

Responding to a Complaint: Ohio

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A Q&A guide to responding to a complaint in a trial court of general jurisdiction in Ohio. 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?

In Ohio, a defendant must respond within 28 days after being served the summons and complaint or after completion of service by publication (*Ohio Civ. R. Rule 12*).

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)?

In Ohio, each county's Court of Common Pleas typically publishes local rules governing extensions of time. Some local rules allow automatic extensions of time, often for up to 20 days. Other local rules allow for extensions of time by stipulation, while still others require Court approval. To obtain an extension of time to respond, the county's individual local rules must be consulted.

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

In Ohio, the following types of responses are permitted:

- An answer (*Ohio Civ. R. 12(A)*).
- A motion for a definite statement (*Ohio Civ. R. 12(E)*).
- A motion to strike (*Ohio Civ. R. 12(F)*).
- A motion to dismiss, commonly referred to as a Rule 12(B) motion (*Ohio Civ. R. 12(B)*).

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 (RULE 12(B) MOTION)

Preliminary

Ohio abolished demurrers (*Ohio Civ. R. 7(C)*). No general preliminary requirements exist except as provided by local rule. Counsel should check the applicable local rules to determine whether the court imposes any preliminary requirement.

Grounds Asserted

The defendant may present the following defenses in a motion to dismiss:

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



(*Ohio Civ. R. 12(B)*.)

Waiver

If a party does not include all Rule 12 defenses in the Rule 12(B) motion, it waives all except the following, which cannot be waived:

- Lack of subject matter jurisdiction.
- Failure to state a claim for which relief can be granted.
- Failure to join a necessary party.

(*Ohio Civ. R. 12(G), (H)*.)

Required Papers

In Ohio, all motions must include:

- A caption with:
 - the name of the court;
 - the title of the action;
 - the case number; and
 - a designation of the document being filed.

(*Ohio Civ. R. 7(B)(3) and 10(A)*.)

- A statement, with particularity, of the grounds on which the motion is based.
- The relief or order sought.

(*Ohio Civ. R. 7(B)*.)

Local rules typically require parties to file both:

- A motion.
- A memorandum in support of the motion (see, for example, *Hamilton Co., Ohio L.R. 14(A)*).

Some local rules require parties to attach unpublished cases to the memorandum in support (see, for example, *Cuyahoga Co., Ohio, Common Pleas Ct. L.R. 11.0(H)*).

Outside Evidence

Other than for a motion to dismiss for failure to state a claim on which relief may be granted, outside evidence is allowed and, as the court permits, evidentiary hearings may be allowed. Concerning a motion to dismiss for failure to state a claim on which relief can be granted, if a defendant presents matters outside of the pleading and the court allows it, the court must:

- Treat the motion as a motion for summary judgment
- Dispose of the motion as provided in Rule 56 of the Ohio Civil Rules of Procedure.

(*Ohio Civ. R. 12(B)*.)

Response by Plaintiffs

Counsel should check the applicable local rules to determine the time frame for the plaintiff's memorandum in opposition.

Reply by Defendants

Counsel should check the applicable local rules to determine whether:

- A defendant may file a reply absent leave of court.
- If allowed, the deadline for any reply.

Oral Argument

Counsel should check the applicable local rules to determine whether the court will hear oral arguments.

Most local rules require parties to request an oral argument in their motion (see, for example, *Tuscarawas Co., Ohio, Ct. of Common Pleas L.R. 4(H)*).

Stay of Discovery

A motion to dismiss does not automatically stay discovery.

Serving an Answer or Other Response

If the court denies the motion to dismiss, the defendant(s) must serve their answer within 14 days after notice of the court's action (*Ohio Civ. R. 12(A)*).

MOTION FOR A DEFINITE STATEMENT

Preliminary Requirements

Counsel should check the applicable local rules to determine whether the court imposes any preliminary requirement.

