

Civil Answers, Replies and Defenses

The forms in this packet are to be used as a **template**, please re-type the forms and **do not** fill in the blanks. Please read the instructions carefully before completing the forms. The Court Clerks **CANNOT** accept documents that do not conform to the instructions in this packet.

You should refer to the Comanche Nation Tribal Court Codes prior to filing any petition or pleadings for a complete understanding of the rules and procedures governing your case. Should you need assistance in preparing any documents, you must consult with an attorney at your own expense. The Court Clerks are prohibited by Ethical Code and Court Rules to provide legal advice and help parties prepare or type court documents. Different situations may require special procedures and the Court Clerks **CANNOT** advise you on how to proceed or what forms may be necessary in specific situations.

INSTRUCTIONS FOR FILING

IMPORTANT INFORMATION PLEASE READ!!!

1. Documents must be typed DOUBLE-SPACED and on LETTER SIZE PAPER (8 ½” x 11”).
2. Documents must be signed in front of the Court Clerk or a notary public when you are ready to file.
3. Filing fees, copy fees, etc. can be made by DEBIT CARD, CASHIER’S CHECK or MONEY ORDER and must be payable to “Comanche Nation Tribal Court”. Filing fees MUST be paid at the time of filing your petition. If you are unsure of the amount of the filing fees, contact the Court Clerk.
4. Submit original Documents, a copy fee will apply to all copies made by the court clerk over 50 pages in length. If the Court Clerk makes your copies, you will be charged a copy fee of \$10.00 for any copies over 50 pages.
5. Documents must have the FULL ADDRESS including street, city, state & zip of the parties to be served. Obtaining this information is **your** responsibility.
6. The forms are a guide to use in preparing the documents. DO NOT fill in the blanks and submit for filing. IT MUST BE RE-TYPED.
7. Petitions filed MUST have a copy of the relevant birth certificate and tribal enrollment card/CDIB and be submitted with the petition when filed. Obtaining these documents is **YOUR** responsibility.
8. Proof of Service of a Petition is MANDATORY for your case to proceed. Obtaining proof of service is **your** responsibility.

Court Clerks WILL NOT accept documents
that do not conform to these Instructions.

INTRODUCTORY COMMENT

Generally, every defense to a claim, counterclaim or third-party claim, must be asserted in a responsive pleading if one is required. The defendant may respond by filing an answer or a motion to dismiss.

In general, the first response to plaintiff's petition must be served within twenty days after service of the summons and petition. However, the plaintiff may elect to require the answer to be served within thirty-five days, rather than twenty days, after service of the summons and petition.

If the summons and petition are served by mail, the response is due twenty days after the defendant's receipt of the summons and petition.

A defendant may extend the time to respond to a petition by twenty days from the last date for the filing of an answer or the motion to dismiss by filing an appearance within this period. In exchange for the additional time to respond to the petition, a defendant who files an appearance waives the following defenses: lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, failure to state a claim upon which relief can be granted, and lack of capacity of a party to be sued.

The answer should include the following components, if they exist:

1. Admissions and denials to the allegations contained in the petition;
2. Jurisdictional and Procedural Defenses, if these grounds for dismissal are not first set out in a motion to dismiss; and
3. Affirmative defenses to the plaintiff's claims for relief.

The defendant must also assert in the answer compulsory counterclaims against the plaintiff. In addition, the defendant may assert in the answer permissive counterclaims against the plaintiff and cross-claims against a co-defendant.

Specific Admissions and Denials. The answer must state in short and plain terms each defense to the claims asserted and shall admit or deny the averments set forth in the petition. If the defendant intends in good faith to deny each allegation in the petition, the defendant may do so by a general denial. If the defendant does not make a general denial, the defendant may (1) specifically deny designated averments or paragraphs, or (2) generally deny all averments except such designated averments and paragraphs which the defendant expressly admits.

If the defendant is without knowledge to form a belief as to the truth of the plaintiff's allegations, the defendant must so state and the statement will operate as a denial. When the defendant intends in good faith to deny only a part of the plaintiff's petition, the defendant must specify that part of the averment which is true and must deny the remainder. Averments which are not specifically denied, except those pertaining to the amount of damages, are deemed admitted. However, when no responsive pleading is required or permitted, averments will be taken as denied or avoided.

