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Jurisdictionary ®

- Presents -

Forms for Civil Cases

by Frederick Graves, JD

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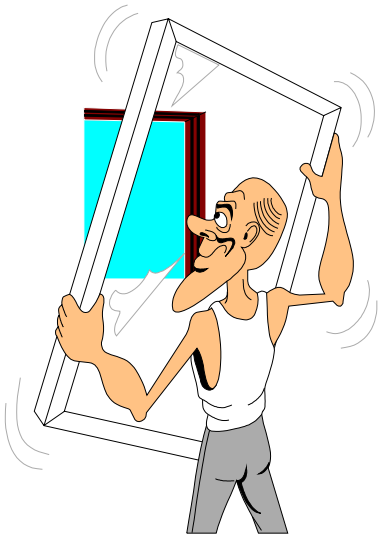
Preface



Before we get into this, be *certain* to understand, "Form is nothing without effective content." It's like a picture frame without a picture.

Therefore, it's far more important to know what must be included in legal documents rather than be concerned about the way things are arranged on pages, size of margins, whether there's a double-vertical line on the left and a single-vertical line on the right, etc. Though these elements of form may be required in some jurisdictions, there's nothing more essential than words that effectively convey content that wins cases … regardless of form!

Jurisdictionary® is pleased to present Forms for Civil Cases, alerting you to problems you'll encounter if you just plug the facts and law of your case into forms you find from other legal self-help sources. The forms presented here are offered primarily to show how content is included, i.e., how motions are made, how discovery requests are written, how notices give effective notice to the parties and the court, etc. It is not intended that the forms offered here be used like a recipe for strawberry pie.

Winning a lawsuit is not like making a strawberry pie.

There are no recipes for winning lawsuits. The key to winning is to make a winning record of the facts and setting out the controlling law that dictates a win. If you have the proper form, so much the better … but, content comes first!

Some courts require specific formats for legal forms. You should consult your local rules, no matter what we offer here. Rules differ from one state to another and, although the forms are generally the same as to content, they may differ from place-to-place as to typestyle or font size required, size of margins, placement of captions, etc.

Your court clerk's office or courthouse library is a wealth of information. Don't ask for legal advice, however, because they cannot give it. If you're pleasant and polite they will help you with things like how wide the border should be, whether you can use legal (8½ x 14) or standard-sized paper (8½ by 11"), and how the caption should appear. These may be critical in the court where your case is being heard, so learn local rules.

By providing Forms for Civil Cases Jurisdictionary® does not intend you to believe the *format* of what follows is the layout your local court requires. What's offered is about the *content* of forms and general layout, not the accepted specific *format* required by your local court. It's extremely important you understand this critical difference. Concentrate on what goes *in* the forms and in a general way what comes first, what comes next, and how it ties together logically. Whether you draft documents in 14-point serif typeface or sans serif may be important to your local court, but it isn't what wins lawsuits.

What's important is that you get a feel for "how" various legal forms work, i.e., what a complaint must do, what a motion should do, and what a memorandum can do (or fail to do if it isn't logically set out on the page in a way that conveys what you need to say).

What is the form attempting to accomplish?

What is the purpose of the form?

What can go wrong?

What should *not* be included in the form?

What should *always* be included?

And, that most important question of all, why do we include what we include?

These questions and more will be answered in the pages that follow.

Introduction

As explained more thoroughly in other Jurisdictionary® tutorials, there are really just a few "forms" one needs to win lawsuits. As the Jurisdictionary® Lawsuit Flowchart sets out, there are really only a handful of documents you need to exercise your rights and get the evidence you need. To win most cases, all you need are the following forms:

- ✓ Complaint
  - o Motion to Dismiss the Complaint
  - o Motion to Strike the Complaint
  - o Motion for a More Definite Statement of the Complaint
- ✓ Answer
  - o Request for Admissions
  - o Request for Production
  - o Interrogatories
  - o Subpoenas
  - o Forms Scheduling Depositions
- ✓ Notice for Trial
  - o Pre-Trial Stipulation
  - o Motions in Limine
  - o Jury Instructions

Every form can be placed in one of the following categories:

- ✓ Pleadings
- ✓ Motions
- ✓ Memoranda (plural for memorandum)
- ✓ Notices
- ✓ Discovery Requests
- ✓ Orders

The most important of these forms are the pleadings, which include:

- ✓ Complaints (or Petitions)
- ✓ Answers
- ✓ Affirmative Defenses
- ✓ Counter-Claims
- ✓ Cross-Claims
- ✓ Third-Party Claims

The most often used form is the motion, usually supported by a memorandum (that may be included in simple motions or drafted as a separate document to support complex

motions, so the court can easily see what the motion is asking for and refer to a separate document to see your argument with case law and statutory citations explaining why the judge should grant your motion).

Notices simply tell the other side and the court what you plan to do, e.g., notice that the case is ready for trial, notice of hearing, notice of taking deposition, etc.

Discovery requests fall into four (4) general categories:

- ✓ Requests for Admissions
- ✓ Requests for Production
- ✓ Interrogatories
- ✓ Subpoenas

Finally, orders may be drafted by the judge, or in some courts, you may be requested to draft an order on occasion, such as when you win a motion hearing. The court may ask you to draft a *proposed* order, provide a copy to the "other side", and mail the *proposed* order to the judge with pre-addressed stamped envelopes so the judge can mail the signed order to all parties if the judge approves the form of your order. Generally the other side is given an opportunity to object to the form of your order or, even, to its content. More on this later.

This tutorial covers all these forms (and a few less commonly used forms). It will explain far more than "format", showing "why" each form includes what it does, but not attempting to show what local rules require as to placement of words on the page, size of margins, type fonts, and so forth.

The most important thing is learning what *not* to include. Learn what's required and make certain you include *all* requirements.

Then stop writing!

The most common mistake of lawyers and *pro se* non-lawyers is saying too much!

This tutorial explains what's necessary and what's not.

In every case, the forms that follow are only for reference and guidance. They are not official. They may comply with local rules in many jurisdictions, however you are urged to confirm that these forms meet all requirements of the court where you are litigating. It isn't possible for Jurisdictionary® to provide you with forms that meet all local rules, because rules vary from jurisdiction to jurisdiction. What *is* included is a general concept of each "form type", giving you a common-sense view of what each is intended to do and how to use it to get what you want.

That's the important part Jurisdictionary® wishes you to learn from this tutorial.

So, let's get started!

Summons

This form is usually issued by the court on its own forms (instead of being drafted by litigants). In most jurisdictions, a clerk will draft the summons, sign it, and hand it to you or your process server to be "served" on the defendant with a copy of your complaint and any initial discovery requests you may include.

This form summons people to appear in court. That's why we call it a summons. ☺

It's in the form of a command. When "served" on a defendant, the summons gives a court what we lawyers call *in personam* jurisdiction, i.e., power over the person. If the person fails to respond after being served with a summons, the judge has legal authority to issue an order finding the defendant in default and awarding plaintiff whatever money damages or other relief the plaintiff is praying for in his complaint (or petition).

This is your right.

You are entitled to file a complaint and require the court to summon defendants to appear and answer (or show why they shouldn't be required to answer) your complaint. The summons is your power to require people (even the President of the United States) to answer your complaint. Remember from grade school how we were told we have the right to petition government for a redress of our grievances? Well, this little paper is the first step by which all of us have the right to require government to require others (under penalty of being cast into jail for non-compliance) to answer our complaints.

Though you will probably never be required to draft one for your own case, the next page shows what a summons looks like generally. (As with all forms in this tutorial, check your local rules.)

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA

Case No. 2004-123
Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT,
Defendant.
_____/

SUMMONS

THE STATE OF FLORIDA:
To Each Sheriff of the State:

YOU ARE COMMANDED to serve this summons and a copy of the complaint or petition in this action on defendant Danny Defendant [and here additional information may be added to assist the Sheriff or his deputies or an official process server to locate and identify the defendant, addresses, descriptions, anything that will help locate and identify the defendant].

Each defendant is required to serve written defenses to the complaint or petition on Peter Plaintiff [and, again, giving the address of plaintiff so the defendant knows where to mail or serve his written defenses, which may be the name and address of his attorney] within 20 days [may differ in other jurisdictions] after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the clerk of this court either before service on plaintiff or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the reliefe demanded in the complaint or petition.

DATED this ___ day of _____ 2004.

CATHERINE CLERK
As Clerk of the Court

by _____
Deputy Clerk

Civil Cover Sheet

Some courts require plaintiffs to file a civil cover sheet at time of filing a complaint (or petition). This form *will* vary from jurisdiction to jurisdiction but, generally, includes the name of the court, style of the case (name of plaintiff and defendant), type of case (contract, property, family, etc.), and name and address of plaintiff's attorney (if any).

Don't worry about the "form" of this document. The clerk will provide one to you at the time you file your case and pay the filing fee.

Complaint

This is the most important document of all … yet even experienced attorneys miss its significance and do a poor job of drafting complaints. If you read the official rules in the jurisdiction where you're filing, you'll probably read something like this: "The complaint shall contain a short and plain statement of the grounds on which the court's jurisdiction depends, a short and plain statement of the ultimate facts showing the pleader is entitled to relief, and a demand for judgment for the relief sought." This is Rule 8 of the Federal Rules of Civil Procedure. It is Rule 1.110 of the Florida Rules of Civil Procedure. And, it is the substance of the rule in all other state court jurisdictions.

