

# *Glossary of Terms - General*

**Acquittal:** Judgment that a criminal defendant has not been proved guilty beyond a reasonable doubt.

**Affidavit:** A written statement of facts confirmed by the oath of the party making it, before a notary or officer having authority to administer oaths.

**Affirmed:** In the practice of the appellate courts, the decree or order is declared valid and will stand as rendered in the lower court.

**Answer:** The formal written statement by a defendant responding to a civil complaint and setting forth the grounds for defense.

**Appeal:** A request made after a trial, asking another court (usually the court of appeals) to decide whether the trial was conducted properly. To make such a request is "to appeal" or "to take an appeal." One who appeals is called the appellant.

**Appellate:** About appeals; an appellate court has the power to review the judgment of another lower court or tribunal.

**Arraignment:** A proceeding in which an individual who is accused of committing a crime is brought into court, told of the charges, and asked to plead guilty or not guilty.

**Bail:** Security given for the release of a criminal defendant or witness from legal custody (usually in the form of money) to secure his appearance on the day and time appointed.

**Bankruptcy:** Refers to statutes and judicial proceedings involving persons or businesses that cannot pay their debts and seek the assistance of the court in getting a fresh start. Under the protection of the bankruptcy court, debtors may discharge their debts, perhaps by paying a portion of each debt. Bankruptcy judges preside over these proceedings.

**Bench trial:** Trial without a jury in which a judge decides the facts.

**Brief:** A written statement submitted by the lawyer for each side in a case that explains to the judges why they should decide the case or a particular part of a case in favor of that lawyer's client.

**Chambers:** A judge's office.

**Capital offense:** A crime punishable by death.

**Case law:** The law as laid down in cases that have been decided in the decisions of the courts.

**Charge to the jury:** The judge's instructions to the jury concerning the law that applies to the facts of the case on trial.

**Chief judge:** The judge who has primary responsibility for the administration of a court but also decides cases; chief judges are determined by seniority.

**Circumstantial evidence:** All evidence except eyewitness testimony.

**Clerk of court:** An officer appointed by the court to work with the chief judge in overseeing the court's

administration, especially to assist in managing the flow of cases through the court and to maintain court records.

**Common law:** The legal system that originated in England and is now in use in the United States. It is based on judicial decisions rather than legislative action.

**Complaint:** A written statement by the plaintiff stating the wrongs allegedly committed by the defendant.

**Contract:** An agreement between two or more persons that creates an obligation to do or not to do a particular thing.

**Conviction:** A judgment of guilt against a criminal defendant.

**Counsel:** Legal advice; a term used to refer to lawyers in a case.

**Counterclaim:** A claim that a defendant makes against a plaintiff.

**Court:** Government entity authorized to resolve legal disputes. Judges sometimes use "court" to refer to themselves in the third person, as in "the court has read the briefs."

**Court reporter:** A person who makes a word-for-word record of what is said in court and produces a transcript of the proceedings upon request.

**Damages:** Money paid by defendants to successful plaintiffs in civil cases to compensate the plaintiffs for their injuries.

**Default judgment:** A judgment rendered because of the defendant's failure to answer or appear.

**Defendant:** In a civil suit, the person complained against; in a criminal case, the person accused of the crime.

**Deposition:** An oral statement made before an officer authorized by law to administer oaths. Such statements are often taken to examine potential witnesses, to obtain discovery, or to be used later in trial.

**Discovery:** Lawyers' examination, before trial, of facts and documents in possession of the opponents to help the lawyers prepare for trial.

**Docket:** A log containing brief entries of court proceedings.

**En banc:** "In the bench" or "full bench." Refers to court sessions with the entire membership of a court participating rather than the usual quorum. U.S. courts of appeals usually sit in panels of three judges, but may expand to a larger number in certain cases. They are then said to be sitting en banc.

**Evidence:** Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case for one side or the other.

**Federal question:** Jurisdiction given to federal courts in cases involving the interpretation and application of the U.S. Constitution, acts of Congress, and treaties.

