

CITES BY TOPIC: appearance: *special and general*

Black's Law Dictionary, 6th Edition, page 97:

appearance. A coming into court as a party to a suit, either in person or by attorney, whether as plaintiff or defendant. The formal proceeding by which a defendant submits himself to the jurisdiction of the court. The **voluntary submission** to a court's jurisdiction.

In civil actions the parties do not normally actually appear in person, but rather through their attorneys (who enter their appearance by filing written pleadings, or a formal written entry of appearance). Also, at many stages of criminal proceedings, particularly involving minor offenses, the defendant's attorney appears on his behalf. See e.g., Fed.R.Crim.P. 43.

An appearance may be either **general** or **special**; the former is a simple and unqualified or unrestricted submission to the jurisdiction of the court, the latter is a submission to the jurisdiction for some specific purpose only, not for all the purposes of the suit. A special appearance is for the purpose of testing or objecting to the sufficiency of service or the jurisdiction of the court over defendant without submitting to such jurisdiction; a general appearance is made where the defendant waives defects of service and submits to the jurisdiction of court. *Insurance Co. of North America v. Kunin*, 175 Neb. 260, 121 N.W.2d 372, 375, 376.

Appearance by attorney. An act of an attorney in prosecuting an action on behalf of his client. Document filed in court in which attorney sets forth fact that he is representing a party to the action.

Appearance docket. A docket kept by the clerk of the court in which appearances are entered, containing also a brief abstract of all the proceedings in the cause.

Common law classifications. At common aw an appearance could be either *compulsory* or *voluntary*, the former where it was compelled by process served on the party, the latter where it was entered by his own will or consent, without the service of process, though process may be outstanding. Also, *optional* when entered by a person who intervened in the action to protect his own interests, through not joined as a party; *conditional* when coupled with conditions as to its becoming or being taken as a general appearance; *gratis*, when made by a party to the action, but before the service of any process or legal notice to appear; *de bene esse*, when made provisionally or to remain good only upon a future contingency; or when designed to permit a party to a proceeding to refuse to submit his person to the jurisdiction of the court unless it was finally determined that he had forever waived that right; *subsequent*, when made by defendant after an appearance had already been entered for him by the plaintiff; *corporal*, when the person was physically present in court.

Initial appearance. A court proceeding for a defendant charged with a felony, during which the judge advises the defendant of the charges against him and of his rights, decides upon bail and/or other conditions of release, and sets the date for a preliminary hearing. See e.g. Fed.R.Crim.P.5.

Notice of appearance. A notice given by defendant to a plaintiff that he appears in the action in person or by attorney.