

R. 28.01

RULE 28 **CROSSCLAIM**

WHERE AVAILABLE

- 28.01** (1) A defendant may crossclaim against a co-defendant who,
- (a) is or may be liable to the defendant for all or part of the plaintiff's claim;
 - (b) is or may be liable to the defendant for an independent claim for damages or other relief arising out of,
 - (i) a transaction or occurrence or series of transactions or occurrences involved in the main action, or
 - (ii) a related transaction or occurrence or series of transactions or occurrences; or
 - (c) should be bound by the determination of an issue arising between the plaintiff and the defendant.
- (2) A defendant who claims contribution from a co-defendant under the *Contributory Negligence Act* shall do so by way of crossclaim.

STATEMENT OF DEFENCE AND CROSSCLAIM

28.02 A crossclaim (Form 28A) shall be included in the same document as the statement of defence and the document shall be entitled a statement of defence and crossclaim.

AMENDING DEFENCE TO ADD CROSSCLAIM

28.03 A defendant who has delivered a statement of defence that does not contain a crossclaim and who wishes to crossclaim may amend the statement of defence in accordance with Rules 26.02 and 26.03 in order to add the crossclaim, and Rule 26.05 (responding to amended pleading) applies to the amended statement of defence and crossclaim.

TIME FOR DELIVERY OF STATEMENT OF DEFENCE AND CROSSCLAIM

- 28.04** (1) A statement of defence and crossclaim shall be delivered,
- (a) within the time prescribed by Rule 18.01 for delivery of the

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statement of defence in the main action or at any time before the defendant is noted in default; or

- (b) subsequently with leave, which the court shall grant unless the plaintiff would be prejudiced thereby.
- (2) A statement of defence and crossclaim need not be served personally on a defendant against whom a crossclaim is made, unless the defendant has failed to deliver a notice of intent to defend or a statement of defence in the main action, in which case the defendant shall be served personally or by an alternative to personal service under Rule 16.03, whether or not the defendant has been noted in default in the main action.

TIME FOR DELIVERY OF DEFENCE TO CROSSCLAIM

Defence to Crossclaim

- 28.05** (1) Subject to subrule (2), a defence to crossclaim (Form 28B) shall be delivered within twenty days after service of the statement of defence and crossclaim.

Where Defence to Crossclaim not Required

- (2) Where,
- (a) a crossclaim contains no claim other than a claim for contribution or indemnity under the *Contributory Negligence Act*,
 - (b) the defendant to crossclaim has delivered a statement of defence in the main action; and
 - (c) the defendant to the crossclaim in response to the crossclaim relies on the facts pleaded in his or her statement of defence in the main action and not on a different version of the facts or on any matter that might, if not specifically pleaded, take the crossclaiming defendant by surprise, the defendant to the crossclaim need not deliver a defence to the crossclaim and shall be deemed to deny the allegations of fact made in the crossclaim and to rely on the facts pleaded in his or her statement of defence in the main action.

CONTENTS OF DEFENCE TO CROSSCLAIM

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May Defend Against Crossclaim and Against Plaintiff's Claim Against Co-defendant

- 28.06** (1) In a defence to crossclaim, the defendant may,
- (a) defend against the crossclaim; and
 - (b) where appropriate, defend against the plaintiff's claim against the crossclaiming defendant, in which case the defendant may raise any defence open to the crossclaiming defendant.

Separate Part for Defence Against Plaintiff

- (2) Where the defendant defends against the plaintiff's claim against the crossclaiming defendant, the defence to crossclaim shall contain a separate part entitled a defence to plaintiff's claim against crossclaiming defendant.

Consequence of Defending Against Plaintiff

- (3) A defendant who defends against the plaintiff's claim against the crossclaiming defendant,
- (a) has the same rights and obligations in the action, including those in respect of discovery, trial and appeal, as a defendant to that claim; and
 - (b) is bound by any order or determination made in the main action between the plaintiff and the crossclaiming defendant.

Time for Reply by Plaintiff

- (4) The plaintiff's reply, if any, to the defence to plaintiff's claim against cross claiming defendant shall be delivered within ten days after service of that defence.

Consequence of Not Defending Against Plaintiff

- (5) A defendant who does not defend against the plaintiff's claim against the crossclaiming defendant is bound by any order or determination made in the main action between the plaintiff and the crossclaiming defendant.

EFFECT OF DEFAULT OF DEFENCE TO CROSSCLAIM

28.07 Where a defendant against whom a crossclaim is made is noted in default

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in respect of the crossclaim, the crossclaiming defendant may obtain judgment against the other defendant only at the trial of the main action or on motion to a judge.

TIME FOR DELIVERY OF REPLY TO DEFENCE TO CROSSCLAIM

28.08 A reply to defence to crossclaim (Form 28C), if any, shall be delivered within ten days after service of the defence to crossclaim.

TRIAL OF CROSSCLAIM

28.09 A crossclaim shall be tried at or immediately after the trial of the main action, unless the court orders otherwise.

PREJUDICE OR DELAY TO PLAINTIFF

28.10 A plaintiff is not to be prejudiced or unnecessarily delayed by reason of a crossclaim, and on motion by the plaintiff the court may make such order to impose such terms, including an order that the crossclaim proceed as a separate action, as are necessary to prevent prejudice or delay where that may be done without injustice to the parties to the crossclaim.

APPLICATION TO COUNTERCLAIMS AND THIRD PARTY CLAIMS

28.11 Rules 28.01 to 28.10 apply, with necessary modifications, to the assertion of a crossclaim between co-defendants to a counterclaim or between third parties to a third party claim.