

An Associate's Answer Checklist

By Michael A. Vercher

You are given a complaint and asked to prepare an answer. Because no two complaints are ever exactly alike, the following is a basic guide to preparing an answer. Be sure to review the procedural rules applicable to the jurisdiction, including local rules.

- ◆ **Calculate and calendar the deadline to file the answer.**
Federal Rule of Civil Procedure 12(a)(1)(A) requires service of an answer "within 20 days after being served with the summons and complaint. . ."
- ◆ **Set up a conference call with your client contact and/or a meeting with the partner who gave you the assignment.**
Request his/her file and any other related documents. The information you obtain in this initial meeting will dictate your entire plan of action in preparing the answer.
- ◆ **Determine if the action can/should be removed to federal court.**
Review 28 U.S.C. §§1331, 1332 and Federal Rule of Civil Procedure 81(c) for applicable removal statutes/rules.
- ◆ **Are there grounds to file a motion to dismiss?**
Review Federal Rule of Civil Procedure 12(b) for the defenses you can assert in a motion to dismiss. Those defenses include: (1) lack of subject matter jurisdiction, (2) lack of personal jurisdiction, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, and (7) failure to join a party under Rule 19. If the complaint contains a fraud count, Federal Rules of Civil Procedure 9(b) and 12(b)(6) may permit you to file a motion to dismiss for failure to plead fraud with particularity as to that count.
- ◆ **Review Federal Rules of Civil Procedure 12(e) and (f) to determine whether a motion for a more definite statement or a motion to strike is proper.**
- ◆ **Is venue proper?**
A motion to dismiss for improper venue is permitted by Federal Rule of Civil Procedure 12(b)(3). A motion to transfer venue for convenience of the parties and witnesses -; forum non conveniens -; should be filed after the answer. See 28 U.S.C. § 1404. If you plan on filing a motion to transfer venue based upon forum non conveniens, raise that ground as an affirmative defense in your answer. Federal venue statutes are located at 28 U.S.C 1391, et seq.
- ◆ **Review the content requirements for an answer.**
If you are not filing a motion to dismiss, a motion to strike or a motion for a more definite statement, you must file an answer. Federal Rule of Civil Procedure 8(b) sets forth the contents of a proper answer. According to Rule 8(b), a party filing an answer must admit or deny each material allegation of the complaint.
- ◆ **Select and use appropriate denials.**
There are three types of denials. An unqualified denial is proper if the allegation is contested in its entirety -; e.g., "defendant denies the allegations contained in paragraph 1 of the complaint." If your client contests only a portion of a particular allegation, admit that part which is true and deny the remainder of the allegation. For example, "defendant admits that venue is proper but denies the remainder of the allegations contained in paragraph 2 of the complaint." If your client lacks information sufficient to either admit or deny a particular allegation, Rule 8(b) permits you to respond accordingly, and that response "has the effect of a denial." An example of this form of denial is "defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the complaint." A general denial -; utilized only when the defendant intends to controvert each and every allegation of the complaint-; should rarely be used.
- ◆ **Include a "catch-all" denial.**
Care must be taken to respond to each allegation of a complaint, including WHEREFORE and unnumbered paragraphs. Because the failure to specifically deny an allegation can operate as an admission, it is good practice to include a sentence stating, in substance, "defendant denies each and every material allegation not heretofore controverted and demands strict proof thereof."
- ◆ **Research and raise all potential affirmative defenses.**
Federal Rules of Civil Procedure 8(c) and 12 **require** you to raise all potentially applicable affirmative defenses in your answer. Good practice dictates that you carefully research the claims made in the complaint and determine which affirmative defenses may apply. Do not rely on the list of affirmative defenses contained in Rule 8(c). An affirmative defense is any allegation upon which the defendant, rather than the plaintiff, bears the ultimate burden of proof. In many jurisdictions, an affirmative defense is waived if not asserted in the answer.
- ◆ **Determine whether a counterclaim, cross-claim and/or a third-party complaint is proper.**
Review Federal Rules of Civil Procedure 13 and 14. If the claim is a compulsory counterclaim, you **must** file it, except in two limited circumstances, at the time you file a responsive pleading. Federal Rule of Civil Procedure 13(a) defines a compulsory counterclaim as one that "arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction."

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