

AMENDMENTS TO THE FEDERAL RULES OF CIVIL
PROCEDURE

COMMUNICATION

FROM

THE CHIEF JUSTICE, THE SUPREME COURT
OF THE UNITED STATES

TRANSMITTING

AN AMENDMENT TO THE FEDERAL RULES OF CIVIL PROCEDURE
THAT HAS BEEN ADOPTED BY THE SUPREME COURT, PURSU-
ANT TO 28 U.S.C. 2074(a) PUBLIC LAW 100-702, SEC. 401(a); (102
STAT. 4649)



APRIL 2, 2024.—Referred to the Committee on the Judiciary and ordered
to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

SUPREME COURT OF THE UNITED STATES,
Washington, DC, April 2, 2024.

Hon. MIKE JOHNSON,
Speaker, United States House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: I have the honor to submit to the Congress an amendment to the Federal Rules of Civil Procedure that has been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying the amended rule are the following materials that were submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated October 23, 2023; a blackline version of the rule with committee note; an excerpt from the September 2023 report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States; and an excerpt from the May 2023 report of the Advisory Committee on Civil Rules.

Sincerely,

JOHN G. ROBERTS, Jr.,
Chief Justice.

April 2, 2024

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. The Federal Rules of Civil Procedure are amended to include an amendment to Rule 12.

[*See infra* pp. ___ __ .]

2. The foregoing amendment to the Federal Rules of Civil Procedure shall take effect on December 1, 2024, and shall govern in all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. THE CHIEF JUSTICE is authorized to transmit to the Congress the foregoing amendment to the Federal Rules of Civil Procedure in accordance with the provisions of Section 2074 of Title 28, United States Code.

A handwritten signature in black ink, appearing to be the initials 'JM' or similar, located in the lower right quadrant of the page.

**PROPOSED AMENDMENT TO THE FEDERAL
RULES OF CIVIL PROCEDURE**

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

(a) Time to Serve a Responsive Pleading. Unless another time is specified by a federal statute, the time for serving a responsive pleading is as follows:

(1) *In General.*

(A) A defendant must serve an answer:

* * * * *



THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

HONORABLE ROSLYNN R. MAUSKOPF
Secretary

October 23, 2023

MEMORANDUM

To: Chief Justice of the United States
Associate Justices of the Supreme Court

From: Judge Roslynn R. Mauskopf *Roslynn R. Mauskopf*
Secretary

RE: TRANSMITTAL OF PROPOSED AMENDMENT TO THE FEDERAL RULES OF
CIVIL PROCEDURE

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I transmit for the Court's consideration a proposed amendment to Rule 12 of the Federal Rules of Civil Procedure, which has been approved by the Judicial Conference. The Judicial Conference recommends that the amended rule be adopted by the Court and transmitted to Congress pursuant to law.

For your assistance in considering the proposed amendment, I am transmitting (i) clean and blackline copies of the amended rule along with committee note; (ii) an excerpt from the September 2023 report of the Committee on Rules of Practice and Procedure to the Judicial Conference; and (iii) an excerpt from the May 2023 report of the Advisory Committee on Civil Rules.

Attachments

**PROPOSED AMENDMENT TO THE FEDERAL
RULES OF CIVIL PROCEDURE¹**

1 **Rule 12. Defenses and Objections: When and How**
2 **Presented; Motion for Judgment on the**
3 **Pleadings; Consolidating Motions;**
4 **Waiving Defenses; Pretrial Hearing**

5 **(a) Time to Serve a Responsive Pleading.**

6 ~~(1) *In General.*~~ Unless another time is specified by
7 ~~this rule~~ or a federal statute, the time for serving a responsive
8 pleading is as follows:

9 **(1) *In General.***

10 **(A)** A defendant must serve an answer:

11 * * * * *

Committee Note

Rule 12 is amended to make it clear that a federal statute that specifies another time supersedes the times to serve a responsive pleading set by paragraphs (a)(2) and (3). Paragraph (a)(1) incorporates this provision, but the structure of subdivision (a) does not seem to extend it to paragraphs (2) and (3). There is no reason to supersede an inconsistent statute by any part of Rule 12(a). The amended

¹ New material is underlined; matter to be omitted is lined through.

structure recognizes the priority of any statute for all of paragraphs (1), (2), and (3).

