

---

---

## AMENDMENTS TO FEDERAL RULES OF CIVIL PROCEDURE

---

The following amendments to the Federal Rules of Civil Procedure were prescribed by the Supreme Court of the United States on March 26, 2009, pursuant to 28 U.S.C. §2072, and were reported to Congress by THE CHIEF JUSTICE on the same date. For the letter of transmittal, see *post*, p. 1342. The Judicial Conference report referred to in that letter is not reproduced herein.

Note that under 28 U.S.C. §2074, such amendments shall take effect no earlier than December 1 of the year in which they are transmitted to Congress unless otherwise provided by law.

For earlier publication of the Federal Rules of Civil Procedure and amendments thereto, see 308 U.S. 645, 308 U.S. 642, 329 U.S. 839, 335 U.S. 919, 341 U.S. 959, 368 U.S. 1009, 374 U.S. 861, 383 U.S. 1029, 389 U.S. 1121, 398 U.S. 977, 401 U.S. 1017, 419 U.S. 1133, 446 U.S. 995, 456 U.S. 1013, 461 U.S. 1095, 471 U.S. 1153, 480 U.S. 953, 485 U.S. 1043, 500 U.S. 963, 507 U.S. 1089, 514 U.S. 1151, 517 U.S. 1279, 520 U.S. 1305, 523 U.S. 1221, 526 U.S. 1183, 529 U.S. 1155, 532 U.S. 1085, 535 U.S. 1147, 538 U.S. 1083, 544 U.S. 1173, 547 U.S. 1233, 550 U.S. 1003, and 553 U.S. 1149.

---

---

LETTER OF TRANSMITTAL

---

SUPREME COURT OF THE UNITED STATES  
WASHINGTON, D. C.

MARCH 26, 2009

*To the Senate and House of Representatives of the United  
States of America in Congress Assembled:*

I have the honor to submit to the Congress the amendments to the Federal Rules of Civil Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying these rules are excerpts from the report of the Judicial Conference of the United States containing the Committee Notes submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code.

Sincerely,

(Signed) JOHN G. ROBERTS, JR.  
*Chief Justice of the United States*

SUPREME COURT OF THE UNITED STATES

MARCH 26, 2009

ORDERED:

1. That the Federal Rules of Civil Procedure be, and they hereby are, amended by including therein amendments to Civil Rules 6, 12, 13, 14, 15, 23, 27, 32, 38, 48, 50, 52, 53, 54, 55, 56, 59, 62, 65, 68, 71.1, 72, and 81, and new Rule 62.1, and Supplemental Rules B, C, and G, and Illustrative Civil Forms 3, 4, and 60.

[See *infra*, pp. 1345–1362.]

2. That the foregoing amendments to the Federal Rules of Civil Procedure shall take effect on December 1, 2009, and shall govern in all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. That THE CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Civil Procedure in accordance with the provisions of Section 2072 of Title 28, United States Code.

AMENDMENTS TO THE FEDERAL RULES  
OF CIVIL PROCEDURE

---

*Rule 6. Computing and extending time; time for motion papers.*

(a) *Computing time.*—The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) *Period stated in days or a longer unit.*—When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Period stated in hours.*—When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) *Inaccessibility of the clerk's office.*—Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 6(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) “*Last day*” defined.—Unless a different time is set by a statute, local rule, or court order, the last day ends:

(A) for electronic filing, at midnight in the court’s time zone; and

(B) for filing by other means, when the clerk’s office is scheduled to close.

(5) “*Next day*” defined.—The “next day” is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) “*Legal holiday*” defined.—“Legal holiday” means:

(A) the day set aside by statute for observing New Year’s Day, Martin Luther King Jr.’s Birthday, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, or Christmas Day;

(B) any day declared a holiday by the President or Congress; and

(C) for periods that are measured after an event, any other day declared a holiday by the state where the district court is located.

(b) *Extending time.*

(2) *Exceptions.*—A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b).

(c) *Motions, notices of hearing, and affidavits.*

(1) *In general.*—A written motion and notice of the hearing must be served at least 14 days before the time specified for the hearing, with the following exceptions:

- (A) when the motion may be heard ex parte;
- (B) when these rules set a different time; or
- (C) when a court order—which a party may, for good cause, apply for ex parte—sets a different time.

