

Appeals and Litigation

How to Avoid and Tackle Lawsuits and Other Challenges

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Introduction

- WHO DO WE HAVE IN THE ROOM?
 - How many YEARS in FOIA?
 - How many YEARS in FOIA APPEALS?
 - How many YEARS in FOIA LITIGATION?

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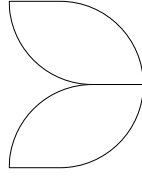
Agenda

- Introduction
- Why Do Requesters File FOIA Appeals?
- Importance of Appeals
- Why Do Requesters go to FOIA Litigation?
- The Culture in the Office
- The Process of FOIA Litigation
- Summary

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Why Do Requesters File FOIA Appeals?



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FOIA Appeals

The Freedom of Information Act (FOIA) provides requesters with a statutory right to administratively appeal an “adverse determination” an agency makes on a FOIA request. 5 U.S.C. § 552(a)(6)(A)(i)

Administrative Appeal: A request to an agency asking that it review at a higher administrative level a full or partial denial of access to records under the FOIA, or any other adverse FOIA determination.



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FOIA Appeals

- Provides requesters with opportunity to challenge agency’s action before going to court.
- Provides agencies with the opportunity to review its initial action and take corrective action, if necessary.



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
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FOIA Appeals

Any adverse determination, such as:

- Inadequate or Incomplete Records Search
- Partial or Full Denial of Responsive Documents
- Non-Response within 20 days
- Denial of Fee Waivers/Fee Category
- Denial of Expedited Processing
- Not Reasonably Described Requests


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FOIA Appeals

Disposition of Administrative Appeals:

- Affirmed
- Completely Reversed/Remanded
- Partially Affirmed & Partially Reversed/Remanded
- Closed for Other Reasons

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Why Do Requesters go to FOIA Litigation?



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FOIA Litigation – Why?

- Requester may file suit after the final agency decision
 - Challenge Redactions
 - Challenge Searches
 - *Requesters must first exhaust administrative remedies
- Failure to respond timely
 - *Appeal not required



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Where do cases get filed?
Jurisdiction & Venue

U.S. District Courts

Where?

- ✓ Home Residence
- ✓ Employment Address
- ✓ Where Records are Located
- ✓ District Court in Washington, DC



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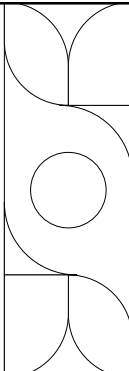
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Let's Talk Culture in Litigation

Deadlines, Deadlines, Deadlines!

Case Ownership
Must have case coverage
Productions
No Two Cases are Identical

Teamwork makes the Dream Work

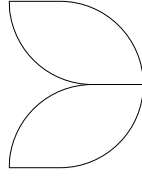


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We have a New Case...

A complaint has been filed...
A complaint is the pleading that starts a case. Essentially, a document that sets forth a jurisdictional basis for the court's power, the plaintiff's cause of action, and a demand for judicial relief.



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A Sample Complaint

Volcano Golf & Resorts, Inc. et al.
Case 1:07-cv-00271 Document 26 Filed 07/27/2007 Page 1 of 3 Doc. 26

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EASTERN DIVISION

VAUGHAN INDEX, LLC
Individual and the Heirs of A/E
Plaintiff(s) Defendant(s)

v.
Lead Plaintiff: No. 07 CV 00271
Judge: Katherine
Magistrate Judge: Steven

CHARLES INC. (DIVERSIFIED)
SEDA, LLC (FOOTER, INC. AKA
REVENUE PROTECTORS)
PETERSON HOLDING CO. (ALFA BEET, INC.
AND JOHN PETERSON)

Defendant(s)

AGREED MOTION FOR EXTENSION OF TIME FOR DEFENDANT FOOTER, INC. AKA REVENUE PROTECTORS TO ANSWER OR OTHERWISE PLEAD

Defendant Footer, Inc. (aka RevenueProtect.com ("Footer")), by its attorneys, respectfully moves the Court to extend until August 13, 2007 the date by which Footer must answer or otherwise plead to the Class Action Complaint at Law and Equity ("Class Action Complaint"). In support of this motion, Footer states:

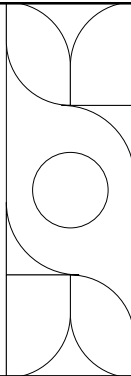
- On June 13, 2007, Plaintiff filed the Class Action Complaint. Footer was served with a copy of the Summons and Class Action Complaint on July 3, 2007 and its deadline to answer or otherwise plead is July 25, 2007.
- The Class Action Complaint is 121 pages long and alleges infringement and misappropriation of registered marks, trade names, logos and other distinctive indicia marks.
- Given the length of the Class Action Complaint and the nature of its claims,

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Some Common Terms

- Complaint
- Answer
- Production
- Status Report
- Declaration
- Vaughn Index
- Plaintiff
- AUSA




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15 Key Steps in the Process

1. Complaint Filed
2. Gathering Information
3. Responsive Pleading
4. Tasking and Monitoring Searches
5. Drafting Search Descriptions
6. Review of Records
7. Production Schedules




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15 Key Steps in the Process cont'd

8. Processing Consultations from Other Agencies
9. Productions
10. Status Reports
11. Status Conferences
12. Settlements
13. Motions for Summary Judgment and Court Filings
14. Declarations and *Vaughn* Indexes
15. Reaching Settlement on Fees and Costs after the Conclusion of a Case



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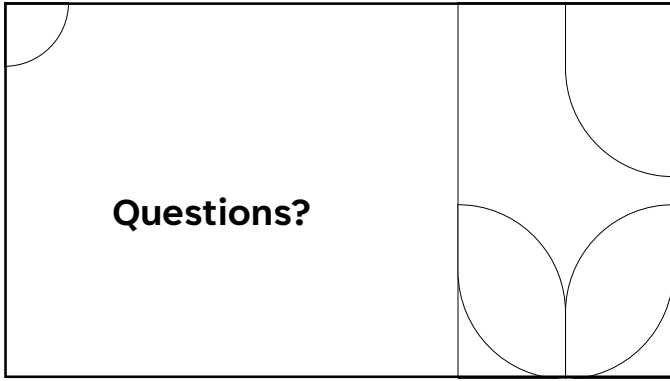
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Summary

There are many differences between FOIA Appeals and Litigation processing and practice. Learn to know the difference in the purpose and the need for both in the FOIA profession. Every case is very different and you will learn something new with each case.

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