Let's list the three necessary ingredients again:

1. short and plain statement of grounds for the court's jurisdiction,
2. short and plain statement of facts on which right to relief is based, and
3. demand for relief.

Nothing more.

Nothing less.

It doesn't matter whether your case is in federal court or in the least significant court of some backwoods county in middle-America. Every complaint must contain all three essential elements … *and nothing more.*

Let me remind you again that this tutorial does not intend to tell you what size font to use or how wide to make the margins. You can get that information from the official rulebook in the state where you live. The Thomson-West Corporation publishes official rules for all state and federal courts, and I cannot urge too strongly the wisdom in ordering the official rules for *your* court. They are not expensive. Call 800-344-5009 and

ask for the "Rules of Court" *in paperback* for your state, and they will send you the rules that control both your state and federal courts … including sample forms. What you must understand, however, is how to write the *content* that must be included in the forms, and how to avoid saying too much.

A well-pleaded complaint will do more than merely set forth the court's basis for jurisdiction, the pleader's right to relief, and the demand for relief.

A well-pleaded complaint will include language that begins the all-important process of discovery, forcing the other side to admit important facts from the very get-go.

Discovery is the key to winning lawsuits.

Discovery gets the winning facts and controlling law in the court record *before* trial.

Discovery begins with the well-pleaded complaint.

Let me explain by looking first at the 2nd ingredient: the facts on which the right to relief is based. What are they? What must be said? What part should be left out?

Causes of Action

This is, perhaps, the least understood aspect of civil lawsuits.

You must have a right to sue.

The right to sue is called a "cause of action".

If you don't have a cause of action, you don't have a case.

Not all "wrongs" can result in a judicial remedy. For example, it used to be law in Florida that a husband or wife could sue an outsider who enticed away a spouse. This cause of action was known as "alienation of affection". In 1945, however (perhaps in part as a reaction to the many broken hearts caused by the War and its absences), our Legislature enacted §771.01 Florida Statutes abolishing this cause of action. The statute

reads, “The rights of action heretofore existing to recover sums of money as damage for the alienation of affections, criminal conversation, seduction, or breach of contract to marry are hereby abolished.” The reasons given were that the law had been “subjected to grave abuses, causing extreme annoyance, embarrassment, humiliation and pecuniary damage to many persons wholly innocent and free of any wrongdoing, who were merely the victims of circumstances, and such remedies having been exercised by unscrupulous persons for their unjust enrichment and such remedies having furnished vehicles for the commission or attempted commission of crime and in many cases have resulted in the perpetration of frauds, exploitation and blackmail, it is hereby declared as the public policy of the State of Florida that the best interest of the people of the State will be served by the abolition of such remedies”. Thus what once might have been grounds to bring a lawsuit (i.e., a valid cause of action) is now no longer a remedy for the wrong. Certainly, it is just as “wrong” today as it was before 1945 for a man to entice away another man’s wife (or a woman to entice away another woman’s husband), however the cause of action was so abused (during the war years especially) that our courts could no longer control the flood of lawsuits nor sort out the frauds from sincerely brokenhearted victims of this once unlawful wound.

Thus, although “alienation of affections” is as wrong today as it is commonplace, we Floridians no longer have the right to sue. The cause of action no longer exists.

Without a cause of action, you have no right to sue … and, if you attempt to sue for a wrong that has no judicial remedy, the other side will rightly and successfully have your complaint dismissed with a Motion to Dismiss for Failure to State a Cause of Action on which relief can be granted.

So, a critical part of the second necessary ingredient (a short and plain statement of the facts on which the right to relief is based) is inclusion of all ultimate facts necessary to *state all your causes of action*. You must state at least one cause of action to avoid the other side's motion to dismiss for failure to state a cause of action. The ultimate facts you must include in your "short and plain statement" are called essential "elements" of your causes of action. If you do not state all essential factual "elements" of a cause of action, the other side will have that cause of action dismissed for failure to state the cause. If the complaint has only one cause of action, your lawsuit will be dismissed in its entirety.

For example, it's not enough to say, "Defendant breached a contract."

No.

No.

No!

You must state in your complaint *all* ultimate facts to establish *all* elements of *all* causes of action.

Please do not fail to order the Jurisdictionary® tutorial on causes of action (if you've not already ordered). The tutorial explains what must be included to state effectively all of the common causes of action, such as breach of contract, negligence, conversion, etc. Do not imagine you can win a lawsuit without understanding what is and what is not a cause of action – or what must be included in your complaint to effectively state a cause of action. The tutorial on causes of action goes into aspects of this important subject that cannot be included in this tutorial on forms for civil cases. Order at www.jurisdictionary.com

Every cause of action requires you to state essential elements. Failure to state is the most common reason why complaints are dismissed. Failure to prove all essential elements of the causes of action stated in the complaint is the most common reason people lose lawsuits!

This tutorial cannot cover the interesting subject of causes of action other than by a few examples to show you how to state facts and law you must include in your complaint in order to win your case. If you haven't already ordered my tutorial on causes of action, go to www.jurisdictionary.com now and order it now. You'll need to know what it says,

whether you're a plaintiff or defendant. It's essential to know the elements of every cause of action in your lawsuit no matter which side you're on (as I'll show you further in this tutorial when we get to motions to dismiss, summary judgment and preparations for trial).

As explained in my tutorial on Causes of Action, a complaint for breach of contract must allege 3 essential elements of fact:

1. Existence of a contract,
2. Plaintiff's performance,
3. Defendant's breach,
4. Plaintiff's damages resulting from Defendant's breach.

If this seems easy to you, it is because it *is* easy!

It is simplicity itself!

Simple 1-Count Complaint

Look at the following single-count Complaint for breach of contract.

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA

Case No. 2004-123
Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT,
Defendant.
_____/

COMPLAINT

PLAINTIFF Peter Plaintiff sues defendant Danny Defendant for money damages and states:

JURISDICTIONAL ALLEGATIONS

1. This is an action for money damages in excess of $15,000. [I'll explain this later.]
2. At all times material to this lawsuit, Peter Plaintiff was a resident of Sunshine County, Florida.
3. At all times material to this lawsuit, Danny Defendant was a resident of Sunshine County.
4. All acts necessary or precedent to the bringing of this lawsuit occurred or accrued in Sunshine County, Florida.
5. This Court has jurisdiction.

GENERAL FACTUAL ALLEGATIONS

6. On 17 May 2004 Plaintiff and Defendant entered into a written agreement whereby Defendant promised to spray Plaintiff's 5-acre strawberry farm with insecticide every week for 8 weeks while Plaintiff was away on vacation in Hawaii.
7. Plaintiff paid Defendant $3,000 at the time of execution of the contract in settlement of all the Plaintiff's obligations under the contract. [See where this is going?]

8. A copy of the written contract is attached as Exhibit 1. [Many jurisdictions require written contracts to be attached to complaints.]
9. During Plaintiff's absence, Defendant failed and refused to spray the strawberries at any time, breaching the contract.
10. As a direct and proximate result, strawberries valued in excess of $15,000 were destroyed by insects, and Plaintiff suffered money damages.

WHEREFORE Peter Plaintiff demands judgment for money damages against Danny Defendant, together with such other and further relief as the Court may deem reasonable and just under the circumstances.

_____

Peter Plaintiff, Plaintiff

That is a simple 1-count complaint for breach of contract.

Let's look at it step-by-step.

First, at the very top is the caption. This tells us the name and location of the court, file number (assigned by the court clerk at the time of filing), the name of the plaintiff(s), the name of the defendant(s), and the fact that this is a "Complaint". If it were some other form, of course, we'd complete the caption with the name of the form, e.g., Motion for an Order to Show Cause or Notice of Hearing. No matter what the name of the form might be, the caption remains the same: identify the court, the file number, and the parties.

Next are the jurisdictional allegations. This is where we allege (state on the record) the facts that gives this court jurisdiction over the subject matter of the pleading. In Florida, for example, a case brought in our circuit courts must seek either money damages in excess of $15,000 or some purely equitable relief (e.g., an injunction or order determining ownership of property) or a mixture of both. An action for breach of contract where the amount in controversy is only $14,999 cannot be brought in our circuit courts. Such an action would have to be brought in our county court. Actions for smaller amounts must be brought in small-claims court. Other jurisdictions have different jurisdictional minimum amounts.

Also note in the jurisdictional allegations that Peter Plaintiff lives in the county where this court sits. So does Danny Defendant. And, in our example, all the acts that gave rise to the lawsuit also took place in the county where the court sits. In Florida these are additional factors that may be considered in arguing that a court has jurisdiction over the subject matter of the lawsuit. If Danny lived in Omaha and Peter lived in Miami, and the contract was executed in Atlanta with performance of its terms to be carried out by

Danny in Chicago, the Florida court would not have jurisdiction … no matter how much money was in controversy. You must allege all facts necessary to show that the court you are filing in has jurisdiction over the subject matter of your lawsuit, or the opposing party can move to dismiss for lack of subject matter jurisdiction. [More on motions to dismiss later on.] Here, again, you must look to your local rules … however, the form is the same, no matter where you file your lawsuit.

