

The following definitions and explanations will help you to understand better the documents and processes referred to on the Flow Chart, which is essentially an outline of the paths the typical lawsuit will follow.

A. **SUMMONS:** A Writ is issued either by mail or in person via a Sheriff's or Bailiff's Office notifying the person or company named as a defendant that a suit has been filed against them in the court from which the Summons was issued. It is accompanied by a copy of the Complaint.

B. **COMPLAINT:** The first pleading on the part of the Plaintiff in a civil action. There are several forms a complaint may take (and it may be called a Petition) but each represents the initial pleading in a lawsuit. Each complaint shall contain or specify:

1. Name of court in which action is brought thereby establishing proper jurisdiction and venue
2. Title of the cause of action
3. money due on open account
4. money due on Promissory Note
5. money due on contract
6. repossession or replevin of merchandise in which a secured interest was perfected
7. foreclosure on real estate
8. Correct legal name of Plaintiff and Defendant
  - A. corporation (division or subsidiary)
  - B. partnership
  - C. limited partnership
  - D. general partnership
  - E. proprietor
  - F. Concise statement of the facts constituting a cause of action with each material allegation distinctly numbered
  - G. Demand (often called prayer) for the relief sought by Plaintiff

Once served with the Summons and Complaint, the Defendant will have a certain number of days to respond officially through the court. Often an attorney will file a Motion of a continuance in order to obtain additional time to review his client's position or simply to stall in hopes of working out a resolution to the suit without further pleadings being filed. In some areas or states an attorney can simply put in an "Appearance" to prevent a Default Judgment. If there is no resolution of the case at this early stage of the litigation then an Answer must be filed by the Defendant.

C. **ANSWER:** The pleading by which the Defendant responds to the allegations of the Plaintiff as stated in the Complaint. In many instances it is a complete denial of the allegations of the complaint. However, an Answer can also take the form of a partial denial and partial admission of the allegations of the Complaint, and allege a defense which the Defendant believes should prevent recovery on the Plaintiff's complaint. The answer may also include one or more of the following:

1. **Counterclaim:** Defendant alleges certain damages sustained due to quality of Plaintiff's product, late delivery, misrepresentation of salesmen, etc. (Reply must be filed by Plaintiff).
2. **Third party Complaint:** Defendant alleges another party is somehow responsible for a portion or all of money due, and demands that a Judgment be rendered against this party, instead of Defendant.

Euler Hermes UMA  
600 South 7<sup>th</sup> Street  
P.O. Box 1672  
Louisville, KY 40201-1672  
Tel 502-583-3600 or 800-237-9386  
Fax 502-584-0443

You must remember that the defendant is considered innocent of all charges or allegations of Complaint of Plaintiff until Plaintiff **proves** otherwise. The burden of proof is on the Plaintiff. In view of this, once an Answer is filed, the attorney for the Plaintiff with the cooperation of the client and guidance of UMA must work to overcome the defenses raised and convince a judge and/or jury that the Plaintiff's case is correct and a Judgment should be awarded. This is done through pre-trial discovery.

**D. Discovery:** Process engaged in by either Plaintiff and/or Defendant by which the initiating party seeks to cause the other party to disclose certain facts or documents which are in his exclusive knowledge or possession, and are necessary to the party seeking the discovery as part of a cause of action. Discovery most pertinent to civil litigation takes place after the Summons and Complaint have been served, and the Defendant has filed an Answer. This is called pre-trial discovery because it is engaged in prior to trial. In many cases it can alleviate a trial altogether and this is a primary goal. The most common forms are:

1. **Interrogatories:** A list of questions which must be answered by the Defendant within a certain time frame. Their purpose is to obtain information from the Defendant through which the defense as stated in the Answer is expanded upon. For instance, an Answer may deny all allegations of a Complaint (general denial) and nothing more. Interrogatories are helpful in forcing the Defendant to be as specific as to any actual defenses.
2. **Request for Admissions:** A series of statements, not questions, drafted and sent to the Defendant to be either admitted or denied. They are drafted in such a fashion so as to more clearly focus on a dispute. In many instances, however, they can undermine a defense, through the Defendant admitting or denying statements contradictory to the Answer.
3. **Request for Production of Documents:** written request of the Defendant to produce for the record copies, or originals for copying, of pertinent letters, contracts, checks, etc., which the Defendant has in his possession and which are being relied upon as defense to the allegations of the Complaint, either in part or in whole. For instance, the Defendant may say that an account has been paid or that a credit was given which offsets the account in full or part. Request for Production of Documents would be used to obtain a copy of cancelled check through which account was paid, and/or copy of credit memo or authorization.
4. **Depositions:** Testimony of key parties in lawsuit which is recorded manually or automatically by a Court Reporter. A transcript is usually made and entered into the record then it can be used at trial for cross-examination. Often a person will to one set of facts during a deposition and another when on a witness stand in a courtroom. Such inconsistencies can prove helpful.

