**WHAT HAPPENS IN A LAWSUIT**

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

Lawsuits get a lot of publicity. But, even those in a lawsuit may not know what is happening. This column will explain the process of a lawsuit in Florida state (not federal) courts.

The party filing suit is known as the plaintiff or in equitable actions (such as dissolution of marriage) the party filing is known as the petitioner. The other party is the defendant or in equitable action, the respondent. This column will refer to the filing party as the plaintiff and the party being sued as the defendant.

Before suit is filed, the plaintiff and the plaintiff’s attorney gather information to support a claim or claims against the defendant. That process can include interviews, document compilation, expert assessment and calculations. The attorney may research court decisions and statutes to determine what claims might be filed and possible defenses. When research and information compilation is finished, the plaintiff’s attorney drafts a complaint. The plaintiff will also decide if a jury trial will be requested. If a jury trial is not requested, the trial will be only with a judge.

The complaint is a recitation of ultimate facts which meet the requirements of Florida statutes or case law to state a cause of action against the defendant. Ultimate facts are not conclusions. The complaint will include the names of the parties, their status, and facts which support the claim or claims. A complaint can plead multiple causes of action and those can even be contradictory. The plaintiff does not have to make a final election of what claim to pursue until trial.

When the complaint is finished, it is filed with the Clerk of Courts. Claims for $30,000 or less are filed in County Court. Larger claims are filed with the Circuit Court. Claims for less than $8,000 are pursued in Small Claims Court, which has different, expedited and simplified process to reach trial. A filing fee is paid to the Clerk of Courts with the amount of the fee based on the relief requested in the complaint. Florida filing fees range from $100-$400.

After the complaint is filed, the Clerk issues a summons and the plaintiff must arrange service of the summons and complaint on the defendant. That is known as service of process. The defendant can be served in person or by leaving the summons and complaint at the defendant’s residence with a person residing there who is 15 years of age or older.

The defendant has 20 days to serve a response to the complaint. The defendant also has a right to demand a jury trial. The response can be an answer, in which the defendant admits or denies allegations in the complaint. Response can include affirmative defenses which set up legal avoidances to claims in the complaint even if the claims are true, such as the statute of limitations barring a claim not timely filed. Defendant can file a counterclaim against the plaintiff, which is a lawsuit against the plaintiff in the same case. The defendant can also file a motion to dismiss if the defendant believes the complaint fails to properly state a cause of action or a motion seeking a more definite statement if the defendant is on sure what the plaintiff is claiming.

As the lawsuit progresses, the parties can file other motions. A motion generally asks the judge for some temporary or permanent relief short of trial. Motions can include request the court order the other party to cooperate, request protection from overreaching effort by the other party, extensions of time and even judgment without trial if a party believes it can establish there is no genuine dispute under which the other party can prevail. One or both parties can even file a motion to amend their pleadings. The parties schedule a hearing with the judge at which the Judge listens to arguments by the attorneys and issues an order granting or denying a motion.

The American trial system presupposes that the parties will present all relevant evidence for determination of what facts are true and application of the law to those facts to determine the prevailing party. Plaintiff and defendant must know everything they can about the case to fulfill their roles. That is done through a process known as discovery.

Discovery includes depositions. A deposition is not in court, but a witness is placed under oath and asked questions by the attorneys while a court reporter makes a record of the proceeding. The parties can also request production of documents from parties and nonparties, serve written questions to be answered under oath (known as interrogatories) and even serve a request that the opponent admit certain facts. The discovery process is somewhat cumbersome and can take a lot of time.

Once discovery is completed, one or both parties will tell the judge the case is ready for trial. The judge will issue an order scheduling the case for a tentative trial period and order the parties to mediation or nonbinding arbitration.

Mediation is a process under which a neutral third party attempts to get the plaintiff and defendant to settle the case. If the parties do not reach agreement, the case proceeds to trial. Arbitration is a process under which a neutral third party renders a decision. If the judge order the parties to arbitration, it is not binding as parties are entitled to a trial. Because arbitration ordered by a judge is nonbinding, either party can request a trial de novo if unhappy with the arbitrator’s decision. If neither party requests a trial de novo, the arbitrator’s decision becomes a judgment.

Trial is the ultimate end game in a lawsuit. The plaintiff goes first, calling witnesses and producing evidence that supports the plaintiff’s claim. The defendant gets to ask questions of all of plaintiff’s witnesses. When the plaintiff rests, the defendant introduces witnesses rebutting the plaintiff’s claims, all of which may be cross-examined by the plaintiff. When the parties are done submitting evidence, the case is submitted to the jury in a jury trial or for the judge if a non- jury trial.

One of the parties is likely to be unhappy when the trial is over. If unhappy enough, that party can file an appeal. In some cases, both parties file appeals. The record is reviewed by an appellate court. No new evidence is introduced and no new testimony is provided. The attorneys file briefs with the appellate court outlining errors or in support of the judgment.

The case is ultimately scheduled for oral argument. The attorneys present their side of the case at oral argument and the appellate judges ask questions. In Florida, each side has only 20 minutes to present their case at the appellate hearing. The appellate court then issues an order affirming or reversing the trial court judgment. Trial courts have one judge. Florida appellate courts have a panel of three judges.

This process may seem simple, but it is relatively cumbersome and lengthy. With good trial lawyers charging by the hour, attorney’s fees and costs for a lawsuit can exceed $100,000. Expense varies from case to case, but is frequently a lot more than the plaintiff or defendant expected before getting involved in a lawsuit. For that reason, the parties should always exhaust settlement effort before a trip to the courthouse.

***William G. Morris is the principal of William G. Morris, P.A. William G. Morris and his firm have represented clients in Collier County for over 30 years. His practice includes litigation and divorce, business law, estate planning, associations and real estate. The information in this column is general in nature and not intended as legal advice.***