

GLOSSARY/INDEX ^{179/}

Abstract of judgment - a document which, when recorded, places a lien on all real property owned by the judgment debtor in the county in which it is recorded. (Ch. 22, pp. 1, 2)

Abuse of discretion - standard of appellate court review used where the trial judge had discretion to make the particular decision; appellate court will defer to the trial court, overturning the lower court decision only when the trial court abused its discretion. (Ch. 21, p. 3)

ADR - abbreviation for **alternative dispute resolution**.

Affirm - declaration by a higher court that the lower court's judgment is valid. (Ch. 21, p. 3)

Affirmative defense - a defense which, if proven, denies recovery to the other party, e.g., the statute of limitations has run, and the action is therefore time-barred; the plaintiff assumed the risk of his/her own harm, and therefore the defendant is not liable; the plaintiff has no standing to sue, etc. (Ch. 9, pp. 4,7)

Alternative dispute resolution - resolution of cases by means other than trial to reduce court calendar congestion and backlog. The two main methods are arbitration, and mediation. (Ch. 19)

Amendment - a supplemental portion to be added to the original pleading, e.g., to insert a name for a DOE, or correct the spelling of a party's name; does not replace the original pleading. (Ch. 10)

Amended pleading - a pleading which replaces a previously filed pleading; may be filed to add parties, causes of action, etc. (Ch. 10)

Amicus curiae brief - a "friend of the court" brief filed in an appellate case by a non-party on a legal point or aspect of the case that they believe the court should consider in deciding the case. (Ch. 21, p. 2)

Answer - responsive pleading in which a defendant or cross-defendant may admit or deny allegations in a complaint or cross-complaint, and assert affirmative defenses; it resists the opposing party's demand for relief. (Ch. 9, p. 2)

Appeal - asking a higher court to review or reconsider the decision of a lower court. (Ch. 21)

Appellant - party who initiates an appeal. (Ch. 21, p. 1)

Appellee - party who responds to a federal court appeal. **Respondent** in state court. (Ch. 21, p. 1)

Arbitrator - a neutral who hears a case and renders an award in an arbitration proceeding; often a retired judge. (Ch. 19, p. 1, 2)

Arbitration - a process whereby an arbitrator hears a case and renders an award which determines the parties' rights and obligations. (Ch. 19, p. 1, 2)

Attacking the complaint - asserting that the complaint is technically flawed; a demurrer asserts that the complaint does not state a

^{179/} We thought this rather unconventional Glossary/Index defining key terms and providing references to pages where the terms are meaningfully discussed would be more helpful than a Glossary and a separate Index. If you can't find what you're looking for here, check the Table of Contents.

cause of action; a motion to strike asks the court to strike offensive portions. (Ch. 9, p. 8)

Attorney-client privilege - protects from disclosure information conveyed by a client to an attorney rendering legal advice. (Ch. 1, p. 3, Ch. 11, p. 4)

Attorney work product privilege - protects from disclosure the attorney's mental processes, written work product, and all oral communications and reports for a client between members of the firm done in preparation for litigation. (Ch. 11, p. 4)

Bank levy - method of enforcing judgment which seizes funds in the judgment debtor's bank account. (Ch. 22, p. 3)

Bar - restriction or prevention of an action. (Ch. 9, pp. 4, 11)

Baseball arbitration - each party to an arbitration submits a figure to the arbitrator, and the arbitrator must select one of them. (Ch. 19, p. 4)

Bench trial - trial by a judge without a jury. (Ch. 20, pp. 2, 3, 6)

Beyond a reasonable doubt - the burden of proof in criminal trials. (Ch. 3, p. 6)

Billable hours - hours of legal services which may be billed to a client (Ch. 2, p. 1)

Body of the complaint - the part of the complaint which contains the jurisdictional, general and specific allegations (causes of action). (Ch. 7, p. 6)

Bracketed arbitration - where the parties agree on the lowest possible award and the highest possible award before the arbitration. (Ch. 19, p. 4)

Burden of proof - the standard used to prove the facts of one's claim, e.g., preponderance of the evidence, beyond a reasonable doubt (Ch. 3, pp. 6-7); the obligation to persuade the court on a point, e.g., defendant has burden of proof on affirmative defenses (Ch. 9, p. 5); requesting party has burden of proof

on need to exceed limit of 35 discovery requests (Ch. 12, p. 7)

Capacity - of legal age and mental competency. (Ch. 5, p. 14)

Caption - first portion of a legal document which identifies the attorney filing the complaint, the court and county where the complaint is being filed, the title of the action (names of parties), and the title of the document. (Ch. 7, p. 4)

Case in chief - the plaintiff's initial presentation of evidence and testimony necessary to establish a *prima facie* case and convince the jury that the plaintiff should prevail in the case. (Ch. 20, p. 3, 4)

Cause of action - legal theories entitling the plaintiff/cross-complainant to recover from any or all of the defendants/cross-defendants. (Ch. 5, p. 8, Ch. 6, Ch. 7)

C.C.P. - abbreviation for Code of Civil Procedure.

Challenge for cause - assertion, for a stated reason, that a prospective juror is not able to serve impartially. (Ch. 20, p. 3)

Chinese Wall - fictional wall which isolates one or more paralegals or attorneys who possess confidential information about a party or a case which could create a conflict of interest in another matter being handled by the firm. (Ch. 5, p. 4)

Civil litigation - lawsuit between individuals or entities. (Ch. 1, p. 1, Ch. 3, p. 7, Ch. 4, p. 1)

Clear and convincing - burden of proof requiring a reasonable certainty or high probability. (Ch. 3, p. 7)

Clerk's transcript - court files and tangible evidence submitted during the trial. (Ch. 21, p. 1)

Closing argument - part of trial when attorneys try to convince the jury to find in their client's favor. They remind the jury what they promised to prove, tell them that they did