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Basics of Litigation

Presented by GKH Attorneys
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Introduction to Types of Cases

CIVIL – CRIMINAL – AGENCY – FAMILY

- Some disputes are civil disputes; some are criminal; some are bound by agencies; some are family law
- Some disputes involve more than one category
- Civil is an umbrella term for matters that aren't criminal, family, or under agency jurisdiction

Criminal Matters – Brief Overview

- The decision to bring a criminal matter against a person or entity is a decision of the government
- You, as an individual or entity, are not a party
 - Commonwealth of Pennsylvania or United States of America are aggrieved parties
- A victim (individual or entity) may have input into the Government's decision to charge, how the case proceeds, and what sentence would be appropriate, but the Government is not required to follow a victim's instructions on these issues.

Civil Matters: Where do I file?

- It depends on...
- What am I seeking?
 - Money, equitable remedy, or both?
 - How much money?
- Which laws are involved?
 - Federal law, state law, or both?

What am I seeking?

- Money damages – PA trial courts
- Equitable relief – in PA, the same courts handle monetary and equitable claims
- Both – can file for both monetary and equitable relief in the same lawsuit or filing

Which laws are involved?

State, federal or both

- Many suits involve more than one area of law (e.g. contract dispute may involve a breach of contract claim and a fraud claim)
- Some matters have both federal and state law actions
- If both, you have option of filing in either federal or state court

In which court do I file a federal claim?

- PA is divided into 3 districts – Western, Middle and Eastern District
- File in whichever district the county where the action took place falls into
- Lancaster is in the Eastern District
- Surrounding counties of Lebanon, Dauphin, Cumberland and York are in the Middle District

PA State Courts - Structure



In which court do I file a state claim?

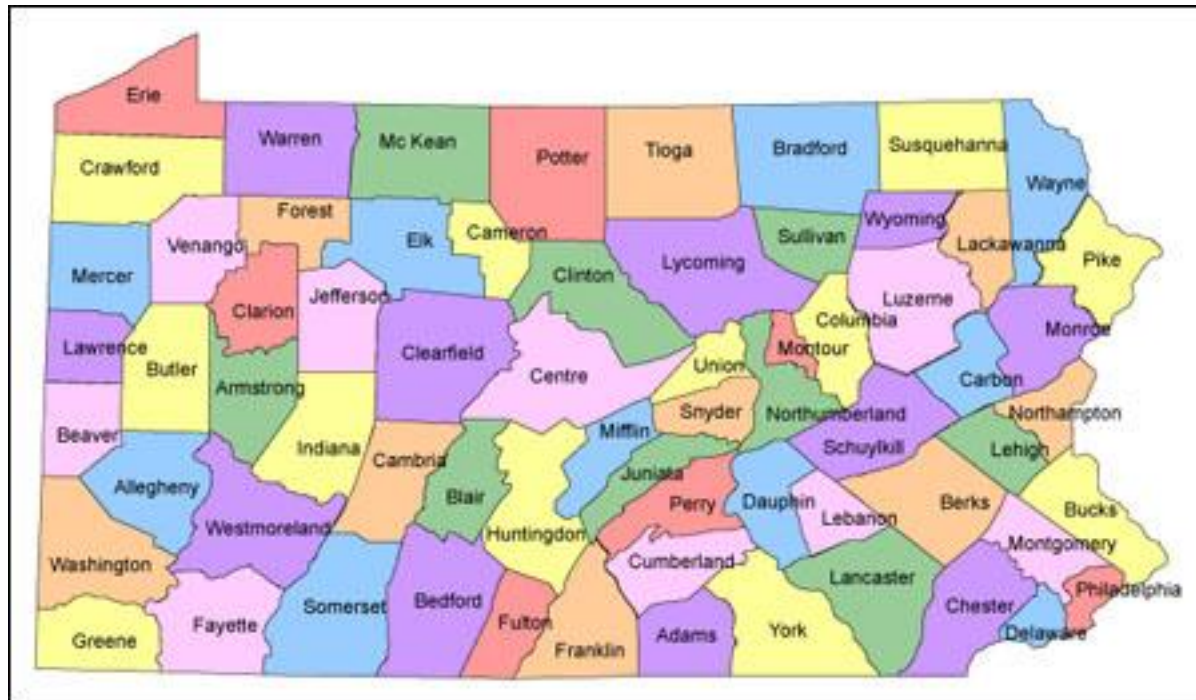
- Magisterial District Court
 - Claims under \$12,000
 - Intended for individuals to be able to represent themselves and also is less expensive
- Court of Common Pleas
 - Any amount of money at issue
 - A person can represent himself, but not as easily as Magisterial District Court
- Commonwealth Court
 - Considered an appellate court, but has original jurisdiction for certain matters

In which court do I file a state claim?

- Commonwealth Court continued
 - Original jurisdiction for claims against the government
 - Appeals from agency decisions
- Superior Court
 - Appellate court
- Supreme Court
 - Appellate court
 - Highest court in PA

In which county do I file a state claim?

