I Have A Case in Court, Now What?

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.

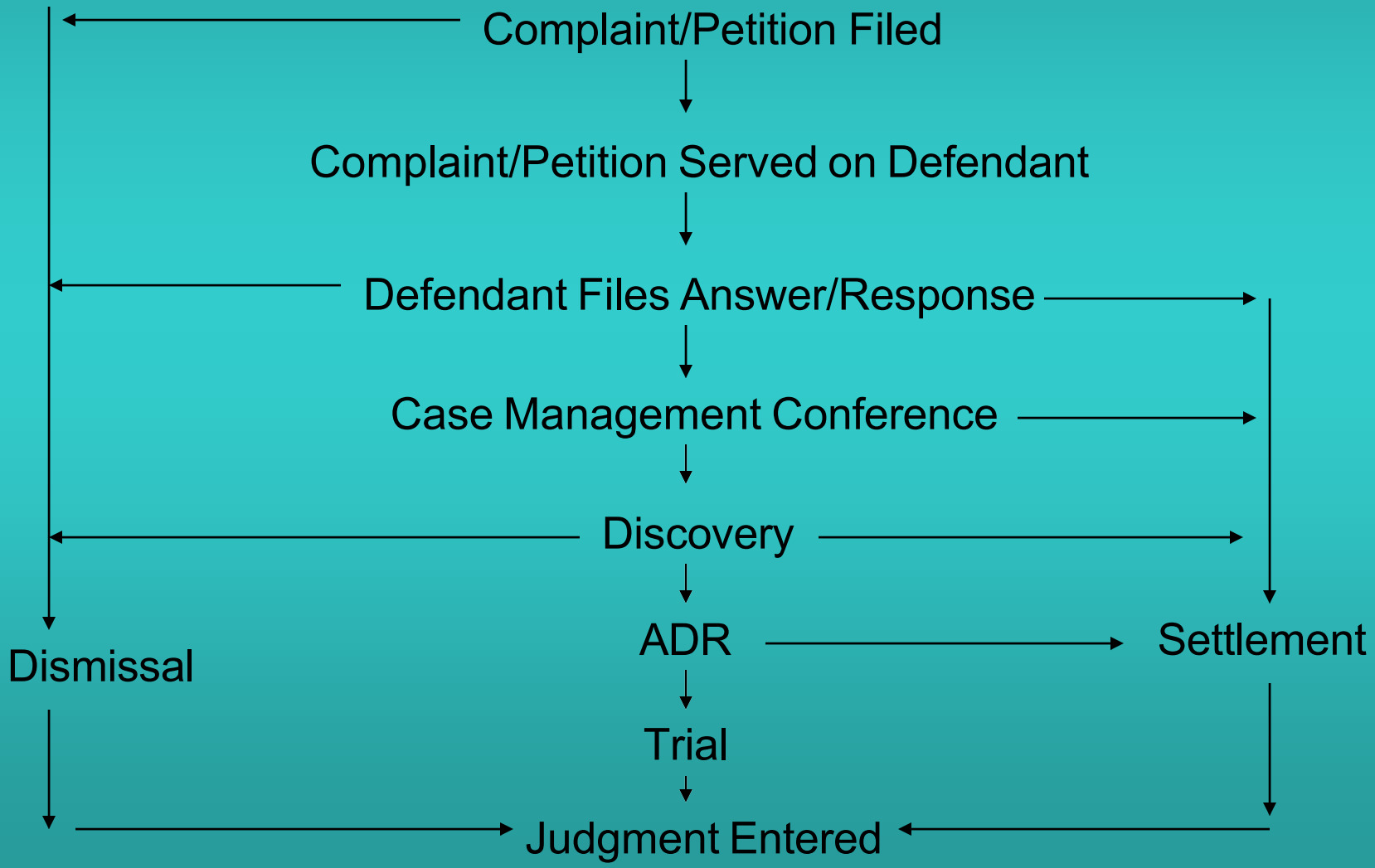
What is A Court Action or Case?

- A process used to get a judgment ordering another party to do something (such as pay money, repair property, stop doing something, etc.)



- Parties:
  - Plaintiff/Petitioner: the person filing the case or “suing”
  - Defendant/Respondent: the person being sued

Civil Case Process



What Are Complaints/Petitions?

- The complaint or petition is the first paper the Plaintiff/Petitioner files in a court case.
- A complaint says what the plaintiff thinks the defendant did.
- A petition says what the petitioner wants the court to grant or order.
- The complaint can be general allegations, and usually lists multiple legal claims.
- If you filed one, did you file it correctly and did you include all possible claims? If not, you may be able to amend it.

