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Proper Issuance of Summons After Admission of Plaintiff Under CPC

Part 1

Article

The issuance of summons to a defendant after the institution and admission of a plaintiff is not a mere administrative step—it is a foundational procedural act that shapes the entire course of civil litigation. The governing framework is the Code of Civil Procedure, 1908 (CPC), particularly **Order V**, read with **Appendix B to First Schedule to CPC**.

However, it has become increasingly common for trial courts to deviate from the prescribed procedure by issuing summons merely requiring defendants to “appear and file written statement.” This practice, though convenient, is inconsistent with the law and undermines the objective of expeditious and structured adjudication.

This article aims to clarify the correct legal position and provide guidance for courts to align practice with statutory requirements.

1. Legal Framework Governing Summons

Section 27 of the Code of Civil Procedure and,

Order V Rules 1 and 5 CPC

Section 27 and Order V Rule 1 CPC clearly provides that when a suit has been duly instituted, a summons may be issued to the defendant:

- **To appear and answer the claim,**
- **If the defendant appeared at the time of presentation of plaintiff and admitted the claim of the plaintiff then no summons shall be issued.**

The wording is important. The purpose is to respond to the claim in a manner that facilitates adjudication.

Order V Rule 5 CPC

Rule 5 further clarifies that:

- The court shall determine **whether the summons is for settlement of issues or for final disposal of the suit.**
- The summons must explicitly state this purpose.
- In every suit heard by a Court of Small Causes, the summons shall be **for the final disposal of the suit.**

This rule is routinely ignored in practice, leading to procedural confusion and delay.

Appendix B to First Schedule (Forms of Summons)

Appendix B provides **mandatory formats** of summons, including:

- **Form No. 1:** Summons for disposal of the suit
- **Form No. 2:** Summons for settlement of issues

These forms are not ornamental; they are statutory templates that must be adhered to. Each form clearly indicates:

- The **purpose of appearance**
- The **consequences of non-appearance**
- The **requirement of producing evidence (if applicable)**

2. The Prevailing Incorrect Practice

In many courts, summons are issued in a simplified manner, typically stating:

“Defendant is directed to appear and file written statement.”

This practice suffers from several legal defects:

- It **ignores the distinction** between summons for disposal and summons for settlement of issues.
- It **bypasses Rule 5**, which requires judicial application of mind.
- It **deprives the defendant of clarity** regarding the stage and purpose of proceedings.
- It contributes to **delays**, as cases are not structured from the outset.

3. Correct Procedure to Be Followed

Step 1: Admission of Complaint

Once the complaint is admitted under Order IV and Order VII CPC, the court must proceed to issue summons.

Step 2: Judicial Determination Under Order V Rule 5

The court must consciously decide:

- **Is the case fit for final disposal at the first hearing?**
(e.g., simple recovery suits, admitted documents, summary matters)

OR

- **Is the case to proceed through framing of issues?**

This determination must be reflected in the summons.

Step 3: Selection of Proper Form from Appendix B

- If **final disposal is intended** → Use **Form No. 1**
- If **settlement of issues is intended** → Use **Form No. 2**

The form must not be altered in substance.

Step 4: Contents of Summons

A valid summons must clearly state:

- The **purpose of appearance** (disposal or settlement of issues)
- The **date, time, and place of hearing**
- Whether the defendant must:
 - Produce documents
 - Bring witnesses (if required)
 - File written statement on or before the date of hearing.

Step 5: Service of Summons

Service must strictly comply with Order V Rules 9–30 CPC, ensuring:

- Personal service where possible
- Substituted service only when justified
- Proper documentation of service

4. Importance of Following the Correct Procedure

A. Ensures Fair Trial

Clarity in summons allows the defendant to understand the nature of proceedings and prepare accordingly.

B. Reduces Delay

When the purpose of hearing is defined from the outset, unnecessary adjournments are minimized.

C. Promotes Judicial Discipline

Adherence to statutory forms ensures uniformity and predictability in judicial practice.

D. Prevents Procedural Challenges

Improper summons can be a ground for:

- Setting aside ex parte proceedings
- Appeals and revisions
- Remand orders

5. Role of the Court: Not a Mechanical Function

Issuance of summons is not a clerical act. It requires:

- **Application of judicial mind**
- **Compliance with statutory provisions**
- **Use of prescribed forms**

Failure to do so amounts to procedural irregularity.

6. Recommendations for Judicial Practice

1. **Strict adherence to Order V Rule 5 CPC**
2. **Mandatory use of Appendix B forms without deviation**
3. **Training of court staff and process servers**
4. **Judicial oversight at the stage of issuance of summons**
5. **Incorporation of compliance checks in case management systems**

Conclusion

The CPC provides a clear, structured mechanism for issuance of summons. The distinction between summons for **final disposal** and for **settlement of issues** is not cosmetic—it is central to procedural efficiency and fairness.

Courts must move away from the informal practice of issuing vague directions to “appear and file written statement” and instead adopt the legally mandated approach. Doing so will not only ensure compliance with the law but also significantly improve the quality and speed of civil adjudication in Pakistan.

Justice Rahmat Hussain Jafferi
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