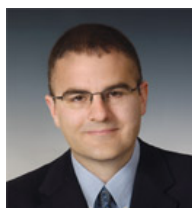


It's time to retire Rhode Island pleading tradition

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Imagine this: You represent a plaintiff in a complex case involving breach of contract and

fraudulent misrepresentation. You meet with your client for hours and pore over hundreds of documents. You then spend dozens more hours crafting a lengthy complaint with numerous specific allegations of the fraud perpetrated on your client.

You're satisfied that you've met your obligation under the U.S. Supreme Court's new "plausibility" pleading standard, as well as cleared the necessary Rule 9(b) hurdle to ensure that your fraud claim survives a motion to dismiss.

You then file, swiftly serve your masterpiece of a complaint and await a response, curious as to how the defendants plan to deal with your piercing allegations.

Twenty days later, the answer arrives.

With coffee and highlighter in hand, you start to read the answer. Instead of admitting the damning allegations, or instead of boldly denying them outright,

your opponents have chosen a different approach.

They've responded to virtually all of the most serious allegations as follows: "Defendants neither admit nor deny the allegations in this paragraph, and leave Plaintiff to its proof thereon."

You're shocked. After 20 days to prepare an answer, that's what they come up with? How could they "neither admit nor deny" those carefully laid-out traps you set in the complaint? How could they not honor the key purposes of Rule 8: to join issue and frame the parameters for discovery?

If you've been practicing in Rhode Island, you know all about this frustrating practice [1] and take no solace in the fact that other attorneys think it is an acceptable approach to answering complaints.

So, you do what all good attorneys do when facing a pleading dilemma: read the rules. You start with Rule 8:

"A party shall state in short and plain terms the party's defenses to each claim asserted and *shall admit or deny* the averments upon which the adverse party relies. If the party

is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial.” (Emphasis added)

The italicized language intrigues you. Rule 8 generally gives defendants three options when responding to allegations in a complaint: admit, deny or state that the defendant lacks sufficient knowledge or information to know whether an averment is true or not (which has the effect of a denial).

There’s no option in Rule 8 to “avoid” direct allegations by neither admitting nor denying allegations and leaving a plaintiff “to its proof.”

You continue to read Rule 8 further until you come across words that jump right off the page: “Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive pleading.” (Emphasis added)

In simple terms, that means if defendants fail to deny allegations to which they must respond, then those allegations are deemed admitted.

The defendants in your case “avoided” all the damning allegations and the ultimate allegations in which you alleged fraud and breach of contract. Therefore, under Rule 8, those allegations should be deemed admitted.

Seizing on the opportunity, you quickly put together a Rule 12(c) motion for judgment on the pleadings.

Surprisingly, there’s not much case law (in Rhode Island or elsewhere) regarding the success of Rule 12(c) motions based on defendants avoiding allegations in a complaint. In other jurisdictions, the pleading maneuver has been held to be an impermissible hedge.

Answering in this manner does not put any material facts at issue. I’ve had recent success in obtaining Rule 12(c) judgments in Rhode Island cases in which defendants neither admitted nor denied key allegations in a complaint.

Aggressively filing a Rule 12(c) motion certainly will put defendants on notice that complaints are meant to be answered, not avoided. The rules give defendants substantial flexibility to claim a genuine lack of knowledge or information (subject to Rule 11, of course).

Invariably, there’s usually an element of an allegation that is either somewhat unclear or outside of a defendant’s knowledge or ability to learn it through a modicum of research.

Defendants should seize any ambiguity or lack of knowledge and follow Rule 8 in claiming as such. Defendants should not be permitted to hedge their bets and “avoid” allegations.

Of course, defendants who avoid allegations in this manner would be wise to

file a motion to amend their answers rather than run the risk of the court entering judgment on the pleadings.

Nonetheless, it's time retire this pleading tradition in Rhode Island and require defendants to do what they're supposed to do: admit, deny or claim a lack of knowledge or information sufficient to form a belief regarding the truth of the allegations.

Endnote

1 Indeed, a recent review of 50 randomly selected complaints filed in Providence County Superior Court reveals that this form of pleading avoidance has been used in 6 percent of the answers reviewed. While 6 percent may seem low, this practice should not be taking place at all. (The writer thanks intern Brandon Deshler for his time-consuming and diligent review of the dockets.)

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