

LITIGATION

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If the parties are not able to reach a settlement through negotiations, the case then proceeds to Litigation.

COMPLAINT & SUMMONS

A Complaint is a written legal document on pleading paper that initiates a civil lawsuit. A Complaint includes identification of the parties, an explanation of why the court has jurisdiction to hear the case, the facts that led to the dispute, the specific laws that were violated, the allegations of wrongdoing against the defense, and a demand for judicial relief in the form of monetary compensation. The injured party filing the complaint is the Plaintiff and the party against whom the complaint is filed is called the Defendant.

SERVICE OF PROCESS

Once the Complaint is filed, the Plaintiff must personally serve notice of the lawsuit on the Defendant(s). This is typically done through a process server or law enforcement officer, ensuring that the Defendant is officially notified of the legal action against them.

INITIATING THE LAWSUIT

The law requires that you either file the Complaint and Summons with the court or the Defendant be personally served with the Complaint and Summons for the statute of limitations to be tolled against all Defendants. You must both file and serve within 90 days to properly effectuate the lawsuit.

RESPONSE BY THE DEFENDANT

The Defendant is required to respond to the Complaint within 20 days, usually by filing an Answer with the court. In the Answer, the Defendant addresses each allegation made in the Complaint and asserts any defenses.

DISCOVERY PROCESS

Following the filing of the Answer, the case enters the discovery phase. This stage involves the exchange of information and evidence between the parties. The discovery process can take months, or even years, to complete and actively requires our client's participation to provide facts, draft documents, provide witness information, and produce documents.

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Discovery methods include:

- Interrogatories: are written questions submitted by one party to the other, requiring written responses under oath (swearing to tell the truth under penalty of perjury)
- Requests for Production: are formal requests for documents, photographs, or other tangible items relevant to the case.
- Deposition: is a sworn, out-of-court testimony given by a party or witness in a civil lawsuit. A deposition has a question-and-answer format. A deposition is conducted primarily by the opposing party's attorney. A deposition is held under oath, which is a promise to tell the truth under penalty of perjury. The purpose of a deposition is so the opposing party's attorney may gather information and facts from a party or witness.
- Requests for Admission: are written requests asking the opposing party to admit or deny specific facts.
- Statement of Damages: is a legal pleading that outlines the types of damages being claimed, and includes:
 - Special Damages: are specific and articulable monetary damages, and includes past and future medical expenses, past and future lost wages, property damage, mileage expenses, out-of-pocket expenses, and other economic expenses.
 - General Damages: are monetary compensation for pain and suffering, which includes pain and suffering, loss of consortium, emotional trauma, physical pain, emotional distress (such as PTSD), disfigurement (including scarring), impairment (such as a loss of a limb), and disability (such as being bound to a wheelchair).

MOTIONS AND PRETRIAL PROCEEDINGS

Either party may file motions during the pretrial phase to establish the boundaries of the case and the legal issues to further litigate. Common motions include:

- Motion to Dismiss: seeks to have the case dismissed based on legal deficiencies in the Complaint.
- Motion for Summary Judgment: requests a judgment in favor of one party without a trial, arguing that there are no genuine disputes of material fact. Civil lawsuits involve different elements that the plaintiff has to prove, and motions for summary judgment may be filed as to one or more of these elements.

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ALTERNATIVE DISPUTE RESOLUTION (ADR)

Mediation or Arbitration may be pursued as alternatives to a trial. A neutral third party facilitates discussions between the parties in a mediation, while an arbitrator makes a binding or non-binding decision after hearing arguments and evidence. Entering into mediation has to be agreed to by the parties, whereas one party may move a case into arbitration after the Answer has been filed. The parties must agree on a mediator, but the court will appoint an arbitrator after each party has stricken or selected preferred arbitrators after reviewing a list of five (5) possible arbitrators. For mediation, both parties submit a letter to the mediator of relevant facts and issues. For an arbitration, the parties submit evidence in-person, by telephone, or through a sworn declaration.

Mediation or an arbitration hearing can take 2-3 hours to complete and in both the expert costs are low. Mediation or an arbitration hearing can occur within months of initiating litigation, whereas a trial may take years to fully resolve. As a result, the Courts require some form of Alternative Dispute Resolution be engaged by the parties to ensure an efficient and economical means of resolving disputes.

NEGOTIATION AND SETTLEMENT TALKS

Throughout the pretrial and discovery process, the parties may continue to engage in negotiation and settlement discussions. Many cases are resolved during the discovery and pretrial stages, as both parties continue to assess the strengths and weaknesses of their cases and seek to reach a mutually agreeable resolution without the risks inherent in taking a case all the way to a jury and bench trial.

TRIAL PREPARATION

Both parties engage in intensive trial preparation, including lay and expert witness preparation, finalizing legal arguments, and ensuring all evidence is ready for presentation.

TRIAL

The trial involves jury selection, motions in limine (legal and factual argument by the attorneys and decision by the judge of what evidence will be presented to the jury), the presentation of evidence, lay and expert witness testimony, and legal arguments to a judge and/or jury regarding the proper instructions to the jury about the law that applies.

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The Plaintiff bears the burden of proving their case by a preponderance of the evidence. The Defendant has the opportunity to present their defenses. Each party is financially responsible for the costs associated with presenting their expert witnesses at trial. An average expert witness can cost anywhere from \$5,000 to \$15,000 (on average) for their preparation, deposition, and trial testimony. Both the Plaintiff and Defendant are required to be present in the courtroom for the entire length of the trial.

VERDICT AND JUDGMENT:

After the trial concludes, the judge or jury deliberates and renders a verdict. If the verdict is in favor of the Plaintiff, a judgment is entered that specifies exactly what special and general damages have been awarded. Even after a verdict is rendered, there may be continued negotiations. A civil judgment can impact credit or be referenced negatively in future proceedings. The parties may agree to enter into an agreement for the Defendant's insurance company to immediately pay the judgement amount if the judgement is not filed. This avoids a collection process that may be lengthy or challenging based on the Defendant's access to liquid funds.

APPEALS (IF APPLICABLE)

Either party may choose to appeal the judgment or the granting/denying of a motion to dismiss or summary judgment if they believe there were legal errors. The appellate process involves a review of the motions, arguments, and/or trial proceedings, and a decision may affirm, reverse, or modify the judgment or granting/denial of a motion.

Throughout each stage, adherence to legal procedures, effective communication, and strategic decision-making play crucial roles in shaping the outcome of your personal injury case.