PROPOSED AMENDMENTS
TO THE
FEDERAL RULES OF CIVIL PROCEDURE*

Rule 4. Process

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1 (b) SAME: FORM. The summons shall be signed by the clerk,
2 be under the seal of the court, contain the name of the court and the
3 names of the parties, be directed to the defendant, state the name
4 and address of the plaintiff's attorney, if any, otherwise the
5 plaintiff's address, and the time within which these rules require the
6 defendant to appear and defend, and shall notify ~~him~~ the defendant
7 that in case of ~~his~~ the defendant's failure to do so judgment by
8 default will be rendered against ~~him~~ the defendant for the relief
9 demanded in the complaint. When, under Rule 4(e), service is made
10 pursuant to a statute or rule of court of a state, the summons, or
11 notice, or order in lieu of summons shall correspond as nearly as may
12 be to that required by the statute or rule.

* * * * *

13 (d) SUMMONS AND COMPLAINT: PERSON TO BE
14 SERVED. The summons and complaint shall be served together. The

*New matter is underscored; matter to be omitted is lined through.

15 plaintiff shall furnish the person making service with such copies as
16 are necessary. Service shall be made as follows:

17 (1) Upon an individual other than an infant or an
18 incompetent person, by delivering a copy of the summons and
19 of the complaint to ~~him~~ the individual personally or by
20 leaving copies thereof at ~~his~~ the individual's dwelling house or
21 usual place of abode with some person of suitable age and
22 discretion then residing therein or by delivering a copy of the
23 summons and of the complaint to an agent authorized by
24 appointment or by law to receive service of process.

* * * * *

25 (e) SUMMONS: SERVICE UPON PARTY NOT INHABITANT
26 OF OR FOUND WITHIN STATE. Whenever a statute of the United
27 States or an order of court thereunder provides for service of a
28 summons, or of a notice, or of an order in lieu of summons upon a
29 party not an inhabitant of or found within the state in which the
30 district court is held, service may be made under the circumstances
31 and in the manner prescribed by the statute or order, or, if there is
32 no provision therein prescribing the manner of service, in a manner
33 stated in this rule. Whenever a statute or rule of court of the state
34 in which the district court is held provides (1) for service of a
35 summons, or of a notice, or of an order in lieu of summons upon a
36 party not an inhabitant of or found within the state, or (2) for
37 service upon or notice to ~~him~~ such a party to appear and respond or
38 defend in an action by reason of the attachment or garnishment or

39 similar seizure of ~~his~~ the party's property located within the state,
40 service may in either case be made under the circumstances and in
41 the manner prescribed in the statute or rule.

* * * * *

42 (i) ALTERNATIVE PROVISIONS FOR SERVICE IN A
43 FOREIGN COUNTRY.

44 (1) Manner. When the federal or state law referred to
45 in subdivision (e) of this rule authorizes service upon a party not an
46 inhabitant of or found within the state in which the district court is
47 held, and service is to be effected upon the party in a foreign
48 country, it is also sufficient if service of the summons and complaint
49 is made: (A) in the manner prescribed by the law of the foreign
50 country for service in that country in an action in any of its courts
51 of general jurisdiction; or (B) as directed by the foreign authority in
52 response to a letter rogatory, when service in either case is
53 reasonably calculated to give actual notice; or (C) upon an
54 individual, by delivery to ~~him~~ the individual personally, and upon a
55 corporation or partnership or association, by delivery to an officer, a
56 managing or general agent; or (D) by any form of mail, requiring a
57 signed receipt, to be addressed and dispatched by the clerk of the
58 court to the party to be served; or (E) as directed by order of the
59 court. Service under (C) or (E) above may be made by any person
60 who is not a party and is not less than 18 years of age or who is
61 designated by order of the district court or by the foreign court. On
62 request, the clerk shall deliver the summons to the plaintiff for

63 transmission to the person or the foreign court or officer who will
64 make the service.

* * * * *

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 5. Service and Filing of Pleadings and Other Papers

* * * * *

1 (b) SAME: HOW MADE. Whenever under these rules service
2 is required or permitted to be made upon a party represented by an
3 attorney the service shall be made upon the attorney unless service
4 upon the party ~~himself~~ is ordered by the court. Service upon the
5 attorney or upon a party shall be made by delivering a copy to ~~him~~
6 the attorney or party or by mailing it to ~~him~~ the attorney or party at
7 ~~his~~ the attorney's or party's last known address or, if no address is
8 known, by leaving it with the clerk of the court. Delivery of a copy
9 within this rule means: handing it to the attorney or to the party; or
10 leaving it at ~~his~~ the attorney's or party's office with ~~his~~ a clerk or
11 other person in charge thereof; or, if there is no one in charge,
12 leaving it in a conspicuous place therein; or, if the office is closed or
13 the person to be served has no office, leaving it at ~~his~~ the person's
14 dwelling house or usual place of abode with some person of suitable
15 age and discretion then residing therein. Service by mail is
16 complete upon mailing.

* * * * *

17 (e) FILING WITH THE COURT DEFINED. The filing of
18 pleadings and other papers with the court as required by these rules
19 shall be made by filing them with the clerk of the court, except that
20 the judge may permit the papers to be filed with ~~him~~ the judge, in
21 which event ~~he~~ the judge shall note thereon the filing date and
22 forthwith transmit them to the office of the clerk.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 6. Time

* * * * *

1 (e) ADDITIONAL TIME AFTER SERVICE BY MAIL.
2 Whenever a party has the right or is required to do some act or take
3 some proceedings within a prescribed period after the service of a
4 notice or other paper upon ~~him~~ the party and the notice or paper is
5 served upon ~~him~~ the party by mail, 3 days shall be added to the
6 prescribed period.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 8. General Rules of Pleading

1 (a) CLAIMS FOR RELIEF. A pleading which sets forth a
2 claim for relief, whether an original claim, counterclaim, cross-
3 claim, or third-party claim, shall contain (1) a short and plain

statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for ~~the relief to which he deems himself entitled~~ such relief. Relief in the alternative or of several different types may be demanded.

(b) DEFENSES; FORM OF DENIALS. A party shall state in short and plain terms ~~his~~ the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If ~~he~~ a party is without knowledge or information sufficient to form a belief as to the truth of an averment, ~~he~~ the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, ~~he~~ the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, ~~he~~ the pleader may make ~~his~~ denials as specific denials of designated averments or paragraphs~~,~~ or ~~he~~ may generally deny all the averments except such designated averments or paragraphs as ~~he~~ the pleader expressly admits; but, when ~~he~~ the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, ~~he~~ the pleader may do so by general denial subject to the obligations set forth in Rule 11.

* * * * *

29 (e) PLEADING TO BE CONCISE AND DIRECT;
30 CONSISTENCY.

* * * * *

31 (2) A party may set forth two or more statements of
32 a claim or defense alternately or hypothetically, either in one
33 count or defense or in separate counts or defenses. When two
34 or more statements are made in the alternative and one of
35 them if made independently would be sufficient, the pleading
36 is not made insufficient by the insufficiency of one or more
37 of the alternative statements. A party may also state as
38 many separate claims or defenses as ~~he~~ the party has
39 regardless of consistency and whether based on legal,
40 equitable, or maritime grounds. All statements shall be made
41 subject to the obligations set forth in Rule 11.

* * * * *

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 9. Pleading Special Matters

1 (a) CAPACITY. It is not necessary to aver the capacity of a
2 party to sue or be sued or the authority of a party to sue or be sued
3 in a representative capacity or the legal existence of an organized
4 association of persons that is made a party, except to the extent

required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, ~~he~~ the party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

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COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

Rule 11. Signing of Pleadings, Motions, and Other Papers; Sanctions

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in ~~his~~ the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign ~~his~~ the party's pleading, motion, or other paper and state ~~his~~ the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by ~~him~~ the signer that ~~he~~ the signer has read the pleading, motion, or other

13 paper; that to the best of ~~his~~ the signer's knowledge, information,
14 and belief formed after reasonable inquiry it is well grounded in fact
15 and is warranted by existing law or a good faith argument for the
16 extension, modification, or reversal of existing law, and that it is
17 not interposed for any improper purpose, such as to harass or to
18 cause unnecessary delay or needless increase in the cost of
19 litigation. If a pleading, motion, or other paper is not signed, it shall
20 be stricken unless it is signed promptly after the omission is called
21 to the attention of the pleader or movant. If a pleading, motion, or
22 other paper is signed in violation of this rule, the court, upon motion
23 or upon its own initiative, shall impose upon the person who signed
24 it, a represented party, or both, an appropriate sanction, which may
25 include an order to pay to the other party or parties the amount of
26 the reasonable expenses incurred because of the filing of the
27 pleading, motion, or other paper, including a reasonable attorney's
28 fee.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 12. Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on Pleadings

1 (a) WHEN PRESENTED. A defendant shall serve ~~his~~ the
2 defendant's answer within 20 days after the service of the summons

3 and complaint upon ~~him~~ that defendant, except when service is made
4 under Rule 4(e) and a different time is prescribed in the order of
5 court under the statute of the United States or in the statute or rule
6 of court of the state. A party served with a pleading stating a
7 cross-claim against ~~him~~ the party shall serve an answer thereto
8 within 20 days after the service upon ~~him~~ the party. The plaintiff
9 shall serve ~~his~~ a reply to a counterclaim in the answer within 20 days
10 after service of the answer, or, if a reply is ordered by the court,
11 within 20 days after service of the order, unless the order otherwise
12 directs. The United States or an officer or agency thereof shall
13 serve an answer to the complaint or to a cross-claim, or a reply to a
14 counterclaim, within 60 days after the service upon the United
15 States attorney of the pleading in which the claim is asserted. The
16 service of a motion permitted under this rule alters these periods of
17 time as follows, unless a different time is fixed by order of the
18 court: (1) if the court denies the motion or postpones its disposition
19 until the trial on the merits, the responsive pleading shall be served
20 within 10 days after notice of the court's action; (2) if the court
21 grants a motion for a more definite statement the responsive
22 pleading shall be served within 10 days after the service of the more
23 definite statement.

24 (b) HOW PRESENTED. Every defense, in law or fact, to a
25 claim for relief in any pleading, whether a claim, courterclaim,
26 cross-claim, or third-party claim, shall be asserted in the responsive
27 pleading thereto if one is required, except that the following

28 defenses may at the option of the pleader be made by motion: (1)
29 lack of jurisdiction over the subject matter, (2) lack of jurisdiction
30 over the person, (3) improper venue, (4) insufficiency of process, (5)
31 insufficiency of service of process, (6) failure to state a claim upon
32 which relief can be granted, (7) failure to join a party under Rule
33 19. A motion making any of these defenses shall be made before
34 pleading if a further pleading is permitted. No defense or objection
35 is waived by being joined with one or more other defenses or
36 objections in a responsive pleading or motion. If a pleading sets
37 forth a claim for relief to which the adverse party is not required to
38 serve a responsive pleading, ~~he~~ the adverse party may assert at the
39 trial any defense in law or fact to that claim for relief. If, on a
40 motion asserting the defense numbered (6) to dismiss for failure of
41 the pleading to state a claim upon which relief can be granted,
42 matters outside the pleading are presented to and not excluded by
43 the court, the motion shall be treated as one for summary judgment
44 and disposed of as provided in Rule 56, and all parties shall be given
45 reasonable opportunity to present all material made pertinent to
46 such a motion by Rule 56.

* * * * *

47 (e) MOTION FOR MORE DEFINITE STATEMENT. If a
48 pleading to which a responsive pleading is permitted is so vague or
49 ambiguous that a party cannot reasonably be required to frame a
50 responsive pleading, ~~he~~ the party may move for a more definite
51 statement before interposing ~~his~~ a responsive pleadings. The motion

52 shall point out the defects complained of and the details desired. If
53 the motion is granted and the order of the court is not obeyed within
54 10 days after notice of the order or within such other time as the
55 court may fix, the court may strike the pleading to which the motion
56 was directed or make such order as it deems just.

57 (f) MOTION TO STRIKE. Upon motion made by a party
58 before responding to a pleading or, if no responsive pleading is
59 permitted by these rules, upon motion made by a party within 20
60 days after the service of the pleading upon ~~him~~ the party or upon the
61 court's own initiative at any time, the court may order stricken from
62 any pleading any insufficient defense or any redundant, immaterial,
63 impertinent, or scandalous matter.

64 (g) CONSOLIDATION OF DEFENSES IN MOTION. A party
65 who makes a motion under this rule may join with it any other
66 motions herein provided for and then available to ~~him~~ the party. If a
67 party makes a motion under this rule but omits therefrom any
68 defense or objection then available to ~~him~~ the party which this rule
69 permits to be raised by motion, ~~he~~ the party shall not thereafter
70 make a motion based on the defense or objection so omitted, except
71 a motion as provided in subdivision (h)(2) hereof on any of the
72 grounds there stated.

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COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 13. Counterclaim and Cross-Claim

1 (a) COMPULSORY COUNTERCLAIMS. A pleading shall
2 state as a counterclaim any claim which at the time of serving the
3 pleading the pleader has against any opposing party, if it arises out
4 of the transaction or occurrence that is the subject matter of the
5 opposing party's claim and does not require for its adjudication the
6 presence of third parties of whom the court cannot acquire
7 jurisdiction. But the pleader need not state the claim if (1) at the
8 time the action was commenced the claim was the subject of
9 another pending action, or (2) the opposing party brought suit upon
10 ~~his~~ the claim by attachment or other process by which the court did
11 not acquire jurisdiction to render a personal judgment on that claim,
12 and the pleader is not stating any counterclaim under this Rule 13.

