



Civil Procedure

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Background

CIVIL PROCEDURE refers to that body of law (usually in the form of collective and published rules) that concerns itself with the methods, procedures, and practices used in civil proceedings. Civil proceedings are distinguished from criminal or administrative proceedings, which are governed by their own respective rules of procedure. Most (but not all) civil proceedings involve "litigation" or lawsuits between private parties or entities (such as business [CORPORATIONS](#)) and the focus herein generally relates to key procedures in the [LITIGATION](#) process.

PROCEDURAL LAW is intended to safeguard those vested rights in life, liberty, and property that are guaranteed by the U.S. Constitution. The Fifth Amendment to the Constitution provides that "No person shall be . . . deprived of life, liberty, or property without [DUE PROCESS OF LAW](#) [the "due process clause"]; nor shall private property be taken for public use, without just compensation." The Fourteenth Amendment to the Constitution makes those provisions applicable to the states.

In almost every civil lawsuit, there will be a prevailing (winning) party and a defeated (losing) party. Judgment against the losing party (whether it is the person who filed the claim or the person against whom the claim was made) generally means he or she will be adversely affected. The constitutional guarantee of "due process of law" ensures that persons whose rights may be adversely affected by litigation have the opportunity for their "day in court,"— to be heard and to present proof(s) in support of their claim or defense. Accordingly, before any judgment can be made for or against a party, certain procedural safeguards [WARRANT](#) that a just and [FAIR HEARING](#) on the matter has been conducted and that all parties whose interests may be affected by the controversy have been notified of their right to be heard.

Civil procedure, then, helps provide the "structure" needed to guarantee a fair and just determination of the controversy, while also serving to move the matter through the legal system in an orderly and consistent manner. It governs such actions as the way in which service of process is made upon a [DEFENDANT](#), the number of days and manner in which parties may "discover" one another's [EVIDENCE](#), and the manner in which parties may present their controversies or objections to the court. Additional rules of procedure may have more simple purposes, such as uniformity or judicial economy. In any event, courts have the power and authority of law (in the absence of abuse of discretion) to dismiss lawsuits and/or deny remedies if procedural rules are not followed.

Authority

Article III of the U.S. Constitution expressly creates a federal court system, and Section 2 of that Article further declares that [JURISDICTION](#) (See Jurisdiction, below) of the U.S. Supreme Court and courts within the federal system shall be subject to "such Regulations as the Congress shall make." Those regulations are contained in Section 1251 of Title 28 of the United States Code (U.S.C. or U.S.C.A.— designating the annotated version). Section 2072 of 28 U.S.C. 131 (The Rules Enabling Act) authorizes the Supreme Court to "prescribe general rules of practice and procedure and rules of evidence for cases in the U.S. district courts (including proceedings before magistrates thereof) and courts of appeals." Similarly, state constitutions and statutes empower the states' highest courts (usually) to regulate civil procedures in state courts.

Jurisdiction

An important and early determination to be made in each pending action is whether to file a civil lawsuit in the "forum" of a federal court or state court. A court's general authority to hear and/or "adjudicate" a legal matter is referred to as its "jurisdiction." In the United States, jurisdiction is granted to a court or court system by [STATUTE](#) or by constitution. A legal decision made by a court that does not have proper jurisdiction is deemed void and non-binding upon the litigants.

Jurisdiction may be referred to as "exclusive," "original," concurrent, general, or limited. Article III, Section 2 of the U.S. Constitution limits the types of cases that federal courts may hear. Generally speaking, federal courts may hear only those cases involving federal laws, federal or sovereign parties (including states), or disputes between citizens from different states. Thus, federal courts have "limited" jurisdiction, which may be "exclusive" over a matter or party (to the exclusion of any other forum), or may be "concurrent" and shared with state courts. In matters where both federal and state courts have concurrent jurisdiction, state courts may hear federal law claims (e.g., violations of [CIVIL RIGHTS](#)), and parties bringing suit may choose the forum. However, when a plaintiff raises both state and federal claims in a state court, the defendant may be able to "remove" the case to a federal court.

