

Demystifying the Lawsuit:

What to Do if You Are Sued



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I think it's human nature to hope that if you ignore your problems, they'll go away. Of course, most of us have learned that's rarely the case. And, if you're on the receiving end of a lawsuit, I can promise you that it won't simply go away if you ignore it. But if you've never been sued before, what should you do? This article demystifies the situation.

A Few Legal Terms

If you've been sued, you are the **defendant**. The party filing the lawsuit is the **plaintiff**.

In most states, there are several types of courts.

At the most basic level, there are criminal and **civil courts**. A criminal court hears criminal cases – where the government – usually in the form of the state or locality – brings charges against an individual or company that could result in fines, jail time or other punishment.

A civil court resolves disputes between two or more parties – either personal or business – where money, property or injury occurred. This could include divorce cases, child custody matters, bankruptcy and more. Some courts hear both civil and criminal matters.

The parties involved in a civil lawsuit can either hire lawyers to represent them or can represent themselves without an attorney, which is known as **pro se**. In some courts – such as some small-claims courts – lawyers may actually be banned from appearing in the courtroom, although they may serve as behind-the-scenes advisors. In a criminal trial, the state, locality or other government entity is the prosecuting attorney.

Steps in a Lawsuit

Receive the Summons: You'll probably learn of the suit when you receive a **summons**, the legal notice that a lawsuit has been filed against you. With the summons will be a copy of the **complaint**. This is a statement detailing the claim against you. The complaint also explains what the person initiating the lawsuit wants from you or wants you to do, for example: money damages, the return of certain property, or stopping you from taking certain actions, otherwise known as an injunction.

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Decide Whether or Not to Hire an Attorney: As soon as you receive a summons and complaint, you should read it, and then decide whether you need to hire a lawyer to defend you. There are a few things to consider, all of which boil down to the seriousness of the lawsuit and the potential outcomes. If you're being sued in small claims court for a couple hundred dollars, you may not even be able to hire a lawyer, but you may want to consult with one. If your small business is being sued for patent infringement that could put you out of business if you lose, you probably want a lawyer by your side.

Defendant's Answer: Once you receive a summons, you have a limited number of days (usually 20 to 30) to file an **answer to the complaint**. In the answer, you set out any defenses you might have to the plaintiff's claim. For example, if you're being sued for to pay money to someone but have already paid it back; that would be a defense.

File a Counterclaim: If you have your own claim against the plaintiff, you can file a pleading called a **counterclaim**. For example, if you are being sued because of involvement in a breach of contract, but you believe the plaintiff actually breached the contract first, then you would file a counterclaim. Not every lawsuit will include counterclaims.

Engage in Discovery: After a lawsuit is filed, both parties can engage in discovery, a process for gathering information about the case. One party could send **interrogatories**, or written questions, to the other party, to find out more information related to the case. Either party can also take the other party's **deposition**, which means asking and answering questions orally under oath. Either party can also request the other party to turn over documents that are relevant to the case.

Try to Negotiate a Settlement: At any point during the case – before a verdict is reached – you can try to negotiate an **out-of-court settlement** with the plaintiff. You can try to talk to the plaintiff directly or ask your lawyer to start discussions with the plaintiff's lawyer. A settlement can be a wise move if you expect a trial to cost a lot of money, or if you think there's a good chance you could lose the case.

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Go to Trial: Many civil lawsuits can be heard before either a jury or a judge. At trial, both parties present their evidence and call witnesses to testify. After all of the witnesses have testified, the judge gives instructions to the jury about which laws apply to your case. The jury deliberates and reaches a verdict. In a trial without a jury, the judge considers all the evidence and reaches a decision.

Judgment: In a jury trial, the judge enters a judgment based on the jury's verdict. In a bench trial, the judge enters a judgment based on his or her decision.

Motions After the Trial & Appeals: The losing party may ask for a new trial and make other motions trying to convince the judge to change the judgment. Both parties have a right to appeal to a higher court if they think a legal error in the trial occurred.

Enforcing the Judgment: If the judgment includes relief, such as a cash payment from one party to the other, the winning party is responsible for attempting to collect the judgment.

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Worst-Case Scenario

Let's say you receive a summons and ignore it. There's one possible outcome – and only one outcome: The court automatically rules in favor of the plaintiff.

What does this mean? Well, it depends on why you were sued.

- If your spouse sued you for divorce and you don't appear in court on the specified time or date, the judge grants your spouse a divorce, and will probably get everything he or she asked for.
- If a creditor sues you for money owed to them, the judgment allows the plaintiff to collect that money from you, which could include putting a lien on your property.

If a default judgment has been entered against you, you may decide to hire an attorney to appeal it. It's almost certain to cost you *more* money than if you'd addressed the lawsuit immediately. You also stand less chance of winning than if you'd tried to defend the lawsuit at the outset. So let's just agree: If you ignore your lawsuit, it won't go away.

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Find Out Whether You Need A Legal Team On Your Side

Schedule a consultation with our legal team to find out what options and strategies you can use to defend yourself or your business.

[Schedule a Consultation](#)