

#### **GETTING THE BALL TO THE GOAL**

Using Demonstratives as a Tool of Persuasion

Judge David R. Jones

36th Annual Jay L. Westbrook Bankruptcy Conference University of Texas Advance Business November 2017

## Rule 8 - General Rules of Pleading

- (a) Claim for Relief. A pleading that states a claim for relief must contain:
- . . .
- (2) a short and plain statement of the claim showing that the pleader is entitled to relief;
- (d) Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.
- (1) *In General*. Each allegation must be simple, concise, and direct. No technical form is required.

11/17/2017

#### What is a Statement?

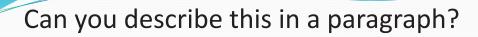
- Defined in Black's Dictionary as: "an allegation, a declaration of matters of fact. The term has come to be used [in] a variety of formal narratives of facts, required by law in various jurisdictions as the foundation of judicial or official proceedings and in a limited sense is a formal, exact, detailed presentation."
- Fed. R. Evid. 801. "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

11/17/2017

### What is a Demonstrative?

- Defined Black's Dictionary: "Evidence addressed directly to the senses without intervention of testimony . . . . May include maps, diagrams, photographs, models, charts . . . ."
- Jones Definition: Something that provides context, makes your case more interesting and easier to understand.

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# Does it really matter?

• What if I told you in a pleading that a lender's collateral was a multistory residential building . . .

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First appeared as part of the conference materials for the  $36^{\text{th}}$  Annual Jay L. Westbrook Bankruptcy Conference session "Getting the Ball to the Goal"