**Felony:** A crime carrying a penalty of more than a year in prison.

**File:** To place a paper in the official custody of the clerk of court to enter into the files or records of a case.

**Grand jury:** A body of citizens who listen to evidence of criminal allegations, which are presented by the government, and determines whether there is probable cause to believe the offense was committed. As it is used in federal criminal cases, "the government" refers to the lawyers of the U.S. attorney's office who are prosecuting the case.

**Habeas corpus:** A writ that is usually used to bring a prisoner before the court to determine the legality of his imprisonment. It may also be used to bring a person in custody before the court to give testimony, or to be prosecuted.

**Hearsay:** Statements by a witness who did not see or hear the incident in question but heard about it from someone else. Hearsay is usually not admissible as evidence in court.

**Impeachment:** (1) The process of calling something into question, as in "impeaching the testimony of a witness." (2) The constitutional process whereby the House of Representatives may "impeach" (accuse of misconduct) high officers of the federal government for trial in the Senate.

**Indictment:** The formal charge issued by a grand jury stating that there is enough evidence that the defendant committed the crime to justify having a trial; it is used primarily for felonies.

**In forma pauperis:** In the manner of a pauper. Permission given to a person to sue without payment of court fees on claim of indigence or poverty.

**Information:** A formal accusation by a government attorney that the defendant committed a misdemeanor.

**Injunction:** An order of the court prohibiting (or compelling) the performance of a specific act to prevent irreparable damage or injury.

**Instructions:** Judge's explanation to the jury before it begins deliberations of the questions it must answer and the law governing the case.

**Interrogatories:** Written questions asked by one party of an opposing party, who must answer them in writing under oath; a discovery device in a lawsuit.

**Issue:** (1) The disputed point in a disagreement between parties in a lawsuit. (2) To send out officially, as in to issue an order.

**Judge:** Government official with authority to decide lawsuits brought before courts. Other judicial officers in the U.S. courts system are Supreme Court justices.

**Judgment:** The official decision of a court finally determining the respective rights and claims of the parties to a suit.

**Jurisdiction:** (1) The legal authority of a court to hear and decide a case. Concurrent jurisdiction exists when two courts have simultaneous responsibility for the same case. (2) The geographic area over which the court has authority to decide cases.

**Jury:** Persons selected according to law and sworn to inquire into and declare a verdict on matters of fact.

**Jurisprudence:** The study of law and the structure of the legal system.

**Lawsuit:** A legal action started by a plaintiff against a defendant based on a complaint that the defendant failed to perform a legal duty, resulting in harm to the plaintiff.

**Litigation:** A case, controversy, or lawsuit. Participants (plaintiffs and defendants) in lawsuits are called litigants.

**Magistrate judges:** Judicial officers who assist U.S. district judges in getting cases ready for trial, who may decide some criminal and civil trials when both parties agree to have the case heard by a magistrate judge instead of a judge.

**Misdemeanor:** Usually a petty offense, a less serious crime than a felony, punishable by less than a year of confinement.

**Mistrial:** An invalid trial, caused by fundamental error. When a mistrial is declared, the trial must start again from the selection of the jury.

**Nolo contendere:** No contest-has the same effect as a plea of guilty, as far as the criminal sentence is concerned, but may not be considered as an admission of guilt for any other purpose.

**Opinion:** A judge's written explanation of a decision of the court or of a majority of judges. A dissenting

opinion disagrees with the majority opinion because of the reasoning and/or the principles of law on which the decision is based. A concurring opinion agrees with the decision of the court but offers further comment.

**Oral argument:** An opportunity for lawyers to summarize their position before the court and also to answer the judges' questions.

**Panel:** (1) In appellate cases, a group of judges (usually three) assigned to decide the case; (2) In the jury selection process, the group of potential jurors.

**Parties:** Plaintiffs and defendants (petitioners and respondents) to lawsuits, also known as appellants and appellees in appeals, and their lawyers.

**Petit jury (or trial jury):** A group of citizens who hear the evidence presented by both sides at trial and determine the facts in dispute. Federal criminal juries consist of 12 persons. Federal civil juries consist of six persons.

