

# CHAPTER 1: LITIGATION AND THE PARALEGAL

## CHAPTER OUTLINE

- I. Introduction to Civil Litigation
  - A. Differences Between Criminal and Civil Cases
  - B. An Overview of Civil Litigation
- II. Types of Civil Lawsuits
- III. Alternatives and Limitations to Litigation
  - A. Alternative Dispute Resolution
  - B. Administrative Agency Hearings
  - C. Legislative and Judicial Limitations
- IV. Locating the Law of Civil Litigation
  - A. Primary Sources
  - B. Secondary Sources
- V. The Role of Technology in Litigation
  - A. Technology and the Law Firm
  - B. Technology and the Courts
- VI. The Role of the Litigation Paralegal
  - A. The Litigation Law Firm
  - B. Litigation Paralegal Job Description
  - C. What a Litigation Paralegal Cannot Do
- VII. Skills Required of the Litigation Paralegal
  - A. Continuing Legal Education
  - B. Professional Organizations
- VIII. Practical Tips for Success in the Law Firm
  - A. Forms File—Invaluable Aid
  - B. How to Build a Litigation Procedures Manual

## ANSWERS TO REVIEW QUESTIONS

1. Civil procedure deals with the rules and methods that apply when pursuing a civil case. It is the same as civil litigation. Criminal procedure deals with the methods that are employed in a criminal case. These methods include not only the court proceedings but also methods used by police in investigating criminal cases.

2. A case can be litigated only if a right exists under substantive law. In other words, without a substantive basis for the lawsuit, litigation cannot take place. Procedural rules dictate the way in which these rights are enforced.
3. Litigation commences with the plaintiff filing a complaint in the proper court. The complaint is then served on the defendant. Defendants either can respond to the complaint by filing an answer or other proper response or can ignore the complaint. If they ignore the complaint, they default, and judgment may be entered against them. If the defendants answer, the parties conduct discovery while waiting for the case to come to trial. Motions may also occur during the course of litigation. Finally the case is tried. Either party can appeal.
4. Lawsuits are categorized in different ways. Some cases are designated as complex, while others are relatively simple. Both complex and simple cases are also categorized by the substantive nature of the case. These categories include lawsuits based on personal injuries, employment disputes, intellectual property issues, construction issues, securities violations, general business disputes, real estate matters, asbestos injuries, and civil rights violations.
5.
  - a. Settlement—The parties agree to resolve their dispute.
  - b. Mediation—The parties meet with a third party, discuss their differences, and try to resolve them.
  - c. Arbitration—The parties allow a third party to decide their dispute.
  - d. Submission to Agency—The law requires that certain disputes be resolved by special agencies or boards.
6. Primary sources for finding the law are constitutions, statutes, and cases. Secondary sources are books that tell us about constitutions, statutes, and cases. They explain the law. Important secondary sources in civil litigation are form books.
7. Technology is used by both the courts and by lawyers. Attorneys use computers with general business software as well as legal software to perform everyday office tasks. Case management software is used to manage case files. Legal professionals also rely on electronic devices such as smart phones and tablets. The Internet is used for various tasks. Attorneys and judges use the Internet for legal research, communications (e-mail), and electronic filing of court documents. In addition, courts use the Internet to post information about cases. Some courts also use videoconferencing to manage short court proceedings.
8. Paralegals research the law, prepare memoranda of points and authorities, draft pleadings, organize files, interview parties and witnesses, and assist with technology needs.

9. Litigation paralegals should be able to do legal research. They may have to research the substantive law in preparation for drafting pleadings or motions. They may also have to use form books. On the other hand, litigation paralegals who are part of a larger team may have little need for legal research, especially if their job is limited to document management.
10. Litigation paralegals are constantly called upon to interact with other people. They may have to interview clients and witnesses. They may act as an intermediary between the attorney and the client. They may draft letters to clients or assist in the drafting of various documents. To do all of this, paralegals must be able to communicate orally and in writing as well as possess organizational and analytical skills. Litigation paralegals must also have technology knowledge and skills.

