Section 1983: Practical Considerations for Motions Practice

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Overview

- General Planning Strategies
- Defective Pleadings
- Removal



Strategic Planning for Section 1983 Motions

Mapping Strategies For Motions Practice

“Whiteboarding” Your Litigation Strategy



REVIEW



IDENTIFY CLAIMS

Typical Claims:
4th Amendment
1st Amendment
14th Amendment



INVESTIGATE

Review existing evidence and documentation in order to prepare responsive pleadings.



EXPERTS

Early retention

Best Practices

Reasonableness of the officer’s actions

What to expect



DEFENSES

S.O.L.

Immunity

Issue or Claim Preclusion

Navigating Your Litigation Map:
What is your Goal at Each Section?



Education

- Informing the court
- Alerting opposing counsel
- Educating yourself
- Posturing for settlement



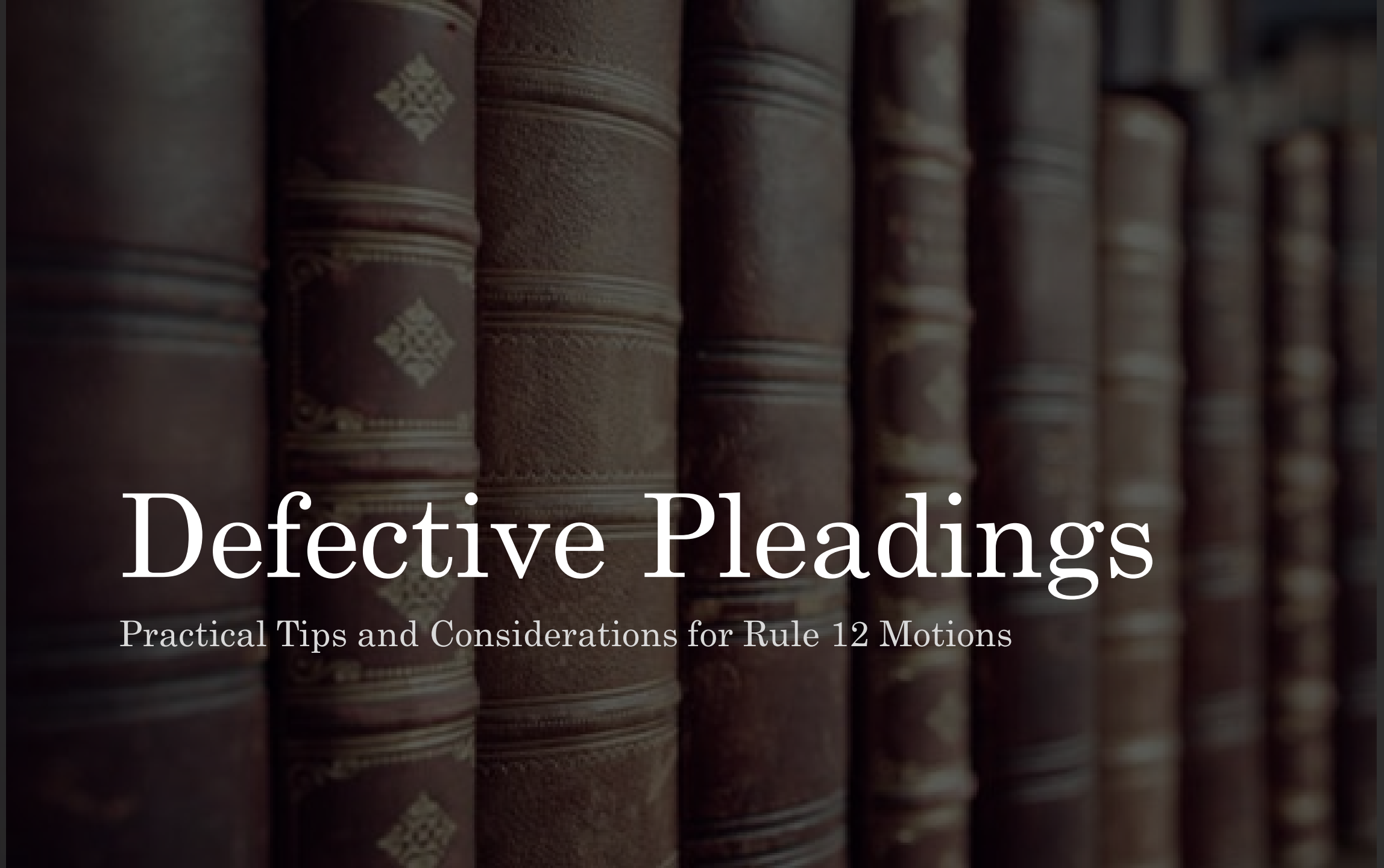
Issue-Narrowing

- Factual Issues
- Legal Issues



Dismissal

- Rule 12 Motions
- Immunity
- Motion for Summary Judgement



Defective Pleadings

Practical Tips and Considerations for Rule 12 Motions

Rule 12(b) Motions

- 12(b)(1): Lack of subject-matter jurisdiction
- 12(b)(2): Lack of personal jurisdiction
- 12(b)(3): Improper venue
- 12(b)(4): Insufficient process
- 12(b)(5): Insufficient service of process
- 12(b)(6): Failure to state a claim upon which relief can be granted
- 12(b)(7): Failure to join a party

Factors For Moving to Dismiss

- Raise these EARLY
  - 12(b) motions must be asserted before a responsive pleading
- Consider waivable defenses
- Winning favor with the court

Moving to Dismiss per Rule 12(b)(6)

- Failure to state a claim upon which relief can be granted

- Dismissed with prejudice

- "Plausibility" standard
  - *Ashcroft v. Iqbal*, 566 U.S. 662 (2009)
  - *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)

Rule 12(b)(6) "Plausability" Standard

- F.R.C.P. Rule 8(a)(2) requires a "short and plain statement of the claim showing that the pleader is entitled to relief."

- Complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"
  - *Iqbal*, 566 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570)

- Plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."
  - *Id.*, 566 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556)

Rule 12(b)(6) Motions

- Think before you file!
  - This is a BIG ask at this stage in the litigation
  - Dismissed with prejudice
- Moving to dismiss only *some* of the claims may be beneficial
  - Always look to win favor with the court
- Plaintiff can move to amend complaint to cure defects
- If necessary, remove the case before moving to dismiss
- File 12(b)(6) motion *with* your answer

Judgement on the Pleadings: Rule 12(c)

- Make sure to raise all defenses in the responsive pleading

- Filed *after* pleadings are closed
  - "…but early enough not to delay trial"
  - Responsive filings may reopen the pleadings

- Rule 12(b)(6) motion may be argued here



Removal

Should I Remove to Federal Court?

28 U.S. Code § 1441: Removal of Civil Actions

(a) Generally-

Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

Section 1983 Claims

- Federal courts have original jurisdiction
  - 28 U.S.C. 1441
- Involve alleged violation(s) of federal statutes or the US Constitution
- ALL defendants must consent to removal

Factors for Removal

- Federal judges
  - Neutrality
  - Experience
- Stricter pleading requirements
- More caselaw
- Qualified Immunity
- Wider jury pool

Factors for Removal

- Federal judges
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  - Experience
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- Caselaw
- Qualified Immunity
- Wider jury pool
- Fast timeframe to seek removal

Questions?