Service of Process

- This is the phrase used to describe a Defendant being served with a complaint or petition, which notifies the Defendant that a case has been filed against them.



- 3 methods of proper service:
  - Personal
  - By Mail (check rules)
  - By Publication (need permission)

- If the Defendant is properly served and fails to “appear” within 30 days, the case can proceed by default

Should I Respond?

- After you are served, you have 30 days to file a response with the Court. If you don't, the Plaintiff can file a "Request for Default".

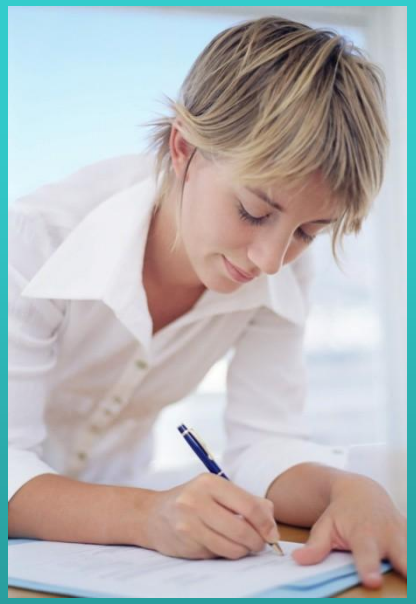
- A default means you can no longer respond to the case and the Plaintiff can get a judgment against you. ***The Plaintiff will win the case!***

What if a Default Judgment is Entered Against Me?

- Default Judgment means whatever the plaintiff/petitioner wanted, he or she gets.
- The Plaintiff can enforce the judgment against you and collect the judgment by:
  - getting money from you by garnishing your paycheck, or
  - putting a lien on your house or car.
- A judgment against you can also show up on your credit report. This can make it hard to get a credit card or a loan.
- You can ask to cancel, or “set aside” a default judgment, but only within 6 months of the Default Judgment being filed.
  - The court will require a very good reason that you did not respond within 30 days.

How Do I Respond?

- You can file most of the responses we talk about with Court forms. You can get the forms at:
  - » California Court's Self Help Center forms page at http://www.courtinfo.ca.gov/selfhelp/
  - » Your local law library
  - » The Clerk's office
  - » For help filling out forms, see the binder "Litigation by the Numbers" by Goren, available in this law library.



Types of Responses

- Answer/Response: Raise Defenses and/or Deny the Claim(s)

- There are various other motions to get the case “stopped”
  - These motions do not necessarily stop the case, but they may put them on hold or get them moved to another court, etc.

Common Affirmative Defenses

- These usually MUST be raised in the first responsive pleading, often the Answer/Response
- **Statute of Limitations**
  - The Plaintiff must file his/her claim within the applicable Statute of Limitations ("SOL" or time limit). See C.C.P. sections 335 to 339 for specific SOL information.
  - The SOL determines whether a court can hear and decide a case.
  - If the Plaintiff did not file within the SOL time, ***Plaintiff loses automatically*** (no matter how strong his/her case is), but ONLY if your Answer/Response points that out!!
  - Examples*:

    Injury: 2 years
    Property Damage: 3 years
    Written Contract: 4 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!__

Common Affirmative Defenses



- Filed in Wrong Court
  - Jurisdiction
    - Personal: Does the court have power over the parties?
    - Subject Matter: Can the court make orders on this issue?
    - *Caution*: Filing a certain type of Response can waive some of the affirmative defenses. See Cal. Code of Civil Procedure section 418.10 for special appearances
  - Venue: County

Common Affirmative Defenses

- Failure to State a Cause of Action: If the Plaintiff's case has no "legal merit"

- The Cause of Action is the basis of the lawsuit, the Defendant either

  1) Violated an existing code

  — OR—

  2) Acted or failed to act in a way that violates CA common law

- Each cause of action has certain elements that must be written in the complaint and proved at trial.

