



COURT RULES

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I. INTRODUCTION

Court rules govern procedures for the conduct of business in the courts. They encompass such matters 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 court action.

In general, both federal and state courts are governed by **statutory law** which establishes the powers and jurisdiction of the courts and some procedural matters. In addition, courts are usually authorized by these statutes to adopt rules which 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 referred to as “rules of procedure” or “rules of court”. The term often encompasses 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 RULES

A. Statutory Authority

In the federal system, the Supreme Court of the United States promulgates court rules for itself and the lower federal courts by virtue 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, not inconsistent with the general rules developed for them by the Supreme Court.

B. Locating Federal Rules: General Sources

There are several general sources which contain the text of most of the types of federal rules described below. The unannotated texts are: *Cyclopedia of Federal Procedure* (Prac. & Proc. KF8716.4 .C95 & online in Westlaw: CYCFEDPROC), *Federal Procedure Rules Service* (Prac. & Proc. KF8835 .F431), West's *Federal Civil Judicial Procedure and Rules* (Reserves KF8816 .A19), and West's *Federal Criminal Code and Rules* (Reserves KF9606 .U57). The West publications are annual handbooks designed for courtroom use by the practicing attorney. These publications are referred to as the "general sources" in the remainder of this guide.

The text and annotations for most of the rules are available online through **LexisNexis and Westlaw**. On Lexis, the rules of all types of federal courts can be found through the path: **Legal > Federal Legal - U.S. > Find Statutes, Regulations, Administrative Materials & Court Rules**. Separate databases are also available for specific rules; e.g., the Rules of Civil Procedure, the Rules of Appellate Procedure and the Rules of the Supreme Court. The rules on Lexis are derived from U.S.C.S. In addition to searching for rules, on Lexis you can display a rule by using the Get a Document function, e.g., FRCP R 23 will display Federal Rule of Civil Procedure 23.

Westlaw's general federal rule file is **US-RULES**. To display a specific rule in Westlaw, use Find by Citation: e.g., FRCP 23 will display Federal Rule of Civil Procedure 23. The rules on Westlaw are from U.S.C.A.

Other online sources for federal rules include the **Federal Judiciary** home page (<http://www.uscourts.gov/RulesAndPolicies/FederalRulemaking/RulesAndForms.aspx>), Cornell's **Legal Information Institute** (<http://www.law.cornell.edu/rules/>), and CALI's **Federal Rules ebook project** (<http://elangdell.cali.org/content/federal-rules-ebooks-legal-information-institute>).

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 Alcove & 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 Alcove & online in Westlaw) and *United States Code Service* (Federal Alcove & online in LexisNexis). In U.S.C.A., rules appear in the appendix following the title; in U.S.C.S., rules are housed in separate volumes near the end of the set.

In addition to the general sources listed in section B, these rules are all reprinted in *Moore's Federal Rules Pamphlet* (Reserve KF8816 .M66 & online in LexisNexis) and *U.S. Supreme Court Digest, L.Ed.*, vols. 17-22. 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 in section B. In the official code, the rules are published in Title 28, Appendix of the *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 (<http://www.supremecourt.gov/ctrules/ctrules.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 which supplement their local court rules. Use the following sources to find local rules:

Federal Rules Service, "Federal Local Court Rules" volumes (KF8816 .A2 U55). This is the most comprehensive source for district court and courts of appeals local rules and internal operating procedures nationwide. It is supplemented regularly as amendments and new rules are issued.

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 2 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.aspx.

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 **U.S.C., U.S.C.A., and U.S.C.S.** The court rules volumes of U.S.C.S. 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.aspx) 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 in section B.

5. Rules of Practice for Quasi-Judicial Agencies

Rules of practice before federal agencies are published in the *Federal Register* (current year in Federal Alcove; 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 Alcove; prior years on microfiche & in HeinOnline, <http://search.library.duke.edu/search?id=DUKE003131760>) *U.S.C.S. Administrative Rules of Procedure*, a 5 volume unit of U.S.C.S., contains rules for the conduct of proceedings before the major federal agencies.

Commercially published **looseleaf services** (see *Bluebook* Table 15 for a list) are another source for agency rules and regulations. Both substantive regulations and rules of practice and procedure are usually included. Check the "How to Use" section of the service for information about what is included.

Pike & Fischer's *Administrative Law* (KF5401.A56 P54 3rd) contains materials on the procedural aspects of practice before federal agencies.

C. Researching Federal Rules

1. Proposed and Historical 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 & BNA Online, <http://search.library.duke.edu/search?id=DUKE004426808>). The monthly pamphlets for *United States Code Congressional & Administrative News* (Federal Alcove & online in

Westlaw) also include amendments for specialized federal courts and administrative tribunals.

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/RulesAndPolicies/FederalRulemaking/ResearchingRules.aspx>). 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). A microform set, *Records of the U.S. Judicial Conference: Committees on Rules of Practice and Procedures* (1935-1996), may provide additional legislative history materials; however, this set is **not** available at Duke. See reference librarians for further assistance.

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. 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 printed in the *Federal Reporter* or the *Federal Supplement*. Articles about the courts and federal procedure are also included.

Federal Rules Service (KF8816 .A198). 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 *Shepard's* or KeyCite.

Tables of Statutes Construed. These tables in all units of the National Reporter System (Level 1) cover the interpretation of court rules. Check the advance sheets for citations to very recent decisions. Each table covers only the cases in that volume.

