

1 COMPLETE CIVIL LITIGATION TIMELINE FLOWCHART

2 Based on Civ Pro II Outline – Prof. Genetin

3 

---

---

4

5

6 PHASE 0: PRE-FILING

7 

---

---

8

9 Informal Investigation

10 (Rule 11 requires reasonable inquiry BEFORE filing)

11 |

12 ▼

- 13 • Interview client, gather facts
- 14 • Research the law
- 15 • Consult experts if needed
- 16 • Cannot contact represented parties (Rule 4.2)
- 17 • Must identify yourself to unrepresented parties

18 |

19 ▼

20 Determine proper court (federal vs. state)

21 Obtain local rules (e.g., N.D. Ohio)

22 Prepare summons or waiver request (Rules 3 & 4)

23 |

24 ▼

25 ↓ Ready to file?

26

27

28 

---

---

29

30 PHASE 1: PLEADINGS

31 

---

---

32

33 PLAINTIFF FILES COMPLAINT (Rule 8(a))

34 

---

35 Must include:

- 36 (1) Jurisdictional allegations – Rule 8(a)(1)
- 37 (2) Short and plain statement of claim – Rule 8(a)(2)
  - 38 → Must meet Twombly-Iqbal PLAUSIBILITY standard
  - 39 → Two-step: discard conclusions → assess remaining facts
  - 40 → Swanson softening: context matters
- 41 (3) Demand for relief – Rule 8(a)(3)

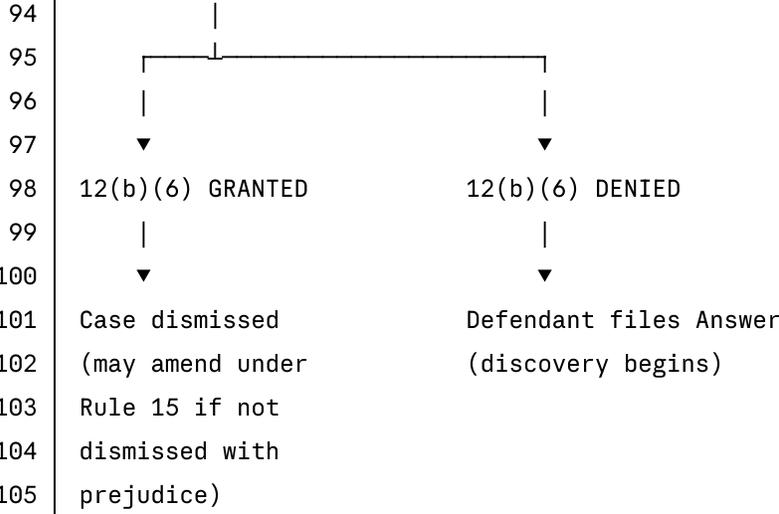
42

43 Form requirements (Rule 10(b)):

- 44 → Numbered paragraphs
- 45 → One set of circumstances per paragraph



- 91 → Must consolidate ALL available defenses in ONE motion
- 92 → Waivable defenses (12(b)(2)-(5)) LOST if not included
- 93 → 12(b)(1), (6), (7) survive – can raise any time



108 **OPTION B: FILE ANSWER (Rules 8(b) & (c))**

---

110 Four components:

- 111 (1) Admissions and denials – Rule 8(b)
- 112 (2) Affirmative defenses – Rule 8(c)
  - 113 → Must plead or WAIVED (but can amend under Rule 15)
  - 114 → Examples: SOL, res judicata, contributory negligence,
  - 115 estoppel, statute of frauds
- 116 (3) Counterclaims – Rule 13
  - 117 → Compulsory (13(a)): same transaction → MUST assert or WAIVED
  - 118 → Permissive (13(b)): different transaction → optional
- 119 (4) Crossclaims against co-parties – Rule 13(g)

121 Attorney signs answer → Rule 11 certification attaches

124 **AMENDING PLEADINGS – Rule 15**

---

126 Rule 15(a)(1) – As of right (ONE TIME ONLY):

- 127 → Within 21 days of serving the pleading, OR
- 128 → Within 21 days after responsive pleading or
- 129 Rule 12(b),(e),(f) motion (whichever earlier)

