So, You're Thinking of Filing A Lawsuit?

San Mateo County Superior Court

DISCLOSURE

- Please note that all of the information contained in this workshop/slideshow is purely general information and should NOT be relied upon for your particular situation. Each piece of information contained herein has many exceptions. You should research your legal issues before deciding on what actions to take, or consult with your own attorney regarding your matter.

- The attorneys who have prepared this workshop/slideshow are NOT YOUR LAWYERS, but are neutral persons who do not represent any party. There is no attorney-client relationship between you and these attorneys. You should consult with your own attorney if you want personalized advice or strategy.

- It is important to remember that both legal claims and lawsuits adhere to strict timelines and waiting to file a claim or an answer to a lawsuit can have irreversible negative consequences. If you are unsure of the time frames relative to your claim or case, you should consult with your own attorney.

- The office of the Self-Help Center is not responsible for the outcome of your case.

Overview of the Court System

- The role of the judiciary
- Two types of state courts:
  - Trial Courts
    - 58 Superior Courts – one in each county
  - Appellate Courts
    - 6 Courts of Appeal
    - 1 California Supreme Court
- 2 types of cases
  - Civil and Criminal



Before You File a Case…

- *Who* Can Sue and Be Sued
- *When* to Sue
- *Where* to Sue
- *What* You Need to Do Before You File
- Should You Utilize Alternative Dispute Resolution (A.D.R.)



Who Can Be a Plaintiff/Petitioner?

- Individuals
  - A person who is over 18 may be a Plaintiff.
  - If Plaintiff is mentally incompetent or under 18, Plaintiff will need a guardian ad lidem appointed to represent him or her.
- Entities
  - Corporations, businesses, partnerships, and agencies may be Plaintiffs.
- Real Party in Interest
  - The Real Party in Interest Must Have a Cause of Action

What is A Cause of Action?

- Cause of Action = Case's "Legal Merit"

- Two typical sources of legal Causes of Action ("COA") are:

  1) Violation of an existing code ("law")

     — OR—

  2) An action, or failure to act, that violates CA common law



COA Resource and Example



- Each COA has certain elements that must be written in the complaint and proved at trial

- Example: Breach of Contract elements
  (1) contract formation,
  (2) performance of Plaintiff's required actions in the contract,
  (3) breach of the contract by failure of the other party to meet their contractual obligations, and
  (4) damages that you have suffered as a result of the other party's breach.

- *Represent Yourself in Court: How to Prepare & Try a Winning Case* by Paul Bergman and Sara Berman-Barrett, published by Nolo Press (KB190/B454, Aisle 38 at the SMCLL).

Who Can Be A Defendant/Respondent?

- Who Can You Sue?
  - An Individual or an Entity
- Who to Name?
  - Individuals: Name the individual(s) by full name.
  - Entities:
    - Businesses owned by individuals: Name the owner(s) and the business.
    - Corporations: Use the exact name of the corporation or company.



Who Can Be A Defendant/Respondent?

- Locating the Defendant
  - If you have…then look at…
    - an old **address** → US Postal Service
    - a **phone number** → reverse directory
    - A **name** or **address** → tax assessor's tax rolls or property records in the county recorder's office
  - If you are suing a **partnership or a business** with only one owner, you can find the names and contact information for the owners at the county or city clerk's office.

Who Can Be A Defendant/Respondent?

- Locating the Defendant
  - **Corporations** → find out the corporation's name and its agent for service on the website for the California Secretary of State.
    - Web search: http://kepler.sos.ca.gov/list.html
  - Paid internet searches can also help you find people or entities



When Should I Sue?

- You must file your claim within the Statute of Limitations ("SOL" or time limit) applicable to your claim. See C.C.P. sections 335 to 339.
- The SOL determines whether a court can hear and decide a case.
- If you do not file within the SOL time, ***you lose automatically*** (no matter how strong your case is)!
- Examples*:

  Injury: 2 years
  Written Contract: 4 years
  Property Damage: 3 years
  Oral Agreement: 2 years

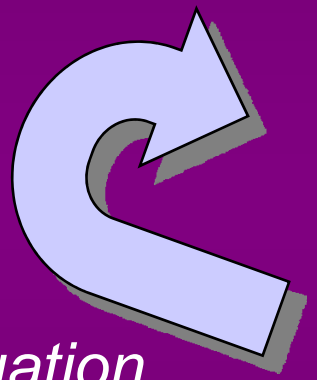
***Please be advised that you should consult the applicable Code or Statute, or with an attorney, for your particular case. You should NOT rely on these examples, as there are many exceptions!**

Have I Tried Everything Else?

