

Instructions for Filing a Counterclaim in the Probate and Family Court

You have important rights relative to children, property, etc. You are strongly urged to consult with an attorney regarding any action in the Probate and Family Court.

What is a counterclaim?

A counterclaim is a claim filed by the defendant in opposition to the claim filed by the plaintiff. You may file a counterclaim to any complaint filed in the Probate and Family Court except a Complaint for Contempt. If you believe the plaintiff has violated orders of the Court, you may file a Complaint for Contempt.

When is a counterclaim filed?

A counterclaim is usually filed by the defendant at the same time as filing an answer to the complaint, but it may be filed after the answer is filed. If you want to file a counterclaim much later than the answer, you need to file a motion requesting permission from the Court to file the counterclaim late. Otherwise, what you are requesting will not be considered by the judge.

What form do I use?

Make sure the counterclaim form you complete is the correct one for the complaint. For example, if the complaint is a Complaint for Divorce, complete the Counterclaim for Divorce, or if the complaint is a Complaint for Modification, complete Counterclaim for Modification. Each

counterclaim form looks similar to the corresponding complaint. In a counterclaim you are now called plaintiff-in-counterclaim and the other party is defendant-in-counterclaim. Forms are available here, at the Registry of Probate, or you may write your own.

What do I write in the counterclaim?

The counterclaim form directs you to provide certain information. The last paragraph of the counterclaim usually begins, "Wherefore plaintiff-in-counterclaim requests that this Court..." This is where you write what you want the Court to do.

Write the date, sign your name on the counterclaim and print your name, address, and telephone number under your signature. Complete the Certificate of Service, which tells the Court who you served a copy of your counterclaim to, how you served them, and when you served them. Sign your name on the Certificate of Service. Remember to write the docket number on the top of each page you submit to court.

What do I do with my counterclaim when I have finished writing it?

File the original signed counterclaim in the Registry of Probate. Court staff will place it in the numbered file folder with the plaintiff's complaint and any other documents filed in the case. There is no fee to file a counterclaim.

Next, give a copy of the counterclaim to the plaintiff. If the plaintiff is not represented by an attorney, mail or hand-deliver your counterclaim to the plaintiff. If the plaintiff has a lawyer, mail or hand-deliver the counterclaim to the lawyer. The address of the plaintiff or the lawyer is written on the complaint. If the plaintiff's address is impounded, you may contact the Registry of Probate for instructions on how to serve the plaintiff.

Do I file a counterclaim if the plaintiff has a 209A order against me?

If the plaintiff has a current 209A order (abuse prevention order) against you, you are allowed to send the counterclaim by mail or have it

served by a Sheriff or another authorized officer. **You may not hand-deliver it yourself.** If the plaintiff's address is impounded, you may contact the Registry of Probate for instructions on how to serve the plaintiff. For more information, see the 209A order you received.

Do I have to file a counterclaim?

No. If you do not want to request any orders, or new orders, of the Court, or if you want to file a different type of case, then you do not need to file a counterclaim.

I filed a counterclaim. Does that mean I don't really have to show up for the next court date?

No! It is very important that you go to court every time there is a hearing. If you do not show up to a hearing, you may lose important rights regarding children and property. Always go to scheduled court dates on time with copies of all the court documents and other related information. **ALWAYS BE PREPARED.**

This brochure is general information. It is not legal advice. If you have questions about your situation, speak with a lawyer.