

# Chapter 3: The Process of Litigation

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## § 3.1 INTRODUCTION

Litigation. The process of going to trial. This chapter introduces the student to terms and processes related to litigation, including the required structure for pleadings and discovery documents.

## **§ 3.2 CIVIL TERMS**

### **Acceptance of Service**

Acknowledged receipt of a summons and complaint or other legal document.

### **Action or Civil Action**

legal action to protect a private civil right or to compel a civil remedy (as distinguished from criminal prosecution).

### **Ad Damnum Clause**

Element of a complaint that asks for damages; also called “wherefore clause” or “prayer for relief.”

### **Affirmative Defense**

An admission that a specific act did occur, arguing that the fault lies not with the defendant. Intended to eliminate or reduce a plaintiff’s damages.

### **Allegation**

The assertion, declaration, or statement of a party to an action, made in a pleading, setting out what the party expects to prove.

### **Allege**

To assert a fact in a pleading.

### **Answer**

The pleading filed by the defendant in response to the allegations contained in the complaint. The Answer must be filed in a specific period of time after the Summons and Complaint have been served upon the defendant. Otherwise, a Default Judgment may be entered against the defendant.

### **Arbitration**

The submission of a legal matter to an arbiter (also called arbitrator). This quasi-judicial process is similar to trial in that both parties present their side of the case for a determination by the arbiter.

Mandatory arbitration refers to a system in many states where parties may be required to go through the arbitration process prior to trial. However, the decision of the arbiter in such a case is not binding.. If one of the parties in a mandatory arbitration matter are not satisfied with the decision of the arbiter, he or she may file a document called a Trial de Novo that demands a formal trial in court.

Binding arbitration is when both parties enter into the arbitration process voluntarily, and both agree that the decision of the arbiter is final and not subject to appeal.

**Award**

A decision by an arbitrator, or an amount granted by a judge or jury to the winning party.

**Bar**

1. To prohibit an act.
2. The "bench," the court, or the judge. ("The case at bar is indefensible.")
3. Also refers to an association of attorneys, such as the American Bar Association.

**Cause of Action**

A legally valid reason to sue; one of the required elements of a complaint.

**Certificate of Mailing**

When a document is filed with the court or when discovery is sent to a party, a certificate of mailing is usually attached. This certificate attests that a true and correct copy of the document was sent to all parties involved in the litigation. The certificate should be signed by the person who places it in the mail, unless the state requires an attorney's signature. This is often replaced with a Receipt of Copy (ROC).

**Co-Defendant**

Multiple defendants in a legal action.

### **Complaint**

The pleading that initiates litigation. Filed by the plaintiff, the complaint contains the general allegations against the defendant. It is served with the summons.

### **Counterclaim**

A claim by the defendant against the plaintiff. Sometimes the only determining factor as to whether a claim is an affirmative defense or a counterclaim is whether the defendant is alleging damages. If this is the case, it becomes a counterclaim. A counterclaim is, in essence, a pleading presenting the defendant's complaint against the plaintiff.

### **Cross Claim**

A claim by one defendant against a co-defendant. One form of cross claim occurs when one original defendant sues another original defendant, but third-party complaints are also cross claims.

### **Damages**

An amount of money paid to atone for injury or economic loss.

### **Decision**

Determination of the court. Also called an opinion or ruling.

### **Default**

When a party does not respond to a complaint or motion, the court may rule in the opposing party's favor. Proper service of the relevant complaint or motion (as prescribed by the relevant court rules) is required for default to be entered.

### **Default Judgment**

When the defendant does not respond in the required time to a complaint the court may enter a Default Judgment.

### **Dismissal**

The termination of a legal action usually due to a procedural error by one of the parties.

**Dismissal With Prejudice**

A case is dismissed and may not be brought again, because the court has made up its mind about the case.

**Dismissal Without Prejudice**

A case is dismissed but may be filed again, because the court has not made up its mind about the matter (i.e., "dismissed without prejudice to re-file").

**Intervention**

An additional party (intervenor) having an interest in the outcome of a lawsuit may attempt to intervene and become part of the suit by filing a motion.

**Judgment**

The final conclusion of the court. In civil cases, the judge usually enters the jury's verdict into judgment. However, the judge has the power to alter or overturn the jury's verdict. In criminal cases, the judge cannot overturn a jury's finding of not guilty, but the court may overturn a guilty verdict in the interest of justice.

**Lien**

A claim upon the property of another as security for some debt.

**Litigant**

Party to a legal action.

**Litigation**

A legal action or suit.

**Negligence**

Establishment of a duty, followed by a breach of that duty, resulting in damages. In order to be actionable, the negligence must have been the proximate cause of the damages. Negligence generally means an act is accidental, not intentional.

### *Contributory Negligence*

Behavior by the plaintiff that contributes to the harm resulting from the defendant's negligence;

### *Comparative Negligence*

Negligence allocated between the plaintiff and the defendant with a corresponding reduction in damages paid to the plaintiff

### **Process**

Process is the summons and complaint. Service of process is the delivery of the summons and complaint upon the defendant in a court action. Service is usually done in person. However, service may, in some circumstances, be made by mail, by publishing a notice in a newspaper or by serving a company whose job it is to accept service (i.e. a resident agent).

### **Receipt of Copy (ROC)**

Document signed by a part acknowledging the acceptance of a document.

### **Reply**

A pleading by the Plaintiff that constitutes a response to new claims or allegations made by the defendant in his or her answer, affirmative defense, or counterclaim.

### **Request for Jury Trial, or Demand for Jury Trial**

Any party may request a jury trial in advance of the trial. Usually requested or demanded in the initial pleadings. There is a deposit which must accompany the request or demand in the amount of \$400.

### **Satisfaction**

Discharge of a legal obligation, as in a "Satisfaction of Judgment."

### **Security for costs**

An undertaking required by a court to cover the payment of costs when the plaintiff is not a resident of the State of Nevada.

**Settlement**

A compromise between the parties prior to or involved in litigation negating the need for further judicial proceedings. Once a settlement is signed, the parties give up their right to further court action.

**Show Cause**

An order, decree, execution or hearing demanding that a party or witness appear and present to the court reasons or considerations as to why the party or witness should not be held in contempt, or why some other action by the court should not proceed.

**Stipulation**

Facts agreed to by the parties. Once a matter has been stipulated, the parties may generally not argue that fact at trial.

**Summons**

Document that informs the defendant that he is being sued and that he has a specific amount of time to respond.

**Third Party Action / Third Party Complaint**

A claim asserted by a defendant against a person not part of the original action, claiming that the "third party" is at least in part liable for damages.

**Tort**

An injury or wrong committed upon the person or property of another. A tort is a civil wrong, and may be the result of either an intentional or negligent act.

**Torfeasor**

One who commits, or is alleged to have committed, a civil wrong (a tort).

**Verification**

A formal assertion or acknowledgement of the validity of a document, amount, or other claimed fact.

### **§ 3.3 WHAT IS LITIGATION?**

Litigation is a legal action. For the purposes of this class, we will be discussing civil litigation, which is a violation of civil law that did not directly harm the community. Thus, the plaintiff/corporation must sue the alleged violator.

#### **PRE LITIGATION STEPS**

##### **Potential Clients**

Legal secretaries and paralegals are, in most offices, the first people to speak to and meet with potential clients. First identify your title as a legal secretary. You must always protect yourself and the firm from any misconceptions that you are an attorney.

##### **Gather pertinent information about the client(s)**

You must control the meeting with the clients. Begin by gathering all pertinent information about your potential clients. All possible addresses and phone numbers of all the people involved, i.e., if it is a corporation or company, obtain names of all the officers or members.

##### **Ask the client to give you a brief description of the situation.**

This does not require you to write every single word down. As the client shares the situation, take notes to capture important aspects. It is your responsibility to keep your client's focus on the story regarding the case. You must control the storytelling.

##### **Documentation**

If the client's brought documentation with them, the initial meeting is not the time to review said documents. Simply record in your notes as to your client's belief and what the documents are and what they represent. All documents should be copied and the originals returned to the client to take with them.

##### **Expectations**

After the client has provided all documentation and information as to their circumstances, ask them why exactly they are seeking an attorney and what they hope the outcome to be. Do not assume. In many cases, it is obvious. But you must be clear as to the client's objectives. This may determine many things, such as whether your firm is the right fit to meet your client's needs.

Many times after all this is done, the legal secretary will speak with the attorney and give a quick recap. While this is taking place, offer the client a drink of water or coffee. Inform the client that the attorney will be in shortly to meet with them.

**Memorandum of Facts**

If the attorney decides to take the case, gather all notes and prepare a Memorandum of Facts for the file. This must include all possible known deadlines, such as when an answer is due, or if a statute of limitations is about to expire.

**Research**

If you are asked to conduct research, the attorney will outline the desired issues and goals of the research. (Attorneys, paralegals, and law clerks typically conduct the legal research, but there is nothing that prevents a skilled legal secretary from doing research as well.)

