

## § 4.5 The “Cross-Complaint”

Sometimes after reviewing the facts of a case, the defendant’s attorney discovers that the defendant has a cause of action arising out of the subject matter of the Complaint against any combination of the plaintiff, another party to the action, or perhaps against another person or entity not yet a party to the action. The defendant’s attorney would then file, in addition to filing an Answer to the Complaint, a pleading called a “Cross-Complaint.”

The Cross-Complaint is the only pleading whereby the defendant can bring a case against another party or another person or entity. The parties to a Cross-Complaint are the party who sues, the “cross-complainant,” and the party who is sued, the “cross-defendant.” C.C.P. § 428.10 *et seq.*, governs the filing and service of Cross-Complaints. A cross-defendant may respond to the Cross-Complaint in the same manner as a response to a Complaint (Demurrer, Cross-Complaint, Answer, etc.) within 30 days of service. (C.C.P. § 432.10) The parties may stipulate to an additional 15 days without leave of court.

The filing and service procedures for the Cross-Complaint depend upon whether the cross-defendant is already a party to the action, or needs to be brought into the action. These procedures will be dealt with more fully later in this section, but for now, here are a couple of situations where a Cross-Complaint would be filed.

Assume that the facts as we presented them in our scenario are completely one-sided in claiming that the accident was solely the defendant’s fault. Suppose that Mr. Wrongdoer’s attorney, Deborah Smith, discovers from talking to a witness that: Wronged’s car had been parked in a no-parking zone, Wronged was in the process of entering the traffic lane from that no-parking zone, he did not signal, and he cut off the defendant. Suppose also that Wrongdoer’s car was damaged, and Wrongdoer suffered physical injury. Ms. Smith would most likely cross-complain against the plaintiff for all of the damages Wrongdoer suffered in the accident. This would be a Cross-Complaint against a party already in the case.

On the other hand, assume the facts presented in our scenario are correct, but additional facts come to light. Suppose the accident occurred because the defendant’s brakes failed. Suppose further that just before the accident, the defendant picked up his car from Jim’s Auto Repair Shop, where a new brake system was installed. Upon discovering these facts, Ms. Smith may decide to file a Cross-Complaint against Jim’s Auto Repair Shop for the damages her client suffered in the accident, and to recover any amounts he ends up having to pay the plaintiff. This would also be done by way of a Cross-Complaint, but Jim’s Auto Repair Shop would have to be brought into the action.

A Cross-Complaint against a party who filed a Complaint against the cross-complainant, e.g., Wronged, must be filed at the same time as the Answer, unless leave of court is obtained. One may file a Cross-Complaint against anyone but the plaintiff at any time before the court sets a trial date. (C.C.P. § 428.50)

The format of the Cross-Complaint is the same as the Complaint, except for the “double-boxed” title of the action and the addition of the department and judge, so we will use the Complaint in Chapter 1 as a guide. The Judicial Council Cross-Complaint form is reproduced at the end of this Chapter.

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## **Service of Summons and Cross-Complaint on Non-Party Cross-Defendant and Attorneys of Record**

### **A CROSS-COMPLAINT AGAINST A NEW PARTY MUST BE SERVED AND A PROOF OF SERVICE MUST BE FILED WITHIN 30 DAYS OF THE FILING DATE. (C.R.C., Rule 3.110(b))**

**NOTE:** An order increasing the time for service may be obtained by filing an application with the court before the service deadline passes. (See § 1.6.)

The Summons and Cross-Complaint may be served on a non-party cross-defendant personally, by mail, or by publication, just like the Summons and Complaint may be served on a defendant.

- To serve the Cross-Defendant, follow the procedures in “Service and Proof of Service of Summons and Complaint,” § 1.5, substituting “Cross-Complaint” for “Complaint” as appropriate. In addition, note that several documents must be served along with the Summons and Cross-Complaint, so prepare a copy of the following for each cross-defendant and add to the package to serve:
  - T the most recently amended Complaint (C.R.C., Rule 3.222)
  - T any Answers filed in the case (C.R.C., Rule 3.222)
  - T all items which would have had to be served with the Complaint, i.e., the ADR Package, Clerk’s notices, including notice of case assignment, notice of case management conference, referrals to mediation/arbitration, etc. (C.R.C., Rule 3.221(c) and local rules, e.g., L.A.S.C.R., Rules 7.3(c) and 12.34)
- Serve the attorneys of record with a copy of the Summons and Cross-Complaint by following the procedures in Chapter 2.

## **§ 4.7 Responding to the Cross-Complaint**

The Cross-Defendant is required to file and serve a response to the Cross-Complaint within 30 days of service of the Cross-Complaint. Any response which may be used to respond to a Complaint may be used to respond to a Cross-Complaint. (C.C.P. § 432.10).