



## **Essay Question One**

1. Paul Peterson, a citizen of Pennsylvania, and David Dobbs, a citizen of Delaware, were involved in a fight in a bar in Pittsburgh on July 20, 2000. On July 1, 2002 Paul Peterson filed a lawsuit in federal district court in Pennsylvania against Doug Dobbs, seeking \$100,000 for personal injuries. The complaint and summons were delivered to the federal marshal in Delaware on July 14, 2002. Doug Dobbs was served on August 1, 2002. Doug was totally mystified by the complaint. Accordingly, he does not respond. Nothing else happens.

His twin brother David has been on a mission trip to an Inca village high in the Andes for six months. When he returns to Delaware on November 10, 2002, Doug asks him: "Do you know a Paul Peterson?" After some discussion, David realized that he was the intended defendant.

The plaintiff's investigator discovered the mistake on December 1, 2002. The plaintiff's law firm filed a Rule 15 motion to amend on December 2. The plaintiff seeks to substitute David for Doug. It argues that, under the Erie doctrine, and in particular Hanna and Byrd, the Federal Rules of Civil Procedure apply, and that the requirements of 15(c)(3) have been satisfied.

You represent the purported defendant David. You have filed an objection to any amendment or substitution.

The statute of limitations for assault and battery in Pennsylvania is two (2) years. Pennsylvania has a narrow and restrictive amendment provision. In addition, the Pennsylvania courts have consistently held that amendments to pleadings are not an effective means of avoiding the legislative policy embodied in statutes of limitations.

You are to make the best argument you can for the defendant. Be organized, be thorough, be logical, be creative. You are standing in front of the federal judge. It is not necessary to repeat the basic facts. (Before going to the courthouse, your senior partner reminds you that, no matter how good one argument may appear, don't neglect other solid arguments.)

## **Essay Question Two**

2. You are the law clerk to a federal judge in the Western District of Arkansas. Today, December 13th, she comes to you with the following situation:

"Lacy (or Larry) Law Clerk, we have a complicated problem here and I need your advice. Let me give you the basic facts. On October 1st, the plaintiff sued in our local state court. In Count I Paul the plaintiff alleged that Police Officer Dan violated his civil rights when Dan used excessive force in detaining Paul during an environmental protest. Relying on the federal civil rights act, Paul sued for \$50,000. In addition, Paul sued Dan under the

tort of assault, which is (as you know) a valid common law claim in Arkansas state courts, also seeking \$50,000. Both parties are from Arkansas and all the events took place in Arkansas.

In a separate Count II of the same lawsuit, Paul's lawsuit also named as defendant "John Doe, an unknown person wearing the uniform of an Missouri State Trooper, who used excessive force, in violation of state common law, against Paul in the hours just prior to the environmental protest." Paul sought \$25,000 from John Doe.

I have learned that Ark. Code Ann. § 16-56-125, permits "any person to file a complaint stating his cause of action in the appropriate court of this state, whenever the identity of the tortfeasor is unknown. The name of the unknown tortfeasor shall be designated by the pseudo-name John Doe. Upon determining the identity of the tortfeasor, the complaint shall be amended by substituting the real name for the pseudo-name." However, this 1959 statute has never been interpreted by the Arkansas courts.

Now back to the facts: On October 19th Dan removed the lawsuit to this court. On October 31 the statute of limitations on all possible claims expired.

Today Paul has filed a motion in this court to amend and to substitute the name of Tony Tiger for John Doe. In addition, Dan has filed motions challenging jurisdiction and parts of the lawsuit. Finally, the attorney for Tony Tiger objects to his inclusion in the lawsuit.

Here are my questions:

- 1) Can Paul assert both claims against Officer Dan in this action? (4 points)
- 2) Was the entire lawsuit (both suits) properly removed to this court? (4 points)
- 3) Is the amendment to substitute Tony Tiger permitted by the Federal Rules of Civil Procedure? (6 points)
- 4) What do I do with the Arkansas Statute? (6 points)

Remember, I don't need definitive answers to each of these questions. In some instances, the facts may not be determined, but I need to know the governing and controlling law. When there are clear answers, I want them. If further inquiries are appropriate or if you believe I need to ask additional questions (of you or the attorneys), I would appreciate your guidance and advice."