Paragraph #6 fulfills the first of the essential elements for breach of contract, i.e., that a contract existed between the parties. It doesn't merely say, "There was a contract." It tells the court "in short and plain language" not only that the contract existed but also what the contract was about … in this case the spraying of strawberries for money paid.

Paragraph #7 alleges Peter met his part of the bargain, performance by payment.

Paragraph #8 meets the local requirement that a copy of the written contract be filed with the complaint.

Paragraph #9 alleges Danny did not meet his part of the bargain, i.e., that he breached the contract.

Paragraph #10 claims Peter suffered money damages as a result of Danny's breach.

Finally, the "WHEREFORE" clause demands judgment for Peter's damages.

All three essential parts of the complaint are met:

- ✓ short and plain statement of grounds for the court's jurisdiction,
- ✓ short and plain statement of facts on which right to relief is based, and
- ✓ demand for relief.

And all four essential elements of its single count for breach of contract are also met.

- ✓ Existence of contract.

- ✓ Plaintiff's performance.
- ✓ Defendant's breach.
- ✓ Plaintiff's damages.

Is this beginning to make more sense to you?

Of course it is!

Multi-Count Complaint

A multi-count complaint is essentially the same as the single-count complaint we've examined, with the exception that we make a general allegation of facts and then state the factual elements of each separate cause of action in separate counts.

A sample multi-count complaint follows. Example has two counts. The form used is the same for two or more counts.

The two causes of action and their essential elements (per Florida law) are:

Breach of Contract

- ➢ Existence of contract.
- ➢ Plaintiff's performance.
- ➢ Defendant's breach.
- ➢ Plaintiff's damages.

Tortious Interference with an Advantageous Business Relationship

- ➢ Existence of plaintiff's advantageous business relationship.
- ➢ Defendant's knowledge of plaintiff's relationship.
- ➢ Defendant's intentional and unjustified interference with relationship.
- ➢ Plaintiff's damages.

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA

Case No. 2004-123
Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT,
Defendant.
_____/

COMPLAINT

PLAINTIFF Peter Plaintiff sues defendant Danny Defendant for money damages and states:

JURISDICTIONAL ALLEGATIONS

1. This is an action for money damages in excess of $15,000.
2. At all times material to this lawsuit, Peter Plaintiff was a resident of Sunshine County, Florida.
3. At all times material to this lawsuit, Danny Defendant was a resident of Sunshine County.
4. All acts necessary or precedent to the bringing of this lawsuit occurred or accrued in Sunshine County, Florida.
5. This Court has jurisdiction.

GENERAL FACTUAL ALLEGATIONS

6. On 17 May 2004 Plaintiff and Defendant entered into a verbal agreement.
7. Terms of the verbal agreement required Defendant to deliver Plaintiff's fresh-picked grapefruit to Plaintiff's customers.
8. Defendant promised to make daily deliveries, including Saturdays and Sundays.
9. Defendant promised to continue deliveries through the end of August 2004.

10. Plaintiff paid Defendant $5,000 in advance for the contemplated delivery services.
11. Defendant performed well for the first five weeks.
12. At some time in July 2004, Defendant stopped delivering grapefruit for Plaintiff.
13. Defendant began delivering his own grapefruit to Plaintiff's customers in competition with Plaintiff prior to the end of August 2004.
14. As a direct result Plaintiff lost his long-standing grapefruit customers as a direct result.
15. Plaintiff lost the value of the remainder of the season's undelivered grapefruit crop due to spoilage.

COUNT ONE: BREACH OF CONTRACT

16. Plaintiff realleges and restates the foregoing jurisdictional allegations and general factual allegations. [This brings the foregoing allegations into the count itself.]
17. The 17 May 2004 verbal agreement constitutes an enforceable contract under Florida law and, since the contract was for services that could be performed within the space of one year, it is within Florida's Statute of Frauds. [Verbal contract for services that cannot be performed within one year are generally unenforceable in Florida's courts.]
18. Defendant was obligated by the contract to deliver plaintiff's grapefruit throughout the 2004 grapefruit season.
19. Plaintiff fully performed the contract by advance payment in full.
20. Defendant's failure to deliver through the entire 2004 season breached the contract.
21. As a direct result of Plaintiff's breach, Plaintiff suffered substantial money damages.

WHEREFORE Peter Plaintiff demands judgment for money damages against Danny Defendant, together with such other and further relief as the Court may deem reasonable

and just under the circumstances.

COUNT TWO: TORTIOUS INTERFERENCE

22. Plaintiff realleges and restates the foregoing jurisdictional allegations and general factual allegations. [Bringing the foregoing allegations into this count.]
23. Prior to Defendant's wrongs complained of, Plaintiff enjoyed a profitable relationship with his former grapefruit customers.
24. Defendant gained knowledge of the identity and location of Plaintiff's customers in the course of his employment by Plaintiff.
25. Defendant gained knowledge of the number and type of grapefruit Plaintiff's customers purchased in the course of his employment by Plaintiff.
26. Defendant gained knowledge of the prices Plaintiff's customers paid for Plaintiff's grapefruits in the course of his employment by Plaintiff.
27. Defendant intentionally without justification interfered with Plaintiff's relationship with his former grapefruit customers by selling grapefruit to them directly and at a competitive price.
28. As a direct and proximate result, Plaintiff suffered substantial money damages.

WHEREFORE Peter Plaintiff demands judgment for money damages against Danny Defendant, together with such other and further relief as the Court may deem reasonable and just under the circumstances.

_____

Peter Plaintiff, Plaintiff

That's all there is to it.

Don't make more of it than it is.

The key to successfully pleading a complaint is to include all three necessary parts of the complaint and all facts necessary to support the essential elements of every cause of action … *without adding anything unnecessary*.

For example, in the foregoing, it's not necessary to allege Danny Defendant used one of Plaintiff's grapefruit delivery trucks, *unless that fact is one of the essential elements of a cause of action.*

There is, however, an exception to this rule.

Getting Discovery with the Complaint

Remember earlier when I mentioned how important discovery of evidence is and that the place to start discovery is with a well-pleaded complaint?

Suppose Danny is going to deny stealing Peter's customers. Suppose he made some deal with the customers, and they promised not to rat him out. Suppose proving he used the old grapefruit delivery truck would help also prove he sold to Peter's customers. In a case like that, where it's important to show Danny used the old truck, we might add a paragraph such as the following:

19. Defendant used Plaintiff's 1944 Ford pickup truck to deliver Defendant's own fresh-picked grapefruit to Plaintiff's former customers.

"But," you may be asking, "didn't we say we weren't going to add anything that wasn't an essential element?"

The answer is, yes … and no.

Keep in mind the defendant is going to be required to answer the complaint sooner or later (unless he succeeds with a motion to dismiss or motion to strike, as explained later). When he answers the complaint, we want him to admit whatever he can that will help us prove the elements of our causes of action. When he files his Answer (as explained in a later chapter) he must admit or deny *each numbered paragraph of your complaint* … or claim he has no knowledge that would allow him to admit or deny*!*

Also keep in mind that one of the most powerful ways to win a lawsuit is to prove your opponent is a liar!

If we add allegations of fact that *if admitted* would help us prove our case (i.e., if we get facts admitted by adding them to our complaint and demanding an answer to every numbered paragraph of our complaint, instead of spending hard-earned money on private investigators or costly court reporters to attend and transcribe depositions) then, when the answer is filed, we may have fewer facts to prove (unless the defendant lies in his answer, which will, of course, give us an opportunity to prove his dishonesty later on).

How to Write a Complaint Paragraph

This topic is so important it's a wonder law schools don't teach it, but few lawyers are aware of the power for discovery they miss by poorly wording the separate numbered paragraphs of their initial pleadings.

In the first place, the numbered paragraphs of a complaint should only rarely contain more than one sentence!

That one sentence should contain only one subject and one verb.

Do not use complex sentences in pleadings, i.e., do not use connectives like "and", "or", "but", or "however".

Never use "and/or" if you can avoid it, because sentences with mixed connectors like that open the door to argument about what you meant, and you want every sentence in the complaint (and in all your legal forms) to mean *one thing and one thing only!*

Remember, the complaint is not merely a paper you file to "complain" to the court. It is also your first bite at the discovery apple. You want each separate numbered paragraph to be absolutely precise in what it alleges. Then, when the defendant answers it, he will be admitting or denying each fact in an equally precise way … *and each admitted fact is admitted for all purposes.*

A sentence like the following, for example, accomplishes nothing.

19. Defendant was aware Plaintiff was worried, but Plaintiff stood alone on the precipice of his financial defeat, while the Defendant watched with pleasure at Plaintiff's suffering.

Who cares?

What does this accomplish?

Does it provide any facts that are essential elements of a cause of action? Does it say anything that gives the court jurisdiction? Does it demand a judgment? It certainly does not offer any opportunity to discover anything when the defendant answers, because all he has to say is, "Without knowledge."

What have you gained by using this run-on, complex sentence?

If any word in your case is not included to advance your cause, leave it out!

Now, consider the following sentence.

