Preliminary Draft of

Proposed Amendments to the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure

Request For Comment

ALL WRITTEN COMMENTS DUE BY FEBRUARY 15, 2006

COMMENTS ARE SOUGHT ON AMENDMENTS TO:

Appellate Rule	25
Bankruptcy Rules	1014, 3001, 3007, 4001, 6006, 7007.1, and new Rules 6003, 9005.1, and 9037
Civil Rule	New Rule 5.2 and Illustrative Civil Forms
Criminal Rules	11, 32, 35, and 45, and new Rule 49.1

COMMITTEE ON RULES OF
PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES

August 2005

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PUBLIC HEARINGS WILL BE HELD ON THE PROPOSED NEW RULES AND AMENDMENTS TO:

Appellate Rules in Phoenix, Arizona, on January 9, 2006;
Bankruptcy Rules in Phoenix, Arizona, on January 9, 2006;
Civil Rules in Chicago, Illinois, on November 18, 2005,
and in Washington, D.C., on December 2, 2005; and
Criminal Rules in Phoenix, Arizona, on January 9, 2006.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE JUDICIAL CONFERENCE OF THE UNITED STATES
August 2005

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES

August 15, 2005

TO THE BENCH, BAR, AND PUBLIC:

Proposed Rules and Forms Amendments

The Judicial Conference Advisory Committees on the Appellate, Bankruptcy, Civil, and Criminal Rules have proposed amendments to federal rules and forms and requested that the proposals be circulated to the bench, bar, and public for comment. The proposed amendments to the federal rules are posted at <www.uscourts.gov/rules>.

Opportunity for Public Comment

Please provide any comments and suggestions on the proposed amendments whether favorable, adverse, or otherwise as soon as possible. **The comment deadline is February 15, 2006**. Please send all correspondence to: Secretary of the Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, D.C. 20544. Comments may also be sent electronically to <www.uscourts.gov/rules>.

In August 2005, the Judicial Conference approved Interim Bankruptcy Rules to be adopted by courts on a local level and Official Forms, implementing the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The Act generally takes effect on October 17, 2005. The text of the Interim Rules and Official Forms can be found at <www.uscourts.gov/rules>. The Advisory Committee on Bankruptcy Rules expects to propose new and amended Federal Rules of Bankruptcy Procedure and revisions to Official Forms based substantially on the Interim Rules modified as appropriate after considering comment from the bench and bar. Any proposed new and amended rules and revisions to the Official Forms will be published in August 2006 for public comment in accordance with the regular rulemaking process. In the meantime, the Advisory Committee will be reviewing the experiences of the bench and bar and seeks written comment or suggestions for changes or additions to the recently approved Interim Rules and Official Forms in the space specifically designated on the web site.

The Advisory Committees will hold public hearings on the proposed amendments to the rules and forms on the following dates:

Appellate Rules	January 9, 2006, Phoenix, Arizona
Bankruptcy Rules	January 9, 2006, Phoenix, Arizona
Civil Rules	November 18, 2005, Chicago, Illinois; and December 2, 2005, Washington, D.C.
Criminal Rules	January 9, 2006, Phoenix, Arizona

If you wish to testify you must contact the Committee Secretary at the above address **at least 30 days before the hearing**. The Advisory Committees will review all timely comments. All comments are made part of the official record and are available to the public.

After the public comment period, the Advisory Committees will decide whether to submit the proposed amendments to the Standing Committee on Rules of Practice and Procedure. At present, the Standing Committee has not approved these proposed amendments, except to authorize their publication for comment. The proposed amendments have not been submitted to nor considered by the Judicial Conference or the Supreme Court.

David F. Levi	Peter G. McCabe
Chair	Secretary

TABLE OF CONTENTS

Page

PART I: APPELLATE RULES

Letter of transmittal to Judge David F. Levi, Chair, Standing Committee on Rules of Practice and Procedure, from Judge Samuel A. Alito, Jr., Chair, Advisory Committee on Appellate Rules 1

Rule 25. Filing and Service 2

PART II: BANKRUPTCY RULES

Letter of transmittal to Judge David F. Levi, Chair, Standing Committee on Rules of Practice and Procedure, from Judge Thomas S. Zilly, Chair, Advisory Committee on Bankruptcy Rules (December 1, 2004) 4

Rule 1014. Dismissal and Change of Venue 6
Rule 7007.1. Corporate Ownership Statement 7

Letter of transmittal to Judge David F. Levi, Chair, Standing Committee on Rules of Practice and Procedure, from Judge Thomas S. Zilly, Chair, Advisory Committee on Bankruptcy Rules (May 2, 2005) 9

Rule 3001. Proof of Claim 12
Rule 3007. Objections to Claims 15
Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of

Property; Use of Cash Collateral; Obtaining Credit; Agreements 21
Rule 6003. Interim and Final Relief Immediately Following the Commencement of the Case — Applications for Employment; Motions for Use, Sale, or Lease of Property; and Motions for Assumptions, Assignments, and Rejections of Executory Contracts 31
Rule 6006. Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease 33
Rule 9005.1. Constitutional Challenge to a Statute — Notice, Certification, and Intervention 36
Rule 9037. Privacy Protection For Filings Made with the Court 37

PART III: CIVIL RULES

Letter of transmittal to Judge David F. Levi, Chair, Standing Committee on Rules of Practice and Procedure, from Judge Lee H. Rosenthal, Chair, Advisory Committee on Civil Rules (May 27, 2005) 44

Rule 5.2. Privacy Protection for Filings Made with the Court 45

Letter of transmittal to Judge David F. Levi, Chair, Standing Committee on Rules of Practice and Procedure, from Judge Lee H. Rosenthal, Chair, Advisory Committee on Civil Rules (July 18, 2005) 52

A. Special Forms
Form 1. Caption 58

Form 2. Date, Signature, Address, E-mail Address, And Telephone Number 60
Form 3. Summons (Current Form 1) 62
Form 4. Summons on a Third-Party Complaint (Current Form 22-A) 64
Form 5. Notice of a Lawsuit and Request to Waive Service of a Summons (Current Form 1A) . . 66
Form 6. Waiver of the Service of Summons (Current Form 1B) 68
Form 7. Statement of Jurisdiction (Current Form 2) . . 70
Form 8. Statement of Reasons for Omitting a Party (Current Form 26) 72
Form 9. Statement Noting a Party's Death (Current Form 30) 74

B. Forms of a Complaint
Form 10. Complaint to Recover a Sum Certain 76
(a) On a Promissory Note (Current Form 3)
(b) On an Account (Current Form 4)
(c) For Goods Sold and Delivered (Current Form 5)
(d) For Money Lent (Current Form 6)
(e) For Money Paid by Mistake (Current Form 7)
(f) For Money Paid and Received (Current Form 8)
Form 11. Complaint for Negligence (Current Form 9).. 80
Form 12. Complaint for Negligence When the Plaintiff Does Not Know Who is Responsible (Current Form 10) 82
Form 13. Complaint for Negligence Under the Federal Employers' Liability Act (Current Form 14) 84

Form 14. Complaint for Damages Under the Merchant Marine Act (Current Form 15) . . . 86
Form 15. Complaint for the Conversion of Property (Current Form 11) 88
Form 16. Third-Party Complaint (Current Form 22-A). 90
Form 17. Complaint for Specific Performance of a Contract to Convey Land (Current Form 12). 92
Form 18. Complaint for Patent Infringement (Current Form 16) 94
Form 19. Complaint for Copyright Infringement and Unfair Competition (Current Form 17) 96
Form 20. Complaint for Interpleader and Declaratory Relief (Current Form 18) 98
Form 21. Complaint on a Claim for Debt and to Set Aside a Fraudulent Conveyance Under Rule 18(b) (Current Form 13) 100

C. Form of an Answer
Form 30. Answer Presenting Defenses Under Rule 12(b) (Current Form 20) 102
Form 31. Answer to a Complaint for Money Had and Received with a Counterclaim for Interpleader (Current Form 21) 104

D. Form of a Motion
Form 40. Motion to Dismiss Under Rule 12(b) for Lack of Jurisdiction, Improper Venue, Insufficient Service of Process, or Failure to State a Claim (Current Form 19) 106
Form 41. Motion to Bring in a Third-Party Defendant (Current Form 22-B) 108
Form 42. Motion to Intervene as a Defendant Under Rule 24 (Current Form 23) 110

E. Discovery Forms
Form 50. Request to Produce Documents and Tangible Things, or to Enter onto Land Under Rule 34 (Current Form 24) 112
Form 51. Request for Admissions Under Rule 36 (Current Form 25) 114
Form 52. Report of the Parties' Planning Meeting (Current Form 35) 116

F. Land Condemnation
Form 60. Notice of Condemnation (Current Form 28) 118
Form 61. Complaint for Condemnation (Current Form 29). 120

G. Judgment
Form 70. Judgment on a Jury Verdict (Current Form 31) 122
Form 71. Judgment by the Court without a Jury (Current Form 32). 124

H. Assignment to a United States Magistrate Judge
Form 80. Notice of a Magistrate Judge's Availability (Current Form 33) 126
Form 81. Consent to an Assignment to a Magistrate Judge (Current Form 34) 128
Form 82. Order of Assignment to a Magistrate Judge (Current Form 34A) 130

IV: CRIMINAL RULES

Letter of transmittal to Judge David F. Levi, Chair, Standing Committee on Rules of Practice and Procedure, from Judge Susan C. Bucklew, Chair, Advisory Committee on Criminal Rules . . 132

Rule 11. Pleas 138
Rule 32. Sentence and Judgment 140
Rule 35. Correcting or Reducing a Sentence 146
Rule 45. Computing and Extending Time 147
Rule 49.1. Privacy Protection For Filings Made with the Court 149

PART V: COMPARISON OF PROPOSED AMENDMENTS IMPLEMENTING E-GOVERNMENT ACT

Letter of transmittal to Judge David F. Levi, Chair, Standing Committee on Rules of Practice and Procedure, from Judge Sidney A. Fitzwater, Chair, Standing Committee on Rules of Practice and Procedure Subcommittee on Technology 158

Amendments Implementing E-Government Act Comparison Chart 159

PART VI: MISCELLANEOUS

Procedures for the Conduct of Business by the Judicial Conference Committee on Rules of Practice and Procedure . . . 164

Membership of Judicial Conference Rules Committees 171

State Bar Points of Contact 175

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
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WASHINGTON, D.C. 20544

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SUSAN C. BUCKLEW
CRIMINAL RULES

JERRY E. SMITH
EVIDENCE RULES

MEMORANDUM

DATE: **May 6, 2005**

TO: **Judge David F. Levi, Chair**
Standing Committee on Rules of Practice and Procedure

FROM: **Judge Samuel A. Alito, Jr., Chair**
Advisory Committee on Appellate Rules

RE: **Report of Advisory Committee on Appellate Rules**

I. Introduction

The Advisory Committee on Appellate Rules met on April 18, 2005, in Washington, D.C.

* * * * *

II. Action Items

* * * * *

B. Items for Publication

1. New Rule 25(a)(5)

As you know, the advisory committees have been working under the guidance of the E-Government Subcommittee to comply with the mandate of the E-Government Act of 2002 that the rules of practice and procedure be amended "to protect privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically." Most of that work has been directed toward developing a privacy-rule template that all of the advisory committees could adopt with minor changes.

At its November 2004 meeting, the Appellate Rules Committee decided that, rather than try to pattern an Appellate Rule after the template, the Committee would instead amend the

Appellate Rules to adopt by reference the privacy provisions of the Bankruptcy, Civil, and Criminal Rules. In that way, the policy decisions can be left to CACM and to the other advisory committees — all of whom have far more of a stake in the privacy issues than the Appellate Rules Committee — and the Appellate Rules will not have to be amended continually to keep up with changes to the other rules of practice and procedure.

The Advisory Committee unanimously approved this amendment at our April 2005 meeting. I should note that we received assistance from the other reporters — particularly Profs. Cooper and Morris — in drafting this amendment, and, as always, we appreciate the support of our colleagues on the other advisory committees.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF APPELLATE PROCEDURE*

Rule 25. Filing and Service**

1 **(a) Filing.**

2 * * * * *

3 (5) **Privacy Protection.** An appeal in a case that was

4 governed by Federal Rule of Bankruptcy Procedure

5 9037, Federal Rule of Civil Procedure 5.2, or Federal

6 Rule of Criminal Procedure 49.1 is governed by the

7 same rule on appeal. All other proceedings are

8 governed by Federal Rule of Civil Procedure 5.2,

9 except that Federal Rule of Criminal Procedure 49.1

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*New material is underlined.

**Amendments proposed to the Bankruptcy, Civil, and Criminal Rules implementing the E-Government Act and the Judicial Conference privacy policy are included in a side-by-side comparison chart on page 159.

10 governs when an extraordinary writ is sought in a

11 criminal case.

12 * * * * *

Committee Note

Subdivision (a)(5). Section 205(c)(3)(A)(i) of the E-Government Act of 2002 (Public Law 107-347, as amended by Public Law 108-281) requires that the rules of practice and procedure be amended "to protect privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically." In response to that directive, the Federal Rules of Bankruptcy, Civil, and Criminal Procedure have been amended, not merely to address the privacy and security concerns raised by documents that are filed electronically, but also to address similar concerns raised by documents that are filed in paper form. *See* FED. R. BANKR. P. 9037; FED. R. CIV. P. 5.2; and FED. R. CRIM. P. 49.1.

Appellate Rule 25(a)(5) requires that, in cases that arise on appeal from a district court, bankruptcy appellate panel, or bankruptcy court, the privacy rule that applied to the case below will continue to apply to the case on appeal. With one exception, all other cases — such as cases involving the review or enforcement of an agency order, the review of a decision of the tax court, or the consideration of a petition for an extraordinary writ — will be governed by Civil Rule 5.2. The only exception is when an extraordinary writ is sought in a criminal case — that is, a case in which the related trial-court proceeding is governed by Criminal Rule 49.1. In such a case, Criminal Rule 49.1 will govern in the court of appeals as well.

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EVIDENCE RULES

TO: **Hon. David F. Levi, Chair**
Standing Committee on Rules of Practice and Procedure

FROM: **Hon. Thomas S. Zilly, Chair**
Advisory Committee on Bankruptcy Rules

DATE: **December 1, 2004**

RE: **Report of the Advisory Committee on Bankruptcy Rules**

I. Introduction

The Advisory Committee on Bankruptcy Rules met on September 9-10, 2004, at Half Moon Bay.

* * * * *

II. Action Items

The Advisory Committee approved for publication (next year) a proposed amendment to Rule 1014 to allow a court on its own motion to initiate, (after notice and a hearing), a change of venue. Courts have generally held that they have authority to dismiss or transfer cases on their own motion. This amendment would recognize this authority but only after notice and a hearing. This proposed amendment was recommended by the Joint Committee on Chapter 11 Venue Issues described in this report. The Advisory Committee requests that the Standing Committee approve this item for publication in August 2005.

The Advisory Committee approved for publication (next year) a proposed amendment to Rule 3007 which would clarify the procedure when a party objects to a claim and also attempts to seek affirmative relief at the same time.* The proposed amendment would bar a party from joining in an objection to a claim the type of relief required to be brought by an adversary proceeding. A creditor may include an objection to a claim in an adversary proceeding. Unlike a contested matter, an adversary proceeding requires the service of a summons and complaint, thus putting the party served on notice of a potential affirmative recovery. The court could also consolidate a separate objection to a claim with a separate adversary proceeding for purposes of trial. The Advisory Committee requests that the Standing Committee approve this item for publication in August 2005.

The Advisory Committee approved a technical amendment to Rule 7007.1 and recommended that it be approved without publication. The proposed amendment clarifies that a party must file a corporate ownership statement with its initial paper filed with the court in an adversary proceeding. The proposed amendment replaces the reference in Rule 7007.1 to the "first pleading" filed in an adversary proceeding with a reference to the first appearance, pleading, petition, motion, response, or other request addressed to the court in the proceeding. The Advisory Committee requests that the Standing Committee approve this technical amendment without publication.

* * * * *

*The Advisory Committee proposed additional amendments to Rule 3007 at its March 10-11, 2005, meeting, which incorporated and superseded the amendments proposed at its September 9-10, 2004, meeting. The proposed amended Rule 3007 can be found in the committee's May 2, 2005, report, which follows this report.

AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE*

Rule 1014. Dismissal and Change of Venue

1 (a) DISMISSAL AND TRANSFER OF CASES.

2 (1) *Cases Filed in Proper District.*

3 If a petition is filed in the proper district, the court, on the
4 timely motion of a party in interest or on its own motion, and
5 after hearing on notice to the petitioners, the United States
6 trustee, and other entities as directed by the court, may
7 transfer the case ~~may be transferred~~ to any other district if the
8 court determines that the transfer is in the interest of justice or
9 for the convenience of the parties.

10 (2) *Cases Filed in Improper District.*

11 If a petition is filed in an improper district, the court, on
12 the timely motion of a party in interest or on its own motion,
13 and after hearing on notice to the petitioners, the United
14 States trustee, and other entities as directed by the court, may

---

*New material is underlined; matter to be omitted is lined through.

15 dismiss the case or transfer it ~~the case may be dismissed or~~

16 ~~transferred~~ to any other district if the court determines that

17 transfer is in the interest of justice or for the convenience of

18 the parties.

19 * * * * *

COMMITTEE NOTE

Courts have generally held that they have the authority to dismiss or transfer cases on their own motion. The amendment recognizes this authority and also provides that dismissal or transfer of the case may take place only after notice and a hearing.

Rule 7007.1. Corporate Ownership Statement

1 * * * * *

2 (b) TIME FOR FILING.

