Bench and Media Guide to Interaction

Overview of the Civil Court Process

Most lawsuits between individuals, corporations or government agencies seek to enforce individual rights or duties through money damages or other relief. They are generally referred to as “civil cases.” They include a broad range of legal subjects as diverse as personal injury, breach of contract, divorce proceedings and will contests. They also include challenges by individuals or corporations to various government actions and demands for a variety of services.

On any given day, the following types of civil cases are filed in Indiana courthouses:

- A suit by a passenger in a car involved in an automobile accident seeking damages from the driver of the car that hit him;
- A suit by a corporation against a former employee seeking an order forbidding that employee from going to work for a competitor;
- A suit by a shop owner against a customer seeking damages for nonpayment of an account;
- A suit by a landlord against a tenant seeking damages for nonpayment of rent and an order requiring that the tenant be evicted from the property;
- A suit by a woman against her husband seeking a divorce and an order that the marital property be divided and that she receive custody of the children and child support;
- A suit by welfare recipients challenging a reduction in the amount of money they receive under a government program;
- A suit by a government agency against the operator of a bingo game seeking an order shutting down the operation

Although the subject matter differs, all these actions proceed in much the same way, under most of the same rules. The suits seeking monetary relief generally can be tried to juries and those seeking orders generally are heard only by a judge. Some of the cases, such as the corporation’s suit involving the enforcement of a non-compete agreement and the landlord’s suit seeking eviction, are generally concluded quickly. Others can take months or years. And relatively few will actually go to trial as the vast majority of lawsuits are resolved before trial, either because of a defect in the claim or because the case is settled.

What follows is a description of the stages of a typical civil case:

Initial Pleadings

Complaint or Petition: Almost all civil lawsuits begin with the filing of a Complaint or Petition with the court. A Complaint or Petition sets out the allegations that the person filing the documents believes entitles him to relief, states what relief is sought and often identifies the legal theory. Except in very rare instances, these documents are public records available for view at the courthouse, either in the clerk’s office or the judge’s chambers. Increasingly, many court documents are available on-line. At this stage, the allegations have not been proved and are almost always a one-sided rendition. Complaints and Petitions are accompanied by a summons that contains the names, addresses and telephone numbers of the parties and attorneys. The person or organization who files a Complaint or Petition becomes known as the Plaintiff or Petitioner.

Early Motions: When immediate relief isnecessary because of time constraints, the Complaint or Petition may be accompanied by a Motion requesting a Temporary Restraining Order. The purpose of this motion is to maintain the status quo for a short period of time until a hearing can be conducted. Although such motions are referred to as “extraordinary,” they are often granted, usually for 10 days without a hearing, to allow the court and parties to determine if the matter before the court should be expedited.

Responsive Pleadings: The person or entity sued, known as the Defendant or Respondent, has about three weeks to file a response or seek an extension of time. The response can take several forms: An Answer in which the party either admits or denies the allegations. Responsive Motions or Pleadings (see below) in which the party sets out defenses or makes claims, or in which the party asks the court to act. Claims by the Defendant against the Plaintiff are called Counterclaims. Claims by the Defendant against another Defendant are called Cross-Claims. Both Counterclaims and Cross-Claims resemble Complaints as they contain

allegations and seek relief, and both require responsive pleadings of their own. These documents are public documents.

Preliminary Motions: Responsive Pleadings may be accompanied by or take the form of Preliminary Motions. Some of them include:

- *Motion for Change of Venue* which usually contests the place in which the suit was filed on the grounds that the trial rules require the action be filed in a different county or court;
- *Motion for Change of Judge* which requests that a suit be assigned to a different judge. Indiana permits such a change without the parties or lawyers giving a reason.
- *Motion to Strike* which requests that portions of the Complaint or Petition be stricken or removed as "scandalous" or "impertinent." While relatively uncommon, these motions contest allegations that could be defamatory if they were contained in something other than a document filed in court. (Indiana generally shields statements made before the court from defamation actions.)
- *Motions to Dismiss* which can end the suit either because the action was untimely or because, even if the allegations are correct, no legal relief is warranted. Motions to dismiss are accompanied by briefs setting out the legal arguments.
- *Petition for Removal* which states a federal court as opposed to state court should hear the case because the subject matter is one of federal law or because the defendants are all from another state.

Such motions are public record and are generally ruled upon by the court without a public hearing. Except for Motions to Dismiss, the case can proceed even if the motion is granted.

