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How to Be Heard in Court

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is
Everyone's Responsibility

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If you hold a winning hand and know how to use the rules to your advantage, you can change the world for the better.

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Ten Tips for Success in Court:

1. Deserve the Judgment You Seek
2. Follow the Rules
3. Make Everyone Follow the Rules
    a. Rules of Civil Procedure
    b. Rules of Evidence
    c. General Legal Principles
    d. Common-Sense & Reason
4. Allow No Monkey-Shines!
5. Demand the Truth
    a. Require Sworn Testimony
    b. Verify Pleadings & Motions
6. Make an Effective Record
    c. Use Well-Paid Court Reporters
    b. Do Not Go Off-the-Record
7. Use Simple Sentences
8. Manage Your Own Case
    a. Don’t Allow Opponent Control
    b. Don’t Allow Court Direction
9. Expect a Favorable Judgment
10. Demand Your Right to Win !

Theory of the Case

Every case should have a theory. The plaintiff's case has one theory; the defendant's case has another.

Make certain you understand ***your*** theory of the case and make the other side tell you ***its*** theory on the record. Do not omit to do this. Many times a case can be won by poking holes in the other side's theory. Or, if it can be shown that facts simply cannot support the other side's theory, you win. Or, if the law cited by the other side doesn't fit the theory they say they are operating from, they lose. If a case theory is not supported by the facts and law, the case is un-winnable.

A good case theory can be stated in just one paragraph. For example, "Defendant owed plaintiff a duty to provide safe seating at its restaurant. When plaintiff sat at defendant's table to eat her meal the table collapsed. Plaintiff was dumped to the floor where she was permitted to remain 15 minutes in full view of defendant's employees. Plaintiff suffered physical injury and emotional embarrassment as a direct result."

Always write your theory of the case, then get the other side to put its theory on the record. Let opposing theories direct your strategy and tactics in the case.

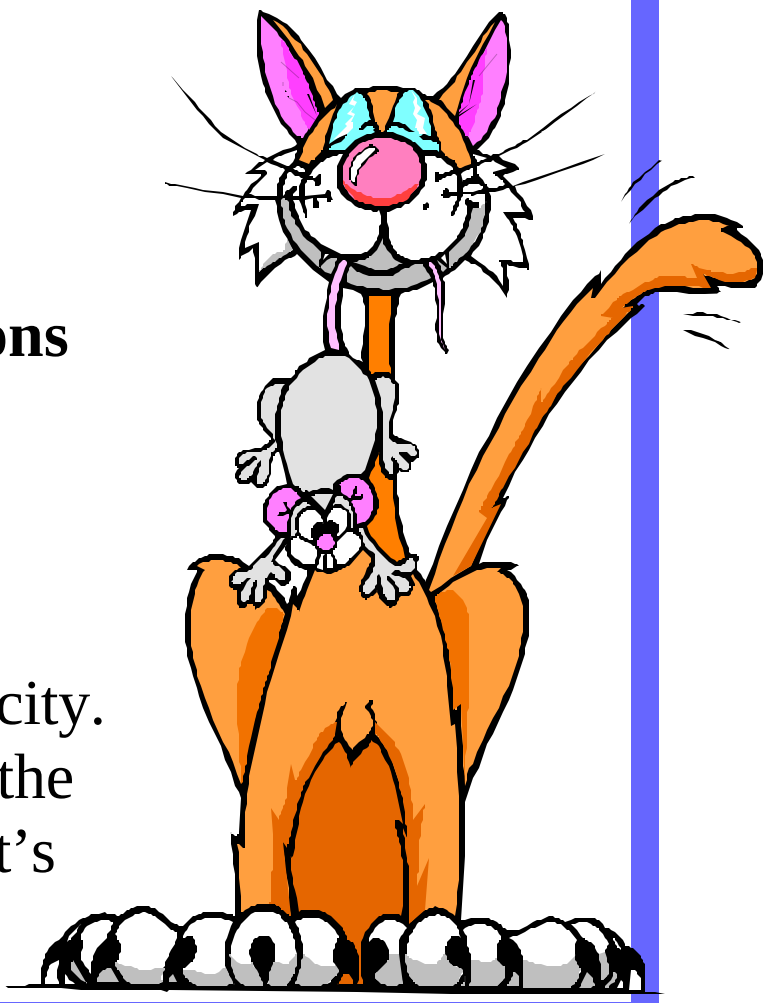
Many cases are lost because the losing party does not see the big-picture view by writing a case theory.

