**How Does a Lawsuit Work? Basic Steps in the Litigation Process – PRESENTER NOTES**

This document provides a general overview of the processes required in handling litigation. It is not construed to be a complete accounting of the requirements to fulfill a legal obligation.

**Litigation**

99% of TrialWorks customers handle cases that go into litigation. It is important to understand the different types of cases so you and assist customers in the right areas of TrialWorks. Today’s session is going to help you do that.

For today we will assume that the firm has already agreed to accept the case from the client and it has been created in Active TrialWorks.

We will use the case info clients, other parties, docket, pleadings, and discovery tabs

La[wsuits arising out of disputes betw](https://www.stoel.com/sitecontrollers/utilities/generatesavedpagespdf)een people, businesses, or other entities, including government entities. Civil lawsuits generally proceed through distinct steps: pleadings, discovery, trial, and possibly an appeal. However, parties can halt this process by voluntarily settling at any time. Most cases settle before reaching trial. Arbitration is sometimes another alternative to a trial.

## Pleadings

Having created your Clients and Other Parties tabs with information on each party and creating the caption allows you to create your litigation documents with templates to automate the document process.

Each party in a lawsuit files initial papers, known as "pleadings." The pleadings explain each party's side of the dispute.

For a firm to keep track of the filing of a complaint and the service on the defendants they will use the pleadings tab to create the complaint and then calendar the response (the answer) on the docket tab. We can use features of TrialWorks like Auto Days for the calculation of due dates. We can have set the dates of filing on the Other Parties tab which prompts us for the service date requirements. Those are also added to the docket.

Service of many documents can now be made electronically through email. TrialWorks includes e-service options on the Email Multiple documents window.

The description of the harm the plaintiff suffered is known as the Cause of Action or Case Facts. The Date of Accident (or event date) helps us calculate the Statute of Limitations that tells us when the deadline is to file the complaint.

**The Complaint:** Litigation begins when the plaintiff files a complaint with the court and formally delivers a copy to the defendant. Delivery of the complaint is referred to as “service.” The complaint describes what the defendant did (or failed to do) that caused harm to the plaintiff and the legal basis for holding the defendant responsible for that harm. Most states follow what is referred to as “notice pleading.” This means that the complains it simply a “short and plain statement” putting the defendant “on notice” of why he or she is being sued. A complaint starts a lawsuit.

When the Answer is received it will be scanned and added to the Pleadings tab. The Other Parties Service Date field would also be added. This will prompt to mark the SOL date complied with.

**The Answer:** The defendant is given a specific amount of time to file an answer to the complaint. The answer provides the defendant's side of the dispute. The defendant may also file counter-claims against the plaintiff, alleging that the plaintiff has harmed the defendant and should be held liable for that harm. Sometimes, the plaintiff responds to the defendant's answer or counter-claims by filing a reply. In some instances, in lieu of an answer or reply, a party may request that the other party clarify or correct deficiencies in its factual allegations or legal theories or may ask the court to dismiss part or all of the suit. This may lead to amended complaints or amended answers. Once the parties have completed the complaint, answer, and any reply, the issues for resolution by the court have been defined.

## Discovery

All Discovery documents also have deadlines for responses.

Thorough case preparation is critical to any successful litigation. Discovery is the method by which parties gather relevant information from each other or from third parties. Research of the law, document review and organization, and witness interviews help clients and their lawyers assess the merits of claims and defenses. The extent to which these and other steps are needed is determined by the issues of the case.

**Discovery:** Unlike what you might see on TV, there are no surprises at trial in civil litigation. That is because the parties go through “discovery.” Discovery is usually the longest and most expensive part of the case. It begins soon after a lawsuit is filed and often does not stop until shortly before trial. During discovery, the parties ask each other and third parties (someone not named in the lawsuit) for information about the facts and issues of the case. Information is gathered formally through written questions (known as "*interrogatories*"), requests for copies of documents (known as “*request for production*”), and *requests for admission* (which ask a party to admit or deny statements of fact). Another key method of obtaining information is to conduct *depositions*, in which witnesses are questioned under oath by the parties' attorneys, and the witnesses' answers are recorded by a court reporter. Depositions are used to learn more about the facts of a case and about what the different witnesses contend happened. Depositions also may be used at trial to show inconsistencies in a witness's story or to question the witness's credibility. The recorded testimony from a deposition (known as “*video depositions*”) sometimes may also be used at trial in place of a witness who is not able to attend the trial in person. The point of discovery is to get all the facts disclosed. If a fact is not disclosed during discovery, it is likely not going to be admissible at trial. Trial becomes merely a presentation of evidence. It is not a time for surprise witnesses, documents, or other facts.

