

## **Chapter 6**

### The Court System and Alternative Dispute Resolution

#### **Chapter Outline**

1. Introduction
2. Basic Judicial Requirements
3. State Court Systems
4. The Federal Court System
5. Alternative Dispute Resolution

#### **Chapter Objectives**

After completing this chapter, you will know:

- The requirements that must be met before a lawsuit can be brought in a particular court by a particular party.
- The difference between jurisdiction and venue.
- The types of courts that make up a typical state court system and the different functions of trial courts and appellate courts.
- The organization of the federal court system and the relationship between state and federal jurisdiction.
- How cases reach the United States Supreme Court.
- The various ways in which disputes can be resolved outside the court system.

## Chapter 6 The Court System and Alternative Dispute Resolution

### Chapter Outline

#### I. INTRODUCTION

- A. Paralegals working in all areas of the law, and particularly litigation paralegals, need to have a basic understanding of the different types of courts that make up the American court system.
- B. Because of cost, in both time and money, many individuals and firms today are turning to alternative methods of dispute resolution that allow parties to resolve their disputes outside of courts.

#### **Jurisdiction**

It is a big word, and it plays a big part in the law. If you can define and apply the following types, you are well on your way to understanding the legal system:

1. Jurisdiction over persons
2. Jurisdiction over property
3. Jurisdiction over subject matter
4. Limited jurisdiction
5. General jurisdiction
6. Original jurisdiction
7. Appellate jurisdiction
8. Exclusive jurisdiction
9. Concurrent jurisdiction

#### II. BASIC JUDICIAL REQUIREMENTS

##### A. Types of Jurisdiction

##### i. Jurisdiction Over Persons

1. Generally, a court can exercise personal jurisdiction over residents of a certain geographical area.
2. Personal jurisdiction is also known as *in personam* jurisdiction.
3. Under a *long arm statute*, a court can exercise personal jurisdiction over a nonresident when the nonresident had sufficient contacts with the state.

##### ii. Jurisdiction Over Property

1. A court can exercise jurisdiction over property that is located within its boundaries.
2. Jurisdiction over property is known as *in rem* jurisdiction.

##### iii. Jurisdiction Over Subject Matter

1. This is a limitation on the types of cases a court can hear.
2. In both the state and federal systems, there are courts of general jurisdiction and of limited jurisdiction.

- a. Courts of general jurisdiction can hear most types of disputes.
    - b. Courts of limited jurisdiction are restricted in the types of actions they can decide.
  3. The subject-matter jurisdiction of a court is usually defined in the statute or constitution creating the court.
  4. In both state and federal courts, a court's subject-matter jurisdiction can be limited by:
    - a. The subject of the lawsuit
    - b. The amount of money in controversy
    - c. Whether the case is a felony or a misdemeanor
    - d. Whether the proceeding is a trial or an appeal.
- iv. Original and Appellate Jurisdiction
  1. Courts of original jurisdiction are courts in which the trial of a case begins.
  2. Any court having original jurisdiction is known as a trial court.
  3. Courts of appellate jurisdiction are reviewing courts.
  4. Appellate courts do not try cases anew but review the decisions of trial courts.

## B. Jurisdiction of the Federal Courts

- i. Federal Questions
  1. When a lawsuit is based, at least in part, on some type of federal law, the case comes under the judicial power of the federal courts.
- ii. Diversity Jurisdiction
  1. Federal courts can exercise jurisdiction over claims involving one of the following:
    - a. A federal question, which arises from the U.S. Constitution, a federal treaty, or a federal law
    - b. Diversity of citizenship, which involves a controversy exceeding \$75,000 *and* arises between citizens from different states, citizens from a foreign country and citizens of a state or of different states, or citizens of a state and citizens or subjects of a foreign country.
- iii. Exclusive versus Concurrent Jurisdiction
  1. Exclusive jurisdiction exists when cases can be tried only in federal courts or only in state courts. Federal courts have exclusive jurisdiction in cases involving bankruptcy, federal crimes, patents, trademarks, copyrights, suits against the United States, and in some areas of admiralty law.
  2. Concurrent jurisdiction exists when both federal and state courts have the power to hear a case. States

have exclusive jurisdiction in certain subject matters, such as divorce and adoptions.

