

What to Expect When You're Expecting...A Lawsuit

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EXPAND YOUR EXPECTATIONS™

What can Trigger a Lawsuit?



Anything and everything under the Sun!

Typical Lawsuits

Breach of Contract

Premises Liability/Slip & Fall

Product Liability

Intellectual Property

Workers Compensation

Employment Cases

- Discrimination, harassment, retaliation
- ADEA, Title VII, ADA, FMLA, ERISA, FLSA, EPA, PDA, GINA

Why should you prepare for a potential lawsuit?

1

Defending a lawsuit, even a frivolous lawsuit, costs time and money.

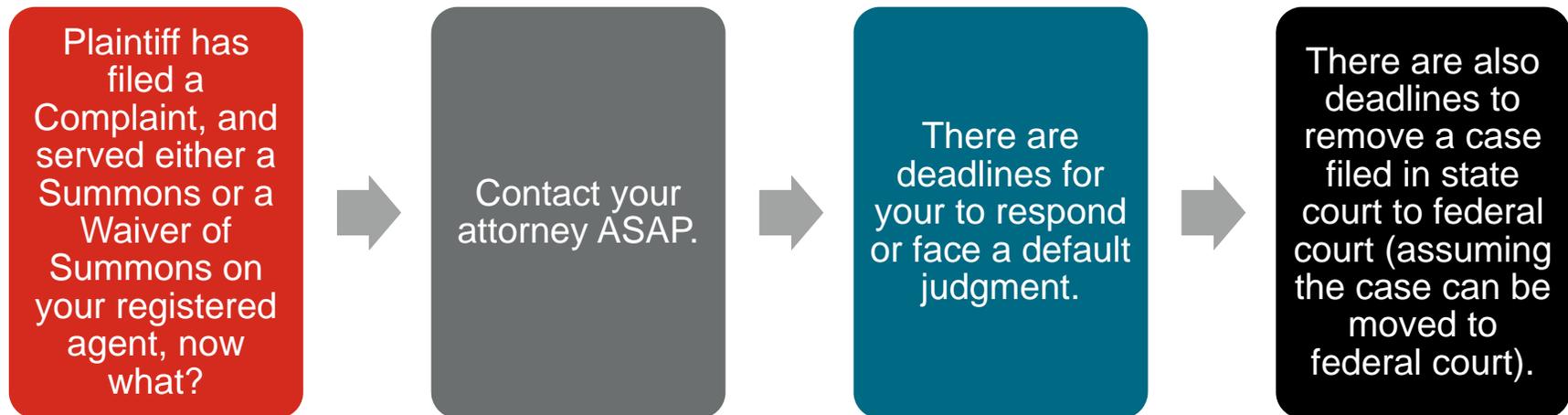
2

You must take the necessary steps to preserve evidence, including electronically stored evidence.

3

It will make the discovery process run smoothly if you are organized from the beginning.

Potential Lawsuit has now Turned to Actual Lawsuit



Determining the Scope

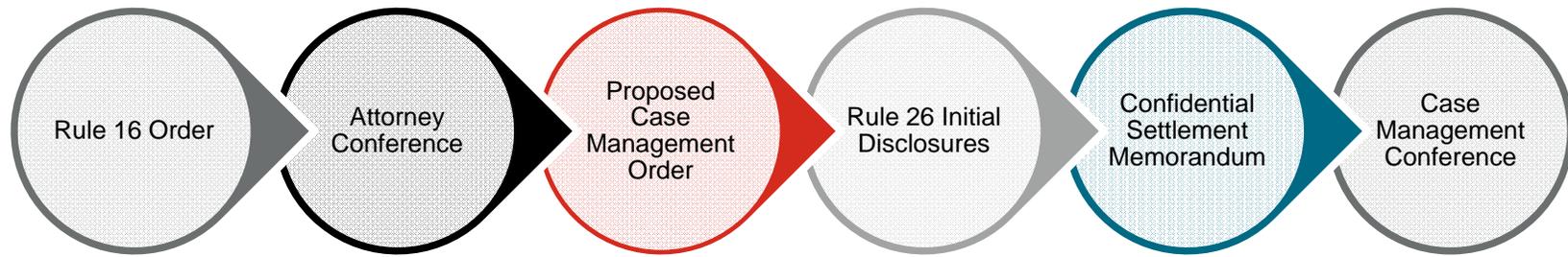
The Federal Rules of Civil Procedure provide that parties "may attain discovery regarding any non-privileged matter that is relevant to any party's claim or defense." Fed. R. Civ. P. 23(b).

While this is a very broad standard, it does not allow for a fishing expedition.

Additionally, discovery can be expensive.

As such, you should plan a careful course of discovery with an eye on what evidence do I need to prove my case or my defense.

Determining the Scope (continued)



Timing Considerations

No discovery prior to Attorney Conference absent special circumstances.

Do you want written discovery responses and third party discovery back before scheduling depositions?

Do you want to depose the plaintiff before the defendant or vice versa?

The Court will set expert and discovery deadlines. Only extended based upon "good cause."

Motions to compel and motions to strike expert designations based upon deficiency of designation must be filed sufficiently in advance of discovery deadline to allow the Court to rule and the party to comply with the Court's order.

Rule 29 Stipulations

Discovery Mechanisms

Rules 26 through 37 and 45 of the Federal Rules of Civil Procedure provide for the various discovery mechanisms available in federal court.

Rule 27, 28, and 30 govern oral depositions. Rule 31 governs written depositions.

Corporate entities are deposed by what is called a 30(b)(6) deposition.

Rule 33 provides for interrogatories to the parties.

Rule 34 provides for the production of documents and other electronically stored information as well as inspection of the premises.

