

## Commencing an Action: West Virginia

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A Q&A guide to commencing an action in West Virginia. This Q&A addresses the requirements for drafting and filing initiating papers, serving process, and amending the complaint. Answers to questions can be compared across a number of jurisdictions (see Commencing an Action: State Q&A Tool).

**Following the suspension or modification of many judicial functions in 2020 due to COVID-19, West Virginia state courts have resumed most operations, but local courts may impose special rules impacting some litigants (such as remote proceedings). Check the West Virginia Judiciary's Coronavirus Disease 2019 (COVID-19) website for the latest developments in this jurisdiction.**

### Overview of Commencing an Action

#### 1. What are the applicable rules for commencing an action?

#### West Virginia Rules of Civil Procedure

The West Virginia Rules of Civil Procedure is the main body of law governing West Virginia civil procedure. The key provisions related to commencing an action are set out in:

- W. Va. R. C. P. 3 to 6 (commencement of action, service of process, and pleadings).
- W. Va. R. C. P. 7 to 16 (pleadings and motions).
- W. Va. R. C. P. 17 to 25 (parties).

Although beyond the scope of this Q&A, the Rules of Civil Procedure for the Magistrate Courts of West Virginia govern the commencement of small claims cases in the magistrate courts.

#### West Virginia Code

The key provisions related to commencing an action are set out in:

- W. Va. Code §§ 56-1-1 to 56-1-1a (venue).
- W. Va. Code §§ 56-2-1 to 56-2-8 (notices and motions).

- W. Va. Code §§ 56-3-1 to 56-3-34 (writs, process, and order of publication).
- W. Va. Code §§ 56-4-1 to 56-4-71 (rules and pleading).

#### Other Sources

Other sources of applicable procedural law include:

- The West Virginia State Constitution.
- Local court rules and individual judge's practices.

#### 2. Generally, in which trial level court must an action be commenced? Please address:

- Monetary thresholds for trial level courts.
- Territorial limits for trial level courts.

In West Virginia, an action that satisfies the jurisdictional requirements may be commenced in one of the following ways:

- Circuit Court.
- Magistrate Court.
- Family Court.



### Circuit Courts

#### Monetary Thresholds

The circuit courts have general jurisdiction over matters where the amount in controversy exceeds \$7,500, excluding interest. The circuit courts also have original general jurisdiction for all cases in equity. (W. Va. Code § 51-2-2.)

#### Territorial Limits

The circuit courts have statewide jurisdiction, but the state is divided into 31 judicial circuits (W. Va. Code § 51-2-1). The appropriate circuit court to commence an action includes the circuit court of a county where:

- An individual defendant lives.
- The cause of action arose.
- The real property at issue is located.
- A defendant corporation has its principal office.
- A defendant corporation's mayor, president, or other chief officer lives.
- Any non-resident defendant is found and served.

(W. Va. Code § 56-1-1.)

### Magistrate Courts

#### Monetary Thresholds

The magistrate court has jurisdiction in certain matters where the amount in controversy is up to \$10,000, exclusive of interest and costs. Magistrate courts do not have jurisdiction over actions in equity. (W. Va. Code § 50-2-1.)

#### Territorial Limits

The jurisdiction of the magistrate extends throughout the county where the magistrate is elected (W. Va. Const. Art. VIII, § 10).

### Family Courts

#### Monetary Thresholds

The family court does not hear monetary claims, but has jurisdiction over proceedings involving:

- Divorce, annulment, or separate maintenance.
- Child support.
- Paternity.

- Custody.
- Visitation.

(W. Va. Code § 51-2A-2.)

However, circuit courts have exclusive jurisdiction over child abuse and neglect proceedings (*In the Interest of J.L.*, 763 S.E.2d 654, 658-59 (W. Va. 2014)).

#### Territorial Limits

West Virginia has a unified family court system, but the state is divided into 27 family court circuits (W. Va. Const. Art. VIII, § 16 and W. Va. Code § 51-2A-3). Venue is most often based on residency (see, for example, W. Va. Code §§ 48-4-101, 48-5-106, and 48-14-103).

### 3. What documents must be prepared to commence an action? Are there official forms for the initiating papers?

### Documents

#### Circuit Courts

In West Virginia, to begin an action in a circuit court, a plaintiff must prepare a complaint and file it with the court (W. Va. R. C. P. 3(a)). The plaintiff must also file a civil case information sheet (W. Va. R. C. P. 3(b)). The clerk of the court issues a summons for each defendant when a plaintiff files the complaint (W. Va. R. C. P. 4(b)).

