

# Responding to a Complaint: West Virginia

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A Q&A guide to responding to a complaint in a trial court of general jurisdiction in West Virginia. 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. Answers to questions can be compared across a number of jurisdictions (see [Responding to a Complaint: State Q&A Tool](#)).

## OVERVIEW OF RESPONDING TO A STATE COMPLAINT

### 1. When must a defendant respond to the complaint?

#### CIRCUIT COURTS

In circuit courts, the defendant must serve its answer within 20 days after service of the summons (W. Va. R. Civ. P. 12(a)(1)). However, the rules extend the time for filing an answer to 30 days when either:

- The defendant serves a notice of bona fide defense upon the plaintiff within the 20-day period.
- Service of process is made on a person authorized to accept service on behalf of the defendant.
- In-state constructive service of process is made under Rule 4(e) of the West Virginia Rules of Civil Procedure.
- Out-of-state personal service of process is made under Rule 4(f) of the West Virginia Rules of Civil Procedure.

(W. Va. R. Civ. P. 12(a)(1).)

In West Virginia circuit courts, the calculation of time periods excludes the first day and includes the last day. However, if the last day falls on a weekend or holiday, the deadline to respond is the next

court day. If the prescribed period of time is less than 11 days, then intermediate Saturdays, Sundays, and legal holidays are excluded from the calculation. (W. Va. R. Civ. P. 6(a).)

#### MAGISTRATE COURTS

In magistrate courts, the defendant must serve its answer either:

- Within 20 days after service of the summons and complaint.
- Within 30 days after service of the summons and complaint, if service of process is made on a person authorized to accept service on behalf of the defendant.
- No later than the date specified in an order of publication, if service of process was by publication.
- Within five days after service of the summons and complaint, in cases of unlawful entry and detainer and wrongful occupation of residential rental property.

(W. Va. R. Civ. P. Magis. Cts., Rule 4.) In West Virginia magistrate courts, time periods are calculated by excluding the first day and including the last day. However, if the last day falls on a weekend or holiday, the deadline to respond is the next court day. If the prescribed period of time is less than seven days, then intermediate Saturdays, Sundays, and legal holidays are excluded from the computation. (W. Va. R. Civ. P. Magis. Cts., Rule 20(a).)

### 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)?

The circuit court may extend the time period either:

- If the parties file a written stipulation agreeing to an extension.
- With or without motion or notice when the request is made before the expiration of the original period.
- On motion, after the expiration of the specified period, where the failure to act was the result of excusable neglect.

(W. Va. R. Civ. P. 6(b)).

The magistrate court may extend the time period either:

- If the parties agree in writing to an extension.

- On a showing of good cause, if the time period has not expired.
  - On a showing of unavoidable cause, if the time period has expired.
- (W. Va. R. Civ. P. Magis. Cts., Rule 20(b).)

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

In West Virginia, the following types of responses are permitted:

- An answer (W. Va. R. Civ. P. 12(a)(1)).
- A motion to dismiss (W. Va. R. Civ. P. 12(b)).
- A motion for a more definite statement (W. Va. R. Civ. P. 12(e)).
- A motion to strike (W. Va. R. Civ. P. 12(f)).

West Virginia has abolished demurrers, pleas, and exceptions for insufficiency of a pleading (W. Va. R. Civ. P. 7(c)).

**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 for a motion to dismiss in West Virginia.

**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 on which relief can be granted.
- Failure to join an indispensable party.

(W. Va. R. Civ. P. 12(b).)

**Waiver**

The following defenses are waived if not included in a motion to dismiss:

- Lack of personal jurisdiction.
- Improper venue.
- Insufficiency of process.
- Insufficiency of service of process.

(W. Va. R. Civ. P. 12(h).) If a party files a motion to dismiss but does not consolidate the motion with a motion for a more definite statement or a motion to strike, the party waives the right to later move for a more definite statement or to move to strike (W. Va. R. Civ. P. 12(g)).

**Required Papers**

A written motion must include a caption containing:

- The name of the court.
- The title of the action, which may be summarized with the name of the first party on each side and an indication of other parties (for example, by using the term “et al.”).
- The file number.
- The title of the motion.

(W. Va. R. Civ. P. 7(b) and 10(a)).

A motion need not be verified or accompanied by an affidavit unless specifically required by rule or statute. However, all motions must include the following information about either an attorney of record or the party, if unrepresented:

- Signature.
- Address.
- Phone number.
- West Virginia State Bar number, if any.

(W. Va. R. Civ. P. 7(b) and 11(a).)

**Outside Evidence**

A party may submit matters outside the pleadings on a motion to dismiss. If a defendant who is moving to dismiss the complaint for failure to state a claim on which relief can be granted includes matters outside the pleading, the court treats the motion as a motion for summary judgment. (W. Va. R. Civ. P. 12(b) and 56.)

