

**RULES OF THE UNITED STATES
COURT OF FEDERAL CLAIMS**

As amended through July 2, 2012



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allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(c) Affirmative Defenses.

(1) *In General.* In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

- accord and satisfaction;
- arbitration and award;
- assumption of risk;
- contributory negligence;
- duress;
- estoppel;
- failure of consideration;
- fraud;
- illegality;
- laches;
- license;
- payment;
- release;
- res judicata;
- statute of frauds;
- statute of limitations; and
- waiver.

(2) *Mistaken Designation.* If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(d) Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.

(1) *In General.* Each allegation must be simple, concise, and direct. No technical form is required.

(2) *Alternative Statements of a Claim or Defense.* A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative

statements, the pleading is sufficient if any one of them is sufficient.

(3) *Inconsistent Claims or Defenses.* A party may state as many separate claims or defenses as it has, regardless of consistency.

(e) *Construing Pleadings.* Pleadings must be construed so as to do justice.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, Jan. 11, 2010.)

Rules Committee Notes

2002 Revision

Minor changes have been made in subdivisions (b) and (c) to conform to FRCP 8. In addition, subdivision (c) was amended to require the pleading, as an affirmative defense, of assumption of risk and contributory negligence. Although these defenses are typically associated with tort claims (i.e., with claims outside this court’s jurisdiction), there can be circumstances in which reliance on these defenses would be appropriate, for example, in congressional reference cases, in some aspects of contract litigation, and with respect to counterclaims asserted pursuant to 28 U.S.C. § 2508.

2008 Amendment

The language of RCFC 8 has been amended to conform to the general restyling of the FRCP.

2010 Amendment

RCFC 8(c)(1) has been amended by deleting “discharge in bankruptcy” from the list of affirmative defenses in accordance with the corresponding change to FRCP 8 that became effective December 1, 2009.

Rule 9. Pleading Special Matters

(a) Capacity or Authority to Sue; Legal Existence.

(1) *In General.* Except when required to show that the court has jurisdiction, a pleading need not allege:

- (A)** a party’s capacity to sue or be sued;

- (B) a party's authority to sue or be sued in a representative capacity; or
 - (C) the legal existence of an organized association of persons that is made a party.
- (2) **Raising Those Issues.** To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.
- (b) **Fraud or Mistake; Conditions of Mind.** In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.
 - (c) **Conditions Precedent.** In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.
 - (d) **Official Document or Act.** In pleading an official document or official act, it suffices to allege that the document was legally issued or the act legally done.
 - (e) **Judgment.** In pleading a judgment or decision of a domestic or foreign court, a judicial or quasi-judicial tribunal, or a board or officer, it suffices to plead the judgment or decision without showing jurisdiction to render it.
 - (f) **Time and Place.** An allegation of time or place is material when testing the sufficiency of a pleading.
 - (g) **Special Damages.** If an item of special damage is claimed, it must be specifically stated.
 - (h) **Admiralty or Maritime Claim.** [Not used.]
 - (i) **Inverse Condemnation Claim.** In pleading a claim for just compensation under the Fifth Amendment of the United States Constitution, a party must identify the specific property interest alleged to have been taken by the United States.
 - (j) **Citation to Statutes, Regulations, and Orders.** In pleading a claim founded on a statute, regulation, or executive order, a party must include the citation to the act of Congress, regulation of an executive department or agency, or Executive Order of the President on which the claim is founded.
 - (k) **Contract or Treaty.** In pleading a claim founded on a contract or treaty, a party must identify the substantive provisions of the contract or treaty on which the party relies. In lieu of a description, the party may annex to the complaint a copy of the contract or treaty, indicating the relevant provisions.
 - (l) **Patent Claim.** In pleading a patent infringement, a party must describe the patent or patents alleged to be infringed.
 - (m) **Tax Refund Claim.** In pleading a claim for a tax refund, a party must include:
 - (1) a copy of the claim for refund, and
 - (2) a statement identifying:
 - (A) the tax year(s) for which a refund is sought;
 - (B) the amount, date, and place of each payment to be refunded;
 - (C) the date and place the return was filed, if any;
 - (D) the name, address, and identification number (under seal) of the taxpayer(s) appearing on the return;
 - (E) the date and place the claim for refund was filed; and
 - (F) the identification number (under seal) of each plaintiff, if different from the identification number of the taxpayer.
 - (n) **Ownership of a Claim; Assignment.** In pleading a claim or part of a claim, ownership of which was acquired by assignment or other transfer, a party must include a statement describing when and upon what consideration the assignment or transfer was made.
 - (o) **Action by Another Tribunal or Body.** In relying on an action by another tribunal or body, a party must describe the action taken

on the claim by Congress, a department or agency of the United States, or another court.

- (p) **Prior Litigation.** In pleading a claim that has been previously presented to another court, whether in whole or in part or directly or indirectly, a party must include a statement identifying the effect, if any, of the prior litigation on this court’s subject matter jurisdiction.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, July 2, 2012.)

Rules Committee Notes

2002 Revision

Subdivision (a) (relating to “Capacity”) has been changed to conform to FRCP 9.

Subdivision (h)(6) (relating to special requirements applicable to complaints in “Tax Refund Suits”) was amended by prescribing, as additional information to be included as part of a tax refund complaint, the following: (i) the taxpayer’s or filer’s identification number; and (ii) a copy of the claim for refund.

Subdivision (h)(7) was added as a means to clarify the nature of the property interest asserted to have been taken in an inverse condemnation action.

2008 Amendment

The language of RCFC 9 has been amended to conform to the general restyling of the FRCP.

In addition, former subdivision (h) (“Special Matters Required in Complaint”), comprised of paragraphs (1) through (7), has been reorganized as separate subdivisions (i) through (o), and a requirement was added to new subdivision (m) (“Tax Refund Claim”) directing that taxpayer identification numbers be included under seal.

2012 Amendment

RCFC 9(p) has been added to require a claimant to address the effect, if any, that a pending prior suit brought in another court may have on this court’s jurisdiction in light of 28 U.S.C. § 1500. *See United States v. Tohono O’Odham Nation*, ___ U.S. ___, 131 S. Ct. 1723 (2011).

Rule 10. Form of Pleadings

- (a) **Caption; Names of Parties.** Every pleading must have a caption with the court’s name, a title, a file number, and a RCFC 7(a) designation. The title of the complaint must name all the parties (see RCFC 20(a)), with the United States designated as the party defendant; the title of other pleadings, after naming the first party on each side, may refer generally to other parties.
- (b) **Paragraphs; Separate Statements.** A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence—and each defense other than a denial—must be stated in a separate count or defense.
- (c) **Adoption by Reference; Exhibits.** A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is part of the pleading for all purposes.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008.)

Rules Committee Notes

2002 Revision

RCFC 10 has been changed in minor respects in order to achieve closer textual conformity with FRCP 10. The former last sentence of subdivision (a) has been moved to RCFC 5.3.

The last sentence of former subdivision (c) (“unless otherwise indicated, but the adverse party shall not be deemed to have admitted the truth of the allegations in such exhibit merely because the adverse party has failed to deny them explicitly”) was omitted as not in conformity with the FRCP and because it was deemed unnecessary.

2008 Amendment