

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 West Virginia circuit courts, the defendant must serve its answer within 20 days after service of the summons and complaint (W. Va. R. C. P. 12(a)(1)).

If a Rule 12 motion is filed, a responsive pleading shall be served within 14 days after:

- Notice of the court's action if the court denies the motion or postpones its disposition until the trial.
- The service of a more definite statement if the court grants a motion for a more definite statement.

(W. Va. R. C. P. 12(a)(2).)

In circuit courts, if the period is stated:

- In days or a longer unit of time, the calculation of time periods excludes the day the event occurred that triggers the period and includes the last day. The calculation includes every day, including intermediate Saturdays, Sundays, and legal holidays. However, if the last day falls on a weekend or holiday, the deadline to respond is the next court day that is not a weekend or legal holiday. (W. Va. R. C. P. 6(a)(1).)
- In hours, the calculation of time begins immediately on the occurrence of the triggering event, counting every hour, including hours during intermediate

Saturdays, Sundays, and legal holidays. However, if the period would end on a Saturday, Sunday, or legal holiday, the time period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday. (W. Va. R. C. P. 6(a)(2).)

If the clerk's office is inaccessible, the time for filing is extended to either:

- The first accessible day that is not a Saturday, Sunday, or legal holiday.
- The same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(W. Va. R. C. P. 6(a)(3).)

Magistrate Courts

In West Virginia 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 a residential rental property.

(W. Va. R. Civ. P. Magis. Cts., Rule 4.)

Magistrate courts calculate time periods by excluding the first day and including the last day. However, if the last day falls on a weekend or legal holiday, the deadline to respond is the next court day. If the prescribed period is fewer than seven days, then the computation excludes intermediate Saturdays, Sundays, and legal holidays. (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)?

In West Virginia, the circuit court may extend the response period:

- If all parties file a written stipulation agreeing to an extension.
- For good cause:
 - with or without motion or notice when the request is made before the expiration of the original period; or
 - on motion, after the expiration of the specified period, where the failure to act was the result of excusable neglect.

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

However, a court cannot extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(c) (W. Va. R. C. P. 6(b)(2)).

The magistrate court may extend the response period:

- If all parties agree in writing to an extension.
- On a showing of good cause, if the period has not expired.
- On a showing of unavoidable cause, if the period has expired.

(W. Va. R. Civ. P. Magis. Cts., Rule 20(b).)

Extensions of time periods for motions to set aside judgment and time periods for appeal are prohibited unless both:

- Judgment was by default.
- Service of process or notice of trial was insufficient.

(W. Va. R. Civ. P. Magis. Cts., Rule 20(c).)

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

West Virginia permits the following types of responses:

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

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

Any of the following grounds may support 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 a claim on which relief can be granted.
- Failure to join an indispensable party.

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

Waiver

If not included in a motion to dismiss or a responsive pleading, the following defenses are waived:

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

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

If a party files a motion under Rule 12, the party cannot make another Rule 12 motion raising a defense or objection that was available to the party but omitted from the earlier motion, except for the defense of:

- Failure to state a claim upon which relief can be granted.
- Failure to join a person as required by Rule 19(b).
- Lack of subject-matter jurisdiction.

(W. Va. R. C. P. 12(g)(2), (h)(2), (h)(3).)

Required Papers

A motion must:

- Be in writing unless made during a hearing or trial.
- State with particularity the grounds for seeking the order.
- State the relief sought.

(W. Va. R. C. P. 7(b)(1).)

A written motion must include a caption containing:

- The name of the court.
- The title of the action, naming the first party on each side and indicating other parties (for example, by using the term “et al.”).
- A civil action number.
- A designation under Rule 7(a).
- A title.

(W. Va. R. C. P. 7(b)(2) and 10(a).)

A party does not need to verify a motion or submit 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.
- Email address.
- Phone number.
- West Virginia State Bar number, if any.

(W. Va. R. C. P. 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. C. P. 12(d) 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 within 21 days of service of the motion. (W. Va. R. C. P. 6(d)(3).)

Reply by Defendants

A defendant is typically allowed to file a reply. Any reply memoranda must be filed and served on opposing counsel within 7 days from the date of service of the response to the motion. (W. Va. R. C. P. 6(d)(3).)

Oral Arguments

The court must hear a motion to dismiss before trial unless the court orders a deferral until trial (W. Va. R. C. P. 12(h)(3)).

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. Bos. Sci. Corp.*, 481 S.E.2d 753, 756 (W. Va. 1996); *Gabbert v. Coyne*, 888 S.E.2d 878, 883 (W. Va. 2023).)

Serving an Answer or Other Response

If the court denies a motion to dismiss, the defendant has 14 days after notice of the court's action to serve its answer (W. Va. R. C. P. 12(a)(2)(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 reasonably respond. The defendant must point out the defects complained of and the details desired. The defendant must make the motion before filing a responsive pleading. (W. Va. R. C. 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. C. 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 they are waived:

- 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. C. P. 12(g).)

Required Papers

See Question 4: 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 within 21 days of service of the motion. (W. Va. R. C. P. 6(d)(3).)

Reply by Defendants

A defendant is typically allowed to file a reply. The reply shall be filed and served on opposing counsel and unrepresented parties within seven days from the date of service of the memorandum in response to the motion. (W. Va. R. C. P. 6(d)(3)).

