

5 NJ Commercial Litigation

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Business disputes can take many forms. Disagreements with customers, suppliers, investors, and even competitors are not uncommon. In the event of a dispute, it's likely preferable to negotiate an agreement but in the real world that's not always possible. In that case, disputes may require litigation.

Businesses emanate from and are formed with a variety of contracts at their core. A high percentage of commercial litigation involves some sort of breach of contract. A few examples are:

- ∞ Non-compete agreements. Sometimes employees or suppliers may be required to sign a non-compete agreement. If they fail to honor that agreement, it can only be enforced by instituting a lawsuit against them in a court of law.
- ∞ Vendor disputes. If you contract with a vendor for a certain product or service at a particular time and they fail to deliver, or if the goods or services provided fail to meet the agreed upon standards, litigation may be required to resolve the dispute.
- ∞ Real estate related. Commercial Leases or Construction Agreements can be complex matters and disputes are common.

Not all litigation is contract based. For example, if a competitor engages in unfair competition or deceptive trade practices, you may need to bring a lawsuit against them to get them to stop.

Process for Commercial Litigation in New Jersey

Typically, most people and businesses try to resolve disputes without resorting to litigation. If litigation is necessary, the following describes how the process works.

1. A complaint is drafted based on the particular facts and law. The complaint is filed with the court.
 2. The summons and complaint are served together next. The summons serves the complaint and gives the adverse party a deadline to file an answer to complaint; the complaint details what the lawsuit is about. It is the first "pleading" to the court. The summons is generally served by the Sheriff of the County,
1. Answering the summons and complaint. The defendant has 35 days to respond with an Answer. Failing to file a timely Answer can result in the issuance of a "Default and Default Judgment" which would allow the plaintiff to try to collect on the judgment and levy on assets to satisfy the claim. The defendant's response to the complaint can include a counterclaim against the plaintiff, a crossclaim against another defendant, or a complaint against a new third party.
2. Discovery. Discovery is the process through which litigants exchange information relevant to the lawsuit. It can include written questions (interrogatories), document demands, questioning witnesses (depositions), inspections, etc. The discovery

process timeframe varies from case to case depending on the complexity of the lawsuit.

3. Mediation or Arbitration will often be scheduled during the discovery period by the parties agreement or in some cases it may be imposed by the courts. Mediation or Arbitration is commonly called Alternate Dispute Resolution (often referred to "A.D.R.") At Arbitration, the Arbitrator considers the case and makes a decision which generally is binding on the parties. At Mediation, the mediator helps the parties come up with a solution rather than relying on the court to impose a fixed result.
4. Trial. If the parties do not resolve their dispute, then the final step is the trial, which can either be a bench trial (heard by just the judge with no jury), or a jury trial. In a jury trial, the judge instructs the jury on the law and it is the jury's job is to decide on the facts in the case when rendering their verdict.

Complex Business Litigation Program

For business disputes where the potential damages are over \$200,000, the parties to the lawsuit can indicate that they want the case to be treated as "Complex Business Litigation," in which case it will be heard by a judge who is specifically trained in business litigation. There are different procedural rules used in the program, for example cases in the program are not part of mandatory ADR programs.