

## Glossary of Terms

**Affidavit** - A voluntary, written, or printed declaration of facts, confirmed by oath of the party making it before a person with authority to administer the oath.

**Affiant** - The person who makes and subscribes an affidavit.

**Agreement** - Mutual consent.

**Allegation** - A statement of the issues in a written document (a pleading) which a person is prepared to prove in court.

**Alternative dispute resolution** - Settling a dispute without a full, formal trial. Methods include mediation, conciliation, arbitration, and settlement, among others.

**American Bar Association** - A national association of lawyers whose primary purpose is improvement of lawyers and the administration of justice.

**Answer** - A formal, written statement by the defendant in a lawsuit which answers each allegation contained in the complaint.

**Answers to Interrogatories** - A formal written statement by a party to a lawsuit which answers each question or interrogatory propounded by the other party. These answers must be acknowledged before a notary public or other person authorized to take acknowledgments.

**Appeal** - A proceeding brought to a higher court to review a lower court decision.

**Appearance** - The act of coming into court as a party to a suit either in person or through an attorney.

**Arbitration** - The hearing of a dispute by an impartial third person or persons (chosen by the parties), whose award the parties agree to accept.

**Attorney of record** - The principal attorney in a lawsuit, who signs all formal documents relating to the suit.

**Brief** - A written argument by counsel arguing a case, which contains a summary of the facts of the case, pertinent laws, and an argument of how the law applies to the fact situation. Also called a memorandum of law.

**Burden of proof** - In the law of evidence, the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a lawsuit. The responsibility of proving a point (the burden of proof). It deals with which side must establish a point or points. (See standard of proof.)

**Caption** - Heading or introductory party of a pleading.

**Case law** -Law established by previous decisions of appellate courts, particularly the United States Supreme Court.

**Cause of action** -The fact or facts which give a person a right to relief in court.

**Chambers** -A judge's private office. A hearing in chambers takes place in the judge's office outside of the presence of the jury and the public.

**Change of venue** -Moving a lawsuit or criminal trial to another place for trial. (See venue.)

**Civil** -Relating to private rights and remedies sought by civil actions as contrasted with criminal proceedings.

**Civil action** -An action brought to enforce or protect private rights.

**Civil procedure** -The rules and process by which a civil case is tried and appealed, including the preparations for trial, the rules of evidence and trial conduct, and the procedure for pursuing appeals.

**Clear and convincing evidence** -Standard of proof commonly used in civil lawsuits and in regulatory agency cases. It governs the amount of proof that must be offered in order for the plaintiff to win the case.

**Clerk of Court** -Administrator or chief clerical officer of the court.

**Closing argument** -The closing statement, by counsel, to the trier of facts after all parties have concluded their presentation of evidence.

**Code of Professional** -The rules of conduct that govern the legal profession Responsibility .

**Complainant** -The party who complains or sues; one who applies to the court for legal redress. (See also plaintiff.)

**Complaint** -1. The legal document that usually begins a civil lawsuit. It states the facts and identifies the action the court is asked to take. 2. Formal written charge that a person has committed a criminal offense.

**Contempt of court** -Willful disobedience of a judge's command or of an official court order.

**Continuance** -Postponement of a legal proceeding to a later date.

**Contract** -An agreement between two or more persons which creates an obligation to do or not to do a particular thing. A legally enforceable agreement between two or more competent parties made either orally or in writing.

**Counsel** -A legal adviser; a term used to refer to lawyers in a case.

**Counterclaim** -A claim made by the defendant in a civil lawsuit against the plaintiff. In essence, a counter lawsuit within a lawsuit.

**Court** -A body in government to which the administration of justice is delegated.

**Cross-examination**- The questioning of a witness produced by the other side.

**Decree** - An order of the court. A final decree is one that fully and finally disposes of the litigation.

**Default** - Failure of the defendant to appear and answer the summons and complaint.

**Default judgment** - A judgment entered against a party who fails to appear in court or respond to the charges.

**Defendant** - The person defending or denying a suit.

**Deposition** - Testimony of a witness or a party taken under oath outside the courtroom, the transcript of which becomes a part of the court's file.

