

Responding to a Complaint: Delaware

by William M. Lafferty, Matthew R. Clark, and John P. DiTomo, Morris, Nichols, Arsht & Tunnell LLP, with Practical Law Litigation

Status: Law stated as of 05 Apr 2021 | Jurisdiction: Delaware, United States

This document is published by Practical Law and can be found at: us.practicallaw.tr.com/w-009-8711

Request a free trial and demonstration at: us.practicallaw.tr.com/about/freetrial

A Q&A guide to responding to a complaint in a trial court of general jurisdiction in Delaware. 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).

Due to the ongoing COVID-19 pandemic, the Delaware courts have modified or suspended many court rules and procedures on a statewide or court-by-court basis. For more information, see [The Delaware Judiciary Response to Coronavirus Disease \(COVID-19\)](#).

Overview of Responding to a State Complaint

1. When must a defendant respond to the complaint?

For an action in the Delaware Court of Chancery, Superior Court, and Court of Common Pleas, unless the court directs otherwise, a defendant must respond to the complaint within 20 days after service of the summons and complaint on the defendant (Del. Ct. Ch. R. 12(a); Del. Super. Ct. Civ. R. 12(a); Del. Ct. Com. Pl. Civ. R. 12(a)). In the Superior Court, if a defendant appears before service is made, the defendant must respond within 20 days after appearance (Del. Super. Ct. Civ. R. 12(a)).

For an action in the Justice of the Peace Court, a defendant must respond to the complaint as directed by the summons (J.P. Ct. Civ. R. 7(a) and 12). Typically, the summons requires that the defendant respond within:

- For a debt or trespass action, 15 days of receipt of the summons (see [Delaware State Courts: How To Respond To A Civil Action in the Justice of the Peace Court](#)).

- For an action by attachment in lieu of summons, 30 days after the date of the attachment of the property or the service of the writ on a garnishee (J.P. Ct. Civ. R. 4(b)(8)).

A garnishee who is duly summoned must respond within 20 days after service of process (J.P. Ct. Civ. R. 5(aa)(2) and 69(c)(2)(B), (c)(3)(B)).

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 practice, in the Delaware Court of Chancery and the Superior Court, parties often obtain extensions of time to respond to complaints by so-ordered stipulations, which the courts routinely grant. The parties do not need to file for an extension with the court. Parties often memorialize time extensions in less formal communications (for example, email). Although parties are not required to document an extension in a stipulated order, the Delaware Supreme Court advises parties to formally memorialize all extensions with the court. Not memorializing all



extensions with the court is a functional waiver of the right to contest any late filings by opposing counsel from that time forward. (*Christian v. Counseling Res. Assocs.*, 60 A.3d 1083, 1087-88 (Del. 2013).)

In the Court of Chancery, a party also may move for an extension of time to respond to the complaint. The court may grant an extension for cause shown. (Del. Ct. Ch. R. 12(a).)

In actions in the Superior Court, Court of Common Pleas and Justice of the Peace Court, a party also may:

- Request (with or without a motion) an extension before the deadline specified by statute, stipulation or court order expires. The court may grant the request for cause shown.
- Move for an extension of time after the deadline expires. The court may grant an extension of time when the party's failure to act was because of excusable neglect.

(Del. Super. Ct. Civ. R. 6(b); Del. Ct. Com. Pl. Civ. R. 6(b); J.P. Ct. Civ. R. 6(b).)

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

In the Delaware Court of Chancery, Superior Court, and Court of Common Pleas, a defendant may respond to the complaint with an answer or a motion (Del. Ct. Ch. R. 12(a); Del. Super. Ct. Civ. R. 12(a); Del. Ct. Com. Pl. Civ. R. 12(a)).

In the Justice of the Peace Court, a defendant must respond to the complaint as directed by the summons (J.P. Ct. Civ. R. 7(a) and 12). The defendant must either file a form answer or appear before the court on the date and time specified, depending on the type of action. If the action is:

- A debt or trespass action, the defendant must respond to the complaint with an answer.
- A replevin and summary possession action, the defendant does not need to file an answer.

