

## Responding to a Complaint: South Carolina

Resource type: **State Q&A**    Status: **Law stated as at 10-Mar-2015**    Jurisdiction: **South Carolina**

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

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## Overview of Responding to a State Complaint

*1. When must a defendant respond to the complaint?*

In South Carolina, a defendant must serve an answer within 30 days of being served with the complaint ([S.C. R. Civ. P. 12\(a\)](#)).

*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)?*

### By Stipulation

The parties may agree to an extension of time to respond. The agreement must be in writing and the additional period must not exceed 30 days ([S.C. R. Civ. P. 6\(b\)](#)).

## By Court Action

For cause shown, the court may, with or without notice or written motion, extend the period when an answer must be filed if the request is made before the expiration of the period originally prescribed or extended ([S.C. R. Civ. P. 6\(b\)](#)).

## By Motion

A defendant may file a motion for an extension of time to respond to the complaint. The motion must show good cause for the extension to be granted. ([S.C. R. Civ. P. 6\(b\)](#).)

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

South Carolina allows the following responses to a complaint:

- An answer.
- A motion.

([S.C. R. Civ. P. 7\(a\)](#) and [12\(b\)](#).)

South Carolina has abolished demurrers, pleas, and exceptions for insufficiency ([S.C. R. Civ. P. 7\(c\)](#)).

## 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?*

## Motion to Dismiss

### Preliminary Requirements

There are no preliminary requirements for a motion to dismiss.

### Grounds Asserted

A motion to dismiss may assert the following as grounds for dismissal:

- Lack of **jurisdiction over the subject matter**.
- Lack of **jurisdiction over the person**.
- Improper **venue**.
- Insufficiency of process.
- Insufficiency of service of process.
- Failure to state facts sufficient to constitute a cause of action.
- Failure to join an indispensable party.
- Another action is pending between the same parties for the same claim.

(S.C. R. Civ. P. 12(b).)

### Waiver

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

- Lack of personal jurisdiction.
- Improper venue.
- Insufficiency of process.
- Insufficiency of service of process.
- Pendency of another action between the same parties arising out of the same claim.

(S.C. R. Civ. P. 12(h)(1).)

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

- Failure to state facts on which relief can be granted.
- Failure to join an indispensable party.

- Failure to state a legal defense to a claim.
- Lack of subject matter jurisdiction.

(S.C. R. Civ. P. 12(h)(2), (3).)

### Required Papers

A motion to dismiss must:

- Be in writing.
- State with particularity the grounds for the motion.
- Set out the relief or order sought.

(S.C. R. Civ. P. 7(b).)

South Carolina does not require that a memorandum of law be submitted in support of the motion.

However, if the motion is supported by an affidavit, the affidavit must be served with the motion (S.C. R. Civ. P. 6(d)).

### Outside Evidence

A motion to dismiss for failure to state a cause of action must be based solely on the allegations set out in the complaint (*Gressette v. SCE&G*, 635 S.E.2d 538 (S.C. 2006)). A document attached as an exhibit to a pleading is part of the pleading (*Brazell v. Windsor*, 682 S.E.2d 824, 826 (S.C. 2009) and S.C. R. Civ. P. 10(c)).

If a defendant moves to dismiss the complaint for failure to state facts sufficient to constitute a cause of action and includes matters outside the pleading, the court will treat the motion as a motion for summary judgment (S.C. R. Civ. P. 12(b)).

### Response by Plaintiffs

The South Carolina Rules of Civil Procedure do not require any response from the plaintiff. Plaintiffs in South Carolina, however, often submit a written response before or at the hearing on the motion.

Best practice is to check with the hearing judge's chambers for any preferences regarding the submission of responses to motions or supporting memoranda.

### Reply by Defendants

The South Carolina Rules of Civil Procedure do not require a reply to a response to a motion to dismiss. Defendants, however, may choose to file a reply in some circumstances.

### Oral Argument

Generally, the trial court hears oral argument before deciding motions to dismiss. These motions must be heard and determined before the trial unless the court orders the hearing and determination be deferred until trial ([S.C. R. Civ. P. 12\(d\)](#)).

Except for **ex parte** motions, the motion and notice must be served at least ten days before the time specified for the hearing ([S.C. R. Civ. P. 6\(d\)](#)).

### **Stay of Discovery**

A pre-answer motion does not stay discovery. The party may, however, request a stay.

### **Serving an Answer or Other Response**

If the court denies the motion to dismiss or postpones its disposition until the trial on the merits, the answer must be served within 15 days after notice of the court's action ([S.C. R. Civ. P. 12\(a\)](#)).

### **Motion for More Definite Statement**

#### **Preliminary Requirements**

There are no preliminary requirements for a motion for a more definite statement. Best practice, however, is to contact opposing counsel and request an amended complaint before filing a motion for a more definite statement.

#### **Grounds Asserted**

If a complaint is so vague or ambiguous that a party cannot reasonably be required to frame a response, the party may move for more definite statement. The motion must specify the defects complained of and the details desired. ([S.C. R. Civ. P. 12\(e\)](#).)