Quite often pre-trial conferences are held while a suit is slowly making its way through the court system. Ostensibly their purpose is to allow the judge to sit down with the respective attorney's and assess the issues of fact or law involved, and determine what discovery has been completed, if any, in order to allow the judge to better plan his docket. Available dates for trial may be discussed. In reality the majority of the conferences are scheduled by the court in an effort to hammer out a settlement agreeable to all parties so the judge doesn't have to worry about an eventual trial. Depending on the disposition of the judge involved, he may do some gentle arm-twisting or flat out make life difficult for all if a settlement isn't reached.

There are various Sanctions which may be entered by the judge against either party, Defendant or Plaintiff, which does not cooperate in the pre-trial discovery phase of a lawsuit. Lack of cooperation is evidenced by a failure or refusal to answer the Interrogatories or respond to the Requests within a reasonable time.

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These Sanctions are usually assessed as a last resort and are preceded by the filing of a Motion to Compel through which the filing party requests that the judge order the other party in the litigation to answer or respond within a certain time frame. These motions are invariably filed by the Plaintiff. The judge usually gives the Defendant 30 days to cooperate. If Defendant doesn't, then Plaintiff's attorney goes back to court and advises the judge of this through a Motion asking for Sanctions which can consist of assessing an attorney fee award against the Defendant to striking the Answer and entering a Judgment.

If all pleadings have been filed and the appropriate pre-trial discovery completed along with the pre-trial conferences then the next step is to look toward obtaining a Judgment.

E. **Judgment:** The decision of the court as rendered by either a judge or jury which states the relief due the Plaintiff and/or Defendant. This is normally an order stating the amount of money due. Judgments can take many forms, depending upon the circumstances of a particular lawsuit. The most common forms encountered are:

1. **Default:** Type of Judgment entered in those lawsuits in which Defendant has been served with the Summons and Complaint, but failed to respond in any fashion within the prescribed time frame. No Answer filed.
2. **Summary:** Type of Judgment obtained after a Defendant has been served with the Summons and Complaint, and filed an Answer. However, through the pretrial discovery the defense of the Defendant has been shown to have no merit, and it has also been demonstrated to the court that there exists no material issues of fact to be resolved at a subsequent trial. Plaintiff asks for a Summary Judgment so that the court's time will not be wasted further and that justice can be rendered.
3. **Confession:** This is also called Consent, Agreed or Stipulated Judgment. Such a Judgment is rendered when the Defendant has been served with the Summons and Complaint and filed an Answer. However, the Defendant later capitulates, since there is no genuine dispute, and confesses or admits to the allegations of the Complaint. A Judgment is subsequently rendered with no further litigation. Judgments of this type often contain certain agreements or stipulations such as the following:
  - A. Judgment is for less than full amount owed
  - B. Judgment is paid through installments
  - C. Plaintiff will withhold execution for a certain period of time
  - D. d. Perhaps merchandise will be returned for credit and balance of Judgment paid in cash
  - E. e. Any reasonable combination of the above

Judgment rendered by judge or jury after trial. This type of Judgment could also include variations of (3).

Obtaining a Judgment is only part of the process of collecting the client's money. Admittedly, it's a very big part since with it, the client's attorney can engage in certain activities which he otherwise would be prohibited from doing. The post-Judgment steps followed primarily take the form of execution to enforce the Judgment, i.e. to collect it.

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F. **Execution:** An order of the court directing the Sheriff or other designated officer of the court to seize the Defendant's property (personal and/or real) to satisfy a Judgment. If property is located then a levy follows. A levy is the process by which the court officer acquires possession and control over the property. These processes, execution and levy, are commonly spoken of as if they were one and treated as such. Common forms encountered are:

1. Garnishment or attachment of money in the form of bank accounts, insurance proceeds, accounts receivable, and wages.
2. Attachment of physical assets such as vehicles, inventory, or equipment, boats, airplanes, etc.
3. Foreclosure on real estate.

Many executions are returned unsatisfied to the court by the court officer:

1. Perhaps the Sheriff didn't try very hard
2. Liens of secured creditor covering all assets
3. Defendant business is now out of business
4. Property found is of no economic value due to age, condition, etc.
5. Any combination of the above
6. No bank accounts

If all collection avenues prove unsuccessful then perhaps the information needed to collect a Judgment can be obtained through an oral examination of the Defendant. Sometimes information critical to the collection of a Judgment can be obtained.

The individual to be questioned is usually given at least one opportunity to appear voluntarily. If he doesn't cooperate in this regard the next attempt to obtain his testimony is through directing a Summons to him demanding him to appear on a certain date/time at a specific place in order to answer questions as to the liabilities and assets of the debtor company or himself if the Judgment is against him personally. This examination differs from a deposition in several respects.

1. Takes place after Judgment as been entered
2. Less formal
3. No Court Reporter present, except on some jurisdictions where it is required
4. No transcript made

Even if the information obtained does not result in the collection of the Judgment, it will in most instances conclusively prove that the Judgment is uncollectible.

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