



What To Do If You Are Sued: Part I

It is a Monday in November. You are just sitting down to dinner with your family. It has been a long workday and you are looking forward hearing everybody's story for that day. As you fill the water glasses, the doorbell rings. Since no one else appears to be responding to the bell, you walk to the front door, open it, and see a middle-aged man holding some papers in his hand. He asks you if you are (you), and you respond yes. The man hands you the papers and tells you that he is serving you with a lawsuit. He walks down your steps, out to his car and leaves. As he does so, you close the door, carry the papers to the living room, and sit down to look at them. Unless you were expecting to be served with the lawsuit, when the shock wears off, you will invariably wonder what do I do now?

The first thing to do is to write down the date and time you were served with the documents. There are time limitations for responding to the service upon you of the documents and the time begins to run from the date you are served. The next thing you should do, as soon as your lawyer's office opens tomorrow, is call your attorney to discuss the documents you were served.

If you were served with a lawsuit from the county court or the small claims court, the documents served upon you will include a Summons and Complaint form (generally) which will specify a day and time upon which you are to appear in the county court (generally 20 to 30 days from the date you are served). On that date and time you must appear in court and respond, in writing, to the claims made against you by the plaintiff, pay a filing fee to the court, and set a trial date. If, on the other hand, the civil action served upon you is in the district court, you will have 20 days from the date you were served with the documents, which will include a Summons and a separate document which is generally called a complaint, to respond. This response must also be in writing, a filing fee must be paid, and more complicated process will follow in which a trial date is eventually set by the parties and the district court.

When you speak to your lawyer about the lawsuit you were served, you want to be sure to discuss with your lawyer whether you have any insurance coverage to cover the claims being made against you. Many homeowners policies, and general liability policies (or so-called "umbrella coverage" under the homeowners policy) may cover the type of claim being made against you. In order to determine if there is coverage, it is necessary to review the insurance contract and discuss the potential claim on the policy with your insurance provider and (if applicable) insurance advisers. One of the most important benefits you will receive if the claims made in the civil action are covered under an insurance policy is that the insurance company will provide, and pay for, a lawyer to defend you in the civil action. Attorney fees in large cases are substantial. Thus, the provision of a legal defense under an insurance policy may save you tens of thousands, or in very large cases, hundreds of thousands of dollars. Thus, explore insurance coverage for a claim immediately with your lawyer and insurance providers or advisers.

About the author: Curtis Shortridge specializes in civil litigation, business and real estate law and is a frequent lecturer and counselor to real estate professionals, business and property owners in Colorado.

F A L L 2 0 0 7

It seems like yesterday we moved into new spacious offices. I marveled over the huge basement file room sporting dozens of empty file drawers. I swooned over enormous empty file closets and cabinets in staff work areas. All that capacity was this administrator's dream come true! We imagined having storage room to spare for years to come. "Au contraire!"

Happily, all these yards of paper indicate many hours of hard work. It is compelling evidence of the trust you extend us and is the bellwether of your confidence in our work product. We are honored by that trust, we are deeply grateful for your business, and we thank you in all sincerity.

Lawyers in our state are required by the Colorado Rules of Professional Conduct to have a plan covering the maintenance, storage, and destruction of client files and property. Historically, most firms have defaulted to a "keep almost everything forever" plan in order to protect the interests of all parties and because, honestly, it was just easier for those having the room to do it. However, in this information age, despite efforts of many to move us to that Nirvana called the "paperless office," there is more paper than ever and law firms everywhere are revisiting file retention policies. SSR&R is one of those firms.

We are in the process of implementing a revised file retention policy that has or will lead us to contact some of you regarding the disposition of long dormant files. The purpose of our records policy has always been to protect the interests and property of our clients and these revisions continue in that spirit. Please read the article on back for a summary of the salient points of our revised file retention policy. I welcome you to call me directly if you have any questions or concerns.

Wishing you a happy and safe holiday season,

Elise Dickerson
Administrator

This publication provides general information and should not be used or taken as legal advice for specific situations which depend on the evaluation of precise factual circumstances. Use of any information herein does not create an attorney-client relationship. The law is constantly changing and there are exceptions to almost every rule of law. You should not rely on the information provided in this newsletter without seeking legal counsel.

Employment At-Will In Colorado

Employment in Colorado is generally “at will” and is generally defined as follows: If an employee is hired for an indefinite period of time and there is no agreement limiting the employer’s right to discharge the employee, there is an at-will employment. An at-will employment may be terminated at any time by either the employer or the employee without notice or cause.

The presumption of employment at-will, however, may be rebutted by a number of major exceptions: 1) If there is an express contract of employment. In this situation the employee may be terminated only in accordance with the contract. 2) If there is an implied contract between the employer and employee. An implied contract may also arise pursuant to the terms of an employee handbook which may spell out certain rights granted to an employee. 3) A public policy exception may exist. For example, generally an employer cannot terminate an employee for filing a workers’ compensation claim after being injured on the job or for refusing to break the law at the request of the employer. 4) An employer’s right to terminate an employee may be limited by the employee’s right not to be discriminated against illegally and by the employer’s obligations to offer equal employment opportunities under federal, state and municipal laws and regulations. These laws mainly deal with the race, religion, sex, age, and/or national origin of the employee.

Whether you are an employer or an employee, it is always a good idea to confer with counsel familiar with employment laws in order to determine your rights and responsibilities within your role. Our employment law specialists are always available to help you concerning these issues.

About the author: Barry W. Rothman is a Shareholder in the firm. His areas of practice include Corporation Law; Business Transactions; Real Estate; and, Employment Law.

SS&R File Retention Policy

Our current file retention policy formalizes procedures that were in place before we undertook the representation of many of our clients and/or implements new procedures to protect the interests of our clients during and after the course of our representation. Generally stated, when a matter is closed, original client documents will be sent back to the client unless those documents are necessary for us to retain. If the documents are needed only as reference material, then copies will be made for the file and the originals will be returned. Unless otherwise agreed upon, your file regarding the representation will be destroyed by us seven (7) years from the date of the last work date on the file. An exception will be made in the case of estate planning files, which will be destroyed by us twenty-one (21) years from the last work date on the file. You may request the return of your file at any time after the matter is formally closed and all associated fees have been paid; in fact, we encourage you to do so before our retention period expires.

If your legal matter was initiated prior to December 1, 2007, we will make every reasonable effort to contact you, and make your files available for you to pick up, before destroying any of your files. Matters initiated on or after this date will be fully subject to the revised policy and, unless otherwise agreed in writing, upon completion of the stated retention period, the firm, may retain, destroy or otherwise dispose of files and documents as we deem appropriate.

If we are currently in possession of a closed file for work that was performed for you and you would like to pick up that file, please call us at your earliest convenience. We appreciate your understanding and cooperation as we implement these changes.