Outline of Procedure for Civil Actions

Court actions can be either criminal or civil in nature. Civil cases resolve disputes between individuals, businesses or governmental entities. Common examples are lawsuits seeking an award of money for personal injuries or property damage, or for the breach of a contract, or to evict a tenant who has not paid rent. Civil lawsuits can also seek non-monetary relief, such as an order requiring someone to do or not do a particular thing, which is called an injunction.

The Beginning of a Lawsuit

The party initiating a civil action is called the plaintiff, and the party against whom relief is sought is called the defendant. A civil lawsuit begins when a plaintiff files a document with a court called a complaint. The complaint alleges the facts the plaintiff claims entitle him or her to relief, usually either an award of money damages or an injunction. The court issues a summons, which is served on the defendant and requires him or her to respond to the claims in the complaint. That response can take the form of a motion, which asks the court to rule against the plaintiff because some legal principle bars the plaintiff from succeeding in the lawsuit. Alternatively, the defendant can file a document called an answer, which admits or denies the factual allegations in the complaint, or raises some sort of defense; for example, an answer may admit and/or deny the allegations in the complaint and may assert that the plaintiff waited too long to file suit and his claims are barred by a statute of limitations.

Getting the Case Ready for Trial

Assuming a civil case is not dismissed by the court following a motion, the parties prepare the case for trial. Both the plaintiff and the defendant can seek information from the other party to help prove their claims or defenses. This process is called discovery. Either party can send the other party written questions, which must be answered under oath; these questions are called interrogatories. Either party can ask the other to produce documents which have information relevant to the case. Parties can also send each other a list of statements which must be either admitted or denied; these are called requests for admission. Finally, a party or his or her lawyer can take depositions, in which a witness is asked questions before a court reporter, who records and transcribes the questions and answers.

If the material facts are not in dispute, either party can attempt to win the case by filing a motion for summary judgment. For example, in a traffic accident case, if the witnesses agree on where the cars and stop signs were located and the only issue requiring decision is who had the right-of-way, which presents a legal rather than factual question, the judge can grant one party's motion for summary judgment and decide the case without having a trial.

After all the pleadings of both parties have been filed and the discovery completed, the case is deemed to be ready for trial. The federal courts in this state, and many of the state district and county courts will then set the case for a pre-trial conference or hearing. At this hearing, the attorneys appear, generally without their clients, and, in the presence of the judge, or in the case of the federal trial courts, in the presence of the United States magistrate, seek to agree on what issues and facts are still disputed or undisputed. There may be stipulations of facts entered, which means that such facts need not be specifically proved at trial, other than to read the stipulation into evidence. Stipulations may include such matters as the exact time and place of an accident, the genuineness or authenticity of pictures or other documents, and other matters even including points of law, which the parties can agree upon.

The objective of the pre-trial hearing is to shorten the actual trial time without infringing upon the rights of either party, and to limit the issues to those which are truly in dispute. The pre-trial procedure, used extensively in federal district courts as well as in most of our state district courts, frequently assists in developing a settlement of the case without trial. Where the case is not settled, however, the court assigns a specific trial date for the case following the pre-trial hearing, or at least a specific period of time during which the attorneys and parties can expect that they might be called for trial on short notice. The judges, or magistrates, then in many cases send out to the attorneys a copy of a pre-trial order reflecting the fact stipulations, the scheduling of trial and other matters resolved at the pre-trial conference. This is normally called the pre-trial order and would provide an excellent summary of the status of the case just before trial. In most cases, it is placed in the file in the clerk's office, and in the federal court. It is actually deemed to be the truest and final authority on what the issues are for trial resolution.

Trial of Civil Cases

The judge is the officer who is appointed (subject to voter approval at certain election intervals) to preside over the court. If the case is tried before a jury, the judge rules upon legal questions dealing with trial procedure, the manner and order of presenting the evidence and instructs the jury upon the law governing the particular case. If the case is tried before the judge alone, then he or she also has the duty of determining the facts in addition to performing the aforementioned duties.

The clerk of the court is an officer of the court, who, at the beginning of the trial, upon the judge's instruction, gives the entire panel of prospective jurors an oath. By this oath, the members of the venire promise that they will truly answer any question concerning their qualifications to sit as jurors in the case.

Any member of the jury panel who is disqualified, for such reasons as being less than 19 years of age, not having the qualifications of electors in their county, being unable to read, speak or understand the English language, or because they are within certain categories exempted from jury duty, would ordinarily be excused by the judge at this time. A person

may also be exempted if he or she is a judge, court clerk, sheriff, jailer, a party to the suit or another suit pending before the same jury panel, or if previously convicted of a felony, or if the person's spouse has been summoned as a juror on the same panel, or if he or she is incapable of serving by reason of physical or mental disability. Also, persons over 65 years of age may make requests for exemption if they wish, but need not do so and are not automatically exempt unless they so request.

The court reporter records all proceedings in the courtroom, including testimony of the witnesses, objections to evidence made by the attorneys and the rulings of the court on the objections, and the listing and marking for identification of any exhibits offered or introduced into evidence. Normally, the clerk of the court has charge of the exhibits until such time as those admitted into evidence are given to the jury for their deliberations at the end of the case.

In a civil trial, the plaintiff has the burden of proof. In other words, the plaintiff has to persuade the judge, or if a case is tried to a jury, the jury, that his or her view of the evidence is more likely true than not true. The plaintiff goes first and calls witnesses, who testify in a question and answer format. The judge rules on legal issues and decides what evidence a jury can consider, but in a jury case, it is up to the jury to decide what the facts are, in other words, what actually happened. The judge channels a jury's consideration of the evidence by providing instructions to the jury. Some types of civil cases are not eligible for jury trial, and in those cases, the judge decides both the applicable law and what facts are true. A trial that does not use a jury is called a bench trial.

Appeal

A civil case is decide by the entry of a judgment, which says who wins, and if the plaintiff wins, what relief is awarded. In both state and federal courts, the losing party can appeal to a higher court. In an appeal, both parties file briefs, which contain written arguments aimed at persuading the appellate court to the party's position. The party that lost in the lower court is called the appellant, and the winner below is called the appellee. Once the briefs are filed, the appellate court schedules an oral argument, at which the parties' lawyers (or the parties themselves if they were not represented) present their arguments and at which the appellate judges often ask questions. An appellate court resolves the appeal by filing a written opinion.