



**SUPREME COURT**

**DISTRICT COURT**

**GUIDE FOR**

**UNREPRESENTED**

**LITIGANTS**

**(HIGHER COURTS)**

September 2007

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## INTRODUCTION

It is your right to decide to represent yourself.

However, you should be aware that by choosing to represent yourself, you could lessen your chances of success. Unless you are very experienced and have a good understanding of legal practice, the law of evidence, court procedures and the law about the particular dispute, you could be disadvantaged, particularly if the other side is represented by a lawyer.

This Guide has been prepared to help you understand in general terms the Court processes. You could be a person who wants to start proceedings in the Court; or you may be someone who has already started a civil action in the Court without a lawyer; or you may be someone who has been sued but does not want a lawyer or someone who previously had a lawyer, but you have, at some stage in the proceedings, decided to continue without one.

As you read this Guide you will notice that it does not tell you when or if you should commence proceedings. That is often a very complex question, and legal advice should be obtained. These services should be used, as your case may not be a "typical" or "simple" one. There may be problems associated with your particular case which are not discussed in this Guide.

Court proceedings vary significantly in type and complexity. This Guide does not describe every type of proceeding. What it does is to give a general description of a typical and simple court action, from the time it begins to the time it finishes. It does not cover appeals, judicial review and injunctions and other specialised proceedings in the Supreme Court.

The Guide describes the process of commencing proceedings in the Court; what happens after the initial summons is served and what happens after the trial begins.

The procedures of the Court are contained in a document available for sale, or to read in the Court library, known as the "... Court Rules" or "the Rules". The present rules commenced on 4 September 2006. There are "old" rules that still apply to cases started before 4 September 2006. If your case has started since then, you should be careful to refer to the new rules. You should familiarise yourself with those Rules which are relevant to your case. This document does not attempt to summarise all of them, but does introduce you to some of them.

## CAUTION

**This Guide has been prepared to help you understand in general terms the process of presenting a case in the Court. It contains helpful suggestions on things that you should consider doing as a litigant. This Guide is not a Court document. It will not be accepted by the Court as being anything other than a guide. The conduct of the trial is in the control of the presiding Judge and this Guide cannot affect the Judge's ultimate authority to regulate proceedings.**

## DISCLAIMER

The content of this Guide is provided for information purposes only. No claim is made as to the accuracy or authenticity of the contents of this Guide. It does not constitute legal advice and all litigants are encouraged to obtain legal advice from a solicitor before taking any steps to begin proceedings. The Supreme Court of South Australia and the District Court do not accept any liability for loss or damage incurred as a result of reliance placed upon the content of this Guide.

It is important that you understand that neither the Court staff nor the Judge can give you legal advice. The Court staff can advise on the processes available. The Judge is there to conduct the trial fairly and in accordance with the law and has to be independent and scrupulously fair to both sides. The Judge can explain the process of how the trial will be conducted, but cannot favour or be thought to have favoured you simply because you are not a lawyer.

## BEGINNING THE ACTION

How the Civil Court action progresses.

The person beginning the action is usually called the plaintiff and the person against whom the action is brought is usually called the defendant. Sometimes there might be more than one plaintiff, and there can be more than one defendant. It does not matter how many parties are involved, so long as you understand that all parties, whether they be plaintiffs or defendants, must receive a copy of all the documents filed in the Court Registry as the case progresses.

Rule 33 requires the plaintiff (the person who proposes to issue the Summons) to send to the defendant (the person against whom the Summons will be issued) 90 days before the Summons is to be issued, a clear and detailed statement of the plaintiff's claim, including an offer to settle the claim on a basis set out, together with any experts' reports relating to the claim. This will give the defendant an opportunity to make an offer to settle the claim before it goes to court.

If this notice does not resolve matters, the first step to be taken by the plaintiff is to file in the Civil Court Registry a document called a "Summons". There will be attached to the Summons a document called a "Statement of Claim".

Before completing these two documents, the plaintiff should read the Rules relating to the content of these two documents because there are some strict rules about the Forms to be used and how they are to be completed. You should carefully read Rules 33 and 38. If you do not follow the Rules relating to the Summons and Statement of Claim, the Registry will refuse to accept them.

If the Registry accepts the documents, a fee will have to be paid. The Summons is then said to have been "lodged" or "filed" in the Court.

