Small Claims – Pretrial Conferences

Introduction

Good morning. My name is David Silverman and I am a County Judge.

We are here today for pretrial conferences in small claims cases. I would like to talk to you briefly about what we will be doing today.

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There are some PowerPoint slides to help explain the nature of the proceedings. To make this more interesting, each slide is introduced by a still photograph from a movie, all of them are courtroom dramas except this one.

Let me hear first from the pro se litigants – but only when I ask for you to respond – raise your hand if you can tell me what movie this picture is from.

Slide 2.1

Each of you is here as a result of suing or being sued. If you are the person suing, you are the plaintiff. If you are being sued then you are the defendant. A plaintiff or a defendant may be a person or a corporation. Now, what is this lawsuit all about?

Slide 2.2

A small claims lawsuit is one for a principal amount less than $5000, not counting court costs and, if applicable, attorney’s fees and , interest on the principal amount, which, when added to the principal, can make the total more than $5,000.

The summons in small claims cases directs the parties to appear for pretrial conference. In some of the cases set for pretrial conference this morning I have entered an order allowing both parties to appear by telephone.

If you are the plaintiff and the defendant is not here, either in person or by telephone, and if you have served the defendant with the *Statement of Claim* and the *Summons* for pretrial conference today, please wait as I may be entering a default judgment in your favor in due course.

If you are the defendant, the person who was sued, and you were served with the *Statement of Claim* and the *Summons*, and the plaintiff is not appearing, either in person or by telephone, I may be dismissing the case in a little while.

Slide 3

Let me address those cases where both parties are present or where one is present and the other is appearing by telephone.

Raise your hand if you can tell me what movie this picture is from.

Slide 3.1

One way by which lawsuits, big or small, and problems in life generally are resolved is through communication. In just a little while I will be asking you to discuss the matter with the other party with a view of seeing if it may be settled, and to do so in mediation, with a mediator present.

Whether it is a dispute with a relative, a neighbor, or a business, discussing the matter is often the first step in reaching some common ground upon which it may be resolved. You may have previously tried to resolve your dispute with the other party, however, being in Court with a trial imminent, may give your discussion more focus and clarity. Litigants, that is, plaintiffs and defendants, are often more satisfied with a resolution of the case they reach themselves, rather than a judgment imposed by a judge following an evidentiary hearing.

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The role of the mediator is to facilitate your discussions – to help the communication process. The mediator has no interest in either side of the case and we have veteran, experienced, volunteer mediators available here today to assist you.

Raise your hand if you can tell me what movie this picture is from.

Slide 4.1

Mediation provides an opportunity for you to engage in a dialogue with the other party to determine whether there is any common ground upon which the case may be settled, if that’s what you want to do. There is no pressure to settle; you should not feel forced or coerced in any way and any settlement you reach must be voluntarily. Agreeing to talk about the case does not commit you, in any way, to settling the case.

That is the most important thing to me – I don’t want anyone leaving here feeling that they have been railroaded into a settlement. Coming to court and then being pressured into some result would be totally wrong and counter-productive. If the case is not settled, it will be set for trial as I will explain in a moment.

As I’ve said, mediation is an opportunity to discuss the case. There is an important privilege that applies to mediation. If the case doesn’t settle and you go to trial, what you’ve said in mediation will not be used against you at the trial. Litigants should have an opportunity to talk about the case without prejudice. If they thought whatever they said would be used against them, it might inhibit them in making an offer to settle. Sometimes people do say at trial, “He said in mediation –” and I often cut them off in mid-sentence because I want people to know that they can have a full and frank discussion without feeling that whatever they say in mediation will come back to haunt them.

Now, a point about our fine mediators. As knowledgeable and as fair-minded as the mediators are, they are not permitted to take sides and they are not permitted to give any legal advice. So please respect the role of the mediator and do not ask them for legal advice during mediation.

Slide 5

If you settle the case, your settlement will be written down and signed to ensure the parties are entering into the agreement knowingly and voluntarily. If you achieve a settlement, be sure to receive a copy of the settlement agreement, before you leave. The Court retains jurisdiction over the case to take action if either party fails to comply with the settlement agreement.

Raise your hand if you can tell me what movie this picture is from.

