

## **INSTRUCTIONS FOR FILLING OUT FORM**

**PURPOSE.** This form is to be used when you have been served with an answer from the defendant and it contains a counterclaim.

**FORMS INVOLVED.** The form is a **Reply to the opposing party's counterclaim** and is required if you want to contest the defendant's 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 a reply to defendant's counterclaim within twenty (20) days of service of the counterclaim upon you or you are in default and judgment could be entered against you.

### **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.

**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' 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.

**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 Reply:

- (1) on this line insert your name.
- (2) on this line insert the name of the opposing party(s).
- (3) on this line insert the numbered paragraphs of the defendant's counterclaim 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 defendant's counterclaim 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 defendant's counterclaim 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 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 insert the day.
- (8) on this line insert the month.
- (9) on this line insert the year.
- (10) on this line insert your name by signing.

(11) on this line insert the address where you mailed your Reply. It will be either the opposing party if they are not representing by legal counsel or to their attorney if the opposing party is represented.

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

**IN CIVIL COURT**

(1) \_\_\_\_\_  
\_\_\_\_\_

DOCKET \_\_\_\_\_

PLAINTIFF(S)

REPLY

VS

(2) \_\_\_\_\_  
\_\_\_\_\_

DEFENDANT(S)

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

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

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

3. That plaintiff admits the allegations contained in paragraphs (3) \_\_\_\_\_ of the defendant's counterclaim; 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 counterclaim.

4. That plaintiff denies the allegations contained in paragraphs (5) \_\_\_\_\_ of defendant's counterclaim.

#### AFFIRMATIVE DEFENSES

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

1.(6) \_\_\_\_\_  
\_\_\_\_\_.

2.(6) \_\_\_\_\_  
\_\_\_\_\_.

3.(6) \_\_\_\_\_  
\_\_\_\_\_.

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

Dated this (7)\_\_\_\_ day of (8)\_\_\_\_\_, (9)\_\_\_\_\_.

(10)\_\_\_\_\_  
Plaintiff

CERTIFICATE OF SERVICE

The undersigned certifies that I mailed a true and correct copy of the forgoing Reply upon the defendant or their attorney by first class mail at (11)\_\_\_\_\_  
\_\_\_\_\_.

Dated this (7)\_\_\_\_ day of (8)\_\_\_\_\_, (9)\_\_\_\_\_.

(10)\_\_\_\_\_  
Plaintiff