## THE SUMMONS

The Summons will contain:

- ☛ the name and address of the plaintiff (or plaintiffs if there are more than one);
- ☛ the name and address of the defendant (or defendants) being sued;
- ☛ certain particulars required by the Rules, including whether the plaintiff wants an extension of time or whether a pre-trial offer has been made and so on.

## STATEMENT OF CLAIM

The Statement of Claim will contain:

- ☛ a short summary of the facts which the plaintiff says he or she will prove and which are relevant to the claim;
- ☛ how those facts entitle the plaintiff to a legal remedy, including reference to any relevant legislation;
- ☛ if the plaintiff claims to have suffered loss as a result of the conduct of the defendant, that loss should be identified and calculated. If the loss is continuing to be suffered, the plaintiff should also claim for such continuing loss and be able to quantify it as the case proceeds;
- ☛ details of the remedy sought or orders which the plaintiff wants the Court to make. For example, the plaintiff may ask the Court to order that the defendant repay a loan which it says is owing or it may want the defendant to pay damages for injuries it says the defendant has caused;
- ☛ reference to any Act of Parliament it relies on;
- ☛ if the real plaintiff is a company and you are acting on its behalf then you must read Rule 27. You are required to apply for permission to act on its behalf. Sub-Rule (2) tells you of the details on which the Court must be satisfied before leave will be granted for you to act on behalf of the company. You might like to read the section titled “The Day of the Trial” on page 15 of this guide in connection with this matter.

## SERVICE

Once the Summons has been lodged in the Registry, a copy of it needs to be given to the defendant. That process is called “service” of the Summons. Service can be made either by the plaintiff, or by a bailiff engaged by the plaintiff, or by an officer employed by the Court. It is for you to make this decision. There are special rules about service of Court documents that plaintiffs should know about if they intend to serve a document themselves. It is generally considered to be easier to have it served by the Court or a professional bailiff.

It is important that you realise that a Summons is only in force for a period of six months, so it is important that you arrange for the service of the Summons as soon as possible after it has been issued. Once the six months have passed, if you have not served it, then you must apply to the Court for a renewal of the Summons. As you would expect, it is your responsibility to justify the delay. Equally importantly, you have only got three months after the expiry date in which to make your application for renewal. Once the Summons has lapsed, the proceedings may be dismissed.

## THE DEFENCE

Once the defendant is served with the Summons, the defendant has a specified amount of time within which to lodge with the Registry a written response. This document is called a “Defence”. The Defence will:

- ☛ say which of the allegations in the Statement of Claim are admitted and which are denied;

- ☞ set out what is the defendant's general response to the claim;
- ☞ say what are the specific responses to any specific allegations made in the Statement of Claim;
- ☞ set out the version of the facts which the defendant relies upon;
- ☞ raise any special ground of defence which the defendant relies upon and say why that defence is available;
- ☞ refer to any Act of Parliament it relies upon;
- ☞ seek orders from the Court: for example, dismissing the plaintiff's claim;
- ☞ in some circumstances, then refer to certain facts which the defence says justify a counterclaim against the plaintiff.

Like the Summons and Statement of Claim, the Defence must be served on the plaintiff or, if the plaintiff has a solicitor, on the plaintiff's solicitor.

### COUNTERCLAIM

If a counterclaim or cross-claim is made by the defendant, the defendant will add to his defence the particulars of that claim in the same way as a statement of claim is prepared. The plaintiff then has to lodge another document, called a "Defence to Counterclaim", which responds to the Counterclaim in the same way a Defence responds to a Summons and Statement of Claim.

### THIRD PARTIES

Sometimes the defendant might want to bring another party into the case and that will usually be done by what is called a "Third Party Claim" and that, too, will be in the form of a brief Statement of Claim. Various parties in an action may also "cross claim" against each other.

### PLEADINGS

Generally, the Summons, the Defence and any Third Party Claim or Cross Claims are called the "Pleadings" in the case. They form the foundation for the conduct of the trial.

They are intended to set out the dispute for the Judge. As a general rule, each party must present a case to the Court which is consistent with what he or she has said in the pleadings. This means that if the pleadings do not make it clear that a party will be relying upon a particular fact, or principle of law, or the provision of an Act of Parliament, that party may not be permitted to rely upon the point in the actual trial, either by way of evidence or argument.