131 Rule 15(a)(2) – With permission:

- 132 → Need written consent OR court leave
- 133 → Standard: "freely given when justice so requires"
- 134 → Foman v. Davis factors: undue delay, bad faith,
- 135 repeated failure to cure, undue prejudice, futility

136  
137 Rule 15(b) – During/after trial:

138 → 15(b)(1): Court allows amendment if aids merits  
139 and no prejudice

140 → 15(b)(2): Implied consent – issue tried without  
141 objection = treated as if in pleadings  
142

143 Rule 15(c) – After statute of limitations runs:

144 → Relation back to original filing date

145 → 15(c)(1)(A): State law allows it

146 → 15(c)(1)(B): Same transaction/occurrence (new claim)

147 → 15(c)(1)(C): New defendant – same transaction +  
148 90-day notice + mistake in identity  
149 (Krupski: focus on defendant's knowledge)

150 |

151 ▼

152 ↓ Pleadings settled? Proceed to Discovery  
153  
154

---

---

155  
156  
157 PHASE 2: DISCOVERY  
158  
159

---

160 RULE 26(f) – MEET AND CONFER  
161

162 At least 21 days before Rule 16(b) scheduling conference

163 Parties discuss: discovery plan, ESI, privilege issues

164 |

165 ▼

---

166 RULE 16(b) – SCHEDULING ORDER  
167

168 Issued within 90 days after any defendant served

169 OR 60 days after any defendant appeared

170 Sets deadlines for all discovery and motions

171 Can only modify for GOOD CAUSE

172 |

173 ▼

---

174 RULE 26(a)(1) – MANDATORY INITIAL DISCLOSURES  
175

176 Due within 14 days after Rule 26(f) conference

177 WITHOUT awaiting a request – must disclose:

178 (i) Witnesses with discoverable information

179 (ii) Documents/ESI supporting claims or defenses

180 (iii) Damages computation + supporting documents

181 (iv) Insurance agreements

182 |

183 ▼

184 PARTY-DRIVEN DISCOVERY (Rules 30-36)

---

185  
186 Tools available:

187  
188 Rule 33 – Interrogatories

189 → Parties only | 25 max | 30 days to respond

190 → Answers under oath | Objections by attorney

191  
192 Rule 34 – Document Requests

193 → Parties only | No numerical limit | 30 days to respond

194 → Reasonable particularity required

195 → No boilerplate objections

196 → Must state what's being withheld

197  
198 Rule 30 – Depositions

199 → Parties AND nonparties (subpoena for nonparties)

200 → 10 depositions max | 1 day / 7 hours limit

201 → No judge present – objections on record

202 → Only refuse to answer for: privilege, court order,

203 motion to terminate

204  
205 Rule 35 – Physical/Mental Examinations

206 → Parties only | Requires court order

207 → Must show: condition in controversy + good cause

208  
209 Rule 36 – Requests for Admissions

210 → Parties only | 30 days to respond

211 → Deemed admitted if no response → CONCLUSIVELY established

212  
213 ⚠ DISCOVERABILITY TEST – Rule 26(b)(1):

214 (1) Nonprivileged?

215 (2) Relevant to any claim or defense?

216 (3) Proportional to the needs of the case?

217 ALL YES → DISCOVERABLE (even if inadmissible at trial)

218  
219 ⚠ ADDITIONAL STOPS TO DISCOVERY:

220 → Cumulative/duplicative – Rule 26(b)(2)(C)

221 → Non-testifying expert limits – Rule 26(b)(4)

222 → Protective orders – Rule 26(c)

223 → Work product – Rule 26(b)(3) (Hickman v. Taylor)

224  
225 Rule 26(a)(2) – EXPERT DISCLOSURES

- Due at least 90 days before trial
- Written reports required for retained experts
- Rebuttal: within 30 days after other party's disclosure

Rule 26(e) – DUTY TO SUPPLEMENT

- Must supplement if response becomes incomplete/incorrect

Rule 26(g) – CERTIFICATION ("Discovery's Rule 11")

- Must sign all discovery papers
- Certifies: consistent with rules, not for improper purpose, not unreasonably burdensome
- Violation → MANDATORY sanctions

DISCOVERY ENFORCEMENT:

