

Responding to a Complaint: Oregon

by **Shannon Armstrong** and **Kristin Asai**, Markowitz Herbold, with Practical Law Litigation

Law stated as at 14 Apr 2016 • Oregon, USA

A Q&A guide to responding to a complaint in a trial court of general jurisdiction in Oregon. 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](#)).

Contents

[Overview of Responding to a State Complaint](#)

[Pre-Answer Responses](#)

[Answering the Complaint](#)

[Amending an Answer](#)

[Replying to an Answer](#)

[Defendant's Affirmative Claims](#)

Overview of Responding to a State Complaint

1. When must a defendant respond to the complaint?

In Oregon, a party must respond to a summons and complaint within 30 days from the date of service ([Or. R. Civ. P. 7\(C\)\(2\)](#)).

If the summons is served by publication, the defendant's answer is due within 30 days from the date stated in the summons ([Or. R. Civ. P. 7\(C\)\(2\)](#)).

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)?

Before Expiration of Response Period

In Oregon, the court may extend the time to file an answer or reply using a court order (Or. R. Civ. P. 15(D)).

After Expiration of Response Period

The court may, in its discretion, allow a party to file a late responsive pleading on just terms (Or. R. Civ. P. 15(D)).

As a practical matter, a lawyer needing more time to respond should ask the claimant's lawyer to agree **not** to seek a default judgment either:

- Before a specified day.
- Without prior notice.

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

Oregon allows the following responses to a complaint:

- An answer.
- A motion.

(Or. R. Civ. P. 13(B) and 21.)

Oregon has abolished demurrers and pleas in abatement (Or. R. Civ. P. 13(C)).

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?

A defendant may bring a motion:

- To dismiss (see Motion to Dismiss).
- To strike (see Motion to Strike).
- For a more definite statement (see Motion for a More Definite Statement).

Motions must be in writing and state their grounds with particularity (Or. R. Civ. P. 14(A)).

69

Motion to Dismiss

Preliminary Requirements

A party filing a motion to dismiss must make a good-faith effort to confer with the other parties **unless** the motion is:

- A motion to dismiss for a failure to state a claim.
- A motion to dismiss for lack of jurisdiction.

(Or. Unif. Trial Ct. R. 5.010(1).)

At the same time the motion is filed, the moving party must file a certificate of compliance showing either:

- The parties conferred.
- Good cause for not conferring.

(Or. Unif. Trial Ct. R. 5.010(3).)

Grounds Asserted

A pre-answer motion to dismiss may be based on one of the following grounds:

- Lack of **subject matter jurisdiction**.
- Lack of **personal jurisdiction**.
- There is another pending action between the parties for the same cause.
- Lack of capacity.
- Insufficiency of process.
- Insufficiency of service of process.
- The plaintiff is not the real party in interest.
- Failure to join a party.
- Failure to state a claim.
- The action did not start within the statutory time limit.

(Or. R. Civ. P. 21(A).)

Waiver

When a motion to dismiss is made, the following defenses are waived if not included in the pre-answer motion to dismiss:

- Lack of personal jurisdiction.
- There is another action pending between the parties for the same cause.
- Insufficiency of summons or process.
- Insufficiency of service of summons or process.

(Or. R. Civ. P. 21(G)(1).)

The following defenses are waived if not included in the pre-answer motion to dismiss or in a responsive pleading:

- Lack of capacity.
- The plaintiff is not the real party in interest.
- The action did not start within the statutory time limit.

These defenses may be made by leave of the court if the moving party shows that:

- It did not know and reasonably was unable to have known the defense existed.
- Other circumstances make a denial of the amendment unjust.

(Or. R. Civ. P. 21(G)(2).)

Required Papers

A motion must contain a caption, which sets out:

- The name of the court.
- The title of the action.
- The register number.
- Its designation under Rule 13(B) of the Oregon Rules of Civil Procedure.
- The name of the parties.