- 67 counties in PA; 60 judicial districts
- Typically, you file in the county where the action took place or in the county where the business has its principal place of business.



Attorney Involvement

- Should I consult an attorney?
 - Yes! There is never an obligation to hire the attorney beyond the consultation
- When should I consult an attorney?
 - Early in the process because there is a set time frame in which a claim has to be filed, called a Statute of Limitation
- Do I need an attorney to represent me in my lawsuit?
 - No, if I'm an individual. Yes, if I'm a business.

Parties

- Plaintiff: the person or entity filing a lawsuit or initiating court action
- Defendant: the person or entity against whom a lawsuit or court action is initiated
- One lawsuit can have multiple plaintiffs and defendants

Pleadings

Complaint: Initial filing by plaintiff (lawsuit)

Response: defendant must respond via

- Answer
 - Counterclaim
 - Crossclaim
 - New Matter
- Preliminary Objections

Discovery

- Multiple types of discovery techniques
 - Interrogatories – written questions
 - Request for Production of Documents
 - Request for Inspection
 - Request for Admissions
 - Depositions
 - Expert reports and depositions
 - Subpoenas to non-parties

Discovery

- Many cases can be settled after discovery
- Other than trial, discovery is the area of the lawsuit that requires the most party involvement
- Discovery is typically the longest phase of litigation

Pre-trial Motions

- Briefs are usually filed before trial
- Despite the name, nothing is short or easy about a brief
- Briefs narrow the issues that can be presented at trial
- Potentially, the entire case can be dismissed at this time before the trial even occurs

Trial

- Bench (judge) or jury (6-12 people)
- Each party has a chance to present its case via testimony, exhibits, witnesses
- Each party has a chance to ask the other party and its witnesses questions

Trial Stats

- Very few cases go all the way to trial
- Most are resolved or dismissed before trial
- Civil Actions in Court of Common Pleas for all of PA – percentage of cases that went to trial (bench and jury)
 - 2015: 1.4%
 - 2014: 1.4%
 - 2013: 1.6%
 - 2012: 1.8%
 - 2011: 1.7%

Source: Caseload Statistics Reports, 2015, 2014, 2013, 2012 & 2011, pacourts.us

Trial Stats

- Lancaster Court of Common Pleas – percentage of all civil cases that went to trial (bench and jury)
 - 2015: 0.31%
 - Out of 3,183 cases disposed of in 2015, only 10 via trial
 - 2014: 0.68%
 - Out of 2,514 cases disposed of in 2014, only 17 via trial

Source: Caseload Statistics Reports for Lancaster County, 2015, 2014, pacourts.us

Post-Trial Motions and Appeals

- Either side can file post-trial motions for the trial judge to consider
- If either party is dissatisfied with the verdict or result of post-trial motions, can file an appeal
- An appeal is asking a higher court, called an appellate court, to review the trial proceedings for error
- Appellate courts review the transcript of the trial and briefs are submitted by the attorneys

Alternatives to Litigation

- At any point during a case, before and after a lawsuit has been filed, the parties can resolve the matter outside of litigation via mediation, arbitration or settlement discussions between the parties/attorneys
- These alternatives save time and money
- Biggest benefit: each party controls the outcome of the matter

Mediation

- Neutral third party (attorney) acts as the mediator
- Mediator assists the parties in discussing the strengths and weaknesses of their case in hopes to facilitate a settlement
- Parties are split into different rooms so they can speak freely and confidentially with the mediator
- Mediator cannot force the parties to settle

Arbitration

- Formal process, a “mini trial,” where parties present evidence, give testimony and argue the case
- An arbitrator or panel of arbitrators (typically attorneys) act as the judge
- Arbitrator decides which party wins and the damages
- In Lancaster County, a case filed in Court of Common Pleas with damages under \$50,000 must go to arbitration, but arbitration award is not binding

Settlement

- At any point during a case, before and after a lawsuit has been filed, the parties can decide to settle a case just by negotiations between the parties or their attorneys
- Generally done outside of court, but some courts may push or facilitate settlement discussions
- No “rules” for settlement discussions

Attorneys' Fees

The American Rule: Each side generally pays its own attorneys' fees regardless of the outcome of the matter.

- Regardless of the outcome of the matter!
- Regardless of the outcome of the matter!

Costs: There are some statutes that contain fee-shifting provisions, and the parties can also agree to fee-shifting in a contract.

Attorneys' Fees

- There are certain exceptions when the losing side must pay, but they are rare
- E.g., Consumer protection claims, wage payment claims, employment discrimination claims, Lemon Law claims
- Even if reimbursement is available it's only after conclusion of trial or appeal
 - You must pay your attorney as the case proceeds, depending on how your engagement letter is written

Take-Away Points

- Lawsuits are not quick or easy
- It's best to talk to an attorney to at least find out your options before filing a lawsuit or settling a lawsuit
- Businesses cannot represent themselves in court
- There are many effective settlement options available both before and after a lawsuit is filed
- Almost all cases require each side to pay its own attorneys' fees, even the winning party

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QUESTIONS & ANSWERS

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