Subject Matter Jurisdiction

A court is competent to hear and decide only those cases whose subject matter fits within the court's scope of authority. Courts of "limited" jurisdiction may be competent to hear only certain matters, such as those involving [PROBATE](#) or juvenile cases. Even courts of broad or general jurisdiction may have certain matters removed from their jurisdiction (by statute or state constitution), such as [DIVORCE](#) or [CUSTODY](#) matters, to be handled by other courts. If the controversy involves a parcel of real estate instead of a person, the property must be located within the territorial jurisdiction of the court.

Jurisdiction over the Parties

A court must have jurisdiction not only over the subject matter of the controversy, but also the parties to the litigation. There is seldom a question of jurisdiction over the plaintiff, since by bringing the action into the court, the plaintiff consents to the court's jurisdiction over him or her. But the plaintiff must also show that the court has jurisdiction over the defendant. In general, this may be established by the defendant's consent, by the defendant's general appearance in court, or by proving a defendant's domicile within the geographic area of the court's jurisdiction (in combination with serving process upon the defendant). A fourth way of acquiring jurisdiction over a defendant relies on "long-arm statutes," which permit a court to "reach" absent defendants or defendants residing in other states by establishing their relationship with the state in which the action was filed (the "forum" state). It may be that they committed the wrongful act within the forum state or transact

business within that state or own property in that state, etc.

Jurisdictional Amounts

Finally, many courts limit their jurisdiction to cases in which the amount in controversy exceeds a certain minimum amount. For example, no complaint may be filed in a federal court unless the amount in controversy exceeds the sum or value of \$75,000. Many state circuit courts have minimum "jurisdictional amounts" of \$10,000, \$15,000, or \$25,000. Conversely, many local or district courts within state court systems have maximum jurisdictional amounts; if the amount in controversy exceeds the jurisdictional maximum, either the case must be re-filed in the next level court or the complaining party must waive his or her right to any judgment that exceeds the maximum.

Venue

Venue refers to the geographic location of the court in which to bring an action. Most court systems (federal and state) have statutes that dictate the particular district, county or city in which a court with jurisdiction may hear a case. Usually, venue is premised on where a defendant resides or does business, where the wrongful act occurred, or alternatively, where a plaintiff resides. The general venue statute governing federal cases is 28 U.S.C.A. Section 1391. Venue provisions for state courts are generally found in statutes rather than rules of civil procedure; the rules of procedure may address the way in which one motions a court for a "change of venue."

Federal Rules of Civil Procedure (FRCP)

A major step toward establishing uniform federal procedures was undertaken in 1934, when the U.S. Supreme Court promulgated the Federal Rules of Civil Procedure (FRCP). The bible for practicing attorneys, the Rules govern all civil actions in federal courts nationwide, including federal [BANKRUPTCY](#) court. The Rules are frequently amended and updated and contain Supplemental Rules sections for cases in admiralty and maritime actions, as well as "local rules" pertaining to specific courts within the federal system.

Although the Rules were intended to apply to U.S. district courts within the federal system, nearly all state courts have since replaced their own procedural rules with new rules modeled after the FRCP. At a minimum, it can be said that the FRCP represents the dominant style of American civil procedure, whether in federal or state court. Although there is not uniformity [PER SE](#), there is general consistency of approach to matters common in most causes of action.

Parties

In civil procedure, the prosecuting party (the one filing a complaint or lawsuit or petition) is referred to as a "plaintiff" or "petitioner" or "complainant" (depending upon the court and the nature of the matter), while the opposing party is referred to as a "defendant" or "respondent." (For purposes of simplicity, the terms "plaintiff" and "defendant" are used exclusively herein, but imply any or all of the above, respectively.)

Any person may file a lawsuit under his or her own name, but the person must have "legal capacity" to sue (the legal competency to stand before the court). This requirement implies, among other factors, minimum [LEGAL AGE](#) and mental competency. FRCP 17(c) provides that a [GUARDIAN](#) or conservator may sue or defend on behalf of an infant or legally incompetent person; or, if none exists, the court will appoint a "next friend" or "guardian ad litem" to represent the interest of the child or incompetent person. A deceased person

may be represented in an action by the personal representative (executor or administrator) of the deceased's estate. FRCP 17(b) also provides that in federal court, the legal capacity of a business corporation to sue or be sued is determined by the law under which it was organized.

