

Chapter 1
APPEARANCE BY PLAINTIFF

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§ 1.2 Preparing the Complaint and Accompanying Forms

The plaintiff begins the lawsuit by filing a complaint against the defendant, setting forth the allegations upon which the lawsuit is based. Although the Judicial Council has prepared forms for complaints (the Judicial Council Complaint form is reproduced at the end of this Chapter), we recommend them for only the most simple cases. In this book we explain how to prepare complaints without using the forms because: the forms cannot be used for many types of actions, most attorneys do not use the forms, and understanding the parts of a complaint is essential for preparing other court documents.

Before you begin, you must be aware that C.R.C., Rule 2.101 requires that all original documents filed with the court, and all copies, whether filed with the court or served on parties, including pleadings, court forms, and exhibits, must be on recycled paper. The act of filing and service certifies that the paper is recycled.

Although we jump right into a discussion of physically drafting the Complaint, there is much to be done preliminarily. Among other things, the plaintiff must select the court with the power and authority to render a legally binding decision in the lawsuit (the court with “jurisdiction”). This requires both subject matter jurisdiction (power to rule on the particular type of case and amount in controversy), and either personal jurisdiction (control over the defendant in the case) or *in rem* jurisdiction (control over the property at issue in the case). There may be more than one court with jurisdiction. The plaintiff also needs to identify the proper county in which to file the case (proper “venue”). Although venue is usually proper in the county in which one or more of the defendants resides at the time the Complaint is filed, depending upon the type of case, venue might also be proper in multiple counties. For example, a personal injury case may be filed in the county in which the accident occurred or where one or more of the defendants reside. In large counties, like Los Angeles and Orange, there are local rules determining the particular courthouse within the county in which to file.

How to determine proper jurisdiction and venue, what to allege, and against whom to allege it, is beyond the scope of this book. Our focus is on format and procedural rules.

For simplicity, we break down the complaint into four main parts: the caption, the body, the prayer, and the date and signature lines.

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§ 1.2.1 The Caption

The caption of the complaint, typed on pleading paper (numbered down the left-hand side of the page from 1 to 28) includes:

- Name, state bar number, office address or, if none, residence address, telephone number, fax number and email address (if available) of the attorney who prepares the document. (Note: inclusion of a fax number or email address does not constitute consent to service by that method.)
- Party designation and name of the party on whose behalf the document is prepared
- Name and place of the court where the action is filed
- Title of the case or action
- Space for case number
- Title of the document
- Footer

California Rules of Court, Rule 2.111, which governs the format of the first page of all papers filed with the court, requires all of the above information to be typed in specific places on the page. Please note that C.R.C., Rule 2.111(1) also requires everything from line 1 through line 7 on the page (the name, address, etc., of the attorney and the party designation) to be typed entirely to the left of the center of the page, leaving the area to the right of the center of the page blank for court use. Although we do not recommend it, this rule is commonly ignored, because: (1) there is often not enough room on the left-hand side of the page to type all of the required information, and (2) the clerk does not need the entire right side of the page to affix a filing stamp.

NOTE RE LIMITED JURISDICTION:

In a “limited civil case” (a case where the amount in controversy is less than \$25,000), you must add “Limited Civil Case” between the space for the case number and the title of the document.

§ 1.4 Filing Complaint/Issuing Summons

The court clerk will file the Complaint by stamping the date and case number on it, issue the Summons by signing, dating, and stamping it with the case number and court seal, file-stamp the accompanying documents, and conform the copies. The clerk may also prepare notices identifying the judge and department to which the case is assigned, the date of the case management conference, a referral to arbitration, etc. The clerk retains the original issued Summons and other original documents in the court file. The conformed copies, the notices, and an “Alternative Dispute Resolution Package” regarding mediation and arbitration (“ADR Package”) will be returned to you by mail or by your attorney service.

- Except for the ADR Package, make at least one copy of each document. Place one copy of each of the clerk’s notices in your file. Substitute file-stamped copies of the face page of the complaint and all accompanying documents for those in your file.

