

## **Contested Litigation Flow Chart**

As the flow chart on the following page illustrates, litigation can be a complicated process. This flow chart focuses on the *Judgment*, which is typically the culmination of the law suit. The chart depicts that there are numerous paths to obtaining a judgment and many stops along the way.

The process starts with a *claim*, which may result in litigation. Litigation starts with the filing of a summons and complaint which is served on the defendant who must file an answer admitting or denying the allegations of the complaint. At that point a number of preliminary motions may be filed. If those motions do not dispose of the case, the parties may proceed with discovery which is one of the more important steps in the litigation process. Some courts however may first require the parties to submit to nonbinding arbitration.

Litigation ends with the entry of a judgment, either by default, by agreement (stipulation), by arbitration award, on motion, or as a result of a trial.

A default judgment occurs when the defendant fails to answer the complaint. A judgment by agreement is simply a settlement.

A court can enter a judgment based on a number of different motions. A motion is simply a written request directed to the court. It is served on the opposing party who normally has 20-30 days to reply. Depending on the court, there may be oral argument, with a decision within 30 days of the hearing or after the last written brief is filed. The most common motion requesting judgment is a Motion for summary judgment.

A judgment entered after a trial (a formal proceeding) occurs when the parties present their evidence to a court. Judgment will be awarded to the prevailing party.

The flow chart ends with the entry of judgment. The post judgment process (collection and appeals) continues, but is beyond the scope of this publication.

*Prepared by the Pamphlet Committee of the Commercial Law League of America  
The information contained herein is not intended as legal advice. Readers should consult an attorney to determine specific applications to the particular situation.*

## The Contested Litigation Flow Chart

The dispute which arises out of the plaintiff's claim may be amicably resolved. If not, it may be resolved through the filing of a law suit. This chart depicts the stages of a law suit starting with the filing of the complaint and ending with the entry of judgement.

### Complaint

A formal pleading used to initiate a law suit. It sets forth facts that support a legal theory of liability, identifies parties, and specifies the damages. It must be served on each defendant, usually no later than 120 days from the filing of the complaint.

### Preliminary Motion to Dismiss

A motion by a defendant to contest the jurisdiction of the court or service. It may also contest the form of the complaint. Objections as to form or service can be cured. If granted, the case is dismissed; if not, the defendant must answer.

### Responsive Pleading

An *answer* filed by the defendant admitting or denying the allegations of the complaint. It may include affirmative defenses which constitute an avoidance or offset, i.e. Statute of Limitations, payment, accord and satisfaction, failure of consideration, bankruptcy, etc. Depending on the court, it must be filed within 20-30 days from service of the complaint. A *counterclaim* may be filed by the defendant seeking affirmative relief (money judgment) against the plaintiff. The attorney must file an answer to the counter claim and will require the assistance of the plaintiff.

### Motion for Judgment on the Pleadings

A motion brought at any time after the filing of a responsive pleading used when an answer admits liability or a complaint is legally deficient.

### Default

Default judgment will be entered if the defendant does not timely answer. The failure to answer is an admission of liability. A default judgment may be entered on affidavit except in those courts which require live testimony.

### Judgment

A judgment may be in favor of the plaintiff or defendant (*Judgment of Dismissal*). As depicted by the chart, it may be granted by default, upon motion, on an arbitration award, or after trial. At any time during the case the parties can stipulate (an agreement) to the entry of a judgment. This is most likely to occur, after the defendant is served with the complaint or on the eve of trial.

### Motion for Summary Judgment

A motion filed at any time by any party alleging that there are no material issues of fact to be tried and the moving party is entitled to judgment as a matter of law. It may take months to formulate the motion from the discovery and evidence accumulated and may be continued if discovery is not complete. If denied, the case continues; if granted, a judgment is entered.

### Discovery Procedures

Discovery is the procedure used to obtain information about the case. *Interrogatories* are written questions the other party must answer in writing. *Request for Production* or *Inspection* requires a party to produce or allow inspection of documents or things. A *deposition* is an oral examination of a party or witnesses taken under oath before a court reporter. The plaintiff and witness can be compelled to appear. Some courts allow videotape and telephone depositions. The deposition testimony is reduced to a written transcript (which may take one to two months to receive). *Request for Admissions* are written requests for a party to admit facts. A *Subpoena* can be used to compel a non-party to produce documents or to testify at a deposition or trial. It may take a number of months to obtain sufficient information to formulate discovery. The opposing party generally has 30 days in which to respond. Requests for extension of time to respond are normally granted. If the defendant does not respond, the court can compel a response. A *Written Motion to Compel* is required. The court can order sanctions (monetary) or, where appropriate, strike the non-responding party's answer or complaint and enter judgment.

### Trial

A trial is a formal hearing. A judge presides and determines issues of law and fact. If it is a jury trial, the jury decides issues of fact. The trial can take several hours or weeks.

### Pretrial Settlement Conference

Before trial some courts require a mandatory settlement conference at which the client may be required to attend. This may result in the entry of an agreed judgment.

### Trial, Scheduling & Preparation

A case is ready for trial when discovery is completed. In some courts a trial date is requested, in others it is assigned. It may take 6 months to 3 years for a case to come to trial. The most time consuming part of a case is trial preparation. Trial briefs may be required, exhibits must be prepared, and witnesses interviewed. As the trial date approaches, settlement discussions take place. Settling on the court house steps is common.

### Arbitration

Some courts require non-binding arbitration which is an informal compromise oriented hearing where the evidence is presented to a hearing officer, usually an attorney. Generally an award is made within 30 days of the hearing. The court will grant a judgment on the award unless the losing party requests a trial, causing the case to continue. Because there is a constitutional right to trial, court ordered arbitration is not binding.