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PLAIN ENGLISH CONSULTING / CLE AND BUSINESS EDUCATION SPEAKER

The Litigation Process in Colorado

"Litigation" is just a fancy word for "lawsuits." It is the process that begins when some person (or entity) sues another person (or entity). The people or entities named in the lawsuit are "parties" to the lawsuit.

A person begins a lawsuit by filing a Complaint with the appropriate court. The person filing the Complaint is the "plaintiff." The person being sued is the "defendant." The plaintiff must serve a copy of the Complaint on the defendant, along with a Summons that instructs the defendant to file an Answer to the Complaint (or other response, such as a Motion to Dismiss) by the deadline on the Summons. If the defendant does not file a response by the deadline on the summons, the plaintiff may obtain a default judgment against the defendant.

The plaintiff may file the Complaint in the District Court, the County Court, or the Small Claims Court. This summary pertains only to District Court lawsuits because I generally don't handle County Court or Small Claims Court lawsuits.

District Court lawsuits may be governed by regular procedure or simplified procedure. Generally, simplified procedure governs lawsuits involving less than $100,000.00. The main difference is that the ability of a party to engage in discovery in a case governed by simplified procedure is limited. Simplified procedure, though well-intended, has drawbacks, and I prefer to avoid it when possible, but it is not always possible. Accordingly, it is important to know the amount of damages you may be able to claim if you file a Complaint or Counterclaim.

Once the plaintiff serves the Summons and Complaint on the defendant, the defendant must file an Answer to the lawsuit that admits or denies the allegations in the Complaint and lists any defenses the defendant wants to assert. (Instead of filing an Answer, the defendant could file a Motion to Dismiss or other responsive pleading, but that is beyond the scope of this summary. If the court denies the Motion to Dismiss, the Defendant must then file an Answer).

In addition to filing an Answer denying liability, the defendant may file a Counterclaim asserting claims against the plaintiff and/or a Cross-Claim asserting claims against other defendants or a Third-Party Complaint against others not yet a party to the lawsuit.

When I draft a Complaint, Answer, or similar document, I like to be detailed and present events in chronological order. You can greatly assist me (and probably reduce your legal fees) by providing me with a chronology and relevant documents as soon as possible. It is best if you can provide them in PDF format.

Once the defendant files an Answer (or when the plaintiff files a Reply to any affirmative defenses in the Answer), that is the "at issue" date. That triggers a series of deadlines, most importantly the parties must voluntarily disclose relevant documents and information 28 days after the "at issue" date. *See, attached paper on Disclosure and Preservation Duties.*

Once a case is "at issue," the Court will hold a case management conference and enter an order setting a trial date and certain other deadlines such as a deadline to amend the Complaint, Answer, Counterclaim, etc. (Those types of documents that contain the claims and defenses are called "pleadings). The parties do not participate in the case management conference, just their lawyers. At the case management conference, the Court will frequently order the parties to participate in non-binding mediation by a certain date. More about that below.

After the case management conference, the parties may engage in "discovery." This could involve one party sending the other party written questions called "interrogatories," a "request for production of documents" and/or a "request for admissions." It could also involve "depositions" where a party or non-party witness answers questions under oath.

Many courts will order the parties to participate in non-binding mediation. If the Court orders mediation, there may be an advantage to participating in mediation before discovery starts. If you settle at the mediation, the Court would dismiss the lawsuit and there would be no need to engage in discovery, thus saving all parties money. On the other hand, there may be cases where it is best to engage in some discovery before participating in mediation to make sure you present the strongest case possible at mediation. (There may be cases where it makes sense to invite the other side to participate in mediation before filing suit).

You may feel you don't want to settle. If you settle, you probably won't be 100% happy with the outcome, and the opposing party likely won't be happy either. But there are usually good reasons to try to settle. First, it saves you time, money, and emotional energy. Second, you have a say in the outcome. Third, it eliminates risk. Judges are human. They try to get it right, don't always succeed. And some may just see things differently. Every experienced trial lawyer has lost a case they should have won and won a case they should have lost. You could be 100% right on the law and the facts and still lose. So, don't discount the possibility of settlement.

If the parties do not settle at mediation, the case will go to trial. Some cases are tried to a judge and others are tried to a jury. Preparing for trial requires lots of work. Trials are expensive and unpredictable. Even if you win, the court generally will not order the other party to pay your attorney's fees unless there was a contract with a "loser pays" attorney's fees provision.

After the judge or jury renders a verdict, the losing party has 49 days to file a Notice of Appeal. However, it's not quite that simple. If you want to appeal, you generally must post an

appeal bond equal to 125% of the amount of any judgment against you. If you can't post the bond, you can't appeal (unless you file bankruptcy). Most appeals are unsuccessful. I generally don't handle appeals.