

## **I. Rules Governing Service**

### **Rule 425. Additional Defendants**

(a) Original process shall be served upon an additional defendant who is not already a party to the action in the same manner as if he or she were an original defendant. [Copies of all pleadings filed in the action shall be served with the complaint against the additional defendant.] The joining party, upon request, shall furnish copies of all or specified pleadings filed in the action.

NOTE: [Prior pleadings must be served with the complaint whether the complaint is original process served upon the additional defendant or a pleading served under Rule 440.]

See Rule 213(b) for the right of an additional defendant to move for a severance and Rule 1006(d) for the right to move for a change of venue.

(b) The defendant or additional defendant shall serve a copy of his or her complaint upon every prior party [but need not attach copies of any pleadings previously filed in the action].

## II. Rules Governing Pleading

### Rule 1017. Pleadings Allowed

(a) Except as provided by Rule 1041.1, the pleadings in an action are limited to

(1) a complaint[, ] and an answer thereto,

NOTE: The term “complaint” includes a complaint to join an additional defendant.

(2) a reply if the answer contains new matter, [or] a counterclaim or a cross-claim,

(3) a counter-reply if the reply to a counterclaim or cross-claim contains new matter,

(4) a preliminary objection and [an answer] a response thereto.

NOTE: Pleading in asbestos litigation is governed by Rule 1041.1

An answer needs to be filed to a preliminary objection only when the preliminary objection alleges facts not of record [, see]. See Rule 1028(c)(2), note.

(b) Rescinded.

NOTE: The grounds for preliminary objections are set forth in Rule 1028(a).

(c) No formal joinder of issues is required.

## **Rule 1031. Counterclaim**

(a) The defendant may set forth in the answer under the heading "Counterclaim" any cause of action cognizable in a civil action which the defendant has against the plaintiff at the time of filing the answer.

NOTE: See Rule 2256 governing counterclaims in an action involving an additional defendant.

See Rule 213(a) and (b) governing consolidation and severance of causes of action.

(b) A counterclaim need not diminish or defeat the relief demanded by the plaintiff. It may demand relief exceeding in amount or different in kind from that demanded by the plaintiff.

## **Rule 1031.1. Cross-claim (NEW)**

Any party may set forth in the answer or reply under the heading “Cross-claim” a cause of action against any other party to the action that the other party may be

- (1) solely liable on the underlying cause of action or

NOTE: The term “underlying cause of action” refers to the cause of action set forth in the plaintiff’s complaint or the defendant’s counterclaim.

- (2) liable to or with the cross-claimant on any cause of action arising out of the transaction or occurrence or series of transactions or occurrences upon which the underlying cause of action is based.

NOTE: Subparagraph (2) permits a cross-claimant to raise a claim that another party is liable over to the cross-claimant or jointly and severally liable with the cross-claimant.

The right to assert a cross-claim in a class action is limited by Rule 1706.1 to the grounds set forth in that rule.

### III. Rules Governing Class Actions

#### **Rule 1706.1. Joinder of Additional Defendants. Cross-Claims**

Any defendant or additional defendant may only join as an additional defendant any person[, whether or] not a party to the action, or may assert a cross-claim against another party to the action, who may be

- (1) solely liable on the plaintiff's cause of action[;], or
- (2) liable over to the joining party on the plaintiff's cause of action, or
- (3) jointly or severally liable with the joining party on the plaintiff's cause of action.

NOTE: [The three bases of joinder provided by this rule are identical to the bases of joinder provided by Rule 2252(a)(1) through (3) governing the joinder of additional defendants generally.] The right of joinder under Rule 1706.1 of an additional defendant based upon liability "on the plaintiff's cause of action" is not as broad as the right under Rule 2252(a) governing the joinder of additional defendants generally

Similarly, the right of cross-claim under this rule is not as broad as the right under Rule 1031.1 governing cross-claims generally.

#### IV. Rules Governing Joinder of Additional Defendants

##### Rule 2252. Right to Join Additional Defendants

(a) Except as provided by Rule 1706.1, any [defendant or additional defendant] party may join as an additional defendant any person[, whether or] not a party to the action[, ] who may be

(1) solely liable on the [plaintiff's] underlying cause of action against the joining party, or

NOTE: The term "underlying cause of action" refers to the cause of action set forth in the plaintiff's complaint or the defendant's counterclaim.

(2) [liable over to the joining party on the plaintiff's cause of action, or] Rescinded

(3) [jointly or severally liable with the joining party on the plaintiff's cause of action, or] Rescinded.