(See [Delaware State Courts: How To Respond To A Civil Action in the Justice of the Peace Court.](#))

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?

There are three types of motions that a defendant may file before filing an answer in the Delaware courts:

- Motions to dismiss (see [Motion to Dismiss](#)).
- Motions for a more definite statement (see [Motion for a More Definite Statement](#)).
- Motions to strike (see [Motion to Strike](#)).

However, in the Justice of the Peace Court, a defendant cannot file a motion in response to a complaint. Instead, depending on the action, the defendant must either file a form answer or appear before the court on the date and time specified. (See [Delaware State Courts: How To Respond To A Civil Action in the Justice of the Peace Court.](#))

Motion to Dismiss

Preliminary Requirements

The court rules do not specify any preliminary requirements that must be filed in response to a complaint. However, in:

- The Superior Court, there are different requirements depending on which location the case is assigned to. In New Castle County and Kent County, before filing a dispositive motion, the defendant must call the judge's chambers to obtain a date and time in which the motion will be heard. ([Superior Court New Castle County Civil Case Management Plan § VI.B.2](#); [Superior Court Kent County Civil Case Management Plan § IV.A.](#)) In Sussex County, this is not necessary because the schedule will be contained in the case scheduling order. However, if a party did not make application for a dispositive motion at the scheduling conference, the party must seek leave of the court to amend the scheduling order before filing the dispositive motion. ([Sussex County Civil Case Management Plan § IV.1.A.](#))
- The Court of Common Pleas, there are no requirements to meet and confer with the plaintiff's counsel or have a conference with the court. The defendant must file a motion to dismiss at least 13 days before the hearing on the motion. (See [Court of Common Pleas for the State of Delaware: How to Prepare a Civil Motion.](#))

Grounds Asserted

A motion to dismiss may be based on 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.
- Failure to join a necessary party.

(Del. Ct. Ch. R. 12(b); Del. Super. Ct. Civ. R. 12(b); Del. Ct. Com. Pl. Civ. R. 12(b).)

Waiver

The following defenses are waived if they were not included in a Rule 12 motion or a responsive pleading, or an amendment to a responsive pleading, permitted as a matter of course:

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

(Del. Ct. Ch. R. 12(h); Del. Super. Ct. Civ. R. 12(h); Del. Ct. Com. Pl. Civ. R. 12(h).)

If a party does not include in the motion a defense or objection that could have been made under Rule 12, the party cannot later make a motion on those grounds. However, the following defenses are not waived and may be raised in an answer, a motion for judgment on the pleadings, or at trial:

- A defense of failure to state a claim.
- A defense of failure to join a necessary party.

(Del. Ct. Ch. R. 12(g), (h); Del. Super. Ct. Civ. R. 12(g), (h); Del. Ct. Com. Pl. Civ. R. 12(g), (h).)

Under Delaware law, there is no need to enter a limited or special appearance to contest personal jurisdiction or service of process (*Canaday v. Superior Court*, 119 A.2d 347 (Del. 1955)).

Required Papers

A motion must:

- Be in writing.
- State the grounds with particularity.
- Specify the relief sought.

(Del. Ct. Ch. R. 7(b); Del. Super. Ct. Civ. R. 7(b); Del. Ct. Com. Pl. Civ. R. 7(b).)

A motion must include a caption stating:

- The court's name.
- The title of the action.
- The file number.
- A designation as to the type of pleading.

(Del. Ct. Ch. R. 10(a); Del. Super. Ct. Civ. R. 10(a); Del. Ct. Com. Pl. Civ. R. 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 signature and address of either:

- One attorney of record.
- The party, if unrepresented.

