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You Just Got Sued

What to Do in the First 48 Hours After Being Served

Being served with a lawsuit is one of the most stressful moments a business owner can face. The instinct is to panic, to ignore it and hope it goes away, or to fire off an angry response to the other side. All three are mistakes. What you do in the first 48 hours after being served can shape the entire outcome of the case—and some of the most damaging errors happen before a defendant ever speaks to a lawyer. This guide walks you through exactly what to do, and what not to do, from the moment the papers hit your desk.

1 Find the Deadline — Because the Clock Is Already Running

The single most dangerous mistake a defendant makes is missing the response deadline. In California, once you are properly served with a summons and complaint, you generally have 30 days to file a response (Code Civ. Proc. § 412.20). If you do nothing, the plaintiff can request a default judgment—meaning they win automatically, often for the full amount demanded, without you ever telling your side of the story. A default judgment is extremely difficult and expensive to undo, and in the meantime it can be used to garnish accounts, place liens, and seize assets. The deadline does not care that you were busy, traveling, or hoping the matter would resolve itself.

What it costs you: A business owner was served while preparing for a major product launch. He set the papers aside intending to deal with them after the launch. By the time he called an attorney, 41 days had passed and the plaintiff had already obtained a default judgment for $310,000. Setting aside a default requires a noticed motion, a showing of excusable neglect, and often months of additional litigation—with no guarantee of success.

What to do:

The moment you are served, find and write down the response deadline. Note the date of service and count 30 calendar days. If the 30th day falls on a weekend or court holiday, the deadline rolls to the next court day. Treat this date as immovable. Contact an attorney immediately—ideally within the first few days—so there is time to evaluate the complaint and prepare the right response. If you truly cannot retain counsel in time, an attorney can often obtain a brief extension by stipulation, but only if you act before the deadline passes.

2 Do Not Contact the Other Side — Especially in Writing

After being served, many business owners feel an overwhelming urge to call the plaintiff, send an email explaining their side, or post about the dispute. This is almost always a serious mistake. Anything you say or write can be used as evidence against you. A defensive email admitting partial fault, a text message losing your temper, or a social media post about the dispute can hand the plaintiff exactly the proof they need. Once litigation has begun, communications should generally flow through counsel—not because you have something to hide, but because untrained communications create admissions, waive defenses, and escalate disputes that might otherwise settle.

What it costs you: A defendant in a breach-of-contract case sent the plaintiff a long email after being served, intending to explain that the delay was "mostly" the plaintiff's fault. The word "mostly" became the centerpiece of the plaintiff's case—an admission that the defendant was at least partly responsible. The email was attached to the plaintiff's summary judgment motion. The defendant spent the rest of the case explaining away his own words.

What to do:

After being served, do not contact the plaintiff, the plaintiff's attorney, or any witness about the case. Do not post about the dispute on social media. Do not send "explanatory" emails or texts. If the plaintiff or their counsel contacts you, politely state that you are retaining counsel and that communications should go through your attorney. Then route everything through your lawyer. Silence is not an admission of anything—but a careless statement can be.

3 Preserve Everything — Deleting Is the Worst Thing You Can Do

Once you reasonably anticipate litigation—and being served certainly qualifies—you have a legal duty to preserve evidence. This includes emails, text messages, contracts, financial records, project files, and any documents related to the dispute. Deleting, altering, or destroying evidence is called spoliation, and California courts treat it harshly. The consequences can include monetary sanctions, evidentiary sanctions (the jury is told to assume the destroyed evidence was harmful to you), and in extreme cases, terminating sanctions that effectively end the case in the plaintiff's favor. Even routine document destruction—an automatic email-deletion policy, for example—can become spoliation once litigation is anticipated.

What it costs you: A company facing a wrongful termination suit had an IT policy that automatically deleted emails after 90 days. After being served, no one suspended the policy. Months later, when the plaintiff requested the terminated employee's emails, they were gone. The court issued an adverse-inference instruction telling the jury it could assume the deleted emails would have helped the plaintiff. The company settled rather than risk the verdict.

