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**NRCP 13 – Proposed**  
**(Adopt federal rule with edits)**

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**Rule 13. Counterclaim and Crossclaim**

**(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 Counterclaim.** A pleading may state as a counterclaim against an opposing party any claim that is not compulsory.

**(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.

**(d) Counterclaim Against the ~~United States~~.** These rules do not expand the right to assert a counterclaim—or to claim a credit—against the ~~United States~~

1 ~~or a United States officer or agency.~~ its political subdivisions, their agencies and  
2 entities, or any current or former officer or employee thereof.

3 (e) **Counterclaim Maturing or Acquired After Pleading.** The court may  
4 permit a party to file a supplemental pleading asserting a counterclaim that matured  
5 or was acquired by the party after serving an earlier pleading.

6 (f) [Abrogated.]

7 (g) **Crossclaim Against a Coparty.** A pleading may state as a crossclaim  
8 any claim by one party against a coparty if the claim arises out of the transaction or  
9 occurrence that is the subject matter of the original action or of a counterclaim, or if  
10 the claim relates to any property that is the subject matter of the original action. The  
11 crossclaim may include a claim that the coparty is or may be liable to the  
12 crossclaimant for all or part of a claim asserted in the action against the  
13 crossclaimant.

14 (h) **Joining Additional Parties.** ~~Rules~~ NRCP 19 and 20 govern the addition  
15 of a person as a party to a counterclaim or crossclaim.

16 (i) **Separate Trials; Separate Judgments.** If the court orders separate  
17 trials under NRCP ~~Rule~~ 42(b), it may enter judgment on a counterclaim or crossclaim  
18 under NRCP ~~Rule~~ 54(b) when it has jurisdiction to do so, even if the opposing party's  
19 claims have been dismissed or otherwise resolved.

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## NRCP 13 – Proposed (Subcommittee notes to the Committee)

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3 (1) NRCP 13 and 14 have interrelated unanswered questions associated with  
4 them. In addressing these questions, the subcommittee followed the theory  
5 that the rules should encourage all claims to be joined in one action, subject  
6 to the district court’s ability to manage the litigation by bifurcating or  
7 severing unrelated claims. *See Schwab v. Erie Lackawanna R. Co.*, 438 F.2d  
8 62, 68-69 (3d Cir. 1971) (stating that the general premise of the FRCP is “the  
9 theory that no inconvenience can result from the joinder of any two or more  
10 matters in the pleadings, but only from trying two or more matters together  
11 which have little or nothing in common.”).

12 a. NRCP 13 and 14 do not address whether a crossclaim can be brought  
13 can be brought by a third-party defendant against a defendant, and  
14 vice versa. The rules can be interpreted narrowly to require such  
15 claims to proceed via NRCP 14, in which case the defendant or third-  
16 party defendant is treated as a non-party with regard to the other,  
17 limiting their initial claims against each other to indemnity-related  
18 claims. NRCP 14(a)(1). Alternatively, the rules can be interpreted  
19 broadly, allowing initial claims as crossclaims under NRCP 13(g) if the  
20 claim arises out of the transaction or occurrence. As defendants and  
21 third-party defendants are already parties to the action, the  
22 Subcommittee proposes the broad approach, treating them as  
23 “coparties” so that they may bring crossclaims against one another  
24 under NRCP 13(g). Changes to NRCP 14 have been made accordingly.

1 For additional information, *see* 6 Wright & Miller, Fed. Prac. & Proc.  
2 Civ. § 1431 (3d ed. 2017); Arthur F. Greenbaum, Jacks or Better to  
3 Open: Procedural Limitations on Co-Party and Third-Party Claims, 74  
4 Minn. L. Rev. 507 (1990); *see also Georgia Ports Auth. v. Construzioni*  
5 *Meccaniche Industriali Genovesi, S.P.A.*, 119 F.R.D. 693, 695 (S.D. Ga.  
6 1988) (“[T]he Court construes “co-party” to mean any party that is not  
7 an opposing party.”). This also avoids having to treat an existing  
8 “party” to the action as a “nonparty” under NRCP 14.

9 b. There is also some disagreement among the courts as to whether  
10 parties may “shift” status from “coparties” to “opposing parties.” *See,*  
11 *e.g.,* Greenbaum, 74 Minn. L. Rev. at 551. Most courts recognize that  
12 the rules are to be flexibly applied, and that a party’s status may shift  
13 in relation to another party depending on what claims, crossclaims,  
14 counterclaims, and third-party claims are made during the litigation.  
15 For example, two defendants would be coparties until one asserts a  
16 crossclaim against the other, at which time they become opposing  
17 parties, and the answering crossdefendant is subject to the compulsory  
18 and permissive counterclaim rules under NRCP 13(a) and (b). Even  
19 with the crossclaim, it is possible that the two defendants might still be  
20 deemed “coparties” when faced with action from the plaintiff.

21 (2) FRCP 13(f) is followed, abrogating the rule, as it is duplicative of NRCP 15  
22 governing amendments to the pleadings.

23 (3) NRCP 13(d) is modified to encompass application to this state.

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