

Introduction to Federal District Court Litigation

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Preliminary Considerations

- How do you assess the strength of your record and the likelihood of success?
- Have you exhausted all administrative remedies? Do you have to?
- Where to file? Are you admitted? Can you work with local counsel?

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Preliminary Considerations (cont.)

- What are the costs of litigation? Do you have sufficient resources (staff, technology) to litigate? What kind of time commitment are you making?
- What is the potential for settlement?
- Can you recover fees through EAJA or other fee recovery statute?
- How do you manage client expectations? How do you counsel regarding privacy concerns?

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Drafting a Federal Complaint

- After preliminary considerations are addressed, practitioner can move on to drafting the complaint
- Generally, the complaint has to fulfill the requirements of *Fed. R. Civ. Pro. 8(a)*
- *However*, form and contents of the filing are subject to the District Court's requirements, which differ based on where complaint is filed, as each Court has its own local rules

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Drafting the Complaint - First Page

- Subject to the District Court's local rules, cover page should have:
 - Lead attorney's name, bar number, firm's name, address, phone and fax number, and email, should typically be listed at the top left of the page
 - Name of the District Court where suit is being filed
 - Include the name(s) of *all* Plaintiff(s) and Defendant(s)
 - Leave space to the right of the caption for a docket number to be assigned
 - Heading stating what the complaint is about

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Drafting the Complaint - Basic Content

- **Intro:** state what relief Plaintiff is seeking and identify legal basis for it
- **Jurisdiction & Venue:** identify statute that gives court jurisdiction to hear the complaint and which part of 28 U.S.C. §1391 provides for venue
- **Parties:** List Plaintiffs and Defendants and state if the latter are sued in official capacity

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Drafting the Complaint - Basic Content (cont.)

- **Exhaustion of Remedies:** Generally exhaustion needs to be met if regulations require admin. appeal and decision of the agency does not come into effect while appeal is pending. See generally *Darby v. Cisneros*, 509 U.S. 137 (1993).
- **Background and Facts:** Outline in chronological order events that led to filing of complaint
- **Causes of Action:** Outline legal reasoning that supports Plaintiff's position and grounds that support granting the suit

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Drafting the Complaint - Basic Content (cont.)

- **Request for Relief:** Outline everything Plaintiff is seeking, including types of fees (if any)
- **Attorney's signature:** Similar to attorney's info provided on the first page (varies by court)
- **Exhibits:** Documents in support of a complaint can be attached upon filing (or they can be added during discovery)
- **Remember redaction rules**

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Filing the Complaint / Petition

- ECF Registration
- Complaint or Petition
- Filing Fee, Summonses,* and Civil Cover Sheet
- Exhibits - Authenticating declaration required?
- Motions for Injunctive Relief - TRO or PI
 - Notice of Motion, Memo in Support, Proposed Orders

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Summons

- Use the form on the district court's website
- Complete one for each Defendant, some courts require a summons for AUSA
- May not be required at all in habeas action
- Court will "issue" the summons
- Serve the issued summons with the complaint

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Serving the Complaint/Petition and Summons

- Serve summons, complaint, filed docs, and court-issued doc
- Follow FRCP 4!
 - United States, FRCP 4(i)(1)(A)-(C)
 - U.S. Agency or Office, FRCP 4(i)(2)
 - Individuals Within a Judicial District, FRCP 4(e)
- Registered or certified mail means registered or certified mail (keep receipts)

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After Service – What's Next?

- Affidavit of Service or Return of Service
 - Attach proof!
- After entry of appearance, usually can serve electronically but need certificate of service per FRCP 5
- If counsel has not entered an appearance, must continue to serve party

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Timing – When to File

- APA Cases:
 - Final agency action required
 - *Darby v. Cisneros*, 509 U.S. 137 (1993)
 - Six-Year Deadline – 28 USC § 2401(a)
- Naturalization Review:
 - 120 days after N-400 examination – 8 USC § 1447(b)
 - Within 120 days of N-336 denial – 8 CFR § 336.9(b)
- Habeas Cases:
 - while detained

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Timing - Pleadings

- FRCP 12(a)(2): Gov't has 60 days to respond
- Habeas – Order to Show Cause
 - 28 USC § 2243 (23 days to answer max; hearing within five days)
 - 28 USC § 1657(a) (expedited consideration)
- Amendment of Complaint:
 - R. 15(a)(1) – First time as matter of course, 21 days from response or 12(b) motion
 - R. 15(a)(2) – other amendments by consent or leave
 - S.D. Fla. L.R. 15.1 – specific requirements

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Timing - Dispositive Motions

- Rule 12(a)(4), (b) – Motions to Dismiss
 - Before responsive pleading; extends response time
- Rule 56 – Summary Judgment
 - No genuine dispute of material fact;
 - At any time (until 30 days after close of discovery)
 - S.D. Fla. L.R. 56.1 – Statement of Material Facts
- Local Rules govern motion practice:
 - S.D. Fla. L.R. 7.2(c) – 20 pg. limit; 1 ½ spacing; 14 days to oppose; seven days to reply

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Sources of Procedural Rules

- Federal Rules of Civil Procedure
 - available at: www.uscourts.gov/rules-policies
- Local Court Rules (ex.: S.D. Fla.)
 - Local Rules, and I.O.P.
 - Civil Filing Requirements
 - CM/ECF Polices and Procedures
 - Forms (National, and Local)
 - Judge's Info, and Judge's Practice Guide / Standing Orders

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Docketing Appeals

- Submit a Notice of Appeal electronically with required fee (\$505) to the *originating* court
- Timing – FRAP 4: must be filed within 30 days; 60 days if US government is party
- FRAP 12 – docketing, representation statement, filing the record
- Check local rules for any court-specific requirements (mediation questionnaire, etc.)

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Resources for Practitioners

- Court clerk / electronic filing help desk
- AILA Federal Court Litigation Section
 - Free!
 - Listserve
 - Sample pleadings
 - Quarterly calls
- AILA AGORA (books, webinars, etc.)
- AIC practice advisories

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**Questions?
Comments?**

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