



Civil Procedure (Kunsch)

by Kelly Kunsch

Introduction

The topic of Civil Procedure covers the manner in which persons may seek redress through the court system. There are many components to this broad topic. They include such subtopics as: jurisdiction (whether a lawsuit can be brought at all and if so, where), pleading (the formal and time requirements for beginning a lawsuit), and discovery (what information must each party furnish to the other in the interests of justice and the procedures for obtaining that information). Because the topic is so broad, this research guide does not attempt comprehensiveness. Instead, it focuses on the most often used and most authoritative works on the subject. The guide also attempts to mention some of the most prominent works on various subtopics of Civil Procedure. This research guide is limited to civil procedure in the United States.

History

When this nation was created, it inherited a procedural framework that was mired in the technicalities of the common law exemplified in Charles Dickens' novel [Bleak House](#) (copy available in Walkover collection). For a detailed discussion about common law pleading, see [Handbook of Common Law Pleading](#) by Joseph H. Koffler and Alison Reppy, KF8870.K6 at Open Reserve. Procedural reform did not come to fruition until the mid-nineteenth century with the advent of code pleading. New York's famous "Field Code" and its progeny substantially simplified civil procedure (the seminal work on the subject is Charles Clark's [Handbook of the Law of Code Pleading](#), KF8870.C55 1947 in the 4th Floor Treatise collection). Thereafter, procedural law in the United States was largely governed by code pleading for nearly a century. In fact, fifteen states, including California, are still code pleading states.

In 1938, civil procedure was reformed again with the adoption of the Federal Rules of Civil Procedure. The Federal Rules created a uniform system of pleading for all suits brought in federal court (thereby uniting law and equity). The Federal Rules also changed the mode of pleading from "fact pleading" to "notice pleading." A discussion of the changes brought about by the Rules is beyond the scope of this research guide. However, Charles Alan Wright's [Federal Practice and Procedure](#) (often referred to as "Wright & Miller"), KF8840.W68 at Reference, provides a detailed discussion of the history of federal procedure at sections 1002 *et seq.* of the Civil component of the multivolume treatise.

Although the Federal Rules have been amended often over the ensuing years, they remain the foundation for civil procedure in the United States. In addition to their direct impact in federal courts, nearly every state has adopted civil rules based to some degree on their federal counterpart.

About this Research Guide

As stated above, this research guide is not intended to be comprehensive, but rather will list some of the major sources of law in the area and a variety of tools for the researcher to use when confronted with questions involving civil procedure. Links in this research guide will take the researcher to information about the resource, and in some cases, will link to full text of the resource. The titles of materials held in the Seattle University Law Library are linked to bibliographic records in the library's catalog. The title or citation for Web-based materials will be linked to the internet site where those materials or information about them may be found. Some citations may be linked to materials in Westlaw, Lexis, or other databases, including statutes, court rules, and law review articles of interest; if so, they may be available only to authorized users.

Primary Sources

There is an unresolved debate over whether regulation of the courts and civil procedure is within the province of the legislative or judicial branch. Because of this, the area is governed by both statute and court rule, with cases interpreting each.

At the federal level, [Title 28](#) (online version from Legal Information Institute at Cornell University) of the [United States Code \(USC\)](#), shelved on Range 2A at Reference, encompasses the judiciary and judicial procedure. Because of superior updating, a researcher is advised to use one of the annotated versions of the code, either the [United States Code Annotated \(USCA\)](#) or [United States Code Service \(USCS\)](#), both shelved on Range 2A in Reference. These versions of the code also contain references to cases, law review articles, and other resources that may be useful to the researcher.

In addition to the United States Code, the [Federal Rules of Civil Procedure \(FRCP\)](#) (online version from Legal Information Institute at Cornell) also govern civil actions in federal courts. West Group annually publishes a volume called [Federal Civil Judicial Procedure and Rules](#), KF8816.A193 shelved in Open Reserve, that includes the current FRCP. Annotations to the Federal rules can be located in both the [USCA](#) (in appendices to Title 28) and the [USCS](#) (in separate volumes shelved after the numbered titles of the code).

