

**STATE OF NEW YORK. RULES OF  
CIVIL PRACTICE ADOPTED BY THE  
CONVENTION TO CONSIDER AND  
ADOPT RULES OF CIVIL  
PRACTICE, JUNE 17, 1921**

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State of New York. Rules of Civil Practice Adopted by the Convention to Consider and Adopt Rules of Civil Practice, June 17, 1921 by Various

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**VARIOUS**

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PRACTICE, JUNE 17, 1921**



STATE OF NEW YORK

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**RULES OF CIVIL PRACTICE**

ADOPTED BY THE

**Convention to Consider and Adopt Rules  
of Civil Practice**

**JUNE 17, 1921**

**Pursuant to Laws of 1920, Chapter 902  
As Amended, Laws 1921, Chapter 370**

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**ALBANY  
J. B. LYON COMPANY, PRINTERS  
1921**



## REPORT

The Committee appointed pursuant to the vote at the Convention of June 8th last, beg leave to report:

That they met and considered the existing general rules of practice, the civil practice act (Laws 1920, chapter 925 with the amendments of 1921); the proposed court rules suggested by the joint legislative committee on the simplification of civil practice, as reported to the legislature in 1919; the court rules proposed by the board of statutory consolidation, and suggestions and criticisms by bar associations, judges and lawyers.

Since the meeting of the convention, September 20-21, 1920, the committee have considered later suggestions from the bar associations of the state and of the city of New York as well as proposals from members of the bar throughout the state. The committee have made changes in forty-one rules previously recommended, suggested the omission of one, and offered two new rules.

They now recommend for adoption the accompanying court rules for civil practice, as generally applicable to our different civil courts, except the court for the trial of impeachments, and the court of appeals.

In view of the differing conditions in the several surrogate courts of the state, the committee concluded that it would now be unwise to formulate general rules for the surrogates' courts.

As minor diversities also exist in the calendar practice in the different appellate divisions, it was thought preferable to leave such matters of local practice to fall under the rules by the respective appellate divisions.

The subject of arbitration, dealt with in the civil practice act (article 83), had been further enlarged by the laws of 1920, chapter 275. It has not been suggested to your committee that special rules for arbitration are required.

A table at the end of our rules indicates what use has been made of the general rules of practice now in force, and where our proposed rules treat of the same subject. The committee have

also drawn rules (numbers 210-214) for the new field of declaratory judgments authorized by the civil practice act, § 473.

The American Experience Table of Mortality, adopted in rule 243 is appended, together with a table showing the present value of an immediate annuity on one dollar on a single life at five per centum interest, taken from "Inheritance Tax Calculations" by S. H. Wolfe.

The rules here reported have been read and revised in joint meeting of the committee, and embody our unanimous judgment.

HARRINGTON PUTNAM, *Chairman*,  
RUSSELL BENEDICT,  
EDGAR T. BRACKETT,  
A. T. CLEARWATER,  
CHARLES A. COLLIN,  
JAMES A. FOLEY,  
LOUIS W. MARCUS,  
CHARLES D. NEWTON,  
ALFRED R. PAGE,  
J. HENRY WALTERS,

*Committee to Formulate Rules.*

Dated, May 24, 1921.



## RULES OF CIVIL PRACTICE

Adopted by the convention to consider and adopt rules of civil practice, held at the capitol in the city of Albany, beginning at noon of the second Tuesday of June, one thousand, nine hundred and twenty, pursuant to chapter nine hundred and two of the laws of the state of New York for the year one thousand, nine hundred and twenty, as amended by chapter three hundred and seventy of the laws of nineteen hundred and twenty-one, "binding upon all the courts in this state and all the justices and judges thereof, except the court for the trial of impeachments and the court of appeals."

