

West's Annotated Mississippi Code Currentness

Mississippi Rules of Court State

▣ Mississippi Rules of Civil Procedure

▣ Chapter III. Pleadings and Motions

→→ **Rule 13. Counterclaim and Cross-Claim**

**(a) Compulsory Counterclaims.** A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction. But the pleader need not state the claim if:

- (1) at the time the action was commenced the claim was the subject of another pending action; or
- (2) the opposing party brought suit upon his claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13; or
- (3) the opposing party's claim is one which an insurer is defending.

In the event an otherwise compulsory counterclaim is not asserted in reliance upon any exception stated in paragraph (a), relitigation of the claim may nevertheless be barred by the doctrines of res judicata or collateral estoppel by judgment in the event certain issues are determined adversely to the party electing not to assert the claim.

**(b) Permissive Counterclaims.** A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

**(c) Counterclaim Exceeding Opposing Claim.** A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

**(d) Counterclaim Against the State of Mississippi.** These rules shall not be construed to enlarge beyond the limits fixed by law the right to assert counterclaims or to claim credits against the State of Mississippi, a political subdivision, or an officer in his representative capacity or agent of either.

**(e) Counterclaim Maturing or Acquired After Pleading.** A claim which either matured or was

acquired by the pleader after serving his pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

**(f) Omitted Counterclaim.** When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, he may by leave of court set up the counterclaim by amendment on such terms as the court deems just.

**(g) Cross-Claim Against Co-party.** A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of the claim asserted in the action against the cross-claimant.

**(h) Claims Exceeding Court's Jurisdiction.** Upon the filing in the county court by any party of a counterclaim or cross-claim which exceeds the jurisdictional limits of that court, and upon the motion of all parties filed within twenty days after the filing of such counterclaim or cross-claim, the county court shall transfer the action to the circuit or chancery court wherein the county court is situated and which would otherwise have jurisdiction.

**(i) Joinder of Additional Parties.** Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

**(j) Separate Trials; Separate Judgments.** If the court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b) when the court has jurisdiction so to do, even if the claims of the opposing parties have been dismissed or otherwise disposed of.

**(k) Appealed Actions.** When an action is commenced in the justice court or in any other court which is not subject to these rules and from which an appeal for a trial de novo lies to a court subject to these rules, any counterclaim made compulsory by subdivision (a) of this rule shall be stated as an amendment to the pleading within thirty days after such appeal has been perfected or within such further time as the court may allow; and other counterclaims and cross-claims shall be permitted as in an original jurisdiction action. When a counterclaim or cross-claim is asserted by a defendant in such an appealed case, the defendant shall not be limited in amount to the jurisdiction of the lower court but shall be permitted to claim and recover the full amount of its claim irrespective of the jurisdiction of the lower court.

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