



INTRODUCTION TO FEDERAL DISTRICT COURT PRACTICE

National Immigration Litigation Alliance

in collaboration with Children's Immigration Law Academy

February 23, 2021



CILA-NILA Partnership



Provide trainings, resources and technical assistance (Texas) related to appellate and litigation practice

Posted Trainings:

- **Ready to Win – Trying Cases Beyond the IJ Level**
- **Legal Writing (Recorded)**
- **Mandamus & APA in SIJS Delay Cases (Recorded)**

<https://cilacademy.org/trainings/appellate-litigation-strategy/>

Upcoming Trainings:

- **Advanced Immigration Legal Research**
- **Habeas Petitions 101**
- **Attorneys Fees Under the Equal Access to Justice Act**
- **Winning at the BIA**



CILA NILA Partnership



**Trainings –
Live and Recorded**



**Resources –
Practice
Advisories &
Templates**



**Texas –
Technical Assistance,
Legal Writing
Technical Assistance**

Overview

1. Procedural

- Getting started (PACER, admission, filing credentials, rules)
- After admission
- Governing rules and resources
- What to file to initiate a district court action
- What to expect after filing
- Service

2. Substantive

- Elements of a district court complaint
- Types of immigration-related district court actions
- Deep dive into 2 common types of district court actions

Poll Questions

PROCEDURAL NUTS AND BOLTS



Getting Started – PACER

- PACER – Public Access to Court Electronic Records
- Website: pacer.uscourts.gov
- Register for an Account
- Benefits:
 - Access to federal court dockets
 - Notice in Cases of Interest feature
 - Required for federal court litigation

Getting started - Admission

- 2 types
 - Full admission to the bar of the district court
 - Pro hac vice admission (requires local counsel)
- Always requires payment of an admission fee
- Usually requires an affidavit from sponsoring attorney
- Application process governed by Local Rule
- Information about admission on court's website
- Full admission
 - Seek admission before need to file (especially for Texas district courts)
 - Some courts require in person ceremony (usually waived now b/c of COVID)

After admission

- Need to register for electronic filing using the federal court system called “Case Management/Electronic Case Files (CM/ECF)”
 - Usually, an online application, may take a few days to process
 - Results in a username and password
 - Option of changing password
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- Caveat: some courts still require hard copy of complaints, so check local rules.

Governing Rules and Court Resources

- Rules
 - Federal Rules of Civil Procedure
 - Local Court Rules
 - Standing Orders
- Court Website Resources
 - Electronic filing training videos (e.g., how to initiate an action)
 - Some courts have filing checklists and/or written guides/materials
 - Contacting the Clerk's office or ECF Office

Initiating a District Court Action

- All courts require
 - The Complaint
 - Civil Cover Sheet (JS-44) or Local Form
 - *See* Guide to Completing Form JS-44, Civil Cover Sheet (in materials)
 - Filing Fee
 - Check court fee schedule on website. Payment often linked to PACER account.
- Some courts require
 - Proposed Summonses (AO 440)
 - Most courts require filing of proposed summonses. Prepare one for each entity/person served.
 - Specific case initiating forms (e.g., category form)
- If seeking more immediate injunctive relief → could file additional documents (motions/memos/proposed orders) on the same day or days after the complaint is filed.

What to Expect After Filing

- Court will assign a case number (during filing)
- Court will assign a magistrate judge or district court judge
 - Both parties must consent to proceed before a magistrate judge, 28 U.S.C. § 636(c). If either party declines, court must assign district court judge.
 - OK to decline magistrate judge assignment before gov't enters an appearance.
 - Declinations usually are made by filing form found on court's website.
- Once judge is assigned →
 - Review all her/his standing orders! (They may require services of specified documents).
 - Basic judge research (bio, wikipedia, the robingroom.com)

