

# YOUR GUIDE TO CIVIL LITIGATION

*For people who are strangers to lawsuits, it is often a shock to discover how time consuming and expensive litigation can be and how slowly the wheels of justice turn. To assist you in better understanding the process, we offer the following explanation of the litigation process together with an indication of the average time required at any stage of the process. Of course, all law suits are factually unique and your case may be more or less complex. Therefore, these estimates are not to be considered as a guarantee of what your specific law suit may require.*

## 1. PRE-LITIGATION

### A. NEGOTIATION - Average Time.....2 - 10 hours.

In many cases, disputes between people grow into a lawsuit due to a lack of trust, conflicting egos, and a break-down of communications. Generally, we seek to re-establish communications and seek a common ground upon which the dispute may possibly be settled. This stage requires initial correspondence and extensive telephone negotiation. If successful, the parties sign a settlement agreement mutually releasing all claims against the other.

### B. ALTERNATIVE DISPUTE RESOLUTION - Average Time.....2 - 20 hours.

(1) Mediation - Many disputes can be resolved by the parties directly by bringing them together with a trained Mediator who can help each party to express their side of the dispute in such a way that the other gains an appreciation for sincerity and merits of their opponent's position. Mediation will resolve many conflicts at a minimal cost and generally the parties are not represented by attorneys. If successful, the parties sign a legally enforceable settlement agreement mutually releasing all claims against the other.

(2) Arbitration - This proceeding is much more like a mini-trial. The parties may be represented by attorneys and can present witnesses to support their claims. Arbitration may be voluntary or required by a contract between the parties. At Arbitration, an attorney will hear both sides present their case following which the Arbitrator will render a decision. The result may be binding on the parties if it arises from a contract Arbitration clause such as found in a Real Estate Purchase Contract.

## 2. LITIGATION

When private negotiation or Alternative Dispute Resolution fails to resolve the dispute, you have only two choices: either drop your claim or proceed with a lawsuit. Alternatively, if you've been sued, you have no alternative but to respond although we would typically pursue private settlement negotiations while the lawsuit proceeded.

A. FILE SUMMONS & COMPLAINT / ANSWER - Following an initial attorney consultation, we will analyze the merits of your position, assemble the available evidence, and identify, locate the involved parties, and make a determination of your likelihood of collecting if you obtain a Judgment. Unless a Summary Proceeding is available, such as for evictions, a defendant will have 30 days to Answer a Complaint.

(1) Summons & Complaint - Average Time.....3 - 10 hours. We must determine who to sue and what to sue for. You must have a good faith complaint against every person you intend to name and claim you make must conform to a recognized legal theory of recovery. We may assert as few as one cause of action or more than ten separate claims depending upon your facts. Each separate claim is related but distinct to the others and ultimately we will select our recovery from some or all. After filing the Complaint with other court required documents, each party named as a defendant in your Complaint must be personally served and Summoned to respond. Unless the person can be served, the court cannot render judgment against them.

(2) Answer - Average Time.....2 - 5 hours. If you are a defendant in a suit, our first action is to determine the merit of the claims against you and determine any and all actual and affirmative defenses which you have. The critical issue is that your response be timely made so that you are not in Default. If you Default, you may not be allowed to defend yourself at trial. Furthermore, when you Answer, you must then make any cross-complaints that you may have.

(3) Answer Challenges - Average Time.....8 - 20 hours. Often defendants will not respond with an Answer but instead will initiate challenges attacking the Complaint itself. These challenges, called Motions & Demurrers, may result in court hearings and possible Amendment of the Complaint. In any event, they add substantial time and cost to the action and delay the time in which the defendant must respond.