* * * * *

13 (e) COUNTERCLAIM MATURING OR ACQUIRED AFTER
14 PLEADING. A claim which either matured or was acquired by the
15 pleader after serving ~~his~~ a pleading may, with the permission of the
16 court, be presented as a counterclaim by supplemental pleading.
17 (f) OMITTED COUNTERCLAIM. When a pleader fails to set
18 up a counterclaim through oversight, inadvertence, or excusable
19 neglect, or when justice requires, ~~he~~ the pleader may by leave of
20 court set up the counterclaim by amendment.

* * * * *

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 14. Third-Party Practice

1 (a) WHEN DEFENDANT MAY BRING IN THIRD PARTY. At
2 any time after commencement of the action a defending party, as a
3 third-party plaintiff, may cause a summons and complaint to be
4 served upon a person not a party to the action who is or may be
5 liable to ~~him~~ the third-party plaintiff for all or part of the plaintiff's
6 claim against ~~him~~ the third-party plaintiff. The third-party plaintiff
7 need not obtain leave to make the service if ~~he~~ the third-party
8 plaintiff files the third-party complaint not later than 10 days after
9 ~~he serves his~~ serving the original answer. Otherwise ~~he~~ the third-
10 party plaintiff must obtain leave on motion upon notice to all parties
11 to the action. The person served with the summons and third-party
12 complaint, hereinafter called the third-party defendant, shall make
13 ~~his~~ any defenses to the third-party plaintiff's claim as provided in
14 Rule 12 and ~~his~~ any counterclaims against the third-party plaintiff
15 and cross-claims against other third-party defendants as provided in
16 Rule 13. The third-party defendant may assert against the plaintiff
17 any defenses which the third-party plaintiff has to the plaintiff's
18 claim. The third-party defendant may also assert any claim against
19 the plaintiff arising out of the transaction or occurrence that is the
20 subject matter of the plaintiff's claim against the third-party
21 plaintiff. The plaintiff may assert any claim against the third-party
22 defendant arising out of the transaction or occurrence that is the

23 subject matter of the plaintiff's claim against the third-party
24 plaintiff, and the third-party defendant thereupon shall assert ~~his~~
25 any defenses as provided in Rule 12 and ~~his~~ any counterclaims and
26 cross-claims as provided in Rule 13. Any party may move to strike
27 the third-party claim, or for its severance or separate trial. A
28 third-party defendant may proceed under this rule against any
29 person not a party to the action who is or may be liable to ~~him~~ the
30 third-party defendant for all or part of the claim made in the action
31 against the third-party defendant. The third-party complaint, if
32 within the admiralty and maritime jurisdiction, may be in rem
33 against a vessel, cargo, or other property subject to admiralty or
34 maritime process in rem, in which case references in this rule to the
35 summons include the warrant of arrest, and references to the third-
36 party plaintiff or defendant include, where appropriate, the claimant
37 of the property arrested.

38 (b) WHEN PLAINTIFF MAY BRING IN THIRD PARTY. When
39 a counterclaim is asserted against a plaintiff, ~~he~~ the plaintiff may
40 cause a third party to be brought in under circumstances which
41 under this rule would entitle a defendant to do so.

42 (c) ADMIRALTY AND MARITIME CLAIMS. When a plaintiff
43 asserts an admiralty or maritime claim within the meaning of Rule
44 9(h), the defendant or claimant, as a third-party plaintiff, may bring
45 in a third-party defendant who may be wholly or partly liable, either
46 to the plaintiff or to the third-party plaintiff, by way of remedy
47 over, contribution, or otherwise on account of the same transaction,

48 occurrence, or series of transactions or occurrences. In such a case
49 the third-party plaintiff may also demand judgment against the
50 third-party defendant in favor of the plaintiff, in which event the
51 third-party defendant shall make ~~his~~ any defenses to the claim of
52 the plaintiff as well as to that of the third-party plaintiff in the
53 manner provided in Rule 12 and the action shall proceed as if the
54 plaintiff had commenced it against the third-party defendant as well
55 as the third-party plaintiff.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 15. Amended and Supplemental Pleadings

1 (a) AMENDMENTS. A party may amend ~~his~~ the party's
2 pleading once as a matter of course at any time before a responsive
3 pleading is served or, if the pleading is one to which no responsive
4 pleading is permitted and the action has not been placed upon the
5 trial calendar, ~~he~~ the party may so amend it at any time within 20
6 days after it is served. Otherwise a party may amend ~~his~~ the party's
7 pleading only by leave of court or by written consent of the adverse
8 party; and leave shall be freely given when justice so requires. A
9 party shall plead in response to an amended pleading within the time
10 remaining for response to the original pleading or within 10 days
11 after service of the amended pleading, whichever period may be the
12 longer, unless the court otherwise orders.

13 (b) AMENDMENTS TO CONFORM TO THE EVIDENCE.
14 When issues not raised by the pleadings are tried by express or
15 implied consent of the parties, they shall be treated in all respects
16 as if they had been raised in the pleadings. Such amendment of the
17 pleadings as may be necessary to cause them to conform to the
18 evidence and to raise these issues may be made upon motion of any
19 party at any time, even after judgment; but failure so to amend does
20 not affect the result of the trial of these issues. If evidence is
21 objected to at the trial on the ground that it is not within the issues
22 made by the pleadings, the court may allow the pleadings to be
23 amended and shall do so freely when the presentation of the merits
24 of the action will be subserved thereby and the objecting party fails
25 to satisfy the court that the admission of such evidence would
26 prejudice ~~him~~ the party in maintaining ~~his~~ the party's action or
27 defense upon the merits. The court may grant a continuance to
28 enable the objecting party to meet such evidence.
29 (c) RELATION BACK OF AMENDMENTS. Whenever the
30 claim or defense asserted in the amended pleading arose out of the
31 conduct, transaction, or occurrence set forth or attempted to be set
32 forth in the original pleading, the amendment relates back to the
33 date of the original pleading. An amendment changing the party
34 against whom a claim is asserted relates back if the foregoing
35 provision is satisfied and, within the period provided by law for
36 commencing the action against ~~him,~~ the party to be brought in by
37 amendment, that party (1) has received such notice of the

38 institution of the action that ~~he~~ the party will not be prejudiced in
39 maintaining ~~his~~ a defense on the merits, and (2) knew or should have
40 known that, but for a mistake concerning the identity of the proper
41 party, the action would have been brought against ~~him~~ the party.
42 The delivery or mailing of process to the United States
43 Attorney, or ~~his~~ the United States Attorney's designee, or the
44 Attorney General of the United States, or an agency or officer who
45 would have been a proper defendant if named, satisfies the
46 requirement of clauses (1) and (2) hereof with respect to the United
47 States or any agency or officer thereof to be brought into the action
48 as a defendant.
49 (d) SUPPLEMENTAL PLEADINGS. Upon motion of a party
50 the court may, upon reasonable notice and upon such terms as are
51 just, permit ~~him~~ the party to serve a supplemental pleading setting
52 forth transactions or occurrences or events which have happened
53 since the date of the pleading sought to be supplemented.
54 Permission may be granted even though the original pleading is
55 defective in its statements of a claim for relief or defense. If the
56 court deems it advisable that the adverse party plea to the
57 supplemental pleading, it shall so order, specifying the time
58 therefor.

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COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 16. Pretrial Conferences; Scheduling; Management

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(f) SANCTIONS. If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or ~~his own initiative~~ sua sponte, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2) (B), (C), (D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing ~~him~~ the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 17. Parties Plaintiff and Defendant; Capacity

(a) REAL PARTY IN INTEREST. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in ~~his~~

6 that person's own name without joining ~~with him~~ as a party the party
7 for whose benefit the action is brought; and when a statute of the
8 United States so provides, an action for the use or benefit of another
9 shall be brought in the name of the United States. No action shall
10 be dismissed on the ground that it is not prosecuted in the name of
11 the real party in interest until a reasonable time has been allowed
12 after objection for ratification of commencement of the action by,
13 or joinder or substitution of, the real party in interest; and such
14 ratification, joinder, or substitution shall have the same effect as if
15 the action had been commenced in the name of the real party in
16 interest.

17 (b) CAPACITY TO SUE OR BE SUED. The capacity of an
18 individual, other than one acting in a representative capacity, to sue
19 or be sued shall be determined by the law of ~~his~~ the individual's
20 domicile. The capacity of a corporation to sue or be sued shall be
21 determined by the law under which it was organized. In all other
22 cases capacity to sue or be sued shall be determined by the law of
23 the state in which the district court is held, except (1) that a
24 partnership or other unincorporated association, which has no such
25 capacity by the law of such state, may sue or be sued in its common
26 name for the purpose of enforcing for or against it a substantive
27 right existing under the Constitution or laws of the United States,
28 and (2) that the capacity of a receiver appointed by a court of the
29 United States to sue or be sued in a court of the United States is
30 governed by Title 28, U.S.C., Sections 754 and 959(a).

31 (c) INFANTS OR INCOMPETENT PERSONS. Whenever an
32 infant or incompetent person has a representative, such as a general
33 guardian, committee, conservator, or other like fiduciary, the
34 representative may sue or defend on behalf of the infant or
35 incompetent person. ~~If an~~ An infant or incompetent person who does
36 not have a duly appointed representative ~~he~~ may sue by ~~his~~ a next
37 friend or by a guardian ad litem. The court shall appoint a guardian
38 ad litem for an infant or incompetent person not otherwise
39 represented in an action or shall make such other order as it deems
40 proper for the protection of the infant or incompetent person.

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COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 18. Joinder of Claims and Remedies

1 (a) JOINDER OF CLAIMS. A party asserting a claim to
2 relief as an original claim, counterclaim, cross-claim, or third-party
3 claim, may join, either as independent or as alternate claims, as
4 many claims, legal, equitable, or maritime, as ~~he~~ the party has
5 against an opposing party.

6 (b) JOINDER OF REMEDIES; FRAUDULENT
7 CONVEYANCES. Whenever a claim is one heretofore cognizable
8 only after another claim has been prosecuted to a conclusion, the
9 two claims may be joined in a single action; but the court shall grant

10 relief in that action only in accordance with the relative substantive
11 rights of the parties. In particular, a plaintiff may state a claim for
12 money and a claim to have set aside a conveyance fraudulent as to
13 ~~him~~ that plaintiff, without first having obtained a judgment
14 establishing the claim for money.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 19. Joinder of Persons Needed for Just Adjudication

1 (a) PERSONS TO BE JOINED IF FEASIBLE. A person who is
2 subject to service of process and whose joinder will not deprive the
3 court of jurisdiction over the subject matter of the action shall be
4 joined as a party in the action if (1) in ~~his~~ the person's absence
5 complete relief cannot be accorded among those already parties, or
6 (2) ~~he~~ the person claims an interest relating to the subject of the
7 action and is so situated that the disposition of the action in ~~his~~ the
8 person's absence may (i) as a practical matter impair or impede ~~his~~
9 the person's ability to protect that interest or (ii) leave any of the
10 persons already parties subject to a substantial risk of incurring
11 double, multiple, or otherwise inconsistent obligations by reason of
12 ~~his~~ the claimed interest. If ~~he~~ the person has not been so joined, the
13 court shall order that ~~he~~ the person be made a party. If ~~he~~ the
14 person should join as a plaintiff but refuses to do so, ~~he~~ the person
15 may be made a defendant, or, in a proper case, an involuntary
16 plaintiff. If the joined party objects to venue and ~~his~~ joinder of that

17 party would render the venue of the action improper, ~~he~~ that party
18 shall be dismissed from the action.
19 (b) DETERMINATION BY COURT WHENEVER JOINDER
20 NOT FEASIBLE. If a person as described in subdivision (a)(1)-(2)
21 hereof cannot be made a party, the court shall determine whether in
22 equity and good conscience the action should proceed among the
23 parties before it, or should be dismissed, the absent person being
24 thus regarded as indispensable. The factors to be considered by the
25 court include: first, to what extent a judgment rendered in the
26 person's absence might be prejudicial to ~~him~~ the person or those
27 already parties; second, the extent to which, by protective
28 provisions in the judgment, by the shaping of relief, or other
29 measures, the prejudice can be lessened or avoided; third, whether a
30 judgment rendered in the person's absence will be adequate; fourth,
31 whether the plaintiff will have an adequate remedy if the action is
32 dismissed for nonjoinder.

* * * * *

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 20. Permissive Joinder of Parties

* * * * *

1 (b) SEPARATE TRIALS. The court may make such orders as
2 will prevent a party from being embarrased, delayed, or put to

3 expense by the inclusion of a party against whom ~~he~~ the party
4 asserts no claim and who asserts no claim against ~~him~~ the party, and
5 may order separate trials or make other orders to prevent delay or
6 prejudice.

* * * * *

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 22. Interpleader

1 (1) Persons having claims against the plaintiff may be
2 joined as defendants and required to interplead when their claims
3 are such that the plaintiff is or may be exposed to double or multiple
4 liability. It is not ground for objection to the joinder that the claims
5 of the several claimants or the titles on which their claims depend
6 do not have a common origin or are not identical but are adverse to
7 and independent of one another, or that the plaintiff avers that ~~he~~
8 the plaintiff is not liable in whole or in part to any or all of the
9 claimants. A defendant exposed to similar liability may obtain such
10 interpleader by way of cross-claim or counterclaim. The provisions
11 of this rule supplement and do not in any way limit the joinder of
12 parties permitted in Rule 20.

* * * * *

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

Rule 23. Class Actions

1 (c) DETERMINATION BY ORDER WHETHER CLASS
2 ACTION TO BE MAINTAINED; NOTICE; JUDGMENT; ACTIONS
3 CONDUCTED PARTIALLY AS CLASS ACTIONS.

