

# Court Rules & Court Documents; Discovery & Jury Instructions

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Spring 2015

# Court Rules

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# Overview

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- Procedural Rules come into play at every step of litigation
- **Must** look for:
  - Federal Rules of Civil Procedure (FRCP)
  - Local Rules of Civil Procedure
- Helpful:
  - Litigation **treatises** and **guides**
  - In-house **forms** or **form books**
  - **Filed court documents**
    - i.e., Pleadings (incl. complaints and answers), motions, etc. filed in other cases

# State Court and Criminal Procedure Rules

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- This semester, you will use **federal rules of civil procedure** for your LRWA II projects.
- In practice, there are also rules of procedure in
  - **State courts**
  - **Criminal courts** (federal and state)
  - **Appellate courts** (federal and state)
- The same research techniques apply for all rules research.

# Background - FRCP

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- Federal Rules of Civil Procedure (FRCP)
  - Govern procedure in the federal district courts
  - Promulgated by the United States Supreme Court and approved by Congress
- Example
  - **Rule 3:** “A civil action is commenced by filing a complaint with the court.”

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The FRCP continues to Rule 86, and then there are forms, too.

These are from the U.S. Courts website; Cornell LII has a very useful set. See notes section of this slide for URLs.

# Westlaw materials

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# Westlaw Resources - FRCP

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- Federal Rules of Civil Procedure (FRCP)
  - Can find by citation
    - E.g., FRCP 12
    - *See next slide*
  - Retrieved from USCA
    - In volumes following Title 28 (Judiciary)
    - Will include annotations to cases and other helpful research aids



**Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolida...**

United States Code Annotated Federal Rules of Civil Procedure for the United States District Courts (Approx. 4 pages)

Document

Notes of Decisions (3,912)

History (2)

Citing References (632,505)

Context &amp; Analysis (1,400)

Powered by KeyCite

[Return to list](#)[Table of Contents](#)

United States Code Annotated

Federal Rules of Civil Procedure for the United States District Courts (Refs &amp; Annos)

Title III. Pleadings and Motions

Federal Rules of Civil Procedure Rule 12

**Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing**

Currentness

**(a) Time to Serve a Responsive Pleading.**

(1) **In General.** Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer:

(i) within 21 days after being served with the summons and complaint; or

(ii) if it has timely waived service under [Rule 4\(d\)](#), within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States.

(B) A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

(2) **United States and Its Agencies, Officers, or Employees Sued in an Official Capacity.** The United States, a United States agency, or a United States officer or employee sued only in an official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the United States attorney.

(3) **United States Officers or Employees Sued in an Individual Capacity.** A United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the officer or employee or service on the United States attorney, whichever is later.

(4) **Effect of a Motion.** Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

**NOTES OF DECISIONS (3912)**

## GENERALLY

MOTION TO DISMISS GENERALLY

MOTION TO DISMISS FOR LACK OF JURISDICTION GENERALLY

MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

MOTION TO DISMISS FOR INSUFFICIENCY OF SERVICE OF PROCESS

MOTION TO DISMISS FOR FAILURE TO STATE CLAIM GENERALLY

**RELATED ANALYSIS****Practitioner Insights**

by Claire Sylvia Partner,  
Phillips & Cohen LLP

Statute of limitations for retaliation claim under False Claims Act is three years

Prac. Insights Emp. TX 0034

**Practitioner Insights**

by Claire Sylvia Partner,  
Phillips & Cohen LLP

Statute of limitations for retaliation claim under False Claims Act is three years

Prac. Insights Emp. CA 0034

**Briefs**

Brian MCVEIGH, Plaintiff and Appellant, v. Recology San FRANCISCO, Recology, Inc., Recology Service Center and Sunset

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consol...

United States Code Annotated Federal Rules of Civil Procedure for the United States District Courts (Approx. 4 pages)

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History (2)

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Context & Analysis (2,705)

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Searchable Notes of Decision.

GENERALLY

MOTION TO DISMISS GENERALLY

MOTION TO DISMISS FOR LACK OF JURISDICTION GENERALLY

MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

MOTION TO DISMISS FOR INSUFFICIENCY OF

Amended and supplemental pleadings, construction with other rules

Amendment of answer

Amendment of pleadings or motions, time for responsive pleadings

Answer

Answer - Generally

Answer - Amendment of answer

Answer - Motion

Limitations, law governing

Motion, answer

Motion for judgment on pleadings, construction

Motion for judgment on pleadings, law governing

Motion for judgment on pleadings, purpose

Motion for more definite statement, construction

Motion for more definite statement, purpose

Motion taken under advisement

Sort By: Procedural Order

GENERALLY

Construction

Construction - Generally

This rule must be liberally construed. McKenna v. U.S. Lines, S.D.N.Y.1939, 26 F.Supp. 558.

