

## General Summary of a Civil Lawsuit in North Carolina

The person who starts a civil lawsuit is called the **Plaintiff**. There can be multiple Plaintiffs, as long as all of them have the exact same position on the problem or issue that is being litigated.

The person who is on the other side of the dispute ... the one against whom the claims are being brought ... is called the **Defendant**. There can also be multiple Defendants if there are several people who have participated in some manner in the issue at hand. It does not matter if all of the Defendants have the exact same position, only that they all contributed to the problem that is being litigated.

The lawsuit is started when the attorney drafts a document that (1) identifies the people involved, (2) provides proper and adequate notice of the problem or issue and how it is that these people are involved in it, and (3) lists the relief being sought by the Plaintiff. This document is called the **COMPLAINT**.

The **COMPLAINT** is filed with the Clerk of Superior Court, along with another paper called the Civil Summons, which is the official notice to each Defendant that the lawsuit has been filed. The Civil Summons also informs the Defendants that they have 30 days to file a written document with the Court that answers the claims alleged in the Complaint. The law is very particular about how a Complaint and Civil Summons must be delivered to each Defendant. The delivery of these documents is referred to as *Aservice@* of the documents. The two primary ways are (1) Certified US Mail, return receipt requested, where the Defendant must sign the receipt, or (2) personal delivery by a Deputy Sheriff.

The responsive document that each Defendant must file in answer to the claims set out in the Complaint is called the **ANSWER**. Simply by making a written request, the 30 day period for the Defendants to file their Answer can be enlarged to 60 days. The Answer is filed with the Clerk of Superior Court and a copy must be sent by regular mail to Plaintiff=s attorney.

In most cases, the Complaint and the Answer (which are collectively referred to as the *Apleadings@*) are the main two documents of the lawsuit. However, sometimes there is more.

Defendants sometimes feel they have valid claims against the Plaintiffs. When that is the situation, the Defendants will also file a **COUNTERCLAIM** that serves essentially the same function as the Complaint, just setting out the Defendants= claims against the Plaintiffs. The Plaintiffs then will have 30 days to file their reply to the allegations of the Counterclaim, and the document that the Plaintiffs must file is called the **REPLY**. The 30 days for filing the Reply can also easily be enlarged to 60 days. The Counterclaim and Reply are also considered part of the *Apleadings.@*

## **Phase One of a civil case: the APleadings Phase@: 30 to 120 Days**

The first phase of a civil case, the APleadings phase,@ is the period of time when the Complaint and Civil Summons is filed and served on the Defendants, and when the Answer is filed and mailed to the attorneys for the opposing parties. This first phase takes **anywhere from 30 to 120 days after the Complaint was filed**, depending on how long it takes to get official service of the Complaint and Civil Summons on Defendants, whether extensions of time are obtained, and whether there is a Counterclaim asserted.

## **Phase Two of a civil case: the ADiscovery Phase@: 30 to 120 Days**

After the **Pleadings phase**, the case enters a second phase, which is called ADiscovery.@ During this phase, which lasts several months, the attorneys can send written documents to the opposing parties or their attorney to gather, or discover, information:

**Interrogatories** are questions submitted to persons on the other side, and they must provide a written answer under oath.

**Request for Admission** are submitted to see if the other side will admit certain facts that otherwise would have to be proved. These are quite helpful for non-controversial elements of the dispute.

**Request for Production of Documents** ask for copies of various documents and records that contain vital information in the possession of the other side.

**Depositions** can also be conducted, which are interviews by the opposing attorney (all the attorneys are present for these) with a court reporter present who administers an oath of truthfulness to the deponent and then transcribes all questions asked and all answers provided. These are often extremely helpful for many reasons, but they are relatively expensive.

In most civil cases, a **Mediation Settlement Conference** must be conducted toward the end of the Discovery phase. All parties must be present at the mediation, which normally lasts anywhere from 3 to 8 hours. The mediator does not make a decision; instead, the mediator helps each side focus on the strengths and weaknesses of their own case. Sometimes, information learned during the Discovery phase causes a case to become weaker or stronger. The mediator helps the parties to re-evaluate the risks of moving forward and to think through whether they are better off settling the case while they are still able to have significant input into the results.