We often have customers in our hosting environment asking about uploading the entire CD which contains the auto-play software. This is why it’s important that they have access to the video deposition.

**Expert Witnesses:** Often a claim or defense requires support from expert witnesses to explain technical information or validate an argument. One or more experts might be needed to testify about the connection between the defendant's conduct and the loss suffered by the plaintiff, or the existence and amount of the plaintiff's damages. Expert witnesses work closely with a party's representatives and attorneys to prepare the party's case.

Using the Expert Witness Tab allows a firm to keep track of the experts they have retained and what documents have been sent to them for them to base their reports on.

**Motions:** Before trial, the parties may use motions to ask the court to rule or act. Motions usually pertain to law or facts in the case, but sometimes they seek clarification or resolution of procedural disputes between the parties. Some motions, such as a *motion for summary judgment*, which asks the court to dismiss part or all a plaintiff's case or a defendant's defense, dispose of issues without a trial. Other motions might ask the court to order a party to produce documents (known as a “**motion to compel**”) or to exclude evidence from trial.

**Timing:** The duration of a lawsuit depends on the issues of the case, the amount of discovery to be conducted, and court scheduling and availability. The parties, guided by the rules of court, usually decide the timing of discovery. Trial dates are set by the court. Timing and scheduling differ between state and federal courts. Most courts issue a “scheduling order” that governs each individual case.

The dates from the Scheduling Order can be entered all at once on the Docket Date Info screen. This makes it easier for User to know which dates need to be added and TrialWorks helps calculate those dates for them using the Date Calculator.

## Trial

At trial, the parties present evidence in support of their claims or defenses to a jury and/or judge.

Many of you have been called to jury duty. This is for a type of trial that is a jury trial. But there are trials where there is only the judge. Preparation for trial is similar in both types. Information is shared between both sides (plaintiff and defendant) to make the process of trial orderly.

Documents are prepared on the pleadings and motions tab that will be submitted at trial. The Trial Materials Tab could have been prepared throughout the start of the case for all pleading and expert reports. Using the Trial Materials tabs enables a user to print all documents at one time and a report.

While the lawyer was gathering evidence during the case they would use the Production Tracker tab to itemize those documents. These could be accident reports, pictures, documents produced from a deposition and even medical records.

If witnesses are not available it is possible that portions of their video depositions will be played.

**Trial:** Immediately before trial, each party provides to the judge a document, called a "pretrial statement," that outlines the arguments and evidence to be used at trial. Some trials, known as "bench trials," do not involve a jury and are decided by the judge alone. Other trials are jury trials. In a jury trial, both parties question potential jurors during a selection process known as "voir dire." Once the trial begins, each party presents its outline of the case in an opening statement. Then, the parties present evidence. Each party may call witnesses or introduce documents and exhibits in support of its arguments. After each witness is called and questioned, the opposing party has an opportunity to cross-examine the witness. The plaintiff presents evidence first, then the defendant. Sometimes, the plaintiff is allowed to present additional evidence, called rebuttal evidence, after the defendant has finished presenting its case. Once all the evidence has been presented, the parties give their closing arguments. After closing arguments, the court instructs the jury on the law to be applied to the evidence. The jury then deliberates and reaches a decision or verdict.

Just because a trial ends doesn’t mean it is the end of the litigation. There are possibilities of challenges to the verdict.

**Post-Verdict:** A party may challenge a jury's verdict. Errors of law committed by the trial court or a jury's disregard of law or evidence are common reasons for challenging a jury's verdict. A motion for judgment notwithstanding the verdict asks the court to disregard the jury's verdict and enter a different decision. A motion for a new trial asks the court to set aside the jury's verdict and order a new trial of the case.

**Costs and Fees:** The party who prevails at trial will usually file a motion requesting the court to order the losing party to pay the prevailing party's costs to prosecute or defend the case. Recoverable costs are defined by rule, statute, or private agreement and generally do not include attorneys' fees. Recoverable costs rarely cover all out-of-pocket costs a party incurs during the course of a lawsuit. Some statutes and contracts also allow the prevailing party to seek reimbursement of its attorneys' fees from the losing party.

