

For questions, call David J. Flynn
(312) 540-7662



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ILLINOIS LAW MANUAL

CHAPTER I

CIVIL PROCEDURE

D. PLEADINGS

1. The Order of Pleadings

The first pleading by the plaintiff is the complaint. The first pleading by the defendant is typically an answer. Along with an answer, the defendant can raise a new matter in the form of an affirmative defense. Thereafter, the plaintiff must file a reply to the affirmative defense. 735 ILCS 5/2-602. “All pleadings shall contain a plain and concise statement of the pleader's cause of action, counterclaim, defense, or reply.” 735 ILCS 5/2-603. Each separate cause of action upon which a separate recovery can be sought must be stated in a separate count or counterclaim as the case may be. 735 ILCS 5/2-603(b). Each count, counterclaim, defense, or reply must be separately pleaded, designated, and numbered. *Id.* In addition, each pleading must be divided into paragraphs numbered consecutively, each paragraph containing as nearly as possible a separate allegation. *Id.* “Pleadings shall be liberally construed with a view to doing substantial justice between the parties.” 735 ILCS 5/2-603.

2. Content of Pleadings

All pleadings must contain "a plain and concise statement" of the cause of action, counterclaim, defense, or reply. *Id.* In Illinois, fact pleading is required, as opposed to the notice pleadings required in federal court. *Johnson v. Matrix Fin. Serv. Corp.*, 354 Ill. App. 3d 684, 696 (4th Dist. 2004). While the "facts" to be pled are impossible to define, generally, fact pleading requires that the facts upon which a cause of action is based be alleged. Notice pleading, on the other hand, only requires that the pleading be sufficient to give the defendant notice of the incident out of which the cause of action arose and the general nature of the action. See, *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351 (2004).

Except in personal injury actions, every complaint or counterclaim must contain specific prayers for relief. 735 ILCS 5/2-604.2(a). In a personal injury claim, the party does not need to claim a specific amount of money unless to comply with the circuit court rules. *Id.* However, the defendant is not prohibited from requesting the amount sought after from the plaintiff by interrogatory. 735 ILCS 5/2-604.2(d). Except for default judgments, parties are not limited to remedies they have offered. 735 ILCS 5/2-604.2(c). The court may use its discretion to provide alternative remedies in order to be less prejudicial. *Id.*

3. Punitive Damages

In all actions where punitive damages are permitted, no complaint can be filed containing a prayer for relief seeking punitive damages without prior leave of court. 735 ILCS 5/2-604.1. The plaintiff may make a constitutional pretrial motion seeking permission to amend a complaint to include a prayer for relief seeking punitive damages. The court will allow the motion for an amended complaint to include punitive damages if the plaintiff establishes at the hearing a

reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages. Any motion to amend the complaint to include a prayer for relief seeking punitive damages must be made no later than 30 days after the close of discovery. Id.; See, Stojkovich v. Monadnock Bldg., 281 Ill. App. 3d 733 (1st Dist. 1996)(noting that trial court’s denial of plaintiff’s motion to amend punitive damages was proper because plaintiff did not show reasonable likelihood that there was willful and wanton conduct by defendant).

4. Verification of Pleadings

Any pleading may be verified by the oath of the party filing it or of any person or persons having knowledge of the facts pleaded. 735 ILCS 5/2-605. If any pleading is verified, every subsequent pleading must also be verified unless verification is excused by the court. Id. See, Watson v. Rosewell, 295 Ill. App. 3d 711 (1st Dist. 1998); In Re Andrea D., 342 Ill. App. 3d. 233 (2nd Dist. 2003). “Verified allegations do not constitute evidence except by the way of admission.” 735 ILCS 5/2-605.

5. Counterclaims

“Any claim by one or more defendants against one or more plaintiffs, or against one or more co-defendant ... may be pleaded as a cross-claim in any action, and when so pleaded shall be called a counterclaim.” 735 ILCS 512-608(a). The counterclaim is a part of the answer and will be designated as a counterclaim. 735 ILCS 5/2-608(b). Service of process on parties already before the court is not necessary. Id. See, Wilson v. M.G. Gulo & Assoc., 294 Ill. App. 3d 897 (3rd Dist. 1998).

6. Supplemental Pleadings

Supplemental pleadings setting up matters which arise after the original pleadings are filed may be filed within a reasonable time by either party with leave of court. 735 ILCS 5/2-609.

7. Pleadings are to be Specific

“Every answer and subsequent pleading shall contain an explicit admission or denial of each allegation of the pleading to which it relates.” 735 ILCS 5/2-610(a). Further, every allegation, except allegations of damages, not explicitly denied in the answer will be deemed admitted, unless the party states in his or her pleading that he or she has no knowledge or insufficient knowledge to form a belief as to the truth or falsity of the statement and attaches an affidavit as to the truth of the statement of want of knowledge. 735 ILCS 5/2-610(b). “Denials must not be evasive but must fairly answer the substance of the allegation denied.” 735 ILCS 5/2-610(c). “If a party wishes to raise an issue as to the amount of damages only, he or she may do so by stating in his or her pleading that he or she desires to contest only the amount of damages.” 735 ILCS 5/2-610.

8. Insufficient Pleadings

“If any pleading is insufficient in substance or form the court may order a fuller or more particular statement [of the pleading]. If the pleadings do not sufficiently define the issues the court may order other pleadings prepared.” 735 ILCS 5/2-612. No pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim or defense which he or she is called upon to meet. 735 ILCS 5/2-612(b). All defects in pleadings, either in form or substance, not objected to in the trial court are waived on appeal.” 735 ILCS 5/2-612(c).

9. Separate Counts and Defenses

Parties may plead as many causes of action, counterclaims, defenses and matters in reply as they may have, however, each must be separately designated and numbered. 735 ILCS 5/2-613(a). “When a party is in doubt as to which of the two or more statements of fact is true, he or she may, regardless of consistency, state them in the alternative or hypothetically in the same or different counts or defenses. A bad alternative does not affect a good one.” 735 ILCS 5/2-613(b).

10. Amendments

At any time before final judgment, amendments may be allowed to pleadings on just and reasonable terms, but a party's right to amend is not absolute and unlimited. 735 ILCS 5/2-616. See, Volper v. IKO Indust., Ltd., 327 Ill. App. 3d. 567 (1st Dist. 2002); O’Brien v. City of Chicago, 285 Ill. App. 3d 864 (1996).