3 A party shall file the statement required under Rule

4 7007.1(a) with its first ~~pleading in an adversary proceeding~~

5 appearance, pleading, motion, response, or other request

6 addressed to the court. A party shall file a supplemental

7 statement promptly upon any change in circumstances that

8 this rule requires the party to identify or disclose.

COMMITTEE NOTE

The rule is amended to clarify that a party must file a corporate ownership statement with its initial paper filed with the court in an adversary proceeding. The party's initial filing may be a document that is not a "pleading" as defined in Rule 7 F.R. Civ. P., which is made applicable in adversary proceedings by Rule 7007. The amendment also brings Rule 7007.1 more closely in line with Rule 7.1 F.R. Civ. P.

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EVIDENCE RULES

TO: **Honorable David F. Levi, Chair**
Standing Committee on Rules of Practice and Procedure

FROM: **Honorable Thomas S. Zilly, Chair**
Advisory Committee on Bankruptcy Rules

DATE: **May 2, 2005**

RE: **Report of the Advisory Committee on Bankruptcy Rules**

I. Introduction

The Advisory Committee on Bankruptcy Rules met on March 10-11, 2005, in Sarasota, Florida. The purpose of this report is to outline actions taken by the Advisory Committee at its spring meeting.

* * * * *

The Advisory Committee also studied a number of proposals to amend the Bankruptcy Rules. After careful consideration, the Advisory Committee requests that the Standing Committee approve for publication a preliminary draft of proposed amendments to Bankruptcy Rules 3001, 3007, 4001, and 6006, and new Rules 6003, 9005.1, and 9037. The Style Consultants to the Standing Committee offered a number of suggestions that were considered by the Advisory Committee's Style Subcommittee, and the proposals set out below in the Action Items section of the report reflect those joint efforts.

* * * * *

III Action items

* * * * *

B. Request Approval for Publication of Preliminary Draft of Proposed Amendments to Bankruptcy Rules 3001, 3007, 4001, and 6006, and new Rules 6003, 9005.1, and 9037

The Advisory Committee approved the following proposed rule amendments and recommends to the Standing Committee that these proposals be published in August 2005.

(1) Rule 3001. The Advisory Committee approved amendments to Rule 3001(c) and (d) to add page limitations on proof of claims filings and require summaries if over the page limitations.

(2) Rule 9005.1. The Advisory Committee approved this new rule dealing with a constitutional challenge to a statute or law to make pending new Civil Rule 5.1 applicable to all contested matters and other proceedings in a case.

(3) Rule 9037. The Advisory Committee approved the new privacy rule which modified the proposed template rule and Committee Note considered by each Advisory Committee. This proposed rule is intended to protect privacy and security concerns relating to electronic filing and the public availability of documents filed electronically, as required by the E-Government Act of 2002. The proposed rule tracks the Revised Privacy Template Rule developed by the E-Government Subcommittee with modifications deemed necessary for bankruptcy purposes.

(4) The Advisory Committee approved amendments to Rules 3007, 4001, and 6006, and new Rule 6003. These proposals, with some amendments by the Advisory Committee, were the result of the efforts of the Joint Subcommittee on Chapter 11 and Venue issues. This is a joint effort of the Committee on the Administration of the Bankruptcy System and the Advisory Committee to analyze choice of venue and other aspects of large chapter 11 cases.

(a) Rule 3007. The proposed amendment would place restrictions upon, and provide procedures for, omnibus objections to claims. In summary, the proposal would prohibit omnibus objections unless the court permits it or the objection is one of the class of permitted omnibus objections generally consisting of non-substantive objections , such as duplicate claims or late claims.

(b) Rule 4001. The proposed amendment relates to the use of cash collateral, obtaining debtor-in-possession financing, and approval of related agreements.

(c) Rule 6003. The proposed new rule would limit the type of motions and relief that can be granted during the first 20 days of a case.

(d) Rule 6006. The proposed amendment would place restrictions upon, and provide procedures for, omnibus assumptions, assignments and rejections of executory contracts and unexpired leases.

A copy of these proposed amendments are attached to this report.

* * * * *

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE*

Rule 3001. Proof of Claim

1 * * * * *

2 (c) CLAIM BASED ON A WRITING. When a claim, or
3 an interest in property of the debtor securing the claim, is
4 based on a writing, ~~the original or a duplicate~~ a copy of the
5 writing shall be filed with the proof of claim. If the writing
6 has been lost or destroyed, a statement of the circumstances
7 of the loss or destruction shall be filed with the proof of
8 claim. If the writing exceeds 25 pages, the claimant shall
9 instead file a copy of relevant excerpts of the writing and a
10 summary of the writing which together shall not exceed a
11 total of 25 pages. If the claimant has not filed a copy of the
12 complete writing, on request of a party in interest, the
13 claimant shall promptly serve on that party a copy of the
14 complete writing.

---

*New material is underlined; matter to be omitted is lined through.

15 (d) EVIDENCE OF PERFECTION OF SECURITY
16 INTEREST. If a security interest in property of the debtor is
17 claimed, the proof of claim shall be accompanied by evidence
18 that the security interest has been perfected. If the evidence
19 of perfection is a writing, the claimant shall file a copy of the
20 writing with the proof of claim. If the writing exceeds five
21 pages, the claimant shall instead file a copy of relevant
22 excerpts of the writing and a summary of the evidence of
23 perfection, which together shall not exceed a total of five
24 pages. If the claimant has not filed a copy of the complete
25 writing, on request of a party in interest, the claimant shall
26 promptly serve on that party a copy of the complete writing.
27 * * * * *

COMMITTEE NOTE

Subdivisions (c) and (d) of the rule are amended to provide that claimants must file duplicates of writings upon which a claim is based or which evidence perfection of any claimed security interest. The rule previously authorized the claimant to file either the original writing or a duplicate thereof. If the writings that support the claim

are 25 pages or less, the claimant must attach a copy of the writings to the proof of claim, whether or not the claimant provides a summary of the writings. The attached writings and summary together must not exceed 25 pages. Similarly, if the writings that evidence perfection of a security interest do not exceed five pages, the claimant must file a copy of those writings with the proof of claim. The claimant also may attach a summary of the writings evidencing perfection, but the total of the summary and the writings evidencing perfection of a security interest must not exceed five pages.

Subdivisions (c) and (d) are amended to establish limits on the length of documents being attached to a proof of claim. Some documents can be extremely lengthy and may pose particular problems, especially when they are filed electronically. Voluminous documents can cause undue delays both in the filing of the proof of claim as well as in searches of the court's record. Shortened versions of the writings should prevent these problems. Consequently, the rule directs the claimant to file a summary of the writing upon which the claim is based along with copies of the relevant portions of the writing. For example, if a writing must be signed by the debtor to be enforceable, the relevant excerpts likely would include the debtor's signature. The claimant makes the initial determination of relevancy, but to the extent that the attachment does not include relevant excerpts, the evidentiary effect of the proof of claim under subdivision (f) would be limited.

Under subdivision (c), writings on which the claim is based may not exceed 25 pages in length, and if they do, the claimant must instead attach a duplicate of relevant excerpts of the writings and a summary of the complete writings. The summary and the relevant excerpts also may not exceed 25 pages in the aggregate. Similarly, under subdivision (d), any attachment to the proof of claim to provide evidence of perfection of a security interest may not exceed five pages

in length. If the writings exceed five pages, the claimant must instead file a summary of the writings and a duplicate of relevant excerpts. The summary and relevant excerpts of evidence of perfection may not exceed five pages in the aggregate.

Under both subdivisions (c) and (d), if the claimant files a summary rather than a duplicate of the complete writing, the claimant must serve a copy of the complete writing upon any party in interest that requests a copy.

Rule 3007. Objections to Claims

1 (a) OBJECTIONS TO CLAIMS. An objection to the
2 allowance of a claim shall be in writing and filed. A copy of
3 the objection with notice of the hearing thereon shall be
4 mailed or otherwise delivered to the claimant, the debtor or
5 debtor in possession, and the trustee at least 30 days prior to
6 the hearing. ~~If an objection to a claim is joined with a~~
7 ~~demand for relief of the kind specified in Rule 7001, it~~
8 ~~becomes an adversary proceeding.~~
9 (b) DEMAND FOR RELIEF REQUIRING AN
10 ADVERSARY PROCEEDING. A party in interest shall not
11 include a demand for relief of a kind specified in Rule 7001

12 in an objection to the allowance of a claim, but an objection
13 to the allowance of a claim may be included in an adversary
14 proceeding.

15 (c) LIMITATION ON JOINDER OF CLAIMS
16 OBJECTIONS. Unless otherwise ordered by the court, or
17 permitted by subdivision (d), objections to more than one
18 claim shall not be joined in a single objection.

19 (d) OMNIBUS OBJECTION. Subject to subdivision (e),
20 objections to more than one claim may be joined in an
21 omnibus objection if all the claims were filed by the same
22 entity, or the objections are based solely on the grounds that
23 the claims should be disallowed, in whole or in part, for one
24 or more of the following reasons:

25 (1) they duplicate other claims;

26 (2) they have been filed in the wrong case;

27 (3) they have been replaced by subsequently filed
28 proofs of claim;

29 (4) they have been transferred in accordance with Rule
30 3001(e);
31 (5) they were not timely filed;
32 (6) they have been satisfied or released during the case
33 in accordance with the Code, applicable rules, or a court
34 order;
35 (7) they were presented in a form that does not comply
36 with applicable rules, and the objection states that the objector
37 is unable to determine the validity of the claim because of the
38 noncompliance;
39 (8) they are interests, rather than claims; and
40 (9) they assert priority in an amount that exceeds the
41 maximum amount under § 507 of the Code.
42 (e) REQUIREMENTS FOR OMNIBUS OBJECTION.
43 An omnibus objection under subdivision (d) shall:

44 (1) state in a conspicuous place that claimants
45 receiving the objection should locate their names and claims
46 as listed in the objection;
47 (2) list claimants alphabetically, provide a cross-
48 reference to claim numbers, and, if appropriate, list claimants
49 by category of claims;
50 (3) state the grounds of the objection to each claim
51 and provide a cross-reference to the pages in the omnibus
52 objection pertinent to the stated grounds;
53 (4) state in the title of the omnibus objection the
54 identity of the objector and the grounds for the objections;
55 (5) be numbered consecutively with other omnibus
56 objections filed by the same objector; and
57 (6) contain objections to no more than 100 claims.
58 (f) FINALITY OF OBJECTION. The finality of any
59 order regarding a claim objection included in an omnibus

60 objection shall be determined as though the claim had been

61 subject to an individual objection.

COMMITTEE NOTE

The rule is amended in a number of ways. First, the amendment prohibits a party in interest from including in a claim objection a request for relief that requires an adversary proceeding. A party in interest may, however, include an objection to the allowance of a claim in an adversary proceeding. Unlike a contested matter, an adversary proceeding requires the service of a summons and complaint which puts the defendant on notice of the potential for an affirmative recovery. Permitting the plaintiff in the adversary proceeding to include an objection to a claim would not unfairly surprise the defendant as might be the case if the action were brought as a contested matter that included an action to obtain relief of a kind specified in Rule 7001.

The rule as amended does not require that a party include an objection to the allowance of a claim in an adversary proceeding. If a claim objection is filed separately from a related adversary proceeding, the court may consolidate the objection with the adversary proceeding under Rule 7042.

The rule also is amended to authorize the filing of a pleading that joins objections to more than one claim. Such filings present significant opportunity for efficient administration of large cases, but the rule includes restrictions on the use of these omnibus objections to ensure the protection of the due process rights of the claimants.

Unless the court orders otherwise, objections to more than one claim may be joined in a single pleading only if all of the claims were

filed by the same entity, or if the objections are based solely on the grounds set out in subdivision (d) of the rule. Objections of the type listed in subdivision (d) often can be resolved without material factual or legal disputes. Objections to multiple claims permitted under the rule must comply with the procedural requirements set forth in subdivision (e). Among those requirements is the requirement in subdivision (e)(5) that these omnibus objections be consecutively numbered. Since these objections may not join more than 100 objections in any one omnibus objection, there may be a need for several omnibus objections to be filed in a particular case. Consecutive numbering of each omnibus objection and the identification of the objector in the title of the objection is essential to keep track of the objections on the court's docket. For example, the objections could be titled Debtor in Possession's First Omnibus Objection to Claims, Debtor in Possession's Second Omnibus Objection to Claims, Creditors' Committee's First Omnibus Objection to Claims, and so on. Titling the objections in this manner should avoid confusion and aid in tracking the objections on the docket.

Use of omnibus objections does not preclude the objecting party from raising other objections to claims listed on an omnibus objection. Section 502(j) of the Code authorizes reconsideration of claims, so this rule likewise recognizes the splitting of objections to claims. *See* Restatement (Second) of Judgments § 26 (1982). Consequently, a claim included in an omnibus objection based on one or more grounds set out in subdivision (d) could be included in another omnibus objection based on a different ground. The claim might also be subject to an objection on any other ground.

Subdivision (f) provides that an order resolving an objection to any particular claim is treated, for purposes of finality, as if the claim had been the subject of an individual objection. A party

seeking to appeal any such order is neither required, nor permitted, to await the court's resolution of all other joined objections. The rule permits the joinder of objections for convenience, and that convenience should not impede timely review of a court's decision with respect to each claim. Whether the court's action as to a particular objection is final, and the consequences of that finality, are not addressed by this amendment.

Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements

1 * * * * *

2 (b) USE OF CASH COLLATERAL.

3 (1) *Motion; Service.*

4 (A) Motion. A motion for ~~authorization~~ authority

5 to use cash collateral shall be made in accordance with Rule

6 9014 and shall be accompanied by a proposed form of order

7 ~~served on any entity which has an interest in the cash~~

8 ~~collateral, on any committee elected pursuant to § 705 or~~

9 ~~appointed pursuant to § 1102 of the Code or its authorized~~

10 ~~agent, or, if the case is a chapter 9 municipality case or a~~

11 ~~chapter 11 reorganization case and no committee of unsecured~~
12 ~~creditors has been appointed pursuant to § 1102, on the~~
13 ~~creditors included on the list filed pursuant to Rule 1007(d),~~
14 ~~and on such other entities as the court may direct~~.
15 (B) Contents. The motion shall include an
16 introductory statement, not to exceed three pages,
17 summarizing all material provisions of the motion, including:
18 (1) the name of each entity with an interest in
19 the cash collateral;
20 (2) the purposes for the use of the cash
21 collateral;
22 (3) the terms, including duration, of the use of
23 the cash collateral; and
24 (4) any liens, cash payments, or other
25 adequate protection that will be provided to each entity with
26 an interest in the cash collateral or, if no additional adequate

27 protection is proposed, an explanation of why each entity's
28 interest is adequately protected.
29 (C) Service. The motion shall be served on any
30 entity with an interest in the cash collateral, any committee
31 elected under § 705 or appointed under § 1102 of the Code or
32 its authorized agent, or, if the case is a chapter 9 municipality
33 case or a chapter 11 reorganization case and no committee of
34 unsecured creditors has been appointed under § 1102, the
35 creditors included on the list filed under Rule 1007(d), and
36 any other entity that the court may direct.
37 * * * * *
38 (c) OBTAINING CREDIT.
39 (1) *Motion; Service.*
40 (A) Motion. A motion for authority to obtain
41 credit shall be made in accordance with Rule 9014 and shall
42 be accompanied by a copy of the credit agreement and a
43 proposed form of order ~~served on any committee elected~~

44 ~~pursuant to § 705 or appointed pursuant to § 1102 of the Code~~
45 ~~or its authorized agent, or, if the case is a chapter 9~~
46 ~~municipality case or a chapter 11 reorganization case and no~~
47 ~~committee of unsecured creditors has been appointed pursuant~~
48 ~~to § 1102, on the creditors included on the list filed pursuant~~
49 ~~to Rule 1007(d), and on such other entities as the court may~~
50 ~~direct. The motion shall be accompanied by a copy of the~~
51 ~~agreement.~~
52 (B) Contents. The motion shall include an
53 introductory statement, not to exceed three pages,
54 summarizing all material provisions of the proposed credit
55 agreement, including interest rate, maturity, events of default,
56 liens, borrowing limits, and borrowing conditions. If the
57 proposed credit agreement or proposed order includes any of
58 the following provisions, the motion shall describe the nature
59 and extent of each provision, explain the reasons for each

60 provision, and identify the specific location of the provision
61 in the proposed form of order, agreement, or other document:
62 (1) the granting of priority or a lien on
63 property of the estate under § 364(c) or (d);
64 (2) the providing of adequate protection or
65 priority with respect to a claim that arose before the
66 commencement of the case, including the granting of a lien on
67 property of the estate to secure the claim, or the use of
68 property of the estate or credit obtained under § 364 to make
69 cash payments on account of the claim;
70 (3) a determination with respect to the
71 validity, enforceability, priority, or amount of a claim that
72 arose before the commencement of the case, or of any lien
73 securing the claim;
74 (4) a waiver or modification of the
75 provisions of the Code or applicable rules relating to the
76 automatic stay;

77 (5) a waiver or modification of any entity's
78 authority to file a plan, to seek an extension of time in which
79 the debtor has the exclusive right to file a plan, or the right to
80 request the use of cash collateral under § 363(c), or request
81 authority to obtain credit under § 364;
82 (6) a waiver or modification of the
83 applicability of nonbankruptcy law relating to the perfection
84 of a lien on property of the estate, or on the foreclosure or
85 other enforcement of the lien;
86 (7) a release, waiver, or limitation on any
87 claim or other cause of action belonging to the estate or the
88 trustee, including any modification of the statute of
89 limitations or other deadline to commence an action;
90 (8) indemnification of any entity;
91 (9) a release, waiver, or limitation of any
92 right under § 506(c); or

93 (10) the granting of a lien on any claim or
94 cause of action arising under § 544, 545, 547, 548, 549,
95 553(b), 723(a), or 724(a).
96 (C) Application of Rule 9024. The court may
97 grant appropriate relief under Rule 9024 if it determines that
98 the introductory statement did not adequately disclose a
99 material element of the agreement.
100 (D) Service. The motion shall be served on any
101 committee elected under § 705 or appointed under § 1102 of
102 the Code or its authorized agent, or, if the case is a chapter 9
103 municipality case or a chapter 11 reorganization case and no
104 committee of unsecured creditors has been appointed under
105 § 1102, on the creditors included on the list filed under Rule
106 1007(d), and on such other entities as the court may direct.
107 * * * * *
108 (d) AGREEMENT RELATING TO RELIEF FROM
109 THE AUTOMATIC STAY, PROHIBITING OR

110 CONDITIONING THE USE, SALE, OR LEASE OF
111 PROPERTY, PROVIDING ADEQUATE PROTECTION,
112 USE OF CASH COLLATERAL, AND OBTAINING
113 CREDIT.

