

PREFACE

It has been twenty years since the last revision of volume 5B of *Federal Practice and Procedure*, which focuses on Rule 12(a) and most of Rule 12(b). Since then, the original author of that material, Professor Arthur Miller, and I have faithfully attended to its care through annual supplementation. The time has arrived to consolidate this work into a new edition, and I am honored to have been asked to complete that task.

Rule 12(a) of the Federal Rules of Civil Procedure addresses the time to serve a responsive pleading and the effect of intervening motions on that timing. This is an area that has been relatively stable. Rule 12(b) covers the presentation of defenses by pre-answer motion. The most significant development here since 2004 is the Supreme Court's overhaul of the basic pleading standard under Rule 8(a)(2), which it first accomplished in *Bell Atlantic, Corp. v. Twombly* in 2007, and then solidified in *Ashcroft v. Iqbal* in 2009. By abrogating the long-standing approach to assessing the sufficiency of pleadings that had been articulated in *Conley v. Gibson*, and adopting a new "plausibility" standard, the Court disrupted long-settled understandings about the role of the pleadings in civil litigation and the relationship between Rule 8(a)(2) and other rules. The new pleading standard is typically enforced via a motion to dismiss for failure to state a claim under Rule 12(b)(6), coverage of which forms the bulk of volume 5B.

By now, the new plausibility pleading standard has settled in as the established norm. However, courts continue to work out its contours and its reach, wrestling with what it demands and with whether it should apply beyond assessing the sufficiency of claims—for example, does the standard govern the pleading of jurisdiction or affirmative defenses. This revision presents that body of jurisprudence and guides the reader to a proper understanding of what is currently required under the rules. Finally, the Appendix of Forms—which provided illustrations of the minimum level of detail the pleading rules called for—were abrogated by the Supreme Court in 2015 as part of the rules amendment process, removing what stood as an embarrassing counterargument to the Court's own insistence that the ordinary pleading standard must be read to require the pleading of facts showing plausible entitlement to relief. This revision takes all of these developments into account, providing an up-to-date discussion of the case law on this topic. The revision also brings together the coverage of Rule 12(b)(6) under a single volume, relocating Section 1358—which presents illustrative cases involving Rule 12(b)(6)—from volume 5C to volume 5B.

Additionally, this revision takes the opportunity to streamline the wealth of material previously made available for users via the prior edi-

tion and its annual supplementation by eliminating lengthy, circuit-by-circuit references to outdated cases that are likely of diminished utility today. Particularly in light of the sea-change in pleading standards, it is now important to focus discussion in this area of the treatise on contemporary understandings of these rules more so than how courts many decades ago understood them. Thus, within this revision users will find fewer instances of exhaustive citations to older cases and more emphasis on a discussion and analysis of how the rules are interpreted and applied, making its text more navigable and useful overall.

Finally, in 2007 the Federal Rules of Civil Procedure were amended comprehensively as part of a restyling project that sought to modernize and simplify the language used in the rules, for example, by eliminating most uses of the word “shall” and substituting the word “allegation” for “averment”. This revision updates the text of the treatise to reflect these stylistic modifications, ensuring that all quotations and excerpts from the rules are current and accurate.

It is a privilege to assume responsibility for this portion of *Federal Practice and Procedure* from my mentor and former teacher, Arthur Miller. I first learned about the power and intricacies of federal civil procedure from Professor Miller at Harvard Law School and became infected with a love for the subject as a result of his enthusiastic presentation of the material. It is my hope that I can maintain the high standards that Professor Miller has established for this work.

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