If you can spell "CAT" you can master the fundamental anatomy of every lawsuit.

C ... Complaint
A ... Answer
T ... Trial

Of course lawsuits are far more complicated than this, however the basics are the same in every law-suit.

Complaint
Flurry of Motions
Answer
Discovery
Trial



Focus on this simplicity. Winners know how the game is played. That's how winners win!

Causes of Action

Every Complaint must state at least one Cause of Action.

Every Cause of Action begins with a Breach of some sort:

1. **Breach of Contract**
2. **Breach of Faithful Duty**
3. **Breach of Professional Duty**
4. **Breach of Public Duty**
5. **Breach of Law**

Every good complaint also states ALL FACTS to be proven plus ALL LAWS to be relied upon.

Jurisdiction

Court must have a right to speak ("jurisdiction").

Complaint sets (1) subject matter jurisdiction and (2) personal jurisdiction — or motion to dismiss wins.

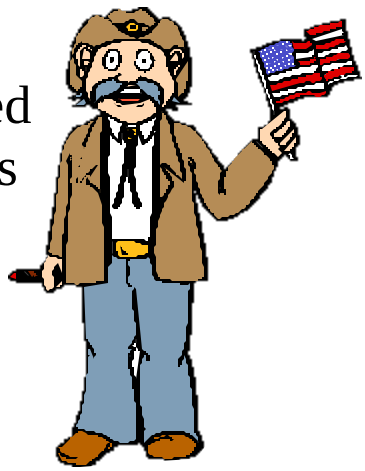
Ask clerk for subject matter jurisdiction of courts. Florida cases over $15,000 or seeking injunction *must* be in circuit court. Lesser disputes and special cases may be brought in county court or small claims.

Florida has 3 lower courts and 2 appellate courts.

Most cases begin in the local circuit court.

Florida Supreme Court
District Court of Appeal
Circuit Court
County Court
Small Claims Court

Personal jurisdiction arises if (1) person resides in county, cause of action accrues in county, or property is located in county and (2) person receives copy of complaint & summons or alternative service provided by rules. Facts alleged meet first requirement. Affidavit of process server meets second requirement. Jurisdiction thereby attaches to person.



Complaint: Form & Substance

- **Caption**
- **Title**
- **Preamble**
- **Jurisdictional Allegations**
- **General Factual Allegations**
- **Counts & Wherefore Clauses**
- **Signature**
- **Verification** (optional for lawyers)

Use Simple Sentences

Single Subject
Single Verb
Minimum Adjectives & Adverbs

IN THE THIRTIETH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA
CIVIL DIVISION

File No. 99-123

INJURED PARTY,
Plaintiff,
v.
WILLFUL WRONGDOER,
Defendant.
_____/

COMPLAINT

PLAINTIFF Injured Party sues Willful Wrongdoer and states:

JURISDICTIONAL ALLEGATIONS

1. _____
2. _____

GENERAL FACTUAL ALLEGATIONS

3. _____
4. _____

COUNT ONE: COMMON NEGLIGENCE

5. _____
6. _____

WHEREFORE plaintiff prays for an Order awarding money damages against defendant Wrongdoer.

- etc. -

Injured Party

JURISDICTIONAL ALLEGATIONS

1. This action is for damages exceeding $15,000.
2. Plaintiff is a resident of Sunshine County.
3. Defendant is a resident of Sunshine County.
4. Defendant's intentional acts in Sunshine County directly caused plaintiff damages in Sunshine County.
5. This Court has jurisdiction.

NOTES:

Use simple sentences with single subject and single verb, minimum adverbs and adjectives.

Use many separate numbered paragraphs.

Start by stating facts upon which the Court's jurisdiction can be firmly established.

One single complete thought per paragraph.

Follow this format throughout the complaint.

Follow this format with ALL pleadings, motions, notices, and ALL papers filed with the Court.

Do not try to write like Shakespeare or John Milton. The object is to win your case, not to appear as a great person of letters.

Keep it simple!

GENERAL FACTUAL ALLEGATIONS

6. On 1 May 1999 defendant owned a worm farm and retail fishing supply store in Sunshine County.

7. Plaintiff was lawfully in defendant's store on the stated date.

8. Defendant permitted more than six particularly large worms to be on the floor of his store during the plaintiff's visit on the stated date.