With respect to "legislative" history of the court rules, there are two organizations whose publications can be useful in interpreting the Federal Rules of Civil Procedure and, consequently, any state rules based on the Federal Rules. The Advisory Committee to the Federal Rules was created in 1935 to prepare and submit a set of draft rules to the United States Supreme Court. Their discussions and explanations offer aid in understanding the Rules. Even after adoption of the Rules, the Advisory Committee continued to review their operation and recommend amendments.

The Advisory Committee was discharged in 1956 and almost immediately the need for a similar body was recognized. In response, the Judicial Conference of the United States was given the responsibility in 1958 to study operation of the Federal Rules and suggest amendments. The

Judicial Conference has delegated most of these functions to its Standing Committee on Rules of Practice and Procedure. The Standing Committee consists of judges, lawyers and law professors. The Standing Committee in turn delegates its power to the Advisory Committee on the Civil Rules and the Advisory Committee on the Appellate rules but retains its authority to review and amend the recommendations of these committees before they are transmitted back to the U.S. Supreme Court. The Standing Committee and Advisory committee deliberations are open to the public and their final recommendations to the U.S. Supreme Court are of public record. Because of this, the notes of the Judicial Conference and its Committees are useful in discerning the intent behind the language in court rules. Committee commentary is published in the annotated versions of the FRCP as well as in the multivolume treatises (cited below under secondary sources).

At the state level, [Title 4](#) (online version from Municipal Research and Services Center of Washington) of the [Revised Code of Washington \(RCW\)](#), located in Reference, Open Reserve, and 3rd Floor, governs Civil Procedure. Annotations to its sections can be located in both the [Revised Code of Washington Annotated \(RCWA\)](#) and [Annotated Revised Code of Washington \(ARCW\)](#). [Superior Court Civil Rules](#) (online version from Washington Administrator for the Courts homepage) created by the Washington Supreme Court, are the state equivalent of the FRCP. They are heavily based on the Federal Rules even to the point of adopting similar numbering of the rules. They are not, however, verbatim adaptations of the Federal Rules. The State's Civil Rules are abbreviated "CR" in state decisions (differing from Bluebook citation form). The Washington Court Rules (including the Civil Rules) are published annually in [Washington Court Rules-State](#), KFW529.A317A2 at Open Reserve. Annotations to all state court rules are located in [Washington Court Rules Annotated](#), KFW529.A2 at Open Reserve.

As is true with the Federal Rules, Washington rules were promulgated with the help of an Advisory Committee. The Committee's comments can be useful in rule interpretation, particularly when the Washington rules varies from its federal counterpart. Advisory Committee Notes are found in [Washington Court Rules Annotated](#) and in the [Rules Practice](#) volumes 3A and 4 of the Washington Practice Series.

Supplementing the federal and state rules of civil procedure, there are often local Court Rules that govern practice within specific courts. Local rules concern minor procedural matters such as docketing and format of pleadings (*e.g.*, margin width and page limits). Thus, there are Ninth Circuit Local Rules and Federal District Court Local Rules for each District in Washington. They can be found in [Federal Local Court Rules](#). At the state level, there are local rules for each county. They can be found in [Washington Court Rules-Local Rules](#). In addition, some individual judges have standing orders governing procedure in their particular courtrooms.

Case law on the topic of civil procedure is usually found through the annotated codes and rules listed above or as footnotes in secondary sources (discussed below). As an alternative, cases on the subject can also be found using the applicable Digest: [Federal Practice Digest](#), located at Range 3A on the Third Floor of the Library, or [Washington Digest](#), located in Reference and on the 4th Floor. There is not a Digest Topic for the general subject of "Civil Procedure." Instead, there are numerous Digest Topics that cover issues touching on civil procedure. Examples include: "Federal Civil Procedure," "Pretrial Procedure," "Process," and "Courts." Probably the

most effective way to find the appropriate Topic and Key Number in a particular instance is by using the Descriptive Work Index to the *Digest* (the volumes are near the end of the set). Many of the citations in the Digest will be to [Federal Rules Decisions](#), Range 3B on Third Floor of the Library. [Federal Rules Decisions](#) is a component of the West Reporting system that reports cases interpreting the federal rules. The reporter also contains rules proposals and articles on issues involving federal rules. The articles in [Federal Rules Decisions](#) are also available on [Westlaw](#) (database: FEDRDTP) as are the decisions themselves (although not as a standalone database).

