

The Paralegal's Guide to Drafting Pleadings



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The Paralegal's Guide to Drafting Pleadings

Though the broader legal field is undergoing a period of relatively slow job growth compared to its rate of growth in previous decades, the market for paralegals remains as strong as it has ever been, or just a bit stronger. The United States Bureau of Labor and Statistics estimates that the profession is growing at an annual rate of just over 18 percent, putting it on a track slightly better than the average occupation nationwide. With that kind of demand, new paralegals are entering the job market every day, and law firms are increasingly hiring entry-level candidates who need a bit of guidance when it comes to drafting their first few pleadings. The good news for those candidates is that it's actually quite easy to draft a pleading that adheres to local and state laws, the guidelines and expectations of the law firm, and the needs of each client for whom pleadings are being drafted, reviewed, and filed.

For those who are new to the paralegal profession, or those who simply need a brief review of the best practices required of those drafting pleadings on a regular basis, there are a few guidelines to follow and some key information that must always be included in these crucial documents. From the facts of the case to the contact information for each party, drafting a pleading is a logical and systematic process that's easy to complete with the right information and the right steps.

A Look at Crucial Information: The Data that Every Pleading Should Contain

While there is some degree of variance between what a pleading must contain based on the state where it's being drafted and the type of law that is being practiced, the actual information placed into these pleadings is generally uniform across all sectors and in all states. New paralegals should be aware of these key elements, perhaps developing a checklist to make sure that each item makes it into the document before it is submitted, filed, and eventually rejected due to their absence.

Start with the Basics: Court Information and Company Letterhead

Some states, and some individual courts, permit the use of a company letterhead on a pleading that is being filed with that court. Others, though, require the law firm's contact information to be typed in the same font as the pleading itself, placed above all other information and centered on the page. Be sure to understand these requirements before proceeding through the rest of the pleading, as running afoul of such basic recommendations and requirements can lead to the pleading being denied and sent back for modification before it can be properly handled by the court. In any case, make sure that the law firm's contact information is the very first thing on the page.

Below the law firm's contact information, the information of the relevant court should be included. If any uncertainty exists as to which court, and which address, is being used for a given pleading, make sure to verify that information with a consulting attorney or with another paralegal who can offer clarity on the case. Rules vary between states and courts when it comes to whether or not a court's address or location should be included. In most cases, the court's full address and contact information must appear near the top of the pleading, below the law firm's own contact information and above the identification of the plaintiff and the defendant in the case.

Identify the Parties for Whom the Pleading is Being Drafted

Pleadings are generally exchanged between a plaintiff and a defendant, or at least between the respective parties' attorneys. For this reason, every pleading drafted should clearly identify the parties based on their involvement in the case. Identifying these parties is actually rather easy. In most pleadings, identifying information concerning the plaintiff is placed on the right side of the pleading document, near the top of the first page, just below the firm's letterhead and the court's information. This is indicated by a heading that reads, quite simply, "Plaintiff."

On the right side of the paper, just below the law firm's letterhead and the court's information, paralegals would need to similarly identify the defendant in the case. This, like the plaintiff information, is denoted by a heading of "Defendant." Both of these headings must include some key information that will help legal professionals and agents of the court identify, contact, and understand the parties in the case. Among the required information that should be used when identifying and naming the case's defendant and plaintiff:

- The defendant's and the plaintiff's current or last known mailing address
- The defendant's and the plaintiff's business association or relationship
- Contact information for both parties that includes, at the very list, a landline or mobile phone number, and may include business or personal email addresses

When drafting a pleading, the case number must be printed next to or below the plaintiff's information. Including the case number is absolutely crucial, as this is the primary way that all relevant documents are handled, organized, and retrieved by the court handling the legal proceedings. Be sure to type the case number exactly as it appears on initial documents from the court, as found in discovery files. Any mistyped case number could lead to serious delays in filing, and could cause complications when actually pursuing the desired outcome of the matter.

What if the Plaintiff and Defendant are Not Known to the Paralegal?

In some cases, firms may simply hand over a great deal of discovery information and charge their paralegal with combing through those documents, learning about the case, and using their own research to determine who the plaintiff and defendant are in the case that serves as the basis for the pleading. In fact, this is a pretty common behavior in most of the larger firms where memos and easy information are hard to come by, especially for entry-level professionals in a new paralegal position.