Construction - Motion for judgment on pleadings

Also listed as Motion for judgment on pleadings, construction

A strict construction of subd. (c) of this rule regarding presentation of motion for judgment on pleading would require a motion for judgment on pleadings because of failure to state claim upon which relief can be granted to be made before other pleadings but objection contained in motion was considered as not "waived" by answer. Liquid Carbonic Corp. v. Goodyear Tire & Rubber Co., N.D.Ohio 1940, 38 F.Supp. 520.Federal Civil Procedure 1061

Motion for judgment on pleadings, construction

See Construction - Motion for judgment on pleadings

Construction - Motion for more definite statement

Also listed as Motion for more definite statement, construction

Provision of this rule requiring motion for more definite statement to point out defects complained of and details desired must be liberally construed. McKenna v. U.S. Lines, S.D.N.Y.1939, 26 F.Supp. 558.Federal Civil Procedure 957

# WL Resources - Treatise

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## ◉ *Federal Practice and Procedure (FPP)* by Wright & Miller

- Scholarly **treatise** on federal practice and procedure
  - Part of the treatise is organized by FRCP Rule
- Explanation of rules and how they have been applied, with citations to illustrative cases

Q federal practi

4th Circuit

SEARCH

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Looking for this?

Federal Practice & Procedure (Wright & Miller) ←

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## News and Insight from REUTERS



### U.S. privacy board says NSA phone program illegal, should end

REUTERS | Thursday, January 23, 2014

The National Security Agency's bulk collection of phone records provides only minimal benefits to countering terrorism, is illegal and should end, a federal privacy watchdog said in a new report reviewed by Reuters.

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Home > Secondary Sources > Texts & Treatises > Litigation Texts & Treatises > Federal Practice & Procedure (Wright & Miller) > Federal Practice and Procedure > Federal Rules of Civil Procedure

## Chapter 3. Commencement of Action; Service of Process and Other Papers; Time

Browse Table of Contents below or search above.



Search all content  Specify content to search

### TOOLS & RESOURCES

[Federal Practice & Procedure Index](#)

#### Rule 3. Commencement of Action

- § 1051. History and Purpose of Rule 3
- § 1052. Commencement of Action—In General
- § 1053. --Construction with Other Federal Rules
- § 1054. --Construction with Federal Statutes
- § 1055. --Payment of Filing Fees
- § 1056. Statutes of Limitations—In General
- § 1057. --Diversity of Citizenship Cases

#### Rule 4. Summons

- A. Service of Process and Personal Jurisdiction—In General
- B. Immunity From Process
- C. Rule 4—In General
- D. Issuance and Form of Summons
- E. Manner of Service
- F. Service on Individuals
- G. Service on Corporations and Other Associations
- H. Service on Government and Agencies Thereof
- I. Service Pursuant to State Law or Federal Statute
- J. Actions Quasi-In-Rem
- K. Territorial Limits on Service
- L. Return and Amendment of Process
- M. Service in a Foreign Country
- N. Time Limit for Service

#### Rule 4.1. Service of Other Process

- § 1138. Service of Other Process—In General

#### Rule 5. Serving and Filing of Pleadings and Other Papers

- § 1141. Service and Filing—In General
- § 1142. History of Rule 5
- § 1143. Pleadings and Similar Papers Required to Be Served
- § 1144. Appearance a Prerequisite for Service
- § 1145. Service on Attorney Required
- § 1146. When Amended Pleadings Containing Additional Claims May be Served on Opposing Party's Attorney
- § 1147. Manner of Service
- § 1148. Service by Mail—In General
- § 1149. --Notice of Removal

**The treatise provides the text of each rule and an in-depth analysis of the rule, including citations to major cases interpreting the rule.**

# Lexis Resources - FRCP

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- Federal Rules of Civil Procedure (FRCP)
  - Use find by citation
    - E.g., FRCP 12
  - Retrieved from USCS
    - In volumes after Title 51.
    - Will contain **annotations**

Document: USCS Fed Rules Civ Proc R 12

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## USCS Fed Rules Civ Proc R 12

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**Part 1 of 4.** You are viewing a very large document that has been divided into parts.

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

**(a)** Time to Serve a Responsive Pleading.

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Document: USCS Fed Rules Civ Proc R 12

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Use Jump to... to quickly get to the Case Notes, which are at the bottom of the page.



# Lexis Resources - Treatise

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## ◉ *Moore's Federal Practice – Civil*

- Major treatise on federal civil practice and procedure
  - Each chapter corresponds to a rule in the FRCP
    - i.e., Chapter 12 is about FRCP 12
- Explanation of rules and how they've been applied, with citations to cases

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| ▶ | <input type="checkbox"/> § 3.05 Filing Pursuant to Rule 3 Tolls Statute of Limitations in Cases Based on Federal Law                |    |
| ▶ | <input type="checkbox"/> § 3.06 State Method of Tolling Statute of Limitations Applies in Diversity Actions That Differ From Rule 3 |    |
| ▶ | HISTORICAL APPENDIX   |    |
| ▶ | Chapter 4 Summons   |    |
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| ▶ | HISTORICAL APPENDIX   |    |
| ▶ | Chapter 5 Serving and Filing Pleadings and Other Papers   |    |
| ▶ | HISTORICAL APPENDIX   |    |

**Moore's includes the rules' text and analysis, including citation to important cases interpreting the rule.**

# Local Rules – Virginia

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# Background - Local Rules

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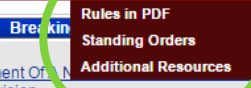
- Local Rules are written by each court
  - E.g., Local Rules for the United States District Court, Eastern District of Virginia
    - See <http://www.vaed.uscourts.gov/>
    - <http://www.vaed.uscourts.gov/localrules/LocalRulesEDVA.pdf>
- Local rules **supplement** the FRCP and **must** be followed in the particular court.
- Example
  - Eastern District of Virginia Rule 3 will tell you which division to file your complaint in.
- Find the local rules on the court's web site.