Excerpt from the September 2023 Report of the Committee on Rules of Practice and Procedure

Agenda E-19
Rules
September 2023

REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

**TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES:**

The Committee on Rules of Practice and Procedure (Standing Committee or Committee) met on June 6, 2023. All members participated.

* * * * *

FEDERAL RULES OF CIVIL PROCEDURE

Rule Recommended for Approval and Transmission

The Advisory Committee on Civil Rules recommended for final approval proposed amendments to Civil Rule 12(a). The Standing Committee unanimously approved the Advisory Committee's recommendation.

Rule 12 (Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing)

Rule 12(a) prescribes the time to serve responsive pleadings. Paragraph (1) provides the general response time, but recognizes that a federal statute setting a different time governs. In contrast, neither paragraph (2) (which sets a 60-day response time for the United States, its agencies, and its officers or employees sued in an official capacity) nor paragraph (3) (which sets a 60-day response time for United States officers or employees sued in an individual capacity for acts or omissions in connection with federal duties) recognizes the possibility of conflicting statutory response times.

<p style="text-align: center;">NOTICE NO RECOMMENDATIONS PRESENTED HEREIN REPRESENT THE POLICY OF THE JUDICIAL CONFERENCE UNLESS APPROVED BY THE CONFERENCE ITSELF.</p>
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Excerpt from the September 2023 Report of the Committee on Rules of Practice and Procedure

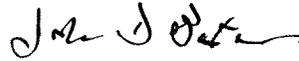
The current language could be read to suggest unintended preemption of statutory time directives. While it is not clear whether any statutes inconsistent with paragraph (3) exist, there are statutes setting shorter times than the 60 days provided by paragraph (2); one example is the Freedom of Information Act. The current rule fails to reflect the Advisory Committee's intent to defer to different response times set by statute. Thus, the current language could be mistakenly interpreted as a deliberate choice by the Advisory Committee that the response times set in paragraphs (2) and (3) are intended to supersede inconsistent statutory provisions, especially because paragraph (1) includes specific language deferring to different periods established by statute.

The Advisory Committee determined that an amendment to Rule 12(a) is necessary to explicitly extend to paragraphs (2) and (3) the recognition now set forth in paragraph (1)--namely, that a different response time set by statute supersedes the response times set by those rules. After public comment, the Advisory Committee recommended final approval of the rule as published.

Recommendation: That the Judicial Conference approve the proposed amendment to Civil Rule 12(a), as set forth in Appendix C, and transmit it to the Supreme Court for consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

* * * * *

Respectfully submitted,



John D. Bates, Chair

Paul Barbadoro	Lisa O. Monaco
Elizabeth J. Cabraser	Andrew J. Pincus
Robert J. Giuffra, Jr.	Gene E.K. Pratter
William J. Kayatta, Jr.	D. Brooks Smith
Carolyn B. Kuhl	Kosta Stojilkovic
Troy A. McKenzie	Jennifer G. Zipp
Patricia Ann Millett	

Excerpt from the May 11, 2023, Report of the Advisory Committee on Civil Rules

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

JOHN D. BATES
CHAIR
H. THOMAS BYRON III
SECRETARY

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JAMES C. DEVER III
CRIMINAL RULES
PATRICK J. SCHILTZ
EVIDENCE RULES

TO: Hon. John D. Bates, Chair
Committee on Rules of Practice and Procedure
FROM: Hon. Robin L. Rosenberg, Chair
Advisory Committee on Civil Rules
RE: Report of the Advisory Committee on Civil Rules
DATE: May 11, 2023

Introduction

The Civil Rules Advisory Committee met in West Palm Beach, FL, on March 28, 2023. Members of the public attended in person, and public on-line attendance was also provided. * * *

Part I of this report presents three items for action at this meeting:

(a) Rule 12(a) amendment for final approval: A small amendment to Rule 12(a) was published for public comment in August 2022. Only three comments were received. The Advisory Committee recommends approving this amendment and forwarding it to the Judicial Conference.