- Rule 37(a): Motion to compel
- Rule 37(c)(1): Failure to disclose → automatic exclusion
- Rule 37(e): ESI spoliation → curative measures or case-dispositive sanctions
- Litigation holds (Zubulake): implement when litigation reasonably anticipated

|



Rule 26(a)(3) – PRETRIAL DISCLOSURES

- Due at least 30 days before trial
- Witness lists, exhibit lists

|



- ↘ Discovery complete? Proceed to Pretrial

---

---

PHASE 3: PRETRIAL CASE MANAGEMENT

---

---

RULE 16 – PRETRIAL CONFERENCES

---

Rule 16(c): Attorneys must attend with authority to act

- Can discuss settlement ≠ obligation to agree
- Seven categories: narrow issues, manage discovery, resolve legal issues, trial prep, settlement/ADR, special management, catch-all

Rule 16(d): Pretrial orders control the action

- 271 Rule 16(e): FINAL PRETRIAL ORDER
- 272 → Supersedes the pleadings
- 273 → If it's not in here → excluded from trial
- 274 → Modify only for MANIFEST INJUSTICE (very high bar)
- 275 → Davey v. Lockheed: four-factor test for modification

- 277 Rule 16(f): Sanctions for failure to appear,
- 278 unpreparedness, disobedience
- 279 |
- 280 ▼
- 281 ↓ Can the case be resolved without trial?