9. Defendant had a phone conversation with an employee at Acme Truck Repair on the 12th of June 2003.

Will he deny? Can he deny without lying? If he admits, then you don't have to prove the conversation took place. If he denies, you can subpoena the Truck Repair company's phone records or depose the employee, proving the defendant is a dishonest man who is more than likely responsible for all the damages your complaint sets forth.

Compare the foregoing with this compound sentence.

22. Defendant was in Pittsburgh on 11 December 2002, and Plaintiff was unable to reach him by phone.

How is the defendant supposed to know you couldn't reach him by phone?

All he has to do is answer this allegation by writing:

22. Denied.

That's what the answer will say, and you'll have gained nothing.

Far better to use simple sentences with one subject, one verb, like this:

22. Defendant was in Pittsburgh on 11 December 2002.

23. Plaintiff was unable to reach Defendant on 11 December 2002 by telephone.

Defendant may answer that he has no knowledge of #23, but he must either admit or deny #22, giving you a valuable point (whether he lies or tells the truth).

Keep your numbered paragraphs to simple sentences with one subject and one verb.

And, don't say anything that isn't going to allege *a fact you must prove to win*.

Include the three required parts of a complaint: jurisdiction, right to relief, demand.

Include all facts necessary to allege the essential elements of every cause of action.

Allege *additional* facts (with simple sentences) that you want the other side to admit (or lie about, so you can catch him in the lie) … but do this only with facts that will help you prove the elements of your cause of action (or the jurisdiction of the court).

Nothing else matters.

Everything else stays out!

Include everything you must … then STOP WRITING!

Keep it simple.

Make it powerful and to the point.

See that your complaint fulfills all three functions explained in this chapter.

Say nothing more.

There'll be time later on to pour out your bleeding heart to the judge. ☺

Write, re-write, and re-write your complaint again and again until it's perfect. The complaint is the most important form in your lawsuit. Ask a friend to go over it with you. Have them read this chapter before they read your complaint. Brainstorm on it. Be picky!

Think of it as a high-tech nuclear smart-bomb you are precisely programming for a direct hit!

A well-pleaded complaint will do more to help you win your lawsuit than anything else you can do.

A poorly-pleaded complaint will get you off to a slow start and give your defendant unnecessary opportunities to defeat you at every turn.

Make sure your complaint clearly states what you're suing for … and every fact you have to prove to win … and nothing more!

Certificate of Service

All court papers other than initial pleadings require certificate of service, a statement added to the end of every form certifying a copy was served on the opposing party or his lawyer.

Here in Florida, where lawyers are considered officers of the court (or, at least, have taken an oath upon which they can be punished for false actions) my certificate of service need not be sworn, i.e., I don't have to execute my certificate of service before a notary.

Non-lawyers in most states are required to certify service by their affidavit, i.e., under oath.

There follow two forms of certificate of service. The first is the simpler form used by lawyers. The second form is probably acceptable in your state for use by non-lawyers who have never been required to swear an oath that they will make no false representations to the courts. [*See the Oath of Admission to The Florida Bar.*]

Here is the oath Florida lawyers are required to swear before being admitted to practice before our courts, binding us as surely as we would be bound if required to give our affidavit with every form we sign and, though the power we submit to by our oath is seldom exercised to punish lawyers who lie, we *are* subject to penalties of perjury if we falsely certify any fact on the court record by our signature.

Oath of Admission to The Florida Bar

I do solemnly swear:

I will support the constitution of the United States and the Constitution of the State of Florida;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval.

I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged.

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone's cause for lucre or malice.

So help me God.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing was provided by regular U.S. mail to Larry Lawyer, Esq., 123 Main Street, Anywhere, Florida 33333 this 17th day of May 2004.

_____

Frederick D. Graves, Esq.
Florida Bar No. 558583
Counsel for the Plaintiff
516 Camden Avenue
Stuart, Florida 34994
772-288-9880

[This is a standard form used by lawyers, whose oath of office makes them subject to the penalties of perjury for falsely certifying any official act.]

CERTIFICATE OF SERVICE

UNDER PENALTY OF PERJURY, I CERTIFY that a copy of the foregoing was provided by regular U.S. mail to Larry Lawyer, Esq., 123 Main Street, Anywhere, Florida 33333 this 17th day of May 2004.

_____

Peter Plaintiff, *pro se*
9 Happiness Lane
Anywhere, Florida 33333
772-555-1212

STATE OF FLORIDA
COUNTY OF SUNSHINE

BEFORE ME personally appeared Peter Plaintiff who, being by me first duly sworn and identified in accordance with Florida law, did execute the foregoing in my presence this ___ day of _____ 2004.

_____
Notary Public
My commission expires:

[This form should suffice for use by non-lawyers, who are not subject to penalties of perjury for falsely certifying service unless they are sworn before a notary. As always, however, check your local rules.]

Verification

Many forms (most notably pleadings and motions that assert facts in dispute) carry a bit more weight if they include a sworn verification at the end.

A verification is nothing more than an affidavit attesting that the party read the paper and swears under penalties of perjury that the facts alleged are true and correct of his own knowledge.

As a common practice in our office, we require clients to verify *all* pleadings and motions where facts asserted might not be true. We lawyers have enough trouble without going on record alleging facts for our clients that might not be true. As a *pro se*, of course, the advantage of verifying pleadings and motions (and any other paper alleging facts in dispute) is that you gain credibility with the court.

Some forms should *always* be verified. These include objections or other responses to motions for summary judgment and replies to affirmative defenses, where you may be denied relief if you do not swear to facts you assert in response – thus putting the issues of fact squarely into controversy and leaving nothing to chance.

The following verification is typical. As always, check local rules.

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA

Case No. 2004-123
Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT,
Defendant.
_____/

VERIFICATION OF COMPLAINT

STATE OF FLORIDA
COUNTY OF SUNSHINE

BEFORE ME personally appeared Peter Plaintiff who, being by me first duly sworn and identified in accordance with Florida law, deposes and says:

1. My name is Peter Plaintiff, plaintiff herein.

2. I have read and understood the attached foregoing complaint filed herein, and each fact alleged therein is true and correct of my own personal knowledge.

FURTHER THE AFFIANT SAYETH NAUGHT.

_____
Peter Plaintiff, Affiant

SWORN TO and subscribed before me this ___ day of _____ 2004.

_____
Notary Public
My commission expires:

[Certificate of Service]

In the alternative, verification may be added at the end of the form itself, in which case the title of the form should begin with the word “VERIFIED” in all-capitals, as shown in the following example:

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA

Case No. 2004-123
Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT,
Defendant.
_____/

VERIFIED COMPLAINT

PLAINTIFF Peter Plaintiff sues defendant Danny Defendant for money damages and states:

JURISDICTIONAL ALLEGATIONS

11. This is an action for money damages in excess of $15,000. [I'll explain this later.]
12. At all times material to this lawsuit, Peter Plaintiff was a resident of Sunshine County, Florida.
13. At all times material to this lawsuit, Danny Defendant was a resident of Sunshine County.
14. All acts necessary or precedent to the bringing of this lawsuit occurred or accrued in Sunshine County, Florida.
15. This Court has jurisdiction.

GENERAL FACTUAL ALLEGATIONS

16. On 17 May 2004 Plaintiff and Defendant entered into a written agreement whereby Defendant promised to spray Plaintiff's 5-acre strawberry farm with insecticide every week for 8 weeks while Plaintiff was away on vacation in Hawaii.
17. Plaintiff paid Defendant $3,000 at the time of execution of the contract in settlement of all the Plaintiff's obligations under the contract. [See where this is going?]

18. A copy of the written contract is attached as Exhibit 1. [Many jurisdictions require written contracts to be attached to complaints.]
19. During Plaintiff's absence, Defendant failed and refused to spray the strawberries at any time, breaching the contract.
20. As a direct and proximate result, strawberries valued in excess of $15,000 were destroyed by insects, and Plaintiff suffered money damages.

WHEREFORE Peter Plaintiff demands judgment for money damages against Danny Defendant, together with such other and further relief as the Court may deem reasonable and just under the circumstances.

_____
Peter Plaintiff, Plaintiff

VERIFICATION

STATE OF FLORIDA
COUNTY OF SUNSHINE

BEFORE ME personally appeared Peter Plaintiff who, being by me first duly sworn and identified in accordance with Florida law, deposes and says:

3. My name is Peter Plaintiff, plaintiff defendant herein.
4. I have read and understood the attached foregoing complaint, and each fact alleged therein is true and correct of my own personal knowledge.

FURTHER THE AFFIANT SAYETH NAUGHT.

_____
Peter Plaintiff, Affiant

SWORN TO and subscribed before me this ___ day of _____ 2004.

_____
Notary Public
My commission expires:

Answer

An answer is nothing more complicated than a defendant's formal response to the initial pleading, e.g., complaint, counter-claim, cross-claim, or third-party complaint.

If you're a defendant you'll try to avoid filing an answer. Examples of motions to dismiss, strike, and require a more definite statement of the complaint are given in a later chapter. If you're unsuccessful with this "flurry of motions" to dismiss, strike, or require a more definite statement, you'll be required to file an answer.

The answer must respond to each numbered paragraph of the initial pleading by one of the following three statements:

- ✓ Admitted.
- ✓ Denied.
- ✓ Without knowledge.