* * * * *

4 (2) In any class action maintained under subdivision
5 (b)(3), the court shall direct to the members of the class the
6 best notice practicable under the circumstances, including
7 individual notice to all members who can be identified
8 through reasonable effort. The notice shall advise each
9 member that (A) the court will exclude ~~him~~ the member from
10 the class if ~~he~~ the member so requests by a specified date; (B)
11 the judgment, whether favorable or not, will include all
12 members who do not request exclusion; and (C) any member
13 who does not request exclusion may, if ~~he~~ the member
14 desires, enter an appearance through ~~his~~ counsel.

* * * * *

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 23.1. Derivative Actions by Shareholders

1 In a derivative action brought by one or more shareholders or
2 members to enforce a right of a corporation or of an unincorporated

association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege (1) that the plaintiff was a shareholder or member at the time of the transaction of which ~~he~~ the plaintiff complains or that ~~his~~ the plaintiff's share or membership thereafter devolved on ~~him~~ the plaintiff by operation of law, and (2) that the action is not a collusive one to confer jurisdiction on a court of the United States which it would not otherwise have. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action ~~he~~ the plaintiff desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for ~~his~~ the plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 24. Intervention

(a) INTERVENTION OF RIGHT. Upon timely application anyone shall be permitted to intervene in an action: (1) when a

3 statute of the United States confers an unconditional right to
4 intervene; or (2) when the applicant claims an interest relating to
5 the property or transaction which is the subject of the action and ~~he~~
6 the applicant is so situated that the disposition of the action may as
7 a practical matter impair or impede ~~his~~ the applicant's ability to
8 protect that interest, unless the applicant's interest is adequately
9 represented by existing parties.

* * * * *

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 25. Substitution of Parties

* * * * *

1 (b) INCOMPETENCY. If a party becomes incompetent, the
2 court upon motion served as provided in subdivision (a) of this rule
3 may allow the action to be continued by or against ~~his~~ the party's
4 representative.

* * * * *

5 (d) PUBLIC OFFICERS; DEATH OR SEPARATION FROM
6 OFFICE.
7 (1) When a public officer is a party to an action in ~~his~~
8 an official capacity and during its pendency dies, resigns, or
9 otherwise ceases to hold office, the action does not abate and
10 ~~his~~ the officer's successor is automatically substituted as a

11 party. Proceedings following the substitution shall be in the
12 name of the substituted party, but any misnomer not
13 affecting the substantial rights of the parties shall be
14 disregarded. An order of substitution may be entered at any
15 time, but the omission to enter such an order shall not affect
16 the substitution.

17 (2) ~~When a~~ A public officer who sues or is sued in ~~his~~
18 an official capacity~~, he~~ may be described as a party by ~~his~~ the
19 officer's official title rather than by name; but the court may
20 require ~~his~~ the officer's name to be added.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 26. General Provisions Governing Discovery

* * * * *

1 (b) DISCOVERY SCOPE AND LIMITS. Unless otherwise
2 limited by order of the court in accordance with these rules, the
3 scope of discovery is as follows:

* * * * *

4 (3) Trial Preparation: Materials. Subject to the
5 provisions of subdivision (b)(4) of this rule, a party may obtain
6 discovery of documents and tangible things otherwise
7 discoverable under subdivision (b)(1) of this rule and prepared
8 in anticipation of litigation or for trial by or for another

9 party or by or for that other party's representative
10 (including ~~his~~ the other party's attorney, consultant,
11 surety, indemnitor, insurer, or agent) only upon a showing
12 that the party seeking discovery has substantial need of the
13 materials in the preparation of ~~his~~ the party's case and that
14 ~~he~~ the party is unable without undue hardship to obtain the
15 substantial equivalent of the materials by other means. In
16 ordering discovery of such materials when the required
17 showing has been made, the court shall protect against
18 disclosure of the mental impressions, conclusions, opinions, or
19 legal theories of an attorney or other representative of a
20 party concerning the litigation.

* * * * *

21 (e) SUPPLEMENTATION OF RESPONSES. A party who has
22 responded to a request for discovery with a response that was
23 complete when made is under no duty to supplement ~~his~~ the response
24 to include information thereafter acquired, except as follows:

25 (1) A party is under a duty seasonably to supplement
26 ~~his~~ the response with respect to any question directly
27 addressed to (A) the identity and location of persons having
28 knowledge of discoverable matters, and (B) the identity of
29 each person expected to be called as an expert witness at
30 trial, the subject matter on which ~~he~~ the person is expected
31 to testify, and the substance of ~~his~~ the person's testimony.

32 (2) A party is under a duty seasonably to amend a
33 prior response if ~~he~~ the party obtains information upon the
34 basis of which (A) ~~he~~ the party knows that the response was
35 incorrect when made, or (B) ~~he~~ the party knows that the
36 response though correct when made is no longer true and the
37 circumstances are such that a failure to amend the response
38 is in substance a knowing concealment.

* * * * *

39 (f) DISCOVERY CONFERENCE. At any time after
40 commencement of an action the court may direct the attorneys for
41 the parties to appear before it for a conference on the subject of
42 discovery. The court shall do so upon motion by the attorney for any
43 party if the motion includes:

* * * * *

44 (5) A statement showing that the attorney making the
45 motion has made a reasonable effort to reach agreement with
46 opposing attorneys on the matters set forth in the motion.
47 Each party and ~~his~~ each party's attorney are under a duty to
48 participate in good faith in the framing of a discovery plan if
49 a plan is proposed by the attorney for any party. Notice of
50 the motion shall be served on all parties. Objections or
51 additions to matters set forth in the motion shall be served
52 not later than 10 days after service of the motion.

* * * * *

53 (g) SIGNING OF DISCOVERY REQUESTS, RESPONSES,
54 AND OBJECTIONS. Every request for discovery or response or
55 objection thereto made by a party represented by an attorney shall
56 be signed by at least one attorney of record in ~~his~~ the attorney's
57 individual name, whose address shall be stated. A party who is not
58 represented by an attorney shall sign the request, response, or
59 objection and state ~~his~~ the party's address. The signature of the
60 attorney or party constitutes a certification that ~~he~~ the signer has
61 read the request, response, or objection, and that to the best of ~~his~~
62 the signer's knowledge, information, and belief formed after a
63 reasonable inquiry it is: (1) consistent with these rules and
64 warranted by existing law or a good faith argument for the
65 extension, modification, or reversal of existing law; (2) not
66 interposed for any improper purpose, such as to harass or to cause
67 unnecessary delay or needless increase in the cost of litigation; and
68 (3) not unreasonable or unduly burdensome or expensive, given the
69 needs of the case, the discovery already had in the case, the amount
70 in controversy, and the importance of the issues at stake in the
71 litigation. If a request, response, or objection is not signed, it shall
72 be stricken unless it is signed promptly after the omission is called
73 to the attention of the party making the request, response, or
74 objection, and a party shall not be obligated to take any action with
75 respect to it until it is signed.

* * * * *

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 27. Depositions Before Action or Pending Appeal

(a) BEFORE ACTION.

(1) Petition. A person who desires to perpetuate ~~his own testimony or that of another person~~ testimony regarding any matter that may be cognizable in any court of the United States may file a verified petition in the United States district court in the district of the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show: 1, that the petitioner expects to be a party to an action cognizable in a court of the United States but is presently unable to bring it or cause it to be brought, 2, the subject matter of the expected action and ~~his~~ the petitioner's interest therein, 3, the facts which ~~he~~ the petitioner desires to establish by the proposed testimony and ~~his~~ the reasons for desiring to perpetuate it, 4, the names or a description of the persons ~~he~~ the petitioner expects will be adverse parties and their addresses so far as known, and 5, the names and addresses of the persons to be examined and the substance of the testimony which ~~he~~ the petitioner expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the

21 persons to be examined named in the petition, for the purpose
22 of perpetuating their testimony.

* * * * *

23 (b) PENDING APPEAL. If an appeal has been taken from a
24 judgment of a district court or before the taking of an appeal if the
25 time therefor has not expired, the district court in which the
26 judgment was rendered may allow the taking of the depositions of
27 witnesses to perpetuate their testimony for use in the event of
28 further proceedings in the district court. In such case the party who
29 desires to perpetuate the testimony may make a motion in the
30 district court for leave to take the depositions, upon the same notice
31 and service thereof as if the action was pending in the district court.
32 The motion shall show (1) the names and addresses of persons to be
33 examined, and the substance of the testimony which ~~he~~ the party
34 expects to elicit from each; (2) the reasons for perpetuating their
35 testimony. If the court finds that the perpetuation of the testimony
36 is proper to avoid a failure or delay of justice, it may make an order
37 allowing the depositions to be taken and may make orders of the
38 character provided for by Rules 34 and 35, and thereupon the
39 depositions may be taken and used in the same manner and under the
40 same conditions as are prescribed in these rules for depositions
41 taken in actions pending in the district court.

* * * * *

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 28. Persons Before Whom Depositions May Be Taken

* * * * *

1 (b) IN FOREIGN COUNTRIES. In a foreign country,
2 depositions may be taken (1) on notice before a person authorized to
3 administer oaths in the place in which the examination is held,
4 either by the law thereof or by the law of the United States, or (2)
5 before a person commissioned by the court, and a person so
6 commissioned shall have the power by virtue of ~~his~~ the commission
7 to administer any necessary oath and take testimony, or (3) pursuant
8 to a letter rogatory. A commission or a letter rogatory shall be
9 issued on application and notice and on terms that are just and
10 appropriate. It is not requisite to the issuance of a commission or a
11 letter rogatory that the taking of the deposition in any other manner
12 is impracticable or inconvenient; and both a commission and a letter
13 rogatory may be issued in proper cases. A notice or commission may
14 designate the person before whom the deposition is to be taken
15 either by name or descriptive title. A letter rogatory may be
16 addressed "To the Appropriate Authority in [here name the
17 country]." Evidence obtained in response to a letter rogatory need
18 not be excluded merely for the reason that it is not a verbatim
19 transcript or that the testimony was not taken under oath or for any
20 similar departure from the requirements for depositions taken within
21 the United States under these rules.

* * * * *

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

Rule 30. Depositions Upon Oral Examination

* * * * *

1 (b) NOTICE OF EXAMINATION: GENERAL
2 REQUIREMENTS; SPECIAL NOTICE; NON-STENOGRAPHIC
3 RECORDING; PRODUCTION OF DOCUMENTS AND THINGS;
4 DEPOSITION OF ORGANIZATION; DEPOSITION BY TELEPHONE.
5 (1) A party desiring to take the deposition of any
6 person upon oral examination shall give reasonable notice in
7 writing to every other party to the action. The notice shall
8 state the time and place for taking the deposition and the
9 name and address of each person to be examined, if known,
10 and, if the name is not known, a general description
11 sufficient to identity ~~him~~ the person or the particular class or
12 group to which ~~he~~ the person belongs. If a subpoena duces
13 tecum is to be served on the person to be examined, the
14 designation of the materials to be produced as set forth in the
15 subpoena shall be attached to or included in the notice.
16 (2) Leave of court is not required for the taking of a
17 deposition by the plaintiff if the notice (A) states that the
18 person to be examined is about to go out of the district where
19 the action is pending and more than 100 miles from the place
20 of trial, or is about to go out of the United States, or is bound

21 on a voyage to sea, and will be unavailable for examination
22 unless ~~his~~ the person's deposition is taken before expiration of
23 the 30-day period, and (B) sets forth facts to support the
24 statement. The plaintiff's attorney shall sign the notice, and
25 ~~his~~ the attorney's signature constitutes a certification by ~~him~~
26 the attorney that to the best of ~~his~~ the attorney's knowledge,
27 information, and belief the statement and supporting facts
28 are true. The sanctions provided by Rule 11 are applicable to
29 the certification.

30 If a party shows that when ~~he~~ the party was served with
31 notice under this subdivision (b)(2) ~~he~~ the party was unable
32 through the exercise of diligence to obtain counsel to
33 represent ~~him~~ the party at the taking of the deposition, the
34 deposition may not be used against ~~him~~ the party.

* * * * *

35 (4) The parties may stipulate in writing or the court
36 may upon motion order that the testimony at a deposition be
37 recorded by other than stenographic means. The stipulation
38 or order shall designate the person before whom the
39 deposition shall be taken, the manner of recording, preserving
40 and filing the deposition, and may include other provisions to
41 assure that the recorded testimony will be accurate and
42 trustworthy. A party may arrange to have a stenographic
43 transcription made at ~~his~~ the party's own expense. Any
44 objections under subdivision (c), any changes made by the

45 witness, ~~his~~ the witness' signature identifying the deposition
46 as ~~his~~ the witness' own or the statement of the officer that is
47 required if the witness does not sign, as provided in
48 subdivision (e), and the certification of the officer required
49 by subdivision (f) shall be set forth in a writing to accompany
50 a deposition recorded by non-stenographic means.

* * * * *

51 (6) A party may in ~~his~~ the party's notice and in a
52 subpoena name as the deponent a public or private
53 corporation or a partnership or association or governmental
54 agency and describe with reasonable particularity the matters
55 on which examination is requested. In that event, the
56 organization so named shall designate one or more officers,
57 directors, or managing agents, or other persons who consent
58 to testify on its behalf, and may set forth, for each person
59 designated, the matters on which ~~he~~ the person will testify.
60 A subpoena shall advise a non-party organization of its duty
61 to make such a designation. The persons so designated shall
62 testify as to matters known or reasonably available to the
63 organization. This subdivision (b)(6) does not preclude taking
64 a deposition by any other procedure authorized in these rules.
65 (7) The parties may stipulate in writing or the court
66 may upon motion order that a deposition be taken by
67 telephone. For the purposes of this rule and Rules 28(a),
68 37(a)(1), 37(b)(1), and 45(d), a deposition taken by telephone is

69 taken in the district and at the place where the deponent is to
70 answer questions propounded to ~~him~~ the deponent.
71 (c) EXAMINATION AND CROSS-EXAMINATION; RECORD
72 OF EXAMINATION; OATH; OBJECTIONS. Examination and cross-
73 examination of witnesses may proceed as permitted at the trial
74 under the provisions of the Federal Rules of Evidence. The officer
75 before whom the deposition is to be taken shall put the witness on
76 oath and shall personally, or by someone acting under ~~his~~ the
77 officer's direction and in ~~his~~ the officer's presence, record the
78 testimony of the witness. The testimony shall be taken
79 stenographically or recorded by any other means ordered in
80 accordance with subdivision (b)(4) of this rule. If requested by one
81 of the parties, the testimony shall be transcribed. All objections
82 made at the time of the examination to the qualifications of the
83 officer taking the deposition, or to the manner of taking it, or to the
84 evidence presented, or to the conduct of any party, and any other
75 objection to the proceedings, shall be noted by the officer upon the
86 deposition. Evidence objected to shall be taken subject to the
87 objections. In lieu of participating in the oral examination, parties
88 may serve written questions in a sealed envelope on the party taking
89 the deposition and ~~he~~ the party taking the deposition shall transmit
90 them to the officer, who shall propound them to the witness and
91 record the answers verbatim.

