RULE 12

PRESENT RULE:	RECOMMENDED RULE:
RULE 12. DEFENSES AND OBJECTIONS-- WHEN AND HOW PRESENTED--BY PLEADING OR MOTION--MOTION FOR JUDGMENT ON PLEADINGS	**Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing**
(a) When Presented. Except as otherwise provided by statute applicable to particular defendants or proceedings, the responsive pleadings shall be served as follows: A defendant shall serve an answer within 20 days after the service of the summons and complaint upon that defendant, or within 20 days after the completion of service of process as provided in Rule 4, unless the court directs otherwise when service of process is made pursuant to Rule 4D(4). A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after the service upon that party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer, or, if a reply is ordered by the court, within 20 days after service of the order or such time as the order otherwise directs. The state, or any state board or state agency shall serve an answer to the complaint within 40 days after service upon the attorney general. Unless a different time is fixed by the court, when a motion permitted by these rules is served, the responsive pleading shall be served within 20 days after notice of the court's action if the court denies the motion or postpones its disposition until trial on the merits, and shall be served within 20 days after the service of the more definite statement if the court grants a motion for a more definite statement.	**(a) Time to Serve a Responsive Pleading.** **(1)** ***In General.*** Unless another time is specified by this rule or a statute, the time for serving a responsive pleading is as follows: (A) a defendant must serve an answer within 21 days after being served with the summons and complaint, unless the court orders otherwise under Rule 4(a)(2)(c). (B) a party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim. (C) a party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time. **(2)** ***State of Montana and Its Agencies, Officers, or Employees Sued in an Official Capacity.*** The State of Montana, a state agency, or a state officer or employee sued only in an official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 42 days after service on the attorney general. **(3)** ***State Officers or Employees Sued in an Individual Capacity.*** A state officer or employee sued in an individual capacity for

	RECOMMENDED RULE 12(a) (continued): an act or omission occurring in connection with duties performed on the state's behalf must serve an answer to a complaint, counterclaim, or crossclaim within 42 days after service on the officer or employee or service on the attorney general, whichever is later. (4) ***Effect of a Motion.*** Unless the court sets a different time, serving a motion under this rule alters these periods as follows: (A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or (B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.
PRESENT RULE 12(b): **(b) How Presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections	**RECOMMENDED RULE 12(b):** **(b) How to Present Defenses.** Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion: (1) lack of subject-matter jurisdiction; (2) lack of personal jurisdiction; (3) improper venue; (4) insufficient process; (5) insufficient service of process;

PRESENT RULE 12(b) (continued):	**RECOMMENDED RULE 12(b) (continued):**
in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to the claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56. (i) The cases in which place of trial may be changed are specified in section 25-2-201, Montana Code Annotated. (ii) If the county designated in the complaint is not the proper county for trial of the action, the defendant must at the time of defendant's first appearance request by motion that the trial be had in the proper county. Every defense in law or fact, to a claim for relief in any pleading which defendant desires to present by way of motion as hereinabove provided must be joined with, or inserted in, the motion requesting a change in the place of trial. If the court in which the action is commenced grants the request for change of venue, that court shall not consider nor pass upon other defenses in law, or fact, presented by the motion, but such shall be considered and decided by the court sitting in the proper county after the transfer has been completed. No request for change of venue is waived by being joined in a motion with other defenses or objections in law or fact. (iii) Any request for change in place of trial for grounds 2 and 3 of section 25-2-201,	(6) failure to state a claim upon which relief can be granted; and (7) failure to join a party under Rule 19. A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion. If a court grants a motion made under subsection (3), any other defenses presented must be decided by the court in the proper venue, and not by the court in which the action is commenced.

PRESENT RULE 12(b) (continued): Montana Code Annotated, must be presented by motion within 20 days after the answer to the complaint, or to the cross-claim where a cross-claim is filed, or the reply to any answer, in those cases in which a reply is authorized, has been filed; except that whenever at some time more than 20 days after the last pleading has been filed an event occurs which thereafter affords good cause to believe that an impartial trial cannot be had under ground 2 of said section 25-2-201, and competent proof is submitted to the court that such cause of impartiality did not exist within the 20-day period after the last pleading was filed, then the court may entertain a motion to change the place of trial under ground 2 of section 25-2-201 within 20 days after that later event occurs.	
PRESENT RULE 12(c): **(c) Motion for Judgment on the Pleadings.** After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.	**RECOMMENDED RULE 12(c):** **(c) Motion for Judgment on the Pleadings.** After the pleadings are closed--but early enough not to delay trial--a party may move for judgment on the pleadings.

