Criminal proceedings from beginning to end

1. Arrest: **Valid arrests** must be based on *probable cause*. A reasonable belief that a certain set of facts which rises to the level of a threat to life or property are true. Must be based entered into the court record via sworn statement. *(REMEMBER - no sworn statement of probable cause, even in a traffic case = no valid arrest).*

2. Booking: The literal processing in to jail. You cannot refuse to be photographed and fingerprinted. Don't cause problems for yourself there.

3. Complaint: The prosecutor determines there is **enough evidence of probable cause** to file a *criminal suit*. In most state crimes as well as *federal misdemeanors*, the complaint is based on an *information* which includes an investigatory officer's affidavit or sworn statement of probable cause (*if No sworn statement of probable cause, even in a traffic case = No subject matter jurisdiction)*. In some major state crimes and federal felonies, the prosecution concurs with a grand jury's determination of probable cause (even though it may be a kangaroo grand jury).

4. First Appearance: The defendant is informed of the nature and cause, settles the issues of counsel and bail. Don't be stupid, get out and be a good biy or girl for now. Win this on pleadings not strange theories.

The important things to remember: (a) **never admit that you "understand" the charges against you**, and (b) you have a Constitutionally reserved right to **represent yourself with the assistance of counsel appointed** and paid for by the state (state used in generic terminology means all levels of government). So you get to run your case but have counsel to get through the procedural system. YOU must be in charge, or you will more likely get railroaded. You can **do far more than an attorney** would dare do, against his friends in the court. He wants to protect his reputation with his associates, and will not stand up to them on jurisdictional grounds, like you can and need to. You can but one to do that either, so why waste your money? Just use that attorney as *your assistant*, not generally speak for you (except on procedural questions WE ALL may need help with).

5. Preliminary hearing: Applies in felony cases. Purpose to the court can determine whether procedural requests for prosecution have been followed. How to aggravate the system? Insist on **representing yourself but refuse to admit that you understand** the charges against you. The risk in this strategy is that you may be judged a risk of flight and incarcerated. If you are threatened, consider answering only "under threat, duress, and coercion". Never expect any judge, prosecutor, or attorney to know and obey the law. Don't fear their drama either, it's all intended to get you to submit and volunteer. Remember they are acting judge an acting prosecutor professionals, in the game of intimidation they call jus-tice.

6. Filing the indictment: The prosecutor files the grand jury indictment or the *information* used as the basis for the complaint. You will know the statute you are being

charged under. You cannot be charged under a theory of law. You must be charged under a statute. Check the state or federal *annotated statutes* to determine what the state's *burden of proof* is under that statute. Soon **File a motion to quash** with a supporting brief, that states why the information or indictment is insufficient to charge you with a crime, support with annotated law you site in the brief. Keep it simple too.

7. Arraignment: The pleading stage: a) Ask the judge to rule on your motion to quash. b) If the judge overrules your motion to quash, move to *have the judge certify the question as interlocutory* and 3) if granted *file an interlocutory appeal*. *Unless you have received a certified bill of particulars stating the **EIGHT elements of a cause of action**, refuse to plead as you have not been fully informed of the nature and cause against you*. The common likely result is that the court will enter a not-guilty plea for you. I suggest that you NOT plead innocent, that's too off the wall. These big babies are easy enough to piss off. Simply follow this up and file a motion for a certified Bill of Particulars.

8. Pre-trial motions: Generally for the defense. File a Motion to Dismiss for lack of subject matter jurisdiction; the complaint is wholly lacking in factual sufficiency; **the complaint fails to charge a crime.** Do this *even if* you have previously been denied a Motion to Quash.

9. Trial: Prepare yourself for the likelihood of sinking with an attorney. Remember, you are the one who will go to prison, not the attorney. YOU must aggressively present yourself by: properly preparing requested jury instructions, an opening statement, learning how to object, and how to impeach witnesses. *This is an awesome and daunting task, but what's your alternative?* Remember: 95% of so-called trial lawyers have never conducted a trial and even experienced trial attorneys would rather plead out. Constantly make a record for a potential appeal, by getting your objections in the record. Memorize your Opening (the open can win the case) and Closing statement. You, not the prosecution, can make *character* an issue. Your choice may mean that good character witnesses may exonerate you in the eyes of the jury. No matter what, don't beat up on yourself, and remember, most judges are corrupt crooks, at least that's what my research shows.

10. Sentencing: Prepare a *pre-sentencing report* based on sentencing guidelines.

11. Appeals: Don't be afraid to Appeal. You **only need one issue** that warrants reversal (any issue showing a due process violation you catch them on). KEY: On your cross examination of their own witnesses is where you can build appealable evidence. You can bond out while a federal appeal is pending. In most jurisdictions, you cannot pursue a writ of habeas corpus while an appeal is pending, but *that won't stop you from filing a civil rights lawsuit.* A potential pitfall of appeals, the United States Supreme Court has ruled that you have NO right to represent yourself on appeal, but you can lead the process.

