



Congress, the Judiciary, and Federal Court Procedure

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Court procedural rules control how parties present their cases in court and how courts decide them. These rules play a key role in litigation—a party’s case may succeed or fail based not only on the merits of their substantive claims but also on their compliance or noncompliance with the applicable procedures. While many are aware of Congress’s role in enacting and the courts’ role in interpreting substantive laws, casual observers may be less familiar with the legislative and judicial branches’ roles in dictating court procedures.

Under a statute known as the [Rules Enabling Act](#), Congress and the judicial branch share responsibility for promulgating rules for the federal courts. The Rules Enabling Act grants the Supreme Court primary authority for creating and amending federal procedural rules, but also imposes congressional oversight of the rulemaking process. In the alternative, Congress can directly amend the federal procedural rules or enact statutes governing federal court procedures. This In Focus summarizes the various legal authorities that govern federal judicial procedure, outlines the rulemaking process under the Rules Enabling Act, and presents related considerations for Congress.

Overview of Federal Procedural Rules

Procedural rules govern all aspects of federal litigation, including initiation of a case, factual discovery, trial proceedings, briefing and oral argument, final judgment, and any appeal. For instance, among other things, procedural rules regulate the [pleadings](#) the parties file, [grand jury](#) proceedings and [civil](#) and [criminal](#) jury trials, and [testimony](#) and other [evidentiary matters](#). Procedural rules aim to provide structure to litigation, limit cost and delay, and ensure that all appropriate parties can participate fully and fairly in judicial proceedings. As Federal Rule of Civil Procedure 1 [explains](#), the rules “should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.”

Court procedures may come from several sources, including the Constitution, federal statutes, and procedural rules made under the Rules Enabling Act. Constitutional requirements include [Fifth](#), [Sixth](#), and [Seventh Amendment](#) rights, among others. Those requirements cannot be changed via ordinary legislation; any changes would require a constitutional amendment.

Many statutes governing federal judicial procedures are contained in [Title 28](#) of the *U.S. Code*, which governs the federal judiciary. Among other things, federal statutes define the [jurisdiction of the federal courts](#) (subject to constitutional limits) and govern certain [judicial procedures](#).

The rules governing federal court procedures promulgated under the Rules Enabling Act include the following:

- the [Federal Rules of Civil Procedure](#), which govern civil litigation in the trial-level federal district courts;

- the [Federal Rules of Criminal Procedure](#), which apply to criminal proceedings in district court and on appeal;
- the [Federal Rules of Appellate Procedure](#), which govern proceedings in the U.S. Courts of Appeals, including appeals from the district courts in civil, criminal, and bankruptcy cases; appeals from the Tax Court; and petitions for judicial review of agency action;
- the [Federal Rules of Evidence](#), which govern evidentiary matters in all federal courts;
- the [Federal Rules of Bankruptcy Procedure](#), which apply to bankruptcy proceedings; and
- the [Rules of the Supreme Court](#), which apply specifically to litigation before the High Court.

Procedural rules may be classified as either *jurisdictional rules* or *claim-processing rules*. The Supreme Court has [held](#) that jurisdictional rules strictly limit “a court’s adjudicatory authority”—the power of the court to consider a given case. Claim-processing rules, by contrast, “seek to promote the [orderly progress](#) of litigation by requiring that the parties take certain procedural steps at certain specified times.” Judges have discretion to modify claim-processing rules, but may not alter or waive jurisdictional rules. Those rules may only be changed by amending the relevant authority. A rule’s classification may depend on its source: the Supreme Court has [held](#) that many statutory deadlines to appeal are jurisdictional, while deadlines in court-made rules are not.

More than one set of rules may apply in a given case. For instance, both the Federal Rules of Civil Procedure and the Federal Rules of Evidence would apply to evidentiary matters in a civil trial in district court. Moreover, multiple constitutional, statutory, and rules-based legal authorities may govern procedures in a single proceeding. To illustrate, in criminal cases, the [Sixth Amendment](#) broadly protects the right of a criminal defendant to a speedy jury trial, while the [Speedy Trial Act](#) imposes specific timing requirements. Various statutory [provisions within Title 28](#) govern matters including juror qualifications and jury selection. In addition, [Federal Rule of Criminal Procedure 23](#) imposes requirements related to the exact size of a jury and the process by which a defendant can waive the right to a jury trial.

In addition to the foregoing authorities, lower federal courts may issue their own [local rules](#) of procedure under the Rules Enabling Act. The Supreme Court has also [recognized](#) that courts have inherent authority to supervise judicial proceedings, as long as the exercise of such authority does not conflict with procedural rules or statutes. Thus, individual judges or panels of judges may establish other procedures. Judges may modify or supplement certain procedural rules on a case-by-case basis or issue [standing orders](#) setting procedures that generally apply in their cases.

The Rules Enabling Act

Congress enacted the [Rules Enabling Act](#) in 1934 to streamline federal judicial procedure. At that time, separate rules governed civil proceedings at law (e.g., claims for money damages) and proceedings in equity (e.g., claims for injunctive relief). Proceedings in equity were subject to the [Federal Equity Rules](#), which applied nationwide. By contrast, under a statute known as the [Conformity Act](#), the procedural rules of the state in which each federal court sat governed proceedings at law.