Common Affirmative Defenses

- Failure to Exhaust Other Remedies
  - Did you try everything else?
  - Administrative Remedies
  - Alternative Dispute Resolution



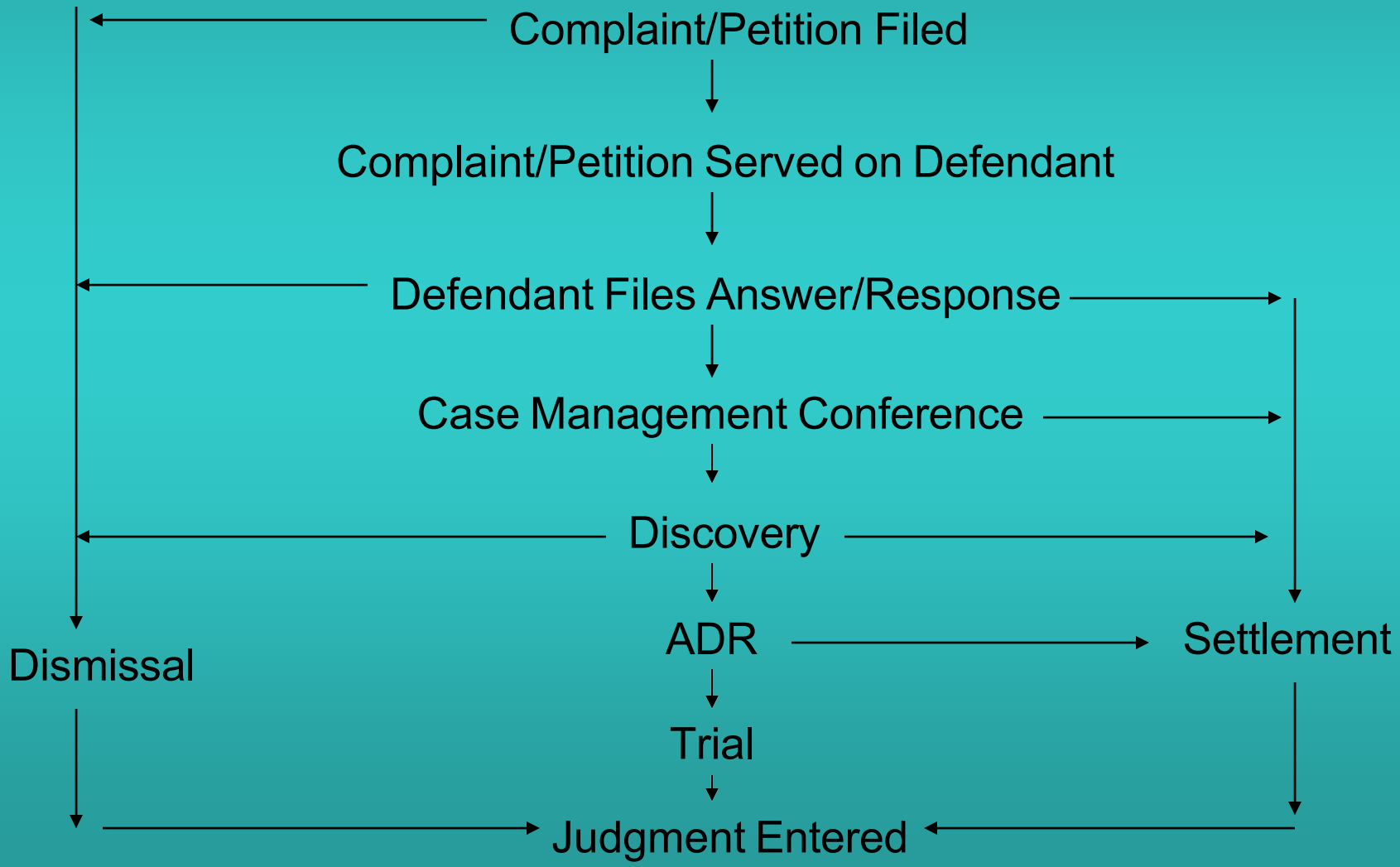
- Others: *California Affirmative Defenses, 2007 ed. (The Expert Series) by Ann Taylor Schwing*

Other Responses

- Cross-Complaints: File a case against the Plaintiff or another party about the same issue
- Joinder: Makes another person a party in the case, anyone who has a stake in the outcome



Case Process



Case Flow - CMC

- **Case Management Conference** (“CMC”)
  - *Unlimited civil* cases only
  - After 120 days, both sides, the lawyers and the judge meet to talk about how to handle the case.
  - 15 days before the first CMC, file a CMC Statement per California Rule of Court 3.725
  - CA Rule of Court 3.724 requires that the parties talk about how to handle the case, what issues to settle before trial, and whether the parties want to try ADR
  - Both parties must attend!