# United States District Court Eastern District of Virginia

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**Breaking News**

- November 14, 2014  
[Public Notice For Appointment Of N... Application Form - Norfolk / Newport News Division](#)
- October 23, 2014: NOTICE re: 2014 U.S.S.C. Amendment Reducing Drug Offense Levels - Motions for reduction in sentence based on the 2014 U.S.S.C. Amendment Reducing Drug Offense Levels should be electronically filed by registered e-filing users using the motion docket event "Motion Reduce Sentence - USSC Amendment."
- July 31, 2014

Please be aware that citizens are being targeted by a juror phishing email that asks recipients to provide personal identifiers (SSN, DOB, mother's maiden name, etc.) on an attached PDF form and emailed back to the originator. **Please do not respond to the email.** Our Court will not request that your personal identification information be sent directly in an email response. Our request for you to complete a qualification questionnaire will be initiated by formal written correspondence and we will provide instructions for our juror participants to be authenticated over a secure connection.

**Resources**

- [Court Schedules](#)
- [PACER](#)
- [Evidence Presentation Systems](#)
- [Notable Cases](#)
- [CJA Attorney Information](#)
- [Opinions](#)
- [Naturalization](#)
- [Scam Alerts](#)

**Local Rules / Procedures**

- [Rules in PDF](#)
- [Standing Orders](#)
- [Civil Motions Procedures - Norfolk/Newport News](#)
- [Norfolk/Newport News Courtesy Copies/Division Specific Information](#)
- [Civil and Criminal Motions Procedures - Alexandria](#)
- [Richmond Courtesy Copies/Division-Specific Information](#)

**Forms and Fees**

- [Civil Forms](#)
- [Criminal Forms](#)
- [Attorney Forms](#)
- [4th Circuit Forms](#)
- [Court Fees](#)

**Publications**

- [First comprehensive history of the United States District Court for the Eastern District of Virginia](#)
- [Code of Pretrial and Trial Conduct](#)
- [Pro Se Litigant Reference Handbook](#)
- [Court Interpreter Manual](#)

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**Jury Services**

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- [eJUROR: Jury Information Form and Qualification Questionnaire](#)
- [Juror Reporting Instructions](#)
- [eJUROR Video](#)



# Court Documents

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# Court Documents

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- ◉ Pleadings and Motions filed in the case
  - Westlaw & Lexis provide some, but not all
  - **Filed doesn't mean good!**
    - No substitute for your own analysis
    - Prefer in-house forms and examples
  - You can search for documents or link to the available related ones from an opinion.
    - **Westlaw:** Trial Court Documents
    - **Lexis:** Briefs, Pleadings and Motions



629 f.supp.2d 526 Search Search Tips
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Thomas M. Gilbert Architects, P.C. v. Accent Builders & Developers, LLC, 629 F. Supp. 2d 526 (Copy citation)

United States District Court for the Eastern District of Virginia, Richmond Division
August 28, 2008, Decided; August 28, 2008, Filed
Civil Action Number 3:07CV699

Reporter: 629 F. Supp. 2d 526 | 2008 U.S. Dist. LEXIS 66504

THOMAS M. GILBERT ARCHITECTS, P.C., Plaintiff, v. ACCENT BUILDERS AND DEVELOPERS, LLC, et al., Defendants.

Notice:

Subsequent History: Affirmed by Thomas M. Gilbert Architects, P.C. v. Accent Builders & Developers, LLC, 2010 U.S. App. LEXIS 9299 (4th Cir. Va., May 6, 2010)

Prior History: Thomas M. Gilbert Architects, P.C. v. Accent Builders & Developers, LLC, 2008 U.S. Dist. LEXIS 43928 (E.D. Va., June 4, 2008)

Core Terms

fair use, copyrighted work, modified, misuse, infringement, license, copyright owner, creator's, weigh, ownership, notice, copyright infringement, modifications, licensee, implied license, transformative, nonexclusive, summary judgment motion, new work, architectural, affirmative defense, commercial purpose, the Copyright Act, summary judgment, material fact, creative, reliable

Case Summary

Procedural Posture

Plaintiff, an architectural firm, provided architectural plans (plans) for a certain real estate project. Defendants were hired to develop the project. Plaintiff put a notice of copyright on the plans. Defendants copied and made changes to the plans. Plaintiff sued for copyright infringement. Plaintiff also alleged a claim under the Digital Millenium Copyright Act (DMCA). Plaintiff moved for summary judgment.

Overview

To establish a prima facie case of copyright infringement, a plaintiff had to show that (1) he owned the copyright to the work that was allegedly copied, and (2) the defendant copied protected elements of the work. Here, defendants did not contest the validity of plaintiff's registration certificate and, therefore, the first element was met. Additionally, defendants did not dispute that they copied and modified the plans. The court held defendants infringed plaintiff's copyright and the affirmative defenses asserted by defendants lacked merit. Defendants' modification and use of the plans was not protected by the fair use doctrine. Further, defendants had not presented sufficient evidence to create a jury issue on the affirmative defense of implied license. Finally, no court had found, as defendants urged, copyright misuse based on a copyright being overpriced or too expensive. The court opined that the notion that a defendant could infringe a copyright because it found the owner's price

About this Document

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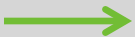
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Thomas M. Gilbert Architects, P.C. v. Accent Builders and Developers, LLC

