



# COURT RULES

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## I. INTRODUCTION

**Court rules** govern procedures for the conduct of business in the courts. They often concern matters such as time limitations, pleadings allowed, and grounds for appeal. Each jurisdiction has its own procedure for how court rules are promulgated, which is generally some combination of legislative and judicial action.

In general, both federal and state courts are governed by **statutory law** that establishes the powers and jurisdiction of the courts and some procedural matters. In addition, courts are usually authorized by these statutes to adopt rules that further define procedures and processes of the courts. In many jurisdictions the courts issue proposed rules that become effective subject to timely repeal by the legislature. Rules that are validly adopted have the same legal effect as statutory law.

The **terminology** of court rules is often inconsistent and confusing. Court rules may be called “rules of procedure” or “rules of court.” The term often refers to both the statutory codes of procedure as well as the rules adopted by the courts. There are rules that apply generally to all types of courts, specific rules for each type of court, and local rules or internal operating procedures for a particular court location. The terminology is not usually important, but you do need to be aware of the various layers that may apply to the court you are researching.

## II. FEDERAL COURT RULES

In the federal system, the Supreme Court of the United States promulgates court rules for itself and the lower federal courts under the authority of 28 U.S.C. § 2072. As a matter of practice, rules are drafted by committees of the Judicial Conference of the United States, approved by the Judicial Conference and then submitted to the Supreme Court for adoption. Rules must be submitted to Congress by May 1 in order to become effective on December 1; however, Congress need not take action for the rules to become effective. Courts of appeals and the federal district courts have been empowered by 28 U.S.C. § 2071 to make their own separate rules, which must be consistent with the general rules developed for them by the Supreme Court.

### A. Locating Federal Rules: General Sources

There are several general sources that contain the text of most of the federal rules described below. The unannotated texts (referred to as the “**general sources**” in the remainder of this guide) are:

- *Cyclopedia of Federal Procedure* (online in Westlaw)
- *Federal Procedure Rules Service* (Practice & Procedure KF8835 .F431)
- West’s *Federal Civil Judicial Procedure and Rules* (Reserves KF8816 .A19)
- West’s *Federal Criminal Code and Rules* (Reserves KF9606 .U57).

The above are listings for the most current year of these annual handbook titles. Prior editions can be found in the library stacks (Level 2) at the same call numbers.

The text and annotations for most of the rules are available online through the legal research services **Lexis Advance, Westlaw, and Bloomberg Law**. On Lexis Advance, the rules of all types of federal courts can be found by following the path Statutes & Legislation > Court Rules. On Westlaw, browse the Statutes & Court Rules database, which is linked on the research homepage. On Bloomberg Law, follow the navigation path Browse All Content > Litigation and Dockets > Court Rules.

Other online sources for federal rules include the **Federal Judiciary** homepage (<http://www.uscourts.gov/rules-policies>), and Cornell’s **Legal Information Institute** (<http://www.law.cornell.edu/rules/>).

### 1. Rules of General Application (F.R.C.P., F.R. App. P., F.R. Crim. P., F.R.E.)

The Federal Rules of Civil Procedure (F.R.C.P.), the Federal Rules of Appellate Procedure (F.R. App. P.), and the Federal Rules of Evidence (F.R.E.) are published in the official *U.S. Code* (Federal Area & online at <http://uscode.house.gov/>), in the appendix to Title 28, Judiciary and Judicial Procedure. Federal Rules of Criminal Procedure (F.R. Crim. P.) are published in the *U.S. Code*’s appendix to Title 18, Crimes and Criminal Procedure.

Annotated versions of these rules are available in both unofficial versions of the Code, *United States Code Annotated* (Federal Area & online in Westlaw) and *United States Code Service* (Federal Area & online in Lexis Advance). In the print U.S.C.A., rules appear in the appendix

following the title; in the print U.S.C.S., rules are housed in separate volumes near the end of the set.

In addition to the general sources listed above, these rules are all reprinted in *Moore's Federal Rules Pamphlet* (Practice & Procedure KF8816 .M66 & online in Lexis Advance) and *U.S. Supreme Court Digest, L.Ed.*, vols. 17 – 22 (Federal Reporters & Digests). These sources contain historical notes, Advisory Committee comments, and annotations to the federal civil and criminal rules.

## 2. Rules for the U.S. Supreme Court

The rules of the U.S. Supreme Court can be found in many places, including the general sources noted above in Section A. The rules are published in Title 28, Appendix of the official *U.S. Code*. The annotated rules are in Title 28 of U.S.C.A., in a separate Court Rules volume at the end of U.S.C.S., and in volume 17 of *U.S. Supreme Court Digest, L.Ed.* Current rules are also available at the Court's website ([https://www.supremecourt.gov/filingandrules/rules\\_guidance.aspx](https://www.supremecourt.gov/filingandrules/rules_guidance.aspx)).

