

Answering a Lawsuit



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

Being served with a lawsuit can be understandably distressing. While the Office of the Minnesota Attorney General cannot give legal advice in private legal matters, this flyer has some general information that may help if you are sued in Minnesota state district court. If you are sued in small claims court instead (also called "Conciliation Court"), please read the last section of this flyer, titled *About Conciliation (Small Claims) Court*.

Start of a Lawsuit

In Minnesota's state district court, a person or company starts a lawsuit against another person or company by giving them legal documents called the Summons and Complaint. The person or company starting the lawsuit is called a "Plaintiff." The person being sued is called a "Defendant." A Summons is a legal document that tells the Defendant they are being sued. A Complaint is a legal document in which the Plaintiff describes what happened that led to the lawsuit and explains why they believe they can sue the Defendant. A Plaintiff usually starts a lawsuit by serving a Summons and Complaint on the Defendant in one of two ways:

- by handing it to the Defendant personally, or giving it to a "person of suitable age and discretion" at the Defendant's home who can give it to the Defendant; or
- by mail, if the Defendant agrees in writing to accept the Summons and Complaint by mail.

If you are served with a Summons and Complaint, you generally have 21 days to give a document called an "Answer" to the Plaintiff or their lawyer. If you are served with the Plaintiff's Summons and Complaint by mail, and you give the Plaintiff written permission to serve you by mail, you typically have 60 days from the date you send back a form agreeing to accept the Summons and Complaint by mail to give your Answer to the Plaintiff or their lawyer. If you are served with the Plaintiff's Summons and Complaint by mail and do not return a form stating that you agree to accept these documents by mail, the Plaintiff may still have to serve the Summons and Complaint on you in person. However, the Plaintiff may attempt to add the cost to hire a process server to serve you in person to their lawsuit.

Sending an Answer to a Lawsuit

If you receive a lawsuit and wish to dispute anything the Plaintiff says in it, you must send the Plaintiff's lawyer (or the Plaintiff directly, if they do not have a lawyer) a document called an "Answer." An Answer is a specific kind of legal document that responds to a Complaint. If you wish to dispute a lawsuit, it is very important that you give an Answer to the Plaintiff before the deadline given in the Summons—usually 21 days. If you do not give the Plaintiff an Answer before the deadline in the Summons, the Plaintiff can get a "default judgment" against you.

A default judgment is an automatic win that the Plaintiff can request if you do not send the Plaintiff an Answer before the deadline. A default judgment may require you to pay money to the Plaintiff or may force you to take some other action. The Plaintiff can use a variety of methods to collect a default judgment from you, including garnishing money from your wages or bank accounts.

You can hire a lawyer to write an Answer for you. If you cannot afford a lawyer, the Minnesota Judicial Branch has created a packet to help you respond to a lawsuit, which includes the following forms: 1) "Instructions - Answer or Answer and Counterclaim," 2) "Answer or Answer and Counterclaim," and 3) "Affidavit of Service - Combined." These documents provide a basic outline for how to send an Answer. The documents can be found online at <https://www.mncourts.gov/GetForms.aspx?c=7&p=36>.

Do Not Ignore a Lawsuit

Under Minnesota law, a Plaintiff may start a lawsuit against you just by serving it on you, even if the lawsuit has not been filed with the court yet. Because of this law, a Summons and Complaint that is served on you will not always have a court file number on it. Similarly, if you call your county court to ask whether the lawsuit is real or has been filed, the court may not be aware of the lawsuit yet. This does not mean that the lawsuit is not real, however. Do not assume that a lawsuit is a scam simply because the court has no record of it: if you believe the lawsuit may be a scam, call the Plaintiff, or their lawyer, to ask more about the suit.

Default Judgments

If you ignore a lawsuit against you, you could be found to be “in default,” meaning you did not give the Plaintiff an Answer by the deadline. Under Minnesota law, when you do not Answer a lawsuit, a Plaintiff may ask the court for a default judgment against you—essentially an automatic win for the Plaintiff.

The Garnishment Process

If the Plaintiff wins their lawsuit against you, the Plaintiff may be able to garnish money from your bank account or from your paycheck. To start the garnishment process, the Plaintiff sends a set of documents called “Garnishment Summons” to your employer or bank, known as the “Garnishee.” Typically, a Garnishee who receives a Garnishment Summons must begin garnishing a portion your paycheck or freeze any money in your bank account. The Plaintiff then collects that money from the Garnishee either by getting your written permission or by asking the court for an order to collect, called a Writ of Execution. When a Garnishee receives a Writ of Execution from the Plaintiff, the Garnishee must turn over up to 110 percent of the amount of the unpaid judgment to the Plaintiff.

There are legal limits on the amount of your wages that can be garnished. Some people are legally exempt from garnishment altogether. The “Exemption Forms” the Plaintiff must give you with the Garnishment Summons have a list of possible reasons you may be exempt from garnishment. For example, people who receive public assistance like food stamps (SNAP) or MinnesotaCare are exempt from garnishment. If you want to ask for an exemption, you must immediately return the Exemption Forms and any documentation proving you qualify for the exemption to the Plaintiff or their lawyer.

Motion to Vacate Default Judgment

Even if you did not give an Answer to the Plaintiff by the deadline and the Plaintiff won a default judgment against you, in some limited cases you may be able to request the judgment be “vacated,” or cancelled. You must ask the court that gave the Plaintiff the judgment to vacate it. The court will generally only vacate a default judgment if you can prove one of these: (1) you had a good excuse not to give the Plaintiff an Answer, (2) the Plaintiff defrauded you, (3) the judgment is legally void, (4) enforcing the judgment against you would be unjust, or (5) any other reason to justify canceling the judgment, which includes improper service of the Plaintiff’s lawsuit (Minn. R. Civ. P. 60.02). You must generally (but not

always) submit a request to vacate a judgment to the court within one year of when the Plaintiff got their judgment against you. It is up to the judge to decide whether to vacate a default judgment. If you believe that the Plaintiff wrongfully won a judgment against you and wish to have it vacated, it is best to get help from a lawyer.

Consulting a Lawyer

A lawsuit is a complex process, and it is generally best if you can be represented by a lawyer or get legal advice from one. If you need help finding the right lawyer, the Minnesota State Bar Association’s Attorney Referral Service is available on the Internet at www.mnlawyerreferral.org. In addition, the Attorney General’s publication entitled Hiring an Attorney has more information on how to find and hire a lawyer.

If You Cannot Afford a Lawyer

If you cannot afford a lawyer, you may want to visit the self-help center at the Minnesota Judicial Branch website, which can be found at www.mncourts.gov/selfhelp. In addition, your county 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 an Answer 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.

In some cases, people with limited income and assets may be able to get free legal assistance through a Legal Aid lawyer.

About Conciliation (Small Claims) Court

Alternately, instead of following the district court process described above, a Plaintiff can file a lawsuit in small claims court (also called conciliation court) for disputes under \$20,000. The purpose of conciliation court is to help parties resolve simple disputes over smaller amounts of money without having to hire a lawyer or go through a long and complex court process. Once the Plaintiff files a lawsuit in small claims court, the court schedules a hearing and mails notices to the Plaintiff and Defendant with the date and time of the hearing. If the amount demanded by the lawsuit is over \$2,500, the Plaintiff must also send the summons to the Defendant by certified mail. If you are served with a conciliation court lawsuit, you must attend the hearing and be prepared to argue your case to the judge to avoid a default judgment. For more information, you may wish to review the brochure prepared by this Office entitled *Conciliation Court*, which gives more detail about the conciliation court process.