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# How to Be Heard in Court

## *Intermediate Tutorial*

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# Jurisdiction<sup>®</sup>

*Learn How to Be Heard.  
Learn How to Make Your Opponents  
Answer Truthfully in Court.  
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If you hold a winning hand and know how to use the rules to your advantage, you can change the world for the better.



The rules are your tools.  
You have all that you need!  
The system is not bad.

It's just that not many of us know the rights we have or how to put them to good use.

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## **Ten Tips for Success in Court:**

1. Deserve the Judgment You Seek
2. Follow the Rules
3. Make Everyone Follow the Rules
  - a. Rules of Civil Procedure
  - b. Rules of Evidence
  - c. General Legal Principles
  - d. Common-Sense & Reason
4. Allow No Monkey-Shines!
5. Demand the Truth
  - a. Require Sworn Testimony
  - b. Verify Pleadings & Motions
6. Make an Effective Record
  - c. Use Well-Paid Court Reporters
  - b. Do Not Go Off-the-Record
7. Use Simple Sentences
8. Manage Your Own Case
  - a. Don't Allow Opponent Control
  - b. Don't Allow Court Direction
9. Expect a Favorable Judgment
10. Demand Your Right to Win !

## Theory of the Case

Every case should have a theory. The plaintiff's case has one theory; the defendant's case has another.

Make certain you understand *your* theory of the case and make the other side tell you *its* theory on the record. Do not omit to do this. Many times a case can be won by poking holes in the other side's theory. Or, if it can be shown that facts simply cannot support the other side's theory, you win. Or, if the law cited by the other side doesn't fit the theory they say they are operating from, they lose. If a case theory is not supported by the facts and law, the case is un-winnable.

A good case theory can be stated in just one paragraph. For example, "Defendant owed plaintiff a duty to provide safe seating at its restaurant. When plaintiff sat at defendant's table to eat her meal the table collapsed. Plaintiff was dumped to the floor where she was permitted to remain 15 minutes in full view of defendant's employees. Plaintiff suffered physical injury and emotional embarrassment as a direct result."

Always write your theory of the case, then get the other side to put its theory on the record. Let opposing theories direct your strategy and tactics in the case.

Many cases are lost because the losing party does not see the big-picture view by writing a case theory.

*If you can spell “CAT” you can master the fundamental anatomy of every lawsuit.*

**C ... Complaint**

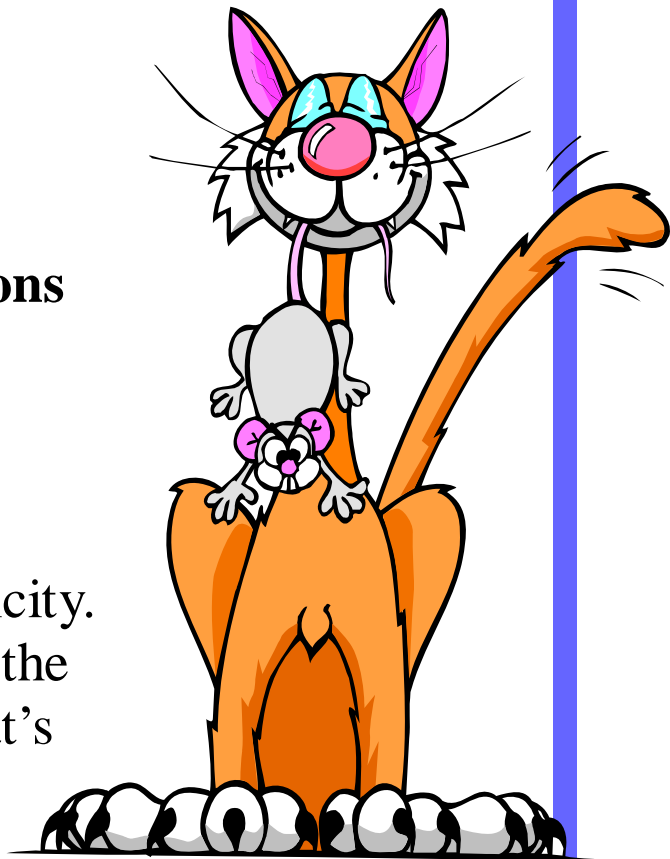
**A ... Answer**

**T ... Trial**

Of course lawsuits are far more complicated than this, however the basics are the same in every lawsuit.