(2) *Supporting affidavit.*—Any affidavit supporting a motion must be served with the motion. Except as Rule 59(c) provides otherwise, any opposing affidavit must be served at least 7 days before the hearing, unless the court permits service at another time.

*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:

(A) A defendant must serve an answer:

- (i) within 21 days after being served with the summons and complaint; or
- (ii) if it has timely waived service under Rule 4(d), within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States.

(B) A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

(4) *Effect of a motion.*—Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be

served within 14 days after notice of the court's action;  
or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

(e) *Motion for a more definite statement.*—A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) *Motion to strike.*—The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

- (1) on its own; or
- (2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

*Rule 13. Counterclaim and crossclaim.*

(f) *[Abrogated.]*

*Rule 14. Third-party practice.*

(a) *When a defending party may bring in a third party.*

(1) *Timing of the summons and complaint.*—A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must, by motion, obtain the court's leave if it files

the third-party complaint more than 14 days after serving its original answer.

*Rule 15. Amended and supplemental pleadings.*

(a) *Amendments before trial.*

(1) *Amending as a matter of course.*—A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) *Other amendments.*—In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(3) *Time to respond.*—Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

*Rule 23. Class actions.*

(f) *Appeals.*—A court of appeals may permit an appeal from an order granting or denying class-action certification under this rule if a petition for permission to appeal is filed with the circuit clerk within 14 days after the order is entered. An appeal does not stay proceedings in the district court unless the district judge or the court of appeals so orders.

*Rule 27. Depositions to perpetuate testimony.*

(a) *Before an action is filed.*



(2) *Notice and service.*—At least 21 days before the hearing date, the petitioner must serve each expected adverse party with a copy of the petition and a notice stating the time and place of the hearing. The notice may be served either inside or outside the district or state in the manner provided in Rule 4. If that service cannot be made with reasonable diligence on an expected adverse party, the court may order service by publication or otherwise. The court must appoint an attorney to represent persons not served in the manner provided in Rule 4 and to cross-examine the deponent if an unserved person is not otherwise represented. If any expected adverse party is a minor or is incompetent, Rule 17(c) applies.

*Rule 32. Using depositions in court proceedings.*

(a) *Using depositions.*

(5) *Limitations on use.*

(A) *Deposition taken on short notice.*—A deposition must not be used against a party who, having received less than 14 days' notice of the deposition, promptly moved for a protective order under Rule 26(c)(1)(B) requesting that it not be taken or be taken at a different time or place—and this motion was still pending when the deposition was taken.

(d) *Waiver of objections.*

(3) *To the taking of the deposition.*

(C) *Objection to a written question.*—An objection to the form of a written question under Rule 31 is waived if not served in writing on the party submitting the question within the time for serving responsive questions or, if the question is a recross-question, within 7 days after being served with it.

*Rule 38. Right to a jury trial; demand.*

(b) *Demand*.—On any issue triable of right by a jury, a party may demand a jury trial by:

- (1) serving the other parties with a written demand—which may be included in a pleading—no later than 14 days after the last pleading directed to the issue is served; and
- (2) filing the demand in accordance with Rule 5(d).

(c) *Specifying issues*.—In its demand, a party may specify the issues that it wishes to have tried by a jury; otherwise, it is considered to have demanded a jury trial on all the issues so triable. If the party has demanded a jury trial on only some issues, any other party may—within 14 days after being served with the demand or within a shorter time ordered by the court—serve a demand for a jury trial on any other or all factual issues triable by jury.

*Rule 48. Number of jurors; verdict; polling.*

(a) *Number of jurors*.—A jury must begin with at least 6 and no more than 12 members, and each juror must participate in the verdict unless excused under Rule 47(c).

(b) *Verdict*.—Unless the parties stipulate otherwise, the verdict must be unanimous and must be returned by a jury of at least 6 members.

(c) *Polling*.—After a verdict is returned but before the jury is discharged, the court must on a party's request, or may on its own, poll the jurors individually. If the poll reveals a lack of unanimity or lack of assent by the number of jurors that the parties stipulated to, the court may direct the jury to deliberate further or may order a new trial.

