Baldwin's Ohio Revised Code Annotated
Rules of Civil Procedure (Refs & Annos)
Title III. Pleadings and Motions

Civ. R. Rule 8

Civ R 8 General rules of pleading

Currentness

(A) Claims for Relief. A pleading that sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the claim showing that the party is entitled to relief, and (2) a demand for judgment for the relief to which the party claims to be entitled. If the party seeks more than twenty-five thousand dollars, the party shall so state in the pleading but shall not specify in the demand for judgment the amount of recovery sought, unless the claim is based upon an instrument required to be attached pursuant to Civ. R. 10. At any time after the pleading is filed and served, any party from whom monetary recovery is sought may request in writing that the party seeking recovery provide the requesting party a written statement of the amount of recovery sought. Upon motion, the court shall require the party to respond to the request. Relief in the alternative or of several different types may be demanded.

(B) Defenses; Form of Denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part of a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make the denials as specific denials or designated averments or paragraphs, or the pleader may generally deny all the averments except the designated averments or paragraphs as the pleader expressly admits; but, when the pleader does intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Civ. R. 11.

(C) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, want of consideration for a negotiable instrument, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court, if justice so requires, shall treat the pleading as if there had been a proper designation.

(D) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(E) Pleading to Be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or equitable grounds. All statements shall be made subject to the obligations set forth in Rule 11.

(F) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

(G) Pleadings Shall Not Be Read or Submitted. Pleadings shall not be read or submitted to the jury, except insofar as a pleading or portion thereof is used in evidence.

(H) Disclosure of Minority or Incompetency. Every pleading or motion made by or on behalf of a minor or an incompetent shall set forth such fact unless the fact of minority or incompetency has been disclosed in a prior pleading or motion in the same action or proceeding.

CREDIT(S)
(Adopted eff. 7-1-70; amended eff. 7-1-94)

STAFF NOTES
1994:

Rule 8(A) Claims for relief

In 1987, the General Assembly enacted R.C. 2309.01, which created complex rules for plaintiffs and defendants to follow when the former prayed for damage relief in tort cases. Recently, the Supreme Court held R.C. 2309.01 to be unconstitutional, as it was in conflict with Civ. R. 8(A). *Rockey v. 84 Lumber Co.* (1993), 66 Ohio St.3d 221, 611 N.E. 2d 789. Three Justices, in a concurring opinion in *Rockey*, suggested that Civ.R. 54(C) be amended to incorporate some of the provisions of the statute.

The amendment to Civ. R. 8(A) is responsive to this suggestion as well as to some of the policy concerns that lead to the enactment of R.C. 2309.01. This rule, rather than Civ. R. 54(C), is a better place for the amendment, since it was the focus of the *Rockey* decision and Civ. R. 8, rather than Civ. R. 54, explicitly sets forth the information required in a complaint. The concerns that lead to enactment of R.C. 2309.01 related to misconceptions about the civil justice system generated by media reports of large amounts of damages sought in complaints, particularly in tort cases. Stanton Darling, Ohio Civil Justice Reform Act 1987, at 92 (1987). In his concurring opinion in *Rockey*, Justice Pfeifer suggested that the statute "had a worthy purpose" that could be accommodated by placing limits on the damage request in cases exceeding $25,000, and then allowing the defendant to request a more definite amount, if it desired. 66 Ohio St. 3d at 227. The amendment follows Justice Pfeifer's suggestion. Unlike R.C. 2309.01, however, it is not limited to tort cases, since (a) it is not clear that the concern over damage requests in prayers for relief is confined to tort cases, (b) it obviates the necessity of deciding what is a "tort" case and what it [sic.] not, and (c) the Civil Rules in general are trans-substantive. The amendment also excludes account cases, governed by Civ. R. 10, from its scope.

Finally, it should be noted that the amendment does not set a trap for the unwary. It might be argued that given the requirements of the amendment, a plaintiff may inadvertently list "$25,000" in the prayer when "$25,000 or more" was truly intended. Two problems might be presented. The trial might begin with plaintiff having forgotten to amend the complaint. Or, a defendant might then intentionally default so it would only have to pay the lower amount, given the first sentence of Civ. R. 54(C).

