

Responding to a Complaint: Kentucky

COLIN H. LINDSAY AND MATTHEW BARSZCZ, DINSMORE & SHOHL LLP, WITH PRACTICAL LAW LITIGATION

A Q&A guide to responding to a complaint in a trial court of general jurisdiction in Kentucky. This Q&A addresses the time to respond, extending the time to respond, pre-answer motions, answers, replies to the answer, counterclaims, crossclaims, third-party claims (also known as impleader) and defensive interpleader.

OVERVIEW OF RESPONDING TO A STATE COMPLAINT

1. When must a defendant respond to the complaint?

A defendant must serve its answer within 20 days after service of the summons (*Ky. R. Civ. P. 12.01*).

2. How, if at all, can one obtain an extension of time to respond (for example, by stipulation, so-ordered stipulation, ex parte motion, motion on notice)

Parties often stipulate to an extension between themselves, however Kentucky case law requires this agreement to be reduced to an agreed order signed by the court (*Moffitt v. Asher, 302 S.W.2d 102 (Ky. 1957)*).

3. What types of responses are permitted (for example, answer, motion, demurrer, special appearance)?

In Kentucky, the following types of responses are permitted:

- An answer (*Ky. R. Civ. P. 8.03*).
- A motion to dismiss (*Ky. R. Civ. P. 12.02*).
- A motion for a more definite statement (*Ky. R. Civ. P. 12.05*).
- A motion to strike (*Ky. R. Civ. P. 12.06*).

PRE-ANSWER RESPONSES

4. If motions, demurrers or the like are permitted:

- Are there any preliminary requirements (for example, meet and confer with the plaintiff's counsel, have a conference with the court)?
- What grounds can be asserted (for example, subject matter jurisdiction, personal jurisdiction, failure to state a claim)?
- Are available grounds that are not asserted waived (either just for pre-answer litigation or for the whole case)?
- What papers are required (for example, notice of motion, motion, affidavit, memorandum of law)?
- Can the defendant offer evidence outside the complaint?
- When and how does the plaintiff respond?
- Can the defendant reply? If so, when and how?
- Does the court hear oral argument before deciding?
- Is discovery stayed until the court decides?
- If the court does not dismiss the complaint, how much time does the defendant have to file an answer?

MOTION TO DISMISS

Preliminary Requirements

There are no preliminary requirements to filing a motion to dismiss in Kentucky.

Grounds Asserted

A motion to dismiss may be made on any of the following grounds:

- Lack of subject matter jurisdiction.
- Lack of personal jurisdiction.
- Improper venue.
- Insufficiency of process.
- Insufficiency of service of process.
- Failure to state a claim upon which relief can be granted.
- Failure to join an indispensable party.

(*Ky. R. Civ. P. 12.02*.)



Waiver

If a party makes a motion under Rule 12 of the Kentucky Rules of Civil Procedure, but omits any defense or objection available under Rule 12 and which Rule 12 permits to be made by motion, the party cannot later make a motion on the omitted defense or objection, other than:

- Failure to state a claim upon which relief can be granted.
- Failure to join an indispensable party.
- Failure to state a legal claim to a defense.

(Ky. Rs. Civ. P. 12.07 and 12.08.)

Required Papers

The Kentucky Rules of Civil Procedure do not set out what papers are required for a motion to dismiss. Counsel should check the local rules in a given jurisdiction, as different courts throughout Kentucky have different requirements. Some courts require only a motion and other courts require a separate memorandum of law.

Outside Evidence

In most cases, presentation of evidence outside the pleading itself is disfavored. If a court accepts outside evidence, a motion to dismiss for failure to state a claim upon which relief can be granted converts into a motion for summary judgment (Ky. R. Civ. P. 12.02).

When a plaintiff attaches documents as exhibits to a complaint (such as in a breach of contract claim), those exhibits are treated as part of the pleading for purposes of a motion to dismiss (*Underwriter's at Lloyd's v. Abundance Coal, Inc.*, 352 S.W.3d 594, 596 n.2 (Ky. App. 2011)).

