

## VII. PROCEEDING WITH A CIVIL CASE

### ***ALERT!***

#### **TIME STANDARDS AND DEADLINES**

- It is the court's responsibility to manage the process by which cases are heard and decided.
- In order to move cases along, and see that they are resolved in a timely manner, courts have firm deadlines by which certain events should take place. These are commonly referred to as **time standards**.
- Judges, lawyers, and litigants are all expected to meet the court's deadlines.
- In certain circumstances, the court may extend time periods or change deadlines to meet the particular needs of the parties or the public.

#### **A. What is a case management conference?**

After an answer has been filed with the court, a case management conference may be scheduled by the court. If you fail to appear at the case management conference, there may be negative consequences. The judge, clerk-magistrate or assistant clerk-magistrate will conduct the case management conference. Depending upon the court and the matter, these proceedings may be short and simple, or they could be long and complex. At the case management conference the parties may:

- Discuss settlement
- Establish deadlines for discovery
- Resolve discovery disputes
- Discuss adding parties
- Determine if the case is ready for trial
- Schedule a pre-trial conference
- Schedule a trial date

## B. What is discovery?

Discovery is a way for you and the other side to exchange information. Typically this process occurs after a complaint and answer have been filed and one party asks another party to produce documents or respond in another way to a request for information. In some cases, however, for example in certain family law cases, the parties are required to exchange financial information within a certain amount of time after the complaint is filed even if one party does not request it from the other party.

Discovery will help you prepare your witnesses and determine which documents you want to submit to the court if your case goes to trial. All aspects of discovery are governed by rules and law. You need to know the rules that apply to your case.

There are several types of discovery. Some examples are:

- **Interrogatories:** Interrogatories are written questions to be answered in writing and signed under oath that one side sends to the other.
- **Requests for Production of Documents:** Each side can ask the other side to provide copies of documents relevant to the case.
- **Depositions:** A deposition is an opportunity to question the other party or a witness in the case. Depositions are typically recorded by a court reporter and a transcript may be prepared. Usually the party scheduling the deposition pays the costs involved.
- **Requests for Admissions:** Each side can ask the other side to admit or deny statements related to the case.
- **Independent Medical Examinations:** In some cases, the other side can request that a physician or therapist hired by them be allowed to examine the injured party.
- **Mandatory Self-Disclosure:** In certain family law cases, the parties are required to exchange specific financial information with the other side after the complaint is filed, even if the other side does not request the information. You need to follow the specific rules that apply to your case.

Except when your case requires self-disclosure, you are not required to conduct discovery. However, if the other side sends you discovery requests, you must respond as required by the applicable rules. The rules include strict time limits. If you fail to comply, you could be penalized by the court. You may even risk losing your case. Know the rules that apply to your case and follow them.

**ALERT!**

**Discovery** is an important part of litigation. There are strict rules that govern this process.

Failure of the defendant to provide discovery when required to do so by the rules or order of the court could result in a **default judgment**. A default judgment is when the trial judge enters judgment in favor of the plaintiff without hearing from the defendant. It is a final decision resolving the dispute.

Failure of the plaintiff to provide discovery when required to do so could result in **dismissal** of the plaintiff's case. A dismissal is also a final determination by the court of the rights of the parties.

**C. After discovery, what's next?**

After discovery is completed, a number of things may happen, including:

- **Settlement:** Each party can see the strengths and weaknesses of their own case and of the other side's case, perhaps making it possible to reach an agreement in the case without going to trial. Refer to Section X: *Settling the Case*.
- **Summary Judgment:** Either party can file a pre-trial motion asking the judge to decide the case without a trial based on a claim that the facts are not in dispute and that the law, when applied to those facts, entitles that party to a favorable judgment.
- **Trial:** The case may proceed to trial.

**D. Do most civil cases go to trial?**

No. Many people believe that every case proceeds to trial and every party gets his or her day in court. You may picture yourself questioning witnesses in your case and making a closing argument. However, the fact is that very few cases actually go to trial. The vast majority of cases are settled by agreement of the parties. The agreement may be reviewed by the judge and may become part of a final order or judgment in the case.

## E. What is a pre-trial conference?

If your case is proceeding to trial, a pre-trial conference may be scheduled. The pre-trial conference provides an opportunity for the parties to:

- Discuss settlement
- Establish deadlines for discovery
- Add parties, if allowed
- Address motions
- Resolve discovery disputes
- Determine if the case is ready for trial

The pre-trial conference is usually conducted by a judge. The parties may request a pre-trial conference or the court may schedule one to make sure the case keeps moving.

At the pre-trial conference, you may be required to file a pre-trial memorandum. You need to follow any rules, orders or instructions of the court related to the preparation of your memorandum and appearance at the pre-trial conference. If you do not appear at the pre-trial conference or file the memorandum as required, you may be penalized or even lose your chance to bring or defend your claim.

A trial date is often set at the pre-trial conference.