

---

# APPEARANCE

## TOPIC SCOPE

### Scope of Topic:

This definitional title defines appearances in civil cases, including general and special appearances, and focuses on the decline of the importance of such terms under the Federal Rules of Civil Procedure and many state counterparts. It also mentions grounds for the withdrawal of an appearance.

### Treated Elsewhere:

Appearance in admiralty cases, **see** 2 Am Jur 2d, Admiralty § 26

Appearances in administrative proceedings, **see** 2 Am Jur 2d, Administrative Law § 288

Authority of an attorney to appear, **see** 7 Am Jur 2d, Attorneys at Law § 141

Entry of unauthorized appearance as malpractice, **see** 7 Am Jur 2d, Attorneys at Law § 214

Appearance as supporting jurisdiction in divorce proceeding, **see** 24 Am Jur 2d, Divorce and Separation § 553

Appearance by foreign corporation, **see** 36 Am Jur 2d, Foreign Corporations §§ 467 et seq.

Appearance of guardian for ward, **see** 39 Am Jur 2d, Guardian and Ward § 158

Appearance on behalf of infant, **see** 42 Am Jur 2d, Infants § 198

Appearance by foreign sovereign, **see** 45 Am Jur 2d, International Law § 53

Appearance for the purpose of requiring notice of an application for a default judgment against a party who has appeared, **see** 46 Am Jur 2d, Judgments § 300

Effect of appearance on running of statute of limitations, **see** 51 Am Jur 2d, Limitation of Actions § 214

Appearance on behalf of partnership, **see** 59A Am Jur 2d, Partnership § 733

Effect of pleading to the merits, **see** 61A Am Jur 2d, Pleading § 177

Process, generally, **see** 62B Am Jur 2d, Process §§ 1 et seq.

Appearance at trial, **see** 75 Am Jur 2d, Trial §§ 226 et seq.

Appearance by witnesses, **see** 81 Am Jur 2d, Witnesses §§ 2 et seq.

## RESEARCH REFERENCES

### Annotation References:

ALR Digest, Appearance

ALR Index, Appearance

### Practice References:

1 Federal Procedural Forms, L Ed, Actions in District Court §§ 1:391 et seq.

2 Am Jur Pl & Pr Forms (Rev), Appearance

### Insta-Cite(R):

Cases and annotations referred to herein can be further researched through the **Insta-Cite(R)** citation verification service. Use Insta-Cite to check citations for Bluebook styling, parallel references, prior and later history, and annotation references.

---

## § 1 Definition

[View Entire Section](#)  
[Go to Parallel Reference Table](#)

The term "appearance" is used particularly to signify or designate the overt act by which one against whom suit has been commenced submits himself to the court's jurisdiction, 1 although in a broader sense it embraces the act of either plaintiff or defendant in coming into court. 2 It is said that "appearance is the first act of the defendant in court." 3 An appearance may be expressly made by formal written or oral declaration, or record entry, or it may be implied from some act done with the intention of appearing and submitting to the court's jurisdiction. 4

---

### Footnotes

Footnote 1. Blankenship v Blankenship, 263 Ala 297, 82 So 2d 335; Jones v Roberts Marble Co., 90 Ga App 830, 84 SE2d 469; Sharp v Sharp, 196 Kan 38, 409 P2d 1019; Rogers v Penobscot Mining Co., 28 SD 72, 132 NW 792.

Footnote 2. In re Cool's Estate, 19 NJ Misc 236, 18 A2d 714.

Footnote 3. Johnson v Clark, 131 Mont 454, 311 P2d 772; Stephens v Ringling, 102 SC 333, 86 SE 683; M. Fisher, Sons & Co. v Crowley, 57 W Va 312, 50 SE 422.

Footnote 4. Creed v Schultz (1st Dist) 148 Cal App 3d 733, 196 Cal Rptr 252 (criticized on other grounds by In re Marriage of Ryall (5th Dist) 154 Cal App 3d 743, 201 Cal Rptr 504); Patterson v Rockwell International (Tenn) 665 SW2d 96.

