

# UNITED STATES CODE ANNOTATED

## Title 28

### Federal Rules of Civil Procedure Rules 1 to 11

#### Cumulative Annual Pocket Part

*For Use In 1981*

Replacing prior pocket part in back of volume

Includes amendments  
through February 1, 1981

For close of Notes of Decisions

See page 3

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# EXPLANATION

This Cumulative Annual Pocket Part contains the Federal Rules of Civil Procedure as amended to February 1, 1981.

A Time Table for Lawyers, indicating the time for taking each step in a civil action, is included as a special feature in this volume of the Rules.

Under the Rule classification will be found the annotations from the decisions of the State and Federal courts construing the Rules.

The annotations close with the following:

Supreme Court Reporter .....	101 S.Ct. 41
United States Reports .....	444 U.S. (part)
Lawyers' Edition, Second Series .....	62 L.Ed.2d (part)
Federal Reporter, Second Series .....	627 F.2d 1094
U. S. Court of Appeals, Dist. of Columbia .....	198 U.S.App.D.C.
Federal Supplement .....	494 F.Supp. 1103
Federal Rules Decisions .....	87 F.R.D. 252
Atlantic Reporter, Second Series .....	419 A.2d 860
California Reporter .....	168 Cal.Rptr. 332
New York Supplement, Second Series .....	431 N.Y.S.2d 811
North Eastern Reporter, Second Series .....	410 N.E.2d 492
North Western Reporter, Second Series .....	296 N.W.2d 771
Pacific Reporter, Second Series .....	616 P.2d 1286
South Eastern Reporter, Second Series .....	270 S.E.2d 184
Southern Reporter, Second Series .....	388 So.2d 170
South Western Reporter, Second Series .....	604 S.W.2d 554
Opinions Attorney General .....	43 Op.Atty.Gen. (part)
Decisions Comptroller General .....	58 Comp.Gen. (part)
Court of Claims .....	215 Ct.Cl. (part)
Court of Customs and Patent Appeals .....	65 C.C.P.A. (part)
Customs Court .....	84 Cust.Ct. (part)
United States Tax Court .....	74 Tax Ct. (part)
Military Justice Reporter .....	9 M.J. 961
Bankruptcy Reporter .....	5 B.R. 509
Other Standard Reports .....	

For subsequent judicial constructions, pending the publication of the next supplementary service, see Table of Statutes Construed in the later permanent volumes and weekly Advance Sheets of the Reporters listed above.

Later amendments and judicial constructions and interpretations will be cumulated in subsequent pamphlets and annual pocket parts.

**CITE THIS POCKET PART BY RULE THUS:**

**Fed. Rules Civ. Proc. Rule —, 28 U.S.C.A.**

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OF  
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OF THE  
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As Constituted January 1, 1981

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# TIME TABLE FOR LAWYERS

## IN

### FEDERAL CIVIL CASES

Revised to February 1, 1981

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This Time Table indicates the time for each of the steps of a civil action as provided by the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure. Certain steps governed by statute and by the 1980 Revised Rules of the Supreme Court are also listed. Usually the periods permitted for each of these steps may be enlarged by the court in its discretion. In some cases no enlargement is permitted. Civil Rule 6(b) and Appellate Rule 26(b) state when, and under what conditions, an enlargement may be allowed.

Service by mail is complete upon mailing (Civil Rule 5(b) and Appellate Rule 25(c)). Whenever a period of time is computed from the service of a notice or other paper, and the service is made by mail, 3 days are added to the prescribed period of time (Civil Rule 6(e) and Appellate Rule 26(c)). Variations which make impossible the application of any rigid limitation of time to all steps of the action are indicated in the Time Table. Citations to supporting authority are in the form "Civ.R. —" for the Rules of Civil Procedure; "App. R. —" for the Rules of Appellate Procedure; "28 U.S.C.A. § —" for statutes; and "1980 Revised Rules of the Supreme Court, Rule —".

#### ADMISSIONS

Requests for admissions, service of On plaintiff after commencement of action and on any other party with or after service of summons and complaint on him. Civ.R. 36(a).

