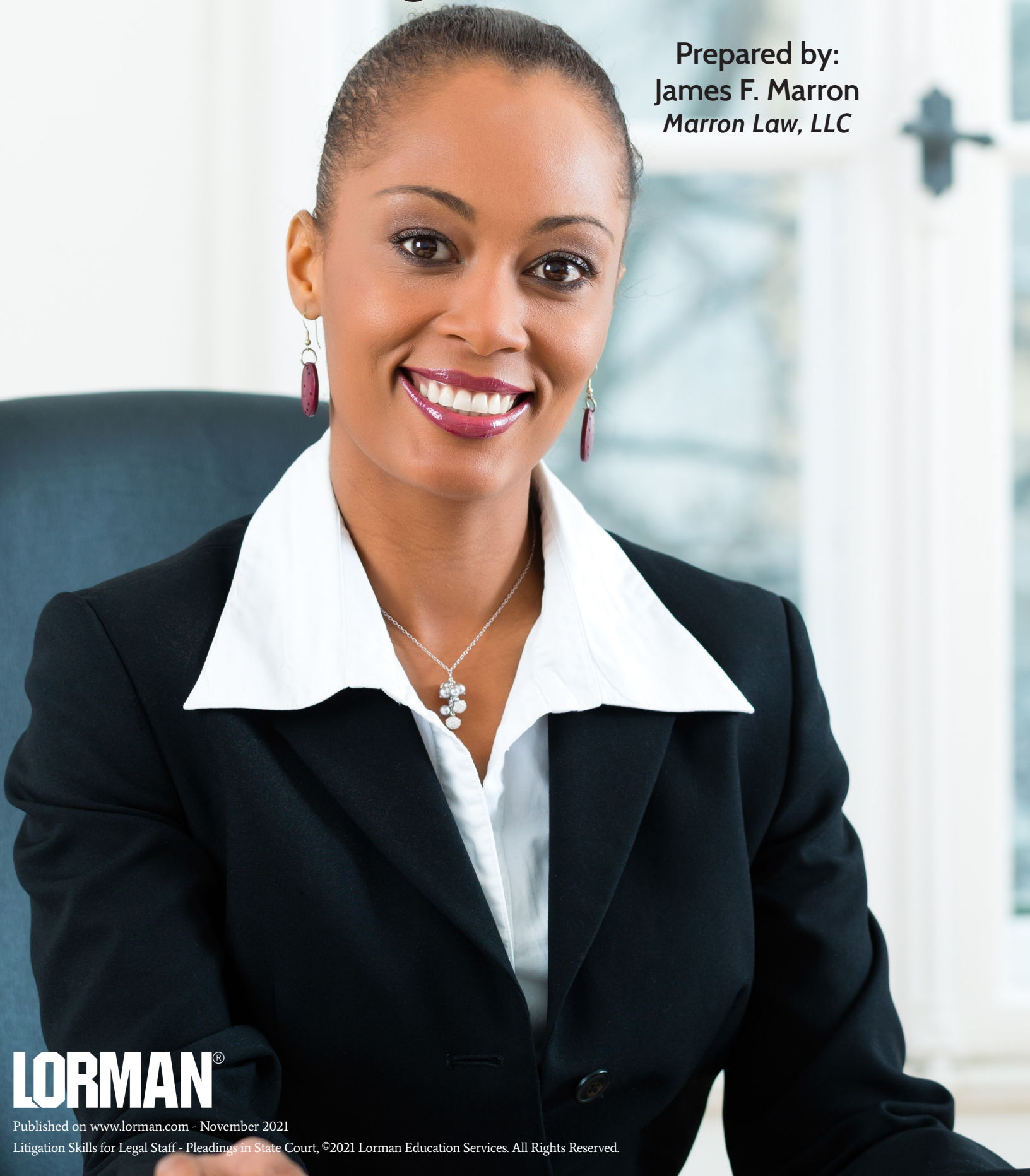


Litigation Skills for Legal Staff Pleadings in State Court

Prepared by:
James F. Marron
Marron Law, LLC



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Litigation Skills for Legal Staff

Pleadings in State Court

“Pleadings” are written statements by the parties of the facts constituting their respective claims and defenses. ORCP 13. They include complaints and answers.

A. Complaints

A complaint starts the litigation process. In order to prepare the complaint it is necessary to know where the matter must be filed (which court), the names of the parties, where they reside or can be found, the type of claim(s), and whether the dispute is subject to mandatory arbitration. Whether a case is referred to the court-annexed arbitration program is initially determined by the complaint. When a complaint is filed, the clerk reviews it and designates it “arbitration-eligible” unless, on its face, the document clearly indicates otherwise. Also, a defense attorney may plead a defense (such as a counterclaim, cross-claim, or third-party claim) or file a response that takes the case out of mandatory arbitration. Cases involving \$50,000 or less, exclusive of attorney fees and costs, and prejudgment interest, are arbitration-eligible.