---

## § 2 General or special

[View Entire Section](#)  
[Go to Parallel Reference Table](#)  
[Go to Supplement](#)

Appearances have been classified as either general or special. 5 An appearance is special when the defendant appears for the purpose of objecting to the jurisdiction of the court over the defendant's person, and confines the appearance solely to that question of jurisdiction. 6 A general appearance is made by a party who comes into court and appears in the case in any manner except specially for the specific purpose of challenging the jurisdiction of the court over the defendant's person. 7 A party may waive its objection to the erroneous exercise of personal jurisdiction if the party generally appears in the case and actively prosecutes the action or contests the issues, 8 and, as a general

rule, a party's general appearance will cure any defects in service occurring prior to that time. 9 However, a general appearance does not retroactively validate court orders made before the date of the appearance. 10

Personal jurisdiction may be acquired either by the party making a general appearance or by service of process. 11 Some statutes or rules provide that a defendant's voluntary general appearance is equivalent to the service of summons upon the defendant. 12

A general appearance is entered when a person or the person's attorney comes into court and submits the party to the jurisdiction of the court. 13 However, a "notice of appearance" filed by counsel is not necessarily a general appearance so as to waive the defendant's right to claim lack of jurisdiction over its person. 14

---

## § 2 ----General or special [SUPPLEMENT]

### Case authorities:

Although appearance in action typically involves some presentation or submission to court, defaulting party has appeared for FRCP 55 purposes if it has indicated to moving party clear purpose to defend suit. *Key Bank v Tablecloth Textile Co.* (1996, CA1 Me) 74 F3d 349.

Defendant preserved his personal jurisdiction objection pursuant to statute, where, before making any general appearance in action, defendant alleged in his answer that he had not been served with copy of summons and where he also entered special appearance in conjunction with his motion to dismiss although this was unnecessary as "special appearance" procedure no longer applies in Wisconsin (Stats § 802.06(8)(a)). *Dietrich v Elliott* (1995, App) 190 Wis 2d 817, 528 NW2d 17.

In personal injury action with subrogation claims, conduct of parties with subrogation claims in choosing not to appear in court by pronouncing that unless they heard from court otherwise, they deemed themselves excused was egregious and they failed to present clear and justifiable excuse for their failure to appear. *Buchanan v General Casualty Co.* (1995, App) 191 Wis 2d 1, 528 NW2d 457.

---

### Footnotes

Footnote 5. *Johnson v Clark*, 131 Mont 454, 311 P2d 772; *Chapman v Chapman* (3d Dept) 5 App Div 2d 257, 168 NYS2d 872; *In re Blalock*, 233 NC 493, 64 SE2d 848, 25 ALR2d 818; *Rogers v Penobscot Mining Co.*, 28 SD 72, 132 NW 792; *Swetnam v Dalby*, 95 Utah 74, 79 P2d 20.

Footnote 6. *American Farmers Ins. Co. v Thomason*, 217 Ark 705, 234 SW2d 37; *State ex rel. Valles v Brown*, 97 NM 327, 639 P2d 1181; *Willis v Aetna Life Ins. Co.*, 185 Okla 647, 95 P2d 608; *Union Bond & Mortgage Co. v Brown*, 64 SD 600, 269 NW 474, 107 ALR 1089; *Swetnam v Dalby*, 95 Utah 74, 79 P2d 20; *Zarbell v Bank of America Nat'l Trust & Sav. Assn.*, 52 Wash 2d 549, 327 P2d 436; *State ex rel. Nelson v Grimm*, 219 Wis 630, 263 NW 583, 102 ALR 220.

"Special appearances" are not recognized except where a party appears solely to object to the court's jurisdiction over the person on the ground that he is not amenable to process. *Hurst v Southwest Mississippi Legal Services Corp.* (Miss) 610 So 2d 374.

A special appearance is entered when a person comes into court to test the court's jurisdiction or the sufficiency of service. *Milton v Gesler*, 107 Nev 767, 819 P2d 245.

**Forms:** Special appearances. 2 Am Jur Pl & Pr Forms (Rev), Appearance, Forms 1-17.

Footnote 7. *Tarr v Superior Court*, 142 Ariz 349, 690 P2d 68; *Jones v Roberts Marble Co.*, 90 Ga App 830, 84 SE2d 469; *Green v Green*, 42 Kan 654, 22 P 730; *Stanley v Jones*, 197 La 627, 2 So 2d 45, *supp op* 201 La 549, 9 So 2d 678; *State ex rel. A. M. T. v Weinstein* (Mo App) 411 SW2d 267; *Johnson v Clark*, 131 Mont 454, 311 P2d 772; *Eliason v Devaney*, 228 Neb 331, 422 NW2d 356; *State ex rel. Valles v Brown*, 97 NM 327, 639 P2d 1181; *Lemley v Barr*, 176 W Va 378, 343 SE2d 101; *Smith v Smith*, 138 W Va 388, 76 SE2d 253, *subsequent app* 140 W Va 298, 83 SE2d 923.