## 3. Local Court Rules for Federal Courts

Individual lower federal courts issue their own rules governing local practice. These rules generally concern the operation of the court and often supplement the rules of general application. Some courts of appeal also have internal operating procedures that supplement their local court rules.

**Court rule handbooks** published for individual states will include the local rules of the federal district courts in that state, as well as the circuit court of appeals for that jurisdiction. **Annual handbooks** are published for selected states. These are located with the state codes (Level 3). For example, *North Carolina Rules of Court* (State Codes & NC Alcove), published by West, is divided into two volumes -- one for rules of the North Carolina state courts and one for the local rules of the federal district courts in North Carolina and the Fourth Circuit Court of Appeals. *North Carolina General Statutes, Annotated Rules* (State Codes & NC Alcove) published by Lexis, contains annotated state court rules and unannotated federal rules for these same courts.

Court rules are also frequently published on the websites of the individual court or court systems. The **Administrative Office of the U.S. Courts** maintains a federal court locator site with links to the websites of individual courts at [http://www.uscourts.gov/court\\_locator](http://www.uscourts.gov/court_locator).

## 4. Rules for Courts of Limited Jurisdiction and Special Proceedings

Congress has established several federal courts with limited jurisdiction in specific subject areas, such as the Tax Court, the Court of Federal Claims, and the Court of International Trade. Their rules of court are published in the **U.S.C.**, **U.S.C.A.**, and **U.S.C.S.** The court rules volumes of U.S.C.S. (in print or online on Lexis Advance) are probably the most convenient source.

Rules for courts of limited jurisdictions are also frequently published on the website of the individual court. Use the **Court Locator** ([http://www.uscourts.gov/court\\_locator](http://www.uscourts.gov/court_locator)) to locate the site for a particular court.

Rules of procedure for the trial of misdemeanors before U.S. magistrates, supplemental rules for admiralty and maritime claims, rules governing multi-district litigation, and rules governing habeas corpus proceedings are included in the West federal handbooks and other general sources listed above.

## 5. Rules of Practice for Quasi-Judicial Agencies

Rules of practice before federal agencies are published in the *Federal Register* (available online at <http://www.federalregister.gov>; previous years on microfiche & in HeinOnline, <http://search.library.duke.edu/search?id=DUKE003131760>). Eventually the *Federal Register* is compiled into the *Code of Federal Regulations* (Federal Area; prior years in Documents AE 2.106/3, on microfiche & in HeinOnline, <http://search.library.duke.edu/search?id=DUKE003131760>).

*U.S.C.S. Administrative Rules of Procedure*, a five-volume unit of U.S.C.S. (Federal Area & online in Lexis Advance), contains rules for the conduct of proceedings before the major federal agencies.

Commercially published **looseleaf or electronic services** (see *Bluebook* Table 15 for a representative list) are another source for agency rules and regulations. Both substantive regulations and rules of practice and procedure are usually included.

Agency websites frequently contain relevant rules. To locate an agency website, visit the **USA.gov A-Z Index of U.S. Government Departments and Agencies** (<https://www.usa.gov/federal-agencies/a>).

## B. Researching Federal Rules

### 1. Proposed Amendments

The text of rules promulgated by the Supreme Court with Judicial Conference Advisory Committee notes can be found in the advance sheets to the *West Supreme Court Reporter*, *Federal Reporter*, *Federal Supplement*, and *Federal Rules Decisions* (Federal Reporters, Level 3), and also in *U.S. Law Week* (Periodicals & online in Bloomberg Law & Bloomberg BNA, <http://search.library.duke.edu/search?id=DUKE004426808>). The monthly pamphlets for *United States Code Congressional & Administrative News* (Federal Area & online in Westlaw) also include amendments for specialized federal courts and administrative tribunals.

### 2. Locating Decisions Construing Court Rules

The text of court decisions construing rules of procedure are usually printed in the same reports that cover court decisions generally, and can be found using traditional case finding

research methods online and in print. Two additional sources for decisions construing federal court rules are:

***Federal Rules Decisions*** (F.R.D.) (Level 3 & online in Westlaw). This unit of West's National Reporter System contains decisions of the federal district courts since 1940 construing rules of civil procedure, and decisions since 1946 construing rules of criminal procedure. Decisions printed are only those **not** already printed in the *Federal Reporter* or the *Federal Supplement*. Articles about the courts and federal procedure are also included.

