

No. SC100277

In the
Supreme Court of Missouri

CLARA FAATZ AND WILLIAM CALDWELL,
Appellants,

v.

JOHN R. ASHCROFT,
IN HIS OFFICIAL CAPACITY AS MISSOURI SECRETARY OF STATE,

AND

THE JUDICIAL REDISTRICTING COMMISSION,
Respondents.

Appeal from the Circuit Court of Cole County
The Honorable Judge Jon E. Beetem

APPENDIX TO RESPONDENTS' BRIEF

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United States Code Annotated
Constitution of the United States
Annotated
Article I. The Congress

U.S.C.A. Const. Art. I § 6, cl. 1

Section 6, Clause 1. Compensation of Members; Privilege from Arrest
Currentness

The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

U.S.C.A. Const. Art. I § 6, cl. 1, USCA CONST Art. I § 6, cl. 1
Current through P.L. 118-23. Some statute sections may be more current, see credits for details.

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Vernon's Annotated Missouri Statutes
Constitution of 1945 of the State of Missouri
Article III. Legislative Department

This section has been updated. Click [here](#) for the updated version.

V.A.M.S. Const. Art. 3, § 2

§ 2. Election of representatives--apportionment commission, duties, compensation

Effective: [See Text Amendments] to December 5, 2018.

The house of representatives shall consist of one hundred sixty-three members elected at each general election and apportioned in the following manner: Within sixty days after the population of this state is reported to the President for each decennial census of the United States and, in the event that a reapportionment has been invalidated by a court of competent jurisdiction, within sixty days after notification by the governor that such a ruling has been made, the congressional district committee of each of the two parties casting the highest vote for governor at the last preceding election shall meet and the members of the committee shall nominate, by a majority vote of the members of the committee present, provided that a majority of the elected members is present, two members of their party, residents in that district, as nominees for reapportionment commissioners. Neither party shall select more than one nominee from any one state legislative district. The congressional committees shall each submit to the governor their list of elected nominees. Within thirty days the governor shall appoint a commission consisting of one name from each list to reapportion the state into one hundred and sixty-three representative districts and to establish the numbers and boundaries of said districts.

If any of the congressional committees fails to submit a list within such time the governor shall appoint a member of his own choice from that district and from the political party of the committee failing to make the appointment.

Members of the commission shall be disqualified from holding office as members of the general assembly for four years following the date of the filing by the commission of its final statement of apportionment.

For the purposes of this article, the term congressional district committee or congressional district refers to the congressional district committee or the congressional district from which a congressman was last elected, or, in the event members of congress from this state have been elected at large, the term congressional district committee refers to those persons who last served as the congressional district committee for those districts from which congressmen were last elected, and the term congressional district refers to those districts from which congressmen were last elected. Any action pursuant to this section by the congressional district committee shall take place only at duly called meetings, shall be recorded in their official minutes and only members present in person shall be permitted to vote.

The commissioners so selected shall on the fifteenth day, excluding Sundays and holidays, after all members have been selected, meet in the capitol building and proceed to organize by electing from their number a chairman, vice chairman and secretary and shall adopt an agenda establishing at least three hearing dates on which hearings open to the public shall be held. A copy of the agenda shall be filed with the clerk of the house of representatives within twenty-four hours after its adoption. Executive meetings may be scheduled and held as often as the commission deems advisable.

The commission shall reapportion the representatives by dividing the population of the state by the number one hundred sixty-three and shall establish each district so that the population of that district shall, as nearly as possible, equal that figure.

Each district shall be composed of contiguous territory as compact as may be.

§ 2. Election of representatives--apportionment commission, MO CONST Art. 3, § 2

Not later than five months after the appointment of the commission, the commission shall file with the secretary of state a tentative plan of apportionment and map of the proposed districts and during the ensuing fifteen days shall hold such public hearings as may be necessary to hear objections or testimony of interested persons.

Not later than six months after the appointment of the commission, the commission shall file with the secretary of state a final statement of the numbers and the boundaries of the districts together with a map of the districts, and no statement shall be valid unless approved by at least seven-tenths of the members.

After the statement is filed members of the house of representatives shall be elected according to such districts until a reapportionment is made as herein provided, except that if the statement is not filed within six months of the time fixed for the appointment of the commission, it shall stand discharged and the house of representatives shall be apportioned by a commission of six members appointed from among the judges of the appellate courts of the state of Missouri by the state supreme court, a majority of whom shall sign and file its apportionment plan and map with the secretary of state within ninety days of the date of the discharge of the apportionment commission. Thereafter members of the house of representatives shall be elected according to such districts until a reapportionment is made as herein provided.

Each member of the commission shall receive as compensation fifteen dollars a day for each day the commission is in session but not more than one thousand dollars, and, in addition, shall be reimbursed for his actual and necessary expenses incurred while serving as a member of the commission.

No reapportionment shall be subject to the referendum.

Credits
(Amendments adopted at special election Jan. 14, 1966; general election Nov. 2, 1982.)

