

Rule 13. Counterclaim

(a) Compulsory counterclaims. A party shall state as a counterclaim any claim which at the time of serving a responsive pleading, or thereafter in accordance with paragraph (e) of this Rule, the party 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 of whom the Court cannot acquire jurisdiction. The claim need not be stated as a counterclaim if (1) at the time the action was commenced the claim was the subject of another pending action, (2) the opposing party initiated the suit by attachment or other process by which the Court did not acquire jurisdiction to render a personal judgment on the opposing party's claim, and the pleader is not stating any other counterclaim pursuant to this Rule, or (3) the claim is not within the jurisdiction of this Court.

(b) Permissive counterclaims. A party 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 if such counterclaim is within the jurisdiction of the Court.

(c) Counterclaim exceeding opposing claim. A counterclaim may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim maturing or acquired after pleading. When a claim which otherwise would be a compulsory counterclaim under paragraph (a) of this Rule either matured or was acquired by a party after serving a responsive pleading but prior to trial, the claim shall be stated as a counterclaim by supplemental pleading pursuant to SCR-Dom Rel 15(d). If, upon motion of any party, the Court determines that litigation of the counterclaim in the current proceeding will result in substantial prejudice to any party, it may continue the proceeding for trial on all the claims or order a separate trial of the counterclaim. Any other claim which either matured or was acquired by a party after serving a pleading may, with the permission of the Court, be stated as a counterclaim by supplemental pleading.

(e) Omitted counterclaim. When a party fails to plead a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the party may by leave of Court plead the counterclaim by amendment pursuant to SCR-Dom Rel 15(a).

(f) Request for change of name on divorce. In action for divorce, a party may in a responsive pleading request restoration of the party's birth-given or other previously-used name.

COMMENT

Paragraph (d) provides that when a claim which would otherwise be a compulsory counterclaim either matures or is acquired by a party after serving a responsive pleading but before trial, it must be pleaded. An example of such a claim is one for absolute divorce where the ground of one year separation had not been reached until after the party filed an answer in a suit for legal separation. If, upon motion, the Court determines that litigation of the counterclaim in the instant proceeding would result in substantial prejudice to any party, it may either continue the trial date to allow the parties to prepare to litigate all claims, or it may order the separate trial of the counterclaim. This deviation from SCR-Civil 13 accommodates the unique nature of actions in the Domestic Relations Branch, and furthers the purpose of the rule by promoting complete litigation of all claims between the parties in one action.

Paragraph (f) makes it clear that a party need not file a counterclaim for a change of name upon divorce. The request may be included in the party's responsive pleading.