

3.07 | DEFENDANT'S RESPONSE TO THE COMPLAINT

1. Answer

If service is made on a defendant by summons, the defendant has twenty-one (21) days from the date of service of the complaint to file an answer with the court. However, if the defendant is the United States or a federal official, the defendant has sixty (60) days from the date of service to file an answer. In an answer, a defendant admits or denies each of the plaintiff's allegations. The answer can also include affirmative defenses. It is important that the defendant admit, deny, or clarify each allegation made by paragraph number. Once the defendant files an answer, the case moves to the next phase.

2. Default

If a defendant has been properly served with a complaint, but fails to file any response in the required amount of time, then that defendant is considered in "default." Once the defendant is in default, the plaintiff can ask the Court for a default judgment, which means that the plaintiff wins the case and may take steps to collect on the judgment against that defendant.

If a defendant is in default, the plaintiff should file a "request for Clerk's entry of default" AND proof that the defendant has been served with the complaint. If the Clerk of Court approves the request, he or she will then enter default against the defendant. Once the Clerk has entered default against the defendant, the plaintiff may then file a "Motion for Default Judgment" supported by: (1) a declaration showing that the defendant was served with the complaint but did not file a written response within the required time for responding; and (2) a declaration proving the amount of damages claimed in the complaint against the defendant. There are special rules for default judgments against minors and the U.S. government and its officers and agents, which are explained in Federal Rule of Civil Procedure 55.

A defendant against whom default or a default judgment has been entered may make a motion to set aside the default or default judgment. The Court will set aside an entry of default or a default judgment for good cause or for one of the reasons listed in Rule 60(b), which includes mistake, fraud, newly-



discovered evidence, the judgment is void, or “any other reason that justifies relief.”

3. Motion To Dismiss

In lieu of filing an answer to the complaint, a defendant may file a motion to dismiss, which asks the Court to dismiss the case. The motion argues that there are problems with the way the complaint was written, filed, or served. A motion to dismiss may be filed for any of the reasons set forth in Federal Rule of Civil Procedure 12(b): lack of subject-matter jurisdiction; lack of personal jurisdiction; improper venue; insufficient process; insufficient service of process; failure to state a claim upon which relief can be granted; and failure to join a party under Rule 19.

The motion to dismiss must state the specific facts and legal arguments supporting the stated reasons for dismissal. A defendant may move to dismiss all the claims in the complaint or just certain claims.

A court may deny or grant the motion to dismiss as to each claim that is the subject of the motion. If the Court denies the motion to dismiss, the defendant must file an answer within fourteen (14) days, and the case moves to the next phase. See Federal Rule of Civil Procedure 12(a)(4). If the Court grants the motion to dismiss without prejudice, the plaintiff may submit an amended complaint that corrects the deficiencies identified by the Court within a time period specified by the Court. Finally, if the Court grants the motion to dismiss with prejudice, the case is over as to those claims.

a. Lack of Subject Matter Jurisdiction

The defendant argues that the Court does not have the legal authority to hear the kind of lawsuit the plaintiff filed. In other words, the defendant contests that the case neither involves a violation of a federal law or the U.S. Constitution, nor is between citizens of different states involving an amount in controversy greater than \$75,000.

b. Lack of Personal Jurisdiction

The defendant argues that the Court has no legal authority to hear the case because the defendant has so



little connection with the district in which the case was filed. The defendant must show that it is not a resident of the state in which the case was brought and that it did not even have “minimum contacts” with the state.

c. Improper Venue

The defendant argues that the lawsuit was filed in the wrong geographical location.

d. Insufficiency of Service of Process

The defendant argues that the plaintiff did not prepare the summons correctly or did not correctly serve the defendant.

e. Failure to State a Claim Upon Which Relief can be Granted

The defendant argues that even if everything in the complaint is true, the defendant did not violate the law. Each type of claim requires that the plaintiff allege and show facts to support certain elements. For example, a negligence claim requires that the plaintiff allege and show facts to support a duty, a breach of the duty, proximate cause, and damages. Here, the defendant is asserting that the plaintiff did not plead sufficient facts to support all requisite elements of the plaintiff's claim.

f. Failure to Join an Indispensable Party Under Rule 19

The defendant argues that the plaintiff failed to sue someone who must be included in the lawsuit before the Court can decide the issues raised in the complaint. A party must be included in a lawsuit when: (1) a court cannot accord complete relief among the parties without the additional party's presence, or (2) the party's absence impedes its ability to protect its interest or leaves the party vulnerable to incurring inconsistent obligations because of the interest. See Federal Rule of Civil Procedure 19.

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Honorable Mention: USNYND, USCAND)