V. A. M. S. Const. Art. 3, § 2, MO CONST Art. 3, § 2
Statutes are current through the end of the 2021 First Regular and First Extraordinary Sessions of the 101st General Assembly.
Constitution is current through the November 3, 2020 General Election.

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Vernon's Annotated Missouri Statutes
Constitution of 1945 of the State of Missouri
Article III. Legislative Department

This section has been updated. Click [here](#) for the updated version.

V.A.M.S. Const. Art. 3, § 3

§ 3. State demographer established and selected--election of representatives--
legislative districts established--congressional district commission

Effective: December 6, 2018 to December 3, 2020

<Text of section eff. until Dec. 3, 2020.>

(a) There is hereby established the post of "Nonpartisan State Demographer". The nonpartisan state demographer shall acquire appropriate information to develop procedures in preparation for drawing legislative redistricting maps on the basis of each federal census for presentation to the house apportionment commission and the senatorial apportionment commission.

(b) The nonpartisan state demographer shall be selected through the following process. First, state residents may apply for selection to the state auditor using an application developed by the state auditor to determine an applicant's qualifications and expertise relevant to the position. Second, the state auditor shall deliver to the majority leader and minority leader of the senate a list of at least three applicants with sufficient expertise and qualifications, as determined by the state auditor, to perform the duties of the nonpartisan state demographer. Third, if the majority leader and minority leader of the senate together agree that a specific applicant should be selected to be the nonpartisan state demographer, that applicant shall be selected and the selection process shall cease. Fourth, if the majority leader and minority leader of the senate cannot together agree on an applicant, they may each remove a number of applicants on the state auditor's list equal to one-third of the total number of applicants on that list, rounded down to the next integer, and the state auditor shall then conduct a random lottery of the applicants remaining after removal to select the nonpartisan state demographer. The state auditor shall prescribe a time frame and deadlines for this application and selection process that both encourages numerous qualified applicants and avoids delay in selection. The nonpartisan state demographer shall serve a term of five years and may be reappointed. To be eligible for the nonpartisan state demographer position, an individual shall not have served in a partisan, elected position for four years prior to the appointment. The nonpartisan state demographer shall be disqualified from holding office as a member of the general assembly for four years following the date of the presentation of his or her most recent legislative redistricting map to the house apportionment commission or the senatorial apportionment commission.

(c) The house of representatives shall consist of one hundred sixty-three members elected at each general election and apportioned as provided in this section.

(1) Within ten days after the population of this state is reported to the President for each decennial census of the United States or, in the event that a reapportionment has been invalidated by a court of competent jurisdiction, within ten days after such a ruling has been made, the nonpartisan state demographer shall begin the preparation of legislative districting plans and maps using the following methods, listed in order of priority:

§ 3. State demographer established and selected--election of..., MO CONST Art. 3, § 3

a. Districts shall be established on the basis of total population. Legislative districts shall each have a total population as nearly equal as practicable to the ideal population for such districts, determined by dividing the number of districts to be established into the total population of the state reported in the federal decennial census;

b. Districts shall be established in a manner so as to comply with all requirements of the United States Constitution and applicable federal laws, including, but not limited to, the Voting Rights Act of 1965 (as amended). Notwithstanding any other provision of this Article, districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or diminishing their ability to elect representatives of their choice, whether by themselves or by voting in concert with other persons.

Districts shall be designed in a manner that achieves both partisan fairness and, secondarily, competitiveness. **“Partisan fairness”** means that parties shall be able to translate their popular support into legislative representation with approximately equal efficiency. **“Competitiveness”** means that parties' legislative representation shall be substantially and similarly responsive to shifts in the electorate's preferences.

To this end, the nonpartisan state demographer shall calculate the average electoral performance of the two parties receiving the most votes in the three preceding elections for governor, for United States Senate, and for President of the United States. This index shall be defined as the total votes received by each party in the three preceding elections for governor, for United States Senate, and for President of the United States, divided by the total votes cast for both parties in these elections. Using this index, the nonpartisan state demographer shall calculate the total number of wasted votes for each party, summing across all of the districts in the plan. "Wasted votes" are votes cast for a losing candidate or for a winning candidate in excess of the fifty percent threshold needed for victory. In any plan of apportionment and map of the proposed districts submitted to the respective apportionment commission, the nonpartisan state demographer shall ensure the difference between the two parties' total wasted votes, divided by the total votes cast for the two parties, is as close to zero as practicable.

To promote competitiveness, the nonpartisan state demographer shall use the electoral performance index to simulate elections in which the hypothetical statewide vote shifts by one percent, two percent, three percent, four percent, and five percent in favor of each party. The vote in each individual district shall be assumed to shift by the same amount as the statewide vote. The nonpartisan state demographer shall ensure that, in each of these simulated elections, the difference between the two parties' total wasted votes, divided by the total votes cast for the two parties, is as close to zero as practicable;

c. Subject to the requirements of paragraphs a. and b. of this subdivision, districts shall be composed of contiguous territory. Areas which meet only at the points of adjoining corners are not contiguous;

d. To the extent consistent with paragraphs a. to c. of this subdivision, district boundaries shall coincide with the boundaries of political subdivisions of the state. The number of counties and cities divided among more than one district shall be as small as possible. When there is a choice between dividing local political subdivisions, the more populous subdivisions shall be divided before the less populous, but this preference shall not apply to a legislative district boundary drawn along a county line which passes through a city that lies in more than one county;

e. Preference shall be that districts are compact in form, but the standards established by paragraphs a. to d. of this subdivision take precedence over compactness where a conflict arises between compactness and these standards. In general, compact districts are those which are square, rectangular, or hexagonal in shape to the extent permitted by natural or political boundaries.