Response by Plaintiffs

A plaintiff is typically allowed to file a response to a motion to dismiss, although there is no time period set out by the Kentucky Rules of Civil Procedure about when that response must be filed. Counsel should check the local rules in a given jurisdiction, as different courts throughout Kentucky have different rules on responsive pleading.

Reply by Defendants

It is customary in Kentucky to allow the defendant a reply as a matter of right. There is no rule that specifically addresses this issue. Counsel should check the local rules in a given jurisdiction, as different courts throughout Kentucky have their own local rules concerning motion practice.

Oral Arguments

A motion to dismiss must be heard by the court before a trial (Ky. R. Civ. P. 12.04). Enforcement of this rule varies under local practice.

Stay of Discovery

Discovery is not automatically stayed while a motion to dismiss is pending, although courts have discretion to stay discovery pending a motion to dismiss. This can be accomplished by filing a separate motion to stay discovery. (*Clark v. Cincinnati Ins. Co.*, No. 2005-CA-000356-MR, 2006 WL 1044461, at *2 (Ky. App. Apr. 21, 2006).)

Serving an Answer or Other Response

If the court denies a motion to dismiss, the defendant has ten days from the date of entry of the court's order in which to serve its answer (Ky. R. Civ. P. 12.01).

MOTIONS FOR A MORE DEFINITE STATEMENT

Preliminary Requirements

There are no preliminary requirements to filing a motion for a more definite statement.

Grounds Asserted

A motion for a more definite statement can be filed only when the complaint is so vague and ambiguous that the defendant cannot respond. A defendant must point out the defects and the details desired. (Ky. R. Civ. P. 12.05.)

Waiver

A defendant cannot complain about the lack of particularity in the complaint where it does not seek a more definite statement (*Scott v. Farmers State Bank*, 410 S.W.2d 717 (Ky. 1966)).

Required Papers

The Kentucky Rules of Civil Procedure do not set out what papers are required for a motion for a more definite statement. Before filing a motion, counsel should check the local rules in a given jurisdiction, as different courts throughout Kentucky have their own local rules.

Outside Evidence

The nature of a motion for a more definite statement does not lend itself to the presentation of outside evidence.

Response by Plaintiffs

A plaintiff is typically allowed to file a response to a motion for a more definite statement, although there is no time period set out by the Kentucky Rules of Civil Procedure about when that response must be filed. Before filing a response, counsel should check the local rules in a given jurisdiction, as different courts throughout Kentucky have their own local rules.

Reply by Defendants

It is customary in Kentucky to allow the defendant a reply as a matter of right. There is no rule that specifically addresses this issue. Before filing a reply, counsel should check the local rules in a given jurisdiction, as different courts throughout Kentucky have their own local rules.

Oral Argument

The Kentucky Rules of Civil Procedure do not require oral argument on a motion for a more definite statement. Counsel should check the local rules in a given jurisdiction, as different courts throughout Kentucky have their own local rules for oral arguments on motions for a more definite statement.

Stay of Discovery

Discovery is not automatically stayed while a motion for a more definite statement is pending, although courts have discretion to stay discovery pending a motion for a more definite statement. This can be accomplished by filing a separate motion to stay discovery. (*Clark, 2006 WL 1044461, at *2.*)

Serving an Answer or Other Response

If the court denies a motion for a more definite statement, the defendant has ten days from the date of entry of the court's order in which to serve its answer (*Ky. R. Civ. P. 12.01*).

MOTION TO STRIKE

Preliminary Requirements

There are no preliminary requirements for motions to strike.

Grounds Asserted

A motion to strike can be filed to request that the court strike any sham, redundant, immaterial, impertinent, or scandalous matter (*Ky. R. Civ. P. 12.06*).

Waiver

A defendant may file a motion to strike before responding to a pleading or, in no responsive pleading is permitted, on a motion made within 20 days after the service of the complaint (*Ky. R. Civ. P. 12.06*).

Required Papers

The Kentucky Rules of Civil Procedure do not set out what papers are required for a motion to strike. Counsel should check the local rules in a given jurisdiction, as different courts throughout Kentucky have different requirements. Some courts require only a motion and other courts require a separate memorandum of law.