* * * * *

92 (e) SUBMISSION TO WITNESS; CHANGES; SIGNING. When
93 the testimony is fully transcribed the deposition shall be submitted
94 to the witness for examination and shall be read to or by ~~him~~ the
95 witness, unless such examination and reading are waived by the
96 witness and by the parties. Any changes in form or substance which
97 the witness desires to make shall be entered upon the deposition by
98 the officer with a statement of the reasons given by the witness for
99 making them. The deposition shall then be signed by the witness,
100 unless the parties by stipulation waive the signing or the witness is
101 ill or cannot be found or refuses to sign. If the deposition is not
102 signed by the witness within 30 days of its submission to ~~him~~ the
103 witness, the officer shall sign it and state on the record the fact of
104 the waiver or of the illness or absence of the witness or the fact of
105 the refusal to sign together with the reason, if any, given therefor;
106 and the deposition may then be used as fully as though signed unless
107 on a motion to suppress under Rule 32(d)(4) the court holds that the
108 reasons given for the refusal to sign require rejection of the
109 deposition in whole or in part.

110 (f) CERTIFICATION AND FILING BY OFFICER;
111 EXHIBITS; COPIES; NOTICE OF FILING.

112 (1) The officer shall certify on the deposition
113 that the witness was duly sworn by ~~him~~ the officer and that
114 the deposition is a true record of the testimony given by the
115 witness. Unless otherwise ordered by the court, ~~he~~ the officer
116 shall then securely seal the deposition in an envelope indorsed

117 with the title of the action and marked "Deposition of [here
118 insert name of witness]" and shall promptly file it with the
119 court in which the action is pending or send it by registered
120 or certified mail to the clerk thereof for filing.

121 Documents and things produced for inspection during
122 the examination of the witness, shall, upon the request of a
123 party, be marked for identification and annexed to the
124 deposition and may be inspected and copied by any party,
125 except that if the person producing the materials desires to
126 retain them ~~he~~ the person may (A) offer copies to be marked
127 for identification and annexed to the deposition and to serve
128 thereafter as originals if ~~he~~ the person affords to all parties
129 fair opportunity to verify the copies by comparison with the
130 originals, or (B) offer the originals to be marked for
131 identification, after giving to each party an opportunity to
132 inspect and copy them, in which event the materials may then
133 be used in the same manner as if annexed to the deposition.
134 Any party may move for an order that the original be annexed
135 to and returned with the deposition to the court, pending final
136 disposition of the case.

* * * * *

137 (g) FAILURE TO ATTEND OR TO SERVE SUBPOENA;
138 EXPENSES.

139 (1) If the party giving the notice of the taking of a
140 deposition fails to attend and proceed therewith and another

141 party attends in person or by attorney pursuant to the notice,
142 the court may order the party giving the notice to pay to such
143 other party the reasonable expenses incurred by ~~him~~ that
144 party and ~~his~~ that party's attorney in attending, including
145 reasonable attorney's fees.

146 (2) If the party giving the notice of the taking of a
147 deposition of a witness fails to serve a subpoena upon ~~him~~ the
148 witness and the witness because of such failure does not
149 attend, and if another party attends in person or by attorney
150 because ~~he~~ that party expects the deposition of that witness
151 to be taken, the court may order the party giving the notice
152 to pay to such other party the reasonable expenses incurred
153 by ~~him~~ that party and ~~his~~ that party's attorney in attending,
154 including reasonable attorney's fees.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 31. Depositions Upon Written Questions

1 (a) SERVING QUESTIONS; NOTICE. After commencement
2 of the action, any party may take the testimony of any person,
3 including a party, by deposition upon written questions. The
4 attendance of witnesses may be compelled by the use of subpoena as
5 provided in Rule 45. The deposition of a person confined in prison
6 may be taken only by leave of court on such terms as the court
7 prescribes.

8 A party desiring to take a deposition upon written questions
9 shall serve them upon every other party with a notice stating (1) the
10 name and address of the person who is to answer them, if known, and
11 if the name is not known, a general description sufficient to identify
12 ~~him~~ the person or the particular class or group to which ~~he~~ the
13 person belongs, and (2) the name or descriptive title and address of
14 the officer before whom the deposition is to be taken. A deposition
15 upon written questions may be taken of a public or private
16 corporation or a partnership or association or governmental agency
17 in accordance with the provisions of Rule 30(b)(6).

18 Within 30 days after the notice and written questions are
19 served, a party may serve cross questions upon all other parties.
20 Within 10 days after being served with cross questions, a party may
21 serve redirect questions upon all other parties. Within 10 days after
23 being served with redirect questions, a party may serve recross
23 questions upon all other parties. The court may for cause shown
24 enlarge or shorten the time.

25 (b) OFFICER TO TAKE RESPONSES AND PREPARE
26 RECORD. A copy of the notice and copies of all questions served
27 shall be delivered by the party taking the deposition to the officer
28 designated in the notice, who shall proceed promptly, in the manner
29 provided by Rule 30(c), (e), and (f), to take the testimony of the
30 witness in response to the questions and to prepare, certify, and file
31 or mail the deposition, attaching thereto the copy of the notice and
32 the questions received by ~~him~~ the officer.

* * * * *

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 32. Use of Depositions in Court Proceedings

1 (a) USE OF DEPOSITIONS. At the trial or upon the hearing
2 of a motion or an interlocutory proceeding, any part or all of a
3 deposition, so far as admissible under the rules of evidence applied
4 as though the witness were then present and testifying, may be used
5 against any party who was present or represented at the taking of
6 the deposition or who had reasonable notice thereof, in accordance
7 with any of the following provisions:

* * * * *

8 (4) If only part of a deposition is offered in evidence
9 by a party, an adverse party may require ~~him~~ the offeror to
10 introduce any other part which ought in fairness to be
11 considered with the part introduced, and any party may
12 introduce any other parts.

* * * * *

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

Rule 34. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes

1 (a) SCOPE. Any party may serve on any other party a
2 request (1) to produce and permit the party making the request, or

3 someone acting on ~~his~~ the requestor's behalf, to inspect and copy,
4 any designated documents (including writings, drawings, graphs,
5 charts, photographs, phonorecords, and other data compilations from
6 which information can be obtained, translated, if necessary, by the
7 respondent through detection devices into reasonably usable form),
8 or to inspect and copy, test, or sample any tangible things which
9 constitute or contain matters within the scope of Rule 26(b) and
10 which are in the possession, custody or control of the party upon
11 whom the request is served; or (2) to permit entry upon designated
12 land or other property in the possession or control of the party upon
13 whom the request is served for the purpose of inspection and
14 measuring, surveying, photographing, testing, or sampling the
15 property or any designated object or operation thereon, within the
16 scope of Rule 26(b).

* * * * *

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

Rule 35. Physical and Mental Examination of Persons

1 (a) ORDER FOR EXAMINATION. When the mental or
2 physical condition (including the blood group) of a party, or of a
3 person in the custody or under the legal control of a party, is in
4 controversy, the court in which the action is pending may order the
5 party to submit to a physical or mental examination by a physician
6 or to produce for examination the person in ~~his~~ the party's custody

7 or legal control. The order may be made only on motion for good
8 cause shown and upon notice to the person to be examined and to all
9 parties and shall specify the time, place, manner, conditions, and
10 scope of the examination and the person or persons by whom it is to
11 be made.

12 (b) REPORT OF EXAMINING PHYSICIAN.

13 (1) If requested by the party against whom an order
14 made under Rule 35(a) or the person examined, the party
15 causing the examination to be made shall deliver to ~~him~~ the
16 requestor a copy of a detailed written report of the
17 examining physician setting out ~~his~~ the physician's findings,
18 including results of all tests made, diagnoses and conclusions,
19 together with like reports of all earlier examinations of the
20 same condition. After delivery the party causing the
21 examination shall be entitled upon request to receive from
22 the party against whom the order is made a like report of any
23 examination, previously or thereafter made, of the same
24 condition, unless, in the case of a report of examination of a
25 person not a party, the party shows that ~~he~~ such party is
26 unable to obtain it. The court on motion may make an order
27 against a party requiring delivery of a report on such terms as
28 are just, and if a physician fails or refuses to make a report
29 the court may exclude ~~his~~ the physician's testimony if offered
30 at the trial.

31 (2) By requesting and obtaining a report of the
32 examination so ordered or by taking the deposition of the
33 examiner, the party examined waives any privilege ~~he~~ the
34 party may have in that action or any other involving the same
35 controversy, regarding the testimony of every other person
36 who has examined or may thereafter examine ~~him~~ the party
37 in respect of the same mental or physical condition.

* * * * *

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 36. Requests for Admission

1 (a) REQUEST FOR ADMISSION. A party may serve upon any
2 other party a written request for the admission, for purposes of the
3 pending action only, of the truth of any matters within the scope of
4 Rule 26(b) set forth in the request that relate to statements or
5 opinions of fact or of the application of law to fact including the
6 genuineness of any documents described in the request. Copies of
7 documents shall be served with the request unless they have been or
8 are otherwise furnished or made available for inspection and
9 copying. The request may, without leave of court, be served upon
10 the plaintiff after commencement of the action and upon any other
11 party with or after service of the summons and complaint upon that
12 party.

13 Each matter of which an admission is requested shall be
14 separately set forth. The matter is admitted unless, within 30 days
15 after service of the request, or within such shorter or longer time as
16 the court may allow, the party to whom the request is directed
17 serves upon the party requesting the admission a written answer or
18 objection addressed to the matter, signed by the party or by ~~his~~ the
19 party's attorney, but, unless the court shortens the time, a defendant
20 shall not be required to serve answers or objections before the
21 expiration of 45 days after service of the summons and complaint
22 upon ~~him~~ that defendant. If objection is made, the reasons therefor
23 shall be stated. The answer shall specifically deny the matter or set
24 forth in detail the reasons why the answering party cannot truthfully
25 admit or deny the matter. A denial shall fairly meet the substance
26 of the requested admission, and when good faith requires that a
27 party qualify ~~his~~ an answer or deny only a part of the matter of
28 which an admission is requested, ~~he~~ the party shall specify so much
29 of it as is true and qualify or deny the remainder. An answering
30 party may not give lack of information or knowledge as a reason for
31 failure to admit or deny unless ~~he~~ the party states that ~~he~~ the party
32 has made reasonable inquiry and that the information known or
33 readily obtainable by ~~him~~ the party is insufficient to enable ~~him~~ the
34 party to admit or deny. A party who considers that a matter of
35 which an admission has been requested presents a genuine issue for
36 trial may not, on that ground alone, object to the request; ~~he~~ the

party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why ~~he~~ the party cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) EFFECT OF ADMISSION. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provision of Rule 16 governing amendment of a pre-trial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice ~~him~~ the party in maintaining ~~his~~ the action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by ~~him~~ the party for any other purpose nor may it be used against ~~him~~ the party in any other proceeding.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 37. Failure to Make or Cooperate in Discovery: Sanctions

1 (a) MOTION FOR ORDER COMPELLING DISCOVERY. A
2 party, upon reasonable notice to other parties and all persons
3 affected thereby, may apply for an order compelling discovery as
4 follows:

* * * * *

5 (2) Motion. If a deponent fails to answer a question
6 propounded or submitted under Rules 30 or 31, or a
7 corporation or other entity fails to make a designation under
8 Rule 30(b)(6) or 31(a), or a party fails to answer an
9 interrogatory submitted under Rule 33, or if a party, in
10 response to a request for inspection submitted under Rule 34,
11 fails to respond that inspection will be permitted as requested
12 or fails to permit inspection as requested, the discovering
13 party may move for an order compelling an answer, or a
14 designation, or an order compelling inspection in accordance
15 with the request. When taking a deposition on oral
16 examination, the proponent of the question may complete or
17 adjourn the examination before ~~he applies~~ applying for an
18 order.

* * * * *

19 (b) FAILURE TO COMPLY WITH ORDER.

* * * * *

20 (2) Sanctions by Court in Which Action Is Pending. If
21 a party or an officer, director, or managing agent of a party
22 or a person designated under Rule 30(b)(6) or 31(a) to testify
23 on behalf of a party fails to obey an order to provide or
24 permit discovery, including an order made under subdivision
25 (a) of this rule or Rule 35, or if a party fails to obey an order
26 entered under Rule 26(f), the court in which the action is
27 pending may make such orders in regard to the failure as are
28 just, and among others the following:

* * * * *

29 (B) An order refusing to allow the disobedient
30 party to support or oppose designated claims or
31 defenses, or prohibiting ~~him~~ that party from
32 introducing designated matters in evidence;

* * * * *

33 (E) Where a party has failed to comply with
34 an order under Rule 35(a) requiring ~~him~~ that party to
35 produce another for examination, such orders as are
36 listed in paragraphs (A), (B), and (C) of this subdivision,
37 unless the party failing to comply shows that ~~he~~ that
38 party is unable to produce such person for
39 examination.

