

# **Kansas Legal Services**

A non-profit law firm and community education organization helping low and moderate income people in Kansas



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## **Chapter 61 answer**

The instructions for filing an answer in a Chapter 61 Limited Action case are both listed below and provided in the attached document. The attached document also gives a fillable sample form for filing your answer.

Please read the instructions carefully before filing your answer with the court.

### **Instructions for Filing an Answer in a Limited Action case**

1. Do NOT file the first 3 instruction pages with the Court.
2. Complete the form by replacing the labels for information (surrounded by < > symbols) with your information. Make sure to erase the < > symbols once you have entered your info.
  - For example, where it says <Filer's name>, put in your name.
  - Some areas don't have < > symbols, but rather a blank line. In the example below, Case No. is followed by a blank line. That is where you would insert your case number. Make sure you have entered all the needed data.
3. Put in the information from the Petition in the upper part (known as the caption). Put the Plaintiff's name in exactly as it is listed, etc. This is only used to identify the case. Copy the case number from the Petition.
  - Example:

<Plaintiff's name>                      Plaintiff

vs.

Case No. \_\_\_\_\_

<Defendant's name>                      Defendant

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4. Complete paragraph 1 with a very brief statement of why you deny the truth of the Plaintiff's Petition.

- Remember that failure to state your defense may result in judgment being taken against you.

5. Read the instructions below to determine if you need to put anything in paragraph 2.

- Generally, a defendant is only required to "deny" the truthfulness of a Plaintiff's statement in order to create a situation where the Plaintiff must prove the statement in a trial.
- However, Kansas law requires certain things to be stated affirmatively as defenses to a law suit. Those things are set out in KSA 60 -208( c) and are listed here:

(c)?Affirmative defenses. (1) In general. In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

(A)?Accord and satisfaction;

(B)?arbitration and award;

(C)?assumption of risk;

(D)?contributory negligence or comparative fault;

(E)?duress;

(F)?estoppel;

(G)?failure of consideration;

(H)?fraud, illegality;

(I)?injury by fellow servant;

(J)?laches;

(K)?license;

(L)?payment;

(M)?release;

(N)?res judicata;

(O)?statute of frauds;

(P)?statute of limitations; and

(Q)?waiver.

- Most of these are technical legal terms that may require additional research, if you believe one applies to your situation.
- If you believe one or more than one of these things applies in your situation, you must state it in paragraph 2. Otherwise, you may leave paragraph 2 blank.

6. In the Certificate of Service area, put in the address for the Plaintiff or Plaintiff's attorney that is listed on the Petition.

- You are required to mail a copy of your Answer to that address along with filing a copy of the Answer with the Clerk of the District Court.

7. Sign the Answer in two places: At the bottom of the ANSWER section and at the bottom of the CERTIFICATE OF SERVICE section.

- You will need the original and at least 2 copies of the Answer.

8. Mail a copy of your answer to the Plaintiff (or Plaintiff's attorney, if represented).

- Put the date you mail the copy of your answer in the Certificate of Service section on both the copy you mail and on the original you will file with the Court.

9. Take or Mail your Answer to the Clerk of the District Court in the County in which the case is filed. If you need help finding the Courthouse, you can use the map on the right side of this webpage to locate it: <http://www.kscourts.org/>

- This form must be filed with the Clerk of the District Court on or before the date you have been given to appear, if you wish not to have to appear in Court. You can ask the Clerk to "file stamp" a copy of your answer for your records. You must provide them the copy to stamp.
- **NOTE:** If you appear in Court and ask for a trial, you must file this answer within 14 days of the day you appear in Court. If you fail to file an answer, your trial may be dismissed. You

must still file this with the Clerk of the District Court and mail a copy to the Plaintiff (or Plaintiff's attorney, if represented).

10. Ask the Clerk of the District Court what date your case is set for trial.

- Be sure to put this date on your calendar.

11. Be alert for any discovery requests you receive prior to trial. This could include request for admissions and requests for copies of other documents in your possession.

- Failure to respond to requests for admissions can result in those items being "admitted to" on your part.

12. You should plan for the trial, by preparing 3 copies of any documents you will be presenting to the Judge during trial (one for your use, one for the Defendant and one for the Judge).

- You may testify at your trial. You will be cross-examined (asked questions) by the attorney or Plaintiff.
- You may ask questions of any witnesses the Plaintiff has testify at trial.

13. You may subpoena witnesses to attend the trial and testify on your behalf.

- Use the subpoena here: <http://courts.jocogov.org/forms/SUBPOENA.PDF>
  - Retype the form for use in counties other than Johnson County
- You may subpoena business records for use at trial with this form: <http://courts.jocogov.org/forms/BUS-SUBP.PDF>
  - Retype the form for use in counties other than Johnson County.
  - The Business Records Subpoena is an alternative to having someone from the business available to testify.
  - The business records are submitted to the Court in a sealed envelope. They are opened by the Judge and shared with the parties. You don't get a chance to look at them before Court, unless you have obtained them in some other way. However, records of a business that you have obtained in another manner may not be admissible unless there is a representative of the business present to testify that those are authentic records of the business.

-END OF INSTRUCTIONS-

 Chapter 61 Answer

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