

## INSTRUCTIONS FOR FILLING OUT FORM

**PURPOSE.** This form is to be used when you have been served with a summons and complaint for Divorce the complaint and you also have a Counterclaim against the opposing party. For example, if you are served with a summons and complaint for divorce and you want custody of your children born during the marriage and child support you need to Counterclaim for custody and child support.

**FORM 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 and any counterclaim to plaintiff's complaint within 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). 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 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.

**Please refer to the Divorce Pro Se Guide for more information on how to proceed in court.**

**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 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).

(7) insert “have” if you and defendant acquired property during the marriage or “have not” if you and defendant have not acquired property during the marriage.

(8) insert “have” if you and defendant incurred debts during the marriage or “have not” if you and defendant have not incurred debt during the marriage.

(9) insert the grounds for your divorce. The grounds for divorce include adultery, extreme cruelty, willful desertion, willful neglect, habitual intemperance (being drunk all the time), conviction of a felony, chronic mental illness or irreconcilable differences (differences between you and your spouse that cannot be fixed). See Burden Of Proof section above for grounds.

(10) insert your maiden name if you want it restored or leave blank if you do not or you are a man.

(11) insert any other counterclaims you may have against the plaintiff.

(12) on this line insert the day.

(13) on this line insert the month.

(14) on this line insert the year.

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

(16) 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) \_\_\_\_\_

3.(6)

COUNTERCLAIM

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

6. That defendant is the child(ren)'s primary caretaker and has had the care custody and control of the child(ren), and it is in the child(ren)'s best interest that the care, custody, and control be awarded to defendant.

7. That the Plaintiff is an able-bodied person capable of paying child support to the defendant in an amount deemed reasonable by the Court.

8. That Plaintiff and defendant (7) accumulated property during the course of their marriage.

9. That Plaintiff and Defendant (8) incurred debts during the course of their marriage.

10. That plaintiff and defendant have irreconcilable differences, or in the alternative, the plaintiff has perpetrated acts upon defendant amounting to (9) which make it impossible to fulfill the aims and goals of their marriage.

11. That plaintiff be restored her maiden name of (10)

12.(11)

13.(11)

14.(11)

15.(11)

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

- A. This court has jurisdiction over the parties and subject matter herein;
- B. Judgment be entered awarding defendant a Decree of Divorce from plaintiff.
- C. The defendant be granted custody of the child(ren).
- D. The plaintiff pay a reasonable amount of child support.
- E. The Court make a fair and equitable division of the property and make a fair and equitable distribution of the debts.
- F. That the plaintiff reimburse the defendant for the fees incurred in this matter.
- G. For any other relief the Court deems just and equitable.

Dated this (12)\_\_\_\_\_ day of (13)\_\_\_\_\_, (14)\_\_\_\_\_.

(15)\_\_\_\_\_  
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 (16)\_\_\_\_\_

Dated this (12)\_\_\_\_\_ day of (13)\_\_\_\_\_, (14)\_\_\_\_\_.

(15)\_\_\_\_\_  
Defendant