- Title
1. Courts; miscellaneous provisions. (Rules 1-9.)
  2. Papers and the filing thereof. (Rules 10-16.)
  3. Service of papers. (Rules 20, 21.)
  4. Security. (Rules 25-27.)
  5. Payment into court. (Rules 30-34.)
  6. Action by or against poor person. (Rules 35-37.)
  7. Guardians ad litem and special guardians. (Rules 39-44.)
  8. Summons and the service thereof. (Rules 45-53.)
  9. Appearance. (Rules 55, 56.)
  10. Motions. (Rules 60-67.)
  11. Orders. (Rules 70-74.)
  12. Arrest, injunction and attachment. (Rules 80-84.)
  13. Extension of time. (Rules 85-88.)
  14. Pleadings. (Rules 90-116.)
  15. Depositions to be used within the state. (Rules 120-133.)
  16. Depositions to be used without the state. (Rules 136, 137.)
  17. Perpetuation of testimony in real property actions. (Rule 138.)
  18. Discovery and inspection. (Rules 140-142.)
  19. Change of venue. (Rules 145-147.)
  20. Notice of trial and of issue. (Rules 150, 151.)
  21. Trial. (Rules 155-166.)
  22. References. (Rules 170-173.)
  23. Receivers. (Rules 175-180.)
  24. Judgment. (Rules 185-204.)
  25. Declaratory judgment. (Rules 210-214.)

26. New trial. (Rules 220-224.)
27. Appeals. (Rules 229-239.)
28. Action to recover real property. (Rules 240, 241.)
29. Action for dower. (Rule 243.)
30. Action for partition. (Rules 245-251.)
31. Action for foreclosure. (Rules 255-267.)
32. Action to recover chattel. (Rules 270-273.)
33. Matrimonial actions. (Rules 275-283.)
34. Committee of incompetent person. (Rules 285-288.)
35. Infants; their guardianship and maintenance. (Rules 290-294.)
36. Disposition of real property of infants or incompetents. (Rules 295-300.)

## TITLE 1

### COURTS; MISCELLANEOUS PROVISIONS

- Rule 1.** Applications for admission as attorneys.
2. Courts may make further rules.
  3. Provisions applicable to proceedings in surrogates' courts.
  4. Oral agreement between parties or counsel.
  5. County judge; when time begins to run if disqualified.
  6. Compelling officer to return, deliver or file paper.
  7. Books to be kept by clerks of courts.
  8. Notice to present claims.
  9. Term "proceeding" refers to special proceedings.

**Rule 1. Applications for admission as attorneys.** Within the first ten days of each year the appellate division in each department shall name a committee of not less than three practicing lawyers for each judicial district within its department, which committee shall investigate the character and fitness of every applicant for admission to the bar. Each of such committees shall continue until its successor is appointed, and all applications for admission to the bar of persons residing within a district shall be referred to the committee for such district. Unless otherwise ordered by the court, no person shall be admitted to the bar without a certificate from the proper committee that it has carefully investigated the character and fitness of the applicant and that, in such respects, he is entitled to admission. Such committee shall have power to prescribe a form of written statement of the applicant's experience, from which the committee may

pass on his moral and general fitness. If such applicant has before applied for admission to the bar in this or any other state, the applicant shall set forth the same with the particulars thereof. If his application has been rejected or disapproved by the committee on character of an appellate division, he shall obtain the consent of that appellate division to the renewal of his application in any other department. No person shall receive a certificate from any such committee who does not satisfy the committee that he believes in the form of, and is loyal to, the government of the United States.

Each applicant for admission must present to the court where he shall apply for admission proof that he has complied with the rules of the court of appeals relating to admission to the bar. No person shall be admitted until he has proven that he is a citizen of the United States and an actual resident of the state of New York for six months prior to the making of the application. He shall specify the place of his residence by street and number, if such there be, and the length of time he has been such resident.

The clerk of the appellate division must file in his office all the papers presented and acted on by the court on each application for admission.

**Rule 2. Courts may make further rules.** The appellate division in each department and any other court of record may make such other, or further, rule for the conduct of business before it as it may deem necessary and which is not inconsistent with the following rules.

**Rule 3. Provisions applicable to proceedings in surrogates' courts.** Except where a contrary intent is expressed in, or plainly implied from, the context, a provision of rules applicable to practice or procedure in the supreme court applies to surrogates' courts and to the proceedings therein so far as they can be applied to the substance and subject matter of a proceeding without regard to its form.

**Rule 4. Oral agreement between parties or counsel.** An agreement between parties or their attorneys relating to any matter in an action or a proceeding shall not be binding unless in writing subscribed by the party, or by his attorney or