- Before filing in court, you must “exhaust all pre-filing remedies” = you tried everything else first
- Contract cases: some contracts have a clause that says how to resolve any problems that come up
  - Common examples: arbitration, mediation, etc
- Government agency claims: some agencies require that you file a claim with the agency before filing in court

Which Court Do I File In?

- If you bring your claim in the wrong court, the court can dismiss the case and you will need to re-file in the correct court.



- Two Considerations:
  1) Which County ("Venue"): Based on *situation*.
  2) Which Court: Based on the *subject matter* at issue.
     -Ex.s: Small Claims, Civil, Probate, and Family

Which Court Do I File In?

- Examples of Courts based on Subject Matter:
  - Small Claims: Less than $7,500, No Unlawful Detainer
  - Civil Unlimited: Civil cases over $25,000
  - Civil Limited: Civil cases $25,000 or less, and Unlawful Detainer
  - Probate: Guardianships, Conservatorships, Estates
  - Family: divorce, paternity, child custody and support, and domestic violence
- Resource: CA Dept. of Consumer Affairs

  Website (for small claims, but helpful in general):

  http://www.dca.ca.gov/publications/small_claims/index.shtml

Special Claims

- Some claims cannot be filed in the Superior Court system
  - Some Government Agencies require that you file with that agency first
  - Federal Claims must go to the Federal Court



Before You File!

- Make sure you have talked to the other party first.
- There may be a simple solution.
  - Maybe they were unaware of all the facts
  - Maybe it is just a misunderstanding and filing a case will just make things harder
- Try to resolve the case with the other party first.

What Papers Do I File?

- In a general civil case, you will need to file:
  (1) a Complaint,
  (2) a Civil Case Cover Sheet (in unlimited civil ONLY),
  (3) an original copy of the Summons, along with
  (4) a filing fee.
- In a family or probate case, you will often be filing
  (1) a Petition,
  (2) an original copy of a Summons or Notice of Petition, and
  (3) a filing fee.



What Papers Do I File?

- Depending on what type of case you are filing, you will either have to draft the pleadings yourself or use Judicial Council Forms.

- The filing fee will vary depending on the type of case you are filing, but currently, general filing fees are:
  - unlimited civil cases = $320
  - limited civil cases = $300,
  - small claims ranges from $30 to $100 depending on the amount at issue,
  - family = $320, and
  - probate fees are graduated depending on the value of the estate starting at $320 and ranging to over $3,000.

- There will be additional fees for Motions and some other filings throughout the course of the litigation

What Is Service?

- After you file the lawsuit, you must have the papers you filed served.

- You have to have all papers throughout the lawsuit "served" on every party in the whole case.



How Do I Serve Other Parties?



