

## **RULE 4:7. Counterclaim And Cross-Claim**

### **4:7-1. Mandatory or Permissive Counterclaims**

Except as otherwise provided by R. 4:64-5 (foreclosure actions) and R. 4:67-4 (summary actions), a pleading may state as a counterclaim any claim against the opposing party whether or not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim. A defendant, however, either failing to comply with R. 4:30A (entire controversy doctrine) or failing to set off a liquidated debt or demand or a debt or demand capable of being ascertained by calculation, shall thereafter be precluded from bringing any action for such claim or for such debt or demand which might have been so set off.

Note: Source-R.R. 4:13-1. Amended July 16, 1979 to be effective September 10, 1979; amended June 29, 1990 to be effective September 4, 1990; amended July 14, 1992 to be effective September 1, 1992.

### **4:7-2. 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 or not germane to that sought in the pleading of the opposing party.

Note: Source-R.R. 4:13-2.

### **4:7-3. Counterclaim Maturing or Acquired After Pleading**

A claim which either matured or was acquired by the pleader after service of the pleading may, by leave of court, be presented as a counterclaim by supplemental pleading.

Note: Source-R.R. 4:13-4; amended July 13, 1994 to be effective September 1, 1994.

### **4:7-4. Omitted Counterclaim**

When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the counterclaim may be set up by leave of court by amendment.

Note: Source-R.R. 4:13-5; amended July 13, 1994 to be effective September 1, 1994.

### **4:7-5. Cross-Claim Against Co-party; Claim for Contribution or Claim for Indemnity**

- **(a) Cross-Claim.** Except as otherwise provided by R. 4:67-4 (summary actions) and subject to the mandatory joinder provisions of R. 4:30A a pleading may state as a cross-claim by one party against a co-party including a claim that the latter is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.
- **(b) Claim for Contribution or Claim for Indemnity.** A defendant shall assert a claim for contribution or indemnity against any party to the action by inserting in the answer above the signature and under the heading "Claim for Contribution" or "Claim for Indemnity", a general demand for contribution or indemnity from a named party and specifying the statute under which such claim is made, but without setting forth the facts upon which the claim is based. If a claim for contribution or indemnity is made, the answer shall be served upon the parties against whom such relief is sought and no

responsive pleading thereto need be filed. A motion at trial for the dismissal of the complaint as against a co-defendant shall be made and proceeded upon in accordance with R. 4:37-2(c).

- **(c) Time for Assertion.** Cross-claims may be asserted by any defendant as of right within 90 days after service upon the defendant of the original complaint or after service of the complaint upon the party against whom the cross-claim is asserted, whichever is later. A cross-claim may be thereafter asserted only by leave of court, which shall be freely given. A copy of the proposed cross-claim shall be annexed to the notice of motion seeking such leave. A non-settling defendant's failure to have asserted a cross-claim for contribution against a settling defendant, however, shall not preclude either an allocation of a percentage of negligence by the finder of fact against the settling defendant or a credit in favor of the non-settling defendant consistent with that allocation, provided plaintiff was fairly apprised prior to trial that the liability of the settling defendant remained an issue and was accorded a fair opportunity to meet that issue at trial.

Note: Source-R.R. 4:13-6(a)(b); paragraph (b) amended November 27, 1974 to be effective April 1, 1975; paragraphs (a) and (b) amended July 16, 1979 to be effective September 10, 1979; paragraph (a) amended July 18, 1990 to be effective September 4, 1990; paragraph (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (b) amended July 13, 1994 to be effective September 1, 1994.

#### **4:7-6. Additional Parties May Be Brought In**

Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of R. 4:28 and 4:29.

Note: Source-R.R. 4:13-7.

#### **4:7-7. Separate Trials; Separate Judgment**

If the court orders separate trials as provided by R. 4:38-2, judgment on a counterclaim or cross-claim may be rendered in accordance with R. 4:42-2 (judgment upon multiple claims) even if the claims of the opposing party have not been dismissed or otherwise disposed of.

Note: Source-R.R. 4:13-8.