

FEDERAL RULES
OF
CIVIL PROCEDURE

WITH FORMS

DECEMBER 1, 2006



Printed for the use
of
THE COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

(b) PROCEDURES WHEN THERE IS NO CONTROLLING LAW. A judge may regulate practice in any manner consistent with federal law, rules adopted under 28 U.S.C. §§ 2072 and 2075, and local rules of the district. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local district rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

(As amended Apr. 29, 1985, eff. Aug. 1, 1985; Apr. 27, 1995, eff. Dec. 1, 1995.)

Rule 84. Forms

The forms contained in the Appendix of Forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948.)

Rule 85. Title

These rules may be known and cited as the Federal Rules of Civil Procedure.

Rule 86. Effective Date

(a)¹ [EFFECTIVE DATE OF ORIGINAL RULES.] These rules will take effect on the day which is 3 months subsequent to the adjournment of the second regular session of the 75th Congress, but if that day is prior to September 1, 1938, then these rules will take effect on September 1, 1938. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

(b) EFFECTIVE DATE OF AMENDMENTS. The amendments adopted by the Supreme Court on December 27, 1946, and transmitted to the Attorney General on January 2, 1947, shall take effect on the day which is three months subsequent to the adjournment of the first regular session of the 80th Congress, but, if that day is prior to September 1, 1947, then these amendments shall take effect on September 1, 1947. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(c) EFFECTIVE DATE OF AMENDMENTS. The amendments adopted by the Supreme Court on December 29, 1948, and transmitted to the Attorney General on December 31, 1948, shall take effect on the day following the adjournment of the first regular session of the 81st Congress.

(d) EFFECTIVE DATE OF AMENDMENTS. The amendments adopted by the Supreme Court on April 17, 1961, and transmitted to the Congress on April 18, 1961, shall take effect on July 19, 1961. They

¹ Subdivision heading supplied editorially.

APPENDIX OF FORMS

(See Rule 84)

Introductory Statement

1. The following forms are intended for illustration only. They are limited in number. No attempt is made to furnish a manual of forms. Each form assumes the action to be brought in the Southern District of New York. If the district in which an action is brought has divisions, the division should be indicated in the caption.

2. Except where otherwise indicated each pleading, motion, and other paper should have a caption similar to that of the summons, with the designation of the particular paper substituted for the word "Summons". In the caption of the summons and in the caption of the complaint all parties must be named but in other pleadings and papers, it is sufficient to state the name of the first party on either side, with an appropriate indication of other parties. See Rules 4(b) [now (a)], 7(b)(2), and 10(a).

3. In Form 3 and the forms following, the words, "Allegation of jurisdiction," are used to indicate the appropriate allegation in Form 2.

4. Each pleading, motion, and other paper is to be signed in his individual name by at least one attorney of record (Rule 11). The attorney's name is to be followed by his address as indicated in Form 3. In forms following Form 3 the signature and address are not indicated.

5. If a party is not represented by an attorney, the signature and address of the party are required in place of those of the attorney.

Form 1. Summons

United States District Court for the Southern
District of New York

Civil Action, File Number _____

A. B., Plaintiff

v.

C. D., Defendant

} *Summons*

To the above-named Defendant:

You are hereby summoned and required to serve upon _____, plaintiff's attorney, whose address is _____, an answer to the complaint which is herewith served upon you, within 20¹ days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

_____,
Clerk of Court.

[Seal of the U.S. District Court]

Dated _____

(This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure)

¹If the United States or an officer or agency thereof is a defendant, the time to be inserted as to it is 60 days.

(As amended Dec. 29, 1948, eff. Oct. 20, 1949.)

Form 3. Complaint on a Promissory Note

1. Allegation of jurisdiction.

2. Defendant on or about June 1, 1935, executed and delivered to plaintiff a promissory note [in the following words and figures: (here set out the note verbatim)]; [a copy of which is hereto annexed as Exhibit A]; [whereby defendant promised to pay to plaintiff or order on June 1, 1936 the sum of _____ dollars with interest thereon at the rate of six percent. per annum].

3. Defendant owes to plaintiff the amount of said note and interest.

Wherefore plaintiff demands judgment against defendant for the sum of _____ dollars, interest, and costs.

