

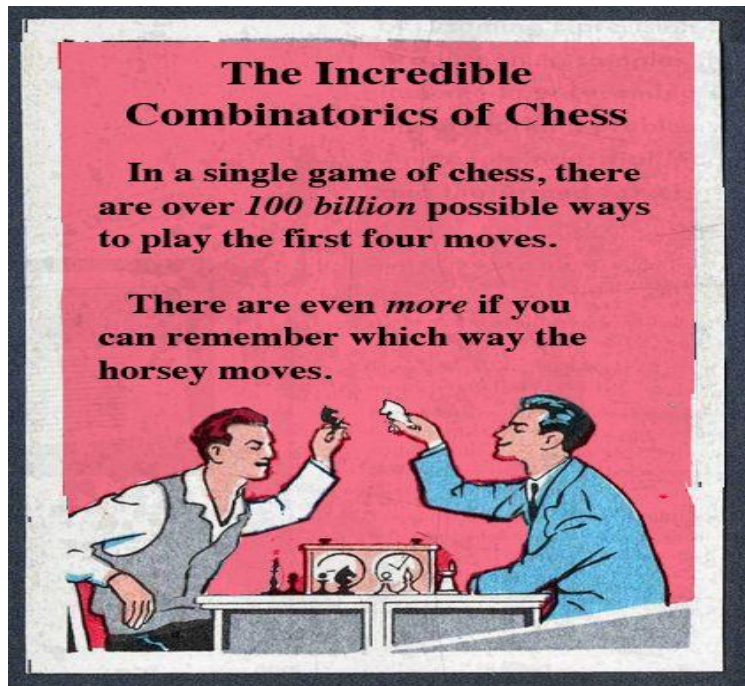
AFFIRMATIVE PLEADING TRAINING

PART 1 - DRAFTING COMPLAINTS

JUNE 19, 2019

FUN QUESTION OF THE DAY:

IS LITIGATION MORE LIKE CHESS OR POKER? WHY?



PURPOSES OF THE COMPLAINT*

1. _____
Hints: Sets clock on time to serve original process on D. Stops clock on SOL.

2. _____
Hint: By end of first read through, we want readers (various audiences) to feel D committed wrong against P – for which law clearly provides relief.

3. _____
Hint: *Iqbal/Twombly* (US) and *Iannachio* (SJC) cases require allegations plausibly suggesting (not merely consistent with) entitlement to relief.

4. _____
Hints: Minimize D’s “wobble-room” by removing compound statements, adjectives/adverbs, conditional tense, etc. Prevent R. 26(b)(1) objections.

5. _____
Hint: In addition to demanding all relief P (your client) wants, consider also demanding additional relief that you know D will not want to provide.

*5 purposes adapted from: Federal Practice Manual For Legal Aid Attorneys (Shriver Center).



THE RULES OF THE GAME



FEDERAL RULES	MASSACHUSETTS RULES
<p>Rule 3, COMMENCING AN ACTION: “A civil action is commenced by filing a complaint ...”</p>	<p>Rule 3, COMMENCEMENT OF ACTION: “A civil action is commenced by ... filing such complaint ...”</p>
<p>Rule 8, GENERAL RULES OF PLEADING: “(a) Claim for Relief. A pleading that states a claim for relief must contain: (1) a short and plain statement of grounds for the court's jurisdiction, unless court already has jurisdiction; (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought, which may include relief in alternative or different types of relief. ** (b)-(c) deal with defenses, omitted here ** (d) Pleadings to Be Concise and Direct; Alternative Statements; Inconsistency (e) Construing Pleadings. “... so as to do justice.”</p>	<p>Rule 8, GENERAL RULES OF PLEADING: “(a) Claims for relief: A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim shall contain: **No requirement to state jurisdiction, but best practice** (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded. ** (b)-(c) deal with defenses, omitted here ** (e) Pleadings to Be Concise and Direct; Consistency (f) Construction of Pleadings. “to do substantial justice.”</p>
<p>Rule 9, PLEADING SPECIAL MATTERS: “(a) Capacity or Authority to Sue; Legal Existence.” No need to plead unless “to show court has jurisdiction” (b) Fraud or Mistake. “state circs with particularity” [...] “(f) Time and Place. An allegation of time or place is material when testing the sufficiency of a pleading.” ** (f) Means SOL can be raised by Rule 12(b)(6) MTD</p>	<p>Rule 9, PLEADING SPECIAL MATTERS: (a) Capacity. No requirement to plead **no requirement to allege at all bc no need to plead jurisdiction per R. 8 supra (b) Fraud, mistake, duress, undue influence: Same [...] “(f) Time and Place. For the purpose of testing sufficiency of a pleading, averments of time and place are material ...” **Old rule was: SOL only raised as affirmative defense</p>
<p>Rule 10, FORM OF PLEADINGS: (a) Caption, Names; (b) Numbered Paragraphs, Separate Statements. (c) Adoption By Reference, Exhibits. “Statement can be adopted by reference” elsewhere. “A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.” **e.g., K, but others too</p>	<p>Rule 10, FORM OF PLEADINGS: **Same as fed plus- (d) Parties’ Residence or Place of Business; (e) 2-Sided Docs **Consider carefully whether to attach a K (or any doc) to cpt bc entire doc becomes part of cpt → MTD? Instead, maybe insert screenshot excerpt you like into complaint.</p>
<p>Rule 11, SIGNING PLEADINGS ...SANCTIONS: (a) Atty must sign → (b) certifies to “best of knowledge, info, and belief” after “inquiry reasonable in circcums” that: pleading is not presented for improper purpose; is warranted by law existing or non-frivolous argument to change law; & facts have (likely) evidentiary support. (c) Sanctions- Violating atty+firm jointly liable for monetary sanction sufficient to deter repetitions</p>	<p>Rule 11, APPEARANCES & PLEADINGS: (a) Atty must sign → certifies “read the pleading and to best of knowledge, info, and belief there is a good ground to support it.” **Several differences from Fed: **No reasonable inquiry requirement (just “read”). **Subjective good faith belief enough, but no willful ignorance. Van Christo Advert., Inc., 426 Mass. 410 (1998) **No sanctions- but maybe atty fees/costs & tort (WU/CP)</p>

