

## COMPLAINT DRAFTING TIPS

Sample Only  
Use At Your Own Risk



### The Basics of Complaint Drafting

#### Your Opening Move

The complaint you file with the court is like an opening chess move. Whether you open with pawn to king 4 or pawn to queen 4 can make a great deal of difference in the subsequent development of the game. Likewise your complaint, in great part, sets up the agenda for what follows in your case. If a cause of action doesn't contain a sufficient factual statement of the elements of the cause, you could face a move to throw your case out of court with a "*demurrer*" and "*motion to strike*". If you plead the wrong cause of action or leave out a necessary cause of action altogether, you may not get a judgment in the end for what you are seeking.

A good chess player tries to look forward a few moves. A good litigant does the same.

I can't send you to law school and I can't guarantee that any particular form we provide you will contain all of the allegations you need to include in your complaint to state causes of action or to shield you from attack by the other side. If you are going to represent yourself, just keep in mind that complaint drafting is an art form. You need to include just enough factual allegations to make out causes of action which will withstand attacks by parties more knowledgeable than you. At the same time you will want to avoid including more allegations that you need because every allegation could provide your opponent with the basis for irrelevant questions or attacks later in the game.

#### Complaint Checklist

While drafting your complaint, it is a good idea to keep the following checklist in mind:

- \_\_\_\_\_ Check the federal, state, and local rules for specific requirements regarding the filing of a complaint.
- \_\_\_\_\_ Based on the facts of your case, perform legal research to identify the claims that you can legitimately plead and damages you can seek.
- \_\_\_\_\_ At the beginning of the complaint, make sure that you properly allege subject matter jurisdiction, personal jurisdiction, and venue.
- \_\_\_\_\_ Draft a concise and plain statement of the factual allegations.

- \_\_\_\_\_ Draft separate causes of action for each legal claim.
- \_\_\_\_\_ Where required, plead the facts with particularity.
- \_\_\_\_\_ Be sure to specifically request the relief you are seeking (e.g., monetary damages, an injunction), and a jury trial, if you would like one.

### **General Format of a Complaint**

In a long career, I have seen hundreds of complaints and they are all slightly different. However they generally follow the following format:

1. **Caption:** This is the first section of the complaint which identifies the plaintiff(s) and defendant(s), and the court in which the complaint is being filed.
2. **Common Allegations:** These are allegations which are designed to describe the names of the parties and where they reside and any other information which establishes that you are filing your complaint in the proper jurisdiction and venue. These are sometimes described as “Jurisdictional Allegations”.
3. **Individual Causes of Action:** What constitutes a “*cause of action*” is a complex subject you should research before you begin drafting your complaint. Each cause of action contains elements. For example a cause of action for breach of contract, at minimum, has four elements – 1) a contract, 2) performance of the contract, 3) defendant’s failure to perform, and, 4) resulting damages. Each cause of action you draft must allege sufficient factual allegations to make out every element of that cause of action.
4. **Incorporation Paragraphs:** You will want to incorporate your common allegations into your first cause of action and, if you have more than one cause, you may want to incorporate all of the preceding paragraphs into each cause. The language of an incorporation paragraph at the beginning of each cause of action is something like this: “*Plaintiff incorporates by reference paragraphs \_\_\_\_\_ through \_\_\_\_\_ herein the same as though fully set out herein at length.*”
5. **Prayer:** The Prayer is the portion of a complaint in which the plaintiff describes the remedies that the plaintiff seeks from the court. For example, the plaintiff may ask for an award of compensatory damages, punitive damages, attorney's fees, an injunction to make the defendant stop a certain activity, or all of these.
6. **Signature:** The complaint must be dated and signed. If a plaintiff is unrepresented by an attorney, he/she signs as Plaintiff *In Pro Per*.
7. **Exhibits:** If you have made reference to exhibits in the body of the complaint, be sure to attach them. Each exhibit should be preceded by a cover page with the Exhibit number or letter printed at the bottom; i.e. “Exhibit A” or “Exhibit 1”

8. **Verification:** Civil complaints in California can be either unverified or verified. If a complaint is verified the answer to the complaint must be verified.

Take a look at the sample complaint in the Drafting Complaints section of our California Forms menu. It's a complaint I filed for a client seeking real property partition and associated causes. The eight sections described above are identified in the body of the complaint.

- Gene Kinsey

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