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Client Information: What to Expect in Civil Litigation

Getting Started

Complaint filed by plaintiff against defendant, contains essential allegations or charges
Filed in court; filing fee ranges from \$80 to \$350, depending upon the court

Need to file in court with jurisdiction over person or persons involved

Copy served on defendant with summons, generally by someone other than plaintiff or interested party

Service on defendant personally is best, so we must know his/her/its full address(es).

Also good to know registered agents, for non-resident corporations

EEOC cases - must file in district (or state court for same area) where discrimination occurred (usually where plaintiff works or worked or applied for work) or where plaintiff employee's personnel records are kept

Answer

Defendant's answer is due in 20 days if the complaint is filed in D.C. Superior Court, 21 days if the complaint is filed in Federal Court.

Due in 30 days if complaint filed in Maryland state circuit courts

Due in 60 days if the defendant is a Federal Government agency

May be due in 60 days in some courts if defendant is out-of-state resident

Sometimes accompanied by discovery request (but this gives the defendant more time to respond)

Discovery

We usually begin formal discovery after defendant's answer is filed

Purposes:

To obtain information from the other side to support your claims and to discover information which supposedly supports its defenses

Focuses on facts in question, arguments to be made by each party

Usually, but not always, started with written discovery requests: interrogatories, requests for admission, requests for documents

Interrogatories are written questions to the opponent, which must be answered in writing under oath, usually within 30 days

More and more, courts are limiting the number of interrogatories (30 is becoming the standard limit under the Federal rules and local rules)

Requests for admissions are short statements which the opponent must admit or deny in a timely manner

Requests for documents are solicitations for relevant documents

Usual time frame for serving responses is 30 days after receipt

Extensions of time are available, but I do not like to seek them

If a party fails to respond timely and fully, the other side, after giving an informal opportunity to correct the problem, may file a motion to compel (see below) and when

the plaintiff fails to serve timely and complete discovery responses, the defendant might even file a motion to dismiss the case.

Clients can help by

providing all relevant information and documents ASAP

suggesting information to request

We can raise objections to some requests, but need all requested materials to know what our position should be on the information and if they are discoverable

Depositions are oral responses to questions, under oath, before a court reporter (almost always without a judge present), in a lawyer's conference room or, much less frequently, on the telephone

For tips on depositions, see the depositions handout

Relevance standard is very broad

Do not hold anything back from your attorneys. You can lose your case if you do not tell your lawyer everything about your case, including anything which remotely could be held against you

Opponent can file motion with court asking for order compelling responses or more complete answers (see below). Loser may have to pay opponent's costs and fees.

Motions

- Motions to dismiss complaints are based usually on the wording of the complaint, with the defendant usually arguing that the complaint does not state a claim on which relief can be granted or that it is untimely, but may be based on other arguments, such as failure of the plaintiff to serve complete and timely discovery responses
- Motions for summary judgment
 - are often filed after discovery ends, sometimes before
 - are based on facts in evidence, including affidavits, depositions, interrogatory answers
 - Asks for ruling on the case, without trial
 - Depends upon showing that the material facts underlying plaintiff's claims are truly undisputed
 - Can be defeated if there are genuine issues of material facts
 - If plaintiff loses, the case or any defeated claims are out of court
 - Motions to compel answers to discovery
 - When a party does not serve discovery responses in a timely manner
 - For compelling more complete responses to discovery
 - To preclude introduction of relevant evidence not produced in discovery
 - Loser may be required to pay opponent's attorney's fees and costs if position is not substantially justified
 - If the plaintiff does not serve timely and complete responses to the defendant's discovery requests (including interrogatories) or if the plaintiff refuses to answer certain critical relevant questions in a deposition, the defendant might file a motion to dismiss the case
 - Motions also are used for a variety of other purposes, such as to exclude evidence at trial

Trial

- Pretrial statement (which includes lists of witnesses, lists of proposed exhibits, proposed voir dire questions to ask prospective jurors, proposed jury instructions, etc.)
- Maybe settlement conference
- Jury selection where jury trial has been requested
- Plaintiff presents case in court through witnesses and documents; judge rules on admitting evidence
- Motion for directed verdict (asking judge to direct jury to render verdict dismissing case; denied if reasonable jury could rule in plaintiff's favor)
- Defendant defends
- Jury instructions if jury involved
- Verdict by jury or judge
- Motion for judgment as a matter of law (formerly known as a judgment notwithstanding the verdict), or motion for new trial based on evidentiary or other rulings, asks judge to change the verdict

Appeal (possibly)

- Based on record before the trial court and nothing else
- Notice of appeal filed within 30 days of lower court's judgment
- Record usually goes up to appellate court
- The brief for appellant (the party filing the appeal) is usually due 40 days after the record is sent to appellate court, 40 days in federal court
- Responding brief for the appellee (the party defending the appeal) is normally due 30 days later
- Reply brief for appellant generally may be filed about two weeks later (if at all)
- Oral argument by attorneys is usually, but not always, held
- Decided by three judges (with majority rule)
- Decision results in affirmance, reversal, or remand (sending it back to the lower court)
- losing party may seek reconsideration, but it is rarely granted

Enforcement

- To execute on judgment
- Garnishment of wages of private sector employees
- Attachment of property
- Contempt available
- Oral hearings to determine the defendant's assets

Attorney's fees, costs may be awarded to losing party