

HOW TO ANSWER A LAWSUIT FOR DEBT COLLECTION

Introduction

This packet should help you if you have been served with a lawsuit in a debt collection case. THIS PACKET IS NOT A SUBSTITUTE FOR ACTUAL REPRESENTATION BY A LAWYER. YOU SHOULD ALWAYS TRY TO CONSULT OR HIRE A LAWYER BEFORE ANSWERING PAPERS. This packet should be used with the **Debtors' Rights in a Lawsuit** publication, available on Northwest Justice Project web site at www.nwjustice.org or by calling 206-464-1519 (in Seattle) or 1-888-201-1014 or 1-888-201-9737 (TDD).

Basic Questions & Answers

Should you answer the Complaint?

Yes, if you believe that you do not owe part or all of the amounts claimed.

Do you have to answer the Complaint?

No, if you agree that you owe the amount claimed or do not wish to dispute the claim.

What happens if you do not answer the Complaint?

The plaintiff will win automatically. The plaintiff will get a judgment for the amount of money the plaintiff asks for in the complaint. Even if the plaintiff wins, there are limits on what the plaintiff can do to collect. See our publication Debtors' Rights in a Lawsuit for details.

Can you be sued for an unpaid bill even if you have offered to make small payments on your bill or even if you have told the plaintiff you would make full payments as soon as you could?

Yes. However, most creditors would rather not have to spend money on lawsuits and will enter into agreements for you to pay installments. If you can't make a payment, you should contact the creditor right away and explain what happened. If they don't hear from you they may assume you don't intend to pay and will file a lawsuit. If they win, the costs of that suit will be added to the amount you owe. The creditor does not have to accept anything less than what you owe.

Can you be sued for money even if you cannot afford to pay the debt?

Yes. It is not a defense that you cannot afford to pay the debt.

What are a Summons and Complaint?

When any lawsuit is started, the person starting it must prepare a statement, telling the judge what the problem is and what he or she wants. That statement is called the

Complaint, and the person starting the lawsuit is called the plaintiff. If the lawsuit is against you, you are the defendant. A copy of the Complaint must be delivered to you so that you will know about the lawsuit. You will also receive a Summons, which tells you that you have a right to disagree with the Complaint in writing. It also tells you the amount of time you have to answer the Complaint, and where to deliver your Answer.

If you do not tell the court in writing that you disagree with the statements in the Complaint, the judge will assume that you agree with it and will usually give the plaintiff what he or she asks for. In other words, the plaintiff wins by default, since you have not answered. If a Default Judgment is entered in the court records against you, you will not necessarily be notified if you have not answered. Once a judgment is entered against you, the plaintiff may be able to use that judgment to take money from your bank account or paycheck, or to take some of your property to pay the judgment. Therefore, it is very important that you file a written response within the time limit given by your Summons (usually twenty days; read your Summons carefully for the deadline).

You may respond by delivering either a Notice of Appearance or an Answer to the person who signed the Summons and Complaint. A Notice of Appearance merely states that you have appeared in the lawsuit. By delivering a Notice of Appearance, you will prevent the court from entering a default judgment against you without a court hearing. A Notice of Appearance does not explain your position in the lawsuit. This will be done when you file your Answer. You should use the form Notice of Appearance which is attached. You should try to do both the Notice of Appearance and the Answer at the same time. If you can't, it is very important that you at least do the Notice of Appearance because if it is delivered and filed before the plaintiff goes to court, he or she must inform you of all further court hearings. A sample Notice of Appearance and a Notice of Appearance form are attached. You should plan on delivering and filing your Answer before you go to court. You can use the attached Answer form to fill in the necessary information. To fill it out, follow the directions below.

What is an Answer?

The Answer is your written response to the statements in the Complaint. You are called the defendant.

In your Answer, you do not have to tell the entire story or make legal arguments. You do need to state whether you agree or disagree with each statement in the complaint. Your answer should be typed, but if you cannot have it typed, you can neatly hand write it, using print (not cursive writing).

Your Answer **does** need to be clear and readable, and it must say whether you agree or disagree with some or all of the statements in the Complaint, or whether you do not know if the statements in the Complaint are true or not. Your answer also must be on 8 1/2 by 11 inch paper (the size of this page).

By filing an Answer in time, you keep your right to argue about this matter in court, and to be notified of further proceedings.

Many people who have been served with lawsuits feel embarrassed or guilty about being in debt or being in an accident. Sometimes they just want it all to be over with, or they feel

they should be punished and want the judge to punish them. **Even if you feel you are at fault, there is nothing wrong with filing an answer, and it does not mean that you are trying to avoid your legitimate debts.** You may disagree with the amount of money the plaintiff asked for in the Complaint. You may also want to answer to preserve your right to be notified of further hearings. If you do not file an Answer, you may lose your chance to say how much you think you should pay. However, you should know that filing an Answer may increase the court costs and attorney fees that you may owe if you lose the case.