Any action on the part of the defendant, except to object to the jurisdiction, which recognizes the case as in court, will amount to a general appearance. *Norsworthy v Norsworthy*, 289 Ark 479, 713 SW2d 451.

A general appearance will be established where a party in some manner recognizes the authority of the court to proceed in the action or take any step which is part of the regular proceeding in the case on the hypothesis only that the court had jurisdiction of his person. *Creed v Schultz* (1st Dist) 148 Cal App 3d 733, 196 Cal Rptr 252 (criticized on other grounds by *In re Marriage of Ryall* (5th Dist) 154 Cal App 3d 743, 201 Cal Rptr 504).

When a defendant makes a request to use the power and authority of a court to prevent the plaintiff from exercising a right accorded by the rules of civil procedure or a statute, such a request will constitute a general appearance; however, a motion to quash an unauthorized notice of deposition is purely defensive and is not a request for affirmative relief inconsistent with a defense of lack of personal jurisdiction. *Banco de Costa Rica v Rodriguez* (Fla) 573 So 2d 833, 16 FLW S 158.

When parties appear before the court voluntarily and request relief, personal jurisdiction exists, and by such general appearance, the court acquires jurisdiction over their persons. *In re Hanson*, 121 Idaho 507, 826 P2d 468.

A party who takes or consents to any step in a proceeding which assumes that jurisdiction exists or continues has made a general appearance. *Peterson v Eishen* (Minn) 512 NW2d 338.

**Forms:** General appearances. 2 Am Jur Pl & Pr Forms (Rev), Appearance, Forms 21-37.

Footnote 8. *In re Baby Girl B.*, 224 Conn 263, 618 A2d 1.

Footnote 9. *Helms v McCollum* (Ala) 447 So 2d 687.

Footnote 10. *In re Marriage of Verdung*, 126 Ill 2d 542, 129 Ill Dec 53, 535 NE2d 818.

Footnote 11. *In re Marriage of Verdung*, 126 Ill 2d 542, 129 Ill Dec 53, 535 NE2d 818; *Dougan v McGrew*, 187 Kan 410, 357 P2d 319, 86 ALR2d 1174; *Peterson v Eishen* (Minn) 512 NW2d 338.

Footnote 12. *Kenai Peninsula Borough v English Bay Village Corp.* (Alaska) 781 P2d 6; *Newbold v Arvidson*, 105 Idaho 663, 672 P2d 231 (criticized on other grounds by *Shelton v Diamond Int'l Corp.*, 108 Idaho 935, 703 P2d 699) (so noted in dissenting opinion); *Moon v Moon* (ND) 499 NW2d 597.

Footnote 13. *Milton v Gesler*, 107 Nev 767, 819 P2d 245.

Footnote 14. *Public Gas Co. v Weatherhead Co.* (Fla) 409 So 2d 1026.

---

### § 3 --Abolition of distinction

[View Entire Section](#)  
[Go to Parallel Reference Table](#)

Rule 12(b) of the Federal Rules of Civil Procedure<sup>15</sup> and comparable state statutes or rules have abolished the distinction between general and special appearances in courts where such rules are in effect.<sup>16</sup> All objections to jurisdiction, venue, and process may be set up in a motion or answer without waiving any of them,<sup>17</sup> and even after the trial court denies jurisdictional defenses, the defendant can defend the action on the merits while continuing to preserve its jurisdictional objections.<sup>18</sup> Other jurisdictions may recognize the hybrid motion to quash and dismiss as a proper means of challenging the court's authority without making a general appearance,<sup>19</sup> or that the subsequent or simultaneous filing of an answer, before the trial of an exception based on improper venue or the like, does not waive the pending exception, even though the subsequent filing of an answer can be considered a general appearance.<sup>20</sup> However, some states still appear to recognize the distinction between general and special appearances, and a defendant who makes a general appearance and does not initially contest solely the exercise of in personam jurisdiction cannot thereafter raise the issue.<sup>21</sup>

---

### Footnotes

Footnote 15. FR Civ P Rule 12(b).

