

INSTRUCTIONS FOR FILLING OUT FORM

PURPOSE. This form is to be used when you have been served with a summons and complaint and you have a counterclaim against the opposing party. For example, if you are served with a summons and complaint for paternity and custody and you want custody you need to counterclaim for custody.

FORMS INVOLVED. The form is an **Answer and Counterclaim** to the opposing party's complaint and is required if you want to contest the complaint. It also contains a counterclaim. You will need to fill in the necessary information with help from the instructions below and then file the original with the appropriate court and mail a copy to the opposing party or their attorney.

WARNING. You must file an answer to plaintiff's complaint within thirty (30) days of service of the summons and complaint upon you or you are in default and judgment could be entered against you. This does not apply to an eviction summons and complaint in which case you must file an answer within seven (7) days of service of an eviction summons and complaint upon you.

What do I do if I am served with a Summons and Complaint. This section explains what to do if you are served with a summons and complaint. If you are served with a summons and complaint you are being sued for some reason. As a result you must file an Answer with the court and a copy on the plaintiff within 30 days of service of the summons and complaint is served upon you or you are in default. Read the summons and complaint carefully. Other actions, such as eviction actions, have a much shorter time period to answer. The summons will tell you how long you have to file an answer from the date you are served with the summons and complaint. The complaint will tell you what the plaintiff(s) claim is against you.

What is an Answer. An Answer is a pleading where the defendant(s) responds to the plaintiff(s) complaint. You can answer the plaintiff(s) complaint by denying and/or admitting to any parts or all of plaintiff(s) allegations in the complaint. If you have any **affirmative defenses** to plaintiff(s) complaint you must specifically plead these affirmative defenses in your answer. If you fail to raise any affirmative defenses you may have you will be barred from using such a defense. This means that if you fail to raise an affirmative defense you waive the right to use such a defense. Affirmative defenses include accord and satisfaction (meaning you already settled this matter with the opposing party), arbitration and award (meaning an independent arbitrator already decided the case before the court did) assumption of the risk, contributory negligence, discharge in bankruptcy, duress (you were forced or threatened to do something you did not want to do), estoppel (meaning the other party cannot complain against their own actions), failure of consideration, fraud, injury by fellow servant, illegality, laches (meaning the other party waited too long to bring the action), license, payment, release (meaning the other party released you from any obligation), res judicata (meaning the court has already heard and decided the matter in an earlier case involving the same thing as this case), statute of frauds, statute of limitations (meaning the other party did not bring the action in the time set out in the code) and waiver (meaning the other party waived any claim they had). You must prove any affirmative defenses you raise in your Reply by a preponderance of the evidence at trial.

You also may need to file a counterclaim with your answer. A counterclaim is like the

plaintiff(s) complaint in that it sets out your cause of action against the plaintiff(s). You must file a counterclaim on any claim you have against the plaintiff(s) if it arises out of the same transaction or occurrence raised in the plaintiff(s) complaint. Failure to do so could result in the court barring your claim. If you have a separate claim against the plaintiff(s) you do not have to counterclaim and can start a new action against the plaintiff(s) by filing your own summons and complaint.

How to file an Answer and Counterclaim. You must file an Answer and Counterclaim to the plaintiff's summons and complaint by filing the original with the court and by mailing a copy to the plaintiff if they are not represented by legal counsel or to their attorney if the plaintiff is represented. Look at the summons you received with the complaint, it will tell you where to mail your answer and counterclaim.

The Answer and Counterclaim forms below is generic. If you have been served with a summons and complaint for divorce, paternity, etc. go to that page to find a more specific Answer and Counterclaim geared toward your needs.

INSTRUCTIONS FOR FILLING OUT THE FORM. To fill out this form follow these instructions. The numbers to each instruction below is the number on the blank line on the form where the information for that number needs to be inserted on the form.