Several parties may be joined in an action, as coplaintiffs or co-defendants. Under FRCP 23 and most state rules, multiple plaintiffs who have suffered harm as a result of the actions of a common defendant may be joined together in one lawsuit called a "class action." Under such a suit, only a few plaintiffs will be named in the action, but they will represent all plaintiffs within the certified "class," and their claims must be fairly representative of the interests of all the persons within the class.

A lawsuit may become fairly complicated when the original parties (and sometimes the court) bring in third or additional parties not initially named in the suit. Parties joined on the same side are referred to as "co-parties." If co-parties raise claims against one another (e.g., a defendant blames another defendant), they are "cross-parties" as to each other. But if a "counter-claim" is raised against an opposing party, they become "counter-parties" as to the [COUNTERCLAIM](#). In the "caption," or heading of the original action, the parties may be referred to as coplaintiffs, co-defendants, cross-plaintiffs, cross-defendants, counter-plaintiffs, counter-defendants, or "interested parties," depending upon the claims or defenses raised.

Commencement of an Action

A lawsuit must be commenced within the limitation period provided by law (the applicable "statute of limitations"). Lawsuits not filed within the period of the applicable [STATUTE OF LIMITATIONS](#) will be dismissed. Under the U.S. Supreme Court decision in *Erie v. Tompkins*, federal courts will apply the statute of limitations of the state in which the federal court lies. Statutes of limitations generally begin to run when the cause of action arises. Many states have exceptions that allow for "tolling" of their statutes of limitations (temporarily "stopping the clock") during periods of absence from the forum state, war, legal [INCOMPETENCY](#), etc. There are also special rules that apply if death occurs prior to the expiration of the limitations period.

Under FRCP 3 and many state jurisdictions, an action commences when a complaint is filed. However, many states do not consider the action to have commenced until service of process has been made upon the defendant. Service of process may be made by personal service of the complaint and [SUMMONS](#) upon the defendant (many states permit registered mail service); constructive service by notice or publication; or substituted service on a registered agent of the defendant (as for business corporations). There are strict rules that limit the use of constructive or substituted service on defendants.

Pleadings

Pleadings are written formal allegations in support of either a claim or a defense, presented for the court's consideration and judgment. Under FRPC 7, pleadings are limited to a complaint and an answer, a reply (to a counterclaim), an answer to a cross-claim, a third-party complaint, and a third-party answer.

The first pleading in an action is called a "complaint." (In a minority of jurisdictions, the pleading may still be referred to as a "bill of complaint" or "declaration.") FRCP 10(a) requires that a complaint contain, at a minimum the following:

- A caption that contains the name of the court, the title of the action, the file number (provided by the court), and the names of all the parties
- A short and plain statement of facts which tend to show that the pleader is entitled to relief
- A demand for judgment for the relief to which plaintiff deems himself or herself entitled

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- A signature of an attorney of record and the attorney's business address (or the party's signature and address, if not represented by an attorney)
- A short and plain statement of the grounds upon which the court's jurisdiction depends

FRCP 7 provides that the responsive pleading to a complaint is called an answer. It generally contains denials of the allegations in the complaint and/or new matters asserted as counterclaims or affirmative defenses. However, under FRCP12 and most states' rules, an interim responsive pleading may be in the form of a motion to dismiss or a motion for [SUMMARY JUDGMENT](#), for such reasons as failure to state a claim, lack of jurisdiction, insufficiency of process, etc. These generally constitute "affirmative defenses" that do not speak to the specific facts alleged in the complaint but rather challenge the validity of the complaint on some other grounds.

Under FRCP 8, allegations in a pleading to which a responsive pleading is required are admitted unless they are specifically denied in the answer. Moreover, under the federal rules, the defendant is required to assert all defenses in the responsive pleading or they will be waived. As part of the responsive pleading, FRCP 13 permits the raising of a counterclaim against the plaintiff, or a cross-claim against a co-party or a third party claim against a non-party (who will be served and joined as a party). There must be a reply to a counterclaim or cross-claim. Amendments to pleadings are permitted in the furtherance of justice and on the terms deemed proper by the court (FRCP 15).