Signed: _____
Attorney for Plaintiff.

Address: _____

NOTES

1. The pleader may use the material in one of the three sets of brackets. His choice will depend upon whether he desires to plead the document verbatim, or by exhibit, or according to its legal effect.

2. Under the rules free joinder of claims is permitted. See Rules 8(e) and 18. Consequently the claims set forth in each and all of the following forms may be joined with this complaint or with each other. Ordinarily each claim should be stated in a separate division of the complaint, and the divisions should be designated as counts successively numbered. In particular the rules permit alternative and inconsistent pleading. See Form 10.

(As amended Jan. 21, 1963, eff. July 1, 1963.)

Form 4. Complaint on an Account

1. Allegation of jurisdiction.

2. Defendant owes plaintiff _____ dollars according to the account hereto annexed as Exhibit A.

Wherefore (etc. as in Form 3).

(As amended Jan. 21, 1963, eff. July 1, 1963.)

Form 5. Complaint for Goods Sold and Delivered

1. Allegation of jurisdiction.

2. Defendant owes plaintiff _____ dollars for goods sold and delivered by plaintiff to defendant between June 1, 1936 and December 1, 1936.

Wherefore (etc. as in Form 3).

NOTE

This form may be used where the action is for an agreed price or for the reasonable value of the goods.

(As amended Jan. 21, 1963, eff. July 1, 1963.)

Form 6. Complaint for Money Lent

1. Allegation of jurisdiction.

2. Defendant owes plaintiff _____ dollars for money lent by plaintiff to defendant on June 1, 1936.

Wherefore (etc. as in Form 3).

(As amended Jan. 21, 1963, eff. July 1, 1963.)

Form 7. Complaint for Money Paid by Mistake

1. Allegation of jurisdiction.

2. Defendant owes plaintiff _____ dollars for money paid by plaintiff to defendant by mistake on June 1, 1936, under the following circumstances: [here state the circumstances with particularity—see Rule 9(b)].

Wherefore (etc. as in Form 3).

(As amended Jan. 21, 1963, eff. July 1, 1963.)

Form 8. Complaint for Money Had and Received

1. Allegation of jurisdiction.

2. Defendant owes plaintiff _____ dollars for money had and received from one G. H. on June 1, 1936, to be paid by defendant to plaintiff.

Wherefore (etc. as in Form 3).

(As amended Jan. 21, 1963, eff. July 1, 1963.)

Form 9. Complaint for Negligence

1. Allegation of jurisdiction.

2. On June 1, 1936, in a public highway called Boylston Street in Boston, Massachusetts, defendant negligently drove a motor vehicle against plaintiff who was then crossing said highway.

3. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars and costs.

NOTE

Since contributory negligence is an affirmative defense, the complaint need contain no allegation of due care of plaintiff.

(As amended Jan. 21, 1963, eff. July 1, 1963.)

Form 10. Complaint for Negligence Where Plaintiff Is Unable To Determine Definitely Whether the Person Responsible Is C. D. or E. F. or Whether Both Are Responsible and Where His Evidence May Justify a Finding of Wilfulness or of Recklessness or of Negligence

A. B., Plaintiff

v.

C. D. and E. F., Defendants

} *Complaint*

1. Allegation of jurisdiction.

2. On June 1, 1936, in a public highway called Boylston Street in Boston, Massachusetts, defendant C. D. or defendant E. F., or both defendants C. D. and E. F. wilfully or recklessly or negligently drove or caused to be driven a motor vehicle against plaintiff who was then crossing said highway.

3. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his

business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against C. D. or against E. F. or against both in the sum of _____ dollars and costs. (As amended Jan. 21, 1963, eff. July 1, 1963.)

Form 11. Complaint for Conversion

1. Allegation of jurisdiction.

2. On or about December 1, 1936, defendant converted to his own use ten bonds of the _____ Company (here insert brief identification as by number and issue) of the value of _____ dollars, the property of plaintiff.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest, and costs.

(As amended Jan. 21, 1963, eff. July 1, 1963.)

Form 12. Complaint for Specific Performance of Contract To Convey Land

1. Allegation of jurisdiction.

2. On or about December 1, 1936, plaintiff and defendant entered into an agreement in writing a copy of which is hereto annexed as Exhibit A.