For those professionals who are not given the plaintiff or defendant information, there's a general rule of thumb when determining who each of these parties are.

The Plaintiff: Typically, the plaintiff is the person who is pursuing legal action against another party, perhaps due to issues like negligence, breach of contract, custody, or some other matter.

The Defendant: The defendant is the one who has to "defend" against the accusations of the plaintiff.

It should be pretty easy for any paralegal to determine who is taking action against another individual, and to then determine who the plaintiff and defendant are in the case. When in doubt, be sure to verify this information with another associate in the office before filing erroneous paperwork with the court.

What If No Business or Contact Information is Included in Discovery Files?

From time to time, the very early stages of a case may prevent the discovery file from including any information about the plaintiff's or defendant's contact information, last known residence, business association, or other key information used when drafting the first section of the pleading. This might seem like a pretty big hurdle, but paralegals almost always have the benefit of a strong online resource that can help them find everything they need to create the most complete and robust pleading possible.

That online resource is known as LexisNexis, and it's easily the largest online database of legal files, identifying information, business contacts and records, and a whole host of other records that can be used when drafting pleadings. Because of the sheer usefulness and wide availability of LexisNexis in all legal settings, paralegals should quickly become familiar with the site's operation and learn how to find the information they need. Especially in the early stages of a case, it is often the paralegal who conducts research to determine key information about the opposing party.

Begin the Pleading with a Brief Statement of the Case

The best pleadings begin with a short statement of the case, or a short summary of actions taken since the last pleading was dispatched to the opposing party and filed with the court. In opening pleadings concerning cases that have not yet advanced to a more mature stage, the statement of the case must include the specific charges of the case, the nature of the lawsuit or allegation, and how the client wishes to resolve that action either through methods like arbitration or by pursuing traditional lawsuits and legal actions.

It's worth noting that this brief statement of the case is actually required by the vast majority of states, and the absence of a sufficient statement at the beginning of the pleading will cause the pleading to be considered invalid upon being filed with the proper court. This might result in a significant delay to the case or, at the very least, a minor inconvenience that will find the paralegal performing a great deal of editing rather than working on other cases currently pending within the firm.

Remember that the statement of the case is only designed to function as general a statement of facts, charges, and claims. More detailed information about each of these charges or claims will be covered later in the pleading, so they do not need to be covered in this opening paragraph.

Proceed Through the Each Claim or Charge in a Logical Manner

After the statement of the case has been concluded, the pleading will move into a new phase. This more detailed phase will involve a discussion of each charge or claim being lodged against the opposing party and, in some cases, it will also cover counter-claims made by the opposing party. This is where the finer details of the case are printed and discussed, largely in an effort to inform the opposing party of the stakes and inform their legal counsel of the next steps to take as they seek to nullify or counter those charges.

While it is tempting for new paralegals to restate the facts of the case in each charge, this is generally not necessary. If an element of the case, covered earlier, is also relevant to a charge that appears later in the pleading, it can simply be referenced by including a footnote or another indicator. This helps to make the pleading both as short and as informative as possible, and it's considered a best practice by most courts as well as most law firms.

Each charge must be denoted by a separate heading that denotes the exact charge being lodged against the other party, and this heading must be typed in a bold font. In most states, such headings must also be underlined and each word within the headline must begin with a capital letter.

The Content of Each Charge: Don't Forget the "Affirmative" Details of the Case

Drafting a legal pleading is not a matter of merely defining each charge against the client and citing their involvement. The nature of a pleading is to charge that the other party broke a law or a contract, and then to back up each of those charges or assertions with the relevant law, regulation, or contractual clause, that proves that point. This kind of information must be included with every charge.

As a matter of best practices, the charge should open with an allegation made by the plaintiff. That charge should then be backed up by citing relevant laws, regulations, or parts of the contract that is alleged to have been breached. Every allegation needs substantiation. The lack of such substantiation will cause the pleading to be deemed ineffective, and it may have serious negative implications on the prospect of the case at hand. Typically, any substantiation of the claims and charges made in the pleading will be part of the discovery file that is given to and handled by the paralegal for the duration of the case.

