

89-R-99001

FILED

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OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

IN RE: AMENDMENT OF M.R.C.P. 13

MOTION TO AMEND M.R.C.P. 13

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. 13 as follows:

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**Rule 13. Counter-claim and Cross-claim**

**(a) Compulsory Counter-claims.** 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 counter-claim under this Rule 13; or
- (3) the opposing party's claim is one which an insurer is defending.

In the event an otherwise compulsory counter-claim is not asserted in reliance upon any exception stated in paragraph (a), re-litigation 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 Counter-claims.** A pleading may state as a counter-claim 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) Counter-claim Exceeding Opposing Claim.** A counter-claim 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) Counter-claim Against the State of Mississippi.** These rules shall not be construed to enlarge beyond the limits fixed by law the right to assert counter-claims or to claim credits against the State of Mississippi, a political subdivision, or an officer in his representative capacity or agent of either.

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**(e) Counter-claim 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 counter-claim by supplemental pleading.

**(f) Omitted Counter-claim.** When a pleader fails to set up a counter-claim in the answer, the pleader may amend the answer to include a counter-claim in accordance with M.R.C.P. 15. ~~through oversight, inadvertence, or excusable neglect, or when justice requires, he may by leave of court set up the counter-claim 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 counter-claim 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 counter-claim 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 counter-claim 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 counter-claim or cross-claim in accordance with the provisions of Rules 19 and 20.

**(j) Separate Trials; Separate Judgment.** If the court orders separate trials as provided in Rule 42(b), judgment on a counter-claim 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 counter-claim 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 counter-claims and cross-claims shall be permitted as in an original jurisdiction action. When a counter-claim 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.

*Advisory Committee Historical Note*

Effective \_\_\_\_\_, Rule 13(f) was amended to clarify that M.R.C.P. 15 governs amendment of pleadings, including the amendment of an answer to include a previously omitted counterclaim. So. 2d (West Miss. Cases 20\_\_).

**Advisory Committee Notes**

*The purpose of Rule 13 is to grant the court broad discretion to allow claims to be joined in order to expedite the resolution of all the controversies between the parties in one suit and to eliminate the inordinate expense occasioned by circuity of action and multiple litigation.*

*Subject to the exceptions stated in Rule 13(a), counterclaims are compulsory if they arise out of the same transaction or occurrence that is the subject matter of the opposing party's claim. Compulsory counterclaims are so closely related to the claims already raised, that they can be adjudicated in the same action without creating confusion and should be adjudicated in the same action so as to avoid unnecessary expense and duplicative litigation. Rule 13 generally requires compulsory counterclaims to be asserted in the pending litigation to avoid waiver.*

*All other counterclaims are permissive and may be asserted by the defending party. If trying the permissive counterclaim in the same case as the original claim is tried will create confusion, prejudice, unnecessary delay or increased costs, the court has the discretion to order that the counterclaim be tried separately pursuant to Rule 42(b).*

*Pursuant to Rule 13(g), a party may assert a cross-claim against a co-party if the cross-claim arises out of the same transaction or occurrence that is the subject matter of the complaint or a counterclaim thereto or relates to any property that is the subject matter of the complaint. Cross-claims may be derivative claims that assert that the party against whom the cross-claim is asserted is or may be liable to the cross-claimant for all or part of the claim against the cross-claimant. Pursuant to Rule 13, cross-claims are permissive rather than compulsory.*

*A party asserting a counterclaim or cross-claim may join additional parties as defendants to the counterclaim or cross-claim pursuant to Rules 19 and 20.*

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

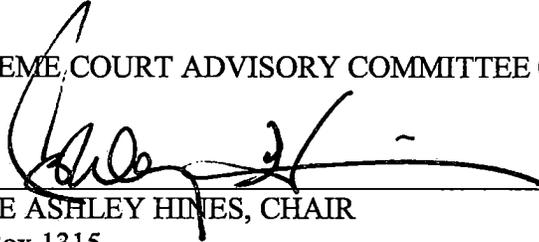
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The proposed amendment to Rule 13(f) clarifies that M.R.C.P. 15 governs amendment of pleadings, including the amendment of an answer to include a previously omitted counterclaim. The motion to amend M.R.C.P. 13 was unanimously approved by the Committee on September 7, 2018.

The Supreme Court Advisory Committee on Rules therefore moves that the above proposed amendment to M.R.C.P. 13 be considered by the Mississippi Supreme Court.

SO MOVED, this the 7<sup>E</sup> day of February, 2020.

SUPREME COURT ADVISORY COMMITTEE ON RULES



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