

Civil Claim Strategies

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Defending Against Civil Claims



- Complaint is filed and served
- UCIP has assigned counsel
- What are your next steps?

- How you approach a claim early on can drastically shape the rest of the case.

- Tools for crafting your defense:
 - Initial Evaluation
 - Answer and/or Rule 12 Motions
 - Rule 68 Offer of Judgment

Initial Evaluation Letter



- When
 - Before or shortly after the answer and initial client meeting
- What
 - Summary of the facts currently known
 - Evaluation of the claims
 - Introduction to possible defense and litigation plan
 - Proposed budget
- Who
 - Sent to UCIP and all clients

Initial Evaluation Letter



- Why
 - Open the lines of communication
 - Establish expectations for your attorney
 - Develop a plan to litigate (or settle) the case
 - Educate regarding the applicable legal standards
 - Identify issues to be raised in motions
 - Identify discovery needs

Answer

State Court

- 21 days after service
- Waiving service does not buy more time, but all parties have “a duty to avoid unnecessary expenses of serving the summons and complaint.” Utah R. Civ. P. 4(d)(3)(A).

Federal Court

- 21 days after service or 60 days after a request to waive service was sent, if accepted

Answer



- Respond to each and every allegation with admit, deny, or lack sufficient information
- Object to certain allegations where appropriate
- Affirmative Defenses
 - Some can be waived if not raised here
 - Consider raising state governmental immunity provisions
- Jury demand

Rule 12 Motions

12(b)(6) Motion to Dismiss

- Must be raised 21 days after service of Complaint
- Standard: failure of the pleading to state a claim for which relief can be granted
- Must not consider matters outside the pleading

12(c) Motion for Judgment on the Pleadings

- Must be filed after pleadings but early enough to not delay trial
- Applies the same standard as a Rule 12(b)(6) motion
- Must not consider matters outside the pleadings

Rule 12 Motions



- Common Defenses to Consider:
 - Are the claims adequately pled?
 - Can certain parties be dismissed outright?
 - Sub-governmental entities, administrators in their official capacity
 - Does the Governmental Immunity Act apply? If so, consider the following requirements:
 - Notice of Claim
 - Statute of Limitations
 - Undertaking
 - Willful misconduct for individual employees
 - Exceptions to the waivers of immunity

Rule 68 Offer of Judgment



- Offer of Judgment: offer to allow judgment to be entered based upon specified terms, with costs (and fees where applicable) then accrued
 - Must be served at least 14 days before trial
 - Must allow 14 days to respond
 - If unaccepted and the ultimate judgment obtained is “not more favorable than the unaccepted offer,” the Plaintiff must pay the Defendant’s costs incurred after the date the offer was made
 - Utah R. Civ. P. 68 also provides that in this scenario the “offeror is not liable for costs, prejudgment interest or attorney fees incurred by the offeree after the offer”

Rule 68 Offer of Judgment



- Purpose: encourage settlement and avoid litigation
- Most useful in cases brought under fee shifting statutes, like 42 U.S.C. § 1983, where attorney fees are considered to be part of “costs”
- Offer must be clear as to whether costs are included within its scope, or will be determined by the court and added on top of the offer
- Carefully draft the offer: several courts have found that ambiguous offers must be construed against the defendant

Questions?

