

How to Answer a Civil Lawsuit



Magistrate Court - Civil Division

This pamphlet is general in nature and is not designed to give legal advice. The Court does not guarantee the legal sufficiency of this pamphlet or that it meets your specific needs. Also, as the law is constantly changing, the information in this pamphlet may not be current. Therefore, you may wish to seek the advice and assistance of an attorney.

WHAT IS A COMPLAINT?

A **Complaint** is a document filed with the Court that states the claims being made by the Plaintiff and asks the Court for some sort of assistance. The **Complaint** is filed by the **Plaintiff** and the person being sued is called the **Defendant**.

A **Plaintiff** or a **Defendant** must be:

- A person at least 18 years old or the guardian, “next friend” or parent of a minor; or
- A business entity, such as a partnership, company or corporation.

If the **Plaintiff** or **Defendant** is a legal entity, such as a corporation or limited liability company, the entity may be required by law to hire an attorney to represent the entity in any lawsuit.

WHAT IS A SUMMONS?

After the **Complaint** is filed, the law requires that the **Defendant** be given notice of the lawsuit. It is the responsibility of the **Plaintiff** to make sure that the **Defendant** receives proper notice. This notice is called a **Summons**.

The **Plaintiff is prohibited** by law from delivering the **Complaint & Summons** to the **Defendant**. However, the following persons can deliver the **Complaint & Summons**:

- The County Sheriff; or
- A private process server; or
- Any person 18 years of age or older who is not a party in the lawsuit.

There are specific rules that **must** be followed to give proper notice of the lawsuit to the **Defendant**. If the **Defendant** is a person, the 4 basic ways to serve the Defendant properly are by:

- Giving the **Complaint & Summons** directly to the **Defendant** (personal service); or
- Posting the **Complaint & Summons** on the front door of the **Defendant's** residence. If posted, a copy of the **Complaint** and **Summons** also **must** be mailed to the **Defendant** (posting & mailing); or
- Giving the **Complaint** and **Summons** to someone who lives at **Defendant's** residence and is 15 years of age or older (substitute service).
- Mailing the **Complaint** and **Summons** and 2 copies of an Acknowledgment of Service to the **Defendant**. A **Defendant** does not have to sign the Acknowledgment, but will not have to pay service fees even if the **Defendant** loses the lawsuit.

If the **Defendant** is a legal business entity, such as a corporation, the **Complaint & Summons must** be given to the **Registered Agent**, an officer, manager, or other person in charge of the entity. A **Complaint & Summons** can be mailed to a **Registered Agent** as well.

WHAT IS AN ANSWER?

After the **Defendant** is served with the *Complaint & Summons*, the **Defendant** must file an *Answer* or some other pleading (such as a Motion to Dismiss) within 20 days.

An *Answer* is a written reply to a *Complaint*. When sued, the *Answer* is **Defendant's** chance to explain Defendant's side of the case to the Court.

An *Answer* form should be attached to the *Complaint & Summons packet*. More *Answer* forms are available at the judicial website (www.nmcourts.gov) or any public library.

WHAT SHOULD BE INCLUDED IN THE ANSWER?

In the *Answer*, **Defendant** should state whether **Defendant** admits or denies **Plaintiff's** claims made in the *Complaint*. **Defendant** can also include any explanations or defenses **Defendant** may have to the claims. **Defendant** should also provide **Defendant's** current mailing address. A copy of the *Answer* must be mailed by the **Defendant** to the **Plaintiff** and to all of the other parties involved in the lawsuit. In an *Answer*, **Defendant** may also request a jury. **Defendant** may also file a **Counterclaim**, **Cross-Claim** or a **Third-Party Complaint**.

WHAT IS THE TIME LIMIT TO FILE AN ANSWER?

Defendant must file an *Answer* to the *Complaint* within 20 days from the date **Defendant** was served the *Complaint & Summons*.

CAN A JURY BE REQUESTED?