3. In accord with the provisions of said agreement plaintiff tendered to defendant the purchase price and requested a conveyance of the land, but defendant refused to accept the tender and refused to make the conveyance.

4. Plaintiff now offers to pay the purchase price.

Wherefore plaintiff demands (1) that defendant be required specifically to perform said agreement, (2) damages in the sum of one thousand dollars, and (3) that if specific performance is not granted plaintiff have judgment against defendant in the sum of _____ dollars.

NOTE

Here, as in Form 3, plaintiff may set forth the contract verbatim in the complaint or plead it, as indicated, by exhibit, or plead it according to its legal effect. Furthermore, plaintiff may seek legal or equitable relief or both even though this was impossible under the system in operation before these rules.

(As amended Jan. 21, 1963, eff. July 1, 1963.)

Form 13. Complaint on Claim for Debt and To Set Aside Fraudulent Conveyance Under Rule 18(b)

A. B., Plaintiff	}	<i>Complaint</i>
<i>v.</i>		
C. D. and E. F., Defendants		

1. Allegation of jurisdiction.

2. Defendant C. D. on or about _____ executed and delivered to plaintiff a promissory note [in the following words and figures: (here set out the note verbatim)]; [a copy of which is hereto annexed as Exhibit A]; [whereby defendant C. D. promised to pay to plaintiff or order on _____ the sum of five thousand dollars with interest thereon at the rate of _____ percent. per annum].

3. Defendant C. D. owes to plaintiff the amount of said note and interest.

4. Defendant C. D. on or about _____ conveyed all his property, real and personal [or specify and describe] to defendant E. F. for the purpose of defrauding plaintiff and hindering and delaying the collection of the indebtedness evidenced by the note above referred to.

Wherefore plaintiff demands:

(1) That plaintiff have judgment against defendant C. D. for _____ dollars and interest; (2) that the aforesaid conveyance to defendant E. F. be declared void and the judgment herein be declared a lien on said property; (3) that plaintiff have judgment against the defendants for costs.

(As amended Jan. 21, 1963, eff. July 1, 1963.)

Form 14. Complaint for Negligence Under Federal Employer's Liability Act

1. Allegation of jurisdiction.

2. During all the times herein mentioned defendant owned and operated in interstate commerce a railroad which passed through a tunnel located at _____ and known as Tunnel No. _____.

3. On or about June 1, 1936, defendant was repairing and enlarging the tunnel in order to protect interstate trains and passengers and freight from injury and in order to make the tunnel more conveniently usable for interstate commerce.

4. In the course of thus repairing and enlarging the tunnel on said day defendant employed plaintiff as one of its workmen, and negligently put plaintiff to work in a portion of the tunnel which defendant had left unprotected and unsupported.

5. By reason of defendant's negligence in thus putting plaintiff to work in that portion of the tunnel, plaintiff was, while so working pursuant to defendant's orders, struck and crushed by a rock, which fell from the unsupported portion of the tunnel, and was (here describe plaintiff's injuries).

6. Prior to these injuries, plaintiff was a strong, able-bodied man, capable of earning and actually earning _____ dollars per day. By these injuries he has been made incapable of any gainful activity, has suffered great physical and mental pain, and has incurred expense in the amount of _____ dollars for medicine, medical attendance, and hospitalization.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars and costs.

Form 15. Complaint for Damages Under Merchant Marine Act

1. Allegation of jurisdiction. [If the pleader wishes to invoke the distinctively maritime procedures referred to in Rule 9(h), add the following or its substantial equivalent: This is an admiralty or maritime claim within the meaning of Rule 9(h).]

2. During all the times herein mentioned defendant was the owner of the steamship _____ and used it in the transportation of freight for hire by water in interstate and foreign commerce.

3. During the first part of (month and year) at _____ plaintiff entered the employ of defendant as an able seaman on said steamship under seamen's articles of customary form for a voyage from

_____ ports to the Orient and return at a wage of _____ dollars per month and found, which is equal to a wage of _____ dollars per month as a shore worker.