The Rules Enabling Act paved the way for the federal courts to dispense with the formal division between proceedings in law and equity and created a process where the courts could adopt uniform rules for federal judicial proceedings. As currently codified, the Rules Enabling Act [authorizes](#) the Supreme Court to “prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts . . . and courts of appeals.” Such procedural rules may not “abridge, enlarge or modify any substantive right.” The Rules Enabling Act [directs](#) the Supreme Court to transmit any proposed amendments to the rules to Congress no later than May 1 of the year in which such amendments are slated to take effect. Amendments take effect automatically, unless Congress enacts legislation to reject, modify, or delay a proposed change.

The Rules Enabling Act also [empowers](#) lower courts to prescribe their own rules after public notice and comment. Those rules must be consistent with applicable statutes and the rules promulgated by the Supreme Court and are subject to modification or abrogation by the [Judicial Conference of the United States](#) (the national policymaking body for the federal courts) or [circuit judicial councils](#). In addition, the act [authorizes](#) the Supreme Court to create its own procedural rules, which need not be submitted to Congress before they take effect.

The Supreme Court [proposed](#) the first Federal Rules of Civil Procedure under the Rules Enabling Act in 1937, and Congress allowed those rules to take effect without modification in 1938. The rules abolished the distinction between proceedings in law and in equity, with [Federal Rule of Civil Procedure 2](#) providing: “There shall be one form of action to be known as ‘civil action.’” (Later amendments changed the wording, but not the substance, of that provision.) The Supreme Court promulgated the [Federal Rules of Criminal Procedure](#) in 1944 and the [Federal Rules of Appellate Procedure](#) in 1967.

In 1972, the Supreme Court first [proposed](#) the Federal Rules of Evidence. However, in the first and perhaps most notable exercise of its authority to oversee judicial rulemaking, Congress passed legislation blocking those rules from taking effect. In 1975, Congress instead [enacted](#) new Federal Rules of Evidence legislatively. The congressionally enacted rules were based on the rules adopted by the Supreme Court but contained significant modifications, particularly with respect to evidentiary privileges. Congress further [provided](#) that any rule “creating, abolishing, or modifying an evidentiary privilege shall have no force or effect unless approved by Act of Congress.” Since then, Congress has periodically [exercised](#) its authority to [delay](#) or [modify](#) procedural rules that the Supreme Court proposed for the lower federal courts under the Rules

Enabling Act. At times, Congress has also [enacted](#) legislation to directly [amend](#) the federal procedural rules.

While the Supreme Court is responsible for proposing new procedural rules under the Rules Enabling Act, most rules amendments originate from [standing committees](#) of the Judicial Conference. The standing committees propose amendments, solicit public comments, and then submit the amendments to the Judicial Conference’s Committee on Rules of Practice and Procedure. Any amendments approved by that committee and the Judicial Conference are then transmitted to the Supreme Court, which makes the ultimate decision whether to adopt them and submit them to Congress.

Considerations for Congress

Congress possesses substantial legal authority to dictate the procedures of federal courts, either through the process established in the Rules Enabling Act or through stand-alone legislation. This authority includes power to regulate the Supreme Court but, as a [CRS report](#) discusses in more detail, the unique role of the Supreme Court in the American constitutional system means that Congress has sometimes taken a less active role in regulating the Supreme Court than it does when regulating the lower federal courts. One example of this is Congress’s decision in the Rules Enabling Act to empower the Supreme Court to make its own procedural rules without the congressional review that applies to rules for the lower courts.

Congress is involved in the court rulemaking process as a matter of course each May, when it has the opportunity to review rule changes proposed by the Supreme Court. Beyond delaying, modifying, or rejecting specific proposals, Congress could amend the Rules Enabling Act to change the process for creating federal court procedural rules. Congress can also enact new or revised procedural rules directly via [legislation](#).

One topic related to court procedures that has attracted significant attention from Congress in recent years is [litigation against the federal government](#), including [nationwide injunctions](#) (also called universal injunctions), review of agency action under the [Administrative Procedure Act](#), [enforcement of court orders](#) against the executive branch, and [removal of cases](#) against federal officials from state to federal court. Another area of interest is [Supreme Court regulation](#), including discussion of the Court’s [non-merits docket](#) (also called the shadow docket or the interim docket), the Court’s adoption of a [Code of Conduct](#), and the use of the Constitution’s [Exceptions Clause](#) to limit the Court’s appellate jurisdiction. Lawmakers have also considered [forum selection](#) for federal cases; [class actions](#), which are governed by Federal Rule of Civil Procedure 23; and the [broadcasting of federal criminal trials](#), which is limited by Federal Rule of Criminal Procedure 53.

CRS tracks Supreme Court litigation related to court procedural rules, including roundups from the [2024 Term](#) and the [2025 Term](#), and can advise congressional clients on legislative proposals or pending cases.

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