§ 3. State demographer established and selected--election of..., MO CONST Art. 3, § 3

(2) Within sixty days after the population of this state is reported to the President for each decennial census of the United States or, in the event that a reapportionment has been invalidated by a court of competent jurisdiction, within sixty days that such a ruling has been made, the congressional district committee of each of the two parties casting the highest vote for governor at the last preceding election shall meet and the members of the committee shall nominate, by a majority vote of the members of the committee present, provided that a majority of the elected members is present, two members of their party, residents in that district, as nominees for reapportionment commissioners. Neither party shall select more than one nominee from any one state legislative district. The congressional committees shall each submit to the governor their list of elected nominees. Within thirty days the governor shall appoint a commission consisting of one name from each list to reapportion the state into one hundred and sixty-three representative districts and to establish the numbers and boundaries of said districts.

If any of the congressional committees fails to submit a list within such time the governor shall appoint a member of his own choice from that district and from the political party of the committee failing to make the appointment.

Members of the commission shall be disqualified from holding office as members of the general assembly for four years following the date of the filing by the commission of its final statement of apportionment.

For the purposes of this Article, the term congressional district committee or congressional district refers to the congressional district committee or the congressional district from which a congressman was last elected, or, in the event members of congress from this state have been elected at large, the term congressional district committee refers to those persons who last served as the congressional district committee for those districts from which congressmen were last elected, and the term congressional district refers to those districts from which congressmen were last elected. Any action pursuant to this section by the congressional district committee shall take place only at duly called meetings, shall be recorded in their official minutes and only members present in person shall be permitted to vote.

(3) Within six months after the population of this state is reported to the President for each decennial census of the United States or, in the event that a reapportionment has been invalidated by a court of competent jurisdiction, within six months after such a ruling has been made, the nonpartisan state demographer shall make public and file with the secretary of state and with the house apportionment commission a tentative plan of apportionment and map of the proposed districts, as well as all demographic and partisan data used in the creation of the plan and map.

The commissioners so selected shall, within ten days of receiving the tentative plan of apportionment and map of the proposed districts, meet in the capitol building and proceed to organize by electing from their number a chairman, vice chairman and secretary. The commission shall adopt an agenda establishing at least three hearing dates on which hearings open to the public shall be held to hear objections or testimony from interested persons. A copy of the agenda shall be filed with the clerk of the house of representatives within twenty-four hours after its adoption. Executive meetings may be scheduled and held as often as the commission deems advisable.

The commission may make changes to the tentative plan of apportionment and map of the proposed districts received from the nonpartisan state demographer provided that such changes are consistent with this section and approved by a vote of at least seven-tenths of the commissioners. If no changes are made or approved as provided for in this subsection, the tentative plan of apportionment and map of proposed districts shall become final. Not later than two months of receiving the tentative plan of apportionment and map of the proposed districts, the commission shall file with the secretary of state a final statement of the numbers and the boundaries of the districts together with a map of the districts.

Each member of the commission shall receive as compensation fifteen dollars a day for each day the commission is in session but not more than one thousand dollars, and, in addition, shall be reimbursed for his actual and necessary expenses incurred while serving as a member of the commission.

§ 3. State demographer established and selected--election of..., MO CONST Art. 3, § 3

No reapportionment shall be subject to the referendum.

Credits

(Amendments adopted at special election Jan. 14, 1966; general election Nov. 2, 1982. Recodification and amendment from Art. III, § 2 adopted at general election Nov. 6, 2018, Amendment 1, Initiative Petition, eff. Dec. 6, 2018.)

V. A. M. S. Const. Art. 3, § 3, MO CONST Art. 3, § 3

Statutes are current through the end of the 2021 First Regular and First Extraordinary Sessions of the 101st General Assembly. Constitution is current through the November 3, 2020 General Election.

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Article III. Legislative Department

This section has been updated. Click [here](#) for the updated version.

V.A.M.S. Const. Art. 3, § 7

§ 7. Senatorial apportionment commission--number, appointment, duties, compensation

Effective: [See Text Amendments] to December 5, 2018.

Within sixty days after the population of this state is reported to the President for each decennial census of the United States, and within sixty days after notification by the governor that a reapportionment has been invalidated by a court of competent jurisdiction, the state committee of each of the two political parties casting the highest vote for governor at the last preceding election shall, at a committee meeting duly called, select by a vote of the individual committee members, and thereafter submit to the governor a list of ten persons, and within thirty days thereafter the governor shall appoint a commission of ten members, five from each list, to reapportion the thirty-four senatorial districts and to establish the numbers and boundaries of said districts.