United States District Court, E.D. Virginia, Richmond Division. August 28, 2008 629 F.Supp.2d 526 (Approx. 15 pages)

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| <b>1. Complaint</b><br>THOMAS M. GILBERT ARCHITECTS, P.C. a Virginia professional corporation, Plaintiff, v. ACCENT BUILDERS AND DEVELOPERS, LLC a Virginia limited liability company, Serve: Michael Tummillo and Design Custom Builders, Inc. a Virginia corporation, Serve: Michael Tummillo and Michael Tummillo, Defendants.<br>2007 WL 4885242 |     | E.D.Va. | Nov. 9, 2007  | Pleading |
| <b>2. Defendants' Trial Memorandum Regarding Profits</b><br>Thomas M. GILBERT ARCHITECTS, P.C., Plaintiff, v. ACCENT BUILDERS AND DEVELOPERS, LLC, et al., Defendants.<br>2008 WL 3925452  |     | E.D.Va. | Jun. 16, 2008 | Motion   |
| <b>3. Plaintiff's Trial Brief Regarding Infringers' Profits and the Potential for the Offering of Expert Witness Testimony</b><br>Thomas M. GILBERT ARCHITECTS, P.C., v. ACCENT BUILDERS AND DEVELOPERS, LLC, Design Custom Builders, Inc. and Michael Tummillo.<br>2008 WL 3925370  |     | E.D.Va. | Jun. 9, 2008  | Motion   |
| <b>4. Plaintiff's Trial Brief Regarding Infringers' Profits and the Potential for the Offering of Expert Witness Testimony</b><br>Thomas M. GILBERT ARCHITECTS, P.C., v. ACCENT BUILDERS AND DEVELOPERS, LLC, Design Custom Builders, Inc. and Michael Tummillo.<br>2008 WL 3925371  |     | E.D.Va. | Jun. 9, 2008  | Motion   |
| <b>5. Reply Memorandum In Support of Motion to Exclude Expert Testimony</b><br>Thomas M. GILBERT Architects, P.C., Plaintiff, v. Michael TUMMILLO, et al., defendants.<br>2008 WL 3925365  |     | E.D.Va. | May 29, 2008  | Motion   |
| <b>6. Reply Memorandum in Support of Plaintiff's Motion for Summary Judgment of Infringement</b><br>THOMAS M. GILBERT ARCHITECTS, P.C., Plaintiff, v. Michael TUMMILLO, et al., Defendants.<br>2008 WL 3925364   |     | E.D.Va. | May 23, 2008  | Motion   |
| <b>7. Defendants' Memorandum of Law in Opposition to Plaintiff's Motion to Exclude Expert Testimony</b><br>Thomas M. GILBERT ARCHITECTS, P.C., Plaintiff, v. ACCENT BUILDERS AND DEVELOPERS, LLC, et al, Defendants.<br>2008 WL 3925363  |     | E.D.Va. | May 20, 2008  | Motion   |
| <b>8. Defendants' Memorandum of Law In Opposition to Plaintiff's Motion for Summary Judgment of Infringement</b><br>Thomas M. GILBERT ARCHITECTS, P.C., Plaintiff, v. ACCENT BUILDERS AND DEVELOPERS, LLC, et al., Defendants.<br>2008 WL 3925332  |     | E.D.Va. | May 15, 2008  | Motion   |
| <b>9. Memorandum in Support Motion to Exclude Expert Testimony</b><br>Thomas M. GILBERT Architects, P.C., Plaintiff, v. Michael TUMMILLO, et al., Defendants.  |     | E.D.Va. | May 9, 2008   | Motion   |

Link to related filings.

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## Trial Court Documents (125)

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A. V., a minor, by his next friend Robert Vanderhye K. W., a minor, by his next friend Kevin Wade, Sr. E. N., a minor, by her next friend Scott Nelson and M. N., a minor, by her next friend Scott Nelson, Plaintiffs, v. IPARADIGMS, LLC, Defendant. | United States District Court, E.D. Virginia, Alexandria Division. | November 28, 2007 | No. 1:07 CV 293 CMH/LO. | 2007 WL 4298738

Exhibits indicated as "PL. EX." are plaintiffs' trial exhibit numbers (and are submitted herewith). Exhibits indicated by "Ex." followed by a number are exhibits provided with plaintiffs'...

...In particular: "Fair use is an 'equitable rule of reason,' allowing courts to find certain uses noninfringing where such uses benefit the public and further the overall purpose of the Copyright Act. The rationale for the fair use doctrine is that, when the free flow of information is sufficiently vital, it should override the copyright holder's interest in the exclusive control of the work..."

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...and the fair use doctrine as applied to copyrights....

...actual monetary loss with respect to the copyrighted work....

 2. Iparadigms, LLC's Memorandum of Law in Support of its Motion for Summary Judgment

A. V., a minor, by his next friend Robert Vanderhye K. W., a minor, by his next friend Kevin Wade, Sr. E. N., a minor, by her next friend Scott Nelson and M. N., a minor, by her next friend Scott Nelson, Plaintiffs, v. IPARADIGMS, LLC, Defendant. | United States District Court, E.D. Virginia, Alexandria Division. | November 14, 2007 | No. 1:07 cv 293 CMH/BRP. | 2007 WL 4162524

FN\* Admitted pro hac vice Defendant iParadigms, LLC ("Paradigms"), by and through its attorneys, respectfully submits this memorandum of points and authorities in support of defendant's...