* * * * *

Excerpt from the May 11, 2023, Report of the Advisory Committee on Civil Rules

I. Action Items

A. For final approval: Amendment to Rule 12(a)

In August 2022, a preliminary draft of a proposed amendment to Rule 12(a) was published for public comment. The stimulus was principally that some litigants encountered difficulties obtaining summonses in FOIA cases that called for responsive pleadings within the statutory 30-day deadline because it was not clear that a federal statute prescribing a different time would apply to the United States under Rules 12(a)(2) and 12(a)(3). To avoid unintended preemption of such statutory time directives, the invocation of federal statutes was moved up to apply to the whole of Rule 12(a), as follows:

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

- (a) **Time to Serve a Responsive Pleading.** ~~(1) *In General.*~~ Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows:

(1) *In General.*

- (A) A defendant must serve an answer:

* * * * *

Committee Note

Rule 12 is amended to make it clear that a federal statute that specifies another time supersedes the times to serve a responsive pleading set by paragraphs (a)(2) and (3). Paragraph (a)(1) incorporates this provision, but the structure of subdivision (a) does not seem to extend it to paragraphs (2) and (3). There is no reason to supersede an inconsistent statute by any part of Rule 12(a). The amended structure recognizes the priority of any statute for all of paragraphs (1), (2), and (3).

* * * * *

Only three comments were received, and they are summarized below. One supports the proposed amendment, citing the potential problem in FOIA cases. Another is from Andrew Straw, who also has submitted a proposal to amend Rule 11 (discussed below), seemingly objecting to something that happened in a case between him and the state of Indiana.

The third comment is from the Federal Magistrate Judges Association (FMJA). The FMJA recognizes that the amendment clarifies that the response times specified in the rule may be superseded by a federal statute even in cases in which the United States is a party.

The FMJA suggested, however, that there should be some recognition that other federal rules, including various Supplemental Rules, may have response provisions inconsistent with Rule

Excerpt from the May 11, 2023, Report of the Advisory Committee on Civil Rules

12(a). It therefore proposes that the amendment “restore” language stricken in the published preliminary draft as follows:

Unless another time is specified by these rules or a federal statute, the time for serving a responsive pleading is as follows:

This addition might do no harm, but does not seem to serve an important purpose. The FMJA submission does not cite any such rule, but instead says some such rules “might also” contain divergent response times, and that they are “potentially conflicting” rules. Yet the only such rule that has been called to our attention is Rule 15, and the current rule did not exclude it, so there does not appear to be a problem on this account. Some little-known federal statutes (in addition to the FOIA) were mentioned when the rule change was under discussion, and the amended rule would deal with them.

Moreover, this change would go beyond “restoring” the stricken language, which referred only to a different time specified by “this rule.”

At its March 2023 meeting, the Advisory Committee voted to seek final approval of this amendment.

Summary of Comments on Rule 12(a) Amendment

Andrew Straw (CV-2022-0003-0003): “Rule 12 has been disregarded to favor the State of Indiana and its Attorney General. A deputy AG asked for more time to file a motion to dismiss on day 29 after service and the trial judge allowed it even with the lie that 29 days was still timely. When I objected to the 7th Circuit, I was slapped with a \$500 fine and a ban on using any federal court for 2 years. This represents a COURT CLOSURE to hide and protect violations of Rule 12(a). Straw v. Indiana Supreme Court, 18-2878 (7th Cir. 2018).”

Federal Magistrate Judges Association (CV-2022-0003-0006): The amendment clarifies that the response times fixed by Rule 12 may be superseded by statute even in cases where the United States is a party. The current rule does not recognize that possibility. But other rules may contain response provisions that are inconsistent with Rule 12, so the rule could be amended to read: “Unless another time is specified by these rules or a federal statute, the time for serving a responsive pleading is as follows:”

Anonymous (CV-2022-0003-0007): I support the proposed amendment. The FOIA gives federal agencies 30 days to respond, which should supersede the 60 days provided in Rule 12(a)(2). I have had a court clerk issue a 60-day summons even though the statute provides a 30-day time limit. Part of the problem may be the standard A.O. form used by courts to issue a summons. That form says the U.S. has 60 days to respond, but does not note that there may be a different time limit.

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