## **BPE LAW GROUP, INC.**

### **Attorneys at Law**

11140 Fair Oaks Blvd. - Suite 300 - Fair Oaks, CA 95628

Office: (916) 966-2260

Fax: (916) 966-2268

e-mail: [office@bpelaw.com](mailto:office@bpelaw.com)

Internet: [www.bpelaw.com](http://www.bpelaw.com)

**B. DISCOVERY** - Once a Complaint has been filed and Answered, every party to the lawsuit has a right to demand that any other party respond to their investigations. In fact defendants, can even seek discovery before they file their answer although typically this does not happen. Failure to timely respond to questions asked may lead to the court fining or even ruling against the defaulting party. This investigation period lasts for approximately three months following the last filed Answer. Typical investigation demands are:

- (1) **Form Interrogatories** - Average Time...1/2 - 3 hours - These are standardized questions which are generally used first. The number of questions varies depending upon the type of case.
- (2) **Special Discovery** - Average Time...2 - 5 hours - These are specially prepared demands relating to the facts of their case:
  - (a) **Special Interrogatories** - Specific written questions to be answered concerning claims and defenses.
  - (b) **Requests for Admissions** - Specific written conclusions concerning claims and defenses. If not answered, these are treated as being admitted and can be used against the receiver.
  - (c) **Requests for Production of Documents** - Specific demands that the answering party make available any and all documents upon which they rely or refer to in asserting any claims or defenses.
- (3) **Oral Depositions** - Average Time.....6 - 20 hours. - Generally each party may be subjected to oral questioning one time before trial. These are intense fact gathering sessions with many different objectives. Witnesses and experts may also be deposed. The party requesting the deposition must pay for the facility and pay the costs of any non-parties being deposed.
- (4) **Countering Discovery Abuse** - Average Time.....4 - 20 hours. - One of the most difficult issues is dealing either with the attorney who besieges you with grossly excessive discovery demands or who fails to provide any reasonable responses to your own requests. In these cases, we are required to attempt informal resolution of the abuses and, if not successful, we can bring an action to compel performance.

**C. INTERIM FILINGS** - Average Time.....4 - 20 hours. Throughout the course of litigation, the parties are required to file numerous documents with the Court. Regular Diligence Statements must be filed showing the progress of the case. At times the court will require specific hearings on procedural issues and special Law and Motion briefs may be required as well as appearances at Court. Once all parties have been served, an At-Issue Memorandum must be filed showing that the court has jurisdiction on all parties and the case is ready to be set for trial. **MOTIONS** are requests for the Court to make a pre-trial decision on some issue in the case. These range from **Injunctions**, which seek to protect the parties, to **Summary Judgment**, which seeks to end the case based upon law alone.

**D. ARBITRATION** - Average Time.....6 - 20 hours. - Generally, the court will order all parties to participate in judicial arbitration in an attempt to settle the case. This process is the same as described at pre-litigation. Unless a party rejects the results within a set time, the Arbitration award will become binding.

**E. SETTLEMENT CONFERENCE** - Average Time.....4 - 8 hours - Following Arbitration, the court will order the parties to attend a Settlement Conference at which several experienced attorneys will hear the parties' arguments independently and will try to settle the case. The process is similar to Mediation except that the attorneys may be much more experienced and they will give subjective evaluations as to how they believe the judge and/or jury will respond to the evidence presented. Settlement conference statements (briefs) are required.

**F. TRIAL** - Average Time.....1 - 14 days. If the dispute cannot be settled, the matter will be tried either before a judge or a jury. At this proceeding, all evidence and witnesses will be presented. Evidence and statements obtained in discovery or prior hearings will be used to support or challenge trial testimony. The judge will rule on issues of law and the jury, if selected, will determine matters of fact. The most difficult part of this may be getting a courtroom and a judge to hear your case. Due to the high load of criminal and preferred cases on the court calendar, you may come on several occasions prepared to go to trial only to find that you must wait for another day. You have no control over this process. Once your trial begins and jury is selected, each party will present their case (plaintiff first) and ultimately a decision will be rendered.

**G. APPEAL** - Average Time.....1 - 10 days. Even if you prevail at trial, the losing party may file an appeal seeking to set aside the judgment on the basis of a mistake of law. Appellate Trials are very focused on the specific legal issues being challenged and no facts can be presented other than those contained in the trial transcript.

**3. ENFORCEMENT** - Once a Judgment has been obtained, you now have the problem of enforcing it. If the dispute concerns property, the court may order its sale or transfer. If it concerns money, you can collect your judgment amount by attaching the defendant's property and garnishing their wages. You are also now a judgment creditor against that party which is important if the defendant should declare bankruptcy.