

INSTRUCTIONS FOR FILLING OUT FORM

PURPOSE. This form is to be used when you have been served with a summons and complaint for temporary and/or permanent restraining order and you have a counterclaim against the opposing party. For example, if you are served with a summons and complaint you want to counterclaim for temporary and/or permanent restraining order.

FORMS INVOLVED. The form is an **Answer** 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 twenty (20) or thirty (30) days of service on you (depending on which tribal court you are dealing with) or you are in default and judgment could be entered against 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. The complaint will tell you what the plaintiff(s) claim is against you.

What is an Answer. An Answer is a pleading (a legal paper you file with the court) where the defendant responds to the plaintiff's complaint. You can answer the plaintiff complaint by denying and/or admitting to any parts or all of plaintiff allegations in the complaint. If you have any affirmative defenses to plaintiff 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 can 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).

WHAT HAPPENS IF DEFENDANT FILES A COUNTERCLAIM WITH THEIR ANSWER.

This section explains what to do if you receive a counterclaim in the defendant's answer. You should read defendant's answer carefully. It will tell you what parts of your complaint the defendant admits and what parts defendant denies. The answer will tell you if the defendant is

filing a counterclaim against you. If the answer contains a counterclaim you must reply to the counterclaim. As a result you must file a Reply with the court and a copy to the plaintiff within the time period prescribed by law or you are in default to defendant's counterclaim. If you receive an Answer from the defendant and it contains a counterclaim you must reply to defendant's counterclaim within 20 days of service of the counterclaim upon you or you are in default. Use the **Plaintiff's Reply to the Defendant's Counterclaim** form if you received an answer and counterclaim from the defendant.

What is a Reply. A Reply is your answer to the defendant's counterclaim. This means you must admit or deny each of the defendant's allegations in the counterclaim. 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 can 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.

What happens if you fail to Reply to defendant's counterclaim within time period prescribed by law? If you fail to Reply to defendant's counterclaim within 20 days of service of the counterclaim upon you, you are in default and the defendant may seek a default judgment against you on their counterclaim. This means that if you fail to reply to the defendant's counterclaim the defendant may be awarded what they ask for in their counterclaim and you cannot object or present your side of the issue. **Warning.** You must reply to defendant's counterclaim within a specified period of time. If you fail to do so a default judgment could be entered against you.

How to file a reply. You must file a Reply to the defendant's Answer and Counterclaim 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.

What happens if you fail to Answer plaintiff's summons and complaint within time period prescribed by law. If you fail to Answer plaintiff's complaint within 30 days of the date of service you are in default and the plaintiff may seek a default judgment against you. This means that if you fail to answer, the plaintiff may be awarded what they ask for in their complaint and

you cannot object or present your side of the issue. **Warning.** You must answer plaintiff's complaint within 30 days. If you fail to do so a default judgment could be entered against you.

You may also need to file a counterclaim with your answer. A counterclaim is like the plaintiff(s) complaint in that it sets out your causes of action against the plaintiff. You must file a counterclaim on any claim you have against the plaintiff if it arises out of the same transaction or occurrence raised in the plaintiff complaint. Failure to do so could result in the court barring your claim. If there are children involved in the divorce and you want custody of the children you must counterclaim for custody and child support.

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.

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 and Counterclaim:

- (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 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).
- (7) insert the date plaintiff committed the illegal or wrongful against you.

- (8) insert the approximate time the illegal or wrongful act occurred.
- (9) explain in detail how plaintiff committed an illegal or wrongful act against you.
- (10) insert the community in which plaintiff committed the illegal or wrongful act against you.
- (11) explain any injuries you suffered as a result of the illegal or wrongful act of plaintiff.
- (12) insert whether this incident was reported to law enforcement, if law enforcement investigated, and whether plaintiff was arrested. Explain why plaintiff's illegal or wrongful act was not reported if that is the case.
- (13) explain why you feel that plaintiff will continue to commit illegal or wrongful acts against you and why you are in immediate and present danger of further illegal or wrongful acts by plaintiff.
- (14) explain why notice should not be given plaintiff until hearing is held. In order to get a temporary restraining order without notice to plaintiff before the hearing for preliminary or permanent injunction, you must show the court that you will suffer irreparable injury or damage (injury or damage that cannot be repaired) before hearing can be held and notice given to plaintiff. This can be done by pleading that plaintiff has engaged in assaultive behavior or threatened you with bodily harm or that you fear retaliation against you by plaintiff for filing this action.
- (15) on this line insert the day.
- (16) on this line insert the month.
- (17) on this line insert the year.
- (18) on this line insert your name by signing.
- (19) 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 where 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) _____

and that as a result defendant feels he/she is in immediate and present danger by plaintiff.

9. That immediate and irreparable harm will come to defendant before plaintiff(s) can be given notice and be heard and asks the court to issue a temporary restraining order.

10. That notice to plaintiff(s) should not be required because (14) _____

11. That defendant has no other adequate legal remedy to prevent future harm and there is no less restrictive means to prevent such harm to defendant.

12. That defendant has no administrative remedies or has exhausted all administrative remedies.

13. That defendant will suffer irreparable harm which cannot be solved by awarding money damages unless plaintiff is restrained.

14. That greater harm will be done to defendant by the refusal of injunctive relief than will be occasioned to plaintiff by the granting of such relief.

WHEREFORE, Defendant prays that this Court order that

A. This court has jurisdiction over the parties and subject matter herein;

B. Defendant be granted a Temporary Restraining Order immediately, without notice to plaintiff, enjoining and restraining defendant(s) from abusing, threatening to abuse defendant and to have no form of contact or communication with defendant and that copies of said order be served upon plaintiff and the appropriate law enforcement officials.

C. A hearing in this matter be set within the time limits set out in the applicable tribal code for plaintiff to show cause why the temporary restraining order be converted to a temporary or permanent injunction/restraining order and that notice of said hearing and the Temporary Restraining Order be served upon plaintiff.

D. After hearing defendant be granted a preliminary and permanent restraining order against

plaintiff for as long as allowable under tribal law.

J. Plaintiff be restrained from having any form of communication or contact with defenant, his/her residence, place of employment or school.

F. That the plaintiff reimburse the defendant for the fees he/she incurred in this matter.

G. For any other relief the Court deems just and equitable.

Wherefore, defendant prays that the relief requested in plaintiff's complaint be denied and that plaintiff's complaint be dismissed with prejudice.

Dated this (15)____ day of (16)_____, (17)_____.

(18)_____
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 (19)_____.

Dated this (15)____ day of (16)_____, (17)_____.

(18)_____
Defendant