...Such works thus lie at the heart of the fair use doctrine's guarantee of breathing space within the confines of copyright, and the more transformative the new work, the less will be the significance of other factors, like commercialism, that may weigh against a finding of fair use....

...As the Supreme Court has recognized, the more transformative the use, the less significant the other fair use factors: Although such transformative use is not absolutely necessary for a finding of fair use, the goal of copyright, to promote science and the arts, is generally furthered by the creation of transformative works....

...Particularly given the Courts' emphasis on the importance of the first and fourth factors, which overwhelmingly favor fair use here, plaintiffs' infringement claims must be dismissed on fair use grounds....

...The fair use doctrine considers the nature of the copyrighted work in recognition that some works are closer to the core of intended copyright protection than others....

 3. Defendant Sprint Nextel Corporation's Memorandum in Support of Its Motion for Partial Summary Judgment

QUANTUM SYSTEMS INTEGRATORS, INC., Plaintiff, v. SPRINT NEXTEL CORPORATION, Defendant. | United States District Court, E.D. Virginia, Alexandria Division. | October 29, 2007 | No. 1:07-cv-00491. | 2007 WL 5123704

Exhibit A Settlement Agreement, dated August 7, 2006, which resolved the parties' differences in the previous action (1:06-cv-00241). Exhibit B Sprint Nextel Corporation's Answers to...

...The Copyright Act lists four factors to govern whether fair use exists: (a) purpose and character of the use; (b) nature of the copyrighted work; (c) amount and substantiality of the portion copyrighted work used; and (d) effect of the use upon the potential market for or value of the

## &gt;&gt; RELATED DOCUMENTS

## Secondary Sources

## FIXING FAIR USE

85 N.C. L. Rev. 1087

May, 2007

North Carolina Law Review

.... See, e.g., American Association of Law Libraries, AALL Guidelines on the Fair Use of Copyrighted Works by Law Libraries, [http://www.aallnet.org/about/policy\\_fair.asp](http://www.aallnet.org/about/policy_fair.asp)

(last visited Feb. 25, 2007); Copyright Management Center, Fair Use

Issues, <http://copyright.iupui.edu/fairuse.htm>

(last visited Feb. 25, 2007); Stanford University Libraries, Copyright & Fair Use,

<http://fairuse.stanford.edu/> (last visited Feb. 25, 2007); University of Maryland University College, Copyright...

## OLD LYRICS, KNOCK-OFF VIDEOS, AND COPYCAT COMIC BOOKS: THE FOURTH FAIR USE FACTOR IN U.S. COPYRIGHT LAW

54 Syracuse L. Rev. 665

2004

Syracuse Law Review

.... See, e.g., Richard A. Posner, Misappropriation: A Dirge, 40 Hous. L. Rev. 621, 623 (2003) (eminent domain is a distant counterpart to fair

use); Dan L. Burk, The Trouble With Trespass, 4 J. Small & Emerging

Bus. L. 27, 50 (2000) (analogizing fair use to private takings) [hereinafter Burk, Trespass]; Dan L. Burk, Muddy

Rules for Cyberspace, 21 Cardozo L. Rev. 121, 158 (1999) ("at least one view of copyright fair use is to view it

as sort of public easement on the copyright holder's property rights"...

## A PATTERN-ORIENTED APPROACH TO FAIR USE

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U.S. District Court  
Eastern District of Virginia - (Richmond)  
CIVIL DOCKET FOR CASE #: 3:07-cv-00699-JRS

Thomas M. Gilbert Architects, P.C. v. Accent Builders and Developers, LLC et al

[Parties and Attorneys](#)  
[Docket Proceedings - \(Last\)](#)

Date Filed: Nov. 09, 2007  
Status: Closed  
Nature of suit: 820 Copyright  
Assigned to: [District Judge James R. Spencer](#)  
Case in other court: 08-02103 Case Manager  
Cause: 17:101 Copyright Infringement  
Date terminated: July 14, 2009  
Jurisdiction: Federal Question  
Jury demand: Plaintiff

**Parties and Attorneys**

**Plaintiff**

Thomas M. Gilbert Architects, P.C.

**Attorneys and Firms**

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cgatewood@hf-law.com  
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ATTORNEY TO BE NOTICED

**Defendant**

**Accent Builders and Developers, LLC**  
a Virginia limited liability company

**Attorneys and Firms**

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*Christman & Barton LLP*  
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(804) 697-4121  
Fax: (804) 697-6121  
dlacy@cblaw.com  
ATTORNEY TO BE NOTICED