Pre-trial Procedure

Following the filing of all initial pleadings, there begins a period of "discovery" which enables each party to learn of evidence held by opposing or other parties to the action. Generally speaking, the scope of allowable [DISCOVERY](#) is broad: FRCP 26 provides that parties may obtain discovery on any matter, not privileged, which is relevant to the subject matter involved in the pending action. Discovery is accomplished by means of subpoenas; requests for inspection of documents, photographs, recordings, or other items of evidence; the taking of [TESTIMONY](#) of witnesses (usually by [DEPOSITION](#)); review and copying of relevant records; written interrogatories (questions that must be answered under oath); written requests for admissions (requiring admission or denial of the facts posed); requests for physical or mental [EXAMINATION](#) of a party; and often, visitation to sites, premises, or geographic locations relevant to the case.

Also during the pre-trial period (and continuing through the trial process), various "motions" may be filed with the court, requesting that the court grant an order on some matter related to the progress of the case. A motion may request immediate relief for an interim dispute (such as a motion to compel the release of evidence) or it may request "dispositive" relief (such as a motion to dismiss the case for lack of evidence or failure to state a cause of action).

Trial

At the close of discovery, parties are encouraged to review the sum total of evidence and attempt to settle the case. In many state jurisdictions, there is compulsory (but non-binding) "mediation" of the case, in which an independent panel reviews the pleadings and evidence and makes a [SETTLEMENT](#) recommendation. If no viable settlement results, the case will move on to the trial stage. Prior to trial, attorneys for the parties will provide written requests for jury instructions they wish to include in the charge to the jury (FRCP 51). Attorneys will also have the opportunity to examine and rule out prospective jurors ("voir dire") for such disqualifying factors as [BIAS](#), personal familiarity with the parties or witnesses, **FELONY CONVICTION**, legal relationship with any party or witness (such as [LANDLORD](#), employer, partner), etc. (FRCP 47). These are referred to as "challenges for cause." Most jurisdictions also permit a certain number of "peremptory challenges," wherein trial attorneys may rule out prospective jurors without stating their reason for doing so. After a final jury is agreed upon and all last-minute motions have been heard, trial begins.

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In general, the order of proceedings at trial are: opening statements (first plaintiff, then defendant); introduction of evidence (first plaintiff, then defendant, then rebuttal evidence); closing arguments (first plaintiff, then defendant); instructions to the jury ("jury charge") by the court; return of verdict and poll of jury; and entry of a judgment.

The normal order for the presentation of proofs (evidence) is: the plaintiff introduces all the evidence for his or her "case in chief"; the defendant then introduces his or her evidence in chief; the plaintiff then offers rebuttal evidence; and finally, the defendant may be permitted to present evidence in rebuttal of any new matter brought out in the plaintiff's rebuttal evidence (called surrebuttal). Objections to any proffered evidence must be timely made or they are waived; proper and/or permissible objections are covered in the Federal Rules of Evidence (FRE) rather than the FRCP.

Closing arguments are then made (plaintiff first, followed by defendant, then followed with plaintiff's final rebuttal), and the jury is charged and sequestered for deliberations. The jury normally renders its verdict through its foreman, and the entire jury must be present when the verdict is delivered in court. Barring any defects in form or challenges to the verdict, a judgment is declared for the prevailing party.

Prior to the delivery of a verdict, either party may motion the court for a judgment on the evidence (e.g., a motion for summary judgment) or for [MISTRIAL](#) (based upon an objection made during trial). Following delivery of a verdict, a party may motion for a new trial or partial retrial (FRCP 59).

Judgment

A judgment on the verdict is not the only way to prevail in a [CIVIL ACTION](#). In fact, at the conclusion of trial, either party may motion a court for a "judgment notwithstanding the verdict," (following the party's earlier motion for a [DIRECTED VERDICT](#)), even though there has been a jury verdict for the other party.