There are no other responses. The response may be varied somewhat, e.g., "Denied that Defendant ate the apple, otherwise admitted," however the substance of the response to each numbered paragraph of the initial pleading must satisfy one of these three. Either the defendant denies the statement, admits the statement, or has no knowledge by which he might answer the statement.

If you are plaintiff and a defendant answers in a way substantially different from one of these three, move to strike his answer as "unresponsive".

You are entitled to know, with regard to each and every numbered paragraph of your complaint, whether the defendant admits, denies, or has no knowledge sufficient to allow a truthful response.

Just as I told you the complaint is the most important form of all, so also the answer must be responsive to the complaint, or you've lost the power of the complaint to get at the truth "from the get-go" as I explained earlier. Demand an answer you can understand. Demand an answer that pins the defendant down. Don't let him squirm with a response like, "The defendant believes the plaintiff is attempting to obtain information that he has no right to obtain," or, "This paragraph of plaintiff's complaint is wholly without factual foundation of any kind." Such "responses" are "un-responsive". They don't *answer* the complaint. If you are the plaintiff, make sure all your hard work at drafting an effective initial pleading does not go to waste. Force the defendant to respond *responsively* to each and every numbered paragraph with one of the three allowed answers: admitted, denied, or without knowledge … or words to that effect … and nothing more.

If you are the defendant and must respond to the complaint, remember that there's a great deal more you can do in your answer than merely "answer" the complaint. Among these are the all-important affirmative defenses (explained in the next chapter) and the possibility of a counter-claim (an attack on the plaintiff), a cross-claim (an attack on your co-defendants), or a third-party complaint (an attack on someone you allege is the legal cause of the plaintiff's damages instead of you).

Simple Answer

The next example is a simple answer.

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA

Case No. 2004-123
Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT,
Defendant.
_____/

ANSWER

DEFENDANT Danny Defendant answers the complaint of Peter Plaintiff and, in response to each numbered paragraph thereof, states:

1. Denied.
2. Admitted.
3. Without knowledge.
4. Denied.
5. Denied.
6. Denied.
7. Admitted.

RESPECTFULLY SUBMITTED this 23 May 2004.

_____
Danny Defendant, Defendant

[Certificate of Service]

That's really all there is to a simple answer.

In practice, however, there will usually be affirmative defenses (discussed in a later chapter) and one or more additional claims included with the answer.

Counter-Claim

For example, the next form is an answer with a counter-claim.

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA

Case No. 2004-123
Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT,
Defendant.
_____/

ANSWER AND COUNTER-CLAIM

DEFENDANT Danny Defendant answers the complaint of Peter Plaintiff responding to each numbered paragraph thereof and counterclaiming as follows:

1. Denied.
2. Admitted.
3. Without knowledge.
4. Denied.
5. Denied.
6. Denied.
7. Admitted.

COUNTER-CLAIM

8. On or about 13 May 2004, Plaintiff verbally contracted to pay Defendant $3,000 as an initial deposit toward the agreed full contract price of $5,000 for grapefruit deliveries.
9. Defendant made multiple grapefruit deliveries for Plaintiff thereafter.
10. Plaintiff failed and refused to pay Defendant for any grapefruit deliveries, breaching the parties' contract.
11. Defendant suffered substantial money damages as a direct result.

WHEREFORE Danny Defendant demands judgment for money damages against

Peter Plaintiff, together with such other and further relief as the Court may deem reasonable and just under the circumstances.

RESPECTFULLY SUBMITTED this 23 May 2004.

_____

Danny Defendant, Defendant and Counter-Plaintiff

[Certificate of Service]

Once an answer with a counter-claim is filed, the plaintiff must then respond to the counter-claim in the same way the defendant responded to the initial complaint. He must respond to it with a formal Answer.

Cross-Claim

The cross-claim is like a counter-claim, but the responding defendant asserts a claim against one or more co-defendants instead of the plaintiff. Therefore, in a case brought by Peter Plaintiff against Danny Defendant *and* Carl Co-Defendant, the answer and cross-claim might look like the following … if Plaintiff sues two or more people, as in the next example.

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA

Case No. 2004-123
Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT and
CARL CO-DEFENDANT,
Defendants.
_____/

ANSWER AND CROSS-CLAIM

DEFENDANT Danny Defendant answers the complaint of Peter Plaintiff responding to each numbered paragraph thereof, stating:

1. Denied.
2. Admitted.
3. Without knowledge.
4. Denied.
5. Denied.
6. Denied.
7. Admitted.

CROSS-CLAIM

DEFENDANT Danny Defendant sues Carl Co-Defendant and states,

8. On or about 13 May 2004, Defendant and Co-defendant agreed to work together to deliver grapefruit for Plaintiff.
9. Defendant and Co-defendant agreed to share the labor responsibilities equally.
10. Defendant and Co-defendant agreed to share their costs equally.
11. Defendant and Co-defendant agreed to share Plaintiff's payments equally.

12. Plaintiff contracted to pay Defendant and Co-Defendant $3,000 as an initial deposit toward agreed full contract price of $5,000 for grapefruit delivery to be performed by both Defendant and Co-Defendant working together.
13. Plaintiff paid Co-defendant the $3,000 initial deposit.
14. Defendant made multiple grapefruit deliveries for Plaintiff thereafter.
15. Co-defendant failed and refused to make any grapefruit deliveries, breaching the contract between Defendant and Co-defendant.
16. Co-defendant failed and refused to tender any part of the $3,000 initial deposit to Defendant, breaching the contract between Defendant and Co-defendant.
17. Defendant suffered substantial money damages as a direct result.

WHEREFORE Danny Defendant demands judgment for money damages against Carl Co-Defendant together with such other and further relief as the Court may deem reasonable and just under the circumstances.

RESPECTFULLY SUBMITTED this 23 May 2004.

_____

Danny Defendant, Defendant and Cross-Plaintiff

[Certificate of Service]

Third-Party Complaint

The third-party complaint is similar, but requires a change in the caption to add the name of the third-party defendant, whom the defendant claims is ultimately responsible for the plaintiff's losses and, if defendant loses the lawsuit brought by plaintiff, asserting that the third-party defendant owes the defendant whatever his losses might be. In the following example, Peter sued Danny. When Danny files his answer, he brings in a third-party, whom Danny says is responsible for whatever Danny may be required to pay Peter.

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA

Case No. 2004-123
Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT,
Defendant,
v.
THEO THIRD-PARTY,
Third-Party Defendant.
_____/

ANSWER AND THIRD-PARTY COMPLAINT

DEFENDANT Danny Defendant answers the complaint of Peter Plaintiff responding to each numbered paragraph thereof,

1. Denied.
2. Admitted.
3. Without knowledge.
4. Denied.
5. Denied.
6. Denied.
7. Admitted.

THIRD-PARTY COMPLAINT

DEFENDANT Danny Defendant sues Theo Third-Party and states,

8. On or about 13 May 2004, Theo Third-Party agreed to work for Defendant to deliver grapefruit for Plaintiff.
9. Defendant paid third-party defendant $1,500 to deliver grapefruit for Plaintiff.
10. Third-party defendant failed and refused to deliver any grapefruit for Plaintiff,

breaching his contract with Defendant.

11. As a result of the breach of third-party defendant, Defendant has been required to file an answer in this lawsuit and defend against the claims of money damages brought against Defendant by Plaintiff.

12. Third-party defendant is liable to Defendant for all damages suffered by Defendant in this lawsuit.

13. Third-party defendant is further liable to Defendant for return of the $1,500 taken by him without consideration of any kind.

WHEREFORE Danny Defendant demands judgment for money damages against Theo Third-Party together with such other and further relief as the Court may deem reasonable and just under the circumstances.

RESPECTFULLY SUBMITTED this 23 May 2004.

_____

Danny Defendant, Defendant and Third-Party Plaintiff

[Certificate of Service]

The only other primary function served by an answer is the affirmative defense, discussed more fully in the next chapter.

Affirmative Defense

One or more affirmative defenses should *always* be filed – if you have any, that is.

Affirmative defenses include any defense in fact or law that would prevent plaintiff from winning his case. Common examples include:

- ✓ Statute of Limitations – suit brought beyond statutory limit date
- ✓ Laches – suit brought beyond equitable limit, prejudicing defendant
- ✓ Accord and Satisfaction – parties already settled the dispute
- ✓ Assumption of Risk – plaintiff knowingly exposed himself to danger
- ✓ Statute of Frauds – absence of writing to enforce contract
- ✓ Estoppel – plaintiff's own actions prevent him from seeking a remedy in court

The list is, however, virtually endless and includes any other matter constituting an avoidance or defense. Every defense likely to prevent the plaintiff from winning should be asserted in the answer as an affirmative defense.