Responding to a Complaint: Delaware

(Del. Ct. Ch. R. 7(b)(3) and 11(a); Del. Super. Ct. Civ. R. 7(b)(3) and 11(a); Del. Ct. Com. Pl. Civ. R. 7(b)(3) and 11(a).)

For motions filed in the Superior Court and the Court of Common Pleas, a defendant must also include the following documents:

- A notice of motion.
- The motion.
- The order.
- The notarized certificate of service.
- Exhibits, as needed.

([Superior Court New Castle County Civil Case Management Plan § VI.B.2](#); [Superior Court Kent County Civil Case Management Plan § IV.A.2](#); [Superior Court Sussex County Civil Case Management Plan § IV.1.B](#); see [Court of Common Pleas for the State of Delaware: How to Prepare a Civil Motion](#).)

Outside Evidence

A defendant may present evidence outside of the complaint. If outside evidence is presented on a motion to dismiss for failure to state a claim, the motion must be treated as a motion for summary judgment. (Del. Ct. Ch. R. 12(b); Del. Super. Ct. Civ. R. 12(b); Del. Ct. Com. Pl. Civ. R. 12(b).)

Response by Plaintiff

The plaintiff may respond to a defendant's motion to dismiss, and the time to do so is set by stipulation. Delaware law does not specify the time to respond.

For a motion in the Superior Court, the plaintiff must respond no later than four days before the date when the hearing on the motion is scheduled. If the plaintiff does not respond, the motion is deemed unopposed. ([Superior Court New Castle County Civil Case Management Plan § VI.A.2](#); [Superior Court Kent County Civil Case Management Plan § IV.A.3](#); [Sussex County Civil Case Management Plan § IV.1.C](#).)

Reply by Defendants

The defendant may reply to a plaintiff's response, and the time to do so is set by stipulation. Delaware law does not specify the time to reply.

However, in the Superior Court, a defendant cannot reply unless ordered by the court ([Superior Court New Castle County Civil Case Management Plan § VI.B.2](#); [Superior Court Kent County Civil Case Management Plan § IV.A.4](#)).

In practice, parties typically enter into briefing stipulations regarding a motion to dismiss.

Oral Argument

Courts are not required to hold a hearing or have oral argument before deciding a motion to dismiss. However, any party may apply for a preliminary hearing. The hearing must take place before trial unless the court defers the matter until trial. (Del. Ct. Ch. R. 12(d); Del. Super. Ct. Civ. R. 12(d); Del. Ct. Com. Pl. Civ. R. 12(d); see [Preliminary Requirements](#).)

However, in the Superior Court, the court sets a hearing date. The court holds the hearing unless it determines the case on the papers. ([Superior Court New Castle County Civil Case Management Plan § VI.B.2](#); [Superior Court Kent County Civil Case Management Plan § IV.A](#); [Sussex County Civil Case Management Plan § IV.1](#).)

Stay of Discovery

A motion to dismiss does not automatically stay discovery. A party seeking to limit, prevent, or stay discovery must file a protective order (Del. Ct. Ch. R. 26(c); Del. Super. Ct. Civ. R. 26(c); Del. Ct. Com. Pl. Civ. R. 26(c)).

In the Court of Chancery, although a motion to dismiss does not automatically stay discovery, the court normally grants a stay of discovery pending the determination of a motion to dismiss (*Weschler v. Quad-C, Inc.*, 2000 WL 33173170, at *1 (Del. Ch. Sept. 12, 2000)).

Serving an Answer or Other Response

The defendant has ten days to file an answer if the court denies the motion (Del. Ct. Ch. R. 12(a)(1); Del. Super. Ct. Civ. R. 12(a)(1); Del. Ct. Com. Pl. Civ. R. 12(a)(1)).

Motion for a More Definite Statement

Preliminary Requirements

See [Motion to Dismiss: Preliminary Requirements](#).

Grounds Asserted

If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing the responsive pleading. The motion must point out the defects complained of and the details desired. (Del. Ct. Ch. R. 12(e); Del. Super. Ct. Civ. R. 12(e); Del. Ct. Com. Pl. Civ. R. 12(e).)

