

Drafting Complaints: Start Off on the Right Foot

The most critical document in any early litigation is one that most lawyers never learn how to draft.

A complaint-the introductory pleading that triggers most lawsuits-leaves an irrevocable first impression on judges and adversaries, and sets the tone for the litigation that will follow. Although it may seem like a simple, straightforward task, drafting a complaint requires strategic decision-making and attention to detail-and many of us get no formal instruction in how to do it. The following are best practices and other considerations to guide you in the drafting process.

Do your research. Before putting allegations on paper, gather as much information as possible about your client(s), the defendant(s), and the facts and circumstances surrounding the case. This "intake" phase should include interviews of witnesses who are familiar with the facts. If one or more of the parties is a business, learn about the business, how it works and who runs it. Review any relevant documents, emails, videos, and other potential evidence. As you gather facts, brainstorm possible causes of action and begin to gather the information you will need to establish the necessary elements of each one. Be vigilant about fact-checking your client's story; although you will have opportunities to modify your claims as the case proceeds, once a complaint is filed, its contents are public.

Follow the rules. If you are filing your complaint in federal court, you will need to familiarize yourself with Federal Rule of Civil Procedure 8 (General Rules of Pleading), which sets forth, among other things, the three types of statements that must comprise any pleading for relief: a statement explaining the grounds for jurisdiction, a statement of the claim showing the pleader is entitled to relief, and a demand for the relief sought. FRCP 8(a). For New York state cases, refer to Article 2 of the Civil Practice Law and Rules for information regarding statutes of limitations, Article 5 for the rules on venue, and Article 30 for guidance on pleadings and their contents. Also make sure to consult the local court rules of the particular court in which you plan to file the complaint.

Use templates wisely. It may be helpful to consult (and even borrow the format and language from) complaints in other cases, especially if you are new to drafting pleadings. Be careful, though, to adapt the template carefully to your case. Don't make the mistake that some lawyers do and forget to change details like the defendant's address when copying and pasting from an old complaint. Although these types of errors can be easily remedied through amendment, they give an impression of sloppiness that may be hard to reverse.

Include full statements of jurisdiction and venue. In every case, the plaintiff bears the burden of demonstrating that the litigation is properly before the court. To do this, it is important to clearly

set forth the basis for jurisdiction and venue and to provide support for both. For example, if you want to invoke a federal court's diversity jurisdiction, make sure you include facts in your statement of jurisdiction that prove that there is complete diversity of citizenship between the parties and that the amount in controversy exceeds \$75,000. (If you are bringing a class action lawsuit, be sure to consult the specific requirements for diversity jurisdiction in class cases.)

Draft short, clear, and "plausible" fact allegations. Both the federal pleading rules and their New York counterparts require that pleadings consist of numbered paragraphs, each containing a single, concise claim. A set of U.S. Supreme Court cases from around a decade ago, *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007) heightened these basic requirements by introducing what some have called a "doctrine of plausibility," i.e. the idea that "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678. While courts have differed over what exactly constitutes plausibility in this context, the goal in pleading fact allegations should be to make clear that the defendant violated the law, not just that it is possible that defendant violated the law.

Clearly articulate your causes of action. One pet peeve of judges is the proliferation of "shotgun complaints," defined by one court as complaints that fail "to identify claims with sufficient clarity to enable the defendant to frame a responsive pleading." *Beckwith v. Bellsouth Telecomms.*, 146 Fed. Appx. 368, 371 (11th Cir. 2005). Shotgun complaints typically contain multiple counts, with each one incorporating by reference the allegations in the preceding count. Often they fail to pinpoint which allegation applies to which defendant, and which facts correspond to which claim. When drafting the causes of action in your complaint, make your allegations clear and definitive, and leave no question as to which facts apply to which claims.

Request relief. The last part of the complaint is arguably the most important one. In asking the court for relief-damages, attorney fees, declaratory relief, costs, etc.-be sure to explicitly name the relief you are seeking and ensure that there is support in the complaint for each category of requested relief. End with a catchall provision, such as "and any other relief deemed just and proper by the court."

Consider the complaint's vulnerabilities. Once you have a draft complaint, review it with an eye toward the various grounds on which the defendant might move to dismiss. Some of the common ones include lack of personal jurisdiction, failure to state a claim upon which relief can be granted, and improper venue. Read the factual allegations portion of the complaint and ask yourself if it tells a coherent story that leads to the natural conclusion that the plaintiff was wronged and deserves relief.

If at first you don't succeed ... It is common for plaintiffs to amend their complaints, sometimes more than once. In one extreme case that ultimately landed before the U.S. Court of Appeals for the Seventh Circuit, amendments of a complaint and corresponding motions to dismiss dragged on for four and a half years. An amended complaint fully replaces the original complaint, so it should include both the content you want to keep from the original and any new content you want to add. Although FRCP 15 and CPLR 3025 both allow for one amendment without seeking leave of the court, subsequent efforts to amend will be scrutinized by the court and should not be

considered a sure thing. Some litigants have learned this the hard way, as judges have denied their fourth or fifth motion for leave to amend on grounds that the plaintiff ignored pleading rules or even disregarded the court's specific instructions on how to modify their complaint. As with all the advice here, following the rules will be key to your success.

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