

Preparing, Filing, and Serving an Answer in Justice Court

A Step-by-Step Guide for Filing a Response to a Lawsuit

Civil Law Self-Help Center

This document has been prepared as a courtesy and to assist you with completing your Answer. It is not to be construed as providing legal advice or representation on how to prepare your case or defense.

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INSTRUCTIONS FOR PREPARING, FILING, AND SERVING AN ANSWER IN JUSTICE COURT (Debt or Loan)

If you are served with a Summons and Complaint in Justice Court and are named as a defendant in the case, you can respond by preparing, filing, and serving an Answer. An Answer is your formal reply to the Court and the Plaintiff or their attorney.

You only have 20 days from the day you were served with the Summons and Complaint to file and serve your Answer. If you don't file an Answer with the court and serve a copy to the Plaintiff or their attorney within 20 days of the day you were served, the Plaintiff may obtain a default judgment against you.

WARNING: The filing of an Answer affects your legal rights. If you file an Answer, you have agreed that the Court in which you file your Answer has the authority to decide your case.

PART I - PREPARING YOUR ANSWER

Step 1: Read the Complaint:

The Complaint is the lawsuit filed against you. That Complaint contains numbered paragraphs. You must respond (or 'Answer') to each one.

Each paragraph in the complaint should be numbered. Read each one and next to each paragraph, **write the following note:**

- A → I ADMIT → This applies to you and is true.
- D → I DENY → This does not apply to you or it is untrue.
- U → I DON'T KNOW → You are unsure if the information applies or is true.

Step 2: Fill out your Answer:

An Answer form is attached.

This Answer form is intended to be used in a case involving a dispute over a consumer debt or loan. The information you provide on the form should be either typewritten or neatly handwritten in ink. The Answer form is also available on the Self-Help Center's website, www.civillawselfhelpcenter.org

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Steps to Complete the Answer

- 1. Fill out Personal Information** - On Lines 1-5 of your Answer, you'll see spaces for your personal information. Put your name (Line 1), address (Lines 2 and 3), and phone number (Line 4) on these lines.
- 2. Complete the Caption Information** - On Page 1, Lines 7-13, provide the Plaintiff's name, Defendant's name, case number and department number. All of this information is on the Complaint you received and should be filled out **EXACTLY AS IT APPEARS ON THE COMPLAINT**.
- 3. Admit, Deny, or State Your Lack of Knowledge** - Once you have written A, D, or U next to every allegation included in the Answer, you will put your responses into the Answer form like this:

1. Answering paragraph(s) _____	PARAGRAPHS YOU ADMIT (by number 1,2,3)
of Plaintiff's Complaint, Defendant(s) ADMITS each and every allegation contained therein.	
2. Answering paragraph(s) _____	PARAGRAPHS YOU DENY (bv number)
of Plaintiff's Complaint, Defendant(s) DENIES each and every allegation contained therein.	
3. Answering paragraph(s) _____	PARAGRAPHS YOU DON'T KNOW
of Plaintiff's Complaint, Defendant(s) state(s) that Defendant(s) do(es) not have sufficient knowledge or information upon which to base a belief as to the truth of the allegation contained therein and therefore Defendant(s) DENIES each and every allegation contained therein.	
4. Answering paragraph(s) _____	

- ☐ In paragraph 1 of your Answer (Line 16 on Page 1), list the paragraph number of each Complaint paragraph you are going to ADMIT. Admitting means that you agree with the facts in it. Example: if you admit the allegations in paragraph 1 of the Complaint, put a "1" on Line 16 of your Answer.
- ☐ Repeat for each paragraph that you ADMIT.
- ☐ In paragraph 2 (Line 18 on Page 1), list the paragraphs you DENY. Denying a paragraph means that you disagree with the allegation. If you DENY the allegations in paragraph 1 of the Complaint, put a "1" on Line 18 of your Answer.
- ☐ Repeat for each paragraph you DENY.

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- ☐ In paragraph 3 (Line 20 on Page 1), list the paragraphs that you can't respond to because you DON'T KNOW the information. These answers will be considered denied. If you don't have enough information about the allegations in paragraph 1, for instance, put a "1" on Line 20 of Page 1 of your Answer.
- ☐ Repeat for each paragraph you DON'T KNOW.
- ☐ If you dispute some parts of a paragraph, but not all, you can provide that explanation on Line 4 (Lines 24-27 on Page 1). You can specify on those lines which parts of a specific paragraph you agree with and which parts you do not. You can also provide additional facts to the Court about those specific paragraphs here. List what paragraphs you wish to further explain on Line 24 and then provide the explanations on Lines 25 to 27.

4. Check for Available Affirmative Defenses - On Page 2 of the Answer, there is a list of Affirmative Defenses. An Affirmative Defense is a defense that states that the Defendant should win still win even if all of the things the Plaintiff said in the complaint are true.

A list of Affirmative Defenses is included. The defenses listed may be found in Justice Court Rule of Civil Procedure 8(c). A short explanation of each defense is included with these instructions. Contact an attorney for a full explanation of these Affirmative Defenses and to discuss whether a particular defense applies to your case.

