

## SUCCESSFUL LITIGATION IN STATE AND FEDERAL COURT

### General overview:

- Volume of cases
  - State > Federal
    - One statistic indicates that about 90% of cases heard in the American court system occur in state court.

### Civil:

- Jurisdictional Requirements
  - State courts are courts of general jurisdiction. State court systems vary from state to state.
  - Federal courts are courts of limited jurisdiction. Generally, two ways to be in federal court:
    - Federal question jurisdiction
    - Diversity jurisdiction
      - Diversity of citizenship and amount in controversy exceeds \$75,000
    - Removal
      - Defendants may remove to the appropriate federal district court any civil action that could have originally been filed in federal court.
- Role of the Judge
  - State: Judges may be assigned preside over criminal, probate, juvenile, or general civil matters.
  - Law and motion judges vs. independent calendar judge
  - Federal: Highlight the duties of magistrate judges and district court judges; both preside over criminal and civil matters
- Answer
  - State: Can file a general answer and assert affirmative defenses (unless a verified complaint was filed)
  - Federal: Must admit or deny each allegation
- Discovery
  - Initial Disclosures

- State: The parties must ask for witness, document, and insurance information during discovery stage
    - Federal: The parties must exchange initial core disclosure of witnesses, documents, plaintiff's computation of damages, and defendant's insurance information prior to commencing formal discovery
  - Timing of Discovery
    - State Court: Plaintiff may begin serving discovery within 10 days of service of complaint
      - This is regardless of pending dispositive motions
      - CMC may not occur until several months after case filed
    - Federal: Must wait until Rule 26 conference unless otherwise ordered
      - Usually commences after CMC
      - CMC usually occurs within 45 days of all parties answering
  - Continuing Discovery Responses
  - Length of Discovery
    - State: Deadlines are often set by the code. At times, the judge may set discovery deadlines
    - Federal: Very defined deadlines articulated in a scheduling order
- Settlement Negotiations
  - Federal Court: Early Neutral Evaluation ("ENE") Conference occurs forty-five days after the defendant answers the Complaint. The ENE aims to facilitate settlement discussions at an early stage in the litigation.
  - Some state courts have court sponsored mediation. Parties can pay for private mediation.
- Motion Practice
  - Continuances
    - State: parties can stipulate to many things, including continuances of deadlines and even trial
    - Federal: stipulation is generally insufficient (unless it is a stipulation for dismissal under Federal Rule of Civil Procedure 41(a)). Typically, the parties must demonstrate good cause. *See* Fed. R. Civ. P. 16.

- Tentative Rulings
  - State: Judge's discretion – many issue tentative orders the night before oral argument (often the day of)
  - Federal: Judge's discretion; most do not issue tentative rulings in advance of a motion hearing.
    - Most do not hold hearings and motions are often decided on the papers
- Oral argument
  - State: Judge's discretion; typically judges more likely to entertain oral argument than in federal court – almost always
  - Federal: Judge's discretion, although most motions are taken under submission on the briefs
- Demurrer/Motion to Dismiss
  - State → Demurrer. Tests the legal sufficiency of the pleaded causes of action in the Complaint
    - Plaintiff may still begin serving discovery notwithstanding the pendency of a dispositive motion
  - Federal → Motions to dismiss for failure to state a claim.
    - Defendants typically file a 12(b)(6) motion in federal court
    - Pre-answer motion stops the progression of the case until disposition
- Motions for Summary Judgment
  - Separate Statement:
    - State: must contain a separate statement of undisputed facts (motion for adjudication)
    - Federal: not required; some judges require or permit; others prohibit them
  - Rate at which summary judgment motions granted/denied
    - State: Perhaps less likely to grant motions for summary judgment
    - Federal: One statistic shows that motions for summary judgment in the Southern District are granted at a rate of 46%
- Citations

- State: unpublished case opinions may not be cited as precedent (except for claim or issue preclusion purposes)
  - Federal: unpublished federal opinions may be cited
    - Note: If you are in federal court and your case involves state law claims, you use the Bluebook for California citations—not the California Style Manual
- Trial
  - Jury pool
    - State: residents from within the county
      - California has 58 Superior Courts—one in every county
    - Federal: list of registered voters in San Diego and Imperial Counties
      - California has four federal courts: Northern, Eastern, Central, and Southern districts
  - Jury Size
    - State: usually 12 individuals
    - Federal: at least 6 individuals
  - Jury Verdicts
    - State: 75% of panel
    - Federal: must be unanimous, absent a stipulation to the contrary
- Administrative Matters
  - Rules of Court
    - Local Rules
    - Chambers Rules
  - Contacting Chambers
  - Court call
    - In state court, oral argument may be made telephonically (and it often is)
    - Perhaps less likely in federal court

### **Criminal:**

- Preliminary Hearing
  - State: The defendant appears before the judge to determine whether there is probable cause to believe that a crime was committed, and that the defendant is the person who committed that crime.

- Federal: The defendant routinely chooses to waive preliminary hearing
- Sentencing
  - State: Statutory (Penal Code). Ex: Determinate Sentencing Law (lower term, middle term, and upper term).
  - Federal: Federal Sentencing Guidelines