

## file:cvpro\_part-1\_iv.htm

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Civil Procedure readers1 Normal RND GROUP 8 16 2002-01-09T23:31:00Z 2002-01-19T09:17:00Z 2 811 4626  
supreme court 38 9 5681 9.2720 110

### 4. JOINDER OF ISSUES

#### 1. Filing of Answer

##### 1. Time to Plead

1.1 Answer to Complaint and Third-Party (Fourth-Party, etc.) Complaint – fifteen (15) days after service of summons, unless a different period is fixed by the court.<sup>121</sup>

However, under Rule 16, Section 4, if a motion to dismiss is denied, the movant shall file his answer within the balance of the period provided by Rule 11 to which he was entitled at the time of serving his motion, but not less than five (5) days in any event, computed from his receipt of the notice of the denial. If the pleading is ordered to be amended, he shall file his answer within the period prescribed by Rule 11 counted from service of the amended pleading, unless the court provides a longer period.

##### 1.2 Answer of a defendant foreign private juridical entity

1.2.1 when summons is served upon a resident agent – fifteen (15) days after service of summons.<sup>122</sup>

1.2.2 when summons is served on the government official designated to receive the same – thirty (30) days from receipt by the latter of the summons.<sup>123</sup>

1.3 Answer to Amended Complaint, Amended Counterclaim, Amended Cross-claim and Amended Third-Party (Fourth-Party, etc.) Complaint:

1.3.1 amended complaint was filed as a matter of right (Rule 10, Section 2) – fifteen (15) days after being served with a copy thereof;<sup>124</sup> and

1.3.2 amended complaint was filed with leave of court (Rule 10, Section 3) – ten (10) days from notice of order admitting the amended complaint.<sup>125</sup>

1.4 Answer to counterclaim or cross-claim - within ten (10) days from service.<sup>126</sup>

1.5 Reply - within ten (10) days from service of the pleading responded to.<sup>127</sup>

1.6 Answer to supplemental complaint - within ten (10) days from notice of the order admitting the same, unless a different period is fixed by the court.<sup>128</sup>

1.7 Answer to Complaint-in-Intervention - within fifteen (15) days from notice of the order admitting the same unless a different period is fixed by the court.<sup>129</sup>

#### 2. Strict Observance of the Period

While the rules are liberally construed, the provisions on reglementary periods are strictly applied for they are deemed indispensable to the prevention of needless delays and necessary to the orderly and speedy discharge of judicial business.<sup>130</sup>

Strict compliance with said periods is mandatory and imperative.<sup>131</sup>

### 3. Effect of Failure to Plead (Rule 9)

Sec. 1. Defenses and objections not pleaded.—Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by Statute of Limitations, the court shall dismiss the claim.

### 2. Counterclaim

#### 1. Definition

A counterclaim is any claim which a defending party may have against an opposing party.<sup>132</sup>

There are two (2) kinds, the compulsory and the permissive. A compulsory counterclaim is one which, being cognizable by the regular courts of justice, arises out of or is connected with the transaction or occurrence constituting 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. Such a counterclaim must be within the jurisdiction of the court both as to the amount and the nature thereof, except that in an original action before the Regional Trial Court, the counterclaim may be considered compulsory regardless of the amount.<sup>133</sup>

A counterclaim which is not compulsory is a permissive counterclaim.

#### 2. Difference Between Permissive and Compulsory Counterclaim

In a permissive counterclaim, the docket and other lawful fees should be paid and the same should be accompanied by a certificate against forum shopping and certificate to file action issued by the proper Lupon Tagapamayapa. It should also be answered by the claiming party. It is not barred even if not set up in the action.

In a compulsory counterclaim, no docket fee is paid and the certificates mentioned above are not required.<sup>134</sup> If it is not raised in the answer, it shall be barred.<sup>135</sup>

A compulsory counterclaim that merely reiterates special defenses which are deemed controverted even without a reply, or raises issues which are deemed automatically joined by the allegations of the complaint need not be answered.<sup>136</sup> However, a compulsory counterclaim which raises issues not covered by the complaint should be answered.<sup>137</sup>

If the counterclaim is based on an actionable document attached to or copied in the counterclaim, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party specifically denies under oath its genuineness and due execution.<sup>138</sup>

### 3. Cognate Rules

3.1 A cross-claim which is not set up in the action is barred.<sup>139</sup>

3.2 The dismissal of the complaint carries with it the dismissal of the cross-claim which is purely defensive, but not a cross-claim seeking affirmative relief.<sup>140</sup> It does not also carry with it a dismissal of the counterclaim that has been pleaded by the defendant prior to service to him of the notice of dismissal,<sup>141</sup> or to a dismissal due to

the fault of the plaintiff.<sup>142</sup>

3.3 A party cannot, in his reply, amend his cause of action nor introduce therein new or additional causes of action.<sup>143</sup>

3.4 A third-party complaint need not arise out of or be entirely dependent on the main action as it suffices that the former be only "in respect" of the claim of the third-party plaintiff's opponent.<sup>144</sup>

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121 Rules of Court, Rule 11, Secs. 1 and 5.

122 Rules of Court, Rule 14, Sec. 12.

123 Rules of Court, Rule 11, Sec. 2.

124 Rules of Court, Rule 11, Sec. 3.

125 Ibid.

126 Rules of Court, Rule 11, Sec. 4.

127 Ibid., Sec. 6.

128 Ibid., Sec. 7.

129 Rules of Court, Rule 19, Sec. 7.

130 Alvero v. De La Rosa, 76 Phil. 428 [1946]; Valdez v. Ocumen, 106 Phil. 929 [1960]; Mangali v. Court of Appeals, L-47296, August 21, 1980, 99 SCRA 236; Legaspi-Santos v. Court of Appeals, G. R. No. 60577, October 11, 1983, 125 SCRA 22.

131 FJR Garments Industries v. Court of Appeals, L-49320, June 29, 1984, 130 SCRA 216.

132 Rules of Court, Rule 6, Sec. 6.

133 Ibid., Sec. 7.

134 Santo Tomas University v. Surla, G. R. No. 129718, August 17, 1998, 294 SCRA 382.

135 Rules of Court, Rule 9, Sec. 2.

136 Lama v. Apacible 79 Phil. 68 [1947]; Navarro v. Bello, 102 Phil. 1019 [1958]; Gojo v Goyala, G. R. No. 26768, October 30, 1970, 35 SCRA 557.

137 Feria, Annotated 1997 Rules of Court, 41.

138 Rules of Court, Rule 8, Sec. 8.

139 Rules of Court, Rule 9, Sec. 2.

140 Torres v. Court of Appeals, L-25889, January 12, 1973, 49 SCRA 67.

141 Rules of Court, Rule 17, Sec. 2.

142 Ibid., Sec. 3.

143 Anaya v. Palaroan, L-27930, November 26, 1970, 36 SCRA 97.

144 Pascual v. Bautista, L-21644, May 29, 1970, 33 SCRA 301.

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