# Complaints, Summons, Subpoenas and Potential Damage Claims

The following is a guide to help you better understand complaints, summons, and subpoenas. This guide does not cover all the possible questions, problems or other conditions that may be involved if you are served with a summons and complaint, or with a subpoena. For that reason, the Sacramento office should be contacted as quickly as possible in the event you are served with one of these documents. A member of the office staff will discuss the matter with you and outline the proper procedures to follow.

**Complaints and Summons**

Briefly, a complaint is a document filed by a private party with a court of law naming the State, and/or one or more of its employees, as allegedly being responsible for an injury, damage, or offense. It is filed with a court but does not become effective until the party named is brought under the court's authority by means of a summons.

A summons is a document by which the court requires an appearance before it to answer or otherwise defend oneself from the charges contained in the complaint. The two documents are normally served at the same time.

Structures employees are not authorized to accept the service of a summons and complaint where only the State is named as defendant. Service of summons and complaint in actions against the State is required to be made upon the Attorney General except that for actions in inverse condemnation, service may be made upon the Director of Transportation or the Attorney General.

In cases where the employee himself is named as the defendant, or is one of the defendants, then service is required to be made upon the named employee personally. If an employee is served with a summons and complaint, he should note the following information in the upper right-hand corner of the documents:

1. The date and time service was made.
2. The name of the employee being served or receiving the summons and complaint.
3. The location and county where the service was made.
4. The name of the person who served the document.

As soon as possible, after receipt, a copy of the summons and complaint, along with a letter of transmittal, should be forwarded to the Sacramento office. The office staff will take care of processing it through the State's legal division and informing the employee as to what his next step should be.

The letter of transmittal should contain a reference to any previous reports which have been submitted concerning the matters contained in the complaint. If no report has been previous submitted, one should be prepared immediately. Under no circumstances, however, should the copy of the summons and complaint be retained by the employee while the circumstances are being investigated and the report prepared. If additional information is to be sent, this fact should be contained in the letter of transmittal.

If an employee is served with a summons and complaint arising out of the operation of a State-owned motor vehicle, the letter of transmittal should include a reference to the original loss report (Form 270) if possible. Include also any other pertinent information which might be of assistance in the defense of the lawsuit.

**Subpoena**

A subpoena is a writ, or judicial order, which commands the attendance or appearance of an employee in court, or before a judicial officer, or a deposition.

A subpoena may be served on anyone. If the service is made properly (valid), it becomes a direct order from the court compelling the employee to appear on the date, time and place specified. In some cases, the subpoena may require that the employee bring certain records or data with him to his scheduled appearance (Subpoena Duces Tecum). This is a part of the order and must be obeyed if at all practical. If the order is violated and the person named fails to appear, or otherwise does not meet the requirements of the subpoena, he is subject to a court imposed penalty.

The subpoena is valid only when it is served at a point within 150 miles of the place where the employee's appearance is scheduled. In certain cases, however, this distance limitation can be modified by an order of the court. It is wise, therefore, to check with the Sacramento office in the event there is a dispute over the distance involved.

An individual served with a subpoena may refuse to accept service, normally, if he is required to travel more than 150 miles. In all cases when a subpoena is served, the employee is entitled to receive, in advance, a $35.00 witness fee per day plus 20 1/2 cents per mile each way transportation expenses from the place of his residence to the place where he is to appear. These fees are seldom offered voluntarily. In order to obtain them, the witness must demand them, in advance, from the person serving the subpoena. (There is an exception in cases involving criminal proceedings in which case the person serving the subpoena does not have to give the witness the fees in advance.)

As with the summons and complaint; the employee must note up in the right-hand corner, the date pertinent to the receipt of the subpoena. He must also see that the Sacramento office is notified promptly.

In general, subpoenas served in connection with litigation in which the State is not involved need not be submitted to the Division of Structures. However, subpoenaed employees should inform the Sacramento office giving the date, place of service or receipt, the manner of service or receipt, the name and authority of the individual serving the subpoena and the reason for the subpoena. If it appears that legal advice or action is necessary, the employee will be so advised.

The State is *required* to defend a civil action against an employee when the action arises out of an act or omission in the scope of his employment, unless the employee acted with actual fraud, corruption or malice. The State is *authorized* to defend an employee against criminal charges or administrative proceedings where the employee, in the course of his employment, acted in good faith, and the employee's defense is in the best interest of the State.

The State is required to pay any judgment for any compromise or settlement of a claim against an employee or former employee if the act or omission upon which the claim or judgment is based occurred within the scope of his employment and the employee did not act or fail to act because of actual fraud, corruption or malice.

**Payroll Status**

If an employee is called as a witness in a court case, either civil or criminal, by reason of knowledge acquired by him in the course of his official duties, he will be carried on the payroll in the same manner as though engaged in his regular work. The State will provide transportation to and from the place where the court case is heard, and the employee will be considered to be on official duty if required to be away from his headquarters overnight.

(Examples of this type would be: the designer of a freeway bridge being called upon to provide the court with design data; a maintenance man called upon to testify regarding an auto accident he witnessed; a construction engineer subpoenaed to explain the geometric details of a detour; etc.)

If an employee is subpoenaed as a witness in a case, by reason of knowledge not acquired in the course of his official duties, and in which he is neither a party nor an expert witness, he may be paid his regular salary provided he remits to the State any fees which he is paid for his appearance. Under these circumstances, the employee would furnish his own transportation and would retain any payment he received for travel expenses. (The only situation where the employee cannot be paid his regular salary is if he is a party to the litigation, or is called as an expert witness.)

If the employee is paid his regular salary, monies collected for witness fees must be turned over to Accounting. If he chooses to take vacation or leave without pay in order to testify, he may retain witness fees.

If there is any question of whether or not a court appearance is at the State's expense and time, you should contact the Sacramento office for clarification.

**Miscellaneous**

Thus far we have discussed only cases where an outside party has issued a summons or subpoena. There are also many incidences in which an employee's presence in court at a deposition taking, or at a fact-finding meeting, is required by the State's legal division or a private law firm handling the State's defense. In these cases arrangements will be made by the Sacramento office for your appearance, your necessary expenses and travel allowances.

**Potential Damage Claims**

Employees may occasionally receive letters, bills or other informal written communications in connection with accidents involving the operation of State-owned motor vehicles, or referring to an alleged dangerous or defective condition of the highway, or an alleged negligent act or omission of a State employee. All such communications will be considered as potential damage claims against the State, and must be forwarded to the Sacramento office for further handling. Such letters should not be acknowledged by the employee.