



Complaint department

The art of crafting a complaint...and avoiding a demurrer



Cooper

BY MILES B. COOPER

The lawyer knew the case was unusual. There was a worry the other side wouldn't get it – that there would be significant pleading battles. The lawyer worked hard to put in the right combination of facts plus a case citation for the unique cause of action. That may stave off a demurrer, the lawyer hoped...

First impressions get formed

The complaint is the first formal opportunity to tell the story: what happened and why the defendants are liable. But many complaints, after meeting filing formalities, are unintelligible. The information gets further obscured with Latin and legalese – herein, whereas, heretofore, and so forth. Take the time to strip the legalese out. Still using proximate cause instead of legal cause? That jury instruction changed years ago – the complaint should reflect it.

Form complaints, while seemingly convenient, should also be avoided. The first time one amends a form complaint, one recognizes they don't save time. The form programs don't take kindly to inserts and deletions.

The caption

Hang around a courthouse and one will see a jury panel milling outside a courtroom. Some jurors will glance at the papers clipped to the door. On it? The trial's case caption, typically as it appeared when first filed. When selecting defendants' order, consider what defendants may remain. Plan on dismissing the corporate defendant's named employee after completing discovery? Don't put the individual as the first defendant. In state actions, add Does so that one can add an unknown defendant later. Federal court does not allow for Does, however. Another federal pitfall – font size. Each district court has its own local font size rule – typically 13 or 14 point instead of 12 point. Wise old eyes with lifetime appointments don't see as well as their state brethren, one might conclude...

Consider an introduction

Formality does not mean formulaic. Nothing precludes one from having a detailed, non-legal introduction that sets forth what happened. There are two reasons for this. The first: it reduces the chance defense counsel will call, saying, "I received the complaint – now tell me what happened." The second: this forms the press release, to the extent the case deserves any media attention.

Allegedly

The general allegations make up most of the content. The initial paragraphs list the parties, their residences or principle places of business for jurisdiction purposes, and the necessary but dull successor-in-interest, Doe, and other formal paragraphs.

Venue basis is typically in the general allegations as well. But another federal peculiarity is that the venue basis needs its own heading. The venue tells the court why it is the case belongs there. The incident location, defendant's residence, or diversity of citizenship are common jurisdictional bases.

The general allegations then move into the facts. California is a notice pleading state. This means that in most cases, the bare minimum facts are sufficient. Exemplary damage claims are different, however. Those require specific facts – more detail. There are strategic reasons to make detailed allegations. But be careful – a very detailed complaint can become the first discovery, when defense counsel cuts and pastes it into detailed contention interrogatories.

Damages

The final general allegations topic is damages. We list each damage as a separate paragraph. These can include past and future medical expenses, past and future wage loss, past and future household services, and past and future noneconomic damages. These are then wrapped up with a final paragraph stating that the specific amount of damages is unknown but exceeds the court's jurisdictional minimum. The early detail eliminates damages repetition in the causes of action. The causes of action simply say, "As a result, the plaintiff sustained damages as more fully set forth above."

Action!

Next come the causes of action. These are typically pled against all defendants, unless there's a specific reason not to. The causes of action themselves can be simple. The detailed facts are established in the general allegations. Review each cause of action to make sure it sets forth duty, breach, causation, and damages. If it is a unique action, compare the elements pled to the appropriate jury instruction. And if there is no CACI instruction – it is case-based – consider citing the case in the action to help beat back the likely demurrer.

Prayer and jury demand

The prayer lists all the items one hopes to obtain. Economic damages, noneconomic damages, costs of suit, interest, a pound of flesh, etc. The jury demand is equally important. One can always



drop a jury demand, but it can be difficult to add later on. Consider paying the non-refundable jury fee at the time of filing. If it is not paid by the first case management conference, a judge can deny a jury.

Outro

Back to our lawyer. Shortly after the complaint was served, the lawyer spoke with defense counsel. “I have not seen this cause of action before, but I read the case you cited in the complaint. I don’t think a demurrer would succeed...” Job done – a pleading battle most likely avoided.

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