



Well pleaded

TIPS FOR DRAFTING EFFECTIVE AND WELL-ORGANIZED COMPLAINTS THAT CAN HELP YOU AVOID UNNECESSARY ISSUES

Often, the first impression any defense counsel or handling judge will have of both your case, and of you as a lawyer, comes from their review of your complaint. While it is unlikely that you are going to win any case based on a complaint alone, you can certainly create a host of issues for yourself with a bad one. Avoiding these issues, as well as avoiding creating unnecessary negative impressions in the eyes of your judge or opposing counsel will only help you in your practice.

A well-crafted complaint is one that is organized, easy to follow and presents your facts and causes of action in a clear and straightforward manner. To accomplish this, what you write is as important as how you structure and organize your writing. Judges are used to seeing a certain type of case presented in a certain way and so it benefits you, and your client, to provide that to them. Your complaint is your first chance to do this and demonstrate your competency to the judge and opposing counsel.

Consider how others have done it

Legal reading and writing in law school may have required us to write complaints from scratch, but the reality in practice is much different. In practice we rarely draft something out of whole cloth and more often than not have the ability to utilize prior work of others as a starting off point. For the most part, complaints are formulaic in their structure and judges are used to seeing them structured and presented in a certain way. If you are preparing a type of a complaint for the first time, I always suggest trying to find a sample to review. Chances are that somebody has previously drafted a complaint that is the same or substantially similar to the case you are working on. Starting with a solid foundation to build upon is always a sound practice.

Similar complaints from other cases will provide you with many benefits. First, these are complaints from cases that have already been litigated and so you get the

benefit of hindsight to see if there were any issues with them. In instances where the complaints weren't challenged, or withstood any challenges to the pleadings, you will have a good outline to follow. If the complaint was challenged and found lacking, you will have an example of what not to do. In either situation you are better off for having found and reviewed the prior similar work of others. A little time spent tracking down some samples at the onset will make your job drafting a complaint much easier in the long run.

If you don't have any samples from prior work you have done, then reach out to co-workers in your office, or your colleagues at other firms and ask for samples. Another option, if you are aware of a case similar to yours, is to go to the court docket for that case and see if the complaints are available to download. Finally, if you need one in personal injury or wrongful death, feel free to email me directly.

Think before you write

You should spend some time outlining the specific issues in your case. If you have located a sample complaint, don't just duplicate everything if it doesn't fit your case. Maybe some of it will work and other parts won't. Even if you have previously done a similar complaint, or found a great sample to work from, you will benefit from spending a little time sketching out your own specific case issues. You should review any samples with a critical eye. Are they logical? Easy to read? Don't blindly copy things; delete or fix anything that is awkward, unnecessary, or just doesn't make sense.

When drafting the complaint, you should be thinking about questions like, who are the parties? Do I have all the correct parties? If not, will I be able to add additional unknown parties later? Is state court or federal court better for the case? Do I have any potential issues with jurisdiction or venue? What causes of action can I plead? What causes of action *should* I plead? What damages are we seeking?

Who are your parties?

While every case is different, spending some time to make sure you have all the necessary and proper parties in your complaint is vital. Ask yourself whether you have identified all the defendants and identified them correctly. If the defendant is a company, it is prudent to conduct a business-entity search with the Secretary of State for the state you are filing your case in to confirm you have the proper name and entity. You will also be able to locate the agent for service of process for the company this way.

Do you have all the proper plaintiffs? If so, have you properly presented their claims? Do you need a guardian ad litem? Will you need to include an estate or successor in interest claim? Are there any plaintiffs you may need to add as nominal defendants?

Where to file

Prior to drafting your complaint, consider whether you want to file your case in state or federal court and what venues are available.

As a civil procedure refresher, remember that federal courts are limited-jurisdiction courts and to file your case there it must be based on either 1) a federal question or 2) have complete diversity between the parties and an amount in controversy greater than \$75,000. The facts of your case, your parties, and what causes of action you want to bring should all be considered when making this decision. Maybe you have a civil-rights or employment case and you want to allege multiple violations of federal statutes. Then maybe federal court is where you need to be. Maybe you don't have any federal questions, and you have a case that qualifies for diversity jurisdiction, but you want to stay in state court and avoid removal. In this case, perhaps you will need to contemplate adding additional parties and claims to stay in state court. Every analysis for every case will differ, but your answer to

questions like these will help you decide on what parties you need to join and what claims you want to bring.

Notice pleading v. fact pleading

Another thing to consider when choosing between state and federal court is that the standard you need to plead in your causes of action differs between them in California. Federal court requires only notice pleading. Notice pleading allows one to state his or her claim generally without needing to assert detailed facts to support one's cause of action. The notice pleading standard is in alignment with the ideology that the pleading is needed to notify the relevant parties of the issues in the case. As such, notice pleading is a more relaxed pleading requirement than its counterpart, fact pleading. But, despite the relaxed notice-pleading standard in federal court, the Supreme Court has added a "plausibility" requirement that means that federal courts do not automatically deem every fact pleaded in a complaint as true if the pleading is challenged with a motion to dismiss. By contrast, in California, when a court considers a demurrer, it must presume the facts alleged to be true, even if they are highly improbable. (See, e.g., *Marina Pacific Hotel and Suites, LLC v. Fireman's Fund Ins. Co.* (2022) 81 Cal.App.5th 96, 109 [detailing difference in California and federal pleading standards].)