### DISCLOSURE AND INSPECTION

After all pleadings have been lodged in the Court, each party is obliged to lodge in the Registry and provide to all other parties a list of the documents which are then in its possession (or which have been possessed at any previous time) and which are directly relevant to the matter in dispute.

That list must describe every such document, whether or not it helps the case of the party disclosing it.

**No party is allowed to conceal the existence of a document that is directly relevant to the dispute.**

This obligation of disclosure is a very strict one and if it is not properly complied with, the party at fault may suffer very serious consequences in terms of costs orders or credibility findings. It applies to all directly relevant documents held, previously held, or which come into a party's possession at any time before or at trial.

Even if a party claims that documents are "immune" or "privileged", in the sense that they are protected from disclosure to the other side, they must still be listed in the disclosure document, but under a separate heading that shows that these are documents for which the disclosing party wishes to claim privilege. This means they are documents to which the other side should not have access.

The lodging and provision of these lists of documents is called the process of "Disclosure".

Once a party has provided Disclosure, it must make all "disclosed documents" (with the exception of documents which are said to have immunity or be privileged) available for inspection and copying by the other side, if so requested. That process is called "Inspection" of documents.

If there is a dispute between the parties about immunity or privilege or some claim that confidentiality has been lost, then the dispute will be resolved by a court hearing started by one or other of the parties on an Interlocutory Application.

Once the action has been started, the parties will generally receive letters directly from the Court or the other side, informing them of the times at which other documents must be lodged or at which pre-trial hearings will be conducted.

### PREPARING YOUR CASE

Once you have reached this stage and because you will be involved in Interlocutory processes, the time for serious preparation has arrived. Interlocutory processes are steps taken before the trial to ensure that the parties are in fact ready for trial. See also the Section headed **Directions/Interlocutory Applications** below. It does not matter whether you are the plaintiff or defendant, the key to success is the amount of preparation you are willing to do. Already as part of the work you have done on the pleadings you will have begun your preparation. In following the suggestions below you will be refining with greater precision what you have already done.

The first thing you should prepare is a Case Plan. This is not for use by the Court but for your own assistance in preparing your case. This will be divided into two basic sections. One section will deal with the facts and the other section will deal with the law.

#### The Fact Section

For the purpose of presenting evidence, a fact is anything that the witness has personally learned through one or other of the five senses. The witness must be able to say that he or she saw, heard, touched, tasted, or smelled whatever it is that the witness is giving evidence about.

In the fact section you will list all the facts that you will need to prove to the Court. Beside each fact you will name the witness or describe the document that will prove the fact as true.

### Law Section

In this section you will list the submissions of law on which you will rely. This will include references to case law authorities and the sections of any relevant legislation. The term "case law authorities" covers reference to decisions of the Courts upon which you may rely to support your argument as to the merits of your claim. It is important that you are able to relate the relevance of these legal propositions to the factual case that you are presenting.

### Personal Statement

The next document you should prepare is a personal statement. You will certainly be a witness and it may be that you are your only witness. Therefore you must be certain that all relevant facts are stated in your testimony. The most effective way of writing up this list of facts to which you can testify is to do it in date order. Importantly, remember the definition of facts that was given above. Evidence that consists of facts that someone has told you about is called "hearsay evidence" and, with some exceptions, it cannot be given in court. The only person that can give those facts as evidence is the person who can speak from personal knowledge of them. All you can tell in evidence is that you had a conversation with that person. If you are relying on what that person has told you, you will need to call that other person as a witness to give evidence.

Returning to your own personal statement, it is not a document that can or should be given to the Court or to the other side, nor will you be permitted to read it out in court. It is simply a good way of putting all the facts into proper order in your mind and so that you can confine yourself to the matters about which you can speak in evidence. If the list or the notes that you prepare refer to another document, then you should be prepared to bring and tender the original of that document to the Court.

It is not advisable to use that statement to refresh or assist your memory close to the time of trial - to do so might mean it becomes open to inspection by the other party.

### Witness Statement

It may be that you will have to prove some facts by the evidence of other witnesses. It is important to speak with those persons well before the trial and find out exactly what facts they can tell the Court.