40 In lieu of any of the foregoing orders or in
41 addition thereto, the court shall require the party
42 failing to obey the order or the attorney advising ~~him~~
43 that party or both to pay the reasonable expenses,
44 including attorney's fees, caused by the failure, unless
45 the court finds that the failure was substantially
46 justified or that other circumstances make an award of
47 expenses unjust.

48 (c) EXPENSES ON FAILURE TO ADMIT. If a party fails to
49 admit the genuineness of any document or the truth of any matter as
50 requested under Rule 36, and if the party requesting the admissions
51 thereafter proves the genuineness of the document or the truth of
52 the matter, ~~he~~ the requesting party may apply to the court for an
53 order requiring the other party to pay ~~him~~ the reasonable expenses
54 incurred in making that proof, including reasonable attorney's fees.
55 The court shall make the order unless it finds that (1) the request
56 was held objectionable pursuant to Rule 36(a), or (2) the admission
57 sought was of no substantial importance, or (3) the party failing to
58 admit had reasonable ground to believe that ~~he~~ the party might
59 prevail on the matter, or (4) there was other good reason for the
60 failure to admit.

61 (d) FAILURE OF PARTY TO ATTEND AT OWN DEPOSITION
62 OR SERVE ANSWERS TO INTERROGATORIES OR RESPOND TO
63 REQUEST FOR INSPECTION. If a party or an officer, director, or
64 managing agent of a party or a person designated under Rule 30(b)(6)

65 or 31(a) to testify on behalf of a party fails (1) to appear before the
66 officer who is to take ~~his~~ the deposition, after being served with a
67 proper notice, or (2) to serve answers or objections to
68 interrogatories submitted under Rule 33, after proper service of the
69 interrogatories, or (3) to serve a written response to a request for
70 inspection submitted under Rule 34, after proper service of the
71 request, the court in which the action is pending on motion may
72 make such orders in regard to the failure as are just, and among
73 others it may take any action authorized under paragraphs (A), (B),
74 and (C) of subdivision (b)(2) of this rule. In lieu of any order or in
75 addition thereto, the court shall require the party failing to act or
76 the attorney advising ~~him~~ that party or both to pay the reasonable
77 expenses, including attorney's fees, caused by the failure, unless the
78 court finds that the failure was substantially justified or that other
79 circumstances make an award of expenses unjust.

* * * * *

80 (g) FAILURE TO PARTICIPATE IN THE FRAMING OF A
81 DISCOVERY PLAN. If a party or ~~his~~ a party's attorney fails to
82 participate in good faith in the framing of a discovery plan by
83 agreement as is required by Rule 26(f), the court may, after
84 opportunity for hearing, require such party or ~~his~~ attorney to pay to
85 any other party the reasonable expenses, including attorney's fees,
86 caused by the failure.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 38. Jury Trial of Right

* * * * *

(c) SAME: SPECIFICATION OF ISSUES. In ~~his~~ such demand a party may specify the issues which ~~he~~ the party wishes so tried; otherwise ~~he~~ the party shall be deemed to have demanded trial by jury for all the issues so triable. If ~~he~~ the party has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) WAIVER. The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d)constitutes a waiver by ~~him~~ the party of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

* * * * *

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 41. Dismissal of Actions

(a) VOLUNTARY DISMISSAL: EFFECT THEREOF.

* * * * *

(2) By Order of Court. Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of

5 the court and upon such terms and conditions as the court
6 deems proper. If a counterclaim has been pleaded by a
7 defendant prior to the service upon ~~him~~ the defendant of the
8 plaintiff's motion to dismiss, the action shall not be dismissed
9 against the defendant's objection unless the counterclaim can
10 remain pending for independent adjudication by the court.
11 Unless otherwise specified in the order, a dismissal under this
12 paragraph is without prejudice.

13 (b) INVOLUNTARY DISMISSAL: EFFECT THEREOF. For
14 failure of the plaintiff to prosecute or to comply with these rules or
15 any order of court, a defendant may move for dismissal of an action
16 or of any claim against ~~him~~ the defendant. After the plaintiff, in
17 action tried by the court without a jury, has completed the
18 presentation of ~~his~~ the plaintiff's evidence, the defendant, without
19 waiving ~~his~~ the right to offer evidence in the event the motion is not
20 granted, may move for a dismissal on the ground that upon the facts
21 and the law the plaintiff has shown no right to relief. The court as
22 trier of the facts may then determine them and render judgment
23 against the plaintiff or may decline to render any judgment until the
24 close of all the evidence. If the court renders judgment on the
25 merits against the plaintiff, the court shall make findings as
26 provided in Rule 52(a). Unless the court in its order for dismissal
27 otherwise specifies, a dismissal under this subdivision and any
28 dismissal not provided for in this rule, other than a dismissal for lack

29 of jurisdiction, for improper venue, or for failure to join a party
30 under Rule 19, operates as an adjudication upon the merits.

* * * * *

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

Rule 43. Taking of Testimony

* * * * *

1 (f) INTERPRETERS. The court may appoint an interpreter
2 of its own selection and may fix ~~his~~ the interpreter's reasonable
3 compensation. The compensation shall be paid out of funds provided
4 by law or by one or more of the parties as the court may direct, and
5 may be taxed ultimately as costs, in the discretion of the court.

* * * * *

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

Rule 44. Proof of Official Record

1 (a) AUTHENTICATION.
2 (1) Domestic. An official record kept within the
3 United States, or any state, district, commonwealth,
4 territory, or insular possession thereof, or within the Panama
5 Canal Zone, the Trust Territory of the Pacific Islands, or the
6 Ryukyu Islands, or an entry therein, when admissible for any
7 purpose, may be evidenced by an official publication thereof

8 or by a copy attested by the officer having the legal custody
9 of the record, or by ~~his~~ the officer's deputy, and accompanied
10 by a certificate that such officer has the custody. The
11 certificate may be made by a judge of a court of record of
12 the district or political subdivision in which the record is
13 kept, authenticated by the seal of the court, or may be made
14 by any public officer having a seal of office and having
15 official duties in the district or political subdivision in which
16 the record is kept, authenticated by the seal of ~~his~~ the
17 officer's office.

* * * * *

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 44.1. Determination of Foreign Law

1 A party who intends to raise an issue concerning the law of a
2 foreign country shall give notice in ~~his~~ the party's pleadings or other
3 reasonable written notice. The court, in determining foreign law,
4 may consider any relevant material or source, including testimony,
5 whether or not submitted by a party or admissible under the Federal
6 Rules of Evidence. The court's determination shall be treated as a
7 ruling on a question of law.

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

Rule 45. Subpoena

* * * * *

1 (c) SERVICE. A subpoena may be served by the marshal, by
2 ~~his~~ a deputy marshal, or by any other person who is not a party and
3 is not less than 18 years of age. Service of a subpoena upon a person
4 named therein shall be made by delivering a copy thereof to such
5 person and by tendering to ~~him~~ that person the fees for one day's
6 attendance and the mileage allowed by law. When the subpoena is
7 issued on behalf of the United States or an officer or agency
8 thereof, fees and mileage need not be tendered.

* * * * *

9 (f) CONTEMPT. Failure by any person without adequate
10 excuse to obey a subpoena served upon ~~him~~ the person may be
11 deemed a contempt of the court from which the subpoena issued.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 46. Exceptions Unnecessary

1 Formal exceptions to rulings or orders of the court are
2 unnecessary; but for all purposes for which an exception has
3 heretofore been necessary it is sufficient that a party, at the time
4 the ruling or order of the court is made or sought, makes known to
5 the court the action which ~~he~~ the party desires the court to take or
6 ~~his~~ the party's objection to the action of the court and ~~his~~ the
7 party's grounds therefor; and, if a party has no opportunity to object

8 to a ruling or order at the time it is made, the absence of an
9 objection does not thereafter prejudice ~~him~~ the party.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 49. Special Verdicts and Interrogatories

1 (a) SPECIAL VERDICTS. The court may require a jury to
2 return only a special verdict in the form of a special written finding
3 upon each issue of fact. In that event the court may submit to the
4 jury written questions susceptible of categorical or other brief
5 answer or may submit written forms of the several special findings
6 which might properly be made under the pleadings and evidence; or
7 it may use such other method of submitting the issues and requiring
8 the written findings thereon as it deems most appropriate. The
9 court shall give to the jury such explanation and instruction
10 concerning the matter thus submitted as may be necessary to enable
11 the jury to make its findings upon each issue. If in so doing the
12 court omits any issue of fact raised by the pleadings or by the
13 evidence, each party waives ~~his~~ the right to a trial by jury of the
14 issue so omitted unless before the jury retires ~~he~~ the party demands
15 its submission to the jury. As to an issue omitted without such
16 demand the court may make a finding; or, if it fails to do so, it shall
17 be deemed to have made a finding in accord with the judgment on
18 the special verdict.

* * * * *

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 50. Motion for a Directed Verdict and for Judgment Notwithstanding the Verdict

* * * * *

1 (b) MOTION FOR JUDGMENT NOTWITHSTANDING THE
2 VERDICT. Whenever a motion for a directed verdict made at the
3 close of all the evidence is denied or for any reason is not granted,
4 the court is deemed to have submitted the action to the jury subject
5 to a later determination of the legal questions raised by the
6 motion. Not later than 10 days after entry of judgment, a party who
7 has moved for a directed verdict may move to have the verdict and
8 any judgment entered thereon set aside and to have judgment
9 entered in accordance with ~~his~~ the party's motion for a directed
10 verdict; or if a verdict was not returned such party, within 10 days
11 after the jury has been discharged, may move for judgment in
12 accordance with ~~his~~ the party's motion for a directed verdict. A
13 motion for a new trial may be joined with this motion, or a new trial
14 may be prayed for in the alternative. If a verdict was returned the
15 court may allow the judgment to stand or may reopen the judgment
16 and either order a new trial or direct the entry of judgment as if the
17 requested verdict had been directed. If no verdict was returned the
18 court may direct the entry of judgment as if the requested verdict
19 had been directed or may order a new trial.

* * * * *

20 (d) SAME: DENIAL OF MOTION. If the motion for judgment
21 notwithstanding the verdict is denied, the party who prevailed on
22 that motion may, as appellee, assert grounds entitling ~~him~~ the party
23 to a new trial in the event the appellate court concludes that the
24 trial court erred in denying the motion for judgment notwithstanding
25 the verdict. If the appellate court reverses the judgment, nothing in
26 this rule precludes it from determining that the appellee is entitled
27 to a new trial, or from directing the trial court to determine
28 whether a new trial shall be granted.

* * * * *

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 51. Instructions to Jury: Objection

1 At the close of the evidence or at such earlier time during
2 the trial as the court reasonably directs, any party may file written
3 requests that the court instruct the jury on the law as set forth in
4 the requests. The court shall inform counsel of its proposed action
5 upon the requests prior to their arguments to the jury, but the court
6 shall instruct the jury after the arguments are completed. No party
7 may assign as error the giving or the failure to give an instruction
8 unless ~~he~~ the party objects thereto before the jury retires to
9 consider its verdict, stating distinctly the matter to which ~~he~~ the
10 party objects and the grounds of ~~his~~ the objection. Opportunity shall
11 be given to make the objection out of the hearing of the jury.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 53. Masters

1 (a) APPOINTMENT AND COMPENSATION. The court in
2 which any action is pending may appoint a special master therein.
3 As used in these rules the word "master" includes a referee, an
4 auditor, an examiner, and an assessor. The compensation to be
5 allowed to a master shall be fixed by the court, and shall be charged
6 upon such of the parties or paid out of any fund or subject matter of
7 the action, which is in the custody and control of the court as the
8 court may direct; provided that this provision for compensation shall
9 not apply when a United States magistrate is designated to serve as
10 a master pursuant to Title 28, U. S. C. Section 636(b)(2). The master
11 shall not retain ~~his~~ the master's report as security for ~~his~~ the
12 master's compensation; but when the party ordered to pay the
13 compensation allowed by the court does not pay it after notice and
14 within the time prescribed by the court, the master is entitled to a
15 writ of execution against the delinquent party.

* * * * *

16 (c) POWERS. The order of reference to the master may
17 specify or limit ~~his~~ the master's powers and may direct ~~him~~ the
18 master to report only upon particular issues or to do or perform
19 particular acts or to receive and report evidence only and may fix
20 the time and place for beginning and closing the hearings and for the

21 filing of the master's report. Subject to the specifications and
22 limitations stated in the order, the master has and shall exercise the
23 power to regulate all proceedings in every hearing before ~~him~~ the
24 master and to do all acts and take all measures necessary or proper
25 for the efficient performance of ~~his~~ the master's duties under the
26 order. ~~He~~ The master may require the production before ~~him~~ the
27 master of evidence upon all matters embraced in the reference,
28 including the production of all books, papers, vouchers, documents,
29 and writings applicable thereto. ~~He~~ The master may rule upon the
30 admissibility of evidence unless otherwise directed by the order of
31 reference and has the authority to put witnesses on oath and may
32 ~~himself~~ examine them and may call the parties to the action and
33 examine them upon oath. When a party so requests, the master shall
34 make a record of the evidence offered and excluded in the same
35 manner and subject to the same limitations as provided in the
36 Federal Rules of Evidence for a court sitting without a jury.

37 (d) PROCEEDINGS.