If either of the party committees fails to submit a list within such time the governor shall appoint five members of his own choice from the party of the committee so failing to act.

Members of the commission shall be disqualified from holding office as members of the general assembly for four years following the date of the filing by the commission of its final statement of apportionment.

The commissioners so selected shall on the fifteenth day, excluding Sundays and holidays, after all members have been selected, meet in the capitol building and proceed to organize by electing from their number a chairman, vice chairman and secretary and shall adopt an agenda establishing at least three hearing dates on which hearings open to the public shall be held. A copy of the agenda shall be filed with the secretary of the senate within twenty-four hours after its adoption. Executive meetings may be scheduled and held as often as the commission deems advisable.

The commission shall reapportion the senatorial districts by dividing the population of the state by the number thirty-four and shall establish each district so that the population of that district shall, as nearly as possible, equal that figure; no county lines shall be crossed except when necessary to add sufficient population to a multi-district county or city to complete only one district which lies partly within such multi-district county or city so as to be as nearly equal as practicable in population. Any county with a population in excess of the quotient obtained by dividing the population of the state by the number thirty-four is hereby declared to be a multi-district county.

Not later than five months after the appointment of the commission, the commission shall file with the secretary of state a tentative plan of apportionment and map of the proposed districts and during the ensuing fifteen days shall hold such public hearings as may be necessary to hear objections or testimony of interested persons.

Not later than six months after the appointment of the commission, the commission shall file with the secretary of state a final statement of the numbers and the boundaries of the districts together with a map of the districts, and no statement shall be valid unless approved by at least seven members.

After the statement is filed senators shall be elected according to such districts until a reapportionment is made as herein provided, except that if the statement is not filed within six months of the time fixed for the appointment of the commission, it

§ 7. Senatorial apportionment commission--number,...., MO CONST Art. 3, § 7

shall stand discharged and the senate shall be apportioned by a commission of six members appointed from among the judges of the appellate courts of the state of Missouri by the state supreme court, a majority of whom shall sign and file its apportionment plan and map with the secretary of state within ninety days of the date of the discharge of the apportionment commission. Thereafter senators shall be elected according to such districts until a reapportionment is made as herein provided.

Each member of the commission shall receive as compensation fifteen dollars a day for each day the commission is in session, but not more than one thousand dollars, and, in addition, shall be reimbursed for his actual and necessary expenses incurred while serving as a member of the commission.

No reapportionment shall be subject to the referendum.

Credits

(Amendments adopted at special election Jan. 14, 1966; general election Nov. 2, 1982.)

V. A. M. S. Const. Art. 3, § 7, MO CONST Art. 3, § 7

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V.A.M.S. Const. Art. 3, § 19

§ 19. Legislative privileges--legislative records--legislative proceedings public

Effective: December 6, 2018

Currentness

(a) Senators and representatives shall, in all cases except treason, felony, offenses under this Article, or breach of the peace, be privileged from arrest during the session of the general assembly, and for the fifteen days next before the commencement and after the termination of each session; and they shall not be questioned for any speech or debate in either house in any other place.

(b) Legislative records shall be public records and subject to generally applicable state laws governing public access to public records, including the Sunshine Law. Legislative records include, but are not limited to, all records, in whatever form or format, of the official acts of the general assembly, of the official acts of legislative committees, of the official acts of members of the general assembly, of individual legislators, their employees and staff, of the conduct of legislative business and all records that are created, stored or distributed through legislative branch facilities, equipment or mechanisms, including electronic. Each member of the general assembly is the custodian of legislative records under the custody and control of the member, their employees and staff. The chief clerk of the house or the secretary of the senate are the custodians for all other legislative records relating to the house and the senate, respectively.

(c) Legislative proceedings, including committee proceedings, shall be public meetings subject to generally applicable law governing public access to public meetings, including the Sunshine Law. Open public meetings of legislative proceedings shall be subject to recording by citizens, so long as the proceedings are not materially disrupted.

Credits

(Amendment adopted at general election Nov. 6, 2018, Amendment 1, Initiative Petition, eff. Dec. 6, 2018.)

V. A. M. S. Const. Art. 3, § 19, MO CONST Art. 3, § 19

Statutes are current through the end of the 2021 First Regular and First Extraordinary Sessions of the 101st General Assembly. Constitution is current through the November 3, 2020 General Election.

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Clerk Handbooks

Supreme Court Rules

	Section/Rule:	52.04
Subject: Rule 52 - Rules of Civil Procedure - Rules Governing Civil Procedure in the Circuit Courts - Parties	Publication / Adopted Date:	April 21, 1972
Topic: Joinder of Persons Needed for Just Adjudication	Revised / Effective Date:	January 1, 1994

52.04. Joinder of Persons Needed for Just Adjudication

(a) Persons to Be Joined if Feasible. A person shall be joined in the action if: (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant.

