

# Kinds of pleadings and motions



## KINDS OF PLEADINGS (Rules 6, 7 and 8)

1. **Complaint** - the written statement of a plaintiff's cause of action; the names and residences of the plaintiff and defendant must be stated in the complaint.
2. **Answer** - specific denials of allegations of the complaint, or a statement of new facts preventing recovery by the plaintiff
3. **Counterclaim** - any claim which a defending party may have against an opposing party (this may either be compulsory or permissive)
4. **Crossclaim** - a claim by one party against a co-party arising out of a transaction or occurrence that is the subject matter of the original suit, or of a counterclaim
5. **Reply** - a denial of new matters stated in the answer (if no reply is filed, the new matters are deemed controverted)
6. **Third party complaint** - a claim filed by the defendant with the permission of the court against a person who is not a party in the lawsuit (called the "third party defendant") for contribution, indemnity, subrogation, etc.

## KINDS OF MOTIONS (Rules 12, 16, 19, 34 and 35)

1. **Motion for bill of particulars** - a request by a party for a clearer and more specific statement of allegations made by the opposing party, to enable him to prepare his responsive pleading or to prepare for trial. It must point out defects complained of and the details desired.
2. **Motion to dismiss** - a move by the defendant to dismiss the suit against him based on grounds like the lack of jurisdiction, no cause of action, etc.
3. **Motion for intervention** - made by a person who has a legal interest (a) in the matter in litigation; (b) in the success of either party; (c) an interest against both; or (d) who will be adversely affected by distribution or disposition of property in the custody of the court or an officer thereof.
4. **Motion for judgment on the pleadings** - made by the plaintiff for the court to render a decision based solely on the pleadings because the defendant's answer does not deny the allegations in the complaint, except damages (this is not allowed for legal separation or annulment cases).
5. **Motion for summary judgment** - made by any party for the court to render a decision based on the pleadings (complaint, answer, etc), affidavits, stipulations, and admissions, in cases like recovery of debts, etc.

Service of a motion on an adverse party should generally be done as to ensure its receipt at least three days before the hearing. Motion day generally is Friday. Based on the "omnibus motion rule", a motion shall include all objections then available; if not included, they are deemed waived, except lack of jurisdiction over the subject matter, litis pendentia, res judicata, and prescription. In a motion to reset a hearing (after the pre-trial conference), the proper fee must be paid. Motions for postponements due to illness of a party or counsel must be accompanied by affidavits or sworn certification.