Either party may request a jury trial. The **Plaintiff** must make the request when the *Complaint* is filed. The **Defendant** does not need to request a jury if the Plaintiff already has done so, but if not, the Defendant must request a jury trial when filing the *Answer*. The Court charges additional fees for a jury trial. All jury fees must be paid by the party requesting the jury at the time of filing the *Complaint* or *Answer* form. If a jury trial is not requested, then the assigned Judge will make all of the decisions in the case.

WHO WILL BE THE JUDGE?

Cases are randomly assigned to a **Judge** at the time the case is filed. In a civil case, **Plaintiff** can disqualify/excuse a **Judge** within **10 days** after the *Complaint* is filed. **Defendant** can excuse the **Judge** within **10 days** after an *Answer* is filed.

WHAT ARE THE FEES FOR COURT?

Plaintiff is responsible for the filing fee. If you need to obtain copies of any Court documents, the charge is **\$0.50 per page**.

If a jury is requested, the Court charges a **\$25.00** non-refundable jury fee and also a **\$75.00** jury deposit. The jury fee and jury deposit must be paid separately. The jury deposit may be refundable.

WHAT HAPPENS IF AN ANSWER OR SOME OTHER PLEADING IS NOT FILED?

If the **Defendant** does not file an *Answer* or some other appropriate pleading in response to the *Complaint* within 20 days after service, the **Plaintiff** can request the Court to enter a Default Judgment against the **Defendant** and in favor of the **Plaintiff without a hearing**. (See also *Motions* pamphlet.)

A **Default Judgment** means that the **Plaintiff** will win the lawsuit automatically and usually will be given the dollar amount or other relief requested in the **Complaint**. Therefore, it is extremely important that the **Defendant** file an *Answer or an appropriate pleading* with the Court, if a **Defendant** wants to protect the **Defendant's** rights.

WHAT IS A COUNTERCLAIM?

On occasion, the **Defendant** may have a claim against the **Plaintiff**. This is called a **Counterclaim** and is usually based on the same dispute or set of facts. The **Defendant** can include a **Counterclaim** in the Answer.

WHAT IS A CROSS-CLAIM?

If the **Defendant** believes another **Defendant** named in the case is responsible for the damages claimed by the **Plaintiff**, then the **Defendant** can say that in the Answer. This is called a **Cross-Claim**. A **Cross-Claim** is a lawsuit against another **Defendant** in the same lawsuit based on the same dispute or set of facts.

WHAT IS A THIRD-PARTY COMPLAINT?

A **Third-Party Complaint** is a lawsuit against a party, who has not been named in the lawsuit, but whom the **Defendant** believes is responsible for the damages being claimed by the **Plaintiff**. A **Third-Party Complaint** must be filed within 10 days upon service of the **Answer** on the **Plaintiff**.

When a **Third-Party Complaint** is filed, additional parties are required to be joined in the lawsuit. These additional parties are called **Third-Party Defendants**.

At the time the **Third-Party Complaint** is filed, the Clerk will prepare a (*Service Packet*) that the **Defendant** will need to have served on each **Third-Party Defendant**.

It is the **Defendant's** responsibility to have the (*Third Party Service Packet*) delivered to each **Third-Party Defendant**.

The (*Service Packet*) is served on the **Third-Party Defendant** in the same manner that **Defendant** received notice of the lawsuit. (See "What is a Summons?" section herein.)

Please note that the damages claimed by the Defendant on the Counterclaim, Cross-Claim and/or Third-Party Complaint cannot exceed \$10,000 and must be the type of case that the Court can consider. (See *How to File A Lawsuit* pamphlet.)



Please also note that a copy of any document filed by any party with the Court must be mailed to all other parties involved in the lawsuit.



WHAT HAPPENS AFTER AN ANSWER IS FILED?

After the *Answer* is filed, the parties may proceed to prepare for trial.

If the case is not settled, the Judge will schedule a **Pre-trial hearing** and/or **Trial**. (See *Pre-Trial & Trial* pamphlet.)

OTHER PAMPHLETS AND FORMS ARE AVAILABLE AT THE JUDICIAL WEBSITE (www.nmcourts.gov) OR AT ANY PUBLIC LIBRARY.