12. Post conviction remedies: Focus on "jurisdictional defects" and claim that practically everything done in any court was Void. Coincidentally, the so-called Patriot Act and so-called Homeland Security have effectively destroyed the privilege of the writ of habeas corpus. Time to vote out every slimeball Congressman and Senator who votes to keep these two atrocities on the books. Meanwhile use civil rights lawsuits to counterattack.

CIVIL PROCEDURE (non criminal) - Start to Finish Outline

1. Theory of indemnity: There are basically on **four types of civil suits**: (a) breach of contract, (b) breach of duty otherwise known as a personal injury – even if there is no physical injury, (c) violation of civil rights. To have a civil rights violation, the actors must be shown to have acted under color of law. Color of law in this context means in conjunction with a government employee whether the person is actually employed by the government, or merely appears to be in an agency relationship with the government, and (d) civil racketeering actions where the plaintiff is a *private attorney general.*

2. Filing the complaint: In federal courts, **the complaint is called a "complaint"** and **must state the statutory authority** for the complaint. Civil actions in federal courts are of two types: (a) federal question and (b) diversity. A diversity action is where all the parties are in different states (complete diversity), the complaint specifies a wrong cognizable under state law, and the amount of damages exceeds $75,000. In state courts, the complaint is usually called a "petition" and commonly requires citing statutory authority although to a limited extent, equity actions still exist in state and municipal courts.

3. Notice and opportunity: Contrary to popular belief, **you DO NOT have to give prior notice for filing a lawsuit** (although a good idea). However, you should first attempt to give the opposition an opportunity to avoid suit although, as is a good-faith gesture. This is referred to attempting to exhaust administrative remedies FIRST, which may help the court look on your position more favourably. Therefore, in some state jurisdictions, breach of contract cases require a good-faith attempt to settle without litigation. Notice and opportunity is serving a copy of the summons and complaint or petition on the respondent (party being sued). Sufficiency of service is controlled by state service requirements - watch them carefully. In other words, even in a federal case, you achieve service based on the party's home state rules for service. You don't want to lose stupidly on a simple notice rule violation.

4. First appearance: In the first responsive pleading the respondent **can raise two issues** to defeat the complaint: (a) **lack of personal jurisdiction** including insufficiency of service, and (b) **failure to state a claim**. If the respondent complains about lack of personal jurisdiction or insufficiency of service, an *administrative determination* must be made. If the respondent lives in the jurisdiction, operates a business in a jurisdiction,

owns property in a jurisdiction, or commits an act in a jurisdiction, that jurisdiction has *in personam* jurisdiction over the respondent. Even if the court does not have inherent personal jurisdiction over the respondent, appearing and *taking act except challenging the personal jurisdiction of the court,* constitutes a waiver of personal jurisdiction.

It is also true, the respondent can, by showing a **defect in service**, defeat the complaint without waiving personal jurisdiction; however, if the respondent goes on the offensive such a moving to dismiss for failing to state a claim upon which relief can be granted, the respondent has waived challenges to personal jurisdiction and sufficiency of service due to the fact that a party must be "before the court" to argue on the merits.

The **motion to dismiss for failure to state a claim upon which relief can be granted** is the most abused rule in civil law. In consideration of a motion to dismiss for failure to state a claim upon which relief can be granted: (1) The Court must take as true the well-pleaded factual allegations of the plaintiff and draw all reasonable inferences in their favor, (2) The Rules of Civil Procedure require only that a claimant plead a short and plain statement of the claim, showing that the pleader is entitled to relief, and (3) Plaintiff is not required to set out in detail the facts upon which he bases his claim.

The bottom line: if you have supported your complaint with a **procedurally proper affidavit**, the case cannot be dismissed for failure to state a claim, and I am of the opinion that any judge who dismisses your complaint under those circumstances has willfully, intelligently, and intentionally conspired to construct an artifice to take money under false pretense, THUS warranting a racketeering suit against that pirate!

An example of your proper use of a F.R.Civ.P. rule 12(b)(6) would be a federal case based on state law, where there is incomplete diversity and/or insufficient controversy amount.

5. The answer: In the answer, the respondent can assert affirmative defense or simply dispute. Disputing must be particular. The respondent can also file a counterclaim which is one of our favorite strategies.

6. Defaults: Another much abused rule. Default judgments are appropriate where the respondent or defendant on a counterclaim fails to enter an appearance and answer or otherwise defend. It is a common misconception among judges and lawyers that a party who attains a default judgment is entitle to monetary or other damages. ***Damage must always be proved – even in a default judgment.*** And what is required to prove damages? Testimony of a competent fact witness and properly authenticated evidence.