5. Check for Other Available Defenses - On page 3 of the Answer, Lines 1 through 20, there are additional defenses relating to the collection of a debt or loan that may be applicable to your case. A short explanation of each defense listed is included with these instructions. Contact an attorney for a full explanation of the additional Affirmative Defenses and to discuss whether a particular defense applies to your case.

WARNING: Be aware that failing to state a defense when you file your Answer might prevent you from raising it later.

6. Sign and Date your Answer - You must date and sign your Answer on Page 4, Lines 11 to 15.

7. Fill out the Certificate of Service - You will need to deliver a copy of your Answer to the Plaintiff. Those steps are covered in Part II.

The Certificate of Service is your statement to the court that you notified the Plaintiff of your response.

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Fill in the name and address for the plaintiff's attorney (or the plaintiff if he does not have an attorney) on Lines 21 to 25. You can find this information on the top of page 1 of the Complaint.

8. Make Copies - Once you've completed your Answer, make at least four (4) copies.

PART II - FILING & SERVING YOUR ANSWER

Your Answer must be filed with the Court. Take your original Answer and the remaining copies to the Clerk of the Justice Court where the plaintiff filed their Complaint. The filing fee in Justice Court is \$71.00.

If you cannot afford the \$71.00 filing fee, you may ask the court to waive your filing fee. Waiving the filing fee is at the judge's discretion and is based on your financial circumstances. If you want the court to waive your filing fee, complete a fee waiver form. You can obtain a fee waiver form at the Self-Help Center or on the Center's website, www.civillawselfhelpcenter.org

The clerk will file stamp the Answer and all of the copies. The clerk will then keep the original and at least two copies.

After filing your Answer, you must serve the Plaintiff or their attorney with a copy of your Answer by mail. The attorney's address is located on the first page of the Complaint. Mail a copy to the plaintiff's attorney on the same date that you filled in on the Certificate of Mailing on Page 4, Line 18, of your Answer.

PART III - WHAT HAPPENS AFTER I FILE MY ANSWER?

After you file your Answer, the Plaintiff or their attorney may file additional Motions. Whether they choose to file additional Motions may depend on the responses within your Answer. The Plaintiff or their attorney may serve you with other paperwork asking you to provide information (Motion for Discovery). They may also ask the Court to make findings based on your responses (Motion for Summary Judgment, Motion for Judgment on the Pleadings).

You may need to respond to these Motions and those responses are usually time-sensitive. For more information on your next steps should you receive any of these motions, you should contact an attorney or visit the Self-Help Center or its website, www.civillawselfhelpcenter.org.

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PART IV – CAN I TRY TO SETTLE?

If you acknowledge that you owe the amount the Plaintiff has demanded and you want to start repaying the debt, you can arrange a payment plan with the Plaintiff's attorney. Be cautious, as they may ask you to sign a Confession of Judgment or Stipulation and Order for Judgment. Read any document you are asked to sign carefully and make certain you understand the terms of the agreement, including:

- The total amount owed
- Interest rate being charged
- Attorney's fees
- Payment schedule
- What constitutes default and what are next steps (garnishment, judgment) if you default

PART V – WHAT IF IT'S NOT MY DEBT?

Some Complaints contain a notice stating that you have 30 days to dispute the validity of the debt at issue in the case. Federal law (The Fair Debt Collection Practices Act) requires this notice to be given the first time a collection agency (or attorney) contacts a person to collect a debt.

A form letter is attached to this packet. You can send this letter to the Plaintiff or their attorney to dispute the validity of the debt or any part of the debt. You should send this letter by certified mail. Be sure to keep a copy of the letter for your records.

In response to the letter, the Plaintiff or their attorney must then obtain verification of the debt and provide you with copies of that verification.

For more information about your rights when dealing with collection agencies, you can visit the Federal Trade Commission's website at www.ftc.gov.

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STOP! DID I DO EVERYTHING?

Review Checklist below

ANSWER CHECKLIST

- ☐ Filled out Answer
- ☐ Made 4 copies of Answer
- ☐ Mailed copy of Answer to plaintiff's attorney
- ☐ Filed Answer with the court

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AFFIRMATIVE DEFENSES- DEFINITIONS

An “Affirmative Defense” is argument presented by the Defendant that states that the Defendant should win the case even if all of the allegations made by the Plaintiff are true.

If you have questions about whether or not a defense applies to your circumstance, please consult an attorney.

Accord and Satisfaction – Did the Plaintiff agree to a settlement and accept the terms of that settlement? For example, if the Plaintiff agreed to accept a lower amount to settle the claim and the Defendant paid that amount, the Defendant may have this Defense available.

Arbitration and Award – Did the parties meet with an arbitrator and reach an agreement?

Assumption of the Risk – If the Plaintiff knew there were risks to their behavior but did it anyway, a Defendant may be able to raise this defense in personal injury claims.

Contributory Negligence -- This defense might apply if plaintiff suffered some personal injury, but contributed to his own injury by being negligent along with the defendant who caused the injury.

