

Proposed Amendments to Rule 13

Rule 13 is amended as follows:

Rule 13. Counterclaim and ~~[Cross-Claim]~~**Crossclaim**

(a) Counterclaims. A pleading ~~will~~**shall** state as a counterclaim any claim **that –** ~~[which]~~ at the time of **its service –** ~~[serving the pleading]~~ the pleader has against an~~[y]~~ opposing party~~[,]~~ if ~~[(4)]~~ the claim: **(1)** involves the imported merchandise that is the subject matter of the civil action, or **(2)** ~~[the claim]~~ is to recover ~~[up]~~ on a bond or customs duties relating to such merchandise.

(b) Relief Sought in a Counterclaim ~~[Exceeding Opposing Claim]~~. A counterclaim **need**~~[may or may]~~ not diminish or defeat the recovery sought by the opposing party. It may **request**~~[claim]~~ relief **that** exceeds~~[ing]~~ in amount or differs~~[ent]~~ in kind from the **relief**~~[at]~~ sought **by** ~~[in the pleading of]~~ the opposing party.

(c) Counterclaim Against the United States. These rules **do**~~[shall]~~ not **expand the right to assert a counterclaim – or to claim a credit –** ~~[be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits]~~ against **the United States or a**~~[the]~~ United States ~~[or an]~~ officer or ~~[an]~~ agency ~~[thereof]~~.

(d) Counterclaim Maturing or Acquired After Pleading. **The court may permit a party to file a supplemental pleading asserting a counterclaim that** ~~[A claim which either]~~ matured or was acquired by the **party**~~[leader]~~ after serving **an earlier** ~~[his]~~ pleading ~~[may, with the permission of the court, be presented as a counterclaim by supplemental pleading]~~.

(e) Omitted Counterclaim. **The court may permit a party to amend a pleading to add** ~~[When a pleader fails to set up]~~ a counterclaim **if it was omitted** through oversight, inadvertence, or excusable neglect, or when justice requires~~;~~ ~~the pleader may by leave of court set up the counterclaim by amendment]~~.

(f) ~~[Cross-Claim]~~ **Crossclaim** Against **A** ~~[Co-Party]~~ **Coparty**. A pleading may state as a ~~[cross-claim]~~ **crossclaim** any claim by one party against a ~~[co-party]~~ **coparty**, if (1) the claim involves the imported merchandise that is the subject matter of the civil action, or (2) the claim is to recover ~~[up]~~ on a bond or customs duties relating to such merchandise. **The** ~~[Such cross-claim]~~ **crossclaim** may include a claim that the **coparty** ~~[against whom it is asserted]~~ is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(g) Joining~~der of~~ Additional Parties. **Rules 19 and 20 govern the addition of a person as a party** ~~[Persons other than those made parties to the original action may be made parties]~~ to a counterclaim or ~~[cross-claim]~~ **crossclaim** ~~[in accordance with the provisions of Rules 19 and 20]~~.

(h) Separate Trials--Separate Judgments. If the court orders separate trials **under** ~~[as provided in]~~ Rule 42(b), **it may enter** judgment on a counterclaim or ~~[cross-claim]~~ **crossclaim under** ~~[may be rendered in accordance with the terms of]~~ Rule 54(b) when **it** ~~[the court]~~ has jurisdiction so to do, even if the ~~[claims of the]~~ opposing party's **claims** have been dismissed or otherwise **resolved** ~~[disposed of]~~.

(i) Demand for a Complaint.

(1) **Regardless of whether a** ~~[Notwithstanding the pendency of the]~~ civil action **is pending** on a Reserve or Suspension Calendar, in a civil action **under** ~~[described in]~~

28 U.S.C. § 1581(a) or (b), for good cause shown, a defendant who wishes to proceed expeditiously in the action may file a motion demanding that the plaintiff file a complaint.

(2) The motion **should**~~[all]~~ include, among other information, (A) **the movant's** ~~[a statement of the]~~ reasons for wanting to proceed at this time, (B) **if the movant seeks a time different from that provided in this rule**, a proposed timetable **within which** ~~[for requiring]~~ the plaintiff **should**~~[to]~~ file a complaint ~~[if different from the time provided for in this rule]~~ and the reasons for a different time, and, in a suspended action, other scheduling information that the **movant**~~[defendant]~~ believes necessary to enable the court to **issue**~~[formulate]~~ an order removing a suspended action from a Suspension Calendar, and (C) a description of any counterclaim known to the **movant**~~[defendant]~~ at the time **of its** ~~[the]~~ motion ~~[is filed]~~ that the **movant** ~~[defendant]~~ intends to assert in its answer.

(3) If **the court grants** ~~[an order granting]~~ a motion for a demand for a complaint~~[is entered]~~, plaintiff **must**~~[shall]~~ file its complaint within 30 days after the date of service of the order if plaintiff wishes to continue the action.

(4) If **the court enters** an order granting a motion for a demand for a complaint ~~[is entered]~~ and plaintiff does not voluntarily dismiss the action or fails to file a complaint, the clerk **will**~~[shall]~~ enter an order of dismissal without further direction from the court.

(As amended July 28, 1988, eff. Nov. 1, 1988; Oct. 5, 1994, eff. Jan. 1, 1995; _____, 2008, eff. _____, 2009).

Advisory Committee Note

The language of Rule 13 has been amended as part of the general restyling of these rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.