Set out their account of events in date order as you did when you prepared your own statement.

That statement is not to be given to the witness or the Court or the other side. It is prepared so that you can use it as an aid to direct the witness (when giving evidence) to the topics you want the witness to speak about.

Many of these steps should be completed even before the case is listed for trial, but at the very least, you should attend to them urgently once you have a trial date.

It is important that witnesses, too, be available to give evidence from the time the case starts. Of course, in some cases, they may not be called upon straight away and it may be possible for arrangements to be made with them and with the Court to be available at short notice. **Generally speaking, however, the Court expects that you will have all witnesses available to be called in sequence and without delay.** Equally importantly, your witnesses must bring along any documents that they may wish to refer to in their evidence.

If you are the plaintiff, you should have all your witnesses ready to give evidence on the first day and you might then be able to make arrangements with the defendant and the Court to send them away, provided they are available for recall at first notice.

If you are the defendant then you will present your case after the plaintiff. You may be able to negotiate with the plaintiff and the Court, the times at which your witnesses will be needed.

Make sure your witnesses are fully aware of the precise time and place of the trial, but they must remain outside the courtroom until called in to give evidence.

### DIRECTIONS/INTERLOCUTORY APPLICATIONS

These are often referred to as “pre-trial” hearings. They concern preliminary matters that need to be resolved before the trial process begins.

After the Pleadings have been lodged and the processes of Disclosure and Inspection of Documents are completed (sometimes, even before this), there may be disputes between the parties on preliminary matters which need to be resolved by the Court before the matter can go to trial. Such disputes are generally called “interlocutory” disputes and they may arise in any number of ways: for example, one party may say that the other has not “disclosed” all relevant documents or it may dispute a privilege claim; or it may argue that the facts in the pleading upon which one party relies will not support the Court orders it is seeking; or there may be disputes about inspection of documents or about moneys being paid into Court, and so on.

Interlocutory disputes are usually determined by a Court officer known as a “Master”. A Master is a class of judge who has the power to make binding court orders in “directions” or “interlocutory” hearings. Generally, a Master will not conduct your trial; but is responsible for making those decisions and orders that are necessary for the case to be ready for trial before a Judge.

All parties are required to attend pre-trial hearings. A party failing to attend might suffer serious disadvantage in the future conduct of the case and, in some circumstances, may risk losing it.

### MEDIATION/PRETRIAL RESOLUTION

Even after all the pleadings are completed, the parties are still able to negotiate. Judges recognise that negotiation has always been a most effective means of settling disputes.

The Courts now encourage any attempt by the parties to resolve their differences without the expense of time and energy and money of a trial. At various stages of a proceeding, the parties may be offered the opportunity to mediate their disputes, either privately or in a pre-trial conference. If that happens and an agreement is reached on some or all of the matters in dispute, the parties can have that agreement recorded by means of a Court order. If the agreement finalises the whole action, it is usually called a “Settlement”. Agreements reached through mediation or conciliation and made the subject of Court orders, are just as enforceable as the decision and order of a Judge after a trial.

The Court encourages all parties up until the final judgment is delivered, to try to resolve their differences outside of court and (if they want it) to have a Court order recording their agreements. In particular a party may file in the Court a formal offer as settlement. This should be considered carefully because it may affect the level of costs to which the successful party is entitled. This point is explained more fully in the section on Costs later in this Guide.

## FIXING THE TRIAL DATE AND TIME

When all pleadings and any interlocutory disputes are finished, the Court will call a listing conference and, in consultation with the parties, fix a date for the hearing of the trial. That date may be some months ahead, depending on the likely length and complexity of the trial. When you attend the Listing Conference you should know beforehand who your witnesses are and whether or not they will be available on the date to be set down for the trial. If they are not available, the Court should be advised so that an acceptable alternative program can be established.

**It is only in exceptional circumstances that a case, once the trial date is set, will be adjourned or deferred at the request of any party.**

## SUMMONSING WITNESSES AND DOCUMENTS

It may be that you want to call as a witness someone who is unwilling to come to Court or who, for special reasons (e.g. confidentiality), is unable to cooperate with an informal request. If so, it will be necessary to go to the Registry and ask it to provide a document called a "Subpoena". This should be done as soon as the trial date is fixed and that Subpoena must be "served" on the person you want to call as a witness. The Subpoena is an order by the Court for that person to attend at the trial to give evidence and, if also requested, to produce any relevant documents in that person's possession.