PRESENT RULE 12(d):	RECOMMENDED RULE 12(d):
(d) Preliminary Hearings. The defenses specifically enumerated (1)-(7) in subdivision (b) of this rule whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until trial.	**(d) Result of Presenting Matters Outside the Pleadings.** If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.
PRESENT RULE 12(e):	**RECOMMENDED RULE 12(e):**
(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.	**(e) Motion For a More Definite Statement.** A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.
PRESENT RULE 12(f):	**RECOMMENDED RULE 12(f):**
(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.	**(f) Motion To Strike.** The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act: (1) on its own; or (2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

PRESENT RULE 12(g):	RECOMMENDED RULE 12(g):
(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.	**(g) Joining Motions.** **(1)** ***Right to Join.*** A motion under this rule may be joined with any other motion allowed by this rule. **(2)** ***Limitation on Further Motions.*** Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.
PRESENT RULE 12(h):	**RECOMMENDED RULE 12(h):**
(h) Waiver or Preservation of Certain Defenses. (1) A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course. (2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits. (3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.	**(h) Waiving and Preserving Certain Defenses.** **(1)** ***When Some Are Waived.*** A party waives any defense listed in Rule 12(b)(2)-(5) by: (A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or (B) failing to either: (i) make it by motion under this rule; (ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course; or (iii) for the defense of improper venue, show good cause within 21 days of an event providing reason to believe that an impartial trial cannot be had in the county in which the action is commenced under section 25-2-201(2), Montana Code Annotated.

	RECOMMENDED RULE 12(h) (continued): **(2)** ***When to Raise Others.*** Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised: (A) in any pleading allowed or ordered under Rule 7(a); (B) by a motion under Rule 12(c); or (C) at trial. **(3)** ***Lack of Subject-Matter Jurisdiction.*** If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.
	RECOMMENDED RULE 12(i): **(i) Hearing Before Trial.** If a party so moves, any defense listed in Rule 12(b)(1)-(7)--whether made in a pleading or by motion--and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

COMMITTEE NOTES

The language of Rule 12 has been amended as part of the general restyling of the Civil Rules to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules. The times set in the former Rule at 10 or 20 days have been revised to 14 or 21 days. *See* Committee Notes to Rule 6.

Rule 12(a)(3) is a substantive amendment taken from the 2000 Amendments to the Federal Rules. The Federal Committee Note explains: "Time is needed for the [State] to determine whether to provide representation to the defendant officer or employee. If the [State] provides representation, the need for an extended answer period is the same as in actions against the [State], a [State] agency, or a [State] officer sued in an official capacity." The time set for the State to answer in Rules 12(a)(2) and (3) is 42 days, following the 7-day increment approach of Rule 6.

Rule 12(a)(4) is a clarifying amendment taken from the restyled 2007 Federal Rules. The Federal Committee Note explains: "Former Rule [12(a)] referred to an [action] that postpones disposition of a motion 'until [] trial on the merits.' Rule 12(a)(4) now refers to postponing disposition 'until trial.' The new expression avoids the ambiguity that inheres in 'trial on the merits,' which may become confusing when there is a separate trial of a single issue or another event different from a single all-encompassing trial."

Rule 12(b)(3) reincorporates improper venue as a Rule 12(b) defense, replacing the 1965 Amendment adding subsections 12(b)(i)-(iii), which originally were intended to clarify the procedure for change of venue under Montana Code Annotated § 25-2-201. Subsection (i) was an unnecessary reference to the venue statute, which like other statutory defenses presentable under Rule 12(b) controls regardless of whether it is incorporated into the rules. Subsection (ii) required presentation of "every defense in law or fact" in a change of venue motion, and reserved consideration of those other defenses for the new court if the original court granted the change in venue; Rules 12(g)(2) and 12(h)(1) already require the presentation of all available defenses under 12(b)(2)-(5) in a Rule 12(b) motion under penalty of waiver, and the final sentence of Rule 12(b) retains the reservation of non-venue defenses for the new court. Subsection (iii) repeats the 20-day response requirement applicable to all 12(b) motions, but provides for later change of venue within 20 days after the discovery of reason to believe that an impartial trial cannot be had in the original venue; this exception to the 20-day response rule has been relocated to Rule 12(h), which addresses waiver and preservation of defenses.

Rule 12(d), addressing hearings on 12(b) defenses before trial, and Rule 12(i), addressing the conversion of a Rule 12 motion presenting matters outside the pleadings to a Rule 56 motion for summary judgment, have been switched to reflect the usual order in which they may be asserted in a case. This revision conforms with the restyled Federal Rules of Civil Procedure effective December 1, 2007.

RULE 13

PRESENT RULE:	RECOMMENDED RULE:
RULE 13. COUNTERCLAIM AND CROSS-CLAIM	**Rule 13. Counterclaim and Crossclaim**
(a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader 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. But the pleader need not state the 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 the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.	**(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; or (B) the opposing party sued on its claim by attachment or other process that did not establish personal jurisdiction over the pleader on that claim, and the pleader does not assert any counterclaim under this rule.
(b) Permissive Counterclaims. A pleading 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.	**(b) Permissive Counterclaims.** A pleading may state as a counterclaim against an opposing party any claim that is not compulsory.