**Direct examination** - The first questioning of witnesses by the party on whose behalf they are called.

**Discovery** - The name given pretrial devices for obtaining facts and information about the case.

**Dismissal** - The termination of a lawsuit. (See with prejudice and without prejudice.)

**Dissolution** - The termination; process of dissolving or winding up something.

**Docket** - An abstract or listing of all pleadings filed in a case; the book containing such entries; trial docket is a list of or calendar of cases to be tried in a certain term.

**Entry**- A statement of conclusion reached by the court and placed in the court record.

**Equity**- Justice administered according to fairness; the spirit or habit of fairness in dealing with other persons.

**Escrow**- Money or a written instrument such as a deed that, by agreement between two parties, is held by a neutral third party (held in escrow) until all conditions of the agreement are met.

**Estate**- A person's property.

**Ethics**- Of or relating to moral action and conduct; professionally right; conforming to professional standards.

**Evidence-** Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case for one side or the other.

**Execute-** To complete; to sign; to carry out according to its terms.

**Exhibit** -A document or other item introduced as evidence during a trial or hearing.

**Ex parte** -On behalf of only one party, without notice to any other party. For example, a request for emergency custody based on endangerment is an ex parte proceeding, since the other person is not notified of the proceeding and is not present at the hearing.

**Fair market value** - The value for which a reasonable seller would sell an item of property and for which a reasonable buyer would buy it.

**Family law** - Those areas of the law pertaining to families, i.e., marriage, divorce, child custody, juvenile, paternity, etc.

**Filing Fee** - The fee required for filing various documents.

**File** - To place a paper in the official custody of the clerk of court/court administrator to enter into the files or records of a case.

**Finding** - Formal conclusion by a judge or regulatory agency on issues of fact.

**Guardian** - A person appointed by will or by law to assume responsibility for incompetent adults or minor children. If a parent dies, this will usually be the other parent. If both die, it probably will be a close relative.

**Guardianship** - Legal right given to a person to be responsible for the food, housing, health care, and other necessities of a person deemed incapable of providing these necessities for himself or herself.

**Harmless error** - An error committed during a trial that was corrected or was not serious enough to affect the outcome of a trial and therefore was not sufficiently harmful (prejudicial) to be reversed on appeal.

**Hearing** - A formal proceeding (generally less formal than a trial) with definite issues of law or of fact to be heard. Hearings are used extensively by legislative and administrative agencies.

**Hearsay** -- Statements by a witness who did not see or hear the incident in question but heard about it from someone else. Hearsay is usually not admissible as evidence in court.

**Hostile witness** - A witness whose testimony is not favorable to the party who calls him or her as a witness. A hostile witness may be asked leading questions and may be cross-examined by the party who calls him or her to the stand.

**Impeachment of a witness** - An attack on the credibility (believability) of a witness, through evidence introduced for that purpose.

**Inadmissible** - That which, under the rules of evidence, cannot be admitted or received as evidence.

**Interlocutory** - Temporary; provisional; interim; not final.

**Interrogatories** - A set or series of written questions propounded to a party, witness, or other person having information or interest in a case; a discovery device.

**Intervention** - An action by which a third person who may be affected by a lawsuit is permitted to become a party to the suit.

**Issue** - 1. The disputed point in a disagreement between parties in a lawsuit. 2. To send out officially, as in to issue an order.

**Joint tenancy** - A form of legal co-ownership of property (also known as survivorship). At the death of one co-owner, the surviving co-owner becomes sole owner of the property. Tenancy by the entirety is a special form of joint tenancy between a husband and wife.

**Judge** - A presiding officer of the court.

**Judgment** - The official and authentic decision of a court of justice upon the rights and claims of parties to an action or suit submitted to the court for determination. (

**Jurisdiction** - The power or authority of a court to hear and try a case; the geographic area in which a court has power or the types of cases it has power to hear.

**Law** - The combination of those rules and principles of conduct promulgated by legislative authority, derived from court decisions and established by local custom.

**Law Clerk** - In the United States, usually a law school student employed by a law firm to do research and other tasks. In the courts, a lawyer (or law school student) employed to do legal research.

**Lawsuit** - An action or proceeding in a civil court; term used for a suit or action between two private parties in a court of law.