38 (1) Meetings. When a reference is made, the clerk
39 shall forthwith furnish the master with a copy of the order of
40 reference. Upon receipt thereof unless the order of
41 reference otherwise provides, the master shall forthwith set a
42 time and place for the first meeting of the parties or their
43 attorneys to be held within 20 days after the date of the
44 order of reference and shall notify the parties or their

45 attorneys. It is the duty of the master to proceed with all
46 reasonable diligence. Either party, on notice to the parties
47 and master, may apply to the court for an order requiring the
48 master to speed the proceedings and to make ~~his~~ the master's
49 report. If a party fails to appear at the time and place
50 appointed, the master may proceed ex parte or, in ~~his~~ the
51 master's discretion, adjourn the proceedings to a future day,
52 giving notice to the absent party of the adjournment.

53 (2) Witnesses. The parties may procure the
54 attendance of witnesses before the master by the issuance
55 and service of subpoenas as provided in Rule 45. If without
56 adequate excuse a witness fails to appear or give evidence, ~~he~~
57 the witness may be punished as for a contempt and be
58 subjected to the consequences, penalties, and remedies
59 provided in Rules 37 and 45.

60 (3) Statement of Accounts. When matters of
61 accounting are in issue before the master, ~~he~~ the master may
62 prescribe the form in which the accounts shall be submitted
63 and in any proper case may require or receive in evidence a
64 statement by a certified public accountant who is called as a
65 witness. Upon objection of a party to any of the items thus
66 submitted or upon a showing that the form of statement is
67 insufficient, the master may require a different form of
68 statement to be furnished, or the accounts or specific items

69 thereof to be proved by oral examination of the accounting
70 parties or upon written interrogatories or in such other
71 manner as ~~he~~ the master directs.
72 (e) REPORT.
73 (1) Contents and Filing. The master shall prepare a
74 report upon the matters submitted to ~~him~~ the master by the
75 order of reference and, if required to make findings of fact
76 and conclusions of law, ~~he~~ the master shall set them forth in
77 the report. ~~He~~ The master shall file the report with the clerk
78 of the court and in an action to be tried without a jury, unless
79 otherwise directed by the order of reference, shall file with it
80 a transcript of the proceedings and of the evidence and the
81 original exhibits. The clerk shall forthwith mail to all parties
82 notice of the filing.

* * * * *

83 (3) In Jury Actions. In an action to be tried by a jury
84 the master shall not be directed to report the evidence. ~~His~~
85 The master's findings upon the issues submitted to ~~him~~ the
86 master are admissible as evidence of the matters found and
87 may be read to the jury, subject to the ruling of the court
88 upon any objections in point of law which may be made to the
89 report.

* * * * *

90 (5) Draft Report. Before filing ~~his~~ the master's
91 report a master may submit a draft thereof to counsel for all
92 parties for the purpose of receiving their suggestions.

* * * * *

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 54. Judgments; Costs

* * * * *

1 (c) DEMAND FOR JUDGMENT. A judgment by default shall
2 not be different in kind from or exceed in amount that prayed for in
3 the demand for judgment. Except as to a party against whom a
4 judgment is entered by default, every final judgment shall grant the
5 relief to which the party in whose favor it is rendered is entitled,
6 even if the party has not demanded such relief in ~~his~~ the party's
7 pleadings.

* * * * *

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

Rule 55. Default

1 (a) ENTRY. When a party against whom a judgment for
2 affirmative relief is sought has failed to plead or otherwise defend
3 as required by these rules and that fact is made to appear by
4 affidavit or otherwise, the clerk shall enter ~~his~~ the party's default.

5 (b) JUDGMENT. Judgment by default may be entered as
6 follows:
7 (1) By the Clerk. When the plaintiff's claim against a
8 defendant is for a sum certain or for a sum which can by
9 computation be made certain, the clerk upon request of the
10 plaintiff and upon affidavit of the amount due shall enter
11 judgment for that amount and costs against the defendant, if
12 ~~he~~ the defendant has been defaulted for failure to appear and
13 ~~if~~ ~~he~~ is not an infant or incompetent person.
14 (2) By The Court. In all other cases the party
15 entitled to a judgment by default shall apply to the court
16 therefor; but no judgment by default shall be entered against
17 an infant or incompetent person unless represented in the
18 action by a general guardian, committee, conservator, or
19 other such representative who has appeared therein. If the
20 party against whom judgment by default is sought has
21 appeared in the action, ~~he~~ the party (or, if appearing by
22 representative, ~~his~~ the party's representative) shall be served
23 with written notice of the application for judgment at least 3
24 days prior to the hearing on such application. If, in order to
25 enable the court to enter judgment or to carry it into effect,
26 it is necessary to take an account or to determine the amount
27 of damages or to establish the truth of any averment by
28 evidence or to make an investigation of any other matter, the
29 court may conduct such hearings or order such references as
30 it deems necessary and proper and shall accord a right of trial

31 by jury to the parties when and as required by any statute of
32 the United States.

* * * * *

33 (e) JUDGMENT AGAINST THE UNITED STATES. No
34 judgment by default shall be entered against the United States or an
35 officer or agency thereof unless the claimant establishes ~~his~~ a claim
36 or right to relief by evidence satisfactory to the court.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 56. Summary Judgment

1 (a) FOR CLAIMANT. A party seeking to recover upon a
2 claim, counterclaim, or cross-claim or to obtain a declaratory
3 judgment may, at any time after the expiration of 20 days from the
4 commencement of the action or after service of a motion for
5 summary judgment by the adverse party, move with or without
6 supporting affidavits for a summary judgment in ~~his~~ the party's favor
7 upon all or any part thereof.

8 (b) FOR DEFENDING PARTY. A party against whom a
9 claim, counterclaim, or cross-claim is asserted or a declaratory
10 judgment is sought may, at any time, move with or without
11 supporting affidavits for a summary judgment in ~~his~~ the party's favor
12 as to all or any part thereof.

* * * * *

13 (e) FORM OF AFFIDAVITS; FURTHER TESTIMONY;
14 DEFENSE REQUIRED. Supporting and opposing affidavits shall be
15 made on personal knowledge, shall set forth such facts as would be
16 admissible in evidence, and shall show affirmatively that the affiant
17 is competent to testify to the matters stated therein. Sworn or
18 certified copies of all papers or parts thereof referred to in an
19 affidavit shall be attached thereto or served therewith. The court
20 may permit affidavits to be supplemented or opposed by depositions,
21 answers to interrogatories, or further affidavits. When a motion for
22 summary judgment is made and supported as provided in this rule, an
23 adverse party may not rest upon the mere allegations or denials of
24 ~~his~~ the adverse party's pleading, but ~~his~~ the adverse party's response,
25 by affidavits or as otherwise provided in this rule, must set forth
26 specific facts showing that there is a genuine issue for trial. If ~~he~~
27 the adverse party does not so respond, summary judgment, if
28 appropriate, shall be entered against ~~him~~ the adverse party.
29 (f) WHEN AFFIDAVITS ARE UNAVAILABLE. Should it
30 appear from the affidavits of a party opposing the motion that ~~he~~
31 the party cannot for reasons stated present by affidavit facts
32 essential to justify ~~his~~ the party's opposition, the court may refuse
33 the application for judgment or may order a continuance to permit
34 affidavits to be obtained or depositions to be taken or discovery to
35 be had or may make such other order as is just.

36 (g) AFFIDAVITS MADE IN BAD FAITH. Should it appear to
37 the satisfaction of the court at any time that any of the affidavits
38 presented pursuant to this rule are presented in bad faith or solely
39 for the purpose of delay, the court shall forthwith order the party
40 employing them to pay to the other party the amount of the
41 reasonable expenses which the filing of the affidavits caused ~~him~~ the
42 other party to incur, including reasonable attorney's fees, and any
43 offending party or attorney may be adjudged guilty of contempt.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 60. Relief From Judgment or Order

* * * * *

1 (b) MISTAKES; INADVERTENCE; EXCUSABLE NEGLECT;
2 NEWLY DISCOVERED EVIDENCE; FRAUD, ETC. On motion and
3 upon such terms as are just, the court may relieve a party or ~~his~~ a
4 party's legal representative from a final judgment, order, or
5 proceeding for the following reasons: (1) mistake, inadvertence,
6 surprise, or excusable neglect; (2) newly discovered evidence which
7 by due diligence could not have been discovered in time to move for
8 a new trial under Rule 59(b); (3) fraud (whether heretofore
9 denominated intrinsic or extrinsic), misrepresentation, or other
10 misconduct of an adverse party; (4) the judgment is void; (5) the
11 judgment has been satisfied, released, or discharged, or a prior
12 judgment upon which it is based has been reversed or otherwise
13 vacated, or it is no longer equitable that the judgment should have
14 prospective application; or (6) any other reason justifying relief from

15 the operation of the judgment. The motion shall be made within a
16 reasonable time, and for reasons (1), (2), and (3) not more than one
17 year after the judgment, order, or proceeding was entered or
18 taken. A motion under this subdivision (b) does not effect the
19 finality of a judgment or suspend its operation. This rule does not
20 limit the power of a court to entertain an independent action to
21 relieve a party from a judgment, order, or proceeding, or to grant
22 relief to a defendant not actually personally notified as provided in
23 Title 28, U.S.C., § 1655, or to set aside a judgment for fraud upon
24 the court. Writs of coram nobis, coram vobis, audita querela, and
25 bills of review and bills in the nature of a bill of review, are
26 abolished, and the procedure for obtaining any relief from a
27 judgment shall be by motion as prescribed in these rules or by an
28 independent action.

* * * * *

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

Rule 62. Stay of Proceedings to Enforce a Judgment

* * * * *

1 (f) STAY ACCORDING TO STATE LAW. In any state in
2 which a judgment is a lien upon the property of the judgment debtor
3 and in which the judgment debtor is entitled to a stay of execution,
4 a judgment debtor is entitled, in the district court held therein, to

5 such stay as would be accorded ~~him~~ the judgment debtor had the
6 action been maintained in the courts of that state.

* * * * *

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

Rule 63. Disability of a Judge

1 If by reason of death, sickness, or other disability, a judge
2 before whom an action has been tried is unable to perform the duties
3 to be performed by the court under these rules after a verdict is
4 returned or findings of fact and conclusions of law are filed, then
5 any other judge regularly sitting in or assigned to the court in which
6 the action was tried may perform those duties; but if such other
7 judge is satisfied that ~~he~~ such other judge cannot perform those
8 duties because ~~he~~ such other judge did not preside at the trial or for
9 any other reason, ~~he~~ such other judge may in ~~his~~ such other judge's
10 discretion grant a new trial.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 65. Injunctions

* * * * *

1 (b) TEMPORARY RESTRAINING ORDER; NOTICE;
2 HEARING; DURATION. A temporary restraining order may be

3 granted without written or oral notice to the adverse party or ~~his~~
4 that party's attorney only if (1) it clearly appears from specific facts
5 shown by affidavit or by the verified complaint that immediate and
6 irreparable injury, loss, or damage will result to the applicant before
7 the adverse party or ~~his~~ that party's attorney can be heard in
8 opposition, and (2) the applicant's attorney certifies to the court in
9 writing the efforts, if any, which have been made to give the notice
10 and the reasons supporting ~~his~~ the claim that notice should not be
11 required. Every temporary restraining order granted without notice
12 shall be indorsed with the date and hour of issuance; shall be filed
13 forthwith in the clerk's office and entered of record; shall define the
14 injury and state why it is irreparable and why the order was granted
15 without notice; and shall expire by its terms within such time after
16 entry, not to exceed 10 days, as the court fixes, unless within the
17 time so fixed the order, for good cause shown, is extended for a like
18 period or unless the party against whom the order is directed
19 consents that it may be extended for a longer period. The reasons
20 for the extension shall be entered of record. In case a temporary
21 restraining order is granted without notice, the motion for a
22 preliminary injunction shall be set down for hearing at the earliest
23 possible time and takes precedence of all matters except older
24 matters of the same character; and when the motion comes on for

25 hearing the party who obtained the temporary restraining order shall
26 proceed with the application for a preliminary injunction and, if ~~he~~
27 the party does not do so, the court shall dissolve the temporary
28 restraining order. On 2 day's notice to the party who obtained the
29 temporary restraining order without notice or on such shorter notice
30 to that party as the court may prescribe, the adverse party may
31 appear and move its dissolution or modification and in that event the
32 court shall proceed to hear and determine such motion as
33 expeditiously as the ends of justice require.

* * * * *

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 65.1. Security: Proceedings Against Sureties

1 Whenever these rules, including the Supplemental Rules for
2 Certain Admiralty and Maritime Claims, require or permit the
3 giving of security by a party, and security is given in the form of a
4 bond or stipulation or other undertaking with one or more sureties,
5 each surety submits ~~himself~~ to the jurisdiction of the court and
6 irrevocably appoints the clerk of the court as ~~his~~ the surety's agent
7 upon whom any papers affecting ~~his~~ the surety's liability on the bond
8 or undertaking may be served. ~~His~~ The surety's liability may be
9 enforced on motion without the necessity of an independent action.
10 The motion and such notice of the motion as the court prescribes

11 may be served on the clerk of the court, who shall forthwith mail
12 copies to the sureties if their addresses are known.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 68. Offer of Judgment

1 At any time more than 10 days before the trial begins, a
2 party defending against a claim may serve upon the adverse party an
3 offer to allow judgment to be taken against ~~him~~ the party for the
4 money or property or to the effect specified in ~~his~~ the offer, with
5 costs then accrued. If within 10 days after the service of the offer
6 the adverse party serves written notice that the offer is accepted,
7 either party may then file the offer and notice of acceptance
8 together with proof of service thereof and thereupon the clerk shall
9 enter judgment. An offer not accepted shall be deemed withdrawn
10 and evidence thereof is not admissible except in a proceeding to
11 determine costs. If the judgment finally obtained by the offeree is
12 not more favorable than the offer, the offeree must pay the costs
13 incurred after the making of the offer. The fact that an offer is
14 made but not accepted does not preclude a subsequent offer. When
15 the liability of one party to another has been determined by verdict
16 or order or judgment, but the amount or extent of the liability
17 remains to be determined by further proceedings, the party adjudged
18 liable may make an offer of judgment, which shall have the same

19 effect as an offer made before trial if it is served within a
20 reasonable time not less than 10 days prior to the commencement of
21 hearings to determine the amount or extent of liability.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 69. Execution

1 (a) IN GENERAL. Process to enforce a judgment for the
2 payment of money shall be a writ of execution, unless the court
3 directs otherwise. The procedure on execution, in proceedings
4 supplementary to and in aid of a judgment, and in proceedings on and
5 in aid of execution shall be in accordance with the practice and
6 procedure of the state in which the district court is held, existing at
7 the time the remedy is sought, except that any statute of the United
8 States governs to the extent that it is applicable. In aid of the
9 judgment or execution, the judgment creditor or ~~his~~ a successor in
10 interest when that interest appears of record, may obtain discovery
11 from any person, including the judgment debtor, in the manner
12 provided in these rules or in the manner provided by the practice of
13 the state in which the district court is held.