What to do:

The moment you are served, issue an internal litigation hold. Suspend any automatic deletion policies. Instruct everyone in your organization who might have relevant documents to preserve them—emails, texts, files, voicemails, anything connected to the dispute. Do not delete, edit, or "clean up" anything, even material you think is unhelpful or embarrassing. Your attorney will help you define the scope of the hold, but the duty to preserve begins immediately, not when the lawyer arrives.

4 Read the Complaint Carefully — and Check Your Insurance

Once the initial panic passes, read the complaint closely. Identify who is suing you, what they claim you did, what legal causes of action they assert, and what they are demanding. This matters for two immediate reasons. First, the specific claims determine your deadlines, your defenses, and your strategy. Second—and this is the step most business owners miss—many lawsuits are covered by insurance. General liability, professional liability (errors and omissions), directors-and-officers, employment practices liability, and cyber policies may all provide a defense and indemnity. Most policies require prompt notice of a claim, and late notice can forfeit coverage entirely.

What it costs you: A consulting firm was sued for professional negligence and assumed it would have to pay for its own defense. The owner spent $45,000 on legal fees over four months before mentioning the case to his insurance broker—who immediately recognized it as a covered claim under the firm's E&O; policy. But because notice was late, the carrier initially disputed coverage, and the firm had to fight for reimbursement of fees the policy would have covered from day one.

What to do:

Read the complaint and identify every cause of action. Then locate every insurance policy your business holds—general liability, professional liability, D&O;, EPLI, cyber, and any others—and notify each carrier of the lawsuit immediately, in writing, even if you are unsure whether the claim is covered. Notification is not an admission, and over-notifying costs nothing. Under-notifying can cost you your entire defense. Provide a copy of the complaint to your insurance broker and your attorney on day one.

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5 Hire the Right Lawyer — Quickly and Deliberately

The final step is also the most important: retain experienced counsel, and do it fast. But fast does not mean careless. The lawyer you hire should have direct experience defending the type of case you are facing—a business litigator for a commercial dispute, not a general practitioner who dabbles. Ask who will actually handle your case, whether the attorney has taken cases like yours to trial, and how they assess your early exposure. The right lawyer will not just react to the complaint; they will evaluate your defenses, identify potential cross-claims, assess settlement leverage, and tell you honestly what the realistic range of outcomes looks like. The early strategic decisions—how to respond, whether to file a demurrer, whether to assert a cross-complaint—often shape the entire case.

What it costs you: A business owner hired the first attorney he found, a solo practitioner who primarily handled family law. The attorney filed a bare-bones answer, missed the opportunity to demur to a defective cause of action, and never identified the client's viable cross-complaint. Eight months and $60,000 later, the client hired a business litigator who immediately spotted the cross-claim—but key deadlines had passed and the leverage was gone.

What to do:

Retain a business litigator with direct experience in your type of dispute. In your initial consultation, ask: Have you handled cases like mine? Who will actually work on my case? What are my defenses, and do I have any claims of my own? What is my realistic exposure? What does the first 90 days look like? A good litigator gives you a candid early assessment—not false reassurance and not doomsaying. The goal is a clear-eyed strategy from day one, while every option is still on the table.

The Bottom Line

A lawsuit is not won or lost on the day you are served—but it can be lost in the days right after, before you ever get to court. Find the deadline. Stop communicating with the other side. Preserve everything. Check your insurance. Hire the right lawyer fast. Do those five things in the first 48 hours, and you put yourself in the strongest possible position to defend your business. The defendants who lose early are almost always the ones who waited.

Just Got Served? Don't Wait.

Kolmogorov Law, P.C. defends California businesses in contract disputes, fraud claims, partnership litigation, and complex commercial matters. If you have been served, time matters—the sooner we talk, the more options you have.

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