



Legal Newsletter

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Steps in a Lawsuit for Damages

Our last article discussed settlement of legal claims without filing a lawsuit. If the person making the claim does not reach an agreement with the person at fault (or their insurance company), then the next step is to file a lawsuit.

Filing Suit

A lawsuit must be filed in a court that has “jurisdiction”, which is the power to decide the lawsuit. Which court has jurisdiction depends upon where the parties live, where the injury or other events happened, and the kind of legal claim being filed. In some cases, there will be only one court where a case can be filed. In other cases, the person filing may have a choice. For instance, one may be able to choose between state court and tribal court, or between state court or federal court.

A lawsuit must also be filed soon enough. There are different time limits in different courts, and different time limits for different kinds of claims. The time limits are set by law, and there are almost no exceptions to the requirement to file within the time allowed. The law which sets a time limit to file a claim is called the “statute of limitations.”

Service of Process

A lawsuit is started by filing a “complaint.” After the lawsuit is filed, it is necessary to serve a copy of the complaint and a formal notice, called a “summons”, on the parties being sued. Under court rules, this can sometimes be done by mail, but in other cases the defendants must be served with the summons in person. In the Navajo Nation courts, there are persons approved by the courts to serve these papers.

When a defendant has been served, he or she then has a limited time, such as 20 or 30 days, to file a paper with the court responding to the lawsuit. That paper is called the “answer”.

“Discovery” and Pre-Trial

When the defendants have filed their answer, there is a period before a trial is set, during which the parties can obtain information from each other and prepare for trial. The court rules allow several ways a party can get information from the other side. This is called “discovery”.

Under the rules allowing discovery, a party can ask the other side written questions, called “interrogatories”. The questions must be answered in writing, and the answers are sworn to under oath, just like testimony in court.

A party can also ask questions face to face, to either an opposing party or any witness or person who knows something about the case. This is a “deposition”. Depositions are an important and commonly used method to find out information in a lawsuit and prepare for trial. A deposition is held in a conference room or office. Attorneys for all parties are present, and the parties themselves can attend. The judge does not attend. There is also a court reporter, who makes a record of everything that is said. The court reporter will then prepare a written “transcript” of what was said. The person whose deposition is being taken is given an oath, like the oath to tell the truth in a courtroom. Also during the discovery phase, each party can obtain records and documents from the other parties, and can look at equipment or facilities involved in the case.

Out of Court Settlement

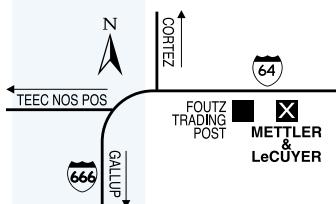
Even if the parties did not agree on a settlement before the lawsuit was filed, there is usually some discussion of settlement after it is filed, but before the trial. This is easier after there has been some discovery because then the attorneys know what the opposing parties and witnesses have to say, and may be somewhat in agreement about what will happen at trial.

It has become increasingly common to use “mediation” to settle a case. In mediation, the parties agree on a mediator to conduct a settlement conference. The mediator’s job is to help the parties reach a settlement, if possible. In some cases, the court may order the parties to conduct a settlement conference or mediation.

Trial and Appeal

If there is no settlement and no dismissal on legal grounds, the case will go to trial. In cases seeking money damages, the law usually allows a trial by jury. In that case, either side can ask for a jury. In some courts the number of jurors is set by court rule, and in others the party asking for a jury has a choice.

After trial, a party dissatisfied with the result may file an appeal to a higher court. In most cases an appeal deals mainly with legal issues. The appeals court will consider whether the trial judge applied the law correctly, but usually will not consider whether the jury was right about the facts, such as who caused an accident or how much the injured person was damaged by it.



Mettler & LeCuyer, P.C., is a law firm serving the Navajo Reservation area from its office at Shiprock, handling primarily personal injury and accident cases, on-the-job injuries, medical claims, disability and insurance claims, uranium miners and Social Security. The firm has a branch office in Albuquerque. The office in Shiprock is located on Highway 64, just east of Foutz Trading Co., and is open 9:00a.m. - 4:00p.m. Monday through Thursday.