

ESSAY QUESTION NO. 6

Answer this question in booklet No. 6

In 2005, Patrick begins to have a series of run-ins with his neighbor David. Their unpleasant relationship escalates to a physical altercation in 2006. Police Officer George responds, finding David with a broken, bleeding nose. George charges Patrick with fourth-degree assault. The charge is subsequently dismissed by the District Attorney's Office.

In 2007, Patrick sues David, within the applicable Statute of Limitations, in Alaska Superior Court for assault and battery, the latter arising from their fisticuffs, although it was David who got the worst of the fight. In court, the hostilities continue in the form of discovery disputes. Eventually David succeeds in getting the case against him dismissed due to Patrick violating the court's discovery orders. Judgment is entered against Patrick, who appeals to the Alaska Supreme Court.

In 2010, the Alaska Supreme Court reverses the dismissal and remands for trial. Now Patrick moves the Superior Court for leave to amend his complaint to join Officer George as a defendant. He alleges George is liable for false arrest, false imprisonment, assault and battery, excessive force and violation of his right under the Alaska Constitution to be free from unreasonable seizures. The Superior Court grants leave to amend. Patrick files his Amended Complaint in Superior Court, with the case now captioned *Patrick v. David and George*, and he serves George with the Amended Complaint.

No sooner has George entered his appearance than Patrick accepts a nominal settlement offer from David.

Without answering the Amended Complaint, George moves to dismiss it, asserting that the Statute of Limitations has run. Patrick opposes dismissal.

1. What factors will the Superior Court evaluate when deciding whether to grant George's Motion to Dismiss?
2. Was George required to file an answer before making his Motion to Dismiss? Explain.

GRADERS' GUIDE

*** QUESTION NO. 6 ***

SUBJECT: CIVIL PROCEDURE

1. **(70 points) What factors will the Superior Court evaluate when deciding whether to grant George's Motion to Dismiss?**

Rule 12 and Rule 15 of the Alaska Rules of Civil Procedure are the main rules that apply to this Motion to Dismiss.

Because the Amended Complaint was filed after the Statute of Limitations had run, Patrick must show how his amendment, joining a new party, "relates back" to the filing of his original complaint against David, so as to escape the bar of the Statute of Limitations. This analysis is governed by Rule 15(c), which states:

(c) **Relation Back of Amendments.** Whenever 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. An amendment *changing the party* against whom a claim is asserted relates back *if* the foregoing provision is satisfied *and*, within the period provided by Rule 4(j) for service of the summons and complaint, that party (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, *and* (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

Id. (italics added.)

Because Patrick isn't just adding new claims against the original defendant, but is adding a new defendant, George, he must show that George has had notice, and that Patrick had been mistaken about George's identity.

The Court must examine the other two requirements of Rule 15(c), because the Amended Complaint adds a party new to the Superior Court case. It may reason as follows:

(A.) Did George, within the period in 2006 provided by Rule 4 for service of Patrick's original lawsuit against the original defendant, receive "such notice of the . . . action" that George "will not be prejudiced", in

2010 and beyond, in “maintaining a defense on the merits” against the Amended Complaint?

There are no facts showing George ever received notice that Patrick would add him to the lawsuit, or would sue him at all.

(B.) Did George know, or should he have known, that Patrick would have sued him earlier, “but for a mistake concerning the identity of the proper party”?

The answer is almost certainly “no.” At all times, Patrick knew or could have known George’s identity; first, if George was in uniform and wearing a name tag; second, if Patrick had inquired of the police department or obtained a copy of the police report; third, because of George’s name on the charging documents in the criminal case, and fourth, because George would have been an important witness in discovery in the civil case against David. There was no mistake of identity meeting the requirements of part (2) of Rule 15(c).

The Superior Court will grant the Motion to Dismiss the Amended Complaint joining George.

Note that the “relation back” requirements at parts (1) and (2) of Rule 15(c) are stated in the conjunctive. Even assuming George was fully aware of Patrick’s original 2006 suit against David, the Amended Complaint is barred, because Patrick at all times knew or should have known the identity of the officer.

2. (30 points) Was George required to file an answer before making his Motion to Dismiss? Explain.

George appropriately filed the Motion instead of answering, because Rule 12(b) states, “A motion making any of these defenses shall be made *before pleading* if a further pleading is permitted.” (Italics added.) Thus, the motion is timely and must be filed before answering.