**Response by Plaintiff**

A plaintiff is typically allowed to file a response to a motion to dismiss. A party must serve a response to a written motion:

- At least 4 days before the scheduled hearing, if served by mail.
- At least 2 days before the scheduled hearing, if served on the opposing party by:
  - hand delivery;
  - fax; or
  - leaving it with an agent of the opposing party’s office.

(W. Va. R. Civ. P. 6(d)(2).)

**Reply by Defendants**

A defendant is typically allowed to file a reply. There is no deadline for filing a reply, but the court may set a deadline. Practitioners should check local and judge's rules to determine whether the court imposes any deadline.

**Oral Arguments**

The court must hear a motion to dismiss before trial (W. Va. R. Civ. P. 12(d)).

**Stay of Discovery**

The rules do not automatically stay discovery while a motion to dismiss is pending. A party may file a separate motion to stay discovery. (See *Lane v. Boston Scientific Corp.*, 481 S.E.2d 753, 756 (W. Va. 1996).)

**Serving an Answer or Other Response**

If the court denies a motion to dismiss, the defendant has ten days after notice of the court's action in which to serve its answer (W. Va. R. Civ. P. 12(a)(3)(A)).

**MOTION FOR A MORE DEFINITE STATEMENT****Preliminary Requirements**

There are no preliminary requirements for a motion for a more definite statement in West Virginia.

**Grounds Asserted**

A defendant may file a motion for a more definite statement when the complaint is so vague and ambiguous that the defendant cannot respond. The defendant must point out the defects complained of and the details desired. (W. Va. R. Civ. P. 12(e).)

**Waiver**

If a defendant files an answer, the defendant waives the right to move for a more definite statement (W. Va. R. Civ. P. 12(e)).

If a defendant files a motion for a more definite statement, the defendant must consolidate the motion with the following preliminary motions or else waive the right to make them:

- A motion to dismiss the original complaint based on:
  - lack of personal jurisdiction;
  - improper venue;
  - insufficient process; or
  - insufficient service of process.
- A motion to strike.

(W. Va. R. Civ. P. 12(g).)

**Required Papers**

See Motion to Dismiss: Required Papers.

**Outside Evidence**

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

**Response by Plaintiff**

A plaintiff is typically allowed to file a response to a motion for a more definite statement. A party must serve a response to a written motion:

- At least 4 days before the scheduled hearing, if served by mail.
  - At least 2 days before the scheduled hearing, if served on the opposing party by:
    - hand delivery;
    - fax; or
    - leaving it with an agent of the opposing party's office.
- (W. Va. R. Civ. P. 6(d)(2).)

**Reply by Defendants**

A defendant is typically allowed to file a reply. There is no deadline for filing a reply, but the court may set a deadline. Practitioners should check local and judge's rules to determine whether the court imposes any deadline.

**Oral Arguments**

The West Virginia Rules of Civil Procedure do not require oral argument on a motion for a more definite statement. Practitioners should check local and judge's rules to determine whether different courts in West Virginia have their own rules for oral arguments on motions for a more definite statement.

**Stay of Discovery**

The West Virginia Rules of Civil Procedure do not automatically stay discovery while a motion for a more definite statement is pending. A party can file a separate motion to stay discovery (see *Lane*, 481 S.E.2d at 756).

**Serving an Answer or Other Response**

If the motion for a more definite statement is granted, the plaintiff must comply with the court's order and serve an amended complaint within ten days of the order, or else the court may strike the complaint (W. Va. R. Civ. P. 12(e)). The defendant has ten days after service of the amended complaint to serve its answer (W. Va. R. Civ. P. 12(a)(3)(B) and 15(a)).

If the court denies a motion for a more definite statement, the defendant has ten days after notice of the court's action in which to serve its answer (W. Va. R. Civ. P. 12(a)(3)(A)).

**MOTION TO STRIKE****Preliminary Requirements**

There are no preliminary requirements for a motion to strike.

**Grounds Asserted**

A defendant may move the court to strike any matter from the complaint that is:

- Redundant.
- Immaterial.

- Impertinent.
  - Scandalous.
- (W. Va. R. Civ. P. 12(f).)

### Waiver

Since a defendant must file a motion to strike before responding to a pleading, a defendant waives the right to move to strike by filing an answer (W. Va. R. Civ. P. 12(f)).

Nevertheless, the court may strike material from any pleading upon its own initiative at any time (W. Va. R. Civ. P. 12(f)).