*Rule 50. Judgment as a matter of law in a jury trial; related motion for a new trial; conditional ruling.*

(b) *Renewing the motion after trial; alternative motion for a new trial*.—If the court does not grant a motion for

judgment as a matter of law made under Rule 50(a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. No later than 28 days after the entry of judgment—or if the motion addresses a jury issue not decided by a verdict, no later than 28 days after the jury was discharged—the movant may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59. In ruling on the renewed motion, the court may:

(d) *Time for a losing party's new-trial motion.*—Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered must be filed no later than 28 days after the entry of the judgment.

*Rule 52. Findings and conclusions by the court; judgment on partial findings.*

(b) *Amended or additional findings.*—On a party's motion filed no later than 28 days after the entry of judgment, the court may amend its findings—or make additional findings—and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59.

*Rule 53. Masters.*

(f) *Action on the master's order, report, or recommendations.*

(2) *Time to object or move to adopt or modify.*—A party may file objections to—or a motion to adopt or modify—the master's order, report, or recommendations no later than 21 days after a copy is served, unless the court sets a different time.

*Rule 54. Judgment; costs.*

*(d) Costs; attorney's fees.*

(1) *Costs other than attorney's fees.*—Unless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney's fees—should be allowed to the prevailing party. But costs against the United States, its officers, and its agencies may be imposed only to the extent allowed by law. The clerk may tax costs on 14 days' notice. On motion served within the next 7 days, the court may review the clerk's action.

*Rule 55. Default; default judgment.*

*(b) Entering a default judgment.*

(2) *By the court.*—In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals—preserving any federal statutory right to a jury trial—when, to enter or effectuate judgment, it needs to:

*Rule 56. Summary judgment.*

(a) *By a claiming party.*—A party claiming relief may move, with or without supporting affidavits, for summary judgment on all or part of the claim.

(b) *By a defending party.*—A party against whom relief is sought may move, with or without supporting affidavits, for summary judgment on all or part of the claim.

(c) *Time for a motion, response, and reply; proceedings.*

(1) These times apply unless a different time is set by local rule or the court orders otherwise:

(A) a party may move for summary judgment at any time until 30 days after the close of all discovery;

(B) a party opposing the motion must file a response within 21 days after the motion is served or a responsive pleading is due, whichever is later; and

(C) the movant may file a reply within 14 days after the response is served.

(2) The judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.

*Rule 59. New trial; altering or amending a judgment.*

(b) *Time to file a motion for a new trial.*—A motion for a new trial must be filed no later than 28 days after the entry of judgment.

(c) *Time to serve affidavits.*—When a motion for a new trial is based on affidavits, they must be filed with the motion. The opposing party has 14 days after being served to file opposing affidavits. The court may permit reply affidavits.

(d) *New trial on the court's initiative or for reasons not in the motion.*—No later than 28 days after the entry of judgment, the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

(e) *Motion to alter or amend a judgment.*—A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

*Rule 62. Stay of proceedings to enforce a judgment.*

(a) *Automatic stay; exceptions for injunctions, receiver-ships, and patent accountings.*—Except as stated in this rule, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 14 days have passed after its entry. But unless the court orders otherwise, the following are not stayed after being entered, even if an appeal is taken:

. . . . .

*Rule 62.1. Indicative ruling on a motion for relief that is barred by a pending appeal.*

(a) *Relief pending appeal.*—If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:

- (1) defer considering the motion;
- (2) deny the motion; or
- (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.

(b) *Notice to the court of appeals.*—The movant must promptly notify the circuit clerk under Federal Rule of Appellate Procedure 12.1 if the district court states that it would grant the motion or that the motion raises a substantial issue.

(c) *Remand.*—The district court may decide the motion if the court of appeals remands for that purpose.

*Rule 65. Injunctions and restraining orders.*

. . . . .

(b) *Temporary restraining order.*

. . . . .

(2) *Contents; expiration.*—Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the

record. The order expires at the time after entry—not to exceed 14 days—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

*Rule 68. Offer of judgment.*

(a) *Making an offer; judgment on an accepted offer.*—At least 14 days before the date set for trial, a party defending against a claim may serve on an opposing party an offer to allow judgment on specified terms, with the costs then accrued. If, within 14 days after being served, the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. The clerk must then enter judgment.