You will need a total of one original and two copies of your Answer. The original will be filed with the court, one copy will go to the plaintiff and you will keep a copy. See the section below called "What To Do With The Answer" for the details on how this is done.

Parts of the Answer

A. The Caption

Look at your Summons and Complaint. You will notice that they have a heading that gives information about the case. This heading is called the "caption." All court papers, including the Summons, the Complaint, and your Answer, are called "pleadings". All pleadings use this same kind of caption.

The caption looks something like this:

IN THE _____ COURT OF THE STATE OF WASHINGTON	
IN AND FOR THE COUNTY OF _____	
(YOUR OPPONENT'S NAME),	No. _____
Plaintiff,	ANSWER
vs.	
(YOUR NAME),	
Defendant.	

- The top line gives the name of the court, the state, and the county. For instance: "District Court of Washington for Pierce County" or "In the Superior Court of the State of Washington In and for the County of Pierce."
- The left side lists the names of the Plaintiff and Defendant.
- The right side lists the **number** that has been assigned to this case by the court clerk (so that they can keep it filed correctly) and the **title** of that particular pleading.

NOTE: If the papers you received do not have a file number, that may mean that the plaintiff decided to deliver (or serve) the papers to you before filing them with the court. The law allows this, and you are still bound by the time limit listed in your Summons. However, if this is the case, you may not need to file your Answer with the court yet. You will still have to deliver a copy to the plaintiff's lawyer (or the plaintiff if s/he has no lawyer). Read your Summons carefully. It should tell you what to do.

When you write or type your Answer (this packet has a blank form for you to use), fill in the caption at the top of the page. You may copy the necessary information from your Summons and Complaint. Copy the names of the plaintiff and defendant **just as they are on the Summons and Complaint**, even if they spelled your name wrong or called you or your spouse "John Doe."

When you finish the heading for your Answer, it should look like the example above, but with the blanks properly filled in. See the attached Sample Answer.

B. Admissions/Denials

After you complete the caption, use the middle of the page to give your answers to the statements in the Complaint. Usually, the paragraphs in the Complaint will be numbered. You may list the numbers and say one of three things about each paragraph of the complaint:

1. You **admit** that it is a true statement (for instance, that you live in Pierce County or that you are not a member of the Armed Forces). Admit the statement only if you agree with **every part** of it. Otherwise, deny the statement.
2. You **deny** that it is a true statement (for instance, you owe a specific amount of money to the person named).
3. You write that you do not know whether the statement is true or not (for instance, the collection agency who is suing you is licensed and bonded. You might assume that they are, but you do not have any evidence; you have never seen their license).

Read your Complaint carefully and make sure you briefly answer all the statements in it.

If you totally disagree with everything in the Complaint, you can simply write a single sentence saying you deny each and every allegation in the Complaint. However, you should not deny things that you know are true.

C. Defenses

You may also have technical or legal defenses to the Complaint, such as an argument that the statute of limitations has run. Actions to collect debts, like all actions, have a time limit called the "statute of limitations," which usually begin once the creditor has a right to sue you (for example, once you miss a payment). Once that time limit has passed, the person can no longer collect the money from you, and the action will be dismissed. For more information on the Statute of Limitations, call us or check the Revised Code of Washington (RCW). The reference department at your local library should be able to help you find the right section of the RCW using the index. You may also argue as an affirmative defense that you do not owe the money. Even if you did

buy the item for which the plaintiff is suing, you might not owe the money if the item was defective and you returned it or attempted to return it.

You could lose some “Affirmative Defenses” if you file an Answer without stating them. Affirmative Defenses are also listed in Rule 8(c) of the Civil Rules for Superior Court, available at your local law library.

D. Counterclaims

In some situations, you may have claims that you want to make against the plaintiff. These claims **must** be stated in your Answer if they arise out of the same transaction or occurrence that the plaintiff is suing about. For example, if you are being sued by the seller for a debt for purchase of an appliance that was defective and injured you, any claim you wish to make against the seller/plaintiff must be stated in your answer. Or, if the plaintiff violated Fair Debt Collection rules (see the **Debtors' Rights - Collection Agencies** publication), you may have a damage claim against the plaintiff. For more information on counterclaims, consult a lawyer or the court rules.

E. Exempt Income

If your income is exempt from garnishment, then you may wish to include a paragraph in your answer making the plaintiff aware of that fact. For example, if your only income is Social Security, which is exempt from garnishment by federal law, then you might write in your answer the following: “My income consists only of Social Security.” While this is not a defense to the underlying lawsuit, it does provide the plaintiff with knowledge that your only income is exempt from garnishment. If you lose the lawsuit and the plaintiff subsequently garnishes your bank account containing exempt funds, then you may have a cause of action against the plaintiff. For more information, see our publication **How to Claim Personal Property Exemptions**.