***Federal Rules Service*** (KF8816 .A198, updated through February 2015). This looseleaf service focuses entirely on decisions construing rules of civil procedure. It includes three useful sections: (1) *Federal Rules Service* volumes contain the text of all federal court decisions construing federal rules of civil procedure. Indexing is from the beginning of the service in 1939. Since 1968, cases construing rules of appellate procedure are also included; (2) *Federal Rules Digest* contains digests of the decisions in an arrangement based on the official rule numbers, and editorial comments; (3) the *Finding Aids* volume includes the text of the rules, a subject index, and a table of cases.

Citations to decisions can also be found: (1) in annotated rules compilations such as U.S.C.A. and U.S.C.S.; (2) as references in secondary sources such as Wright and Miller's ***Federal Practice and Procedure*** described below; and (3) by updating citations using a citator service such as *Shepard's* or KeyCite.

### 3. Updating Court Rules

Court rule citations are treated as statutes in the legal research **citator services**, allowing researchers to locate citing decisions as well as information about amendments and repeals to individual rules. Current members of the Duke Law community may update court rules online in Lexis Advance (*Shepardize* This Document for citing decisions and history), Westlaw (KeyCite tabs for History and Citing References), and Bloomberg Law (SmartCode tab for citing decisions).

Updating court rules is more challenging outside the premium legal research services. LexisNexis Academic, the campus-wide version of Lexis Advance, contains *Shepard's* for case law, but does not allow users to update federal or state court rule citations. However, the Law Library owns updated print copies of the state ***Shepard's North Carolina Citations*** (NC Alcove, Level 3), which include citing references for both federal and state court rules.

### 4. Finding Discussion of the Federal Rules

Several multi-volume sets discuss the practice and procedure of federal courts. They usually contain the text of the rules followed by analysis and citations to court decisions. Often they are cross-referenced to companion sets of form books.

Two well-respected treatises are: Wright and Miller's ***Federal Practice and Procedure*** (Practice & Procedure KF9619 .W7 & online in Westlaw) and ***Moore's Federal Practice*** (Practice & Procedure KF8840 .M663 & online in Lexis Advance). These multi-volume sets

include textual commentary on the rules and on practice under the rules, numerous case and law review citations, forms, as well as detailed indexing and other finding aids. Both sets are arranged basically in rule number order. Even though these commentaries are secondary sources, they are widely cited in cases, in addition to serving as research tools.

Other useful sets for commentary on federal practice are: *Federal Procedure Lawyers Edition* (Practice & Procedure KF8835 .F43 1981 & online in Westlaw) and its companion set *Federal Procedural Forms, Lawyers Edition* (Practice & Procedure KF8836 .F4); and *Cyclopedia of Federal Procedure* (online in Westlaw) and its companion set *Nichols Cyclopedia of Federal Procedure Forms* (KF8716.4 .C951 & online in Westlaw).

For a guide to the jurisdictional and procedural operations of the Supreme Court, use the one-volume treatise by Gressman, *Supreme Court Practice*, 10th ed. (KF9057 .S8 2013 & online in Bloomberg Law). It includes checklists, sample forms, and pertinent rules and statutes. *West's Federal Forms*, Supreme Court vols. (Practice & Procedure KF8836 .W4 & online in Westlaw) is another useful source.

For discussion of the Federal Rules of Evidence, try the general federal practice sources above. *Weinstein's Federal Evidence: Commentary on Rules of Evidence for the United States Courts* (no longer updated in print in the library but current online in Lexis Advance) is an electronic service including commentary on each rule. There is also a version of *Weinstein's Evidence* for student use that can be found online as *Weinstein's Evidence Manual* on Lexis Advance. Other major treatises on the law of evidence are *The New Wigmore: A Treatise on Evidence* (library call number varies by subtopic) and *McCormick on Evidence*, 7th ed. (Reserves KF8935 .M131 2013). Although it is no longer updated in the library's print collection, the *Federal Rules of Evidence Service* (KF8933 .F42) reporter volumes contain decisions of federal courts and agencies interpreting the rules, up to volume 95 (2015).

Useful subject headings to begin a search in the library's online catalog are: **Civil Procedure--United States; Criminal Procedure--United States; Evidence (Law)--United States; Trial Practice--United States; Courts--United States; and Court Rules--United States.**

### III. STATE COURT RULES

Each state has court rules governing the operation of its courts. Since 1939, many states have adopted rules of procedure modeled after the federal rules, and many states have patterned their rules of evidence after the federal rules since those were adopted.

*Uniform Laws Annotated* (Practice & Procedure KF879.A45 U51 & online in Westlaw: ULA) contains the texts of the Uniform Rules of Criminal Procedure and the Model Penal Code. There are also comments by the National Conference's Special Committee on Uniform Rules of Criminal Procedure and numerous law review citations. ULA also contains the Uniform Rules of Evidence, with official comments of the National Commissioners on Uniform State Laws. Annotations from state and federal courts, state variations from the official text, and other library references are also included.