An example of form that should suffice in most jurisdictions (check your local rules) follows:

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA

Case No. 2004-123
Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT,
Defendant.
_____/

ANSWER AND AFFIRMATIVE DEFENSES

DEFENDANT Danny Defendant answers the complaint of Peter Plaintiff and, in response to each numbered paragraph thereof, states:

1. Denied.
2. Admitted.
3. Without knowledge.
4. Denied.
5. Denied.
6. Denied.
7. Admitted.

AFFIRMATIVE DEFENSES

Further the defendant asserts the following defenses and states:

8. Plaintiff's action is barred by the applicable statute of limitations. Breach of contract complained of took place more than 5 years prior to the filing of this action and is, pursuant to §95.11 Florida Statutes, barred.
9. Plaintiff's action is barred by the statute of frauds (§725.01 Florida Statutes) that precludes actions to enforce a verbal contract for service to be performed within the space of one year, because the contract complained of contemplated Defendant would

work for Plaintiff more than one year, and contract is not in writing.

10. Plaintiff's action is barred by estoppel, in that Plaintiff's own failure to provide fresh grapefruit to Defendant for delivery to Plaintiff's customers is the cause of failure by the Defendant to deliver and thereby perform the contract.

RESPECTFULLY SUBMITTED this 23 May 2004.

_____

Danny Defendant, Defendant

[Certificate of Service]

That's all there is to the affirmative defense, however it cannot be urged too strongly that *all* defenses in fact and law should be asserted with *every* answer or other responsive pleading, because those stated defenses are the defendant's arsenal, and they need to be made a part of the court's record at the very beginning of the lawsuit.

Note that Danny Defendant didn't merely list his affirmative defenses by name. He added ultimate facts to support his defenses. This is always a good idea. Make a record of your position at *every* opportunity … and most especially with affirmative defenses.

The filing of an affirmative defense requires the plaintiff to file a reply (if he wishes to avoid the affirmative defense). The reply is discussed next.

Reply

A reply should be filed to avoid the affirmative defenses and demand strict proof.

This is the final pleading in most cases.

Once the reply is filed, the court and the parties should know what the case is about, i.e., what is complained of, what the defenses are, and what the complainers say about the defenses … so that everyone knows where everyone else stands on the facts and law.

The fight can then begin to *prove the truth* and move the court for judgment.

Thus, there will be a complaint, followed by an answer and one or more affirmative defenses, followed by a reply to affirmative defenses … closing the pleadings.

Of course, if the answer includes a counter-claim, cross-claim, or third-party claim, there will be answers to each of these, and each answer may include affirmative defenses, to which there will be replies … closing the pleadings.

When all complaints (including counter-claims, cross-claims, and third-party claims) are answered, and affirmative defenses are replied to, the pleadings are closed.

Once the pleadings are closed, we can proceed to complete discovery *that we should have begun with our initial pleadings!*

An example of a simple reply follows:

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA

Case No. 2004-123
Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT,
Defendant.
_____/

REPLY

PLAINTIFF Peter Plaintiff replies to affirmative defenses filed by defendant Danny Defendant and states with regard to each:

1. Plaintiff denies the first affirmative defense and demands strict proof.

2. Plaintiff denies the second affirmative defense and demands strict proof.

3. Plaintiff denies the third affirmative defense and demands strict proof.

_____
Peter Plaintiff, Plaintiff

[Certificate of Service]

Motion

Motions by far are the most-used forms. There may be dozens or even hundreds filed in a single lawsuit, depending on complexity of issues and number of parties.

Motions vary from simple 1-page forms to complex arguments over facts and law requiring 100's of pages and attached exhibits. What I want you to know about this form is that its purpose is to *move* the court, i.e., to require the court to *do* something (whether the court does what you want or not).

The result of every motion is that the court must *move*.

Motions require the court to make a decision, either granting your motion or denying it. We hope, of course, the court will grant our motions, but even when the court denies a motion it has been required to *move*. In some cases, the court may be required to state the reasons for denying a motion, making findings of fact in its order or rendering opinions as to how some law applies to the facts. A court cannot remain as it was and ignore your motion. You have *moved* it, and it must *move* … either in the direction you want it to go or against your wishes but, either way, all motions *move* the court.

Therefore, you must be precise in telling a court what you want with your motion.

Jurisdictionary® takes the position that you may "move the court" to do anything you wish it to do, and you may do this in writing or *via voce*, i.e., by voice. The court may not grant your motion, however there are no rules as to what you can move the court to do. I once knew a young lawyer who objected to a motion I made, stating, "There's no such motion as that!" I learned later that he couldn't find a form for my motion in his office law library and concluded that such a motion didn't exist! The court granted my motion.

The point is, you can move the court to open the window, if you wish. You can move the court to refer a matter to an outside accountant. You can move the court to come to the Courthouse on Saturday to hold a hearing. The judge may not grant such motions, but you can make them … provided they are properly stated.

Tell the court what you want. Tell the court why you're entitled as a matter of law. Give the court citations of case law or statute to justify the court's ruling (and assure the judge he won't be overturned on appeal). And then *MOVE THE COURT*.

When I was just a 1st year law student, local circuit judge Harry Fogle (whose widow gave me his notes so I could write The Trial of Jesus offered free with all Jurisdictionary® tutorial orders) came to "preside" over some mock hearing exercises. We were there that day to learn how to make motions. When it came my turn I tentatively approached the bench where I encountered the demanding stare of this venerable old judge who asked in a somewhat gruff voice, "And what do *you* want?"

I replied, "I'd like to make a motion that the …" He didn't let me finish.

"Well," he demanded impatiently, "make your motion!"

"If it please the court," I began again, only to be interrupted once more.

"Are you going to make your motion or not?"

"Well, your honor," I stammered, "I'd like to move the court to …"

At this the kind but stern old gentleman leaned forward a bit and with a softened voice suggested, "Why don't you *move* the court, Mr. Graves?"

The familiar lightning of instant awareness struck, and I immediately responded with a knowing smile, "I move the court to …"

I don't remember what the motion was, but once I got to the point of *moving* the court, instead of trying to be polite and respectful and merely suggesting what I wanted to do or telling the court what I'd *like* to do and got the meat-and-potatoes of the matter and *moved* the court, Judge Fogle said not another word until I'd finished my motion and then declared, "Motion granted!"

The point of this exercise was for us to understand that motions are intended to *move* the court, to *cause* the court to act … not to beg it to act or to tell it how much we wish it would act. No. No. Motions *move* the court. They're not disrespectful. They are efficient. They tell the court

- what you want the judge to do,
- why you're entitled as a matter of law,
- what citations to statute or case law justify the court's action, and
- to *move!*

Remember this: Every judge is a public servant, paid for by taxes and duty-bound to follow and do what the law requires. He or she is not authorized to make up the rules as your case moves through the Courthouse. It's always wise to be polite to the court, but unless you instruct the judge in the law and the facts and *insist* on your rights (rather than standing there with your hat in your hand, obsequiously staring at your shoes and begging the court for mercy) you'll be missing the power that is yours to win your lawsuit. Make the judge obey the law!

Do it politely, if you can, but *do it!*

Motion to Dismiss

A common motion you'll encounter in nearly every lawsuit is the motion to dismiss the complaint. There are several grounds for a motion to dismiss, including

- failure to state a cause of action
- lack of subject matter jurisdiction (i.e., the court has no authority over the matter)
- lack of personal jurisdiction (i.e., the court has no authority over defendant)
- failure of service of process (i.e., summons never properly served on defendant)

Other grounds exist for motions to dismiss, but these are perhaps the more obvious. We've already discussed failure to state a cause of action, so let's see what a motion to dismiss for failure to state a cause of action looks like.

As you'll see, this isn't complicated at all.

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA

Case No. 2004-123
Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT,
Defendant.
_____/

MOTION TO DISMISS FOR FAILURE TO STATE A CAUSE OF ACTION

DEFENDANT Danny Defendant moves this Honorable Court to enter an Order dismissing Plaintiff's complaint for failure to state a cause of action and states:

1. The complaint alleges a cause of action for breach of contract.
2. Plaintiff failed to allege ultimate facts to establish Plaintiff suffered any damages.
3. Allegation of damages is necessary element of cause of action for breach of contract.

   J.J. Gumberg Co. v. Janis Services, Inc., 847 So.2d 1048 (Fla. 4th DCA 2003).
4. The complaint should be dismissed for failure to state a cause of action.

WHEREFORE Danny Defendant moves this Court to enter an Order dismissing the complaint and granting such other and further relief as the Court may deem reasonable and just under the circumstances.

_____
Danny Defendant, Defendant

[Certificate of Service]

It's no more complicated than that. Every motion follows essentially the same form. Tell the court

- what you want the judge to do,
- why you're entitled as a matter of law,
- what citations to statute or case law justify the court's action, and
- to *move!*

Motion to Strike

A motion to strike may be made where any pleading or paper contains redundant, scandalous, or impertinent matter. (As always, check local rules for details.) This is not a motion to dismiss. The purpose of the motion may be to merely remove some improper reference in the objectionable paper. Or, if the paper is so replete with improper remarks that merely removing a few sentences here and there will not repair the error, the motion may seek an order striking the entire paper!

An example follows.

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA

Case No. 2004-123
Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT,
Defendant.
_____/

MOTION TO STRIKE SCANDALOUS AND IMPERTINENT REFERENCE

DEFENDANT Danny Defendant moves this Honorable Court to enter an Order striking portions of Plaintiff's complaint as scandalous and impertinent, stating in support therefor as follows:

1. The 42nd paragraph of the complaint alleges, "Danny Defendant is a flake."
2. The statement should be stricken pursuant to Rule 1.140 Florida Rules of Civil Procedure, because it is "wholly irrelevant and can have no bearing on the equities and no influence on the decision," Rice-Lamar v. City of Fort Lauderdale, 853 So.2d 1125 (Fla. 4th DCA 2003).