Rule 35 provides for the physical and mental examinations.

Request for admission are provided for in Rule 36.

Discovery is Over – Now What?

Dispositive Motions

Hearings on Dispositive Motions

Pretrial Conferences

- Motions in Limine
- Proposed Pretrial Order
- Proposed Jury Instructions

Trial

Developing a Successful Trial Strategy

Creating an understandable and effective case **theme** is a fundamental part of every case.



When to Develop the Theme?

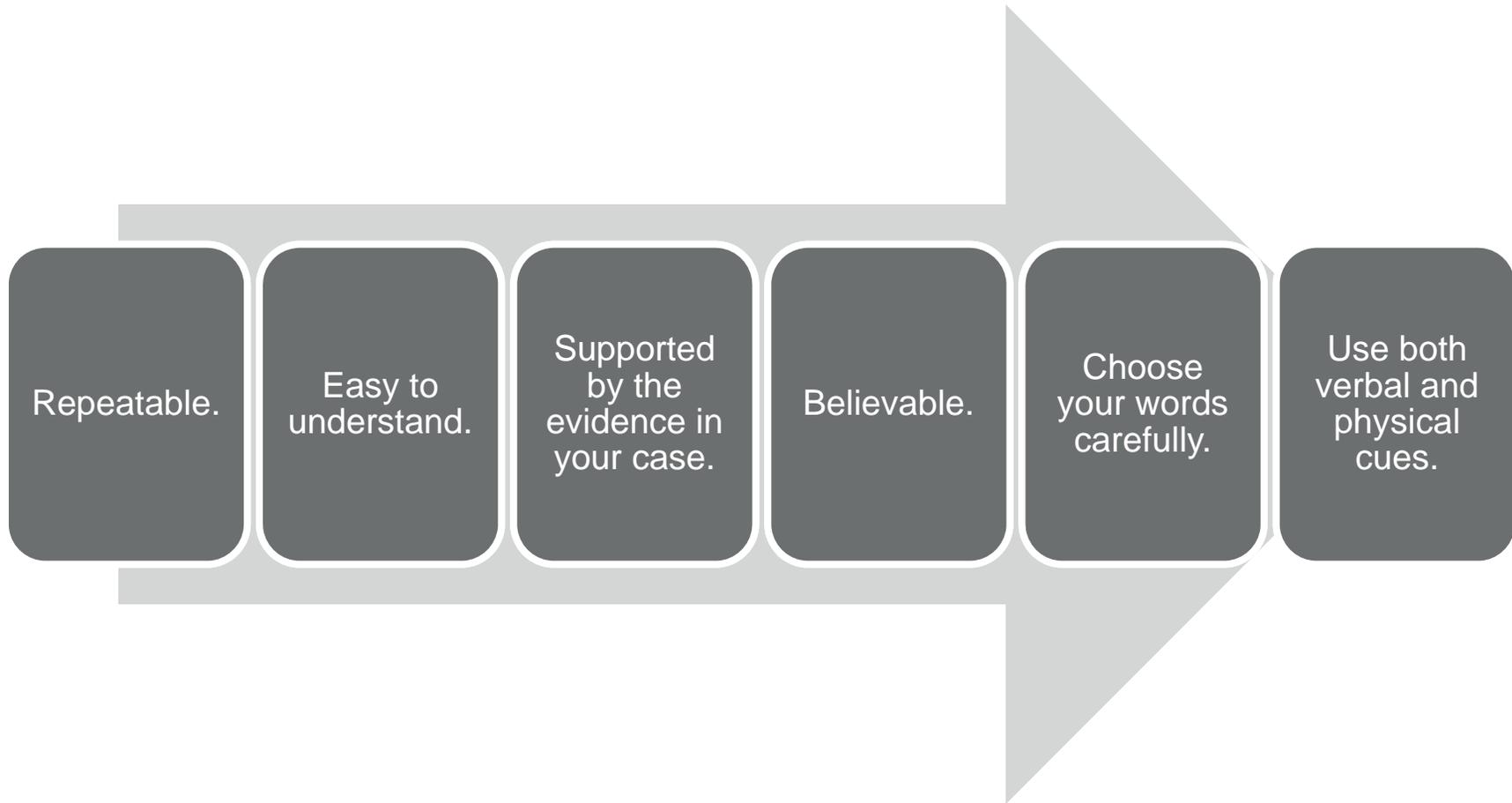
Your theme needs development in pleadings, discovery, and trial.

Scrambling to develop a theme on the eve of trial is not the best practice.

What is an Effective Theme?

- 1 Easy to repeat
- 2 Easy to understand
- 3 Easy to integrate into your case.

Key Elements of a Strong Case Theme



How to Test your Theme?

Try it on a non-lawyer!

Try it on someone who has no prior knowledge of the case!

Appellate Issues

You must preserve issues for appeal, i.e. your attorney must make objections!

Consider having an appellate lawyer attend the trial to assist in the preservation of the issue.

Where will Appellate Issues Arise?

- Pleadings (responsive pleadings, motions, etc.)
- Procedural Issues
- Discovery Issues
- Evidence (motions in limine, evidentiary objections at hearing or trial)
- Trial (voir dire, opening statement, closing argument, etc.)
- Instructions to the jury
- Preserving Error (before trial, in trial, after trial)
- Use of Writs, Interlocutory Appeals
- Motions at the close of plaintiff's evidence, close of all evidence, new trial (Fed. R. Civ. P. 50).

How do You Avoid All of this Fun?

- Have policies and procedures
- Follow those policies and procedures
- Train your managers
- Train your supervisor
- Be consistent
- Communicate
- Respect
- Apologize
- Plaintiffs/employees talk; do not be an easy target



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