

## THE ANATOMY OF A LAWSUIT

Whenever one of my clients is sued, they inevitably want to understand the process of a lawsuit from when the complaint is filed until trial. Most people are rarely, if ever, involved in lawsuits so have no idea of what to expect. Below, I will provide a brief overview of the process involved if you find yourself a party to a lawsuit.

### **The Pleadings:**

Black's Law Dictionary provides a very useful definition of the pleading as "the formal allegations by the parties to a lawsuit of their respective claims and defenses, with the intended purpose being to provide notice of what is to be expected at trial." For the party filing the lawsuit, known as the plaintiff, the complaint is the operative pleading that it files to set forth its allegations as to the case. The party that is being sued, the defendant, sets forth its response to the complaint in the answer.

The pleadings are not usually very detailed as to the specific factual support for a party's position. That is because the law requires that the pleadings need only put the other side on notice as to the general nature of the plaintiff's claims and alleged damages. The answer by the defendant usually only consists of a general denial of the plaintiff's allegations without any specific statement as to the factual basis of any potential defenses.

After the answer is filed and all the parties have appeared in the case, the case is considered "at issue." Many people believe that by filing a lawsuit, somehow all of a sudden the parties are able to utilize the courts to bring the matter to a speedy conclusion. The opposite is usually true. Filing a lawsuit is the proverbial example of "hurry up and wait."

### **Discovery:**

Once the lawsuit is at issue, it is largely up to the parties as to how quickly or slowly they wish to proceed. The major effort in the early part of the case involves the various forms of discovery propounded by each side. In discovery, the parties serve on each other written questions ("interrogatories"), requests to provide documents ("requests for production of documents") and requests to the other party to admit or deny certain facts ("requests for admissions"). The other party has to answer the written questions and provide requested documentation unless the questions are improper, irrelevant or subject to any other objections.

Written discovery is generally of limited use to the parties. Most questions can be answered without providing any substantive facts that the other side can use against the answering parties. The requests for documents are usually the most useful form of

written discovery and can lead to the “smoking gun” types of documents that can help a case.

Written discovery usually precedes depositions in the case. In a deposition, one side is able to request that a witness appear and provide testimony that can be recorded by a court reporter. Depositions are where the real facts are developed in a case. The question and answer nature of the proceedings allows the attorneys to fully develop the facts surrounding the case. Also, people often get tired, cranky and generally fed up in depositions and because of that tend to offer up information that can be of great benefit to one party or the other. But when do these depositions occur and how long does it take to get to this point?

As I said before, the parties for the most part control the pace of the case. So, right after the case is filed, they can start the written discovery process or taking depositions. But, this rarely occurs. Most cases languish with little or nothing done by the parties until later in the case. Most litigators are busy and do not pay particular attention to a case until some type of deadline is looming. It is common for little to happen for at least 6 months or so after the complaint is filed.

The deadlines usually start to appear in a case when the initial status conference is held in the court. (The timeline I am describing is based upon my experience litigating cases in California courts but is illustrative of the general litigation process). The status conference occurs about six months after the complaint is filed. At the status conference, the court will set a trial date, which is approximately twelve to eighteen months after the complaint is filed.

Once the trial date is set by the court, a flurry of activity usually begins. Parties that have not sent out any written discovery will do so. Once they get written discovery responses back, they will begin to set depositions. If a party does not answer written discovery or provides evasive or incomplete answers, then the asking party can file motions to compel responses. As the trial date nears, the parties continue this process in order to try to position the case for trial (which really means settlement, as will be described below).

### **Pre-Trial Preparations:**

About two to three months before trial, most cases begin to take shape. The parties have a much clearer picture of their opponent’s strengths and weaknesses in the case as well as the scope of the potential exposure and the amount of money that each side can be expected to pay or collect. For this reason, and the fact that the parties are usually getting fed up with the litigation system, many cases are ripe for settlement at this point. This is a prime time to have a mediator sit down with the parties to try to see if a settlement is possible.

Barring a settlement, the last main part of the litigation process is expert witness depositions. Experts provide their opinions about critical issues in the case, in part to help the jury understand more complex issues. Once the expert witnesses have been deposed and any expert witness reports exchanged, the parties make their final preparations for the trial.

### **Trial:**

A case actually proceeding all the way to trial is an exceedingly rare event. I have heard figures tossed around that are in the region of 95% of all cases are settled and never go to trial. I know from my personal experience that while I was a litigator, I probably handled over four hundred cases in my career and only three of those cases went all the way to trial. So, although many people expect to get their day in court, the reality is that very few ever will.

Litigation is a long, emotional process for those that are involved. Some people believe that we would be better off without this type of dispute resolution process, but from my experience it has its merits. Like it or hate it, it is the primary way we resolve disputes in this country.

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