THE COMPLAINT

THE CAPTION

What Court and who is involved

INTRODUCTION/PRELIMINARY STATEMENT

Your chance to tell the story, and frame the case to begin persuading reader why you win.

JURISDICTION AND VENUE

Why this court can hear and decide this case

PARTIES

The dramatis personae

FACTS

Every fact you need to establish every element of every legal claim. Told in right order as clearly, simply and directly as you can manage, without legal argument. Depending on the complexity of the facts and the legal landscape, may break this up into sections.

CLAIMS FOR RELIEF

How the FACTS you just laid out give entitle you to help from the court, broken out claim by claim.

DEMAND FOR RELIEF

What you want the court to do.

SIGNATURE BLOCK/DATE

You and all your contact information

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, ss

EASTERN HAMPSHIRE DISTRICT COURT
DOCKET NO. 1998CV000015 *the court will give you this*

_____)	
FRED FLINTSTONE,)	<i>in the Complaint, name all the parties. Later</i>
)	<i>pleadings can have just the first and et al.</i>
)	
Plaintiff,)	
)	COMPLAINT
v.)	
)	
DIRECTOR OF THE DEPARTMENT)	
OF UNEMPLOYMENT ASSISTANCE)	
and UNITED STATES DEPARTMENT)	
OF AGRICULTURE,)	
)	
Defendants.)	
_____)	

INTRODUCTION

This is your chance to tell the story the way you want it told. It is likely to be the first thing the judge is going to read, and the aim is that when finished with this section, the judge will want to help you get what you are entitled to.

1. This is an action for review of a final decision of the Director of the Department of Unemployment Assistance (“DUA”). *Define terms, so that you don’t have to repeat lengthy names or other things, such as statutes.* The Plaintiff, Fred Flintstone (“Mr. Flintstone”), *our clients have names, not roles (except where the court clearly prefers a different approach)* worked as a soil conservationist for the Defendant United States Department of Agriculture (“the Department”) for over a decade. On February 22, 2018, the Department notified Mr. Flintstone that it was terminating his employment for failure to possess a valid driver’s license, which was a

condition of his employment. Mr. Flintstone's license had been revoked on October 20, 2017, when he was arrested for drunk driving and he refused to submit to a breathalyzer test. Because Mr. Flintstone had three prior convictions for drunk driving on his record, the revocation was for his lifetime.

Mr. Flintstone is an alcoholic, and his arrest for drunk driving and refusal to submit to a breathalyzer test on October 20, 2017 are directly related and attributable to his disease. Despite the obvious nexus between Mr. Flintstone's disease and the actions that resulted in the loss of his license, the DUA erroneously treated Mr. Flintstone's case as a voluntary quit case under G.L. c. 151A, § 25(e)(1) and disqualified Mr. Flintstone from receiving benefits. In reaching its decision, the DUA relied on Olmeda v. Dir. of Division of Employment Security, 394 Mass. 1002 (1985), a case that is readily distinguishable on its facts both because the claimant in Olmeda actually quit as opposed to being discharged, as Mr. Flintstone was, and because the claimant in Olmeda did not assert that his misconduct was attributable to the disease of alcoholism, as Mr. Flintstone has. Indeed, pursuant to Shepherd v. Dir. of Division of Employment Security, 399 Mass. 737 (1987), a case that came after Olmeda, where a claimant is discharged for misconduct attributable to the disease of alcoholism, he or she lacks the requisite state of mind to support disqualification. Yet the DUA declined to apply Shepherd to Mr. Flintstone's case. *Legal citation is usually out of place in a complaint, unless it is important to the story, as it is here*