(c) *Offer after liability is determined.*—When one party's liability to another has been determined but the extent of liability remains to be determined by further proceedings, the party held liable may make an offer of judgment. It must be served within a reasonable time—but at least 14 days—before the date set for a hearing to determine the extent of liability.

*Rule 71.1. Condemning real or personal property.*

(d) *Process.*

(2) *Contents of the notice.*

(A) *Main contents.*—Each notice must name the court, the title of the action, and the defendant to whom it is directed. It must describe the property sufficiently to identify it, but need not describe any property other than that to be taken from the named defendant. The notice must also state:

- (i) that the action is to condemn property;

- (ii) the interest to be taken;
- (iii) the authority for the taking;
- (iv) the uses for which the property is to be taken;
- (v) that the defendant may serve an answer on the plaintiff's attorney within 21 days after being served with the notice;
- (vi) that the failure to so serve an answer constitutes consent to the taking and to the court's authority to proceed with the action and fix the compensation; and
- (vii) that a defendant who does not serve an answer may file a notice of appearance.

(e) *Appearance or answer.*

(2) *Answer.*—A defendant that has an objection or defense to the taking must serve an answer within 21 days after being served with the notice. The answer must:

*Rule 72. Magistrate judges: pretrial order.*

(a) *Nondispositive matters.*—When a pretrial matter not dispositive of a party's claim or defense is referred to a magistrate judge to hear and decide, the magistrate judge must promptly conduct the required proceedings and, when appropriate, issue a written order stating the decision. A party may serve and file objections to the order within 14 days after being served with a copy. A party may not assign as error a defect in the order not timely objected to. The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.

(b) *Dispositive motions and prisoner petitions.*

(2) *Objections.*—Within 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. A party may respond to an-



other party's objections within 14 days after being served with a copy. Unless the district judge orders otherwise, the objecting party must promptly arrange for transcribing the record, or whatever portions of it the parties agree to or the magistrate judge considers sufficient.

*Rule 81. Applicability of the rules in general; removed actions.*

*(c) Removed actions.*

(2) *Further pleading.*—After removal, repleading is unnecessary unless the court orders it. A defendant who did not answer before removal must answer or present other defenses or objections under these rules within the longest of these periods:

(A) 21 days after receiving—through service or otherwise—a copy of the initial pleading stating the claim for relief;

(B) 21 days after being served with the summons for an initial pleading on file at the time of service; or

(C) 7 days after the notice of removal is filed.

*(3) Demand for a jury trial.*

(B) *Under Rule 38.*—If all necessary pleadings have been served at the time of removal, a party entitled to a jury trial under Rule 38 must be given one if the party serves a demand within 14 days after:

(i) it files a notice of removal; or

(ii) it is served with a notice of removal filed by another party.

*(d) Law applicable.*

(1) *“State law” defined.*—When these rules refer to state law, the term “law” includes the state’s statutes and the state’s judicial decisions.

(2) “*State*” *defined*.—The term “state” includes, where appropriate, the District of Columbia and any United States commonwealth or territory.

(3) “*Federal statute*” *defined in the District of Columbia*.—In the United States District Court for the District of Columbia, the term “federal statute” includes any Act of Congress that applies locally to the District.

FORM 3. SUMMONS

(Caption—See Form 1.)

To name the defendant :

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure.

FORM 4. SUMMONS ON A THIRD-PARTY COMPLAINT

(Caption—See Form 1.)

To name the third-party defendant :

A lawsuit has been filed against defendant \_\_\_\_\_, who as third-party plaintiff is making this claim against you to pay part or all of what [he] may owe to the plaintiff \_\_\_\_\_.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff and on the defendant an answer to the attached third-party complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure.

FORM 60. NOTICE OF CONDEMNATION

(Caption—See Form 1.)

4. If you want to object or present any defense to the taking you must serve an answer on the plaintiff’s attorney within 21 days [after being served with this notice] [from insert the date of the last publication of notice]. Send your answer to this address: \_\_\_\_\_.