(4) liable to or with the joining party on any cause of action arising out of the transaction or occurrence or series of transactions or occurrences upon which the [plaintiff's] underlying cause of action against the joining party is based.

NOTE: Paragraph (4) permits a joining party to join an additional defendant who may be liable over on the underlying cause of action against the joining party or jointly and severally liable with the joining party.

The joinder of an additional defendant in a class action is limited by Rule 1706.1 to the grounds set forth in [subparagraphs (1) to (3)] that rule.

(b) [If the person sought to be joined is not a party to the action the] The joining party may file as of course a praecipe for a writ or a complaint.

(1) If the joinder is by writ, the joining party shall file a complaint within twenty days from the filing of the praecipe for the writ. If the joining party fails to file the complaint within the required time, [the plaintiff or the additional defendant joined] any other party may seek a rule to file the complaint and an eventual judgment of non pros in the manner provided by Rule 1037(a) for failure to file a complaint.

(2) The complaint, in the manner and form required of the initial pleading of the plaintiff in the action, shall set forth the facts relied upon to establish the liability of the joined party and the relief demanded.

NOTE: For the form of notice to defend in a complaint to join an additional defendant, see Rule 1018.1.

(c) The writ to join an additional defendant shall be directed to the additional defendant and shall be substantially in the following form:

**Commonwealth of Pennsylvania**

**County of \_\_\_\_\_**

**(Caption)**

To \_\_\_\_\_: (Name of Additional Defendant)

You are notified that \_\_\_\_\_  
(Name(s) of Defendant(s))

has (have) joined you as an additional defendant in this action, which you are required to defend.

Date \_\_\_\_\_

Seal of Court

\_\_\_\_\_  
(Name of Prothonotary (Clerk))

By \_\_\_\_\_  
(Deputy)

(d) [If the person sought to be joined is a party, the joining party shall, without moving for severance or the filing of a praecipe for a writ or a complaint, assert in the answer as new matter that such party is alone liable to the plaintiff or liable over to the joining party or jointly or severally liable to the plaintiff or liable to the joining party directly setting forth the ground therefor. The case shall proceed thereafter as if such party had been joined by a writ or a complaint.] Rescinded.

NOTE: See Rule 1031.1 governing cross-claims for the procedure to assert a claim against a person already a party to an action.

## **Rule 2253. Time for Filing Praecept or Complaint**

(a) Except as provided by Rule 1041.1(e), neither a praecipe for a writ to join an additional defendant nor a complaint if the joinder is commenced by complaint, shall be filed [by the original defendant or an additional defendant] later than

(1) sixty days after the service upon the original defendant of the initial pleading of the plaintiff or any amendment thereof, or

(2) the time for filing the joining party's answer as established by Rule 1026, Rule 1028 or order of court,

whichever is later, unless such filing is allowed by order of the court or by the written consent of all parties approved by and filed with the court. The praecipe for a writ to join an additional defendant or the complaint joining the additional defendant shall be filed within twenty days after notice of the court order or the court approval of the written consent or within such other time as the court shall fix.

NOTE: Rule 1041.1(e) provides that in asbestos litigation leave of court is not required to join an additional defendant out of time but the joined party may request by preliminary objection that the joinder be stricken.

(b) Any party may object to a motion to join an additional defendant after the [sixty-day] period prescribed by subdivision (a) on the ground that the party will be prejudiced by the late joinder. The plaintiff may also object to the late joinder on the ground that the joining party has not shown a reasonable justification for its delay in commencing joinder proceedings.

(c) A person not previously a party who is joined as an additional defendant may object to the joinder by filing preliminary objections asserting prejudice or any other ground set forth in Rule 1028.

NOTE: The person joined may object to the joinder whether the joinder was effected by order or consent.

## **Rule 2255. Procedure**

(a) The procedure, including pleadings, between the party joining an additional defendant and the additional defendant shall be the same as though the party joining the additional defendant were a plaintiff and the additional defendant were a defendant.

(b) [No pleadings shall be filed between the additional defendant and any party other than the one joining the additional defendant except that the additional defendant may file a counterclaim against the plaintiff.] Rescinded.

(c) No judgment on the pleadings may be entered in favor of any party against an additional defendant for failure to answer the complaint of the party joining the additional defendant, but all allegations of fact in such complaint to which an answer is required and which are not sufficiently answered shall be conclusive upon the additional defendant.

(d) The plaintiff shall recover from an additional defendant found liable to the plaintiff alone or jointly with the defendant as though such additional defendant had been joined as a defendant and duly served and the initial pleading of the plaintiff had averred such liability.

