

Civil Procedure I- Prof. Jack Williams, G.S.U., Fall 2000

Federal Rules of Civil Procedure- Promulgated by the Supreme Court; have the force and effect of law if Congress doesn't act to change them.

- Rule 1: Three Touchstones of Civil Procedure- Parties and judges have a duty to “secure the just, speedy, and inexpensive determination of every action”.
- Rule 2: One form of action known as “civil action”
- Rule 3: Civil action commenced by filing a complaint with the court.
- Rule 4: Summons
- Rule 5: Service of Pleadings and other Papers
- Rule 6: Time
 - The day of the act or event from which time begins to run is not included.
 - The last day is included unless it is a Saturday, Sunday or Legal Holiday.
 - When the time period is less than 11 days, Sat's, Sun's and LH's will be excluded.
 - When service of notice triggers a time period, if the notice is sent by mail, 3 days are added.
- Rule 7: Pleadings
 - (a) 6 different types of Pleadings-
 - 1 Complaint
 - 2 Answer / Answer with Counterclaim (must be designated as such)
 - 3 Reply to Counterclaim
 - 4 Answer to a Cross-Claim (Cross-claim sets forth defendant's claim against one or more other defendants; not considered a pleading)
 - 5 Third-party Complaint
 - 6 Third-party Answer
 - (b) Motions- application to the court for an order. Must state the grounds with particularity, and set forth the relief sought.
- Rule 8: General Rules of Pleading
 - (a) Complaint must set out:
 - 1 Grounds for jurisdiction.
 - 2 Claim showing that the pleader is entitled to relief.
 - 3 Demand for judgment for relief.
 - * Under Rule 8, only reasonable notice of complaint and grounds upon which the claim rests is required. If more specificity is used, it may be more persuasive, but may also allow for increased challenges under 12(b)(6).
 - (b) Defendant (answer):
 - 1 Shall state in short and plain terms the party's defenses to each allegation.
 - 2 Shall admit or deny each averment upon which the adverse party relies (an admission may be changed to a denial by an amendment to the answer).
 - 3 Any lack of ability to admit or deny shall be stated, having the effect of a denial.
 - (c) Defendant must list affirmative defenses. If a defense is not listed, it is not waived, but must be asserted in an amendment to the answer.
- Rule 9: Pleading Special Matters- Certain issues must be stated with particularity.
 - 9(b): A complaint that alleges fraud or mistake must state the circumstances that constitute fraud or mistake with particularity. Must show all elements of fraud/mistake with specificity. (Fraud is easy to plead, but hard to prove. Since it carries a stigma, the drafters of the rules gave it a heightened pleading standard).

- Rule 10: Form of Pleadings- Caption shall include the name of the court, title of action, file number, and designation under 7(a) (type of pleading).
- Rule 11: Pleadings, motions, and other papers must be signed by an attorney certifying four things (Rule 11(b)(1-4)). A motion for sanctions under the rule can be served, and then filed 21 days later if there is no response. Court can issue sanctions in response to the motion, or at its own initiative.
 - '93 Version:
 - 1 Broadens the target of sanctions (includes the firm)
 - 2 Has a continuing obligation standard view rather than “snapshot” view of the filing.
 - 3 Clarifies that one can be sanctioned even if the document as a whole is sound.
- Rule 12: Defenses and Objections-
 - (a) Defendant must serve an answer within 20 of being served with the summons and complaint.
 - (b) Some defenses may be made by motion, and not in the pleadings.
 - 1 Lack of jurisdiction over the subject matter.
 - 2 Lack of jurisdiction over the person.
 - 3 Improper venue.
 - 4 Insufficiency of process.
 - 5 Insufficiency of service of process.
 - 6 Failure to state a claim upon which relief can be granted.
 - Conley: A 12(b)(6) motion will not succeed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief.
 - Four Corners Rule: when considering a 12(b)(6) motion the court can only look at the complaint itself (within the “four corners” of the complaint), not any extraneous evidence. (If matters outside the pleading are presented, this motion will be treated as one for summary judgment under Rule 56.)
 - 7 Failure to join a party under Rule 19.
 - * 2-5 Can be waived if not claimed in original motion, under Rule 12(g).
 - * If a Rule 12 motion is filed, an answer to the original complaint is not required until the motion is ruled on. Courts are split on whether an answer is required to claims not covered by the Rule 12 motion (for multi-claim complaints).
 - * Standard of review for 12(b) motion- construing the evidence in a light most favorable to the plaintiff, it must be beyond a reasonable doubt.
 - (e) Motion for a more Definite Statement- Standard: Is the complaint so excessively vague and ambiguous that the defendant cannot be reasonably required to draft an effective response.
- Rule 13: Counterclaim and Cross-Claim
 - (a) Compulsory Counterclaim- if a pleader has a counterclaim against the opposing party at the time of serving the pleading that involves the same transaction or occurrence as the claim, the counter claim must be stated in the pleading or it is permanently waived.
 - (b) Permissive Counterclaim- a pleading may state as a counterclaim any claim against the opposing party not arising out of the same transaction or occurrence that is the subject matter of the opposing party’s claim.
 - (g) Cross-Claim: a pleading may state as a cross-claim any claim by a party against a co-party arising out of the same transaction or occurrence (must be related to the original action or property that is the subject matter of the original action).
- Rule 14: Third-Party Practice (Impleader)- allows a defendant to assert a claim against a new party who may be liable for all or part of the plaintiff’s claim against the defendant.