(b) Determination by Court Whenever Joinder Not Feasible. If a person as described in Rule 52.04(a)(1) or Rule 52.04(a)(2) cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it or should be dismissed, the absent party being thus regarded as indispensable. The factors to be considered by the court include: (i) to what extent a judgment rendered in the person's absence might be prejudicial to that person or those already parties; (ii) the extent to which by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (iii) whether a judgment rendered in the person's absence will be adequate; and (iv) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivisions (a) (1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) Exception of Class Actions. This rule is subject to the provisions of [Rule 52.08](#).

(Adopted April 21, 1972, eff. Dec. 1, 1972. Amended Sept. 28, 1993, eff. Jan. 1, 1994.)

Committee Note - 1974

This is the same as Rule 19 of the Federal Rules of Civil Procedure with references to jurisdiction and venue eliminated.

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Supreme Court Rules

	Section/Rule:	52.06
Subject: Rule 52 - Rules of Civil Procedure - Rules Governing Civil Procedure in the Circuit Courts - Parties	Publication / Adopted Date:	April 21, 1972
Topic: Misjoinder and Nonjoinder of Parties	Revised / Effective Date:	December 1, 1972

52.06. Misjoinder and Nonjoinder of Parties

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

(Adopted April 21, 1972, eff. Dec. 1, 1972.)

Committee Note - 1974

This is the same as prior Rule 52.06(a).

Compare: Rule 21 of the Federal Rules of Civil Procedure.



Clerk Handbooks

Supreme Court Rules

	Section/Rule:	55.27
Subject:	Rule 55 - Rules of Civil Procedure - Rules Governing Civil Procedure in the Circuit Courts - Pleadings, Motions, and Hearings	Publication / Adopted January 19, 1973
Topic:	Defenses and Objections - How Presented - Revised / Effective By Pleading or Motion - Motion for Judgment on the Pleadings	Date: January 1, 2012

55.27. Defenses and Objections - How Presented - By Pleading or Motion - Motion for Judgment on the Pleadings

(a) **How Presented.** Every defense, in law or fact, to a claim in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

- (1) Lack of jurisdiction over the subject matter,
- (2) Lack of jurisdiction over the person,
- (3) That plaintiff does not have legal capacity to sue,
- (4) Insufficiency of process,
- (5) Insufficiency of service of process,
- (6) Failure to state a claim upon which relief can be granted,
- (7) Failure to join a party under [Rule 52.04](#),
- (8) That plaintiff should furnish security for costs,
- (9) That there is another action pending between the same parties for the same cause in this state,
- (10) That several claims have been improperly united,
- (11) That the counterclaim or cross-claim is one which cannot be properly interposed in this action.

A motion making any of these defenses shall be made:

(A) Within the time allowed for responding to the opposing party's pleading,
or

(B) If no responsive pleading is permitted, within thirty days after the service
of the last pleading.

Motions and pleadings may be filed simultaneously without waiver of the matters contained
in either.

No defense or objection is waived by being joined with one or more other defenses or
objections in a responsive pleading or motion.

If a pleading sets forth a claim for relief to which the adverse party is not required to serve a
responsive pleading, the adverse party may assert at the trial any defense in law or fact to
the claim for relief.

If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to
state a claim upon which relief can be granted, matters outside the pleadings are presented
to and not excluded by the court, the motion shall be treated as one for summary judgment
and disposed of as provided in [Rule 74.04](#). All parties shall be given reasonable opportunity
to present all material made pertinent to such a motion by [Rule 74.04](#).

(b) Motion for Judgment on the Pleadings. After the pleadings are closed but within such
time as not to delay the trial, any party may move for judgment on the pleadings. If, on a
motion for judgment on the pleadings, matters outside the pleadings are presented to and
not excluded by the court, the motion shall be treated as one for summary judgment and
disposed of as provided in [Rule 74.04](#), and all parties shall be given reasonable opportunity
to present all materials made pertinent to such a motion by [Rule 74.04](#).

(c) Preliminary Hearings. The defenses specifically enumerated (1)-(11) in subdivision (a)
of this Rule, whether made in a pleading or by motion, and the motion for judgment
mentioned in subdivision (b) of this Rule shall be heard and determined before trial on
application of any party, unless the court orders that the hearing and determination thereof
be deferred until the trial.

(d) Motion for More Definite Statement. A party may move for a more definite statement
of any matter contained in a pleading that is not averred with sufficient definiteness or
particularity to enable the party properly to prepare responsive pleadings or to prepare
generally for trial when a responsive pleading is not required. If the motion is granted and
the order of the court is not obeyed within ten days after notice of the order, or within such
other time as the court may fix, the court may strike the pleading to which the motion was
directed or make such order as it deems just.

(e) Motion to Strike. Upon motion made by a party before responding to a pleading or, if
no responsive pleading is permitted by these rules, upon motion made by a party within
thirty days after the service of the pleading upon any party or upon the court's own initiative
at any time, the court may order stricken from any pleading any insufficient defense or any
redundant, immaterial, impertinent, or scandalous matter.

(f) Consolidation of Defenses in Motion. A party who makes a motion under this Rule 55.27 may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this Rule 55.27 but omits therefrom any defense or objection then available that this Rule 55.27 permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in Rule 55.27(g)(2) on any of the grounds there stated.