Response to requested admissions Answers or objections must be served within 30 days after service of the request, or such shorter or longer time as court may allow, but unless court shortens time, defendant need not serve before expiration of 45 days after service of the summons and complaint upon him. Civ.R. 36(a).

#### ALTERNATE jurors

Alternate jurors (in order in which called) replace jurors who, prior to jury's retiring to consider verdict, are found unable or disqualified to perform duties; alternates not replacing regular jurors shall be discharged after jury so retires. Civ.R. 47(b).

#### ANSWER

To complaint See, also, "Responsive Pleadings", this table. Service within 20 days after service of summons and complaint unless otherwise ordered by the court or provided by an applicable state statute

## LAWYERS' TIME TABLE

### ANSWER—Cont'd

or rule when substituted service is made under Rule 4(e) upon a party not an inhabitant of or found within the state. Civ.R. 12(a).

Service within 60 days after service upon the United States Attorney, in action against the United States or an officer or agency thereof. Civ.R. 12(a).

The time for responsive pleading is altered by service of Civ.R. 12 motions. See "Responsive Pleadings", this table.

#### To cross-claim

Service within 20 days after service of pleading stating cross-claim. Civ.R. 12(a).

60 days for United States. Civ.R. 12(a).

The time for responsive pleading is altered by service of Civ.R. 12(a) motions, see "Responsive Pleadings", this table.

#### To third-party complaint

Same as answer to complaint. Civ.R. 14(a).

#### To notice of condemnation

Service within 20 days after service of notice. Civ.R. 71A(e).

#### Removed actions

20 days after receipt of pleading, or within 20 days after service of summons, or within 5 days after filing of removal petition, whichever is longest. Civ.R. 81(c).

#### Proceedings to cancel certificates of citizenship under 8 U.S.C.A. § 1451

60 days after service of petition. Civ.R. 81(a)(6).

### ANSWERS (or objections) to interrogatories to party

Service within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon him. Court may allow a shorter or longer time. Civ.R. 33(a).

### APPEAL

#### As of right

30 days from entry of judgment or order. App.R. 4(a)(1).

District court may extend for excusable neglect or good cause upon motion filed not later than 30 days after expiration of time prescribed by App.R. 4(a); no extension to exceed 30 days past prescribed time or 10 days from entry of order granting motion, whichever occurs later. App.R. 4(a)(5).

60 days in cases in which the United States or its officers, agencies are parties. App.R. 4(a)(1).

## LAWYERS' TIME TABLE

### APPEAL—Cont'd

If any of the following motions is timely filed in district court by any party, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. A notice of appeal filed before the disposition of any of the motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order so disposing of the motion:

- (1) motion for judgment under Civ.R. 50(b);
- (2) motion under Civ.R. 52(b) to amend or make additional findings of fact, whether or not an alteration of judgment would be required if motion is granted;
- (3) motion under Civ.R. 59 to alter or amend judgment;
- (4) motion under Civ.R. 59 for new trial.

App.R. 4(a)(4).

By other parties, within 14 days of filing of first notice of appeal, or within the time otherwise prescribed by rule, whichever last expires. App.R. 4(a)(3).

By permission under 28 U.S.C.A. § 1292(b) (interlocutory orders) 10 days after entry of orders appealable under 28 U.S.C.A. § 1292(b). App.R. 5(a).

Entry of judgment or order, notice of Lack of such notice by clerk does not affect time to appeal or relieve or authorize court to relieve party for failure to appeal within time allowed, except as permitted in App.R. 4(a). Civ.R. 77(d).

Record (Appellant) Within 10 days after filing notice of appeal: Appellant to place written order for transcript and file copy of order with clerk; if none to be ordered, file a certificate to that effect; unless entire transcript to be included, file a statement of issues and serve appellee a copy of order or certificate and of statement. App.R. 10(b).

Record (Appellee) Within 10 days after service of appellant's order or certificate or statement, appellee to file and serve on appellant a designation of additional parts of transcript to be included. Unless within 10 days after designation appellant has ordered such parts and so notified appellee, appellee may within following 10 days either order the parts or move in district court for order requiring appellant to do so. App.R. 10(b).

