

MORRIS DUFFY ALONSO & FALEY MUNICIPAL LAW UPDATE

WHEN YOU ARE SERVED WITH A SUMMONS AND COMPLAINT:

As we state in our newsletters, in this litigious day and age a municipality being served with a summons and complaint is no longer a "shock to the system." However, government entities, as with any other person or company served with a lawsuit, need to be reminded that the receipt of a summons and complaint triggers the demand for responses that must be made in a timely manner.

It is imperative that the attorneys who will defend you in a lawsuit receive a copy of the summons and complaint as soon as possible. As elaborated below, this is especially true with cases filed in state court that contain federal issues.

The failure to provide your attorney with these necessary papers in a timely manner can have negative consequences for you. Some of these consequences might be:

- A default judgment taken against you;
- The incurring of attorney fees to void a default judgment or to oppose a motion for a default judgment made against you;
- The need to "rush" an investigation so that a proper answer to a complaint can be submitted to the court; and
- Being precluded from removing a case based on federal issues to federal court, e.g., police, free speech, discrimination, and sexual harassment cases.

Removal to Federal Court

By federal statute - 28 U.S.C. § 1446 - a defendant has only 30 days from receipt of a summons and complaint to remove a case brought

in state court to federal court. There are many good reasons to have a case that hinges on a federal issue litigated in federal court, not the least being that the federal judges are familiar with these complex issues, whereas a state court judge might only have limited exposure to these claims.

However, often more than 30 days pass before your attorney even becomes aware that you have been sued. The time limit for removal is a statutory act of Congress as opposed to a court rule. It is therefore strictly construed by the courts.

Missing this time limit puts you and your attorney at an immediate disadvantage in cases with federal issues. Your attorney will no longer have the option of choosing the court that is best for you in defending your case. The forum will have been chosen by the person suing you.

Conclusion

The process from being served with a lawsuit through having an answer filed in court by your attorney takes time. In cases where there is insurance, the complaint must first go to your insurance carrier. The carrier needs to perform necessary administrative functions that include an initial assessment of your liability and the assignment of a case to a law firm.

Once assigned, your lawyer must review and analyze your summons and complaint, conduct an investigation of the facts and decide what course of action will be most beneficial to you.

For all of these reasons and more, after being served with a lawsuit, your interests will be best served by getting the summons and complaint to your insurance carrier and notifying your attorney immediately.