

Motion to Quash Service of Summons

Remember the discussions about personal jurisdiction in Chapter 5, and service of process in Chapter 7? If there are defects in either of those areas (e.g., the defendant has no contacts with California, or the plaintiff attempted service of process by an unauthorized means, say by fax or email), the defendant may raise those issues immediately, leaving the task of responding to the complaint (if ultimately required) for later.^{1/}

The defendant wishing to challenge the court's assertion of personal jurisdiction must file a **motion to quash service of summons**. Recall, however, that a defendant submits to the jurisdiction of the court by making an appearance in the case, i.e., filing papers with the court. So, by filing a motion *challenging* personal jurisdiction, won't the defendant be *submitting* to the court's jurisdiction?

To obviate that Catch-22, the filing of a motion to quash constitutes a **special appearance** in the case for the sole purpose of challenging jurisdiction. By filing a motion to quash, it is as if the defendant is inside a bubble appearing before the court. If the court agrees that it has no jurisdiction, the case against the defendant is dismissed. If the court finds the assertion of jurisdiction is justified, the bubble is burst, and the defendant must then respond to the complaint.

The motion to quash, which follows the format of a regular motion,^{2/} must be filed within 30 days of service of the summons. The basis for a motion to quash could be:

- The summons was not properly served on the defendant (see discussion on proper ways to service the defendant in Chapter 7 under "Service of the Summons and Complaint").
- The court lacks power to exercise personal jurisdiction over the defendant because a constitutionally sufficient basis for jurisdiction does not exist between the defendant and the state (a minimum contacts issue).

If the defendant unsuccessfully challenges jurisdiction:

- The defendant may refuse to defend the case and lose by default, hoping to challenge the judgment when it is asserted against the defendant in his/her home state.
- The defendant may proceed to defend the case on the merits, and still raise lack of jurisdiction as an affirmative defense.

^{1/} The service and filing of the motion to quash extends the defendant's time to respond to the complaint until 15 days after service of a notice of entry of an order denying the motion.

^{2/} For information on basic law and motion practice, which is applicable to motions to quash, see Chapter 18, "Motions."