

How to Avoid Getting Shot Down – A Primer on Shotgun Pleadings

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The Eleventh Circuit recently reaffirmed [its stance on shotgun pleadings](#), reiterating in *Barmapov v. Amuial* that district courts are within their discretion to dismiss with prejudice a shotgun pleading filed by a litigant who is represented by counsel and fails to request leave to amend, so long as the court has given him at least one chance to replead. This decision is particularly notable, however, because of Judge Tjoflat’s separate concurrence, which provides specific guidance on how attorneys and district courts should proceed when faced with such unwieldy pleadings — with the aim to both help lawyers better serve their clients and to reduce the burden that such pleadings place upon federal courts. This practical and direct advice would be wisely heeded by attorneys representing plaintiffs and defendants alike. First, in order to best vindicate the rights of their clients, plaintiffs’ lawyers must present claims discretely and succinctly. Attorneys are warned “never to plead what you need not, lest you oblige yourself to prove what you cannot.” And they should be on notice that even meritorious claims are subject to dismissal if they are not well pleaded, as was unfortunately the fate of Mr. Barmapov’s potentially viable claims. Second, district courts are advised to confront shotgun pleadings “head on at the earliest stages of litigation,” immediately ordering a repleader pursuant to the court’s inherent authority. Shotgun pleadings that make it past district courts, the concurrence explains, “wreak havoc on appellate court dockets,” requiring appellate courts to “pore over the record and rebuild the case from scratch.” Finally, defense counsel faced with a shotgun pleading should either move for a more definite statement under Rule 12(e) or to dismiss for failure to state a claim under Rule 12(b)(6). While the result may be the same for early pleadings, defense attorneys are cautioned against “diving directly” into the more “labor-intensive” motions to dismiss where a motion for a more definite statement will suffice. Critically, the concurrence warns that defense counsel should *never* respond to a shotgun pleading in kind. The Eleventh Circuit has “expressly condemned” the filing of shotgun answers containing affirmative answers that do not respond explicitly to the specific claims asserted, and defendants who choose to respond in kind

may forgo, among other things, entitlement to attorneys' fees. Tips:

- Part of your job representing your client is making the court's job simpler. When drafting a complaint, ensure that all claims are pleaded distinctly and are well supported by factual allegations. Never bury a claim within immaterial or conclusory allegations, and don't plead more than is necessary or than can be proven.
- When faced with a shotgun pleading, carefully consider the repercussions of your response. Avoid responding in kind, and consider whether a motion for a more definite statement will yield the result you need while conserving client resources.

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