/caseload-statistics-data-tables>.

## **CENTRAL VIOLATIONS BUREAU**

In addition to major criminal cases, federal courts also hear cases about minor infractions that occur on federal land, such as military bases, park and forest land, and federally operated hospitals. These infractions can include traffic violations, vandalism, and possession of small amounts of drugs, and often result in court fines.

Hearings in these cases are handled by magistrate judges, and defendants often pay a fine without appearing in court. Fines are collected and case records are maintained by a national office, the Central Violations Bureau (CVB), which is based in San Antonio, Texas.

Reporters seeking CVB records should email [media@ao.uscourts.gov](mailto:media@ao.uscourts.gov). Under Judiciary policy, CVB records are subject to a search fee, and an estimate will be provided before the search is conducted. Records typically are limited to a copy of the citation, including a statement of the facts, and a summary of fine payments.

As with other federal criminal records, CVB case records are redacted to remove certain personally identifying information, such as street addresses and driver's license numbers.

Some courts also make CVB case records available via PACER.

# Helpful Online Resources

**Federal court websites:** Every federal court has its own website, with court locations and hours, local rules, access to PACER records, and other court information. Access links to all court websites at <http://www.uscourts.gov/about-federal-courts/federal-courts-public/court-website-links>.

The **Supreme Court** website, with court calendar and opinions, is at [www.supremecourt.gov](http://www.supremecourt.gov).

The **Judicial Conference of the United States** sets policy for the federal Judiciary. Find information about the Conference at <http://www.uscourts.gov/about-federal-courts/governance-judicial-conference/about-judicial-conference>, including membership and reports on its proceedings.

The **Federal Judicial Center** ([www.fjc.gov](http://www.fjc.gov)) provides training and research for the federal Judiciary. Its website includes

- a Judiciary history page (<http://www.fjc.gov/history/home.nsf/page/judges.html>) and
- a biographical database of all Article III judges in U.S. history (<https://www.fjc.gov/history/judges>).

**Financial disclosure statements** of federal judges and senior court personnel may be sought through the Administrative Office's Financial Disclosure Committee staff. The process is explained in the Judiciary's disclosure request form (<http://www.uscourts.gov/forms/other-forms/financial-disclosure-report-request>).

The **United States Sentencing Commission** establishes sentencing guidelines for the federal criminal justice system. To learn more, see [www.ussc.gov](http://www.ussc.gov).

FDsys (<https://www.gpo.gov/fdsys/browse/collection.action?collectionCode=USCOURTS>), an online Government Publishing Office service, has text-searchable published opinions for all regional U.S. courts of appeals, and for some U.S. district and bankruptcy courts.

Title 28 of the United States Code, which governs the federal courts, is available at FDsys (<https://www.gpo.gov/fdsys/browse/collection.action?collectionCode=USCOURTS>).

The Judiciary website, [www.uscourts.gov](http://www.uscourts.gov), has many resources:

- **Email Updates** (<http://www.uscourts.gov/email-updates>) includes a subscription form to receive email updates about court news.
- **Court Locator** (<http://www.uscourts.gov/court-locator>) provides address and contact information for all federal court units.
- **Judiciary News** (<http://www.uscourts.gov/judiciary-news>) has news articles and video about the federal courts.
- **About Federal Courts** (<http://www.uscourts.gov/about-federal-courts>) provides an overview of the federal Judiciary. More detailed descriptions of the federal appellate and district courts are at Court Role and Structure, which also includes the background paper “Understanding Federal Courts.”
- **Judges & Judgeships** (<http://www.uscourts.gov/judges-judgeships>) includes information on judicial vacancies and emergencies, for the current and previous years, as well as the Code of Conduct for U.S. Judges.
- **Statistics & Reports** (<http://www.uscourts.gov/statistics-reports>) includes Judiciary data tables and access to Judiciary reports, which are described in detail at Analysis & Reports.
- **Rules & Policies** (<http://www.uscourts.gov/rules-policies>) includes information about Federal Rules of Procedure:
  - About the Rulemaking Process (<http://www.uscourts.gov/rules-policies/about-rulemaking-process>)
  - Current Rules of Practice & Procedure (<http://www.uscourts.gov/rules-policies/current-rules-practice-procedure>)
    - Rules of Appellate Procedure
    - Rules of Bankruptcy Procedure
    - Rules of Civil Procedure
    - Rules of Criminal Procedure
    - Rules of Evidence
  - Pending Rules and Forms Amendments (<http://www.uscourts.gov/rules-policies/pending-rules-and-forms-amendments>)
  - Proposed Amendments Published for Public Comment (<http://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment>)

- Records and Archives of the Rules Committee (<http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees>)
- **Educational Resources** (<http://www.uscourts.gov/about-federal-courts/educational-resources>) includes information about the courts, including classroom-ready materials for teachers and students.
- **A Glossary of Legal Terms** (<http://www.uscourts.gov/glossary>) is available at the bottom of each page of the Judiciary website.

**Social Media.** Federal courts sometimes maintain their own social media accounts that are linked from individual court websites. The Administrative Office of the U.S. Courts maintains a presence in the following social media:

- YouTube (<https://www.youtube.com/user/uscourts>): The federal Judiciary’s channel has videos produced by U.S. courts, the Federal Judicial Center, and the United States Sentencing Commission.
- Twitter (<https://twitter.com/uscourts>): @uscourts is the official source for news and information about the U.S. courts.
- LinkedIn (<https://www.linkedin.com/company/us-courts/>): This page provides information about working for the federal Judiciary



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