- Rule 15: Amended and Supplemental Pleadings
 - (a) A pleading to which no responsive pleading is permitted (answer) may be amended within 20 days, other wise it can be amended only:
 - 1 By leave of court (freely granted when justice so requires)
 - 2 By written consent of the adverse party
 - (b) If issues not raised in the pleadings are tried by express or implied consent of the parties, they will be treated as if they had been raised in the pleadings. If evidence outside the pleadings is objected to, the court may allow it if:
 - 1 The presentation of the merits of the action will be subserved, AND
 - 2 The objecting party fails to show that the admission of the evidence will prejudice the party.
 - (c) For purposes of the statute of limitations, an amendment relates back to the date of the original pleading when:
 - 1 The statute of limitations law permits relation back.
 - 2 The claim or defense in the amendment arose out of the event described in the original pleading.
 - 3 The amendment changes the name of the party against whom a claim is asserted if (2) is satisfied and the party to be brought in has been given notice within 4(m) AND knew or should have known that, but for a mistake concerning identity, the action would have been brought against him. “Mistake” concerning the identity of defendant does not mean lack of knowledge of who the defendant should be.
 - (d) A court may allow a supplemental pleading upon a motion by a party if it is just to do so.
 - * If a complaint is supplemented, the complaint and supplement are live.
 - * If a complaint is amended, the original complaint is dead, and the amended complaint is live.
 - * If the statute of limitations has run, and the judge denies a motion for leave to amend the complaint, defendants can still be added by filing a new complaint against the new defendant and then moving to have the cases consolidated.

- Rule 16: Pretrial Conferences; Scheduling; Management

- Rule 17: Parties plaintiff and defendant
 - (a) Every action shall be prosecuted in the name of the real party in interest. However, no action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification, joinder or substitution (because of statute of limitations).
 - (b) Capacity to sue or be sued will be determined by local/state law.

- Rule 18: Joinder of Claims - Permissive: A party may join all claims against a defendant into one action; does not have to arise out of the same transaction or occurrence. If joinder is done by amendment, Rule 15 applies. Rule 42 is a limitation on the effect of joinder.

- Rule 19: Compulsory Joinder of persons needed for just adjudication- A person must be joined if it is “feasible” (19(a)- they must be indispensable, and it must not cause prejudice).

- Rule 20: Joinder of Parties- Permissible joinder: if they assert, or is asserted against them, any right to relief jointly, severally, or in the alternative in respect or arising out of the same transaction or occurrence AND if any question of law or fact common to all these persons will arise in the action; the standard is reasonable relationships between transactions and occurrences.

