**LAWSUIT TERMS EXPLAINED**

**By: William G. Morris, Esq.**

People hear about lawsuits all the time. Some people are involved in a lawsuit. Even those involved in a lawsuit may not understand what is happening, because they do not understand the terms used by lawyers. This column will explain the components of a Florida lawsuit.

A lawsuit is started by filing a complaint with the court. The party on whose behalf the complaint is filed is known as the plaintiff and the other side is the defendant. The complaint must plead ultimate facts in separately numbered paragraphs which, on their face, meet the elements of what is known as a cause of action. Cause of action is a legal theory under which a party may be entitled to judgment. Ultimate facts are not opinion or conclusion.

Florida’s Supreme Court has published forms to be used for certain claims and if the form is used it will be deemed sufficient by all courts in Florida. If the complaint does not include ultimate facts sufficient to plead all elements of a cause of action, it is subject to being dismissed if the opposing party so requests and the judge agrees.

In some cases, the initial pleading filed with the court is known as a petition. Petitions are generally required in cases that are equitable actions. In old England, courts were either of equity or of law. Law courts handled cases seeking damages and equity courts handled cases seeking other forms of relief. That distinction is carried forward into modern courts, even though the same court now hears both types of cases. The only real remaining difference is equity actions start with a petition.

After the complaint or petition is filed, the clerk issues a summons. The summons is also based on old English practice, under which the defendant was summoned to appear before the judge. The summons serves a similar purpose. The summons tells the defendant that the defendant must answer the complaint within a set period of time or risk having a judgment entered against the defendant. Most cases require response from the defendant within 20 days of the date the defendant receives the summons.

The summons is delivered to the defendant with a copy of the complaint. Delivery of the summons and the complaint is known as service of process. Service may be made on the defendant personally or by leaving at the defendant’s residence with a person who resides at the defendant’s residence and is at least 15 years of age. Leaving the summons and complaint with someone other than the defendant is known as substitute service. In some cases, service of process can also be effected by mail and in others service may be made upon an agent authorized by statute or court rule.

After the defendant is served with summons and complaint, the defendant has 20 days to serve a response. Response can be served by mail or most commonly via the court operated email service system. The defendant has options in response. The most basic option is called an answer. In an answer, the defendant admits or denies the claims in the complaint.

The defendant can plead affirmative defenses. An affirmative defense explains that even if a claim is valid there is a reason why the claim is unenforceable. A good example is when someone is suing but the claim is barred by the statute limitations because it was not timely filed.

The defendant may plead claims the defendant has against the plaintiff in what is known as a counterclaim. If the defendant has a claim arising from the matter on which plaintiff is suing, the defendant must plead that claim as a counterclaim or it will be barred. Claims in other matters can also be pled as a counterclaim, but those claims could also be filed in a separate lawsuit at a different time.

Once a lawsuit starts rolling, the parties want to know everything they can know about the case. That is done through a process known as discovery. By the time of trial, everyone is supposed to know everything about the case so it can be well presented to the judge or jury for decision.

A party can serve a request for admissions, in which the opposing party is asked to admit or deny statements in the request. If a request for admissions is not denied within 30 days, it is deemed admitted. A request for admissions is generally used to get admission on certain facts to make the case simpler, but the attorney often make it more complicated.

A party can request production of documents from the opponent or from non-parties. The recipient of a request for production is supposed to produce the documents within 30 days or object to production on grounds like attorney-client privilege, unduly burden or confidentiality.

The most onerous discovery technique is a deposition. Deposition is an appearance by a witness who is placed under oath. An attorney or attorneys ask questions and the proceeding is recorded by a court reporter. It is a lot like testifying at trial but there is no judge or jury.The court reporter types a transcript of the deposition and it can be used at trial. A deposition can even be substitute for live testimony if the witness is unavailable or is more than 100 miles from the court in which the lawsuit is pending.

Believe it or not, attorneys and the parties are not always cooperative. To force action or to get protection from the court, a motion may be filed. A motion asks the judge to grant some type of relief and is most often decided at a hearing. A hearing is when the parties appear before the judge, other than at trial. Hearings can be evidentiary in which testimony is taken but most hearings only involve attorneys arguing the merits of a particular legal position. Motions can ask for almost anything, from an order that someone produce information to an order that the parties maintain the status quo until the suit is ended. Perhaps the most common motion is to force production of evidence or prevent one party from obtaining documents that are confidential or irrelevant.

A person or entity can be required to attend a deposition, hearing, trial or other proceeding by subpoena. Most subpoenas can be issued by attorneys on behalf of the court. A subpoena orders a person or entity to produce information or to appear for testimony and failure to do so can be punished by court order to pay attorney’s fees, other expenses and even the possibility of incarceration.

As trial approaches, most judges order the parties to either mediation or non-binding arbitration. Mediation is a process during which a third-party mediator attempts to get the parties to reach settlement. If no settlement is reached, the parties proceed to trial. Non-binding arbitration is a process by which the parties provide a short presentation of the case and a third-party issues a decision. The decision becomes a judgment unless one of the parties requests a trial de novo. If the party requesting a trial de novo does not do better at trial than at arbitration, the court may award the opponent attorney’s fees and costs incurred from and including the arbitration through trial. That can be a substantial disincentive to request trial de novo.

Trial is the process by which the parties present evidence and a judge or jury enters a decision in the lawsuit. Final resolution is a judgment signed by the judge. After trial, either party may file an appeal for an appellate court to review what was presented at trial and determine if either the proceeding or judgment are so erroneous as to warrant a new trial or other relief. No new evidence is offered on appeal. It is review of what happened at trial.

One term everyone should understand is attorney’s fees. Fees can be significant, even when a client thinks it is an open and shut case. Parties to a dispute are well advised to consider the cost of pursuing suit before filing a lawsuit.

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