**ANATOMY OF A LAWSUIT**

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Lawsuits can be confusing. Attorneys, paralegals, judges and court personnel know the procedure and the terms used. The parties do not. This column will provide a brief synopsis of a civil action, and the terms most frequently used while the case proceeds.

A lawsuit starts with filing of a complaint (or a petition in certain types of cases). A complaint in this context means a formal pleading that states ultimate facts in numbered paragraphs which together allege a claim which is pleads the elements of a cause of action recognized in Florida. A petition is similar but is filed in cases seeking equitable relief such as dissolution of marriage or probate.

We inherited law from England. England recognized two types of court actions. One was an action under the common law, usually involving money damages and requiring strict adherence to rules. Common law also recognized only limited types of claims (focused mostly on commerce). Equity courts arose to fill the gap when there were claims that should be eligible for relief but were not recognized under common law. Between 1873 and 1875, these separate courts were merged in England and that is true in Florida. For parties, actions in law or equity are both lawsuits.

The person seeking relief is the plaintiff and the party being sued is the defendant. The defendant is brought into the case by service of process. That means the complaint and a summons is delivered to the defendant in a manner provided by statute and court rules. The summons is the document by which the defendant is told a complaint is attached and the defendant has a set amount of time to file a response (most cases 20 days).

The defendant has options. If the defendant does not think the allegations state a claim under Florida law, the defendant can file a motion to dismiss. A motion to dismiss is similar to other motions as it asks the judge to take some action. A motion is usually set for a hearing, which is when the attorneys argue to the judge the merits of the motion. When the judge decides, the judge issues an order on the motion which orders the parties to do what the order says.

If a motion to dismiss is granted, the plaintiff is usually given an opportunity to amend the complaint to cure deficiencies. If not granted, the defendant must file an answer in which the defendant admits or denies the allegations in the complaint.

The defendant can also file affirmative defenses. Affirmative defenses are legal excuses that make the claim of plaintiff unenforceable. Pleading the claim is barred by the statute of limitations because it was filed too late is a good example of an affirmative defense.

The plaintiff can file a reply to any affirmative defense in which the plaintiff sets out reasons why the defense should fail. The plaintiff might file a reply to the statute of limitations defense in which the plaintiff states the reason the suit was filed so late is because the defendant promised to pay if the plaintiff put off filing suit.

The defendant could also file a claim against the plaintiff. That is a counterclaim, and it is treated procedurally like the original complaint, with the plaintiff having same options to respond as the defendant had to the complaint. The defendant could also file a claim against a non-party for some or all of the damages claimed by the plaintiff. That is known as a crossclaim.

The parties will usually pursue discovery. Discovery is the process of getting information so everything is known before trial. The American system believes if both sides know everything, they can present all relevant information for ultimate decision. That information is known as evidence, and it is produced by witness testimony at trial.

Discovery includes request for production (requesting documents and records), interrogatories (written questions to be answered under oath), request for admissions (asking that certain “facts” be admitted), and depositions (witness is placed under oath and questioned with a court reporter recording the questions and answers).

Parties to a lawsuit can be asked to provide discovery by simple notice. Non-parties can be subpoenaed to produce records, appear at a deposition or trial. If a non-party fails to comply with a subpoena (or ask the court to stop the subpoena with a motion for protective order) the non-party can be held in contempt of court and even jailed until compliance.

As the case gets closer to trial, the judge will order the parties to participate in mediation or non-binding arbitration in an effort to get the case resolved without court time. Mediation uses a mediator to try to get the parties to reach a settlement. If the parties fail to agree, they go to trial.

Arbitration is a process during which the parties present their case, and the arbitrator issues a decision. Since the Constitution guarantees the right to trial, the arbitration cannot be binding unless the parties agree in advance. If ordered to non-binding arbitration and either party is unhappy enough with the arbitrator’s decision, that party can ask for a trial de novo which proceeds as if arbitration never happened.

In a trial, a witness put on the witness stand is placed under oath, asked questions by the party calling that witness, can be cross-examined by the opposing attorney and if the first attorney feels a need can be asked additional questions on what is known as re-direct .

After all the evidence is finished, the attorneys make closing arguments, and the case is submitted to the jury if one of the parties demanded a jury trial or the judge decides. Judgment is ultimately entered awarding or denying the relief requested in the case.

An appeal can be filed if one of the parties is particularly unhappy. The appeal is based solely on the record at trial and no new evidence is presented. Witnesses do not testify. A panel of judges decides the appeal based on review of the record of the trial and the briefs submitted by the attorneys. If oral argument is requested, each side’s attorney will be given a limited amount of time to present an oral argument and answer questions from the judges.

When all is done and the plaintiff wins, the plaintiff must still collect the judgment as payment and is not automatic. The anatomy of collection is beyond the scope of this article.

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