**Leading question** - A question that suggests the answer desired of the witness. A party generally may not ask one's own witness leading questions. Leading questions may be asked only of hostile witnesses and on cross-examination.

**Legal aid** - Professional legal services available usually to persons or organizations unable to afford such services.

**Legislation** - The act of giving or enacting laws; the power to make laws via legislation in contrast to court-made laws.

**Litigant** - A party to a lawsuit.

**Litigation** - A lawsuit; a legal action, including all proceedings therein.

**Malpractice** - Any professional misconduct.

**Mediation** - A form of alternative dispute resolution in which the parties bring their dispute to a neutral third party, who helps them agree on a settlement.

**Memorandum** - An informal note or instrument embodying something the parties desire to have in written evidence.

**Memorialized** - In writing.

**Minor** - A person under the age of legal competence.

**Motion** - An application made to a court or judge which requests a ruling or order in favor of the applicant.

**Motion in Limine** - A motion made by counsel requesting that information which might be prejudicial not be allowed to be heard in a case.

**Negotiation** - The process of submission and consideration of offers until an acceptable offer is made and accepted.

**Notary Public** - A public officer whose function it is to administer oaths, to attest and certify documents, and to take acknowledgments.

**Notice** - Formal notification to the party that has been sued in a civil case of the fact that the lawsuit has been filed. Also, any form of notification of a legal proceeding.

**Oath** - A solemn pledge made under a sense of responsibility in attestation of the truth of a statement or in verification of a statement made.

**Objection** - The process by which one party takes exception to some statement or procedure. An objection is either sustained (allowed) or overruled by the judge.

**Opening statement** - The initial statement made by attorneys for each side, outlining the facts each intends to establish during the trial.

**Opinion** - A judge's written explanation of a decision of the court or of a majority of judges. A dissenting opinion disagrees with the majority opinion because of the reasoning and/or the

principles of law on which the decision is based. A concurring opinion agrees with the decision of the court but offers further comment.

**Oral argument** - Presentation of a case before a court by spoken argument; usually with respect to a presentation of a case to an appellate court where a time limit might be set for oral argument.

**Order** - A mandate, command, or direction authoritatively given. Direction of a court or judge made in writing.

**Overrule** - A judge's decision not to allow an objection. Also, a decision by a higher court finding that a lower court decision was in error.

**Paralegal** - Also, legal assistant. A person with legal skills who works under the supervision of a lawyer.

**Party** - A person, business, or government agency actively involved in the prosecution or defense of a legal proceeding.

**Personal property** - Anything a person owns other than real estate.

**Petitioner** - The person filing an action in a court of original jurisdiction. Also, the person who appeals the judgment of a lower court. (See respondent.)

**Plaintiff** - A person who brings an action; the party who complains or sues in a civil action. (See complainant.)

**Pleadings** - The written statements of fact and law filed by the parties to a lawsuit.

**Post-trial** - Refers to items happening after the trial, i.e., post-trial motions or post-trial discovery.

**Preponderance of the proof** - Greater weight of the evidence, the common standard of evidence in civil cases.

**Pretrial conference** - Conference among the opposing attorneys and the judge called at the discretion of the court to narrow the issues to be tried and to make a final effort to settle the case without a trial.

**Prima facie case** - A case that is sufficient and has the minimum amount of evidence necessary to allow it to continue in the judicial process.

**Quash** To vacate or void a summons, subpoena, etc.

**Quitclaim deed** A deed without warranty of title which passes whatever title the grantor has to another.

**Real property** Land, buildings, and whatever is attached or affixed to the land. Generally synonymous with the words "real estate."

**Reasonable person** A phrase used to denote a hypothetical person who exercises qualities of attention, knowledge; intelligence, and judgment that society requires of its members for the protection of their own interest and the interests of others. Thus, the test of negligence is based on either a failure to do something that a reasonable person, guided by considerations that ordinarily regulate conduct, would do, or on the doing of something that a reasonable and prudent (wise) person would not do.

**Record** All the documents and evidence plus transcripts of oral proceedings in a case.

**Recuse** The process by which a judge is disqualified from hearing a case, on his or her own motion or upon the objection of either party.

**Re-direct examination** Opportunity to present rebuttal evidence after one's evidence has been subjected to cross-examination.

