

USLegal Pamphlet on How to Answer a Complaint



INTRODUCTION

In a civil case, an answer is the defendant's written response to the plaintiff's complaint. It must be filed within a specified period of time, and it either admits to or (more typically) denies the factual or legal basis for liability. Some states allow an answer to state a lack of knowledge as to whether a particular allegation is true or false. An answer is a legally sufficient response to the allegations that have been alleged against you in the complaint.

HOW TO ANSWER A COMPLAINT

The answer will generally either admit or deny each claim made by paragraph, or state an inability to admit or deny for lack of knowledge. In the answer, you do not have to tell the entire story or make legal arguments. The answer should be typed, but if you cannot

have it typed, you can neatly hand write it, using print (not cursive writing). If there is a case number on your Summons and Complaint, then you should write in the number on your answer and file the original(s) with the Court Clerk. Make at least two copies of your answer. Deliver one copy of any filed documents to the lawyer for the plaintiff.

The answer may also include "affirmative defenses" including allegations which contradict the complaint or contain legal theories (like "unclean hands," "contributory negligence" or "anticipatory breach") which are intended to undercut the claims in the complaint. Along with defenses that may be raised, a counterclaim or cross claim may also be asserted. In some cases, a demand for a trial by jury is made in the answer.

There are rules of evidence which govern the formalities and time period required in filing an answer. The answer must be filed within a certain number of days of being served with the complaint, typically 20-30 days. Timelines vary

by local area. If the defendant fails to file an answer, the plaintiff usually wins by default. A "default judgment" may be rendered against a party if it is the result of a party's failure to take a necessary step in the action within the proper time; this generally means a failure to plead or otherwise defend within the time allowed. Since, under rules of procedure, allegations not specifically denied are deemed admitted, failure to file a responsive pleading will generally result in the entry of a default judgment against the defendant. When a complaint is filed and the defendant fails to file an answer within the applicable time period, a default judgment may be entered against the defendant. In some areas, a notice of appearance may be filed with the answer. The notice indicates that the party is participating as a party to the litigation and avoids a default judgment.

If you have evidence showing that you do not owe the amount claimed, such as receipts, attach copies of those papers to

every copy of your answer. Keep copies of all the original documents and bring them to the trial. Make at least two copies of your answer. Deliver one copy of any filed documents to the lawyer for the plaintiff. A copy of your answer must be served on the opposing party. If an attorney represents the party, the papers may be faxed, mailed or hand delivered to the attorney's office. Because you are a party to the lawsuit, you are not allowed to serve the papers personally so you must have someone do it for you. Anyone who is not involved in the lawsuit and is over the age of 18 may typically serve the papers. Whether the papers are hand delivered, mailed or faxed, the person must fill out a return of service and file it with the court as soon as possible. If an attorney does not represent the opposing party, you must have someone serve the party personally by handing the papers directly to him/her.

The answer is filed in the court where the complaint was filed, along with applicable fees and a proof of service of the same upon the other parties to the action. The proof of

service may also be referred to as a certificate of service. Proof of service is also document or court paper filed in a court as evidence to show that process has been successfully served on a party or a witness in a lawsuit. This is also termed as return of service or return of process.

DEFENSES, COUNTERCLAIMS, AND CROSS-CLAIMS

A counterclaim is made by the defendant to a civil proceeding, in a main action against the plaintiff or against the plaintiff and other people. This claim may be an attempt to offset or reduce the amount/implications of the plaintiff's original claim against the defendant, or it may be a different claim. The defendant cannot counterclaim about entirely unrelated issues--that would be a different lawsuit.

Counterclaims are either compulsory or permissive. If the counterclaim is permissive, it may be brought, but no rights are waived if it is not. If the counterclaim is

mandatory, it must be brought in the current action or it is waived. Under the United States Federal Rules of Civil Procedure, a counterclaim is compulsory if it involves only the parties currently part of the suit, and is from the same transaction that the original suit is based on. Federal Rule of Civil Procedure 13(a).

A cross-claim is a claim by a party against a party on the same side of a lawsuit, such as when a defendant sues another defendant named by the plaintiff in a lawsuit. Cross-claims against co-parties are governed in the federal district courts and in most state trial courts by Rules of Civil Procedure. Cross-claims are litigated by parties on the same side of the main litigation, while counter-claims are litigated between opposing parties to the principal action.

An affirmative defense is a type of defense in which the defendant seeks to avoid liability by introducing new evidence not addresses in the claims of the plaintiff's complaint. Such a defense must be

raised in the defendant's answer, and because affirmative defenses require the assertion of facts beyond those claimed by the plaintiff, the defendant has the burden of proof for the defense. The burden of proof is typically lower than beyond a reasonable doubt. It can either be clear and convincing or preponderance of the evidence. An affirmative defense must be timely made by the defendant in order for the court to consider it, or else it is considered waived by the defendant's failure to assert it.

There are many affirmative defenses that may be raised, depending on the facts in each case. For example, in a personal injury case, a claim of comparative negligence is often raised. Contributory negligence is a doctrine of common law that if a person was injured in part due to his/her own negligence the injured party was barred from recovering any damages (money) from another party who was claimed to have caused the accident. Under this rule, a severely injured person

who was only minimally negligent could not win in court against a grossly negligent defendant. The harsh results from the application of the rule has led some juries to ignore the rule and most states have adopted a comparative negligence test in which the relative percentages of negligence by each person are used to apportion liability for damages.

Another common defense is that the statute of limitations has expired on the claim. A statute of limitations is a law which sets the maximum period which one can wait before filing a lawsuit, depending on the type of case or claim. The periods vary by state and by type of claim. Federal statutes set the limitations for federal lawsuits. If the lawsuit or claim is not filed before the statutory deadline, the right to sue or make a claim is lost forever.