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Anatomy Of A Case In Court

Most cases that are brought before the court share a similar ride...all aboard for small claims court, report to the lower deck, file a complaint, don't ask any questions, go see the mediator, wait around for a judge, maybe come back on another day...all aboard for Law Division, report to the upper deck, get comfortable as this may take a while, talk, ask questions, come back and report to the court, have a mediation, get on the trial list, see you in a while...a long while...years, maybe. Actually, it is much better than prior.

Let's talk about how a case in the Law Division of the Superior Court proceeds. The Law Division is that part of the Superior Court, located in each county seat, where the more important cases are heard. Most personal injury and contract claims of higher value are held at this level. Each county has numerous Superior Court Judges to handle Law Division Cases and a Clerk's Office with many employees who track the files and try to keep things moving along.

It all starts with a complaint, which is the pleading to the court that spells out what the Plaintiff is demanding from the Defendant. The Defendant may counter-claim against the Plaintiff saying that he or she was the one in the wrong, or make a claim against a third-party defendant, essentially saying, "it was someone else, not me!" Defendants may cross-claim against one another blaming the other in whole or in part. In the end, it can resemble a bad wedding reception.

When a complaint is filed, the Defendant will file an answer or maybe something more as suggested above, and when all the complaints and answers are in, then this initial phase of pleadings is complete...well, pleadings can be amended along the way, however, when completed, the discovery phase commences.

When one thinks of "discovery," images of digging, probing, great anticipations and the cry of "Eureka!" comes to mind...most minds that is, unless you are an attorney or litigant, in which case, images of written questions and answers, and lots of them, called interrogatories comes to mind, as well as sitting at a table with a bunch of lawyers asking questions with notebooks and pens blazing and a stenographer reprimanding the participants for not talking one at a time...the dreaded deposition. Interrogatories, depositions, and production of documents are the heart of the discovery process. It can be grueling. "Eureka" can be just a big "yuch."

When the discovery is completed, then there are often motions to the court, where one litigant is ratting out another for not doing something right or claiming that the case is so clear that the judge can rule on it now and not even wait for

the trial to occur. This type of motion is called a “summary judgment.” It most often fails.

Next stop on this sometimes slow moving train is the mediation or arbitration process, wherein the litigants get to have a mini-teeny-weeny-micro (read...really abbreviated) unofficial trial before a couple of experienced attorneys who try to work the case out, and put a number on it that maybe will help it resolve. Sometimes it works, and when it doesn't, it is onto the trial list.

Sometimes, the judge to whom the case is assigned, will have a settlement conference, or two, and try to nudge the matter in the direction of settlement. This can and often does result in a settlement at some time, usually just before trial, on the courthouse steps, so to speak. Hmm...I have settled cases in the hallway, probably in the cafeteria, on the phone, yet can not remember actually settling one on the courthouse steps. Next time, I may just demand that the other attorney speak with me out on the steps, so that I can someday say...“I remember the time I actually settled a matter on the courthouse steps.” Maybe not.

Such can be the anatomy of a case, in real rough but pretty accurate form. If only that other person had used a blinker, the accident might not have occurred, and those attorneys would not have to be out there in the rain, snow or heat of day, trying to settle their cases on the courthouse steps.

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