**Referee** A person to whom the court refers a pending case to take testimony, hear the parties, and report back to the court. A referee is an officer with judicial powers who serves as an arm of the court.

**Remand** To send a dispute back to the court where it was originally heard. Usually it is an appellate court that remands a case for proceedings in the trial court consistent with the appellate court's ruling.

**Remedy** Legal or judicial means by which a right or privilege is enforced or the violation of a right or privilege is prevented, redressed, or compensated.

**Reply** The response by a party to charges raised in a pleading by the other party.

**Request for production of documents** - A direction or command served upon another party for production of specified documents for review with respect to a suit; a discovery device.

**Rescission** The unmaking or undoing of a contract; repeal.

**Research** A careful hunting for facts or truth about a subject; inquiry; investigation.

**Respondent** The person against whom an appeal is taken. (See petitioner.)

**Rest** A party is said to "rest" or "rest its case" when it has presented all the evidence it intends to offer.

**Retainer** Act of the client in employing the attorney or counsel, and also denotes the fee which the client pays when he or she retains the attorney to act for them.

**Reverse** An action of a higher court in setting aside or revoking a lower court decision.

**Reversible error** A procedural error during a trial or hearing sufficiently harmful to justify reversing the judgment of a lower court.

**Rules of evidence** Standards governing whether evidence in a civil or criminal case is admissible.

**Sequester** - To separate. Sometimes juries are separated from outside influences during their deliberations. For example, this may occur during a highly publicized trial.

**Sequestration of witnesses** - Keeping all witnesses (except plaintiff and defendant) out of the courtroom except for their time on the stand, and cautioning them not to discuss their testimony with other witnesses. Also referred to as "separation of witnesses."

**Service of process** - The delivering of writs, summonses, and subpoenas by delivering them to the party named in the document. Also referred to as "service."

**Settlement** - An agreement between the parties disposing of a lawsuit.

**Standard of proof** - Indicates the degree to which the point must be proven. In a civil case, the burden of proof rests with the plaintiff, who must establish his or her case by such standards of proof as a "preponderance of evidence" or "clear and convincing evidence." (See burden of proof.)

**Statute** - Legislative enactment; it may be a single act of a legislature or a body of acts which are collected and arranged for a session of a legislature.

**Statute of limitations** - A statute which limits the right of a plaintiff to file an action unless it is done within a specified time period after the occurrence which gives rise to the right to sue.

**Statutory** - Relating to a statute; created or defined by a law.

**Statutory law** - Laws promulgated by Congress and state legislatures.

**Stipulation** - An agreement between the parties involved in a suit regulating matters incidental to trial.

**Strike** - Highlighting in the record of a case, evidence that has been improperly offered and will not be relied upon.

**Subpoena** - A command to appear at a certain time and place to give testimony upon a certain matter.

**Subpoena Duces Tecum** - A court order commanding a witness to bring certain documents or records to court.

**Summons** - Instrument used to commence a civil action or special proceeding; the means of acquiring jurisdiction over a party.

**Sustain** - A court ruling upholding an objection or a motion.

**Temporary relief** - Any form of action by a court granting one of the parties an order to protect its interest pending further action by the court.

**Testimony** - The evidence given by a witness under oath. It does not include evidence from documents and other physical evidence.

**Transcript** - A written, word-for-word record of what was said. Usually refers to a record of a trial, hearing, or other proceeding which has been transcribed from a recording or from shorthand.

**Trial** - A judicial examination of issues between parties to an action.

**Trial brief** - A written document prepared for and used by an attorney at trial. It contains the issues to be tried, synopsis of evidence to be presented and case and statutory authority to substantiate the attorney's position at trial.

**Vacate** - To set aside.

**Venue** - Authority of a court to hear a matter based on geographical location.

**Void** - Invalid; a void agreement is one for which there is no remedy.

**Waiver** - Intentionally given up a right.

**With prejudice** - A declaration which dismisses all rights. A judgment barring the right to bring or maintain an action on the same claim or cause.

**Without prejudice** - A declaration that no rights or privileges of the party concerned are waived or lost. In a dismissal these words maintain the right to bring a subsequent suit on the same claim.

**Witness** - One who personally sees or perceives a thing; one who testifies as to what he has seen, heard, or otherwise observed.