#### C. Jurisdiction in Cyberspace

- i. The Internet's capacity to bypass political and geographical boundaries undercuts traditional basic limitations on a court's authority to exercise jurisdiction.
- ii. The "Sliding-Scale" Standard
  1. This is a standard for determining when the exercise of jurisdiction over an out-of-state party is proper.
  2. Three categories of Internet business contacts are reviewed:
    - a. Substantial business conducted over the Internet
    - b. Some interactivity through a Web site
    - c. Passive advertising.
  3. Jurisdiction is proper for the first category, is improper for the third, and may or may not be appropriate for the second.
- iii. International Jurisdictional Issues
  1. The Internet is international in scope, so international jurisdictional issues apply.
  2. The emerging standard is a requirement of minimum contacts—doing business within the jurisdiction.

#### D. Venue

- i. Venue is concerned with the most appropriate geographical location for a trial.
- ii. The concept of venue reflects the policy that a court trying a suit should be in the geographic neighborhood in which the incident leading to the suit occurred or where the parties to the suit reside.

#### E. Standing to Sue

- i. To bring a lawsuit before a court, a party must have *standing to sue*, or a sufficient "stake" in a matter to justify seeking relief through the court system.
- ii. The "stake" in the matter means a legally protected and tangible interest in the litigation, having suffered a harm as a result of the action about which the party is complaining.

#### F. Judicial Procedures

- i. Litigation in court must follow specifically designated procedural rules.
- ii. Federal court procedures are set forth in the Federal Rules of Civil Procedure.
- iii. State rules of procedure vary from state to state.
- iv. Court procedural rules are different for civil cases than for criminal cases.

#### G. Basic Judicial Requirements and the Paralegal

- i. The paralegal's value to the legal team is directly related to her knowledge of the concepts affecting litigation procedures.
- ii. Paralegals should be familiar with such concepts as jurisdiction and venue.
- iii. Paralegals should be familiar with the procedural rules of the specific court in which a case is filed.
- iv. Paralegals need to have a basic understanding of the different types of courts that make up the American court system.

### III. STATE COURT SYSTEMS

#### A. Trial Courts

- i. The structure of state court systems varies from state to state.
- ii. A typical state court system may consist of several tiers.
- iii. On the bottom tier are courts of limited jurisdiction.
- iv. On the next tier are usually trial courts of general jurisdiction, such as county courts.
- v. Trial courts are courts of original jurisdiction; they are where lawsuits are initiated, trials are held, and evidence is presented.

#### B. Appellate, or Reviewing, Courts

- i. Appellate courts are where trial courts' decisions can be appealed.
- ii. Appellate courts are reviewing courts; they do not retry cases.
- iii. The function of appellate courts is to review the trial courts' decisions in cases that are appealed.
  - 1. Intermediate Appellate Courts
    - a. About three-fourths of the states have intermediate appellate courts.
    - b. These courts do not retry cases; instead, they review the record of the case on appeal and determine whether the trial court committed a prejudicial error of law.
  - 2. Highest State Courts
    - a. The highest state appellate court is typically called the state supreme court, although there are exceptions.
    - b. Cases can be appealed from state supreme courts to the United States Supreme Court only when issues of federal law are involved.

#### C. State Court Systems and the Paralegal

- i. Because each state has its own unique system of courts, paralegals must become familiar with the court system of their particular state.
- ii. Paralegals must also become familiar with procedural requirements of special courts to assist attorneys in drafting legal documents to be filed in those courts.

#### IV. THE FEDERAL COURT SYSTEM

##### A. U.S. District Court

- i. U.S. district courts are the trial courts of the federal court system.
- ii. U.S. district courts are courts of general jurisdiction.
- iii. There is a U.S. district court in every state.

##### B. U.S. Courts of Appeals

- i. Decisions from a district court can be appealed to the court of appeals of the circuit (geographical area) in which the district court is located.
- ii. There are thirteen circuit courts of appeals.
- iii. Decisions rendered by these circuit courts may be appealed to the United States Supreme Court.

##### C. The United States Supreme Court

- i. The United States Supreme Court is the highest court and consists of nine justices.
- ii. The United States Supreme Court has original, or trial court, jurisdiction in a small number of situations—such as those affecting ambassadors. Otherwise, the court has only appellate jurisdiction.
- iii. How Cases Reach the Supreme Court
  1. There is no absolute right of appeal to the Supreme Court.
  2. If the Court decides to review a case, it will issue a writ of *certiorari*.
  3. A writ of *certiorari* is an order to a lower court requiring it to send to the Supreme Court the record of a case for review.
- iv. Types of Cases Reviewed by the Supreme Court
  1. The Supreme Court generally reviews cases that raise important constitution questions, that conflict with other state or federal court decisions, or that issue and generate a decision to define the law on the matter.

