



Anatomy of a Typical Lawsuit

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Every lawsuit should be planned and coordinated with legal counsel.
This presentation is not intended to constitute legal advice on a particular matter.

Most Lawsuits Have Four Primary Stages

1. Pleading
2. Discovery
3. Pretrial Resolution
4. Trial

1. Pleading

A. Complaint

B. Answer

C. Cross-Complaint

D. Answer(s) to Cross Complaint(s)

A. Complaint

- Concisely allege facts that if true, would entitle plaintiff to relief/damages requested;
- Some suits alleging serious wrongs (e.g., fraud) must contain more specificity in facts alleged (who, what, when, where, how, etc...);
- Some suits have sufficiently serious consequences (e.g., evictions) that the complaint must be made under penalty of perjury (verified complaint);
- Complaint must request relief consistent with alleged facts (e.g., damages, attorneys' fees, costs, accounting).

B. Answer

- Answer must honestly and directly respond to material facts alleged in complaint;
- Answer may allege additional matters (e.g., fraud in inducement, statute of limitations) not apparent from complaint that if true, would negate plaintiff's right to recover. These additional matters are deemed denied by plaintiff;
- Complaint may be challenged by other methods (e.g., motion to strike, motion to dismiss for insufficiency of facts necessary to entitle relief to plaintiff);
- Answer may be joined with cross-complaint.

C. Cross-Complaint

- May be against plaintiff, or against third parties not already in suit;
- If against plaintiff, may involve other disputes between plaintiff and defendant; but if against third parties, must relate to issues in complaint (e.g., third person caused defendant's inability to perform).

D. Answer to Cross-complaint

- Just like “B. Answer” above.

2. Discovery

Discovery is a method to gather *relevant, nonprivileged* facts relating to issues framed by pleadings;

- A. Depositions;
- B. Interrogatories;
- C. Requests to produce documents and things;
- D. Requests to admit;
- E. Medical examinations;
- F. Informal discovery.

A. Depositions

- Oral testimony given under oath;
- Just like trial testimony;
- Involves deposing attorney, witness, other parties' attorneys and court reporter;
- Testimony is transcribed into booklet which can be used as evidence in summary judgment, or at trial;
- Typically expensive, but deponent has limited time to craft answers and follow-on questions may elicit more detailed answers.

B. Interrogatories

- Written questions which if relevant, unambiguous and not protected (e.g., “What did your attorney say to you about....”) must be answered in writing under oath;
- Gives respondent time to carefully consider and craft answers;
- If not fairly answered, can be ordered answered by court after motion brought by interrogating party.

C. Requests to Produce

- Written requests to produce documents, things (e.g., product alleged to be defective), or inspect real or personal property at issue;
- Must be responded to in writing under oath;
- Gives respondent time to carefully consider and craft answers;
- Respondent must explain lost or destroyed documents or things (“spoliation of evidence”) and produce relevant, unprivileged documents, things.

D. Requests to Admit

- Written requests asking responding party to admit to truth of facts or genuineness of documents;
- Must be relevant to issues in case;
- Gives respondent time to carefully consider and craft answers;
- If denied and later proven true, asking party may obtain costs for untruthful denial;
- If unfair or deceptive answer given, fair answers may be ordered by court.

E. Medical Examinations

- May be requested where a party places in issue bodily damage, mental suffering, or lack of mental competence to act as alleged;
- Performed by a professional examiner (e.g., M.D., PhD)
- Not “open game” on unrelated medical issues (e.g., if not in issue, privacy rights of person examined prevail over need for peripherally relevant discovery.)

F. Informal Discovery

- Information from client, or client's agents;
- Statements from friendly persons not in case and not agents of opposition (e.g., corporate executives, spouses, health care professionals);
- Private investigators;
- Viewing neutral property (e.g., public place that was the site of an event);
- Court records;
- Newspapers, internet pages, etc....
- Other????

3. Pretrial Resolution

- Court-ordered mediation, arbitration;
- Motion for Summary Judgment where discovery shows no material facts are in dispute, and known, proven facts demonstrate a party must, even without a trial, be entitled to judgment in its favor;
- Statutory Offer made early can induce resolution or shift costs of experts like a “spread” in gambling events.

4. Trial

- Some cases are tried to a jury, some are not;
- Civil cases can be “bumped” if no courtrooms are available or delayed for other reasons such as death of a party or essential witness;
- Typically, trials are very expensive, and require meticulous attention to coordinate witnesses, documents, presentations, trial briefs, etc....
- Conclusion of trial results in judgment in favor of one party or another.

Where to get more information



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