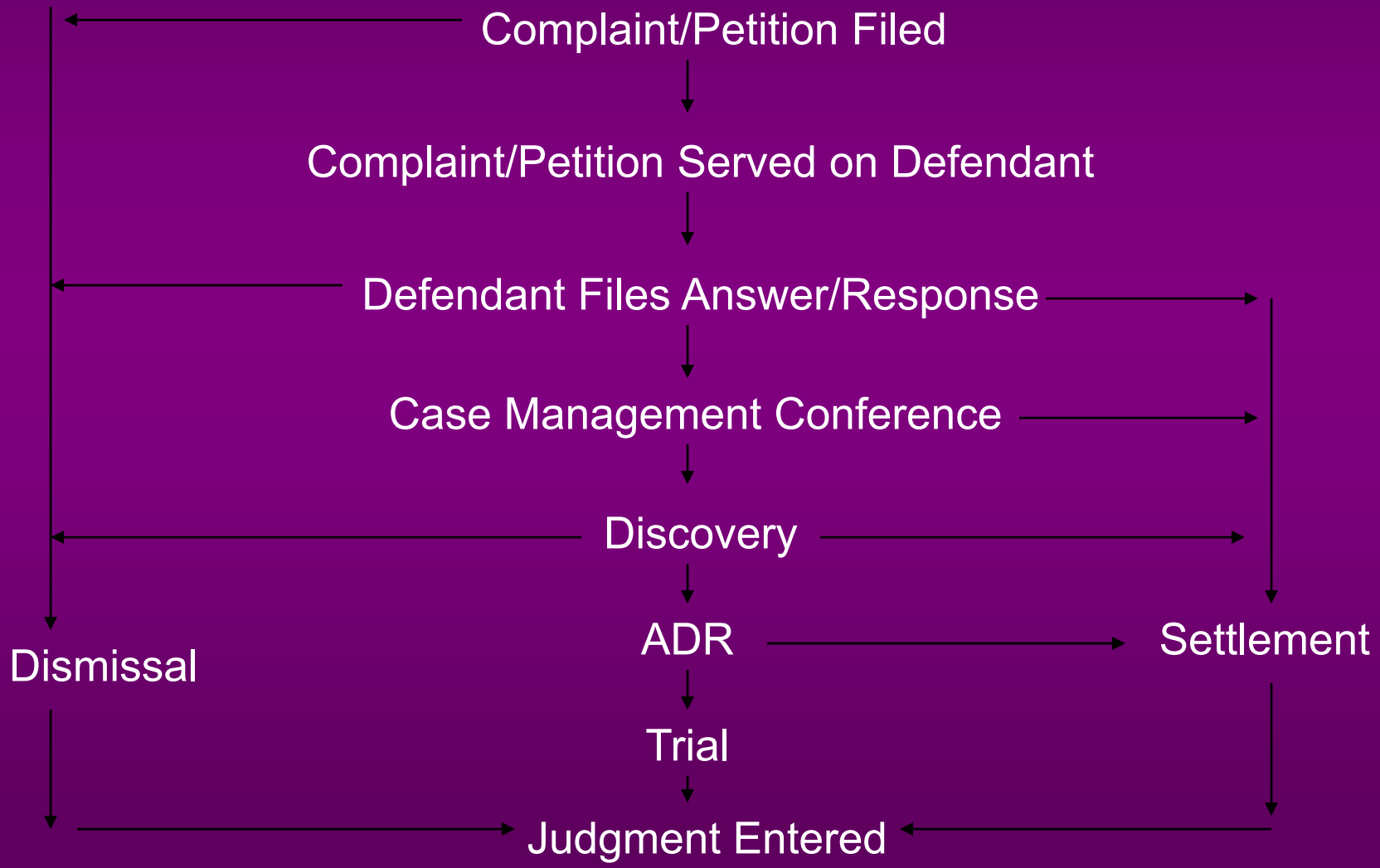
- 3 Methods of Service:
    1) Personal service
    2) Service by mail (check rules)
    3) Service by publication (need permission)
- Consider hiring a professional Process Server to serve the papers.
- For more rules about service, look at the CA Code of Civil Procedure (CCP), CA Rules of Court, and the court's Local Rules

Other Considerations

- Long Process
  - Case Management Conferences
  - Motions and Hearings
  - Discovery
  - Settlement Conferences
  - Trial

  *For More Details on These Aspects of Litigation, Please Attend Workshop II

Civil Case Process



Other Considerations

- The court will not collect judgments for you
- Is the Defendant “Judgment-Proof”?
  - If the defendant is broke or can hide their assets, then collecting your judgment may be impossible.
- Collecting from a Difficult Defendant
  - Hire an attorney or collection agency.
  - Writ Process

Considering Potential Outcomes

- Winning and Losing
  - No Certainty
- Defaults
- Possible Financial Losses
  - Costs and Attorneys Fees





Other Considerations

- Do I Need A Lawyer?
  - Many good reasons to have a lawyer
    - Knowledge and experience
  - Consider the complexity of your case
    - If you want to sue and go through the court process, a lawyer may be able to help you be more successful
    - If you want to settle without going through the court process, you may be comfortable doing that yourself





How Can A Case Be Resolved?

- Alternative Dispute Resolution ("ADR" for short) is the common name for many different ways of settling a disagreement without suing in court.
- ADR includes mediation, arbitration, neutral evaluation, special masters and referees, binding arbitration, and settlement conference.
- The most commonly utilized forms of ADR are settlement conferences, mediation, and arbitration.

Can I Settle Without Filing a Case?

- Yes!!!



- Utilize the services of the Peninsula Conflict Resolution Center ("PCRC") – see Referral Form
- *__Beware__* of Statutes of Limitations running out!

What Types of ADR Are Available?

- **Mediation**: Neutral mediator facilitates communication between the parties to reach a mutually satisfactory agreement.
- **Arbitration**: Neutral arbitrator has decision-making authority to make an award.
- **Settlement**: Parties come to an agreement.

