



OFFICE LOCATION

Ankin Law Office
162 W Grand Ave
Chicago, IL 60654

Tel: 312-346-8780
Fax: 312-346-8781

PRACTICE AREAS

Workers Compensation

Personal Injury

Motor Vehicle Accidents

Wrongful Death

JANUARY 25, 2010

E-Newsletter

State Trial Practice

The American legal system depends on the adversarial process to bring out the truth. Parties to disputes present their arguments to an impartial judge who resolves the matter by examining the facts, applying the relevant law, and issuing a decision. This basic model applies to both civil and criminal cases. Civil cases concern private conflicts between individuals, businesses, and the government, while criminal cases involve law enforcement by the government against individuals. Both types of cases may be brought to trial before state courts.

Civil cases make up the majority of state cases filed. Civil matters involve disputes amongst private parties, or between a private party and the government. Common examples of civil cases include personal injury, contract disputes, divorces, and landlord-tenant issues. At the state level, the plaintiff usually starts the lawsuit by serving a summons and complaint on the defendant and by filing the complaint with the court. The complaint sets forth the plaintiff's claims, and requests a remedy from the court. Usually, the aggrieved party in a civil case seeks a financial award as damages, but occasionally plaintiffs request non-monetary relief. Plaintiffs can demand a court order called an injunction that bars a person from acting in a certain way. Courts also can issue a restraining order to restrict a party's actions until the case is resolved.

Example: If Elaine signs a purchase agreement for Joyce's house, but Joyce accepts another offer prior to completing the sale to Elaine, Elaine could seek a court order preventing Joyce from proceeding with the second sale.



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The defendant must answer the complaint within a short time period, either by responding directly to the issues raised in the complaint or by filing a motion to dismiss the claims. The court may not dismiss valid legal claims at this stage, so motions to dismiss are often denied and a trial date is set. Prior to trial, the parties engage in discovery, a procedure that allows each side to obtain factual evidence concerning the other party's arguments. Some states require that the parties pursue alternative dispute resolution prior to trial to avoid full-fledged litigation. With or without private alternative dispute resolution, most cases do settle prior to their court dates.

State governments bring criminal cases against individuals charged with violating the law. Crimes range in severity from felonies to misdemeanors and petty offenses. Unlike the civil pretrial process, in these cases the state is the plaintiff. The accused criminal defendant may be the subject of a prosecutor's complaint, or he or she may be indicted for the alleged crime. Once a complaint or indictment issues, the prosecutor can obtain an arrest warrant or issue a summons to appear for less serious crimes.

Upon arrest, the criminal defendant is charged with the crime, and taken before a judge to be informed of the charges. At this point, a public defender may be assigned to criminal defendants who cannot afford other legal representation. Criminal defendants retain the right to represent themselves in court, but most prefer professional assistance. The judge will also decide whether to set bail or to keep the defendant in custody pending trial. Prior to trial, the judge must review the evidence against the defendant to ensure that there is probable cause to think that the defendant committed the alleged offense. The defendant makes his or her plea (usually guilty or not guilty) at an arraignment. At any stage in this pre-trial process, the defendant and the state can pursue a plea bargain through which the defendant can agree to a lesser offense in exchange for the state's dropping the more serious charge.

Despite the differences in pre-trial procedures, civil and criminal trials follow the same general model at the state level. The parties present opening statements, and then the plaintiff or prosecution presents its case by examining witnesses. The defense may cross-examine these witnesses on their testimony, followed by re-direct examination by the plaintiff if necessary. When the plaintiff or prosecution rests its case, the defense



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has its opportunity, and offers its side of the case through witness testimony. Throughout the testimony, the parties may object to unfavorable evidence or questions based on the court's rules of evidence. The judge decides whether to sustain (or agree with) the objections or to overrule them and allow the evidence or question. After testimony, both sides present closing arguments and the case proceeds to verdict.

Criminal cases require a jury to decide the defendant's guilt or innocence, but a jury is not always required in a civil trial. For many cases, such as tort and contract cases, the parties are entitled to request a jury trial. The most common exception to this rule is when the case is based on the rights created by a statute, if the statute does not say that a jury may decide a dispute. The judge generally decides other kinds of cases, most notably no-fault divorce cases. Also a jury trial may be waived in order to expedite the proceedings, in which case the judge rules on both factual and legal aspects of the case. Additionally, civil and criminal disputes bear different standards of proof. The plaintiff in a civil case must prove his or her case by a preponderance of the evidence, meaning that if the plaintiff presents the more persuasive evidence, he or she wins the case. In a criminal trial, the prosecution must show that the defendant is guilty beyond a reasonable doubt. The reasonable doubt standard does not require the jury to be absolutely certain of guilt, but they must not harbor any reasonable doubt about the matter. These different standards explain why an individual who is subject to a criminal and civil trial for the same alleged actions can be found not guilty in one instance, but held financially liable in the other.

Example: Marshall is arrested for arson after his business burns down. At his criminal trial, the jury finds him not guilty because the prosecution does not present much physical evidence linking Marshall to the crime, leaving a reasonable doubt regarding his guilt. Afterwards, the homeowner living next to Marshall's business sues him civilly for damages to his house caused by the fire. The homeowner shows by a preponderance of the evidence that Marshall was responsible for the fire, and the court orders him to pay restitution to his neighbor.

In civil actions, the losing party may appeal the trial court's decision. For criminal cases, usually only a losing defendant can appeal. State appeals systems vary, but all states have at least one level of appellate review for civil and criminal cases. On appeal, the losing party can raise only legal issues concerning the trial court's decision: He or she can claim that the court



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misapplied the law to the facts of the case, or that the trial court committed some legal error in conducting the trial. The facts of the case are fixed at the trial court level and cannot be reopened at the appeals level.

Civil and criminal trials involve complicated evidentiary issues and strategic decisions with far-reaching consequences for the parties. Civil litigants and criminal defendants should seek attorneys familiar with the laws in question to conduct an effective trial.

Checklist: Providing an Affidavit

To read and printout the Checklist please click below.

[Providing an Affidavit](#)

Disclaimer

This publication and the information included in it are not intended to serve as a substitute for consultation with an attorney. Specific legal issues, concerns and conditions always require the advice of appropriate legal professionals.