114 (1) *Motion; Service.*

115 (A) Motion. A motion for approval of an agreement
116 (~~A~~1) to provide adequate protection, (~~B~~2) to prohibit or
117 condition the use, sale, or lease of property, (~~C~~3) to modify or
118 terminate the stay provided for in § 362, (~~D~~4) to use cash
119 collateral, or (~~E~~5) between the debtor and an entity that has a
120 lien or interest in property of the estate pursuant to which the
121 entity consents to the creation of a lien senior or equal to the
122 entity's lien or interest in such property shall be ~~served on any~~
123 ~~committee elected pursuant to § 705 or appointed pursuant to~~
124 ~~§ 1102 of the Code or its authorized agent, or, if the case is a~~
125 ~~chapter 9 municipality case or a chapter 11 reorganization~~
126 ~~case and no committee of unsecured creditors has been~~

127 ~~appointed pursuant to § 1102, on the creditors included on the~~
128 ~~list filed pursuant to Rule 1007(d), and on such other entities~~
129 ~~as the court may direct. The motion shall be~~ accompanied by
130 a copy of the agreement and a proposed form of order.
131 (B) Contents. The motion shall include an
132 introductory statement, not to exceed three pages,
133 summarizing all material provisions of the agreement. The
134 motion also shall state whether the relief requested includes
135 any of the provisions listed in subdivision (c)(1)(B) and, if so,
136 shall describe the nature and extent of each provision, explain
137 the reasons for each provision, and identify the specific
138 location of the provision in the proposed form of order,
139 agreement, or other document.
140 (C) Application of Rule 9024. The court may
141 grant appropriate relief under Rule 9024 if it determines that
142 the introductory statement did not adequately disclose a
143 material element of the agreement.

144 (D) Service. The motion shall be served on any
145 committee elected under § 705 or appointed under § 1102 of
146 the Code or its authorized agent, or, if the case is a chapter 9
147 municipality case or a chapter 11 reorganization case and no
148 committee of unsecured creditors has been appointed under
149 § 1102, on the creditors included on the list filed under Rule
150 1007(d), and on such other entities as the court may direct.
151 * * * * *

COMMITTEE NOTE

The rule is amended to require that parties seeking authority to use cash collateral, to obtain credit, and to obtain approval of agreements to provide adequate protection, modify or terminate the stay, or to grant a senior or equal lien on property, submit with those requests a proposed order granting the relief, and that they provide more extensive notice to interested parties of a number of specified terms. The motion must include a summary, not to exceed three pages, which will assist the court and interested parties in understanding the nature of the relief requested. In addition to the summary, the rule requires that motions under subdivisions (c) and (d) state whether the movant is seeking approval of any of the provisions listed in subdivision (c)(1)(B), and where those provisions are located in the documents. These provisions are frequently included in agreements of these types, and the rule is intended to

enhance the ability of the court and interested parties to find and evaluate those provisions.

The rule limits the introductory summary to three pages. The parties to agreements and lending offers frequently have concise summaries of their transactions that contain a list of the material provisions of the agreements, even if the agreements themselves are very lengthy. A similar summary should allow the court and interested parties to understand the relief requested. The court may grant relief under Rule 9024 if it determines that a material element of the requested financing, or agreement regarding the stay or cash collateral usage, was not adequately disclosed in the introductory statement.

Other amendments are stylistic.

Rule 6003. Interim and Final Relief Immediately Following the Commencement of the Case — Applications for Employment; Motions for Use, Sale, or Lease of Property; and Motions for Assumptions, Assignments, and Rejections of Executory Contracts

1 Except to the extent that relief is necessary to avoid
2 immediate and irreparable harm, the court shall not, within 20
3 days after the filing of the petition, grant relief regarding the
4 following:
5 (a) an application under Rule 2014;

6 (b) a motion to use, sell, lease, or otherwise incur an
7 obligation regarding property of the estate, including a motion
8 to pay all or part of a claim that arose before the filing of the
9 petition, but not a motion under Rule 4001; and
10 (c) a motion to assume, assign, or reject an executory
11 contract or unexpired lease in accordance with § 365.

COMMITTEE NOTE

There can be a flurry of activity during the first days of a bankruptcy case. This activity frequently takes place prior to the formation of a creditors' committee, and it also can include substantial amounts of materials for the court and parties in interest to review and evaluate. This rule is intended to alleviate some of the time pressures present at the start of a case so that full and close consideration can be given to matters that may have a fundamental impact on the case.

The rule provides that the court cannot grant relief on applications for the employment of professional persons, motions for the use, sale, or lease of property of the estate other than such a motion under Rule 4001, and motions to assume, assign, or reject executory contracts and unexpired leases for the first 20 days of the case, unless it is necessary to avoid immediate and irreparable harm. This standard is taken from Rule 4001(b)(2) and (c)(2), and decisions under those provisions should provide guidance for the application of this provision.

This rule does not govern motions and applications made more than 20 days after the filing of the petition.

Rule 6006. Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease

1 * * * * *

2 (e) LIMITATIONS. The trustee shall not seek authority
3 to assume or assign multiple executory contracts or unexpired
4 leases in one motion unless all executory contracts or
5 unexpired leases to be assumed or assigned are between the
6 same parties or are to be assigned to the same assignee, or the
7 court otherwise authorizes the motion to be filed. Subject to
8 subdivision (f), the trustee may join requests for authority to
9 reject multiple executory contracts or unexpired leases in one
10 motion.

11 (f) OMNIBUS MOTIONS. A motion to reject or, if
12 permitted under subdivision (e), a motion to assume or assign

13 multiple executory contracts or unexpired leases that are not
14 between the same parties shall:
15 (1) state in a conspicuous place that parties receiving
16 the omnibus motion should locate their names and their
17 contracts or leases listed in the motion;
18 (2) list parties alphabetically and identify the
19 corresponding contract or lease;
20 (3) specify the terms, including the curing of defaults,
21 for each requested assumption or assignment;
22 (4) specify the terms, including the identity of each
23 assignee and the adequate assurance of future performance by
24 each assignee, for each requested assignment;
25 (5) be numbered consecutively with other omnibus
26 motions to assume, assign, or reject executory contracts or
27 unexpired leases; and
28 (6) be limited to no more than 100 executory
29 contracts or unexpired leases.

30 (g) FINALITY OF DETERMINATION. The finality of any
31 order respecting an executory contract or unexpired lease
32 included in an omnibus motion shall be determined as though
33 such contract or lease had been the subject of a separate
34 motion.

COMMITTEE NOTE

The rule is amended to authorize the use of omnibus motions to reject multiple executory contracts and unexpired leases. In some cases there may be numerous executory contracts and unexpired leases, and this rule permits the combining of up to one hundred of these contracts and leases in a single motion to initiate the contested matter.

The rule also is amended to authorize the use of a single motion to assume or assign executory contracts and unexpired leases (i) when such contracts and leases are with a single nondebtor party, (ii) when such contracts and leases are being assigned to the same assignee, or (iii) the court authorizes the filing of a joint motion to assume or to assume and assign executory contracts and unexpired leases under other circumstances that are not specifically recognized in the rule.

An omnibus motion to assume, assign, or reject multiple executory contracts and unexpired leases must comply with the procedural requirements set forth in subdivision (f) of the rule, unless the court orders otherwise. These requirements are intended to ensure that the nondebtor parties to the contracts and leases receive effective

notice of the motion. Among those requirements is the requirement in subdivision (f)(5) that these motions be consecutively numbered (*e.g.*, Debtor in Possession's First Omnibus Motion for Authority to Assume Executory Contracts and Unexpired Leases, Debtor in Possession's Second Omnibus Motion for Authority to Assume Executory Contracts and Unexpired Leases, etc.). There may be a need for several of these motions in a particular case. Thus, consecutive numbering of each motion is essential to keep track of these motions on the court's docket. Numbering the motions consecutively should avoid confusion that might otherwise result from similar or identically titled motions.

Subdivision (g) of the rule provides that the finality of any order respecting an executory contract or unexpired lease included in an omnibus motion shall be determined as though such contract or lease had been the subject of a separate motion. A party seeking to appeal any such order is neither required, nor permitted, to await the court's resolution of all other contracts or leases included in the omnibus motion to obtain appellate review of the order. The rule permits the listing of multiple contracts or leases for convenience, and that convenience should not impede timely review of the court's decision with respect to each contract or lease.

Rule 9005.1. Constitutional Challenge to a Statute — Notice, Certification, and Intervention

1 Rule 5.1 F.R.Civ.P. applies in cases under the Code.

COMMITTEE NOTE

The rule is added to adopt the new rule added to the Federal Rules of Civil Procedure. The new Civil Rule replaces Rule 24(c)

F.R.Civ.P., so the cross reference to Civil Rule 24 contained in Rule 7024 is no longer sufficient to bring the provisions of new Civil Rule 5.1 into adversary proceedings. This rule also makes Civil Rule 5.1 applicable to all contested matters and other proceedings within the bankruptcy case.

Rule 9037. Privacy Protection For Filings Made with the Court[**]

1 (a) LIMITS ON INFORMATION DISCLOSED IN A
2 FILING. Unless the court orders otherwise, an electronic or
3 paper filing made with the court that includes a social security
4 number or tax identification number; a name of a person,
5 other than the debtor, known to be and identified as a minor;
6 a person's birth date; or a financial account number may
7 include only:
8 (1) the last four digits of the social security number
9 and tax identification number;
10 (2) the minor's initials;

[**]Amendments proposed to the Bankruptcy, Civil, and Criminal Rules implementing the E-Government Act and the Judicial Conference privacy policy are included in a side-by-side comparison chart on page 159.

11 (3) the year of birth; and

12 (4) the last four digits of the financial account

13 number.

14 (b) EXEMPTIONS FROM THE REDACTION

15 REQUIREMENT. The redaction requirement of subdivision

16 (a) does not apply to the following:

17 (1) the record of an administrative or agency

18 proceeding unless filed with a proof of claim;

19 (2) the record of a court or tribunal whose decision

20 is being reviewed, if that record was not subject to

21 subdivision (a) when originally filed;

22 (3) filings covered by subdivision (c) of this rule;

23 and

24 (4) filings that are subject to § 110 of the Code.

25 (c) FILINGS MADE UNDER SEAL. The court may

26 order that a filing be made under seal without redaction. The

27 court may later unseal the filing or order the person who made
28 the filing to file a redacted version for the public record.
29 (d) PROTECTIVE ORDERS. If necessary to protect
30 private or sensitive information that is not otherwise protected
31 by subdivision (a), a court may by order in a case under the
32 Code:
33 (1) require redaction of additional information; or
34 (2) limit or prohibit remote electronic access by a
35 nonparty to a document filed with the court.
36 (e) OPTION FOR ADDITIONAL UNREDACTED
37 FILING UNDER SEAL. A party making a redacted filing
38 under subdivision (a) may also file an unredacted copy under
39 seal. The court must retain the unredacted copy as part of the
40 record.
41 (f) OPTION FOR FILING A REFERENCE LIST. A
42 filing that contains information redacted under subdivision (a)
43 may be filed together with a reference list that identifies each

44 item of redacted information and specifies an appropriate
45 identifier that uniquely corresponds to each item of redacted
46 information listed. The reference list must be filed under seal
47 and may be amended as of right. Any references in the case
48 to an identifier in the reference list will be construed to refer
49 to the corresponding item of information.

50 (g) WAIVER OF PROTECTION OF IDENTIFIERS. A
51 party waives the protection of subdivision (a) as to the party's
52 own information to the extent that such information is filed
53 not under seal and without redaction.

COMMITTEE NOTE

The rule is adopted in compliance with section 205(c)(3) of the E-Government Act of 2002, Public Law No. 107-347. Section 205(c)(3) requires the Supreme Court to prescribe rules "to protect privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically." The rule goes further than the E-Government Act in regulating paper filings even when they are not converted to electronic form, but the number of filings that remain in paper form is certain to diminish over time. Most districts scan paper filings into the electronic case file, where they become available to the public in the same way as documents initially filed in electronic form. It is

electronic availability, not the form of the initial filing, that raises the privacy and security concerns addressed in the E-Government Act.

The rule is derived from and implements the policy adopted by the Judicial Conference in September 2001 to address the privacy concerns resulting from public access to electronic case files. *See* http://www.privacy.uscourts.gov/Policy.htm. The Judicial Conference policy is that documents in case files generally should be made available electronically to the same extent they are available at the courthouse, provided that certain "personal data identifiers" are not included in the public file.

While providing for the public filing of some information, such as the last four digits of an account number, the rule does not intend to establish a presumption that this information never could or should be protected. For example, it may well be necessary in individual cases to prevent remote access by nonparties to any part of an account number or social security number. It may also be necessary to protect information not covered by the redaction requirement — such as driver's license numbers and alien registration numbers — in a particular case. In such cases, the party may seek protection under subdivision (c) or (d). Moreover, the rule does not affect the protection available under other rules, such as Rules 16 and 26(c) of the Federal Rules of Civil Procedure, or under other sources of protective authority.

Parties must remember that any personal information not otherwise protected by sealing or redaction will be made available over the internet. Counsel should notify clients of this fact so that an informed decision may be made on what information is to be included in a document filed with the court.

The inclusion of a debtor's full social security number on the notice of the § 341 meeting of creditors, however, is an example of full information that is made available to creditors. Of course, that information is not filed with the court, see Rule 1007(f) (the debtor "submits" this information), and the copy of the notice that is filed with the court does not include the full social security number. Thus, since the full social security number is not filed with the court, it is not available to a person searching that record.

The clerk is not required to review documents filed with the court for compliance with this rule. The responsibility to redact filings rests with counsel and the parties.

Subdivision (d) recognizes the court's inherent authority to issue a protective order to prevent remote access to private or sensitive information and to require redaction of material in addition to that which would be redacted under subdivision (a) of the rule. These orders may be issued whenever necessary either by the court on its own motion, or on motion of a party in interest.

Subdivision (e) allows a party who makes a redacted filing to file an unredacted document under seal. This provision is derived from section 205(c)(3)(iv) of the E-Government Act. Subdivision (f) allows parties to file a reference list of redacted information. This provision is derived from section 205(c)(3)(v) of the E-Government Act, as amended in 2004.

In accordance with the E-Government Act, subdivision (f) of the rule refers to "redacted" information. The term "redacted" is intended to govern a filing that is prepared with abbreviated identifiers in the first instance, as well as a filing in which a personal identifier is edited after its preparation.

Subdivision (g) allows a party to waive the protections of the rule as to its own personal information by filing it in unredacted form. A party may wish to waive the protection if it determines that the costs of redaction outweigh the benefits to privacy. As to financial account numbers, the instructions to Schedules E and F of Official Form 6 note that the debtor may elect to include the complete account number on those schedules rather than limit the number to the final four digits. Including the complete number would operate as a waiver by the debtor under subdivision (g) as to the full information that the debtor set out on those schedules. The waiver operates only to the extent of the information that the party filed without redaction. If a party files an unredacted identifier by mistake, it may seek relief from the court.

Trial exhibits are subject to the redaction requirements of Rule 9037 to the extent they are filed with the court. Trial exhibits that are not initially filed with the court must be redacted in accordance with the rule if and when they are filed as part of an appeal or for other reasons.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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To: **Honorable David F. Levi, Chair, Standing Committee on Rules of Practice and Procedure**

From: **Honorable Lee H. Rosenthal, Chair, Advisory Committee on the Federal Rules of Civil Procedure**

Date: **May 27, 2005**

Re: **Report of the Civil Rules Advisory Committee**

Introduction

* * * * *

Part II recommends publication for comment of a new Rule 5.2, the Civil Rules version of the E-Government Act rules. The Appellate, Bankruptcy, and Criminal Rules Advisory Committees have made similar recommendations.

* * * * *

II. Action Items: Rule Amendment Recommended for Publication for Comment

The Advisory Committee recommends publication for comment of new Rule 5.2:

PROPOSED AMENDMENT TO THE FEDERAL RULES OF CIVIL PROCEDURE*

Rule 5.2. Privacy Protection For Filings Made with the Court**

1 **(a) Redacted Filings.** Unless the court orders otherwise, an
2 electronic or paper filing made with the court that includes a
3 social security number or an individual's tax identification
4 number, a name of a person known to be a minor, a person's
5 birth date, or a financial account number may include only:
6 (1) the last four digits of the social security number and
7 tax identification number;
8 (2) the minor's initials;
9 (3) the year of birth; and
10 (4) the last four digits of the financial account number.
11 **(b) Exemptions from the Redaction Requirement.** The
12 redaction requirement of Rule 5.2(a) does not apply to the
13 following:

---

*New material is underlined.

