



Civil Litigation Process: The Basics

This is not legal advice. It gives you general information only. Individuals considering legal action should consult with their own legal counsel.

This describes the typical steps in litigation in federal court. State and local courts may have different processes and names for documents. The litigation process can take a long time, sometimes as long as years.

Before the case starts and anytime during the case, the parties may try to come to an agreement through settlement. Very few cases go all the way to trial.

Step 1: Pleadings

- » A lawsuit starts when a plaintiff files a **complaint**. The complaint states the facts of the case, the laws that were violated, the harm done, and the outcome or relief that sought. Filing a complaint requires the payment of a fee. Sometimes that fee can be waived.
- » After the defendant receives the complaint, the defendant has two choices. The defendant can file an **answer** which responds to the statements in the complaint. Or the defendant can file a **motion to dismiss** which argues that even if the facts in the complaint are true, the law was not violated or there are other problems with the complaint. For example, a motion to dismiss can argue that the complaint was filed too late or in the wrong court. If the court grants the motion to dismiss, the case is over. Sometimes the court lets the plaintiff file an **amended complaint** to fix problems with the original one.
- » If the case continues, the court usually has a conference with the parties to set up deadlines.

Step 2: Discovery

- » Discovery is the process each side uses to get information from the other side. It is often a long process.
- » During the discovery period, each side can ask the other side to:
 - Answer written questions under oath (called Interrogatories)
 - Provide documents, emails, texts, social media posts (called a Request for Production)
 - To admit or deny statements of fact (called Request for Admissions)
 - In certain cases, submit to a mental or physical exam
 - Submit to live questioning under oath (called a Deposition)
- » Witnesses can also be required to produce documents or answer questions under oath.

Step 3: Summary Judgement or Trial

- » After discovery is over, either side can file a motion for **summary judgment**. This asks the court to look at the evidence that is not in dispute and decide in favor of the party asking for summary judgment. If one side wins summary judgment, the case is over. If neither side wins at summary judgment, the case is scheduled for trial.

Things that Can Happen During the Litigation:

- » **Motions:** During discovery, if the parties cannot agree about something, either side can file a motion with the court. For example, one side may want a document or a more complete answer to a question.
- » **Settlement:** A case can settle at any time. Sometimes the parties negotiate directly with each other. Other times they involve a mediator or some outside, neutral person. There are many reasons cases settle. Settlements are usually faster, save time, save money, and let the parties be in control of the outcome of the case.
- » Most cases either settle or get decided at the motion to dismiss or summary judgment phase. Very few cases go to trial.