

# So You've Been Served with a Complaint, What Now?

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Whether it be a subpoena or a summons and complaint, being served with any sort of formal paperwork can be nerve-racking. No matter how hard it may be, try not to panic and call your attorney right away. Your attorney will help you prepare your response to the complaint which can protect your rights, put forward your defenses, and assert any claims that you may have against the plaintiff.

A complaint is the first document filed in court to initiate a lawsuit. It is a formal legal document which typically lists the plaintiff's view of the facts and the legal reasons why the plaintiff believes they have been harmed by the defendant. Once the complaint and summons are served on a defendant, the clock starts ticking to respond. Remember: Keep Calm and Call your Attorney.

## **In addition to speaking with your attorney, here are 10 things to keep in mind after being served with a complaint:**

1. **First things first.** Do not ignore the complaint. In most jurisdictions, if you do not respond within 14-21 days of service, you forever waive your defenses and may have a judgment entered against you, even if the plaintiff is completely wrong about what happened. There are avenues to remove a default judgment, but it is not easy. Get in touch with your attorney right away – don't put it off. Even if your attorney doesn't typically take on litigation cases, he/she should be able to refer you to someone in his/her network that can assist you.
2. **Insurance.** Consider what type(s) of insurance you have. Sometimes insurance policies cover lawsuits filed against you or your company. Beware that most insurance policies have strict deadlines for notifying the insurer and failure to notify the insurer may result in loss of coverage. When you initially get in touch with your attorney, make sure to let them know what kind of insurance you have. Your attorney should be able to assist with the insurance claim process.
3. **Who not to talk to.** Except for your attorney, do not speak with anyone or anyone outside your company about the complaint and speak only to those within your company on a "need to know" basis. Speaking with others about the complaint could eventually be used against you by the plaintiff. In addition, do not speak to the plaintiff if they are represented by counsel. Once a party is represented by counsel, you should only speak to them through their attorney. However, make sure you are careful about what you say to the plaintiff's attorney as they will use what you say against you given the opportunity. If possible, try to avoid speaking to the plaintiff's attorney altogether and leave it to your attorney to get in touch with them. If you are inclined to call the plaintiff's attorney yourself to talk about settling the case, make sure to mention at the beginning of the call that the call is in relation to settlement discussions and is

confidential.

4. **Document Preservation.** You have an obligation to preserve documents and information relevant to the issues asserted in the complaint. Do not destroy or throw away any documents that are in any way related to the facts alleged in the complaint and contact your IT department to turn off auto-delete protocols on relevant employees' email. Failure to do so can result in court sanctions ranging from monetary sanctions to a judgment against you and/or your company.
5. **Motion to Dismiss.** Some complaints are defective and a motion to dismiss may be an appropriate response. There are a lot of reasons why a complaint could be dismissed, which you attorney should be able to argue for you. When a complaint is dismissed, the lawsuit is over. If you answer or otherwise respond to the complaint (for example, by sending a letter to the court) before discussing with your attorney the possibility of filing a motion to dismiss, you may lose your ability to file one later on. Your attorney can help you determine whether to file a motion to dismiss or to file an answer to the complaint.
6. **Answering the Complaint.** If you do not move to dismiss the complaint, you must answer the complaint. Consult with your attorney to help draft the answer and defenses. The paragraphs of the complaint are numbered consecutively. Your answer must respond to each numbered paragraph by either admitting or denying each alleged fact or stating that you lack information to respond to the alleged fact. Your answer must also assert all the defenses that you have.
7. **Counterclaims.** If you believe the plaintiff has wronged you, answering the complaint gives you the option of also asserting counterclaims against the plaintiff. A counterclaim is similar to the defendant's complaint against the plaintiff and is alleged directly after the answer in one cohesive document. A counterclaim can be asserted if it arises out of the same facts or transaction underlying the plaintiff's complaint. If you don't assert your counterclaims against the plaintiff in the answer, then you risk forever losing your right to assert them. Make sure to talk to your attorney about any and all counterclaims that you could possibly assert against the plaintiff.
8. **Third Parties.** In addition to having the ability to serve a counterclaim against the plaintiff, you should also consider whether you can serve a third-party complaint. A third-party complaint is a way of saying "maybe what the plaintiff says in the complaint is true, but it's not my fault – it's his!" For example, if a homeowner sues a general contractor for a leak in the roof, but the roof was completed by a roofing company and not the general contractor, then the general contract could serve a third-party complaint against the roofing company. Your attorney should be able to help you determine if any third parties may be liable to you and will guide you on how to bring them into the lawsuit. In addition, if your insurance carrier is providing coverage for the lawsuit, they may require that certain third parties be brought into the lawsuit via a third-party complaint.
9. **Settlement.** Make sure to discuss the possibility of settlement with your attorney and whether that is a viable option for you and/or your company at the onset of the case. Settlement may not be right for everyone at the start of a case, but it could resolve the issues quickly and save you time and money in the long run. Your attorney should be able to assist you in drafting not only the terms of the settlement agreement, but also any releases that may be warranted. A release is a part of a settlement that essentially prohibits the plaintiff from ever bringing a suit against you or your company again based on the facts alleged in the complaint. Releases are a great way to protect you and your company and one way to make sure this plaintiff goes away for good (a least based on the transaction or set of facts alleged in the complaint).
10. **Stay in touch.** Although being served with a lawsuit can be stressful, know that your attorney is there to help you. If you have questions, you should reach out to your attorney and ask. There are a lot of components to a litigation and you and/or your company need to be involved in the process. Your attorney should be taking care of the "legal" side of things, but you and your employees are the ones that know the facts. Set aside time to tell your side of the story to your attorney so he/she can be prepared when

answering the complaint or having settlement discussions. It will be time and money well spent in the long run.

For more information regarding what to do after being served with a complaint, please contact Paige Zacharakis.