

You've Been Sued-Now What?

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If you are named in a lawsuit, this can be frightening. Many thoughts and emotions come to mind after you have been served with a Complaint. What do I do? Can I afford an attorney? How do I choose an attorney? What kind of attorney do I need? What happens in a lawsuit? Although you may not know what to do when you are served with a Complaint and how the legal system operates, there is one thing you should NOT do—you should not ignore it. You are most likely to be successful if you retain a licensed attorney who practices in the area of civil litigation and is familiar with the subject matter contained in the Complaint. It is important to know that all corporations and limited liability companies must be represented by counsel in the Superior Court.

A brief overview of the stages of litigation in New Jersey will unlock the mystery of what happens after you have been sued.

The Complaint

First, a Complaint is filed with the Clerk of the Superior Court. Once a Complaint is filed, it must be served on all Defendants. In New Jersey, a Defendant has 35 calendar days to file a response to the Complaint. In Federal Court, a Defendant has only 20 days to respond to a Complaint. Usually, the response is in the form of an Answer. In the Answer, the Defendant responds to each allegation in the Complaint. You may also file a Counterclaim against the Plaintiff if you have separate claims. If you think there are other parties that may be at fault, you can file cross-claims or name a third-party defendant. Once you have been served with a Complaint, it is important to seek legal counsel immediately so that counsel can respond on your behalf in a timely manner. Legal counsel will best advise you of the appropriate response.

The Answer

If you do not file an Answer, default will be entered against you. Once default has been entered, you may be able to vacate the default and file an Answer, if you file the appropriate motion. Once default has been entered, a Plaintiff may proceed with a default judgment. Once a judgment has been entered, the judgment will be a lien on any real property that you own. In addition, the Plaintiff may seek to execute on the judgment by garnishing your wages, levying upon bank accounts, and forcing the sale of certain real or personal property. The consequences of a judgment are substantial and in most circumstances, will negatively impact your credit. Because of these consequences, it is important that you not ignore a lawsuit and retain counsel to protect your assets.

Discovery After an Answer has been filed, the litigation progresses to what is called the Discovery period. The length of the discovery period varies depending on the type of case. The period can initially last for 150 to 450 days, and even longer in some cases if extensions have been granted. In Special Civil Part and Small Claims Court matters, this time period may be substantially shorter.

The discovery phase of a case is like a fact-finding mission. All parties can request documents and answers to written questions under oath. These questions are called “interrogatories.” Because discovery requests can be very broad and involve complicated inquiries, it is important to have counsel advise you how to respond to interrogatories and what documents you need to provide. Conversely, it is important to know what documents you need and the questions you must answer to either prove your case or defend yourself or your business. Frequently, one or both parties may request a deposition of an individual or officer of a corporation. A deposition consists of questions asked by an attorney to a witness who has personal knowledge about the issues related to the case. A deposition is usually taken in a conference room and all answers are under oath and a transcript of the testimony is recorded by a court reporter. Whether you are a party in the lawsuit or even a witness, you are allowed to have an attorney to represent you during the deposition. If you are a party in the case, meaning that you have been named in the lawsuit, it is extremely important that you be represented by counsel.

During discovery, it may be necessary to hire experts to help you pursue your claim or defend yourself or your business. Experts are required when issues arise that are beyond the common knowledge of jurors. There is one important distinction between a fact witness and an expert witness: experts can give their professional opinion. Often, experts will be asked to prepare a report which is provided to the adverse party. Experts may also be deposed by an adverse party.

Alternative Dispute Resolution

During or immediately following the discovery phase, New Jersey Courts often require that parties participate in a form of alternative dispute resolution. This may be in the form of arbitration (non-binding) or mediation. Arbitration is a process in which disputes are submitted to experienced and knowledgeable neutral attorneys or retired Superior Court Judges to hear arguments, review evidence and render a decision. It is less formal, less complex and often can be concluded more quickly than court proceedings. In many types of cases (personal injury, automobile accidents, insurance, certain commercial matters), arbitration is mandatory. Mediation involves an impartial third party who facilitates negotiations among the parties to help them reach a mutually acceptable settlement. The major distinction between mediation and arbitration is that, unlike an arbitrator, a mediator does not make a decision about the outcome of the case. If mediation is unsuccessful or either party is unsatisfied with the decision of the arbitrator, the case will proceed to trial.

Motions for Summary Judgment

Once discovery has been completed, there is no further fact finding, unless a Court orders otherwise. At this point, a party may file a “motion for summary judgment.” A summary judgment motion requests that the case be dismissed by the Judge because there are no factual issues for a fact-finder to decide. Sometimes, the summary judgment motion may request that the entire case be dismissed, other times a request for partial summary judgment is filed with respect to certain issues. If unopposed, the Judge will often grant the summary judgment motion and in most cases, the successful party will have a final judgment. If there are any issues that remain following summary judgment

motions, those issues will proceed to trial. An order for summary judgment is final. Once entered, a party can only file a motion for reconsideration (within the time prescribed by the Court Rules) or file an appeal to the Appellate Division. Because summary judgment motions often involve intricate factual and legal issues, it is important to have competent legal representation.

Trial

If a case is not settled or dismissed on summary judgment, the case will proceed to trial. If one of the parties requested a jury, the trial will be presided over by a judge with six jurors. Juries only decide factual issues, while the judge makes decisions on legal issues. If a jury demand was not made by either party (or if the case is in the Chancery Division or Family Part) the case will be heard by a trial judge.

During a civil trial, both sides will present evidence to the fact-finder. The evidence may include testimony by fact and expert witnesses as well as trial exhibits. Both sides may call witnesses to testify on their behalf. Parties are allowed to cross-examine witnesses, which is one of the hallmarks of our legal justice system. The Plaintiff goes first, followed by the Defendant(s). Trials can be extremely complicated and time-consuming. Some trials may last for hours, while others may take months to be completed. Often, a trial will last several Court days. Once a decision is made, that decision is finalized in a formal judgment, which is filed in the Superior Court.

Appeals

If one of the parties believes that one of the legal issues was improperly decided, they may file an appeal with the Appellate Division. The Court of last resort in the State of New Jersey is the New Jersey Supreme Court. That Court is very selective with the cases it will hear and it only hears a small fraction of the cases where parties request that the decision of the Appellate Division be reviewed.

This brief overview of the civil legal system in the State of New Jersey only scratches the surface with respect to the many intricacies and nuances in the legal system. To avoid the pitfalls of litigation and

to learn more about your claims or defenses, contact Andres S. Berns, Esq. or Timothy J. Ford, Esq. at Einhorn, Barbarito, Frost & Botwinick, PC We litigate many types of cases, including but not limited to commercial, construction, contract and employment matters. Our experienced litigators are here to represent you if your rights have been violated or if you have been sued in the Superior or Federal Courts. Please contact us today to arrange for a consultation to discuss your lawsuit.