

## Civ Pro 101

Stages of a civil law suit and related strategy considerations.

# In the Beginning...

- Before the beginning
  - Administrative Remedies
- Initial Pleading
  - Petition (FRCP 1.110(b))
  - Complaint (FRCP 1.110(b))
- Summons vs. Subpoena
  - PLEASE NOTIFY ATTORNEY OR FACT
  - Summons is for lawsuit (FRCP 1.070(a))
  - Subpoena is for appearance or things
  - Time Limits (20 days from service of Complaint/Summons)
  - No response = Default and maybe Default Judgment

### Summons

### IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

PERFORMANCE PERSONNEL SERVICES OF PENSACOLA, LLC A FLORIDA LIMITED LIABILITY CORPORATION

PLAINTIFF,

CASE NO: 2017 CA 001011

DIVISION: C

FLORIDA STRUCTURAL GROUP (g. a.,

DEFENDANT,

Y5.

SUMMONS PERSONAL SERVICE ON A NATURAL PERSON

10 DEFENDANT: BRIAN W PEACURY

173H ALICO CENTER ROAD

SHITE D

FORT MYERS, FL 33967

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PLAINTERCHAINTERS VERORINGS JASON C TAYLOR

1709 HERMITAGE BLAD STE-200 TALLAHASSEE, FL 32308

16/814 (200-1108) 24

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### **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 ......

Each defendant is required to serve written defenses to the complaint or petition on ......... plaintiff's attorney, whose address is ......, within 20 days1 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's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

# Eeny, Meeny, Miney, Moe

- State v. Federal
- Removal Requirements
- Removal Deadlines
- Workers' Compensation Issues

# Four Options for Defendants

- Dismissal
- Summary Judgment
- Trial
- Resolution

### Dismissal-Rules

- FRCP 1.420
- Can be voluntary, involuntary, or due to inactivity
- Complaint must do more than provide labels or conclusions or a formulaic recitation of the elements of a cause of action. Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007).
- Complaint must contain sufficient factual matter, accepted as true to "state a claim of relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662 (2009).
- Court accepts all <u>factual</u> allegations as true.
- Court does not have to accept as true legal conclusions.

### Dismissal-Practical

- Factual Disputes v. Legal Standard
- State v. Federal (Fed.RCP 12(b)(6)
- Strategy Considerations
  - What information am I giving up?
  - Costs
- With Prejudice v. Without Prejudice

# Summary Judgment

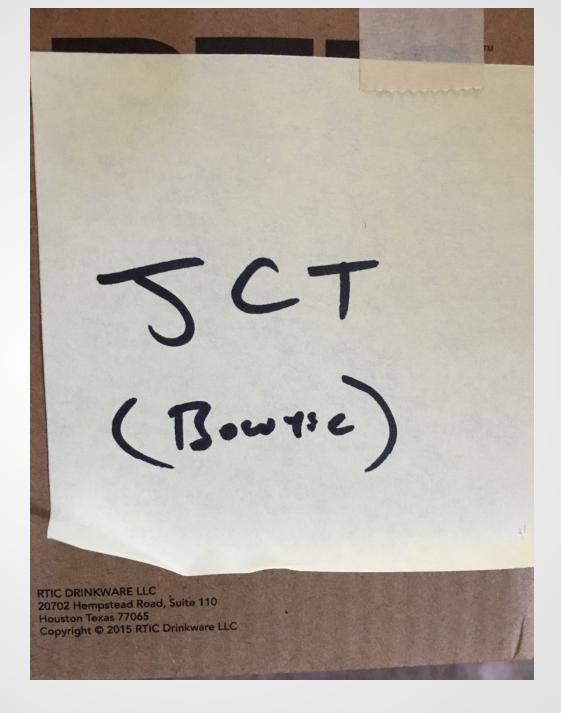
- FRCP 1.510
- Claimant cannot seek less than 20 days after commencement of lawsuit-no time limitation for Defendant.
- Legal determination by judge vs. factual determination by jury.
- Rule does not require evidence, but typically motion is based on information obtained through discovery.
- Moving party must allow at least 20 days after motion and any supporting information is filed before a hearing can be set.
- Non-moving party must provide response and supporting materials to moving party 5 days before hearing if by mail and 2 days if by delivery.

## SJ Practical Issues

- Denial for defense does not mean case is lost, but typically only get one opportunity.
- Factual dispute is typically basis for denial.
- Costs are greater at this stage based on discovery needed to support motion.
- Delayed filing can prevent last minute factual discovery from affecting motion.
- Courts often hear motions at pretrial or otherwise close to trial – where possible, accelerate that process to bring down costs.
- Affidavits vs. Depositions for support.

## Settlement/Resolution

- Point of Equal Unhappiness
- Balance of Costs and Certainty of Result
  - Allocation of Resources (Time and Money)
- Often Allows for Greater Flexibility in Creating Solution
- Consideration of Publicity Always a Factor
- Proposal for Settlement as Tool (FRCP 1.442/Fla. Stat. 768.79)
- No Deadline or Time Restriction





## Trial - Battle of Perception

- Lengthy process to get to trial often 10-15 months, depending on issues and time of year.
- Evidence gets to jury in two primary forms documentation and testimony.
- Courts schedule multiple cases for docket/trial periods due to settlement and cancelling between parties.
- Judge you have may not be expert in field, but should be expert in admissibility, evidence code, and objections.
- In spite of lengthy process to get there, the parties have a comparatively microscopic time to present their respective cases. Let the perception battle begin.

### Trial Order - Pretrial

- Attorney Conference
  - Witnesses
  - Exhibits
- Pretrial
- Motions in Limine/Reduction of Issues
- Pretrial Preparation

## Trial Order - Trial

- Jury Selection
- Opening
- Plaintiff's Case
- Potential Motion for Directed Verdict
- Defendant's Case
- Rebuttal
- Another Potential Motion for DV
- Charging Conference
- July Deliberation and Verdict

# McCONNAUGHHAY · COONROD POPE · WEAVER · STERN P.A.

- Questions??
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- www.mcconnaughhay.com