PRESENT RULE 13(c):	RECOMMENDED RULE 13(c):
(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.	**(c) Relief Sought in a Counterclaim.** A counterclaim need not diminish or defeat the recovery sought by the opposing party. It may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party.
PRESENT RULE 13(d):	**RECOMMENDED RULE 13(d):**
(d) Counterclaim Against the State. These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the state of Montana or any of its governmental subdivisions, agencies or officers.	**(d) Counterclaim Against the State.** These rules do not expand the right to assert a counterclaim--or to claim a credit--against the State of Montana or a state officer or agency.
PRESENT RULE 13(e):	**RECOMMENDED RULE 13(e):**
(e) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after serving a pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.	**(e) Counterclaim Maturing or Acquired After Pleading.** The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading.
PRESENT RULE 13(f):	**RECOMMENDED RULE 13(f):**
(f) Omitted Counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.	[Abrogated.]
PRESENT RULE 13(g):	**RECOMMENDED RULE 13(g):**
(g) Cross-Claim Against Coparty. A pleading may state as a cross-claim any claim by one party against a coparty arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action.	**(g) Crossclaim Against a Coparty.** A pleading may state as a crossclaim any claim by one party against a coparty if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the

PRESENT RULE 13(g):	RECOMMENDED RULE 13(g) (continued):
Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.	original action. The crossclaim may include a claim that the coparty is or may be liable to the crossclaimant for all or part of a claim asserted in the action against the crossclaimant.
PRERESENT RULE 13(h):	**RECOMMENDED RULE 13(h):**
(h) Joinder of Additional Parties. 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 Rules 19 and 20.	**(h) Joining Additional Parties.** Rules 19 and 20 govern the addition of a person as a party to a counterclaim or crossclaim.
PRESENT RULE 13(i):	**RECOMMENDED RULE 13(i):**
(i) Separate Trials -- Separate Judgment. If the court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b), even if the claims of the opposing party have been dismissed or otherwise disposed of.	**(i) Separate Trials; Separate Judgments.** If the court orders separate trials under Rule 42(b), it may enter judgment on a counterclaim or crossclaim under Rule 54(b) when it has jurisdiction to do so, even if the opposing party's claims have been dismissed or otherwise resolved.

COMMITTEE NOTES

The language of Rule 13 has been amended as part of the general restyling of the Civil Rules to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules.

Rule 13(b) is a clarifying amendment taken from the restyled 2007 Federal Rules. The Federal Committee Note explains: "The meaning of former Rule 13(b) is better expressed by deleting 'not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.' Both as a matter of intended meaning and current practice, a party may state as a permissive counterclaim a claim that does not grow out of the same transaction or occurrence as an opposing party's claim even though one of the exceptions in Rule 13(a) means the claim is not a compulsory counterclaim."

The Committee followed the Federal lead in deleting Rule 13(f) as redundant of Rule 15 and potentially confusing because of that. The following Federal Comment to the 2009 Amendment to Rule 13 explains the purpose of the deletion:

> Rule 13(f) is deleted as largely redundant and potentially misleading. An amendment to add a counterclaim will be governed by Rule 15. Rule 15(a)(1) permits some amendments to be made as a matter of course or with the opposing party's written consent. When the court's leave is required, the reasons described in Rule 13(f) for permitting amendment of a pleading to add an omitted counterclaim sound different from the general amendment standard in Rule 15(a)(2), but seem to be administered – as they should be – according to the same standard directing that leave should be freely given when justice so requires. The independent existence of Rule 13(f) has, however, created some uncertainty as to the availability of relation back of the amendment under Rule 15(c). See 6 C. Wright, A. Miller & M. Kane, Federal Practice & Procedure: Civil 2d, § 1430 (1990). Deletion of Rule 13(f) ensures that relation back is governed by the tests that apply to all other pleading amendments.

The Committee recommends that, in order to conform to the Federal numbering and lettering system as closely as possible, Rule 13(f) will maintain its place as 13(f) in the Rule but with the simple indication of "Abrogated." Rules 13(g), (h) and (i) remain as lettered.

RULE 14

PRESENT RULE :	RECOMMENDED RULE:
RULE 14. THIRD-PARTY PRACTICE	**Rule 14. Third-Party Practice**
(a) When Defendant May Bring in Third Party. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than 30 days after serving the original answer. Otherwise the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12 and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13. Any party may move to strike	**(a) When a Defending Party May Bring in a Third Party.** **(1)** ***Timing of the Summons and Complaint.*** A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must, by motion, obtain the court's leave if it files the third-party complaint more than 14 days after serving its original answer. **(2)** ***Third-Party Defendant's Claims and Defenses.*** The person served with the summons and third-party complaint--the "third-party defendant": (A) must assert any defense against the third-party plaintiff's claim under Rule 12; (B) must assert any counterclaim against the third-party plaintiff under Rule 13(a), and may assert any counterclaim against the third-party plaintiff under Rule 13(b) or any crossclaim against another third-party defendant under Rule 13(g); (C) may assert against the plaintiff any defense that the third-party plaintiff has to the plaintiff's claim; and (D) may also assert against the plaintiff any claim arising out of