Nobody is required to settle a case at a mediation conference, but all parties are required to go through the process. Naturally, being well prepared to move into trial increases the chances of a more favorable settlement at mediation. Probably 75% of all civil cases settle at the mediation conference.

### **Phase Three: the Final Trial Preparation Phase@: 30 to 120 Days**

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Final preparation for the trial follows the mediation, if it is not successful. In reality, of course, the trial preparation for the Plaintiff=s attorney actually starts before the Complaint is drafted and filed. Trial preparation for the Defendant=s attorney starts when the Defendant retains the attorney.

Initial trial preparation includes performing research of the facts, interviewing witnesses, visiting the site of an accident or land in dispute, and performing legal research to seek legal support for the client=s position. Gaining information through the Discovery Phase also is part of trial preparation.

Final trial preparation includes **(1)** sorting through and identifying which documents and photographs will be offered into evidence at the trial, **(2)** determining which people will be called upon to testify, and what issues each person will be asked about, **(3)** issuing a Subpoena to people who may be reluctant to testify or who need it to miss work, **(4)** preparing the questions to ask of the various witnesses, **(5)** preparing a Pre-Trial Order for a Pre-Trial hearing before a Judge, **(6)** making a notebook of copies of all documents and photographs for each juror, the Judge, the client, the attorney, and for use by witnesses (18 notebooks). All this material must also be supplied to the opposing attorney.

Sometimes, where the important facts turn out to be not in dispute ... where the dispute is really about the conclusions to be drawn from the facts ... it is possible to short-cut the process with a **Motion for Summary Judgment**. Since the role of the jury in a civil trial is only to determine the facts (when one side says the facts are X and the other side says the facts are Y), if the facts are not in dispute, there is nothing for a jury to do, and the Judge will make a ruling ... and that is what is called Summary Judgment. Motions for Summary Judgment are sometimes made before the mediation takes place, with the hearing on the motion being scheduled for a date after the mediation. In certain circumstances, this can increase the chances for a successful mediation.

Other important pre-trial motions are also scheduled for hearing by a Judge during the Final Trial Preparation phase if they have not been dealt with sooner.

## **Phase Four: the ATrial Phase@:    **Varies widely****

A jury trial takes **anywhere from a couple of days to a week or more**, depending on the nature of the case, the number of witnesses, and number of issues and the complexity of the issues.

When a case first appears on a trial docket, it generally is on a list of several other cases that are also on the same trial docket. A case that is in second place on a trial docket still might not be reached if the first case on the docket takes up the entire court term (usually one week in the non-urban counties, but sometimes two weeks).

However, a case listed in sixth place could turn out to be the first case actually called for trial if the first five cases either settle or get postponed. In most instances, even the best-prepared attorneys cannot know absolutely whether your case will actually be reached during the term of court when it appears on the trial docket. This is extremely frustrating for clients, witnesses and attorneys.

In almost every instance, the actual trial list is not known until the Monday morning of the term of court. It is not unusual for a trial of a case on a trial docket to be postponed more than once when the cases ahead of it take up the allotted time. In counties of relatively small population, there are only about 4 to 8 weeks per year when civil cases are heard.

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Please be aware that there are a great many costs in filing a civil lawsuit, including:

- (1) filing fee to the Court,
- (2) service fee to the Sheriff to serve Complaint and Civil Summons on Defendants,
- (3) Certified Mail fee to the US Post Office when that method is attempted for serving Complaint and Civil Summons on Defendants,
- (4) additional fee to the Court for each motion filed,
- (5) court reporter appearance fee and transcript copy fee for depositions, where applicable,
- (6) additional fee to Sheriff for serving Subpoenas, where applicable,
- (7) charges for photographs or copies of survey plats or other relevant documents, where applicable,
- (8) charges for copies of exhibits, whether documents or photographs or otherwise, for all 12 jurors and for other required sets of all documents (normally 18 sets of all trial exhibits),
- (9) expert witness fees, where applicable,
- (10) official certified copies of various documents, where applicable.

This is a very general summary. There are many exceptions and variations, but this is a reasonable idea of what to expect. The period of time from the filing of a Complaint to the conclusion of a jury trial is normally 12 to 15 months, but that varies widely as well.