**Plaintiff:** The person who files the complaint in a civil lawsuit.

**Plea:** In a criminal case, the defendant's statement pleading "guilty" or "not guilty" in answer to the charges, a declaration made in open court.

**Pleadings:** Written statements of the parties in a civil case of their positions. In the federal courts, the principal pleadings are the complaint and the answer.

**Precedent:** A court decision in an earlier case with facts and law similar to a dispute currently before a court. Precedent will ordinarily govern the decision of a later similar case, unless a party can show that it was wrongly decided or that it differed in some significant way.

**Procedure:** The rules for the conduct of a lawsuit; there are rules of civil, criminal, evidence, bankruptcy, and appellate procedure.

**Pretrial conference:** A meeting of the judge and lawyers to discuss which matters should be presented to the jury, to review evidence and witnesses, to set a timetable, and to discuss the settlement of the case.

**Probation:** A sentencing alternative to imprisonment in which the court releases convicted defendants under supervision as long as certain conditions are observed.

**Pro se:** A Latin term meaning "on one's own behalf"; in courts, it refers to persons who present their own cases without lawyers.

**Prosecute:** To charge someone with a crime. A prosecutor tries a criminal case on behalf of the government.

**Record:** A written account of all the acts and proceedings in a lawsuit.

**Remand:** When an appellate court sends a case back to a lower court for further proceedings.

**Reverse:** When an appellate court sets aside the decision of a lower court because of an error. A reversal is often followed by a remand.

**Sentence:** The punishment ordered by a court for a defendant convicted of a crime.

**Service of process:** The service of writs or summonses to the appropriate party.

**Settlement:** Parties to a lawsuit resolve their difference without having a trial. Settlements often involve the payment of compensation by one party in satisfaction of the other party's claims.

**Sequester:** To separate. Sometimes juries are sequestered from outside influences during their deliberations.

**Sidebar:** A conference between the judge and lawyers held out of earshot of the jury and spectators.

**Statute:** A law passed by a legislature.

**Statute of limitations:** A law that sets the time within which parties must take action to enforce their rights.

**Subpoena:** A command to a witness to appear and give testimony.

**Subpoena duces tecum:** A command to a witness to produce documents.

**Summary judgment:** A decision made on the basis of statements and evidence presented for the record without a trial. It is used when there is no dispute as to the facts of the case, and one party is entitled to judgment as a matter of law.

**Temporary restraining order:** Prohibits a person from an action that is likely to cause irreparable harm. This differs from an injunction in that it may be granted immediately, without notice to the opposing party, and without a hearing. It is intended to last only until a hearing can be held.

**Testimony:** Evidence presented orally by witnesses during trials or before grand juries.

**Tort:** A civil wrong or breach of a duty to another person, as outlined by law. A very common tort is negligent operation of a motor vehicle that results in property damage and personal injury in an automobile accident.

**Transcript:** A written, word-for-word record of what was said, either in a proceeding such as a trial or during some other conversation, as in a transcript of a hearing or oral deposition.

**Uphold:** The decision of an appellate court not to reverse a lower court decision.

**U.S. Attorney:** A lawyer appointed by the President in each judicial district to prosecute and defend cases for the federal government.

**Venue:** The geographical location in which a case is tried.

**Verdict:** The decision of a petit jury or a judge.

**Voir dire:** The process by which judges and lawyers select a petit jury from among those eligible to serve, by questioning them to determine knowledge of the facts of the case and a willingness to decide the case only on the evidence presented in court. "Voir dire" is a phrase meaning "to speak the truth."

**Warrant:** A written order directing the arrest of a party. A search warrant orders that a specific location be searched for items, which if found, can be used in court as evidence.

**Witness:** A person called upon by either side in a lawsuit to give testimony before the court or jury.

**Writ:** A formal written command, issued from the court, requiring the performance of a specific act.

**Writ of certiorari:** An order issued by the Supreme Court directing the lower court to transmit records for a case for which it will hear on appeal.