Footnote 16. *Neifeld v Steinberg* (CA3 Pa) 438 F2d 423, 8 UCCRS 897, 17 ALR Fed 374; *Orange Theatre Corp. v Rayherstz Amusement Corp.* (CA3 NJ) 139 F2d 871, cert den 322 US 740, 88 L Ed 1573, 64 S Ct 1057; *Bjorgo v Weerden* (CA7 Ill) 342 F2d 558; *Creel v Gator Leasing, Inc.* (Ala) 544 So 2d 936; *Fausett v Host*, 315 Ark 527, 868 SW2d 472; *Fisher v Keller Industries, Inc.* (Iowa) 485 NW2d 626 (criticized on other grounds by *Thomas v Hansen* (Iowa) 524 NW2d 145); *Anderson v Mikel Drilling Co.*, 257 Minn 487, 102 NW2d 293, 1 ALR3d 605; *Jones v Chandler* (Miss) 592 So 2d 966; *State ex rel. White v Marsh* (Mo) 646 SW2d 357; *Knoepke v Southwestern Ry.*, 190 Mont 238, 620 P2d 1185; *Lynch v Lynch*, 303 NC 367, 279 SE2d 840; *Moon v Moon*

(ND) 499 NW2d 597; *Maryhew v Yova*, 11 Ohio St 3d 154, 11 Ohio BR 471, 464 NE2d 538; *Easton v Hurita*, 290 Or 689, 625 P2d 1290; *Clarkson v Western Heritage* (Utah) 627 P2d 72 (concurring opinion); *Matthies v Knodel*, 19 Wash App 1, 573 P2d 1332 (disapproved on other grounds by *Nearing v Golden State Foods Corp.*, 114 Wash 2d 817, 792 P2d 500, 57 BNA FEP Cas 671); *Punke v Brody*, 17 Wis 2d 9, 115 NW2d 601; *Gookin v State Farm Fire & Casualty Ins. Co.* (Wyo) 826 P2d 229.

Footnote 17. *Marine Bank & Trust Co. v Hamilton Bros., Inc.* (MD Fla) 55 FRD 505, 16 FR Serv 2d 802; *Frye v Batavia* (N.Y.) Veterans Administration Employees Federal Credit Union (DC Dist Col) 8 FRD 334; *Fisher v Keller Industries, Inc.* (Iowa) 485 NW2d 626 (criticized by *Thomas v Hansen* (Iowa) 1994 Iowa Sup LEXIS 243); *Knoepke v Southwestern Ry.*, 190 Mont 238, 620 P2d 1185.

A defense of lack of jurisdiction over the person may be made in a motion or answer raising other defenses that formerly would have constituted a general appearance. *Creel v Gator Leasing, Inc.* (Ala) 544 So 2d 936.

Special appearances are no longer necessary when contesting jurisdiction, if the defense of lack of jurisdiction is raised in a defendant's first answer, even though the rule of civil procedure dealing with service of process provides that a court may acquire jurisdiction over any person by voluntary general appearance. *Moon v Moon* (ND) 499 NW2d 597.

**Forms:** Defenses under FRCP 12(b). 1 Federal Procedural Forms, L Ed, Actions in District Court §§ 1:391 et seq.

Footnote 18. *State ex rel. White v Marsh* (Mo) 646 SW2d 357; *Gookin v State Farm Fire & Casualty Ins. Co.* (Wyo) 826 P2d 229.

**Annotation:** Litigant's participation on merits, after objection to jurisdiction of person made under special appearance or the like has been overruled, as waiver of objection, 62 ALR2d 937.

Footnote 19. *Boisclair v Superior Court*, 51 Cal 3d 1140, 276 Cal Rptr 62, 801 P2d 305, 90 CDOS 9128, 90 Daily Journal DAR 14282 (at footnote 1 of the opinion).

Footnote 20. *Bickham v Sub Sea Int'l, Inc.* (La) 617 So 2d 483, reh den (La) 618 So 2d 415.

Footnote 21. *McRae v J.D./M.D., Inc.* (Fla) 511 So 2d 540, 12 FLW 332 (at footnote 3 of the opinion); *Thilman & Co. v Esposito* (1st Dist) 87 Ill App 3d 289, 42 Ill Dec 305, 408 NE2d 1014 (by virtue of provision of Civil Practice Act); *Eliason v Devaney*, 228 Neb 331, 422 NW2d 356; *Milton v Gesler*, 107 Nev 767, 819 P2d 245 (apparently despite the promulgation of rules of civil procedure).