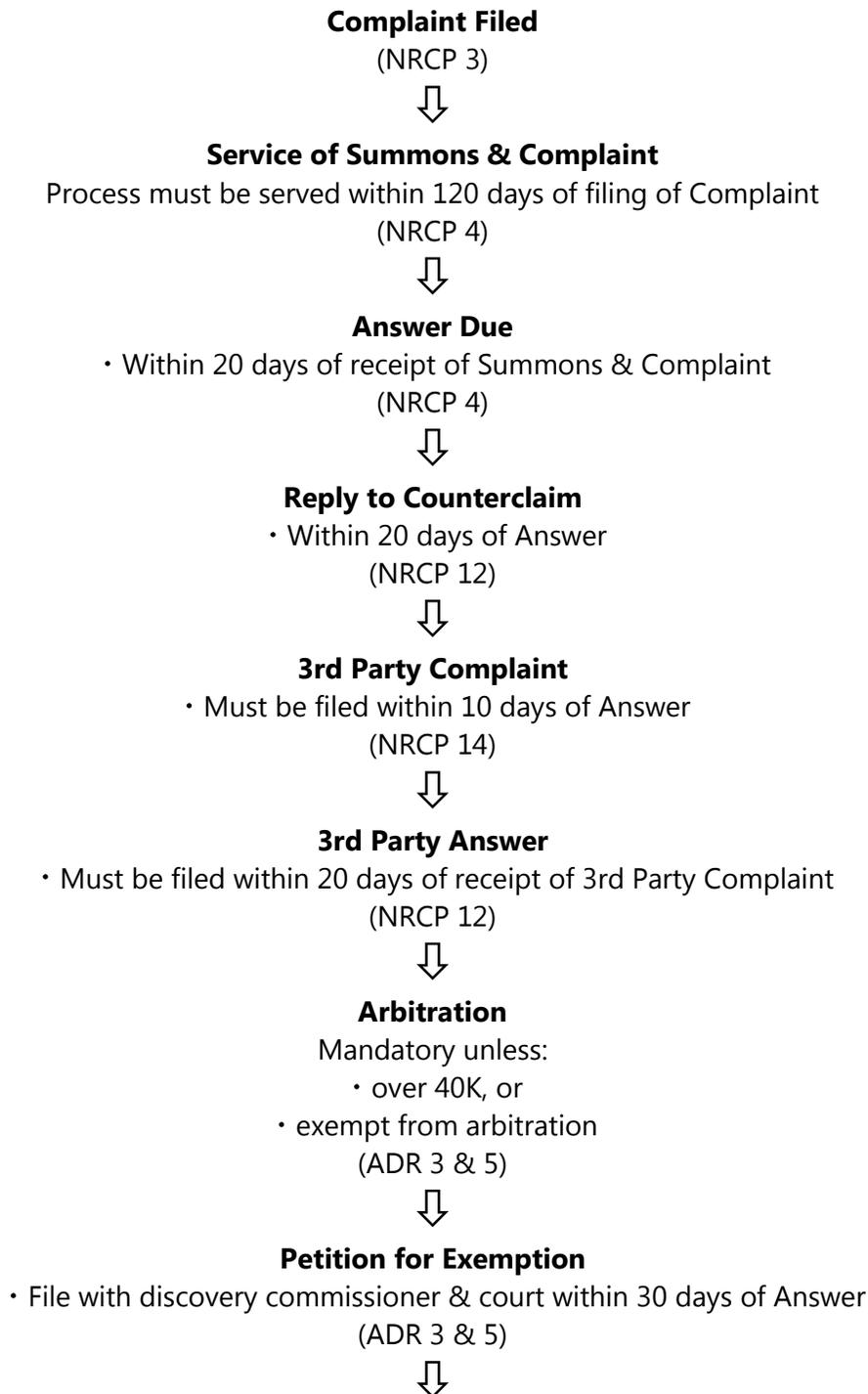
**Meeting**

After the research has been completed, the attorney may request to either have a conference call or a meeting with the clients to go over the findings. It is important to keep the client informed, with the approval of the attorney, of course.

**Decision is made**

The decision is then made whether to pursue civil litigation, a demand, or not to proceed. This is entirely the attorney's decision. However, it may in part be based on the work you have done.

**§ 3.4 LITIGATION FLOWCHART**



**Exemption Objection**

- Within 10 days of Petition for Exemption  
(ADR 5)



**Joint Case Conference (JCC)**

- Within 30 days of Answer
- After arbitration, EAC may replace JCC  
(NRCP 16.1)



**JCC Report**

- Within 30 days of JCC
- Within 30 days mailing of trial de novo notice  
(NRCP 16.1)



**Motions Complete**

- All motions must be completed 30 days before trial  
(NRCP 37)



**Discovery complete**

- 45 days before trial
- 30 days before trial for discovery motions  
(NRCP 26)



**Trial**



### § 3.6 THE AIMS OF LEGAL LETTER WRITING

The aim of legal letter writing depends on the type of letter that is being written. Letters can be put into two broad categories:

- Letters to and from your own client
- Letters to and from opposing counsel, third parties, and other attorneys

In writing, a legal letter, it is always important to bear in mind who the recipient is, as this will dictate the tone and content of the letter:

- Clients
- Witnesses (lay)
- Witnesses (expert)
- Court officials
- Other lawyers
- Miscellaneous others (i.e., government officials, insurance agents, etc.)

#### **Essential Qualities of all Legal Letters**

You should always plan your letter in advance. It is wise to follow established forms and styles, unless you have a good reason not to. Make sure to clearly identify:

- The name and address of the intended recipient
- The date on which it is sent
- The form that the letter will be sent
- The identity of the sender
- The matter the letter addresses

Note: You need to always keep a copy of your letter in the file.

#### **All legal letters must:**

- Be accurate
- Be clear and precise
- Use plain English and contemporary vocabulary
- Be short, simple, and direct
- Use short sentences

### Formalities of Legal Letter Writing

#### *Location of the Addressee's Address*

Place in the upper left hand of the page under the addresser's letterhead. The address should include the fax number, if that is how it is being sent. By convention, the physical address is always included, even if the letter is sent by fax.

#### *The Date*

Insert the date in the center above the address.

#### *Salutation*

It is usual to address a letter to a client or potential witness in the personal form, using their family name or even, if you have been encouraged to do so by the client, their first name. In some cases, for example, where the client is a child in a personal injury case, it may be appropriate to use the more familiar form of address in any event.

By contrast, when writing to those who are neither clients nor potential witnesses, a less personal approach may be preferable. A letter of demand should begin, "Dear Sir." If the gender of the recipient is unknown, use "Dear Sir or Madam." Always use a file reference if it is available. This enables the recipient to find the relevant file more speedily and looks efficient.

Addressing a letter appropriately sets both a scene and a standard. Inappropriately addressed letters create the wrong impression about your professionalism.

#### *The Heading*

The heading is usually underlined, sometimes with the short form "Re:" preceding it. Include a file reference if there is one. Example:

Re: Purchase of Tacoma Property

Once litigation is commenced, include the title of the action as the heading. If you act for the defendant, it is traditional to put the defendant's name first and use the letters "adv." Before the name of the plaintiff. Thus, a case normally titles *Castro v. Perez* becomes:

Re: *Perez adv. Castro*

*Openings*

Make sure that your recipient knows why you are writing. If the letter is following up on something, such as a meeting, a phone call, or another letter from or to the recipient, refer to it. Put the letter into context for the reader, especially if the letter is to be more than a paragraph long.

*Body of the Letter*

Keep in mind the audience, the purpose and if the letter is from you, make sure to inform the reader that you are informing them and/or providing information but not advising.

*Purpose*

State what the letter is for.

*Problem*

State the facts that give rise to the problem.

*Summarize Your Conclusion*

It may seem strange to state your conclusion near the beginning of a letter. However, stating a conclusion summary can assist the reader in understanding what you have to say in the body of the letter where the analysis of the matter is set forth.

*Possibilities (Options)*

Discuss the options that are available in view of the facts and laws that apply. Set out one of the options as the one your attorney recommends and explain why it is the most beneficial to the client.

*Practical Steps*

Is there something that either you or your client needs to do? If so, make it clear who should do what and when. If there is nothing to be done, make clear the client should await further instruction pending the opposing party's response.

*Ending the Letter*

If the letter begins "Dear Sir" or "Dear Madam," it should end just as formally with "Sincerely" or "Respectfully."

*Attachments*

Attachments to a letter should be identified by the abbreviation "encl" at the bottom of the letter. With important communications, the documents should be listed, so that the recipient can check that she or he has received everything.

**§ 3.7 DISTRICT COURT CAPTION**

CODE  
NAME  
ADDRESS  
CITY, STATE, ZIP CODE  
TELEPHONE NUMBER  
PLAINTIFF/DEFENDANT IN PROPER PERSON (OR ATTORNEY NAME AND BAR NUMBER)

**DISTRICT COURT OF CLARK COUNTY  
STATE OF CONFUSION**

NAME,		
	Plaintiff,	CASE NO. _____
vs.		
DEPT. NO. _____		
NAME,		
	Defendant.	
_____		

**TITLE OF DOCUMENT**  
HEARING DATE:  
HEARING TIME:

**BODY OF DOCUMENT.....**

\_\_\_\_\_  
ATTORNEY SIGNATURE  
NAME  
ADDRESS  
CITY, STATE, ZIP CODE

### § 3.8 COMMENCEMENT OF LITIGATION

The Nevada Rules of Civil Procedure (NRCP) and the Eighth Judicial Court Rules (EDCR) govern civil state litigation cases that are not mandated to go through the Arbitration process and those cases that have gone through Arbitration and are now going to trial.

#### *Complaint*

A litigation matter commences with the filing of the Complaint in District Court. The Complaint contains general allegations and the Causes of Action which are also known as Claims for Relief. You may be asked to draft a complaint, setting forth the general allegations set forth by your client. The attorney usually provides the Causes of Action.

#### *Filing of the Complaint*

The complaint is filed along with the Civil Cover Sheet, the Summons, the Initial Disclosure Statement, and a check covering the applicable filing fee.

#### *Review of the filing of the Complaint*

Upon filing the Complaint, the case will be given a Case Number and a Department Number. The Department Number is always in Roman Numeral form. This Roman Numeral indicates the courtroom and judge that will be presiding over the case.

#### *Peremptory Challenge*

It is at the discretion of the attorney to have the case reassigned to a different judge (department). The filing of a Peremptory Challenge allows the case to be reassigned. A party can file a Peremptory Challenge anytime up to the point where the judge makes a ruling on the case. Once the presiding judge makes a ruling, there is no option to be reassigned. This is why most attorneys file a Peremptory Challenge at the commencement of a case.

### § 3.9 PLEADING PREPARATION

Courts in Nevada, and other states as well, have specific rules and requirements for document that are filed. The legal secretary must follow these rules precisely, because to do otherwise could result in a document being rejected by the court. Following are the rules that students will follow when preparing pleading and discovery documents for this class. These rules should be followed as carefully as if the documents were being filed in an actual court.

#### *What is pleading paper?*

Pleading paper is numbered paper that many states require. pleadings and discovery to be printed on. In addition, many states that do not use pleading paper for pleading and discovery documents still use it for depositions. Pleading paper should have 28 lines, beginning one inch from the top, double spaced. It should then finish one inch from the bottom of the page. Your word processing software should have a template for pleading paper.

#### **Rules for Written Assignments**

All assignments are to be turned in on their due date. Each day assignment is late will cost the student the equivalent of one full letter grade unless excused by the instructor. Each assignment must receive a passing grade for the student to receive his or her certificate. Each assignment shall be prepared in the following manner:

- (1) Assignments shall be typed or printed (no hand-written assignments shall be accepted)
- (2) All assignments shall be prepared on 8 1/2 x 11 inch white bond paper
- (3) All assignments shall be double spaced, unless otherwise instructed
- (4) Assignments shall be typed on only one side of each sheet of paper
- (5) Each written assignment shall be stapled on the top left hand corner
- (6) The student name shall be typed or written on the top right hand corner of the front page
- (7) No folders, file holders, or plastic bindings shall be accepted
- (8) Pleading and discovery assignments shall be on pleading paper
- (9) Pleading assignments shall provide the appropriate document code above the attorney name on the top left of the first page.

Violation of these rules shall result in the loss of up to one letter grade for each violation, at the instructor's discretion.