It may be that you require the production of documents held by the other party or by a third party. If that is the case, Rule 172 permits you to take out a Summons addressed to the person or organisation holding the documents requiring that person or organisation to produce the documents for the purposes of the hearing.

## DOCUMENTS

We have already discussed the obligation on a party to "disclose" the documents on which he or she seeks to rely.

On the day the trial commences and throughout the trial, you should have the **originals** of all of those documents with you at court, so that they can be produced by you or shown to witnesses and then tendered to the Court.

In addition to disclosed documents, you should bring all other documents which you think might help or have some relevance to anything in dispute.

It is preferable, too, to have duplicates of all those documents at Court because if the originals are handed up to the Court and received as relevant documents (this is referred to as "tendering" documents to be used as "exhibits"), then it is helpful if you have retained a copy for your own ready reference.

## PROVING DOCUMENTS

Just because a document might be relevant to some aspect of a dispute, it does not mean the party wanting to use it can simply hand it up to the Court as an "exhibit". In a general sense, apart from "Public Documents", most documents can only be proved and tendered as an exhibit either with the agreement of the other party in the action or by calling the person who is the author of the document and having the person confirm that fact. There are some exceptions to this rule. For further information as to these exceptions, you should refer to the

Evidence Act (SA) 1929. If a document is to be shown to a witness for comment, but it cannot be “proved” until a later witness is called, it is usual to ask the court to “mark it for identification”.

Subject to satisfying certain rules, a witness may refresh his or her memory at trial from a document that was created at the same time as the event in question. If a witness seeks to refresh his or her memory from a document, a request must be made to the Judge for permission to do so.

### EXPERT EVIDENCE

It may be that part of the evidence upon which your case is based is the opinion of someone with some expertise, such as a doctor, accountant or engineer.

That opinion must and can only be based on facts you have proved. If you wish to call an expert witness, there are some very strict rules that you must follow. The principal ones are these:

- you must ask the expert to provide a written report in a form that complies with Rule 160;
- (a) you must send a copy of the report to the other party as soon as possible, and before the trial;
- (b) if the expert witness wants to add anything subsequently to that initial report then it must be in writing and given to the other party;
- (d) you must be prepared to prove the facts upon which the expert’s opinion is based.

An expert is required by the Court to give independent evidence and is never called for the purposes of arguing a party’s own case. Experts simply state an opinion based upon a set of facts put to them by you. The task of proving those facts at trial is up to the party calling the expert witness.

A person who is not an expert in a particular field of study or experience cannot give opinion evidence about it.

### MCKENZIE FRIEND

It is possible for you to be assisted during the trial by a friend, but you must first ask the permission of the Judge, who will then decide whether you can have that assistance. You do not have an automatic right to such assistance. If such assistance is allowed, your friend may sit with you at the “bar table” (as it is called) and make suggestions to you as to how the proceedings should be conducted. That friend may also take notes, or act in any other reasonable manner that is permitted by the Court. However, the friend is not usually permitted to actively participate in the trial by asking questions of witnesses or by addressing the Judge.

### INTERPRETERS

Either you or your witnesses may not be fluent in understanding, speaking or reading English and may need the services of an interpreter during the trial.

If that is the case, as soon as your trial date is fixed you should ask the Registry to arrange for the required interpreter to be at Court at the required time.

## SECURITY

If you have any concern for your personal safety at Court or the safety of any friend or witness, you should contact the Court Civil Registry well in advance of your trial date and tell them, so that appropriate arrangements can be made.

## GENERAL ADVICE

The above matters are a brief summary of some of the questions you should consider in preparing for trial. However, every case is different and it may be that special procedures are required in some cases that are not required in others. You should therefore be completely familiar with the Rules so that, if necessary, you can deal with these procedures.

As well, you should try to gain a proper understanding of the law that applies to your case.

Many people have never been in a courtroom before. It is a good idea to visit the Court before your case to see where the hearing will take place. Courts are usually open to the public and you are entitled to observe other cases to familiarise yourself with the way the Court functions. (*see link to images in the main menu*)

Another source of information about the Courts is on the Courts Administration Authority web site: [www.courts.sa.gov.au](http://www.courts.sa.gov.au).