## LAWYERS' TIME TABLE

### APPEAL—Cont'd

Record (costs)	At time of ordering, party to make satisfactory arrangements with reporter for payment of cost of transcript. App.R. 10(b)(4).
Record (Reporter)	If transcript cannot be completed within 30 days of receipt of order, reporter shall request extension of time from clerk of court of appeals. App.R. 11(b).
Stay of proceedings to enforce judgment	Effective when supersedeas bond is approved by court. Civ.R. 62(d). Supersedeas bond may be given at or after time of filing notice of appeal or of procuring the order allowing appeal. Civ.R. 62(d).
Briefs	Appellant must file his brief within 40 days after the record is filed. Appellee must file his brief within 30 days after service of the appellant's brief. A reply brief must be filed within 14 days after service of appellee's brief and, except for good cause shown, at least 3 days before argument. A court of appeals may shorten the times allowed for briefs either by rule for all cases or by order for specific cases. App.R. 31(a).
Transcripts	See "Record", ante, this heading.

### APPEAL to Supreme Court

Direct appeals	30 days after entry of interlocutory or final order, decree or judgment holding Act of Congress unconstitutional under circumstances provided by 28 U.S.C.A. §§ 1252, 1253 and 2282. 28 U.S.C.A. § 2101(a), as amended May 24, 1949, c. 139, § 106, 63 Stat. 104; see 1980 Revised Rules of the Supreme Court, Rule 11(2). 30 days from interlocutory judgment, order, or decree in any other direct appeal authorized by law from decision of district court. 28 U.S.C.A. § 2101(b); see 1980 Revised Rules of the Supreme Court, Rule 11(2). 60 days from final judgment, order, or decree in any other direct appeal authorized by law from decision of district court. 28 U.S.C.A. § 2101(b); see 1980 Revised Rules of the Supreme Court, Rule 11(2).
Notice of appeal	Time for filing runs from date judgment or decree sought to be reviewed is rendered, and not from date of issuance of the mandate (or its equivalent under local practice); however, if petition for rehearing is timely filed, time for filing runs from date of denial of rehearing or

## LAWYERS' TIME TABLE

### APPEAL to Supreme Court—Cont'd

entry of subsequent judgment. 1980 Revised Rules of the Supreme Court, Rule 11.3.

Time for filing may not be extended. 1980 Revised Rules of the Supreme Court, Rule 11.4.

Other appeals and certiorari

90 days after entry of judgment or decree; justice of Supreme Court for good cause shown may extend time for applying for writ of certiorari for period not exceeding 60 days. 28 U.S.C.A. § 2101(c).

Briefs supporting certiorari

No separate brief supporting petition for certiorari will be received. 1980 Revised Rules of the Supreme Court, Rule 21(3).

Brief opposing certiorari

30 days after receipt of petition unless time is enlarged by Court or justice thereof or by the clerk. 1980 Revised Rules of the Supreme Court, Rule 22(1).

Brief on merits on appeal or certiorari

By appellant or petitioner, within 45 days of the order noting or postponing probable jurisdiction or of the order granting the writ of certiorari. 1980 Revised Rules of the Supreme Court, Rule 35(1).

By appellee or respondent, within 30 days after receipt by him of the brief filed by the appellant or petitioner. 1980 Revised Rules of the Supreme Court, Rule 35(2).

Reply brief—No later than one week before the date of oral argument, and only by leave of Court thereafter. 1980 Revised Rules of the Supreme Court, Rule 35.3.

**BILL of particulars**

Abolished. See Civ.R. 12(e), as amended in 1948. See, however, "More definite statement", this table.

**CLASS actions**

As soon as practicable after commencement court is to determine by order whether action is to be so maintained. Civ.R. 23(c)(1).

**CLERICAL mistakes in judgments, orders, or record**

May be corrected at any time; but during pendency of appeal, may be corrected before appeal is docketed in the appellate court, and thereafter while appeal pending may be corrected with leave of appellate court. Civ.R. 60(a).