BE SURE TO CALENDAR ALL OF THE FOLLOWING:

- ‘ the date the Complaint was filed
- ‘ 60 days after the Complaint was filed (or 180 days in a “Collections Case”) as the last day to file Proof of Service of Summons (see § 1.5)
- ‘ a tickler 50 to 55 days after the date the Complaint was filed to consider the need to apply to the court for an extension of the 60-day limit to file Proof of Service of Summons (inapplicable to “Collections Cases”) (see § 1.6)
- ‘ In a “Collections Case,” 360 days after the Complaint was filed as the last day to obtain default judgment (see § 3.4)
- ‘ the date of the Case Management Conference and associated dates (see § 7)

The next step is to serve the defendant with the Summons, Complaint, and copies of the documents you received from the court clerk. The defendant may be served personally, by substituted service, by mail, or, upon court order, by publication. Each method is discussed below, beginning with § 1.5.1.

§ 1.5 Service and Proof of Service of Summons and Complaint and Accompanying Documents

YOU MUST SERVE THE SUMMONS AND COMPLAINT, AND FILE PROOF OF SERVICE WITHIN 60 DAYS OF FILING THE COMPLAINT (BUT SEE NOTE RE COLLECTIONS CASE EXCEPTION BELOW). Otherwise, an order to show cause may be issued against the plaintiff. (C.R.C., Rules 3.110(b) and (f)) An order increasing the time for service may be sought before the service deadline passes. (See § 1.6.)

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NOTE: COLLECTIONS CASE EXCEPTION TO 60-DAY DEADLINE



“Collections cases” (defined in C.R.C., Rule 3.740(a)) are exempt from the 60-day deadline. Instead, C.R.C., Rule 3.740(d) provides that the Summons and Complaint must be served, and proof of service filed, or an order for publication of summons must be obtained, within 180 days of filing the complaint, or the court may issue an order to show cause why reasonable monetary sanctions should not be imposed.

§ 1.5A Additional Optional Documents to Serve on the Defendant

There are two documents you should consider preparing and serving along with the Summons and Complaint, i.e., additional accompanying documents. They include the “Statement of Damages” (see § 1.5A(1)) and the “Case Questionnaire” (see § 1.5A(2))

§ 1.5A(1) “Statement of Damages” (Mandatory Judicial Council Form No. CIV-050)
(for personal injury and wrongful death actions only)

If your case involves personal injury or wrongful death, you should also prepare a “Statement of Damages” to serve with the other documents. If the defendant defaults (see Chapter 3), you will have to establish that you personally served the Statement of Damages on the defendant before you can obtain a default judgment. (C.C.P. § 425.11(c) and (d)) Service at this juncture obviates the need to do so later. If your case does not involve personal injury or wrongful death, skip this section.

- 1' Complete the top portion of the form as on the Civil Case Cover Sheet, but add the case number.
 - 2' Enter the plaintiff's name in all caps, and the defendant's name in all caps below.
 - 3' Check the box for each category of damages being claimed against the defendant in your case, and enter the amount being claimed on the right.
 - 4' Enter the date the attorney will sign.
 - 5' Enter the attorney's name in all caps, and have the attorney review and sign the form.
- Leave the reverse side of the form (not shown) blank.

NOTE: The Statement of Damages is not mentioned again specifically in this chapter. If you prepare one, consider it to be one of the “accompanying documents” referred to throughout this chapter.

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Statement of Damages

CIV-050

— DO NOT FILE WITH THE COURT —
 — UNLESS YOU ARE APPLYING FOR A DEFAULT JUDGMENT UNDER CODE OF CIVIL PROCEDURE § 585 —

1▶ ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): JOE LAWYER, ESQ. (State Bar #7756234) 1000 Colorado Boulevard, Suite 555 Los Angeles, California 90001-1234	TELEPHONE NO.: (213) 452-0000	FOR COURT USE ONLY
ATTORNEY FOR (name): FRED A. WRONGED SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, California 90012 BRANCH NAME: Central		
PLAINTIFF: FRED A. WRONGED DEFENDANT: JAMES A. WRONGDOER		
STATEMENT OF DAMAGES (Personal Injury or Wrongful Death)		CASE NUMBER: C 126447

To (name of one defendant only): JAMES A. WRONGDOER 2▶
 Plaintiff (name of one plaintiff only): FRED A. WRONGED
 seeks damages in the above-entitled action, as follows:

