

INSTRUCTIONS

Answer or Answer and Counterclaim

The following court forms will be used to respond to a lawsuit:

- ✓ *Answer or Answer and Counterclaim* (CIV302)
- ✓ *Affidavit of Service* (SOP105)

Important Notices and Resources:

The Court has forms and instructions, for some types of cases, as a general guide to the court process. These instructions explain the steps in more detail and answer common questions, but are not a full guide to the law. Court employees may be able to give general information on court rules and procedures, but they cannot give legal advice.

Got a question about court forms or instructions?

- Visit www.MNCourts.gov/SelfHelp
- Call the MN Courts Self Help Center at (651) 435-6535

Not sure what to do about a legal issue or need advice?

- Talk with a lawyer
- Visit www.MNCourts.gov/Find-a-Lawyer.aspx

Helpful materials may be found at your public county law library. For a directory, see <http://mn.gov/law-library/research-links/county-law-libraries.jsp>. For more information, contact your court administrator or call the Minnesota State Law Library at 651-297-7651.

Who Should Use This Form?

This *Answer* form is used to respond to the initial papers (*Summons and Complaint*) that started a civil lawsuit. In a civil lawsuit, the party suing is called the Plaintiff and the party being sued is called the Defendant.

Do **not** use this *Answer* form to respond to a lawsuit in Conciliation Court, or for family, juvenile, criminal, probate, or guardianship cases. The court has specific answer forms for some cases, and you should use a specific form if one is available. Forms are available at www.mncourts.gov/forms.

Some of the specific answer forms are:

- *Answer to Eviction Complaint*
- *Response to a Conciliation Court Claim*
- *Answer to Divorce Petition*

The most common use for this *Answer* is to respond to a lawsuit in District Court that says you owe money for services or purchases, or have breached a contract or done something else to injure the party suing you. The suit may ask for a money judgment or an order requiring some action (called “specific performance”). All civil cases are complicated, and you are strongly encouraged to get help from an attorney. **This *Answer* form is provided with the idea that you will first get legal advice on what to say in the Answer. It is not a “do-it-yourself” form.**

Note: Corporations and LLCs must be represented by an attorney in District Court. An officer or shareholder cannot sign the *Answer* or appear in Court.

If you have questions about whether a specific Answer form is available, call the Statewide Self-Help Center at 651-435-6535. For more information about what to expect in a civil case, you are strongly encouraged to read the “Civil Actions” Help Topic at <http://mncourts.gov/Help-Topics/Civil-Actions.aspx>, and a booklet available there entitled “What to Expect as a Self-Represented Plaintiff or Defendant...Civil Trial (without a jury).”

What Should I Do When I Receive a *Summons and Complaint*?

When you are served with a *Summons and Complaint*, a lawsuit against you has started even if nothing has been filed with the Court. A *Summons and Complaint* may be served upon you personally, left at your residence with someone who resides with you who is of “suitable age and discretion,” or served by mail if you sign and return a document called *Waiver of Service of Summons*.

If you want to challenge the lawsuit, you must prepare a written *Answer* and serve it on the party suing you. If an attorney signed the *Complaint* on behalf of the party suing you, your *Answer* should be served on the attorney.

The *Summons* you received states your deadline for responding. In most civil cases you have 21 days from the date you were served with the *Summons and Complaint*. If you do not serve an *Answer* on the Plaintiff within this time period, the Plaintiff can ask the court for a default judgment against you without further notice to you.

Form CIV302 may be used to answer a *Complaint*. The information which follows is not legal advice. Each case is unique and **you are strongly advised to contact an attorney for legal advice as soon as possible**. Court employees are neutral and are not allowed to give legal advice to either party. The *Answer* form includes legal terms that are not explained or defined in detail in these instructions. If you need help understanding the terms, deciding what to include on the form, or deciding if you should challenge the lawsuit, please talk with an attorney or do your own research at a law library. (See page 1 for links to lawyer referral and libraries.)

Step 1 Fill out the <i>Answer or Answer and Counterclaim</i> form (CIV302)

Read each paragraph of the *Complaint*. For each paragraph of the *Complaint*, you must admit, deny, or state that you do not have enough information to answer the statements. You will make these admissions and denials on the *Answer*.