**Amendments proposed to the Bankruptcy, Civil, and Criminal Rules implementing the E-Government Act and the Judicial Conference privacy policy are included in a side-by-side comparison chart on page 159.

15 **(1)** in a forfeiture proceeding, a financial account number
16 that identifies the property alleged to be subject to
17 forfeiture;
18 **(2)** the record of an administrative or agency proceeding;
19 **(3)** the official record of a state-court proceeding;
20 **(4)** the record of a court or tribunal whose decision is
21 being reviewed, if that record was not subject to Rule
22 5.2(a) when originally filed;
23 **(5)** a filing covered by Rule 5.2(c) or (d); and
24 **(6)** a filing made in an action brought under 28 U.S.C.
25 § 2241, 2254, or 2255.
26 **(c) Limitations on Remote Access to Electronic Files;**
27 **Social Security Appeals and Immigration Cases.** Unless
28 the court orders otherwise, in an action for benefits under the
29 Social Security Act, and in an action or proceeding relating to
30 an order of removal, relief from removal, or immigration
31 benefits or detention, access to an electronic file is authorized
32 as follows:

33 **(1)** the parties and their attorneys may have remote
34 electronic access to any part of the case file, including the
35 administrative record;
36 **(2)** any other person may have electronic access to the
37 full record at the courthouse, but may have remote
38 electronic access only to:
39 **(A)** the docket maintained by the court; and
40 **(B)** an opinion, order, judgment, or other disposition
41 of the court, but not any other part of the case file or
42 the administrative record.
43 **(d) Filings Made Under Seal.** The court may order that a
44 filing be made under seal without redaction. The court may
45 later unseal the filing or order the person who made the filing
46 to file a redacted version for the public record.
47 **(e) Protective Orders.** If necessary to protect private or
48 sensitive information that is not otherwise protected under
49 Rule 5.2(a), a court may by order in a case:
50 **(1)** require redaction of additional information; or
51 **(2)** limit or prohibit remote electronic access by a
52 nonparty to a document filed with the court.

53 **(f) Option for Additional Unredacted Filing Under Seal.**
54 A party making a redacted filing under Rule 5.2(a) may also
55 file an unredacted copy under seal. The court must retain the
56 unredacted copy as part of the record.
57 **(g) Option for Filing a Reference List.** A filing that contains
58 information redacted under Rule 5.2(a) may be filed together
59 with a reference list that identifies each item of redacted
60 information and specifies an appropriate identifier that
61 uniquely corresponds to each item of redacted information
62 listed. The reference list must be filed under seal and may be
63 amended as of right. Any reference in the case to an identifier
64 in the reference list will be construed to refer to the
65 corresponding item of information.
66 **(h) Waiver of Protection of Identifiers.** A party waives the
67 protection of Rule 5.2(a) as to the party's own information to
68 the extent that the party files such information not under seal
69 and without redaction.

Committee Note

The rule is adopted in compliance with section 205(c)(3) of the E-Government Act of 2002, Public Law No. 107-347. Section 205(c)(3) requires the Supreme Court to prescribe rules "to protect

privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically." The rule goes further than the E-Government Act in regulating paper filings even when they are not converted to electronic form. But the number of filings that remain in paper form is certain to diminish over time. Most districts scan paper filings into the electronic case file, where they become available to the public in the same way as documents initially filed in electronic form. It is electronic availability, not the form of the initial filing, that raises the privacy and security concerns addressed in the E-Government Act.

The rule is derived from and implements the policy adopted by the Judicial Conference in September 2001 to address the privacy concerns resulting from public access to electronic case files. *See* http://www.privacy.uscourts.gov/Policy.htm. The Judicial Conference policy is that documents in case files generally should be made available electronically to the same extent they are available at the courthouse, provided that certain "personal data identifiers" are not included in the public file.

While providing for the public filing of some information, such as the last four digits of an account number, the rule does not intend to establish a presumption that this information never could or should be protected. For example, it may well be necessary in individual cases to prevent remote access by nonparties to any part of an account number or social security number. It may also be necessary to protect information not covered by the redaction requirement — such as driver's license numbers and alien registration numbers — in a particular case. In such cases, the party may seek protection under subdivision (d) or (e). Moreover, the rule does not affect the protection available under other rules, such as Civil Rules 16 and 26(c), or under other sources of protective authority.

Parties must remember that any personal information not otherwise protected by sealing or redaction will be made available over the internet. Counsel should notify clients of this fact so that an informed decision may be made on what information is to be included in a document filed with the court.

The clerk is not required to review documents filed with the court for compliance with this rule. The responsibility to redact filings rests with counsel and the parties.

Subdivision (c) provides for limited public access in Social Security cases and immigration cases. Those actions are entitled to special treatment due to the prevalence of sensitive information and the volume of filings. Remote electronic access by nonparties is limited to the docket and the written dispositions of the court unless the court orders otherwise. The rule contemplates, however, that nonparties can obtain full access to the case file at the courthouse, including access through the court's public computer terminal.

Subdivision (d) reflects the interplay between redaction and filing under seal. It does not limit or expand the judicially developed rules that govern sealing. But it does reflect the possibility that redaction may provide an alternative to sealing.

Subdivision (e) provides that the court can by order in a particular case require more extensive redaction than otherwise required by the rule, where necessary to protect against disclosure to nonparties of sensitive or private information. Nothing in this subdivision is intended to affect the limitations on sealing that are otherwise applicable to the court.

Subdivision (f) allows a party who makes a redacted filing to file an unredacted document under seal. This provision is derived from section 205(c)(3)(iv) of the E-Government Act.

Subdivision (g) allows parties to file a register of redacted information. This provision is derived from section 205(c)(3)(v) of the E-Government Act, as amended in 2004. In accordance with the E-Government Act, subdivision (g) refers to "redacted" information. The term "redacted" is intended to govern a filing that is prepared with abbreviated identifiers in the first instance, as well as a filing in which a personal identifier is edited after its preparation.

Subdivision (h) allows a party to waive the protections of the rule as to its own personal information by filing it unsealed and in unredacted form. A party may wish to waive the protection if it

determines that the costs of redaction outweigh the benefits to privacy. If a party files an unredacted identifier by mistake, it may seek relief from the court.

Trial exhibits are subject to the redaction requirements of Rule 5.2 to the extent they are filed with the court. Trial exhibits that are not initially filed with the court must be redacted in accordance with the rule if and when they are filed as part of an appeal or for other reasons.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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To: **Honorable David F. Levi, Chair, Standing Committee on Rules of Practice and Procedure**

From: **Honorable Lee H. Rosenthal, Chair, Advisory Committee on the Federal Rules of Civil Procedure**

Date: **July 18, 2005**

Re: **Recommendation that the Standing Committee Approve the Publication of the Style Forms for a Period of Public Comment**

As you know, as part of the Style Project, the Civil Rules have been edited to make them simpler, clearer, more consistent, and easier to use. This work follows the successful completion of the Style Project for the Criminal Rules and the Appellate Rules. The Style Project on the Civil Rules includes the illustrative forms contained in the Appendix of Forms to the Federal Rules of Civil Procedure. These Forms have not been revised or updated in a number of years and the intent from the outset has been to "style" the Forms in tandem with the Rules. The Style Civil Rules were published for comment in February 2005, but the amount of work required to prepare the Rules for publication did not make it possible to publish the "Style Forms" for comment at that time.

Since the publication of the Style Rules, Professor Tom Rowe, Joe Spaniol and Professor Joe Kimble, the members of the Style Subcommittee of the Standing Committee, and Professor Cooper have worked very hard to prepare a Style version of the Civil Forms for publication. The Advisory Committee has voted to recommend to the Standing Committee that the Style Forms be published in August

2005, for a period of public comment that will end in February 2006.[1] The Style Forms are attached to this memo, with the existing Forms for ready comparison.

There are significant advantages to publishing the Style Forms in August 2005. The major advantage is that the publication period will overlap with the publication period for the Style Rules. The nature of the project is such that useful reaction from the bench, bar, and academy will require a significant amount of work. We are very fortunate that an organized effort to provide such reaction has taken shape. Professor Stephen Burbank of the University of Pennsylvania Law School and Gregory Joseph, Esq., former chair of the American Bar Association Section on Litigation have organized a group to study specific rules and provide detailed reaction to the proposed Style changes. This study will be invaluable to the Standing and Civil Rules Committees. It will help us ensure that we have not made unintended substantive changes and have achieved the best possible Style expression. It is important to have this organized reaction available for the Style Forms as well.

The second advantage of publishing the Style Forms in August is that it will place the Style Rules and Forms on the same timetable for the Rules Enabling Act process. The Civil Rules Committee can consider the public comments in the Spring of 2006 and make recommendations to the Standing Committee in June 2006, which can in turn make recommendations to the Judicial Conference in September 2006. It will be much easier and more effective for the Committees and the Conference to consider the Style Rules and Forms together than to have the Style Forms presented much later, on their own.

The same Style conventions and protocols used with the Rules apply to the Forms. As with the Rules, adapting the Forms to the Style conventions and protocols required a number of decisions and choices. The specific decisions and choices are evident by comparing the present and Style Forms, but it is useful to point out some of the larger issues.

1. The Limits of the Work. The limits of the Style Project are evident in the Style Forms. The Committee has resisted changes to the substance of the forms. Although some of the Forms represent approaches to pleading and other submissions that may not be consistent with current practice, those approaches have been continued to avoid substantive revision. For example, the complaint Forms call for allegations that are far briefer and sketchier that are commonly found in cases filed in federal court. The Style Forms maintained this approach and do not raise the

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[1] One member of the Civil Rules Committee was out of the country on vacation and did not vote. One member voted to delay publication. All others voted in favor of publication.

substantive questions implicit in calling for a greater level of detail. Similarly, the choice of examples in the Forms has not changed; the negligence complaint continues to use the example of an automobile striking a pedestrian. Within the Style Project, one change has been made to make the Forms consistent with similar changes in the Rules themselves. The information required at the end of every document filed is amended to call for e-mail addresses in addition to the name, date, address, and telephone number.

2. Numbering and Organization. The present Forms are numbered consecutively. The Advisory Committee considered whether to have the Forms numbered consecutively, without break, or to number in decades, organized by subject area. The advantage of the decade grouping is that new Forms can be added and given numbers within the decade group, without the necessity of using extensions such as "A" for additions. The Style Forms place special forms within the first decade as Forms 1-9; complaint forms as Forms 10-21, answer forms as Forms 30-31; motions forms as Forms 40-42; discovery forms as Forms 50-52; condemnation forms as Forms 60-61; judgment forms as Forms 70-71; and forms for assignment to magistrate judges as Forms 80-82.

Some of the present Forms have been moved to conform to this organization. For example, the complaint form for the Jones Act has been moved so that it immediately follows the complaint form for its close relative, the FELA. Not all of the cross-references have been made fully consistent with these changes. That will be finished before publication to reflect the final decision on numbering.

3. Brackets and Blanks. The present forms do not use brackets around the blanks that are to be filled in for use in particular cases. The brackets are used in the Style Forms only when alternatives are indicated, such as a choice between attaching a contract or summarizing it.

4. Explanatory Notes. The present Forms include a number of notes. For example, present Form 2 has a note discussing the citizenship of a corporation, a note discussing the amount-in-controversy requirement, and a third stating that it is not necessary to plead venue. Present Form 34 includes a reminder not to send a copy of the consent to jurisdiction by a magistrate judge to the district or magistrate judge, but only to the clerk. The decision was made to avoid all explanatory notes. The forms are intended to be simple and brief illustrations. They should not become the occasion for sporadic and necessarily incomplete practice points.

5. The Summons Forms and "Default 'Will' or 'May' Be Entered": Forms 12 and 13 (present forms 1 and 22-A), for summons and third-party summons, state that a failure to answer "will" result in judgment by default. "Will" is carried

forward, despite the observation by several that "may" is more accurate. The primary reasons to retain "will" are to avoid a substantive change and because the strong warning of the consequence of failure to answer is useful. Both present and Style Rule 4(a), further, require that the summons notify the defendant that failure to answer "will" result in a judgment by default.

6. Pleading Dates. The Forms do not refer to "on or about." The present forms alternate between stating a specific date – July 1, 1936 – and "on or about." The Style Form choice is to use a uniform blank date. The concern is that the plaintiff may not know a precise date. Three choices were presented: automatically follow the present forms; adopt a uniform convention to delete "on or about" throughout; or adopt a uniform convention but drop a footnote at the first appearance to say that "on or about" is permitted. The Style Forms choice avoids the uncertain and necessarily unsuccessful efforts to address highly sensitive limitations and other timing problems, such as the effective date of legislation. Litigants who are uncertain about the date are likely to resort to "on or about" without the need for reference in the Forms.

7. Money Had and Received, Style Form 10(f). Professor Rowe made a strong case for retaining "had and" in this Form. Present Forms 4 through 8 embody the "common counts" and give each their traditional titles. Garner refers to the traditional phrase as a historic term of art that most Anglo-American jurisdictions "no longer require." But he also distinguishes it from the action for money paid, used to recover money paid to a third persons in circumstances that benefit the defendant. The Style Subcommittee is either agnostic or in favor of using "had and." Despite its somewhat archaic sound, it is retained in the Style Form.

8. Interest in the Forms for Judgment. The present Forms are inconsistent in including "plus interest" in the demands for judgment. The present Form 3 demand includes interest, and this is carried forward in Forms 4 to 8. Interest is not included in present Forms 9, 10, 11, 12, 14, 15, 17, or 18, but is in Form 13 (promissory note) and Form 16 (patent infringement). In Style Form 10, Complaint to Recover a Sum Certain, "plus interest" is included in the demand for each of the Forms (a) to (f). This is consistent with the present Form treatment. Interest is not included in the remaining Style Forms on judgment. The choice not to refer to "plus interest" in the forms other than those for use in complaints to recover definite sums reflects the close tie between the availability of interest and substantive law and the variability of the rules on interest. On the other hand, prejudgment interest is often available. One approach might be to include "plus interest" with a qualifying term, such as "as available under applicable law." This is an area on which public comment could usefully be solicited.

9. The Copyright Form. This Form is presented in a Style version, but it is subject to a more basic choice, set out in the footnote. The present Copyright Form is obsolete in light of substantive changes in copyright law. The choice is between omitting any copyright form or adopting a new form that conforms to the substantive changes. The latter choice would require work outside the Style Project.

10. Responding to Allegations in the Complaint: Form 30. Rule 8(b) imposes on defendants greater obligations of clarity than Rules 8(a) and 10 impose on plaintiffs. Present Form 20 does not illustrate a general denial and no attempt is made in Style Form 30. The central idea in Style Form 30 is to encourage answers that respond to each paragraph of the complaint. But a single paragraph of a complaint may plead several matters, some of which should be admitted, some denied, and some admitted in part and denied in part. An orderly response would identify each paragraph of the complaint, but a statement that each allegation in the complaint must have a "correspondingly numbered paragraph in the answer" may prove confusing – the sequence of the answer will seldom track the complaint. The Style Form breaks down the response into those allegations that are admitted, those as to which the defendant lacks a sufficient basis to admit or deny, and those that are must be denied.

11. The Need for a Notice of Motion Form. Present Form 19 includes a "Notice of Motion" form. It is not included in the Style Forms on the premise that it is no longer useful. All districts have abolished regular "motion days," and the only need for a notice of motion was to identify which of the regular motion days was contemplated. The omission should be noted and comment on it solicited when the Forms are published, to ensure that the premise as to consistent practice around the country is correct.

12. The Magistrate Judge Forms. The Style Forms use "referral" rather than "assignment" to describe the transfer to the magistrate judge following the parties' consent. This choice means that "referral" is used to describe both this type of transfer and the more limited referral for report and recommendation, which does not require the parties' consent. This use is consistent with Rule 73(b), which speaks of "referral" and "reference," as well as with sections 636(c)(2) and (4), which also use the word "reference."

The Civil Rules Committee looks forward to responding to any questions or comments that members of the Standing Committee may have. As with the Style Rules, we anticipate that the best forum to raise questions is during the public comment period.

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Form 1. Caption. *(Use on every summons, complaint, answer, motion, or other document.)*

United States District Court
for the
_____District of _____

A B, Plaintiff	)	
	)	
v.	)	
	)	**Civil Action No. _____**
C D, Defendant	)	
	)	
v.	)	
	)	
E F, Third-Party Defendant	)	
(*Use if needed.*)	)	

(Name of Document)

NO COMPARABLE FORM

Form 2. Date, Signature, Address, E-mail Address, and Telephone Number.
(Use at the conclusion of pleadings and other papers that require a signature.)

Date _____

_____
(Signature of the attorney
or unrepresented party)

_____
(Printed name)

_____
E-mail address)

_____
(Address)

_____
(Telephone number)

NO COMPARABLE FORM

Form 3. Summons.

(Caption – See Form 1.)

To *name the defendant*:

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney,_____, whose address is _____. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date _____

_____
Clerk of Court

(Court Seal)

(Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States allowed 60 days by Rule 12(a)(3)(A) or (B).)

Form 1. Summons

United States District Court
for the Southern District of New York

Civil Action, File Number _____

A. B., Plaintiff	)	
v.	)	***Summons***
C. D., Defendant	)	

To the above-named Defendant:

You are hereby summoned and required to serve upon _____, plaintiff's attorney, whose address is _____, an answer to the complaint which is herewith served upon you, within 20[1] days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

_____,
Clerk of Court.

[Seal of the U.S. District Court]
Dated _____
(This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure)

(As amended Dec. 29, 1948, eff. Oct. 20, 1949.)