§ 3.10 CIVIL COVER SHEET

CIVIL COVER SHEET		
_____ County, Nevada Case No. _____ <i>(Assigned by Clerk's Office)</i>		
<b>I. Party Information</b>		
Plaintiff(s) (name/address/phone): _____ _____ Attorney (name/address/phone): _____ _____ _____	Defendant(s) (name/address/phone): _____ _____ Attorney (name/address/phone): _____ _____ _____	
<b>II. Nature of Controversy</b> (Please check applicable bold category and applicable subcategory, if appropriate)		<input type="checkbox"/> <b>Arbitration Requested</b>
<b>Civil Cases</b>		
Real Property	Negligence	Torts
<input type="checkbox"/> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> <b>Title to Property</b> <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> <b>Condemnation/Eminent Domain</b> <input type="checkbox"/> <b>Other Real Property</b> <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> <b>Negligence – Auto</b> <input type="checkbox"/> <b>Negligence – Medical/Dental</b> <input type="checkbox"/> <b>Negligence – Premises Liability</b> (Slip/Fall) <input type="checkbox"/> <b>Negligence – Other</b>	<input type="checkbox"/> <b>Product Liability</b> <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> <b>Intentional Misconduct</b> <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> <b>Employment Torts</b> (Wrongful termination) <input type="checkbox"/> <b>Other Torts</b> <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
<input type="checkbox"/> <b>Summary Administration</b> <input type="checkbox"/> <b>General Administration</b> <input type="checkbox"/> <b>Special Administration</b> <input type="checkbox"/> <b>Set Aside Estates</b> <input type="checkbox"/> <b>Trust/Conservatorships</b> <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> <b>Other Probate</b>	<input type="checkbox"/> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> <b>Breach of Contract</b> <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> <b>Civil Petition for Judicial Review</b> <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> <b>Appeal from Lower Court</b> <i>(also check applicable civil case box)</i> <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> <b>Civil Writ</b> <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters
<b>III. Business Court Requested</b> (Please check applicable category, for Clark or Washoe Counties only.)		
<input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 90) <input type="checkbox"/> Securities (NRS 90)	<input type="checkbox"/> Investments (NRS 104 Art. 8) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademarks (NRS 600A)	<input type="checkbox"/> Enhanced Case Mgmt/Business <input type="checkbox"/> Other Business Court Matters
_____ Date	_____ Signature of initiating party or representative	
Nevada AOC – Planning and Analysis Division <span style="float: right;">Form PA 201 Rev. 2.3E</span>		

**§ 3.11 INITIAL APPEARANCE FEE DISCLOSURE**

1	<b>IAFD</b>	
2	Name (Attorneys Include Bar No. & Firm)	
3	Address	
4	City/State/Zip	
5	Telephone	
6	In Proper Person OR Attorney for	
7	DISTRICT COURT	
8	CLARK COUNTY, NEVADA	
9	Plaintiff(s)	
10	Plaintiff(s),	CASE NO. Case No.
11	-vs-	DEPT. NO. Dept. No.
12	Defendant(s)	
13	Defendant(s).	
14	<b>INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)</b>	
15	Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are	
16	submitted for parties appearing in the above entitled action as indicated below:	
17	Name	<input type="checkbox"/> \$151.00 or <input type="checkbox"/> \$104.00
18		
19		
20		
21		
22		
23	<input type="checkbox"/> Total of Continuation Sheet Attached	
24	TOTAL REMITTED: (Required)	<b>Total</b>
25	DATED this Day day of Month, 200Yr.	
26		
27	Name	
28	Address	
	City, State & ZIP	
	Telephone	
	Initial Appearance Fee Disclosure.doc/10/2005	

**§ 3.12 THE SUMMONS**

**DISTRICT COURT OF CLARK COUNTY  
STATE OF CONFUSION**

JOHN DOE

Plaintiff,

vs.

PHILLIP DUNCAN

Defendant.



**SUMMONS**

**SUMMONS**

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN TWENTY DAYS.  
READ THE INFORMATION BELOW.**

TO THE DEFENDANT(S): A civil complaint has been filed by the plaintiff against you for the relief set forth in the complaint.

1. If you intend to defend this lawsuit, within twenty days after this summons is served on you, exclusive of the day of service, you must do the following:
  - a. File with the clerk of this court, whose address is shown below, a formal written response to the complaint in accordance with the rules of the court, with the appropriate filing fee.
  - b. Serve a copy of your response upon the attorney whose name is shown below.
2. Unless you respond, your default will be entered upon application of the plaintiff, and this court may enter a judgment against you for the relief demanded in the complaint, which could result in the taking of money or property or other relief requested in the complaint.
3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.
4. The state of Confusion, its political subdivisions, agencies, officers, employees, board members, commission members and legislators, each have 45 days after service of this summons within which to file an answer or other responsive pleading to the complaint.

Issued at the direction of Sally Smooth CLERK OF COURT

\_\_\_\_\_ By: \_\_\_\_\_

Jude Justice  
Attorneys for Plaintiff

1212 W. North St.  
Central City, Confusion

**§ 3.13 EIGHTH JUDICIAL DISTRICT DOCUMENT CODES**

The Clerk of the Court requires DOCUMENT and CALENDAR codes be placed on the first page of each document filed with the court as detailed in Court Rule EDCR 7.20. Parties filing documents with the court must enter a document or calendar code in the left margin on Line 1 on the first page of the document, just above the name of the attorney or party appearing in proper person. These codes are used by the court to enable the collection of statistical information for the Nevada Administrative Office of the Courts.

Calendar codes are numeric and are used when setting a matter on the Court's calendar. Document codes are alphabetic (with the exception of some which are part numeric and part alphabetic, e.g., CC24) and are used for all other documents.

Several codes are included in the Calendar Codes for a variety of Motions and Petitions. Please select the code that most closely fits the motion or petition you are filing. If a document addresses two separate issues, such as "Motion for Sanctions and to Reduce Arrears to Judgment," use the code for the first issue in the title. In this case it would be 0024, the code for Motion for Sanctions.

**CONDENSED/REVISED - FEBRUARY 2005**

ACSR	Acceptance of Service
ACCT	Accounting and Report
FACT	Final Accounting
ACKN	Acknowledgment
ADDM	Addendum
AOC	Advisement of Compliance
AFFT	Affidavit
ANAG	Agreement
ANS	Answer
AANS	Amended Answer
ANAC	Answer to Amended Complaint
XCAN	Answer to Crossclaim
ANTC	Answer to Third Party Complaint
APPR	Appearance
APPL	Application
APRV	Approval

ARBN	Arbitration
ARGU	Argument
ASSC	Association of Counsel
ATLN	Attorney Lien
BNCH	Bench Warrant
BOND	Bond
BREF	Brief
CASA	CASA Report
ASTA	Case Appeal Statement

**Case Conference Reports**

ECCR	Early Case Conference Report
ICCR	Individual Case Conference Report
JCCR	Joint Case Conference Report
SCCR	Supplemental Case Conference Report
CMO	Case Management Order
CRTF	Certificate
COD	Certificate of Death
CERT	Certificate of Mailing
CER	Certification
COA	Change of Address
CVEN	Change of Venue
CSPI	Child Support & Welfare Party Identification Sheet
CITA	Citation
COMM	Commission to Take Deposition Outside Nevada
COMP	Complaint
ACOM	Amended Complaint
FPC	Fourth Party Complaint
TPC	Third Party Complaint
CONS	Consent
CTCM	Counterclaim
CC24	Creditor's Claim
RCC	Rejection of Creditor's Claim
SATC	Satisfaction of Creditor's Claim
CRCM	Crossclaim
DECN	Decision
CC13	Declaration Under Uniform Child Custody Jurisdiction Act
DFLT	Default
TDN	Three Day Notice of Intent to Take Default
DEMD	Demand
DMJT	Demand for Jury Trial
DROA	Designation of Record on Appeal
DOW	Designation of Witness
DSCL	Disclaimer

### Chapter 3: The Process of Litigation

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DCPR	Discovery Case Plan Report
DISM	Dismissal
VDSM	Voluntary Dismissal
DRAR	Distributee's Receipt and Release
DAFF	Domestic Relations Affidavit of Financial Condition
ECCR	Early Case Conference Report
EFSO	Electronic Filing and Service Order
ERR	Errata
EXH	Exhibit
ETPO	Extended Protective Order Against Domestic Violence
MOFI	Family Court Motion/Opposition Fee Information Sheet
FFCL	Findings of Fact, Conclusions of Law and Judgment
IND	Indictment (Grand Jury)
ICCR	Individual Case Conference Report
INFO	Information
AINF	Amended Information
IAFD	Initial Appearance Fee Disclosure
INTG	Interrogatories
INVY	Inventory
CC25	Inventory, Appraisal and Record of Value
JOIN	Joinder
JCCR	Joint Case Conference Report
CC12	Joint Preliminary Injunction
JUDG	Judgment
FFCL	Findings of Fact, Conclusions of Law and Judgment
JOC	Judgment of Conviction
JOCP	Judgment of Conviction - Plea
OFFR	Offer of Judgment
SATF	Satisfaction of Judgment
JUVI	Juvenile Court Return Agreement
WILL	Last Will And Testament
LETT	Letters
LISP	Lis Pendens
MRAO	Master's Recommendation and Order
MRO	Master's Recommendation and Order Judgment (UIFSA)
MEMO	Memorandum
NOM	Nomination
NOTC	Notice
OATH	Oath
OBJ	Objection
OPPS	Opposition
NONO	Non-Opposition

ORDR	Order
EXPR	Ex Parte Order
PET	Petition Filed
PTAT	Points and Authorities
PROF	Proof
ROP	Receipt
ROC	Receipt of Copy
ROA	Record on Appeal
RELS	Release
REMV	Removal to the U.S. District Court
RPLY	Reply
CCAN	Reply to Counterclaim
RAR	Report and Recommendations
TRAN	Reporter's Transcript
REQT	Request
FMCO	Request and Order for Mediation
RSPN	Response
RET	Return
SCHD	Schedule of Arrears
STAT	Statement
STIP	Stipulation
SAO	Stipulation and Order
CC03	Subpoena
SUBT	Substitution of Attorney
SUMM	Summons
TPS	Third Party Summons
SUPP	Supplement
SCCR	Supplemental Case Conference Report
TPO	Temporary Protective Order
TRO	Temporary Restraining Order
TRNS	Transmittal
VERF	Verification
VAPP	Verified Application for Assn. of Counsel Under