PRESENT RULE 14(a):	RECOMMENDED RULE 14(a) (continued):
the third-party claim, or for its severance or separate trial; the court may direct a final judgment upon either the original claim or the third-party claim alone in accordance with the provisions of Rule 54(b). A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.	the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. **(3)** ***Plaintiff's Claims Against a Third-Party Defendant.*** The plaintiff may assert against the third-party defendant any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The third-party defendant must then assert any defense under Rule 12 and any counterclaim under Rule 13(a), and may assert any counterclaim under Rule 13(b) or any crossclaim under Rule 13(g). **(4)** ***Motion to Strike, Sever, or Try Separately.*** Any party may move to strike the third-party claim, to sever it, or to try it separately. ***(5) Third-Party Defendant's Claim Against a Nonparty.*** A third-party defendant may proceed under this rule against a nonparty who is or may be liable to the third-party defendant for all or part of any claim against it.
PRESENT RULE 14(b):	**RECOMMENDED RULE 14(b):**
(b) When Plaintiff May Bring in Third Party. When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.	**(b) When a Plaintiff May Bring in a Third Party.** When a claim is asserted against a plaintiff, the plaintiff may bring in a third party if this rule would allow a defendant to do so.

COMMITTEE NOTES

The language of Rule 14 has been amended as part of the general restyling of the Civil Rules to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules. To conform to the Federal Rule, the time in Rule 14(a)(1) has been changed from 30 to 14 days (the time in which a third party plaintiff must, by motion, obtain the court's leave if it files the third-party complaint after serving its original answer).

Rules 13(a)(2)(B) and (a)(3) contain clarifying amendments taken from the restyled 2007 Federal Rules. The Federal Committee Note explains: "Former Rule 14 twice refers to counterclaims under Rule 13. In each case, the operation of Rule 13(a) depends on the state of the action at the time the pleading is filed. If plaintiff and third-party defendant have become opposing parties because one has made a claim for relief against the other, Rule 13(a) requires assertion of any counterclaim that grows out of the transaction or occurrence that is the subject matter of that claim. Rules 14(a)(2)(B) and (a)(3) reflect the distinction between compulsory and permissive counterclaims."

Rule 14(b) contains a "style-substance" amendment changing the term "counterclaim" to "claim" taken from the restyled 2007 Federal Rules. The Federal Committee Note explains: "A plaintiff should be on equal footing with the defendant in making third-party claims, whether the claim against the plaintiff is asserted as a counterclaim or as another form of claim. The limit imposed by the former reference to 'counterclaim' is deleted."

RULE 15

PRESENT RULE:	RECOMMENDED RULE:
RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS	**Rule 15. Amended and Supplemental Pleadings**
(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.	**(a) Amendments Before Trial.** **(1)** ***Amending as a Matter of Course.*** A party may amend its pleading once as a matter of course within: (A) 21 days after serving it; or (B) if the pleading is one to which a responsive pleadings is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier. **(2)** ***Other Amendments.*** In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires. **(3)** ***Time to Respond.*** Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.
(b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to so amend does not affect the result of the trial of these	**(b) Amendments During and After Trial.** **(1)** ***Based on an Objection at Trial.*** If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a

PRESENT RULE 15(b) (continued):	RECOMMENDED RULE 15(b) (continued):
issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.	continuance to enable the objecting party to meet the evidence. **(2) *For Issues Tried by Consent.*** When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move--at any time, even after judgment--to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.
PRESENT RULE 15(c): **(c) Relation Back of Amendments.** Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against the party to be brought in by amendment, that party (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party. The requirements of clauses (1) and (2) hereof are satisfied with respect to any city, village, town, school district, county, or public agency, board or officer of such public bodies, and with respect to the state or any state board, agency or officer thereof, to be brought into the	**RECOMMENDED RULE 15(c):** **(c) Relation Back of Amendments.** **(1) *When an Amendment Relates Back.*** An amendment to a pleading relates back to the date of the original pleading when: (A) the law that provides the applicable statute of limitations allows relation back; (B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out--or attempted to be set out--in the original pleading; or (C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(t) for serving the summons and complaint, the party to be brought in by amendment: (i) received such notice of the action that it will not be prejudiced in defending on the merits; and

PRESENT RULE 15(c) (continued):	RECOMMENDED RULE 15(c) (continued):
action as defendant, if process is served as provided by Rule 4D(2)(g) and (h) for service upon such defendant.	(ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity. **(2) *Notice to the State of Montana and Other Public Bodies.*** When the State of Montana, local government, or a state or local officer or agency is added as a defendant by amendment, the notice requirements of Rule 15(c)(1)(C)(i) and (ii) are satisfied if, during the stated period, process was served as provided by Rule 4(k) and (l).
PRESENT RULE 15(d):	**RECOMMENDED RULE 15(d):**
(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented, whether or not the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefor.	**(d) Supplemental Pleadings.** On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

COMMITTEE NOTES

Rule 15, F. R. Civ. P., was substantially modified and Montana has elected to follow these Federal modifications. The Federal Committee Comment to Rule 15, which explains the changes and the rationale, is as follows:

> The times set in the former rule at 10 or 20 days have been revised to 14 or 21 days. *See* the Note to Rule 6.
>
> Rule 15(a)(1) is amended to make three changes in the time allowed to make one amendment as a matter of course.

