

Chapter 1: Introduction to the Legal Environment

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§ 1.1 INTRODUCTION

Welcome to the Legal Secretary Program!

The work of a legal secretary can be a significant factor in the efficiency and effectiveness of an attorney's representation. This manual is designed to develop specific skills related to your work on behalf of an attorney.

While this book assumes that you have basic computer word processing skills, such as with Microsoft Word, if you don't that deficiency must be addressed before seeking employment. There are many on campus and online educational programs that teach these skills.

To start we will discuss court systems and structure and provide an outline of some of the most important legal terms.

Good luck!

§ 1.2 COURT SYSTEMS & COURT STRUCTURE

There are two basic levels of courts in the United States:

Trial Level Courts

There are two levels of courts: Trial Level and Appellate Level. Trial courts, with a single judge, are where the legal action is initiated and facts and evidence are presented. In most cases, either party can demand a trial by jury, where permitted by law.

Appellate Level Courts

Appellate courts review trial court decisions by reviewing the record to determine whether the trial court erred. Appellate courts have several judges. Since juries are the triers-of-fact, and the facts were determined at trial, appellate courts only deal with questions of law, not of fact.

There are also two court systems in the United States: State Courts and Federal Courts.

State Courts

State courts are part of the judicial branch of the relevant state. Both federal and state courts have trial and appellate levels. As we will see, the question of jurisdiction involves whether the question before the court is a state issue or a federal issue.

Federal Courts

Federal courts are part of the judicial branch of the United States government. In other words, they are part of the national court system.

Federal courts have jurisdiction over cases involving federal questions, cases where the United States is a party, cases where specific statutes grant jurisdiction, and cases in which diversity of citizenship exists.

§ 1.3 STATE COURTS

There are three basic levels of courts in most state legal systems: the local or state trial court (depending on type of case), the state appellate court, and the state supreme court. Following is a typical state court structure.

Local or State Trial Court: Nev. Justice Court or District Court

The Nevada Justice Court hears tort, contract, and real property (less than \$10,000) cases. It also hears small claims of up to \$5,000 and has jurisdiction over misdemeanors and preliminary hearings (which are sometimes bound over, or sent, to the Nevada District Court). In addition, the Justice Court has jurisdiction over parking and traffic infractions. Some counties also have Municipal Court, which is similar to a city court and has jurisdiction over violations of city or county ordinances. The Nevada District Court hears tort, contract, and real property cases (over \$10,000). It also has jurisdiction over mental health, estate/probate, miscellaneous civil cases, and civil appeals from the Justice Courts. The Nevada District court has jurisdiction over domestic relations, and has exclusive juvenile jurisdiction. This court hears felony and misdemeanor cases.

State Appellate Court: The Nevada Court of Appeals

The Nevada Court of Appeals is an appellate level court. This court has jurisdiction over appeals from the District Court.

The Nevada Supreme Court

The Nevada Supreme Court is an appellate level court.

Other State Court Titles Vary, but the functions are almost identical

Most states have two courts at the appellate-level. The first (sometimes referred to as an intermediate appellate level court) is usually titled a court of appeals, such as the Colorado Court of Appeals. The upper level appellate court is usually called a supreme court, such as the New Mexico Supreme Court. A few states refer to the highest court by other titles, such as the New York Court of Appeals.

A few states, such as South Dakota and Nevada, have only one appellate level court, the state supreme court. In those states, any appeal from the trial level must proceed directly to the state supreme court. Since every case has an automatic right to at least one appeal, a very heavy burden is borne by those tribunals.

§ 1.4 FEDERAL COURTS

There are three basic federal courts: The U.S. District Court (trial-level court), the U.S. Courts of Appeal (appellate-level court), and the U.S. Supreme Court (appellate-level court).

United States District Court (trial-level court)

U.S. District Courts are the trial courts where federal actions commence. Every state has at least one federal district and many states are broken into multiple districts.

United States Courts of Appeal (appellate-level court)

The federal appellate court is broken into federal circuits and is often referred to as the Circuit Court of Appeals. A Circuit is a collection of Districts. Thus, a Circuit Court is responsible for appeals from a collection of District Courts.

