

89-R-99001

FILED

FEB 07 2020

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

IN RE: AMENDMENT OF M.R.C.P. 14

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

MOTION TO AMEND M.R.C.P. 14

Comes now the Supreme Court Advisory Committee on Rules, pursuant to M.R.A.P. 27(f), and moves the Mississippi Supreme Court to amend M.R.C.P. 14 as follows:

Rule 14. Third-Party Practice

(a) When Defendant May Bring in Third Party. ~~After commencement of the action and upon being so authorized by the court in which the action is pending on motion and for good cause shown, a~~ A defending party may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him. But, the third-party plaintiff must, by motion, obtain the court's leave upon good cause shown if it files the third-party complaint more than 10 days after serving its original answer. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim as provided in Rule 12 and his counter-claims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff and the third-party defendant thereupon shall assert his defenses as provided in Rule 12 and his counter-claims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant.

(b) When Plaintiff May Bring in Third Party. When a counter-claim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

(c) [Admiralty and Maritime Claims] [Omitted].

[Former Rule 14 deleted effective May 1, 1982; new Rule 14 adopted effective July 1, 1986. Amended effective _____]

MOTION#

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Advisory Committee Historical Note

Effective _____, Rule 14(a) was amended to authorize a defendant/third-party plaintiff to file a third-party complaint without leave of court within ten days after serving its original answer. So. 2d _____ (West Miss. Cases 20 _____).

Effective July 1, 1986, a new Rule 14 was adopted. 486-490 So. 2d XVII (West Miss. Cas. 1986).

Effective May 1, 1982, Rule 14 was abrogated. 410-416 So. 2d XXI (West Miss. Cas. 1982).

Advisory Committee Notes

It is essential that the third-party claim be for some form of derivative or secondary liability of the third-party defendant to the third-party plaintiff. Impleader is not available for the assertion of an independent action by the defendant against a third party, even if the claim arose out of the same transaction or occurrence as the main claim. Once a third-party claim is properly asserted, however, the third-party plaintiff may assert whatever additional claims the third-party plaintiff has against the third-party defendant under Rule 18(a).

The requirement that the third-party claim be for derivative or secondary liability may be met by, for example, an allegation of a right of indemnity (contractual or otherwise), contribution, subrogation, or warranty. The ~~rules~~ rule does not, however create any such rights. It merely provides a procedure for expedited consideration of these rights where they are available under substantive law. An insured party has a derivative claim for indemnity against the insured party's liability insurer, and may implead the party's liability insurer, if the insured is being sued for damages allegedly covered by the liability policy and the insurer is disclaiming coverage pursuant to the liability policy.

A defendant who is subject to joint and several liability for a plaintiff's damages may have a claim against joint tortfeasors for contribution. Generally, in Mississippi, liability for damages imposed in civil cases based upon "fault" is several only and not joint and several, thereby obviating the need or basis for contribution claims. Mississippi Code Annotated section 85-5-7(4), however, provides that "[j]oint and several liability shall be imposed on all who consciously and deliberately pursue a common plan or design to commit a tortuous act, or who actively take part in it." The statute further provides that "[a]ny person held jointly and severally liable under [such] section shall have a right of contribution from his fellow defendants acting in concert." Thus, Mississippi law grants a defendant who has been held jointly and severally liable for acting in concert a right of contribution against co-defendants who were also acting in concert.

A first-party insurer against loss, sued by its policyholder for such loss, has a derivative claim for subrogation against, and may implead the person who allegedly caused the loss, where a right of subrogation would arise from the insurer's payment of the insured plaintiff's claim.

Because the rule expressly allows third-party claims against one who "may be liable," it is not an objection to implead that the third party's liability is contingent on the original plaintiff's recovery against the defendant/third-party plaintiff.

M.R.C.P. 14 differs from Fed. R. Civ. P. 14 in that M.R.C.P. 14 requires a defending party to obtain authorization from the court based upon a showing of good cause before such defending party may serve a summons and third party complaint upon a nonparty. Pursuant to Fed. R. Civ. P. 14, a defending party must obtain leave of court only if it is filing a third party complaint more than 14 days after serving its original answer.

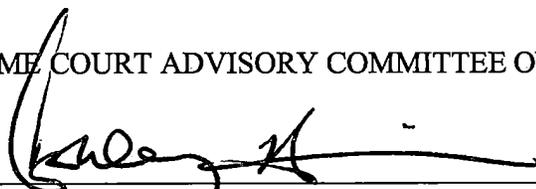
[Advisory Committee Note adopted effective July 1, 2014; amended _____.]

The proposed amendment to Rule 14(a) authorizes a defendant/third-party plaintiff to file a third-party complaint within ten days after serving its original answer without leave of court. After such time, the defendant/third-party plaintiff must obtain leave of court upon a showing of good cause. F.R.C.P. 14(a) requires that the defendant/third-party plaintiff obtain leave of court when filing a third-party complaint more than 14 days after serving its original answer. The motion to amend M.R.C.P. 14 was unanimously approved by the Committee on September 7, 2018.

The Supreme Court Advisory Committee on Rules therefore moves that the above proposed amendment to M.R.C.P. 14 be considered by the Mississippi Supreme Court.

SO MOVED, this the 7 day of February, 2020.

SUPREME COURT ADVISORY COMMITTEE ON RULES



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