---



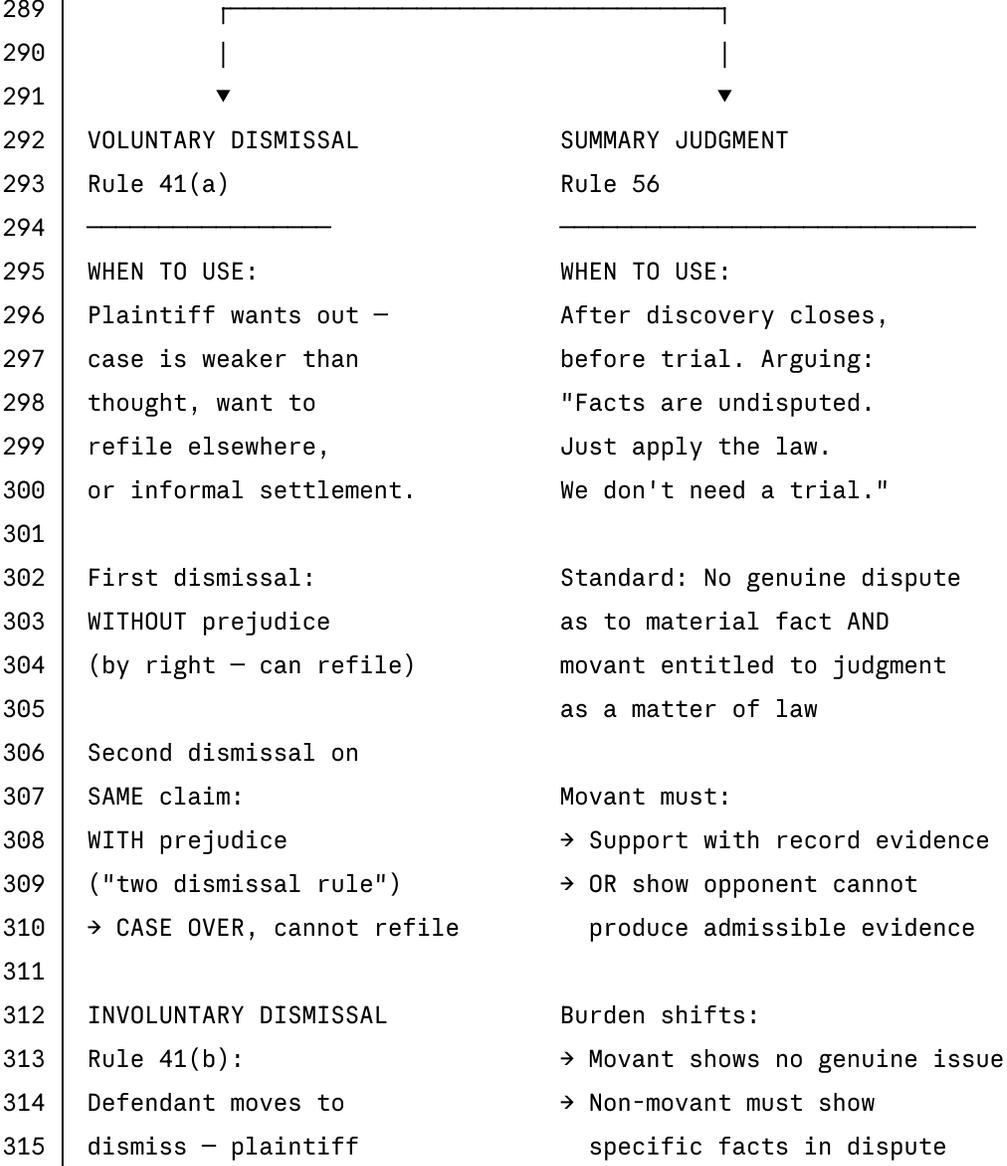
---

286 PHASE 4: RESOLUTION WITHOUT TRIAL

---

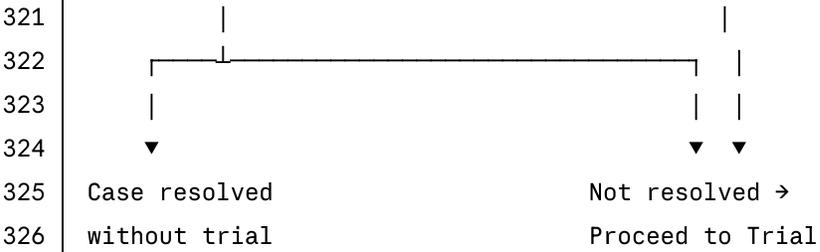


---



316 failing to prosecute  
317 or violating orders. Court views facts in light  
318 → Treated as judgment most favorable to non-movant

319 ON THE MERITS  
320 (cannot refile)



---

---

331 PHASE 5: TRIAL

---

---

334 SEVENTH AMENDMENT – JURY TRIAL RIGHT

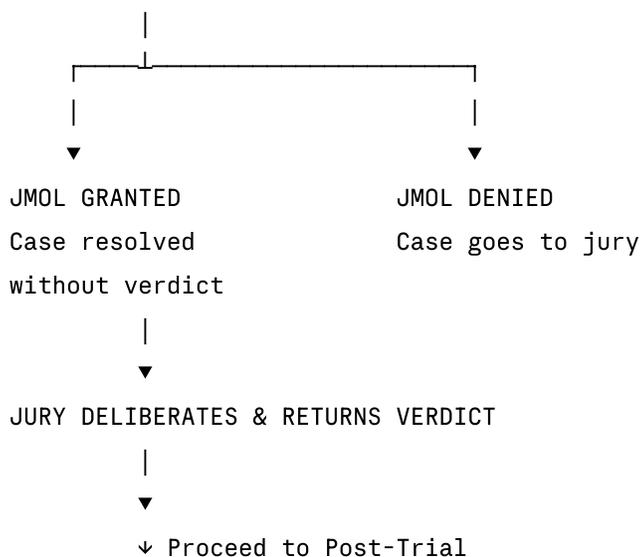
335  
336 Applies to "suits at common law" (federal only)  
337 Money damages → jury trial right  
338 Equitable relief → judge decides  
339 Dairy Queen: labels don't control – substance matters  
340 Must request jury trial (waivable)

341 |  
342 ▼  
343 JURY SELECTION & TRIAL BEGINS

344 |  
345 ▼  
346 RULE 50(a) – JUDGMENT AS A MATTER OF LAW (JMOL)

347  
348 WHEN TO USE:  
349 Other side has just finished presenting evidence.  
350 You argue: "Even viewing all their evidence in the  
351 light most favorable to them, no rational jury  
352 could find for them. End the case now."  
353  
354 Can move ANY TIME before case goes to jury  
355 (after opposing party fully heard on an issue)  
356 Standard: Rational factfinder COULD NOT find for  
357 the party on the evidence presented  
358 Court: draws all inferences for non-movant;  
359 does NOT weigh evidence or assess credibility

361 ⚠ CRITICAL: Must file 50(a) during trial or you  
362 LOSE the right to file 50(b) after the verdict!