#### Magistrate Courts

A plaintiff begins a civil action in the magistrate court by filing a complaint with the magistrate assistant, magistrate clerk, or magistrate deputy clerk (W. Va. R. Civ. P. Magis. Cts., Rule 2).

#### Family Courts

A plaintiff begins a divorce or related proceeding by filing a verified petition with the circuit clerk. The plaintiff must also file a civil case information sheet. (W. Va. R. Prac. & Proc. Fam. Ct., Rule 9). For a divorce proceeding involving spousal support, child support, child custody, or child visitation, a plaintiff must also file an application for services under Title IV-D of the Social Security Act (W. Va. R. C. P. 3(c)).

### Official Forms

Official court forms are available on the West Virginia Judiciary website, including:

- The [Civil Case Information Statement](#).
- [Family Court](#) forms.
- [Magistrate Court](#) forms.

#### 4. Is an action commenced by serving or filing the initiating papers? If an action is commenced by service, by when must the complaint or other pleadings be filed?

In West Virginia, a plaintiff begins an action by filing the complaint with the clerk of the court (W. Va. R. C. P. 3(a)). The commencement of an action dates from the issuance of the summons (see *State ex rel. Chem. Tank Lines, Inc. v. Davis*, 93 S.E.2d 28, 32 (W. Va. 1956)).

If the plaintiff fails to serve the summons and complaint on a defendant within 120 days after the plaintiff files the initiating papers, the court may dismiss the action against that defendant without prejudice. Alternatively, the court may order service to be made within a specific time. (W. Va. R. C. P. 4(k).)

#### 5. How are the initiating papers filed? Please address:

- Whether the papers are filed electronically or by hard copy.
- Any fees for filing the initiating papers, and in what form those fees must be paid.

### Filing Initiating Papers

In West Virginia, a party must file hard copies of the required initiating papers with the clerk in counties that do not require electronic filing (see W. Va. T.C.R., Rules 10.01, 15.04(d)).

West Virginia introduced electronic filing in the state courts in 2015, after which pilot programs were introduced in various counties. Effective November 1, 2019, e-filing is mandatory in counties that have implemented it, called "Active Counties." Actions brought to the court by pro se litigants will be filed electronically by the clerk. No alternative electronic filing, such as by facsimile, is permitted except in an emergency. (W. Va. T.C.R., Rule 15A.04).

### Filing Fees

#### Circuit and Family Courts

The filing fee to commence an action is generally \$200. Some specific exceptions include the filing fee for:

- A medical malpractice claim, which is currently \$400. Effective December 31, 2021, the fee will be \$280.
- A verified divorce petition, which is \$135.
- Petitioning to modify an order involving child custody, child visitation, child support, or spousal support, which is \$85.
- An expedited modification of a child support order, which is \$35.

(W. Va. Code § 59-1-11(a)(2) to (5).)

When a filing includes a counterclaim, cross claim, third-party complaint, or motion to intervene, the filing party must pay a filing fee of \$200, except in a family court action (W. Va. Code § 59-1-11(a)(6)).

Except in family court, a filing party must pay an additional fee of \$15 for each defendant or respondent named in the initial pleading where there are two or more named defendants, and for each additional defendant, respondent, or third-party defendant subsequently named in a pleading (W. Va. Code § 59-1-11(a)(7)).

#### Magistrate Courts

The filing fees vary based on the dollar amount of the relief requested in the complaint (W. Va. Code § 50-3-1). Because there is some variation in practices, it is best practice for a party to contact the clerk to determine the appropriate filing fee.

### Initiating Papers

#### 6. What are the contents that must be included in the summons?

In West Virginia, the summons must be addressed to the defendant and must contain:

- The name of the court.
- The name of the parties.
- The name and address of the plaintiff's attorney, or, if unrepresented, the plaintiff.
- The time within which the defendant must appear and defend.
- A notification that, if the defendant fails to timely appear and defend, a default judgment will be awarded against the defendant.
- The clerk's signature.
- The seal of the court.

(W. Va. R. C. P. 4(a).)

### 7. What are the contents that must be included in the complaint?

In West Virginia, every complaint must include a caption containing:

- The name of the court.
- The title of the action, which must include the names of all parties.
- A blank space for the file number, which the clerk will add in.
- A designation (“complaint”).

(W. Va. R. C. P. 10(a).)