**Nevada Supreme Court Rule 42**

WAIV	Waiver
WARR	Warrant
WITH	Withdrawal
WOA	Withdrawal of Attorney

**Witnesses**

LIST	Expert Witness List
LTWT	List of Witnesses
WRIT	Writ

**§ 3.14 EIGHTH JUDICIAL DISTRICT CALENDAR CODES**

CONDENSED/REVISED - FEBRUARY 2005

0157	Account & Report
0166	First & Final Accounting & Report
0264	Annulment Hearing
0126	Calendar Call
0178	Citation to Appear
0051	Examination Judgment Debtor
0066	Hearing
0074	Joinder/Mtn
0460	Joinder/Mtn in Limine
0001	Motion
0036	Mtn/Amend Answer
0035	Mtn/Amend Complaint
0092	Mtn/Appointment
0105	Mtn/Associate Counsel
0011	Mtn/Attorney Fees
0103	Mtn/Bifurcate
0131	Mtn/Cancel Lis Pendens
0050	Mtn/Change of Venue
0134	Mtn/Child Custody
0243	Mtn/Child Support
0096	Mtn/Clarify
0043	Mtn/Compel
0076	Mtn/Consolidate
0026	Mtn/Continue
0316	Mtn/Determine Good Faith Settlement
0056	Mtn/Dismiss
0143	Mtn/Disqualify Attorney
0033	Mtn/Disqualify Judge
0118	Mtn/Enforce
0005	Mtn/Exclusive Possession
0004	Mtn/Fees & Allowances
0090	Mtn/Immediate Occupancy
0144	Mtn/Increase
0128	Mtn/Interplead
0079	Mtn/Intervene
0071	Mtn/Limine
0156	Mtn/Mediation
0003	Mtn/Modify Child Custody

0149	Mtn/Modify Child Support
0002	Mtn/Modify Decree Of Divorce
0249	Mtn/Modify Probation
0231	Mtn/Modify Sentence
0138	Mtn/Modify Visitation
0031	Mtn/New Trial
0064	Mtn/Partial Summary Judgment
0009	Mtn/Preliminary Injunction
0115	Mtn/Produce
0113	Mtn/Protective Order
0022	Mtn/Quash
0365	Mtn/Quash Bench Warrant
0120	Mtn/Reconsider
0006	Mtn/Reduce Arrears To Judgment
0137	Mtn/Reduce Child Support
0070	Mtn/Rehear
0139	Mtn/Resolve Parent-Child Issues
0085	Mtn/Retax
0024	Mtn/Sanctions
0052	Mtn/Set Aside
0204	Mtn/Set Bail
0318	Mtn/Settlement Conference
0021	Mtn/Stay
0020	Mtn/Strike
0054	Mtn/Summary Judgment
0135	Mtn/Temporary Child Support
0136	Mtn/Temporary Custody
0008	Mtn/Temporary Restraining Order
0385	Mtn/Trial De Novo
0097	Mtn/Visitation Rights
0142	Mtn/Wage Assignment
0042	Mtn/Withdraw
0203	Mtn/Withdraw Plea
0146	Objection
0125	Opposition
0010	Order/Show Cause
0272	Petition
0159	Ptn/Allowances
0161	Ptn/Authority
0162	Ptn/Codicil
0167	Ptn/Fees
0169	Ptn/Instruction
0086	Ptn/Judicial Review
0174	Ptn/Partial Distribution

### Chapter 3: The Process of Litigation

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0232	Ptn/Post Conviction Relief
0175	Ptn/Probate of Will
0193	Ptn/Prove Will
0176	Ptn/Purchase
0177	Ptn/Return & Confirmation of Sale
0069	Ptn/Seal Records
0171	Ptn/Sell Property
0180	Ptn/Set Aside Estate Without Admin
0183	Ptn/Summary Admin
0184	Ptn/Temp. Guardianship
0083	Ptn/Terminate Guardianship
0072	Ptn/Writ of Attachment
0121	Ptn/Writ of Certiorari
0014	Ptn/Writ of Habeas Corpus
0016	Ptn/Writ of Mandamus
0015	Ptn/Writ of Restitution
0029	Pre-Trial Conference
0032	Prove Up/Default

#### **Trials**

0123	Jury Trial
0063	Non-Jury Trial

**§ 3.15 EXAMPLE OF A COMPLAINT**

**DISTRICT COURT OF CLARK COUNTY  
STATE OF CONFUSION**

JOHN and SALLY SMITH

Plaintiff,

vs.

JACK DOE

Defendant.

**COMPLAINT**

Come now the Plaintiffs, John and Sally Smith, and for cause of action against the Defendant(s), and each of them, complain and allege as follows:

**GENERAL ALLEGATIONS**  
(Against All Defendants)

**I.**

Plaintiffs are now and at all times relevant have been residents of Kent County, state of Confusion.

**II.**

Defendants are now and at all times relevant have been residents of Kent County, state of Confusion.

**III.**

On or about November 20, 2010, Defendant was driving a taxi, in which Plaintiff(s) were passengers. Defendant, traveling north on Hill Boulevard., was traveling 60 mph in a 30 mph zone.

**IV.**

At the intersection of Hill Boulevard and Lee Road, Defendant failed to stop for a red light.

**V.**

Defendant’s taxi subsequently struck a vehicle traveling south on Lee Road. The vehicle that was struck possessed the right of way.

**VI.**

Both Plaintiffs suffered severe damages as a result of the accident requiring lengthy hospitalization.

**VII.**

Both Plaintiffs have been forced to miss work and employment opportunities due to the accident.

**VIII.**

As a result of this litigation, Plaintiffs have secured the services of an attorney.

**FIRST CAUSE OF ACTION**  
(Negligence)

**IX.**

Plaintiffs hereby incorporate and reallege Paragraphs I through VIII, as though fully set forth at length herein.

**X.**

Defendant had a duty to obey the traffic laws of the state and county where the accident occurred, and by failing to do so acted in a negligent manner.

**XI.**

As a result of Defendant's negligent conduct stated above, Plaintiffs have suffered specific damages, including, but not limited to, medical expenses and lost wages.

**SECOND CAUSE OF ACTION**  
(Negligence per se)

**XII.**

Plaintiffs hereby reallege and incorporate by reference Paragraphs I through XI, inclusive, as though fully set forth at length herein.

**XIII.**

Defendant owed a duty to the users of the public roadways to operate his vehicle in a manner consistent with the laws of the state of Confusion.

**XIV.**

As a direct and proximate result of the Defendant's speeding, Defendant was negligent per se, and Plaintiffs suffered specific damages.

WHEREFORE, Plaintiffs pray for judgment against the defendant as follows:

1. For general damages in excess of \$10,000.00, according to proof,
2. For loss of earnings and earning capacity, according to proof,
3. For medical expenses, future medical expenses, and all incidental expenses, according to proof,
4. For interest from the date of the accident to the time of judgment,
5. For costs of suit incurred herein,
6. For attorney's fees incurred herein, and
7. For such other and further relief as the Court deems proper.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Attorney Name State Bar No. 1907  
Address  
Attorney for Plaintiffs

**§ 3.16 EIGHTH JUDICIAL COURT FILING FEES**

OFFICIAL FEES FOR THE EIGHTH JUDICIAL DISTRICT COURT

Effective August 1, 2009

**Adoptions**  
When filing a new Adoption proceeding .....\$238.00

Special Needs Adoption  
When filing a new Adoption proceeding for a special needs child pursuant to NRS 19.034.....\$1.00

**Answer or Appearance**  
When a defendant answers a complaint; to be paid upon the filing of the first paper in the action for Civil cases and Domestic cases not contained in NRS 125, NRS 19.013 (\$44), 19.031 (\$25), 19.0312 (\$10), 19.0313 (\$10), 19.0315 (\$15), AB 65 (\$99).....\$223.00

For each additional defendant named in a civil answer or first appearance (See \*Examples below at the bottom of this table) NRS 19.0335 (\$30) .....\$30.00

When a defendant answers an action for constructional defect or any other action defined as complex. NRS 19.013 (\$44), 19.031 (\$25), 19.0312 (\$10), 19.0313 (\$10), 19.0315 (\$15), AB 65 (\$349) .....\$473.00

When a defendant answers a business court filing.  
NRS 19.013 (\$44), 19.031 (\$25), 19.0312 (\$10), 19.0313 (\$10), 19.0315 (\$15), AB 65 (\$1,359) ...\$1,483.00

Child Custody answer or first appearance.....\$212.00

Divorce, Annulment, Separate Maintenance answer or first appearance .....\$217.00

**Appeal from a Justice or Municipal Court**  
When filing an appeal from a Justice Court or Municipal Court.....\$47.00

**Appeal/Supreme Court**  
When filing a Notice of Appeal.....\$24.00

Bonds for Costs on Appeal .....\$500.00

Supreme Court Appeal Filing Fee (payable to the Clerk of the Supreme Court).....\$250.00

**Complaints Annulment or Separate Maintenance**  
When filing a Complaint for Annulment or a Complaint for Separate Maintenance.....\$269.00

**Child Custody**  
When filing a Complaint for Child Custody.....\$259.00

## Chapter 3: The Process of Litigation

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### Civil

When filing a new Civil action or proceeding.....	\$270.00
For each additional plaintiff named in a civil complaint or amended civil complaint.....	\$30.00
When filing an action for constructional defect or other action defined as complex .....	\$520.00
NRS 19.013 (\$56), 19.020 (\$3), 19.030 (\$32), 19.031 (\$25), 19.0312 (\$10), 19.0313 (\$10), 19.0315 (\$15), AB 65 (\$349)	
When filing a business court matter.....	\$1,530.00
NRS 19.013 (\$56), 19.020 (\$3), 19.030 (\$32), 19.031 (\$25), 19.0312 (\$10), 19.0313 (\$10), 19.0315 (\$15), AB 65 (\$1,359)	
When filing a transfer to business court after filing as a general civil action .....	\$1,260.00
When filing a third party complaint .....	\$135.00

### Divorce

When filing for a Divorce.....	\$289.00
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### Domestic Cases Not Specified Above

When filing Domestic Cases Not Specified Above.....	\$270.00
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### Confession of Judgment

For filing a Confession of Judgment.....	\$28.00
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### Demand for Jury Trial

When filing a Demand for Jury Trial.....	\$400.00 Deposit
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### Domestic Case-Reopen

When filing a motion or other paper that seeks to modify or adjust a final order issued pursuant to NRS 125, 125B and 125C and on filing any answer or response to such a motion or other paper, excluding those exceptions noted in NRS 19.0312 (Effective November 4, 2002).....	\$25.00
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### Liens, Frivolous or Excessive

When filing an application regarding frivolous or excessive liens.....	\$299.00
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### Minor's Compromise

When filing a Petition to Compromise a Minor's Claim.....	NO FEE
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### Miscellaneous Filings

To file other papers to be kept by the clerk, except for papers filed in court or filed by public officers in their official capacity, not otherwise provided for.....	\$18.00
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For issuing any certificate under seal not otherwise provided for.....	\$6.00
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### Motions

For filing a motion for a summary judgment or joinder .....	\$200.00
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For filing a motion to certify/decertify class .....	\$349.00
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### Peremptory Challenge

Peremptory challenge of a Judge (payable to the Clerk of the Supreme Court).....	\$450.00
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### Petition to Seal Records

When filing a new Petition to Seal Records.....	\$270.00
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**Probate/Guardianship**

When filing a petition for letters testamentary or administration or guardianship where the stated value of the estate is \$20,000 or less .....NO FEE  
or  
Where the stated value of the estate is more than \$20,000 but less than \$200,000.....\$286.00  
or  
Where the stated value of the estate is \$200,000 or more .....\$539.00

When filing a petition to contest any will or codicil, objection or cross-petition to the appointment of an executor, administrator or guardian or an objection to the settlement of account or any answer in an estate or guardianship matter .....\$223.00

**Transfer from another District Court or County**

To transfer an action or proceeding from another District Court or County.....\$270.00

**Transfer from a Justice or Municipal Court**

When transferring a case from a Justice Court or Municipal Court.....\$42.00

**Will**

When filing an original Will.....\$18.00

**Writs**

For the issuance of any writ of attachment, writ of garnishment, writ of execution or any other writ designed to enforce any judgment of the court .....\$10.00

**Copies**

For each page copied from any document(s).....\$1.00

**Certify/Exemplify**

To certify copies of any document(s) prepared by the clerk..... \$ 3.00  
(Plus copy fees of \$1.00 per page)

To exemplify any document(s) prepared by the clerk.....\$ 6.00  
(Plus copy fees of \$1.00 per page)

To examine and certify a copy of any document(s) prepared by another.....\$5.00

To examine and exemplify a copy of any document(s) prepared by another.....\$9.00

**Searches**

For performing a search of the records per year, per name.....\$1.00

Examples: Multiple Party Civil Filing Fee (Source: Letter dated 6/23/03 from Administrative Office of the Courts, Supreme Court of Nevada)

A. A complaint is filed with four plaintiffs. The filing fee would be \$270 for the first plaintiff plus \$90 (\$30 for each additional plaintiff).