#### **Waiver**

The service of an answer waives the defendant's right to make a motion for a more definite statement.

#### **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 Plaintiffs**

The South Carolina Rules of Civil Procedure do not require any response from the plaintiff. Plaintiffs in South Carolina, however, often submit a written response before or at the hearing on the motion.

If the court grants the motion, the plaintiff has 15 days to serve an amended complaint or the court may strike the pleading ([S.C. R. Civ. P. 12\(e\)](#)).

### **Reply by Defendants**

The South Carolina Rules of Civil Procedure do not require a reply to a response to a motion for a more definite statement. Plaintiffs, however, may choose to file a reply in some circumstances.

### **Oral Argument**

Generally, the trial court hears oral argument before deciding motions made under [Rule 12 of the South Carolina Rules of Civil Procedure](#).

### **Stay of Discovery**

A pre-answer motion does not stay discovery.

### **Serving an Answer or Other Response**

If the court denies the motion for a more definite statement, or postpones its decision until trial, the defendant must file its answer within 15 days after notice of the court's action ([S.C. R. Civ. P. 12\(a\)](#)).

### **Motion to Strike**

#### **Preliminary Requirements**

There are no preliminary requirements for a motion to strike.

#### **Grounds Asserted**

The court may strike from the complaint any:

- Insufficient defenses.
- Matters that are:
  - redundant;
  - immaterial;
  - impertinent; or
  - scandalous.

([S.C. R. Civ. P. 12\(f\)](#).)

### **Waiver**

The service of an answer waives the defendant's right to make a motion to strike.

### 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 Plaintiffs

The South Carolina Rules of Civil Procedure do not require any response from the plaintiff. Plaintiffs in South Carolina, however, often submit a written response before or at the hearing on the motion.

A responsive pleading, if necessary, must be served within 15 days after notice of the court's action on a motion to strike ([S.C. R. Civ. P. 12\(a\)](#)).

### Reply by Defendants

The South Carolina Rules of Civil Procedure do not require a reply to a response to a motion to strike. Defendants, however, may choose to file a reply in some circumstances.

### Oral Argument

Generally, the trial court hears oral argument before deciding motions made under [Rule 12 of the South Carolina Rules of Civil Procedure](#).

### Stay of Discovery

A pre-answer motion does not stay discovery.

### Serving an Answer or Other Response

If the court denies the motion to strike, or postpones its decision until trial, the defendant must file its answer within 15 days after notice of the court's action ([S.C. R. Civ. P. 12\(a\)](#)).

## Answering the Complaint

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

### Required Contents

#### Caption

In South Carolina, every pleading must have a caption listing:

- The name of the state and county.
- The name of the court.
- The title of the action.
- The file number.
- A designation of the pleading being submitted.

In the summons and complaint, the title of the action must include the names of all parties. In other pleadings, however, it is sufficient to state the name of the first party on each side with an appropriate indication of other parties. (S.C. R. Civ. P. 10(a).)

### Denials and Admissions

A party must set out in short and plain terms the facts constituting its defenses to the causes of action alleged in the complaint. The answer must respond to each allegation in the complaint with one or more of the following:

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

(S.C. R. Civ. P. 8(b).)

South Carolina does not allow general denials unless the pleader can controvert every allegation of the complaint, including the jurisdictional allegations. When denying only a part of an allegation, the defendant should specify the portion that is true and deny the remainder. (S.C. R. Civ. P. 8(b).)

### Defenses

The answer must contain any **affirmative defenses** that the defendant wants to raise. Affirmative defenses are waived if they are not pled in the answer. The following is a non-exclusive list of common affirmative defenses:

- Accord and satisfaction.
- **Arbitration** and award.
- Assumption of risk.
- Condonation.
- Contributory negligence.
- **Discharge** in bankruptcy.
- Duress.



- Fraud.
- Illegality.
- Injury by fellow servant.
- **Laches.**
- **License.**
- Misrepresentation.
- Mistake.
- Payment.
- *Plene administravit* or the administration of the estate is closed.
- Recrimination.
- **Release.**
- **Res judicata.**
- **Statute of frauds.**
- Statute of limitations.
- Waiver.
- Any other matter constituting an avoidance or affirmative defense.

[\(S.C. R. Civ. P. 8\(c\).\)](#)

### **Signature Block**

In South Carolina, every pleading, motion, and other paper of a party represented by an attorney must be signed by at least one attorney of record and include the attorney's address and telephone number. A party who is not represented by an attorney must sign his pleading, motion, or other paper and state his address. [\(S.C. R. Civ. P. 11\(a\).\)](#)

South Carolina generally does not require that pleadings be verified (S.C. R. Civ. P. 11(a)).

### **Compulsory Counterclaims**

The answer must contain counterclaims arising out of the same transaction or occurrence that is the subject matter of the lawsuit, unless the claim requires the presence of a third party over whom the court cannot acquire jurisdiction [\(S.C. R. Civ. P. 13\(a\)\).](#)

### **Optional Contents**

#### **Crossclaims, Permissive Counterclaims, and Third-Party Claims**

A party may assert any of the following in its answer:

- Crossclaims.
- Permissive counterclaims.
- Third-party claims.