Slide 5.1

I wanted to take a moment to show you the settlement form for the payment of money. You may not be able to read these portions of the stipulation on the screen, but I wanted to show you how they look to encourage you to read them carefully, if you reach that point in mediation.

Slide 5.2

If the blanks are filled in a party should know exactly how much they are agreeing to pay – the principal amount, court costs and any interest and attorney’s fees the parties agree to.

Slide 5.3

The form should clearly state how much each payment would be and when the payments are required to be made and whether there is any interest and if so, what rate of interest it will it be.

Slide 5.4

The stipulation form also provides for what happens if a payment is not made. That would be the entry of a judgment – and we’ll talk about what that is in just a moment. The stipulation states what notice, if any, a debtor would be given that there was a default in payment. It will also state exactly how much the judgment will be for if a payment is not made.

A point about entering into a settlement. No party should agree to any settlement agreement calling for them to make payments that they do not reasonably expect to be able to make. A party should undertake an obligation only if they realistically believe they will be able to fulfill that obligation.

Slide 6

If your case is not settled, if your mediation reaches what is called an impasse, your case will be set for trial by a Pretrial Conference Order that I will enter. You have a right to a trial and in this country you never have to give up your claim or any defense you may have.

Raise your hand if you can tell me what movie this picture is from.?

Slide 6.1

The pretrial conference order I will prepare will set the trial date. The pretrial conference order will also require that each party disclose to the other party the names and addresses of any person who they would call as a witness to testify at the trial and to disclose any documents that party intends to introduce into evidence at the trial. And to make those disclosures in writing to the other party at least 15 days prior to the trial date.

Slide 7

At the trial, you, or if you are represented by a lawyer, your attorney would be required to present your case.

Raise your hand if you can tell me what movie this picture is from.

Slide 7.1

Making a presentation at trial may involve subpoenaing witnesses and presenting testimony and documents. The Court is bound by the rules of in accepting evidence and only certain evidence may be considered by the court in deciding the case. Generally speaking, and with some exceptions, witnesses are required to testify from their own personal knowledge. And although business records may sometimes be admissible, letters, estimates and affidavits, may not necessarily be accepted as evidence.

The Court cannot give you any legal advice or help you prepare. If you are proceeding to trial I urge you to read the brief one-page explanation of the trial procedure attached to the pretrial conference order. I also encourage any litigant and particularly those parties who are proceeding to trial to obtain the advice of a qualified lawyer.

Slide 8

The trial process typically results in a judgment either for the plaintiff or the defendant. What is a judgment and how might it affect someone? That is a good question that I am not able to fully answer. A judgment is essentially an authorization for a creditor to collect the amount of the judgment from the defendant.

Raise your hand if you can tell me what movie this picture is from.

Slide 8.1

Let me show you what a judgment looks like. At the top of the page there is a caption, with the parties, the Court and the case number.

Slide 8.2

Then there language to the effect that the plaintiff recovers a specific amount from the defendant. It provides that amount will increase at a particular interest rate. At the end of the judgment are the words, “let execution issue.” That last part means that the plaintiff may go about making their collection efforts with the assistance of the sheriff.

Slide 8.3

In this judgment there is a provision that the defendant shall fill out a *Fact Information Form*. That is a form that a judgment debtor may required to fill out providing information about their assets and income, so the plaintiff may locate assets, real estate, vehicles, bank accounts and wages so they may go about trying to collect the judgment against those things.

Slide 9

Raise your hand if you can tell me what movie this picture is from.

Slide 9.1

How is a judgment collected? The laws of Florida provide several means of collection, such as forcing the sale of real estate or a motor vehicle or garnishing wages or a bank account. Are there defenses or exemptions available to avoid this? There may be.

Homestead, head of household, social security payments, among others exemptions may be applicable. While a detailed discussion of collection is beyond the scope of this introductory statement, it is fair to say that the existence of a judgment against in the public records may impair the debtor’s credit and may adversely affect them in other ways. Absent a discharge in bankruptcy, a judgment remains in effect for a long time and may be collected anytime the debtor becomes collectible. There is no guarantee that a judgment will be collected as a party may be indigent and judgment proof for an indefinite period of time.

Slide 10

That concludes the introductory statement.

Let me begin by directing that the parties to a case, where both are here, accompany a mediator to a mediation room or whatever room is available in the friendly confines of the Melbourne Courthouse. Then we will take up the defaults, where only one party is here.