B. In response, three defendants respond with one answer; the filing fee is \$223 plus \$60 (\$30 for each of the two additional defendants). Another defendant answers individually and pays the \$223 answer fee. An additional five defendants answer jointly and pay \$223, plus \$120 (\$30 for each of the additional four defendants).

C. The complaint is amended to add two plaintiffs. The fee would be \$60 (\$30 for each plaintiff added).

### **§ 3.17 PARTIES TO A LEGAL ACTION**

#### **THE PARTIES**

##### *Plaintiff*

The party initiating the suit. The party making the initial allegations.

##### *Defendant*

The party against whom the suit is brought.

##### *Co-Defendant*

When there is one than more defendant.

##### *Counterclaim*

A claim by a defendant against the plaintiff. Essentially, this is a defendant's complaint.

##### *Counter Claimant*

The party filing a counterclaim. Usually an original defendant. Thus, this party may be titled Defendant/Counter Claimant in subsequent pleadings and motions.

##### *Counter Defendant*

The party against whom the counterclaim is brought. (Usually the original plaintiff.) Thus, this party may be titled Plaintiff/Counter Defendant in subsequent pleadings and motions.

##### *Cross Claim*

A claim made by one defendant against a co-defendant. A typical example is a Third Party Complaint. This claim is usually included as a separate section within the Answer.

##### *Cross Claimant*

The party initiating the cross claim. Thus, this party may be titled Defendant/Cross Claimant in subsequent pleadings and motions.

##### *Cross Defendant*

The party against whom a cross claim is made. Thus, this party may be titled Defendant/Cross Defendant in subsequent pleadings and motions.

*Third Party Complaint*

An example of a cross claim, however it typically involves a defendant who has not been named in the original complaint. A Third Party Complaint requires the same service obligations (summons, certificate of service, etc.) that is required of an original complaint. This document should be served by a process server. Also, if a defendant brings in a third party, the original plaintiff should amend his or her complaint to now include that third party as a named co-defendant.

*Third Party Plaintiff*

The party filing the Third Party Complaint. Thus, this party may be titled Defendant/Third Party Plaintiff in subsequent pleadings and motions.

*Third Party Defendant*

This is usually a new party to the action that has been served with a Third Party Complaint. Thus, this party may be titled Defendant/Third Party in subsequent pleadings and motions (assuming the plaintiff amends his or her complaint).

**SERVICE OF COMPLAINT**

*Service of Complaint*

A process server should be contacted to serve the Summons and Complaint. No one who has an interest in the outcome of the case (including those on the payroll of the attorney) should deliver these documents. Ask your attorney or other staff in the firm for a list of process servers used by the firm and keep it handy. After sending the documents for service, remember to monitor the status of the service on a weekly basis, including the service for each defendant individually (if there are multiple defendants).

*Service of Companies/Corporations*

If one of the defendants is a company or corporation you must determine in what state the company/corporation is incorporated. The officers or other members of the company are typically not the ones who are served. Instead, contact the respective Secretary of State's office or website to determine who is listed as the Resident Agent for the company. It is this Resident Agent who accepts service on behalf of the company.

*Affidavit of Service*

Once the process server has confirmed that service has been effectuated on a defendant, make sure to obtain the server's Affidavit of Service. This document provides details of how and when the service was made and is filed with the court (which is referred to as "perfecting service").

### *Unable to Serve*

If the process server is not able to serve a defendant either because the defendant is evading service or the last known address is not valid, review the entire case file to identify other possible addresses to provide the process server. Discuss the issue immediately with the attorney. Also discuss with your client as to whether there are other possible addresses, ask the process server to attempt to serve at different times of the day, request a DMV or Social Security Number search, and possibly even check the voter registration list at the county recorder's office. Ask the attorney if she wants to send a registered letter to the last known address.

### *Affidavit of Due Diligence*

If all attempts prove fruitless, the attorney may ask the process server to provide an Affidavit of Due Diligence. This attests to the attempts that were made by the process server to serve the defendant, including specific addresses, dates, and times that attempts were made.

### *Affidavit for Publication of Summons*

Upon receipt of the Affidavit of Due Diligence, and Affidavit of Publication of Summons should be prepared. This is the plaintiff's attorney attesting to the efforts that have been made to serve the defendant. Note that only the summons will be published, not the complaint.

### *Order for Publication of Summons*

An Order for Publication of Summons will be submitted to the judge along with a courtesy copy of the Affidavit for Publication of Summons. This process is regularly referred to as *Service by Publication*. The order authorizes the attorney to serve the defendant by publishing the summons in a generally circulated newspaper within the same county as the last known address of the defendant. (The summons must be published for at least four weeks.) Service is considered to be complete 20 days after the last date of publication. At that point, the attorney may proceed to ask for a Default Judgment against the defendant.

### *Affidavit of Publication*

Once the Order for Publication and a copy of the Summons is submitted to the legal publication, they will draft a sample of how the publication will look for the attorney's review. The sample will also have the dates the publication will run at the bottom. In accordance with NRCP (Nevada Rules of Civil Procedure), the publication runs once per week for a minimum of 4 weeks. The last day of publication is critical because 20 days after that date is when the attorney can proceed to request a Default Judgment from the court against the defendant.

*Regardless of whether the last known address has been confirmed as vacant, abandoned, destroyed, or whatever the situation is, the plaintiff must serve the defendant by regular mail to that last known address. Thus, be sure to file a Certificate of Mailing for this service by mail with the court.*

## **RESPONSIVE PLEADINGS**

A responsive pleading is a pleading that demands a response or is a response to another pleading. After service is completed, the defendant must file a responsive pleading within twenty (20) days of service. One should never assume that the defense is going to file an answer to the complaint because there is another pleading that could be filed. That is why the term “responsive pleading” should be used.

### *Answer*

The most common responsive pleading to the complaint is the answer. The answer responds to every single allegation and cause of action in the complaint. There are typically three answers given to each allegation or claim. They are Admit (A), Deny (D), or Lack Knowledge and thereby Deny (LKD).

*When the attorney files an answer to a complaint, a decision needs to be made at that time whether to include any counterclaims, cross claims, or third party complaints.*

### Filing the Answer

The filing of an answer is accompanied with the appropriate filing fee. The filing fee is a first time appearance fee. It is usually filed with the answer because that is the first time the attorney is “appearing” in the matter. Remember that whatever the first document filed is, the fee must be paid by all defendants.

### *Content of the Answer*

The answer responds to each statement in the complaint. It also contains affirmative defenses. An affirmative defense cannot be a separate pleading and must be included as part of the answer (if there are any). The attorney will decide what affirmative defenses may apply, but they are listed in NRCP 8(c). The answer will include the following elements:

- **Caption**
- **Body** (where the claims are admitted or denied)
- **Affirmative Defenses** (If there are any)
- **Ad Damnum Clause** (also called the Wherefore Clause, or Prayer for Relief, this specifies what the court is being asked to do)
- **The Subscription** (the attorney's signature, name, address, phone number)

Note that if there is a counterclaim, it may be included as part of the answer or as a separate document.

### MOTIONS

#### *Motion to Dismiss*

This document argues that the court has no jurisdiction to hear the matter. A Motion to Dismiss may be filed at any time during litigation, but if the argument is that the court does not have jurisdiction over the matter, it should be filed in lieu of an answer. This motion is governed by Rule 12(b) of the NRCPC. Again, if this is filed as the first responsive pleading, a first appearance fee must also be submitted.

#### *Calendar of the Motion to Dismiss*

There are two dates that are important to calendar upon any motion:

1. The **Hearing Date**, which is outlined in the Notice of Motion. Be aware that any time you see the word "Motion," this means a request for a judge to rule over a legal matter in a case.
2. The **Opposition Date**, which is 10 days from the date of service of the motion. Keep in mind, however, that in accordance with NRCPC, if a party is served by mail there is an additional 3 days to file an opposition to the motion.

*Note: Upon receipt of an Opposition to Motion, the party that filed the motion has the option to Reply to the Opposition to Motion within 5 days prior to the scheduled hearing.*

#### *Hearing*

On the hearing date, the attorneys appear and argue their position. If a Motion to Dismiss is granted, the case is over. If a Motion to Dismiss is denied, the defendant has 20 days from the hearing date to file a formal answer to the complaint.

### **§ 3.18 EARLY CASE CONFERENCE**

Plaintiff's counsel is responsible for arranging the Early Case Conference (ECC). The conference can be set up according to Rule 16, within 30 days after the service of the answer by the first answering defendant. However, in order to have full participation by all parties and to avoid delays in litigation, plaintiff's counsel should wait until all defendants have filed their answers. If one of the defendants files a Motion to Dismiss, Plaintiff's counsel should wait until after that hearing to arrange the Early Case Conference since it will be uncertain if that defendant will continue in the litigation or not.

Once all defendants have filed an answer, it is the responsibility of Plaintiff's counsel to contact all parties and obtain certain dates in which to hold the ECC. Select three dates from which attorneys can choose. Don't leave the date completely open. You should request to speak to the Secretary/Assistant of the opposing counsel and give him or her the dates, requesting that they contact you back with an appropriate date. However, do not rely on the opposing counsel returning your call. Instead, calendar the date and the name of the person you spoke with a follow up within a couple of days to confirm.