The complaint must also include:

- A short and plain statement of the claim showing that the pleader is entitled to relief (W. Va. R. C. P. 8(a); W. Va. R. Civ. P. Magis. Cts., Rule 2).
- A demand for judgment for the relief sought (W. Va. R. C. P. 8(a); W. Va. R. Civ. P. Magis. Cts., Rule 2).
- Every essential element of a cause of action (see *Sticklen v. Kittle*, 287 S.E.2d 148, 158 (W. Va. 1981)).
- All claims set out in numbered paragraphs, each one limited as far as practicable to a statement of a single set of circumstances (W. Va. R. C. P. 10(b)).
- Separate counts for each claim that is based on a separate transaction or occurrence (W. Va. R. C. P. 10(b)).
- The signature of at least one attorney of record, or the signature of the plaintiff, if unrepresented (W. Va. R. C. P. 11(a)).

### 8. Must the plaintiff certify or swear to the complaint?

In West Virginia, a complaint need not be verified unless an applicable statute or rule requires verification (W. Va. R. C. P. 11(a); W. Va. Code § 54-2-2 (requiring verification when pleading eminent domain)).

Even when not required, a verified complaint may be useful, because a verified complaint can be used in place of an affidavit (see *Williams v. Precision Coil, Inc.*, 459 S.E.2d 329, 338 n.14 (W. Va. 1995)).

### 9. What is the applicable pleading standard? Please address any:

- Key distinctions from Federal Rules of Civil Procedure 8.
- Different pleadings requirements for particular claims (for example, fraud).

#### State Pleading Standard

West Virginia is a notice pleading jurisdiction (see *Roth v. DeFeliceCare, Inc.*, 700 S.E.2d 183, 189 n.4 (W. Va. 2010)). Under West Virginia law, a complaint need only contain a short and plain statement of the claim showing that the pleader is entitled to relief (W. Va. R. C. P. 8(a)).

#### Key Federal Distinctions

In federal practice, a complaint must contain sufficient facts to give rise to a claim that is plausible on its face (see *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). West Virginia has adopted a more liberal construction rule for pleadings. West Virginia law only requires that the plaintiff provide “fair notice” of the claim. A complaint need only provide the “who, what, where, and when of a problem.” (*Mountaineer Fire & Rescue Equip., LLC v. City Nat’l Bank of W. Va.*, 854 S.E.2d 870, 883 nn.4 & 5 (W. Va. 2020) and *Roth*, 700 S.E.2d at 189 n.4.)

#### Pleading Requirements for Particular Claims

##### Fraud

A party must state the circumstances constituting fraud or mistake with particularity. However, a party may make general allegations of malice, intent, knowledge, negligence, and other conditions of mind generally. (W. Va. R. C. P. 9(b)).

##### Conditions Precedent

A party may generally allege the satisfaction or performance of conditions precedent. A party denying the performance or occurrence must state the denial specifically and with particularity. (W. Va. R. C. P. 9(c).)

### Official Document or Act

To plead an official document or act, a party may allege generally that the document was issued or the act was done in compliance with the law (W. Va. R. C. P. 9(d)).

### Judgment

In pleading a judgment or decision by a domestic or foreign court, judicial or quasi-judicial tribunal, board, or officer, it is sufficient to allege the existence of the judgment or decision without pleading that the deciding body had jurisdiction to render the judgment or decision (W. Va. R. C. P. 9(e)).

### Special Damage

A party must specifically state special damages (W. Va. R. C. P. 9(g)).

### Eminent Domain

In an eminent domain proceeding, the petitioner must:

- Plead a description of the property with particularity.
- Plead the purpose for which the property is to be used with particularity.
- Attach a copy of a Certificate of Convenience and Necessity, if a public utility company is the petitioner.

(W. Va. R. C. P. 9(h).)

A complaint to condemn property for public purposes is sufficient if it substantially conforms to the requirements of W. Va. Code § 54-2-2 (see *State by State Rd. Comm'n v. Prof'l Realty Co.*, 110 S.E.2d 616, 621 (W. Va. 1959)).

### Personal Injury or Wrongful Death

A complaint alleging personal injury or wrongful death cannot plead a specific dollar amount of damages. However, the complaint may include a statement that the amount in controversy satisfies the minimum jurisdictional amount for filing the action. (W. Va. Code § 55-7-25.)

### Medical Malpractice

A complaint alleging medical malpractice against a health care provider cannot plead a specific dollar amount of damages. However, the complaint may include a statement that the amount in controversy satisfies the minimum jurisdictional amount for filing the action. (W. Va. Code § 55-7B-5.)