1. If all statements in a paragraph of the *Complaint* are false, you will “deny” that paragraph by writing the number of the paragraph in your *Answer* at #1.
2. If all the statements in a paragraph are true, you will “admit” that paragraph by writing the paragraph number in your *Answer* at #2.
3. If the paragraph is partly true and partly untrue, list the paragraph number in your *Answer* at #3. Then write down at #3 the statements in the *Complaint* paragraph that you agree are true.
4. There may be statements you cannot admit or deny, because you do not have enough information to know if the statement is true or false. List these statements or paragraph numbers in your *Answer* at #4.

Remember: you must admit, deny, or address each paragraph in the *Complaint*.

5. **Affirmative Defenses**

Court Rules direct the Defendant (you) to raise all Affirmative Defenses in the *Answer*. You may have a defense, but not an Affirmative Defense. Your defense may simply be that the statements in the *Complaint* are false, and you deny them. An Affirmative Defense is a new set of facts that would defeat the other party’s claims even if the facts in the *Complaint* are true.

Example: The Complaint says you owe Computer House \$4,000. You went through bankruptcy and the \$4,000 debt was discharged in the bankruptcy. Although you admit that you bought a computer and did not pay the \$4,000, you can check “Discharge in bankruptcy” and explain that you are no longer responsible for the debt because it was discharged in Bankruptcy Case No. 12311 in March 2018.

In this example, you admit that the facts in the *Complaint* are true, but you have an Affirmative Defense (Discharge in Bankruptcy).

Some Affirmative Defenses can be raised later in an *Amended Answer*, but you should plan to raise all defenses now. Read through the Affirmative Defenses listed in the *Answer* at #5. If any apply to your case, check the box and then provide the facts to support the defense in the space provided. If you need more space, attach a separate sheet of paper.

If you think you have any sort of defense to the *Complaint*, you should get advice from a lawyer to determine whether it is an Affirmative Defense.

6. Counterclaims

Paragraph 6 of the *Answer* asks about counterclaims. If you do not have a Counterclaim, check the box Defendant has no Counterclaims.

The Plaintiff is suing you based on a set of facts included in the *Complaint*. If you think that the Plaintiff should be paying you instead of suing you, you may have a Counterclaim. In the Counterclaim, you must state facts that, if proven to be true, will support your request for a judgment against the Plaintiff. You must also state what “relief” or outcome you want the judge to order.



If you include a Counterclaim and the court determines that your claim was frivolous or not supported by law, you could be ordered to pay fines, costs or attorney fees for the other party. On the other hand, failing to include a Counterclaim could prevent you from suing later. If you have a counterclaim ***arising out of the same facts that are in the Complaint***, you generally must state your Counterclaim in your Answer. You should talk to a lawyer for help deciding if you have a counterclaim.

7. Adding Parties to the Lawsuit

Rule 14 of the Minnesota Rules of Civil Procedure addresses *when* it is proper to add new parties to the lawsuit and *how* to do it. New parties are called “Third Party Defendant” or “Third Party Plaintiff”. Adding parties is complicated. Court staff cannot answer questions on this topic. Ask a lawyer for help if you think another person or entity should be a party to the lawsuit. As the

Defendant, you can add defendants only if the new defendant is liable to you (instead of to the Plaintiff.)

8. **Relief**

The paragraph that starts with “WHEREFORE” is called the “prayer for relief.” This is where you write what you want the judge to order. Standard relief language is included on the form. Select the relief you are requesting by checking the box.

Step 2

Sign the *Answer* or *Answer and Counterclaim* form

After you complete the *Answer* form, you must read the acknowledgment and then sign and date it. If an attorney is representing you, the attorney will sign instead.

Step 3

Make Copies of the Form

Make one copy of the dated and signed *Answer* for yourself and one copy for each Plaintiff and any Defendant other than you.

Step 4

Serve the Other Party

A copy of your *Answer* must be served on each Plaintiff’s attorney. The attorney signed the Complaint served on you, and included his/her address. If the Plaintiff does not have an attorney, the plaintiff will have signed the Complaint and your *Answer* must be served on the Plaintiff. Do not serve the Original *Answer* (the paper you actually signed) because the original must be filed with the court.