F. The Signature and Your Address

On the last page, put the date you sign your name. Below that, sign your name with your legal signature (the one you use for checks). Just below your signature, print or type your name so it will be easily readable. Finally, put your address below that. Now your Answer is complete. You need to be able to receive delivery by mail and **by hand** at this address, so do not use a P.O. Box. It is important that you use an address where you know you will definitely receive your mail. Notices of hearings will be mailed to that address, and if you fail to appear because you didn't get the notice, a judgment may be entered against you by default.

What to do with the Answer and Notice of Appearance

A. Delivery

Make at least two copies of your Answer and Notice of Appearance. Deliver one copy of each of these documents to the lawyer for the plaintiff. The lawyer's name and address should be printed on the lower right-hand side of the Summons and Complaint. If the plaintiff doesn't have an lawyer and is representing himself, deliver a copy of the documents to the plaintiff. If you do not want to deliver them yourself, have a reliable friend do it for you. You must deliver a copy of your Answer or Notice of Appearance on or before the date stated in the Summons. Because it is important for your Answer and

Notice of Appearance to be delivered on time, it is best to deliver a copy of each document personally to the plaintiff's lawyer. The papers may be left with a secretary or receptionist. If you are delivering the papers to the lawyer's office, ask the receptionist to stamp the original and copy of each document with a "copy received" stamp showing the date received.

Getting your original and copy of the Answer and Notice of Appearance stamped by the receptionist will prove that these documents were delivered by the deadline stated in the Summons. If you decide to mail these documents to the plaintiff's lawyer, be sure to allow enough time for the mail to be delivered by the deadline (at least three days). It is not enough for the Answer and Notice of Appearance to be postmarked on or before the deadline. It must be received by the deadline stated in the Summons. Also, if you mail the Answer, you should consider sending one Answer by regular mail and one by certified mail, return receipt requested. Hand-delivery is best because you can have the lawyer's office stamp the original and your copy that shows that your Answer was delivered on time.

If you mail the Notice of Appearance and/or the Answer the court needs to know this was done. You do this by completing a Certificate of Service and attaching it to the original of the document that was mailed. A sample Certificate of Service and a Certificate of Service form you may use are attached. Be sure to make extra copies of the form before you use it. Make sure you identify what kind of legal paper the Certificate of Service refers to (i.e. Answer, Notice of Appearance, etc.) and strike out the type of delivery that does not apply (i.e. if you mailed it, strike out the words "hand-delivered").

B. Filing

When the plaintiff pays the filing fee and files the Complaint with the court, the court assigns a case number. That number will usually be stamped or typed on the upper right-hand side of the Summons and Complaint. The court will not have any record of the case and will not be able to give you any information about the case until the case has been filed. If there is a case number on your Summons and Complaint, then you should write in the number on your Answer and Notice of Appearance and file the original(s) with the Court Clerk. File the original Answer and Notice of Appearance after you deliver a copy to the plaintiff's attorney and obtain proof of service (the "copy received" stamp), but before the deadline stated in the Summons. At the time you file the original Answer and Notice of Appearance you should stamp your personal copies with the Clerk's stamp showing the date the originals were filed.

If the Summons and Complaint which you received do not have a case number on them, then the Clerk will not have a record of your case and you will not be able to file the original of your Answer and Notice of Appearance. You must still follow the regular procedure for delivering a copy of your Answer to the plaintiff's lawyer, even if the case has not been filed. However, if there is no case number, keep your original Answer and Notice of Appearance until you are notified that the case has been filed and has been assigned a case number. When you receive the case number, follow the procedure for filing the original documents described above.

*REMEMBER to make sure that you file your Answer within the time limit listed in your Summons (usually twenty days). Do not take a chance with that time limit! Once you have timely filed your Answer and served the plaintiff's lawyer, you should be given notice of any hearings. Do not miss these hearings. IF YOU HAVE ALREADY MISSED YOUR TIME LIMIT, FILE AN ANSWER ANYWAY. A late Answer may be better than no Answer at all. If you are too late, and a judgment has been entered against you, you should contact a lawyer immediately.

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This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of the date of its printing, August 2001.

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SAMPLE FORM - DO NOT FILE

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**DISTRICT COURT OF WASHINGTON
COUNTY OF CLARK**

123ABC COLLECTIONS,

Plaintiff,

v.

JOHN DOE,

Defendant.