9. Defendant knew the worms were on the floor at the time of plaintiff's visit.

10. Defendant failed to remove worms from floor.

11. Defendant failed to warn plaintiff of worms.

12. Plaintiff stepped on at least one of the worms.

13. Plaintiff lost his footing due to worm slime.

14. Plaintiff fell to the floor.

15. Plaintiff's fall resulted in three broken ribs.

16. Plaintiff required medical treatment.

17. Plaintiff required the services of an attorney to bring this action and is obligated to compensate his attorney reasonably.

Note: Each paragraph (except 17) is simple sentence. All facts that must be proved to win are clearly stated. Defendant's answer must ADMIT, DENY, or claim to have NO KNOWLEDGE of each separate allegation. The first step to winning your case is to state it.

COUNT ONE: NEGLIGENCE

18. Plaintiff realleges paragraphs 1-17.

19. Defendant owed plaintiff a duty of care.

20. Defendant breached his duty by allowing the worms to be on the floor during plaintiff's visit.

21. Defendant breached his duty by failing to give plaintiff any warning of the slimy worms on the floor.

22. Breach of duty constitutes negligence in this jurisdiction.

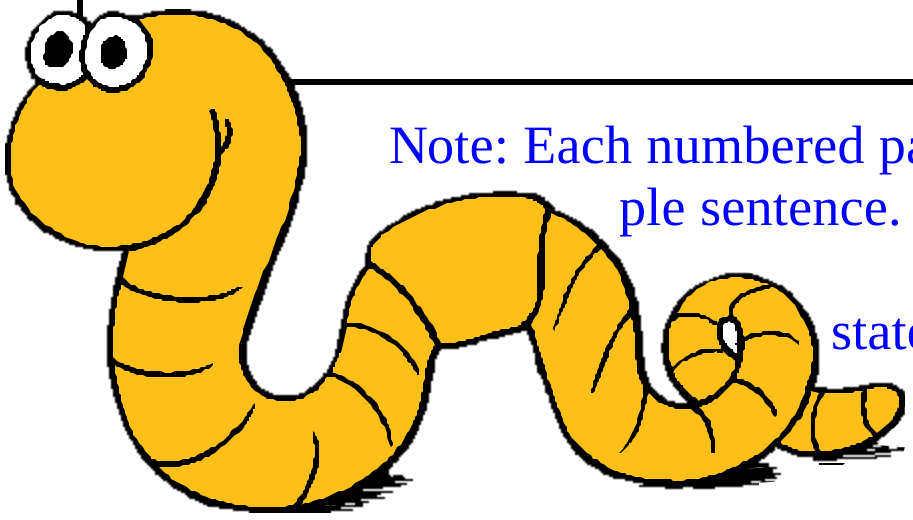
23. Defendant's negligence proximately caused plaintiff to suffer personal injury.

24. Defendant's negligence proximately caused plaintiff to suffer money damages.

WHEREFORE plaintiff moves this Court to adjudge defendant liable to plaintiff for money damages and such other and further relief as the Court may deem reasonable and just under the circumstances including (but not limited to) reasonable attorneys fees.

DATED this 12 August 1999.

Injured Party



Note: Each numbered paragraph is a simple sentence. A cause of action for negligence is stated based on provable facts.

What Happens Next?

Defendant must (1) answer complaint, (2) move to dismiss complaint, (3) move for definite statement, or (4) move to strike part or all of the complaint.

If the defendant elects to answer the complaint he must do so within a set period (20 days in Florida). He must respond to each numbered paragraph separately. He must admit, deny, or claim no knowledge.

Perhaps the most important thing that can be said about litigation is that everything depends upon the record. The savvy litigant is scrupulous about making a record. That's why a properly worded complaint is so very important. Everything that happens thereafter is (or should be) in response to the allegations of the complaint. If the complaint fails to fully state the case, everything afterward will be riddled with loopholes.

The defendant has no options. He must do one of the four things listed above. This is the power of civil lawsuits. It all begins with a well-stated complaint.

Form books are tools used by those who don't care much if they win or lose. They are tools to help you identify causes of action and essential form.

Only by effectively stating your entire case can you hope to get a complete and prompt verdict.

Start the discovery process with the complaint!

MOTIONS TO DISMISS

The complaint can be dismissed if the court lacks subject matter jurisdiction. Obviously, if the court has no jurisdiction over the subject matter of the case, it cannot enter judgment. The case must be dismissed.