---

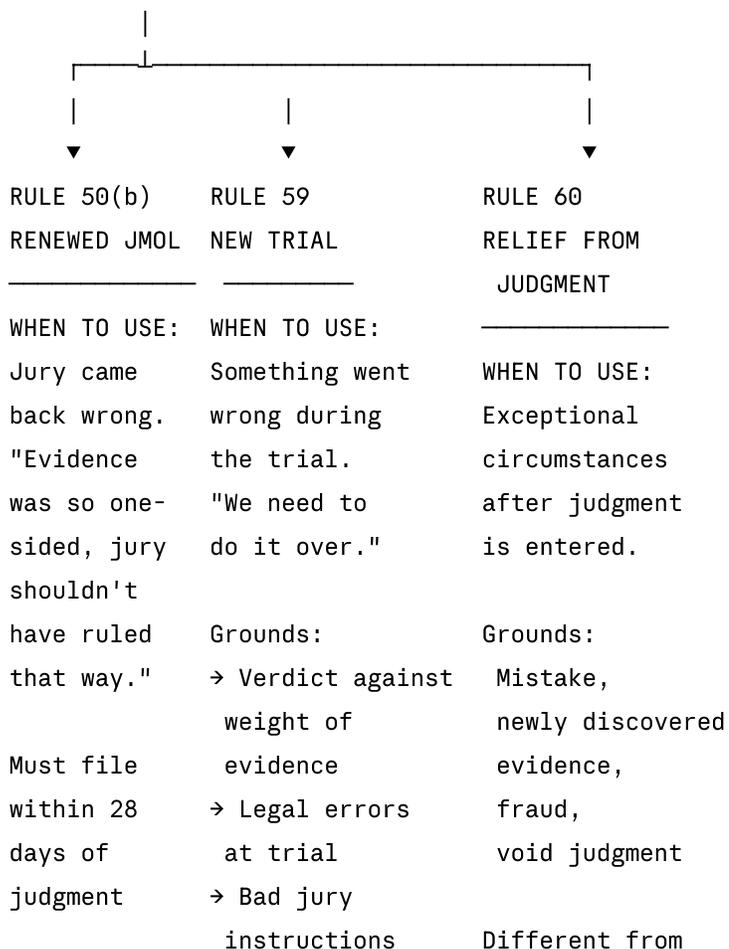
---

380 PHASE 6: POST-TRIAL MOTIONS

---

---

383 THREE POST-TRIAL OPTIONS:



406 Must mirror → Juror 50(b) – not  
407 prior 50(a) misconduct about the  
408 motion → Newly verdict being  
409 discovered wrong, but  
410 ⚠️ CANNOT evidence about getting  
411 file 50(b) → Grossly relief from  
412 without excessive or the judgment  
413 prior 50(a)! inadequate itself  
414 damages

416 KEY DISTINCTION:

417 Rule 50(b) = "Jury got it wrong – rule for me instead"  
418 Rule 59 = "Something went wrong – redo the trial"  
419 |  
420 ▼  
421 ↓ Still not resolved? Proceed to Appeal

---

---

426 PHASE 7: APPEAL

---

---

429 FINAL JUDGMENT RULE – 28 U.S.C. § 1291

---

431 Generally only FINAL judgments are appealable  
432 → Final judgment resolves ALL claims of ALL parties  
433  
434 Notice of appeal: Must file within 30 days  
435 after entry of judgment  
436

437 EXCEPTIONS TO FINALITY:

438 → Interlocutory appeals – 28 U.S.C. § 1292  
439 (injunctions, collateral order doctrine,  
440 permissive interlocutory appeal)  
441 → Writ of mandamus  
442

443 STANDARDS OF APPELLATE REVIEW:

444 → Legal conclusions: DE NOVO  
445 → Factual findings: CLEAR ERROR  
446 → Jury verdicts: SUBSTANTIAL EVIDENCE  
447 → Discretionary rulings: ABUSE OF DISCRETION  
448

449 Appellate court options:

450 → Affirm | Reverse | Remand | Modify

|



↘ Case truly over? Or can it be re-litigated?