Grounds Asserted

A party may move for a definite statement if the pleading is so vague or ambiguous that the party cannot reasonably prepare a response. The party must make the motion before filing a responsive pleading and it must include the defects and details desired. (*Ohio Civ. R. 12(E)*)

Waiver

Motions for a more definite statement shall be raised "before interposing [a] responsive pleading" (*Ohio Civ. R. 12(E)*).

Ohio Courts may otherwise deem the motion waived.

Required Papers

See *Motion to Dismiss*.

Outside Evidence

No outside evidence is required for a motion for a definite statement.

Response by Plaintiffs

Counsel should check the applicable local rules to determine the deadline for the plaintiff's memorandum in opposition.

Reply by Defendants

Counsel should check the applicable local rules to determine whether:

- A defendant may file a reply absent leave of court.
- If allowed, the deadline for any reply.

Oral Argument

Counsel should check the applicable local rules to determine whether the court will hear oral arguments.

Most local rules require parties to request an oral argument in their motion (see, for example, *Tuscarawas Co., Ohio, Ct. of Common Pleas L.R. 4(H)*).

Stay of Discovery

Rule 12 motions do not automatically stay discovery.

Serving an Answer or Other Response

If the court orders a definite statement and the plaintiff does not comply within 14 days after notice of the order, or within the time the court sets, the court may:

- Strike the pleading.
- Issue any other appropriate order.

(*Ohio Civ. R. 12(E)*.)

If the court denies the motion for a definite statement, the defendant(s) have 14 days to file an answer or such other time as the Court may affix. If the order is not obeyed, the statement may be stricken. (*Ohio Civ. R. 12(A)*.)

MOTION TO STRIKE

Preliminary Requirements

Counsel should check the applicable local rules to determine whether the court imposes any preliminary requirement.

Grounds Asserted

A party may move to strike from a pleading:

- An insufficient claim or defense.
- Any matter that is:
 - redundant;
 - immaterial;
 - impertinent; or
 - scandalous.

(*Ohio Civ. R. 12(F)*.)

Waiver

A defendant waives the right to file a motion to strike by:

- Filing a responsive pleading before making the motion.
- Allowing more than 28 days to pass after service of the pleading, if a response is not allowed.

(*Ohio Civ. R. 12(F)*.)

Required Papers

See *Motion to Dismiss*.

Outside Evidence

Outside evidence is not required pertaining to a motion to strike.

Response by Plaintiffs

Counsel should check the applicable local rules to determine the deadline for the plaintiff's memorandum in opposition.

Reply by Defendants

Counsel should check the applicable local rules to determine whether:

- A defendant may file a reply absent leave of court.
- If allowed, the time for any reply.

Oral Argument

Counsel should check the applicable local rules to determine whether the court will hear oral arguments.

Most local rules require parties to request an oral argument in their motion (see, for example, *Tuscarawas Co., Ohio, Ct. of Common Pleas L.R. 4(H)*).

Stay of Discovery

If the court denies the motion to strike, a defendant must serve an answer within 14 days after notice of the court's action (*Ohio Civ. R. 12(A)*).

Serving an Answer or Other Response

If the court denies the motion to strike, the defendant(s) must serve their answer within 14 days after notice of the court's action (*Ohio Civ. R. 12(A)*).

ANSWERING THE COMPLAINT

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

REQUIRED CONTENTS

Caption

In Ohio, a defendant's answer must contain a caption including:

- The name of the court.
- The title of the action.
- The case number.
- A designation of the document being filed.

(*Ohio Civ. R. 10(A)*.)

ADMISSIONS OR DENIALS

The answer must respond to each allegation, "in short and plain terms" in the complaint with either:

- A defense.
- An admission or denial.

If a party claims it is without knowledge of an allegation, this constitutes a denial.

(*Ohio Civ. R. 8(B)*.)

Affirmative Defenses

A defendant must set out its affirmative defenses in the answer, including:

- Accord and satisfaction.
- Arbitration and award.
- Assumption of risk.
- Contributory negligence.
- Discharge in bankruptcy.
- Duress.
- Estoppel.
- Failure of consideration.
- Lack of consideration for a negotiable instrument.
- Fraud.
- Illegality.
- Injury by fellow servant.