Federal Rules Service, KF8830F4 at Reference, provides an alternative source for locating cases about federal civil procedure (particularly rules-based issues). The set contains a unique digest system similar to West Key numbers. this digest system is based on FRCP numbers. A researcher can determine the precise digest number from the "findex," or alternatively, the researcher can browse the volume of the Digest component that covers the rule (listed on the spine of each Digest volume). The entries in the Digest volumes summarize the case and give citations to cases. In addition to the standard citations, [Federal Rules Service](#) also cites to its own reporter volumes (part of the entire set).

Finally, cases can also be found online in [Lexis](#), [Westlaw](#), or other case databases. Among other methods, cases can be found by full-text search or by combining citations to known authority with key words.

Secondary Sources

Treatises

For comprehensive treatment of the topic:

Federal Practice and Procedure, by Charles Alan Wright, KF8840.W68 at Reference. This multivolume treatise is probably *the* most cited secondary source in American jurisprudence. The various volumes are written by well respected authorities and are comprehensive, covering the law, its history, the policy, and critique. The volumes are heavily footnoted with primary authority and other secondary authority. Also available online via [Westlaw](#) (database: FPP).

Moore's Federal Practice, by James William Moore, KF8820.A313M63 1997 at Reference. This set is similar to *Federal Practice and Procedure* in that it is multivolume and primarily arranged by rule number. It is slightly less scholarly than its counterpart (which is written by academics). It may be somewhat superior, however, with respect to practice-oriented topics. Also available online via [Lexis](#) (MATBEN;MOORES).

Federal Procedure (Lawyer's Edition), published by Lawyers Co-operative, KF8835.F43 at Reference. Another multivolume work on Civil Procedure, this one is arranged alphabetically by topic rather than rule number. The work is practice-oriented with numerous references to its companion set *Federal Procedural Forms* (discussed below). Also available online via [Westlaw](#) (database: FEDPROC).

For less comprehensive overview of the topic:

Civil Procedure, by Jack H. Friedenthal, Mary Kay Kane, and Arthur R. Miller, KF8840.F72 1999 at Open Reserve. This single volume Hornbook focuses on black letter law. It does, however, contain enough history and policy to provide students and other users with the context necessary for a fuller understanding of the law.

Federal Civil Rules Handbook, by Steven Baicker-McKee, William M. Janssen and John B. Corr, KF8816.A194 at Open Reserve. This single softbound volume is very popular with students. It begins with a discussion of rulemaking and general concepts in federal practice before addressing each rule specifically. The rules section is divided into text and commentary, including core concepts and applications.

Civil Procedure Examples and Explanations, 3d Ed., by Joseph W. Glannon, KF8840.G58 1997 at Open Reserve. This popular student study aid attempts to teach Civil Procedure by providing fact patterns for the student to consider. There "examples" are preceded by a discussion of a topic, and are followed by the author's analysis or "explanation" of the resolution to the example: application of the rule to the facts. The format is akin to a law school examination.

Civil Procedure, 4th Ed., by James Fleming Jr., Geoffrey C. Hazard, Jr., and John Leubsdorf, KF8840J3 1992 at Open Reserve. This is another single volume treatise on the subject written by well-known scholars (similar in style to the Friedenthal book). Because of its 1992 publication date, some of its sections may be outdated to a degree.