Service

- Governed by Federal Rule of Civil Procedure 4(i)
- Who is sued determines who must be served
- **ONLY** acceptable methods of service are:
 - Personal service on person designated to accept service,
 - U.S. registered mail, or
 - U.S. certified mail.
- Fed-Ex, DHL, UPS are **NOT** permissible for service.
- 2 Tips
 - U.S. certified mail, return receipt requested.
 - Parties now encouraged to *also* email complaints and summons.
- Must file form/affidavit with the court proving proper service.
- See [Whom to Sue and Service in Immigration-Related District Court Litigation](#) (in materials)

Ethics Refresher

- Competence – know what you are doing or get up to speed
- Scope of Representation & Allocation of Authority – Retainers!
- Be specific about:
 - Scope of work (district court litigation only, appeals, or both)?
 - Right to terminate (conditioned on permission to withdraw)
 - Permission to consult w/other counsel
 - Permission to share information
 - Payment – EAJA (net worth declarations, assignment)
 - Social media
- Client Communications (including copies of substantive filings)
- Client Confidentiality

Ethics Refresher

- Duty of candor to the Court (including in all written submissions)
- Settlement decisions belong to the Client
- Federal Rule of Civil Procedure 408(a)
 - Protects settlement discussions from admissibility
 - Limited exceptions in 408(b)
 - Labeling settlement communications w/ reference to Rule 408(a)



SUBSTANTIVE NUTS AND BOLTS



Elements of a district court complaint

- Caption
- Introduction
- Jurisdiction
- Venue
- Exhaustion (if applicable)
- Parties
- Factual Allegations
- Claims for Relief / Causes of Action / Counts
- Prayer for Relief
- Signature block

Common Types of Immigration-Related District Court Actions

- Actions to compel agency adjudication
- Actions challenging agency final decisions/policies/actions
- Habeas actions seeking release from immigration custody
- Actions seeking compensation/redress for abuse or misconduct

Deep Dive 1: Actions to compel agency adjudications

- Jurisdiction
 - Mandamus Act, 28 U.S.C. § 1361
 - Federal Question Statute, 28 U.S.C. § 1331 (w/Administrative Procedure Act)
- Venue – 28 U.S.C. § 1391(e)
 - Where defendant or plaintiff resides, or where substantial events/omissions occurred
- Defendant – varies
- Causes of action
 - Violation of 5 U.S.C. § 706(1) – agency action unlawfully withheld or unreasonably delayed
 - Violation of 28 U.S.C. § 1361 – plaintiff has a right to adjudication, agency has a duty to act, and no other remedy is available

Deep Dive 1: Actions to compel agency adjudications

- Defendant has 60 days after service on US Attys Office to respond, Fed. R. Civ. P. 12(a)(2)
 - Ok to reach out before 60 days if urgent
- May result in prompt adjudication after complaint is filed
- If agency does not adjudicate, expect either:
 - Answer → follow Rule 26 procedures
 - Motion to dismiss → motion briefing (see local rules)
- Additional resource:
 - *See* [Mandamus and APA Actions for Special Immigrant Juvenile Petitions](#)
 - *See* [Mandamus Actions: Avoiding Dismissal and Proving the Case](#)

Deep Dive 2: Actions challenging final agency decisions/policies

- Jurisdiction
 - Federal Question Statute, 28 U.S.C. § 1331
 - Declaratory Judgment Act, 28 U.S.C. § 2201
 - All Writs Act, 28 U.S.C. § 2202A
- Venue – 28 U.S.C. § 1391(e)
 - Where defendant or plaintiff resides, or where substantial events/omissions occurred
- Defendant – varies
- Causes of action
 - Violation of 5 U.S.C. § 706(2)(A)-(F)
 - Violation of statutory provision

Deep Dive 2: Actions challenging final agency decisions/policies

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 - Ok to reach out before 60 days if urgent
- Expect either:
 - Answer → follow Rule 26 procedures
 - Motion to dismiss → motion briefing
- Additional resource:
 - *See* [Immigration Lawsuits and the APA: The Basics of a District Court Action](#)



Thanks for Joining Us!

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Texas Folks – Reach out to CILA for CILA/NILA technical assistance.

Upcoming recorded trainings:
Advanced Immigration
Legal Research &
Habeas Petitions 101.

[CILA - NILA Trainings Available Here](#)