An answer should be simple, concise and direct, and no technical form of pleading is required. The answer may set forth two or more statements of defense alternatively or hypothetically, either in one defense or in separate defenses. Moreover, a pleading may also state as many separate defenses as the pleader has regardless of consistency and whether based on legal or equitable grounds.

Counterclaims and cross-claims, if filed in the same document as the answer, should follow the statement of affirmative defenses. These claims may also be stated in separate pleadings so long as the pleadings are filed concurrently with the answer. Defendant must comply with the filing and service requirements.

As in the case of the petition, the defendant may adopt by reference statements made in a

different part of the same pleading or another pleading or motion. Incorporation by reference is intended to avoid confusion, redundancy and repetition; thus, it is necessary that such references be direct, clear and explicit in identifying the allegation of the pleading which is to be incorporated.

General Denials Not Favored. A general denial may be interposed only when the defendant, in good faith, intends to controvert each and every averment in the petition. A defendant should not plead a general denial if the defendant knows or believes some of the allegations in the petition are true in order to require the plaintiff to bear the burden and cost of establishing the truth of those allegations.

Effect of a Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided. Accordingly, great care should be taken to check a proposed answer against every allegation in the petition. A response must be made to each allegation. Failure to deny any averment will bar the defendant from introducing evidence which disproves that allegation at trial.

Signature and Service. The answer must be signed by the defendant or defendant's attorney. An attorney must state his or her name, address, telephone number and Bar Association identification number. A party who is not represented by an attorney should sign the answer and state his or her address.

The answer need not be verified or accompanied by an affidavit, but must be served upon all parties to the action.

Reply to Answer. A reply is allowed in two instances: (1) to a counterclaim denominated as such, and (2) if the trial court so orders. The court may order a reply to an answer or a third-party answer.

Reservation of time

[Court Caption]

RESERVATION OF TIME BY DEFENDANT [NAME]

Defendant, [Name], files **his/her/its** reservation of time in this action and extends the time to respond to the petition for a period of 20 days, or until [Date]. *[This reservation of time is explicitly qualified to not waive the defenses of improper venue, lack of personal jurisdiction, and failure to state a claim, which are expressly reserved by Defendant, [Name].]*

Dated: [Date]

[Signed] _____
[Typed Name]
[Address]
[Telephone Number]

Notes

A defendant must file an answer or a motion to dismiss the petition within twenty days after service. However, by filing a reservation of time within this period, a defendant may extend the time to respond to a petition by twenty days from the last date for the filing of an answer or the motion to dismiss. In exchange for the additional time to respond to the petition, a defendant who files a reservation of time waives the following defenses: lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, failure to state a claim upon which relief can be granted, and lack of capacity of a party to be sued.

Although the filing of a reservation of time waives the defense of the plaintiff's failure to state a claim in the petition, a defendant may move for summary judgment before trial, demur to the evidence at trial, and move for a judgment notwithstanding the verdict after trial if the plaintiff is unable or has failed to prove every essential element of the claim.

Answer

[Court Caption]

ANSWER OF DEFENDANT *[NAME]*

Defendant *[Name]* alleges the following in response to the petition:

Admissions and Denials

1. Defendant admits the allegations of paragraph 1 of the petition.
2. Defendant denies the allegations of paragraph 2 of the petition.
3. Defendant admits that **he/she** signed the agreement alleged in paragraph 3 of the petition, and denies all other allegations therein.
4. Defendant has no knowledge or information sufficient to form a belief regarding the truth of the allegations in paragraph 4 of the petition.
5. Defendant denies all other allegations of the petition, except that **he/she** admits that **he/she** has not paid any money to Plaintiff.

Jurisdictional Defenses

6. This Court has no jurisdiction over Defendant's person.
7. The venue of this action does not lie in this County.
8. The petition fails to state a claim against Defendant upon which relief can be granted.
9. On *[Date]*, Plaintiff filed a civil action entitled *[give name of action and case number]* in the *[specify Court]*, asserting the same claim as in this action, and that action remains pending.

Affirmative Defenses

10. On *[Date]*, after the alleged breach of the agreement and before the filing of this action, Defendant delivered to Plaintiff and Plaintiff accepted *[specify amount]* in full satisfaction of Plaintiff's claim.
11. The claim attempted to be stated in the petition is barred by the applicable statute of limitations in *[cite statute]*.
12. On *[Date]*, before Plaintiff reached the age of majority, Plaintiff disaffirmed the agreement alleged in the petition.