## THE DAY OF THE TRIAL

It is usual for Courts to begin their daily sittings at 10.00 am and continue until 4.30 pm, with a break for lunch between 1.00 pm and 2.15 pm and with short breaks during the morning and the afternoon.

On the day of the hearing, you should check in the newspaper or on the lists displayed in the Court entrance to see which courtroom your case is listed in. You should try to be at that Court at least 15 minutes before the scheduled starting time. It is very important you are not late, as the case may proceed and be determined in your absence.

When you go into court, you will see a raised section at the back of the room in front of the Coat of Arms. That is where the Judge sits. That is referred to as the "Bench".

At a table, in front of the Bench sit other Court officials. One of these is the Judge's Associate or Assistant. As well, there may be a Court Reporter, who is responsible for taking down everything that is said during the hearing and having it typed up. You may order a copy of the transcript of the hearing and it is usually, but not always, available for collection at the end of that particular day or the beginning of the next day. It is, however, expensive and you should keep that in mind.

Closer to the door from the table where the Court officials sit is a long table that is called the "bar table". It has a lectern on it for the use of the lawyers and whoever is appearing in the case.

Further back towards the entrance to the courtroom, you will find seats for members of the public. Except in unusual cases, any member of the public is welcome at any time to observe what happens in a court hearing. Sometimes, members of the press may attend to listen to the hearing, or parts of it.

When you arrive in the courtroom, you should seek out the Judge's Associate. He or she may not arrive in court until shortly before the hearing time, but you should make yourself

known to them and state that you are representing yourself, as that may not, at that stage, be known. The Judge's Associate will let the Judge know that you are representing yourself. You should also tell the Associate the names of your witnesses and whether they will want to take an oath or an affirmation, or if they have a particular religious belief which requires a different approach.

You should then return and sit in the public seats until the Judge enters the courtroom and your case is announced.

### THE ROLE OF THE JUDGE

The Judge presiding over the trial ensures that it is conducted fairly and according to law. That role may require rulings to be made by the Judge as to whether particular evidence which you might want a witness to give is admissible (that is to say, whether the witness may be permitted to give the evidence) or whether a document or documents can be received as evidence. Ultimately, the Judge will decide the case and provide written reasons for that decision.

The Judge may ask questions of a witness, but must be impartial and cannot offer advice or help to any party, whether represented or not. Natural justice or fairness requires that any assistance given to you by the Judge is limited to matters of procedure.

During the course of a trial, no party is permitted to speak to the Judge unless all other parties are also present.

### SPEAKING TO THE JUDGE

You must stand when you are speaking to or being spoken to by the Judge and sit while the Judge is addressing the other person or the other person's lawyer in the case.

When speaking to the Judge, you should always address him or her as "your Honour".

### ETIQUETTE IN COURT

The courtroom is a formal place. You should bow (as if nodding) and remain standing when a Judge enters or leaves the courtroom.

When you enter and exit the courtroom, it is customary to acknowledge the presence of the Judge. This is simply a matter of pausing briefly at the door and nodding your head while looking at the Judge.

The following are not permitted in the courtroom:

- ☞ talking, smoking, eating and chewing gum;
- ☞ video or other cameras, tape recorders, two-way radios or other electronic equipment.

**You must turn off your mobile phone and pager and the alarm on your watch while in the courtroom.**

Your dress should be neat and smart. Do not wear a hat or sunglasses in the courtroom.

It is traditional for Judges and lawyers to wear gowns in court.

In court, it is important that you follow directions and pay attention. You should never be hostile.

A trial is a structured proceeding for the orderly collection of factual evidence by the Court. Fundamental to this process is that each party is allowed to speak in turn and put its case. It is quite possible that you disagree with what the other side is putting to the Judge. If so, make a note of the errors and correct them when it is your turn to speak, as well as putting your side of the story. In that way the Judge will get a very good idea of what the real issues are all about.

### THE START OF THE TRIAL

After the Judge enters, the case is announced. It is usual for the plaintiff and the defendant (or the lawyers representing them) then to stand up and identify themselves. The plaintiff will identify himself or herself first, followed by the defendant. Whatever role you are in, you should, in your turn, stand up, state your name and identify whether you are representing yourself or perhaps even yourself and another person.