(g) Waiver or Preservation of Certain Defenses.

(1) A defense of:

(A) Lack of jurisdiction over the person,

(B) Insufficiency of process,

(C) Insufficiency of service of process,

(D) That plaintiff should furnish security for costs,

(E) That plaintiff does not have legal capacity to sue,

(F) That there is another action pending between the same parties for the same cause in this state,

(G) That several claims have been improperly united, or

(H) That the counterclaim or cross-claim is one which cannot be properly interposed in this action, is waived if it is:

(a) Omitted from a motion in the circumstances described in Rule 55.27(f), or

(b) Neither made by motion under this Rule 55.27 nor included in a responsive pleading.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under [Rule 52.04](#), and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under [Rule 55.01](#) or by motion for judgment on the pleadings.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

(Adopted Jan. 19, 1973, eff. Sept. 1, 1973. Amended June 1, 1993, eff. Jan. 1, 1994; Sept. 28, 1993, eff. Jan. 1, 1994; May 26, 2000, eff. Jan. 1, 2001; June 21, 2002, eff. Jan. 1, 2003. Amended June 23, 2008, eff. July 1, 2008; June 28, 2011, effective January 1, 2012.)



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Supreme Court Rules

	Section/Rule:	78.07
Subject:	Rule 78 - Rules of Civil Procedure - Rules Governing Civil Procedure in the Circuit Courts - New Trials - After-Trial Motions - Preservation of Error	Publication / Adopted April 10, 1974 Date:
Topic:	After-Trial Motion - Allegations of Error Required	Revised / Effective July 1, 2017 Date:

78.07 After-Trial Motion - Allegations of Error Required

(a) In jury tried cases, except as otherwise provided in this Rule 78.07, allegations of error must be included in a motion for a new trial in order to be preserved for appellate review.

The following matters need not be included in such motion to preserve the allegations of error:

- (1) Questions of jurisdiction over the subject matter;
- (2) Questions presented in motions for judgment under [Rule 72.01\(b\)](#); and
- (3) Questions relating to motions for directed verdict that are granted at trial.

Where definite objections or requests were made during the trial in accordance with [Rule 78.09](#), including specific objections to instructions, a general statement in the motion of any allegations of error based thereon is sufficient.

Allegations of error based on matters occurring or becoming known after final submission to the court or jury shall be stated specifically.

(b) Except as otherwise provided in Rule 78.07(c), in cases tried without a jury or with an advisory jury, neither a motion for a new trial nor a motion to amend the judgment or opinion is necessary to preserve any matter for appellate review if the matter was previously presented to the trial court.

(c) In all cases, allegations of error relating to the form or language of the judgment, including the failure to make statutorily required findings, must be raised in a motion to amend the judgment in order to be preserved for appellate review.

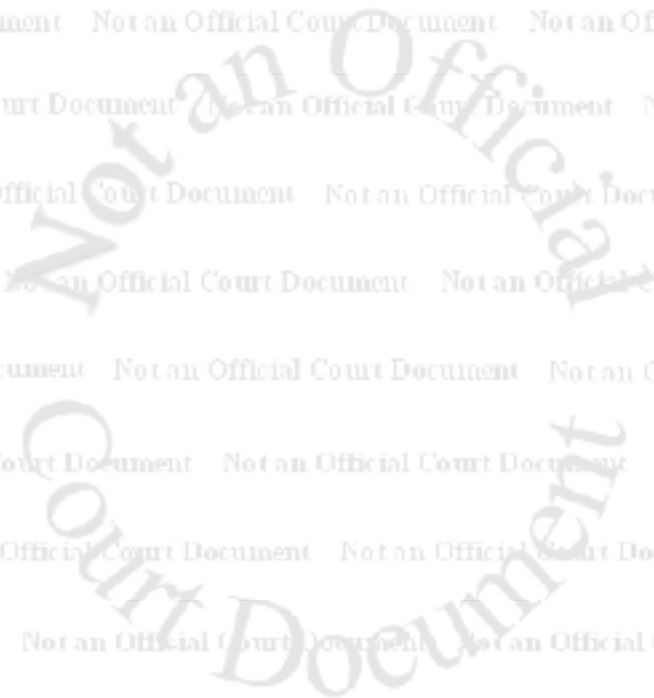
(d) The trial court may amend or modify any judgment in accordance with [Rule 75.01](#) or

upon motion by any party. Unless an amended judgment shall otherwise specify, an amended judgment shall be deemed a new judgment for all purposes.

(Adopted April 10, 1974, eff. Jan. 1, 1975. Amended June 1, 1993, eff. Jan. 1, 1994; May 27, 1999, eff. Jan. 1, 2000; June 25, 2001, eff. Jan. 1, 2002; June 17, 2004, eff. Jan. 1, 2005; June 28, 2011, eff. Jan. 1, 2012; Dec. 27, 2016, eff. July 1, 2017.)

Committee Note - 1974 [REPEALED]

(Repealed June 1, 1993, eff. Jan. 1, 1994.)