Former Rule 15(a) addressed amendment of a pleading to which a responsive pleading is required by distinguishing between the means used to challenge the pleadings. Serving a responsive pleading terminated the right to amend. Serving a motion attacking the pleading did not terminate the right to amend, because a motion is not a "pleading" as defined in Rule 7. The right to amend survived beyond decision of the motion unless the decision expressly cut off the right to amend.

The distinction drawn in former Rule 15(a) is changed in two ways. First, the right to amend once as a matter of course terminates 21 days after service of a motion under Rule 12(b), (e), or (f). This provision will force the pleader to consider carefully and promptly the wisdom of amending to meet the arguments in the motion. A responsive amendment may avoid the need to decide the motion or reduce the number of issues to be decided, and will expedite determination of issues that otherwise might be raised seriatim. It also should advance other pretrial proceedings.

Second, the right to amend once as a matter of course is no longer terminated by service of a responsive pleading. The responsive pleading may point out issues that the original pleader had not considered and persuade the pleader that amendment is wise. Just as amendment was permitted by former Rule 15(a) in response to a motion, so the amended rule permits one amendment as a matter of course in response to a responsive pleading. The right is subject to the same 21-day limit as the right to amend in response to a motion.

The 21-day periods to amend once as a matter of course after service of a responsive pleading or after service of a designated motion are not cumulative. If a responsive pleading is served after one of the designated motions is served, for example, there is no new 21-day period.

Finally, amended Rule 15(a)(1) extends from 20 to 21 days the period to amend a pleading to which no responsive pleading is allowed and omits the provision that cuts off the right if the action is on the trial calendar. Rule 40 no longer refers to a trial calendar, and many courts have abandoned formal trial calendars. It is more effective to rely on scheduling orders or other pretrial directions to establish time limits for amendment in the few situations that otherwise might allow one amendment as a matter of course at a time that would disrupt trial preparations. Leave to amend still can

be sought under Rule 15(a)(2), or at and after trial under Rule 15(b).

Amended Rule 15(a)(3) extends from 10 to 14 days the period to respond to an amended pleading.

Abrogation of Rule 13(f) establishes Rule 15 as the sole rule governing amendment of a pleading to add a counterclaim.

Rule 15(c)(1)(C)(i) is a clarifying amendment taken from the restyled 2007 Federal Rules. The Federal Committee Note explains: "Former Rule 15(c)(3)(A) called for notice of the 'institution' of the action. Rule 15(c)(1)(C)(i) omits the reference to 'institution' as potentially confusing. What counts is that the party to be brought in have notice of the existence of the action, whether or not the notice includes details as to its 'institution.'"

RULE 16

PRESENT RULE:	RECOMMENDED RULE:
RULE 16. PRETRIAL CONFERENCES--SCHEDULING–MANAGEMENT	**Rule 16. Pretrial Conferences; Scheduling; Management**
(a) Pretrial Conferences -- Objectives. In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as (1) expediting the disposition of the action; (2) establishing early and continuing control so that the case will not be protracted because of lack of management; (3) discouraging wasteful pretrial activities; (4) improving the quality of the trial through more thorough preparation, and; (5) facilitating the settlement of the case.	**(a) Purposes of a Pretrial Conference.** In any action, the court may order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as: (1) expediting disposition of the action; (2) establishing early and continuing control so that the case will not be protracted because of lack of management; (3) discouraging wasteful pretrial activities; (4) improving the quality of the trial through more thorough preparation, and; (5) facilitating settlement.
(b) Scheduling and Planning. Except in categories of actions exempted by district court rule as inappropriate, the judge shall, after consulting with the attorneys for the parties and any unrepresented parties, by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that limits the time (1) to join other parties and to amend the pleadings; (2) to file and hear motions; and (3) to complete discovery.	**(b) Scheduling.** **(1)** ***Scheduling Order.*** Upon request by a party, except in categories of actions exempted by district court rule, the judge must issue a scheduling order after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference or by telephone, mail, or other means. **(2)** ***Time to Issue.*** The judge must issue the scheduling order as soon as practicable, but in any event within 90 days of a request by a party.

PRESENT RULE 16(b) (continued):	**RECOMMENDED RULE 16(b) (continued):**
The scheduling order also may include (4) the date or dates for conferences before trial, final pretrial conference, and trial; (5) provisions for disclosure or discovery of electronically stored information; and (6) any other matters appropriate in the circumstances of the case. The order shall issue as soon as practicable but in no event more than 120 days after filing of the complaint. A schedule shall not be modified except by leave of the judge upon a showing of good cause.	**(3)** ***Contents of the Order.*** (A) *Required Contents.* The scheduling order must limit the time to join other parties, amend the pleadings, complete discovery, and file motions. (B) *Permitted Contents.* The scheduling order may: (i) modify the timing of disclosures under Rules 26(a) and 26(e)(1); (ii) modify the extent of discovery; (iii) provide for disclosure or discovery of electronically stored information; (iv) include any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced; (v) set dates for pretrial conferences and for trial; and (vi) include other appropriate matters. **(4)** ***Modifying a Schedule.*** A schedule may be modified only for good cause and with the judge's consent.

