

Litigation Notes - 02/25/14

Chapter 5

Pleadings - documents that brings claims against the party. Documents to get the claim rolling. Also called Petition for Damages. Complaint is the first pleading to be filed.

Third Party Complaint - Plaintiff doesn't list but defendant names them.

Intervention - party tries to get in the claim.

Answer - replies to alleged claim

Counterclaim - Re-conventional Demand

Rule 8

Be short and concise.

Article 854 - all allegations of fact should be short and concise.

Format requirements pg. 128

Et al - and others

Federal - Judge and Magistrate

Designation - Title

Signing the pleadings verifies facts and laws. It is based in fact and law.

Art. 863 -

Verify - I have read this and understand.

Signature certifies the document.

Reasonable Inquiry - can change upon time (2 days before prescription)

Certificate of Service - Notice at the end of a pleading indicating you sent the document to the opposing side.

Wherefore clause - what you are asking for - claim for relief (Prayer for relief)

Don't impress them with your vocabulary impress them with your argument.

First paragraph – defendants.

Alternatively, if not him then the other

Federal - letter

State – legal

Certain types of allegations need to be used with particularity.

Jury Demand – 10 days after the Answer you have to request a jury trial.

Torte – A civil wrong or injury not based upon contract.

State court – 90 days to serve summons

Summons – Notice accompanying the complaint that commands that the defendant appears and defends.

Summons content:

- Defendant's name and address
- Plaintiff's attorney and attorney's address
- Request for answer
- Time limit on answer
- Statement of consequences of no reply

Rule 12 – answers due in 21 days (federal) state is 15 days – Responsive pleadings

Methods of Service

Infant – serve parent

Corporation – serve registered agent

Waiver of service – allows the plaintiff to request that the defendant waive formal service of summons. Has to be notarized.

Long arm service – certified mail

Hague Convention – how to serve people in other countries.

Timeliness – Federal 120 days – State 90 days

Lack of Subject Matter Jurisdiction

Insufficient process

Right venue

Motion to Dismiss (state court is an Exception)

Strike – scandalous matter

Exceptions – Motions to Dismiss

- 1) Declinatory (place)– declines the action – must be pled with the answer or before filing answer or waived
 - a. Insufficient of citation
 - b. Lack of jurisdiction over personal
 - c. Insufficient of process
 - d. Lack of jurisdiction of subject matters
- 2) Dilatory – delays the action
 - a. Prematurely
 - b. Unauthorized use of summary proceeding
 - c. Vagueness
 - d. Lack of procedurally capacity
- 3) Preemptory – subscription, cause of action – anytime can be pled
 - a. Prescription –a year to file time limits (can be interrupted) or put on hold
 - b. Pre-emption – not interrupted – it starts over
 - c. Rejudicata – only get to go to court once.
 - d. No cause of action –
 - e. No right of action

Answers – a response by the defendant to the plaintiff’s complaint, either admit, deny or deny for lack of information or belief.

Affirmative Defenses – Defense pled by the defendant in the answer that if proven, denies recovery the plaintiff.

Rule 12(b) defenses are exceptions.

Only answer what pertains to your client.

Counterclaim (Reconventional Demand) – Claim in the form of a pleading brought by the defendant against the plaintiff as part of the same lawsuit.

Compulsory Counterclaims

1. The claim must exist.
2. The claim must arise out of the same transaction.
3. Court must be able to obtain jurisdiction over any additional parties.
4. The counterclaim must not be the subject of a pending claim.

Permissive Counterclaims – claims that may be brought

Statue of Limitations –

Waiver – Failure to plead a compulsory counterclaim bars the defendant from asserting the claim later.