PARTIES

Nothing too fancy here. Names, addresses and roles in the case. If other things, like age, are helpful, can be included

2. The plaintiff, Fred Flintstone, resides at 123 Main Street, Amherst,

Massachusetts 01002.

3. Defendant Director of DUA is responsible for the operations of the DUA, a department within the Executive Office of Labor and Workforce Development of the Commonwealth of Massachusetts. Pursuant to G.L. c. 151A, § 42, the Director is a party to this action. The Director’s address is Charles F. Hurley Building, 19 Staniford Street, Boston, MA 02114.

4. Defendant United States Department of Agriculture (“USDA”) is a department of the United States and is Mr. Flintstone’s former employer. The Department’s address is 1400 Independence Ave., S.W., Washington, DC 20250.

JURISDICTION AND VENUE

Required by the Federal rules, but generally a good idea

4. Jurisdiction is conferred on this Court under G.L. c. 30A, § 14, and c. 151A, § 42. Venue is proper in this district because the plaintiff lives in Amherst.

STATEMENT OF FACTS

“A short and plain statement of the claim showing that the pleader is entitled to relief”

“simple, concise, and direct”

“in numbered paragraphs, the contents of each of which shall be limited as far as practicable to

a statement of a single set of circumstances”

To know what you need here, identify all of the elements of all of your claims. Think about what

your closing argument will be. You need a fact here to satisfy every element.

In a more complex case, this will probably be broken up into sections.

Some sections will set out the law, but only to the extent the court needs it for the facts to make

sense. This is not the place for argument

5. Mr. Flintstone worked as a soil conservationist for the USDA commencing on June 13, 2006.

6. The Department discharged Mr. Flintstone on February 22, 2018 for failure to possess a valid Class D Driver's License, which was a condition of his employment.

7. Mr. Flintstone's Class D Driver's License had been revoked on October 20, 2017, when he was arrested for Operating Under the Influence of Intoxicating Liquor in violation of G.L. c. 90, § 24, and he refused to submit to a chemical analysis of his breath.

8. Mr. Flintstone is an alcoholic.

9. Following his separation, Mr. Flintstone filed a claim for unemployment compensation benefits.

10. The claim was denied initially, and Mr. Flintstone requested a hearing before a Review Examiner of the DUA.

11. The Review Examiner affirmed the decision denying Mr. Flintstone benefits.

12. Mr. Flintstone appealed the Review Examiner's decision to the Board of Review ("Board) of DUA. The Board accepted Mr. Flintstone's application for review, and, on February 4, 2019, affirmed the Review Examiner's decision. This decision is the final decision of the Director.

CLAIMS FOR RELIEF

This is not the place for any new facts.

This could be broken up into subheadings:

First Claim for Relief

Error of Law

13. The decision of the Board is based upon errors of law.
14. The decision of the Board is not supported by substantial evidence.

RELIEF SOUGHT

“a demand for judgment for the relief to which he deems himself entitled. “

“Relief in the alternative or of several different types may be demanded.”

WHEREFORE, plaintiff Fred Flintstone respectfully requests that this Court:

1. Reverse the decision of the Board of Review and find that Mr. Flintstone was entitled to unemployment compensation benefits; *or*
2. *Remand the decision to the Board of Review for....*
3. Grant such other and further relief as it deems just and proper. *Always add this, or something like it*

FRED FLINTSTONE,
By his attorney,

Dated: March 15, 2019
Date every pleading

Barney Rubble
Central West Justice Center
One Monarch Place, Suite 350
Springfield, MA 01144
(413) 686-9000
brubble@cwjustice.org
Check the rules to see what is required

Mary Smith has just told you the following story:

“I was on TAFDC. I got a letter that said my TAFDC was being stopped immediately because I failed to report some income. There were no details about what they claimed I had failed to report. The letter didn’t say anything about how to appeal. I went to the DTA office and showed them the letter and asked to speak to someone about how to appeal to keep my benefits going. They said there was no appeal and wouldn’t let me talk to anyone. When I got angry and asked to talk to a supervisor or the director they told me to get out. When I continued to ask about why I could not appeal they threatened to have me arrested and the security guard made me leave the building.”

You have looked at the notice and Mary’s description of it is correct.