Case Flow – Law & Motion

- **Law and Motion**
  - Motions: Requests of the Judge for Orders while the case is pending
  - More about Motions: Look for these resources at the law library -- Practice Guides specific to your type of case (often by Rutter Group), California Forms of Pleading and Practice, and California Points and Authorities

Case Flow – Law & Motion

- **Law and Motion**
  - Special Considerations for Motions and Responses:
    - Proper Form: Declaration of Facts under Penalty of Perjury, Legal Authority in Memorandum of Points and Authorities
    - Hearing Date & Service 16 Days Before Hearing
      - Particular requirements depending on method of service
      - CA Code of Civil Procedure Sections 1003 to 1020
    - Check the Tentative Ruling at:
      www.sanmateo.courts.ca.gov OR
      (650) 261-5019

Sanctions

- The winning party on a motion may ask the other party to pay his/her costs and/or attorney's fees

- Failing to comply with court orders can result in monetary sanctions or having your case dismissed

Case Flow - Discovery

- Building Your Case: Investigation and Discovery



»Many ways to investigate your case: take photos, conduct interviews, record data

»Free/low-cost information resources: internet, library, government agencies

»What you gather is called “evidence”, and the process of gathering evidence is called “discovery”

Specific Forms of Discovery

- Oral Depositions
- Depositions by written questions
- Interrogatories
- Demands to look at papers, things or places
- Physical or mental examinations of a person
- Requests for Admission of fact, or opinion, or application of law to fact, or Authenticity of Document
- Sharing information about expert witnesses, and the expected testimony

Case Flow - Discovery

- **Discovery**
  - If you have trouble getting others to “produce” (turn over/give you) evidence, there are several ways to get the evidence
    - Motion to Compel
    - Subpoenas



      - Look for subpoena forms at stores that sell legal forms, at the State Court website, and in books at the law library such as the California Forms of Pleading and Practice, Discovery volume

Case Flow - Discovery

- **Discovery**
  - Discovery has very strict rules. If the rules are not followed, the evidence may not be admitted and sanctions can be imposed.
    - Resources:
      - » California Civil Discovery Practice, CEB in 2 volumes
      - » California Forms of Pleading and Practice, See Discovery volume
      - » California Code of Civil Procedure § 1916 and 2024
  - Can Be Complicated and Expensive



Case Flow – Trial

- **Trial**
  - The purpose of a trial is to allow both parties to present the evidence in support of their argument to the judge and/or jury
  - Before the Trial: Trial Setting Conference
    - Everyone who will be trying the case should be at the hearing
    - The judge will set the trial date at this hearing
    - The parties must give the judge their decision on whether to have a jury trial or a bench trial
      - If you request jury trial, you must pay the jury fees!

Case Flow – Trial Preparation

- Try to begin preparing 100 days before trial
- Preparing for trial is difficult and can be expensive, this is a very good time to consider settlement
  - See Lynch, et. al., *California Negotiation and Settlement* (Pub'd by Bancroft Whitney).
- As trial prep, begin looking at the initial pleadings (Complaint/Petition & Answer/Response), refer back to discovery, review motions, arrange for witness testimony, prepare exhibits, and make notes or outlines

Case Flow - MSC



- **Mandatory Settlement Conference** ("MSC")
  - A few days before the trial
  - File a Settlement Conference Statement 10 days before the MSC
  - Parties will try to settle the case by presenting the facts of the case to a (temporary) judge who tries to find a solution on which the parties can agree. If they agree, no trial!



Case Flow - Trial

- Jury Trials begin with Voir Dire (“vwah-deer”) or jury selection
  - Each party can ask the jurors questions
  - Jury fees must be paid every day of the trial
- Opening Statements
- Closing Argument
- Verdict by Jury or Judge



- ENTIRE Process is MUCH Faster and Simpler in Small Claims Court! These phases vary for civil limited, family and probate cases, but the ideas and processes presented here can be used as arguments in any court.

What is ADR?

- 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 Going to Trial?

- Yes!!!



- Utilize the ADR Services offered!

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 statutes of limitations can run out!

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

What can I Expect in Mediation?

- Mediation is an opportunity to meet face to face with the other party to discuss your situation in the presence of a trained neutral person, the mediator.
- A mediator has no decision-making authority. Unlike a judge or an arbitrator, a mediator does not decide what is right or wrong or make suggestions about ways to resolve a problem.
- The mediator does not take sides or push for any one solution. Mediators maintain a neutral role.
- Mediation focuses on the future, not the past, and what will resolve the conflict.
- Mediation does not replace the need for legal advice or counseling if your "rights" in a situation are the concern.