[1] If the United States or an officer or agency there of is a defendant, the time to be inserted as to it is 60 days.

Form 4. Summons on a Third-Party Complaint.

(Caption – See Form 1.)

To *name the third-party defendant:*

A lawsuit has been filed against defendant _____, who as third-party plaintiff is making this claim against you to pay part or all of what [he] may owe to the plaintiff _____.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff and on the defendant an answer to the attached third-party complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the defendant's attorney, _____ , whose address is, _____ , and also on the plaintiff's attorney, _____ , whose address is, _____. If you fail to do so, judgment by default will be entered against you for the relief demanded in the third-party complaint. You also must file the answer or motion with the court and serve it on any other parties.

A copy of the plaintiff's complaint is also attached. You may – but are not required to – respond to it.

Date _____

_____
Clerk of Court

(Court Seal)

Form 22-A. Summons and Complaint Against Third-Party Defendant

United States District Court
for the Southern District of New York

Civil Action, File Number ___

A. B., Plaintiff	)	
v.	)	
C. D., Defendant and	)	
Third-Party Plaintiff	)	***Summons***
v.	)	
E. F., Third-Party Defendant	)	

To the above-named Third-Party Defendant:

You are hereby summoned and required to serve upon _____, plaintiff's attorney whose address is _____, and upon _____, who is attorney for C. D., defendant and third-party plaintiff, and whose address is _____, an answer to the third-party complaint which is herewith served upon you within 20 days after the service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the third-party complaint. There is also served upon you herewith a copy of the complaint of the plaintiff which you may but are not required to answer.

_____,
Clerk of Court.

[Seal of District Court]
Dated _____

United States District Court for the
Southern District of New York

Civil Action, File Number ___

A. B., Plaintiff	)	
v.	)	
C. D., Defendant and	)	
Third-Party Plaintiff	)	**Third-Party Complaint**
v.	)	
E. F., Third-Party Defendant	)	

1. Plaintiff A. B. has filed against defendant C. D. a complaint, a copy of which is hereto attached as "Exhibit A."

2. (Here state the grounds upon which C. D. is entitled to recover from E. F., all or part of what A. B. may recover from C. D. The statement should be framed as in an original complaint.)

Wherefore C. D. demands judgment against third-party defendant E. F. for all sums[1] that may be adjudged against defendant C. D. in favor of plaintiff A. B.

Signed: _____
Attorney for C. D., Third-Party Plaintiff
Address: _____

(Added Jan. 21, 1963, eff. July 1, 1963.)

[1] Make appropriate change where C. D. is entitled to only partial recovery-over against E. F.

Form 5. Notice of a Lawsuit and Request to Waive Service of a Summons.

(Caption – See Form 1.)

To (*name the defendant – or if the defendant is a corporation, partnership, or association name an officer or agent authorized to receive service*):

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid costs, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these costs you must return the signed waiver within (*give at least 30 days or at least 60 days if the defendant is outside any judicial district of the United States*) from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange for formal service and ask the court to require you, or the entity you represent, to pay the costs.

Please read the enclosed statement about the duty to waive formal service.

I certify that this request is being sent to you on the date below.

(Date and sign – See Form 2.)

Form 1A. Notice of Lawsuit and Request for Waiver of Service of Summons

TO: (A)
[as (B) of (C)]

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the (D) and has been assigned docket number (E).

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within (F) days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the reverse side (or at the foot) of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this ___ day of _____, _____.

Signature of Plaintiff's Attorney or Unrepresented Plaintiff

Notes:

A--Name of individual defendant (or name of officer or agent of corporate defendant)

B--Title, or other relationship of individual to corporate defendant

C--Name of corporate defendants, if any

D--District

E--Docket number of action

F--Addresses must be given at least 30 days (60 days if located in foreign country) in which to return waiver

(Added Apr. 22, 1993, eff. Dec. 1, 1993.)

Form 6. Waiver of the Service of Summons.

(Caption – See Form 1.)

To *name the plaintiff's attorney or the unrepresented plaintiff*:

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the cost of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from _____, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

(Date and sign – See Form 2.)

(Attach the following to Form 6.)

Duty to Avoid Unnecessary Costs of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary costs of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the costs of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property. If the waiver is signed and returned, you can still make these and other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

Form 1B. Waiver of Service of Summons

TO: (name of plaintiff's attorney or unrepresented plaintiff)

I acknowledge receipt of your request that I waive service of a summons in the action of (caption of action), which is case number (docket number) in the United States District Court for the (district). I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after (date request was sent), or within 90 days after that date if the request was sent outside the United States.

_____ _____

Date Signature

Printed/typed name: _____

[as _____]

[of _____]

To be printed on reverse side of the waiver form or set forth at the foot of the form:

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

(Added Apr. 22, 1993, eff. Dec. 1, 1993.)

Form 7. Statement of Jurisdiction.

a. (*For diversity-of-citizenship jurisdiction.*) The plaintiff is [a citizen of *Michigan*] [a corporation incorporated under the laws of *Michigan* with its principal place of business in *Michigan*]. The defendant is [a citizen of *New York*] [a corporation incorporated under the laws of *New York* with its principal place of business in *New York*]. The amount in controversy, without interest and costs, exceeds the sum or value specified by 28 U.S.C. § 1332.

b. (*For federal-question jurisdiction.*) This action arises under [the United States Constitution, *specify the article or amendment and the section*] [a United States treaty *specify*] [a federal statute, ___U.S.C. § ___].

c. (*For a claim in the admiralty or maritime jurisdiction.*) This is a case of admiralty or maritime jurisdiction. *(To invoke admiralty status under Rule 9(h) use the following:* This is an admiralty or maritime claim within the meaning of Rule 9(h).)

Form 2. Allegation of Jurisdiction

(a) Jurisdiction founded on diversity of citizenship and amount.

Plaintiff is a [citizen of the State of Connecticut][1] [corporation incorporated under the laws of the State of Connecticut having its principal place of business in the State of Connecticut] and defendant is a corporation incorporated under the laws of the State of New York having its principal place of business in a State other than the State of Connecticut. The matter in controversy exceeds, exclusive of interest and costs, the sum specified by 28 U.S.C. § 1332.

(b) Jurisdiction founded on the existence of a Federal question.

The action arises under [the Constitution of the United States, Article ___, Section ___]; [the ___ Amendment to the Constitution of the United States, Section ___]; [the Act of ___, ___ Stat. ___; U.S.C., Title ___, § ___]; [the Treaty of the United States (here describe the treaty)][2] as hereinafter more fully appears.

(c) Jurisdiction founded on the existence of a question arising under particular statutes.

The action arises under the Act of ___, ___ Stat. ___; U.S.C., Title ___, § ___, as hereinafter more fully appears.

(d) Jurisdiction founded on the admiralty or maritime character of the claim.

This is a case of admiralty and maritime jurisdiction, as hereinafter more fully appears. [If the pleader wishes to invoke the distinctively maritime procedures referred to in Rule 9(h), add the following or its substantial equivalent: This is an admiralty or maritime claim within the meaning of Rule 9(h).]

(As amended Apr. 26, 1999, eff. Dec. 1, 1999.)

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[1] Form for natural person.

[2] Use the appropriate phrase or phrases. The general allegation of the existence of a Federal question is ineffective unless the matters constituting the claim for relief as set forth in the complaint raise a Federal question.

Form 8. Statement of Reasons for Omitting a Party.
(If a person who ought to be made a party under Rule 19(a) is not named, include this statement in accordance with Rule 19(c).)

This complaint does not join as a party *name* who [is not subject to this court's personal jurisdiction] [cannot be made a party without depriving this court of subject-matter jurisdiction] because *state the reason*.

Form 26. Allegation of Reason for Omitting Party

When it is necessary, under Rule 19(c), for the pleader to set forth in his pleading the names of persons who ought to be made parties, but who are not so made, there should be an allegation such as the one set out below:

John Doe named in this complaint is not made a party to this action [because he is not subject to the jurisdiction of this court]; [because he cannot be made a party to this action without depriving this court of jurisdiction].

Form 9. Statement Noting a Party's Death.

(Caption – See Form 1.)

In accordance with Rule 25(a) *name the person*, who is [a party to this action] [a representative of or successor to the deceased party] notes the death during the pendency of this action of *name*, [*describe as party* in this action].

(Date and sign – See Form 2.)

Form 30. Suggestion of Death Upon the Record Under Rule 25(a)(1)

A. B. [describe as a party, or as executor, administrator, or other representative or successor of C. D., the deceased party] suggests upon the record, pursuant to Rule 25(a)(1), the death of C. D. [describe as party] during the pendency of this action.

(Added Jan. 21, 1963, eff. July 1, 1963.)

Form 10. Complaint to Recover a Sum Certain.

(Caption – See Form 1.)

1. (Statement of Jurisdiction -- See Form 7.)

(Use one or more of the following as appropriate and include a demand for judgment.)

(a) On a Promissory Note

2. On __*date*__, the defendant executed and delivered a note promising to pay the plaintiff on __*date*__ the sum of $ _____ with interest at the rate of __ percent. A copy of the note [is attached as Exhibit A] [is summarized as follows: _____.]

3. The defendant has not paid the amount owed.

(b) On an Account

2. The defendant owes the plaintiff $_____ according to the account set out in Exhibit A.

(c) For Goods Sold and Delivered

2. The defendant owes the plaintiff $ _____ for goods sold and delivered by the plaintiff to the defendant from __*date*__ to __*date*__.

(d) For Money Lent

2. The defendant owes the plaintiff $ _____ for money lent by the plaintiff to the defendant on __*date*__.

(e) For Money Paid by Mistake

2. The defendant owes the plaintiff $ _____ for money paid by mistake to the defendant on __*date*__ under these circumstances: *describe with particularity in accordance with Rule 9(b).*

(f) For Money Had and Received

2. The defendant owes the plaintiff $ _____ for money that was received from __*name*__ on __*date*__ to be paid by the defendant to the plaintiff.

Demand for Judgment

Therefore, the plaintiff demands judgment against the defendant for $ _____, plus interest and costs.

(Date and sign – See Form 2.)

Form 3. Complaint on a Promissory Note

1. Allegation of jurisdiction.
2. Defendant on or about June 1, 1935, executed and delivered to plaintiff a promissory note [in the following words and figures: (here set out the note verbatim)]; [a copy of which is hereto annexed as Exhibit A]; [whereby defendant promised to pay to plaintiff or order[1] on June 1, 1936 the sum of _____ dollars with interest thereon at the rate of six percent. per annum].
3. Defendant owes to plaintiff the amount of said note and interest.

Wherefore plaintiff demands judgment against defendant for the sum of _____ dollars, interest, and costs.

Signed: _____
Attorney for Plaintiff.
Address: _____

NOTES

1. The pleader may use the material in one of the three sets of brackets. His choice will depend upon whether he desires to plead the document verbatim, or by exhibit, or according to its legal effect.
2. Under the rules free joinder of claims is permitted. See rules 8(e) and 18. Consequently the claims set forth in each and all of the following forms may be joined with this complaint or with each other. Ordinarily each claim should be stated in a separate division of the complaint, and the divisions should be designated as counts successively numbered. In particular the rules permit alternative and inconsistent pleading. See Form 10.

(As amended Jan. 21, 1963, eff. July 1, 1963.)

Form 4. Complaint on an Account

1. Allegation of jurisdiction.
2. Defendant owes plaintiff _____ dollars according to the account hereto annexed as Exhibit A.

Wherefore (etc. as in Form 3).

(As amended Jan. 21, 1963, eff. July 1, 1963.)

Form 5. Complaint for Goods Sold and Delivered

1. Allegation of jurisdiction.
2. Defendant owes plaintiff _____ dollars for goods sold and delivered by plaintiff to defendant between June 1, 1936 and December 1, 1936.

Wherefore (etc. as in Form 3).

NOTE

This form may be used where the action is for an agreed price or for the reasonable value of the goods.

(As amended Jan. 21, 1963, eff. July 1, 1963.)

[1] So in original.

PAGE INTENTIONALLY BLANK

Form 6. Complaint for Money Lent

1. Allegation of jurisdiction.
2. Defendant owes plaintiff _____ dollars for money lent by plaintiff to defendant on June 1, 1936.

Wherefore (etc. as in Form 3).

(As amended Jan. 21, 1963, eff. July 1, 1963.)

Form 7. Complaint for Money Paid by Mistake

1. Allegation of jurisdiction.
2. Defendant owes plaintiff _____ dollars for money paid by plaintiff to defendant by mistake on June 1, 1936, under the following circumstances: [here state the circumstances with particularity--see Rule 9(b)].

Wherefore (etc. as in Form 3).

(As amended Jan. 21, 1963, eff. July 1, 1963.)

Form 8. Complaint for Money Had and Received

1. Allegation of jurisdiction.
2. Defendant owes plaintiff _____ dollars for money had and received from one G. H. on June 1, 1936, to be paid by defendant to plaintiff.

Wherefore (etc. as in Form 3).

(As amended Jan. 21, 1963, eff. July 1, 1963.)

Form 11. Complaint for Negligence.

(Caption – See Form 1.)

1. (Statement of Jurisdiction – See Form 7.)

2. On _*date*_, at _*place*_, the defendant negligently drove a motor vehicle against the plaintiff.

3. As a result, the plaintiff was physically injured, lost wages or income, suffered physical and mental pain, and incurred medical expenses of $_____.

Therefore, the plaintiff demands judgment against the defendant for $ _____, plus costs.

(Date and sign – See Form 2).

Form 9. Complaint for Negligence

1. Allegation of jurisdiction.

2. On June 1, 1936, in a public highway called Boylston Street in Boston, Massachusetts, defendant negligently drove a motor vehicle against plaintiff who was then crossing said highway.

3. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars and costs.

NOTE

Since contributory negligence is an affirmative defense, the complaint need contain no allegation of due care of plaintiff.

(As amended Jan. 21, 1963, eff. July 1, 1963.)

Form 12. Complaint for Negligence When the Plaintiff Does Not Know Who Is Responsible.

(Caption – See Form 1.)

1. (Statement of Jurisdiction – See Form 7.)

2. On *date*, at *place*, defendant *name* or defendant *name* or both of them willfully or recklessly or negligently drove, or caused to be driven, a motor vehicle against the plaintiff.

3. As a result, the plaintiff was physically injured, lost wages or income, suffered mental and physical pain, and incurred medical expenses of $ _____.

Therefore, the plaintiff demands judgment against one or both defendants for $ _____, plus costs.

(Date and sign – See Form 2.)

Form 10. Complaint for Negligence Where Plaintiff is Unable to Determine Definitely Whether the Person Responsible is C. D. or E. F. or Whether Both are Responsible and Where his Evidence may Justify a Finding of Wilfulness or of Recklessness or of Negligence

A. B., Plaintiff	)	
v.	)	***Complaint***
C. D. and E. F., Defendants	)	

1. Allegation of jurisdiction.

2. On June 1, 1936, in a public highway called Boylston Street in Boston, Massachusetts, defendant C. D. or defendant E. F., or both defendants C. D. and E. F. wilfully or recklessly or negligently drove or caused to be driven a motor vehicle against plaintiff who was then crossing said highway.

3. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against C. D. or against E. F. or against both in the sum of _____ dollars and costs.

(As amended Jan. 21, 1963, eff. July 1, 1963.)

PROPOSED STYLE FORM

Form 13. Complaint for Negligence Under the Federal Employers' Liability Act.

(Caption – See Form 1.)

1. (Statement of Jurisdiction – See Form 7.)

2. At the times below, the defendant owned and operated in interstate commerce a railroad line that passed through a tunnel located at _____.

3. On __*date*__, the plaintiff was working to repair and enlarge the tunnel to make it convenient and safe for use in interstate commerce.

4. During this work, the defendant, as the employer, negligently put the plaintiff to work in a section of the tunnel that the defendant had left unprotected and unsupported.

5. The defendant's negligence caused the plaintiff to be injured by a rock that fell from an unsupported portion of the tunnel.

6. As a result, the plaintiff was physically injured, lost wages or income, suffered mental and physical pain, and incurred medical expenses of $ _____.

Therefore, the plaintiff demands judgment against the defendant for $ _____, and costs.

(Date and sign – See Form 2.)

Form 14. Complaint for Negligence Under Federal Employer's Liability Act

1. Allegation of jurisdiction.

2. During all the times herein mentioned defendant owned and operated in interstate commerce a railroad which passed through a tunnel located at _____ and known as Tunnel No. ___.

3. On or about June 1, 1936, defendant was repairing and enlarging the tunnel in order to protect interstate trains and passengers and freight from injury and in order to make the tunnel more conveniently usable for interstate commerce.

4. In the course of thus repairing and enlarging the tunnel on said day defendant employed plaintiff as one of its workmen, and negligently put plaintiff to work in a portion of the tunnel which defendant had left unprotected and unsupported.

5. By reason of defendant's negligence in thus putting plaintiff to work in that portion of the tunnel, plaintiff was, while so working pursuant to defendant's orders, struck and crushed by a rock, which fell from the unsupported portion of the tunnel, and was (here describe plaintiff's injuries).

6. Prior to these injuries, plaintiff was a strong, able-bodied man, capable of earning and actually earning _____ dollars per day. By these injuries he has been made incapable of any gainful activity, has suffered great physical and mental pain, and has incurred expense in the amount of _____ dollars for medicine, medical attendance, and hospitalization.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars and costs.