14 (b) AGAINST CERTAIN PUBLIC OFFICERS. When a
15 judgment has been entered against a collector or other officer of
16 revenue under the circumstances stated in Title 28, U.S.C., Section
17 2006, or against an officer of Congress in an action mentioned in the

18 Act of March 3, 1875, ch. 130, Sec. 8 (18 Stat. 401), U.S.C., Title 2,
19 Section 118, and when the court has given the certificate of
20 probable cause for ~~his~~ the officer's act as provided in those statutes,
21 execution shall not issue against the officer or ~~his~~ the officer's
22 property but the final judgment shall be satisfied as provided in such
23 statutes.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 71. Process in Behalf of and Against Persons Not Parties

1 When an order is made in favor of a person who is not a party
2 to the action, ~~he~~ the person may enforce obedience to the order by
3 the same process as if ~~he~~ the person were a party; and, when
4 obedience to an order may be lawfully enforced against a person who
5 is not a party, ~~he~~ the person is liable to the same process for
6 enforcing obedience to the order as if ~~he~~ the person were a party.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 71A. Condemnation of Property

* * * * *

1 (d) PROCESS.

* * * * *

2 (2) Same; Form. Each notice shall state the court,
3 the title of the action, the name of the defendant to whom it
4 is directed, that the action is to condemn property, a
5 description of ~~his~~ the defendant's property sufficient for its
6 identification, the interest to be taken, the authority for the
7 taking, the uses for which the property is to be taken, that
8 the defendant may serve upon the plaintiff's attorney an
9 answer within 20 days after service of the notice, and that
10 the failure so to serve an answer constitutes a consent to the
11 taking and to the authority of the court to proceed to hear
12 the action and to fix the compensation. The notice shall
13 conclude with the name of the plaintiff's attorney and an
14 address within the district in which action is brought where
15 ~~he~~ the attorney may be served. The notice need contain a
16 description of no other property than that to be taken from
17 the defendants to whom it is directed.
18 (3) Service of Notice.

* * * * *

19 (ii) Service by Publication. Upon the filing of
20 a certificate of the plaintiff's attorney stating that ~~he~~
21 the attorney believes a defendant cannot be personally
22 served, because after diligent inquiry within the state
23 in which the complaint is filed ~~his~~ the defendant's
24 place of residence cannot be ascertained by the

25 plaintiff or, if ascertained, that it is beyond the
26 territorial limits of personal service as provided in this
27 rule, service of the notice shall be made on this
28 defendant by publication in a newspaper published in
29 the county where the property is located, or if there is
30 no such newspaper, then in a newspaper having a
31 general circulation where the property is located, once
32 a week for not less than three successive weeks. Prior
33 to the last publication, a copy of the notice shall also
34 be mailed to a defendant who cannot be personally
35 served as provided in this rule but whose place of
36 residence is then known. Unknown owners may be
37 served by publication in like manner by a notice
38 adressed to "Unknown Owners."
39 Service by publication is complete upon the date
40 of the last publication. Proof of publication and
41 mailing shall be made by certificate of the plantiff's
42 attorney, to which shall be attached a printed copy of
43 the published notice with the name and dates of the
44 newspaper marked thereon.

* * * * *

45 (e) Appearance or Answer. If a defendant has no objection or
46 defense to the taking of ~~his~~ the defendants property, ~~he~~ the
47 defendant may serve a notice of appearance designating the

48 property in which ~~he~~ the defendant claims to be interested.
49 Thereafter, ~~he~~ the defendant shall receive notice of all proceedings
50 affecting it. If a defendant has any objection or defense to the
51 taking of ~~his~~ the property, ~~he~~ the defendant shall serve ~~his~~ an answer
52 within 20 days after the service of notice upon ~~him~~ the defendant.
53 The answer shall identify the property in which ~~he~~ the defendant
54 claims to have an interest, state the nature and extent of the
55 interest claimed, and state all ~~his~~ the defendant's objections and
56 defenses to the taking of ~~his~~ the property. A defendant waives all
57 defenses and objections not so presented, but at the trial of the issue
58 of just compensation, whether or not ~~he~~ the defendant has previously
59 appeared or answered, ~~he~~ the defendant may present evidence as to
60 the amount of the compensation to be paid for ~~his~~ the property, and
61 ~~he~~ the defendant may share in the distribution of the award. No
62 other pleading or motion asserting any additional defense or
63 objection shall be allowed.

64 (f) Amendment of Pleadings. Without leave of court, the
65 plaintiff may amend the complaint at any time before the trial of
66 the issue of compensation and as many times as desired, but no
67 amendment shall be made which will result in a dismissal forbidden
68 by subdivision (i) of this rule. The plaintiff need not serve a copy of
69 an amendment, but shall serve notice of the filing, as provided in
70 Rule 5(b), upon any party affected thereby who has appeared and, in
71 the manner provided in subdivision (d) of this rule, upon any party
72 affected thereby who has not appeared. The plaintiff shall furnish

73 to the clerk of the court for the use of the defendants at least one
74 copy of each amendment~~,~~ and ~~he~~ shall furnish additional copies on
75 the request of the clerk or of a defendant. Within the time allowed
76 by subdivision (e) of this rule a defendant may serve ~~his~~ an answer
77 to the amended pleading, in the form and manner and with the same
78 effect as there provided.

79 (g) Substitution of Parties. If a defendant dies or becomes
80 incompetent or transfers ~~his~~ an interest after ~~his~~ the defendant's
81 joinder, the court may order substitution of the proper party upon
82 motion and notice of hearing. If the motion and notice of hearing
83 are to be served upon a person not already a party, service shall be
84 made as provided in subdivision (d)(3) of this rule.

* * * * *

85 (j) Deposit and Its Distribution. The plaintiff shall deposit
86 with the court any money required by law as a condition to the
87 exercise of the power of eminent domain; and, although not so
88 required, may make a deposit when permitted by statute. In such
89 cases the court and attorneys shall expedite the proceedings for the
90 distribution of the money so deposited and for the ascertainment and
91 payment of just compensation. If the compensation finally awarded
92 to any defendant exceeds the amount which has been paid to ~~him~~
93 that defendant on distribution of the deposit, the court shall enter
94 judgment against the plaintiff and in favor of that defendant for the
95 deficiency. If the compensation finally awarded to any defendant is
96 less than the amount which has been paid to ~~him~~ that defendant, the

97 court shall enter judgment against ~~him~~ that defendant and in favor
98 of the plaintiff for the overpayment.

* * * * *

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 73. Magistrates; Trial by Consent and Appeal Options

* * * * *

1 (b) Consent. When a magistrate has been designated to exercise
2 civil trial jurisdiction, the clerk shall give written notice to the parties of
3 their opportunity to consent to the exercise by a magistrate of civil
4 jurisdiction over the case, as authorized by Title 28, U.S.C. § 636(c). If,
5 within the period specified by local rule, the parties agree to a magistrate's
6 exercise of such authority, they shall execute and file a joint form of
7 consent or separate forms of consent setting forth such election.
8 No district judge, magistrate, or other court official shall attempt to
9 persuade or induce a party to consent to a reference of a civil matter to a
10 magistrate under this rule, nor shall a district judge or magistrate be
11 informed of a party's reponse to the clerk's notification, unless all parties
12 have consented to the referral of the matter to a magistrate.
13 The district judge, for good cause shown, on ~~his own motion~~ the
14 judge's motion, or under extraordinary circumstances shown by a party,
15 may vacate a reference of a civil matter to a magistrate under this
16 subdivision.

* * * * *

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

Rule 75. Proceedings on Appeal from Magistrate to District Judge under Rule 73(d)

* * * * *

1 (b) Record on Appeal.

* * * * *

2 (2) Transcript. Within 10 days after filing the notice
3 of appeal the appellant shall make arrangements for the
4 production of a transcript of such parts of the proceedings as
5 he the appellant deems necessary. Unless the entire
6 transcript is to be included, the appellant, within the time
7 provided above, shall serve on the appellee and file with the
8 court a description of the parts of the transcript which he the
9 appellant intends to present on the appeal. If the appellee
10 deems a transcript of other parts of the proceedings to be
11 necessary, within 10 days after the service of the statement
12 of the appellant, he the appellee shall serve on the appellant
13 and file with the court a designation of additional parts to be
14 included. The appellant shall promptly make arrangements
15 for the inclusion of all such parts unless the magistrate, upon
16 motion, exempts the appellant from providing certain parts,
17 in which case the appellee may provide for their
18 transcription.

* * * * *

19 (c) Time for Filing Briefs. Unless a local rule or court order
20 otherwise provides, the following time limits for filing briefs shall
21 apply.

22 (1) The appellant shall serve and file ~~his~~ the
23 appellant's brief within 20 days after the filing of the
24 transcript, statement of the case, or statement of the
25 evidence.

26 (2) The appellee shall serve and file ~~his~~ the appellee's
27 brief within 20 days after service of the brief of the
28 appellant.

* * * * *

29 (4) If the appellee has filed a cross-appeal, ~~he~~ the
30 appellee may file a reply brief limited to the issues on
31 the cross-appeal within 10 days after service of the reply
32 brief of the appellant.

* * * *

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 77. District Courts and Clerks

* * * * *

1 (c) Clerk's Office and Orders By Clerk. The clerk's office
2 with the clerk or a deputy in attendance shall be open during
3 business hours on all days except Saturdays, Sundays, and legal

4 holidays, but a district court may provide by local rule or order that
5 its clerk's office shall be open for specified hours on Saturdays or
6 particular legal holidays other than New Year's Day, Birthday of
7 Martin Luther King, Jr., Washington's Birthday, Memorial Day,
8 Independence Day, Labor Day, Columbus Day, Veterans Day,
9 Thanksgiving Day, and Christmas Day. All motions and applications
10 in the clerk's office for issuing mesne process, for issuing final
11 process to enforce and execute judgments, for entering defaults or
12 judgments by default, and for other proceedings which do not require
13 allowance or order of the court are grantable of course by the clerk;
14 but ~~his~~ the clerk's action may be suspended or altered or rescinded
15 by the court upon cause shown.

* * * * *

COMMITTEE NOTE

The amendments are technical. No substantive change is intended. The Birthday of Martin Luther King, Jr. is added to the list of national holidays in Rule 77.

Rule 78. Motion Day

1 Unless local conditions make it impracticable, each district
2 court shall establish regular times and places, at intervals
3 sufficiently frequent for the prompt dispatch of business, at which
4 motions requiring notice and hearing may be heard and disposed of;
5 but the judge at any time or place and on such notice, if any, as ~~he~~
6 the judge considers reasonable may make orders for the
7 advancement, conduct, and hearing of actions.

* * * * *

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

Rule 81. Applicability in General

* * * * *

1 (c) Removed Actions. These rules apply to civil actions
2 removed to the United States district courts from the state courts
3 and govern procedure after removal. Repleading is not necessary
4 unless the court so orders. In a removed action in which the
5 defendant has not answered, ~~he~~ the defendant shall answer or
6 present the other defenses or objections available to ~~him~~ the
7 defendant under these rules within 20 days after the receipt through
8 service or otherwise of a copy of the initial pleading setting forth
9 the claim for relief upon which the action or proceeding is based, or
10 within 20 days after the service of summons upon such initial
11 pleading, then filed, or within 5 days after the filing of the petition
12 for removal, whichever period is longest. If at the time of removal
13 all necessary pleadings have been served, a party entitled to trial by
14 jury under Rule 38 shall be accorded it, if ~~his~~ the party's demand
15 therefor is served within 10 days after the petition for removal is
16 filed if ~~he~~ the party is the petitioner, of if ~~he~~ the party is not the
17 petitioner within 10 days after service on ~~him~~ the party of the
18 notice of filing the petition. A party who, prior to removal, has
19 made an express demand for trial by jury in accordance with state

21 law, need not make a demand after removal. If state law applicable
22 in the court from which the case is removed does not require the
23 parties to make express demands in order to claim trial by jury, they
24 need not make demands after removal unless the court directs that
25 they do so within a specified time if they desire to claim trial by
26 jury. The court may make this direction on its own motion and shall
27 do so as a matter of course at the request of any party. The failure
28 of a party to make demand as directed constitutes a waiver by ~~him~~
29 the party of trial by jury.