Rather than defend a civil complaint, a party may merely consent to judgment, as in claims of debt, and such "consent judgments" are entered on the record and are as binding as a full jury verdict.

A "default judgment" may be rendered against a party if it is the result of a party's failure to take a necessary step in the action within the proper time; this generally means a failure to plead or otherwise defend within the time allowed. Since, under rules of procedure, allegations not specifically denied are deemed admitted, failure to file a responsive pleading will generally result in the entry of a [DEFAULT JUDGMENT](#) against the defendant.

Finally, under FRCP 57 and most state rules and/or statutes, courts are authorized to grant "declaratory judgments" in cases where the requested relief is in the form of a court's declaration of certain rights, status, or legal relations between parties or entities. Some examples include actions to "quiet title" to real property, actions regarding ownership, or use of intellectual property rights (such as copyrights or [PATENTS](#)), etc. In order to invoke the court's jurisdiction in a declaratory matter, there must be an actual controversy and not a mere desire for an advisory opinion from the court.

Appeal

In both federal and state courts, a party may appeal only final orders, decisions, or judgments. After the entry of a final order, decision, or judgment, there are strict procedural deadlines as to the number of days within which an appeal must be filed. Grounds for appeal are extremely limited. An order of a court will not be reversed unless the [APPELLANT](#) can show that either the order was clearly contrary to law or that the judge abused his or her discretion.

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Likewise, there is limited review of trial judgments. It is not generally sufficient to show error in the conduct of trial; the appellant must show harm or prejudice that was caused by the error (for example, the introduction of evidence which the appellant argued was improper and without which the appellant most likely would have prevailed). APPELLATE courts disregard harmless errors or defects that do not affect the substantial rights of the parties in determining whether a particular case should be reversed. (FRCP 61)

State Rules of Civil Procedure

The first state to establish uniform rules of civil procedure was New York, which in 1848 enacted the Field Code, named after its principal author, David Dudley Field. Over the next several decades, nearly all states had either adopted the Code outright or had made other considerable changes to their procedures. As of 2002, the Code has been replaced with modified versions of the FRCP in nearly all states. Notwithstanding, there are procedural differences from state to state, and it is imperative that litigants are familiar with state rules before proceeding in court. Copies of state rules may often be found at public libraries, college libraries, and/or on states' official Internet websites.

ALABAMA: See Title 6 of the Alabama Code of 1975, also available at <http://www.legislatures.state.al.us/codeofAlabama/1975>.

ALASKA: See Title 9 of Alaska Statutes, "Code of Civil Procedure."

ARIZONA: See Title 12 of the Arizona Revised Statutes, available at <http://www.azleg.state.ar.us/>

ARKANSAS: See Title 16, Subtitle 5 of the Arkansas Code, available at <http://www.arkleg.state.ar.us/dcode>.

CALIFORNIA: See the "California Code of Civil Procedure."

COLORADO: See Title 13 of the Colorado Constitution, "Colorado Rules of Civil Procedure."

CONNECTICUT: See Title 52 of the General Statutes of Connecticut, available at <http://www.cga.state.ct.us/2001/pub/Title52>.

DELAWARE: See Title 10, Part 3 of the Delaware Code, "Courts and Judicial Procedure."

DISTRICT OF COLUMBIA: See Titles 13-17.

FLORIDA: See "Florida Rules of Civil Procedure," from the Florida Lawyers World Wide Web Resource Center at http://phonl.com/fl_law/rules/frcp/

GEORGIA: See Title 9, Chapter 10 of the Georgia Code.

IDAHO: See Titles 1-13 of the Idaho Code.

ILLINOIS: See Code of Civil Procedure, 735 IL CS 5.

INDIANA: See Title 34 of the Indiana Code, Articles 1-57, available at www.state.in.us/legislature/ic/code/title34.

IOWA: See Title X, Subtitle 3 of the Iowa Code, available at www.legis.state.ia.us/IACODE.

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KANSAS: See Chapters 60 and 61 of the Kansas Statutes, available at <http://www.kslegislature.org/cgi-bin/statutes/index.cgi>.