The complaint can be dismissed if the court lacks personal jurisdiction. If the act complained of was in Georgia where the defendant resides, and where the property is located, the case cannot be lawfully heard in a Florida court.

The complaint can be dismissed if it was filed in the wrong county or the wrong court. For example, a Florida case filed in circuit court to resolve a battle over $14,999 must be dismissed.

A complaint can be dismissed if it fails to state at least one cause of action. All counts failing to state a cause of action may be dismissed separately.

A complaint can be dismissed if it fails to join an indispensable party. If a case cannot be resolved completely without joining a party not named by the complaint, the case can be dismissed.

A complaint can be dismissed if the court is convinced the cause of justice will be frustrated. Florida judges have “inherent power” to do whatever it takes to preserve justice and fair play in our courts. Any contempt for the court may result in dismissal.

MOTION FOR MORE DEFINITE STATEMENT

If the plaintiff's complaint is so poorly written that a reasonable person cannot be certain what it says, if it is vague, ambiguous, contains sentences with no subject or no verb, the court will require the plaintiff to re-state it or dismiss.

It is surprising how often lawyers file papers that contain non-sentences or use language no reasonable person can understand. When this happens, a motion for more definite statement will invariably prevail.

The same rule applies to answers or any other paper filed in the court. We have a right to know what the other side is saying and, if they cannot say it so reasonable people can understand them, the court will invariably require them to say it differently.

Of course, if this continues and a party cannot state their position reasonably after several tries, the court may dismiss their case as impertinent.

A very large insurance company recently filed a complaint containing a string of words beginning with a capital letter and ending with a period but containing no verb whatsoever. Since it was impossible to know what the complaint was saying, the defendant moved for a more definite statement and prevailed, of course. The insurance company must now file a more definite statement of their complaint or be dismissed.

MOTIONS TO STRIKE

A complaint can be stricken if it or any part of it is untrue and was known to be untrue at the time it was filed. This is accomplished by a motion to strike sham, and evidence may be taken at the hearing. Only truth may be permitted in court. A successful motion to strike sham can result in dismissal or judgment in the movant's favor, depending on the circumstances.

Any part of the complaint can be stricken if it is redundant. If parts of the complaint merely restate other parts, they may be stricken upon motion.

Any part of the complaint can be stricken if it is immaterial. If the complaint alleges facts that have no rational relationship to the matter before the court, the immaterial part can be stricken.

Any part of the complaint can be stricken if it is impertinent. If part of the complaint shows insolence toward our legal system, it may be stricken.

Any part of the complaint can be stricken if it is scandalous. If part of the complaint is so outrageous that a slanderous motive can be clearly seen, the court may strike that part or the entire complaint.

Improper form may also result in striking.

Any contempt of court may result in a complaint being stricken, dismissed, or summarily judged in favor of the defendant. Our courts have this power.

Discovery

NOW THE FUN BEGINS!

Once the defendant files his answer (courts allow discovery earlier) any of several methods may be employed to get at the truth.

Remember: Getting at truth is what it's all about.

Any fact, whether admissible at trial or not, may be sought by discovery if it will lead to the discovery of admissible evidence! This is a very powerful tool for getting at the truth.

1. **Request for Admissions**
2. **Interrogatories**
3. **Request for Production of Documents & Things**
4. **Depositions** (oral or written)
5. **Entry upon Private Premises**
6. **Physical and Mental Examinations**

Discovery requests are resisted by a motion for protective order.

Discovery requests are enforced by motions to compel, to show cause, and for contempt sanctions.

Insist upon complete and faithful discovery!

REQUEST FOR ADMISSIONS

Parties in nearly all jurisdictions may request the other party to admit the truth of any matter that might reasonably lead to discovery of admissible evidence.

In addition (and very importantly) either party may require the other side to provide its statements or opinions of fact and the application of law to any fact. This is very powerful. Opinion testimony and the law upon which the other side intends to rely cannot be so easily gotten at by any other means of discovery.

The other side may be forced to admit that certain documents are genuine, for example, or that they were signed on a particular date in a particular place.

By requiring the other side to admit facts and law, it's sometimes possible to prove early on that they are completely without a case, and since their response to your request can be required to be "under oath" you may win your case by employing skillfully worded requests for admissions.