PRESENT RULE 16(c):	RECOMMENDED RULE 16(c):
(c) Subjects to Be Discussed at Pretrial Conferences. The participants at any conference under this rule may consider and take action with respect to (1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses; (2) the necessity or desirability of amendments to the pleadings; (3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence; (4) the avoidance of unnecessary proof and of cumulative evidence; (5) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial; (6) the advisability of referring matters to a master; (7) the possibility of settlement or the use of extrajudicial procedures to resolve the dispute; (8) the form and substance of the pretrial order; (9) the disposition of pending motions; (10) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems; and	**(c) Attendance and Matters for Consideration at a Pretrial Conference.** **(1)** ***Attendance.*** A represented party must authorize at least one of its attorneys to make stipulations and admissions about all matters that can reasonably be anticipated for discussion at a pretrial conference. If appropriate, the court may require that a party or its representative be present or reasonably available by other means to consider possible settlement. **(2)** ***Matters for Consideration.*** At any pretrial conference, the court may consider and take appropriate action on the following matters: (A) formulating and simplifying the issues, and eliminating frivolous claims or defenses; (B) amending the pleadings if necessary or desirable; (C) obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence; (D) avoiding unnecessary proof and cumulative evidence, and limiting the use of testimony under Montana Rule of Evidence 702; (E) determining the appropriateness and timing of summary adjudication under Rule 56; (F) controlling and scheduling discovery, including orders affecting

PRESENT RULE 16(c) (continued):	**RECOMMENDED RULE 16(c) (continued):**
(11) the time for submission of proposed findings of fact and conclusions of law in a non-jury action, or proposed instructions to the jury and the form of verdict in a jury action, and such other matters as may aid in the disposition of the action. At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed.	disclosures and discovery under Rule 26 and Rules 29 through 37; (G) identifying witnesses and documents, scheduling the filing and exchange of any pretrial briefs, and setting dates for further conferences and for trial; (H) referring matters to a master; (I) settling the case and using special procedures to assist in resolving the dispute when authorized by statute or local rule; (J) determining the form and content of the pretrial order; (K) disposing of pending motions; (L) adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems; (M) ordering a separate trial under Rule 42(b) of a claim, counterclaim, crossclaim, third-party claim, or particular issue; (N) ordering the presentation of evidence early in the trial on a manageable issue that might, on the evidence, be the basis for a judgment as a matter of law under Rule 50(a) or a judgment on partial findings under Rule 52(c); (O) establishing a reasonable limit on the time allowed to present evidence; and

	PRESENT RULE 16(c) (continued): (P) the time for submission of proposed findings of fact and conclusions of law in a non-jury action, or proposed instructions to the jury and the form of verdict in a jury action; and (Q) facilitating in other ways the just, speedy, and inexpensive disposition of the action.
PRESENT RULE 16(d): **(d) Final Pretrial Conference.** Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.	**RECOMMENDED RULE 16(d):** **(d) Pretrial Orders.** After any conference under this rule, the court should issue an order reciting the action taken. This order controls the course of the action unless the court modifies it.
PRESENT RULE 16(e): **(e) Pretrial Orders.** After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.	**RECOMMENDED RULE 16(e):** **(e) Final Pretrial Conference and Orders.** The court may hold a final pretrial conference to formulate a trial plan, including a plan to facilitate the admission of evidence. The conference must be held as close to the start of trial as is reasonable, and must be attended by at least one attorney who will conduct the trial for each party and by any unrepresented party. The court may modify the order issued after a final pretrial conference only to prevent manifest injustice.
PRESENT RULE 16(f): **(f) Sanctions.** If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared	**RECOMMENDED RULE 16(f):** **(f) Sanctions.** **(1)** ***In General.*** On motion or on its own, the court may issue any just orders, including those authorized by Rule

PRESENT RULE 16(f) (continued):	RECOMMENDED RULE 16(f) (continued):
to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.	37(b)(2)(A)(ii)-(vii), if a party or its attorney: (A) fails to appear at a scheduling or other pretrial conference; (B) is substantially unprepared to participate--or does not participate in good faith--in the conference; or (C) fails to obey a scheduling or other pretrial order. **(2) *Imposing Fees and Costs.*** Instead of or in addition to any other sanction, the court must order the party, its attorney, or both to pay the reasonable expenses--including attorney's fees--incurred because of any noncompliance with this rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

COMMITTEE NOTES

The language of Rule 16 has been amended as part of the general restyling of the Civil Rules to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules.

Rule 16(b)(2) contains a substantive amendment drafted by the Committee. The amendment replaces the judge's duty to issue a scheduling order 120 days after filing a complaint with a party's right to request a scheduling order that must issue 90 days after the request. The purpose of the amendment is to allow each party to assess the need and timing for a scheduling order, and to avoid premature issuance of a scheduling order when the parties agree such an order is not yet necessary.