Service of your forms must be completed in the time stated in the *Summons and Complaint*. The time period starts the day after you were served. For example, if you were served with a *Summons* on Monday that says you have 21 days to respond, start counting your 21 days on Tuesday (Day 1). The 21st day is the last day your *Answer* can be served on time. Service is complete upon hand-delivering or mailing a copy of your *Answer* to the Plaintiff’s attorney (or the Plaintiff, if there is no attorney). If the 21st day falls on a Saturday, Sunday, or legal holiday, then the deadline becomes the next day that is *not* a Saturday, Sunday, or legal holiday.

Service cannot be made on a legal holiday.

Who Can Serve

The forms you have prepared can be served by any of the following:

- The sheriff;
- Another adult; or
- You.

Personal Service

- If an attorney signed the *Complaint*, the papers can be hand-delivered to the attorney or given to an employee of the attorney who is authorized to accept service of process for the attorney.
- If the Plaintiff (other party) is representing him or herself, the *Answer* can be hand-delivered to the Plaintiff at any location, or left at the Plaintiff's home with an adult or other person of "suitable age and discretion" who lives there with the Plaintiff. For additional information about serving papers, see Minnesota Rules of Civil Procedure, Rule 4 Service (https://www.revisor.mn.gov/court_rules/cp/id/4/).

Service by Mail

- A copy of your *Answer* is placed in an envelope addressed to the Plaintiff's attorney (or the Plaintiff, if there is no attorney) with your return address on the envelope and is then sent by first class U.S. mail. The server must drop the letter in the mailbox or give it to the postal worker. The address for the Plaintiff's attorney or Plaintiff is on the *Complaint*, as part of Plaintiff's signature block.

Step 5

Complete the *Affidavit of Service* Form (SOP105)

After the *Answer* is hand-delivered or mailed, the person who did the service must fill out an *Affidavit of Service* form and sign it under penalty of perjury. Perjury is the crime of intentionally lying or misrepresenting the truth.

You must have an *Affidavit of Service* for each party served. The *Affidavit of Service* does not get sent to the other parties.

Step 6

Filing your *Answer* and *Affidavit of Service* with the Court

Keep the original *Answer* and the *Affidavit of Service* with your important documents. If you receive a “Notice of Judicial Assignment” or other letter from the court, it means that the Plaintiff has filed the *Summons and Complaint*, and that you must file your original *Answer* and *Affidavit of Service* with the court.

At the time you file your *Answer* and *Affidavit of Service*, you are required to pay a filing fee. This fee varies by county. If you cannot afford the filing fee, you may request a fee waiver. Forms and instructions for the Fee Waiver are available at <http://mncourts.gov/GetForms.aspx?c=19&p=69>, and from Court Administration. Court Administration cannot process your *Answer* unless you pay the fee or get a fee waiver order signed by a judge.

Step 7 **Settlement or Trial**

After you serve your *Answer*, the Plaintiff may contact you to discuss settling the case without a trial. Most cases settle. If you do not hear from the Plaintiff, you can call the Plaintiff’s attorney or the Plaintiff and suggest settling the case. If Plaintiff has an attorney, the attorney signed the Complaint and you will find contact information below the signature, usually on the last page.

If you are representing yourself, keep in mind that you can get help from an attorney at any stage. You can hire an attorney to help with some or all parts of your case. For example, if you get a settlement offer, you may want to consult with an attorney on whether to accept the offer, or make a counteroffer.

At each court hearing, the Judge will ask if you have tried to settle and will likely require mediation or arbitration. See the “Settle Out of Court” Help Topic at <http://mncourts.gov/Help-Topics/Settle-Out-of-Court.aspx>.

Do not ignore anything you receive from the Plaintiff or the court. You may need to respond in writing to additional documents. You may need to attend several court hearings before a trial.

Again, more information about “what to expect” is available under the “Civil Actions” Help Topic at <http://mncourts.gov/Help-Topics/Civil-Actions.aspx>.