Waiver

See Motion to Dismiss: Waiver.

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

See Motion to Dismiss: Response by Plaintiff.

Reply by Defendants

See Motion to Dismiss: Reply by Defendants.

Oral Argument

Courts are not required to hold a hearing or have oral argument before deciding a motion for a more definite statement. However:

- In the Court of Chancery, a party may request that the court exercise its discretion to set a hearing date or the court may set a hearing on its own accord.
- In the Superior Court, the court sets a hearing date. The court holds the hearing unless it determines the case on the papers. ([Superior Court New Castle County Civil Case Management Plan § VI.A](#); [Superior Court Kent County Civil Case Management Plan § IV.B](#); [Sussex County Civil Case Management Plan § IV.2](#).)

Stay of Discovery

See Motion to Dismiss: Stay of Discovery.

Serving an Answer or Other Response

The defendant has ten days to file an answer if the court denies the motion (Del. Ct. Ch. R. 12(a)(1); Del. Super. Ct. Civ. R. 12(a)(1); Del. Ct. Com. Pl. Civ. R. 12(a)(1)).

If the court grants the motion for a more definite statement, then the defendant must serve the responsive pleading within ten days after the service of the more definite statement (Del. Ct. Ch. R. 12(a)(2); Del. Super. Ct. Civ. R. 12(a)(2); Del. Ct. Com. Pl. Civ. R. 12(a)(2)).

Motion to Strike

Preliminary Requirements

See Motion to Dismiss: Preliminary Requirements.

Grounds Asserted

The defendant may move to strike from the complaint allegations that are redundant, immaterial, impertinent, or scandalous (Del. Ct. Ch. R. 12(f); Del. Super. Ct. Civ. R. 12(f); Del. Ct. Com. Pl. Civ. R. 12(f)).

Waiver

See Motion to Dismiss: Waiver.

Required Papers

See Motion to Dismiss: Required Papers.

Outside Evidence

The nature of a motion to strike does not lend itself to the presentation of outside evidence.

Response by Plaintiff

See Motion to Dismiss: Response by Plaintiff.

Reply by Defendants

See Motion to Dismiss: Reply by Defendants.

Oral Argument

Courts are not required to hold a hearing or have oral argument before deciding a motion to strike. However,

- In the Court of Chancery, a party may request that the court exercise its discretion to set a hearing date or the court may set a hearing on its own accord.
- In the Superior Court, the court sets a hearing date. The court holds the hearing unless it determines the case on the papers. ([Superior Court New Castle County Civil Case Management Plan § VI.A](#); [Superior Court Kent County Civil Case Management Plan § IV.A](#); [Superior Court Sussex County Civil Case Management Plan § IV.2](#).)

Stay of Discovery

See Motion to Dismiss: Stay of Discovery.

Serving an Answer or Other Response

See Motion to Dismiss: Serving an Answer or Other Response.

Answering the Complaint

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

Required Contents

Court of Chancery

In Delaware, an answer must contain a caption listing:

- The court's name.
- The title of the action.
- The civil action number.
- A brief title listing the nature of the document.
- The parties' names.
- The designation "IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE."

(Del. Ct. Ch. R. 10(a).)

The defendant must restate the allegations from the complaint and place the response below each allegation (Del. Ct. Ch. R. 10(b)). For an answer, the response may contain:

- An admission.
- A denial, which must fairly meet the substance of the allegations denied.
- A partial denial, which must state which part of the allegation is true.
- A statement that the defendant is without knowledge or information sufficient to form a belief as to the truth of an allegation, which has the effect of a denial.
- A statement that the allegations assert legal conclusions to which no response is required.

If a defendant does not deny an allegation in the complaint that requires a responsive pleading, the allegation is deemed admitted if the allegation required a responsive pleading (Del. Ct. Ch. R. 8(d)).