## **Rule 2256. Counterclaims**

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(c) [A party against whom a counterclaim is asserted shall have the same right to join any one as an additional party that is given to a defendant in Rule 2252.]

Rescinded.

NOTE: A party against whom a counterclaim is asserted may join an additional defendant under Rule 2252(a).

## **Rule 2274. Effective Date. Pending Actions**

[These rules shall become effective upon adoption and shall apply to actions pending at that time.] Rescinded.

NOTE: See Rule 52 governing effective date of rules and amendments to rules and the application of new rules and amendments to pending actions.

## **Explanatory Comment**

The Supreme Court of Pennsylvania has promulgated a new rule of civil procedure governing cross-claims and amended the rules governing joinder of additional defendants. The revisions are as follows:

### **I. Cross-claim**

Rule 2252 governing joinder of an additional defendant was amended in 1969 by adding subdivision (d) providing that “If the person sought to be joined is a party, the joining party shall, without moving for severance or the filing of a praecipe for a writ or a complaint,” assert the claim in the answer as new matter. This amendment was described in the commentary to the 1969 amendments to Rule 2252 as “the equivalent of the cross-claim between two defendants under the federal rules.” However, the term “cross-claim” did not appear in the rules.

Under new Rule 1031.1, the assertion of a claim by one party against another party is a matter of pleading rather than joinder of parties. The claim is to be pleaded as a cross-claim under the new rule. The claims which may be asserted in a cross-claim are identical to those which serve as bases for joining an additional defendant under revised Rule 2252(a) discussed below.

### **II. Joinder of Additional Defendants**

1. Rule 2252(a) has been amended to limit the rules governing joinder of additional defendants to the joinder of persons not already parties to an action:

...any party may join as an additional defendant any person not a party to the action...

2. The joinder may be effected by “any party,” not simply the defendant or additional defendant as under the present rule. This revision acknowledges that a plaintiff may join an additional defendant in his or her capacity as defendant on a counterclaim. In light of this revision, subparagraphs (a)(1) and (4) describing the bases for joining an additional defendant refer to the “underlying cause of action against the joining party” rather than the “plaintiff’s cause of action.” A new note explains that the term “underlying cause of action” refers to “the cause of action set forth in the plaintiff’s complaint or the defendant’s counterclaim.”

3. Subdivision (a)(2) and (3) setting forth liability over and joint or several liability as bases for joining an additional defendant are deleted as they are subsumed in subdivision (a)(4) which provides for joinder of a person who is

(4) liable to or with the joining party on any cause of action arising out of the transaction or occurrence or series of transactions or occurrences upon which the underlying cause of action against the joining party is based.

4. Current Rule 2255(b) prohibiting the filing of pleadings between an additional defendant and “any party other than the one joining the additional defendant” has been rescinded.

5. The time for joinder of an additional defendant without leave of court under Rule 2253(a) prior to the present amendment was “sixty days after the service upon the original defendant of the initial pleading of the plaintiff or any amendment thereof.” Frequently a defendant who has filed preliminary objections is not in a position to join an additional defendant within the sixty-day time period. In addition, an additional defendant may be served outside the sixty-day period and have no opportunity to timely join another additional defendant without leave of court.

Rule 2253(a) has been amended to allow a joining party to join an additional defendant without leave of court if the joinder is accomplished within one of two time frames, whichever is longer. The first time frame is the sixty-day period “after the service upon the original defendant of the initial pleading of the plaintiff or any amendment thereof.” The second time frame is new and is the time for filing the joining party’s answer, whether that time is set forth under Rule 1026, Rule 1028 or an order or court.

### **III. Conforming Amendments**

Rule 425 governing service upon additional defendants has been revised to delete the burdensome requirement that the joining party serve with the complaint copies of all pleadings in the action. Rather, “[t]he joining party, upon request, shall furnish copies of all or specified pleadings filed in the action.”

Rule 1017 governing pleadings allowed has been revised stylistically to provide a numerical list of pleadings which may be filed. The revised rule in subdivision (a)(2) and (3) includes a reference to the cross-claim under new Rule 1031.1.

The note to Rule 1031(a) governing counterclaims has been revised by adding a paragraph cross-referring to Rule 2256 relating to counterclaims in an action involving an additional defendant.

Rule 1706.1 governing joinder of an additional defendant in a class action has been revised to permit a party to assert a cross-claim against another party to the action on the grounds limited by that rule.

By the Civil Procedural  
Rules Committee

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Chair