## CHAPTER EXERCISES

1. Advertisements for litigation paralegals may be found under the categories of “paralegal” or “legal assistant.” A careful reading of the ads under “legal secretary” may also reveal jobs that are suitable for litigation paralegals. Litigation paralegal positions often require prior experience. Desired skills often include good written and oral communication skills, strong organizational skills, and knowledge of word processing.
2. Most courts will have their own rules of court. These can usually be obtained from the court, from local legal newspapers, or from local bar associations. Copies of the local rules are generally available in the nearest law libraries or on the court’s Web site.
3. Paralegal associations may be located on the Internet or may be listed in the telephone book. If not, the local legal secretaries’ association or bar association should be helpful in locating a paralegal association. Many paralegal associations do allow for student membership.
4. Self-explanatory.
5. Students should find numerous advertisements for automated litigation support software. This includes programs for time and billing, calendaring, conflict checks, document assembly, and litigation forms. Also advertised are various legal research materials, including local rules of court. Students should also see that most of the information is now available on CD-ROM and online. Students will probably find many products advertised that are not included in the text, indicating how the area of automated litigation support is growing.
6. Some of the hypotheticals in this question are primarily either civil or criminal. However, with slight changes, these questions could become both. On the other hand, some of the hypotheticals could easily result in a civil action, a criminal action, or both. Students should be encouraged to discuss the alternatives.

- a. This is primarily a civil case arising out of a contract dispute. The plaintiff in this case would be Finkle, the home owner, and the defendant would be Baron, the contractor.
  - b. This is a criminal case because Martin clearly violated a criminal law, arson. The plaintiff would be “the people” or the state, and the defendant would be Martin. Of course, if the insurance company had paid, a civil case could also result with the insurance company being the plaintiff and Martin being the defendant.
  - c. This is primarily a civil case arising out of a contract provision requiring confidentiality and out of a patent/copyright infringement. DATA Corp. would be the plaintiffs seeking monetary damages and injunctions against two defendants, Reese and DISK Corp. This question also raises the possibility of a criminal action arising out of a new type of crime, theft of intellectual property.
  - d. Murder or manslaughter is a crime. Bates would be the defendant, and the state would be the plaintiff. However, the children would have a civil action against their father for damages for wrongful death.
  - e. This question (based loosely on the book *A Civil Action*) could result in a civil case if the children sue Rosemond Corporation for damages resulting from the occurrence of cancer. In most areas, environmental pollution is also a crime. In a criminal case, the plaintiff would be the state, not the children.
- 7.
- a. Civil Case—*Brown v. Board of Education* was a private dispute, even though it affected many people. It did not involve any crime.
  - b. Criminal Case—*Gideon v. Wainwright* involved a criminal trial. Gideon was being tried by the state of Florida.
  - c. Civil Case—*Hazelwood v. Kuhlmeier* involved a private, civil dispute concerning constitutional rights in which students were seeking relief including injunctions and damages.
  - d. *New Jersey v. T.L.O.* was a juvenile case—technically not criminal, but in substance comparable to a criminal case. The action was brought by the state and was related to criminal activity.
  - e. Civil Case—*Gutter v. Bollinger* is a civil case based on discrimination. It is a private dispute between the parties over discrimination.
  - f. Criminal Case—*Roper v. Simmons* is a criminal case dealing with punishment (death for juveniles). Roper was charged and found guilty of a criminal offense.
  - g. Civil Case—*New York Times v. Sullivan* is a private dispute over First Amendment rights. No crime is involved.

- h. Civil Case—*Sony Corp. of America v. Universal City Studios, Inc.* is a civil case involving a copyright dispute. Injunctions and damages are sought.
- i. Civil Case—*Reichle v. Howards*, is a civil lawsuit under 42 U.S.C. § 1983. It was a case in which the plaintiff was seeking money damages for a violation of his civil rights in connection with an arrest. The plaintiff claimed that he was arrested because of statements he made about the vice-president and thus his First Amendment rights were violated.