United States Supreme Court (appellate-level court)

This is the country's highest court. It is comprised of nine justices who are nominated by the President and confirmed by the U.S. Senate.

Federal Court Titles

A federal trial court is always called a United States District Court. Every state has at least one district, and many states have multiple federal districts. For example, because of its relatively low population, Nevada has only one federal district, the *District of Nevada* (abbreviated D. Nev.).

North Carolina, however, has three federal districts: the *Eastern District of North Carolina* (E.D.N.C.), the *Middle District of North Carolina* (M.D.N.C.), and the *Western District of North Carolina* (W.D.N.C.).

There is one intermediate federal appellate court, the *United States Courts of Appeal*, organized into 13 circuits (11 geographical circuits, the D.C. Circuit, and the Federal Circuit).

Federal Circuits are collections of federal Districts. For instance, the Districts of Colorado, New Mexico, Oklahoma, Utah, Kansas, and Wyoming collectively form the U.S. Court of Appeals for the Tenth Circuit. Any appeal from those federal trial courts must be brought to the Tenth Circuit Court of Appeals.

Diagram 1 | Federal Circuits

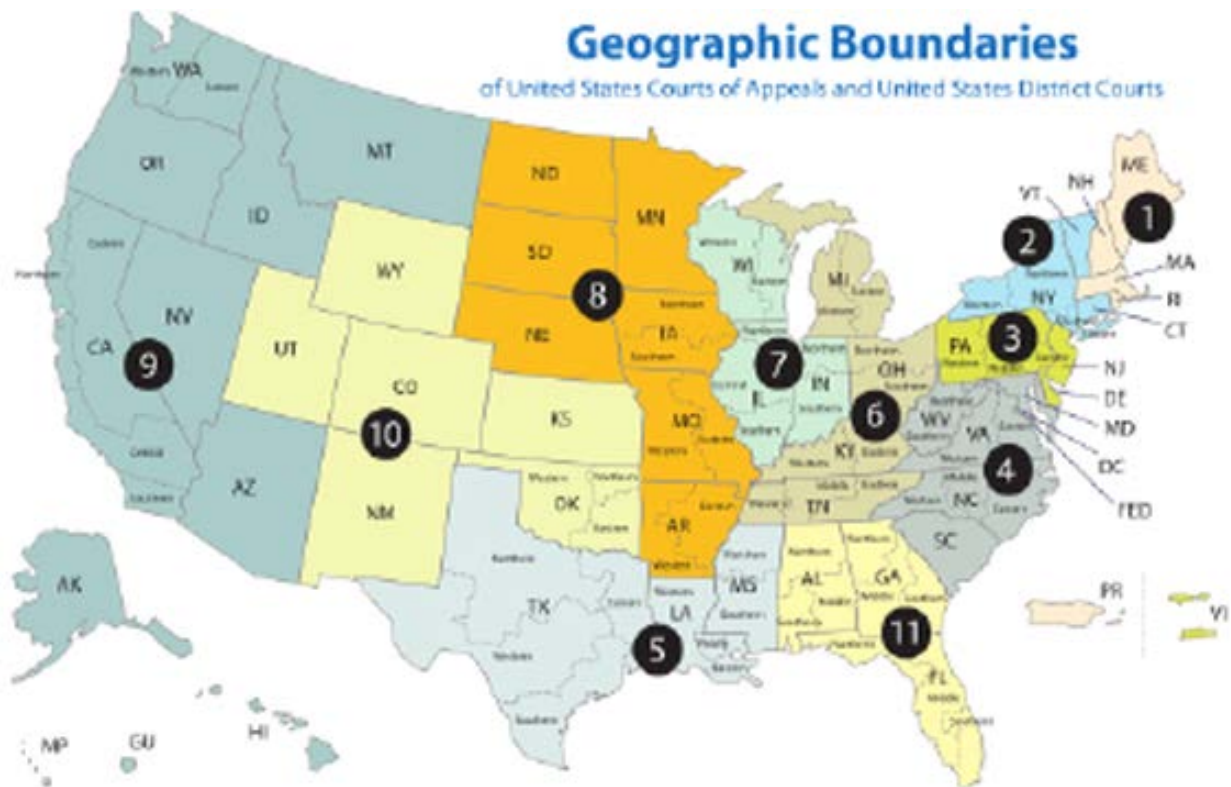
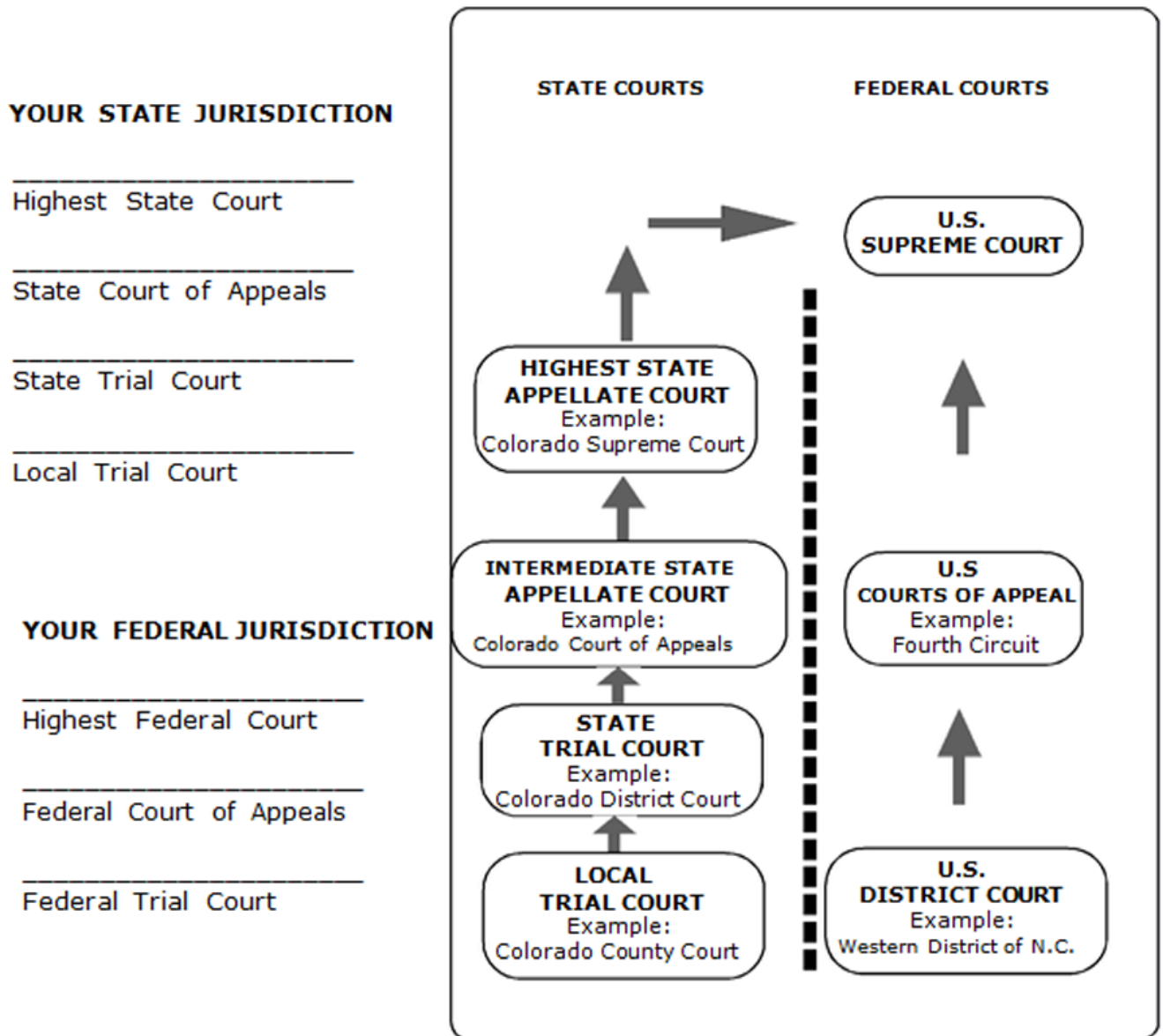


Diagram 2 | Federal and State Court Structure



§ 1.5 LEGAL TERMINOLOGY

GENERAL TERMS

Adversary

The opponent. The plaintiff and defendant are opponents.