4. On June 1, 1936, said steamship was about _____ days out of the port of _____ and was being navigated by the master and crew on the return voyage to _____ ports. (Here describe weather conditions and the condition of the ship and state as in an ordinary complaint for personal injuries the negligent conduct of defendant.)

5. By reason of defendant's negligence in thus (brief statement of defendant's negligent conduct) and the unseaworthiness of said steamship, plaintiff was (here describe plaintiff's injuries).

6. Prior to these injuries, plaintiff was a strong, able-bodied man, capable of earning and actually earning _____ dollars per day. By these injuries he has been made incapable of any gainful activity; has suffered great physical and mental pain, and has incurred expense in the amount of _____ dollars for medicine, medical attendance, and hospitalization.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars and costs.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

Form 16. Complaint for Infringement of Patent

1. Allegation of jurisdiction.

2. On May 16, 1934, United States Letters Patent No. _____ were duly and legally issued to plaintiff for an invention in an electric motor; and since that date plaintiff has been and still is the owner of those Letters Patent.

3. Defendant has for a long time past been and still is infringing those Letters Patent by making, selling, and using electric motors embodying the patented invention, and will continue to do so unless enjoined by this court.

4. Plaintiff has placed the required statutory notice on all electric motors manufactured and sold by him under said Letters Patent, and has given written notice to defendant of his said infringement.

Wherefore plaintiff demands a preliminary and final injunction against continued infringement, an accounting for damages, and an assessment of interest and costs against defendant.

(As amended Jan. 21, 1963, eff. July 1, 1963.)

Form 17. Complaint for Infringement of Copyright and Unfair Competition

1. Allegation of jurisdiction.

2. Prior to March, 1936, plaintiff, who then was and ever since has been a citizen of the United States, created and wrote an original book, entitled _____.

3. This book contains a large amount of material wholly original with plaintiff and is copyrightable subject matter under the laws of the United States.

4. Between March 2, 1936, and March 10, 1936, plaintiff complied in all respects with the Act of (give citation) and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said book, and received from the

Register of Copyrights a certificate of registration, dated and identified as follows: "March 10, 1936, Class _____, No. _____."

5. Since March 10, 1936, said book has been published by plaintiff and all copies of it made by plaintiff or under his authority or license have been printed, bound, and published in strict conformity with the provisions of the Act of _____ and all other laws governing copyright.

6. Since March 10, 1936, plaintiff has been and still is the sole proprietor of all rights, title, and interest in and to the copyright in said book.

7. After March 10, 1936, defendant infringed said copyright by publishing and placing upon the market a book entitled _____, which was copied largely from plaintiff's copyrighted book, entitled _____.

8. A copy of plaintiff's copyrighted book is hereto attached as "Exhibit 1"; and a copy of defendant's infringing book is hereto attached as "Exhibit 2."

9. Plaintiff has notified defendant that defendant has infringed the copyright of plaintiff, and defendant has continued to infringe the copyright.

10. After March 10, 1936, and continuously since about _____, defendant has been publishing, selling and otherwise marketing the book entitled _____, and has thereby been engaging in unfair trade practices and unfair competition against plaintiff to plaintiff's irreparable damage.

Wherefore plaintiff demands:

(1) That defendant, his agents, and servants be enjoined during the pendency of this action and permanently from infringing said copyright of said plaintiff in any manner, and from publishing, selling, marketing or otherwise disposing of any copies of the book entitled _____.

(2) That defendant be required to pay to plaintiff such damages as plaintiff has sustained in consequence of defendant's infringement of said copyright and said unfair trade practices and unfair competition and to account for

(a) all gains, profits and advantages derived by defendant by said trade practices and unfair competition and

(b) all gains, profits, and advantages derived by defendant by his infringement of plaintiff's copyright or such damages as to the court shall appear proper within the provisions of the copyright statutes, but not less than two hundred and fifty dollars.

(3) That defendant be required to deliver up to be impounded during the pendency of this action all copies of said book entitled _____ in his possession or under his control and to deliver up for destruction all infringing copies and all plates, molds, and other matter for making such infringing copies.

(4) That defendant pay to plaintiff the costs of this action and reasonable attorney's fees to be allowed to the plaintiff by the court.

(5) That plaintiff have such other and further relief as is just.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948.)