

COMMENCING CIVIL ACTIONS SELECTED RULES AND STATUTES

FEDERAL RULES OF CIVIL PROCEDURE

Rule 1. Scope and Purpose

These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.

Rule 2. One Form of Action

There is one form of action—the civil action.

Rule 3. Commencement of Action

A civil action is commenced by filing a complaint with the court.

Rule 7. Pleadings Allowed; Form of Motions and Other Papers

- (a) *Pleadings.* Only these pleadings are allowed:
 - (1) a complaint;
 - (2) an answer to a complaint;
 - (3) an answer to a counterclaim designated as a counterclaim;
 - (4) an answer to a crossclaim;
 - (5) a third-party complaint;
 - (6) an answer to a third-party complaint; and
 - (7) if the court orders one, a reply to an answer.
- (b) *Motions and Other Papers*
 - (1) In General. A request for a court order must be made by motion. The motion must:
 - (A) be in writing unless made during a hearing or trial;
 - (B) state with particularity the grounds for seeking the order; and
 - (C) state the relief sought.
 - (2) Form. The rules governing captions and other matters of form in pleadings apply to motions and other papers.

Rule 8. General Rules of Pleading

- (a) *Claims for Relief.* A pleading that states a claim for relief must contain:
 - (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

- (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
 - (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.
- (b) *Defenses; Admissions and Denials.*
- (1) In General. In responding to a pleading, a party must:
 - (A) state in short and plain terms its defenses to each claim asserted against it; and
 - (B) admit or deny the allegations asserted against it by an opposing party.
 - (2) Denials—Responding to the Substance. A denial must fairly respond to the substance of the allegation.
 - (3) General and Specific Denials. A party that intends in good faith to deny all the allegations of a pleading — including the jurisdictional grounds — may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.
 - (4) Denying Part of an Allegation. A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.
 - (5) Lacking Knowledge or Information. A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.
 - (6) Effect of Failing to Deny. An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.
- (c) *Affirmative Defenses.*
- (1) In General. In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:
 - accord and satisfaction;
 - arbitration and award;
 - assumption of risk;
 - contributory negligence;
 - duress;
 - estoppel;
 - failure of consideration;
 - fraud;illegality;
 - injury by fellow servant;
 - laches;license;
 - payment;
 - release;
 - res judicata;
 - statute of frauds;
 - statute of limitations; and

- waiver.
- (2) Mistaken Designation. If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.
- (d) *Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.*
 - (1) In General. Each allegation must be simple, concise, and direct. No technical form is required.
 - (2) Alternative Statements of a Claim or Defense. A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.
 - (3) Inconsistent Claims or Defenses. A party may state as many separate claims or defenses as it has, regardless of consistency.
- (e) Construing Pleadings. Pleadings must be construed so as to do justice.

Rule 9. Pleading Special Matters

(b) *Fraud or Mistake; Condition of Mind.* In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

Rule 10. Form of Pleadings

(a) *Caption; Names of Parties.* Every pleading must have a caption with the court's name, a title, a file number, and a Rule 7(a) designation. The title of the complaint must name all the parties; the title of other pleadings, after naming the first party on each side, may refer generally to other parties.

(b) *Paragraphs; Separate Statements.* A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence—and each defense other than a denial—must be stated in a separate count or defense.

(c) *Adoption by Reference; Exhibits.* A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.

Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

(a) *Signature.* Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address,

and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) *Representations to the Court.* By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) *Sanctions.*

- (1) *In General.* If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.
- (2) *Motion for Sanctions.* A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.
- (3) *On the Court's Initiative.* On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).
- (4) *Nature of a Sanction.* A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order

directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

- (5) Limitations on Monetary Sanctions. The court must not impose a monetary sanction:
 - (A) against a represented party for violating Rule 11(b)(2); or
 - (B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.
- (6) Requirements for an Order. An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.
- (d) *Inapplicability to Discovery*. This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.

Rule 38. Right to a Jury Trial; Demand

(a) *Right Preserved*. The right of trial by jury as declared by the Seventh Amendment to the Constitution^[1]—or as provided by a federal statute—is preserved to the parties inviolate.

(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.