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Supreme Court Rules

	Section/Rule:	84.04
Subject: Rule 84 - Rules of Civil Procedure - Rules Relating to All Appellate Courts - Procedure in All Appellate Courts	Publication / Adopted June 13, 1979	Date:
Topic: Briefs - Contents	Revised / Effective	January 1, 2018
	Date:	

84.04. Briefs - Contents

(a) **Contents.** The brief for appellant shall contain:

- (1) A detailed table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with reference to the pages of the brief where they are cited;
- (2) A concise statement of the grounds on which jurisdiction of the review court is invoked;
- (3) A statement of facts;
- (4) The points relied on;
- (5) An argument, which shall substantially follow the order of the points relied on; and
- (6) A short conclusion stating the precise relief sought.

(b) **Jurisdictional Statement.** Bare recitals that jurisdiction is invoked "on the ground that the case involves the validity of a statute" or similar statements or conclusions are insufficient as jurisdictional statements. The jurisdictional statement shall set forth sufficient factual data to demonstrate the applicability of the particular provision or provisions of [Article V, section 3](#), of the Constitution upon which jurisdiction is sought to be predicated. For example: "The action is one involving the question of whether the respondent's machinery and equipment used in its operations in removing rock from the ground are exempt from the state sales tax law as being machinery and equipment falling within the exemption provided by [Section 144.030.3\(4\), RSMo](#), and hence involves the construction of a revenue law of this state."

(c) **Statement of Facts.** The statement of facts shall be a fair and concise statement of the

facts relevant to the questions presented for determination without argument. All statement of facts shall have specific page references to the relevant portion of the record on appeal, i.e., legal file, transcript, or exhibits. If the citation is to the system-generated legal file, it shall include the system-generated appeal document number and page number (e.g., D6 p. 7). If the portion cited is contained in the appendix, a page reference to the appendix shall also be included (e.g., D6 p. 7; App 9).

(d) Points Relied On.

(1) Where the appellate court reviews the decision of a trial court, each point shall:

- (A) Identify the trial court ruling or action that the appellant challenges;
- (B) State concisely the legal reasons for the appellant's claim of reversible error; and
- (C) Explain in summary fashion why, in the context of the case, those legal reasons support the claim of reversible error.

The point shall be in substantially the following form: "The trial court erred in [*identify the challenged ruling or action*], because [*state the legal reasons for the claim of reversible error*], in that [*explain why the legal reasons, in the context of the case, support the claim of reversible error*]."

(2) Where the appellate court reviews the decision of an administrative agency, rather than a trial court, each point shall:

- (A) Identify the administrative ruling or action the appellant challenges;
- (B) State concisely the legal reasons for the appellant's claim of reversible error; and
- (C) Explain in summary fashion why, in the context of the case, those legal reasons support the claim of reversible error.

The point shall be in substantially the following form: "The [*name of agency*] erred in [*identify the challenged ruling or action*], because [*state the legal reasons for the claim of reversible error, including the reference to the applicable statute authorizing review*], in that [*explain why, in the context of the case, the legal reasons support the claim of reversible error*]."

(3) In an original writ proceeding, each point shall:

- (A) State what relief the petitioner or relator seeks from the appellate court;
- (B) Identify the action that the petitioner or relator challenges;
- (C) State concisely the legal reasons for the challenge to respondent's action; and
- (D) Explain in summary fashion why, in the context of the case, those legal reasons support the challenge.

For an action in prohibition, the point shall be in substantially the following form: "Relator is entitled to an order prohibiting Respondent from [*describe challenged action*], because

[state the legal reasons for the challenge], in that [explain why, in the context of the case, the legal reasons support the challenge]." For other remedial writs, the introductory language should be altered appropriately.

(4) Abstract statements of law, standing alone, do not comply with this rule. Any reference to the record shall be limited to the ultimate facts necessary to inform the appellate court and the other parties of the issues. Detailed evidentiary facts shall not be included.

(5) Immediately following each "Point Relied On," the appellant, relator, or petitioner shall include a list of cases, not to exceed four, and the constitutional, statutory, and regulatory provisions or other authority upon which that party principally relies.

(6) If a party asserts error relating to damages, the party may assert its material effect on the judgment, including that the judgment is inadequate or excessive, in the same "Point Relied On."

(e) Argument. The argument shall substantially follow the order of "Points Relied On." The point relied on shall be restated at the beginning of the section of the argument discussing that point. The argument shall be limited to those errors included in the "Points Relied On."

For each claim of error, the argument shall also include a concise statement describing whether the error was preserved for appellate review; if so, how it was preserved; and the applicable standard of review.

If a point relates to the giving, refusal or modification of an instruction, such instruction shall be set forth in full in the argument portion of the brief.

Long quotations from cases and long lists of citations should not be included.

All factual assertions in the argument shall have specific page references to the relevant portion of the record on appeal, i.e., legal file, transcript, or exhibits. If the citation is to the system-generated legal file, it shall include the system-generated appeal document number and page number (e.g., D6 p. 7). If the portion cited is contained in the appendix, a page reference to the appendix shall also be included (e.g., D6 p. 7; App 9).