**Annotation:** Motion to vacate judgment or order as constituting general appearance, 31 ALR2d 262.

---

#### § 4 Withdrawal of appearance

Although it is sometimes stated without qualification that an appearance may be withdrawn, the right of withdrawal is ordinarily subject to certain conditions or limitations, such as leave of court, 22 or a showing of good cause. 23 And there are some statements to the effect that a regularly entered appearance cannot be withdrawn, even by leave of court. 24 In any event, an appearance of the defendant cannot ordinarily be withdrawn if the withdrawal would operate to the prejudice of the plaintiff. 25

Among the grounds for allowing leave to withdraw an appearance are—

—the appearance of a party defendant was entered without his authority. 26

—the appearance was made or induced by fraud, 27 mistake, or inadvertence. 28

—the amendment of a complaint in a material respect after entry of the appearance. 29

Leave to withdraw has been denied as not warranted by the showing in support of the application, or on the ground that it would be unjustly prejudicial to the plaintiff. 30 And there are statements to the effect that leave to withdraw an appearance will not be granted merely to enable the defendant to interpose objection to the service of process. 31

---

## Footnotes

Footnote 22. *In re Jacobs*, 116 Vt 11, 68 A2d 710.

**Annotation:** Withdrawal or vacation of appearance, 64 ALR2d 1424 §§ 2, 17.

**Forms:** Motions, notices, affidavits, and orders regarding withdrawal of appearance. 2 Am Jur Pl & Pr Forms (Rev), Appearance, Forms 41-45.

Footnote 23. *Wilson v Barry*, 102 Cal App 2d 778, 228 P2d 331.

**Annotation:** 64 ALR2d 1424 § 2.

Footnote 24. *Phillips v The Maccabees* (Tex Civ App) 50 SW2d 478.

Footnote 25. *Laseter v C. I. T. Corp.*, 228 Ala 19, 152 So 607; *Athens v Ernst*, 342 Ill App 357, 96 NE2d 643.

**Annotation:** 64 ALR2d 1424 § 2.

Footnote 26. *Chapline v North Am. Acceptance Corp.*, 25 Ariz App 465, 544 P2d 682; *Neihaus v Superior Court of Sacramento County* (3rd Dist) 69 Cal App 3d 340, 137 Cal Rptr 905; *St. Lucie Estates, Inc. v Palm Beach Plumbing Supply Co.*, 101 Fla 205, 133 So 841; *Hervis v Valdez* (Fla App D3) 381 So 2d 733; *Hahn v Wiggins* (1st Dist) 23 Ill App 2d 391, 163 NE2d 562; *Hampton v Sharp* (Tex Civ App Houston (1st Dist)) 447

SW2d 754, writ ref n r e (Mar 25, 1970).

**Annotation:** 64 ALR2d 1424 § 4.

Footnote 27. Hahn v Wiggins (1st Dist) 23 Ill App 2d 391, 163 NE2d 562; Kaiser v Butchart, 197 Minn 28, 265 NW 826.

**Annotation:** 64 ALR2d 1424 § 5.

Footnote 28. Hahn v Wiggins (1st Dist) 23 Ill App 2d 391, 163 NE2d 562; Baker v Baker, 248 Iowa 361, 81 NW2d 1, 64 ALR2d 1421; International Development Co. v Sanger, 75 Wash 546, 135 P 28.

But a claim that a general appearance was filed by "inadvertence" did not constitute a showing of good cause for its withdrawal, where the defects in process could have been discovered by counsel prior to the entry of the general appearance and its withdrawal would have the effect of divesting the trial court of jurisdiction and barring plaintiff's remedy without any hope of a trial on the merits. Johnson v Zoning Board of Appeals, 166 Conn 102, 347 A2d 53.

**Annotation:** 64 ALR2d 1424 § 5.

Footnote 29. Hahn v Wiggins (1st Dist) 23 Ill App 2d 391, 163 NE2d 562.

**Annotation:** 64 ALR2d 1424 § 6.

Footnote 30. Johnson v Zoning Board of Appeals, 166 Conn 102, 347 A2d 53; Athens v Ernst, 342 Ill App 357, 96 NE2d 643; Davis Bakery Inc. v Dozier, 139 Va 628, 124 SE 411.

**Annotation:** 64 ALR2d 1424 § 8[b].

Footnote 31. Davis Bakery Inc. v Dozier, 139 Va 628, 124 SE 411.

**Annotation:** 64 ALR2d 1424 § 8[b].