

3. E. F. has notified the defendant that he claims such deposit, that the purported assignment is not valid, and that he holds the defendant responsible for the deposit.

Wherefore defendant demands:

(1) That the court order E. F. to be made a party defendant to respond to the complaint and to this counterclaim.¹

(2) That the court order the plaintiff and E. F. to interplead their respective claims.

(3) That the court adjudge whether the plaintiff or E. F. is entitled to the sum of money.

(4) That the court discharge defendant from all liability in the premises except to the person it shall adjudge entitled to the sum of money.

(5) That the court award to the defendant its costs and attorney's fees.

¹Rule 13(h) provides for the court ordering parties to a counterclaim, but who are not parties to the original action, to be brought in as defendants.

(As amended Jan. 21, 1963, eff. July 1, 1963.)

NOTES OF ADVISORY COMMITTEE ON RULES—1963
AMENDMENT

This form was amended in 1963 by deleting the stated dollar amount and substituting a blank, to be properly filled in by the pleader. See Note of Advisory Committee under Form 3.

[Form 22. Eliminated Jan. 21, 1963, eff. July 1, 1963]

Form 22 for motion to bring in third-party defendant, setting out as an exhibit summons and third-party complaint, and for notice of motion, was eliminated Jan. 21, 1963, eff. July 1, 1963, and superseded by Forms 22-A and 22-B, setting out summons and complaint against third-party defendant, and motion to bring in third-party defendant. See Advisory Committee notes under Forms 22-A and 22-B.

Form 22-A. Summons and Complaint Against Third-Party Defendant

United States District Court for the Southern District of New York

Civil Action, File Number _____

28AF22A1.EPS

To the above-named Third-Party Defendant:

You are hereby summoned and required to serve upon _____, plaintiff's attorney whose address is _____, and upon _____, who is attorney for C. D., defendant and third-party plaintiff, and whose address is _____, an answer to the third-party complaint which is herewith served upon you within 20 days after the service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the third-party complaint. There is also served upon you herewith a copy of the complaint of the plaintiff which you may but are not required to answer.

Clerk of Court.

[Seal of District Court]

Dated _____

United States District Court for the Southern District of New York

Civil Action, File Number _____

28AF22A2.EPS

1. Plaintiff A. B. has filed against defendant C. D. a complaint, a copy of which is hereto attached as "Exhibit A."

2. (Here state the grounds upon which C. D. is entitled to recover from E. F., all or part of what A. B. may recover from C. D. The statement should be framed as in an original complaint.)

Wherefore C. D. demands judgment against third-party defendant E. F. for all sums¹ that may be adjudged against defendant C. D. in favor of plaintiff A. B.

Signed: _____,

Attorney for C. D., Third-Party Plaintiff.

Address: _____

¹Make appropriate change where C. D. is entitled to only partial recovery-over against E. F.

(As added Jan. 21, 1963, eff. July 1, 1963.)

NOTES OF ADVISORY COMMITTEE ON RULES—1963

Under the amendment of Rule 14(a), a defendant who files a third-party complaint not later than 10 days after serving his original answer need not obtain leave of court to bring in the third-party defendant by service under Rule 4. Form 22-A is intended for use in these cases.

The changes in the form of summons reflect an earlier amendment of Rule 14(a), effective in 1948, making it permissive, rather than mandatory, for the third-party defendant to answer the plaintiff's complaint. See *Cooper v. D/S A/S Progress*, 188 F.Supp. 578 (E.D.Pa. 1960); 1A Barron & Holtzoff, *Federal Practice and Procedure* 696 (Wright ed. 1960).

Under the amendment of Rule 5(a) requiring, with certain exceptions, that papers be served upon all the parties to the action, the third-party defendant, even if he makes no answer to the plaintiff's complaint, is obliged to serve upon the plaintiff a copy of his answer to the third-party complaint. Similarly, the defendant is obliged to serve upon the plaintiff a copy of the summons and complaint against the third-party defendant.

Form 22-B. Motion To Bring in Third-Party Defendant

Defendant moves for leave, as third-party plaintiff, to cause to be served upon E. F. a summons and third-party complaint, copies of which are hereto attached as Exhibit X.

Signed: _____,

Attorney for Defendant C. D.

Address: _____

Notice of Motion

(Contents the same as in Form 19. The notice should be addressed to all parties to the action.)

Exhibit X

(Contents the same as in Form 22-A.)