

A retailer brought a federal diversity action against an architect, alleging fraudulent misrepresentations in the architect's design of the retailer's store. The complaint did not include a jury demand.

One week later, the architect timely moved to dismiss the action for failure to state a claim; he did not file an answer. Twenty days after being served with the motion, the retailer filed and served an amended complaint that added a defamation claim based on the architect's recent statements about the retailer in a local newspaper. In the amended complaint, the retailer demanded a jury on both claims.

Has the retailer properly demanded a jury trial?

- A. No, because the retailer filed the demand more than 14 days after service of the motion to dismiss.
- B. No, because the retailer filed the demand more than 14 days after service of the original complaint.
- C. Yes, but on the defamation claim only, because the original complaint did not contain a jury demand.
- D. Yes, on both claims, because the architect had not answered the original complaint when the retailer filed the amended complaint with the jury demand.

Explanation:

The retailer's original complaint did not demand a jury trial. But under Federal Rule of Civil Procedure (FRCP) 15, a party may **amend its original pleading** *once* as a matter of course (ie, without the court's permission) within **21 days after**:

- serving the original pleading (eg, complaint) *or*
- being served with a responsive pleading (eg, answer) or **motion** under [FRCP 12\(b\), \(e\), or \(f\)](#) (eg, motion to dismiss for **failure to state a claim**)—whichever occurs first.

The retailer amended its complaint more than 21 days after serving the original complaint. However, the amendment occurred within 21 days of the retailer being served with the architect's motion to dismiss for failure to state a claim. Therefore, the amendment—which added a defamation claim and jury trial demand—was timely and permissible.

And under FRCP 38, a written **jury trial demand** on any triable jury issue is **timely** when the demand is:

- served on the other parties **no later than 14 days after the last pleading** directed to the issue is served (**Choices A & B**) *and*
- filed with the court within a reasonable time after service of the jury trial demand.

An answer is typically the last pleading directed at the triable jury issue. Since the architect had not filed an answer when the retailer filed and served the amended complaint that demanded a jury trial, the demand was proper. Therefore, the retailer is entitled to a jury on both claims (**Choice C**).

Educational objective:

A party may demand a jury trial on any triable jury issue by (1) serving the other parties with a written jury demand no later than 14 days after the last pleading directed to the issue is served and (2) filing the demand with the court within a reasonable time after service. An answer is typically the last pleading directed at the triable jury issue.

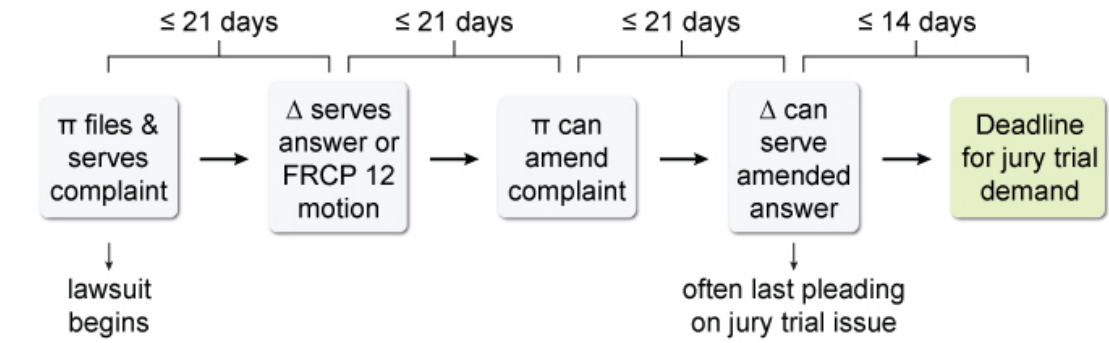
References

- Fed. R. Civ. P. 15(a) (amended pleadings).
- Fed. R. Civ. P. 38 (demand for a jury trial).

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Jury trial demand timeline



π = plaintiff; Δ = defendant

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