**Defendant**

**Design Custom Builders, Inc.**  
a Virginia corporation

**Attorneys and Firms**

**David Brendan Lacy**  
(See above for address)  
ATTORNEY TO BE NOTICED

**Defendant**

Michael Tummillo

**Attorneys and Firms**

**David Brendan Lacy**  
(See above for address)  
ATTORNEY TO BE NOTICED

**Docket Proceedings**

**[Reverse Proceedings](#)**

| Req #             | Filing Date   | # | Docket Text  |
|-------------------|---------------|---|--|
| <a href="#">1</a> | Nov. 09, 2007 | 1 | COMPLAINT against Accent Builders and Developers, LLC, Design Custom Builders, Inc., Michael Tummillo ( Filing fee: \$350; receipt number: 300002734.), filed by Thomas M. Gilbert Architects, P.C. (Attachments: # 1 Civil Cover Sheet # 2 Receipt)(jtho. ) (Entered: 11/13/2007) |
| <a href="#">2</a> | Nov. 13, 2007 | 2 | Summons Issued as to Accent Builders and Developers, LLC, Design Custom Builders, Inc., Michael Tummillo. (atty. to arrange for service) (Attachments: # 1 Letter)(jtho. ) Modified filing date. (jtho. ). (Entered: 11/15/2007)   |
| <a href="#">3</a> | Dec. 10, 2007 | 3 | JOINT ANSWER to Complaint by Accent Builders and Developers, LLC, Design Custom Builders, Inc., Michael Tummillo.(Lacy, David) (Entered: 12/10/2007)   |
| <a href="#">4</a> | Dec. 20, 2007 | 4 | Response Regarding Copyright Registrations filed by Thomas M. Gilbert Architects.  |

General Info

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**General Information**

**Docket Number**  
3:07-cv-00699

**Status**  
Closed

**Court**  
United States District Court for the Eastern District of Virginia

**Nature of Suit**  
Property Rights: Copyright

**Related Opinion(s)**  
+ 2008 BL 118253

| Req # | Filing Date   | #  | Docket Text  |
|-------|---------------|----|--|
| 1     | Nov. 09, 2007 | 1  | COMPLAINT against Accent Builders and Developers, LLC, Design Custom Builders, Inc., Michael Tummillo ( Filing fee: \$350; receipt number: 300002734.), filed by Thomas M. Gilbert Architects, P.C. (Attachments: # 1 Civil Cover Sheet # 2 Receipt)(jtho. ) (Entered: 11/13/2007)   |
| 2     | Nov. 13, 2007 | 2  | Summons Issued as to Accent Builders and Developers, LLC, Design Custom Builders, Inc., Michael Tummillo. (atty. to arrange for service) (Attachments: # 1 Letter)(jtho. ) Modified filing date.(jtho. ) (Entered: 11/15/2007)   |
| 3     | Dec. 10, 2007 | 3  | JOINT ANSWER to Complaint by Accent Builders and Developers, LLC, Design Custom Builders, Inc., Michael Tummillo.(Lacy, David) (Entered: 12/10/2007)   |
| 4     | Dec. 20, 2007 | 4  | Response Regarding Copyright Registrations filed by Thomas M. Gilbert Architects, P.C.. (Attachments: # 1 Exhibit 1, Certificates of Registration)(Gatewood, Christopher) (Entered: 12/20/2007)  |
| 5     | Dec. 27, 2007 | 5  | NOTICE of Pretrial Conference (khan. ) (Entered: 12/27/2007)   |
| 6     | Dec. 27, 2007 |    | Set/Reset Hearings: Initial Pretrial Conference set for 1/31/2008 at 09:35 AM before District Judge James R. Spencer. (khan. ) (Entered: 12/27/2007)   |
| 7     | Jan. 31, 2008 | 6  | PRETRIAL ORDER. Signed by Judge James R. Spencer on 1/31/08. (khan. ) (Entered: 01/31/2008)  |
| 8     | Jan. 31, 2008 |    | Set/Reset Hearings: Jury Trial set for 6/9/2008 at 10:00 AM before District Judge James R. Spencer. (khan. ) (Entered: 01/31/2008)   |
| 9     | Jan. 31, 2008 |    | Minute Entry for proceedings held before Judge James R. Spencer : Initial Pretrial Conference held on 1/31/2008. (khan. ) (Entered: 01/31/2008)  |
| 10    | Feb. 04, 2008 | 7  | ORDER this matter is REFERRED to the Honorable Dennis W. Dohnal for the limited purpose of settlement discussions. Signed by Judge James R. Spencer on 2/4/2008. (cgar. ) (Entered: 02/04/2008)  |
| 11    | Mar. 05, 2008 | 8  | NOTICE by Thomas M. Gilbert Architects, P.C. Notice of Meeting of Counsel per Pretrial Order (Gatewood, Christopher) (Entered: 03/05/2008)   |
