

Rule 13. Counterclaim

(a) COMPULSORY COUNTERCLAIM.

(1) *In General.* A pleading must state as a counterclaim any claim that—at the time of its service—the pleader has against an opposing party if the claim:

(A) arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and

(B) does not require adding another party over whom the court cannot acquire jurisdiction.

(2) *Exceptions.* The pleader need not state the claim if:

(A) when the action was commenced, the claim was the subject of another pending action;

(B) the opposing party sued on its claim by attachment or other process that did not establish personal jurisdiction to over the pleader on that claim, and the pleader does not assert any counterclaim under this rule; or

(C) it is not within the jurisdiction of the court.

(b) **PERMISSIVE COUNTERCLAIMS.** A pleading may state as a counterclaim against an opposing party any claim that is not compulsory if such counterclaim is within the jurisdiction of the court.

(c) **RELIEF SOUGHT IN A COUNTERCLAIM.** A counterclaim may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party.

(d) **COUNTERCLAIM MATURING OR ACQUIRED AFTER PLEADING.**

(1) *Compulsory Counterclaim Maturing or Acquired.* If a compulsory counterclaim matured or was acquired by a party after serving an earlier pleading but prior to trial, the party must file a supplemental pleading asserting the compulsory counterclaim. 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.

(2) *Permissive Counterclaim Maturing or Acquired.* The court may permit a party to file a supplemental pleading asserting a permissive counterclaim that matured or was acquired by the party after serving an earlier pleading.

(e) **REQUEST FOR CHANGE OF NAME ON DIVORCE.** In an action for divorce, a party may in a responsive pleading request restoration of the party's birth-given or other previously-used name.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to closely conform to the civil rule. In conformance with the civil rule, the provision regarding omitted counterclaims has been deleted. Section (e), formerly section (f), was retained from the previous domestic relations rule. The provision for requesting a name change in a pleading does not affect the court's authority to grant an oral request for a name change.

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.