**10. Please address the circumstances, if any, where a complaint is not part of the initiating papers, including what papers are filed instead of a complaint.**

West Virginia has adopted the Uniform Enforcement of Foreign Judgments Act. To enforce a foreign judgment, a party may file an authenticated copy of a foreign judgment in a circuit court without filing a separate action. The judgment creditor must follow certain notice requirements. (W. Va. Code §§ 55-14-2 and 55-14-3.)

**11. Please discuss any prerequisites for filing certain claims (for example, filing a complaint against a government entity).**

### Medical Malpractice

For West Virginia medical malpractice claims, a plaintiff must file a pre-suit notice of claim. A plaintiff must serve the notice by certified mail, return receipt requested, on each health care provider the plaintiff intends to sue at least 30 days before filing the action. The notice must include:

- A statement of the theories of liability.
- A list of all health care providers and facilities to whom the plaintiff is sending notice.
- A screening certificate of merit.

(W. Va. Code § 55-7B-6(b).)

The screening certificate of merit must be executed under oath by a health care provider who:

- Qualifies as an expert under the West Virginia rules of evidence.
- Holds a current, valid license to practice medicine from any state.
- Has experience or training diagnosing injuries similar to the patient's.
- Devotes at least 60 percent of the provider's time to active practice, or to university instruction, in the provider's field or specialty.

(W. Va. Code § 55-7B-6(b).)

The screening certificate of merit must state with particularity the expert's:

- Familiarity with the applicable standard of care at issue.
- Qualifications.
- Opinion on how the applicable standard of care was breached.
- Opinion on how the breach of the applicable standard of care resulted in injury or death.

- List of all medical records and other information reviewed before executing the screening certificate.

(W. Va. Code § 55-7B-6(b).)

### Claims Against the State

For claims against the state or a state agency, the plaintiff must provide written notice:

- To the chief officer of the government agency and to the attorney general.
- By certified mail, return receipt requested.
- Specifying the alleged claim and the relief sought.
- At least 30 days before the start of an action.

(W. Va. Code § 55-17-3(a)(1).)

### Notice of *Lis Pendens*

When a complaint seeks to enforce any lien on, right to, or interest in real estate, the plaintiff must record a notice of *lis pendens* with the clerk of the county commission of each county where the real estate is located. The notice of *lis pendens* must state:

- The title of the action.
- The court where it is pending.
- The names of all the parties to the proceeding.
- A description of the real estate at issue.
- The nature of the lien, right, or interest sought to be enforced.
- The name of the person whose property is at issue.

(W. Va. Code § 55-11-2.)

### Challenging Administrative Agency Actions

Before a claimant may challenge an administrative agency's action in court, the claimant must first exhaust the available administrative remedies. A court may excuse failure to exhaust if:

- The claim is collateral to a demand for benefits.
- Exhaustion would be futile.
- Plaintiffs would suffer irreparable harm if required to exhaust administrative remedies.

(See *Hicks v. Mani*, 736 S.E.2d 9, 13 (W. Va. 2012).)

## Service of Process

### 12. When must the defendant be served with process? Can the time to serve the defendant be lengthened?

#### Serving the Defendant with Process

In West Virginia, the plaintiff must serve the defendant within 120 days of filing the complaint. If service is not made within the 120-day period, the court may dismiss the action without prejudice. (W. Va. R. C. P. 4(k).)

#### Additional Time for Service

If the plaintiff shows good cause for the failure to serve the defendant within 120 days after filing the complaint, the court may extend the time for service for an appropriate period (W. Va. R. C. P. 4(k)).

### 13. What documents must be served?

In West Virginia, the plaintiff must serve the summons and complaint on the defendant (W. Va. R. C. P. 4(c)(1)).

### 14. Who may serve process? Is a license or other certification required?

In West Virginia, process may be served by anyone who is not a party and who is at least 18 years of age (W. Va. R. C. P. 4(c)(2)). No license or other certification is required.

### 15. What are the methods for service within the state?

In West Virginia, the available methods of service vary depending on the type of defendant (W. Va. R. Civ. P. 4(d)).

#### Service on an Individual

An individual may be served by one of the following methods:

- Personal delivery.
- Delivery at the individual's residence or usual place of abode to a member of the individual's family who is over 16 years old, if the server informs the recipient of the meaning of the summons and complaint.