(Or. R. Civ. P. 16(A).)

A motion to dismiss must also include a memorandum of law or a statement of authority explaining how relevant authorities support the motion (Or. Unif. Trial Ct. R. 5.020(1)).

Outside Evidence

Outside evidence, including affidavits and declarations, generally can be submitted on a motion to dismiss. If a motion does contain outside evidence, the court gives all other parties a reasonable opportunity to present affidavits, declarations, and other evidence. (Or. R. Civ. P. 21(A).)

However, the court may not rely on evidence outside the pleadings when deciding a motion to dismiss for failure to state ultimate facts (Or. R. Civ. P. 21(A)(8)).

Response by Plaintiffs

An opposing party may file a written memorandum of authorities in response to the matters raised in the motion to dismiss within 14 days from the date of service of the motion (Or. Unif. Trial Ct. R. 5.030(1)).

Reply by Defendants

The defendant may file a reply within seven days of the service of the responding memorandum (Or. Unif. Trial Ct. R. 5.030(2)).

Oral Arguments

Either party may request oral argument. The defendant must request oral argument in the caption of the motion. The responding party must request oral argument in the caption of the response. (Or. Unif. Trial Ct. R. 5.050(1).)

When requesting oral argument, the first paragraph of the motion or response must include:

- An estimate of the time required for argument.
- A statement of whether or not official court reporting services are requested.

(Or. Unif. Trial Ct. R. 5.050(1).)

A party may also request oral argument by conference telephone call. The request must:

- Be in the caption of the motion or response.
- List names and telephone numbers of all parties served with the request, in the first paragraph of the motion or response.

(Or. Unif. Trial Ct. R. 5.050(2) to (2)(b).)

The first party to request telecommunication must begin the conference call at its expense, unless the court directs otherwise (Or. Unif. Trial Ct. R. 5.050(2)(c)).

Stay of Discovery

A motion to dismiss does not automatically stay discovery. However, a party with good cause may move the court for an order limiting discovery (Or. R. Civ. P. 36(C)).

Serving an Answer or Other Response

If the court denies the motion to dismiss, the defendant has ten days after service of the order to serve a responsive pleading, unless the order directs otherwise (Or. R. Civ. P. 15(B)(1)).

If the court grants the motion and either allows or requires an amended pleading, the pleading must also be filed within ten days of service of the order, unless the order directs otherwise (Or. R. Civ. P. 15(B)(2)).

Motion to Strike

Preliminary Requirements

There are no preliminary requirements for a motion to strike.

Grounds Asserted

A defendant may move to strike any:

- Insufficient defense.
- Pleading containing more than one claim that is not separately stated.
- Pleading that is:
 - frivolous;
 - irrelevant; or
 - a sham.
- Matter that is:
 - frivolous;
 - irrelevant;

- redundant; or
- a sham.

(Or. R. Civ. P. 21(E).)

Waiver

The service of an answer waives the defendant's right to make a motion to strike (Or. R. Civ. P. 21(E)).

Required Papers

See Motion to Dismiss: Required Papers.

Outside Evidence

A motion to strike generally does not require outside evidence.

Response by Plaintiffs

See Motion to Dismiss: Response by Plaintiffs.

Reply by Defendants

See Motion to Dismiss: Reply by Defendants.

Oral Argument

See Motion to Dismiss: Oral Argument.

Stay of Discovery

A motion to strike generally does not stay discovery.

Serving an Answer or Other Response

If the court denies the motion, the defendant has ten days after service of the order to file a responsive pleading (Or. R. Civ. P. 15(B)).

Motion for a More Definite Statement

Preliminary Requirements

There are no preliminary requirements for a motion for a more definite statement.

Grounds Asserted

If the allegations in a complaint are so indefinite or uncertain that the precise nature of the charge is not apparent, the defendant may move for a more definite statement (Or. R. Civ. P. 21(D)).