**Complaint**  
**Flurry of Motions**  
**Answer**  
**Discovery**  
**Trial**

Focus on this simplicity.  
Winners know how the game is played. That's how winners win!



# Causes of Action

**Every Complaint must state at least one Cause of Action.**

**Every Cause of Action begins with a Breach of some sort:**

- 1. Breach of Contract**
- 2. Breach of Faithful Duty**
- 3. Breach of Professional Duty**
- 4. Breach of Public Duty**
- 5. Breach of Law**

**Every good complaint also states ALL FACTS to be proven plus ALL LAWS to be relied upon.**

# Jurisdiction

Court must have a right to speak (“jurisdiction”).

Complaint sets (1) subject matter jurisdiction and (2) personal jurisdiction — or motion to dismiss wins.

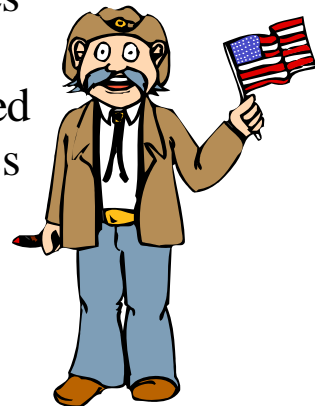
Ask clerk for subject matter jurisdiction of courts. Florida cases over \$15,000 or seeking injunction *must* be in circuit court. Lesser disputes and special cases may be brought in county court or small claims.

Florida has 3 lower courts and 2 appellate courts.

Most cases begin in the local circuit court.

**Florida Supreme Court**  
**District Court of Appeal**  
**Circuit Court**  
**County Court**  
**Small Claims Court**

Personal jurisdiction arises if (1) person resides in county, cause of action accrues in county, or property is located in county and (2) person receives copy of complaint & summons or alternative service provided by rules. Facts alleged meet first requirement. Affidavit of process server meets second requirement. Jurisdiction thereby attaches to person.



# Complaint Form

- **Caption**
- **Title**
- **Preamble**
- **Jurisdictional Allegations**
- **General Factual Allegations**
- **Counts & Wherefore Clauses**
- **Signature**
- **Verification** (optional for lawyers)

**Use Simple Sentences**

**Single Subject**

**Single Verb**

**Minimum Adjectives & Adverbs**

**IN THE THIRTIETH JUDICIAL CIRCUIT COURT  
IN AND FOR SUNSHINE COUNTY, FLORIDA  
CIVIL DIVISION**

File No. 99-123

INJURED PARTY,  
Plaintiff,

v.

WILLFUL WRONGDOER,  
Defendant.

\_\_\_\_\_ /

**COMPLAINT**

PLAINTIFF Injured Party sues Willful Wrongdoer  
and states:

**JURISDICTIONAL ALLEGATIONS**

1. \_\_\_\_\_
2. \_\_\_\_\_

**GENERAL FACTUAL ALLEGATIONS**

3. \_\_\_\_\_
4. \_\_\_\_\_

**COUNT ONE: COMMON NEGLIGENCE**

5. \_\_\_\_\_
6. \_\_\_\_\_

WHEREFORE plaintiff prays for an Order awarding  
money damages against defendant Wrongdoer.

- etc. -

*Injured Party*

## **JURISDICTIONAL ALLEGATIONS**

1. This action is for damages exceeding \$15,000.
2. Plaintiff is a resident of Sunshine County.
3. Defendant is a resident of Sunshine County.
4. Defendant's intentional acts in Sunshine County directly caused plaintiff damages in Sunshine County.
5. This Court has jurisdiction.