While perhaps placing the posited plaintiff in an unfortunate situation, these possibilities are clearly avoidable. With regard to the first possibility, a concurrent amendment to Civ. R. 54(C) permits amendments for relief at any time to be governed by Civ.

R. 15, which in theory would permit an amendment up to or during the trial. With regard to the second possibility, Civ. R. 8(A), and the first sentence of Civ. R. 54(C), protects defendants by permitting them to make a rational decision whether or not to litigate the case based on the relief sought. 10 Charles Alan Wright, et al., Federal Practice and Procedure sec. 2663, pp. 140-41 (1983). The hypothetical plaintiff has to move for a default judgment, and in any event could seek additional relief even after a default by defendant. See the concurrent 1994 amendment to Civ. R. 5(A). Moreover, a plaintiff who successfully moved for a default judgment could seek relief in the form of a motion under Civ. R. 55(C) and 60(B). Id., p. 145. If that relief is permitted, then plaintiff could replead and the process would start anew.

The amendment should have little, if any, impact on the operation of courts of limited monetary subject-matter jurisdiction, i.e., R.C. 1901.17 (municipal courts); R.C. 1907.03 (county courts); cf. Civ. R. 1(C)(4) (excludes small claims courts from coverage of Civil Rules). While it appears to be the usual practice to determine subject-matter jurisdiction in such courts on the basis of the pleadings, e.g., *State ex rel. Natl. Empl. Benefit Serv., Inc. v. Cuyahoga Cty. Court of Common Pleas* (1990), 49 Ohio St. 3d 49, 550 N.E. 2d 941; cf. *Jenkins v. Eberhart*(1991), 71 Ohio App. 3d 351, 594 N.E. 2d 29 (court may go outside pleadings to resolve motion under Civ. R. 12(B)(1)), if counsel follow the language of the amendment in preparing a pleading which does not specify the amount of recovery sought, it will presumably be clear that more than $25,000 is sought. Likewise, the amendment will apply in other specialized courts, cf. Civ. R. 73 & 75, but since it concerns only the "amount of recovery sought," the full panoply of equitable relief available in such courts would be unaffected.

Rule 8(B) Defenses; Form of denials

Masculine references are replaced by gender-neutral language and the style used for a rule reference is revised. No substantive change is intended.

1. Claims for relief

2. Defenses; form of denials

3. Affirmative defenses

4. Effect of failure to deny

5. Pleading to be concise and direct; consistency

6. Construction of pleadings

7. Pleadings shall not be read or submitted

8. Disclosure of minority or incompetency

1. Claims for relief

1970:

In principle, Rule 8(A) is based on Federal Rule 8(a). Rule 8(A), however, does not require a jurisdictional statement in the original pleading (in a federal court it is necessary for the plaintiff to state in his complaint whether he had invoked federal jurisdiction by way of diversity or the raising of a federal question).

Rule 8(A) denominates the action as a "claim for relief" rather than as a "cause of action." In addition, throughout the rules generally, the original pleading is denominated a "complaint" rather than a "petition." The language change (cause of action

becomes claim for relief and petition becomes complaint) is purposeful; the language change indicates that "rule" pleading is a departure from hidebound "fact" pleading. The rules seek to free pleading from the interminable battles over the form of the pleadings under a Field Code.

In Ohio under the code a "petition" (§ 2309.02, R.C.) must contain "a statement of facts constituting a cause of action in ordinary and concise language" (§ 2309.04, R.C.). Under a "fact" pleading system the pleader, in pleading the "facts… in ordinary and concise language," must steer a narrow, indefinable course between pleading "conclusions of law" on the one hand and "evidence" on the other in order to escape a demurrer, a motion to strike, or a motion to make definite and certain, the form of the language being all important. The drafters of the Field Code thought that pleading under the code should be simple, rather than technical. The simplified forms which accompanied some of the original codes and in Ohio the simplified forms in Swan's Pleadings and Precedents (1867) so indicate. But at the turn of the century the "technical" or "railroad pleading era" set in with *New York & St. Louis R. R. v. Kistler*, 66 Ohio St. 326 (1902). That case, for example, initiated the "specifications of negligence" doctrine wherein in a petition the pleader may not use such words as "negligently and carelessly" or "immoderate and dangerous rate of speed" (such words being conclusions of law) unless such words are accompanied by a list of "facts" setting forth in specific detail the nature of the fault involved. Whether that kind of pleading is "ordinary and concise language" is a continuing, if meaningless, debate. See, *Grieser, Plaintiff's Pleading*, Personal Injury Litigation in Ohio 180 (1965).

