

“HOW LONG WILL MY LAWSUIT LAST?”

Picture one of the following scenarios: 1) You just finished a big meeting with your attorney, and you're prepared to file a lawsuit to recover what you believe is rightfully yours; or 2) You just got served with a summons stating you (or your business) are being sued for thousands of dollars. Under the Plaintiff's scenario, you're probably eager to get the legal ball rolling. If you are the Defendant, you may be feeling sick and losing sleep. Either way, you are probably eager to conclude the lawsuit. However, litigation is a process with several very important steps. Not all of them, however, must be taken. This article attempts to give you a general idea of when your suit could be finished.

Initially, it must be noted that the Plaintiff and Defendant may, as long as they agree, end a lawsuit at any time. The vast majority of lawsuits never go to trial. In many of these cases, the parties agree to settle the matter. Often, however, it takes two skilled attorneys, and possibly a neutral third party (called a “mediator”) to force each side to objectively look at the weaknesses of their case and convince them that settlement is a good option. Thus, the time for a settlement could be as soon as days after a complaint is filed, or literally minutes before the trial begins. Assuming your case does not settle, there are several points at which your lawsuit could end.

A typical lawsuit will begin with the filing of a complaint by the Plaintiff. If you are a Defendant, you should receive a copy of the complaint with your summons. The answer will be due twenty (20) days after you receive the complaint, although this time may be extended by thirty (30) days. Therefore, by the time the Defendant finally admits, denies, or states he does not have enough information to admit or deny the Plaintiff's allegations, almost two (2) months have passed.

The Defendant does not always file an answer, however. Sometimes, the Defendant fails to respond at all to the complaint. If nothing happens within the first twenty (20) days, *i.e.* there is no answer or no extension of time, the Plaintiff may be entitled to win automatically, called a “default judgment.” Beware of becoming too excited, however. Default judgments are easily set aside by courts if the Defendant has a valid reason for missing the deadline.

On the other hand, the Defendant may file a motion to dismiss the complaint instead of an answer. More popular reasons for motions to dismiss are that the Plaintiff sued the wrong person, sued outside of the proper jurisdiction, or is trying to recover on a theory that the law does not permit. When a Defendant files a motion to dismiss, the Plaintiff will have an opportunity to respond and a hearing will usually be held before the court rules. This briefing, hearing, and time for the court to consider the issue could easily take 3 months or more. If the Defendant succeeds, he wins the lawsuit. If he loses, he is back to square one and has to file an answer.

After an answer is filed, the court will usually hold a scheduling conference that does not typically involve the parties themselves, but only their attorneys and the court. Among other things, a trial date is set during this conference. You should expect that trial will be scheduled at least a year away. The trial is scheduled so far out to allow for discovery. Discovery is the information-seeking portion of a lawsuit and often takes months or even years, depending on the case. During this time, you may be asked to respond to written questions called interrogatories. You may also be required to produce certain documents or allow the other side to view certain property. This is done through requests for production. You may also sit through a question-and-answer session with the opposing attorney and a court reporter, called a deposition. The attorneys may also want to take the depositions of other people such as witnesses or experts. If you are hurt, you could be examined by a neutral physician. You can now see why this process can take so long. Keep in mind that although there are time limits for these discovery methods, compliance with the limits are not

always feasible, so extensions are common.

At any point after the complaint and answer have been filed, either party may ask the court for “summary judgment.” Summary judgment is a technique whereby the party seeking it asks the court to construe every fact in favor of the opposite party, but then grant the first party judgment in its favor. By way of example, summary judgments can occur when the issue is highly legal and not very factual (such as when a Plaintiff claims a Defendant *breached* a duty to him, but under the law the Defendant never *owed* a duty in the first place) or when a party initially stated there were facts supporting his argument, but he cannot produce any such facts (such as when a Defendant initially claims he was not driving, but in his deposition he admits he was too intoxicated to accurately remember and there are several witnesses who saw him driving).

A few months before the trial is scheduled, many judges will require the parties to attempt to settle the case with a mediator. Mediation is the process whereby the mediator speaks with both sides, often getting everyone together at first and then splitting his time talking to each side individually, with the goal of reaching a settlement. No one can make you settle at mediation, but settlements are often reached because each side believes a settlement is better than going through a trial.

If your lawsuit has made it this far past mediation and still has not settled, you may be headed toward trial. The trial may be conducted solely by a judge (a “bench trial”) or by jury. In general, bench trials are faster because the time to pick and jury and read instructions are omitted. Most trials can be finished in less than a week, but more complicated trials taking much longer are possible.

At the end of the trial, there will be a judgment (if there was not a “hung jury”). Although you may think your lawsuit is finally over, it may not be. Either party has the opportunity to appeal to the Court of Appeals (parties with a judgment in their favor may appeal on the issue of damages, claiming they did not receive enough). It is rare that an appeal is finished in less than six (6) months. The Court of Appeals can hold the trial court was correct (“affirming” the decision) or it can reverse the trial court. If the trial court is reversed, the case is often given back to the trial court (“remanded”) for another trial. When the Court of Appeals makes their decision, either party can then try to have the Supreme Court hear the case. Unlike taking a case the Court of Appeals, there is no right to appeal to the Supreme Court, and your request could be denied.

As you can see, your lawsuit may be over in as short a time as twenty (20) days, or it could go on for years with lengthy discovery, trial, and appeals. There is no way to know for sure how long your lawsuit will last, but the instances above are some common means for it to end.

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