Rules 16(b)(3)(iv) and 16(c)(2)(D)-(F), (M)-(P) contain a substantive but non-binding amendment taken from the 2006 and 1993 Amendments to the Federal Rules, respectively. The 1993 Federal Committee Note explains: "The primary purposes of the changes in subdivision (c) are to call attention to the opportunities for structuring of trial under Rules 42, 50, and 52 and to eliminate questions that have occasionally been raised regarding the authority of the court to make appropriate orders designed either to facilitate settlement or to provide for an efficient and economical trial."

Rule 16(c)(1) contains a substantive amendment taken from the 1993 and 2007 Amendments to the Federal Rules. The 1993 Federal Committee Note explains in part: "[I]ndeed, a conference is most effective and productive when the parties participate in a spirit of cooperation and mindful of their responsibilities under Rule 1."

Rules 16(d) and 16(e) have been switched to reflect the usual order in which they arise.

PRESENT CHAPTER TITLE AND RULE: IV. PARTIES RULE 17. PARTIES PLAINTIFF AND DEFENDANT – CAPACITY	RECOMMENDED CHAPTER TITLE AND RULE: TITLE IV. PARTIES Rule 17. Plaintiff and Defendant; Capacity; Public Officers
(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. A personal representative, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; and when a statute of the state of Montana so provides, an action for the use or benefit of another shall be brought in the name of the state of Montana. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.	**(a) Real Party in Interest.** **(1)** ***Designation in General.*** An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought: (A) an executor; (B) an administrator; (C) a guardian; (D) a bailee; (E) a trustee of an express trust; (F) a party with whom or in whose name a contract has been made for another's benefit; and (G) a party authorized by statute. **(2)** ***Action in the Name of the State of Montana for Another's Use or Benefit.*** When a state statute so provides, an action for another's use or benefit must be brought in the name of the State of Montana. **(3)** ***Joinder of the Real Party in Interest.*** The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be

	RECOMMENDED RULE 17(a) (continued): substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.
PRESENT RULE 17(b): **(b) Capacity to Sue or Be Sued.** The capacity of persons to sue or be sued shall be determined by appropriate statutory provisions.	**RECOMMENDED RULE 17(b):** **(b) Capacity to Sue or be Sued.** Capacity to sue or be sued is determined by appropriate statutory provisions.
PRESENT RULE 17(c): **(c) Infants or Incompetent Persons.** Whenever an infant or incompetent person has a representative, such as a general guardian, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person, or in any case where the court deems it expedient a guardian ad litem may be appointed to represent an infant or incompetent person, even though the infant or incompetent person may have a general guardian and may have appeared by that general guardian.	**RECOMMENDED RULE 17(c):** **(c) Minor or Incompetent Person.** **(1)** ***With a Representative.*** The following representatives may sue or defend on behalf of a minor or an incompetent person: (A) a general guardian; (B) a committee; (C) a conservator; or (D) a like fiduciary. **(2)** ***Without a Representative.*** A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem--or issue another appropriate order--to protect a minor or incompetent person who is unrepresented in an action.

	RECOMMENDED RULE 17(d): **(d) Public Officer's Title and Name.** A public officer who sues or is sued in an official capacity may be designated by official title rather than by name, but the court may order that the officer's name be added.

COMMITTEE NOTES

The language of Rule 17 has been amended as part of the general restyling of the Civil Rules to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules.

Rule 17(d) incorporates the provisions of previous Rule 25(d)(2), which fit better with Rule 17.

RULE 18

PRESENT RULE: **RULE 18. JOINDER OF CLAIMS AND REMEDIES**	RECOMMENDED RULE: **Rule 18. Joinder of Claims**
(a) Joinder of Claims. A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims either legal or equitable or both as the party has against an opposing party or coparty.	**(a) In General.** A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.
(b) Joinder of Remedies -- Fraudulent Conveyances. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to that plaintiff, without first having obtained a judgment establishing the claim for money. This rule shall not be applied in tort cases so as to permit the joinder of a liability or indemnity insurance carrier, unless such carrier is by law or contract directly liable to the person injured or damaged.	**(b) Joinder of Contingent Claims.** A party may join two claims even though one of them is contingent on the disposition of the other; but the court may grant relief only in accordance with the parties' relative substantive rights. In particular, a plaintiff may state a claim for money and a claim to set aside a conveyance that is fraudulent as to that plaintiff, without first obtaining a judgment for the money. In tort cases, this rule does not allow a liability or indemnity insurance carrier to join, unless under law or a contract the carrier is directly liable to the person injured or damaged.

COMMITTEE NOTES

The language of Rule 18 has been amended as part of the general restyling of the Civil Rules to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules.

The final sentence in Rule 18(b) restates a limitation on joinder in tort cases by insurance carriers that has no counterpart in the Federal Rules.

RULE 19

PRESENT RULE:	RECOMMENDED RULE:
RULE 19. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION	**Rule 19. Required Joinder of Parties**
(a) Persons to Be Joined if Feasible. A person who is subject to service of process shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.	**(a) Persons Required to Be Joined if Feasible.** **(1)** ***Required Party.*** A person who is subject to service of process must be joined as a party if: (A) in that person's absence, the court cannot accord complete relief among existing parties; or (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest. **(2)** ***Joinder by Court Order.*** If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff. **(3)** ***Venue.*** If a joined party objects to venue and the joinder would make venue improper, the court must dismiss that party.