3. Updating Court Rules

Court rules are treated as statutes in *Shepard's Citations*, so amendments to and repeals of rules are noted as well as citations to decisions citing the rules. The Law Library has updated print copies of the state *Shepard's North Carolina Citations* (NC Alcove), which

include both federal and state court rules. A print set of *Shepard's Federal Rules Citations* (Reference Indexes - Shepard's) includes federal rules only but ceased being updated by the library in 2008.

Shepard's is available electronically to the Duke Law community through LexisNexis (a campus-wide version called LexisNexis Academic contains *Shepard's* for case law but does not allow users to update federal or state court rule citations). To *Shepardize* a court rule, enter the rule or statute citation, e.g. FRE 1001 for Rule 1001 of the Federal Rules of Evidence.

The Westlaw equivalent to *Shepard's* is called **KeyCite**, also available to Duke Law students, faculty and staff by individual password. To update a specific rule or statute in Westlaw use the KeyCite function, e.g., FRE 1001 will display the citations to Federal Rule of Evidence 1001.

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 treatises are: Wright and Miller's *Federal Practice and Procedure* (Prac. & Proc. KF 9619.W7; also available on Westlaw: FPP) and *Moore's Federal Practice* (Prac. & Proc. KF 8840 .M663; also available on LexisNexis: MOORES), cross-referenced to *Bender's Federal Practice Forms* (Prac. & Proc. KF8836 .B45) (no longer updated in print at the Goodson Law Library, but is available on LexisNexis: FDPRACT). These multi volume sets include textual commentary on the rules and on practice under the rules, numerous case and law review citations, forms, detailed indexing and other finding aids. Both sets are arranged basically in rule number order. Emphasis is on the needs of the bar and bench. 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* (Prac. & Proc. KF8835 .F43 1981) and its companion set *Federal Procedural Forms, Lawyers Edition* (Prac. & Proc. KF8836 .F4); and *Cyclopedia of Federal Procedure* (Prac. & Proc. KF8716.4 .C95) and its companion set *Nichol's Cyclopedia of Federal Procedure Forms* (Prac. & Proc. KF8716.4 .C951 & online in Westlaw: NICHOLS-LF).

For a guide to the jurisdictional and procedural operations of the Supreme Court, use the one-volume treatise by Gressman, *Supreme Court Practice*, 9th ed. (KF9057 .S8 2007). It includes checklists, sample forms and pertinent rules and statutes. *West's Federal Forms, Supreme Court*, vols. 1-1AA (Prac. & Proc. KF8836 .W4 & online in Westlaw: FEDFORMS) is another useful source. For the federal courts of appeal, use Stern, *Appellate Practice in the United States*, 2d ed. (Reserve KF9050 .S75 1989).

For discussion of the Federal Rules of Evidence, try the general federal practice sources above, as well as the *Federal Rules of Evidence Service* (KF8933 .F42), which contains the text of the rules with editorial notes, digest volumes, and reporter volumes. The reporter volumes contain decisions of federal courts and agencies interpreting the rules. *Weinstein's Federal Evidence: Commentary on Rules of Evidence for the United States Courts* (Prac. & Proc. KF8933 .W45 1997 & online in LexisNexis: WFECBE) is now a looseleaf set which also includes tables of cases and statutes, an author/title index and a subject index. There is also a version of *Weinstein's Evidence* for student use that can be found in the general library stacks (KF8935 .W4 2003). Other major treatises on the law of evidence are *The New Wigmore: A Treatise on Evidence* (Reserve KF8935 .W55) and *McCormick on Evidence*, 6th ed. (Reserve KF8935 .M131 2006).

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 (Prac. & Proc. KF 879.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 cites. 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 paperbound 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 be found in the state (and West regional) reporters.

The court rules for all 50 states are also available online through Westlaw and LexisNexis. In Westlaw the identifier for a particular state is XX-RULES, where XX is the two letter postal abbreviation, e.g., NC-RULES for North Carolina. The database includes the local federal district court and bankruptcy court rules. Updates to both state and federal rules are in the XX-ORDERS databases. To access the state court rules in Lexis, use the path: **Legal > States Legal - U.S. > [State] > Find Statutes, Regulations, Administrative Materials & Court Rules.**

Rules are frequently available on the web sites of the state's court system or legislature. The **North Carolina General Assembly** (<http://www.ncga.state.nc.us/gascripts/statutes/Statutes.asp>) provides access to the *General Statutes*, which contain the Annotated Rules of North Carolina. In addition, the **North Carolina Administrative Offices of the Court** (<http://www.aoc.state.nc.us/www/public/html/rules.htm>) 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 "**Law by State**" listing (<http://www.law.cornell.edu/states/listing.html>).

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. Updating will also lead to decisions.

More than half the states have adopted evidence rules based on the Federal Rules of Evidence. *Weinstein's Federal Evidence* (Prac. & Proc. KF8933 .W45 1997 & online in LexisNexis: WFECBE) includes a chart of states that have adopted the rules, textual analysis of each state's provisions, and case citations. Shepard's *state* citators generally do not include the state's evidence rules.

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*, 6th ed. (NC Alcove KFN7930 .S53 2003 & online in Westlaw: NCCPP) and its companion volume *Thorp's North Carolina Trial Practice Forms*, 7th ed. (NC Alcove KFN7930.A65 T48 2011 & online in Westlaw: TNCTPF).
- Price, *North Carolina Criminal Trial Practice Forms*, 5th ed. (NC Alcove KFN7975.A65 P74 2003 & online in Westlaw: NCCTRFMS).
- Broun, *Brandis and Broun on North Carolina Evidence*, 7th ed. (NC Alcove KFN7940 .S82 2011; & online in LexisNexis).

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