

A professional woman with dark hair pulled back, wearing a black blazer over a white collared shirt, is smiling at the camera. She is sitting at a desk with a computer monitor visible on the right. The background is a bright office window.

Overview of Litigation Skills for Legal Staff

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I. Litigation Overview

“Litigation” is defined as a contest in a public court of law for the purpose of enforcing a right or seeking a remedy. Black’s Law Dictionary 934 (6th ed. 1990). Generally speaking, the most persuasive litigant will prevail. Since facts persuade, litigation involves extensive fact gathering through interviews, document review, pictures, site inspections, and formal discovery.

The litigation process begins with the filing of a complaint with the court. ORCP 3. The party served with the complaint must file an appearance in the form of an answer or pre-trial motion within 30 days or risk entry of a default judgment. ORCP 7, 69. Once the pleadings are “at issue” - meaning a complaint and answer/motion has been filed - parties usually engage in “discovery” to obtain additional information. After discovery has been completed the parties may negotiate a settlement, proceed to argue pretrial motions and/or proceed to some form of alternative dispute resolution (like mediation) prior to trial. Matters left unresolved proceed to trial after which the losing party may appeal.

Many practices and procedures in Oregon courts, including many of the timelines for civil practice in courts, are controlled by court rules and statutes. Failure to comply with relevant court rules can result in dismissal, award of costs, refusal of a court to accept a filing or to set or hear a motion, or other unfavorable consequences. These potential consequences make it important to know where to find and how to use relevant court rules.

II. The Role of Legal Staff in Litigation

The litigation role or duties given to legal staff¹ will vary depending upon where you work. However, understanding the importance of fact gathering, the over-all litigation process as well as relevant ethical rules will enable you to provide effective assistance no matter what role or duties you are given.

A. Professional Responsibility

Legal professionals must adhere to the Oregon Rules of Professional Conduct (“Rules”). The rules most commonly encountered in litigation include the rules governing confidentiality and conflicts of interest.

The confidentiality rule prohibits disclosure of information relating to the representation of a client. ORPC Rule 1.6. The best rule of thumb is to keep everything confidential in light of the limited exceptions to this broad obligation of confidentiality. In fact, most clients expect absolute confidentiality.

The rules regarding conflicts of interest can be more complicated. See ORPC Rules 1.7-1.11. The key to avoiding a conflict of interest is to understand that the rules are designed to protect the “other” client. In other words, a lawyer cannot sue one of his or her other clients. That is why running a thorough conflict check before undertaking a new matter is critical to avoiding a representation that the lawyer cannot undertake.

B. Calendaring and Common Responsibilities

(1) Conflict Check. The first task that must be completed is a conflict check with the name of the new client and adverse party. Presuming

¹ For purposes of convenience these materials will collectively refer to paralegals and legal assistants as legal professionals.

there is no conflict, a retainer agreement is signed and an intake meeting is normally held at which the dispute is discussed and preliminary facts obtained that either enable a complaint to be prepared or lead to further investigation that gathers the facts needed to prepare a complaint.

(2) Calendaring. All deadline dates must be calendared. Reminders of upcoming deadlines also need to be calendared.

ORCP 10 provides that in computing any period of time allowed by the ORCP, when the period of time allowed is less than seven days (without regard to the “mail rule” of ORCP 10B), intermediate Saturdays, Sundays, and legal holidays are excluded from the computation. ORCP 10B provides that whenever a party must do some act within a prescribed period after service by mail, fax, email or electronic service, three days are added to the prescribed period. UTCR 1.130 applies ORCP 10 to the UTCRs. ORCP 9F and G provides that if service is made by fax or email it is the same as service by mail for purposes of Rule 10B.

Example. A motion for summary judgment is faxed to opposing counsel and filed on Monday, October 9, 2021. The response would be due 23 days later – on November 1, 2021. ORCP 47C.

(3) Telephone calls. Get as detailed a message as possible from callers. This information allows the lawyer to be prepared to answer the callers’ questions when the calls are returned. The lawyer who returns a call without knowing what the caller wants may find that the information needed by

the caller must be researched or checked by the lawyer. Consequently, another call must be made, and more time is wasted.

If the caller leaves a detailed message, the lawyer can have the legal professional return the call and give the requested information. This alleviates the need for the lawyer to return every phone call. Most clients are not as concerned about talking to the lawyer as they are about getting the answers they need.

(4) Fact Gathering and Organization. To reiterate, facts persuade. Therefore, legal professionals are usually responsible for interviewing witnesses, reviewing and organizing documents and creating notebooks for use at depositions, hearings or trial to make it easy for the trial lawyer to find all important information quickly.

(5) Electronic filing. Legal professionals are usually responsible for electronic filing. If so, it is important to be familiar with the Oregon electronic filing system and which documents are required to be conventionally filed. See UTCR 21.140.

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