



## Litigation 101 - What Happens in a Lawsuit?

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Litigation can cause anxiety for just about anyone, whether you are being sued, or you find yourself in a position where you have to sue someone else. A general understanding of the litigation process can help relieve some of that anxiety. This article is a general outline of the litigation process in case you find yourself in a situation where you have been sued or you need to sue someone else.

### **RETAINING AN ATTORNEY**

If you are going to bring a lawsuit against someone or some company, the first step is to retain an attorney to represent you. If you are being sued, call your attorney (if you have one) as soon as possible. If you have a liability insurance policy that may cover the claims being litigated, call your insurance company's claims department and report the claim **as soon as possible**. You will need to forward the lawsuit papers to them as well. Usually, the insurance company will retain (and pay for) an attorney experienced in the type of lawsuit, and pay litigation costs.

Attorneys are trained and knowledgeable with the court rules that govern litigation, including the important deadlines for filing or responding to a lawsuit. Failure to comply with deadlines could have serious financial implications for you or your business. The rules and deadlines in litigation are different in each case and depend upon what court has jurisdiction over the lawsuit, which judge is assigned to the case, what types of parties are involved, and what claims are being litigated.

### **THE SUMMONS AND COMPLAINT**

A plaintiff begins a lawsuit by filing a summons and complaint. The summons is a notice to the defendant(s) that a lawsuit has been filed against them, what court the lawsuit has been filed in, the court's case

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number, the date the case was filed, and the number of days before a response is required. The plaintiff who filed suit has a duty to deliver (to “serve”) the summons and the complaint on the defendant(s) putting the defendant(s) on notice that they have been sued and need to respond in writing within a certain number of days. Service of process of the summons and complaint is possible by a number of methods, but typically it is by personal service, i.e., a process server or someone else personally hands the papers to the defendant(s), or by certified mail.

The complaint contains numbered paragraphs that will explain the jurisdiction (what court has the power to hear the case and why), venue (where the lawsuit may be filed), claims or counts (for example, breach of contract or negligence), and damages (how much money the plaintiff wants from the defendant) in a case. The complaint will ask for a jury if the plaintiff wants a jury trial. Where the complaint is filed depends on the dollar amount of the claimed damages, the type of claims, and where the parties live or do business.

### **THE FIRST RESPONSIVE PLEADING**

The person sued, the defendant, must respond to the complaint within a deadline set by the applicable rules or a default will enter. A defendant may respond in an answer that admits or denies each of the plaintiff's allegations in the complaint. The answer will list defenses and counter-claims or cross-claims against the plaintiff or other defendants. The answer will state whether the defendant wants a jury trial. The case will then continue. Sometimes a defendant may respond by filing a motion in lieu of an answer, which seeks immediate dismissal of all or part of the complaint. The judge will grant or deny the motion, and the case will either be dismissed or continue and the defendant will answer the complaint. Alternatively, the parties may appeal the judge's decision on the motion.

### **THE SCHEDULING ORDER**

The judge will issue a scheduling order for each case, setting important deadlines for when discovery will be completed, when dispositive motions, motions to dispose of the case or portions of the case may be filed, if the case will be sent to alternative dispute resolution, and when the case will ultimately go to trial.

### **DISCOVERY**

Discovery is the time period where the parties request and obtain information from each other. The court rules set specific requirements for how the parties may seek and produce this information. If a plaintiff or defendant fails to respond to another party's request as required by the rules, that party may file a motion to compel responses and go before the judge. Often, parties will depose witnesses in the case. In a deposition, attorneys ask a witness questions and everything said is typed word-for-word by a court reporter. The parties then use the transcripts of the deposition for various purposes during litigation.

### **MOTIONS**

Motions are a way for parties to ask the judge for specific relief, including dismissal or judgment of a case. Motions are typically accompanied by a written “brief” (which is often not brief at all) that explains the legal



arguments supporting the requested relief. Motions may attach many exhibits to help explain why the relief should be granted or not. If one party files a motion, the opposing party will have the chance to file a written response. The judge will schedule oral argument on the motion, where the attorneys will have to appear in court and verbally explain their position. The judge will make a decision, either orally at the hearing or in a written order or opinion. Parties are bound by the judge's decision, unless they choose to seek relief from a "higher" appellate court.

### **CASE EVALUATION, MEDIATION AND SETTLEMENT**

All court systems have processes to encourage parties to settle their differences out of court, rather than going to trial. Michigan state courts require parties to participate in "case evaluation" in which a panel of seasoned attorneys evaluates the case and assigns a monetary value to suggest an amount the parties should consider settling their case. If the parties mutually accept the case evaluation award, the case is settled. If a party rejects a case evaluation award the case will move towards trial. The parties may avoid case evaluation by agreeing to an alternative form of alternative dispute resolution. Alternative Dispute Resolution generally refers to mediation, which is essentially a privately conducted settlement conference led by an attorney trained and experienced in case resolution techniques. When a case is settled through direct negotiations or case evaluation or mediation, the case is resolved, typically without the necessity of a trial. Settlement can occur at any time, including during trial, after trial or even during an appeal. When a case is settled, an order dismissing the case will be entered and a settlement agreement is signed by the parties. The parties must then comply with the terms of that settlement agreement or face further legal action.

### **TRIAL**

After discovery has concluded, if the case does not settle and is not resolved by a motion for summary disposition or judgment, the case will go to trial. Trial requires extensive preparation on the part of attorneys. In a jury trial, the jury is the fact-finder; in a bench trial, the judge decides the facts. In all trials, the judge will rule on objections and motions to exclude certain evidence or testimony. At trial, attorneys will present arguments, witnesses, and evidence. Once the trial has concluded, the parties may sometimes submit post-trial motions or briefs. Attorneys may appeal the judgment entered after a trial.

### **APPEAL**

In an appeal, a trial court's decision is revisited by another "higher" court. An appeal may happen at many different times in a case. Depending on the type of appeal, the attorney may have to first seek leave (or permission) from the appellate court to see if it will take the appeal. Sometimes a stay is needed to keep the case from continuing while an issue is being taken on appeal to the appellate court. Appellate briefs explain why a trial court's decision should be affirmed or reversed and rely on citations to statutes and prior appellate court decisions as authority for their arguments. Rules in appellate courts are different than those at the trial court level. Often attorneys specializing in appellate litigation handle appeals.

As this overview shows, litigation is a complicated process involving many strict deadlines. If you find yourself facing a lawsuit or if you need to sue someone else, please contact an experienced litigator at Foster swift.



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*This article was originally written in October 2012 by former Foster Swift attorneys Liza Moore & Bruce VandeVusse*