Form 14. Complaint for Damages Under the Merchant Marine Act.

(Caption – See Form 1.)

1. (Statement of Jurisdiction – See Form 7.)

2. At the times below, the defendant owned and operated the vessel *name* and used it to transport cargo for hire by water in interstate and foreign commerce.

3. On *date*, at *place*, the defendant hired the plaintiff under seamen's articles of customary form for a voyage from _____ to _____ and return at a wage of $ _____ a month and found, which is equal to a shore worker's wage of $ _____ a month.

4. On *date*, the vessel was at sea on the return voyage. (*Describe the weather and the condition of the vessel.*)

5. (*Describe as in Form 11 the defendant's negligent conduct.*)

6. As a result of the defendant's negligent conduct and the unseaworthiness of the vessel, the plaintiff was physically injured, has been incapable of any gainful activity, suffered mental and physical pain, and has incurred medical expenses of $ _____.

Therefore, the plaintiff demands judgment against the defendant for $ _____, plus costs.

(Date and sign — See Form 2.)

Form 15. Complaint for Damages Under Merchant Marine Act

1. Allegation of jurisdiction. [If the pleader wishes to invoke the distinctively maritime procedures referred to in Rule 9(h), add the following or its substantial equivalent: This is an admiralty or maritime claim within the meaning of Rule 9(h).]

2. During all the times herein mentioned defendant was the owner of the steamship _____ and used it in the transportation of freight for hire by water in interstate and foreign commerce.

3. During the first part of (month and year) at _____ plaintiff entered the employ of defendant as an able seaman on said steamship under seamen's articles of customary form for a voyage from _____ ports to the Orient and return at a wage of _____ dollars per month and found, which is equal to a wage of _____ dollars per month as a shore worker.

4. On June 1, 1936, said steamship was about ___ days out of the port of _____ and was being navigated by the master and crew on the return voyage to _____ ports. (Here describe weather conditions and the condition of the ship and state as in an ordinary complaint for personal injuries the negligent conduct of defendant.)

5. By reason of defendant's negligence in thus (brief statement of defendant's negligent conduct) and the unseaworthiness of said steamship, plaintiff was (here describe plaintiff's injuries).

6. Prior to these injuries, plaintiff was a strong, able-bodied man, capable of earning and actually earning _____ dollars per day. By these injuries he has been made incapable of any gainful activity; has suffered great physical and mental pain, and has incurred expense in the amount of _____ dollars for medicine, medical attendance, and hospitalization.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars and costs.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

Form 15. Complaint for the Conversion of Property.

(Caption — See Form 1.)

1. (Statement of Jurisdiction — See Form 7.)

2. On _*date*_, at _*place*_, the defendant converted to the defendant's own use property owned by the plaintiff. The property converted consists of _*describe*_.

3. The property is worth $_____.

Therefore, the plaintiff demands judgment against the defendant for $ _____, plus costs.

(Date and sign – See Form 2.)

Form 11. Complaint for Conversion

1. Allegation of jurisdiction.

2. On or about December 1, 1936, defendant converted to his own use ten bonds of the _____ Company (here insert brief identification as by number and issue) of the value of _____ dollars, the property of plaintiff.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest, and costs.

(As amended Jan. 21, 1963, eff. July 1, 1963.)

Form 16. Third-Party Complaint.

(Caption – See Form 1.)

1. Plaintiff *name* has filed against defendant *name* a complaint, a copy of which is attached.

2. (State grounds entitling defendant's name to recover from third-party defendant's name for (all or an identified share) of any judgment for plaintiff's name against defendant's name.)

Therefore, the defendant demands judgment against *third-party defendant's name* for *all or an identified share* of sums that may be adjudged against the defendant in the plaintiff's favor.

(Date and sign – See Form 2.)

Form 22-A. Summons and Complaint Against Third-Party Defendant

United States District Court
for the Southern District of New York

Civil Action, File Number ___

A. B., Plaintiff	)	
v.	)	
C. D., Defendant and	)	
Third-Party Plaintiff	)	***Summons***
v.	)	
E. F., Third-Party Defendant	)	

To the above-named Third-Party Defendant:

You are hereby summoned and required to serve upon _____, plaintiff's attorney whose address is _____, and upon _____, who is attorney for C. D., defendant and third-party plaintiff, and whose address is _____, an answer to the third-party complaint which is herewith served upon you within 20 days after the service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the third-party complaint. There is also served upon you herewith a copy of the complaint of the plaintiff which you may but are not required to answer.

_____,
Clerk of Court.

[Seal of District Court]
Dated _____

United States District Court for the
Southern District of New York

Civil Action, File Number ___

A. B., Plaintiff	)	
v.	)	
C. D., Defendant and	)	
Third-Party Plaintiff	)	**Third-Party Complaint**
v.	)	
E. F., Third-Party Defendant	)	

1. Plaintiff A. B. has filed against defendant C. D. a complaint, a copy of which is hereto attached as "Exhibit A."

2. (Here state the grounds upon which C. D. is entitled to recover from E. F., all or part of what A. B. may recover from C. D. The statement should be framed as in an original complaint.)

Wherefore C. D. demands judgment against third-party defendant E. F. for all sums[1] that may be adjudged against defendant C. D. in favor of plaintiff A. B.

Signed: _____
Attorney for C. D., Third-Party Plaintiff
Address: _____

(Added Jan. 21, 1963, eff. July 1, 1963.)

[1] Make appropriate change where C. D. is entitled to only partial recovery-over against E. F.

Form 17. Complaint for Specific Performance of a Contract to Convey Land.

(Caption – See Form 1.)

1. (Statement of Jurisdiction – See Form 7.)

2. On _*date*_, the parties agreed to the contract [attached as Exhibit A][summarize the contract].

3. As agreed, the plaintiff tendered the purchase price and requested a conveyance of the land, but the defendant refused to accept the money or make a conveyance.

4. The plaintiff now offers to pay the purchase price.

Therefore, the plaintiff demands:

(a) that the defendant now be required to specifically perform the agreement and pay damages of $ _____, plus interest and costs, or

(b) that if specific performance is not ordered, the defendant pay damages of $ _____, plus costs.

(Date and sign – See Form 2.)

CURRENT FORM

Form 12. Complaint for Specific Performance of Contract to Convey Land

1. Allegation of jurisdiction.

2. On or about December 1, 1936, plaintiff and defendant entered into an agreement in writing a copy of which is hereto annexed as Exhibit A.

3. In accord with the provisions of said agreement plaintiff tendered to defendant the purchase price and requested a conveyance of the land, but defendant refused to accept the tender and refused to make the conveyance.

4. Plaintiff now offers to pay the purchase price.

Wherefore plaintiff demands (1) that defendant be required specifically to perform said agreement, (2) damages in the sum of one thousand dollars, and (3) that if specific performance is not granted plaintiff have judgment against defendant in the sum of _____ dollars.

NOTE

Here, as in Form 3, plaintiff may set forth the contract verbatim in the complaint or plead it, as indicated, by exhibit, or plead it according to its legal effect. Furthermore, plaintiff may seek legal or equitable relief or both even though this was impossible under the system in operation before these rules.

(As amended Jan. 21, 1963, eff. July 1, 1963.)

Form 18. Complaint for Patent Infringement.

(Caption – See Form 1.)

1. (Statement of Jurisdiction — See Form 7.)

2. On *date*, United States Letters Patent No. _____ were issued to the plaintiff for an invention in an *electric motor*. The plaintiff owned the patent throughout the period of the defendant's infringing acts and still owns the patent.

3. The defendant has infringed and is still infringing the Letters Patent by making, selling, and using *electric motors* that embody the patented invention, and the defendant will continue to do so unless enjoined by this court.

4. The plaintiff has complied with the statutory requirement of placing a notice of the Letters Patent on all *electric motors* it manufactures and sells, and has given the defendant written notice of the infringement.

Therefore, the plaintiff demands:

(a) a preliminary and final injunction against the continuing infringement;

(b) an accounting for damages; and

(c) an assessment of interest and costs against the defendant.

(Date and sign – See Form 2.)

Form 16. Complaint for Infringement of Patent

1. Allegation of jurisdiction.

2. On May 16, 1934, United States Letters Patent No. ___ were duly and legally issued to plaintiff for an invention in an electric motor; and since that date plaintiff has been and still is the owner of those Letters Patent.

3. Defendant has for a long time past been and still is infringing those Letters Patent by making, selling, and using electric motors embodying the patented invention, and will continue to do so unless enjoined by this court.

4. Plaintiff has placed the required statutory notice on all electric motors manufactured and sold by him under said Letters Patent, and has given written notice to defendant of his said infringement.

Wherefore plaintiff demands a preliminary and final injunction against continued infringement, an accounting for damages, and an assessment of interest and costs against defendant.

(As amended Jan. 21, 1963, eff. July 1, 1963.)

Form 19. Complaint for Copyright Infringement and Unfair Competition.[1]

(Caption – See Form 1.)

1. (Statement of Jurisdiction – See Form 7.)

2. Before *date*, the plaintiff, a United States citizen, wrote a book entitled_____.

3. The book is an original work that may be copyrighted under United States law. A copy of the book is attached as Exhibit A.

4. Between *date* and *date*, the plaintiff applied to the copyright office and received a certificate of registration dated _____ and identified as *date, class, number*.

5. Since *date*, the plaintiff has either published or licensed for publication all copies of the book in compliance with the copyright laws and has remained the sole owner of the copyright.

6. After the copyright was issued, the defendant infringed the copyright by publishing and selling a book entitled _____, which was copied largely from the plaintiff's book. A copy of the defendant's book is attached as Exhibit B.

7. The plaintiff has notified the defendant in writing of the infringement.

8. The defendant continues to infringe the copyright and engage in unfair trade practices and unfair competition by continuing to publish and sell the infringing book in violation of the copyright, thus causing irreparable damage.

Therefore, the plaintiff demands:

(a) that until this case is decided the defendant and the defendant's agents be enjoined from disposing of any copies of the defendant's book by sale or otherwise;

(b) that the defendant account for and pay as damages to the plaintiff all profits and advantages gained from unfair trade practices and unfair competition in selling the defendant's book, and all profits and advantages gained from infringing the plaintiff's copyright (but no less than the statutory minimum);

(c) that the defendant deliver for impoundment all copies of the book in the defendant's possession or control and deliver for destruction all infringing copies and all plates, molds, and other materials for making infringing copies;

(d) that the defendant pay the plaintiff interest, costs, and reasonable attorney's fees; and

(e) that the plaintiff be awarded any other just relief.

(Date and sign – See Form 2.)

[1] Form [19] is presented in a tentatively styled form subject to a determination whether to adopt a new form that conforms to any substantive changes in copyright law or to omit any copyright complaint from the Forms.

Form 17. Complaint for Infringement of Copyright and Unfair Competition

1. Allegation of jurisdiction.

2. Prior to March, 1936, plaintiff, who then was and ever since has been a citizen of the United States, created and wrote an original book, entitled _____.

3. This book contains a large amount of material wholly original with plaintiff and is copyrightable subject matter under the laws of the United States.

4. Between March 2, 1936, and March 10, 1936, plaintiff complied in all respects with the Act of (give citation) and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said book, and received from the Register of Copyrights a certificate of registration, dated and identified as follows: "March 10, 1936, Class ___, No. ___."

5. Since March 10, 1936, said book has been published by plaintiff and all copies of it made by plaintiff or under his authority or license have been printed, bound, and published in strict conformity with the provisions of the Act of _____ and all other laws governing copyright.

6. Since March 10, 1936, plaintiff has been and still is the sole proprietor of all rights, title, and interest in and to the copyright in said book.

7. After March 10, 1936, defendant infringed said copyright by publishing and placing upon the market a book entitled _____, which was copied largely from plaintiff's copyrighted book, entitled _____.

8. A copy of plaintiff's copyrighted book is hereto attached as "Exhibit 1"; and a copy of defendant's infringing book is hereto attached as "Exhibit 2."

9. Plaintiff has notified defendant that defendant has infringed the copyright of plaintiff, and defendant has continued to infringe the copyright.

10. After March 10, 1936, and continuously since about _____, defendant has been publishing, selling and otherwise marketing the book entitled _____, and has thereby been engaging in unfair trade practices and unfair competition against plaintiff to plaintiff's irreparable damage.

Wherefore plaintiff demands:

(1) That defendant, his agents, and servants be enjoined during the pendency of this action and permanently from infringing said copyright of said plaintiff in any manner, and from publishing, selling, marketing or otherwise disposing of any copies of the book entitled _____.

(2) That defendant be required to pay to plaintiff such damages as plaintiff has sustained in consequence of defendant's infringement of said copyright and said unfair trade practices and unfair competition and to account for

(a) all gains, profits and advantages derived by defendant by said trade practices and unfair competition and

(b) all gains, profits, and advantages derived by defendant by his infringement of plaintiff's copyright or such damages as to the court shall appear proper within the provisions of the copyright statutes, but not less than two hundred and fifty dollars.

(3) That defendant be required to deliver up to be impounded during the pendency of this action all copies of said book entitled _____ in his possession or under his control and to deliver up for destruction all infringing copies and all plates, molds, and other matter for making such infringing copies.

(4) That defendant pay to plaintiff the costs of this action and reasonable attorney's fees to be allowed to the plaintiff by the court.

(5) That plaintiff have such other and further relief as is just.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948.)

Form 20. Complaint for Interpleader and Declaratory Relief.

(Caption – See Form 1.)

1. (Statement of Jurisdiction – See Form 7.)

2. On *date*, the plaintiff issued a life insurance policy on the life of *name* with *name* as the named beneficiary.

3. As a condition for keeping the policy in force, the policy required payment of a premium during the first year and then annually.

4. The premium due on *date* was never paid, and the policy lapsed after that date.

5. On *date*, after the policy had lapsed, both the insured and the named beneficiary died in an automobile collision.

6. Defendant *name* claims to be the beneficiary in place of *name* and has filed a claim to be paid the policy's full amount.

7. The other two defendants are representatives of the deceased persons' estates. Each defendant has filed a claim on behalf of each estate to receive payment of the policy's full amount.

8. If the policy was in force at the time of death, the plaintiff is in doubt about who should be paid.

Therefore, the plaintiff demands:

(a) that each defendant be restrained from commencing any action against the plaintiff on the policy;

(b) a judgment that no defendant is entitled to the proceeds of the policy or any part of it, but if the court determines that the policy was in effect at the time of the insured's death, that the defendants be required to interplead and settle among themselves their rights to the proceeds, and that the plaintiff be discharged from all liability except to the defendant determined to be entitled to the proceeds; and

(c) that the plaintiff recover its costs.

(Date and sign – See Form 2.)

Form 18. Complaint for Interpleader and Declaratory Relief

1. Allegation of jurisdiction.

2. On or about June 1, 1935, plaintiff issued to G. H. a policy of life insurance whereby plaintiff promised to pay to K. L. as beneficiary the sum of _____ dollars upon the death of G. H. The policy required the payment by G. H. of a stipulated premium on June 1, 1936, and annually thereafter as a condition precedent to its continuance in force.

3. No part of the premium due June 1, 1936, was ever paid and the policy ceased to have any force or effect on July 1, 1936.

4. Thereafter, on September 1, 1936, G. H. and K. L. died as the result of a collision between a locomotive and the automobile in which G. H. and K. L. were riding.

5. Defendant C. D. is the duly appointed and acting executor of the will of G. H.; defendant E. F. is the duly appointed and acting executor of the will of K. L.; defendant X. Y. claims to have been duly designated as beneficiary of said policy in place of K. L.

6. Each of defendants, C. D., E. F., and X. Y. is claiming that the above-mentioned policy was in full force and effect at the time of the death of G. H.; each of them is claiming to be the only person entitled to receive payment of the amount of the policy and has made demand for payment thereof.

7. By reason of these conflicting claims of the defendants, plaintiff is in great doubt as to which defendant is entitled to be paid the amount of the policy, if it was in force at the death of G. H.

Wherefore plaintiff demands that the court adjudge:

(1) That none of the defendants is entitled to recover from plaintiff the amount of said policy or any part thereof.

(2) That each of the defendants be restrained from instituting any action against plaintiff for the recovery of the amount of said policy or any part thereof.

(3) That, if the court shall determine that said policy was in force at the death of G. H., the defendants be required to interplead and settle between themselves their rights to the money due under said policy, and that plaintiff be discharged from all liability in the premises except to the person whom the court shall adjudge entitled to the amount of said policy.

(4) That plaintiff recover its costs.

(As amended Jan. 21, 1963, eff. July 1, 1963.)

Form 21. Complaint on a Claim for a Debt and to Set Aside a Fraudulent Conveyance Under Rule 18(b).

(Caption – See Form 1.)

1. (Statement of Jurisdiction — See Form 7.)

2. On *date*, defendant *name* signed a note promising to pay to the plaintiff on *date* the sum of $ _____ with interest at the rate of ___ percent. [The pleader may, but need not, attach a copy or plead the note verbatim.]

3. Defendant *name* owes the plaintiff the amount of the note and interest.

4. On *date*, defendant *name* conveyed all defendant's real and personal property *if less than all, describe it fully* to defendant *name* for the purpose of defrauding the plaintiff and hindering or delaying the collection of the debt.

Therefore, the plaintiff demands that:

(a) judgment for $ _____, plus costs, be entered against defendant(s) *name(s)*; and

(b) the conveyance to defendant *name* be declared void and that any judgment granted be made a lien on the property.

(Date and sign – See Form 2.)