PRESENT RULE 19(a):	RECOMMENDED RULE 19(b):
(b) Determination by Court of Whenever Joinder Not Feasible. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.	**(b) When Joinder Is Not Feasible.** If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include: (1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties; (2) the extent to which any prejudice could be lessened or avoided by: (A) protective provisions in the judgment; (B) shaping the relief; or (C) other measures; (3) whether a judgment rendered in the person's absence would be adequate; and (4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.
PRESENT RULE 19(c):	**RECOMMENDED RULE 19(c):**
(c) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.	**(c) Pleading the Reasons for Nonjoinder.** When asserting a claim for relief, a party must state: (1) the name, if known, of any person who is required to be joined if feasible but is not joined; and (2) the reasons for not joining that person.

PRESENT RULE 19(d):	RECOMMENDED RULE 19(d):
(d) Exception of Class Actions. This rule is subject to the provisions of Rule 23.	**(d) Exception for Class Actions.** This rule is subject to Rule 23.

COMMITTEE NOTES

The language of Rule 19 has been amended as part of the general restyling of the Civil Rules to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules.

RULE 20

PRESENT RULE:	RECOMMENDED RULE:
RULE 20. PERMISSIVE JOINDER OF PARTIES	**Rule 20. Permissive Joinder of Parties**
(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.	**(a) Persons Who May Join or Be Joined.** **(1)** ***Plaintiffs.*** Persons may join in one action as plaintiffs if: (A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all plaintiffs will arise in the action. **(2)** ***Defendants.*** Persons may be joined in one action as defendants if: (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action. **(3)** ***Extent of Relief.*** Neither a plaintiff nor a defendant need be interested in obtaining or defending against all the relief demanded. The court may grant judgment to one or more plaintiffs according to their rights, and against one or more defendants according to their liabilities.
(b) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party	**(b) Protective Measures.** The court may issue orders--including an order for separate trials--to protect a party against embarrassment, delay, expense, or other prejudice that arises

PRESENT RULE 20(b) (continued):	RECOMMENDED RULE 20(b) (continued):
asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.	from including a person against whom the party asserts no claim and who asserts no claim against the party.

COMMITTEE NOTES

The language of Rule 20 has been amended as part of the general restyling of the Civil Rules to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules.

RULE 21

PRESENT RULE:	RECOMMENDED RULE:
RULE 21. MISJOINDER AND NONJOINDER OF PARTIES	**Rule 21. Misjoinder and Non-Joinder of Parties**
Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.	Misjoinder of parties is not a ground for dismissing an action. On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party.

COMMITTEE NOTES

The language of Rule 21 has been amended as part of the general restyling of the Civil Rules to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules.

RULE 22

PRESENT RULE:	RECOMMENDED RULE:
RULE 22. INTERPLEADER	**Rule 22. Interpleader**
(a) By Joinder, Cross-claim or Counterclaim. Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.	**(a) Joinder, cross-claim or counterclaim.** **(1)** ***By a Plaintiff.*** Persons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead. Joinder for interpleader is proper even though: (A) the claims of the several claimants, or the titles on which their claims depend, lack a common origin or are adverse and independent rather than identical; or (B) the plaintiff denies liability in whole or in part to any or all of the claimants. **(2)** ***By a Defendant.*** A defendant exposed to similar liability may seek interpleader through a crossclaim or counterclaim.
(b) By Substitution. A defendant against whom an action is pending upon a contract, or for specific real or personal property, at any time before answer, upon affidavit that a person not a party to the action and without collusion with the defendant makes against the defendant a demand for the same debt or property, upon due notice to such person and the adverse party, may apply to the court for an order to substitute such person in the defendant's place and to discharge the defendant from liability to either party on the defendant's depositing in court the amount of the debt, or delivering the property or its value to such person as the court may direct, and the court, in its discretion, may make the order.	**(b) Substitution.** **(1) Grounds.** A defendant in a contract or property action may substitute as the defendant a person who is not a party and who demands the same debt or property at issue in the action, upon motion made: (A) before the defendant files an answer; (B) with due notice to the person not a party and to the plaintiff; and (C) upon affidavit that a person not a party to the action:

	RECOMMENDED RULE 22(a) (continued): (i) makes against the defendant a demand for the same debt or property, and (ii) is not colluding with the defendant. **(2) Deposit of debt or delivery of property.** A defendant substituted under this rule must, at the court's discretion, either : (A) deposit in court the amount of the debt at issue; or (B) deliver the property at issue or its value to such person as the court may direct. **(3) Discharge of liability.** A defendant's deposit of debt or delivery of property under subsection (b)(2) discharges the defendant's liability to either the plaintiff or the substitute defendant.

COMMITTEE NOTES

The language of Rule 22 has been amended as part of the general restyling of the Civil Rules to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules.

Rule 22(b) restates a procedure for interpleading a substitute defendant by deposit of property at issue that has no counterpart in the Federal Rules.