

# Rule 1.140 Defenses

## **(a) When Presented.**

**(1)** Unless a different time is prescribed in a statute of Florida, a defendant must serve an answer within 20 days after service of original process and the initial pleading on the defendant, or not later than the date fixed in a notice by publication. A party served with a pleading stating a crossclaim against that party must serve an answer to it within 20 days after service on that party. The plaintiff must serve an answer to a counterclaim within 20 days after service of the counterclaim. If a reply is required, the reply must be served within 20 days after service of the answer.

**(2) (A)** Except when sued pursuant to section 768.28, Florida Statutes, the state of Florida, an agency of the state, or an officer or employee of the state sued in an official capacity must serve an answer to the complaint or crossclaim, or a reply to a counterclaim, within 40 days after service.

**(B)** When sued pursuant to section 768.28, Florida Statutes, the Department of Financial Services or the defendant state agency has 30 days from the date of service within which to serve an answer to the complaint or crossclaim or a reply to a counterclaim.

**(3)** The service of a motion under this rule, except a motion for judgment on the pleadings or a motion to strike under subdivision (f), alters these periods of time so that if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleadings must be served within 10 days after the filing of the court's order or, if the court grants a motion for a more definite statement, the responsive pleadings must be served within 10 days after service of the more definite statement unless a different time is fixed by the court in either case.

**(4)** If the court permits or requires an amended or responsive pleading or a more definite statement, the pleading or statement must be served within 10 days after the filing of the court's order unless a different time is fixed by the court. Responses to the pleadings or statements must be served within 10 days of service of the pleadings or statements.

**(b) How Presented.** Every defense in law or fact to a claim for relief in a pleading must be asserted in the responsive pleading, if one is required, but the following defenses may be made by motion at the option of the pleader: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a cause of action, and (7) failure to join indispensable parties. A motion making any of these defenses must be made before pleading if a further pleading is permitted. The grounds on which any of the enumerated defenses are based and the

substantial matters of law intended to be argued must be stated specifically and with particularity in the responsive pleading or motion. Any ground not stated must be deemed to be waived except any ground showing that the court lacks jurisdiction of the subject matter may be made at any time. No defense or objection is waived by being joined with other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert any defense in law or fact to that claim for relief at the trial, except that the objection of failure to state a legal defense in an answer or reply must be asserted by motion to strike the defense within 20 days after service of the answer or reply.

**(c) Motion for Judgment on the Pleadings.** After the pleadings are closed, but within such time as not to delay the trial, any party may move for judgment on the pleadings.

**(d) Preliminary Hearings.** The defenses 1 to 7 in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment in subdivision (c) of this rule must be heard and determined before trial on application of any party unless the court orders that the hearing and determination must be deferred until the trial.

**(e) Motion for More Definite Statement.** 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, that party may move for a more definite statement before interposing a responsive pleading. The motion must point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after the filing of the order or such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

**(f) Motion to Strike.** A party may move to strike or the court may strike redundant, immaterial, impertinent, or scandalous matter from any pleading at any time.

**(g) Consolidation of Defenses.** A party who makes a motion under this rule may join with it the other motions herein provided for and then available to that party. If a party makes a motion under this rule but omits from it any defenses or objections then available to that party that this rule permits to be raised by motion, that party shall not thereafter make a motion based on any of the defenses or objections omitted, except as provided in subdivision (h)(2) of this rule.

**(h) Waiver of Defenses.**

**(1)** A party waives all defenses and objections that the party does not present either by motion under subdivisions (b), (e), or (f) of this rule or, if the party has made no motion, in a responsive pleading except as provided in subdivision (h)(2).

**(2)** The defenses of failure to state a cause of action or a legal defense or to join an

indispensable party may be raised by motion for judgment on the pleadings or at the trial on the merits in addition to being raised either in a motion under subdivision (b) or in the answer or reply. The defense of lack of jurisdiction of the subject matter may be raised at any time.