When the case involves multiple defendants and you have problems with one of the offices, obtain the best date for your office and with all other opposing counsel and set it for that date. Note that you only need to attempt to arrange for a convenient date out of courtesy, but it is not mandatory.

Another important aspect which needs to be considered is that the ECC is held at the Plaintiff's Counsel's office. Thus, if your office has a conference room which needs to be reserved, make sure that all arrangements are made before commencing to schedule the ECC.

Once a date and time have been set to hold the ECC, Plaintiff's counsel needs to send out the Notice of Early Case Conference. In addition to this Notice, some attorneys send out a 16.1 letter (referring to NRCP Rule 16.1) which outlines in more detail everything that counsel would like to receive at the ECC. This letter is usually not taken very seriously. However, the letter may also be produced in "pleading form" as a discovery document (Request for Discovery to be Produced at ECC) rather than a letter. This discovery document can later be taken to the Discovery Commissioner to be enforced, if that becomes necessary.

After the date has been set for the ECC, two dates need to be calendared. The first date is the Early Case Conference. The second date is a couple of days prior to the ECC at which time you may be asked to assist in the preparation of the ECC documents. A complete list of witnesses and documents need to be produced. The procedure that is often performed is pulling the entire file with any and all documents pertaining to the matter, with the attorney then placing sticky notes on the documents which will be produced along with a list of witnesses. Witnesses often include all of the parties to the action. If a client is listed as a witness, do not use the client's personal address. Instead, use the address of the attorney.

### **GUIDELINES FOR PREPARATION OF THE CASE CONFERENCE REPORT**

1. There can be no formal discovery done prior to the filing of the Case Conference Report without an Order from the Discovery Commissioner or Judge.
2. Follow the Case Conference Report form promulgated by the office of the Discovery Commissioner. Almost all reports should be joint; if one is not, a red flag is raised, indicating that one or both parties are not cooperating.
3. The Early Case Conference and the Case Conference Report are not meant to be mere procedural paperwork stops along the litigation road of a civil case. The purpose of the rules is to force counsel to make a reasonable investigation of their cases prior to filing and to prepare for and participate in an Early Case Conference after the Answer or Answers have been filed. The rules require counsel to think about their case at an early stage in the litigation, get the case settled if possible, and if further litigation is required, the case will be off to a good start because of the exchange of large amounts of information at the Early Case Conference or shortly thereafter. This takes the place of the traditional course of formal discovery.
4. In order to demonstrate compliance with the rules the section of the report dealing with proceedings prior to the filing of the report must be completed. Stipulations to extend time to hold the Early Case Conference should be noted or counsel will be exposed to sanctions for disregarding the time limitations of N.R.C.P. 16.1.

5. The brief description called for in Part II of the report requires more than a regurgitation of the allegations of the initial pleadings. The description, including that of the claims and defenses, must be specific in that some facts must be stated to give the Judge and/or Discovery Commissioner insight into the case.

The rules of pleading will no longer tolerate either frivolous claims or frivolous defenses.

6. In regard to documents provided, identify those documents produced at the Early Case Conference with as much specificity as possible, so in the event a problem comes up as to the production of a document or other item at the time of trial, reference can be made to the report for a clear determination as to what the parties produced or were responsible to produce. Such information as dates and the number of pages of a particular item should prevent any problems. Numbering the pages of large sets of documents can save time in report preparation by obviating the need for further description of the documents. Also, when documents or other items are to be produced after the conference, please note a cut-off date for the production of those items. When that is done, it will then be easy for the requesting party to seek relief from the Discovery Commissioner for materials not supplied as promised. If such documents are not listed in the report and provided to opposing counsel at the Early Case Conference or as soon thereafter as possible, such materials are in danger of being excluded at trial.
7. Section IV of the report only requires completion when one party refuses production of materials requested by another. The party refusing must state his reasons; this may often lead to a discovery dispute which would be handled by the Discovery Commissioner.
8. In addition to the names and addresses of your witnesses you must also give a brief description of the subject matter of the testimony for each one. Once again, specific facts or opinions to which each witness will testify are required and not simply a statement that witness Jones will testify as to liability and witness Smith will testify as to damages. This will help the Court have a better picture of the contemplated testimony and will help the parties narrow the issues prior to the time of trial, as well as demonstrate their preparedness pursuant to the mandate of N.R.C.P. 16.1.

9. The additional discovery plan should be just that, a plan, not a statement which says the parties will send out interrogatories and take the depositions of all witnesses and be ready in one year. There should be no need for general sets of interrogatories and broad requests for production. All early discovery should be taken care of at the Early Case Conference. The discovery plan should be tailored to the individual case, taking into consideration the amount of money at stake, the complexity of the issues, location and types of witnesses, as well as the pressing needs of your clients. It is only after thinking about, and detailing how and when you are going to schedule discovery, that you will arrive at that workable plan and a reasonable time frame in which you can complete your discovery.

Your estimate for the time required for discovery will be meaningful and your case will be placed upon a stacked calendar in accordance with the contemplated time for discovery. Always indicate the estimated time for trial of the matter, in the event the case should go that far.

10. Unresolved discovery problems should be set forth in section VII. These problems can be raised for resolution by the Discovery Commissioner by simply checking the line on the front of the Case Conference Report form which requests a dispute resolution conference. When such a conference is requested, you will receive a notice to appear from the Commissioner's office. However, if the parties feel they can work out the problem, they may not wish to request dispute resolution. If later the problem does not resolve itself, either side may set a "motion to resolve dispute" before the Commissioner. All discovery disputes are first heard by the Discovery Commissioner.
11. The section on stipulations is simply a place to write down any significant agreements the parties may reach. This is a place to note how you may have agreed to clean up the pleadings to conform to Rule 11 or to list material facts which are not in dispute. It is a place to put agreements on routine matters and demonstrate you have considered your case and are not playing discovery "games." This section of the report can be especially helpful in detailing partial agreements in divorce cases.

12. Whereas it is important to discuss settlement and to indicate the nature of settlement discussions in your Case Conference Report, refrain from putting in figures as to where the parties stand. This is not so much a concern where a jury trial has been demanded, but it would obviously cause problems in the event the case were to go to trial and the Judge were the trier of fact. If the Court is ever able to work out arrangements for a separate settlement Judge or settlement conference by the Discovery Commissioner or if the parties can agree to anyone else hearing settlement negotiations, then the nuts and bolts of "how much" would be perfectly appropriate for a report to that person. Until then, however, please keep the settlement discussion material general, yet informative.
  
13. Do not forget the Rule requires the parties to supplement, but need not repeat, the contents of prior reports after any subsequent case conference. Also, the parties must supplement the report with any new information discovered after the filing of the original report, particularly witnesses and documents.

**§ 3.19 JOINT CASE CONFERENCE REPORT**

RPT  
Attorney's Name  
Attorney's Bar Number  
Attorney's Firm Name  
Attorney's Address  
Attorney's Phone Number  
Party Attorney Represents

**DISTRICT COURT OF CLARK COUNTY  
STATE OF NEVADA**

JOHN DOE

Plaintiff,

vs.

PHILLIP DUNCAN

Defendant.

**CASE NO. 12-3-456789-1  
DEPT. NO. 5**

**JOINT CASE CONFERENCE REPORT**

DISCOVERY PLANNING/DISPUTE  
CONFERENCE REQUESTED:  
YES \_\_\_\_\_ NO \_\_\_\_\_

I.

PROCEEDINGS PRIOR TO CASE CONFERENCE REPORT

- A. DATE OF FILING OF COMPLAINT:
- B. DATE OF FILING OF ANSWER BY EACH DEFENDANT:
- C. DATE THAT EARLY CASE CONFERENCE WAS HELD AND WHO ATTENDED:

II.

A BRIEF DESCRIPTION OF THE NATURE OF THE ACTION AND EACH  
CLAIM FOR RELIEF OR DEFENSE: [16.1(c)(1)]

- A. Description of the action:
- B. Claims for relief:
- C. Defenses:

III.

LIST OF ALL DOCUMENTS, DATA COMPILATIONS AND TANGIBLE THINGS IN THE POSSESSION, CUSTODY OR CONTROL OF EACH PARTY WHICH WERE IDENTIFIED OR PROVIDED AT THE EARLY CASE CONFERENCE OR AS A RESULT THEREOF: [16.1(a)(1)(B) and 16.1(c)(4)]

A. Plaintiff:

B. Defendant:

IV.

LIST OF PERSONS IDENTIFIED BY EACH PARTY AS LIKELY TO HAVE INFORMATION DISCOVERABLE UNDER RULE 26(b), INCLUDING IMPEACHMENT OR REBUTTAL WITNESSES: [16.1(a)(1)(A) and 16.1(c)(3)]

A. Plaintiff:

B. Defendant:

V.

DISCOVERY PLAN [16.1(b)(2) and 16.1(c)(2)]

A. What changes, if any, should be made in the timing, form or requirements for disclosures under 16.1(a):

1. Plaintiff's view:

2. Defendant's view:

When disclosures under 16.1(a)(1) were made or will be made:

1. Plaintiff's disclosures: \_\_\_\_\_  
enter calendar date

2. Defendant's disclosures: \_\_\_\_\_  
enter calendar date

B. Subjects on which discovery may be needed:

1. Plaintiff's view:

2. Defendant's view:

C. Should discovery be conducted in phases or limited to or focused upon particular issues?

1. Plaintiff's view:

2. Defendant's view:

## Chapter 3: The Process of Litigation

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D. What changes, if any, should be made in limitations on discovery imposed under these rules and what, if any, other limitations should be imposed?