Under Rule 8(A) much less emphasis is placed on the form of the language in the complaint, distinctions between "facts," "conclusions of law," and "evidence" being minimized so long as the operative grounds underlying the claim are set forth so as to give adequate notice of the nature of the action. See, *Conley v. Gibson*, 355 U.S. 41 at 47, 48 (1957).

An example, borrowed from the federal rules system, will illustrate the principles of simplified pleading under Rule 8(A).

The main body of the complaint for a negligence action reads as follows (Federal Rules of Civil Procedure, Appendix of Forms, Form 9):

On June 1, 1936 in a public highway called Boylston Street in Boston, Massachusetts, defendant negligently drove a motor vehicle against plaintiff who was then crossing said highway.

As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars and costs.

The operative grounds of the negligence claim meeting minimum pleading standards have been set forth. Thus, the complaint indicates that defendant proximately violated a duty owing when he negligently ran into the plaintiff in a public highway and injured plaintiff. Inasmuch as the operative grounds of the claim have been set forth, there is no argument about whether the form of the language contains "conclusions of law" or "evidence" or "facts." Defendant under Rule 12(E) can move for a more definite statement only if the pleading is so vague that he cannot respond. But defendant may utilize other devices provided by the rules: he may resort to discovery (Rules 26 through 37); he may, if the pleadings are a sham, resort to summary judgment (Rule 56); and he may derive procedural benefits from the pretrial procedure provided by Rule 16.

The Form 9 pleading above is a far cry from the "specifications of negligence" doctrine initiated by the *Kistler* case, *supra*, but it is quite similar to the pre- *Kistler* simplified code pleading to be found in the Appendix of Forms in Swan's Pleadings and Precedents (1867):

Plaintiff says that on _____ the defendant being the owner of a stage coach, the plaintiff took passage therein at _____ to be carried to _____ that the stage was upset by the carelessness of the driver in the service of the defendant, and the plaintiff thereby

had his arm broken, and was otherwise injured, in consequence of which he had to expend dollars for medical services and was otherwise damaged; and says he has sustained damage to the amount of _____ dollars.

Whereupon he asks judgment for _____ dollars.

In short, simplified pleading under Rule 8(A) merely carries the pleader back more than a hundred years to the simplified pleading originally intended by the drafters of the Field Codes. Guides to pleading under Rule 8 may be found in the Appendix of Forms as authorized by Rule 84. See, Ohio Form 8, Complaint for Negligence.

A note of caution to the pleader should be added. Simplified pleading under Rule 8 does not mean that the pleader may ignore the operative grounds underlying a claim for relief. Thus, a pleading which might read "Plaintiff says that defendant owes plaintiff $1,000.00. Wherefore plaintiff demands judgment against defendant in the sum of $1,000.00 and costs," would be subject to a motion to dismiss for failure to state a claim for relief. Does such pleading sound in contract? Tort? What are the operative grounds underlying the claim? In other words, under Rule 8(A) the pleader has failed to state "a short and plain statement of the claim showing that the pleader is entitled to relief."