What are the Advantages of ADR?

- ADR can save resources: time, money, and energy!
- With ADR you are more involved and in control!
- ADR can preserve relationships!
- ADR can be private, cases are public.
- You do NOT lose the opportunity to sue if you cannot settle, but ***beware*** of Statutes of Limitations!

How Does ADR Work in San Mateo County?

- Multi-Option ADR Project
  - Civil ADR Programs include mediation, arbitration, neutral evaluation, and judicial arbitration
  - Family Law ADR includes mediation or arbitration and is confidential
  - Probate ADR has the same options as the Civil ADR Program and is confidential
  - Juvenile Mediation Programs for Dependency and Delinquency Matters
  - Small Claims Mediation (to be addressed by Ana Navarro)

What can I Expect in Mediation?

- Mediation can be face-to-face with the other party or separate from the other party
- Trained neutral person or 3rd party
- Can happen before or after filing.



What Can I Expect in Mediation?

- A mediator has no decision-making authority.
- Mediator does not decide what is right or wrong.
- The mediator does not take sides or push for any one solution.
- Mediators maintain a neutral role.

What Can I Expect in Mediation?

- Mediation focuses on the future, not the past
- Mediation focuses on what will resolve the conflict
- Mediation does not replace the need for legal advice or counseling



How Does Mediation Work in Small Claims?

Before the Hearing or Before Filing:

- Once you agree to participate, the coordinator will contact you to explain the mediation process and to discuss the issues.
- You will be notified of the date, time, and location of the session.
- The mediation session may take up to two hours, a second mediation can be scheduled.

The Day of the Hearing:

- The coordinator will ask you to meet with a mediator and attempt to resolve your case before presenting it to the court.

Workshop Glossary

Case	A lawsuit. Or, a complaint filed in criminal, traffic, or civil court.
Cause of Action	The charges that make up the plaintiff's case.
Code	The law created by statutes. For example, the Welfare and Institutions Code, the Penal Code, etc.
Code of Civil Procedure	The law that describes how a case goes through the court from start to finish.
Complaint	In civil cases, a written statement the plaintiff files to start a case. It says what the plaintiff thinks the defendant did. In criminal cases, the DA files the complaint to say what the defendant is charged with. Also called the initial pleading.
Court	A judge or group of judges whose job is to hear cases and carry out justice. Or, a courthouse or courtroom.
Court Order	A judge's decision that gives someone certain rights or tells someone to do something.
Criminal Case	A case that says someone committed a crime.
Cross-Complaint	A complaint filed by the defendant (or cross-defendant) against the plaintiff.
Damages	Money that a person says s/he is owed, or that the court orders someone to pay, to make up for losses or injuries.
Decedent	A dead person.
Declaration	A statement that a person writes and files with the court. It tells the judge why s/he should win the case. Sometimes, a person signs a declaration under penalty of perjury.
Default	When a defendant doesn't file an answer in time or go to court when s/he is supposed to. If the defendant was properly notified, the judge can decide the case without him or her.
Default Judgment	A court decision in favor of the plaintiff when the defendant doesn't answer or go to court when s/he is supposed to. In Small Claims cases, plaintiffs will still have to prove their case. In eviction cases, the defendant loses automatically if they do not answer or go to Court. The tenant will be evicted unless s/he can get a judge to cancel the default judgment. The tenant must pay everything the landlord asks for. And, s/he may also have to pay for his or her lawyer.
Defendant	In a criminal or traffic case, the person accused of a crime. In a civil case, the person or company being sued.

