

# NH Legal Perspective: What to expect in civil litigation

By COURTNEY HERZ Of Sheehan Phinney  
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By COURTNEY HERZ  
of  
**SHEEHAN PHINNEY**

We all know what a trial looks like in the movies. But how realistic are those portrayals? What does the process look like in the real world in the weeks, months, and even years before the litigants and their lawyers appear before a judge or jury for a trial?

While every case and every court is different, this article will provide a general overview of the “life cycle” of a typical civil case in litigation (criminal matters proceed on a different timeline due to – among other things – an accused’s constitutional right to a speedy trial).

A civil litigation typically begins with the filing of a complaint in court. The complaint is a document that details both the factual allegations (what the plaintiff contends happened) and the causes of action (the statutes or common law doctrines that the plaintiff believes the defendant has violated).

In preparing and filing a complaint, a plaintiff’s attorney must consider many issues, including timing (such as any applicable statutes of limitations), court selection (including whether the claims belong in state or federal court), and whether the plaintiff can – or should – request a jury trial.

After the complaint is filed and served on the defendant, the defendant typically will file a document called an answer. In an answer, the defendant responds to each allegation of the complaint and, if appropriate, alleges counterclaims – causes of action against the plaintiff. Again, the lawyer has many considerations at this stage, including whether to assert counterclaims and whether – before even filing an answer – the plaintiff’s complaint would be vulnerable to a motion to dismiss.

After these initial pleadings (including a plaintiff’s answer to any counterclaims) are on file, most cases proceed into a phase of “discovery,” which frequently lasts months, and typically consists of two (overlapping) phases: the exchange of written documents and the taking of depositions. During written discovery, litigants make formal requests of their opposing parties (and, sometimes, nonparties to the litigation) to answer written questions under oath and to produce documents and other tangible evidence related to the case.

The scope of discovery is broad and typically extends to anything that might be “reasonably calculated to lead to the discovery of admissible evidence.” In recent years, written discovery has evolved to largely consist of the analysis of email and other electronic data.

The proliferation of electronic data has introduced many new elements into a lawyer’s handling of a civil litigation, requiring the attorney to consider things such as proportionality (are broad discovery requests – leading to the expense of managing and reviewing vast quantities of electronic data – justified in light of the potential recovery in the case?) and – particularly in cases involving international email users – laws governing data privacy.

During discovery, attorneys typically also take depositions, which are formal question-and-answer sessions in which witnesses must answer the attorney’s questions about the case under oath. At this stage of litigation, attorneys must both carefully identify which witnesses to depose and plan the questioning to illuminate the key issues in the case.

Depending on the facts and allegations of the case, attorneys may determine that they need to retain expert witnesses to provide testimony that will help the judge or jury understand issues which the average layperson would not know. Similarly, counsel must always be vigilant to identify cases that would be appropriate for a motion to dismiss or for summary judgment. In such a motion, a litigant attempts to persuade the judge to determine that a trial is not necessary to decide the case and therefore, to direct a judgment in their favor.

At any stage of the proceedings, the parties can settle. In fact, the vast majority of cases that have not yet been resolved in some other fashion settle at some point before trial. Sometimes this is done in a formal mediation in which the parties and lawyers gather with an impartial mediator for the purpose of trying to resolve the case. Sometimes, settlements are reached through negotiations between the lawyers – or even by the parties themselves. Attorneys should be vigilant in identifying opportunities to resolve a case on favorable terms for their clients.

Finally, many months, and sometimes years, after a complaint was filed, if a case hasn't been resolved on a motion to dismiss or for summary judgment and hasn't reached a negotiated settlement, a civil case will proceed to trial. After hearing the testimony of witnesses and receiving the written and other evidence submitted by the parties, the outcome of a trial will be determined by a judge or a jury – although almost never in as dramatic fashion as it occurs in movies!

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Courtney Herz is a litigation attorney and shareholder at Sheehan Phinney Bass + Green PA.