1. Plaintiff's view:

2. Defendant's view:

E. What, if any, other orders should be entered by court under Rule 26(c) or Rule 16(b) and (c):

1. Plaintiff's view:

2. Defendant's view:

F. Estimated time for trial:

1. Plaintiff's view: \_\_\_\_\_.  
(number of court days)

2. Defendant's view: \_\_\_\_\_.  
(number of court days)

### VI.

#### DISCOVERY AND MOTION DATES [16.1(c)(5)-(8)]

A. Dates agreed by the parties:

1. Close of discovery: \_\_\_\_\_ enter calendar date

2. Final date to file motions to amend pleadings or add parties (without a further court order): \_\_\_\_\_

enter calendar date

(Not later than 90 days before close of discovery)

3. Final dates for expert disclosures:

i. initial disclosure: \_\_\_\_\_

enter calendar date

(Not later than 90 days before discovery cut-off date)

ii. rebuttal disclosures: \_\_\_\_\_

enter calendar date

(Not later than 30 days after initial disclosure of experts)

4. Final date to file dispositive motions: \_\_\_\_\_

enter calendar date

(Not later than 30 days after discovery cut-off date)

B. In the event the parties do not agree on dates, the following section must be completed:

1. Plaintiff's suggested close of discovery: \_\_\_\_\_  
enter calendar date

Defendant's suggested close of discovery: \_\_\_\_\_  
enter calendar date

2. Final date to file motions to amend pleadings or add parties (without a further court order):

Plaintiff's suggested: \_\_\_\_\_  
enter calendar date  
(Not later than 90 days before close of discovery)

Defendant's suggested: \_\_\_\_\_  
enter calendar date  
(Not later than 90 days before close of discovery)

3. Final dates for expert disclosures:

i. Plaintiff's suggested initial disclosure: \_\_\_\_\_  
enter calendar date  
(Not later than 90 days before discovery cut-off date)

Defendant's suggested initial disclosure: \_\_\_\_\_  
enter calendar date  
(Not later than 90 days before discovery cut-off date)

ii. Plaintiff's suggested rebuttal disclosures: \_\_\_\_\_  
enter calendar date  
(Not later than 30 days after initial disclosure of experts)

Defendant's suggested rebuttal disclosures: \_\_\_\_\_  
enter calendar date  
(Not later than 30 days after initial disclosure of experts)

4. Final date to file dispositive motions:

Plaintiff's suggested: \_\_\_\_\_  
enter calendar date  
(Not later than 30 days after discovery cut-off date)

Defendant's suggested: \_\_\_\_\_  
enter calendar date  
(Not later than 30 days after discovery cut-off date)

Failure to agree on the calendar dates in this subdivision shall result in a discovery planning conference.

### Chapter 3: The Process of Litigation

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VII.  
JURY DEMAND [16.1(c)(10)]

A jury demand has been filed: \_\_\_\_\_.  
(Yes/No)

VIII.  
INITIAL DISCLOSURES/OBJECTIONS [16.1(a)(1)]

If a party objects during the Early Case Conference that initial disclosures are not appropriate in the circumstances of this case, those objections must be stated herein. The Court shall determine what disclosures, if any, are to be made and shall set the time for such disclosure.

This report is signed in accordance with rule 26(g)(1) of the Nevada Rules of Civil Procedure. Each signature constitutes a certification that to the best of the signer's knowledge, information and belief, formed after a reasonable inquiry, the disclosures made by the signer are complete and correct as of this time.

Dated: \_\_\_\_\_  
By \_\_\_\_\_

Dated: \_\_\_\_\_  
By \_\_\_\_\_

Attorney's Name  
Attorney's Bar Number  
Attorney's Firm Name  
Attorney's Address  
Attorney's Phone Number  
ATTORNEY FOR PLAINTIFF

Attorney's Name  
Attorney's Bar Number  
Attorney's Firm Name  
Attorney's Address  
Attorney's Phone Number  
ATTORNEY FOR DEFENDANT

**§ 3.20 DISCOVERY****Interrogatories**

Interrogatories, from the word interrogate, are written questions to the other party or general requests for information relevant to the litigation. The other party must respond to interrogatories under penalty of perjury. While Requests for Admissions (discussed later) attempt to paint the opposing party into a legal corner, Interrogatories, instead, paint with a very broad brush.

Any time after the suit is filed, either party may set forth Interrogatories to the opposing party. While all discovery must be relevant to the issues being tried, Interrogatories may be general and cover extensive matters, attempting to cast a broad net to obtain as many facts as possible.

*Discovery Point*

Discovery is intended to expose all relevant facts that will help the court reach a fair decision. Even if the information is damaging, the responding party must disclose it.

In the past, many jurisdictions required interrogatories and their responses to be filed with the court. Most jurisdictions have eliminated this requirement, although federal rules still generally require filing of the *certificate of mailing or receipt of copy*. After the caption and the “comes now” paragraph, many attorneys include specific instructions regarding the responses.

Although not required, these instructions may include such subjects as who responds to the interrogatories, how certain individuals are referred to, what certain terms or phrases mean and other guidance. These instructions should also state the continuing nature of the interrogatories.

*Continuing Nature of Discovery*

Even after initial discovery deadlines have passed and initial discovery responses have been completed, the responding party must inform the requesting party if additional or subsequent information becomes known. For example, if a previously unidentified witness becomes known to the responding party after discovery is complete, that party is responsible for making this information known to the other side.

Remember, interrogatories attempt to find as much information as possible, from generic background information to specific questions about the matter being litigated.

The litigation process is an adversarial process. However, there are polite considerations that should be observed for the benefit of all. One such consideration is to leave enough space between interrogatories for the opposing party to respond. In fact, in some jurisdictions this is required.

### *Limited Discovery*

Many states now have what is referred to as limited discovery. This means either that only specific questions may be posed or that the number of questions is limited. California, for instance, has replaced traditional discovery documents created in law offices with discovery forms, featuring specific questions for specific legal matters. In some states, discovery forms are supplemented with questions created by the firm, usually requiring court approval.

Many states limit interrogatories to 40 questions per party, unless the court grants more. Many courts even count subsections listed as a, b, c, etc., as individual interrogatories. In those jurisdictions, the legal secretary should rewrite or create interrogatories without subsections to maximize the amount of interrogatories available to the client.

Remember, don't reinvent the wheel. If the firm has interrogatories from a previous litigation, or if there are formbooks available to you (in the law library or online), use them.

### **Answers to Interrogatories**

When a law firm receives interrogatories from the opposing party, the legal secretary should stamp the "date received" on the document, and make note of the response deadline in the appropriate calendar or tickler system. There are three ways to respond to the interrogatories.

#### *1. The attorney responds.*

This is the most inefficient means of response and should only be used in cases involving very technical or complex matters. Otherwise, the client pays attorney rates for a service that could have been provided at legal secretary rates.

#### *2. The client responds by himself.*

This could certainly be appropriate and cost effective. Ultimately, the complexity of the litigation or the client's experience with the litigation process may be the determining factors. If this method of response is chosen, the client must be given a date by which the responses should be returned to the attorney. This date should be well in advance of the actual due date since revisions may be required.

3. *The client responds with help.*

When the interrogatories are received, the secretary should notify the clients and make an appointment to consult with them. This is the most intelligent and cost effective method of responding to discovery. If a legal secretary assists the client in responding, the time an attorney must spend reviewing, correcting and rewriting the interrogatories will be reduced.

When helping a client respond to discovery, always maintain high ethical standards. Should one ever start down the slippery slope of unethical behavior, it is difficult to regain the ethical higher ground. The secretary should also consider the fact that answers to interrogatories, or any other form of discovery, may be entered into evidence or read at trial. Since the person responding to the interrogatories does so under penalty of perjury, any discrepancy between testimony given at trial and discovery responses could place the client and attorney in jeopardy.

Unfortunately, discovery has been used by many attorneys as a means of intimidation, delay, or obstruction. Some questions are posed simply to upset, embarrass, or scare the opposing party. Other questions may ask for responses or materials of such a quantity that the responding party is overwhelmed.

When this occurs, a litigant's attorney has two choices. The attorney may wish to object to an interrogatory because it is irrelevant, inappropriate, creates a burden on the responding party, or for other reasons. If the amount of material requested is considerable or the information not readily available, the attorney may ask the court for an extension of time to respond. Of course, the attorneys may simply agree between themselves to allow additional time. As a secretary, you can support your attorney by documenting any agreement reached between attorneys.

**Example | Interrogatories**

**DISTRICT COURT OF CLARK COUNTY  
STATE OF CONFUSION**

JOHN and SALLY SMITH

Plaintiff,

vs.

JACK DOE

Defendant.

**INTERROGATORIES**

TO: (OPPOSING PARTY'S NAME)

TO: (OPPOSING COUNSEL)

Under the authority of Rule 33 of the State of Confusion Rules of Civil Procedure, Defendant, by and through his attorneys, request that Plaintiffs answer, in writing and under oath, within thirty days of receipt hereof, the interrogatories hereinafter set forth.

**DEFINITIONS**

1. "COMPLAINT" shall mean and refer to Plaintiffs' complaint originally filed on 2-25-11 in Department XVII of the Clark County District Court, Case No. 5076.
1. "PROPERTY" shall mean and refer to the real property owned by Defendant.
2. "YOU," "YOUR," "YOURS," and/or "PLAINTIFF" shall mean and refer to both Plaintiffs as well as their agents, attorneys, employees, accountants, family members, investigators, or any other person acting on their behalf.
3. "DOCUMENT" refers to any piece of paper or evidence, including, but not limited to, letters, correspondence, contracts, proposals, subcontracts, invoices, memoranda, notes, drawings, reports, photographs, microfilm, videotapes, and/or computer input documentation.

**INTERROGATORIES**

INTERROGATORY NO.1:

Describe all items YOU contend constitute defects or deficiencies on the roof at the PROPERTY.

INTERROGATORY NO. 2:

Identify all DOCUMENTS which evidence alleged defects or deficiencies at the PROPERTY.

INTERROGATORY NO. 3:

Please state all facts upon which YOU base any claim for breach of contract.

INTERROGATORY NO. 4:

Please identify all DOCUMENTS upon which YOU rely in claiming that Defendant has breached its contract with respect to the roof at the PROPERTY.

INTERROGATORY NO. 5

State all facts in support of YOUR contention in the COMPLAINT that Defendant owed a duty to YOU.

INTERROGATORY NO. 6:

State all facts in support of YOUR contention in YOUR COMPLAINT that Defendant breached his duty owed to YOU.

INTERROGATORY NO. 7:

Identify with specificity all locations where damages are claimed to have occurred.

INTERROGATORY NO. 8:

Identify all damages claimed to be the result of the alleged wrongful conduct of Defendant.

INTERROGATORY NO. 9:

For each injury identified in response to Interrogatory No. 8, please identify the total cost of the medical services.

INTERROGATORY NO. 10:

Did YOU ever make any written report or complaint to this propounding party regarding alleged injuries?

INTERROGATORY NO. 11:

If YOUR response to the preceding interrogatory was affirmative, please identify with particularity to allow the requesting party to inspect all such documents.

INTERROGATORY NO 12:

Identify each injury or damage YOU attribute to the actions or inactions of Defendant.

DATED this \_\_\_\_ day of \_\_\_\_, 20\_\_.

\_\_\_\_\_

Attorneys for Defendant,

**CERTIFICATE OF MAILING**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_ 20\_\_, I placed a true and correct copy of the foregoing INTERROGATORIES in the United States mail, postage prepaid, addressed to counsel on the attached service list:

\_\_\_\_\_

An employee of [Law Firm Here]

### **Request for Admissions**

Requests for Admissions force an opposing party to commit to a position or set of facts. Requests of this nature may prove to be more powerful than any other form of discovery at exposing the strategy, strengths, and weaknesses of the opposing party.

As the name of this discovery device implies, either party may request the other party to admit or deny certain facts. A party admitting to facts within requests for admissions responses will not be able to contest those facts later at trial.

Historically, requests for admissions have had two functions. The first function is to avoid lengthy examination of the opposing party during trial. Secondly, admissions can be used strategically to force the other party to declare his or her position about certain facts.

