

SUMMARY OF CIVIL CASE PROCEEDINGS

Complaint: The complaint is the legal action in which one party (the plaintiff) sues another party (the defendant). Federal civil cases begin with the filing of a complaint. The plaintiff(s) claim that the defendant(s) failed to carry out some type of legal duty (for example, the duty to comply with a contract or the duty not to violate constitutional rights). The plaintiff also claims to have suffered a financial loss or personal injury because of the defendant's actions. In most civil cases the plaintiff asks the court to order the defendant to pay for the harm suffered by the plaintiff.

Service of Process: The service of process is formally serving a summons and a copy of the complaint on the defendant. The summons tells the defendant that he or she is being sued and asserts the power of the court to hear and determine the case. Pursuant to the rule, "The summons must be signed by the clerk, bear the seal of the court, identify the court and the parties, be directed to the defendant and state the name and address of the plaintiff's attorney or, if unrepresented, of the plaintiff. It must also state the time within which the defendant must appear and defend, and notify the defendant that failure to do so will result in a judgment by default against the defendant for relief demanded in the complaint."

Responsive Pleadings: A pleading is a written document that sets out the basic position and argument of one of the parties in a case. In most cases, the basic pleading for the plaintiff is the Complaint and the basic pleading for the defendant is the Answer. An Answer to the Complaint states the Defendant's side of the dispute and may also contain Affirmative Defenses against Plaintiff's Complaint. In some cases, the basic response of the defendant is a motion to dismiss the case instead of an answer. A Motion to Dismiss asks the Court to dismiss plaintiff's complaint based on defenses under Rule 12 of the Federal Rules of Civil Procedure. If a Motion to Dismiss is granted, the Plaintiff may amend his Complaint to correct the deficiency.

Failure to Respond: If a defendant fails to answer the complaint or file a motion to dismiss within the time limit set forth in the summons, the defendant is in default. The plaintiff can ask the court clerk to make a note of that fact in the file, a procedure called entry of default. Entry of default means that because the defendant has failed to appear, the defendant will not be permitted to contest whether he or she is liable to the plaintiff. Instead, the only question in dispute is how much the plaintiff should receive in damages.

Discovery: In order to prepare the case for trial, the parties engage in what is called Discovery. During the Discovery process the parties gather relevant information from each other or from third parties. Information is gathered formally through:

- (1) Interrogatories: written questions,
- (2) Requests for copies of documents,
- (3) Requests for admission (which ask a party to admit or deny statements of fact),
- (4) Depositions in which witnesses are questioned under oath by the parties' attorneys and the witnesses' answers are recorded by a court reporter. Depositions also may be used at trial to show inconsistencies in a witness's story or to question the witness's credibility.

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As the parties gather discovery to strengthen their case, they may file a Motion for Summary Judgment. A Motion for Summary Judgment asks the court to dismiss part or all of a plaintiff's case or a defendant's defense, or dispose of issues without trial.

Settlement: At any time after the filing of the Complaint, the parties may engage in settlement discussions. A settlement occurs when the parties resolve their civil dispute, usually after negotiating among themselves rather than the court or a jury deciding the case. A settlement is one way a case can end without reaching the trial stage. An informal settlement can even take place before any lawsuit is filed. Through settlement, the plaintiff in a civil case agrees to give up the right to pursue any further legal action in connection with his or her case, in exchange for the payment of an agreed-upon sum of money from the defendant. Parties decide to settle for a number of reasons. Some include the ability to reach a resolution more quickly and less expensively. The parties also avoid the unpredictability of having a jury or judge decide their case. In order to assist the parties in their settlement discussions, judges may refer the case to a magistrate judge to oversee the settlement discussions.

Trial: If the parties cannot reach a settlement, the case then goes to trial. There are two types of trials, a bench trial or a jury trial. In a bench trial the disputed matter is decided by a judge. In a jury trial the disputed matter is decided by a Jury. The Judge will decide what laws(s) the jurors will apply to the case.

Judgment: The Judgment is the last order stating the decision of which side the case is in favor of and the liabilities of the parties.

Appeal: An appeal is made when one party believes that he/she did not receive a fair trial or that the judge has ruled incorrectly on a matter. A Notice of Appeal is the pleading which initiates the appellate process. Our judicial system allows for a review by the appeal court of the judgment or decision of a lower court.