

Locke Lord QuickStudy: Following Removal, Make Sure Your Pleadings Comply with the Federal Rules?

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On June 14, 2021, the Fifth Circuit issued a decision providing an important reminder: after a case is removed to federal court, make sure your pleadings comply with the federal rules.

In *L.A. Public Insurance Adjusters Inc. v. Nelson*, the company terminated its employee, Nelson, after the company and Nelson had a dispute over commissions. The company filed suit in state court against Nelson seeking damages for disparagement. Nelson answered and removed the case to federal court. Nelson's answer included a counterclaim for commissions owed to him.

The company did not answer Nelson's counterclaim in federal court. Instead, it relied on a portion of Texas Rule of Civil Procedure 92: "When a counterclaim or cross-claim is served upon a party who has made an appearance in the action, the party so served, in the absence of a responsive pleading, shall be deemed to have pleaded a general denial of the counterclaim or cross-claim. . . ."

The federal rules generally do not require repleading following removal. Fed. R. Civ. P. 81(c)(2) ("After removal, repleading is unnecessary unless the court orders it."). On the other hand, the federal rules generally require parties to respond to allegations made against them. Fed. R. Civ. P. 8(b)(6) ("An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied."). The federal rules also establish time limits for filing a responsive pleading for defendants "who did not answer before removal." Fed. R. Civ. P. 81(c)(2).

Nelson removed the case to federal court in March 2018. At a hearing in February 2019, the court noted the company had not answered the counterclaim, and that Nelson could move for a default judgment. The company moved for summary judgment on the counterclaim, but did not file an answer until January 2020. The district court allowed the late answer and granted summary judgment for the company.

On appeal, the Fifth Circuit reversed, holding the district court abused its discretion in permitting the late answer. The court noted the rules permit an extension of time, even after the original time has lapsed, when the party "failed to act because of excusable neglect." Fed. R. Civ. P. 6(b)(1). The company blamed its prior attorney for the failure to answer, but the Fifth Circuit rejected that excuse. It held the actions of both the party and its counsel must be excusable. Nor does misunderstanding the federal rules constitute excusable neglect: "Our court has

held that, in most cases, *an attorney's simple misunderstanding of the Federal Rules 'weighs heavily against a finding of excusable neglect.'*" Opinion at 8 (emphasis added; quoting *Midwest Emps. Cas. Co. v. Williams*, 161 F.3d 877, 880 (5th Cir. 1998)).

The Fifth Circuit emphasized additional facts supported its reversal, including: (1) the length of the delay; (2) the company's owner was present at the hearing when the judge observed that Nelson could move for a default judgment because the company had not filed an answer; and (3) the company's answer denied Nelson had satisfied a condition precedent, which is something that must be specifically pleaded. The Fifth Circuit noted the interplay between the Texas and federal rules was complex, but that "the totality of the circumstances would not justify permitting the late filing in this case." Opinion at 9. Chief Justice Owen dissented and would have held the district court did not abuse its discretion in allowing the answer.

The lesson here is, when a case is removed to federal court, you need to examine your pleadings to ensure you are in compliance with the federal rules. Under the federal rules, you may have as little as 7 days to file any pleadings that may be required. Fed. R. Civ. P. 81(c)(2).

You can read the decision [here](#).

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