CHAPTER 1
Litigation and the Paralegal

STUDY TIPS—KEY POINTS

• Civil litigation is the court process through which private parties resolve their disputes.
• Alternative Dispute Resolution (i.e. arbitration, mediation & negotiation) can supplement or replace the litigation process.
• Substantive law determines if parties have the right to sue.
• Procedural law determines how parties enforce their rights.
• The law of civil litigation is found in the Constitution, cases, codes and rules of court.

CHAPTER OUTLINE

I. What Civil Litigation Is
   A. Civil Law v. Criminal Law
      1. Civil laws deal with rights and obligations of private parties
      2. Criminal laws deal with acts that are offenses against society
   B. An Overview of Civil Litigation
      1. The parties file pleadings
         a. Plaintiff ➔ complaint
         b. Defendant ➔ answer and/or other responses
      2. Parties conduct discovery
      3. Parties resolve pretrial disputes through motions
      4. Trial occurs
      5. Judgment enforced and/or appeal

II. Different Types of Civil Lawsuits
   A. Simple v. Complex Cases
   B. Basic Similarities Between Cases

III. Alternatives to Litigation
   A. Alternative Dispute Resolution
      1. Arbitration—neutral third party resolves dispute out of court
      2. Mediation—neutral third party tries to facilitate settlement
      3. Negotiation—parties try to settle case themselves
   B. Administrative Agency Hearings
   C. Legislative and Court Limitations

IV. Procedural versus Substantive Laws
   1. “No fault” insurance
   2. Limits on punitive damages

V. Sources of the Law
   A. Primary Sources
      1. The law itself
      2. Constitutions, cases, codes and rules of court
   B. Secondary Sources
      1. Sources that explain, discuss or analyze the law
      2. Encyclopedias, practice manuals, form books

IV. The Role of the Litigation Paralegal
   A. Litigation Paralegal Job Description
      1. Included are such tasks as gathering evidence, interviewing, preparing pleadings and other documents, assisting with discovery and factual and legal research
      2. Required are written and oral communication skill, organizational skills and analytical skills
   B. What a Litigation Paralegal Cannot Do
      1. Paralegals cannot appear in court
      2. Paralegals cannot give legal advice
V. Skills Required of the Litigation Paralegal—
Keeping Current
A. Continuing Legal Education
B. Professional Organizations

VI. Practical Tips for Success in the Law Firm
A. Check Forms File—Invaluable Aid
B. Build a Litigation Training Manual

WEB SITE LINKS

Professional Paralegal Associations:

http://www.nala.org/ National Association of Legal Assistants
http://www.paralegals.org/ National Federation of Paralegal Associations
http://www.abanet.org/ American Bar Association
http://www.lamanet.org/ Legal Assistant Management Assoc.
http://www.lawofficecomputing.com/ Law Office Computing magazine online
http://www.lawtechnews.com/ Law Technology News magazine online
http://www.law.cornell.edu/states/index.html Index to state laws

LEARNING EXERCISES

1. Define or explain the following terms from Chapter 1:
   alternative dispute resolution  arbitration
   answer  civil law
   complaint  defendant
   criminal law  discovery
   default  local rules of court
   mediation  plaintiff
   motion  trial
   negotiation

   If you cannot define any term, check its meaning in a legal
dictionary such as that found on the following site:
http://dictionary.lp.findlaw.com/

2. Access the Web site for the federal courts at
http://www.uscourts.gov/understand02/content_6_0.html
Read the section on The Federal Judicial Process in Brief
and the section on Civil Cases which follows.