

Answering a Lawsuit



The Office of the
Minnesota Attorney General
helping people afford their lives and live with dignity and respect

For most people without legal training, the legal process can be daunting. It can be a source of great worry for a person to be served with a lawsuit. While the Office of the Minnesota Attorney General cannot provide legal advice in private legal matters, this flyer has some general information that may be of some assistance if you are sued in Minnesota state district court.

Start of a Lawsuit

A lawsuit is started against a person in Minnesota state courts by service of legal documents called a Summons and Complaint. The person or company bringing the lawsuit is known as the "Plaintiff." The person being sued is known as the "Defendant." The Complaint is a legal document in which the Plaintiff explains the factual allegations and legal claims being made against the Defendant. A Plaintiff typically starts a lawsuit by serving a Summons and Complaint on the Defendant in one of two ways:

- by delivering it to the Defendant personally or leaving it at the Defendant's home with a person of suitable age and discretion; or
- by mail, if the Defendant agrees in writing to accept service of the Summons and Complaint by mail and signs a form reflecting this agreement.

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If a lawsuit is served on you and you wish to contest the claims made in the lawsuit, you must give the Plaintiff's lawyer (or the Plaintiff directly, if not represented by a lawyer) a document called an "Answer." An Answer is a legal document that responds to the factual allegations and legal claims in the Complaint. If you wish to contest the lawsuit, it is very important that you provide an Answer to the Plaintiff within the required time period. If you do not provide an Answer in a timely fashion, the Plaintiff may get a "default judgment" against you.

A default judgment is a court order requiring you to pay money or compelling you to take some other action. The Plaintiff may use a variety of methods to collect a default judgment requiring you to pay money, including garnishment of your wages or bank accounts.

If you are served in person with a Summons and Complaint, you generally have 20 days in Minnesota state district court to provide an Answer to the Plaintiff's lawyer. If you are served with the Plaintiff's Summons and Complaint by mail, you typically have 20 days from the date you mail back the form agreeing to accept service of the Summons and Complaint to provide an Answer to the Plaintiff's lawyer. If you are served with the Plaintiff's Summons and Complaint by mail and do not return the form stating you agree to accept these documents by mail, you may be charged the costs associated with the Plaintiff serving you personally.

Your attorney can draft an Answer for you. Generally, the Answer is in a format similar to the lawsuit itself. If you cannot afford an attorney, the Minnesota Judicial Branch has created a packet for responding to a civil lawsuit, which includes Instructions - Answer or Answer and Counterclaim, Answer or Answer and Counterclaim form, and Affidavit of Service - Combined. These documents provide a basic outline of how to Answer a lawsuit. The documents can be found online at <http://www.mncourts.gov/GetForms.aspx?c=7&p=36>.

Do Not Ignore a Lawsuit

Under Minnesota law, a lawsuit may be started by a Plaintiff against a Defendant even though it has not yet been filed in court. As a result, a Summons and Complaint that is served on you will not necessarily include a court file number. Similarly, if you call the court to ask whether a lawsuit has been filed, the court may not be aware of the lawsuit (since, as just noted, a lawsuit can be started in Minnesota state court by serving you with it even though it has not been filed in court). Do not assume that a lawsuit is a scam simply because the court clerk has no record of it.

Default Judgments

If you ignore a lawsuit against you, you could be found to be in "default." Under Minnesota law, when a Defendant does not Answer a lawsuit, a Plaintiff may ask the court for a default judgment.

Consult a Lawyer

If you are sued, it is best that you contact an attorney for legal advice and representation. If you need help locating an attorney, the Minnesota State Bar Association's Attorney Referral Service is available on the Internet at www.mnfindalawyer.com. In addition, the Attorney General's publication entitled Hiring an Attorney has more information on how to find and hire an attorney. In some cases, people with limited income and assets may be able to obtain free legal assistance through a Legal Aid attorney.

The Garnishment Process

If a judgment is entered against you, the Plaintiff may be able to initiate a garnishment action to garnish money from your bank account or wages. To begin the garnishment process, the Plaintiff issues a Garnishment Summons to a third party, such as the Defendant's employer or bank, known as the "Garnishee." In general, if the Garnishee owes money to the Defendant, it must hold the money until it is released to the Plaintiff. The Plaintiff collects the money held by the Garnishee either by consent from the Defendant or by means of a Writ of Execution (Writ) from the court. When a Garnishee receives a Writ, the Garnishee retains as much of the amount due under the Writ as the Garnishee has on deposit owed by the Defendant, but not more than 110 percent of the amount remaining due on the claim. There are limits on the amount of a person's wages that may be garnished. In some cases, a Defendant may also qualify for an exemption from garnishment. The "Exemption Forms" that are enclosed with a Garnishment Summons have a list of possible exemptions. Should you qualify for and wish to claim an exemption, you must immediately return the Exemption Forms plus supporting documentation to the Garnishee and the Plaintiff's attorney.

Motion to Vacate Default Judgment

If a default judgment has been entered against you, in some limited cases you may be able to request the judgment be "vacated," or cancelled. You must make such a request to the court that entered the judgment. A default judgment may generally only be vacated by bringing a motion to the court and proving one of the following things: (1) excusable neglect, (2) fraud, (3) the judgment is void, (4) enforcement of the judgment would be unjust, and (5) any other reason

to justify relief from the judgment, which includes improper service of the creditor's lawsuit (Minn. R. Civ. P. 60.02). A request to vacate a judgment must generally (but not always) be submitted to the court within one year of the judgment being entered. It is up to the judge whether to vacate a default judgment. If you believe that a judgment has been wrongfully entered against you and wish to have it vacated, it is best if you can obtain the assistance of an attorney.

If You Cannot Afford an Attorney

A lawsuit is a formal legal process, and it is generally best if you can be represented by an attorney. If you cannot afford an attorney, you may wish to visit the self-help center at the Minnesota Judicial Branch website, which can be found at www.mncourts.gov/selfhelp. In addition, the court staff may be able to provide you with basic general information and forms. The court staff cannot, however, give you legal advice or serve your papers for you. If you are unable to find what you need from the Minnesota Judicial Branch, you may wish to visit a local law library for more information.

About Conciliation Court

If the amount involved is less than the \$15,000 currently allowed in conciliation court, which is sometimes referred to as small-claims court, a creditor may file claim in conciliation court. The general purpose of conciliation court is to help parties recover relatively small sums of money without having to hire a lawyer. Once the Plaintiff files a claim, a hearing is scheduled and the court administrator's office will mail notices to the Plaintiff and Defendant indicating the date and time of the hearing. If the claim exceeds \$2,500, the Plaintiff must then serve the summons upon the Defendant by certified mail. If you are served with a conciliation court lawsuit, you are required to attend the hearing to avoid a default judgment. For more information, you may wish to review the brochure prepared by this Office entitled *Conciliation Court*, which outlines the conciliation court process.