

Rule 12.170. Counterclaims and Crossclaims

(a) Compulsory Counterpetitions. A pleading must state as a counterpetition any claim which at the time of serving the pleading the pleader has against any opposing party, provided 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 a 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 that party's claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on the claim and the pleader is not stating a counterpetition under this rule.

(b) Permissive Counterpetition. A pleading may state as a counterpetition 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) Counterclaim Exceeding Opposing Claim. A counterclaim 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) Counterclaim Against the State. These rules shall not be construed to enlarge beyond the limits established by law the right to assert counterclaims or to claim credits against the state or any of its subdivisions or other governmental organizations of the state subject to suit or against a municipal corporation or against an officer, agency, or administrative board of the state.

(e) Counterclaim Maturing or Acquired after Pleading. A claim which matured or was acquired by the pleader after serving the pleading may be presented as a counterpetition by supplemental pleading with the permission of the court.

(f) Omitted Counterclaim or Crossclaim. When a pleader fails to set up a counterclaim or crossclaim through oversight, inadvertence, or excusable neglect, or when justice or equity requires, the pleader may set up the counterclaim or crossclaim by amendment with leave of the court.

(g) Crossclaim Against Co-Party. A pleading may state as a crossclaim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter of either the original action or a counterclaim within the original action, or relating to any

property that is the subject matter of the original action. The crossclaim may include a claim that the party against whom it is asserted is or may be liable to the crossclaimant for all or part of a claim asserted in the action against the crossclaimant. Service of a crossclaim on a party who has appeared in the action must be made under rule 12.080. Service of a crossclaim against a party who has not appeared in the action must be made in the manner provided for service of summons.

(h) Additional Parties May Be Brought In. When the presence of parties other than those to the original action is required to grant complete relief in the determination of a counterclaim or crossclaim, they must be named in the counterpetition or crossclaim and be served with process and will be parties to the action thereafter if jurisdiction of them can be obtained and their joinder will not deprive the court of jurisdiction of the action. Rules 12.250(b) and (c) apply to parties brought in under this subdivision.

(i) Separate Trials; Separate Judgment. If the court orders separate trials, a judgment on a counterclaim or crossclaim may be rendered when the court has jurisdiction to do so even if a claim of the opposing party has been dismissed or otherwise disposed of.