Waiver

The service of an answer waives the defendant's right to make a motion for a more definite statement (Or. R. Civ. P. 21(D)).

Required Papers

See Motion to Dismiss: Required Papers.

Outside Evidence

A motion for a more definite statement generally does not require outside evidence.

Response by Plaintiffs

See Motion to Dismiss: Response by Plaintiffs.

Reply by Defendants

See Motion to Dismiss: Reply by Defendants.

Oral Argument

See Motion to Dismiss: Oral Argument.

Stay of Discovery

A motion for a more definite statement does not stay discovery.

Serving an Answer or Other Response

If the court grants a motion for a more definite statement, the defendant must serve its response within ten days after service of the amended complaint (Or. R. Civ. P. 15(C)).

If the court denies the motion for a more definite statement, the defendant must serve its response within ten days of service of the order, unless the order directs otherwise (Or. R. Civ. P. 15(B)(2)).

If the motion is granted but the pleading is not amended within ten days after service of the order or another time as the court orders, the court may strike the entire pleading or make an order as it deems just (Or. R. Civ. P. 21(D)).

Answering the Complaint

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

Required Contents

Caption

In Oregon, an answer must include a caption, listing:

- The name of the court.
- The title of the action.
- The register number of the cause.
- A designation of the document (for example, "Answer").

(Or. R. Civ. P. 16(A).)

Denials or Admissions

The answer must respond to each allegation in the complaint with one or more of the following.

- A denial.
- A statement that the party lacks knowledge or information sufficient to form a belief about the allegation's truth, which has the effect of a denial.
- An admission.

(Or. R. Civ. P. 19(A).)

Any allegations in the complaint not responded to in the answer, other than allegations about damages, are deemed admitted (Or. R. Civ. P. 19(C)).

Defenses

In Oregon, every legal or factual defense must be raised by a responsive pleading, except the following defenses, which may be made in a motion to dismiss:

- Lack of subject matter jurisdiction.
- Lack of personal jurisdiction.
- There is another action pending between the same parties for the same cause.
- The plaintiff lacks legal capacity to sue.
- Insufficiency of summons or process.
- Insufficiency of service of summons or process.
- That the party asserting the claim is not the real party in interest.
- Failure to join a party.
- Failure to state a claim.
- The action has not been commenced within the time limited by statute.

(Or. R. Civ. P. 21(A), (G)(1)).

The answer must contain any **affirmative defenses** that the defendant wants to raise. Affirmative defenses are generally waived if they are not pled in the answer. (Or. R. Civ. P. 19(B); *Adair v. Valley Flying Serv.*, 250 P.2d 104, 106 (Or. 1952).)

The following is a non-exclusive list of common affirmative defenses:

- Accord and satisfaction.
- **Arbitration** and award.
- Assumption of risk
- Comparative or contributory negligence.
- **Discharge** in bankruptcy.
- Duress.
- **Estoppel**.
- Failure of **consideration**.
- Fraud.
- Illegality.
- Injury by fellow servant.
- Issue preclusion.
- **Laches**.
- **License**.
- Payment.
- **Release**.
- **Statute of frauds**.
- Statute of limitations.
- Unconstitutionality.
- Waiver.

(Or. R. Civ. P. 19(B).)

Prayer

An answer must contain a prayer for relief, which is a concise statement of all relief requested in the answer (Or. R. Civ. P. 18). If the body of the answer only contains admissions, denials, and affirmative defenses, then the prayer typically provides as follows:

"WHEREFORE, defendant prays for judgment in his favor and against plaintiff for its costs and disbursements and [if the claim is equitable] any other relief that the court deems just."

If the answer asserts a claim for relief, including a counterclaim or crossclaim, the answer must contain a demand for the exact relief the defendant seeks (Or. R. Civ. P. 18(B)).

Signature and Acknowledgment

All answers and motions must be signed by either:

- One attorney of record that is an active member of the Oregon State Bar.
- The party, if unrepresented.