A defendant may state certain affirmative defenses in the answer. Examples of affirmative defenses include:

- Accord and satisfaction.
- Arbitration and award.
- Discharge in bankruptcy.
- Duress.
- Estoppel.
- Failure of consideration.
- Fraud.
- Illegality.

- Laches.
- License.
- Payment.
- Release.
- Res judicata.
- Statute of frauds.
- Statute of limitations.
- Waiver.

(Del. Ct. Ch. R. 8(c).)

Affirmative defenses must be supported by pled facts (*Cypress Assocs., LLC v. Sunnyside Cogeneration Assocs. Project*, 2007 WL 148754, at *18 (Del. Ch. Jan. 17, 2007)). The Court of Chancery has dismissed or stricken affirmative defenses pled in conclusory fashion (*Kurz v. Holbrook*, 2009 WL 4682622, at *6 (Del. Ch. Dec. 1, 2009); *Di Loreto v. Tiber Holding Corp.*, 1999 WL 1261450, at *4 n.9 (Del. Ch. June 29, 1999)).

Superior Court

An answer must contain a caption listing:

- The court's name.
- The title of the action.
- The filing number.
- A designation as to the type of pleading.
- The parties' names.

(Del. Super. Ct. Civ. R. 10(a).)

The defendant must restate the allegations from the complaint and place the response below each allegation (Del. Super. Ct. Civ. R. 10(b)). For an answer, the response may contain:

- An admission.
- A denial, which must fairly meet the substance of the allegations denied.
- A partial denial, which must state which part of the allegation is true.
- A statement that the defendant is without knowledge or information sufficient to form a belief as to the truth of an allegation, which has the effect of a denial.

If a defendant does not deny an allegation in the complaint that requires a responsive pleading, the

allegation is deemed admitted if the allegation required a responsive pleading (Del. Super. Ct. Civ. R. 8(d)).

A defendant may state certain affirmative defenses in the answer. Examples of affirmative defenses include:

- Accord and satisfaction.
- Arbitration and award.
- Assumption of risk.
- Contributory negligence.
- Discharge in bankruptcy.
- Duress.
- Estoppel.
- Failure of consideration.
- Fraud.
- Illegality.
- Injury by a fellow servant.
- License.
- Payment.
- Release.
- *Res judicata*.
- Statute of frauds.
- Statute of limitations.
- Waiver.

(Del. Super. Ct. Civ. R. 8(c).)

Court of Common Pleas

The answer must include a caption with:

- The court's name.
- The title of the action.
- The file number.
- A designation as to the type of pleading.
- The parties' names.

(Del. Ct. Com. Pl. Civ. R. 10(a).)

The defendant must respond to each of the numbered statements in the complaint and may include an explanation of its responses. At the end of the answer, the defendant must include their:

- Signature.
- Address.
- Telephone number.

(See [Delaware State Courts: Court of Common Pleas Civil Trials](#).)

Justice of the Peace Court

For debt and trespass actions, a defendant must complete and sign a form answer that is enclosed with the complaint and summons. A defendant must indicate whether the defendant wants to go to trial (J.P. Ct. Civ. R. 11(a); Del. J.P. Civ. Form 7.)

For a debt action, the defendant can request that the plaintiff provide a more detailed statement of the claim (J.P. Ct. Civ. R. 26; Del. J.P. Civ. Form 10C).

A garnishee duly summoned must specify in its answer what of the defendant's goods, chattels, rights, credits, money, or effects the garnishee possesses or has in custody (J.P. Ct. Civ. R. 5(aa)(2) and 69(c)(2)(B), (c)(3)(B)).

A defendant may assert every defense in law or fact in an answer. The defendant does not waive a defense by not including it in the answer and may still raise it at trial (Del. J.P. Ct. Civ. R. 12).