Discharge in Bankruptcy – If the Defendant has gone through bankruptcy, the debt may have been “discharged” during that process. If that happened, a Plaintiff cannot collect that debt.

Duress – If the Defendant was forced to act against their will by threats, force, or false imprisonment, the agreement may not be enforceable.

Estoppel – Did the Plaintiff say something about the issue at hand that caused the Defendant to do (or not do something), only to have the Plaintiff change their position later? The plaintiff may be prevented (“estopped”) from taking a position that is different than what they first told the Defendant.

For example, in a case filed by a landlord to recover rent, if the landlord told the tenant that no rent would be charged for each month the tenant performed work at the apartment complex, and if the tenant actually performed the work, the court might find that the landlord was “estopped” (or precluded) from claiming he was entitled to rent for every month of the lease.

Failure of Consideration – The thing that the Plaintiff is seeking payment for in their lawsuit has no value or doesn’t exist any longer.

Fraud – “Fraud” means an intentional misrepresentation, deception, or concealment of an important fact, made with the intent to deprive another person of his rights or property or to otherwise injure another person. For example, if a car dealer sold a car that they knew had been wrecked as being in perfect condition, that car dealer may have committed fraud.

Illegality – If the agreement that the Plaintiff is suing over requires a party to do something illegal, the Defendant may have this defense available.

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Injury by Fellow Servant – This defense might be used by an employer who is being sued by an employee for some personal injury the employee suffered on the job, where the injury to the employee was actually caused by the negligence or misconduct of another employee (i.e., a “fellow servant” of the injured employee).

Laches – Did the Plaintiff wait a very long time to file their case, and did their delay make it harder for the Defendant to defend themselves? The defense of laches may apply.

License – License means permission. If the Plaintiff gave the Defendant permission to do the thing that they are now suing over, the Defendant may be able to use this defense.

Payment – This defense might apply if the payment at issue in the lawsuit has already been made (or the promise fulfilled or the agreement performed).

Release – This defense might apply if plaintiff has made some written or oral statement discharging (or “releasing”) defendant from the payment, obligation, or duty that is the subject of plaintiff’s lawsuit.

Res Judicata – Has a court already decided this issue in the Defendant’s favor? “Res Judicata” literally means a thing has already been decided. If a Court has already ruled in your favor, this may be an available defense.

Statute of Frauds – Certain agreements must be in writing, and if they are not, they are not enforceable. They include contracts relating to the sale of goods priced over \$500, the sale of land, or the guaranty of someone else’s debt, or a contract to perform some service or obligation that couldn’t be performed within one year.

Statute of Limitations – The “statute of limitations” is a law that sets the maximum time periods during which certain claims can be brought or rights enforced. If plaintiff files his complaint after the time period set out in the statute has past, the court might dismiss plaintiff’s complaint and find that it’s barred by the statute of limitations.

Waiver – This defense might apply if plaintiff has knowingly given up some right or if plaintiff’s actions could lead the court to believe that he’s given up that right. For example, if an apartment lease requires payment of rent on the first of every month, but the landlord has always allowed the tenant to pay on the fifteenth of every month, a court might find that the landlord has “waived” his right to enforce the lease’s requirement that rent be paid on the first.

ADDITIONAL POTENTIAL AFFIRMATIVE DEFENSES

Failure to State a Claim – A “claim” is a legal theory upon which a lawsuit can be based. If the party successfully proves their claim, the claim is the basis for a court to award damages. Each claim has certain parts that must be written in the complaint and proved at trial. This defense

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might apply if you think the plaintiff has failed to include a necessary part of his claim in his Complaint.

Unconscionability – When something is labeled as “unconscionable”, it means it’s so unfair that it actually shocks you. If a court decides a contract term is unconscionable, it can refuse to enforce that term. The court decides whether something is unconscionable or not based on the circumstances.

Late Charges Void as Penalty – Are there damages in the Complaint that are intended to punish the Defendant instead of compensating the Plaintiff.

Parties can have “liquidated damages” clauses that say upon breach a party owes a certain amount of money to the other party. But the damage amount has to be comparable to the actual loss suffered.

Setoff and Offset – This defense might apply if plaintiff owes defendant money, or plaintiff failed to credit defendant for money already paid. If Plaintiff owes Defendant money, Defendant may be able to apply that money to reduce (“offset”) the amount that Defendant owes to Plaintiff.

Offset for Violation of FDCPA – The Fair Debt Collection Practices Act is a federal law that requires collection agencies to provide written notice and verification of a debt that meets certain requirements. If plaintiff is a collection agency (or attorney) and has violated the Act, it could be liable to defendant for damages. Defendant might be able to apply those damages to reduce (“offset”) the amount of money he owes to plaintiff.

Military Service – This defense might apply if defendant is or was an active member of the military. The Servicemembers Civil Relief Act is a federal law that provides a wide range of protections for individuals entering the military, called to active duty, or deployed. It may postpone, suspend, or modify certain civil obligations, including the amount of interest that can be charged on a debt.

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