- Delivery to an agent or attorney-in-fact authorized by appointment or statute to receive service on the individual's behalf.
- By certified mail, return receipt requested, sent by the clerk.
- By first class mail, with two copies of a notice of acknowledgment.

(W. Va. R. C. P. 4(d)(1).)

### Infants and Incompetents

An infant or incompetent under 14 years of age may be served by delivery to one of the following:

- The infant or incompetent's guardian or conservator.
- The infant or incompetent's father or mother, if there is no guardian or conservator.
- An appointed guardian *ad litem*, if none of the above exist or can be found.

(W. Va. R. C. P. 4(d)(2).)

An infant or incompetent 14 years old or older must be served by delivery as described above, and by delivery to the infant or incompetent (W. Va. R. C. P. 4(d)(3)).

### Incarcerated Persons

A person incarcerated in a state or federal penitentiary may be served by delivery to:

- The person's committee, guardian, or similar fiduciary in the state.
- The person's appointed guardian *ad litem*, if the person does not have a committee, guardian, or similar fiduciary in the state, or if the committee, guardian, or fiduciary is a plaintiff.

(W. Va. R. C. P. 4(d)(4).)

### Domestic Private Corporations

A domestic private corporation may be served by delivery or mail to one of the following:

- An officer, director, or trustee of the corporation.
- Any agent of the corporation, if no officer, director, or trustee can be found.
- A depot or station agent employed by the company, if the corporation is a railroad, and no officer, director, or trustee can be found.

- Any agent or attorney-in-fact authorized by appointment or by statute to receive or accept service on the corporation's behalf.

(W. Va. R. C. P. 4(d)(5).)

If the corporation is an insurance company, a local or soliciting agent may not receive or accept service on the corporation's behalf (W. Va. R. C. P. 4(d)(5)).

### Domestic Public Corporations

Different types of domestic public corporations are served as follows:

- A city, town, or village may be served by delivery or mail to:
  - the mayor;
  - city manager;
  - recorder;
  - clerk;
  - treasurer; or
  - any member of the council or board of commissioners.
- A county commission may be served by delivery or mail to:
  - any county commissioner or county clerk; or
  - the prosecuting attorney of the county, if the county commissioner or county clerk is absent.
- A board of education may be served by delivery or mail to:
  - the president or any member of the board; or
  - the prosecuting attorney of the county, if the president or member is absent.
- Any other domestic public corporation may be served by delivery or mail to:
  - any officer, director, or governor, or;
  - an agent or attorney-in-fact authorized by appointment or statute to receive or accept service.

(W. Va. R. C. P. 4(d)(6).)

### Foreign Corporations

A foreign corporation qualified to do business in West Virginia, including a business trust, may be served by delivery or mail to any of the following:



- An officer, director, or trustee of the corporation.
- Any agent of the corporation, if no officer, director, or trustee can be located.
- A depot or station agent employed by the company, if the corporation is a railroad, and no officer, director, or trustee can be located.
- Any agent or attorney-in-fact authorized by appointment or by statute to receive or accept service.

(W. Va. R. C. P. 4(d)(7).)

If the corporation is an insurance company, a local or soliciting agent may not receive or accept service on the corporation's behalf (W. Va. R. C. P. 4(d)(7)).

A foreign corporation not qualified to do business in West Virginia may be served by delivery or mail to:

- Any officer, director, trustee, or agent of the corporation.
- Any agent or attorney-in-fact authorized by appointment or by statute to receive or accept service.

(W. Va. R. C. P. 4(d)(8).)

### Unincorporated Associations

An unincorporated association may be served by one of the following methods:

- Delivery to any officer, director, or governor of the association.
- Delivery or mail to any agent or attorney-in-fact authorized by appointment or by statute to receive service.
- Delivery or mail to any member and publication in the county newspaper, if an officer, director, governor, or appointed or statutory agent or attorney-in-fact cannot be located.

(W. Va. R. C. P. 4(d)(9).)

### Service by Publication

If other methods of service are unavailable, a party may be able to serve by publication. Service by publication requires the plaintiff to submit an affidavit attesting to the facts giving rise to the need for constructive service. The serving party must publish notice once a week for two successive weeks, or a longer period if required by statute. (W. Va. R. C. P. 4(e).)

#### 16. What are the methods for service outside the state?

In West Virginia, a plaintiff may serve an out-of-state defendant by either:

- Certified mail.
- Personal delivery.

(W. Va. R. C. P. 4(e)(2), (f)).