Optional Contents

An answer may contain counterclaims or cross-claims. It may also seek to join additional parties to a counterclaim or crossclaim according to applicable joinder rules (Del. Ct. Ch. R. 13; Del. Super. Ct. Civ. R. 13; Del. Ct. Com. Pl. Civ. R. 13; J.P. Ct. Civ. R. 13).

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

In Delaware, a defendant generally does not need to verify an answer or motion unless a statute or rule specifies otherwise (Del. Super. Ct. Civ. R. 11(a); Del. Ct. Com. Pl. Civ. R. 11(a); J.P. Ct. Civ. R. 11(a); Del. Ct. Ch. R. 11(a)).

In the Court of Chancery, if a defendant files counterclaims or cross-claims, the claims must be verified by the defendant (Del. Ct. Ch. R. 3(aa)).

A verification must:

- Be under oath or affirmation.
- State that the matter in the pleading is:

- true relating to the party's own acts and deeds; and
- believed to be true as it concerning others' acts and deeds.

A verification filed by a non-corporate party must be under oath or affirmation by the filing party. (Del. Ct. Ch. R. 3(aa).)

A verification filed by a corporation must be verified under oath or affirmation by any person authorized by the corporation (Del. Ct. Ch. R. 3(aa)).

Amending an Answer

7. Can a defendant amend its answer? If so:

- When?
- What grounds, if any, must be shown to justify an amendment?

Amendment as of Right

Time to Amend

Except for Justice of the Peace Court cases, a defendant in Delaware may amend its answer once by right as follows:

- If a responsive pleading is allowed, any time before it is served.
- If a responsive pleading is not allowed, within 20 days after service of the answer if the case has not been placed on the trial calendar.

(Del. Ct. Ch. R. 15(a); Del. Super. Ct. Civ. R. 15(a); Del. Ct. Com. Pl. Civ. R. 15(a).)

Grounds for Amendment

There are no grounds required for an amendment as of right (Del. Ct. Ch. R. 15(a); Del. Super. Ct. Civ. R. 15(a); Del. Ct. Com. Pl. Civ. R. 15(a)).

Amendment by Stipulation

Time to Amend

The Delaware courts do not impose a time limit on amendment by stipulation (Del. Ct. Ch. R. 15(a); Del. Super. Ct. Civ. R. 15(a); Del. Ct. Com. Pl. Civ. R. 15(a); J.P. Ct. Civ. R. 15(a)).

Grounds for Amendment

There are no grounds required for an amendment by stipulation if the adverse party provides written consent

(Del. Ct. Ch. R. 15(a); Del. Super. Ct. Civ. R. 15; Del. Ct. Com. Pl. Civ. R. 15(a); J.P. Ct. Civ. R. 15(a)).

Amendment by Motion

Time to Amend

The court may grant leave to amend at its discretion at any time (Del. Ct. Ch. R. 15(a); Del. Super. Ct. Civ. R. 15; Del. Ct. Com. Pl. Civ. R. 15(a); J.P. Ct. Civ. R. 15(a)).

Grounds for Amendment

There are no grounds required for an amendment by motion and the court must grant the amendment when justice so requires (Del. Ct. Ch. R. 15(a); Del. Super. Ct. Civ. R. 15; Del. Ct. Com. Pl. Civ. R. 15(a); J.P. Ct. Civ. R. 15(a)).

Amendment Following Motion to Dismiss in the Court of Chancery

In the Court of Chancery, a party wishing to respond to a motion to dismiss under Del. Ct. Ch. R. 12(b)(6) or 23.1 by amending its pleading must file an amended complaint or a motion to amend. The party must file the amended complaint or motion to amend no later than when the party's answering brief in response to the motion to dismiss must be filed. (Del. Ct. Ch. R. 15(aaa).)

If a party fails to timely file an amended complaint or motion to amend and the court dismisses the complaint, the dismissal is deemed to be with prejudice. If the complaints are brought under Del. Ct. Ch. R. 23 or 23.1, the dismissal is with prejudice to the named plaintiffs only. However, the court may dismiss the complaint or motion without prejudice if the party shows good cause that dismissal with prejudice would not be just under all the circumstances. (Del. Ct. Ch. R. 15(aaa).)