Pre-Trial Practice

After the preliminary issues are sorted out, the court establishes deadlines and sets the matter for trial. The court may also order the parties to mediation, formally known as Alternative Dispute Resolution, to see if the case can be resolved short of trial. Except in cases filed in Small Claims Court, the actual trial date is often set more than a year after the case is filed.

Discovery

During this time period, the parties through their lawyers attempt to identify and gather the information they will need to prove or counter the allegations at trial. Much of the information is gathered through informal interviews and searches of documents, much like reporters do when researching articles. The formal part of the process is known as "discovery" when each side is required to disclose information it has to the other side. The results of both types of discovery can be used as evidence.

Some of the tools of discovery are written and known as "interrogatories" or "request for production of documents." The results of such inquiries are not divulged publicly until trial or pre-trial motions. These inquiries usually proceed without involving the court unless a dispute arises.

Depositions, in which potential witnesses are required to respond to oral questions under oath, are another discovery tool. Attorneys for both sides may ask questions and the responses are recorded and then transcribed by a stenographer. Depositions are not public documents, but they may be read at trial (and become public documents) if the person deposed is not available to testify. Depositions also may be submitted in written form before trial in support of pre-trial motions. Because they are taken under oath, portions of depositions also are used at trial to "impeach" a witness who says something contradictory while on the witness stand. In recent years videotaped depositions, especially of expert witnesses or persons who are elderly or ill, have replaced live testimony in some jury trials.

Post-Discovery Resolutions

Once discovery is completed and occasionally while it is ongoing, most civil suits are resolved before trial either through settlement or on a dispositive motion called a "Motion for Summary Judgment."

Settlement

At any time during a civil proceeding, the parties through their lawyers can enter into an agreement that settles or resolves the dispute. Most of the time, the parties are able to work out a compromise, enter into a written agreement and simply notify the court in writing that the case has been resolved and should be dismissed. Such agreements are rarely filed with the courts and do not become public records unless one of the parties is subject to the Public Records Act. In such a case, the settlement document may be obtained through a public records request to the government party.

Many cases are settled through mediation where the parties and their attorneys meet with a trained mediator who helps them work out a settlement. Because mediators are impartial, they are often able to help the lawyers and their clients see the claims and risks more objectively. Mediations also result in private agreements and voluntary dismissals.

One of the prime times for cases to settle is after much of the discovery has been finished. This is because each side has a better idea of the strengths and weaknesses of the case.

Motion for Summary Judgment

Another method of pre-trial resolution is a summary judgment motion. Unlike a motion to dismiss, this motion does not assume the allegations are true. Motions for Summary Judgment test the evidence and legal theories to see if there are genuine issues of material fact that must be decided by a jury or judicial fact-finder. If such issues do not exist, then the court can decide on the issue without seeing live witnesses or conducting an evidentiary hearing.

Such motions are filed with the court and are accompanied by written documents such as affidavits, portions of interrogatories, excerpts from depositions, and briefs or memoranda setting out the legal theories. After reviewing the filings, which are usually public documents, the judge can grant the motion because there is no dispute over the key facts, or the judge can deny the motion because a trial is necessary to resolve disputed facts.

Summary judgment motions also can narrow the issues when some issues are decided but others go to trial.

Trial

When cases are not resolved at earlier stages, they proceed to trial. Trials can either be “bench trials” in which the judge decides both fact and law or “jury trials” in which the judge presides and determines the law but the jury makes most of the factual determinations. In both types of trials, however, the purpose is the same -- to afford a fair and impartial hearing to both sides. Except in very narrow circumstances, trials are open to the public.

Certain aspects of the trial are similar whether a case is tried to a jury or tried to the bench. For example, in both the attorneys usually present an “Opening Statement” which is a roadmap of what the party intends to prove. The party with the burden of proof, usually the Plaintiff, goes first and such statements are generally short. Then evidence is presented, both through live witnesses who are questioned by each side, and through documents obtained during discovery. At the end of the trial, attorneys for each side make closing arguments, commenting on the exhibits and testimony and a decision is made by either the judge or jury. In both types of proceedings, defendants can move at the end of the plaintiff’s case for a ruling based on the theory that the plaintiff failed to prove its case. Similarly, during both types of trial , the lawyers may object to certain questions, answers or exhibits based on rules of evidence and the judge then decides whether the objection shall be sustained, in which case the evidence is excluded, or overruled, in which case the evidence is admitted.