Fact pleading, which is the standard in state court in California, requires one to provide to the court all facts that are needed to prove the cause of action. While fact pleading theoretically does not require that evidentiary facts be pleaded, distinguishing between the requisite "ultimate facts" and superfluous evidentiary facts can be tricky. Practically speaking, this often means that you will need to provide more comprehensive details when pleading the facts in state court as opposed to federal court.

Cause and effect

In addition to evaluating who to include in your lawsuit and where to file it, you need to consider what causes of action

you want to bring. As touched on above, your choice of federal or state court needs to also be considered in this analysis. Some causes of action may only be available to you in one court or the other, and the standard of specificity you will need to articulate the causes of action also varies. If you are utilizing sample complaints from other cases, then carefully compare them to the facts of your own case when deciding what causes of action to allege. You may be tempted to include as many causes of action as you can, however, while there may be a number of different causes of action you could allege with a given set of facts, more is not always better.

If you include causes of action that are only thinly supported by your facts, then you may open your complaint to attack from demurrers and motions to strike. When this occurs, you can find yourself wasting time opposing motions attacking your pleadings rather than litigating your case. Often, it may be better to file a more supported and streamlined complaint and if you later uncover additional facts to support other causes of action, then you can always amend your complaint to allege them.

One detail to pay attention to when conducting this analysis is the statute of limitations applicable to your claims. If the statute of limitations will not lapse for a while from the date of filing of your complaint, then strategically filing a more streamlined complaint may be just fine. However, if the statute of limitations expiration date for a cause of action is rapidly approaching, you may want to cast the net more broadly and plead more causes of action to ensure you are not time-barred from bringing them later.

Package it properly

Once you have outlined your case, analyzed the issues and decided on what you want to allege, it is time to draft your complaint. If you are not utilizing a form complaint as discussed below, you should make sure that you organize your complaint in a manner that is straightforward and easy for a judge to follow. Judges are used to seeing certain

types of complaints organized and presented in a certain way, and so it is in your interest to present yours in a similar manner. Again, a good sample from a prior similar case can go a long way to helping you do this. However, if you don't have a sample, the important thing is to structure your complaint in a way that is easy to follow. An example of one way you can do this is as follows:

- 1) Introduction and Brief Statement of Facts
- 2) Parties
- 3) Jurisdiction and Venue
- 4) First Cause of Action (followed by however many causes of action you are alleging)
- 5) Demand for Jury Trial (if you are seeking one)
- 6) Prayer for Damages

The first section is where you introduce the judge as to what your case is about. Is it a motor-vehicle collision case? Is it an employment case? Is it a breach-of-contract case? Whatever your case is, these first couple of paragraphs will educate the judge so the rest of your complaint is filling in the details and including all the necessary facts and allegations to support your causes of action and case.

The party section is where you want to introduce your parties. After this section the judge should know, who is who, where they are from and why they are part of your case.

Following that is the brief section establishing that the case is in proper jurisdiction and venue so there is no dispute about whether your case is properly in the judge's court.

Another common format is to combine these first three sections into a "General Allegations" section followed by the causes of action.

Whether you utilize either of these methods, or another form of structure, the important thing is to make sure that before your judge has even gotten to your first cause of action he or she can easily identify 1) what your case is about 2) who the parties are and 3) why jurisdiction and venue are appropriate.

Next, you need to set forth the causes of action that you are bringing. Substantively, each cause of action will have specific language and requirements you will need to include. If you are drafting a cause of action for the first time, you should consult a sample complaint as discussed above for the specifics as to that cause of action if you can. If you don't have a good sample to rely on, then get guidance from a practice guide or at the very least consult the jury instructions for the cause of action you are pleading.

Regardless of which causes of action you are alleging, or how many, each cause of action should be separate and clearly identified for the judge. Set them forth in order numerically in the same order as your caption and with clear headings that identify 1) what type of cause of action it is, 2) who is bringing it and 3) against which defendants it is being brought. (Editor's note: There is no rule that requires party names to be put in all caps and doing so generally makes your complaint harder to read. You don't put party names in all caps in motions or appellate briefs.)

An example of such a heading in a negligence case would look something like:

**FIRST CAUSE OF ACTION
NEGLIGENCE**

(By Plaintiff John Smith as Against Defendants Acme, Inc., a private corporation; David Defendant, an individual; and Does 1 through 50, inclusive)

Then, before launching into that cause of action, it is good practice to begin each new cause of action with a sentence incorporating all the preceding paragraphs. Something like: "Plaintiff hereby realleges and incorporates herein by reference each and every allegation contained in the previous paragraphs as though fully set forth herein."

