
§ 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:

Summons
Complaints
Motions
Notices
Briefs
Subpoenas

Interrogatories
Request for Admissions
Request for Production of Documents
Request for Medical Examination
(or Independent Medical Examination – IME)
Deposition Summaries

§ 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.

The typical requirements for successfully noticing a defendant are:

1. *The original complaint and a copy of the summons are filed with the court. (This is usually done before process is served, but some jurisdictions allow filing after service of the summons.)*
2. *The summons and complaint must both be served upon the defendant.*
3. *They must be served by someone not a party to the action who is at least 18 years of age.*
4. *The affidavit of service, also called return of service, must be filled out by the person who serves the documents.*
5. *The affidavit of service, also called return of service, must be filed with the court.*

A paralegal may want to hire a process server to serve the documents. Look in the *Yellow Pages*, check online, or call information. The standard cost is \$50 to \$150 for a private process server. In some jurisdictions, the county sheriff may serve legal documents. The cost is considerably less, but usually the actual service will likely take longer.

Service by publication is possible, but not usually recommended. First, you must continue to publish notice of the legal action for several weeks. The amount of weeks varies by jurisdiction. *Second*, affidavits must be prepared along with a motion for default judgment. Your court rules will spell out what affidavits are required, but typically they involve attesting to your efforts to locate the defendant, what the action is about, and swearing to the amount of damages. Even after all the above steps have been taken, some courts will still require personal service of documents.

In any case, immediate filing of the affidavit of service with the court once the summons has been served is critical. This is called *perfecting service*.

In this chapter students will learn to prepare a summons based upon their assigned client.

ABOUT JURISDICTION

The proper jurisdiction for filing a matter can be affected by the following:

- *Whether the matter is a state or federal issue*
- *Where the plaintiff and defendant live (in personam jurisdiction)*
- *Where the litigated matter happened (in rem jurisdiction)*
- *The amount of damages being claimed*
- *The subject matter of the litigation*

A paralegal should never try to determine the court in which a matter will be filed. To do so would call for fundamental legal judgment, constituting an unauthorized practice of law. The attorney will determine the appropriate jurisdiction.

EXAMPLE | THE SUMMONS

DISTRICT COURT OF CLARK COUNTY
STATE OF CONFUSION

JOHN DOE

Plaintiff,

vs.

SUMMONS

PHILLIP DUNCAN

Defendant.

SUMMONS

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU**WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN TWENTY DAYS.****READ THE INFORMATION BELOW.**

TO THE DEFENDANT(S): A civil complaint has been filed by the plaintiff against you for the relief set forth in the complaint.

1. If you intend to defend this lawsuit, within twenty days after this summons is served on you, exclusive of the day of service, you must do the following:
 - a. File with the clerk of this court, whose address is shown below, a formal written response to the complaint in accordance with the rules of the court, with the appropriate filing fee.
 - b. Serve a copy of your response upon the attorney whose name is shown below.
2. Unless you respond, your default will be entered upon application of the plaintiff, and this court may enter a judgment against you for the relief demanded in the complaint, which could result in the taking of money or property or other relief requested in the complaint.
3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.
4. The state of Confusion, its political subdivisions, agencies, officers, employees, board members, commission members and legislators, each have 45 days after service of this summons within which to file an answer or other responsive pleading to the complaint.

Issued at the direction of Sally Smooth

CLERK OF COURT

Jude Justice

Attorneys for Plaintiff

By: _____

1212 W. North St.
Central City, Confusion