You should be aware that if you are seeking to represent an incorporated body, then there are special rules that require you to obtain permission from the Court to do that. That is not always given.

You should first place yourself in the front row of seats, but the Judge may invite you to step forward and sit at the "bar table", although that is a decision for the particular Judge. If the Judge does so, then there is a practice that the plaintiff sits at the right-hand end of the Bar Table and the defendant at the left.

### THE PLAINTIFF'S OPENING

After the parties identify themselves, the Judge will then call on the plaintiff to "open" its case. An opening is a general introduction to outline the plaintiff's case and to describe in general terms the evidence that will be presented.

### THE PLAINTIFF'S WITNESSES

#### EXAMINATION-IN-CHIEF

After the opening is completed, the plaintiff will then call the first witness. That witness may be the plaintiff or someone else. If you are the plaintiff, you will normally be the first witness. Witnesses should be called in a logical or chronological order.

The main evidence of a witness is given in what is called the "examination-in-chief". There are restrictions on the way in which a witness can be questioned in examination-in-chief. In particular, the witness may not be asked leading questions. A leading question is a question that suggests a particular answer.

So far as is possible, evidence of conversations should be given in the exact words used. In other words, a witness is asked, "What did X then say to you?" The witness should answer, "X said 'I owe you \$20'". The answer should not be "X said that he owed me \$20". Sometimes it is not possible to use direct speech. On those occasions, the effect of what was said should be stated. It is not permitted, however, to summarise what was said.

It is important that evidence is not confused with argument. A witness may not state opinions or suggestions as to the desired outcome of the case or make submissions to that effect. At the end of the hearing, however, the parties have the opportunity to put their final arguments or submissions to the Judge.

If you are going to give evidence yourself, as with the other witnesses, the Judge's Associate will give you a form to complete before the hearing commences, asking you to state whether you prefer to take an oath (swear on the Bible) or to give an affirmation.

You are required to stand in the witness box while either the oath or affirmation is completed. It is very important that everyone in the Courtroom is silent while a witness is being sworn in.

Whenever the Associate is administering the oath to any witness, no-one must speak or in any way distract the witness.

Please speak to the Judge's Associate before the hearing commences if you require an oath of a specific form because you are a member of a particular cultural or religious group.

You may sit (or stand if you prefer) in the witness box while you give your evidence and when questions are asked of you in cross-examination.

There are other rules applying to examination-in-chief. They include a rule that witnesses can only speak of things they know through their own observations, not of things told to them by others, and can only speak of things that are relevant to the dispute. There are other rules, too. Some of them are mentioned in this Guide.

Whilst a witness is giving evidence, the person or solicitor calling him or her must not speak to him or her at all outside the witness box, whether in court or outside, nor should the witness speak to anyone else yet to give evidence in the trial.

### CROSS-EXAMINATION

At the conclusion of the examination-in-chief of each plaintiff witness, the defendant is given the opportunity to cross-examine the witness. Cross-examination consists of putting questions to a witness that are designed to test things said by that witness or otherwise designed to get further information from that witness. The cross-examination may also test the general credibility or reliability of what the witness has said.

### RE-EXAMINATION

At the conclusion of cross-examination, the plaintiff may "re-examine" his or her witness, but only with a view to clarifying or resolving any matters arising from the cross-examination. It is not an opportunity to have a second attempt at examination-in-chief.

At the conclusion of the plaintiff's case, the Court should be informed that that is all the evidence the plaintiff intends to present and the plaintiff then announces that he or she "closes" the plaintiff's case.

### THE DEFENDANT'S CASE

Defendants then have the opportunity to present their case. Once again, they have the chance to make an opening statement and then call witnesses in just the same way as the plaintiff. Those witnesses will give evidence through their examination-in-chief, and be subject to cross-examination and re-examination in the same manner as with the plaintiff's witnesses.

### EVIDENCE AND OBJECTIONS

The question of what evidence can be properly put before a court is a complex one and governed by many rules. As a starting point, parties should be aware of the provisions of the

Evidence Act of South Australia (or of the Commonwealth of Australia if it is a federal matter) and you should also read as much as you can about the general rules of evidence. They relate to:

- ☞ what witnesses can say and cannot say
- ☞ the way in which witnesses can be asked questions
- ☞ the need to put to all witnesses whose evidence challenges your own case, those contrary facts on which your own case relies
- ☞ the need to call all witnesses who can possibly assist in the matter.