Form 13. Complaint on Claim for Debt and to Set Aside Fraudulent Conveyance Under Rule 18(b)

A. B., Plaintiff	)	
v.	)	***Complaint***
C. D. and E. F., Defendants	)	

1. Allegation of jurisdiction.

2. Defendant C. D. on or about _____ executed and delivered to plaintiff a promissory note [in the following words and figures: (here set out the note verbatim)]; [a copy of which is hereto annexed as Exhibit A]; [whereby defendant C. D. promised to pay to plaintiff or order[1] on _____ the sum of five thousand dollars with interest thereon at the rate of _____ percent. per annum].

3. Defendant C. D. owes to plaintiff the amount of said note and interest.

4. Defendant C. D. on or about _____ conveyed all his property, real and personal [or specify and describe] to defendant E. F. for the purpose of defrauding plaintiff and hindering and delaying the collection of the indebtedness evidenced by the note above referred to.

Wherefore plaintiff demands:

(1) That plaintiff have judgment against defendant C. D. for _____ dollars and interest; (2) that the aforesaid conveyance to defendant E. F. be declared void and the judgment herein be declared a lien on said property; (3) that plaintiff have judgment against the defendants for costs.

(As amended Jan. 21, 1963, eff. July 1, 1963.)

[1] So in original.

Form 30. Answer Presenting Defenses Under Rule 12(b).

(Caption – See Form 1.)

Responding to Allegations in the Complaint

Defendant admits the allegations in paragraphs _____.

Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraphs _____.

Defendant admits *identify part of the allegation* in paragraph _____ and denies or lacks knowledge or information sufficient to form a belief about the truth of the rest of the paragraph.

Failure to State a Claim

The complaint fails to state a claim upon which relief can be granted.

Failure to Join a Required Party

If there is a debt, it is owed jointly by the defendant and *name* who is a citizen of _____. This person can be made a party without depriving this court of jurisdiction over the existing parties.

Affirmative Defense – Statute of Limitations

The plaintiff's claim is barred by the statute of limitations because it arose more than _____ years before this action was commenced.

Counterclaim

(Set forth any counterclaim in the same way a claim is pleaded in a complaint. Include a further statement of jurisdiction if needed.)

Crossclaim

(Set forth the crossclaim against a defendant in the same way a claim is pleaded in a complaint. Include a further statement of jurisdiction if needed.)

(Date and sign — See Form 2.)

Form 20. Answer Presenting Defenses Under Rule 12(b)

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

If defendant is indebted to plaintiffs for the goods mentioned in the complaint, he is indebted to them jointly with G. H. G. H. is alive; is a citizen of the State of New York and a resident of this district, is subject to the jurisdiction of this court, as to both service of process and venue; can be made a party without depriving this court of jurisdiction of the present parties, and has not been made a party.

Third Defense

Defendant admits the allegation contained in paragraphs 1 and 4 of the complaint; alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the complaint; and denies each and every other allegation contained in the complaint.

Fourth Defense

The right of action set forth in the complaint did not accrue within six years next before the commencement of this action.

Counterclaim

(Here set forth any claim as a counterclaim in the manner in which a claim is pleaded in a complaint. No statement of the grounds on which the court's jurisdiction depends need be made unless the counterclaim requires independent grounds of jurisdiction.)

Cross-Claim Against Defendant M. N.

(Here set forth the claim constituting a cross-claim against defendant M. N. in the manner in which a claim is pleaded in a complaint. The statement of grounds upon which the court's jurisdiction depends need not be made unless the cross-claim requires independent grounds of jurisdiction.)

Form 31. Answer to a Complaint for Money Had and Received with a Counterclaim for Interpleader.

(Caption – See Form 1.)

Response to the Allegations in the Complaint
(See Form 30.)

Counterclaim for Interpleader

1. The defendant received from _*name*_ a deposit of $ _____.

2. The plaintiff demands payment of the deposit because of a purported assignment from _*name*_ , who has notified the defendant that the assignment is not valid and who continues to hold the defendant responsible for the deposit.

Therefore, the defendant demands that:

(a) _*name*_ be made a party to this action;

(b) the plaintiff and _*name*_ be required to interplead their respective claims;

(c) the court decide whether the plaintiff or _*name*_ or either of them is entitled to the deposit and discharge the defendant of any liability except to the person entitled to the deposit; and

(d) the defendant recover its costs and attorney's fees.

(Date and sign – See Form 2.)

Form 21. Answer to Complaint Set Forth in Form 8, With Counterclaim for Interpleader Defense

Defendant admits the allegations stated in paragraph 1 of the complaint; and denies the allegations stated in paragraph 2 to the extent set forth in the counterclaim herein.

Counterclaim for Interpleader

1. Defendant received the sum of _____ dollars as a deposit from E. F.
2. Plaintiff has demanded the payment of such deposit to him by virtue of an assignment of it which he claims to have received from E. F.
3. E. F. has notified the defendant that he claims such deposit, that the purported assignment is not valid, and that he holds the defendant responsible for the deposit.

Wherefore defendant demands:

(1) That the court order E. F. to be made a party defendant to respond to the complaint and to this counterclaim.[1]
(2) That the court order the plaintiff and E. F. to interplead their respective claims.
(3) That the court adjudge whether the plaintiff or E. F. is entitled to the sum of money.
(4) That the court discharge defendant from all liability in the premises except to the person it shall adjudge entitled to the sum of money.
(5) That the court award to the defendant its costs and attorney's fees.

(As amended Jan. 21, 1963, eff. July 1, 1963.)

[1] Rule 13(h) provides for the court ordering parties to a counterclaim, but who are not parties to the original action, to be brought in as defendants.

Form 40. Motion to Dismiss Under Rule 12(b) for Lack of Jurisdiction, Improper Venue, Insufficient Service of Process, or Failure to State a Claim.

(Caption – See Form 1.)

The defendant moves to dismiss the action because:

1. the amount in controversy is less than the sum or value specified by 28 U.S.C. § 1332;

2. the defendant is not subject to the personal jurisdiction of this court;

3. venue is improper (this defendant does not reside in this district and no part of the events or omissions giving rise to the claim occurred in the district);

4. the defendant has not been properly served, as shown by the attached affidavits of _____; or

5. the complaint fails to state a claim upon which relief can be granted.

(Date and sign – See Form 2.)

Form 19. Motion to Dismiss, Presenting Defenses of Failure to State a Claim, of Lack of Service of Process, of Improper Venue, and of Lack of Jurisdiction Under Rule 12(b)

The defendant moves the court as follows:

1. To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.

2. To dismiss the action or in lieu thereof to quash the return of service of summons on the grounds (a) that the defendant is a corporation organized under the laws of Delaware and was not and is not subject to service of process within the Southern District of New York, and (b) that the defendant has not been properly served with process in this action, all of which more clearly appears in the affidavits of M. N. and X. Y. hereto annexed as Exhibit A and Exhibit B respectively.

3. To dismiss the action on the ground that it is in the wrong district because (a) the jurisdiction of this court is invoked solely on the ground that the action arises under the Constitution and laws of the United States and (b) the defendant is a corporation incorporated under the laws of the State of Delaware and is not licensed to do or doing business in the Southern District of New York, all of which more clearly appears in the affidavits of K. L. and V. W. hereto annexed as Exhibits C and D, respectively.

4. To dismiss the action on the ground that the court lacks jurisdiction because the amount actually in controversy is less than ten thousand dollars exclusive of interest and costs.

Signed: _____
Attorney for Defendant.
Address: _____

Notice of Motion

To: _____
Attorney for Plaintiff.
_____

Please take notice, that the undersigned will bring the above motion on for hearing before this Court at Room ___, United States Court House, Foley Square, City of New York, on the ___ day of _____, 20___, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

Signed: _____
Attorney for Defendant.
Address: _____

NOTES

1. The above motion and notice of motion may be combined and denominated Notice of Motion. See Rule 7(b).

2. As to paragraph 3, see U.S.C., Title 28, § 1391 (Venue generally), subsections (b) and (c).

3. As to paragraph 4, see U.S.C., Title 28, § 1331 (Federal question; amount in controversy; costs), as amended by P.L. 85-554, 72 Stat. 415, July 25, 1958, requiring that the amount in controversy, exclusive of interest and costs, be in excess of $10,000. [Editor's note: This Note reflects U.S.C., Title 28, § 1331, prior to the 1976 and 1980 amendments eliminating the $10,000 jurisdictional amount. See U.S.C., Title 28, § 1332.]

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 17, 1961, eff. July 19, 1961.)

Form 41. Motion to Bring in a Third-Party Defendant.

(Caption – See Form 1.)

The defendant, as third-party plaintiff, moves for leave to serve on *name* a summons and third-party complaint, copies of which are attached.

(Date and sign – See Form 2.)

Form 22-B. Motion to Bring in Third-Party Defendant

Defendant moves for leave, as third-party plaintiff, to cause to be served upon E. F. a summons and third-party complaint, copies of which are hereto attached as Exhibit X.

Signed: _____,
Attorney for Defendant C. D.
Address: _____

Notice of Motion

(Contents the same as in Form 19. The notice should be addressed to all parties to the action.)

Exhibit X

(Contents the same as in Form 22-A.)

(Added Jan. 21, 1963, eff. July 1, 1963.)

Form 42. Motion to Intervene as a Defendant Under Rule 24.

(Caption – See Form 1.)

1. ___*name*___ moves for leave to intervene as a defendant in this action and to file the attached answer.

(*State grounds under Rule 24(a) or (b).*)

2. The plaintiff alleges patent infringement. We manufacture and sell to the defendant the articles involved, and we have a defense to the plaintiff's claim.

3. Our defense presents questions of law and fact that are common to this action.

(Date and sign – See Form 2.)

[An Intervener's Answer must be attached. See Form 30.]

Form 23. Motion to Intervene as a Defendant Under Rule 24

(Based upon the complaint, Form 16)

United States District Court
for the Southern District of New York

Civil Action, File Number ___

A. B., plaintiff	)	
v.	)	***Motion to intervene***
	)	***as a defendant***
C. D., defendant	)	
E. F., applicant	)	
for intervention	)	

E. F. moves for leave to intervene as a defendant in this action, in order to assert the defenses set forth in his proposed answer, of which a copy is hereto attached, on the ground that he is the manufacturer and vendor to the defendant, as well as to others, of the articles alleged in the complaint to be an infringement of plaintiff's patent, and as such has a defense to plaintiff's claim presenting both questions of law and of fact which are common to the main action.[1]

Signed: _____,
Attorney for E. F., Applicant for Intervention.
Address: _____

Notice of Motion

(Contents the same as in Form 19)

United States District Court
for the Southern District of New York

Civil Action, File Number ___

A. B., plaintiff	)	
v.	)	***Intervener's Answer***
C. D., defendant	)	
E. F., intervener	)	

First Defense

Intervener admits the allegations stated in paragraphs 1 and 4 of the complaint; denies the allegations in paragraph 3, and denies the allegations in paragraph 2 in so far as they assert the legality of the issuance of the Letters Patent to plaintiff.

Second Defense

Plaintiff is not the first inventor of the articles covered by the Letters Patent specified in his complaint, since articles substantially identical in character were previously patented in Letters Patent granted to intervener on January 5, 1920.

Signed: _____,
Attorney for E. F., Intervener.
Address: _____

(As amended Dec. 29, 1948, eff. Oct. 20, 1949.)

[1] For other grounds of intervention, either of right or in the discretion of the court, see Rule 24(a) and (b).

Form 50. Request to Produce Documents and Tangible Things, or to Enter onto Land Under Rule 34.

(Caption – See Form 1.)

The plaintiff _name_ requests that the defendant _name_ respond within ____ days to the following requests:

1. To produce and permit the plaintiff to inspect and copy and to test or sample the following documents, including electronically stored information:

(*Describe each document and the electronically stored information, either individually or by category.*)

(*State the time, place, and manner of the inspection and any related acts.*)

2. To produce and permit the plaintiff to inspect and copy — and to test or sample — the following tangible things:

(*Describe each thing, either individually or by category.*)

(*State the time, place, and manner of the inspection and any related acts.*)

3. To permit the plaintiff to enter onto the following land to inspect, photograph, test, or sample the property or an object or operation on the property.

(*Describe the property and each object or operation.*)

(*State the time and manner of the inspection and any related acts.*)

(Date and sign – See Form 2.)

Form 24. Request for Production of Documents, etc., Under Rule 34

Plaintiff A. B. requests defendant C. D. to respond within _____ days to the following requests:

(1) That defendant produce and permit plaintiff to inspect and to copy each of the following documents:
(Here list the documents either individually or by category and describe each of them.)
(Here state the time, place, and manner of making the inspection and performance of any related acts.)
(2) That defendant produce and permit plaintiff to inspect and to copy, test, or sample each of the following objects:
(Here list the objects either individually or by category and describe each of them.)
(Here state the time, place, and manner of making the inspection and performance of any related acts.)
(3) That defendant permit plaintiff to enter (here describe property to be entered) and to inspect and to photograph, test or sample (here describe the portion of the real property and the objects to be inspected).
(Here state the time, place, and manner of making the inspection and performance of any related acts.)

Signed: _____,
Attorney for Plaintiff.
Address: _____

(As amended Mar. 30, 1970, eff. July 1, 1970.)

Form 51. Request for Admissions Under Rule 36.

(Caption — See Form 1.)

The plaintiff __*name*__ asks the defendant __*name*__ to respond within _____days to these requests by admitting, for purposes of this action only and subject to objections to admissibility at trial:

1. The genuineness of the following documents, copies of which [are attached] [are or have been furnished or made available for inspection and copying].

(*List each document.*)

2. The truth of each of the following statements:

(*List each statement.*)

(Date and sign – See Form 2.)

Form 25. Request for Admission Under Rule 36

Plaintiff A. B. requests defendant C. D. within ___ days after service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, exhibited with this request, is genuine.
(Here list the documents and describe each document.)
2. That each of the following statements is true.
(Here list the statements.)

Signed: _____,
Attorney for Plaintiff.
Address: _____

(As amended Dec. 27, 1946, eff. Mar. 19, 1948.)

Form 52. Report of the Parties' Planning Meeting.

(Caption – See Form 1.)

1. The following persons participated in a Rule 26(f) conference on *date* by *state the method of conferring*:

(*e.g., name* representing the plaintiff.)

2. Initial Disclosures. The parties [have completed] [will complete by *date*] the initial disclosures required by Rule 26(a)(1).

3. Discovery Plan. The parties propose this discovery plan:

(*Use separate paragraphs or subparagraphs if the parties disagree*).

(a) Discovery will be needed on these subjects: (*describe.*)
(b) (Dates for commencing and completing discovery, including discovery to be commenced or completed before other discovery.)
(c) (Maximum number of interrogatories by each party to another party, along with the dates the answers are due.)
(d) (Maximum number of requests for admission, along with the dates responses are due.)
(e) (Maximum number of depositions by each party.)
(f) (Limits on the length of depositions, in hours.)
(g) (Dates for exchanging reports of expert witnesses.)
(h) (Dates for supplementations under Rule 26(e).)

4. Other Items:

(a) (A date if the parties ask to meet with the court before a scheduling order.)
(b) (Requested dates for pretrial conferences.)
(c) (Final dates for the plaintiff to amend pleadings or to join parties.)
(d) (Final dates for the defendant to amend pleadings or to join parties.)
(e) (Final dates to file dispositive motions.)
(f) (State the prospects for settlement.)
(g) (Identify any alternative dispute resolution procedure that may enhance settlement prospects.)
(h) (Final dates for submitting Rule 26(a)(3) witness lists, designations of witnesses whose testimony will be presented by deposition, and exhibit lists.)
(i) (Final dates to file objections under Rule 26(a)(3).)
(j) (Suggested trial date and estimate of trial length.)
(k) (Other matters.)

(Date and sign — see Form 2.)

Form 35. Report of Parties' Planning Meeting

[Caption and Names of Parties]

1. Pursuant to Fed.R.Civ.P. 26(f), a meeting was held on (date) at (place) and was attended by:

(name) for plaintiff(s)

(name) for defendant(s) (party name)

(name) for defendant(s) (party name)

2. Pre-Discovery Disclosures. The parties [have exchanged] [will exchange by (date)] the information required by [Fed.R.Civ.P. 26(a)(1)] [local rule ___].

3. Discovery Plan. The parties jointly propose to the court the following discovery plan: [Use separate paragraphs or subparagraphs as necessary if parties disagree.]

Discovery will be needed on the following subjects: (brief description of subjects on which discovery will be needed)

All discovery commenced in time to be completed by (date). [Discovery on (issue for early discovery) to be completed by (date).]

Maximum of ___ interrogatories by each party to any other party. [Responses due ___ days after service.]

Maximum of ___ requests for admission by each party to any other party. [Responses due ___ days after service.]

Maximum of ___ depositions by plaintiff(s) and ___ by defendant(s).

Each deposition [other than of _____] limited to maximum of ___ hours unless extended by agreement of parties.

Reports from retained experts under Rule 26(a)(2) due:

from plaintiff(s) by (date)

from defendant(s) by (date)

Supplementations under Rule 26(e) due (time(s) or interval(s)).

4. Other Items. [Use separate paragraphs or subparagraphs as necessary if parties disagree.]

The parties [request] [do not request] a conference with the court before entry of the scheduling order.

The parties request a pretrial conference in (month and year).

Plaintiff(s) should be allowed until (date) to join additional parties and until (date) to amend the pleadings.

Defendant(s) should be allowed until (date) to join additional parties and until (date) to amend the pleadings.

All potentially dispositive motions should be filed by (date).

Settlement [is likely] [is unlikely] [cannot be evaluated prior to (date)] [may be enhanced by use of the following alternative dispute resolution procedure: [_____].