(Or. R. Civ. P. 17(A).)

A party must also certify that to the best of their knowledge, information, and belief, the paper being filed:

- Is not being filed for an improper purpose (for example, to harass).
- Contains non-frivolous legal contentions.
- Denies factual contentions only when the denial is supported by evidence or reasonably based on lack of information or belief.
- Specifically identifies all denials that cannot be certified as being supported by evidence, but contains allegations and other facts that are or are likely to, after discovery, be supported by evidence.

(Or. R. Civ. P. 17(C).)

A defendant must specifically identify any denials that it does not want to certify. However, the defendant must certify that its decision is reasonably based on a lack of information or belief. (Or. R. Civ. P. 17(C)(5).)

Optional Contents

Counterclaims

The answer may contain counterclaims asserted against the plaintiff (Or. R. Civ. P. 13(B), 22(A); see Question 9).

Crossclaims

The answer may contain crossclaims asserted against a co-defendant that either:

- Arise from the occurrence or transaction specified in the complaint.
- Are related to any property that is the subject matter of the plaintiff's claim.

(Or. R. Civ. P. 22(B)(1); see Question 9.)

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

In Oregon, pleadings do not need to be verified (Or. R. Civ. P. (17)(A)).

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

A defendant may amend an answer once as a matter of course:

- Any time before a responsive pleading is served.
- Within 20 days after the answer is served, if no responsive pleading is permitted.

Otherwise a party may amend the pleading only by leave of court or by written consent of the adverse party. (Or. R. Civ. P. 23(A).)

Grounds for Amendment

No grounds are required for an amendment as of right.

Amendment by Stipulation

Time to Amend

The parties may stipulate to an amendment at any time (Or. R. Civ. P. 23(A)).

Grounds for Amendment

A party may amend a pleading by written consent of the adverse party (Or. R. Civ. P. 23(A)). No particular grounds are required.

Amendment by Motion

Time to Amend

The court may grant leave to amend at its discretion at any time (Or. R. Civ. P. 23(A)).

Grounds for Amendment

No particular grounds are required. Leave to amend must be freely given when justice so requires. (Or. R. Civ. P. 23(A).)

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 generally does not need to reply to an answer. However, the plaintiff may reply in response to a counterclaim or affirmative defense (Or. R. Civ. P. 13(B)).

A plaintiff must file and serve a reply to a counterclaim within 30 days of the date of service of the counterclaim under Rule 7(C)(2) of the Oregon Rules of Civil Procedure (Or. R. Civ. P. 15(A)).

Grounds for Reply

A plaintiff may file a reply in response to:

- A counterclaim set out by the defendant.
- Any affirmative defenses in the answer.

(Or. R. Civ. P. 13(B).)

Reply Contents

A reply is governed by the same general rules of pleading governing complaints or answers (Or. R. Civ. P. 16).

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

A defendant may assert:

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

Counterclaims

The answer may include counterclaims asserted against the plaintiff. Under Oregon law, a defendant may set out as many counterclaims as it has against a plaintiff, both in law and equity.

A counterclaim may or may not diminish or defeat the recovery that the opposing party seeks. It may request relief that:

- Exceeds the amount of relief that the opposing party seeks.
- Differs in kind from the relief the opposing party seeks.

(Or. R. Civ. P. 22(A).)

Crossclaims

Oregon permits a defendant to assert a crossclaim against a co-defendant if the claim either:

- Arises out of the occurrence or transaction set out in the complaint.
- Relates to any property that is the subject matter of the original action.

(Or. R. Civ. P. 22(B)(1).)

The crossclaim may include a claim that the co-defendant is or may be liable to the defendant for all or part of a claim asserted in the action against the defendant (Or. R. Civ. P. 22(B)(2)).

Impleader or Third-Party Practice

A defendant may at any time after the action has started, serve a summons and complaint on a non-party to the action liable or may be liable to the defendant for all or part of the plaintiff's claim against the defendant (Or. R. Civ. P. 22(C)(1)).