A worker’s compensation case is an example where attorney’s fees are allowed from the winning party.

## Appeal

Following trial, a party dissatisfied with the result may appeal. During an appeal, a party asks a higher court to review the trial court proceeding. The parties present their arguments in briefs, which are submitted to the appellate court along with the record of evidence from the trial court. The appellate court usually reviews a case for legal error only. Except under unusual circumstances, the appellate court will not review factual evidence or override a jury's findings of fact. The appellate court announces its decision in a document called an opinion. The appellate court will affirm the verdict if it finds that there was no error in the trial court proceeding. However, if there was an error, the appellate court can reverse the verdict or order the trial court to conduct a new trial. An appeal can extend the litigation process by a year or more.

## Alternatives to Litigation

Alternatives to litigation usually save time and expense, but they may not result in a final resolution of the dispute. The desirability of these alternatives should be evaluated early to allow their timely implementation.

Many of the firms using TrialWorks are firms that settle their cases. Using TrialWorks enables a firm to go from the settlement stage to the litigation stage without creating any additional workload.

**Settlement:** It is generally wise at the outset of any litigation proceeding to review the potential for an out-of-court settlement. Indeed, most matters settle before reaching the trial stage. Settlement can be discussed by any party at any time during litigation and is often a cost-effective alternative to trial. Usually, the court does not require the parties to discuss or attempt settlement, but most courts have procedures by which a party can request the court's assistance in the settlement.

**Mediation:** The parties may be able to negotiate a settlement without outside help, but it is common to involve a neutral third party, known as a "mediator." The mediator's job is to assist the parties' settlement efforts. The parties select the mediator, who meets privately with each party to discuss the strengths and weaknesses of each side's case. The mediator helps the parties identify the risks of the case and encourages them to consider how those risks can affect their goals. The mediator does not have the power to force the parties to agree on a settlement.

**Arbitration:** Arbitration is an adversarial proceeding in which the parties select a neutral third party, called an "arbitrator," to resolve their dispute. In arbitration, the parties present evidence and argue the case to the arbitrator, who then decides which party wins. The process is abbreviated and less formal than a trial. Arbitration often arises from a private agreement, but many courts also require the parties to smaller disputes to explore arbitration as an alternative to trial. Parties who agree to settle their dispute using binding arbitration usually cannot appeal the arbitrator's ruling to a court.

## Teamwork

A positive result of litigation is nearly always the product of teamwork. By using a team approach, clients and legal counsel can adopt the litigation strategy that best suits the clients' risk tolerance and overall business objectives. Clients contribute by providing business expertise and knowledge of the facts. Legal counsel, meanwhile, provides expertise on the legal issues, the trial process, the client's options for resolution, and the potential risks and rewards of each option.

Staff members (paralegals, legal assistants, and secretaries) play an integral part in making sure that the deadlines and requirements of handling a client’s *cause of action* are done timely and efficiently. TrialWorks helps automate all aspects of these requirements both *pre-suit* and once the *suit has been filed*.

The definition of teamwork is important when working in TrialWorks. Users need to know their responsibilities and tasks when maintaining a case in TrialWorks. Due dates and document preparation is critical for the success of the settlement or trial. Using the TrialWorks automation processes makes it even easier.

**Other Types of Lawsuits**

Attorneys typically specialize in a certain area of the law. You must determine what type of case that you have in order to choose the right lawyer. Common types of lawsuits are:

A *breach of contract* case involves one party to a contract failing to meet their responsibilities under the agreement. For a breach of contract case, search for lawyers who focus **business law and contract litigation**.

If your case is related to an issue with your employer, such as *workplace harassment*, you should look for an attorney that focuses on **employment law**.

If you were injured because of someone else’s *negligence*, and you suffered damages because of the negligent conduct, you should look for a **personal injury** lawyer. Personal injury cases may include *car accidents, malpractice*, or *injuries suffered in an assault*. If your injury occurred while you *were at work*, the personal injury attorney may refer you to a **worker’s compensation** attorney or handle the case jointly with them.

If you are unsure of what type of case you have, look for a **general practice** attorney. These attorneys handle a variety of different kinds of cases and may handle your case herself or refer you to another lawyer.