

## Ease into '08 with a crash course in subpoenas

Legal jargon's a headache, but your hearing doesn't have to be

**H**appy new year. To ease you into 2008, here's a short introduction to two kinds of legal notices: the summons and the subpoena. There are no legal technicalities to make you regret your new year's resolution to be nicer to lawyers in 2008. The purpose is to provide basic information so that if you receive a summons or subpoena, which will probably be written in legal jargon, you'll have a general idea of what is going on. There are some remarks at the end about "service," or the delivery of legal notices.



### CONSTRUCTIVE ADVICE

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**Like many parts of our legal system, the rules for legal notices like summonses and subpoenas, and the rules for service of those notices, can be complex.**

A subpoena lists the title of the lawsuit to which it is related and is commonly issued to people or companies that aren't parties to the suit. A common form is the "subpoena duces tecum." The title indicates (in Latin) that the recipient must bring certain stated things (typically documents) along to the scheduled meeting.

Though subpoenas are usually issued by lawyers, failure to obey a subpoena may be punished by the court. A person or company receiving a subpoena should either obey it or ask the issuing party to change it. If the issuing party refuses such a request, the recipient may ask the court for help. Lawyers are often willing to negotiate the terms of a subpoena, particularly if they've asked for a large volume of documents to be collected and produced or if the recipient has a serious schedule conflict. The rules for subpoenas vary from state to state and can change over time; Washington substantially rewrote its rule on this subject in 2007.

### Summons

The details vary from state to state, but in general a civil lawsuit (as opposed to a criminal matter) is started when a person (the "plaintiff") files a document (a "complaint") with a court and delivers a copy of the complaint with a notice form (a "summons") to a person (the "defendant") against whom the plaintiff wants to obtain a court judgment. The summons warns the defendant to "appear" in the action within a certain stated time (usually 20 to 60 days), or else the court may grant the plaintiff's requests without further notice to the defendant (a "default judgment").

To avoid a default judgment, the defendant must "appear" by filing a response (an "answer") to the complaint or by taking some other permitted action. The complaint includes the title of the lawsuit on the front page and lists the parties, the court and the court's identifying number for the lawsuit.

A recent Washington case illustrates the perils of failing to respond to a complaint. In *TMT Bear Creek Shopping Center Inc. v. Petco Animal Supplies Inc.*, the defendant received a summons and complaint and then, through what the court described as a "breakdown in internal office management," failed to respond within the permitted time. The plaintiff obtained a default judgment. The defendant appealed, arguing it shouldn't be penalized for its minor neglect. The court of appeals ruled a default judgment may be vacated (a) if the defendant has a "virtually conclusive defense" to the plaintiff's claim or (b) if the defendant appears to have a meritorious defense and its failure to respond to the complaint was excusable. The court ruled Petco's failure to respond was not excusable.

### Subpoena

A subpoena is an order directing a person to present himself or herself at a particular place and time, generally for the purpose of answering questions under oath or producing docu-

### Service

Both the summons and the subpoena need to be served on the intended recipients to be effective. "Service" means delivery in a manner that provides assurance that the notice was actually communicated to the person involved. In the case of a human being, the most common method of service is personal delivery by a messenger or process server ("process" is an old legal word that now simply means "summons"). In the case of a corporation, documents may be served on a corporate officer or on the corporation's designated "agent for service of process" (designated when the corporation applied for a business license). There are also rules for service on out-of-state companies, on people who can't be found, and on people serving in the military.

Like many parts of our legal system, the rules for legal notices like summonses and subpoenas, and the rules for service of those notices, can be complex. They have evolved to ensure legal notices reasonably give notice to recipients in a wide variety of circumstances. If you receive a summons, subpoena or other legal notice, take it seriously.

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