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; *Gabbert*, 888 S.E.2d at 883).

Serving an Answer or Other Response

If the court grants a motion for a more definite statement, the plaintiff must obey the order within 14 days after notice of the order or within the time the court sets, or the court may strike the complaint or issue any other appropriate order (W. Va. R. C. P. 12(e)). The defendant must serve its answer within 14 days after service of the amended complaint (W. Va. R. C. P. 12(a)(3)(B) and 15(a)(3)).

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

Nevertheless, the court may strike material from any pleading on its own initiative at any time (W. Va. R. C. 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. C. P. 12(g), (h).)

Required Papers

See Question 4: 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 within 21 days of service of the motion. (W. Va. R. C. P. 6(d)(3).)

Reply by Defendants

A defendant is typically allowed to file a reply. The reply shall be filed and served on opposing counsel and unrepresented parties within seven days from the date of service of the memorandum in response to the motion. (W. Va. R. C. P. 6(d)(3).)

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; *Gabbert*, 888 S.E.2d at 883.)

Serving an Answer or Other Response

If the court denies a motion to strike, the defendant has 14 days after notice of the court's action to serve its answer (W. Va. R. C. 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, the names of the first party on each side, and a general indication of other parties (for example, by using the term "et al.").

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- A civil action number.
- A designation of the document as an answer.

(W. Va. R. C. 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 statement that the party has insufficient information to admit or deny an allegation, which has the effect of a denial.

(W. Va. R. C. P. 8(b)(1), (5).)

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. C. P. 8(b)(4)).

The defendant may:

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

(W. Va. R. C. P. 8(b)(2), (3).)

Defenses

A party waives the following defenses if not raised in the answer or by a preliminary motion or if the defenses are omitted from a motion as described in Rule 12(g):

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

(W. Va. R. C. 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.

(W. Va. R. C. P. 8(c)(1); *Inv. 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. C. P. 8(b)).

A party must set out all claims and defenses in numbered paragraphs. Each defense must be limited as far as practicable to a single set of circumstances. The answer may refer to the separately numbered paragraphs of the complaint. (W. Va. R. C. 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.

(W. Va. R. C. P. 8(d)(2), (3).)

A defendant that asserts the affirmative defense of statute of limitations does not waive the defense by engaging in discovery or otherwise participating in the litigation before bringing a motion to dismiss (*Coffield v. Robinson*, 857 S.E.2d 395, 401-02 (W. Va. 2021)).

Signature Block

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

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

(W. Va. R. C. 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 of West Virginia (W. Va. R. C. 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. C. P. 13 and 14.) Counterclaims may be mandatory in certain circumstances. For information about mandatory counterclaims, see [Question 9: Mandatory Claims for Defendant](#).

Jury Demand

The defendant may include a jury demand in the answer on any issue triable of right by a jury (W. Va. R. C. P. 38(b)).

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

A defendant is not required to verify its answer in West Virginia unless a rule or statute specifically states otherwise (W. Va. R. C. 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

In West Virginia, a defendant may amend its answer once without leave of court within 21 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. C. P. 15(a).)

Grounds for Amendment

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

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

(*Hawkins v. Ford Motor Co.*, 566 S.E.2d 624, 628 (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

In West Virginia, a plaintiff must serve an answer to a counterclaim or a crossclaim:

- Within 30 days after service of the pleading that states the counterclaim.
- If a reply is ordered by the court, within 30 days after service of the order, unless the order directs otherwise.

(W. Va. R. C. P. 12(a).)

No other reply pleadings are permitted unless ordered by the court (W. Va. R. C. P. 7(a)).

Grounds for Reply

Where a defendant serves an answer with a counterclaim or crossclaim on the plaintiff, the plaintiff must file and serve a reply to the counterclaim or cross claim (W. Va. R. C. P. 12(a)(1)(B)).

Reply Contents

The contents of a reply to the counterclaim are generally the same as the contents of the answer (see Question 5: Required Contents and Question 5: 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

In West Virginia, 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. C. 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 either:

- Compulsory, where the counterclaim:
 - arises out of the same transaction or occurrence on which the plaintiff's complaint is based; and
 - does not require the presence of third parties over whom the court cannot acquire jurisdiction.
- 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. C. 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 opposing party seeks.

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

Mandatory Claims for Defendant

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

When and How Claims Are Asserted

A defendant must assert any counterclaims in the answer (W. Va. R.C.P. 13(a), (b)).

The Court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading (W. Va. R. C. P. 13(e)).

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

A 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 14 days of serving its original answer. Otherwise, it must obtain leave of court on motion unless provided by order entered under Rule 16(b)(3)(A). (W. Va. R. C. P. 14(a)(1).)

Other Parties' Response to Defendant's Claims

A plaintiff responding to a counterclaim must serve its reply within 30 days after service of the defendant's counterclaim (W. Va. R. C. P. 12(a)(1)(b)).

A party responding to a crossclaim must serve its answer within 30 days after service of the defendant's crossclaim (W. Va. R. C. P. 12(a)(1)(B)).

A party served with a third-party complaint has 30 days after service of the summons to file its answer to the third-party complaint (W. Va. R. C. P. 12(a)(1)(A)).

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