



# Chapter 3

# Court Procedures

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# Stages in a typical Lawsuit

- There has to be a accident
- Breach of Contract, or
- Other event

# The first Step:

- Need to consult with attorney
- Initial Client Interview, Signing of Retainer Agreement
- Once an attorney has been retained, he or she the attorney is required to persue a resolution of the mater on the clients behalt.

# Types of Attorney's Fees:

- Fixed fees may be charged for performance of such services as drafting a simple will.
- Hourly
  - Legal fees range from \$125 to \$ \$600 per hour or even higher

# Informal Investigation:

Proper gathering and assimilating information, before a complaint is filed are critical components successful litigation. Facts are collective pieces of information explaining your client's version of what happened.

# Plaintiff's Attorney Files Complaint:

- Usually the first document filed in a lawsuit is the [\*complaint\*](#) (or *petition*), which provides an outline of the plaintiff's case against the defendant. The complaint is a document that identifies the parties involved, sets out the legal basis for the court's jurisdiction over the controversy, states the plaintiff's legal claims, and relates the facts giving rise to the claims
- The purpose of the complaint is to provide the defendant with notice of the factual and legal bases of the plaintiff's claims. .

# Defendant Notified of Lawsuit

- Before the lawsuit can begin the court must have proof that the defendant was notified of the lawsuit.
- When defendant is formally notified it's called service of process.
- The plaintiff must deliver, or serve, a copy of the complaint and summons to the defendant.
- Summons requires the defendant to appear in court and answer the complaint.

# Defendant's Attorney Files Answer to Complaint or Motion to Dismiss

- The defendant's answer response to the complaint, where appropriate, may assert
  1. Affirmation defenses (i.e., reasons why the plaintiff's claims fail or are limited as a matter of law or equity) and
  2. Counterclaims the defendant argues entitle him to relief.
- If the defendant does not answer within the time allotted by the applicable rules, the plaintiff may seek a default judgement.
- If the defendant asserts a counterclaim, the plaintiff may file a reply.



# Pretrial Motions

- Motion:
- **Motion to Dismiss:**
- **Motion for Judgment on the Pleadings claim:**
- **Motion For Summary Judgment**
- :

# Discovery

- **Depositions** -Sworn testimony, recorded by a court reporter and often by video, of the parties and other key witnesses.
- **Interrogatories**- Written questions related to the subject matter of the lawsuit that must be answered under oath.
- **Request for admission:** Questions to the responding party phrased in an "admit" or "deny" format, giving no opportunity for explanation, and binding the responding party to admissions.
- **Request Documents, Objects, or Entry:** Written request either detailing the types of documentations and other things that the requesting party considers relevant to the lawsuit or requesting permission to enter premises.

# Request for Examination:

- When the physical or mental condition of a party is in question, the opposing party may request a third- party physical or mental examination.

# Electronic Discovery:

- The federal rules and most state rules now allow parties to obtain electronic "data compilations" (email, voice mail, and other data).

# Pretrial

- Pretrial Matters
- After discovery the court schedules a conference or hearing called a **pretrial**
- **conference** .
- The conference takes place before the trial and consists of the judge and attorneys
- having an informal discussion.
- The motive of the conference is to have both parties come to an agreement or reach a
- settlement before the trial.
- If the parties do not agree they then plan the course of the trial, establish rules, and put a
- limit on the number of witnesses and experts.

# Trial

- In a trial there are rules that determine what will and won't be heard at trial.
- At the beginning both attorneys make **opening statements** that explain what they are going to prove during the trial, and must give a brief summary stating the reasons to why each of their clients are correct.
- **Rules of evidence** are a series of rules that courts have created to make sure all evidence presented is fair, reliable, and relevant.

# Posttrial Motions

- When the jury has decided on a verdict the prevailing party will ask the court to enter a judgement. The other party will most likely file a motion.
- **Motion for a new trial** the losing party can only be granted a new trial if the judge believes that the jury was wrong in granting judgement to the other party
- **Motion for judgement** if the defendant's attorney moved earlier for a directed verdict then they can ask for a motion of judgement. If granted the jury's verdict will be overturned because it was unreasonable, the judgement will most likely be in favor of the defendant

# Appeal

- Either party can appeal the jury's verdict and the judge's ruling.
- ● In order to file for an appeal the party must have lawful grounds.
- ● First the party that intends to appeal must file a **notice of appeal**.
- ● Then they must provide a **record or transcript** showing the pleadings, rulings, motions and hearing that were in the trial court.
- ● The appellee's attorney will outline legal arguments known as **briefs** that support their requests to set aside
- the judgement.



# Steps to enforce and Collect Judgment

- The court will sometimes schedule an **oral argument** to hear the counsel for each party to state their positions.
- Based on the briefs and oral arguments the court may
- **Affirm** the trial court's judgement or ruling.
- **Reverse** part or all of the trial court's judgement.
- They could **remand** the case for further proceedings.
- **Render** a new judgement or ruling without further trial court proceedings.