WHEREFORE Danny Defendant moves this Court to enter an Order striking from the record of this cause the 42nd paragraph of the complaint and granting such other and further relief as the Court may deem reasonable and just under the circumstances.

_____
Danny Defendant, Defendant

[Certificate of Service]

NOTE: The word "therefor" in the preamble is correctly spelled. The word is used as "for that" and is not to be confused with "therefore" which is used as "because of that".

Motion for More Definite Statement

Motions for more definite statement are often amusing both for the movant (i.e., the party making the motion) and for the judge, because the gravamen (i.e., the material part) of a motion for more definite statement is frequently sentences that *make no sense at all!*

For example, I once represented an older man being sued by a giant corporation with hundreds of attorneys on its payroll. The complaint contained a numbered paragraph that read something like this:

32. The defendant in Orlando people and ordinary payment insufficient.

I had no idea what was meant. It wasn't even a sentence. There was no verb!

So, I filed a motion somewhat like the following example, and the judge entered an Order granting my motion and requiring what turned out to be a very young lawyer at the firm to re-write his complaint so us mere mortals might understand what it said.

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA

Case No. 2004-123
Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT,
Defendant.
_____/

MOTION FOR MORE DEFINITE STATEMENT

DEFENDANT Danny Defendant moves this Honorable Court to enter an Order requiring Plaintiff to file a more definite statement of the complaint, stating in support therefor as follows:

1. The 32nd paragraph of the complaint contains no verb.
2. As a consequence, the complaint is so vague and ambiguous that the Defendant cannot reasonably be required to frame a responsive pleading.
3. The Defendant should be ordered, pursuant to Rule 1.140 Florida Rules of Civil Procedure, to state the complaint more definitely.
4. Or, in the alternative, the complaint should be dismissed in its entirety.

WHEREFORE Danny Defendant moves this Court to enter an Order requiring the Plaintiff to state the complaint more definitely or, if Plaintiff fails or refuses to do so, dismissing the complaint with prejudice and granting such other and further relief as the Court may deem reasonable and just under the circumstances.

_____
Danny Defendant, Defendant

[Certificate of Service]

[NOTE: Dismissal with prejudice means the case cannot be filed again.]

There are, of course, many more motions that can be made, the number and content of which is virtually unlimited (as stated at the beginning of this chapter), however the basic form and objective are always essentially the same … moving the court to act.

In the next chapter we'll take a look at memoranda (plural for memorandum) and how they are used to support the arguments of a motion. For short motions with simple arguments, the memorandum points are usually included *within* the motion (as shown by the simple examples in this chapter). For longer, more complicated motions involving multiple issues of law and fact, however, it is far better to keep the motion itself simple, and set out the arguments of law and fact in a separate document called a memorandum. In federal court jurisdictions you will find this is almost universally required.

Memorandum

No two memoranda are the same, however all memoranda follow a similar form.

The purpose of a memorandum is to prove argument in support of a motion or other paper filed with the court. The memorandum

- ✓ sets forth the issue in controversy,
- ✓ provides citations to statutes and case law that control the court, and
- ✓ explains how the statutes and case law should be interpreted to resolve the issue

The structure is flexible. The arguments of a memorandum can generally be laid out in whatever order you choose. However, for most purposes, following a fixed format will tend to make your arguments more effective.

The following example will give you an idea how to begin. Note the citations to case law and statute that give the judge confidence to enter the order you're seeking.

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA

Case No. 2004-123
Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT,
Defendant,
v.
THEO THIRD-PARTY,
Third-Party Defendant.
_____/

MEMORANDUM IN RESPONSE TO SUMMARY JUDGMENT MOTION

PLAINTIFF Peter Plaintiff files this memorandum in response to defendant Danny Defendant's motion for summary judgment, stating:

ISSUE

1) The issue for the court is whether a jury could conclude from evidence adduced that Defendant formed Grapefruit Delivery Corporation (hereinafter GDC) to tortiously interfere with plaintiff's business relationships by using Plaintiff's trade secrets.

2) If a jury could reach this conclusion, Defendant's summary judgment motion should be denied.

ARGUMENT

3) The foregoing issue has not been adjudicated.

4) No evidence has yet been presented on the record to contradict Plaintiff's allegations in regard to the foregoing issue.

5) Plaintiff has not completed discovery.

6) Plaintiff has at this moment a motion before the Court for *in camera* inspection of GDC's customer records, which inspection has been postponed by the Court.

7) Plaintiff has noticed Defendant's accountant for deposition.

8) Summary judgment is not proper where discovery has not yet been closed.

9) "Summary judgment should not be granted until the facts have been sufficiently developed to enable the court to be reasonably certain that there is no genuine issue of material fact. Epstein v. Guidance Corporation, Inc., 736 So.2d 137 (Fla. 4th DCA 1999) citing Singer v. Star, 510 So.2d 637,639 (Fla. 4th DCA 1987).

10) "It is reversible error to grant summary judgment where depositions are still pending." Fleet Finance & Mortgage, Inc. v. Carey, 707 So.2d 949 (Fla. 4th DCA 1998).

11) Plaintiff's customer information, compiled through the industry of Plaintiff, was not just a random compilation of information commonly available to the public, and thus the information (much more than a mere customer list) constitutes a trade secret. Kavanaugh v. Stump, 592 So.2d 1231 (Fla. 1st DCA 1992).

12) Plaintiff's client information was not available to Defendant through any other means, e.g., telephone books, etc., but was a result of "considerable effort, knowledge, time, and expense on the part of the plaintiff". Unistar Corporation v. Child, 415 So.2d 733 (Fla. 3rd DCA 1982).

13) Plaintiff has a right to have this Court judicially determine whether plaintiff's client information is a trade secret, and summary judgment is not proper until that judicial determination has been made.

14) Since plaintiff has clearly alleged intentional interference with an existing business relationship coupled with plaintiff's legal rights and damage, it has stated a *prima*

facie case, and the burden has shifted to Defendant to establish that interference was justified. Wackenhut Corporation v. Maimone, 389 So.2d 656 (Fla. 4th DCA 1980).

15) Mere "customer lists" can constitute trade secrets if they were "not mere compilations of information commonly available to public". Kavanaugh v. Stump, 592 So.2d 1231.

16) Where pleadings and affidavits create material issues of fact on question of whether "customer lists" (certainly a less critical asset than customer information records that form the basis for this action) are of such nature and character that they can properly be treated as confidential information, summary judgment is improper. Inland Rubber Corporation v. Helman, 237 So.2d 291 (Fla. 2nd DCA 1970).

WHEREFORE Plaintiff prays the Court will enter an Order denying Defendant's motion for summary judgment and granting such further relief as the Court may deem reasonable under the circumstances.

_____

Peter Plaintiff, Plaintiff

[Certificate of Service]

[Verification]

Notice

Notices are perhaps the simplest of forms. They serve only one purpose.

They give notice to the court and all parties that something is going to happen, or has happened, or is happening at the time of filing the notice. An example of something that has happened is a notice that a party has died. An example of something that is happening at the time of filing the notice is a notice of filing an affidavit. An example of something that's going to happen is a notice of hearing, shown in the next example.

Notices should include *all* information necessary for the parties receiving notice (and the court, of course) to know precisely what's being notice. In the following example of a notice of hearing, the notice provides all the information someone needs to know about a hearing that's been scheduled.

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA

Case No. 2004-123
Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT,
Defendant.
_____/

NOTICE OF HEARING

PLAINTIFF Peter Plaintiff hereby gives notice he will call up to be heard before the Hon. Barry Benchpounder in Courtroom 5 at the Sunshine County Courthouse, 10 Justice Avenue, Anywhere, Florida at 10:00 a.m. on the 31st day of February 2004 his Motion for a More Definite Statement.

TIME RESERVED is 15 minutes.

GOVERN YOURSELVES ACCORDINGLY.

_____
Peter Plaintiff, Plaintiff

[Certificate of Service]

A notice of taking deposition is similar, with just a few changes.

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA

Case No. 2004-123
Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT,
Defendant.
_____/

NOTICE OF TAKING DEPOSITION

YOU ARE HEREBY NOTIFIED that the undersigned will take the deposition of Peter Plaintiff at the offices of Esquire Deposition Services, 515 North Flagler Drive, West Palm Beach, Florida 33401 (800-330-6952) at 9:30 a.m. on 12 June 2005.

This deposition is for discovery and for use at hearings and at trial.

TIME RESERVED is six (6) hours.

GOVERN YOURSELVES ACCORDINGLY.

_____
Peter Plaintiff, Plaintiff

[Certificate of Service]

Subpoena

As non-lawyers, *pro se* litigants must apply to the Clerk of Court to issue subpoenas. A form acceptable by Florida courts that probably suffices in other jurisdictions (check local rules) follows.