No. 01-0000-01

ANSWER, AFFIRMATIVE
DEFENSES,COUNTERCLAIMS

I. ANSWER

Defendant(s) answer the complaint as follows:

- 1. Admit the statements contained in paragraph numbers 1 and 2 except for the following statements:

- 2. Deny the statements contained in paragraph numbers 3 and 4, except for the following statements:

- 3. Lack knowledge about the truth and therefore deny the statements contained in paragraphs numbers 5, 6 and 7.

II. AFFIRMATIVE DEFENSES

Defendant(s) other defenses are: Plaintiff's claim is barred by the statute of limitations.

1 **III. COUNTERCLAIMS**

2 Plaintiff owes defendant \$_____ because: not applicable.

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4 Defendant(s) request that this lawsuit be dismissed and that a judgment be entered against the plaintiff(s) for any counter-claims, costs, or attorney fees.

5 DATED this 21 day of February, 2001.

6 *John Doe*
7 _____
8 John Doe, Defendant

9 Name: John Doe
10 Address: 111 Cherry Lane
Long, WA 98600
11 Phone No.: (206) 555-1212

SAMPLE FORM - DO NOT FILE

**DISTRICT COURT OF WASHINGTON
COUNTY OF CLARK**

No. 01-0000-01

123ABC COLLECTIONS,

NOTICE OF APPEARANCE

Plaintiff,

v.

JOHN DOE,

Defendant.

TO: Larry Lawyer, Attorney for Plaintiff AND TO: Clerk of the Court

YOU AND EACH OF YOU PLEASE TAKE NOTICE that Defendant(s) hereby appears in the above-entitled cause and requests that all further papers and pleadings herein, except original process, be served upon the Defendant at the address below stated, pursuant to Civil Rule 5.

Dated this 31st day of February, 2001.

John Doe (Defendant's Signature)

John Doe (Print Name)

111 Cherry Lane (Address)

Long, WA 98000

(206) 111-2222

SAMPLE FORM - DO NOT FILE

**DISTRICT COURT OF WASHINGTON
COUNTY OF CLARK**

No. 01-0000-01

123ABC COLLECTIONS,

CERTIFICATE OF SERVICE

Plaintiff,

v.

JOHN DOE,

Defendant.

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that, on the date stated below, I did the following:

On the 31st day of February, 2001, I (*strike out what doesn't apply*) mailed by regular U.S. Mail, postage prepaid / ~~hand delivered~~ a true copy of the ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS [name of paper served] filed in this matter to Larry Lawyer [Name of Plaintiff or Plaintiff's Attorney] at the following address: 123 Legal Lane, Long, WA 98600.

Dated this 31st day of February, 2001, in Long, Washington.

John Doe
(Signature)

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_____ COURT OF WASHINGTON
COUNTY OF _____

No. _____

_____,
Plaintiff(s),

ANSWER, AFFIRMATIVE DEFENSES
AND COUNTERCLAIMS

v.

_____,
Defendant(s).

I. ANSWER

Defendant(s) answer the complaint as follows:

1. Admit the statements contained in paragraph numbers _____
except for the following statements: _____

2. Deny the statements contained in paragraph numbers _____
except for the following statements: _____

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3. Lack knowledge about the truth and therefore deny the statements contained in
paragraph number(s) _____.

II. AFFIRMATIVE DEFENSES

Defendant(s) other defenses are: _____

_____.

III. COUNTERCLAIMS

Plaintiff owes defendant \$ _____ because: _____

_____.

Defendant(s) request that this lawsuit be dismissed and that a judgment be entered against
the plaintiff(s) for any counter-claims, costs, or attorney fees.

DATED this _____ day of _____, 20__.

(signature)
Name: _____
Address: _____
Telephone: _____

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COURT OF WASHINGTON
COUNTY OF _____

No. _____

NOTICE OF APPEARANCE

_____,
Plaintiff(s),

v.

_____,
Defendant(s).

TO: _____, Attorney for Plaintiff
AND TO: Clerk of the Court

YOU AND EACH OF YOU PLEASE TAKE NOTICE that Defendant(s) hereby appears in the above-entitled cause and requests that all further papers and pleadings herein, except original process, be served upon the Defendant at the address below stated, pursuant to Civil Rule 5.

Dated this _____ day of _____, 20__.

(Defendant's Signature)

(Print Name)

(Address)

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_____ COURT OF WASHINGTON
COUNTY OF _____

No. _____

CERTIFICATE OF SERVICE

_____ ,

Plaintiff(s),

v.

_____ ,

Defendant(s).

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that, on the date stated below, I did the following:

On the _____ day of _____, 20____, I (*strike out what doesn't apply*) mailed by regular U.S. Mail, postage prepaid / hand delivered a true copy of the _____ [name of paper(s) served] in the above-entitled matter to _____ [Name of Plaintiff or Plaintiff's Attorney] at the following address: _____.

Dated this ____ day of _____, 20____, in _____, _____.

John Doe

(Signature)