The primary rule is that evidence is only admissible in court if it is relevant to the dispute raised by the Pleadings. It is presented to the Court orally – through what is said in court by a party's witnesses – or through tendering documents that are admissible.

One party may object to a question the other party is asking a witness or the documents the other party wishes to put before the court. If so, the Judge will have to make a ruling as to the admissibility of that evidence. To make an objection you must stand up and voice your objection. The Judge will ask you the reason for your objection. After you have told the Judge, he or she may ask the other side to justify what is being attempted. It is important that you make your objection promptly, otherwise the objectionable material will be before the Court and you may have to call additional evidence to undo the damage.

There are many bases for objecting to evidence and it is not possible to set them all out here. The most usual matters to which there can be a proper objection are these:

1. the question is leading: that is, that it is put in examination-in-chief and is asked in such a way as to suggest a particular answer;
2. the question is ambiguous or is two separate questions rolled into one;
3. the question will produce hearsay evidence. Hearsay evidence is evidence sought to be given by a witness of conversations with other people outside of the courtroom. Generally, such evidence is not admissible, but in some circumstances it may be allowed. You will need to consult books on the law of evidence to discover what those circumstances might be;
4. the question is not relevant to any matter in issue;
5. the question seeks a conclusion as to the significance of facts when the witness is not an expert whose expertise has been established: that is, the question asks for an opinion;
6. the question is argumentative;
7. the question seeks evidence that should be proven in another form: for example, the question seeks the contents of a document that could be produced;
8. the question is an attempt by the questioner to introduce new evidence by the form of the question.

**There is a fundamental rule that evidence can only be given by a party when either that party or a witness called by it is in the witness box. Evidence cannot be given by statements from the bar table or by stating some matter of fact during the course of asking a question.**

### CLOSING ADDRESSES

When defendants have closed their case, each of the parties will be given the opportunity to make a "closing address" to the Court. The first address is usually given by the defendant and the plaintiff then has the opportunity to address in answer. The purpose of the closing address is to summarise the case that the party is arguing, to make any appropriate criticism

of the other case and to invite the Court to accept the facts or legal principles upon which the party relies.

## THE JUDGMENT

At the end of the addresses, the Judge may deliver judgment or, more frequently, will announce that “judgment is reserved”. That means the Judge wants to take time to consider the matter before delivering judgment and the reasons for it.

A reserved judgment may take several weeks – and in difficult cases, longer than that – to prepare and deliver and the parties will be informed by the Court when judgment is to be delivered.

## COSTS

After judgment has been delivered, the parties and the Court must consider whether and in what form an order for costs will be made. If you are successful, you must be in a position, if called upon to do so, to state the total of your claim for costs within 28 days of the judgment. The general rule is that the successful party will obtain an order that the other side pay its legal costs, but there are exceptional circumstances where such an order may not be made or where the extent of that order may be limited.

One such circumstance is where formal offers have been filed in Court by one party before the trial and the other party has not done better than the offer. In such cases, the other party’s costs are either limited or in some cases can be increased. You should consider very carefully the rules relating to filed offers, as they may have a very substantial impact on the type of costs order made.

You may, if you wish, file an offer.

As a self-represented litigant, the amount of legal costs you may recover if you are successful is extremely limited. You may only recover your actual out-of-pocket expenses (eg court fees, fees to your witnesses, transcript costs, courier fees, travel expenses etc).

If the other party makes an offer to settle your claim, then you must consider it very carefully. It will usually be less than the amount you have claimed. However, this must be balanced against the time, effort and cost of continuing. If you continue and the Court finds in your favour but only awards you an amount close to the amount offered, then you may find that the Court may make a legal costs order against you.

## APPEAL

Once judgment is delivered and costs orders are made, that is the end of the matter so far as that particular Court is concerned. If a party considers that the decision made is an incorrect one, then there are rights of appeal to a Court comprised of more than one Judge. For details as to those rights of appeal, you should refer to the Act of Parliament establishing that Court and any Rules made under it. Generally speaking, an appeal should be lodged at the Court within 14 days.