Other good practices when laying out your causes of action are to one, make sure that your headings are accurate. Often you may have multiple plaintiffs

with different causes of action against different defendants. The headings are there to quickly allow the reader to know who this cause of action applies to and errors in your headings are a surefire way to put the wrong image in your judge's mind.

Two, use your Does correctly. While not always allowed in federal court, if you are filing your complaint in state court, you will most likely be utilizing Does. Does are fictitious place holders for unknown defendants that you can utilize to substitute a named defendant for whose identity you discover later. There are several benefits to utilizing Does. It is an easier process to add a new defendant than amending your complaint, and if properly added, will relate back to the original filing date. However, to get the full benefit of this process you need to make certain your Does are properly alleged and not comingled. Take a case where there are two defendants in your original complaint. You have alleged separate and distinct causes of action against each of them. Cause of action number one applies to Defendant 1 only and cause of action two, to Defendant 2 only.

In this situation you need to separate out your Does and reserve a distinct number for each cause of action. This is necessary because if you later utilize a Doe to substitute a defendant in, you want that defendant to be inserted in the correct cause of action. So for this example, if you have 100 Does, you should reserve Does 1-50 for cause of action one and Does 51-100 for cause of action two. Thus, if you later discover another defendant you need to add to cause of action two, then you can substitute that defendant in for Doe 51 and only cause of action two will apply to that defendant. If you had co-mingled your Does, alleged Does 1-100 for both causes of action, then both causes of action will apply to any defendant later added with a Doe and that could cause issues and invite challenges to your complaint. Be logical when assigning your Does. If there is a scenario where a

Doe defendant may have multiple causes of action applicable to them, then assign a few overlapping Doe defendants to those causes of action. The point is to give yourself full flexibility when utilizing Does, while not opening yourself up to unnecessary and time-consuming challenges to your pleadings.

Good form

If you have decided to bring your case in state court, one way to avoid a lot of potential issues and challenges to your complaint is to utilize a form complaint. Form complaints are Judicial Council forms created to simplify the complaint process for various types of causes of action. One advantage is that when used properly, a form complaint can help you avoid needless challenges to the form of your complaint.

For example, the Form Complaint for a Personal Injury, Property Damage, Wrongful Death case is PLD-PI-001 and can be found easily online. It is a downloadable and fillable form found here: <https://dev.greenfiling.com/cadoc/data/CA-forms-unlocked/pldpi001.pdf>. Simply select the correct boxes for the facts of your case and input the corresponding information requested in each section. When you get to page 3 of the form, section 10 provides a selection of various causes of action you can plead that will often fit most of your cases.

These include: a) motor vehicle, b) general negligence, c) intentional tort, d) products liability, e) premises liability, and f) other.

These causes of action are separate, fillable Judicial Council forms that you can also download, fill out and insert into your form complaint. They are separately and sequentially numbered for identification; for example, the motor vehicle cause of action discussed above is, form PLD-PI-001(1), general negligence is form PLD-PI-001(2), intentional tort form PLD-PI-001(3), etc. I find that these are best utilized in simple, straightforward cases where you have limited causes of action and parties.

Consider the risk of an anti-SLAPP motion

Before you file any complaint, you must consider whether your allegations might bring the case within the anti-SLAPP statute, Code of Civil Procedure section 425.16. The general issue is whether your claims are premised on the defendant's exercise of a constitutional right. Any claim that could be framed as based on the defendant exercising a right to free speech or to petition the government must be carefully vetted. A malicious-prosecution lawsuit, for example, will almost always draw an anti-SLAPP motion because it is premised on the filing of a lawsuit. You may decide to go forward with a claim even if it presents an anti-SLAPP risk, but that should be a considered decision.

Review before you file

Once you have written your complaint, give it a thorough review. Even better, have somebody else at your office

read it over. A second set of eyes from somebody who didn't write the complaint will often catch errors or omissions you might not.

Some common errors that you should always look for are

- Using incorrect singular or plural references, such as "Plaintiff" when it should read "Plaintiffs";
- Wrong party names from another case;
- Incorrect or duplicate paragraph numbering;
- Text that doesn't match up with your line numbering;
- Random or inconsistent capitalizations; and
- Incorrect section headings.

These errors are easy to catch and fix, but, are also easily seen by a judge. They will make your complaint look sloppy and give the wrong impression to those reading it.

Conclusion

I hope this article has helped provide

some tips and strategies to employ in your practice when drafting complaints in your cases. A well-written, organized and easy-to-follow complaint will go a long way to starting your case on the right footing with your judge and opposing counsel. If you have any questions on anything in this article, or need any help finding a sample complaint in a personal injury or wrongful-death case feel free to reach out to me directly at rcasey@psbr.law, and I will be more than happy to see what I can do to help.

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