(f) Respondent's Brief. The respondent's brief shall include a detailed table of contents, a detailed table of authorities, and an argument in conformity with this Rule 84.04.

If the respondent is dissatisfied with the accuracy or completeness of the jurisdictional statement or statement of facts in the appellant's brief, the respondent's brief may include a jurisdictional statement or statement of facts.

The argument portion of the respondent's brief shall contain headings identifying the points relied on contained in the appellant's brief to which each such argument responds. The respondent's brief may also include additional arguments in support of the judgment that are not raised by the points relied on in the appellant's brief.

(g) Reply Briefs. The appellant may file a reply brief but shall not reargue points covered in the appellant's initial brief.

(h) Appendix. A party's brief shall be accompanied by a separate appendix containing the following materials, unless the material has been included in a previously filed appendix:

- (1) The judgment, order, or decision in question, including the relevant findings of fact and conclusions of law filed in a judge-tried case or by an administrative agency;
- (2) The complete text of all statutes, ordinances, rules of court, or agency rules claimed to be controlling as to a point on appeal; and
- (3) The complete text of any instruction to which a point relied on relates.

An appendix also may set forth matters pertinent to the issues discussed in the brief such as copies of exhibits, excerpts from the written record, and copies of new cases or other pertinent authorities.

The appendix shall have a separate table of contents.

The pages in the appendix shall be numbered consecutively beginning with page A1. The inclusion of any matter in an appendix does not satisfy any requirement to set out such matter in a particular section of the brief.

An appendix to a brief on appeal, regardless of the number of pages it contains, shall be filed as a separate document.

(i) Cross Appeals. If a cross appeal is filed, the plaintiff in the court below shall be deemed the appellant for purposes of this Rule 84.04, unless the parties otherwise agree or the court otherwise orders. The appellant's initial brief shall be filed as otherwise provided in this Rule 84.04 and [Rule 84.05](#). The respondent's initial brief shall contain the issues and argument involved in the respondent's appeal and the response to the brief of the appellant. The appellant may file a second brief in response to the respondent's brief setting forth respondent's appeal and in reply to the respondent's brief opposing appellant's appeal. The respondent may file a reply brief in reply to appellant's response to the issues presented by respondent's appeal. The briefs otherwise shall comply with [Rule 84.06](#). No further briefs shall be filed without leave of the court.

(Adopted June 13, 1979, eff. Jan. 1, 1980. Amended July 27, 1979; June 1, 1993, eff. Jan. 1, 1994; Sept. 28, 1993, eff. Jan. 1, 1994; May 15, 1998, eff. Jan. 1, 1999; May 27, 1999, eff. Jan. 1, 2000; May 26, 2000, eff. Jan. 1, 2001; Dec. 15, 2000, eff. July 1, 2001; May 16, 2001, eff. July 1, 2001; May 23, 2001, eff. Jan. 1, 2002; Jan. 28, 2002, eff. Jan. 1, 2003; June 21, 2005, eff. Jan. 1, 2006; Dec. 18, 2007, eff. July 1, 2008; June 28, 2011, eff. Jan. 1, 2012; May 30, 2012, eff. Jan. 1, 2013. May 19, 2016, eff. Jan. 1, 2017; June 30, 2017, eff. Jan. 1 2018.)



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Supreme Court Rules

	Section/Rule:	84.13
Subject:	Rule 84 - Rules of Civil Procedure - Rules Relating to All Appellate Courts - Procedure in All Appellate Courts	Publication / Adopted June 13, 1979
Topic:	Allegations of Error Considered - Reversible Error - Review in Cases Tried Without a Jury or With an Advisory Jury	Revised / Effective July 1, 2012

84.13. Allegations of Error Considered - Reversible Error - Review in Cases Tried Without a Jury or With an Advisory Jury

- (a) **Preservation of Error in Civil Cases.** Apart from questions of jurisdiction of the trial court over the subject matter, allegations of error not briefed or not properly briefed shall not be considered in any civil appeal and allegations of error not presented to or expressly decided by the trial court shall not be considered in any civil appeal from a jury tried case.
- (b) **Materiality of Error.** No appellate court shall reverse any judgment unless it finds that error was committed by the trial court against the appellant materially affecting the merits of the action.
- (c) **Plain Error may be Considered.** Plain errors affecting substantial rights may be considered on appeal, in the discretion of the court, though not raised or preserved, when the court finds that manifest injustice or miscarriage of justice has resulted therefrom.
- (d) **Appellate review in cases tried without a jury or with an advisory jury.**
- (1) The court shall review the case upon both the law and the evidence as in suits of an equitable nature;
 - (2) The court shall give due regard to the opportunity of the trial court to have judged the credibility of witnesses;
 - (3) The court shall consider admissible evidence that was rejected by the trial court and preserved. The court may order that proffered evidence that was rejected by the trial court and not preserved be taken by the deposition or by reference to a master under [Rule 68.03](#) and returned to the appellate court.