### **NOTES:**

**Use simple sentences with single subject and single verb, minimum adverbs and adjectives.**

**Use many separate numbered paragraphs.**

**Start by stating facts upon which the Court's jurisdiction can be firmly established.**

**One single complete thought per paragraph.**

**Follow this format throughout the complaint.**

**Follow this format with ALL pleadings, motions, notices, and ALL papers filed with the Court.**

**Do not try to write like Shakespeare or John Milton. The object is to win your case, not to appear as a great person of letters.**

**Keep it simple!**



## **GENERAL FACTUAL ALLEGATIONS**

6. On 1 May 1999 defendant owned a worm farm and retail fishing supply store in Sunshine County.

7. Plaintiff was lawfully in defendant's store on the stated date.

8. Defendant permitted more than six particularly large worms to be on the floor of his store during the plaintiff's visit on the stated date.

9. Defendant knew the worms were on the floor at the time of plaintiff's visit.

10. Defendant failed to remove worms from floor.

11. Defendant failed to warn plaintiff of worms.

12. Plaintiff stepped on at least one of the worms.

13. Plaintiff lost his footing due to worm slime.

14. Plaintiff fell to the floor.

15. Plaintiff's fall resulted in three broken ribs.

16. Plaintiff required medical treatment.

17. Plaintiff required the services of an attorney to bring this action and is obligated to compensate his attorney reasonably.

Note: Each paragraph (except 17) is simple sentence. All facts that must be proved to win are clearly stated. Defendant's answer must ADMIT, DENY, or claim to have NO KNOWLEDGE of each separate allegation.

The first step to winning your case is to state it.

## COUNT ONE: NEGLIGENCE

18. Plaintiff realleges paragraphs 1-17.

19. Defendant owed plaintiff a duty of care.

20. Defendant breached his duty by allowing the worms to be on the floor during plaintiff's visit.

21. Defendant breached his duty by failing to give plaintiff any warning of the slimy worms on the floor.

22. Breach of duty constitutes negligence in this jurisdiction.

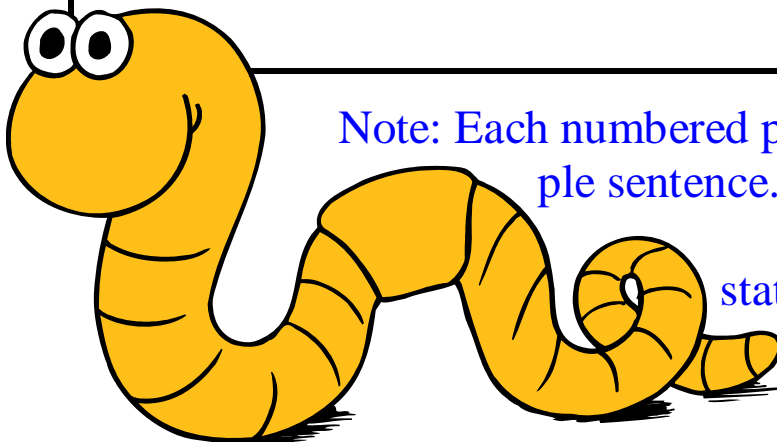
23. Defendant's negligence proximately caused plaintiff to suffer personal injury.

24. Defendant's negligence proximately caused plaintiff to suffer money damages.

WHEREFORE plaintiff moves this Court to adjudge defendant liable to plaintiff for money damages and such other and further relief as the Court may deem reasonable and just under the circumstances including (but not limited to) reasonable attorneys fees.

DATED this 12 August 1999.

*Injured Party*



Note: Each numbered paragraph is a simple sentence. A cause of action for negligence is stated based on provable facts.

## What Happens Next?

Defendant must (1) answer complaint, (2) move to dismiss complaint, (3) move for definite statement, or (4) move to strike part or all of the complaint.