Pleading an Answer: How to Draft a Document that Responds to Charges Made by Other Parties

For every paralegal who drafts an initial pleading of charges against another party, there's a paralegal on the other side of the argument who has made it their job to respond to those allegations or charges and recuse their client of having done anything wrong. Drafting this kind of pleading is actually quite easy, and it follows much the same format as an initial pleading of charges and allegations.

The major difference between these two main types of pleadings is that an "answer" pleading drops the emboldened and underlined headlines for a simple enumeration scheme. The answer to each charge is numbered, beginning with the number one and ending when each allegation has been sufficiently answered. This document is then filed with the court and submitted to the opposing party's legal counsel for review. Their own response to that document will follow some time later, if necessary and relevant to the case.

Focus on the Smaller Details: Layout and Format Always Matter with Pleadings

Every pleading must be double spaced and every page of the pleading must have a page number placed into the footer section of the document. Failure to double space the pleading or give it the proper page number formatting may result in a delayed acceptance of the document or its eventual rejection and a request for modification.

Even the signature that accompanies the pleading document must meet certain specifications. When the body of the document is completed, a double line break should be inserted. In this case, that would be four blank spaces between the end of the document and the signature area. On the fourth line, paralegals should type their full name. On the right side of the page, directly across from the identification of the paralegal's name, the date of the document should be written in a MM/DD/YYYY format. The document should then be printed and an original signature should be placed in the blank space on the last page, with only blue or black ink.

Avoid the Temptation to Descend into "Legalese"

Among those paralegals new to the profession, there is often the temptation to show their skills and professionalism by creating a pleading that is full of "legalese." These pleadings often end up containing vast and winding sentences, an abundance of unnecessary legal jargon, and a great deal of "flair" that doesn't change the nature of the case's charges or the answer to charges submitted by the opposing party.

Generally, courts are busy places and judges are busy people. Their goal is to be able to read a very simple statement of the initial facts and claims associated with any legal action that they are required to handle. Sentences should be short and should contain only the information necessary to inform the judge about the case at hand. Large words and unnecessary vocabulary should be left out of the pleading. Paralegals risk wasting both their time and the court's time when they allow their pleadings to become unnecessarily long and simply too complex for their actual purpose.

As a general rule, paralegals should always allow themselves a few moments to read over their pleading after they've finished the initial draft. They should honestly assess whether it's as brief as possible, whether each sentence serves a discernible purpose, and whether or not the pleading could be condensed in a few less sentences, or even a few less paragraphs. The combination of good detail and strict brevity will create the best possible pleading for all sides of the matter at hand.

One Exception: Resist Using Abbreviations in Legal Pleadings

Brevity is always a good quality when it comes to drafting a great pleading or any legal document, but abbreviations as a rule should not be used to accomplish this goal. In most cases, abbreviations in legal documents are confusing to all sides, and must be defined to be truly effective. By defining the abbreviation, word count is likely to go up while the actual clarity of the document is reduced.

Resources: Great Pleadings are Sometimes the Result of Great Software or Websites

For those paralegals who are new to the profession and need a bit more help, there are plenty of great resources that actually assist with the drafting of all types of pleadings. Perhaps the largest of these resources comes directly from LexisNexis, where most professionals will be spending their time in pursuit of plaintiff or defendant contact information, business records, and more. The company has long served as a point of reference for pleadings, and today its website offers a few great tools that make the process as easy as filling in some key forms.

Within the LexisNexis Total Research System, which is the name the company gives to its plaintiff and defendant research database, paralegals will find everything from pleading forms to non-compete agreements and non-disclosure contracts. These can serve as useful examples that will make it just a bit easier to finish the process.

In addition to these online resources, virtually all fifty states publish their pleading guidelines and regulations online for review by those who need to familiarize themselves with required information and document formats. This information is also published on most court websites, and provides valuable insight into the exact method of pleading creation for approval and quick filing in that specific court.

An Easy Process Focused on Both Detail and Brevity

Perhaps the biggest challenge of drafting an excellent pleading is balancing the need for detail with the preference for brevity. As most paralegals will quickly learn, this balance is one that can be easily achieved by creating brief paragraphs full of simple language and highly relevant case details. Everything else will be elaborated on in later documents and in the courtroom itself. With a bit of attention to detail and a thorough understanding of both local regulations and universal best practices, drafting a pleading can be perhaps the quickest and easiest part of any paralegal's broader position in the firm.

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