



Litigation Services: What to Expect When You Are in a Lawsuit

When Deciding Whether to File a Lawsuit:

In deciding whether to file a lawsuit, you choose whether the reasons for filing outweigh the potential costs and risks. There are both monetary considerations as well as less tangible ones, such as protecting a business's goodwill or proprietary rights, and the potential effect on the emotions and relationships of those involved.

When Defending a Lawsuit:

The choice of whether to engage in litigation is largely compromised if you or your business have been sued. Not defending may result in a default judgment against you. The remaining question becomes how aggressively to defend the case and whether to pursue a negotiated settlement.

Financial Considerations:

Being a party to a lawsuit is expensive. Protoraë Law can discuss with you how various litigation choices can affect your litigation expenses. We can provide litigation budgets to estimate your costs throughout certain phases of the case. The firm cannot, however, fully predict the total litigation expenses because many different variables can and frequently do arise. In addition, you can only control your own choices and not those of the opposing party. Putting forth an aggressive prosecution or defense for your case may depend on our ability to consistently counter the opposition's tactics. While we will endeavor to estimate your litigation expenses upon request, the unpredictability of litigation frequently results in higher than anticipated litigation expenses.

Outcomes

Each litigation matter is unique with different personalities, facts and judges. Court rulings leading up to and during trial often affect the decision to settle or mediate a case, and may require us to revise the case strategy or tactics. Litigation can be a difficult, time consuming, stressful and expensive experience. We work hard to guide you through the litigation process with experienced advice. No amount of experience, however, allows us to guarantee or predict the litigation outcome. Rather, the outcome of litigation is determined by numerous factors. While we cannot guarantee a result, we will zealously represent your interests throughout the litigation.

The Stages of Litigation

The goal as a plaintiff is to get to trial with as many of the plaintiff's claims intact as possible, and to win at trial on those claims. Conversely, a defendant's goal is to get as many claims dismissed before trial as possible and prevail at trial on the remaining ones. The stages of litigation are typically:

Initial Fact Gathering

Reviewing and analyzing the critical evidence and interviewing key witnesses. Client input and participation is most important at this stage.

Preparing Initial Complaint / Responding to the Complaint

After gathering the initial facts, they are analyzed to determine whether they support a valid legal claim or defense. Once that determination is made, a complaint, answer, or preliminary motion is drafted.

Written Discovery

The discovery phase typically lasts several months. During discovery, the parties may serve interrogatories (i.e. written questions) on each other, requiring the other party to answer the interrogatories under oath. Written discovery also includes document collection, review, and production, which can be very time-consuming and expensive. It is not uncommon to have to sort through many thousands of emails, documents, or other business records. Clients often must devote a significant amount of time and resources to this process.

Depositions

Depositions are questioning of witnesses under oath in front of a court reporter who records the questions and answers. Depositions may be scheduled at virtually any time between the filing of a complaint and the close of discovery. Depositions may last multiple days and involve detailed questions into the claims and assertions made by each party. Deposition testimony is preserved and may be used later at trial. The key witnesses and experts on both sides of the case are most often deposed.

Motions

Either side may make a variety of requests of the court, called motions. A motion may ask the court to do anything from dismiss a case altogether or award judgment to one side or the other before trial. Frequently, disputes arise in the course of written discovery that require a court's intervention through a motion.

Trial Preparation / Trial

Trials are mechanisms through which the merits of the allegations in the complaint are decided either by a judge or a jury. Although trials may last only a couple of days, the amount of forethought and work necessary to prepare for trial is substantial, so it is not uncommon for litigation costs to spike in the month prior to trial.

Appeal

After a trial, the losing party may appeal the decision and the winner may be forced to defend the appeal. An appeal is both expensive and time-consuming. If an appeal is successful, it is possible that a new trial may be ordered.

Business Litigation Team

James B. Kinsel
703.749.6023
jkinsel@protoraelaw.com

Brian F. Chandler
703.749.6019
bchandler@protoraelaw.com

Rebecca Bricken Kinsel
703.942.6719
rsegal@protoraelaw.com

John C. Monica, Jr.
703.663.8012
jmonica@protoraelaw.com