- Laches.
- License.
- Payment.
- Release.
- *Res judicata*.
- Statute of frauds.
- Statute of limitations.
- Waiver.
- Any other constituting an avoidance or affirmative defense.

Counterclaims

Defendants must bring existing compulsory counterclaims in their answer (see *Question 9*).

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

Responses do not need to be verified in Ohio.

AMENDING AN ANSWER

7. Can a defendant amend its answer? If so:

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

AMENDMENT AS OF RIGHT

Time to Amend

In Ohio, a defendant may amend its answer once without seeking leave of the plaintiff or the court within 28 days of serving its original answer (*Ohio Civ. R. 15(A)*).

Grounds for Amendment

No formal grounds are required for an amendment made as of right (*Ohio Civ. R. 15(A)*).

AMENDMENT BY STIPULATION

Time to Amend

The parties may stipulate to an amendment at any time or the court may grant leave to amend (*Ohio Civ. R. 15(A)*).

Grounds for Amendment

A defendant may amend a pleading by written consent of the adverse party. No formal grounds are required, and leave shall be freely given when justice so requires. (*Ohio Civ. R. 15(A)*).

AMENDMENT BY MOTION

Time to Amend

A court may grant a defendant leave to amend its answer at any time (*Ohio Civ. R. 15(A)*).

Grounds for Amendment

No formal grounds are required, and leave shall be freely given when justice so requires (*Ohio Civ. R. 15(A)*).

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

A plaintiff is generally not permitted to reply to an answer. However, a court may:

- On motion from a party, allow a supplemental pleading to update a pleading in relation to further events (*Ohio Civ. R. 15(E)*).
- *Sue sponte* order a plaintiff to submit a supplemental pleading.

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

Counterclaims

In Ohio, a defendant may file a counterclaim against an opposing party to the original complaint (*Ohio Civ. R. 13*).

Cross Claim

A defendant may file a cross-claim against a co-party to the original complaint. A cross-claim may include any claim by one party against a co-party either:

- Arising out of the same transaction or occurrence that is the subject matter of the original action or its counterclaim.
- Relating to any property that is the subject matter of the original action.

(*Ohio Civ. R. 13(G)*.)

Third-party Claims

A defendant may assert a third-party claim alleging that someone not already a party to the action is or may be liable to the defendant for all or part of the plaintiff's claim against the defendant (*Ohio Civ. R. 14(A)*).

MANDATORY CLAIMS FOR DEFENDANT

In Ohio, a defendant must assert any claim that it has against the opposing party when serving its pleading, if the claim:

- Arises out of the transaction or occurrence that is the subject matter of the action.
- Does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction.

(*Ohio Civ. R. 13(A)*.)

Mandatory or compulsory counterclaims do not include those claims that when the action began:

- Were the subject of another action.
- Were not subject to court's jurisdiction.

(*Ohio Civ. R. 13(A)*.)

WHEN AND HOW CLAIMS ARE ASSERTED

Counterclaims

Defendants assert counterclaims in a pleading conforming to the same rules as a complaint (*Ohio Civ. R. 13*). Defendants must bring existent compulsory counterclaims when they answer (*Ohio Civ. R. 13(A)*). Counterclaims arising after the initial pleading may be presented by supplemental pleading with permission of the court (*Ohio Civ. R. 13(E)*).

Cross-claims

Defendants assert cross-claims in a pleading conforming to the same rules as a complaint (*Ohio Civ. R. 13*). If known, a cross-claim should be brought at the time the answer is filed.

Third-party Claims

Defendants assert third-party complaints in a pleading conforming to the same rules as a complaint (*Ohio Civ. R. 14*). Third-party claims may be asserted at any time, however, a third-party plaintiff must obtain leave to make the service if the third-party complaint is filed later than 14 days after the third-party plaintiff serves the original answer (*Ohio Civ. R. 14*).

OTHER PARTIES' RESPONSE TO DEFENDANT'S CLAIMS

Other parties respond to claims in the same manner as a defendant to the original complaint.

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