Outside Evidence

Kentucky law does not specifically address whether outside evidence is allowed in support of a motion to strike. The nature of a motion to strike, however, is such that the presentation of outside evidence will often be necessary to show that all or some of the complaint is a sham, redundant, immaterial, impertinent or scandalous matter.

Response by Plaintiffs

A plaintiff is typically allowed to file a response to a motion to strike, although there is no time period set out by the Kentucky Rules of Civil Procedure about when that response must be filed. Before filing a response, counsel should check the local rules in a given jurisdiction, as different courts throughout Kentucky have their own local rules.

Reply by Defendants

It is customary in Kentucky to allow the defendant a reply as a matter of right. There is no rule that specifically addresses this issue. Before filing a reply, counsel should check the local rules in a given jurisdiction, as different courts throughout Kentucky have their own local rules.

Oral Argument

The Kentucky Rules of Civil Procedure do not require oral argument on a motion to strike. Counsel should check the local rules in a given jurisdiction, as different courts throughout Kentucky have their own local rules for oral argument on a motion to strike.

Stay of Discovery

Discovery is not automatically stayed while a motion to strike is pending, although courts have discretion to stay discovery pending a motion to strike. This can be accomplished by filing a separate motion to stay discovery. (*Clark, 2006 WL 1044461, at *2.*)

Serving an Answer or Other Response

If the court denies a motion to strike, the defendant has ten days from the date of entry of the court's order in which to serve its answer (*Ky. R. Civ. P. 12.01*).

ANSWERING THE COMPLAINT

5. What are the required and optional contents of an answer?

REQUIRED CONTENTS

In Kentucky, an answer must indicate whether the defendant is admitting or denying the allegations in the complaint (*Ky. R. Civ. P. 8.02*). If applicable, the defendant may state that it is without knowledge or information sufficient to form a belief about the truth of the allegation, and this operates as a denial (*Ky. R. Civ. P. 8.02*). A party must also assert any known affirmative defense that it has available to it when it files its answer (*Ky. R. Civ. P. 8.03*). Kentucky requires that a party affirmatively state the following affirmative defenses, if applicable, in its answer:

- Accord and satisfaction.
- Arbitration and award.
- Assumption of risk.
- Contributory negligence.
- Discharge and bankruptcy.
- Duress.
- Estoppel.
- Failure of consideration.
- Fraud.
- Illegality.
- Injury by fellow servant.
- Laches.
- License.
- Payment.
- Release.
- Res judicata.
- Statute of frauds.
- Statute of limitations.
- Waiver.

(*Ky. R. Civ. P. 8.03.*)

OPTIONAL CONTENTS

There are no other contents for an answer.

6. Under what circumstances, if any, must a defendant verify its response?

A defendant is not required to verify its answer in Kentucky.

AMENDING AN ANSWER**7. Can a defendant amend its answer? If so:**

- When?
- What grounds, if any, must be shown to justify an amendment?

TIME TO AMEND

A defendant may amend its answer once without leave of court within 20 days after it is served (*Ky. R. Civ. P. 15.01*). A defendant may also amend its answer either by:

- Written consent from the adverse party.
- Leave of court.

(*Ky. R. Civ. P. 15.01*.)

GROUND FOR AMENDMENT

Leave to amend an answer is to be freely given when justice so requires (*Ky. R. Civ. P. 15.01*). A defendant must show that its motion to amend is made in good faith. Good faith can be determined by:

- The timeliness of the motion.
- The excuse for the delay.
- The resulting prejudice to the other party.

(*Farmers Crop Ins. Alliance, Inc. v. Gray*, No. 2009-CA-000969-MR, 2010 WL 5018284, at *3 (*Ky. Ct. App. Dec. 10, 2010*).

REPLYING TO AN ANSWER**8. Can a plaintiff file a reply pleading? If so:**

- When is it due?
- What grounds, if any, must be shown to justify a reply?
- What are the optional and required contents?

TIME TO REPLY

Replies to answers are typically not permitted in Kentucky, but a court may order a reply to an answer (*Ky. R. Civ. P. 7.01*). Because a reply to an answer is only permitted by court order, the timeframe, grounds, and required contents of the reply are handled by trial courts on a case-by-case basis.