Defense	The facts or arguments the defendant uses to show why the plaintiff doesn't have a right to the relief asked for.
Demurrer	When a defendant says that even if facts presented by the plaintiff are true, they aren't enough to prove the defendant is legally responsible.
Deposition	When a witness testifies before trial, under oath. The lawyers ask questions and a court reporter writes everything down. A deposition can be used as evidence at trial.
Discovery	Collecting information (facts, documents, or testimony) before trial. Discovery can be formal depositions, interrogatories, or requests for admissions. Or, it can be independent investigation or talking with the other side's lawyer.
Estate	Everything a person (alive or dead) owns and owes. There are different types of estates, like probate, nonprobate, trust and taxable estates. Probate estate: The property in someone's Will. Or, if they do not have a Will, the property the probate court handles. Nonprobate estate: The property the probate court does not handle. For example, if there's a trust or joint tenancy. Trust estate: Property in a trust. A trustee controls the trust. Taxable estate: The property subject to federal estate tax when a person dies. For example, life insurance.
Evidence	Any proof presented at trial by witnesses, records, and/or exhibits.
Exhibit	A document or an object shown and identified in court as evidence in a case.
Fee Waiver	Permission not to pay the court's filing fees. If you have a very low income or get money from the government (like welfare), ask the court clerk for a fee waiver form.
File	When you officially give a paper to the court clerk.
Filing	Giving papers to the clerk. When the clerk stamps the paper, it is filed.You can take your papers to the clerk's office or mail them in.
Filing Fees	Money you pay to the court clerk to accept (or "file") certain papers. If you can't pay, ask for a fee waiver. The money helps pay to run the court.
Garnishment	A legal process that uses part of a person's wages or property to pay a debt.
Guardian Ad Litem	An adult (usually a parent) chosen by the court to represent a minor child or legally incompetent adult in court. Ad litem means for the lawsuit.
In Limine Motion	Motion that is heard right before a trial starts.
In Propria Persona	When a person represents himself or herself without a lawyer. This comes from the Latin for in one's own proper person.
Judgment	The judge's final decision in a case. It says how much the person who lost has to pay the person who won, and when. Sometimes, you can change part of the judgment with a hearing.

Jurisdiction	A court has to have the legal authority to hear and decide a case. This means that the court has to be authorized to handle the: subject matter (what the case is about), person or place the case is about, and amount of money the case is worth.
Jury	A group of citizens picked according to law and authorized to decide a case.
Litigation	A case, or lawsuit. The people in a lawsuit cannot agree, so they present evidence and let the court decide.
Motion	A spoken or written request that one side makes to ask the judge to make a decision or an order on a specific point.
Moving Party	The side that files a motion.
Notice	Written information or warning. For example, a notice to the other side that you will make a motion in court on a certain date.
Order	A judge's decision in writing. Or, written instructions from the court that tell someone to do, or not do, something.
Opposing Party	The other party (side) in a lawsuit.
Party	One of the sides in a court case. The person who started the case is called the plaintiff or petitioner. The person being sued is called the defendant or respondent.
Personal Service	Handing a copy of court papers directly to the person who is served.
Petition	A court paper that asks the court to take action. For example, in juvenile cases, the Petition starts the court case.
Petitioner	A person who presents a petition to the court.
Plaintiff	The person or company that files a lawsuit.
Probate	The legal process to prove that the Will of a dead person (called the decedent) is valid and to choose a personal representative for the estate. People use the word Probate to talk about everything that has to do with administering the estate, like paying taxes and marshalling assets.
Proceedings	Usually, the process of conducting judicial business in front of a court or other judicial officer. A proceeding is any of the separate steps in that process, like, a motion or hearing.
Process Server	A person who gives court papers to a party in a case. Or, people or companies who get paid to serve people.
Proof of Service	A form filed with the court that proves that court papers were properly served on (delivered to) someone.

Respondent	If you are the person that answers the original Petition, you are the respondent. Even if you later file an action of your own in that case, you are still the respondent for as long as the case is open.
Response	A respondent's first answer to the Complaint or Petition that started the case.
Service	When someone over 18 and not involved with your case gives the other party a copy of the court papers in person or by mail.
Settlement	When both sides reach an agreement that solves the case before the judge (or jury) makes a decision. Make sure you understand everything you agree to. Sometimes the judge orders you to try to settle the case. You don't have to accept what the other side offers. You have the right to have a trial.
Statute	A law passed by Congress or a state legislature.
Statute of Limitations	A law that says how much time you have to file a lawsuit after something happens. If you don't file your case in time, YOU LOSE. Even if you wait just 1 day too long, the court won't be able to hear your case.
Subpoena	A court order to go to court at a certain time. Subpoenas are usually used to get witnesses to go to court to testify.
Summons	A notice from the court that tells the defendant they are being sued and who is suing them. It also says that if the defendant does not answer in time, the court will enter a judgment against them. The Summons must be served with the Complaint.
Trial	A court proceeding where the parties present their cases, including witnesses and documents. The judge or jury hears issues of fact and law and makes a decision in the case. A trial can last 15 minutes or several hours.
Venue	The court where you can file your action.
Voir Dire	The process of questioning potential jurors to choose the people who will decide a particular case.

Information Courtesy of California Superior Court, County of Santa Clara
Complete Information Available at www.scselfservice.org