- Rule 26: Discovery
 - (a) Required Disclosures
 - 1 Initial Disclosures- made within 14 days (10 business days) of Discovery Conference in 26(f).
 - Name, address and phone number of each individual likely to have information that the disclosing party may use to support its claims and defenses.
 - Copy or categorical description of all documents, data and things that the disclosing party may use to support its claims and defenses.
 - Computation (and evidence supporting computation) of damages.
 - Insurance information.
 - 2 Disclosure of Expert Testimony
 - Identity of any person who may give expert testimony, written reports of the expert, and complete statement of opinion, data used to form opinion, summary exhibits, witness qualifications, compensation, listing of cases witness has been involved in. 26 (a.2.B)
 - 3 Pretrial Disclosures (disclosure of evidence to be presented)
 - Name, address and phone number of each witness who may be called.
 - Designation of witnesses whose testimony will be presented by deposition.
 - Identification of each document or other exhibit.
 - (b)(3) Work Product Doctrine: A party may obtain documents prepared in anticipation of litigation or for trial only by a showing that he has a substantial need of the materials, and would be unable, without undue hardship, to obtain the substantial equivalent by other means. However, the court must protect against disclosure the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.
 - (f) Discovery Conference- Parties must meet at least 21 days before a scheduling conference to:
 - 1 Consider the possibility of settlement or resolution,
 - 2 Arrange for disclosures required under 26(a)(1),
 - 3 Develop a proposed discovery plan indicating proposals for:
 - What changes should be made in the timing, form, or requirements under 26(a),
 - The scope and timing of discovery,
 - What changes should be made in the limitations on discovery imposed by the rules,
 - Any orders that should be entered by the court.
- Rule 30: Oral Depositions-
 - (a) A party must obtain leave of court if he wants to:
 - 1 Take more than 10 depositions.
 - 2 Take a deposition from someone who has already been deposed.
 - 3 Take a deposition before the time specified in 26(d) (before the discovery conference).
- Rule 38/39: Trial by Jury- Any party may demand a trial by jury by serving the other parties a demand therefore at any time after the commencement of the action up to 10 days of the service of the last pleading directed to the issue, and filing the demand with the court under 5(d). The trial of all issues so demanded shall be by jury unless the parties consent to trial by the court or the court finds that there is no right to trial by jury on some or all of the issues.
- Rule 41: Dismissal of Actions
 - (a) Voluntary Dismissal- By plaintiff, before service of an answer or motion for summary judgment, by filing a stipulation of dismissal signed by all parties who have appeared in the action, or by order of the court.
 - (b) Involuntary Dismissal- Defendant moves for dismissal, based on misconduct of the plaintiff.
- Rule 45: Subpoena
 - (a) Form- Every subpoena shall:
 - 1 State the name of the issuing court.
 - 2 State the title of the action.
 - 3 Command each person to attend and give testimony or produce tangible evidence.
 - 4 State the protections (c) and duties (d) of persons subject to subpoenas.

- Rule 56: Summary Judgment/ Directed Verdict
 - (a) Claimant may move for summary judgment at any time after 20 days from the commencement of the action, or after service of a motion for summary judgment by the adverse party.
 - (b) Defendant may move for summary judgment at any time.
 - (c) The motion must be served 10 days before the hearing. The moving party has the burden of proof:
 - 1 Before Trial- Summary Judgment: Look at Trial Burden of Proof- Has the party with the burden of proof at trial proved all required elements of his case, viewing all the evidence in a light most favorable to the non-moving party. The court can consider the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits.
 - 2 At any point in the trial, before jury verdict: Directed Verdict.
 - (d) If a court does not rule on an entire case or grant the entire relief requested, causing a trial to still be necessary, the court shall enter an order specifying the facts and amount of relief not in controversy, and directing further proceedings in the action as are just.