GROUND FOR REPLY

See *Time to Reply*.

REPLY CONTENTS

See *Time to Reply*.

DEFENDANT'S AFFIRMATIVE CLAIMS**9. Can a defendant assert affirmative claims of its own? If so:**

- What types of claims are available (for example, counterclaims, crossclaims, third party claims) and what is the basic nature of each (for example, who is a proper defendant to it and what is a proper subject)?
- Are any claims by a defendant mandatory (for example, compulsory counterclaims, claims covered by an entire controversy rule)?
- When and how does the defendant assert its claims?
- When and how do other parties respond to a defendant's claims?

AVAILABLE CLAIMS

A defendant can assert three affirmative claims of its own:

- A counterclaim against the plaintiff (*Ky. R. Civ. P. 13.01 and 13.02*).
- A cross-claim against a co-party (*Ky. R. Civ. P. 13.07*).
- A third party complaint against a person not yet a party to the action (*Ky. R. Civ. P. 14.01*).

Counterclaims

Counterclaims can be:

- Compulsory, where the counterclaim arises out of the same transaction or occurrence that the plaintiff's complaint is based on (*Ky. R. Civ. P. 13.01*).
- Permissive, where the counterclaim does not arise out of the transaction or occurrence that is the subject matter of the plaintiff's claim (*Ky. R. Civ. P.13.02*).

Cross-claims

A cross-claim may be asserted against a co-party for a claim that arises out of the transaction or occurrence that is the subject matter of either:

- The plaintiff's action.
- A counterclaim.

A cross-claim may also related to any property that is the subject matter of the original action. (*Ky. R. Civ. P. 13.07*.)

Third Party Claims

A defendant may assert a third-party claim only against a person who is not already a party to the action and who is or may be liable to the defendant for all or some of the plaintiff's claims against the defendant (*Ky. R. Civ. P. 14.01*).

MANDATORY CLAIMS FOR DEFENDANT

The only mandatory claim for a defendant is a compulsory counterclaim involving the same transaction or occurrence that is the subject matter of the plaintiff's complaint (*Ky. R. Civ. P. 13.01*).

WHEN AND HOW CLAIMS ARE ASSERTED

Counterclaims

A counterclaim should be asserted in the defendant's answer. A defendant may, by leave of court, assert a counterclaim if it was not asserted in the answer through oversight, inadvertence, excusable neglect or because justice so requires (*Ky. R. Civ. P. 13.06*).

Cross-claims

A cross-claim may be asserted in a pleading (*Ky. R. Civ. P. 13.07*). Best practice is for a defendant to assert any cross-claim in its answer.

Third-party Claims

A defendant may assert a third-party claim only on leave of court (*Ky. R. Civ. P. 14.01*). There is no time period set out in the Kentucky Rules of Civil Procedure concerning when a third-party claim must be asserted. Some courts may address this in their local rules and it is best practice to read the local rules of the court where an action is pending before moving for leave to assert a third-party claim. The timeframe in which to assert a third-party claim is sometimes addressed by a court's scheduling order in a particular case.

OTHER PARTIES' RESPONSE TO DEFENDANT'S CLAIMS

Counterclaims

A plaintiff responding to a counterclaim must serve its reply within 20 days after service of the defendant's counterclaim (*Ky. R. Civ. P. 12.01*).

Cross-claims

A party responding to a cross-claim must serve its reply within 20 days after service of the defendant's cross-claim (*Ky. R. Civ. P. 12.01*).

Third-party Claims

A party served with a third-party complaint has 20 days after service of the summons in which to file its answer to the third-party complaint (*Ky. R. Civ. P. 12.01*).

ABOUT PRACTICAL LAW

Practical Law provides legal know-how that gives lawyers a better starting point. Our expert team of attorney editors creates and maintains thousands of up-to-date, practical resources across all major practice areas. We go beyond primary law and traditional legal research to give you the resources needed to practice more efficiently, improve client service and add more value.

If you are not currently a subscriber, we invite you to take a trial of our online services at practicallaw.com. For more information or to schedule training, call **888.529.6397** or e-mail ustraining@practicallaw.com.