**LAWSUIT PLEADINGS EXPLAINED**

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A lawsuit is started when the plaintiff files a pleading known appropriately as a complaint. Court rules require every complaint state a cause of action which is recognized under Florida law or which the plaintiff believes should be recognized. The complaint must show that the claim is within the jurisdiction of the court. In Florida, the amount of the claim determines if the case should be filed in Small Claims ($8,000 or less), County Court (between $8,000 and $30,000) or Circuit Court ($30,000 or more).

The complaint should also establish that the case is filed in the proper location. In most cases, the complaint must be filed where the defendant resides or where the cause of action accrued.

After establishing the case is filed with the proper court, the complaint must recite ultimate facts which state a cause of action. Ultimate facts mean the complaint is not to contain conclusory claims but instead is to contain alleged facts which, if proven at trial, would entitle the plaintiff to a judgment.

Generic elements of various causes of action are relatively easy to determine by review of previous Court cases. The doctrine of stare decisis mandates that judges decide cases based upon precedent so that the same fact setting will reach the same result. That leaves lawyers to argue whether evidence in the case establishes facts which are close enough to previous cases to merit the decision requested by each lawyer.

It is not uncommon for a lawyer to have difficulty figuring out how to meet the technical requirements of a cause of action with the facts at hand. Lawyers may also pick the wrong court, intentionally or unintentionally. Those deficiencies, and others, are generally left to the defendant to complain about. Judges do not usually raise issues independently if the parties do not raise them.

After the complaint is filed, the defendant is served with a summons and a copy of the complaint. The summons requires a response be filed. In Florida state courts, the response is due within 20 days.

The defendant can admit or deny the allegations in the complaint. Admitting or denying allegations is done by filing a pleading known as an answer. If the defendant’s lawyer believes the complaint is deficient, the defendant can file a motion instead of an answer.

A motion requests the court issue an order. Most motions require a hearing at which the judge hears arguments of the lawyers, sometimes evidence, and then issues a ruling in form of an order granting or denying the motion.

The most common motion filed in response to a complaint is a motion to dismiss for failure to state a cause of action. If the judge grants that motion, the plaintiff is generally given additional time to remedy deficiencies in the original complaint by filing an amended pleading. Other motions that can be filed by defendant includes motions attacking jurisdiction, location of filing or requesting the plaintiff’s complaint be amended to provide a more definite statement of facts or requested relief.

Once the defendant agrees that the plaintiff has filed a complaint in the proper court which states a cause of action, the defendant will file an answer. The defendant can also file affirmative defenses and one or more counterclaims. Affirmative defenses admit the allegations in the complaint but set out a legal excuse barring the plaintiff’s recovery. A good example of an affirmative defense is the statute limitations. A defendant may admit owing money but plead that the statute of limitations bars the plaintiff’s claim because the plaintiff waited too long to pursue it.

If the plaintiff believes an affirmative defense can be avoided, the plaintiff files a reply to the affirmative defense. In the statute of limitations example, the plaintiff might file a reply stating that the plaintiff and defendant agreed that if the plaintiff would defer filing suit, the defendant would pay within a certain period of time. The judge will later decide if the reply is sufficient to avoid the affirmative defense.

If the defendant has a claim against the plaintiff, the defendant can file a counterclaim. The counterclaim is similar to a complaint, but it is filed by the defendant against the plaintiff. If it arises from the same circumstances as the plaintiff’s complaint, it is a mandatory counterclaim. A mandatory counterclaim must be filed by the defendant in the same case or it is barred. If the defendant’s claim arises from different circumstances, it can be filed as a counterclaim or a separate lawsuit. The plaintiff’s options in response to the counterclaim are the same as a defendant’s response to the complaint.

The defendant may believe someone else is really to blame for the plaintiff’s woes or that the defendant should not be solely responsible for all of the damages sought by the plaintiff. In those cases, the defendant can file a third-party complaint, which is sometimes known as a cross-claim, seeking to add another defendant with liability to the first defendant.

A good example of a third-party complaint is where the plaintiff sues the defendant for money owed in connection with a business venture. The defendant has a partner and believes the partner should pay at least half of any damages to the plaintiff, so the defendant files a third-party complaint against the partner seeking contribution. A third-party complaint proceeds almost identically to proceedings on the original complaint, with the third-party defendant having options to file motions, answer, affirmative defenses and even a counterclaim against the original defendant.

All of these filings are just the beginning of the lawsuit, but can be quite complicated. Judges also know there may not be a cause of action recognized in Florida for all “wrongs.”Florida courts have adopted an informal three strike rule for pleading, under which if the plaintiff fails to plead a cause of action accepted by the court after 3 amendments, the case can be dismissed without right to file again.

There is flexibility in allowing amendment to remedy pleading deficiencies. Once those deficiencies are cured, the case can proceed through the somewhat long and arduous process of discovery to ultimate trial.

Filing a lawsuit may seem simple and many feel they have an “open and shut case.” But, technical pleading requirements can shut a case before it really opens.

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