



# Legal Research, Writing, and Civil Litigation

## **Class 9**

# Stages of a Pre-trial Proceeding

1. Filing of the Summons and Complaint
  2. Serving the Summons and Complaint on the Defendant
  3. In response, the Defendant can:
    - File an answer and serve it on the Plaintiff
    - File a motion relating to the complaint
    - Default
  4. Either party can move for judgment on the pleadings
  5. Either party can add parties by third party practice
  6. Discovery
  7. Trial
- Note: All these stages are governed in the federal system by the Federal Rules of Civil Procedure, a set of procedural rules promulgated by the Supreme Court to be used in federal courts.

# The Summons and Complaint

- Old Rule: Code Pleading; Pleadings had to be very specific and loaded with facts and application to law; some states still follow the system
- Federal System (FRCP Rule 8):
- Complaint requires only:
  - A short and plain statement explaining why the court has jurisdiction
  - A short and plain statement explaining why the plaintiff is entitled to relief
  - A demand for the relief sought
  - A jury trial demand, if such is desired (different federal rule)
    - Complaint must be accompanied by a summons that tells the defendant what steps he or she must take to avoid default
    - All pleadings must be signed by the party and all motions by the attorney who is filing them; attesting that they are true and are filed in good faith. This allows sanctions if a pleading or motion is false or in bad faith (Rule 11).

# Service of Process

- For a court to have jurisdiction over a person, that person must be properly served with a copy of the summons and complaint. There are time limits for service. In the federal system, it's 120 days after the Complaint is filed.
- Proper service of process "tolls" (stops) the running of the applicable statute of limitations.
- Rules vary from state to state. Under the federal system, Rule 4 spells out the rules.
- In general, the service cannot be made directly by the plaintiff; it must be made by a process server or any other third party.

# Service of Process (cont.)

- The following methods are generally sufficient to serve on a person:
  - Giving it to the defendant personally
  - Leaving it with a person of suitable age and discretion at the defendant's home or office and mailing it to the defendant ("leave and mail")
  - Affixing it to the defendant's home or office and mailing it to the defendant ("nail and mail")
- Service on a corporation can usually be done by giving it to an officer of the company or a registered agent, such as the secretary of state...
- A defendant can also waive service of process.
  - Jurisdictions often "award" this by giving the defendant extra time to answer.
  - Also, if the defendant refuses to waive service for no good reason, the defendant may be charged for the expense in procuring the service.

# The Defendant's Response

- In response to a complaint, the defendant must act within a relatively short period of time or risk default. Under the federal rules, it must be within 20 days (or 60 days, if the defendant waived service of process). The defendant can:
  - **File an Answer**
  - or
  - **File a Motion**

# The Defendant's Response (cont.)

- **File an Answer**
- The answer should, for each paragraph in the complaint, either:
  - admit the paragraph
  - deny the paragraph; or
  - deny sufficient information upon which to form a belief
- The answer can also:
  - State why the complaint should be dismissed on a 12-b ground; and/or
  - Raise an **affirmative defense** such as statute of limitations, bankruptcy, earlier payment, *res judicata*, etc.
- **File a Motion**; Under Rule 12, the motion can be:
  - A motion to dismiss
  - A motion for judgment on the pleadings
  - A motion for a more definite statement in the pleadings
  - A motion to strike a part of the pleading that is "redundant, immaterial, impertinent, or scandalous"



# QUIZ TIME!