2. Defenses; form of denials

1970:

Rule 8(B), a basic provision governing defensive pleading, sets forth standards for the form of denials. Rule 8(B) supersedes § 2309.13(A), R.C., which, along with the specific denial, has unqualifiedly permitted a general denial. Rule 8(B) provides that a general denial should not be served unless the pleader intends in good faith to controvert all the averments of the preceding pleading. Therefore, in light of the fact that a defendant is seldom in a position to deny in good faith all allegations in a plaintiff's pleading, defendant under Rule 8(B) should resort to the specific denial to designated averments or paragraphs in a plaintiff's pleading or state as to a specific averment that defendant is without knowledge or information sufficient to form a belief as to the truth of an averment or admit in whole or in part the truth of a specific averment. Note under Rule 8(D) that if a responsive pleading is required (i.e., an answer to a complaint), averments in the complaint are admitted when not denied. Rule 8(B) does not substantially change Ohio practice in the use of the denial other than to require, more often than not, that a denial be a specific denial rather than a general denial. By generally requiring the specific denial, Rule 8(B) tends to sharpen issues at the answer stage of pleading.

3. Affirmative defenses

1970:

Rule 8(C) sets forth a nonexhaustive list of affirmative defenses. The rule supersedes § 2309.13(B), R.C. Under the rule, as under the code, an affirmative defense serves the function of avoiding surprise. The rule will change Ohio practice to a slight extent by requiring defendant to plead contributory negligence and assumption of the risk as affirmative defenses. Under the code Ohio cases have held that the defenses of contributory negligence and assumption of the risk, although these defenses may be pleaded affirmatively, may be raised without affirmative pleading. See, *Valencic v. Akron & Barberton Belt Rd. Co.*, 133 Ohio St. 287 (1938), and *Centrello v. Basky*, 164 Ohio St. 41 (1955).

Under the equivalent Federal Rule 8(c) the cases have held that an affirmative defense may be pleaded in general terms and is adequate so long as the plaintiff receives fair notice of the defense.

The clause in Rule 8(C) which sets up want of consideration for a negotiable instrument as an affirmative defense conforms Rule 8(C) to § 1303.44, R.C., which is also part of the Uniform Commercial Code.

4. Effect of failure to deny

1970:

On occasion, through inadvertence, a defendant may fail to set up an affirmative defense. When that situation has arisen under the Federal Rules, the federal courts have permitted amendment of the answer under Federal Rule 15 (equivalent to Rule 15) to subserve the merits of the action. See, *Groninger v. Davison*, 364 F.2d 638 (8th Cir. 1966).

5. Pleading to be concise and direct; consistency

1970:

Rule 8(E)(1) restates the principles underlying simplified pleading: a pleading should rely on simple, concise and direct language and avoid formal and technical forms of language.

Rule 8(E)(2) permits alternative or hypothetical pleading and in addition permits the use of inconsistent claims or defenses and in effect changes the holding of *Fuller v. Drenberg*, 3 Ohio St. 2d 109 (1965).

6. Construction of pleadings

1970:

Rule 8(F) emphasizes the fact that pleadings shall be construed liberally in order that the substantive merits of the action may be served.

7. Pleadings shall not be read or submitted

1970:

Rule 8(G), not to be found in Federal Rule 8, was added in order to emphasize that, except on rare occasions, the pleadings in the action shall not be a matter of jury concern. Heretofore in Ohio in those jurisdictions in which pleadings have gone to the jury, much time has been wasted in the arguing of dilatory motions to "clean up the pleadings," whereas in jurisdictions in which pleadings are not submitted to the jury pleadings tend to be much less verbose and motion practice has declined markedly. See, Shibley, *Pleading Injuries and Damages in Tort Actions*, Ohio L.J. 391 at 400 (1962). In addition, in a rules pleading system, motion practice "to clean up the pleadings" is not entertained. In effect, Rule 8(G) emphasizes the idea that pleadings are a matter for the court and the lawyer and not for the jury.

8. Disclosure of minority or incompetency

1970:

Rule 8(H), not to be found in Federal Rule 8, is a variation of § 2309.261, R.C. The rule requires disclosure of minority at the earliest motion of pleading stage in order that technical questions regarding minority may not be raised at a later stage of the proceedings.

Notes of Decisions (1248)

Rules Civ. Proc., Rule 8, OH ST RCP Rule 8

Current with amendments received through August 1, 2023. Some rules may be more current, see credits for details.

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