(d) *Waiver; Withdrawal*. A party waives a jury trial unless its demand is properly served and filed. A proper demand may be withdrawn only if the parties consent.

(e) *Admiralty and Maritime Claims*. These rules do not create a right to a jury trial on issues in a claim that is an admiralty or maritime claim under Rule 9(h).

¹ “In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.”

U.S. Const. amend. VII.

Rule 39. Trial by Jury or by the Court

(a) *When a Demand Is Made.* When jury trial has been demanded under Rule 38, the action must be designated on the docket as a jury action. The trial on all issues so demanded must be by jury unless:

- (1) the parties or their attorneys file a stipulation to a nonjury trial or so stipulate on the record; or
- (2) the court, on motion or on its own, finds that on some or all of those issues there is no federal right to a jury trial.

(b) *When No Demand Is Made.* Issues on which a jury trial is not properly demanded are to be tried by the court. But the court may, on motion, order a jury trial on any issue for which a jury might have been demanded.

(c) *Advisory Jury; Jury Trial by Consent.* In an action not triable of right by a jury, the court, on motion or on its own:

- (1) may try any issue with an advisory jury; or
- (2) may, with the parties' consent, try any issue by a jury whose verdict has the same effect as if a jury trial had been a matter of right, unless the action is against the United States and a federal statute provides for a nonjury trial.

SUBJECT MATTER JURISDICTION**Judicial Code****28 U.S.C. § 1331**

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1337(a)

(a) The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies: Provided, however, That the district courts shall have original jurisdiction of an action brought under section 11706 or 14706 of title 49, only if the matter in controversy for each receipt or bill of lading exceeds \$10,000, exclusive of interest and costs.

VENUE AND PERSONAL JURISDICTION**Clayton Act**

Section 4(a). Suits by persons injured

(a) *Amount of recovery; prejudgment interest.* Except as provided in subsection (b) of this section, any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws *may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy*, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. [emphasis added; prejudgment interest provision redacted] [15 U.S.C. § 15(a)]

Section § 16 Injunctive relief for private parties; exception; costs

Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, *in any court of the United States having jurisdiction over the parties*, against threatened loss or damage by a violation of the antitrust laws, including sections 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: Provided, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit for injunctive relief against any common carrier subject to the jurisdiction of the Surface Transportation Board under subtitle IV of title 49. In any action under this section in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorney's fee, to such plaintiff. [emphasis added] [15 U.S.C. § 26]

Section 12. District in which to sue corporation

Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found. [15 U.S.C. § 22]

Judicial code**28 U.S.C. § 1391 Venue generally**

(a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in

- (1) a judicial district where any defendant resides, if all defendants reside in the same State,

- (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or
 - (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.
- (b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in
 - (1) a judicial district where any defendant resides, if all defendants reside in the same State,
 - (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or
 - (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.
- (c) For purposes of venue under this chapter, a defendant that is a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced. In a State which has more than one judicial district and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State, and, if there is no such district, the corporation shall be deemed to reside in the district within which it has the most significant contacts.
- (d) An alien may be sued in any district.
- (e) A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which
 - (1) a defendant in the action resides,
 - (2) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or
 - (3) the plaintiff resides if no real property is involved in the action. Additional persons may be joined as parties to any such action in accordance with the Federal Rules of Civil Procedure and with such other venue requirements as would be applicable if the United States or one of its officers, employees, or agencies were not a party.

The summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified mail beyond the territorial limits of the district in which the action is brought.

- (f) A civil action against a foreign state as defined in section 1603(a) of this title may be brought—

- (1) in any judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated;
 - (2) in any judicial district in which the vessel or cargo of a foreign state is situated, if the claim is asserted under section 1605(b) of this title;
 - (3) in any judicial district in which the agency or instrumentality is licensed to do business or is doing business, if the action is brought against an agency or instrumentality of a foreign state as defined in section 1603(b) of this title; or
 - (4) in the United States District Court for the District of Columbia if the action is brought against a foreign state or political subdivision thereof.
- (g) A civil action in which jurisdiction of the district court is based upon section 1369 of this title may be brought in any district in which any defendant resides or in which a substantial part of the accident giving rise to the action took place.