

An injured pedestrian filed a diversity action in federal court against a truck driver. The truck driver filed an answer in which he denied liability and asserted an affirmative defense that the pedestrian was contributorily negligent. The truck driver did not assert any counterclaims against the pedestrian in his answer. Thirty days later, the pedestrian seeks to file a pleading to respond to the allegations in the truck driver's answer. The court has not yet issued any orders in the case.

May the pedestrian file a response?

- A. No, because the pedestrian did not file a reply within 14 days after the answer was filed.
- B. No, because the truck driver did not assert a counterclaim and the court did not order a reply.
- C. Yes, because due process allows the pedestrian to file a reply.
- D. Yes, because the truck driver asserted an affirmative defense.

Explanation:

Types of pleadings

(FRCP 7)

Complaint	Plaintiff's assertion of cause of action, court's jurisdiction & demand for relief
Answer	Response to complaint, counterclaim, crossclaim, or third-party complaint that asserts admissions, denials, affirmative defenses & other claims
Third-party complaint	Party's assertion that nonparty is liable for damages party may owe in original suit based on legal theory (eg, indemnity, contribution)
Reply	Response to answer (only required if court ordered)

FRCP = Federal Rule of Civil Procedure.

Federal Rule of Civil Procedure 7(a) lists the **pleadings allowed** in federal court. The most common pleadings are the plaintiff's complaint against the defendant and the defendant's answer in response to that complaint. A **plaintiff** may also **respond** to the defendant's answer by **filing**:

- an **answer**, but only if the defendant asserted a counterclaim *or*
- a **reply**, but only in the rare instance that the **court orders** it.

Here, the truck driver did not assert a counterclaim in his answer, and the court did not order a reply. Therefore, the pedestrian may not respond to the allegations in the truck driver's answer. Instead, the pedestrian's nonresponse is automatically treated as a denial of the affirmative defense alleged in the truck driver's answer.

(Choice A) Had the court ordered a reply, the pedestrian would have needed to serve it within 21 days after being served with the court order—not within 14 days after the answer was filed.

(Choice C) Due process does not allow the pedestrian to file a reply. The pedestrian may only do so pursuant to a court order (not seen here).

(Choice D) The truck driver asserted an affirmative defense (not a counterclaim) alleging that the pedestrian was contributorily negligent. As a result, the pedestrian may not file an answer to respond to the affirmative defense.

Educational objective:

A plaintiff may respond to a defendant's answer by filing (1) an answer if the defendant asserted a counterclaim or (2) a reply if the court orders it.

References

- Fed. R. Civ. P. 7(a) (pleadings).
- 61A Am. Jur. 2d Pleading § 365 (2019) (explaining the permissibility of a reply in federal court).

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