Adversary System

U.S. courts are based on the adversary system, which requires each party to advocate their own positions.

Affidavit

A written statement of fact sworn to under oath.

Affiant

One who signs an affidavit.

Affidavit of Service

A written statement attesting to the fact that a summons and complaint was served, and the general details of how the service was done.

Attorney/Client Privilege

A privilege is the right to refuse to testify, or the right to prevent someone else from testifying. The Attorney/Client Privilege means that communication between an attorney (or the attorney's staff) and a client is privileged, and those involved may not be forced to testify about the content of that communication.

Attorney of Record

The attorney who is representing the client in a case and whose name is on the legal documents involved in representation, such as the pleadings.

Bailiff

Court employee who keeps order in the courtroom.

Branches of Government

There are three elements that make up both state and federal government structure: Legislative, Executive, and Judicial.

legislative branch

The branch that creates or enacts the law. At the federal level, Congress is the highest entity. On the state level, the state legislature is the highest entity.

executive branch

The branch which enforces or executes the law. The highest federal entity is the President. The highest state entity is the governor.

judicial branch

The branch that interprets the law. The state and federal court systems comprise the judicial branch.

Caption

The part of a pleading (document filed with the court) that includes the title of the court, the names of the parties, and the title of the document.

Contempt of Court

An act or omission tending to obstruct or interfere with the orderly administration of the court, or to impair the dignity of the court. Contempt is usually considered a criminal act.

Court Reporter

A person who transcribes by shorthand or stenographically takes down testimony of testimony in court, in a deposition, or of a formal sworn statement.

Defendant

The party against whom a legal action is brought.

Incompetence

Lack of legal qualification or fitness (physical, intellectual, or moral fitness) to discharge a legally required duty or to handle one's own affairs.

Motion

A request that the court take some sort of action. A motion may be written or oral.

Order

An official command by the court, usually demanding that one or both of the parties perform an act.

Party

A person, business, or government entity having a direct interest in the outcome of a case.

Perjury

The act of lying or making a false statement under oath.

Personal Service

Service of legal papers upon an individual, as opposed to a business or registered agent.

Petition

To make a formal request to the court. Some states refer to complaints as petitions depending on the type of action filed. For example, a "Petition for Dissolution of Marriage" would involve a petitioner and respondent rather than a plaintiff and defendant.

Plaintiff

The party who initiates the action by filing a complaint, claiming injury or harm.

Pleading

A document filed with the court asking the court to take some specific legal action. A motion asks the court to rule on a procedural matter. A pleading states a party's position in a legal action.

Power of Attorney

An instrument authorizing one person to act on behalf of another in a legal matter. Any such act, if properly authorized, is as if the one providing the authorization had approved of or performed the act him or herself.

Privilege

The right to refuse to testify or to prevent someone else from testifying.

Pro se

For oneself. To act as one's own attorney.

Record

The official collection of all pleadings, exhibits, motions, orders, and transcript of the trial.

Recuse

To ask a judge to remove him or herself from hearing a case, usually due to bias or conflict of interest. Note: On rare occasions an attorney may need to recuse him or herself from a case as well.

Registered Agent / Resident Agent

A person or business authorized to accept service on behalf of another person or business.

Serve

To present legal papers upon another in a court action.

Substitute Service

To serve an authorized person (usually a resident agent or registered agent) instead of the party him or herself.

PROCEDURAL TERMS

Adjourn

To halt temporarily, but not end, the trial.

Adjudicate

To hear or try a case and determine the outcome.

Appearance

When an attorney acts on behalf of a client in court. This action may be either a personal appearance in front of the judge or the filing of a document (such as a complaint or motion) with the court on behalf of the client.