Jury Trial

Prior to the start of a civil jury trial, lawyers often file “motions in limine” which request that certain potential evidence be excluded because it is considered unduly prejudicial, misleading or likely to confuse a jury. When evidence has been preliminarily ruled inadmissible because of a motion in limine, a party may inform the court out of the presence of the jury that it wishes to introduce the covered evidence. At this time the court can reverse its ruling based on the motion in limine and allow the introduction of the evidence or the court can stand by its original ruling. If the court stands by the original order prohibiting the evidence, the party that wants to use the evidence can make an offer to prove. The offer to prove is done on the record outside the presence of the

jury and is meant to preserve the record for appeal.

Jury trials in Indiana begin with the selection of the jury chosen from a pool of citizens whose names were selected at random from such sources as voter and motor vehicle records. Potential jurors are ordered to appear at the courthouse and the attorneys and their clients are provided with general information about them such as names, ages and place of employment and profession. By court rule, this information is not available to the public. Typically the judge and attorneys describe the nature of the case and ask questions to determine the suitability of the jurors. Jurors who have personal knowledge of the case or the parties or exhibit bias may be challenged “for cause” and excused from jury duty. In addition, each party can make up to three “peremptory challenges” that allows them to eliminate prospective jurors without cause. Once a full jury and alternates are selected, the jurors will be administered an oath and the trial may proceed.

Once the jury is selected, the judge presents preliminary instructions explaining the order of the trial and what is expected of jurors. The next steps are opening statements, presentation of evidence and closing arguments as described above all in open court. One relatively new development in Indiana jury trials is that jurors can submit written questions to the judge to be directed to the various witnesses and those questions will often be asked. At times during a trial a dispute regarding law or legal procedure may arise where the judge calls the attorneys to the bench to make arguments or sends the jury out of the courtroom while he listens to the legal argument and rules on the matter in question. Except for these “sidebar” conferences, what goes on in a courtroom during a civil trial is generally public.

At the close of evidence but before closing arguments, the judge, in consultation with the attorneys, will decide on which jury instructions to issue. Those instructions will set out the issues to be decided and will define legal terms. Once the judge settles on the instructions, he will provide copies of them to the lawyers who often use them to craft their closing arguments summarizing the evidence. If the lawyer comments improperly, the other side may object and the judge will instruct the jury to disregard the improper remarks.

The judge will then instruct the jury as to the possible verdicts that can be returned, depending on their factual findings. Typically they will also be advised that they are to determine the facts and the credibility of the witnesses and that their verdict should be based on the preponderance of evidence. Jurors are then taken to the jury room to deliberate. Jurors are allowed to take jury books with them that contain the instructions, list of witnesses and copies of the exhibits used at trial. Jury deliberations are confidential. During deliberations, the jury can submit written questions, which the judge, after consultation with the attorneys, may answer or the jury can request that certain evidence be read back to them. If the jury has trouble reaching a verdict, the Jury Rules allow the judge, after consulting with counsel, to provide the jury with special assistance. Although the deliberations are confidential, the interaction with the court during deliberations is public.

Once the jury reaches a unanimous decision, the jurors inform the court and return to the courtroom to deliver the verdict. The judge then reads the verdict to the parties.. If the jury cannot come to a decision after a reasonable time for deliberations, the judge will declare a mistrial, discharge the jury and direct that a new trial be held before another jury.

Bench Trials

Obviously, when a case is tried to a judge instead of a jury, there is no jury selection or jury instructions as the judge determines both the law and the facts. It is not uncommon at the end of a bench trial for the lawyers to request an opportunity to submit post-hearing briefs which are public records for the judge to use in deciding the case. Although in some relatively simple cases, judges will announce the decision immediately, it is far more likely that the judge will decide the case at a later date.

Post-Trial Matters

After a decision is rendered, one side or the other may make various motions attempting to have the decision or verdict set aside or modified. These motions are made in writing and are a matter of public record. They are generally made within a month of the trial verdict. A common motion after a jury trial is a “Motion for Judgment Notwithstanding the Verdict” which argues that there was insufficient evidence on a key issue to have allowed the jury to decide. Other motions may point to legal defects in the instructions or evidentiary rulings.

Whether post-trial motions have been filed or not, the losing party may file an appeal within 30 days of the entry

of judgment challenging errors of law or evidentiary rulings. Appellate courts, however, do not hear or re-weigh evidence but make their decisions based on the trial record.

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Division of State Court Administration