

3.08 | RESPONSE TO A MOTION TO DISMISS

If a defendant files a motion to dismiss, the plaintiff will need to file an opposition to that motion. The response must specifically assert facts and law that explain why the motion to dismiss should be denied. Any opposition to the motion to dismiss is typically due fourteen (14) days after the defendant files the motion. Check the Local Rules for deadlines specific to your District.

To calculate the deadline, exclude the day that the defendant files the response, and beginning counting the next day. Count every day, including weekends and holidays. The response is due on the fourteenth (or seventeenth, if mailed) day, unless that day is a Saturday, Sunday, or legal holiday, in which case the response is due on the next day that is not a Saturday, Sunday, or legal holiday. See Federal Rule of Civil Procedure 6.

If you need more time to file your opposition, you need to file a motion for extension of time with the Court. If you can, contact the opposing side and get consent. If you get consent for an extension, make sure that consent is reflected in your motion.

If you cannot get the consent from the other time, file the motion for extension of time before the response is due and show there is "good cause" for the extension. Federal Rule of Civil Procedure 6(b). If a motion for extension of time is filed after the due date, you must show "excusable neglect" for missing the deadline. Federal Rule of Civil Procedure 6(b).

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