Bench

The judge's seat or the judge him or herself. (i.e., "The attorney addressed the bench.")

burden of proof

The degree to which something must be proved at trial. The party making a claim or allegation must generally bear the burden of proof.

BEYOND A REASONABLE DOUBT

Degree of proof required in a criminal prosecution. It usually requires 100% agreement on the part of the jury. The jury may have some doubt and still find the person guilty, but the doubt cannot be reasonable. If it is, the verdict must be not guilty.

PREPONDERANCE OF THE EVIDENCE

Degree of proof when it is "more likely than not" that a fact is as one party alleges it to be. It often requires that a simple majority (or some other degree less than 100%) of the jury agree.

Civil law

A violation of civil law does not directly harm the community; the person harmed sues the violator.

Clerk's minutes

Notes which are taken by the clerk of events that occurred in court.

Criminal law

A violation of criminal law is viewed as harming the community. Therefore, the state acts against the violator. Penalties for violating criminal law include fines, community service, and imprisonment. One can be sued civilly and charged criminally for the same event.

Ex parte communication

To communicate with the court without notifying the other side as to the contents of that communication, which is generally not allowed.

Ex parte hearing

A hearing at court where only one party is present. Temporary Restraining Orders (TRO) are heard ex parte. A garnishment is an example of an ex parte action.

Exhibit

A physical item presented to support an argument.

Hearing

A proceeding in court, where the judge and both parties are present.

Jurisdiction

The power of a court to hear and decide a case.

Statute of limitations

The time limit for filing suit. Suits filed after the time limit has run out will be dismissed. The clock generally starts to tick at the time the damages occurred.

Subpoena

The document issued under authority of the court to compel the appearance of a witness.

Subpoena duces tecum

A document issued under authority of the court to compel the appearance of a witness, and ordering the witness to provide specific documents.

Testimony

A declaration (usually oral) made by a witness under oath.

Venue

For legal purposes, the place of trial; the physical location where the trial occurs.

Motion for Change of Venue

A request, usually by the defendant, that the location of the trial be changed. Even if the physical location changes, the jurisdiction does not.

Witness

One who testifies under oath as to specific knowledge of facts or an event.

Vacate

To set aside a previously decided action or hearing.

APPELLATE TERMS

Affirm

To sustain or uphold. To agree with.

Appeal

To ask the court at the next higher level to determine whether the trial court erred.

Appellant or Petitioner

The party initiating an appeal.

Appellee or Respondent

The party responding to an appeal.

Brief

A written document that supports a legal position at trial. Usually in support of a motion or pleading. When one party submits a brief during or before trial (Trial Brief), the other party has a right to submit a brief in response (Response Brief). Another common form of brief is the Appellate Brief which argues that the trial court erred in some way and asks an appellate court to reverse or modify the trial court's decision.

En banc

When the entire appellate level court sits to hear and decide a case, indicating the case has a high level of importance.

Habeas Corpus

Means literally "You have the body." Refers to a variety of writs whose object is to bring a person before a court or judge. In most common usage, it is directed to the official or person detaining another, commanding him or her to produce the body of a person detained so the court may determine if such person has been denied his or her liberty without due process of law.

Notice of Appeal

Written notification in motion form that a party intends to appeal. Most court rules require that the motion be filed with the trial court, the appellate court, and sent to any other parties involved in the action. A party has the automatic right to one appeal to the next highest court.

Petitioner

One who commences a formal written application requesting some action or relief in a special hearing, addressed to the court for determination.

Precedent

A prior case (usually a written court opinion) that a subsequent court may rely upon when deciding a matter with similar facts and/or issues.

Remand

The appellate court sends the case back to the trial court for further deliberation.

Respondent

One who commences a formal written application requesting some action or relief in a special hearing, addressed to the court for determination.

(Petition for) Writ of Certiorari

The vehicle by which the case is taken from the court of appeals (state or federal) to the supreme court (state or federal). Also, the means by which a case is taken from a state supreme court to the U.S. Supreme Court. The writ of certiorari is issued by the higher court. If the higher court approves the petition, the higher court will review the case. If the higher court denies the petition, the decision of the lower court stands. This is frequently referred to as a petition for writ of cert.