Perhaps the best time to begin with requests for admissions is immediately after the answer is filed.

In some states there's no limit to the number of requests or the number of times requests may be filed except for the general rule that one cannot abuse the court's process and power. Relevant requests can be made at any time and must be answered truthfully!

INTERROGATORIES

All parties are allowed to ask the other side a set number of written questions called interrogatories. In Florida the maximum number of questions (including sub-parts) is usually 30. Interrogatories may inquire into any matter, admissible or not, so long as it can be said to lead to discovery of admissible evidence.

Since the permissible number of interrogatories is limited in most jurisdictions, interrogatories should be used sparingly and only when the information cannot be obtained some other way.

For example, instead of using an interrogatory to ask the other side, “Were you driving a Ford Mustang on 25 December 1962?” ... you could use a request for admissions. “Admit you were driving a Ford Mustang on 25 December 1962.” You get the same information without wasting one of your limited interrogatories.

Some things you cannot easily get at by requests for admissions, e.g., “How many times did you brush your teeth on Tuesday 12 November 1997?”

In some jurisdictions, e.g., Florida, there may be standard interrogatories you are required to use in certain kinds of cases. Refer to the rules for details.

Answers to interrogatories are always under oath. Falsified responses are punishable by imprisonment.

Use interrogatories sparingly and wisely.

REQUEST FOR PRODUCTION OR ENTRY

This is an interesting and useful tool for getting at the truth. You may request the other side to produce papers, charts, sketches, a favorite hat or the shirt they were wearing on a certain day, or to allow inspection of private property if reasonably calculated to lead to discovery of admissible evidence.

Always the test is whether production will lead to discovery of admissible evidence, not whether a thing produced will ultimately be admissible at trial.

You obtain production by requesting it from the other side. You don’t need a court order. The other side must produce or be compelled by the court.

There is no limit to the number of documents or things you can request to be produced. The court will grant a motion for protective order if your requests are overly burdensome or don’t appear to reasonably lead to discovery of admissible evidence.

Contracts, professional and commercial licenses, birth certificates, bank statements, correspondence, or other documents related to the case must be produced.

Automobiles, tools, machinery, even large yachts or private airplanes must be produced.

Entry on private property may be resisted by the other side, but will be ordered for good cause shown if entry is necessary to discover admissible evidence.

DEPOSITIONS

Just the sound of that word triggers terror in the hearts of dishonest people. You may depose anyone under oath (not just parties) having knowledge of facts leading to admissible evidence. Liars go to jail.

Be prepared. New facts may pop up at deposition, and chance favors a prepared mind. List the facts you expect to discover. Be flexible, but be prepared.

Instruct the witness to speak intelligently. If you have a slow-witted deponent, take time to ensure that the testimony will make sense on paper. Answers like, “Well, I guess so,” are worthless. Be tough.

Be polite if you can. Many people dislike being questioned and will dummy-up if pushed. Explain the purpose of your deposition. Tell the deponent what you are trying to discover. Be tough, but be polite.

Take your time. Don’t be rushed or pushed.

Generally speaking, depositions may inquire into any matter not privileged, e.g., talks with lawyers or priests, etc. Don’t be intimidated by objections. Get the discovery you seek and don’t back down. If the deponent doesn’t wish to answer, move for an order to compel the answers you need.