Instructions for filling out the Answer:

- (1) on this line insert the name of opposing party.
- (2) on this line insert your name.
- (3) on this line insert the numbered paragraphs of the plaintiff's complaint that you admit or do not contest. By admitting to a paragraph you can not dispute that allegations at the trial.
- (4) insert the numbered paragraphs of the plaintiff's complaint that you can neither admit or deny because you do not have knowledge or information of whether that allegation is true.
- (5) insert the numbered paragraph of the plaintiff's complaint that you deny or contest. By denying a paragraph you can challenge that allegation at trial.
- (6) list any affirmative defenses you may have. If you have any affirmative defenses to plaintiff(s) complaint you must specifically plead these affirmative defenses in your answer. If you fail to raise any affirmative defenses you may have you will be barred from using such a defense. This means that if you fail to raise an affirmative defense you waive the right to use such a defense. Affirmative defenses include accord and satisfaction (meaning you already settled this matter with the opposing party), arbitration and award (meaning an independent arbitrator already decided the case before the court did) assumption of the risk, contributory negligence, discharge in bankruptcy, duress (you were forced or threatened to do something you did not want to do), estoppel (meaning the other party cannot complain against their own actions), failure of consideration, fraud, injury by fellow servant, illegality, laches (meaning the other party waited to long to bring the action), license, payment, release (meaning the other party released you from any obligation), res judicata (meaning the court has already heard and decided the matter in an earlier case involving the same thing as this case), statute of frauds, statute of limitations (meaning the other party did not bring the action in the time set out in the code) and waiver (meaning the other party waived any claim they had).

(7) on this line write a short and plain statement of each of your counterclaims. Do not make legal arguments. State as briefly as possible the facts showing that you are entitled to the damages or other relief sought. State how each plaintiff was involved and what each plaintiff did that caused the defendant harm or violated the defendant's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted go to the next numbered counterclaim and write a short and plain statement of each counterclaim in a separate paragraph. Attach additional pages if needed.

(15) on this line state briefly and precisely what damages or other relief the you are asking the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any damages claimed, the amounts, and the reasons you claim you are entitled to damages. You will have to prove specific damage amounts at the trial. You can do this with witnesses who of knowledge of the claim and with documents such as medical records and bills.

(8) on this line insert the day.

(9) on this line insert the month.

(10) on this line insert the year.

(11) on this line insert your name by signing.

(12) on this line insert the address where you mailed your answer and counterclaim. It will be either the plaintiff if they are not representing by legal counsel or to their attorney if the plaintiff is represented. Look at the summons you received with the complaint, it will tell you were to mail your answer and counterclaim.

**ROSEBUD SIOUX TRIBAL COURT)
ROSEBUD INDIAN RESERVATION)SS
ROSEBUD, SOUTH DAKOTA)**

IN CIVIL COURT

(1) _____

DOCKET _____

PLAINTIFF(S)

ANSWER AND
COUNTERCLAIM

VS

(2) _____

DEFENDANT(S)

Comes now, the above named defendant and for his/her answer to plaintiff's complaint states and alleges as follows:

1. That the plaintiff's complaint fails to state a claim or cause of action against defendant for which relief may be granted, and defendant moves that the same be dismissed on the merits and with prejudice.

2. That defendant denies each and every allegation contained in plaintiff's complaint, except those specifically admitted to herein.

3. That defendant admits the allegations contained in paragraphs (3) _____ of the plaintiff's complaint; alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph (4) _____ of the complaint.

4. That defendant denies the allegations contained in paragraphs (5) _____ of the plaintiff's complaint.

AFFIRMATIVE DEFENSES

As and for affirmative defenses to the plaintiff's Complaint, defendant alleges:

1.(6) _____
_____.

2.(6) _____

_____.

3.(6)_____

_____.

COUNTERCLAIM

Defendant, for his counterclaim against the above-named plaintiff, hereby states and alleges as follows:

1.(7)_____

_____.

2.(7)_____

_____.

3.(7)_____

Wherefore, defendant prays that the relief requested in plaintiff's complaint be denied and that plaintiff's complaint be dismissed with prejudice and that this Court order the following relief requested in the defendant's counterclaim: (8)_____

Dated this (9)____ day of (10)_____, (11)_____.

(12)_____

Defendant

CERTIFICATE OF SERVICE

The undersigned certifies that I served a true and correct copy of the forgoing Answer and Counterclaim upon the plaintiff or their attorney by first class mail by depositing said copy in the United States Mail addressed to plaintiffs or plaintiffs attorney's last address at (13)_____.

Dated this (9)_____ day of (10)_____, (11)_____.

(12)_____
Defendant