**LAWSUIT TERMS EXPLAINED**

**BY: WILLIAM G. MORRIS, ESQ.**

Attorneys speak law and clients speak English and often the two fail to intersect. Today’s column will give a brief explanation of common elements in most lawsuits.

A lawsuit is started by one party filing a complaint or a petition. A petition is filed in cases seeking equitable relief, the most commonly known being dissolution of marriage. In most other cases a complaint is filed. In old England, there were different courts to hear cases at law and cases in equity. Florida courts hear both, but the different titles of the initial pleading remains. In fact, use of different title can be carried to the absurd as a court may dismiss an initial pleading titled complaint if it is an equitable action that is to start with a petition.

The complaint or petition is supposed to state ultimate facts that when read together establish a cause of action recognized under Florida law. That means, no argument or conclusions are supposed to be included.

The complaint or petition must be served on the other party. In actions at law the other party as a defendant and in an equitable action the other party is referred to as a respondent. The complaint or petition is accompanied by a summons and the summons notifies the other party that response is required with a 20-day deadline in most cases. The summons calls the other party to court, albeit it is figurative since the recipient is really only summonsed to file a response.

Personal service is required in most cases. That means handing the summons and complaint to the defendant or leaving it with a person at least 15 years of age residing in the defendant’s home. There are rules for who can be served when the defendant is a corporation or entity, which generally require service on a registered agent designated by the entity with the Florida Division of Corporations for the highest-ranking officer or employee at a business office of the defendant.

Constructive services may be used in most cases. Constructive service is generally publication in the newspaper and can be used when a money judgment is not sought and the defendant cannot be found after diligent search. Due process under the Florida and United States Constitutions all require actual service in most cases where a money judgment is sought. When might a money judgment not be sought? Money judgment might not be sought in a mortgage foreclosure or a condominium lien foreclosure or when attempting to establish ownership of an asset against competing claims.

Response to the complaint or petition is an answer. The answer admits or denies the allegations against the responding party. The answer can also plead affirmative defenses. Affirmative defenses admit the allegations but set up a legal excuse for why the opposing party should not prevail. A good example of an affirmative defense is when the responding party raises the statute of limitations. Statute of limitations bars a claim that is not timely filed, even if the claim would otherwise entitle the filing party to a successful outcome.

The responding party can also file a counterclaim or counterpetition. Those pleadings are just like a complaint or petition, but they make a claim against the original filing party. As with the initial filing, 20 days are allowed for response. A party can also file a cross-claim, which seeks recovery for part of the claim against that party from someone else. Cross-claims are usually filed against non-parties and follow procedure just like the initial filing, including requirement for service of summons with the cross-claim.

The attorneys pursue discovery as the case moves on. Discovery attempts to uncover information that will be useful at trial. The American justice system presumes each party will present the trier of fact that all information helpful to their case so the judge and jury can reach a correct conclusion. To do that, each party must be able to gather information with or without cooperation of the other party or parties.

Although discovery can be informal, a party can proceed with a formal request for production, interrogatories and even request for admissions. A request for production requests a party or non-party produce documents and records. Interrogatories are questions which must be answered under oath. A request for admissions requests a party to admit certain facts.

Getting documents and sworn answers is helpful, but most attorneys want to eyeball the other side’s witnesses and ask them questions. That is done at a deposition. A deposition is conducted by an attorney asking a witness questions after the witness takes an oath to tell the truth. A court reporter transcribes the witness’s testimony and the testimony can be used for impeachment and in some cases can be read into the record if the witness is not available at trial.

Rules limit the scope of discovery and the number of questions that can be asked by interrogatory or request for admission. Rules also limit the location for depositions and in many cases require paying expenses of the witness.

A party to a lawsuit must generally comply with discovery and other matters after receiving notice or request from his or her opponent. Non-parties have no obligation to respond unless they are served with a subpoena. A subpoena is a request by the court that someone produce documents, appear to answer questions at a deposition or even appear at trial. A subpoena is generally served like a summons.

During the course of a lawsuit, one or more parties may file a motion requesting help from the judge. Motions can be filed to force compliance with a discovery request, to protect one from an onerous discovery request, for extensions of time and a wide variety of other relief. Motions can be decided by a judge without a hearing, but most of the time the judge will require a hearing. The parties have to schedule a hearing based upon the judge’ availability. Recent practice has seen most judges requesting parties refer their hearings to a magistrate, who is an attorney hired by the court system for hearings only. After the magistrate rules, a party can request the judge reject the magistrate’s decision. A party can refer a magistrate, since parties are entitled to a judge under Florida’s Constitution.

Trial is the ultimate conclusion. The parties appearing in court introduce all of their evidence and a final decision is issued. If one of the parties requests a jury trial, the trial is by jury and the jury determines the facts with the judge applying the law to those facts. If no one requests a jury trial, the judge makes the decisions. The final decision is known as a judgment.

If one (or both parties) is unhappy with the judgment, an appeal can be filed. No new evidence will be heard on appeal. The appellate court reviews the record of what happened in the trial court to determine if the judgment is correct.

***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.***