If a defendant files a motion to strike, the defendant must consolidate the motion with the following preliminary motions or else waive the right to make them:

- A motion to dismiss the original complaint based on:
    - lack of personal jurisdiction;
    - improper venue;
    - insufficient process; or
    - insufficient service of process.
  - A motion for a more definite statement.
- (W. Va. R. Civ. P. 12(g).)

### Required Papers

See Motion to Dismiss: Required Papers.

### Outside Evidence

West Virginia law does not specifically address whether outside evidence is allowed in support of a motion to strike. The presentation of outside evidence is often necessary to show that all or some of the complaint is redundant, immaterial, impertinent, or scandalous.

### Response by Plaintiff

A plaintiff is typically allowed to file a response to a motion to strike. A party must serve a response to a written motion:

- At least 4 days before the scheduled hearing, if served by mail.
  - At least 2 days before the scheduled hearing, if served on the opposing party by:
    - hand delivery;
    - fax; or
    - leaving it with an agent of the opposing party's office.
- (W. Va. R. Civ. P. 6(d)(2).)

### Reply by Defendants

A defendant is typically allowed to file a reply. There is no deadline for filing a reply, but the court may set a deadline. Practitioners should check local and judge's rules to determine whether the court imposes any deadline.

### Oral Arguments

The West Virginia Rules of Civil Procedure do not require oral argument on a motion to strike. Practitioners should check local and judge's rules to determine whether different courts in West Virginia have their own rules for oral arguments on motions to strike.

### Stay of Discovery

The West Virginia Rules of Civil Procedure do not automatically stay discovery while a motion to strike is pending. A party can file a separate motion to stay discovery (see *Lane*, 481 S.E.2d at 756).

### Serving an Answer or Other Response

If the court denies a motion to strike, the defendant has ten days after notice of the court's action in which to serve its answer (W. Va. R. Civ. P. 12(a)(3)(A)).

## ANSWERING THE COMPLAINT

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

#### REQUIRED CONTENTS

##### Caption

In West Virginia, the answer must include a caption containing:

- The name of the court.
  - The title of the action, which may be summarized with the name of the first party on each side and an indication of other parties (for example, by using the term "et al.").
  - The file number.
  - A designation of the document as an Answer.
- (W. Va. R. Civ. P. 10(a).)

##### Denials and Admissions

The answer must respond to each allegation in the complaint with one or more of the following:

- An admission.
- A denial.
- A denial of information sufficient to admit or deny an allegation, which has the effect of a denial.

(W. Va. R. Civ. P. 8(b).) If the defendant seeks to deny only part of an allegation, the defendant must specify the portion of the allegation that is true and material and only deny the rest (W. Va. R. Civ. P. 8(b)).

The defendant may:

- Generally deny all allegations, if the defendant intends in good faith to deny every allegation.
- Make specific denials on specific allegations.
- Generally deny all allegations or paragraphs except those designated as admitted.

(W. Va. R. Civ. P. 8(b).)

##### Defenses

A party waives the following defenses if not raised in the answer or by a preliminary motion:

- Lack of personal jurisdiction.
- Improper venue.
- Insufficiency of process.
- Insufficiency of service of process.

(W. Va. R. Civ. P. 12(h).)

Defendants must set out the following affirmative defenses in the answer:

- Accord and satisfaction.
- Arbitration and award.
- Assumption of risk.
- Contributory negligence.
- Discharge in bankruptcy.
- Duress.
- Estoppel.
- Failure of consideration.
- Fraud.
- Illegality.
- Injury by fellow servant.
- Laches.
- License.
- Payment.
- Release.
- Res judicata.
- Statute of frauds.
- Statute of limitations.
- Usury.
- Waiver.
- Any other matter constituting an avoidance or affirmative defense. (W. Va. R. Civ. P. 8(c); *Inv'rs Loan Corp. v. Long*, 166 S.E.2d 113, 117 (W. Va. 1969).)

A party must state in short and plain terms its defenses to each claim asserted (W. Va. R. Civ. P. 8(b)).

All defenses must be made in numbered paragraphs. Each defense should be set out separately wherever separation facilitates the clear presentation of the matters. The answer should refer to the separately numbered paragraphs of the complaint where possible. (W. Va. R. Civ. P. 10(b).)

The defendant may:

- Set out two or more defenses alternatively or hypothetically, either in one defense or in separate defenses.
- State as many separate defenses as it has, regardless of consistency and whether based on legal or equitable grounds. (W. Va. R. Civ. P. 8(e).)

#### Signature Block

All answers must include the following information about either an attorney of record or the party, if unrepresented:

- Signature.
- Address.
- Phone number.
- West Virginia State Bar number, if any.

(W. Va. R. Civ. P. 11(a).)