The defendant may serve a third-party complaint:

- Within 90 days after service of the plaintiff's summons and complaint, without leave of court.
- More than 90 days after service of the plaintiff's summons and complaint, after obtaining the agreement of the parties appearing and leave from the court.

(Or. R. Civ. P. 22(C)(1).)

Interpleader

A defendant exposed to double or multiple liability may obtain interpleader by filing either a:

- Crossclaim.
- Counterclaim.

(Or. R. Civ. P. 31(A).)

Mandatory Claims for Defendant

Under Oregon law, counterclaims, crossclaims, and third-party claims are permissive, not compulsory (Or. R. Civ. P. 22). However, Oregon courts have ruled that a defendant is barred, under the rules of res judicata and collateral

estoppel, from raising a counterclaim or crossclaim if the claim may have been asserted in a prior action and if the facts supporting the claim were previously adjudicated (*Colhouer v. Union P.R. Co.*, 551 P.2d 1291, 1293-94 (Or. 1976)).

When and How Claims are Asserted

Counterclaims

Counterclaims are pled in the answer and they must be pled in the time for answering the complaint (Or. R. Civ. P. 18; see [Question 1](#)).

A counterclaim must contain a:

- Plain and concise statement of the ultimate facts comprising the claim.
- Demand for judgment of the relief sought, including the exact amount of damages.

(Or. R. Civ. P. 18.)

If a counterclaim requires new parties to be joined, the new parties are treated as defendants and must be served under [Rule 7 of the Oregon Rules of Civil Procedure](#) (Or. R. Civ. P. 22(D)(3)).

Crossclaims

Crossclaims are pled in the answer and they must be pled in the time for answering the complaint (Or. R. Civ. P. 18; see [Question 1](#)).

Impleader or Third-Party Practice

A defendant may at any time after the action has started, serve a summons and complaint on a non-party liable or may be liable to the defendant for all or part of the plaintiff's claim against the defendant (Or. R. Civ. P. 22(C)(1)).

The defendant may serve a third-party complaint:

- Within 90 days after service of the plaintiff's summons and complaint, without leave of court.
- More than 90 days after service of the plaintiff's summons and complaint, after obtaining the agreement of the parties appearing and leave from the court.

(Or. R. Civ. P. 22(C)(1).)

The defendant must serve:

The summons and third-party complaint on a third-party defendant under [Rule 7 of the Oregon Rules of Civil Procedure](#).

A copy of the summons and third-party complaint on all parties.

A defendant filing a third-party complaint does not have to pay a plaintiff's appearance fee in addition to or instead of the defendant's general appearance fee (38 Or. Op Att'y. Gen. 531 (Or. 1977)).

Other Parties' Response to Defendant's Claims

Counterclaims

A counterclaim defendant responds to the counterclaims by serving a reply containing the same contents as an answer to a complaint and within the same time limits (Or. R. Civ. P. 7(C)(2) and 15(A); Questions 1 and 5).

Crossclaims

A crossclaim defendant responds to the crossclaims by serving an answer containing the same contents as an answer to a complaint and within the same time limits (Or. R. Civ. P. 7(C)(2) and 15(A); Questions 1 and 5).

Impleader or Third-Party Practice

A third-party defendant responds to the third-party complaint by serving an answer or motion to dismiss the complaint, containing the same contents as an answer or motion to dismiss, within the same time limits (Or. R. Civ. P. 22(C)(1); Questions 1 and 5).

A third-party defendant may also assert counterclaims, crossclaims, and third-party claims of its own in its answer to the third-party complaint (Or. R. Civ. P. 22(C)(1)).

The original plaintiff may bring a direct action against the third-party defendant for any claim arising out of the same transaction or occurrence (Or. R. Civ. P. 22(C)(1)). Although leave of court may not be required, the better practice is to file a motion for leave to amend the complaint.