
§ 6.3**The Complaint***The Plaintiff's Claims*

CRITICAL SKILL

The complaint is the pleading that initiates a legal action. While the summons informs a defendant that he or she is being sued, the complaint explains why the suit is being initiated.

There are five elements to a complaint:

- *caption (or style)*
- *jurisdiction*
- *cause of action*
- *ad damnum clause*
- *subscription*

Caption (also called the *Style*)

Each state has its own form of caption at the top of every pleading. The federal courts have their own form of caption as well. Every caption will include:

- *the title of the document*
- *the court where the matter is being filed*
- *the names of the parties (plaintiff and defendants)*

For this document, the title will be "Complaint." Some attorneys prefer to be more specific in the title, such as *Complaint for Negligence* or *Complaint for Breach of Contract*. Ask what form the attorney prefers. If you are unsure how the court caption looks in your jurisdiction, ask the attorney for an example of a complaint filed previously in the same court. If that is not possible, go to the court clerk's office and ask to see any file that is public record. Almost all documents filed with the court are public record, meaning you have a right to view the item. Copy the complaint from the file. The caption is sometimes referred to as the *style*.

Jurisdiction

Somewhere in the document, the court must be given a reason to hear the matter. *In personam* jurisdiction is jurisdiction over the person. *In rem* jurisdiction is jurisdiction over the controversy. There are many other forms of jurisdiction as well. While additional methods exist to establish jurisdiction, the most common manner is to simply state in the first two or three paragraphs at least one of the following:

- *the address of the plaintiff (establishes in personam jurisdiction)*
- *the address of the defendant (in personam jurisdiction)*
- *the address where the controversy took place (in rem jurisdiction)*

A common example of the jurisdictional paragraphs would be:

1. Plaintiff is now and at all times relevant has been a resident of El Paso County, Colorado.
2. Defendant is now and at all times relevant has been a resident of Kiowa County, Colorado.
3. The business the parties own is now and at all times relevant has been located in Denver County, Colorado.

The statements above establish potential jurisdiction in three different counties: El Paso County could have in personam jurisdiction, Kiowa County could have in personam jurisdiction, and Denver County could have in rem jurisdiction. The plaintiff must choose the jurisdiction in which to file but would likely choose his or her own county (El Paso above).

Federal complaints often include a formalized heading titled *Jurisdictional Statement* followed by the same sort of paragraph described above.

Cause of Action

A cause of action is a legitimate reason to sue, also called **claim for relief**. Every complaint must have at least one cause of action. There are hundreds of possible claims. The attorney will determine what claims are to be included in the complaint. The following is just a few examples of some common claims:

- *negligence*
- *negligence per se*
- *breach of contract*
- *intentional infliction of emotional distress*
- *misrepresentation*

For a cause of action to succeed, it must establish a *prima facie case*. This means that the allegations, if they are eventually proven true at trial, could result in the plaintiff being awarded damages. If the allegations do *not* appear to constitute a valid *prima facie case*, the defendant could file a motion to dismiss.

Ad Damnum Clause

Also called the *Wherefore Clause*, or *Prayer for Relief*, the *ad damnum clause* tells the court specifically what the plaintiff is asking in terms of damages. A typical *ad damnum clause* would be:

Wherefore, plaintiff requests damages in an amount to be determined at trial, attorneys' fees and court costs, and for such other and further relief as the court deems just and proper.

It is advisable to review previous complaints filed by your attorney to determine the preferred format. Lawyers tend to stick with the *ad damnum clause* they first learned. Present the document in a form with which the attorney is most familiar.

Subscription

A subscription looks like a signature, with the attorney's name, bar association number, address, and phone number. In legal terms, it is much more than a simple signature. By signing the document, the attorney is attesting that, to the best of his or her knowledge, the information is correct.

Additional Considerations

Numbering Paragraphs

Each paragraph should be numbered, with either standard Arabic numbers or Roman numerals. The numbers may appear at the left-hand side of the paragraph or centered above each paragraph. A paralegal should notice how the attorney has numbered previous complaints and follow that format.

A paragraph in a complaint may contain a single sentence or many sentences, depending on whether the jurisdiction requires *fact pleadings* or *notice pleadings* (see below). In any case, each paragraph must contain a specific element tending to establish the claim.

Fact-pleading States v. Notice-pleading States

Some states require that each individual fact that amounts to an element of a *prima facie* case be set forth in the complaint. These are called *fact-pleading* states. Other states require only sufficient notice about the allegations to be claimed at trial. These are referred to as *notice pleading* states.

While not a perfect determinant, one way to tell the two kinds of pleadings apart is that pleadings in *fact pleading* complaints tend to contain one sentence per paragraph, with each sentence being a part of the *prima facie* case. *Notice pleading* states tend to produce longer, multi-sentence paragraphs. Ask your attorney if you are unsure.

Note Regarding Verified Complaints

To verify a complaint means to have the plaintiff attest to its validity. The attestation usually occurs at the very end of the document. In most cases, however, complaints are not verified. Some attorneys when they doubt the truth of their client's claims, ask the client to verify the complaint for the attorney's own self-protection.