The purpose of a subpoena is to command a non-party to appear in court or to appear for deposition or to produce documents. Since the non-party is not under the power of the court by summons (which gives the court jurisdiction over defendants served with the summons) nor under the power of the court because they submitted to jurisdiction by filing a lawsuit (which the plaintiff did, thereby giving the court jurisdiction over him) it is necessary to obtain court power over the non-party by way of subpoena.

Subpoenas are used, as in the example, to get telephone records. Other uses are to get banking records, copies of documents, or simply to require a non-party to appear as a witness at trial or at a hearing or to appear before a court reporter to be deposed.

Since there are so many uses, we'll examine the following subpoena *duces tecum* as a typical example. [The term *duces tecum means "to bring the thing with you"*.] This subpoena would command the telephone company to provide a representative to appear before the court and produce records.

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA

Case No. 2004-123
Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT,
Defendant.
_____/

SUBPOENA DUCES TECUM

THE STATE OF FLORIDA:

To: Custodian of Records
BellSouth Telecommunications, Inc.
1960 West Exchange Place, Suite 165
Tucker, Georgia 30083

YOU ARE COMMANDED to appear before the Hon. Barry Benchpounder, Judge of the Court, at the Sunshine County Courthouse in Anywhere, Florida at 10:00 o'clock a.m. on the 31st day of August 2004 to testify in this action and to have with you at that time and place the following:

All records of phone calls to or from phone number 555-555-5555 at any time from 1 January 2003 through 31 August 2003.

IF YOU FAIL TO APPEAR YOU MAY BE IN CONTEMPT OF COURT.

You are subpoenaed to appear by the following party and, unless excused from this subpoena by the party or the court, you shall respond to this subpoena as directed.

DATED this ___ day of _____ 2004.

CATHERINE CLERK
As Clerk of the Court

by _____
Deputy Clerk

_____
Peter Plaintiff, Plaintiff

[Certificate of Service]

Order

Whenever possible, at the conclusion of a hearing or trial, volunteer to prepare the order. Beat the other fellow to the punch. Few judges want to be bothered with this task, and while you must be scrupulously honest about what the judge said in the courtroom, you can avoid giving the other fellow a chance to "modify" the verbal ruling by being the lucky fellow who prepares the order for the judge to sign.

Protocol requires you to provide a copy to the other side at the time of mailing it to the judge (usually enough blanks so there's one for the court and one for each party along with a pre-addressed stamped envelope for each party). Mail your proposed orders ready for the judge's signature with a letter to the court advising that you've provided a copy of the proposed order to the opposing party who will, if he has an objection, notify the court of any changes he requires. In this way, the judge can review the order with his clerk to see if it truly comports with what he ruled from the bench and, if he hears nothing from the other side, he will sign one for the file and mail the others with his rubber-stamped signature in the envelopes you provide.

Though every order will be somewhat different, the following form will generally suffice for most situations – changing the particulars, of course.

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA

Case No. 2004-123
Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT,
Defendant.
_____/

ORDER

THIS CAUSE having come before the Court upon the motion of defendant Danny Defendant for an Order requiring the plaintiff to file a more definite statement of the complaint, and the Court having heard argument of the parties and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED that

1. The defendant's motion is granted.
2. The Court finds the complaint is so vague and ambiguous that defendant cannot reasonably be required to frame a responsive pleading.
3. Plaintiff is hereby directed to file a more definite statement of the complaint within 10 days from entry hereof and to serve a copy of same on defendant who shall have 20 days thereafter to answer the re-stated complaint.

DONE AND ORDERED this ___ day of _____ 2004.

_____
Hon. Barry Benchpounder, Circuit Judge

Copies to: Peter Plaintiff, 9 Happiness Lane, Anywhere, Florida 33333
Danny Defendant, 99 Innocence Avenue, Anywhere, Florida 33333

[envelopes provided]

Discovery

Discovery forms fall into five categories.

- ✓ Notice of Deposition
- ✓ Subpoena
- ✓ Request for Admissions
- ✓ Request for Production
- ✓ Interrogatories

We've already covered Notice of Deposition and Subpoena. That leaves only request for admissions, request for production, and interrogatories.

These three forms are incredibly powerful if carefully thought out and drafted with an eye for what we *need* and what we *don't.* Abusive discovery requests that seek things not needed to prove your case can result in sanctions by the court. Not good. Therefore, it's always best to make a list of what you absolutely must have and then decide which of the five forms of discovery is the best way to get it.

Many lawyers jump into depositions before they've clearly come to see what are the issues of the case, instead of using admissions, production, and interrogatories to narrow the issues *before* taking depositions that can then be incisively planned to fill in the gaps and complete discovery prior to trial. Indeed, if discovery is handled carefully (and begun with the initial pleadings) trial may be avoided by settlement. When a party knows he is going to lose his case, because the other side has done a skillful job of discovery, then he is foolish to go to trial when he might negotiate more favorable terms *before* trial.

Request for Admissions

The request for admissions is very simple to write. It's very similar to a complaint, differing only in that instead of a demand for judgment at the end, the form begins with a request that respondent admit or deny the truth of certain statements of fact. Some jurisdictions limit the number of requests that can be made. Florida at present allows parties to request admissions to only 30 statements of fact, unless the party obtains leave of court to request more.

Used carefully, a request for admissions can prove your case, because any fact the other party admits in his response is deemed admitted for all purposes.

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA

Case No. 2004-123
Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT,
Defendant.
_____/

REQUEST FOR ADMISSIONS

PLAINTIFF Peter Plaintiff, pursuant to Rule 1.370 Florida Rules of Civil Procedure, requests defendant Danny Defendant to admit the truth of the following statements of fact: [Cite to the rule in your own jurisdiction, of course.]

1. You were employed by Plaintiff to deliver grapefruit.
2. You were allowed to use Plaintiff's grapefruit delivery truck.
3. On 17 May 2004 you signed a document in the presence of Plaintiff who also signed the document in your presence.
4. You received $3,000 from Plaintiff on 17 May 2004.

RESPECTFULLY SUBMITTED this ___ day of _____ 2004.

_____
Peter Plaintiff, Plaintiff

[Certificate of Service]

Request for Production

The request for production is similar to the request for admissions but, rather than asking the other party to admit, it asks the other party to produce documents and things.

As with all discovery, requests must be reasonably calculated to lead to discovery of admissible evidence. The thing requested need not be admissible, but the request must be aimed at ultimately discovering admissible evidence. More on this in the Jurisdictionary® tutorial on evidence.

A typical request for production follows:

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA

Case No. 2004-123
Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT,
Defendant.
_____/

REQUEST FOR PRODUCTION

PLAINTIFF Peter Plaintiff, pursuant to Rule 1.350 Florida Rules of Civil Procedure, requests defendant Danny Defendant to produce for inspection and copying the original of the following documents and things the at offices of plaintiff or such other place as the parties may hereafter agree.

1. All corporate records of Grapefruit Delivery Corporation.
2. All records of money or other consideration received by you for sale or delivery of grapefruit from 17 May 2004 to the present, including but not limited to invoices and bank statements.

RESPECTFULLY SUBMITTED this ___ day of _____ 2004.

_____
Peter Plaintiff, Plaintiff

[Certificate of Service]

Interrogatories

The use of interrogatories can narrow issues of fact *before* taking depositions, giving you a decided advantage over those who take depositions before they know what to ask.

Interrogatories are nothing more complicated than questions.

When drafting interrogatories, be careful to ask you question in such a way that only one answer (i.e., the answer you want) is possible.

The following is an example.

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA

Case No. 2004-123
Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT,
Defendant.
_____/

INTERROGATORIES

PLAINTIFF Peter Plaintiff, pursuant to Rule 1.340 Florida Rules of Civil Procedure, propounds the following interrogatories to defendant Danny Defendant. [Cite to the rule in your own jurisdiction.]

1. List all customers to whom you sold or delivered grapefruit from 17 May 2004 until the present, giving for each customer name, address, telephone number (if known), and gross revenues received from each such customer.
2. List all vendors from whom you purchased or obtained grapefruit from 17 May 2004 until the present, giving for each vendor name, address, telephone number (if known), and gross revenues received from each such customer.
3. List the names, addresses, and telephone number of all persons holding shares in Grapefruit Delivery Corporation at any time from 17 May 2004 to the present.

RESPECTFULLY SUBMITTED this ___ day of _____ 2004.

_____
Peter Plaintiff, Plaintiff

[Certificate of Service]

Conclusion

Don't rely on "form books" or cookbook methods to win your lawsuit.

The forms provided in this tutorial are offered *only* to show you what needs to be included, i.e., the *content* and not the format layout that may differ in your jurisdiction.

If you work from form books or cookbook methods you may omit meat-and-potatoes essential to achieve the form's *purpose!* After all, filling in a form called Motion to Strike when you don't know what needs to be filled in is not likely to get you an order striking whatever it is you wanted to strike … unless you know what belongs in the form, i.e., the *essential content* that gives the form effectiveness.

The official Rules of Court handbook for your state (available from Thomson-West at 1-800-344-5009) will give you the official *format* for various forms but will not tell you the *essential content* that gives the form effectiveness.

I hope the foregoing has given you a clearer idea of how to use more common forms in litigation. If you have any questions or wish help with additional forms, please email me at forms@jurisdictionary.com so I can update this tutorial and include your requests.

Thank you.

Frederick Graves, JD

- # -

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