

CHAPTER 1

COMMENCING THE ACTION

I. INTRODUCTION

A civil action in district court is commenced by the filing of a complaint, which sets forth the claims of the plaintiff(s) against the defendant(s). Defendants are formally notified of the filing of the complaint by being served a summons issued in the name of the clerk of the court. Service of the summons triggers the defendant's obligation to respond to the complaint and notifies the defendant, in accordance with the FEDERAL RULES OF CIVIL PROCEDURE, of the date by which the response must be made. Alternatively, the rules permit the plaintiff to request that the defendant waive formal service of the summons. Although the defendant is not obligated to waive service, the defendant will receive substantially more time to respond if service of the summons is waived. However, in emergent situations, the plaintiff will want the defendant to respond prior to the time provided for in the rules. In cases where the plaintiff seeks emergent relief (*e.g.*, a temporary restraining order, a preliminary injunction, and/or early discovery), the plaintiff may proceed by way of an Order to Show Cause issued by a judge of the district court.

District courts can also acquire jurisdiction over a civil action by the "removal" procedures authorized by federal statute. Under these procedures, a party to a civil action filed in state court is entitled to "remove" the action to the district court when the action could have been initially commenced in the district court. A "Notice of Removal" notifies the state court and the other parties to the state court action of the change of jurisdiction.

In addition, a party in possession of a defined amount of money or property is permitted to initiate a lawsuit to settle all its potential liabilities relating to the *res* by commencing an "interpleader" action. The federal interpleader statute and the federal rules provide separate bases for federal jurisdiction of interpleader actions.

The filing of initial pleadings is governed by the general Order governing electronic filing as issued by the United States District Court for the District of New Jersey. A copy of that Order is reproduced in the Appendix to this chapter. *See* the discussion of "Applicable Local Rules" in Section II, below, as to electronic filing generally.

Finally, attorneys who are not members of the New Jersey Bar must retain New Jersey attorneys as co-counsel for matters pending in the District of New Jersey. Out-of-state attorneys can be admitted to practice in the district court for purposes of a particular matter by a *pro hac vice* application. Although such applications can be made at any time, they are usually made upon, or shortly after, the commencement of the action and, therefore, are appropriately considered as part of the discussion of commencing the action.

II. CONTENT AND FORM OF THE COMPLAINT

A. APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE

FED. R. CIV. P. 8(a) governs the content of the complaint generally. This rule requires that the complaint contain a short and plain statement of the district court's jurisdiction, a short and plain statement showing that the plaintiff is entitled to relief, and a demand for judgment granting the relief sought. *See Mruz v. Caring, Inc.*, 991 F. Supp. 701, 721 (D.N.J. 1998) (complaint unclear and provides insufficient notice to enable defendant to frame a response). The "short and plain

statement” requirement must be considered in conjunction with the Supreme Court’s decisions in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), where the Court ruled that although “the pleading standard RULE 8 announces does not require ‘detailed factual allegations,’ . . . it demands more than an unadorned, the-defendant-unlawfully-harmed-me” accusation. *Iqbal*, 556 U.S. at 678 (*quoting Twombly*, 550 U.S. at 555). The complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’ A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw a reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* See also *Fowler v. UPMC Shadyside*, 578 F.3d 203 (3d Cir. 2009) (discussing the Supreme Court’s *Twombly-Iqbal* formulation). See also *Harley v. City of New Jersey City*, 2017 U.S. Dist. LEXIS 135595 at *3-4, 2017 WL 3641565 at *2 (D.N.J. Aug. 23, 2017) (holding *Iqbal/Twombly* standard applicable to civil rights cases).

The rule expressly permits the pleading of alternative forms of relief, and it is well recognized that alternative theories of liability may be pleaded as well. See, e.g., *Acosta v. Honda Motor Company, Ltd.*, 717 F.2d 828, 835 n.10 (3d Cir. 1983). See also FED. R. CIV. P. 8(e) (alternative claims permitted).

Sample Document 1 is an example of a complaint consistent with the requirements of RULE 8(a). See page SD - 1