**COMPLAINT**

Filing commences action—must be served with summons. Civ.R. 3.

**COMPUTATION of time**

Exclude day from which period runs and include last day of period unless a Saturday, Sunday, or holiday, in which case period runs to the end of next day which is not a Saturday, Sunday, or holiday. Civ.R. 6(a); App.R. 26(a).

## LAWYERS' TIME TABLE

### COMPUTATION of time—Cont'd

Intermediate Saturdays, Sundays, and holidays are included except where the period is less than 7 days, in which case they are excluded. Civ.R. 6(a); App.R. 26(a).

Service by mail is complete upon mailing. Civ.R. 5(b); App.R. 25(c).

Service by mail adds three days to a period of time which is computed from such service. Civ.R. 6(e); App.R. 26(c).

Legal holidays are defined by Civil Rule 6(a) and Appellate Rule 26(a).

Supreme Court matters—See 1980 Revised Rules of the Supreme Court, Rule 29.

### CONDEMNATION of property

Answer to notice of condemnation 20 days after service of notice. Civ.R. 71A(e).

### COSTS

Taxation on 1 day's notice. Motion to review taxation of costs 5 days after taxation. Civ.R. 54(d).

### CROSS APPEAL

Appellate rules

Within 14 days of filing of first notice of appeal or within the time otherwise prescribed by rule for appeal, whichever last expires. App.R. 4(a).

Supreme Court rules

Cross appeal shall be in time if it complies with 1980 Revised Rules of the Supreme Court, Rule 11, or if it is docketed as provided in Rule 12.4 of such rules. 1980 Revised Rules of the Supreme Court, Rule 11.5.

### DEFAULT

Entry by clerk

No time stated. Civ.R. 55(b).

Entry by court

If party against whom default is sought has appeared, he shall be served with written notice of application for default judgment at least 3 days prior to hearing on such application. Civ.R. 55(b).

### DEFENSES and objec- tions, presenta- tion of

By pleading

See "Answer", this table.

By motion

Motion shall be made before pleading if further pleading is permitted. Civ.R. 12(b).

At trial

Adverse party may assert at trial any defense in law or fact to claim for relief to which such party is not required to serve responsive pleading. Civ.R. 12(b).

## LAWYERS' TIME TABLE

### DEFENSES and objections, presentation of—Cont'd

Motion affects time for responsive pleading      Service of motion under Civ.R. 12 alters times for responsive pleading. See "Responsive Pleadings", this table.

### DEMURRERS

Abolished. Civ.R. 7(c).

### DEPOSITIONS

See, also, "Interrogatories", "Depositions on written questions", this table.

Notice of filing      Promptly. Civ.R. 30(f)(3) and Civ.R. 31(c).

Notice of taking      By either party after commencement of action except that plaintiff must obtain leave if he seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Civ.R. 4(e), except that leave is not required (1) if defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if the special notice provided by Civ.R. 30(b)(2) has been given. Civ.R. 30(a).

Reasonable notice to every party. Civ.R. 30(b).

Objections      As to admissibility, objection may be made at trial or hearing, but subject to Civ.R. 28(b) and 32(d)(3). Civ.R. 32(b).

As to errors or irregularities in the notice, service promptly. Civ.R. 32(d)(1).

As to disqualification of officer, objection made before deposition begins or as soon thereafter as disqualification becomes known or could be discovered. Civ.R. 32(d)(2).

As to competency of witness or competency, relevancy, or materiality of testimony—not waived by failure to make such objection before or during deposition unless the ground might have been obviated or removed if presented at that time. Civ.R. 32(d)(3)(A).

As to errors and irregularities at oral examination in manner of taking deposition, in the form of questions or answers, in the oath or affirmation, or in conduct of parties, and errors which might be obviated, removed, or cured if promptly presented—seasonable objection made at taking of deposition. Civ.R. 32(d)(3)(B).

As to form of written questions submitted under Civil Rule 31—service within time allowed for serving succeeding cross or other questions and within 5 days after service of last questions authorized. Civ.R. 32(d)(3)(C).