If the defendant elects to answer the complaint he must do so within a set period (20 days in Florida). He must respond to each numbered paragraph separately. He must admit, deny, or claim no knowledge.

Perhaps the most important thing that can be said about litigation is that everything depends upon the record. The savvy litigant is scrupulous about making a record. That's why a properly worded complaint is so very important. Everything that happens thereafter is (or should be) in response to the allegations of the complaint. If the complaint fails to fully state the case, everything afterward will be riddled with loopholes.

The defendant has no options. He must do one of the four things listed above. This is the power of civil lawsuits. It all begins with a well-stated complaint.

Form books are tools used by those who don't care much if they win or lose. They are tools to help you identify causes of action and essential form.

Only by effectively stating your entire case can you hope to get a complete and prompt verdict.

**Start the discovery process with the complaint!**

## **MOTIONS TO DISMISS**

The complaint can be dismissed if the court lacks subject matter jurisdiction. Obviously, if the court has no jurisdiction over the subject matter of the case, it cannot enter judgment. The case must be dismissed.

The complaint can be dismissed if the court lacks personal jurisdiction. If the act complained of was in Georgia where the defendant resides, and where the property is located, the case cannot be lawfully heard in a Florida court.

The complaint can be dismissed if it was filed in the wrong county or the wrong court. For example, a Florida case filed in circuit court to resolve a battle over \$14,999 must be dismissed.

A complaint can be dismissed if it fails to state at least one cause of action. All counts failing to state a cause of action may be dismissed separately.

A complaint can be dismissed if it fails to join an indispensable party. If a case cannot be resolved completely without joining a party not named by the complaint, the case can be dismissed.

A complaint can be dismissed if the court is convinced the cause of justice will be frustrated. Florida judges have “inherent power” to do whatever it takes to preserve justice and fair play in our courts. Any contempt for the court may result in dismissal.

## **MOTION FOR MORE DEFINITE STATEMENT**

If the plaintiff's complaint is so poorly written that a reasonable person cannot be certain what it says, if it is vague, ambiguous, contains sentences with no subject or no verb, the court will require the plaintiff to re-state it or dismiss.

It is surprising how often lawyers file papers that contain non-sentences or use language no reasonable person can understand. When this happens, a motion for more definite statement will invariably prevail.

The same rule applies to answers or any other paper filed in the court. We have a right to know what the other side is saying and, if they cannot say it so reasonable people can understand them, the court will invariably require them to say it differently.

Of course, if this continues and a party cannot state their position reasonably after several tries, the court may dismiss their case as impertinent.

A very large insurance company recently filed a complaint containing a string of words beginning with a capital letter and ending with a period but containing no verb whatsoever. Since it was impossible to know what the complaint was saying, the defendant moved for a more definite statement and prevailed, of course. The insurance company must now file a more definite statement of their complaint or be dismissed.

## **MOTIONS TO STRIKE**

A complaint can be stricken if it or any part of it is untrue and was known to be untrue at the time it was filed. This is accomplished by a motion to strike sham, and evidence may be taken at the hearing. Only truth may be permitted in court. A successful motion to strike sham can result in dismissal or judgment in the moving party's favor, depending on the circumstances.

Any part of the complaint can be stricken if it is redundant. If parts of the complaint merely restate other parts, they may be stricken upon motion.

Any part of the complaint can be stricken if it is immaterial. If the complaint alleges facts that have no rational relationship to the matter before the court, the immaterial part can be stricken.

Any part of the complaint can be stricken if it is impertinent. If part of the complaint shows insolence toward our legal system, it may be stricken.

Any part of the complaint can be stricken if it is scandalous. If part of the complaint is so outrageous that a slanderous motive can be clearly seen, the court may strike that part or the entire complaint.

Improper form may also result in striking.

Any contempt of court may result in a complaint being stricken, dismissed, or summarily judged in favor of the defendant. Our courts have this power.