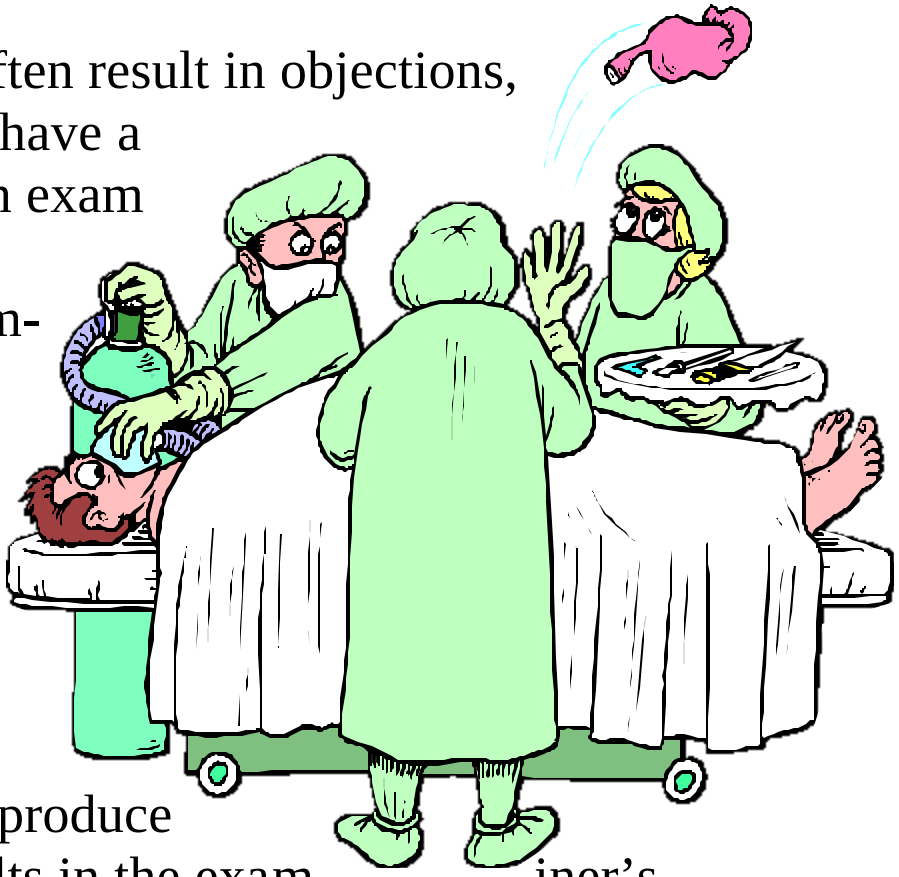
Encourage your deponents to read and sign.

It is often better to do depositions after getting the basic facts through written discovery methods.

EXAMINATION OF PERSONS

If the condition of a party (or person in the party's legal custody or control) is in controversy, the person may be required to submit to a physical examination.

If the exam is other than physical, you can move for an order compelling examination by a qualified expert.



Examinations often result in objections, so it's imperative to have a sound reason why an exam is needed.

If the party examined requests it, a copy of the examiner's detailed written report giving findings, results of tests, diagnoses, and conclusions must be provided. Failure to produce a written report results in the examiner's testimony being excluded at trial.

An examiner may be called as a witness by either side, in which case the findings cannot be excluded.

Like everything else in court, the burden to show the necessity of an exam is upon the party seeking the examination and must be shown by a preponderance.

SUBPOENA POWER

A subpoena for testimony in court issues by clerk under seal and commands each person named to attend and testify at the time and place specified.

Subpoenas may also be used to command persons to produce documentary evidence before the court.

Subpoenas *duces tecum* may be used to command persons to bring things with them to depositions.

If a person files an objection (consult the rules) production of materials requires court order after hearing.

A person may only be commanded to attend in the county where he resides, is employed, or transacts business in person (or such other place as the court orders).

If a commissioner is appointed by court of another state, jurisdiction, or government, witness may be compelled by subpoena issued in other state in same manner as here, except original documents are not be used (copies are taken instead).

Failing to obey command of a subpoena is punishable by contempt.

The court may quash or modify an unreasonable or oppressive subpoena.

Follow the rules.

MAKING A RECORD

The most important thing you can learn from this seminar is the necessity of making an effective record.

From the first word on the complaint to the final wording of the court's ultimate judgment, the record needs to be clear and direct. Single subject single verb sentences with minimum adverbs and adjectives.

Permit no hearings or other appearances before a judge in your case without a court reporter present. Do not go off-the-record for any reason nor permit other parties to go off-the-record. You have a right to be heard in court, and being heard means making a clear record of every single word ... no exceptions.

Hire well-paid court reporters. Never hire beginners. Talk with the court reporter in advance of every hearing, deposition, or other record-making event. Explain that every word must be accurately recorded. If the witnesses or lawyers or the judge himself speaks too rapidly or too softly to be clearly heard, the court reporter MUST interrupt and clarify the record. Make no exceptions.

Get everything that needs to be on the record into the record. Omit nothing of importance.

Speak to the record when you speak. Imagine that your spoken words are being written just as you say them. Make the record win your case. It must.

MOTION FOR JUDGMENT ON PLEADINGS

If the pleadings taken as true permit a judgment to be rendered without discovery or trial, as when the plaintiff sues for damages against Bob for injuries he admits were caused by Bill, the court may grant Bob's motion for judgment on the pleadings if it can be seen clearly from the plaintiff's complaint that Bob is not legally responsible for Bill's actions.