#### Civil Case Information Statement

Every answer must be accompanied by a completed civil case information statement in the form prescribed by the Supreme Court of Appeals (W. Va. R. Civ. P. 8(a)).

#### OPTIONAL CONTENTS

##### Crossclaims, Counterclaims, and Third-Party Claims

A party may assert any of the following in its answer:

- Crossclaims.
- Counterclaims.
- Third-party claims. (W. Va. R. Civ. P. 13 and 14.)

##### Jury Demand

The defendant may include a jury demand in the answer (W. Va. R. Civ. P. 38).

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

A defendant is not required to verify its answer in West Virginia (W. Va. R. Civ. P. 11(a); *M.W. Kellogg Co. v. Concrete Accessories Corp.*, 204 S.E.2d 61, 65 (W. Va. 1974)).

#### 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 serving the answer. Otherwise, a defendant may only amend its answer either by:

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

(W. Va. R. Civ. P. 15(a).)

##### GROUNDINGS FOR AMENDMENT

The court freely permits a defendant to amend an answer when justice so requires (W. Va. R. Civ. P. 15(a)). The court grants motions to amend when all of the following are true:

- The amendment permits the presentation of the merits of the action.
- The adverse party is not prejudiced by the sudden assertion of the subject of the amendment.
- The adverse party can be given ample opportunity to meet the issue.

(*Hawkins v. Ford Motor Co.*, 566 S.E.2d 624, 625 (W. Va. 2002).)

## 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 must serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order directs otherwise (W. Va. R. Civ. P. 12(a)). No other reply pleadings are permitted (W. Va. R. Civ. P. 7(a)).

#### GROUNDINGS FOR REPLY

Where a defendant serves an answer with a counterclaim on the plaintiff, the plaintiff must file and serve a reply to the counterclaim.

#### REPLY CONTENTS

The contents of a reply to the counterclaim are generally the same as the contents of the answer (see Required Contents and Optional Contents).

## 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.
- A cross claim.
- A third-party complaint against a person not yet a party to the action.

(W. Va. R. Civ. P. 13(a), (b), and 14(a).)

#### Counterclaims

A defendant may bring as a counterclaim any claim that the defendant has against any opposing party. Counterclaims can be:

- Compulsory, where the counterclaim arises out of the same transaction or occurrence on which the plaintiff's complaint is based.

- Permissive, where the counterclaim does not arise out of the transaction or occurrence that is the subject matter of the plaintiff's claim.

(W. Va. R. Civ. P. 13(a), (b)). A counterclaim:

- May or may not diminish or defeat the recovery the opposing party seeks.
- May seek relief exceeding in amount or different in kind than the relief the plaintiff seeks.

(W. Va. R. Civ. P. 13(c).)

#### Crossclaims

A defendant may assert a crossclaim against a co-party for a claim that either:

- Arises out of the transaction or occurrence that is the subject matter of the plaintiff's action.
- Arises out of the transaction or occurrence that is the subject matter of a counterclaim.
- Relates to any property that is the subject matter of the plaintiff's action.

(W. Va. R. Civ. P. 13(g).)

#### Third-Party Claims

A defendant may assert a third-party claim only against a nonparty who is or may be liable to the defendant for all or some of the plaintiff's claims against the defendant (W. Va. R. Civ. P. 14(a)).

#### MANDATORY CLAIMS FOR DEFENDANT

The only mandatory claim for a defendant is a compulsory counterclaim (W. Va. R. Civ. P. 13(a)).

#### WHEN AND HOW CLAIMS ARE ASSERTED

A defendant must assert any counterclaims in the answer. A defendant may, by leave of court, amend an answer to assert a counterclaim if:

- The defendant did not originally assert the counterclaim in the answer due to:
  - oversight;
  - inadvertence; or
  - excusable neglect.
- Justice so requires.

(W. Va. R. Civ. P. 13(f).)

A party may assert a crossclaim in a pleading (W. Va. R. Civ. P. 13(g)).

A defendant/third-party plaintiff does not need the court's permission to make service on the third party if it files the third-party complaint within ten days of serving its original answer. Otherwise, it must obtain leave of court on motion. (W. Va. R. Civ. P. 14(a).)

### OTHER PARTIES' RESPONSE TO DEFENDANT'S CLAIMS

A plaintiff responding to a counterclaim must serve its reply within 20 days after service of the defendant's counterclaim (W. Va. R. Civ. P. 12(a)).

A party responding to a crossclaim must serve its answer within 20 days after service of the defendant's crossclaim. (W. Va. R. Civ. P. 12(a)).

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. If, during the 20-day period, the third-party defendant files and serves notice of a bona fide defense, it must serve the answer within 30 days after service of the third-party complaint. (W. Va. R. Civ. P. 12(a).)

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