KENTUCKY: See Kentucky Rules of Court, authority found in Kentucky Constitution, Articles 109-116.

LOUISIANA: See the Louisiana Code of Civil Procedure, available at <http://www.legis.state.la.us>.

MAINE: See Maine Rules of Civil Procedure, available at <http://www.cleaves.org/sc-rules.htm>.

MARYLAND: See "Courts and Judicial Procedures," Section 1-101, et seq., available at http://mlis.state.md.us/cgi-win/web_statutes.exe.

MASSACHUSETTS: See Chapters 211-262 of the General Laws of Massachusetts, "Courts, Judicial Officers and Proceedings in Civil Cases."

MICHIGAN: See "Michigan Rules of Court," available at <http://www.michiganlegislature.org/law/MCLSearch.asp>.

MINNESOTA: See Chapters 540-552.

MISSISSIPPI: See Title 11 of Mississippi Code of 1972, available at <http://www.mscode.com/free/statutes>.

MISSOURI: See Missouri Revised Statutes, Title XXXV, Chapters 506-517, available at <http://www.moga.state.mo.us/STATUTES>.

MONTANA: See Title 25 of state statute.

NEBRASKA: See Chapters 25 and 26 of Nebraska statutes, available at <http://statutes.unicam.state.ne.us/>

NEVADA: See Titles 3-6 of the Nevada Revised Statutes.

NEW HAMPSHIRE: See Title LIII, Chapters 514-526 of the New Hampshire Revised Statutes, "Proceedings in Court," available at <http://sudoc.nhsl.lib.nh.us/rsa/LIII.htm>.

NEW JERSEY: See Chapter 2A of the New Jersey Permanent Statutes, available at <http://www.njleg.state.nj.us/>

NEW YORK: See Chapter 8 of the New York State Consolidated Laws, available at <http://assembly.state.ny.us/leg/>

NORTH CAROLINA: See Chapters 1 and 1A of the North Carolina General Statutes.

NORTH DAKOTA: See Chapter 28 of the Century Code. "Judicial Procedure, Civil."

OKLAHOMA: See Title 12 of the Oklahoma Statutes.

OREGON: See Chapters 12-36 of the Oregon Revised Statutes.

PENNSYLVANIA: See Pennsylvania Constitution of 1968, Article V, Section 10C, 42 PA CS 1722, available at <http://member.aol.com/RulesPA/civil.hyml>.

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RHODE ISLAND: See Title 9, available at <http://www.rilin.state.ri.us/statutes/Title9/INDEX>.

SOUTH CAROLINA: See Title 15 of the Code of Laws, available at <http://www.lpitr.state.sc.us/code/tit15.htm>.

SOUTH DAKOTA: See Title 15.

TENNESSEE: See Titles 19 and 20.

TEXAS: See "Civil Practice and Remedies Code," available at <http://www.capitol.state.tx.us/statutes/cvtoc.html>.

UTAH: See Future Title 28-"Judicial Code" of the Utah Code, available at <http://www.le.state.ut.us/FTITL78>.

VERMONT: See Title 12 of the Vermont Statutes.

VIRGINIA: See Virginia Code Section 915a, available at <http://www.leg1.state.va.us/000/cod/code915a.htm#751573>.

WASHINGTON: See Title 4, "Civil Procedure," of the Revised Code of Washington, available at <http://www.leg.wa.gov/wsladm/rcw.cfm>.

WEST VIRGINIA: See Chapters 55-58.

WISCONSIN: See Chapters 801-847 of the Wisconsin Statutes.

WYOMING: See Title 1 of the Wyoming Statutes, available at <http://legisweb.state.wy.us/title/97titles/title1.htm>.

Additional Resources

"Civil Procedure: an Overview." Available at http://www.law.cornell.edu/topics/civil_procedure.html.

The Court TV Cradle-to-grave Legal Survival Guide. Little, Brown and Company, 1995.

Federal Rules of Civil Procedure. Available at http://www.law.cornell.edu/topics/civil_procedure.html.

The Law of the Land. Rembar, Charles, Simon & Schuster, 1993.

West's Encyclopedia of American Law. West Group, 1998.

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