| 12    | Mar. 12, 2008 |    | Set/Reset Hearings: Settlement Conference set for 4/10/2008 at 10:00 AM before Dennis W. Dohnal. (dtho. ) (Entered: 03/12/2008)  |
| 13    | Apr. 10, 2008 |    | Minute Entry for proceedings held before Magistrate Judge Dennis W. Dohnal: Settlement Conference held on 4/10/2008. (1:45) (dtho. ) (Entered: 04/11/2008)   |
| 14    | Apr. 18, 2008 | 9  | Joint MOTION for Partial Summary Judgment by Accent Builders and Developers, LLC, Design Custom Builders, Inc., Michael Tummillo. (Lacy, David) (Entered: 04/18/2008)  |
| 15    | Apr. 18, 2008 | 10 | Memorandum in Support re 9 Joint MOTION for Partial Summary Judgment filed by Accent Builders and Developers, LLC, Design Custom Builders, Inc., Michael Tummillo. (Lacy, David) (Entered: 04/18/2008)   |
| 16    | Apr. 25, 2008 | 11 | Memorandum in Opposition re 9 Joint MOTION for Partial Summary Judgment , Pursuant to Rule 56(f) filed by Thomas M. Gilbert Architects, P.C.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, Affidavit, # 3 Exhibit C)(Gatewood, Christopher) (Entered: 04/25/2008)   |
| 17    | Apr. 29, 2008 | 12 | Rebuttal Brief re 9 Joint MOTION for Partial Summary Judgment filed by Accent Builders and Developers, LLC, Design Custom Builders, Inc., Michael Tummillo. (Lacy, David) (Entered: 04/29/2008)  |
| 18    | Apr. 30, 2008 |    | Set/Reset Deadlines as to 9 Joint MOTION for Partial Summary Judgment. Motion Hearing set for 5/15/2008 at 09:00 AM before District Judge James R. Spencer. (khan. ) (Entered: 04/30/2008)   |
| 19    | Apr. 30, 2008 | 13 | Joint MOTION for Leave to File Joint Amended Complaint by Accent Builders and Developers, LLC, Design Custom Builders, Inc., Michael Tummillo. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Lacy, David) (Entered: 04/30/2008)  |
| 20    | Apr. 30, 2008 | 14 | MOTION for Summary Judgment of Infringement by Thomas M. Gilbert Architects, P.C.. (Gatewood, Christopher) (Entered: 04/30/2008)   |
| 21    | Apr. 30, 2008 | 15 | Memorandum in Support re 14 MOTION for Summary Judgment of Infringement Exhibits A-K to Memorandum filed by Thomas M. Gilbert Architects, P.C.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K) (Oversized copies of Exhibits C and E maintained in Clerk's Office in brown expandable file) (Gatewood, Christopher) Modified by Clerk on 5/1/2008 (jtho. ) (Entered: 04/30/2008) |
| 22    | May 06, 2008  |    | Set/Reset Deadlines as to 14 MOTION for Summary Judgment of Infringement. Motion Hearing set for 6/3/2008 at 09:00 AM before District Judge James R. Spencer. (khan. ) (Entered: 05/06/2008)   |
| 23    | May 09, 2008  | 16 | MOTION in Limine to Exclude Expert Witness Testimony by Thomas M. Gilbert Architects, P.C.. (Gatewood, Christopher) (Entered: 05/09/2008)  |
| 24    | May 09, 2008  | 17 | Exhibits A - E Memorandum in Support re 16 MOTION in Limine to Exclude Expert Witness Testimony Exhibits A - E filed by Thomas M. Gilbert Architects, P.C.. (Attachments: # 1 Exhibit A, 2002 Aspect Agreement, # 2 Exhibit B, Bailey Disclosure, # 3 Exhibit C, 2006 Proposal, # 4 Exhibit D, Tummillo deposition, # 5 Exhibit E, unpublished opinion)(Gatewood, Christopher) (Entered: 05/09/2008)   |
| 25    | May 13, 2008  | 18 | Memorandum in Opposition re 13 Joint MOTION for Leave to File Joint Amended Complaint filed by Thomas M. Gilbert Architects, P.C.. (Attachments: # 1 Exhibit A) (Gatewood, Christopher) (Entered: 05/13/2008)  |
| 26    | May 14, 2008  | 19 | MOTION for Extension of Time to File Response/Reply as to 14 MOTION for Summary Judgment of Infringement by Accent Builders and Developers, LLC, Design Custom Builders, Inc., Michael Tummillo. (Lacy, David) (Entered: 05/14/2008)   |
| 27    | May 15, 2008  | 20 | Minute Entry for proceedings held before District Judge James R. Spencer: Motion Hearing held on 5/15/2008 re 9 Joint MOTION for Partial Summary Judgment filed by Design Custom Builders, Inc., Accent Builders and Developers, LLC, Michael Tummillo. (Lacy, David) (Entered: 05/15/2008)  |