The plaintiff may serve an out-of-state defendant by serving the West Virginia Secretary of State if the defendant is subject to jurisdiction under:

- West Virginia's general long arm jurisdiction statute.
- West Virginia's nonresident motorist statute.

(W. Va. Code §§ 56-3-31(a) and 56-3-33(a).)

The Secretary of State then sends notice of service and a copy of the summons and complaint to the defendant (W. Va. Code §§ 56-3-31(d) and 56-3-33(c)). Service of process upon foreign corporation through Secretary of State is not successful when registered or certified mailing is returned for any reason other than being accepted or refused (*State ex rel. Monster Tree Service, Inc. v. Cramer*, 853 S.E.2d 595 (W. Va. 2020)).

#### 17. Are there any days on which service of process is restricted (for examples, Sundays or holidays)?

In West Virginia, service of process is restricted on Sundays, except in cases of persons escaping from custody or otherwise specially provided by law (W. Va. Code § 56-3-16).

#### 18. What are the consequences for ineffective service of process?

In West Virginia, if a party fails to serve process on a defendant within 120 days, the court may dismiss the action against that defendant without prejudice (W. Va. R. C. P. 4(k)).

Absent effective service of process, a trial court does not have personal jurisdiction over a defendant. Any judgment against that defendant is void. (See *Beane v. Dailey*, 701 S.E.2d 848, 852 (W. Va. 2010).)

#### 19. How are any defects in serving process cured?

In West Virginia, the court may permit the amendment of a summons, process, or other proof of service unless it is



clear that material prejudice will result to the substantial rights of the opposing party (W. Va. R. C. P. 4(j)).

### **20. Must proof of service of process be filed? Please address:**

- Any required form of proof of service (for example, affidavit, affirmation, or declaration).
- Any information required in the proof of service.
- When the proof of service must be filed.

In West Virginia, the person serving the process must file a proof of service with the court (W. Va. R. C. P. 4(i)).

### **Required Form**

Proof of service must be made by affidavit, unless service was made by the sheriff or clerk (W. Va. R. C. P. 4(i)).

Proof of service by first class mail requires the defendant's signed acknowledgment of receipt (W. Va. R. C. P. 4(d)(1)(E)).

Proof of service by publication is made by filing with the court the publisher's certificate of publication (W. Va. R. C. P. 4(e)(1)(E)).

### **Required Information**

Proof of service by first class mail requires the acknowledgment of receipt to substantially conform to Form 14 of the Appendix of the West Virginia Rules of Civil Procedure (W. Va. R. C. P. 4(d)(1)(E)).

Form 14 specifies:

- The name of the person to be served.
- The address of the person to be served.
- The date of mailing.
- The signature of the clerk.
- The date of the clerk's signature.
- The signature of the person receiving service.
- The relationship of the person receiving services to the entity being served.
- The date of the recipient's signature.

(W. Va. R. C. P. Form 14.)

The rules do not state specific requirements for the content of proofs of service effected by other than first

class mail. However, parties customarily include in the proof the same information as stated above.

### **When Proof Must Be Filed**

A proof of service must be filed within the period for responding to the summons, which is 20 days (W. Va. R. C. P. 4(i) and 12(a)).

However, failure to timely file proof of service does not invalidate service of process (W. Va. R. C. P. 4(i)).

## **Amending the Complaint**

### **21. Can the complaint be amended after it has been filed, but before it has been served?**

In West Virginia, a party can amend the complaint once at any time before a responsive pleading is served (W. Va. R. C. P. 15(a)).

### **22. Can the complaint be amended after it has been filed and served? If so:**

- When can this be done as of right?
- When must a plaintiff seek a court order to amend the complaint?

In West Virginia, a party may amend its complaint once at any time before a responsive pleading is served (W. Va. R. C. P. 15(a)).

### **Amendment as of Right**

A plaintiff does not need either leave of court or the consent of the opposing party to amend the complaint if:

- The responsive pleading has not been served.
- The plaintiff has not previously amended the complaint.

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

The West Virginia Supreme Court has held that courts should liberally apply Rule 15 and grant a motion to amend provided:

- 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.

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- The adverse party can be given ample opportunity to meet the issue.

(*Baker v. Chemours Co. FC, LLC*, 855 S.E.2d 344, 350 (W. Va. 2021).)

### Court Order for Amending the Complaint

After a complaint has been amended once or after a responsive pleading has been served, a party must obtain the written consent of the adverse party or leave of the court to amend the complaint (W. Va. R. C. P. 15(a)).

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