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:

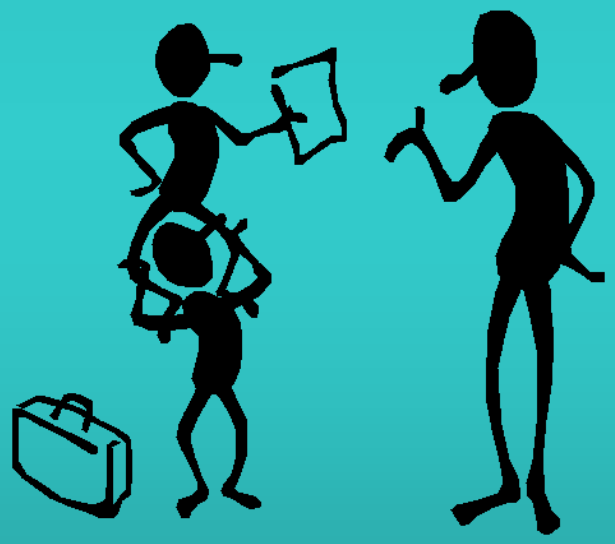
- The coordinator will ask you to meet with a mediator and attempt to resolve your case before presenting it to the court.

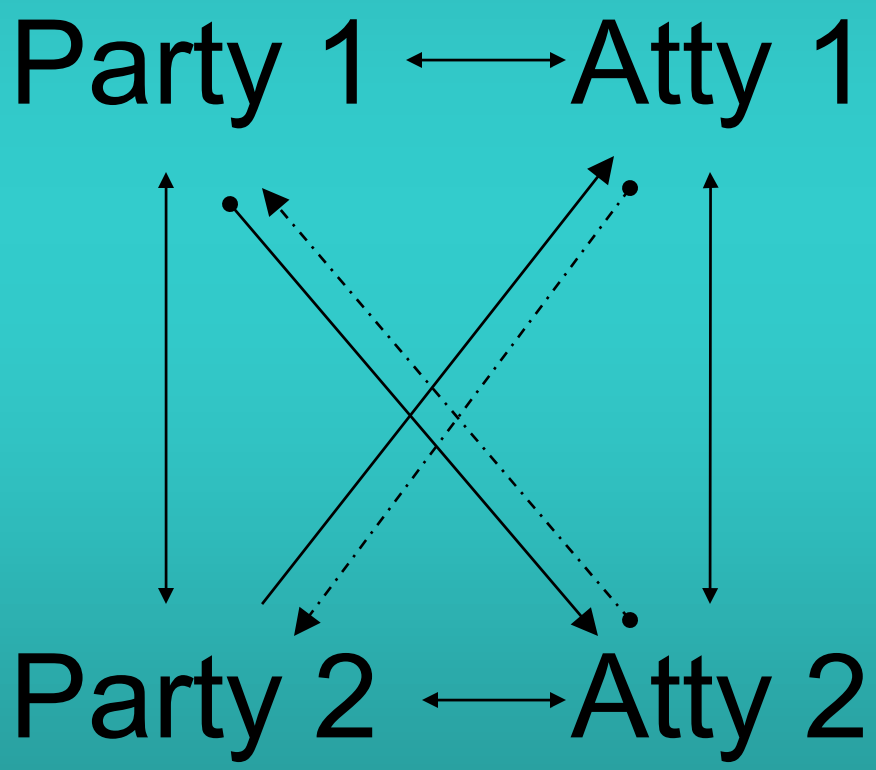
How Do I Address Others?

- Opposing Parties
  - If both parties have attorneys, the Rules of Professional Conduct apply to the *attorneys* (an attorney may not contact a **represented** opposing party without the opposing attorney's prior consent)
  - Parties can always talk directly to each other, regardless of representation

How Do I Address Others?

- Example:





How Do I Address Others?

- Opposing Counsel (The other party's attorney)
  - Respectfully
  - "Mr._____" or "Ms. _____" is common
  - You can follow his/her lead





How Do I Address Others?





- Judges
  - "Your Honor"
  - Do Not Interrupt
  - Be Brief
  - Speak Slowly and Clearly
  - Remember that the Judge Must Keep to a Schedule

How Do I Appear in Court?

- For Any Appearance:
  - Observe Hearings ahead of time
  - Bring all papers that have been filed or served
  - Bring blank paper and a pen
  - Dress appropriately (appearance can affect a jury)
  - When you arrive: check the calendar outside of the courtroom and remember your line number; sign in or check in with the clerk; sit in the audience until your line number is called.

How Do I Appear in Court?



- Hearings:
  - Review pleadings, especially motions and responses
  - Outline
  - Summarize
  - Make sure the judge makes an order on each item requested

How Do I Appear in Court?



- Trial
  - Be professional
  - No Dramatics – it is not TV
  - Be prepared
  - Be brief in making points
  - Keep in mind whether you are addressing the Judge or the Jury, or both

Workshop Glossary

Glossary	Description
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