

House Bill 1405
House Judiciary Committee
Testimony Presented by Sara Behrens
January 28, 2025

Good morning Chairman Klemin, members of the committee. My name is Sara Behrens and I am a staff attorney with the State Court Administrator's Office. I am here today in opposition to House Bill 1405.

Currently, the time to answer a complaint, in general, is 21 days. This deadline is provided for in Rule 12 of the North Dakota Rules of Civil Procedure. The Rules of Civil Procedure were adopted in 1957. From 1957 to 2011, the time to answer a complaint or counterclaim was 20 days. Effective March 1, 2011, the time was increased to 21 days to correspond to changes in the Federal Rules. The general time to answer a complaint ranges from 20 to 30 days in other states in the nation.

In general, when an action is commenced, a summons and complaint is served. The summons provides notice to the defendant that the defendant's answer is due within 21 days of service of the summons and complaint. An answer is not an in-depth or elaborate legal document. The defendant simply indicates whether they admit, deny, or do not have sufficient information to admit or deny the allegations in the complaint. The answer also states defenses the defendant wishes to raise, if any. The North Dakota Supreme Court Self-Help Center has created a Guide to A Civil Action, or Civil Case. This guide contains a section on answering a complaint. In addition to the guide, the website also has an entire page dedicated to answering the complaint with resources, checklists, forms, and links to other resources.

The 20- to 21-day deadline to answer a complaint has worked for decades. However, if an answer is not served within the time frame, a default judgment may be entered. However, if the

defendant has made an “appearance” meaning “any response sufficient to give the plaintiff or his or her attorney notice of an intent to contest the claim” State v. \$33,000 U.S. Currency, 2008 ND 96, the defendant must be given notice of the motion for default judgment. This provides another chance for the defendant to respond to the complaint.

There are many reasons why a defendant doesn’t timely answer a complaint including willful failure to answer, forgetfulness, and extraordinary circumstances. If the defendant has a good reason for failing to answer within the time allotted, the defendant can move to vacate the default judgment. Additionally, if a defendant knows that they will be unable to answer the complaint within 21 days, the defendant can request that the plaintiff allow additional time. If the plaintiff is unwilling to agree to an extension, the defendant can request an extension from the court.

The time to answer a complaint is intentionally somewhat short. This is to encourage prompt resolution of cases and to prevent delays in the proceedings. This bill seeks to nearly triple the time to answer a complaint, delaying proceedings further. If passed, North Dakota’s time period would be double the longest general time limits in the country (Maryland has a 60-day deadline but only for complaints served outside of the state). Interestingly, prior to 2006, Wisconsin allowed 45 days to answer a complaint which was the longest in the country. In the 2005 Legislative Session, this timeframe was more than cut in half to 20 days which is Wisconsin’s current deadline.

It should be noted that it will also lead to confusion having a 60-day deadline in the statute and a 21-day deadline in the rule. The procedural rule setting a 21 (previously 20) day answer deadline has worked for decades and the Court has created resources to assist unrepresented individuals to comply. We request a do not pass from this Committee.