

Power Pleading Complain, Don't Whimper

By Steven D. Stark

No one really pays attention to writing quality in pleadings and complaints today. Thanks to the revisions to the procedural rules a half-century ago which disposed of the antiquated forms of pleading, almost anything that looks like a complaint can withstand a Motion to Dismiss, as long as it contains a sufficient recitation of the legal niceties.

But a complaint that can withstand a dismissal motion isn't necessarily a good complaint. A pleading, after all, is the first litigation document a lawyer files in a lawsuit. A complaint should, well, complain. Moreover, like all good litigation writing, a complaint should inform and persuade the reader that the party filing the document should prevail. To be sure, no one ever lost a case solely because a complaint read badly. But first impressions leave lasting impressions, and a complaint is often the first filing a judge reads in a case. It is certainly the first thing the opposing party and lawyers read. And, if the case is of interest

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to the public, it is often read by reporters and outside parties. Why waste the opening salvo firing a blank?

To improve complaint writing, an attorney should consider the following seven ideas. They are not meant to be exhaustive and may, in fact, violate the pleading rules of some jurisdictions. In other words, check your local rules before implementing them.

1) **Begin with an introduction.** The beginning of any complaint should summarize the lawsuit in a paragraph or two, explaining what the case is about, why you should win, and what you are seeking. This makes it much easier for the reader to understand what follows since, by necessity, complaints are not organized in a way that makes them easy to comprehend. In particular, judges need to know what type of case is before them, what shape it is likely to take, and what relief is sought. When lawyers research cases in the library, they always read the headnotes first because they provide an overview of what will follow. Complaint writers should give their readers the same type of summaries. The worst thing that can happen is that your opponent will deny it.

2) **Use frequent headings, both in the facts and argument.** Unless your readers are devotees of Wittgenstein, it will be difficult for them to read something numbered by sentence or paragraph. Therefore, make it easier for them by dividing your complaint frequently into sections. Moreover, at the beginning of each section, use headings as in a brief. These headings make it easier for the reader to follow what's coming and they emphasize the points of your arguments. For example, with a cause of action, use a head-

ing which summarizes that allegation: "The defendant violated the National Environmental Policy Act when it failed to prepare an Environmental Impact Statement before drilling for oil in the Pacific Ocean."

3) **Organize your facts in a way which makes them easy to understand.** Since factual allegations are generally numbered, they obviously can't be written as compellingly as facts in a brief. Therefore organize the facts so they are easier to digest. Most advocates list their facts chronologically. But if you think of any narrative in our culture—on television, in books, or in movies—we rarely tell stories chronologically anymore. In a complaint, help the reader by organizing the facts by subject matter. For example, in a case involving a car accident, the facts might be aggregated in sections concerning the accident, the insurance policy, or the warranty on the car.

4) **Use short sentences and paragraphs.** As a general rule of writing, the more complicated the information you wish to convey, the shorter you want your sentences and paragraphs to be. Complaints are complicated. Moreover, the longer and more complex your sentences are, the easier it is for your opponents to deny what you are saying. The goal with most complaints, after all, is to get your allegations admitted. Shorter sentences will help to achieve that goal.

5) **Try to avoid legal jargon.** Complaints frequently contain prose which looks like it just came off an 18th-century London street corner. Phrases like "in the instant case," "now here comes the plaintiff," "wherefore," "heretofore," or "said document" just make the complaint harder to follow. In

general, write complaints in 20th-century prose. That is, after all, the century in which you are filing the complaint.

6) Try to be as specific as possible about the relief you are seeking in cases concerning injunctive or declaratory relief. In cases involving injunctions or declaratory judgments, judges are usually and understandably concerned when they read a complaint in which they are asked to do something. The more specific you can be about that, the better. If, for example, you seek a preliminary injunction, you might want to preview for the judge what the order might look like in your relief section. No one will hold you precisely to that language (as long as you also ask for "any other relief the court finds appropriate"), and it will help the judge to understand the case better.

7) If permitted, don't be afraid to attach a few relevant documents to your complaint. Complaints are harder to read than letters or documents. If a letter or article is directly relevant to the allegations in your complaint—and the rules permit you to attach it—you should do so. Illustrations help a case come to life, so they can be absorbed more easily.

In addition, in many jurisdictions documents attached to or incorporated as part of the complaint become part of the record, if the other party does not object. In administrative cases, for example, attachments can thus supplement the record, if the court permits it.

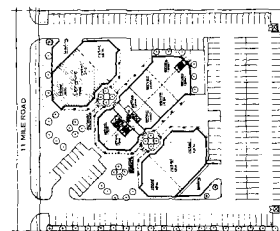
These seven suggestions are obviously not a panacea, nor will they allow litigators to win most cases they otherwise would have lost. The primary role of a complaint is not to convince the court or the other side, but

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to list the legal causes of action in a manner which allows the case to proceed. These suggestions are a first step in transforming complaints from their

current status as little more than legal checklists to documents that make an argument. That is, after all, what litigation is ultimately all about.

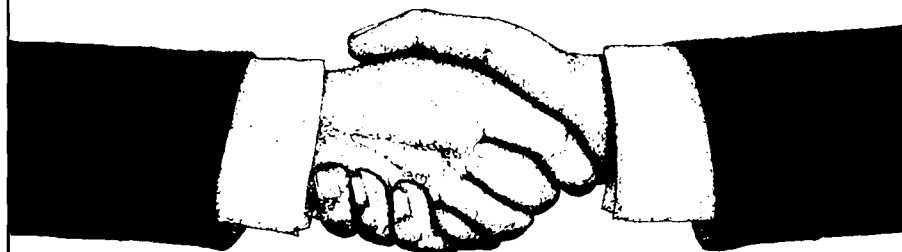


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