* * * * *

SUPPLEMENTAL RULES FOR CERTAIN ADMIRALTY AND MARITIME CLAIMS

Rule B. Attachment and Garnishment: Special Provisions

1 (1) When Available; Complaint, Affidavit, Judicial
2 Authorization, and Process. With respect to any admiralty or
3 maritime claim in personam a verified complaint may contain a
4 prayer for process to attach the defendant's goods and chattels, or
5 credits and effects in the hands of garnishees to be named in the
6 process to the amount sued for, if the defendant shall not be found
7 within the district. Such a complaint shall be accompanied by an
8 affidavit signed by the plaintiff or ~~his~~ the plaintiff's attorney that,
9 to the affiant's knowledge, or to the best of ~~his~~ the affiant's
10 information and belief, the defendant cannot be found within the
11 district. The verified complaint and affidavit shall be reviewed by
12 the court and, if the conditions set forth in this rule appear to exist,
13 an order so stating and authorizing process of attachment and
14 garnishment shall issue. Supplemental process enforcing the court's
15 order may be issued by the clerk upon application without further
16 order of the court. If the plaintiff or ~~his~~ the plaintiff's attorney
17 certifies that exigent circumstances make review by the court
18 impracticable, the clerk shall issue a summons and process of
19 attachment and garnishment and the plaintiff shall have the burden
20 on a post-attachment hearing under Rule E(4)(f) to show that exigent
21 circumstances existed. In addition, or in the alternative, the

22 plaintiff may, pursuant to Rule 4(e), invoke the remedies provided by
23 state law for attachment and garnishment or similar seizure of the
24 defendant's property. Except for Rule E(8) these Supplemental
25 Rules do not apply to state remedies so invoked.

26 (2) Notice to Defendant. No judgment by default shall be
27 entered except upon proof, which may be by affidavit, (a) that the
28 plaintiff or the garnishee has given notice of the action to the
29 defendant by mailing to ~~him~~ the defendant a copy of the complaint,
30 summons, and process of attachment or garnishment using any form
31 of mail requiring a return receipt or (b) that the complaint,
32 summons, and process of attachment or garnishment have been
33 served on the defendant in a manner authorized by Rule 4(d) or (i),
34 or (c) that the plaintiff or the garnishee has made diligent efforts to
35 give notice of the action to the defendant and has been unable to do
36 so.

37 (3) Answer.

38 (a) By Garnishee. The garnishee shall serve ~~his~~ an
39 answer, together with answers to any interrogatories served
40 with the complaint, within 20 days after service of process
41 upon ~~him~~ the garnishee. Interrogatories to the garnishee may
42 be served with the complaint without leave of court. If the
43 garnishee refuses or neglects to answer on oath as to the
44 debts, credits, or effects of the defendant in ~~his~~ the
45 garnishee's hands, or any interrogatories concerning such
46 debts, credits, and effects that may be propounded by the

47 plaintiff, the court may award compulsory process against
48 ~~him~~ the garnishee. If ~~he~~ the garnishee admits any debts,
49 credits, or effects, they shall be held in ~~his~~ the garnishee's
50 hands or paid into the registry of the court, and shall be held
51 in either case subject to the further order of the court.
52 (b) By Defendant. The defendant shall serve ~~his~~ an
53 answer within 30 days after process has been executed,
54 whether by attachment of property or service on the
55 garnishee.

Rule C. Actions in Rem: Special Provisions

* * * * *

1 (3) Judicial Authorization and Process. Except in actions by
2 the United States for forfeitures for federal statutory violations, the
3 verified complaint and any supporting papers shall be reviewed by
4 the court and, if the conditions for an action in rem appear to exist,
5 an order so stating and authorizing a warrant for the arrest of the
6 vessel or other property that is the subject of the action shall issue
7 and be delivered to the clerk who shall prepare the warrant and
8 deliver it to the marshal for service. If the property that is the
9 subject of the action consists in whole or in part of freight, or the
10 proceeds of property sold, or other intangible property, the clerk
11 shall issue a summons directing any person having control of the
12 funds to show cause why they should not be paid into court to abide
13 the judgment. Supplemental process enforcing the court's order may
14 be issued by the clerk upon application without further order of the

15 court. If the plaintiff or ~~his~~ the plaintiff's attorney certifies that
16 exigent circumstances make review by the court impracticable, the
17 clerk shall issue a summons and warrant for the arrest and the
18 plaintiff shall have the burden on a post-arrest hearing under Rule
19 E(4)(f) to show that exigent circumstances existed. In actions by the
20 United States for forfeitures for federal statutory violations, the
21 clerk, upon filing of the complaint, shall forthwith issue a summons
22 and warrant for the arrest of the vessel or other property without
23 requiring a certification of exigent circumstances.

24 * * * * *

25 (6) Claim and Answer; Interrogatories. The claimant of
26 property that is the subject of an action in rem shall file ~~his~~ a claim
27 within 10 days after process has been executed, or within such
28 additional time as may be allowed by the court, and shall serve ~~his~~
29 an answer within 20 days after the filing of the claim. The claim
30 shall be verified on oath or solemn affirmation, and shall state the
31 interest in the property by virtue of which the claimant demands its
32 restitution and the right to defend the action. If the claim is made
33 on behalf of the person entitled to possession by an agent, bailee, or
34 attorney, it shall state that ~~he~~ the agent, bailee, or attorney is duly
35 authorized to make the claim. At the time of answering the
36 claimant shall also serve answers to any interrogatories served with
37 the complaint. In actions in rem interrogatories may be so served
38 without leave of court.

* * * * *

Rule E. Actions in Rem and Quasi in Rem: General Provisions

* * * * *

1 (2) Complaint; Security.

* * ** *

2 (b) Security for Costs. Subject to the provisions of
3 Rule 54(d) and of relevant statutes, the court may, on the
4 filing of the complaint or on the appearance of any
5 defendant, claimant, or any other party, or at any later time,
6 require the plaintiff, defendant, claimant, or other party to
7 give security, or additional security, in such sum as the court
8 shall direct to pay all costs and expenses that shall be
9 awarded against ~~him~~ the party by any interlocutory order or
10 by the final judgment, or on appeal by any appellate court.

* * * * *

11 (4) Execution of Process; Marshal's Return; Custody of
12 Property; Procedures for Release.

* * * * *

13 (b) Tangible Property. If tangible property is to be
14 attached or arrested, the marshal shall take it into ~~his~~ the
15 marshal's possession for safe custody. If the character or
16 situation of the property is such that the taking of actual
17 possession is impracticable, the marshal shall execute the
18 process by affixing a copy thereof to the property in a
19 conspicuous place and by leaving a copy of the complaint and
20 process with the person having possession or ~~his~~ the person's

21 agent. In furtherance of ~~his~~ the marshal's custody of any
22 vessel the marshal is authorized to make a written request to
23 the collector of customs not to grant clearance to such vessel
24 until notified by the marshal or ~~his~~ a deputy marshal or by the
25 clerk that the vessel has been released in accordance with
26 these rules.

27 (c) Intangible Property. If intangible property is to
28 be attached or arrested the marshal shall execute the process
29 by leaving with the garnishee or other obligor a copy of the
30 complaint and process requiring ~~him~~ the garnishee or other
31 obligor to answer as provided in Rules B(3)(a) and C(6); or ~~he~~
32 the marshal may accept for payment into the registry of the
33 court the amount owed to the extent of the amount claimed
34 by the plaintiff with interest and costs, in which event the
35 garnishee or other obligor shall not be required to answer
36 unless alias process shall be served.

* * * * *

37 (5) Release of Property.

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39 (c) Release by Consent or Stipulation; Order of Court
39 or Clerk; Costs. Any vessel, cargo, or other property in the
40 custody of the marshal may be released forthwith upon ~~his~~
41 the marshal's acceptance and approval of a stipulation, bond,
42 or other security, signed by the party on whose behalf the

43 property is detained or ~~his~~ the party's attorney and expressly
44 authorizing such release, if all costs and charges of the court
45 and its officers shall have first been paid. Otherwise no
46 property in the custody of the marshal or other officer of the
47 court shall be released without an order of the court; but such
48 order may be entered as of course by the clerk, upon the
49 giving of approved security as provided by law and these
50 rules, or upon the dismissal or discontinuance of the action;
51 but the marshal shall not deliver any property so released
52 until the costs and charges of the officers of the court shall
53 first have been paid.

* * * * *

54 (9) Disposition of Property; Sales.

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55 (b) Interlocutory Sales. If property that has been
56 attached or arrested is perishable, or liable to deterioration,
57 decay, or injury by being detained in custody pending the
58 action, or if the expense of keeping the property is excessive
59 or disproportionate, or if there is unreasonable delay in
60 securing the release of property, the court, on application of
61 any party or of the marshal, may order the property or any
62 portion thereof to be sold; and the proceeds, or so much
63 thereof as shall be adequate to satisfy any judgment, may be
64 ordered brought into court to abide the event of the action;

65 or the court may, on motion of the defendant or claimant,
66 order delivery of the property to ~~him~~ the defendant or
67 claimant, upon the giving of security in accordance with
68 these rules.

69 (c) Sales, Proceeds. All sales of property shall be
70 made by the marshal or ~~his~~ a deputy marshal, or other proper
71 officer assigned by the court where the marshal is a party in
72 interest; and the proceeds of sale shall be forthwith paid into
73 the registry of the court to be disposed of according to law.

Rule F. Limitation of Liability

1 (1) Time for Filing Complaint; Security. Not later than six
2 months after ~~his~~ receipt of a claim in writing, any vessel owner may
3 file a complaint in the appropriate district court, as provided in
4 subdivision (9) of this rule, for limitation of liability pursuant to
5 statute. The owner (a) shall deposit with the court, for the benefit
6 of claimants, a sum equal to the amount or value of ~~his~~ the owner's
7 interest in the vessel and pending freight, or approved security
8 therefor, and in addition such sums, or approved security therefor,
9 as the court may from time to time fix as necessary to carry out the
10 provisions of the statutes as amended; or (b) at ~~his~~ the owner's
11 option shall transfer to a trustee to be appointed by the court, for
12 the benefit of claimants, ~~his~~ the owner's interest in the vessel and
13 pending freight, together with such sums, or approved security

14 therefor, as the court may from time to time fix as necessary to
15 carry out the provisions of the statutes as amended. The plaintiff
16 shall also give security for costs and, if ~~he~~ the plaintiff elects to
17 give security, for interest at the rate of 6 percent per annum from
18 the date of the security.

19 (2) Complaint. The complaint shall set forth the facts on the
20 basis of which the right to limit liability is asserted and all facts
21 necessary to enable the court to determine the amount to which the
22 owner's liability shall be limited. The complaint may demand
23 exoneration from as well as limitation of liability. It shall state the
24 voyage if any, on which the demands sought to be limited arose, with
25 the date and place of its termination; the amount of all demands
26 including all unsatisfied liens or claims of lien, in contract or in tort
27 or otherwise, arising on that voyage, so far as known to the plaintiff,
28 and what actions and proceedings, if any, are pending thereon;
29 whether the vessel was damaged, lost, or abandoned, and, if so, when
30 and where; the value of the vessel at the close of the voyage or, in
31 case of wreck, the value of her wreckage, strippings, or proceeds, if
32 any, and where and in whose possession they are; and the amount of
33 any pending freight recovered or recoverable. If the plaintiff elects
34 to transfer ~~his~~ the plaintiff's interest in the vessel to a trustee, the
35 complaint must further show any prior paramount liens thereon, and
36 what voyages or trips, if any, she has made since the voyage or trip
37 on which the claims sought to be limited arose, and any existing

38 liens arising upon any such subsequent voyage or trip, with the
39 amounts and causes thereof, and the names and addresses of the
40 lienors, so far as known; and whether the vessel sustained any injury
41 upon or by reason of such subsequent voyage or trip.

42 (3) Claims Against Owner; Injunction. Upon compliance by
43 the owner with the requirements of subdivision (1) of this rule all
44 claims and proceedings against the owner or ~~his~~ the owner's property
45 with respect to the matter in question shall cease. On application of
46 the plaintiff the court shall enjoin the further prosecution of any
47 action or proceeding against the plaintiff or ~~his~~ the plaintiff's
48 property with respect to any claim subject to limitation in the
49 action.

50 (4) Notice to Claimants. Upon the owner's compliance with
51 subdivision (1) of this rule the court shall issue a notice to all
52 persons asserting claims with respect to which the complaint seeks
53 limitation, admonishing them to file their respective claims with the
54 clerk of the court and to serve on the attorneys for the plaintiff a
55 copy thereof on or before a date to be named in the notice. The
56 date so fixed shall not be less than 30 days after issuance of the
57 notice. For cause shown, the court may enlarge the time within
58 which claims may be filed. The notice shall be published in such
59 newspaper or newspapers as the court may direct once a week for
60 four successive weeks prior to the date fixed for the filing of
61 claims. The plaintiff not later than the day of second publication
62 shall also mail a copy of the notice to every person known to have
63 made any claim against the vessel or the plaintiff arising out of the

64 voyage or trip on which the claims sought to be limited arose. In
65 cases involving death a copy of such notice shall be mailed to the
66 decedent at ~~his~~ the decedent's last known address, and also to any
67 person who shall be known to have made any claim on account of
68 such death.

69 (5) Claims and Answer. Claims shall be filed and served on
70 or before the date specified in the notice provided for in subdivision
71 (4) of this rule. Each claim shall specify the facts upon which the
72 claimant relies in support of ~~his~~ the claimant's claim, the items
73 thereof, and the dates on which the same accrued. If a claimant
74 desires to contest either the right to exoneration from or the right
75 to limitation of liability ~~he~~ the claimant shall file and serve an
76 answer to the complaint unless ~~his~~ the claimant's claim has included
77 an answer.

78 (6) Information to be Given Claimants. Within 30 days after
79 the date specified in the notice for filing claims, or within such time
80 as the court thereafter may allow, the plaintiff shall mail to the
81 attorney for each claimant (or if the claimant has no attorney to the
82 claimant ~~himself~~) a list setting forth (a) the name of each claimant,
83 (b) the name and address of ~~his~~ the claimant's attorney (if ~~he~~ the
84 claimant is know to have one), (c) the nature of ~~his~~ the claimant's
85 claim, i.e., whether property loss, property damage, death, personal
86 injury etc., and (d) the amount thereof.

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COMMITTEE NOTE

The amendments are technical. No substantive change is in.ended.