## CHAPTER PROJECT: STARTING A FORMS FILE

Each chapter in the text includes some sample forms. Additionally, a chapter project at the end of each chapter gives the student the opportunity to prepare at least one document. The forms file started by students should include a general index that parallels the table of contents to the text beginning with Chapter 2, The Courts and Jurisdiction.

## ANSWERS TO THE *BENNETT* CASE ASSIGNMENT

### Assignment for Chapter 1: Preliminary Research

The following is a checklist of material that students should include in their summary:

1. Relevant laws:
  - a. Title VII of the Civil Rights Act of 1964, which prohibits sex discrimination, including sexual harassment (hostile environment), by employers of 15 or more. Same sex harassment is included.
  - b. Equal Pay Act of 1963, which requires equal pay for men and women for equal work.
2. a. Sex discrimination: Discrimination in hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. Title VII also prohibits employment decisions based on stereo types and assumptions about abilities, traits, or the performance of individuals on the basis of sex.
  - b. Sexual harassment practices ranging from direct requests for sexual favors to workplace conditions that create a hostile environment for persons of either gender, including same sex harassment.
3. Claim filing procedures:
  - a. Claim can be filed by any individual discriminated against or a representative.
  - b. Claim can be filed by mail or person at nearest EEOC office.

- c. Claim must state:
    - i. The complaining party's name, address, and telephone number;
    - ii. The name, address, and telephone number of the respondent employer, employment agency, or union that is alleged to have discriminated, and number of employees (or union members), if known;
    - iii. A short description of the alleged violation (the event that caused the complaining party to believe that his or her rights were violated); and
    - iv. The date(s) of the alleged violation(s).
  - d. Claim must be filed with EEOC within 180 days from the date of the alleged violation, or 300 days if the charge also is covered by a state or local anti-discrimination law.
  - e. If claim is also proper under both federal and state law and a state agency exists, claimant only needs to file with either EEOC or state agency.
4. Requirements for filing lawsuit: A charging party may file a lawsuit within 90 days after receiving a notice of a "right to sue" from EEOC, as stated above. Under Title VII, a charging party also can request a notice of "right to sue" from EEOC 180 days after the charge was first filed with the Commission and may then bring suit within 90 days after receiving this notice.
  5. The requirements for an employer are found at <<http://www.eeoc.gov/employers/process.cfm>>. These responsibilities include cooperating with the EEOC investigator. This may require the employer to:
    - Submit a statement of position.
    - Respond to a Request for Information (RFI), which includes copies of personnel policies, Charging Party's personnel files, the personnel files of other individuals, and other relevant information.
    - Permit an on-site visit and provide contact information for or have employees available for witness interviews.
    - Retain all relevant documents.
  6. Other information: This will vary from student to student, but students should at least summarize the section on remedies for violation of Title VII.

ANSWERS TO THE *DOUGLASS FINANCIAL SERVICES INC.* CASE  
ASSIGNMENT

**Assignment for Chapter 1:** A memorandum summarizing the factual basis of plaintiff's claim

**Office Memorandum**

TO: [Instructor]

FROM: [Student]

DATE:

RE: *Hewitt v. Douglass Financial Services, Inc. et al.*

Plaintiff, Jessica Hewitt, was seriously injured in an intersection automobile accident. The driver of the other vehicle was Evan Portman, an employee of our client, Douglass Financial Services, Inc. Independent witnesses state that Hewitt entered the intersection on a yellow light. Witnesses also indicate that Portman was driving fast, but at the time of the actual collision, he had the green light. A follow-up police investigation showed that Portman had a blood alcohol level of 0.14. Portman was on his way home from work at the time of the collision.

Before leaving work, Portman attended an office party on the premises of his employer, Douglass Financial Services, Inc. Alcohol was provided. The party was catered by Creative Catering, who provided and served the alcohol.