##### D. The Federal Court System and the Paralegal

- i. Paralegals deal occasionally with the federal court system.
- ii. Paralegals should know the specific requirements of the particular federal court in which a client's lawsuit is to be filed.

### **Deciding Disputes in an Alternative Fashion**

Litigation is not always resolved in a courtroom. Alternative Dispute Resolution (ADR) is an advantage to litigation as it saves the expense and time of trying a case. ADR methods are increasingly popular and valuable. Look for online ADR methods to become available.

#### **V. ALTERNATIVE DISPUTE RESOLUTION**

##### **A. Negotiation**

- i. Negotiation is the simplest method of alternative dispute resolution (ADR).
- ii. Negotiation may or may not involve a third party.
- iii. The parties to the lawsuit simply try to work out their problems to avoid going to court.
- iv. A settlement agreement is an out-of-court resolution to a legal dispute, which is agreed to by the parties in writing.
- v. Out-of-court settlement agreements are reached in the majority of lawsuits, usually before the trial begins.

##### **B. Mediation**

###### **i. A Non-Adversarial Forum**

1. Mediation is a form of ADR in which the parties attempt to reach agreement with the help of a neutral third party.
2. A mediator or panel of mediators helps the parties explore alternative possibilities for settling their differences as amicably as possible.
3. Usually a mediator charges a fee, which can be split between the parties.
4. The mediator proposes various solutions for the parties to consider.
5. Many state and federal courts now require that parties mediate their disputes before bringing the disputes before the court.
6. When mediation is required by the court, the court may appoint the mediator.

###### **ii. Paralegals as Mediators**

1. Because a mediator need not be a lawyer, this field is open to paralegals who acquire training and expertise in the area.

##### **C. Arbitration**

- i. Arbitration is the most formal method of ADR.
- ii. Arbitration Clauses and Statutes
  1. Increasingly, parties are including provisions in their contracts by which they agree to arbitrate any disputes that may arise under the contract.

2. The arbitration clauses will likely be enforced under a federal or state arbitration statute.
  - iii. The Arbitration Process
    1. In arbitration, a neutral third party renders a decision after the parties present their cases and evidence in a hearing.
    2. In voluntary arbitration, the parties normally agree at the outset to be legally bound by the arbitrator's decision.
    3. The final decision of the arbitrator is called the *award*, even if no money is conferred.
  - iv. The Role of the Courts in Pre-Arbitration
    1. The role of the courts in the arbitration process is limited.
    2. When a party has filed suit to compel arbitration, the courts may decide whether a dispute is *arbitrable*, or whether the matter is one that can be resolved through arbitration.
  - v. The Post-Arbitration Role of the Courts
    1. If the arbitration has produced an award, one of the parties may appeal the award or may seek a court order compelling the other party to comply with the award.
- D. Other ADR Forms
- i. Binding Mediation
    1. In this form of ADR, a neutral mediator tries to facilitate agreement between the parties; but if no agreement is reached, the mediator issues a legally-binding decision on the matter.
  - ii. Mediation Arbitration (med-arb)
    1. In med-arb, an arbitrator first attempts to help the parties reach an agreement, just as a mediator would. If no agreement is reached, then formal arbitration is undertaken, and the arbitrator issues a legally-binding decision.
  - iii. Assisted Negotiation
    1. These forms involve a third party in what is essentially a negotiation process.
      - a. Early Neutral Case Evaluation - The parties select a neutral third party to evaluate their respective positions. The parties explain their positions to the case evaluator. The case evaluator's assessment forms the basis of negotiating the settlement.
      - b. Mini-Trial - Each party's attorney briefly argues the party's case before representatives of each

firm who have the authority to settle the dispute.

E. Court-Referred ADR

- i. The majority of states either require or encourage parties to undergo mediation or arbitration prior to trial.
- ii. Several federal courts have instituted ADR programs.

F. Providers of ADR Services

- i. ADR services are provided by both government agencies and private organizations.
- ii. A major provider of ADR services is American Arbitration Association (AAA).

G. Online Dispute Resolution

- i. A number of companies and organizations offer dispute-resolution services via the Internet.
- ii. The settlement of disputes in these online forums is known as *online dispute resolution* (ODR).
  - 1. Online Negotiation
  - 2. Online Mediation
  - 3. Online Arbitration

H. ADR and the Paralegal

- i. Paralegals will play an increasing role in ADR in the future.
- ii. Some paralegals are qualified mediators and directly assist parties in reaching a mutually satisfactory agreement.