FED. R. CIV. P. 9 concerns the pleading of “special matters,”¹ RULE 9(a) provides that, unless required to show the court’s jurisdiction, pleadings need not allege a party’s capacity to sue or be sued, a party’s authority to sue or be sued in a representative capacity; or the legal existence of an organized association of persons that is made a party. A significant exception to the “short plain statement” directive of RULE 8(a) is the requirement of RULE 9(b) that the circumstances constituting an alleged “fraud” or an alleged “mistake” must be pleaded “with particularity.” See, e.g., *Rolo v. City Investing Co. Liquidating Trust*, 155 F.3d 644, 657-59 (3d Cir. 1998) (affirming the dismissal on RULE 9(b) grounds of a complaint alleging fraud under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.*). See also *United States v. Bracco USA, Inc.*, 2022 U.S. Dist. LEXIS 232113 at *8, 2022 WL 17959578 at *3 (D.N.J. Dec. 27, 2022) (allegations of fraud or mistake must place defendants on notice “of the precise misconduct with which they are charged, and to safeguard defendants against spurious charges of immoral and fraudulent behavior”). Another exception to the “short and plain statement” directive of RULE 8(a) was recognized by *In re Advanta Corp. Securities Litigation*, 180 F.3d 525, 531 n.5 (3d Cir. 1999) (announcing the “requirement that plaintiffs ‘state with particularity facts giving rise to a strong inference’ of scienter” under the Private Securities Litigation Reform Act of 1995 (15 U.S.C. § 78(u)-(4) *et seq.*).

Sample Document 2 is an example of a complaint alleging fraud that is consistent with the requirements of RULE 9(b). See page SD - 7

FED. R. CIV. P. 38(b) requires that any demand for a jury trial must either be endorsed on the complaint or served upon the other parties to the action not later than 14 days after the service of the last pleading directed to the issue on which the jury trial is sought and must be filed with the

¹ The special matters addressed in FED. R. CIV. P. 9 are the pleading of:

1) capacity, 2) fraud, mistake, condition of the mind, 3) conditions precedent, 4) official document or act, 5) judgment, 6) time and place, 7) special damages, and 8) admiralty and maritime claims.

court pursuant to FED. R. CIV. P. 5(d). The absence of a properly served and filed jury demand constitutes a waiver of trial by jury. *See* FED. R. CIV. P. 38(d). *See also In re City of Philadelphia Litigation*, 158 F.3d 723, 726-28 (3d Cir. 1998) (although timely jury trial demanded initially, right to a jury trial waived when plaintiff failed to object to a court order providing that certain issues be tried by the court); *Cardio-Medical Associates, Ltd. v. Crozer-Chester Medical Center*, 721 F.2d 68, 76-77 (3d Cir. 1983) (finding a waiver under RULE 38(d) when, although amended complaint demanded a jury trial, plaintiff had failed to demand a jury trial in connection with the original complaint in a timely manner).

FED. R. CIV. P. 10 governs the form of the complaint generally. The complaint must be designated as such in the caption and the caption must contain the name of the district court; the title of the action, including the names of all parties; and the file or docket number. The allegations of the complaint must be set forth in separately numbered paragraphs with each paragraph confined “as far as practicable to a statement of a single set of circumstances.”

Sample Documents 1 and 2 are examples of complaints consistent with the requirements of RULE 10. See pages SD- 1 to SD - 18

B. APPLICABLE LOCAL CIVIL RULES

1. GENERALLY

LOCAL CIVIL RULE 8.1 requires that if the complaint seeks unliquidated money damages, the *ad damnum* clause of the complaint shall simply state a demand for damages generally, without specifying the amount. *See H20 Plus LLC v. Arch Pers. Care Prods. L.P.*, 2011 U.S. Dist. LEXIS 54767 at *19, 2011 WL 2038775, at *6 (D.N.J. May 22, 2011) (striking from complaint specific dollar amounts of alleged damages). Upon the request of any other party to the action, the plaintiff must provide a written statement of damages within 14 days following the request.

LOCAL CIVIL RULE 10.1 requires that a civil complaint state in the first paragraph the street and post office address of each named party or the principal place of business of a party who is not a natural person. In addition, the first page of the complaint must set forth the name of counsel of record, counsel’s office, post office address, and telephone number. (A requirement that the complaint set forth the initials of counsel’s first and last name, followed by the last four digits of counsel’s Social Security Number, was suspended by Order of the District Court in 2005 and thereafter was deleted from the Rule.) The docket number and judge assigned to the case must also be set forth. After the complaint is filed, the clerk will affix a docket number to it and issue an allocation of assignment for the case to a specific district judge. The RULE also contains requirements concerning the typeface and paper size permitted (black lettering on 8½ x 11 inch paper). Since the advent of electronic filing, it has been the practice of many e-filers to indicate “Document Filed Electronically” or make a similar notation on the first page of electronically filed documents. Although this practice is preferable, such notations are not required.

LOCAL CIVIL RULE 11.2 requires that the complaint (or other initial pleading of any party) contain a certification in accordance with 28 U.S.C. § 1746 that states whether the matter is the subject of any other court, arbitration, or administrative proceeding and identifies any such other proceeding.

LOCAL CIVIL RULE 38.1 requires that if a demand for a jury trial is endorsed upon the complaint the title of the complaint shall include the words “and Demand for Jury Trial” or the equivalent.