

What's the Difference Between a Complaint and a Summons?

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If you have ever been sued for any civil cause of action, you already know the difference between a summons and a complaint. But for those of you who have never had the experience of a civil lawsuit being filed against you, it is important to know the difference between these two documents.

A *complaint* is defined as a pleading (formal written allegations) that initiates a lawsuit and informs the person being sued of the basis of the court's jurisdiction, a short and concise statement of the claim itself, the relief being sought by the person filing the suit, that the person is entitled to the relief, and a demand for judgment for the relief the person is seeking.(1)

A complaint is most often drafted by an attorney after a careful review of the alleged basis upon which the suit is being filed. For example, in a case against you for alleged professional negligence, the attorney would meet with and carefully interview the injured plaintiff, analyze medical records and other pertinent medical documents, interview any witnesses that might be called during the trial, and examine other relevant materials.

If an individual does not hire an attorney to draft and file a complaint, the person can do so himself or herself. Although this would be rare in a professional negligence case, the person is then acting as his or her own attorney and is called a "pro se" plaintiff.

In contrast, a *summons* is a document that officially notifies the defendant that a civil case has been filed against him or her. It is issued upon the filing of the case by the court clerk. The summons is attached to the complaint and must include the name of the case (e.g., Joe Smith v. Mary Jones, R.N), the number of the case (e.g., 2012 L 1234), the time frame within which the complaint must be answered and filed in the court where the suit is commenced, and the name, address and phone number of the attorney representing the plaintiff (e.g., Joe Smith). (2)

The summons, along with the complaint is most often *served* by a "process server" who personally "delivers" the complaint to the defendant. State civil procedure rules for serving the summons and complaint define who can serve a summons and complaint and also allow for other types of service, such as by certified mail.

It is important to note that until you, as a defendant, are served with the summons and complaint, a court *does not* have jurisdiction over you. *Only* when the summons and complaint are served consistent with a state's civil practice rules for service of process does jurisdiction "attach" to the person sued.

Because successful service begins the court clock running in terms of when an answer must be filed, or when motions to attempt to prevent the suit from going forward must be filed, it is essential that if you do receive a summons and complaint naming you as a defendant, either individually and/or as an employee of your facility, you need to contact your insurance company *without delay*. An attorney will be assigned to the case to represent you and begin doing so by responding to the summons and complaint.

Other pointers to remember when you are served with a summons and complaint:

- Do not attempt to evade the service processer, lie to the service processer (e.g., “No I’m not Mary Jones, R.N.”) or speak to the service processer about the case (e.g., “I did not injure this patient”);
- Do not contact the attorney for the plaintiff (or petitioner);
- Do not contact the plaintiff or petitioner or any member of his or her family;
- Do not contact the court, a judge or any other official of the court;
- Do not speak about the case with anyone but your attorney;
- Be open and honest with your attorney concerning the case that is the basis for the lawsuit;
- Begin to recollect the facts of the case as best that you can, with the help of your attorney (e.g., Was this your patient? Did you provide care on the date or dates alleged in the complaint? What do you remember as happening when the incident which is included in the complaint occurred?); and
- Recollect if there were any witnesses to the incident that would be helpful and could testify in court, if need be, about your role in the situation or about the role of anyone else present at the time of the incident.

FOOTNOTES

1. Henry Campbell Black(1991). Black’s Law Dictionary With Pronunciations. Abridged 6th Edition. St. Paul, MN, 196.
2. Id., at 1001.

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