([S.C. R. Civ. P. 13\(b\)](#), (g) and 14(a).)

## Exhibits

An answer may contain exhibits, which are deemed part of the answer for all purposes ([S.C. R. Civ. P. 10\(c\)](#)).

## Jury Demand

Any party may demand a jury trial by serving the other parties with a written demand. The written demand may be served at any time after the commencement of the action but not later than ten days after service of the last pleading directed to this issue. ([S.C. R. Civ. P. 38\(b\)](#).)

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

Unless a rule or a statute specifically states otherwise, South Carolina does not require that pleadings be verified or be accompanied by an affidavit ([S.C. R. Civ. P. 11\(a\)](#)). For example, [Rule 9\(i\) of the South Carolina Rules of Civil Procedure](#) provides the rules for verification for actions on an account.

## 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 in South Carolina may amend its answer once without seeking leave of the plaintiff or the court either:

- At any time before a responsive pleading is served.
- Within 30 days after a responsive pleading is served.

If the pleading is one to which no responsive pleading is required and the action has not been placed on the trial roster, the party may amend it at any time within 30 days after it is served. ([S.C. R. Civ. P. 15\(a\)](#).)

## Grounds for Amendment

There are no grounds required for an amendment as of right.

## Amendment by Motion or by Written Consent of Adverse Party

### Time to Amend

The court may grant a defendant leave to amend at any time. The parties may also agree by written consent to amend at any time. ([S.C. R. Civ. P. 15\(a\)](#).)

## Grounds for Amendment

There are no grounds required to amend through written consent of the parties.

When a court considers a motion to amend, leave must be freely given when justice so requires and does not prejudice any other party ([S.C. R. Civ. P. 15\(a\)](#)).

## 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?*

A plaintiff may file a reply to affirmative defenses raised in the answer ([S.C. R. Civ. P. 8\(c\)](#)). There are no grounds required to reply to affirmative defenses. There is also no specific time limit for filing such a reply. Best practice is to submit a reply within 30 days of service of the answer.

## 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:

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

(S.C. R. Civ. P. 13(b), (g) and 14(a).)

## Crossclaims

Crossclaims are brought against co-defendants and can include any claim:

- Arising out of the same transaction or occurrence that is the subject matter of the original action or a counterclaim.
- Relating to any property that is the subject matter of the original action.

(S.C. R. Civ. P. 13(b).)

## Counterclaims

Counterclaims can be either compulsory or permissive.

Compulsory counterclaims arise out of the same transaction or occurrence that is the subject matter of the lawsuit (S.C. R. Civ. P. 13(a)).

Permissive counterclaims do not arise out of the transaction or occurrence that is the subject matter of the plaintiff's claim (S.C. R. Civ. P. 13(b)).

## Third-Party Claims

Third-party claims are brought against a person not a party to the action who is or may be liable to the defendant for all or part of the of the plaintiff's claim against the defendant (S.C. R. Civ. P. 14(a)).

## Mandatory Claims for Defendant

The answer must contain any compulsory counterclaims unless the claim requires the presence of a third party over whom the court cannot acquire jurisdiction (S.C. R. Civ. P. 13(a)).

The defendant need not state the claim, however, if, when the action was commenced, either:

- The claim was the subject of another pending action.
- The opposing party sued on its claim by attachment or other process that did not establish personal jurisdiction over the defendant on that claim and the defendant does not assert any counterclaim under [Rule](#)

## 13 of the South Carolina Rules of Civil Procedure.

(S.C. R. Civ. P. 13(a).)

### When and How Claims are Asserted

Counterclaims and crossclaims are asserted in the answer.

The defendant may serve a third-party complaint at any time after commencement of the action. The defendant does not need to obtain leave of court before service if the defendant files its third-party complaint within ten days after the defendant serves its original answer. ([S.C. R. Civ. P. 14\(a\)](#).)

A pleading which sets out a cause of action, whether an original complaint, counterclaim, crossclaim, or third-party claim, must include:

- A short and plain statement of the grounds including facts and statutes on which the court's jurisdiction depends, unless the court already has jurisdiction to support it.
- A short and plain statement of the facts showing that the pleader is entitled to relief.
- A prayer or demand for judgment for relief.

([S.C. R. Civ. P. 8\(a\)](#).)

### Other Parties' Response to Defendant's Claims

#### Crossclaims

A crossclaim defendant responds to the crossclaims by serving an answer or motion under [Rule 12 of the South Carolina Rules of Civil Procedure](#). The crossclaim defendant must serve its answer or motion within 30 days of service of the crossclaim. ([S.C. R. Civ. P. 12\(a\)](#).)

#### Counterclaims

The plaintiff must serve a reply to a counterclaim within 30 days after service of the answer ([S.C. R. Civ. P. 12\(a\)](#)).

#### Third-Party Claims

A third-party defendant must respond to the third-party complaint and make its defenses, counterclaims, and crossclaims in the same manner as a defendant to the original complaint ([S.C. R. Civ. P. 12](#), [13](#), and [14\(a\)](#)).

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