

Manager/Supervisor Risk Management

#79– 8/9/12

A twice weekly e-mail training for YCPARMIA members

TOPIC: CIVIL LITIGATION – A ONE PAGE PRIMER

Each year a number of civil claims are made against YCPARMIA members. A percentage of those claims become litigated when suit is filed against the entity and/or their employee. A lawsuit does not speak to the merits of the claim – in many cases there is strong defense potential. In other cases the dispute is confined to the amount of damages. Each case is unique, but the litigation process is basically the same.

As discussed previously, the California Government Code requires that in most cases a timely Claim be filed with the entity as a condition precedent to filing suit. Following the entity's Rejection, a written Complaint is filed by the claimant with the court where it is given a case number. The court is usually Yolo Superior in Woodland, but if there are federal issues the claimant can file in federal court (the Eastern District Court in Sacramento). The Complaint contains a list of the parties being sued (the defendants), a one-sided allegation of facts, the legal theories (Cause of Actions) that allegedly support recovery, and the remedies or damages being sought. The claimant, now plaintiff, has protected time.

The next step in the process is for the plaintiff to serve the defendants with the pleadings (Complaint). There are a variety of ways that service can be made but for this discussion it is fair to say that it will usually be in person, by mail, or through the employer. The required proof of the service is the "Summons." It tells the defendant they have been sued, and sets out the time limits for a response – generally 20-30 days from the date of receipt or acknowledgment.

The Summons and Complaint are then forwarded to YCPARMIA, and absent ongoing settlement negotiations, we retain defense counsel. After reviewing a copy of our investigative file, they file and serve an "Answer" to the complaint which basically denies the allegations found in the pleadings. The two sides then start formal discovery in a process that is regulated and controlled by the court. There are time controls on the process with deadlines for response; sanctions can be imposed by the court when those deadlines are not met. The court also directs a discovery cut-off date that ends the process.

Discovery includes Interrogatories, or written questions submitted by either side requiring written answers; generally these questions come out of form books. Requests For Production of Documents require the parties to produce the physical evidence and paper that they will be relying on. Depositions of witnesses usually follow where testimony is recorded under oath by a court reporter; this is usually one sided with questions being asked by the attorney for one of the parties without cross-examination. Then, shortly before discovery closes, there is a Disclosure of Experts where each side reveals the identity and scope of their expert's anticipated testimony. The whole process can take years.

Litigation discovery is intended to provide sufficient information to each side to minimize factual surprises. Even then, there are still disagreements, disputes, and dramatically different evaluations.

Next topic: Civil litigation – the Supervisor's Involvement in Discovery