

INSTRUCTIONS FOR FILING AND SERVING AN ANSWER & COUNTERCLAIM

It is very important to file a written answer to any legal action that is served on you if you want to respond to what the other side has requested in his/her petition. Filing an answer gives you the right to be notified of the hearing. If you fail to file a written answer, then you are telling the court that you are not contesting what the other side has requested and you are waiving your right to be notified by the Court of any court dates.

GENERAL COMMENTS

Preparing an Answer and Counterclaim can be complicated. An attorney can answer any questions you have. If you are served by the sheriff, special process server or acknowledge service of a petition, you normally have thirty days to file a written answer with the clerk of Superior Court in the County in which the original petition was filed. If you have been served by publication, then you normally have sixty days from the date the petition is first published in the legal newspaper to file a written answer.

When you are served, a summons will be on the top of the petition. It will tell you how many days you have to file a written answer with the Court and on whom you must serve a copy of your answer.

INSTRUCTIONS FOR PREPARING AN ANSWER

You can use the attached form Answer and Counterclaim to draft your answer and counterclaim.

Step 1 : Review the Petition that was served on you.

Review the petition that was served on you. It is sometimes helpful if you go through it with a pencil and make notes on whether you agree or disagree with what the other side has stated in his/her petition.

Step 2: Prepare a Written Answer and/or Counterclaim to the Petition that was served on you.

Insert the other side's name in the space above Petitioner, and your name as the Respondent.

Insert the Civil Action File Number from the petition that was served on you.

In the blank after “Answer to”, write the name of the petition that was served on you. If you do not want to file a counterclaim, strike through the word “Counterclaim”.

Insert your name after the word “My name is”.

Then you must review each paragraph of the petition that was served on you. Match the paragraph numbers from the Petition with the paragraph numbers on the Answer. Respond to each paragraph by either admitting it, denying it, or stating that you do not have sufficient knowledge to admit or deny.

DEFENSES

In the paragraph called “**Defenses**” you can state any special reasons why the case should not be allowed to proceed (such as it is filed in the wrong county). You should talk to an attorney to get advice on possible defenses. If you do not properly raise a defense it may be lost.

After you have responded to each paragraph and included any defenses you may decide that you want to also include a counterclaim.

COUNTERCLAIM

If you choose to file a counterclaim, go to the section titled COUNTERCLAIM. A counterclaim is what you are asking for from the Petitioner. You should speak with an attorney before filing a counterclaim to make sure that you have a proper counterclaim and if so, that you have included all of your requests.

Check the appropriate boxes regarding jurisdiction or other issues. In the blank lines write out each thing you are requesting in your counterclaim and any other supporting information that may be needed.

Not all answers require a counterclaim. If you are prepared to file your answer, you may file it without a counterclaim, and later, after speaking with an attorney, add a counterclaim. However, be aware that some counterclaims may not be added later and that you may lose your right to add a counterclaim if you do not include it in your Answer. You should always consult with an attorney if you think you have a counterclaim.

Step 3: Requests to the Court

On the Answer after it says, “FOR THESE REASONS, I REQUEST THE FOLLOWING RELIEF” please follow the instructions below.

Check (a) if you have a signed settlement agreement.

In the following paragraphs insert the other things (the “relief”) you are asking the court to grant (for example, “that I be awarded custody”, that “the Petitioner pay me alimony.”)

Then sign your name in the space provided and print your name, address, telephone number, and email address.

Step 4: Complete the Verification Form

Complete the attached Verification Form. Insert the other side’s name as Petitioner and your name as Respondent. Insert the civil action file number from the petition that was served on you. Then insert your name after the word “I, _____”.

Insert in the next space “Answer and Counterclaim.” Fill in the date where indicated. Then insert your name, address and telephone number in the spaces provided. You will need to sign this Verification in the presence of a Notary Public.

Most libraries and banks have a notary on staff and will notarize your document for a fee. The Family Law Information Center has a notary on staff that will notarize your documents free of charge.

Step 5: Complete a Certificate of Service Form

Complete the attached Certificate of Service Form. Insert the other side’s name as Petitioner and your name as Respondent. Insert the civil action file number from the petition that was served on you.

Check the first box if the other side is not represented by an attorney, you must mail him/her a copy of your answer.

Check the second box if the other side is represented by an attorney, then you must mail a copy of your answer to the attorney. (If you will be serving via the court’s e-filing system, follow the Clerk’s instruction for e-filing and e-service.)

Write that person’s name and address exactly as it is listed on the summons form that was served on you. In the space provided insert the date and sign your name and print your name (and address and email if requested).

Step 6: File your Answer

Make copies of your documents. Serve one copy to the opposing party. This is normally done by mail. If you will be serving via the court’s e-filing system, follow the Clerk’s instruction for e-filing and e-service. Follow the Clerk’s instruction for e-filing

your Answer and Counterclaim. Keep one copy for yourself and remember you must mail or e-serve a copy to the other side.

The Certificate of Service that you will complete and file with the court is your proof to the court that you did serve a copy of your Answer and Counterclaim to the other side or his/her attorney.

Step 8: Timely appear at any hearing, conference or seminar required by the Court.

Your failure to appear at any hearing or other activity scheduled by the Court on the date and time scheduled may result in your claims being dismissed and the case proceeding without you including the entry of a judgment against you.