Imagine the advantage one party could have by asking the opposing party to admit to damaging information. Assuming the information is true, the opposing party is forced to choose between two unpleasant possibilities: Telling the truth and admitting to something that hurts that party's position, or lying- thereby committing perjury.

Many states now limit the number of requests that may be propounded. This makes it imperative that each request be relevant.

Requests for admissions may also be used to authenticate exhibits intended for use at trial.

### **Responding to Requests for Admissions**

When a law firm receives a set of Requests for Admissions from the opposing party, the legal secretary should stamp the "date received" on the document, and make note of the response deadline in the appropriate calendar or tickler system.

Responding in a timely manner is especially critical for requests for admissions because if a request is not specifically *admitted* or *denied* within the required time frame, usually 30 days, the request can be deemed admitted by the requesting party.

#### *Discovery Point*

Some states require that a responding party admit in part and deny in part requests for admissions that are only partly accurate. However, such requests are generally easy to deny.

The rule is that every request for admissions must be answered, but there are several potential options. A request for admission may be:

- *admitted*
- *denied*
- *neither admitted nor denied* due to lack of sufficient information with which to respond at this time (A specific reason must be provided for the refusal to respond.)
- *neither admitted nor denied* due to vagueness of the request
- responded to with a specific *request response omitted*

The attorney may choose not to respond to a particularly troublesome request, but this strategy may give the opposing an opportunity to have the request deemed admitted.

The final two options above may be accompanied by an objection filed with the court about the appropriateness of the request. Not responding to a request is likely to instigate a motion to compel, in which the opposing party asks the court to require a response.

When responding, don't offer additional information. Just admit or deny each request. Don't explain.

*Discovery Point*

It may be possible to object to a request because it is vague or inappropriate, but this tactic should not be overused.

Many beginning legal secretaries find it disturbing that a defendant or plaintiff may be forced to respond to potentially damaging inquiries. What about the Fifth Amendment? Remember that the Fifth Amendment applies only in criminal, not civil, matters. If answering a request places a client in potential jeopardy of being charged with a criminal offense or if the matter being litigated also involves criminal conduct, the individual cannot be forced to provide testimony, or admissions against himself or herself.

The attorney should sign the response and the respondent should sign a verification of the truth of the response for attachment to the document. Of course, a certificate of mailing should accompany the response.

**Example | Request for Admissions**

**DISTRICT COURT OF CLARK COUNTY  
STATE OF CONFUSION**

JOHN and SALLY SMITH

Plaintiff,

vs.

JACK DOE

Defendant.

**REQUEST FOR ADMISSIONS**

TO: (OPPOSING PARTY’S NAME)

TO: (OPPOSING COUNSEL)

YOU ARE requested to admit or deny the statements contained herein and serve your responses upon PLAINTIFF within thirty days of receipt of these requests, pursuant to court rules.

**DEFINITIONS**

1. “COMPLAINT” shall mean and refer to Plaintiffs’ complaint originally filed on 7-05-11 in Department XVII of the Clark County District Court, Case No. 1756.
2. “PROPERTY” shall mean and refer to the real property owned by Defendant.
3. “YOU,” “YOUR,” “YOURS,” and/or “DEFENDANT” shall mean and refer to all Defendants as well as their agents, attorneys, employees, accountants, family members, investigators, or any other person acting on their behalf.
4. “DOCUMENT” refers to any tangible piece of paper or evidence, including, but not limited to, letters, correspondence, contracts, proposals, subcontracts, invoices, memoranda, notes, drawings, reports, photographs, microfilm, videotapes, and/or computer input documentation.

**REQUEST FOR ADMISSIONS**

1. Admit or deny YOU were employed as a taxi driver on July 4, 2010.
2. Admit or deny Plaintiffs were passengers in YOUR taxi.
3. Admit or deny YOUR taxi collided with another vehicle at the intersection of Sahara Boulevard and Paradise Road in the state of Confusion.
4. Admit or deny YOU were negligent in your operation of YOUR taxi during or immediately preceding the event in question.
5. Admit or deny Plaintiffs were passengers in YOUR taxi during the aforementioned collision.

DATED this \_\_\_\_ day of \_\_\_\_ 20\_\_.

\_\_\_\_\_  
John Jones  
Attorney for Defendant  
Bar Number  
Address

**CERTIFICATE OF MAILING**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, I placed a true and correct copy of the foregoing REQUEST FOR ADMISSIONS in the U.S. mail, postage prepaid, addressed to counsel on the attached list:

\_\_\_\_\_  
An employee of [Law Firm Name]  
Your Name, Legal Secretary

**Request for Production of Documents**

Requests for Production and Inspection (most often simply referred to as Request for Production) usually involve documents, but they may also be used to inspect and take photographs of such things as cars, houses and boats. As we will discuss later, it is imperative that the legal secretary be able to distinguish between discoverable and non-discoverable material. The good news is that there are only two kinds of documents that are not discoverable. The bad news is that they are not always easy to identify.

*Discoverable Materials*

Any materials relevant to the litigation requested by the opposing party that do not violate the Fifth Amendment rights of the responding party or any other privilege or rule are discoverable.

*Non-Discoverable Materials*

Some material is not subject to disclosure to the opposing party.

**Attorney Work Product**

Materials developed in anticipation of litigation by or for the attorney are not generally discoverable. For instance, a report produced by order of the client to update the attorney on the client's financial stability would be considered work product.

**Privileged Information**

Privileged information, such as records from a doctor or hospital and private communication with a spouse or with a spiritual advisor, would not be discoverable, unless the privilege has been waived. The most common way to waive a privilege is for the information to be made "non-private" by the fault of the person who owns the privilege.

**Attorney-Client Privilege**

Private communications between the client and his or her attorney are considered privileged communications and are not discoverable. This also applies to communications with secretaries and other staff working for the attorney on behalf of clients. However, the communication must include the following elements to remain privileged:

1. *The communication must be private*
2. *The communication must remain private*
3. *The communication must fall within the scope of the secretary's duties.*

In addition to the attorney-client privilege, there are other privileges that affect the discoverability of certain documents. They include communications between a doctor and a patient, between a member of the clergy and a penitent, and other recognized and relevant privileges.

A legal secretary is often called upon either to prepare materials for inspection by the opposing party or to inspect the materials other parties have provided. When *preparing* materials, follow these rules:

1. Withhold any documents involving communication between the client and the attorney. (This includes other staff and/or secretaries.)
2. Withhold any documents prepared to assist the attorney in arguing the case. However, be aware that any document, even if privileged or work product, will become discoverable if the attorney decides to introduce that document as evidence.

Numerous documents, photographs, reports, and other materials may be obtained through discovery. Requests for production are the mechanism by which such materials are obtained. This mechanism does not require leave of court or a subpoena. Samples of materials to consider when creating requests for production include:

- *photographs*
- *designs or drawings*
- *contracts*
- *corporate records*
- *income tax records*
- *company reports*

Some attorneys use a *subpoena duces tecum* in much the same manner as requests for production. A *subpoena duces tecum* demands the appearance of an individual at a specific time and place and demands that he or she bring specific documents with him or her. A *subpoena duces tecum* is often used for a *witness* who is not a party to the action. There are, however, no rules that prohibit the *subpoena duces tecum* from being issued upon an opposing party. At worst, the party may choose to challenge the validity of the information sought.

### **Responding to Requests for Production**

As with other discovery documents, when requests for production are received, they should be “date-stamped” with the response date noted in the appropriate calendars and tickler systems.

Legal secretaries are sometimes asked to help prepare documents in response to requests for production, or to review documents provided by another party in response to requests. These tasks are not often mentioned among the most important duties of a secretary. Make no mistake: Preparing and reviewing such documents is one of the most critical tasks in which a secretary will engage.

The secretaries may need to communicate with the client to obtain specifically requested materials. When the secretary receives these documents from the client, he or she should make sure the documents are complete and that they accurately respond to the requests.

Privileged or work products documents should be removed from the materials before they are presented to the other side. The requesting party, however, must be alerted that the withheld documents exist but will not be produced and why.

The following is an example of a common request:

21. Produce any and all documents that evaluate compliance by the defendant with the terms of the \_\_\_\_, 20\_\_ contract which is in dispute in this litigation.

The legal secretary reviewing the documents provided by the client discovers that one of the documents is a letter from the client to the attorney. This document would not be considered discoverable, but the existence of the letter must be disclosed to the opposing party. Some attorneys feel that simply disclosing the fact that some privileged material is being withheld is sufficient notice. Other attorneys consider it more appropriate to be specific, and in fact, some courts require this. The following represents one way to deal with the matter:

1. The defendant hereby responds to plaintiff’s request for production and encloses all relevant documents and information requested, with the following exceptions:
2. The following documents are privileged by means of the attorney-client privilege and, therefore, are not discoverable:

### Chapter 3: The Process of Litigation

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- a. August 3, 2010 letter from defendant Carl James to his attorney Judith Faye re: July 16, 2009 contract.

The requesting party may argue that, since the letter precedes litigation, it is not privileged. This would normally be a weak argument. If the document is deemed critical enough, the requesting party can file a motion to compel discovery; the court, after reviewing the document privately, will determine whether it is privileged. A similar response would be provided for work product documents as well:

3. The following documents are privileged by means of the attorney-client privilege, and therefore are not discoverable:
  - a. Notes from August 11 meeting with legal secretary

Finally, keep an accurate and exact copy of the documents provided to the requesting party so that months from now when the trial is about to begin, the attorney will have no doubts about what has been disclosed to the opposing party.

These considerations regarding work product and privileged documents require even more attention when vast amounts of materials are involved. Allowing even one out of thousands of documents to fall negligently into the hands of the opposing party could constitute malpractice.

#### Example | Request for Production

**DISTRICT COURT OF CLARK COUNTY  
STATE OF CONFUSION**

JOHN and SALLY SMITH

Plaintiff,

vs.

JACK DOE

Defendant.

**REQUEST FOR PRODUCTION**

YOU are requested to produce the documents requested herein and serve your responses upon PLAINTIFF within thirty days of receipt of these requests, pursuant to court rules.

**REQUESTS**

1. Produce tax returns for the past three (3) years.
2. Produce any documents or other physical item you plan to enter as evidence at trial.
3. Produce curriculum vitae for any expert witnesses you plan to call to testify at trial.

DATED this \_\_\_\_ day of \_\_\_\_ 20\_\_.

\_\_\_\_\_  
Attorney for Defendant

**CERTIFICATE OF MAILING**

I hereby certify that on this day \_\_\_\_\_ of \_\_\_\_\_ 20\_\_, I placed a true and correct copy of the foregoing REQUEST FOR PRODUCTION in the U.S. mail, postage prepaid, addressed to counsel on the attached list:

\_\_\_\_\_  
John Carroll, Legal Secretary

