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## Filing Supplemental Pleadings in Federal Court

### Question Presented

Can a party file a supplemental pleading in Federal court, and must it be filed with leave of the court?

### Short Answer

Yes, a party may file a supplemental pleading per the Federal Rules of Civil Procedure 15 (d)

### Discussion

A party can file a supplemental pleading under USCS Fed Rules Civ Proc R 15(d) which reads:

Supplemental Pleadings. (d) Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statements of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor

As to whether leave of the court is required to file a supplemental pleading, the case of *Ebel v. Drum*, 55 F. Supp. 186, 188 (D. Mass. 1944) is instructive. In this case,

Defendants asked to have their motion allowed under authority granted under Rule 15(d).

The court observed:

This section of Rule 15, with changes not material here, is an adaptation of former Equity Rule 34, 28 U.S.C.A. § 723 appendix. Under Rule 15(d) as under former Equity Rule 34. **Leave must first be obtained from the court before the supplemental pleading can be filed and such an application is addressed to the discretion of the court.**

*Id.* at 188. (Emphasis added)

In, *Southwest Nurseries, LLC v. Florists Mut. Ins., Inc.*, 266 F. Supp. 2d 1253 (D. Colo. 2003) the Plaintiff's proposed supplemental complaint raised allegations concerning defendants in the context of settlement negotiations, which necessarily implicated the policies underlying *Rule 408 of the Federal Rules of Evidence*. The court weighed the competing objectives underlying the applicable Federal Rules of Civil Procedure and Evidence, and found that the proposed supplemental complaint would violate *Fed. R. Evid. 408* and be unduly prejudicial. The court observed:

*Fed. R. Civ. P. 15* states that the court may upon such terms as are just, permit a party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. A motion to amend under *Fed. R. Civ. P. 15(d)* is addressed to the sound discretion of the court, and leave to serve a supplemental pleading should be liberally granted unless good reason exists for denying leave, such as prejudice to the defendants.

*Id.* at 1256.

Thus, it is the discretion of the court to allow the leave to supplement. The courts are to take a liberal approach while considering a leave to supplement. Generally a leave is denied when it seems to the court that allowing a leave to supplement will cause prejudice to the defendants. However, in this case our client is not yet a party, hence a non-party cannot cause prejudice to the other party.

Nothing specifically in the context of an intervenor, or a non-party filing a supplemental complaint was found.

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