

Proposed Amendments to Rule 8

Rule 8 is amended as follows:

Rule 8. General Rules of Pleading

(a) Claim[s] for Relief. A pleading [~~which sets forth~~] **that states** a claim for relief [~~; whether an original claim, counterclaim, cross claim, or third party claim, shall~~] **must** contain:

(1) a short and plain statement of the grounds [~~upon which~~] **for** the court's jurisdiction, [~~depends,~~] unless the court already has jurisdiction and the claim needs no new [~~grounds of~~] jurisdiction **al** [~~to~~] support [~~it,~~];

(2) a short and plain statement of the claim showing that the pleader is entitled to relief[~~;~~]; and

(3) a demand [~~for judgment~~] for the relief [~~the pleader seeks,~~] **sought, which may include** [~~R~~]relief in the alternative or [~~of several~~] **different types** [~~may be demanded~~] **of relief**.

(b) New Grounds. A party who wishes the court to consider any new ground in support of a civil action described in 28 U.S.C. § 1581(a) [~~shall~~] **must** [~~aver~~] **allege** the new ground in accordance with this rule, and, as provided in 28 U.S.C. § 2638, [~~shall~~] **must** also [~~aver~~] **allege** that the new ground: (1) applies to the same merchandise that was the subject of the protest; and (2) is related to the same administrative decision that was contested in the protest.

(c) Defenses; [~~Form of~~] Admissions and Denials. [~~A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or~~

~~information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Rule 11.]~~

(1) *In General.* In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(2) *Denials – Responding to the Substance.* A denial must fairly respond to the substance of the allegation.

(3) *General and Specific Denials.* A party that intends in good faith to deny all the allegations of a pleading — including the jurisdictional grounds — may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) Denying Part of an Allegation. A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) Lacking Knowledge or Information. A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) Effect of Failing to Deny. An allegation — other than one relating to the amount of damages — is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(d) Affirmative Defenses.

(1) In General. In [pleading] **responding** to a [preceding] pleading, a party [~~shall set forth~~] **must** affirmatively [~~accord and satisfaction, discharge in bankruptcy, duress, estoppel, fraud, illegality, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.~~] **state any avoidance or affirmative defense, including:**

- **accord and satisfaction;**
- **discharge in bankruptcy;**
- **duress;**
- **estoppel;**

- fraud;
- illegality;
- laches;
- license;
- payment;
- release;
- res judicata;
- statute of frauds;
- statute of limitations; and
- waiver.

(2) *Mistaken Designation.* If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

~~[(e) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.]~~

~~[(f)] (e) Pleading to Be Concise and Direct; **Alternative Statements;**
~~[Consistency] **Inconsistency.**~~~~

(1) ***In General.*** Each ~~[averment of a pleading shall]~~ **allegation must** be simple, concise, and direct. No technical form~~[s of pleading or motions are]~~ **is** required.

(2) **Alternative Statements of a Claim or Defense.** A party may set forth ~~out~~ ~~two~~ 2 or more statements of a claim or defense alternately or hypothetically, either in ~~one~~ **a single** count or defense or in separate ~~counts or defenses~~ **ones**. ~~When two or more statements are made in the~~ **If a party makes alternative statements, the pleading is** ~~and one of them if made independently would be~~ sufficient ~~the pleading is not made insufficient by the insufficiency of one or more of the alternative statements~~ **if any one of them is sufficient.**

(3) **Inconsistent Claims or Defenses.** A party may ~~also~~ state as many separate claims or defenses as ~~the party has regardless of consistency and whether based on legal, equitable, or maritime grounds~~ **it has, regardless of consistency.** ~~All statements shall be made subject to the obligations set forth in Rule 11.~~

~~(g)~~ **(f) Construction of Construing Pleadings.** ~~All~~ ~~p~~ Pleadings ~~shall~~ **must** be ~~so~~ construed **so** as to do ~~substantial~~ justice.

PRACTICE COMMENT: For an action described in 28 U.S.C. § 1581(c), the complaint shall contain: (1) a citation to the administrative determination to be reviewed; (2) a statement of the issues presented by the action and (3) a demand for judgment.

(As amended, July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1983; Dec. 18, 2001, eff. Apr. 1, 2002; eff. Apr. 1, 2002; _____, **2008, eff. _____, 2009.**)

Advisory Committee Note

The language of Rule 8 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. It should be noted that the provisions of Rule 8(e) (Effect of Failing

to Deny) are now incorporated into Rule 8(c)(6), and that Rules 8(f) and 8(g) have been redesignated as Rules 8(e) and (f), respectively.