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**§ 6.7****The Answer***The Defendant's Response to the Plaintiff's Claims*

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**DON'T ARGUE. JUST ADMIT OR DENY.**

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The Answer fulfills part of the basic procedure of litigation: the defendant's response to the claims made by the plaintiff in the Complaint. Fortunately, the answer is also one of the easiest documents a paralegal will create. It must respond to each allegation set forth in the complaint.

Since the allegations in the complaint are usually broken into individual paragraphs, it is a simple matter of making clear to the court which will be admitted, which will be denied, and which will be denied due to insufficient information.

You are not going to win your case in the answer, so there is no need to present arguments, reasons, explanations, or detailed defenses. Just admit or deny the allegations. The arguments will come at trial. An admission cannot be withdrawn, so, when in doubt, deny.

When answering a complaint, each paragraph of the complaint should be admitted, denied, or "neither admitted nor denied due to lack of knowledge." To accomplish this, draft three paragraphs.

In the first paragraph, admit any allegations from the complaint that cannot be denied. For example:

1. Defendant hereby admits allegations contained in Paragraphs 1, 4, and 5 of Plaintiff's Complaint.

In the second paragraph, deny those allegations that will be denied in court. For example:

2. Defendant hereby denies any allegations contained in Paragraphs 2, 3, 6, 7, 8, and 9 of Plaintiff's Complaint.

The third paragraph addresses allegations that the defendant is unable to answer. Example:

3. Defendant is without sufficient knowledge to answer Paragraphs 10 and 11 of Plaintiff's complaint and therefore denies the same.

## AFFIRMATIVE DEFENSES

Affirmative defenses, often included with the answer in a separate, captioned section, admit that an event occurred, but do not admit any liability for it. An affirmative defense does not attempt to make the claim that the *defendant* suffered damages. If damages were claimed by the defendant, that would constitute a *Counterclaim* instead of an *affirmative defense*. Examples of affirmative defenses include bankruptcy, a payment, a claim upon which relief cannot be granted, and damages which are inapplicable because of the statute of limitations. Affirmative defenses are not required.

## COUNTERCLAIM

If the defendant claims to have been damaged by the plaintiff, the defendant should include a *Counterclaim* within the *Answer*. This is basically a complaint by the defendant against the plaintiff and should contain all the elements of a complaint, except that the caption does not have to be repeated. The caption for a combined document would read, "Answer, Affirmative Defenses, and Counterclaim."

### EXAMPLE | THE ANSWER

<p style="text-align: center;">DISTRICT COURT OF CLARK COUNTY STATE OF CONFUSION</p> <p>JOHN and SALLY SMITH Plaintiff,</p> <p>vs.</p> <p>JACK DOE Defendant.</p> <p style="text-align: center;">ANSWER AND AFFIRMATIVE DEFENSES</p> <p>Comes now Defendant, JACK DOE, by and through his attorneys of record, and for his answer to the Complaint filed herein, hereby admits, denies, and alleges as follows:</p> <ol style="list-style-type: none"> <li>1. Answering Paragraph 1 of Plaintiffs' Complaint, Defendant is without sufficient knowledge or information necessary to form a belief as to the truth or falsity of the allegation contained therein and therefore denies the same.</li> <li>2. Answering Paragraphs 2, 3, and 4 of Plaintiffs' Complaint, Defendant admits the allegations contained therein.</li> <li>3. Answering Paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 of Plaintiffs' Complaint, Defendant denies the allegations contained therein.</li> </ol> <p style="text-align: center;">AFFIRMATIVE DEFENSES</p> <p style="text-align: center;">FIRST AFFIRMATIVE DEFENSE</p> <ol style="list-style-type: none"> <li>1. Defendant hereby avers and alleges that Plaintiff fails to state a claim upon which relief can be granted in the Complaint.</li> </ol> <p style="text-align: center;">SECOND AFFIRMATIVE DEFENSE</p> <ol style="list-style-type: none"> <li>2. Defendant hereby avers and alleges assumption of risk as an affirmative defense in this matter.</li> </ol> <p style="text-align: center;">THIRD AFFIRMATIVE DEFENSE</p> <ol style="list-style-type: none"> <li>3. Defendant hereby avers and alleges the injuries, if any, suffered by Plaintiff, as set forth in the Complaint, were caused in whole or in part by the negligence of a third party over whom Defendant had no control.</li> </ol> <p>// // //</p> <p>// // //</p> <p>// // //</p>	<p>WHEREFORE, Defendant, JACK DOE, prays for judgment follows:</p> <ol style="list-style-type: none"> <li>1. That Plaintiff takes nothing by way of the allegations contained in his Complaint;</li> <li>2. For an apportionment of damages and proportion to the degree of fault of each responsible person or entity;</li> <li>3. For costs of suit incurred herein;</li> <li>4. For reasonable attorneys' fees; and</li> <li>5. For such other and further relief as the Court may deem just and proper.</li> </ol> <p>Dated this _____ day of _____, 20__.</p> <p style="text-align: right;">_____ Attorney Name State Bar No. 7190 Address Attorney for Defendant</p> <p style="text-align: center;"><b>CERTIFICATE OF MAILING</b></p> <p>I hereby certify that on this day of ____, 20__, I placed a true and correct copy of the foregoing ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' COMPLAINT in the United States Mail, postage prepaid, addressed to counsel on the attached service list:</p> <p style="text-align: right;">_____</p> <p>An employee of (Law Firm)</p> <p>[Attach the list of people being served]</p>
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**ASSIGNMENT § 6.7 | THE ANSWER (OPTIONAL)**

*Students may switch sides in their assigned client's case for this assignment or they may use the following scenario to create an answer. Affirmative defenses and counterclaims may be included. This assignment may be required or assigned for extra credit by your instructor, but is otherwise optional.*

Your attorney tells you she just took a new case. The complaint was filed more than two weeks ago, so the answer is almost due. She wants you to draft an answer and provides you with the basic following information.

The case is Ann Haverhill v. Gene Villipiano. The court case number is 20-1438. Your attorney wants you to admit Paragraphs 1 and 2, deny Paragraphs 3, 5, 6, and 7, and deny Paragraph 4 due to insufficient information. Your affirmative defenses are "Failure to state a claim upon which relief can be granted" and "Assumption of the risk."

Again, this assignment is optional unless your instructor requires it.

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**§ 6.8****Discovery***Exchanging Relevant Information*

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The following pages feature interactive study regarding discovery documents. Exercises will be completed in class, and the Assignments will be completed out-of-class, unless otherwise instructed. Try to be brief in completing the fill-in-the-blank questions but use additional paper if necessary. The exercises are primarily designed to encourage the thought process. They will not be graded.

**THE DISCOVERY PROCESS**

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Evidence is needed by each party to a lawsuit to support its side of the case. Both parties attempt to gather the necessary evidence to win at trial. A paralegal is intimately involved in this process. Discovery is the vehicle by which both parties to a suit are entitled to certain facts, documents and other information while preparing for trial. Discovery serves three functions:

- *to clarify issues*
- *to eliminate the element of surprise*
- *to limit the length of trial*

Every attorney knows that lawsuits are won by hard work during the pretrial stage. The best and smartest attorneys use every tool available for the benefit of their clients, and the paralegal is one of the most powerful tools an attorney possesses. Also, when an attorney hears the term "pretrial," he or she