Demand for Judgment

Accordingly, Defendant demands that Plaintiff take nothing by this action, and that Defendant be awarded costs including reasonable attorney's fees.

[Signed] _____
[Typed Name]
[Address]
[Telephone Number]

Notes

The above form can be adapted or an answer to a third-party petition. For an answer to a cross-claim.

The above form contains an assortment of admissions, denials, jurisdictional and procedural defenses, and affirmative defenses to illustrate the variety of statements that may appear in an answer.

An answer should contain admissions, denials, and, if appropriate, affirmative defenses. A general denial should not be filed unless the defendant intends in good faith to deny every allegation in the petition, and the defendant should admit any allegations which he does not intend to contest. Any allegations, other than those as to the amount of damages, which are not denied are deemed admitted. To avoid inadvertent admissions, it is usually good practice to include a statement, such as that found in Paragraph 5, denying any allegations that are not specifically admitted. The statement of lack of information in Paragraph 4 is authorized and it has the same effect as a denial.

Denials should be forthright and unequivocal, and care should be taken to avoid denials that might be construed as evasive. Negative pregnant and conjunctive denials are two categories of denials that were ineffective at common law because they were deemed evasive. A negative pregnant is a denial of an allegation that contains qualifying language in the exact words of the denial so that the denial is "pregnant" with an implied admission. For example, a denial of an allegation that the defendant owes the plaintiff \$1,000 could be construed as an admission that the defendant owed the plaintiff some amount other than exactly \$1,000. To avoid the negative pregnant, the defendant should deny that the defendant owes the plaintiff \$1,000 or any other amount, if that is in fact the case. An example of a conjunctive denial would be a denial that the defendant executed and delivered a promissory note to the plaintiff. This could be construed as an admission that the defendant either executed or delivered the promissory note, and it can be avoided by using a disjunctive denial stating that the defendant denies either having executed or having delivered the promissory note. Although negative pregnant and conjunctive denials are not grounds for objecting to the sufficiency of the defenses in an answer, they lack precision and are unartful.

Special appearances are unnecessary. Defenses to jurisdiction and venue (Paragraphs 6 and 7 *supra*) may be joined with other defenses (such as those in Paragraphs 8 and 9), and they may be asserted either in the answer or in a pre-answer motion. Usually they are raised in a pre-answer motion so that these preliminary matters can be resolved before the merits of the plaintiff's allegations are reached. While these defenses may be raised in the answer, they should also be the subject of a motion filed reasonably soon after the answer so that they can be determined before trial. A motion asserting any of these defenses should include greater specificity than is found in the answer.

Paragraphs 10 to 12 are examples of affirmative defenses.

Affirmative defense—Introduction

The defendant's answer should state all of the defendant's affirmative defenses. Some of the affirmative defenses are: accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, and waiver.

An "affirmative defense" is one upon which the defendant bears the burden of proof. To preserve an affirmative defense, the defendant must set forth the defense in an answer or amended answer either before or at the pretrial conference, or litigate the defense by express or implied consent of the parties.

If the pleading mistakenly designates a defense as a counterclaim or a counterclaim as a defense, the trial court shall treat the pleading as if it contained a proper designation.

Affirmative defense—Examples

Accord and Satisfaction.

On [Date], after making the contract and the alleged breach, and before this action was commenced, defendant paid to the plaintiff the sum of [specify amount], which was accepted by the plaintiff in full satisfaction and discharge of the damages claimed in the petition.

Arbitration and Award.

On [Date], pursuant to an agreement between plaintiff and defendant, plaintiff's claim was submitted to [Name of Arbitrator] for arbitration and on [Date], the arbitrator made an award dismissing plaintiff's claim against the defendant.

[Or]

On [Date], pursuant to an agreement between plaintiff and defendant, plaintiff's claim was submitted to [Name of Arbitrator] for arbitration, and on [Date], the arbitrator awarded plaintiff the sum of [specify amount], which amount defendant paid to plaintiff on [Date].

Assumption of Risk.

Plaintiff knowingly and with full knowledge assumed the risk of her loss by [specify facts constituting an assumption of risk].