

Proposed Amendments to Rule 15

Rule 15 is amended as follows:

Rule 15. Amended and Supplemental Pleadings

(a) Amendments **Before Trial**.

(1) Amending as a Matter of Course. A party may amend ~~its~~^{the} party's] pleading once as a matter of course: **(A) before being** ~~[at any time before a responsive pleading is]~~ served **with a responsive pleading; or (B)** ~~[or, if the pleading is one to which no responsive pleading is permitted and the action has not been noticed for trial, the party may so amend it at any time]~~ within 20 days after ~~[it is]~~ serving^{ed} **the pleading if a responsive pleading is not allowed and the action is not yet on the trial calendar.**

(2) Other Amendments.~~[Otherwise]~~ **In all other cases,** a party may amend ~~its~~^{the} party's] pleading only **with the opposing party's** ~~[by leave of court or by]~~ written consent **or the court's leave. The court should** ~~[of the adverse party; and leave shall be]~~ freely giveⁿ **leave** when justice so requires.

(3) Time to Respond. **Unless the court orders otherwise, any required** ~~[A party shall plead in]~~ response to an amended pleading **will be made** within the time remaining **to respond**~~[for response]~~ to the original pleading or within 10 days after service of the amended pleading, whichever ~~[period may be longer, unless the court otherwise orders]~~ **is later.**

(b) Amendments **During and After Trial**~~[To Conform to the Evidence]~~.

(1) Based on an Objection at Trial. If, at trial, a party objects that **evidence is not within the issues raised in the pleadings, the court may**

permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) For Issues Tried by Consent. When an issue[s] not raised by the pleadings ~~is[are]~~ tried by **the parties'** express or implied consent ~~[of the parties]~~, **it will** ~~[they shall]~~ be treated in all respects as if **it**~~[they]~~ had been raised in the pleadings. **A party may move – at any time – to amend** ~~[Such amendment of]~~ the pleadings ~~[as may be necessary to cause them]~~ to conform **them** to the evidence and to raise **an unpleaded** ~~[these] issue[s may be made upon motion of any party at any time, even after judgment; but]~~ **But** failure ~~[so]~~ to amend does not affect the result of the trial of **that**~~[ese] issue[s]~~. ~~[If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence].~~

(c) Relation Back of Amendments.

(1) When an Amendment Relates Back. An amendment **to**~~[ef]~~ a pleading relates back to the date of the original pleading when:

(A[1]) ~~[relation back is permitted by]~~ the law that provides the **applicable** statute of limitations **allows relation back**; ~~[applicable to the action, or]~~

(B[2]) **the amendment asserts a** ~~[the]~~ claim or defense **that** ~~[asserted in the amendment]~~ arose out of the conduct, transaction, or occurrence set **out –** ~~[forth]~~ or attempted to be set **out –** ~~[forth]~~ in the original pleading; or

(C[3]) the amendment changes the party or the naming of the party against whom a claim is asserted, if **Rule 15(c)(1)(B)** ~~[the foregoing provision (2)]~~ is satisfied and **if**, within the period provided by Rule 4 for **servi**~~ng~~ ~~[ce of the pleadings commencing the action]~~**the summons and complaint**, the party to be brought in by amendment: (i[A]) ~~[has]~~ received such notice of ~~[the institution of the]~~ action that **it**~~[the party]~~ will not be prejudiced in **defending** ~~[maintaining a defense]~~ on the merits; and (ii[B]) knew or should have known that, ~~[but for a mistake concerning the identity of the proper party]~~, the action would have been brought against **it, but for a mistake concerning the proper party's identity**.

(2) Notice to the United States. When the United States or a United States officer or agency is added as a defendant by amendment, the notice requirements of Rule 15(c)(1)(C)(i) and (ii) are satisfied if, during the stated period, process was mailed or delivered ~~[The delivery or mailing of the pleadings commencing the action]~~ to the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice, or **to the**~~[an]~~

agency or officer.~~[who would have been a proper defendant if named, satisfies the requirement of subparagraphs (A) and (B) of this paragraph (3) with respect to the United States or any agency or officer thereof to be brought into the action as a defendant.]~~

(d) Supplemental Pleadings. ~~[Upon]~~**On** motion **and** ~~[of a party, the court may, upon]~~ reasonable notice, **the court may, on** ~~[and upon such terms as are]~~ just **terms**, permit **a**~~[the]~~ party to serve a supplemental pleading setting **out**~~[forth]~~ **any** transaction, ~~[s or]~~ occurrence,~~[s or]~~ event~~[s]~~ **that** ~~[which have]~~ happened **after**~~[since]~~ the date of the pleading ~~[sought]~~ to be supplemented. **The court may permit supplementation** ~~[Permission may be granted]~~ even though the original pleading is defective in ~~[its]~~ **stating**~~[ements of]~~ a claim ~~[for relief]~~ or defense. **The**~~[If the]~~ court **may** ~~[deems it advisable that the adverse party plead to the supplemental pleading, it shall so]~~ **order that the opposing party plead to the supplemental pleading within a** specified~~[ying the]~~ time ~~[therefor]~~.

(As amended, eff. Jan. 1, 1982; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; _____, **2008, eff. _____, 2009.**)

Advisory Committee Note

The language of Rule 15 has been amended as part of the general restyling of these rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.