Complaint

- A complaint states a claim upon which relief may be granted.
- A claim is cognizable if it entitles one to relief.
- A cognizable claim is a cause of action.
- A cause of action can be broken into its elements (*prime facie* case).
- Complaint Structure:
 - Caption
 - Parties Names
 - Statement of basis for court's jurisdiction
 - Claim- Must include all elements of prima facie case
 - Relief Requested
 - Demand Attorneys Fees
 - Demand Judgment
 - Signature of Attorney

Burden of Proof

- Burden of Production: must show proof of all elements of the cause of action; shifts to defendant after plaintiff has shown relevant evidence.
 - Fed. Rules of Evidence #401: Evidence is relevant if it tends to prove or disprove a fact in issue.
- Risk of Non-Persuasion: usually rests with the plaintiff because he is challenging the status quo (except in *res ipsa loquitor* "the thing speaks for itself" - shifts to defendant.)
 - Preponderance of the Evidence Standard (51% Probability)
 - Clear and Convincing Evidence Standard (Fraud/ Quasi-Criminal)
 - Beyond a Reasonable Doubt Standard (Criminal)
- Standards of Review on Appeal:
 - Cleary Erroneous Standard- resolutions of factual questions.
 - De Novo- questions of law (no deference paid to lower court).
 - Abuse of Discretion- questions of remedies.

Review Outline:

- Power of the Court
 - Fairness (Notice, Due Process)
 - Just, Speedy and Inexpensive determination
- Policies at Play- How these policies are furthered by the rules
 - Accuracy
 - Fairness
 - Dignity
 - Judicial Economy

➤ The Civil Action Process

- Complaint
 - 1 Rule 10 -Form of pleadings
 - 2 Rule 11/ 5 -Signing and Service
 - 3 Rule 7 -Pleadings allowed
 - 4 Rule 8(a) -Requirements for claims for relief
 - 5 Rule 9 -Pleading Special matters (fraud, capacity) with particularity
 - 6 Rule 17 -Parties in interest, capacity
 - 7 Rule 18/42 -Joinder of Claims against opposing party (if common question of law or fact)
 - 8 Rule 19 -Joinder of Persons needed for just adjudication *(R10)
 - 9 Rule 20 -Permissive Joinder of Parties *(R10)
 - 10 Rule 21 -Misjoinder and Non-Joinder
 - 11 Rule 15 -Amendments and supplements
 - 12 Rule 15(c) -Relation-Back

- Timing
 - 1 Rules 2, 3, 5, 6
 - 2 Rule 12(a) -Answer to be served within 20 days after being served with summons or complaint. If no answer is served within 20 days, Default under Rule 55. *(R6)

- Rule 12 Motions
 - 1 Rule 12(b) -Defenses made by motion (Conley)
 - 2 Rule 12 (h,g) -Waiver of defense not claimed
 - 3 Rule 12(c) -Motion for judgment on the pleadings
 - 4 Rule 12(e) -Motion for more definite statement
 - 5 Rule 12(f) -Motion to strike

- Answer
 - 1 Rule 8(b) -Admit or deny all averments
 - 2 Rule 12(b) -Defenses by motion
 - 3 Rule 8(c) -Affirmative defenses
 - 4 Rule 13(a,b) -Counterclaims
 - 5 Rule 13(g) -Crossclaims
 - 6 Rule 14 -Third-Party Practice
 - 7 Rules 2,3,5,6,10,11

- Discovery - Rule 26
 - 1 (a.1) -Initial Disclosure Requirements
 - 2 (a.2) -Expert Disclosure Requirements
 - 3 (a.3) -Pretrial Disclosure Requirements
 - 4 (b.3) -Work Product Doctrine
 - 5 (b.5) -Attorney-Client Privilege
 - 6 (e) -Continuing Obligation
 - 7 Rule 32 -Depositions
 - 8 Rule 33 -Interrogatories (more than 25 requires leave of the court or written stipulation)
 - 9 Rule 35 -Examination of Persons
 - 10 Rule 37 -Sanctions

- Trial
 - 1 Rule 38-40 -Jury Trial
 - 2 Rule 41 -Dismissal
 - 3 Rule 45 -Subpoena
 - 4 Rule 48 -Jury Selection (Batson)
 - 5 Rule 55 -Default Judgment
 - 6 Rule 56 -Summary Judgment *R7,5,10,11
 - 7 Rule 56(c) -Standard for Summary Judgment (Celotex)