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 cannot reply to an answer. However, the Superior Court may order that the plaintiff reply to the

answer. The order specifies when the plaintiff must respond. (Del. Super. Ct. Civ. R. 7(a).)

In all Delaware courts, a plaintiff may reply to a counterclaim. Except for cases in the Justice of the Peace Court, the plaintiff must reply to the counterclaim with 20 days either:

- After service of the answer.
- After service of the order or when the order otherwise directs, if a reply is ordered by the court.

(Del. Ct. Ch. R. 12(a); Del. Super. Ct. Civ. R. 7(a) and 12(a); Del. Ct. Com. Pl. Civ. R. 7(a) and Del. Ct. Com. Pl. Civ. R. 12(a).)

The Justice of the Peace Court's rules do not specify when the plaintiff must reply to a counterclaim (J.P. Ct. Civ. R. 7(a)).

Grounds for Reply

A plaintiff cannot reply to an answer unless ordered by the court.

Reply Contents

A plaintiff cannot reply to an answer unless ordered by the court.

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 all Delaware courts, a defendant may assert:

- Counterclaims.
- Crossclaims.
- Third party-claims.

(Del. Ct. Ch. R. 7(a), Del. Ct. Ch. R. 13, and Del. Ct. Ch. R. 14; Del. Super. Ct. Civ. R. 7(a), 13, and 14; Del. Ct. Com. Pl.

Civ. R. 7(a), Del. Ct. Com. Pl. Civ. R. 13, and Del. Ct. Com. Pl. Civ. R. 14; J.P. Ct. Civ. R. 7(a), 13, and 14.)

Mandatory Claims for Defendant

A defendant must file as a compulsory counterclaim any claim against an opposing party that both:

- Arises out of the transaction or occurrence that is the subject matter of the opposing party's claims.
- Does not require the presence of third parties that are outside of the court's jurisdiction.

(Del. Ct. Ch. R. 13(a); Del. Super. Ct. Civ. R. 13(a); Del. Ct. Com. Pl. Civ. R. 13(a); J.P. Ct. Civ. R. 13(a).)

For a Court of Chancery case, a defendant does not need to file a compulsory counterclaim if at the time the action was commenced the claim was the subject of another pending action (Del. Ct. Ch. R. 13(a)).

For Superior Court and Court of Common Pleas cases, a defendant need not state a compulsory counterclaim if either:

- At the time the action was commenced the claim was the subject of another pending action.
- The plaintiff both:
 - brought suit on the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim; and
 - the defendant is not stating any other counterclaims.

(Del. Super. Ct. Civ. R. 13(a); Del. Ct. Com. Pl. Civ. R. 13(a).)

For a Justice of the Peace Court case, a defendant need not state a compulsory counterclaim if:

- At the time the action was commenced, the claim was the subject of another pending action.
- The plaintiff both:
 - brought suit on the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim; and
 - the defendant is not stating any counterclaim.
- The counterclaim exceeds \$15,000.

(J.P. Ct. Civ. R. 13(a).)

Permissive Claims for Defendant

A defendant may choose to file a counterclaim against an opposing party that does not arise out of the transaction or occurrence that is the subject of the action (Del. Ct. Ch.

Responding to a Complaint: Delaware

R. 13(b); Del. Super. Ct. Civ. R. 13(b); Del. Ct. Com. Pl. Civ. R. 13(b); J.P. Ct. Civ. R. 13(b)).

A defendant may also file a crossclaim against a co-party if the claim:

- Arises out of the same transaction or occurrence as the subject matter of the original action or counterclaim.
- Relates to any property that is the subject matter of the action.