---

---

PHASE 8: CLAIM & ISSUE PRECLUSION

---

---

CLAIM PRECLUSION (Res Judicata)

---

"A final judgment on the merits bars a party from suing again on the SAME claim"

Three requirements:

- (1) Final judgment on the merits
- (2) Same claim – Transactional Test:  
same transaction or series of connected transactions
- (3) Same parties (or their privies)

Effect: Bars re-litigation of claims that WERE or COULD HAVE BEEN litigated

---

ISSUE PRECLUSION (Collateral Estoppel)

---

"Once a court decides an issue necessary to its judgment, that decision precludes re-litigation of that issue in a subsequent action"

Five requirements:

- (1) Same issue of fact or law
- (2) Actually litigated and decided
- (3) Necessary to the judgment
- (4) Final judgment on the merits
- (5) Party against whom preclusion is sought was a party (or privy) to the prior action

Effect: Bars re-litigation of the specific ISSUE (not the entire claim)

---

---

496  
497 STRATEGIC SEQUENCE – RULES 41, 56, 50, 59 AT A GLANCE:  
498

---

---

499  
500 QUESTION: "Can we end this case early or cheaply?"  
501

502 Before/during pleadings:

- 503 → Rule 41(a): Plaintiff voluntarily dismisses
- 504 (1st time = without prejudice; 2nd = with)
- 505 → Rule 41(b): Defendant moves to dismiss for
- 506 failure to prosecute → on the merits

507 |

508 ▼

509 After discovery closes:

- 510 → Rule 56: Summary Judgment
- 511 "Facts undisputed. Law is clear. No trial needed."

512 |

513 ▼ (if denied – trial begins)

514 After opposing party presents evidence:

- 515 → Rule 50(a): JMOL during trial
- 516 "No rational jury could find for them. End it now."
- 517 ⚠ MUST FILE THIS or lose right to 50(b)!

518 |

519 ▼ (if denied – jury deliberates)

520 After jury verdict:

- 521 → Rule 50(b): Renewed JMOL – filed within 28 days

522 "Jury got it wrong – rule for me instead"

523 Must mirror prior 50(a) motion

524 AND/OR

- 525 → Rule 59: New Trial

526 "Something went wrong – we need to redo this"

527 Verdict against weight of evidence, legal errors,

528 juror misconduct, excessive damages  
529  
530

---

---

531  
532  
533 THE COMPLETE PICTURE – ONE LINE:  
534

---

---

535  
536 Pre-Filing → Complaint → Defendant Responds →  
537 Pleadings Settled → Rule 26(f) Meet & Confer →  
538 Rule 16(b) Scheduling Order → Initial Disclosures →  
539 Party-Driven Discovery → Expert Disclosures →  
540 Pretrial Disclosures → Rule 16 Pretrial Conferences →

541 Final Pretrial Order → Summary Judgment (maybe) →  
542 Trial → Post-Trial Motions → Appeal → Preclusion

543  
544

545 KEY RULES AT A GLANCE:

546

- 
- 
- 547 Rule 8(a) - Complaint requirements  
548 Rule 9(b) - Heightened pleading for fraud  
549 Rule 10(b) - Form of pleadings  
550 Rule 11 - Signature + certification (ethics)  
551 Rule 12(b) - Pre-answer motions / defenses  
552 Rule 12(g) - Omnibus motion rule (waiver trap)  
553 Rule 12(h) - What survives the waiver trap  
554 Rule 13 - Counterclaims and crossclaims  
555 Rule 15 - Amendments to pleadings  
556 Rule 16 - Pretrial case management  
557 Rule 26 - Scope and limits of discovery  
558 Rule 30 - Depositions  
559 Rule 33 - Interrogatories  
560 Rule 34 - Document requests  
561 Rule 35 - Physical/mental examinations  
562 Rule 36 - Requests for admissions  
563 Rule 37 - Discovery sanctions  
564 Rule 41 - Dismissal (voluntary = plaintiff out;  
565 involuntary = defendant moves; on merits)  
566 Rule 50(a) - JMOL during trial (before jury)  
567 Rule 50(b) - Renewed JMOL after verdict (28 days;  
568 requires prior 50(a)!)  
569 Rule 55 - Default judgment  
570 Rule 56 - Summary judgment (after discovery,  
571 before trial)  
572 Rule 59 - New trial (something went wrong;  
573 redo the trial)  
574 Rule 60 - Relief from judgment (exceptional  
575 circumstances)  
576 28 U.S.C.  
577 § 1291 - Final judgment / appealability  
578