	AMOUNT	
3▶ 1. General damages		
a. <input checked="" type="checkbox"/> Pain, suffering, and inconvenience	\$ 500,000	3▶
b. <input checked="" type="checkbox"/> Emotional distress	\$ 500,000	
c. <input checked="" type="checkbox"/> Loss of consortium	\$ 500,000	
d. <input type="checkbox"/> Loss of society and companionship (wrongful death actions only)	\$ _____	
e. <input type="checkbox"/> Other (specify)	\$ _____	
f. <input type="checkbox"/> Other (specify)	\$ _____	
g. <input type="checkbox"/> Continued on Attachment 1.g.		
2. Special damages		
a. <input checked="" type="checkbox"/> Medical expenses (to date)	\$ 50,000	
b. <input checked="" type="checkbox"/> Future medical expenses (present value)	\$ 300,000	
c. <input checked="" type="checkbox"/> Loss of earnings (to date)	\$ 25,000	
d. <input checked="" type="checkbox"/> Loss of future earning capacity (present value)	\$ _____	
e. <input checked="" type="checkbox"/> Property damage	\$ 30,000	
f. <input type="checkbox"/> Funeral expenses (wrongful death actions only)	\$ _____	
g. <input type="checkbox"/> Future contributions (present value) (wrongful death actions only)	\$ _____	
h. <input type="checkbox"/> Value of personal service, advice, or training (wrongful death actions only)	\$ _____	
i. <input type="checkbox"/> Other (specify)	\$ _____	
j. <input type="checkbox"/> Other (specify)	\$ _____	
k. <input type="checkbox"/> Continued on Attachment 2.k.		
3. <input type="checkbox"/> Punitive damages: Plaintiff reserves the right to seek punitive damages in the amount of (specify) . . . \$ _____ when pursuing a judgment in the suit filed against you.		
4▶ Date: August 3, 1998		
5▶	5▶	
JOE LAWYER <small>(TYPE OR PRINT NAME)</small>	_____ <small>(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)</small>	
<small>(Proof of service on reverse)</small>		<small>Page 1 of 2</small>
Form Adopted for Mandatory Use Judicial Council of California CIV-050 [Rev. January 1, 2007]	STATEMENT OF DAMAGES (Personal Injury or Wrongful Death)	Code of Civil Procedure, §§ 425.11, 425.115 www.courtinfo.ca.gov
www.accesslaw.com		

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§ 1.5A(2) “Case Questionnaire” (Limited Civil Cases Only) (see form pp. 1-61 to 1-64)

C.C.P. § 93 allows the parties in a Limited Civil Case to attempt to settle economically by exchanging information early in the case. To do so, the plaintiff completes a “Case Questionnaire” (Judicial Council Form No. DISC-010), and serves it on the defendant along with a blank Case Questionnaire for the defendant to complete. The form includes very simple instructions directed to the plaintiff and to the defendant, who is required to complete the blank form and serve it along with the response to the Complaint.

NOTE: The Case Questionnaire is not mentioned again specifically in this chapter. If you prepare one, consider it to be one of the “accompanying documents” referred to throughout this chapter.

§ 1.5.1 Personal Service (C.C.P. § 415.10)

Personal service of the Summons and Complaint and accompanying documents is usually made by a process server, but sometimes by a sheriff or marshal. However, a summons may be served by any person who is at least 18 years of age and not a party to the action. (C.C.P. § 414.10) Our example uses a process server.

As mentioned previously, many offices use an attorney service which regularly picks up documents for filing with the court. The same attorney service has a process service branch which can serve the Summons and Complaint.

- Prepare a check to the attorney service, if advance payment is required.
- Make 1 copy of the Summons, Complaint, and accompanying documents. On the copy of the Summons, “X” or check the appropriate boxes under “Notice to the Person Served” at the bottom, indicating the capacity in which the defendant is being served. Make a copy of that Summons, and put the copy in your office file.
- Clip together all of the above documents (and the check, if applicable).

Prepare service instructions [but first read Appendix “D” - “Attorney Service Do’s and Don’ts”]. Each attorney service has its own form (usually different from their court filing form), requiring you to identify yourself, the case, the defendant (including a description), the documents to serve; any deadlines; etc. Be sure to put your name or initials on the instruction form so the process server can call you if additional information is needed.

- Place the office copy of the service instructions in your file.
- Add the attorney service instructions to the top of the clipped documents, and place the package in your attorney service box for pick-up/service.

If all goes well, the process server will serve the documents as you directed.