(Del. Ct. Ch. R. 13(g); Del. Super. Ct. Civ. R. 13(g); Del. Ct. Com. Pl. Civ. R. 13(g); J.P. Ct. Civ. R. 13(g).)

Third Party Claims

A defendant, as a third-party plaintiff, may cause process and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff (Del. Ct. Ch. R. 14(a); Del. Super. Ct. Civ. R. 14(a); Del. Ct. Com. Pl. Civ. R. 14(a); J.P. Ct. Civ. R. 14(a)).

When and How Claims are Asserted

Except for the Justice of the Peace Court, a defendant may assert counterclaims or cross-claims in its answer to the complaint (Del. Ct. Ch. R. 13(b), (g); Del. Super. Ct. Civ. R. 13(b), (g); Del. Ct. Com. Pl. Civ. R. 7(a) and Del. Ct. Com. Pl. Civ. R. 13).

A defendant may bring a third-party action any time after commencing the action. If the defendant files the third-party complaint within ten days after service of the answer, the defendant/third-party plaintiff does not need to seek leave of court. Otherwise the defendant/third-party plaintiff must move to file and serve the third-party complaint. (Del. Ct. Ch. R. 14(a); Del. Super. Ct. Civ. R. 14(a); Del. Ct. Com. Pl. Civ. R. 14(a).)

Justice of the Peace Court

A defendant may assert counterclaims or crossclaims in its answer to the complaint or by motion before or at the time of trial (J.P. Ct. Civ. R. 12). A counterclaim or cross-claim of

which any party may be aware before the commencement of the trial on the plaintiff's claim should be filed by the party in writing no later than five days before the trial. The court grants a continuance on motion or request if a counterclaim or crossclaim is raised so close to the trial's start date that a party has insufficient opportunity to prepare a defense. The court may grant an adjournment of the proceedings when a counterclaim or cross-claim is raised at trial. (J.P. Ct. Civ. R. 13(d), (e).)

A defendant may bring a third-party action at any time after the action commences. A defendant may commence a third-party action without leave of court if they file no later than five days before trial. Otherwise, the defendant/third-party plaintiff must seek leave of court to file a third-party claim. (J.P. Ct. Civ. R. 14(a).)

Other Parties' Response to Defendant's Claims

Court of Chancery, Superior Court, and Court of Common Pleas

Unless the court directs otherwise, a plaintiff must respond to counterclaims within 20 days after service of the answer. If the court had issued an order for the plaintiff to respond, then the plaintiff must respond within 20 days after service of the order. (Del. Ct. Ch. R. 12(a); Del. Super. Ct. Civ. R. 12(a); Del. Ct. Com. Pl. Civ. R. 12(a).)

A party must respond to cross-claims within 20 days after service of the answer (Del. Ct. Ch. R. 12(a); Del. Super. Ct. Civ. R. 12(a); Del. Ct. Com. Pl. Civ. R. 12(a)).

A third-party defendant must respond to a third-party complaint within 20 days of service of the third-party complaint (Del. Ct. Ch. R. 12 and Del. Ct. Ch. R. 14(a); Del. Super. Ct. Civ. R. 12 and 14(a); Del. Ct. Com. Pl. Civ. R. 12 and Del. Ct. Com. Pl. Civ. R. 14(a)).

Justice of the Peace Court

Usually a party must respond to a counterclaim, crossclaim, and third-party claim at least five days before the start of trial (see [Delaware State Courts: How To Respond To A Civil Action in the Justice of the Peace Court](#)).

About Practical Law

Practical Law provides legal know-how that gives lawyers a better starting point. Our expert team of attorney editors creates and maintains thousands of up-to-date, practical resources across all major practice areas. We go beyond primary law and traditional legal research to give you the resources needed to practice more efficiently, improve client service and add more value.

If you are not currently a subscriber, we invite you to take a trial of our online services at legalsolutions.com/practical-law. For more information or to schedule training, call 1-800-733-2889 or e-mail referenceattorneys@tr.com.