7. Discovery: Discovery includes: requesting admissions (which means requesting a yes or no answer to questions), requesting production of documents, requesting interrogatories (which means requesting narrative answers to questions), and depositions.

Local rules control discovery and although you have no due process right to discovery,

you do have a due process right to reciprocal discovery established at common law. **Aggressively engage in discovery**. As far as depositions go, learn how to answer if you or your witnesses are deposed. Don't waste money deposing them or their witnesses unless absolutely necessary to determine something you don't already know and can't find out using other discovery tools. Discovery is also where you inform the court of your witnesses and evidence. You don't have to bring forward all of your evidence in the beginning, you just have to identify what general evidence you are going to use.
Very important, in federal civil proceedings, both parties have to, soon after the complaint is filed and answered, file their **"rule 26" disclosures,** including naming witnesses, identifying evidence, and the plaintiff's theory of damages. Evidence NOT disclosed under rule 26 cannot be used at trial.

8. Limiting motions: Both sides have authority to file a **motion in limine** if a named witness lacks personal knowledge or if evidence is untrustworthy, irrelevant, or immaterial. You can also move to strike evidence which is **not authenticated,** but I'd wait to do that until **just before trial.** Don't give them too much time to repair.

9. Pretrial conferences: Administrative housecleaning. Also, precedent to the pre-trial conference, both sides are **supposed to confer, issue, and file a status report**. Never allow the opposing side to do this without your inspection. It is best to compose your own report, fax it to your opposition, then file it *as agreed* to report.

10. Summary judgments: Yet another badly abused rule. Summary proceedings are the reason why most so-called judgments are facially void. Summary judgment proceedings are both administrative and judicial in nature. The court has two determinations to make: (1). Administratively, are facts in dispute? (2). Judicially, if facts are not in dispute, would reasonable persons likely come to differing conclusions regarding the facts? If either is true, *the court is a court is deprived of judicial power to render summary judgment*. If facts are not in dispute, the court has discretion to award summary judgment as a matter of law but the summary judgment will be defective if for money and/or property and there is no competent evidence of damages. ***Very Important – court's are deprived of judicial power, to use summary forensics to evaluate the weight or import of the evidence, a power reserved for trial.***

11. Trials: The same strategies are used as in criminal trials; **however the burden of proof is different**. In a criminal trial, if there is "reasonable doubt", the jury must find for the defendant. In a civil trial, if the jury believes that based on a "preponderance of the evidence" that it is truer, more likely than not, the jury can find for you. Again, go to the *annotated statutes* and find out what it takes to prove the case, and strategize around the annotated law.

12. Executions: In every civil trial won, there is a *second lawsuit* called the *in rem proceeding*. An in rem proceeding is necessary because they judgment creditor can't literally take the judgment out of your flesh or reduce you to poverty, both of those results are unconstitutional. In rem proceedings have been simplified **but still must be**

done. Even if they have a judgment, they can't just take your money or property in satisfaction. If you are self-employed and/or own no property and/or own no property in the jurisdiction of the judgment, you will frustrate their efforts at collection. Remember, bank accounts are property, so keep your account low! Also, **if you appeal** the matter, you can post a **superseding bond and stay collection**. Further, if the matter is on appeal and even if you haven't posted bond, they have to in most jurisdictions called bonding execution.

13. Collecting from them: When you win, the general steps are: (1). File the judgment with the clerk of courts and get a **certified copy of the judgment** from the clerk of courts. (2) File a **judgment lien in a county** where the judgment debtor owns property. Your certified copy of the judgment will form the *abstract of judgment.* At the time the judgment lien is filed send a copy via certified mail to the judgment debtor. (3) File for a hearing on assets, this usually requires service of process. The objective is to establish the existence of specific assets which can be levied or made subject to a lien. (the difference between a levy and a lien, levy takes liquid assets by garnishment and a lien must be foreclosed to obtain a sale of property to satisfy the judgment or will alternately be executed on the voluntary sale of property. (4) In most jurisdictions, judgment debtors are privileged to either setup a payment plan or inform the court why paying certain sums would reduce the judgment debtor to poverty. Federal consumer law limits taking from income to satisfy a judgment to 25% of gross income.

14. Appeals: Although at least 85% of all appeals filed over the past 35+ years were rigged, *the time they are a changing.* Even without the important rules changes now being considered, **filing an appeal accomplishes two things**: 1. you could win. 2. again it causes the legal industry aggravation. To date, no one that I have worked with has been made to pay a sanction for filing an appeal. There seems to be an unwritten rule that since the appellate court are going to fix your appeal and hide the fix under the fraud of not for publication that they're reluctant to add insult to injury, by fining you for the privilege of being screwed. Remember though, you cannot appeal to the United States Supreme Court or most state supreme courts. Go there is a petition for review which is totally at the discretion of the law clerks installed there to protect the racketeering of the legal industry.

by Richard Luke Cornforth – June 12th 2005, with supplemental editing.