For Washington specific treatment:

Rules Practice, volumes 3A and 4 of the Washington Practice Series, by Lewis H. Orland and Karl B. Tegl and, KFW80.W32 at Open Reserve. This is a two volume set on the Washington Superior Court Civil Rules. the work is arranged by rule number, setting out each rule's text, followed by commentary from both state and federal advisory committees when available. Author's comments and references to law review commentaries and cases are also included. Also available online via [Westlaw](#) (database: WAPRAC [database includes entire Washington Practice Series]).

Trial Practice-Civil, volumes 14 and 15 of the Washington Practice Series, by Lewis H. Orland and Karl B. Teland, KFW80.W32 at Open Reserve. This is more like a true treatise than the *Rules Practice* set. Textual discussion begins with jurisdiction, following civil actions through venue, service, discovery, trial and ends with foundations for appeal. The work is fairly heavily footnoted, mostly with references to Washington cases. Also available online via Westlaw (database: WAPRAC [database includes entire Washington Practice Series]).

Washington Civil Procedure Deskbook, published by the Washington State Bar Association, KFW530.W37 1992 at Open Reserve. Like many other books on Civil procedure, the Deskbook is arranged by rule number. Each chapter (rule) is broken into: text of rule, historical development, comparison with the federal rule, purpose and procedure, analysis, significant

authorities, and strategic and practical considerations. Because there are so many authors (more than 100), depth and quality of the chapters are uneven.

The Washington Superior Court Judges' Civil Procedure Benchbook, KFW530.W37 1995 at Open Reserve, and [Washington State Judges' Benchbook, Civil Procedure, Courts of Limited Jurisdiction](#), KFW530.W38 1990 at Open Reserve, are designed to provide trial judges with ready reference from the bench. They can also be useful for attorneys practicing in these courts. The benchbooks are generally organized chronologically in the order in which issues are likely to arise. They contain citations in the text to applicable rules, statutes, and cases.

Forms: Form books are useful in drafting pleadings, motions, orders and other court documents. There are many resources that contain federal procedural forms. Some are arranged by rule number, others topically. Several form books are listed below. Additionally, there are volumes of topical forms that include procedural forms. For example, many of the forms in [Collier \[Bankruptcy\] Forms Manual](#) deal with civil procedure in a bankruptcy context. Finally, there are online civil procedure and litigation forms at legal internet sites such as [Findlaw](#) and [The 'Lectric Law Library](#) as well as forms available on [Lexis](#) and [Westlaw](#), noted below.

Bender's Federal Practice Forms, by Lous R. Frumer and Marvin Waxner, KF8836.F78 at Reference. The set is primarily arranged by rule. Also available online via [Lexis](#) (MATBEN;FDPRAC).

West's Federal Forms, published by West Group, KF8836.W4 at Reference. This set is also primarily arranged by rule.

Federal Procedural Forms, Lawyers Edition, published by Lawyers Co-operative, KF8836.F4 at Reference. This set primarily arranged by topic. Also available online via [Westlaw](#) (database: FEDPROF).

Bender's Forms of Discovery, published by Matthew Bender, KF8900.A3B4 at Reference. This set is arranged by topic. See also below.

AmJur Pleading and Practice Forms, KF8836.A45 at Reference. This set is arranged by topic. Also available online via [Westlaw](#) (database: AMJUR-PP).

The Pattern Discovery Series provides discovery checklists and sample interrogatories for numerous subjects. The Law Library collects many of these sets. To see what subjects are covered, do a "word" search in the [Law Library Catalog](#) using "pattern discovery series" as the search words.

Shepard's Causes of Action, published by Shepard's, KF8863.S53 at Reference. In addition to discussing the law governing thousands of topics, this set includes a sample complaint at the end of each article. These samples can be useful in drafting complaints that there are no forms for in the other form books.