## A. Locating State Court Rules

More than half of the states publish rules in their **statutory compilations**. West publishes separate paperback volumes of court rules for many states, including North Carolina. These West handbook editions generally include the current rules of court governing state and federal practice in the state, rules governing the practice of law, and rules concerning judicial conduct. Rules of evidence may also be included. State court rules can be found following the code for that state (State Codes, Level 3). Adoption of changes and updates to state rules can often also be found in the state (and West regional) reporters.

The court rules for all 50 states are also available online through the legal research services Westlaw, Lexis Advance, and Bloomberg Law. In Westlaw, use the State Materials tab to access a particular state's statutes and court rules; a separate database provides access to the local federal district court rules. To access the state court rules in Lexis Advance, Explore Content > State and select the database containing the federal and state court rules. On Bloomberg Law, follow the path Browse > Laws & Regulations > State Laws & Regulations, select a jurisdiction, then select the Court Rules database.

Rules are frequently available on the web sites of the state's court system or legislature. The **North Carolina General Assembly** provides access to the *General Statutes*, which contain the Rules of Civil Procedure, the Evidence Code, and rules of criminal procedure (<http://www.ncga.state.nc.us/gascripts/statutes/Statutes.asp>). In addition, the **NC Administrative Offices of the Court** (<http://www.aoc.state.nc.us/www/public/html/ARResources.asp>) provides access to the Rules of Appellate Procedure, State Bar Rules, and general rules of practice for superior and district courts. To quickly link to court systems and legislatures of other states, visit the Cornell Legal Information Institute's "**Listing by Jurisdiction**" (<http://www.law.cornell.edu/states/listing>).

## B. Locating Decisions Construing the Rules

State rules of court are sometimes published in the annotated editions of the state's statutes with citations to decisions construing the rules. More than half the states have adopted evidence rules based on the Federal Rules of Evidence. *Weinstein's Federal Evidence* (online in Lexis Advance) includes tables of states that have adopted individual federal rules, textual analysis of each state's provisions, and case citations.

## C. Finding Discussion of State Rules

Treatises on state civil and criminal procedure and rules of evidence are available for many states. Treatises usually include commentary and case citations and may include comparisons of state and federal rules. Search the library's online catalog under these subject entries: **Court Rules--North Carolina** (or other state); **Civil Procedure--North Carolina**; **Criminal Procedure--North Carolina**; **Evidence (Law)--North Carolina**.

In North Carolina, several of the most useful treatises are:

- Woodlief, *Shuford North Carolina Civil Practice and Procedure*, annual. (NC Alcove KFN7930 .S532 & online in Westlaw) and its companion volume *Thorp's North Carolina Trial Practice Forms*, 7th ed. (NC Alcove KFN7930.A65 T48 2011 & online in Westlaw).
- Price, *North Carolina Criminal Trial Practice Forms*, annual. (NC Alcove KFN7975.A65 P742 & online in Westlaw).
- Broun, *Brandis and Broun on North Carolina Evidence*, 7th ed. (NC Alcove KFN7940 .S82 2011 & online in Lexis Advance).

#### IV. HISTORICAL COURT RULES

For researching historical amendments to the federal rules, the **U.S. Courts** website provides an archive of rules committee reports and meeting minutes (<http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees>). Selected legislative history documents for rule changes can also be found in the bound volumes of the *Federal Rules Decisions* (Level 3 & online in Westlaw). Two resources on federal rules, discussed above in their present iterations—the *Cyclopedia of Federal Procedure: Civil and Criminal* (current edition online in Westlaw; historical versions at KF8716.4 .L65) and *Moore's Federal Practice* (current edition in Practice & Procedure KF8840 .M663; historical editions on Level 2 at same call number)—are available in their earliest print formats from the first half of the 20th century. A microform set, *Records of the U.S. Judicial Conference: Committees on Rules of Practice and Procedures* (1935-1988), may provide additional legislative history materials; however, this set is **not** available at Duke and would require an interlibrary loan request.

Additionally, the HeinOnline library *State Statutes: A Historical Archive* (available at <http://search.library.duke.edu/search?id=DUKE003131760>) contains historical codes for each state, which often include codifications of state court rules, at least in the 20th century.

Another helpful strategy for finding historical court rules involves searching the online catalog and then manipulating the search results. For the subject headings that follow, sort your results from oldest to newest, and limit the results to holdings in the Goodson Law Library: **Civil Procedure--United States; Court Rules--United States; Criminal Procedure--United States; Evidence (Law)--United States.**

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