



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

www.palmbeachbar.org

December 2012

The Board of
Directors and
Bar Staff
Wish you and Your
Family a Happy
Holiday Season!



The Diversity and Inclusion Committee recently hosted its Diversity Luncheon for approximately 200 lawyers and judges. The purpose of the luncheon was to raise awareness and discuss strategies for successfully promoting, retaining and advancing female lawyers. The luncheon featured a keynote address from Florida Bar President Gwynne Young, and an in-depth panel discussion featuring lawyers from the public and private sector, corporate counsel and managing partners. President Adam Rabin served as moderator. Pictured above are Sia Baker Barnes, CDI Committee Co-chair; Adam Rabin; Gwynne Young; and Sarah Shullman, CDI Committee Co-chair. For more photos from this event, please see page 25.

Mark your calendar for upcoming Membership Events

December 6: Annual Holiday Party and Silent Auction at Frenchman's Reserve

January 7, 2013: Membership Luncheon Celebrating the History & Legacy of the Miami Dolphins and the 40th Anniversary of a perfect season

February 1: Joint Luncheon with Federal Bar Association. Guest speaker is 11th Circuit Chief Judge Joel Dubina

March 1: Bench Bar Conference

April 5: Membership Luncheon with Guest Speaker Marsha Hunter – Consultant on Persuasion and Public Speaking Techniques for Lawyers

April 24: Celebrate Administrative Professional Day with a Firm Trivia Contest

April 26: Golf/CLE Program

April 30: Annual Judicial Reception

May 3: Law Day Luncheon with guest speaker Michael Glazier, Nationally Prominent Attorney Representing Universities Under NCAA Investigation for Sports Scandals

June 1: Annual Installation Banquet

Nominating petitions available for Board of Directors

The annual election of officers and directors for the Palm Beach County Bar will take place via online voting in April. Persons seeking to run for a position on the Board of Directors will need to obtain a nominating petition and must be a member in good standing of the Palm Beach County Bar Association. The nominating petition must be signed by no fewer than 20 members in good standing of the Association. Petitions for President-elect will be available on December 14 and are due back in the office by 5 p.m. on January 12. Petitions for director-at-large seats will be available on December 21 and are due back in the Bar office by 5 p.m. on January 21. Petitions may be obtained by calling the Bar office at 687-2800 or by sending an e-mail requesting it at pburns@palmbeachbar.org. For any of the positions, it is the candidate's responsibility to verify ahead of time through the Bar office that the members that sign their petitions are members in good standing, otherwise, the petition will be deemed invalid.

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Responding to Amended Pleadings

By Matt Triggs and Jonathan Galler

Pop quiz. Say that your client is served with a complaint and you respond, a week and a half later, with a motion to dismiss for failure to state a cause of action. A month after that, with your motion to dismiss still pending, the plaintiff serves an amended complaint. Within how many days must you respond to the amended complaint?

The answer depends on whether you are in federal or state court. And that is not just because the federal rules now compute deadlines in multiples of seven days. The distinctions run deeper.

Federal Rule 15(a)

The federal rule provides that a party may amend its pleading once as a matter of course within (A) 21 days after serving the pleading or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier. In all other cases, the party desiring to amend its pleading must obtain the written consent of the opposing party or leave of court.

So, for starters, the plaintiff in our pop quiz scenario was required, under the federal rules, to obtain written consent or leave of court prior to serving its amended complaint. After all, a full month has passed since service of your motion to dismiss. Notably, an amended pleading served without leave of court, where leave is required, may be deemed to have no legal effect.¹ Thus, no response to the amended pleading may be required at all (although prudence may suggest otherwise).

But let's assume that the plaintiff did obtain leave of court to serve the amended complaint. Or let's assume that the plaintiff served the amended complaint within 21 days after service of your motion to dismiss and, thus, was not required to seek consent or leave of court. When is your response due? Rule 15(a)(3) applies under either scenario and provides that [u]nless the court orders otherwise, any required response to an amended pleading must

¹*Hoover v. Blue Cross and Blue Shield of Alabama*, 855 F.2d 1538, 1544 (11th Cir. 1988); 6 Charles Alan Wright et al., *Federal Practice & Procedure* § 1484 (3d ed. 2012).

be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

That computation provides clear guidance to the responding party. In our scenario, it means that your response is due within 14 days of service of the amended complaint. And because the rule specifies that the responding party must respond within the later of 14 days or the time remaining to respond to the original pleading, the rule prevents a scenario in which a defendant could be forced to respond to an amended complaint sooner than it would have been required to respond to the original complaint.

Florida Rule 1.190(a)

Florida Rule of Civil Procedure 1.190(a) provides that a party may amend a pleading once as a matter of course at any time before a responsive pleading is served. Alternatively, if no responsive pleading is permitted and the action has not been placed on the trial calendar, a party may amend its pleading within 20 days after it is served. In all other cases, the party desiring to amend must obtain written consent or leave of court.

Therefore, unlike in federal court, the plaintiff in our pop quiz scenario plainly does not require leave of court to amend its pleading under the state court rules because no responsive pleading has yet been served. Your motion to dismiss may very well be brilliant, but it is not a responsive pleading.²

As for when your responsive pleading is due, rule 1.190(a) seemingly provides another clear answer: A party shall plead in response to an amended pleading within 10 days after service of the amended pleading unless the court otherwise orders. Interestingly, however, this is one of those times when the rule may not exactly say what it means or mean what it says.

In *Davis v. New River Dev., LLC*, 877 So. 2d 848, 849 (Fla. 4th DCA 2004), the court held that the abbreviated ten-day response deadline applies only where the newly amended pleading was amended upon written consent or by leave of court. Where the pleading was amended as a matter of

²*Williams v. Gaffin Indus. Servs., Inc.*, 88 So. 3d 1027, 1030 (Fla. 2d DCA 2012).



course, the standard 20-day response deadline continues to apply. Thus, Davis identified two different response deadlines by drawing a distinction that turns entirely on the manner in which the newly amended pleading was amended. That distinction is found nowhere in the federal rule and is not readily apparent even in the state rule.

As the Fourth District explained, the provision that a response to an amended pleading must be served within 10 days is juxtaposed with – and, thus, applies exclusively to – the provisions authorizing amendments *other* than as a matter of course. *Davis*, 877 So. 2d at 849. The court also explained that the rule, as interpreted, is consistent with Rule 1.140(a)(3), which is the rule that establishes a 10-day deadline when responding to a pleading that is amended pursuant to a court order on a motion to dismiss. *Id.* This interpretation, like the federal rule, prevents the scenario where a defendant would otherwise find itself with an abbreviated response deadline if served with an amended complaint almost immediately after service of the initial complaint.

So, getting back to our pop quiz, assuming the plaintiff served the amended pleading as a matter of course, you have a full 20 days, under the *Davis* opinion, to respond to the amended complaint.

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