The list continues through Req # 80.

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**Defendant**  
Design Custom Builders, Inc.  
a Virginia corporation

**Attorneys and Firms**  
David Brendan Lacy  
(See above for address)  
ATTORNEY TO BE NOTICED

**Defendant**  
Michael Tummillo

**Attorneys and Firms**  
David Brendan Lacy  
(See above for address)  
ATTORNEY TO BE NOTICED

Docket Proceedings

Reverse Proceedings

| Req # | Filing Date   | #  | Docket Text  |
|-------|---------------|----|--|
| 1     | Nov. 09, 2007 | 1  | COMPLAINT against Accent Builders and Developers, LLC, Design Custom Builders, Inc., Michael Tummillo ( Filing fee: \$350; receipt number: 300002734 ), filed by Thomas M. Gilbert Architects, P.C. (Attachments: # 1 Civil Cover Sheet # 2 Receipt)(jtho. ) (Entered: 11/13/2007)   |
| 2     | Nov. 13, 2007 | 2  | Summons Issued as to Accent Builders and Developers, LLC, Design Custom Builders, Inc., Michael Tummillo. (atty. to arrange for service) (Attachments: # 1 Letter)(jtho. ) Modified filing date.(jtho. ) (Entered: 11/15/2007)   |
| 3     | Dec. 10, 2007 | 3  | JOINT ANSWER to Complaint by Accent Builders and Developers, LLC, Design Custom Builders, Inc., Michael Tummillo.(Lacy, David) (Entered: 12/10/2007)   |
| 4     | Dec. 20, 2007 | 4  | Response Regarding Copyright Registrations filed by Thomas M. Gilbert Architects, P.C. (Gatewood, Christopher) (Entered: 12/20/2007)   |
| 5     | Dec. 27, 2007 | 5  | NOTICE OF HEARING  |
| 6     | Dec. 27, 2007 | 6  | Set/Reset Hearings: Settlement Conference set for 4/10/2008 at 10:00 AM before Dennis W. Dohnal. (dtho. ) (Entered: 03/12/2008)  |
| 7     | Jan. 31, 2008 | 6  | PRELIMINARY ORDER  |
| 8     | Jan. 31, 2008 | 7  | Minute Entry for proceedings held before Magistrate Judge Dennis W. Dohnal: Settlement Conference held on 4/10/2008. (1-35) (dtho. ) (Entered: 04/11/2008)   |
| 9     | Jan. 31, 2008 | 8  | Minute Entry for proceedings held before Magistrate Judge Dennis W. Dohnal: Settlement Conference held on 4/10/2008. (1-35) (dtho. ) (Entered: 04/11/2008)   |
| 10    | Feb. 04, 2008 | 7  | ORIGINAL PURCHASE ORDER  |
| 11    | Mar. 05, 2008 | 8  | NOTICE OF HEARING  |
| 12    | Mar. 12, 2008 | 9  | Pretrial Order (Gatewood, Christopher) (Entered: 03/05/2008)   |
| 13    | Apr. 10, 2008 | 10 | Set/Reset Hearings: Settlement Conference set for 4/10/2008 at 10:00 AM before Dennis W. Dohnal. (dtho. ) (Entered: 03/12/2008)  |
| 14    | Apr. 18, 2008 | 9  | Minute Entry for proceedings held before Magistrate Judge Dennis W. Dohnal: Settlement Conference held on 4/10/2008. (1-35) (dtho. ) (Entered: 04/11/2008)   |
| 15    | Apr. 18, 2008 | 10 | Joint MOTION for Partial Summary Judgment by Accent Builders and Developers, LLC, Design Custom Builders, Inc., Michael Tummillo. (Lacy, David) (Entered: 04/18/2008)  |
| 16    | Apr. 18, 2008 | 11 | Memorandum in Support re 9 Joint MOTION for Partial Summary Judgment filed by Accent Builders and Developers, LLC, Design Custom Builders, Inc., Michael Tummillo. (Lacy, David) (Entered: 04/18/2008)   |
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| 19    | Apr. 30, 2008 | 13 | Set/Reset Deadlines as to 9 Joint MOTION for Partial Summary Judgment: Motion Hearing set for 5/15/2008 at 09:00 AM before District Judge James R. Spencer. (khan. ) (Entered: 04/30/2008)   |
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| 23    | May 06, 2008  | 17 | Set/Reset Deadlines as to 14 MOTION for Summary Judgment of Infringement: Motion Hearing set for 6/3/2008 at 09:00 AM before District Judge James R. Spencer. (khan. ) (Entered: 05/06/2008)   |

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**Party Name:** SWEENEY/STAFF ABLETTED, INC., et al., vs. Robert F. MURPHY, et al.  
No. 07-00012 (Public) - Docket Number: 0700012\_000001

**Document:** Memorandum of Law of Intervening Plaintiff for Law Firm Association in Opposition to the Defendant's Counter Claim Motion to Compel against ADR

**Respondents:** Robert F. Murphy (JUDGE), Robert C. Deane (JUDGE), Lindsay R. O'Connell (L.R. O'CONNOR) (Court: 00 South District Massachusetts, November 1992, 012-017) [l.obrien@judicial.com](mailto:l.obrien@judicial.com), [robert@judicial.com](mailto:robert@judicial.com)

**Author:** Robert C. Deane, Thomas H. Conroy, Evan R. Proctor-Pinch, Curtis Weiss and Brian L.P. Hill (Bridges & Weiss, New York, New York, 1998, 212-693-6100, [brian@brw.com](mailto:brian@brw.com), [kate@brw.com](mailto:kate@brw.com), Counsel for Law Firm Association)

**TABLE OF AUTHORITIES**

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**STATEMENT OF FACTS**

**Background**

On December 1, 2009, shortly after Northwest Pacific Interagency in September 2009 and had conducted April 19, 2010, a written interrogatory agreement with ADR, for Northwest & Interstate P.R. (Land Reclamation Corporation of Puerto Rico) Water Executive Council (WEC) and ADR.

### Connectors and Expanders

- & AND
- /s In same sentence
- or OR
- +s Preceding within sentence
- /p In same paragraph
- "" Phrase
- +p Preceding within paragraph
- % But not
- /n Within n terms of
- ! Root expander
- +n Preceding within n terms of
- \* Universal character
- # Prefix to turn off plurals and equivalents



# Jury Instructions

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- Before juries begin their deliberations, the judge instructs them on the applicable law.
  - Judge may use proposed instructions submitted by the attorneys
  - Use his/her own
  - Or use instructions from another source
- The instructions given to the jurors are often important to the outcome of their deliberations.

# Model/Pattern Jury Instructions

---

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  - Bar associations
  - Courts
  - Commercial vendors
- ◉ Can help you identify each element of a cause of action plus all defenses
- ◉ Can be specialized
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# Commonly used jury instructions

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- ◉ *Federal Jury Practice and Instructions: Civil and Criminal*
  - On WestlawNext
- ◉ *Modern Federal Jury Instructions*
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