This is very rare, however it bears remembering that the motion is allowed and will prevail in certain circumstances.

MOTION FOR SUMMARY JUDGMENT

Either party may seek summary judgment after an answer is filed. The movant must file at least one supporting affidavit, and the case at that point must have no justiciable issues of material fact or law. Summary judgment is a good way to prevent the costs and risks of going all the way through a full-blown trial, which you should avoid if possible.

The foregoing motions are most often brought after the parties have begun to engage in discovery. The discovery phase in a lawsuit continues until trial and seeks to "discover" admissible evidence of facts and law that will determine the final outcome.

TRIAL

Don’t go alone. Trial is a place for quick-thinking in tight places, and experience is a must. A good trial attorney is essential.

Don’t go at all if you can avoid it. This seminar is aimed at demonstrating how to be heard in court and how to make your opponents answer truthfully. Most lawsuits are resolved before trial by making an effective record that permits but one outcome ... victory for the party who *should* win.

Begin discovery with the complaint. Make a plan for getting the facts and law on the court’s record, and work your plan diligently so you aren’t forced to go to trial without the tools and materials you need to win.

In Florida the other side may set the case for trial as soon as the last motion directed to the pleadings is disposed of (or 20 days after the last pleading is filed). This is another reason why discovery should begin at the complaint and be pursued diligently. Work fast!

If you must go to trial, try to have all the facts and legal issues settled in advance by discovery or stipulation. Do not expect to “discover” necessary facts once you are in trial. Trial is your last bite at the apple. If you don’t have your facts and issues resolved before you go, there is no way to predict the outcome — and surprises are the order of the day.

Evidence

Every lawsuit is a search for truth.

Evidence (in the strict sense) is that which is seen to be true. That's what the word means.

Guesses are not evidence. Conjecture is not. Nor are inferences or presumptions ... though these may be used under controlled circumstances.

The courtroom is not a scientific laboratory. In a science lab there are no rules (as the present state of physics clearly shows). Things that are improbable or downright silly are considered as explanations for the observations of phenomena made by scientists. This is not allowed in our courts of law.

The rules of evidence comprise less than 66 pages in Florida. The rules are based on common sense and a reverence for human rights. Hearsay is generally excluded. Privileged conversations are excluded. Facts having no relevance to issues in the case are excluded.

All relevant evidence is admissible, with exceptions set forth in the rules. Relevant evidence is evidence tending to prove or disprove a material fact.

Read the rules. An evidence seminar is being prepared for future programs. Use your common sense.

BURDEN OF PROOF

Put the burden where it belongs!

Every person who comes to the court making demands or moving the court to act in any way is required to prove he is entitled to the relief he seeks. This requirement is called the burden of proof.

Suppose you sue a neighbor for running over your dog with a lawn mower. You file your complaint and demand that the court enter judgment in your favor. You have the burden to prove you are entitled to the relief you seek.

Your neighbor is *not* required to prove he didn't do it. The burden is *always* on the person asserting a claim, making a motion, demanding a right.

It's not "your word against his". The burden may shift back and forth, but it's always there. Important!

If you are accused, it is not your job to prove you didn't do what is claimed. The other side must carry the burden ... not you.

In civil cases the burden is a preponderance of the evidence, i.e., greater weight of evidence presented. In cases that may remove a person's civil rights, "beyond a reasonable doubt" or "clear and convincing" is the burden of proof.

Conclusion

A thing similar is not exactly the same.

If we are to remain a nation of laws and not of men, if we are to pass on to our children a heritage of liberty and justice for all, we need to understand these fundamental principles that guide our courts and insist that our courts be guided by them. This is *your* job!

A thing similar is not exactly the same.

Many today say truth is relative, that there is no such thing as self-evident truth. Such thinking adds to our mounting legal problems in the United States and around the world, for some truths *are* self-evident.

Hold fast to self-evident truth! It's your heritage!

Hold fast to what you've learned today. Hold fast to these truths ... for the rules of court you've learned in this seminar are widely held and of long standing. In the final analysis, the rules of court guarantee our liberty and secure justice for all perhaps more than any other aspect of our life as a nation of free people.

Teach others to learn and exercise their rights.

Resolve conflicts peacefully.

Visit the Jurisdictionary® often and urge friends and family to stand together in pursuit of justice for every living soul.

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