Pleadings and Statutes of Limitations

- Pleadings are the initial documents filed with the court at the outset of a civil lawsuit. These include:
  - The complaint filed by the plaintiff
  - The answer, filed by the defendant
  - Counterclaims, cross-claims, etc.
- Serving a complaint (or counterclaim) on the other party *tolls* the statute of limitations with regard to that cause of action.
  - Thus, always be aware that you need to serve within the limitations period, even if the complaint may not be as perfect as you'd like.

Preparing a Pleading - General Tips

- Applicable federal and state rules are relatively forgiving when it comes to what pleadings must say. Still, some general rules are important to follow:
  - Have in mind the big picture of what causes of action you are trying to prove
  - Avoid language that is too vague, broad or ambiguous
  - Avoid language that is too specific, especially if your client might want to change his/her story a little later on
  - Avoid excessive legalese and redundancies
  - Don't be afraid to adapt standard forms to account for unique circumstances. Don't be afraid to mention more facts than absolute necessary.

Formal Pleading Requirements

- Caption:
  - This should state the court, the parties and index number
- Paper size and margins
  - Some courts have specific rules regarding these; otherwise, you can use standard letter paper and standard margins
- Signature
  - Attorneys must sign all federal pleadings and motions) under Rule 11 of the FRCP
- Verification
  - Under the federal rules, the client must sign a statement acknowledging that s/he read the complaint and assures that court that it is true…

Structure of the Complaint 1

- Complaints must be in paragraph form
- A statement identifying all parties and where they live/operate should be in every complaint
- There must be a statement on the grounds for jurisdiction (personal and subject matter- though that can often be done in one statement)
  - The appropriate federal or state statute under which jurisdiction arises should be cited
- A complaint also requires:
  - An allegation that gives rise to a cause of action upon which the law allows the court to grant relief
  - A statement of relief sought (e.g., money, an injunction…)
  - A demand for a jury trial, if sought

Statement of the Claim(s)

- The heart of every complaint is an explanation of the allegations that entitled the plaintiff to relief
- When drafting this part, be sure to:
  - Adequately describe the facts relevant to each cause of action
  - Separate each cause of action (e.g., each tort alleged, breach of contract, etc.) into a *separate section*!
  - Make sure the complaint explains how the facts (as you stated them) show that each element of the cause of action has been alleged
  - If possible, in the complaint, track the accepted language for the definition of the cause of action being alleged

Summon and Service of Process

- Complaints must be served in the manner prescribed by applicable law, which can include:
  - Personal service
  - Delivery to the defendant's home or office
  - Service by mail (in some cases)
- A complaint must be served with a summons. This is a simply document that explains to the defendant what he or she must do to avoid a default judgment. It includes:
  - The names of the parties
  - The court
  - The number of days the defendant has to answer
  - The manner in which the defendant must answer

Drafting the Answer 1

- The answer should to three basic things:
  - 1) Explain to the other side and the court how your client responds to each allegation in the complaint; e.g.
    - Paragraph 1 of the complaint it admitted
    - Paragraph 2 of the complaint is denied upon information and belief
    - Paragraph 3 is admitted except insofar as Defendant denies [such and such component of the paragraph]
    - Defendant denies sufficient information upon which to form a belief regarding Paragraph 4 of the complaint.
    - Etc.

Drafting the Answer 2

- 2) The answer must raise all affirmative defenses that the defendant wishes to raise.
  - Each affirmative defense should be put into its own section and each should be raised independently of the earlier responses to the allegations;
  - E.g., "7) Plaintiff's cause of action is barred by the applicable statute of limitations because it was brought four years after the accident" etc.
- 3) Any counterclaims against the plaintiff that the defendant may wish to bring

- A request for relief should also be part of the answer.
- Service of an answer and counterclaim can usually be done by (registered or certified) mail.

Motions

- Motions can be used either as an alternative to filing an answer; e.g.,
  - A motion to dismiss the complaint for a ground listed in Rule 12(b) of the FRCP
  - A motion for a more definite statement
    - Because the complaint is too vague to be responded to
- Or, motions can be used later in the litigation process when seeking a wide variety of types of relief

Types of Motions

- Motions include (among many others):
  - Motion for summary judgment or default judgment
  - Motion to amend a previous pleading
  - Motion to compel discovery from the other side
  - Motion to sanction the other side for failing to comply with discovery
  - Motion for a delay or continuance
  - Motion to extend time limits for filings
  - Motion for judgment on the pleadings or JNOV
  - Motion for leave to implead a third party
  - Motion for a new trial
  - Motion to quash a subpoena or request of your client
  - Motion to strike a portion of the pleading

Preparing the Motion

- A motion document be sent to the court and to the other party (except some ex parte motions) and must contain:
  - A statement of relief sought
  - The rule or statute under which the motion is being made
  - An explanation of the law and facts that indicate that the motion should be granted (the “argument”). This is, of course, the key component of the motion
  - Signature by the submitting attorney
  - In man jurisdictions, an affidavit that the motion is not frivolous
  - Accompanying exhibits, if any
- Often, the moving party will also prepare an “order” for the court to sign granting the requested relief.

Amended and Supplemental Pleadings

- Amending a complaint or answer can be important because you may be barred from raising an issue not brought up initially in the pleadings.
- A pleading can be amended:
  - As a matter of course, if no responsive pleading has been filed and/or within a limited period of time
  - By motion, if allowed by the court; which it will usually allow within a reasonable time if the other side is not prejudiced
- In filing a motion to amend the pleading, stress that it would cause your client prejudice to not allow the amendment and that allowing it would not cause harm…