

A plaintiff from State A sued a defendant from State B in a federal court in State B. The plaintiff claims that the defendant breached a provision of their contract, which resulted in \$100,000 in damages. The defendant filed and served an answer denying liability.

Three months later, the plaintiff stopped performing his duties under the contract. The defendant would now like to assert a claim against the plaintiff for breach of contract for \$80,000.

What is the best way for the defendant to pursue her claim?

- A. File a new suit in the same court.
- B. File a reply.
- C. File an amended answer as a matter of course.
- D. Move for leave to file a supplemental answer.

Explanation:

Amended v. Supplemental pleading

(FRCP 15)

Amended pleading	<ul style="list-style-type: none">• Asserts transaction, occurrence, or event that arose <i>before</i> pleading to be amended was filed• Amend by right, with opposing party's written consent, or by leave of court• Supersedes pleading to be amended
Supplemental pleading	<ul style="list-style-type: none">• Asserts transaction, occurrence, or event that arose <i>after</i> pleading to be supplemented was filed• Supplement by leave of court• Does not supersede pleading to be supplemented

FRCP = Federal Rule of Civil Procedure

Parties can modify their **pleadings** in two ways:

- **Amended pleadings** – to set forth a transaction, occurrence, or event that **arose before** the pleading to be amended was filed
- **Supplemental pleadings** – to set forth a transaction, occurrence, or event that **arose after** the pleading to be supplemented was filed

Here, the plaintiff allegedly breached his contractual duties three months *after* the defendant filed and served her answer. Therefore, the best way for the defendant to pursue a **counterclaim** for breach of contract is to move for leave (ie, permission) to file a supplemental answer that sets forth that claim. The court will then determine whether to allow the supplemental pleading.

(Choice A) The defendant *could* file a new suit against the plaintiff in the same court, but this would likely be more time-consuming and expensive than filing a supplemental answer in the pending action. Therefore, this is not the best way for the defendant to pursue her breach-of-contract claim.

(Choice B) Filing a reply is not the best way for the *defendant* to assert her counterclaim against the plaintiff. That is because a reply is typically a response made by the *plaintiff* to the defendant's answer and is permitted only when the court orders one (not seen here).*

*A reply can also be a response by the defendant to a plaintiff's counterclaim answer, a third-party answer, or a crossclaim answer—none of which is seen here.

(Choice C) An amended answer would have been proper had the defendant's breach-of-contract claim arisen *before* she filed her original answer. And even if it had, she could not have **amended** her answer as a matter of course—ie, without the court's permission or the plaintiff's written consent. That is because more than 21 days have elapsed since her answer was served.

Educational objective:

An amended pleading is used to set forth a transaction, occurrence, or event that arose *before* the pleading to be amended was filed. In contrast, a supplemental pleading is used to set forth a transaction, occurrence, or event that arose *after* the pleading to be supplemented was filed.

References

- Fed. R. Civ. P. 15 (amended and supplemental pleadings).
- 61A Am. Jur. 2d Pleading § 669 (2019) (explaining the difference between an amended and supplemental pleading).