Selected treatises on subtopics of civil procedure:

Discovery

Deposition Strategy, Law, and Forms, published by Matthew Bender, KF8900.D46 at Reference. This multivolume work is written for practitioners. The first volume of the set focuses on depositions generally: conduct, defenses, forms, etc. The remaining volumes are arranged alphabetically by subject. Chapters are devoted to subjects such as antitrust, family law, and medical malpractice. The authors of each chapter discuss such issues as whether to take depositions, who should be examined, and objective and preparations for depositions. The text includes sample questions with possible answers.

Bender's Forms of Discovery, published by Matthew Bender, KF8900.A3B4 at Reference. This set contains sample interrogatories covering several hundred topics. It includes interrogatories for both Plaintiff and Defendant. Also available online via [Lexis](#) (MATBEN;BFDISC). Interrogatories can also be found in [AmJur Proof of Facts, 3d Series](#), KF8933.A43 at Reference (the earlier series did not always include interrogatories). Also available online via [Westlaw](#) (database: AMJUR-POF).

The Pattern Discovery Series (mentioned above) provides commentary, checklists and sample interrogatories for numerous subjects. The Law Library collects many of these sets. To see what subjects are covered, do a "word" search in the [Law Library Catalog](#) using "pattern discovery series" as the search words.

Class Actions

Newberg on Class Actions, by Herbert B. Newberg, KF8896.N4 at Reference. This is a comprehensive treatise analyzing all aspects of class action lawsuits. It includes checklists and other aids. Also available online via Westlaw (database: CLASSACT).

Finding additional Resources

Supplementary resources in the Law Library's collection can be located by using the [Law Library Catalog](#), the catalog of print and non-print resources. The [Catalog Help](#) page will show you how to use the catalog to your best advantage. Using Library of Congress subject headings will help you get an overview of the materials available. Some suggested headings are:

- Civil Procedure--United States
 - Civil Procedure--Washington (State)
 - Discovery (Law)--United States
 - Discovery (Law)--Washington (State)
- Also, the following (include jurisdictional limitations if desired)
- Depositions
 - Joinder of Actions
 - Judgments
 - Jurisdiction
 - Pleading

Periodical Articles and American Law Reports

Law reviews and journals reflect the latest thinking on topical issues. Over a thousand are published in the United States and the Law Library receives almost all of them. Abbreviations abound in this area so it is best to ask for help at the law library reference desk. All current periodicals are kept in Open Reserve on the second floor of the Law Library. Older, bound volumes are located on the court level which is reached by the elevator inside the Library.

To find articles on particular topics, use either [Current Law Index](#) or [Index to Legal Periodicals](#), both located on Range 2B in Reference. Both titles offer indexes by author, title, subject, case, and statute. For law school students, both services are available on [Lexis](#) (lawrev;lgind for *Current Law Index*) and [Westlaw](#) (database: LRI for *Current Law Index*; database: ILP for *Index to Legal Periodicals*) Non-law Seattle University students can use *Index to Legal Periodicals* through the [databases](#) offered by [Lemieux Library](#) (ILP is a FirstSearch database) or manually in the Law Library.

Similar to periodical articles, annotations in [American Law Reports](#), shelved on the 3rd Floor at the end of the Reporters, may provide useful analysis on a particular topic of Civil Procedure. *ALR* is now in its 5th Series. *ALR Fed* covers exclusively federal issues. The footnotes from the *ALR* may offer important primary authority. It is usually best to begin research using the *ALR Index* volumes, shelved at the end of all the sets. *ALR* is also available online via [Lexis](#) (ALR;ALR) and [Westlaw](#) (database: ALR).

Web Sites of Interest

[Federal Judiciary Homepage](#)

This site includes a useful FAQ section that speaks about federal judges, court information, filing a case, and other topics. It also has a page on Federal Rulemaking that explains the rulemaking process and links to proposed amendments to the federal rules.

[Supreme Court of the United States Homepage](#)

[The Center for Computer-Assisted Legal Instruction](#)

CALI has online lessons for various subjects (including Civil Procedure) for students to use as study aids. Some exercises can be done on the Web. Others must be downloaded before running. Students will need to obtain a password from the Law Library (in some instances, faculty members may supply them to the class).

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