

Entrepreneur's Guide to Litigation - Blog Series: Complaints and Answers



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A. The Complaint

Litigation begins with a Complaint. “Complaint” is capitalized because it is a specific legal document, rather than a garden-variety complaint about something. The **Complaint lays out the plaintiff’s specific legal claims against the defendant.** It needs to contain enough facts that, if everything stated is true and there are no extenuating circumstances, a judge and jury could find in favor of the plaintiff.

As an example, Paul Plaintiff is suing Diana Defendant for violating a contract. Paul files a Complaint with a court claiming several facts: 1) Diana signed a contract to buy widgets; 2) Paul delivered the widgets; and 3) Diana did not pay the agreed-upon amount. If the court finds that these facts are true, then, unless there were extenuating circumstances, Diana probably breached a contract with Paul and should pay damages.

Paul’s Complaint also needs to allege facts showing that he has a right to be in that court. For example, if Paul wants to sue Diana in Texas, he has to show that the case and the parties have some connection to Texas. If he wants to sue her in a federal court, he has to meet a number of other criteria. (Federal court is generally only available if the parties are based in different states and the damages are relatively substantial or if the legal question is one of federal law.)

B. Response to a Complaint

Once the defendant officially learns of the Complaint, she has a certain limited time to file some sort of response with the court. The time to respond, however, does not run from when the plaintiff filed the lawsuit, but generally when he officially delivered notice of the Complaint to the defendant. (There is a timeline that starts ticking when the defendant becomes aware of a state court lawsuit she wants to “remove” to federal court.) The amount of time for the defendant to respond varies by what court the case is in, but is generally a short period of time.

After receiving the complaint, the defendant has three options: 1) **Ignore the Complaint** and have the court grant judgment in favor of the plaintiff; 2) Tell the court that the **Complaint is defective** and ask for dismissal; or 3) **Answer the Complaint**. Option one is usually not a good plan; courts do not look favorably on defendants who ignore the legal process, and this option prevents a defendant from fighting the plaintiff’s claims.

Option two does not deal with the merits of the plaintiff’s issue. It is simply telling the court that the Complaint is defective for a variety of reasons including, for instance, how it was served, who the parties are (or are not), which court the case is in, or simply that, even if everything is true, the plaintiff cannot win. For example, if Paul sues Diana, but never tells Diana about the suit, Diana can then ask the court to dismiss the case. Also, if Diana works for DefendCo and Paul’s contract was actually with DefendCo and not with Diana, personally, she may be able to have the case dismissed because Paul sued the wrong party. If Paul sued Diana in a federal court in Texas when both parties are residents of California and neither has ever been to or done business in Texas, then Diana may be able to get the case dismissed, at least from the Texas court.

Finally, there is the “So, what?” defense. If the Complaint doesn’t actually **allege a cause of action**, the defendant can ask the court to dismiss it. This usually happens because the plaintiff simply assumes a fact, but does not include it in the Complaint. If, for example, Paul alleges only that Diana failed to pay him a certain amount of money, but does not allege that a contract existed between them, then Diana can essentially say “So, what?” and ask the court to dismiss the case. She would ask the court to dismiss the case because, even if true (she really did not pay him any money), he did not plead any facts showing that she was supposed to pay him money. The defendant is not admitting the truth of the allegation; she is just saying that even if true, the plaintiff cannot win.

Finally, a defendant can file an Answer. Again, “Answer” is capitalized because it is a specific legal document. In an Answer, the defendant responds, paragraph by paragraph, to each of the plaintiff’s allegations. The defendant must admit, deny, or say that she does not know the answer to each specific allegation. Saying “I don’t know” functions as a denial.

For example, Paul’s Complaint probably alleges that Diana lives at a certain address. Assuming Diana actually lives there, she has to admit that fact. Paul may allege that he delivered the correct number of working widgets to Diana. If the widgets were not what she actually ordered or did not work, Diana would deny that

allegation. Finally, Paul may claim that those widgets cost him a certain amount of money. Diana likely has no way to know how much Paul paid for the widgets, so she would say she does not know – thus leaving Paul to prove that allegation.

Also in the Answer, the defendant can claim affirmative defenses. Those tell the court that there were extenuating circumstances so that, even if everything the plaintiff says is true, the court should not find in favor of the plaintiff.

For example, if Paul told Diana not to worry about paying him for the widgets for six months but then turned around and immediately sued her, she would claim that as an affirmative defense.

Finally, the Answer may contain **counterclaims**. These claims are the **defendant counter-suing** the plaintiff for something. The counterclaims may be related to the original suit or not. Usually they are related, but they do not have to be. This section follows the same rules as if the defendant were filing a complaint.

For example, Diana may counterclaim against Paul because he sent her the wrong widgets and, perhaps, add a claim that when Paul delivered the widgets to her warehouse, he backed his truck into her building and caused damage. She would then counterclaim for breach of contract and property damage. The court would then sort out the whole mess to decide who owed whom how much.

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