

LITIGATION STAGES

Civil litigation arises out of disputes between people, businesses, or other entities. A client and their attorney will typically navigate litigation through distinct stages including: investigation, pleadings, discovery, pre-trial motions, trial, and potentially appeal. The client and lawyer work together to strategize the best path forward and share business and legal expertise to do so.

01. INVESTIGATION

When a client first comes to a lawyer, he has a problem rather than a legal case. During this initial pre-stage of litigation, the lawyer's first task is to determine the facts surrounding the issue and analyze potential claims. Based on the facts and the relevant law, the lawyer will then determine whether the client has a case and how successful it would be if it went to trial. Often times during this stage, the client will provide the lawyer with information they already have available related to their problem, and the lawyer can do additional research to help develop other facts, including informally interviewing witnesses or review available records.

02. PLEADINGS

The next stage of litigation involves bringing the action in court. The lawyer will determine which court is appropriate to file the lawsuit depending on which court has jurisdiction over the matter. Occasionally, multiple courts (such as state and federal court) will have jurisdiction and the lawyer will help guide the client to choose the best court for their case. The first pleading filed is a complaint. The lawyer will file a complaint on the client's behalf in the chosen court and will serve the complaint and a summons on the defendant. The complaint provides notice to the defendant of the plaintiff's claims and allows the defendant to prepare his defense. After filing the complaint, the defendant generally has the following options: do nothing and receive a default judgment against him, file a motion against the complaint (these can vary), or answer the complaint and include affirmative defenses or potentially counterclaims if the defendant believes he also has claims against the client.

03. DISCOVERY

Depending on what path the defendant chooses, if it results in a dispute on an issue of fact or law, litigation continues and requires trial (unless the parties choose to settle the case). In order to prepare for trial, the parties in the case must share information with each other and gather information from third parties through the process of discovery. The purpose of discovery is to prevent surprises during trial and allow both sides to prepare their case equally. Information is gathered through requests for production of documents, requests for admission (asking the other party to admit or deny statements of fact), and depositions (formal witness interviews that may be used in court). In addition, expert witnesses are often required to help explain technical information or validate a party's argument. This stage requires the client to provide the lawyer with a broad range of documents related to the lawsuit, and other potentially relevant topics.

04. PRE-TRIAL

After discovery, each party has more information and can better determine their likelihood of success if the case went to trial. During the pre-trial phase, the parties try to create leverage and determine whether they want to settle the lawsuit. That can happen informally through counsel or formally through mediation or a

settlement conference with a judge. At this stage the parties can also file motions asking the judge to rule on the case, or portions of the case. For example, a commonly filed motion is a motion for summary judgment. One or both parties may file a motion for summary judgment, which asks the court to dispose of part or all of a plaintiff's case or a defendant's defense without the need for trial. These motions help narrow the issues or eliminate the need for trial if there is no real factual or legal dispute. As a result of the additional information gathered throughout discovery and pre-trial motion practice, parties often settle during the pre-trial stage because one party knows it has the advantage and the other party realizes it may save money by not paying for the expense of trial.

05. TRIAL

If the parties fail to settle the matter and an issue remains after summary judgment motions, the next stage of litigation—and the most popularized stage—is trial. At trial, the parties present evidence in support of their claims or defenses before a jury ("jury trial") or before a judge sitting as a jury ("bench trial"). Immediately before trial, each party provides to the judge a "trial memorandum," which outlines the arguments and evidence to be used at trial. To prepare for a jury trial, the parties undergo a process called "voir dire," where they select a jury after asking questions and eliminating undesirable jurors. The actual trial begins with the plaintiff's opening statement followed by its presentation of evidence. The plaintiff will call witnesses, the defendant will have an opportunity to cross-examine the witnesses, and the plaintiff will have an opportunity for rebuttal. After the plaintiff is finished with their case, the defendant may ask the trial court for a "directed verdict," which means the plaintiff has not proved enough to enable a jury to find for it. If the defendant does not do this, or the court denies the motion, the defendant will then present their direct case. After the defendant's direct case, either party may again ask the court for a directed verdict. If the court denies these motions, the parties present their closing arguments. If a jury trial, the judge then gives instructions to the jury as to the applicable law and after deliberation, the jury brings their "verdict." Either party may challenge a jury's verdict by filing a motion for judgment notwithstanding the verdict, which asks the court to disregard the jury's verdict and enter a different decision. Either party may also file a motion for a new trial.

06. SETTLEMENT

Parties may settle at any point throughout the litigation process. Each party should evaluate the potential for an out-of-court settlement early in the case because it can save a great deal of money for both parties. In fact, most parties settle before reaching an actual trial. Some courts require that the parties attempt settlement, and courts usually have procedures which allow a party to request the court's assistance in settlement through mediation or arbitration. In mediation, a neutral third party ("mediator") assists the parties in reaching a settlement. The mediator does not have the power to force parties to agree on a settlement. On the other hand, arbitration is an adversarial proceeding, similar to an informal trial, which utilizes a neutral third party ("arbitrator") who does have the power to force parties to comply. The arbitrator decides which party wins, and the parties often cannot appeal the decision.

07. APPEAL

If either party is dissatisfied with the result, they may appeal the case to the appellate court in the appropriate jurisdiction. The focus of the appellate court's scrutiny is on the correctness of the rulings of the trial court. In making its decision, the appellate court will rely on the record in the court below and additional appellate briefs filed by the parties. After the parties file briefs and the record is complete, the case is typically set up for oral argument and the parties argue their case before the appellate court. The

appellate court judges will then meet, confer, and write an opinion. The appellate court will issue its opinion, which may affirm the lower court opinion, reverse it, or send it back to require the lower court to re-evaluate a certain aspect of the case. At this point, either party may again appeal the decision to the next highest court until all appeals are exhausted.

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