A big advantage for plaintiff attorneys is conducting a pre-filing investigation before the other side even knows litigation is imminent. However, it should be noted that complaints must be filed within the time provided by applicable statutes of limitations and any statute of ultimate repose.

B. Responses to Complaints

(1) Answers And Affirmative Defenses. An answer responds to the allegations of the complaint by admission, denial, and/or asserting a lack of knowledge. An answer may allege affirmative defenses that avoid the claim(s) stated in the

complaint. An answer may also allege third-party claims, crossclaims and counter-claims discussed below. An answer must be filed thirty days from date of service or if by publication, 30 days from date of first publication. ORCP 7C(2), 15A.

A plaintiff may need to respond to an answer by a motion or, in limited circumstances, by a reply. ORCP 13B, 21. Otherwise, no response is required. The defendant may respond to a reply in one of three ways (1) file a motion pursuant to ORCP 21, (2) file a motion with the court for leave to file a rejoinder to avoid new allegations in the reply, or (3) because the allegations of the reply are by law denied or avoided, not file anything in response. ORCP 13B, 19C.

(2) Third-Party Claims. A party who has been sued can, in turn, sue someone else who is not a party to the action who is or may be liable to them for all or part of the plaintiff's claim against them. ORCP 22C. This commonly occurs in construction defect litigation in which a property owner has sued their general contractor who, in turn, sues all the subcontractors actually responsible for building the faulty project. These claims must be asserted within 90 days after service of the plaintiff's summons and complaint or agreement of parties who have appeared and leave of court must be obtained. ORCP 22C(1).

(3) Cross-Claims and Counter-Claims. A cross-claim is an independent claim that a defendant (or a third party) has against a codefendant. ORCP 22B. The cross-claim must arise from the occurrence or transaction set forth in the complaint or be related to any property that is the subject matter of the plaintiff's claim. ORCP 22 B(1). A cross-claim also may be asserted when the defendant against whom it is asserted may be liable in whole or part for the relief sought in the plaintiff's complaint. ORCP 22 B(2).

Cross-claims are subject to applicable statutes of limitations. Generally, if the statute has run on the proposed

cross-claim when the cross-claimant files its answer, the cross-claimant cannot still assert that cross-claim. Even so, as with counterclaims, a cross-claim asserted after the statute of limitations has run is not barred if it arises out of the same transaction or occurrence alleged in the plaintiff's complaint and existed when the plaintiff filed his or her complaint.

Cross-claims are subject to arbitration rules and can be used to join additional parties as defendants in that claim. A counterclaim is a claim for relief that a defendant asserts against the plaintiff. ORCP 13B. As a rule, counterclaims are permissible, not compulsory. Even so, any potential counterclaim that is not asserted but that was necessarily adjudicated with the plaintiff's claim is subject to the doctrine of issue preclusion in subsequent actions. Counterclaims are subject to the same requirements of form as complaints, except that a counterclaim shares the caption of the answer.

Counterclaims are subject to applicable statutes of limitations. Generally, if the statute has run on the claim when the plaintiff files his or her complaint, the defendant cannot still assert that counterclaim. Even so, a counterclaim asserted after the statute of limitations has run is not barred if it arises out of the same transaction or occurrence alleged in the plaintiff's complaint and if the claim existed when the plaintiff filed his or her complaint. Counterclaims are subject to arbitration rules and can be used to join additional parties as defendants in that claim.

C. Amendments

Amending a pleading involves formally changing it in some respect to make it more accurate or complete.

A party may amend a pleading to add new allegations or to correct existing allegations. ORCP 23A. New allegations are allegations that arise from the transaction or events as they

existed when the pleading was originally filed. Alleging facts that arise after the original filing is accomplished through a supplemental pleading.

A pleading may be amended before during, or after trial in accordance with ORCP 23B. If a proposed amendment would not prejudice the opposing party, courts are inclined to allow the amendment. When a pleading is amended before trial, the amendment will be made by filing a new amended pleading or by interlineations or deletion in the existing pleading. ORCP 23D.

A pleading to which a responsive pleading is permitted may be amended once as a matter of course at any time before a responsive pleading is served. A pleading to which no responsive pleading is permitted may be amended at any time within 20 days after it is served. Otherwise, a pleading may be amended only by leave of court or by written consent of the adverse party. ORCP 23A.

Under ORCP 23A, leave of court to amend a pleading shall be freely given when justice so requires. A motion to amend should include a copy of the proposed amended pleading and be supported by an affidavit setting for the reasons for amendment.

If the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. ORCP 23C.

A response by an existing party to an amended complaint, amended answer, or amended cross-claim, counterclaim, or third-party claim must be filed not later than 10 days after service of the pleading to which the response is directed. ORCP 15A. But if more than 10 days remain in the 30-day period after

service of summons on the original complaint, then that longer time is the period within which the response must be filed. ORCP 15C.



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📍 2510 Alpine Road Eau Claire, WI 54703

💻 www.lorman.com ☎ 866-352-9539 ✉ customerservice@lorman.com



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