

CHAPTER 6

LITIGATION DOCUMENTS

Chapter Outline

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ASSIGNMENTS

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Summons and Complaint
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- Assignment § 6.8**
Discovery Documents
- Assignment § 6.9**
Deposition transcript

Chapter 6 Introduction

WINNING OR LOSING

To gain a proper perspective of the litigation process there are a couple of points that, while not obvious, are important.

1. A case is never *won* in a complaint, but it can certainly be *lost* in a complaint.

This applies to all pleadings, but especially the complaint. Do not try to prove your client's case in the complaint. Provide only enough information to establish a valid cause of action. Do not argue your case. Simply state the required elements for each cause of action and get out. This is not the place to be aggressive, bold, or creative

Conversely, if you do not pay attention to the required elements of each cause of action, do not include any required correct forms, or fail to follow proper procedures, a client can lose the case in the

complaint. If the court finds the claims or procedures deficient, or if service of process has been inadequate, the court may dismiss the matter before the trial even begins.

2. Discovery is about investigation.

Discovery is the chance to question the other party and the other party *must* answer (unless the answer would reveal privileged communication or attorney work product). Documents can be demanded for review. Do not treat discovery as just a standard exchange of documents. Realize that it is a chance to be creative. To ask questions that will help your client. To ask for a document no one else thought about. A paralegal cannot be a star at trial, but a paralegal can be a star in pre-trial. Unlike pleadings, in discovery a paralegal *should* be aggressive, bold, and creative.

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SERVICE OF PROCESS

DRAFTING PLEADINGS

DISCOVERY DOCUMENTS

§ 6.1**Legal Writing***Litigation Documents*

CRITICAL SKILL-SET

Litigation documents demonstrate the need for a paralegal to possess strong writing skills. These are documents created during the pre-trial, trial, and post-trial stages of the litigation process. The skills in creating these documents are transferable to many other areas of legal writing. The most common litigation documents include:

<i>Summons</i>	<i>Interrogatories</i>
<i>Complaints</i>	<i>Request for Admissions</i>
<i>Motions</i>	<i>Request for Production of Documents</i>
<i>Notices</i>	<i>Request for Medical Examination</i>
<i>Briefs</i>	<i>(or Independent Medical Examination – IME)</i>
<i>Subpoenas</i>	<i>Deposition Summaries</i>

§ 6.2**The Summons***Initiating Litigation*

Process is the summons and complaint. Service of process, then, is the presenting of the summons and complaint to a defendant in a legal action. (Preparing a complaint is discussed on the following pages.)

Technically, a summons is not a pleading. It is an instrument. However, it is usually placed in the pleading portion of a client's file.

Serving the summons and complaint fulfills one of the due process requirements of a lawsuit. Everyone has a due process right to know why and by whom he or she is being sued. This is called notice. If notice is not properly effectuated, the lawsuit will be dismissed. Jurisdictions have varying requirements for the summons and for the service of the summons. Check with your attorney, instructor, or other paralegals for examples and procedures in your jurisdiction.