Final lists of witnesses and exhibits under Rule 26(a)(3) should be due

from plaintiff(s) by (date)

from defendant(s) by (date)

Parties should have ___ days after service of final lists of witnesses and exhibits to list objections under Rule 26(a)(3).

The case should be ready for trial by (date) [and at this time is expected to take approximately (length of time)].

[Other matters.]

Date: _____

(Added Apr. 22, 1993, eff. Dec. 1, 1993.)

Form 60. Notice of Condemnation.

(Caption – See Form 1.)

To *name the defendant*.

1. A complaint in condemnation has been filed in the United States District Court for the _____District of _____, to take property to use for *purpose*. The interest to be taken is *describe*. The court is located in the United States courthouse at this address: _____.

2. The property to be taken is described below. You have or claim an interest in it.

(*Describe the property.*)

3. The authority for taking this property is *cite*.

4. If you want to object or present any defense to the taking you must serve an answer on the plaintiff's attorney within 20 days [after being served with this notice][from (insert the date of the last publication of notice)]. Send your answer to this address: _____.

5. Your answer must identify the property in which you claim an interest, state the nature and extent of that interest, and state all your objections and defenses to the taking. Objections and defenses not presented are waived.

6. If you fail to answer you consent to the taking and the court will enter a judgment that takes your described property interest.

7. Instead of answering, you may serve on the plaintiff's attorney a notice of appearance that designates the property in which you claim an interest. After you do that, you will receive a notice of any proceedings that affect you. Whether or not you have previously appeared or answered, you may present evidence at a trial to determine compensation for the property and share in the overall award.

(Date and sign – See Form 2.)

Form 28. Notice: Condemnation

United States District Court for the
Southern District of New York

Civil Action, File Number ___

United States of America, Plaintiff	)	
v.	)	
1,000 Acres of Land in [here insert a	)	***Notice***
general location as "City of ____"	)	
or "County of ____"], John Doe et	)	
al., and Unknown Owners, Defendants	)	

To (here insert the names of the defendants to whom the notice is directed):

You are hereby notified that a complaint in condemnation has heretofore been filed in the office of the clerk of the United States District Court for the Southern District of New York, in the United States Court House in New York City, New York, for the taking (here state the interest to be acquired, as "an estate in fee simple") for use (here state briefly the use, "as a site for a post-office building") of the following described property in which you have or claim an interest.

(Here insert brief description of the property in which the defendants, to whom the notice is directed, have or claim an interest.)

The authority for the taking is (here state briefly, as "the Act of ____, ____ Stat. ____, U.S.C., Title ____, § ___".)[1]

You are further notified that if you desire to present any objection or defense to the taking of your property you are required to serve your answer on the plaintiff's attorney at the address herein designated within twenty days after _____.[2]

Your answer shall identify the property in which you claim to have an interest, state the nature and extent of the interest you claim, and state all of your objections and defenses to the taking of your property. All defenses and objections not so presented are waived. And in case of your failure so to answer the complaint, judgment of condemnation of that part of the above-described property in which you have or claim an interest will be rendered.

But without answering, you may serve on the plaintiff's attorney a notice of appearance designating the property in which you claim to be interested. Thereafter you will receive notice of all proceedings affecting it. At the trial of the issue of just compensation, whether or not you have previously appeared or answered, you may present evidence as to the amount of the compensation to be paid for your property, and you may share in the distribution of the award.

_____
United States Attorney.
Address _____

(Here state an address within the district where the United States Attorney may be served as "United States Court House, New York, N.Y.".)
Dated _____

(Added May 1, 1951, eff. Aug. 1, 1951.)

---

[1] And where appropriate add a citation to any applicable Executive Order.

[2] Here insert the words "personal service of this notice upon you," if personal service is to be made pursuant to subdivision (d)(3)(i) of this rule [Rule 71A]; or, insert the date of the last publication of notice, if service by publication is to be made pursuant to subdivision (d)(3)(ii) of this rule.

Form 61. Complaint for Condemnation.

(Caption – See Form 1; name as defendants the property and at least one owner.)

1. (Statement of Jurisdiction – See Form 7.)

2. This is an action to take property under the power of eminent domain and to determine just compensation to be paid to the owners and parties in interest.

3. The authority for the taking is _____.

4. The property is to be used for _____.

5. The property to be taken is (*describe in enough detail for identification — or attach the description and state "is described in Exhibit A, attached."*)

6. The interest to be acquired is _____.

7. The persons known to the plaintiff to have or claim an interest in the property are: _____. (*For each person include the interest claimed.*)

8. There may be other persons who have or claim an interest in the property and whose names could not be found after a reasonably diligent search. They are made parties under the designation "Unknown Owners."

Therefore, the plaintiff demands judgment:

(a) condemning the property;

(b) determining and awarding just compensation; and

(c) granting any other lawful and proper relief.

(Date and sign – See Form 2.)

Form 29. Complaint: Condemnation

United States District Court
for the Southern District of New York

Civil Action, File Number ___

United States of America, Plaintiff	)	
v.	)	
1,000 Acres of Land in [here insert a	)	***Complaint***
general location as "City of _____"	)	
or "County of _____"], John Doe, et	)	
al., and Unknown Owners, Defendants	)	

1. This is an action of a civil nature brought by the United States of America for the taking of property under the power of eminent domain and for the ascertainment and award of just compensation to the owners and parties in interest.[1]

2. The authority for the taking is (here state briefly, as "the Act of _____, _____ Stat. _____, U.S.C., Title _____, § ___").[2]

3. The use for which the property is to be taken is (here state briefly the use, "as a site for a post-office building").

4. The interest to be acquired in the property is (here state the interest as "an estate in fee simple").

5. The property so to be taken is (here set forth a description of the property sufficient for its identification) or (described in Exhibit A hereto attached and made a part hereof).

6. The persons known to the plaintiff to have or claim an interest in the property[3] are:

(Here set forth the names of such persons and the interests claimed.)[4]

7. In addition to the persons named, there are or may be others who have or may claim some interest in the property to be taken, whose names are unknown to the plaintiff and on diligent inquiry have not been ascertained. They are made parties to the action under the designation "Unknown Owners."

Wherefore the plaintiff demands judgment that the property be condemned and that just compensation for the taking be ascertained and awarded and for such other relief as may be lawful and proper.

_____
United States Attorney.
Address _____

(Here state an address within the district where the United States Attorney may be served, as "United States Court House, New York, N.Y.".)

(Added May 1, 1951, eff. Aug. 1, 1951.)

---

[1] If the plaintiff is not the United States, but is, for example, a corporation invoking the power of eminent domain delegated to it by the state, then this paragraph 1 of the complaint should be appropriately modified and should be preceded by a paragraph appropriately alleging federal jurisdiction for the action, such as diversity. See Form 2.

[2] And where appropriate add a citation to any applicable Executive Order.

[3] At the commencement of the action the plaintiff need name as defendants only the persons having or claiming an interest in the property whose names are then known, but prior to any hearing involving the compensation to be paid for a particular piece of property the plaintiff must add as defendants all persons having or claiming an interest in that property whose names can be ascertained by an appropriate search of the records and also those whose names have otherwise been learned. See Rule 71A(c)(2).

[4] The plaintiff should designate, as to each separate piece of property, the defendants who have been joined as owners thereof or of some interest therein. See Rule 71A(c)(2).

Form 70. Judgment on a Jury Verdict.

(Caption – See Form 1.)

This action was tried by a jury with Judge _____ presiding, and the jury has rendered a verdict.

It is ordered that:

[the plaintiff __*name*__recover from the defendant __*name*__the amount of $_____ with interest at the rate of __%, along with costs.]

[the plaintiff recover nothing, the action be dismissed on the merits, and the defendant __*name*__recover costs from the plaintiff __*name*.]

Date _____.

_____
Clerk of Court

Form 31. Judgment on Jury Verdict

United States District Court
for the Southern District of New York

Civil Action, File Number ___.

A. B., Plaintiff	)
v.	) ***Judgment***
C. D., Defendant	)

This action came on for trial before the Court and a jury, Honorable John Marshall, District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged

[that the plaintiff A. B. recover of the defendant C. D. the sum of _____, with interest thereon at the rate of _____ percent as provided by law, and his costs of action.]

[that the plaintiff take nothing, that the action be dismissed on the merits, and that the defendant C. D. recover of the plaintiff A. B. his costs of action.]

Dated at New York, New York, this ___ day of _____, 20__.

_____,
Clerk of Court.

NOTE

1. This Form is illustrative of the judgment to be entered upon the general verdict of a jury. It deals with the cases where there is a general jury verdict awarding the plaintiff money damages or finding for the defendant, but is adaptable to other situations of jury verdicts.

2. The clerk, unless the court otherwise orders, is required forthwith to prepare, sign, and enter the judgment upon a general jury verdict without awaiting any direction by the court. The form of the judgment upon a special verdict or a general verdict accompanied by answers to interrogatories shall be promptly approved by the court, and the clerk shall thereupon enter it. See Rule 58, as amended.

3. The Rules contemplate a simple judgment promptly entered. See Rule 54(a). Every judgment shall be set forth on a separate document. See Rule 58, as amended.

4. Attorneys are not to submit forms of judgment unless directed in exceptional cases to do so by the court. See Rule 58, as amended.

(Added Jan. 21, 1963, eff. July 1, 1963.)

Form 71. Judgment by the Court without a Jury.

(Caption – See Form 1.)

This action was tried by Judge _____ without a jury and the following decision was reached:

It is ordered that [the plaintiff __*name*__ recover from the defendant __*name*__ the amount of $_____, with interest at the rate of ___%, along with costs.] [the plaintiff recover nothing, the action be dismissed on the merits, and the defendant __*name*__ recover costs from the plaintiff __*name*__.]

Date_____.

_____
Clerk of Court

Form 32. Judgment on Decision by the Court

United States District Court
for the Southern District of New York

Civil Action, File Number ___

A. B., Plaintiff	)	
v.	)	***Judgment***
C. D., Defendant	)	

This action came on for [trial] [hearing] before the Court, Honorable John Marshall, District Judge, presiding, and the issues having been duly [tried] [heard] and a decision having been duly rendered,

It is Ordered and Adjudged

[that the plaintiff A. B. recover of the defendant C. D. the sum of _____, with interest thereon at the rate of _____ percent as provided by law, and his costs of action.]

[that the plaintiff take nothing, that the action be dismissed on the merits, and that the defendant C. D. recover of the plaintiff A. B. his costs of action.]

Dated at New York, New York, this ___ day of _____, 20__.

_____,
Clerk of Court.

NOTES

1. This Form is illustrative of the judgment to be entered upon a decision of the court. It deals with the cases of decisions by the court awarding a party only money damages or costs, but is adaptable to other decisions by the court.

2. The clerk, unless the court otherwise orders, is required forthwith, without awaiting any direction by the court, to prepare, sign, and enter the judgment upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied. The form of the judgment upon a decision by the court granting other relief shall be promptly approved by the court, and the clerk shall thereupon enter it. See Rule 58, as amended.

3. See also paragraphs 3-4 of the Explanatory Note to Form 31.

(Added Jan. 21, 1963, eff. July 1, 1963.)

Form 80. Notice of a Magistrate Judge's Availability.

1. A magistrate judge is available under title 28 U.S.C. § 636(c) to conduct the proceedings in this case, including a jury or nonjury trial and the entry of final judgment. But a magistrate judge can be assigned only if all parties voluntarily consent.

2. You may withhold your consent without adverse substantive consequences. The identity of any party consenting or withholding consent will not be disclosed to the judge to whom the case is assigned or to any magistrate judge.

3. If a magistrate judge does hear your case, you may appeal directly to a United States court of appeals as you would if a district judge heard it.

A form called *Consent to an Assignment to a United States Magistrate Judge* is available from the court clerk's office.

Form 33. Notice of Availability of a Magistrate Judge to Exercise Jurisdiction

In accordance with the provisions of Title 28, U.S.C. § 636(c), you are hereby notified that a United States magistrate judge of this district court is available to exercise the court's jurisdiction and to conduct any or all proceedings in this case including a jury or nonjury trial, and entry of a final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

An appeal from a judgment entered by a magistrate judge may be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of a district court.

Copies of the Form for the "Consent to Jurisdiction by a United States Magistrate Judge" are available from the clerk of the court.

(Added Apr. 28, 1983, eff. Aug. 1, 1983, and amended Apr. 22, 1993, eff. Dec. 1, 1993; April 11, 1997, eff. Dec. 1, 1997.)

Form 81. Consent to an Assignment to a Magistrate Judge.

(Caption – See Form 1.)

I voluntarily consent to have a United States magistrate judge conduct all further proceedings in this case, including a trial, and order the entry of final judgment. (Return this form to the court clerk — not to a judge or magistrate judge.)

Date_____ _____

Signature of the Party

Form 34. Consent to Exercise of Jurisdiction by a United States Magistrate Judge

UNITED STATES DISTRICT COURT

_____ DISTRICT OF _____

Plaintiff,	)	
	)	
vs.	)	**Docket No. _____**
	)	
Defendant.	)	

CONSENT TO JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of Title 28, U.S.C. § 636(c), the undersigned party or parties to the above-captioned civil matter hereby voluntarily consent to have a United States magistrate judge conduct any and all further proceedings in the case, including trial, and order the entry of a final judgment.

_____ _____

Date Signature

Note: Return this form to the Clerk of the Court if you consent to jurisdiction by a magistrate judge. Do not send a copy of this form to any district judge or magistrate judge.

(Added Apr. 28, 1983, eff. Aug. 1, 1983, and amended Apr. 22, 1993, eff. Dec. 1, 1993.)

Form 82. Order of Assignment to a Magistrate Judge.

(Caption – See Form 1.)

With the parties' consent it is ordered that this case be assigned to United States Magistrate Judge _____ of this district to conduct all proceedings and enter final judgment in accordance with 28 U.S.C. § 636(c).

Date _____.

_____
United States District Judge

Form 34A. Order of Reference

UNITED STATES DISTRICT COURT

_____ DISTRICT OF _____

Plaintiff,	)
	)
vs.	) **Docket No. _____**
	)
Defendant.	)

ORDER OF REFERENCE

IT IS HEREBY ORDERED that the above-captioned matter be referred to United States Magistrate Judge for all further proceedings and entry of judgment in accordance with Title 28, U.S.C. § 636(c) and the consent of the parties.

_____
U.S. District Judge

(Added Apr. 22, 1993, eff. Dec. 1, 1993.)

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

DAVID F. LEVI
CHAIR

PETER G. McCABE
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

SAMUEL A. ALITO, JR.
APPELLATE RULES

THOMAS S. ZILLY
BANKRUPTCY RULES

LEE H. ROSENTHAL
CIVIL RULES

SUSAN C. BUCKLEW
CRIMINAL RULES

JERRY E. SMITH
EVIDENCE RULES

To: **Hon. David F. Levi, Chair**
Standing Committee on Rules of Practice and Procedure

From: **Hon. Susan C. Bucklew, Chair**
Advisory Committee on Federal Rules of Criminal Procedure

Subject: **Report of the Advisory Committee on Criminal Rules**

Date: **May 17, 2005**

I. Introduction

The Advisory Committee on Federal Rules of Criminal Procedure met on April 4-5, 2005 in Charleston, South Carolina and took action on a number of proposed amendments to the Rules of Criminal Procedure.

* * * * *

II. Action Items – Overview

* * * * *

Third, the Committee considered and recommended amendments to the following rules, as well as one new rule, as follows:

- Rule 11, Pleas; Proposed Amendment Regarding Advice to Defendant Under Advisory Sentencing Guidelines.

- Rule 32(d)(2)(F), Sentencing and Judgment; Proposed Amendment Regarding Notice to Defendant Under Advisory Sentencing Guidelines.

- Rule 32(h), Sentencing and Judgment; Proposed Amendment Regarding Notice to Defendant Under Advisory Sentencing Guidelines.

- Rule 32(k), Sentencing and Judgment; Proposed Amendment Regarding Use of Judgment Form Prescribed by Judicial Conference.

- Rule 35, Correcting or Reducing Sentence; Proposed Amendment Regarding Elimination of Reference to Mandatory Sentencing Guidelines.

- Rule 45, Computing and Extending Time; Proposed Amendment Regarding Computation of Additional Time for Service.

- Rule 49.1, Privacy Protections for Filings Made with the Court; Proposed Rule to Implement E-Government Act.

The Advisory Committee recommends that these rules be published for public comment.

* * * * *

IV. Action Items–Recommendations to Publish Amendments to the Rules

A. Summary and Recommendations

The Advisory Committee has considered amendments to a number of rules as well as a new rule to implement the E-Government Act, and it recommends that they be published for public comment. The rules are as follows:

1. ACTION ITEM–Rule 11. Pleas; Proposed Amendment Regarding Advice to Defendant Under Advisory Sentencing Guidelines.

This amendment is part of a package of proposals required to bring the rules into conformity with the Supreme Court's decision in *United States v. Booker*, 125 S.Ct. 738 (2005). *Booker* held that the provisions of the federal sentencing statute that make the Guidelines mandatory violate the Sixth Amendment right to jury trial and the Fifth Amendment requirement of proof beyond a reasonable doubt. With

these provisions excised, the Sentencing Reform Act "makes the Guidelines effectively advisory," and "requires a sentencing court to consider Guidelines ranges, see 18 U.S.C.A. § 3553(a)(4) (Supp.2004), but it permits the court to tailor the sentence in light of other statutory concerns as well, see § 3553(a) (Supp.2004)." 125 S.Ct. at 756. Rule 11(b)(M) incorporates this analysis into the information provided to the defendant at the time of a plea of guilty or nolo contendere. The Committee approved this amendment by a unanimous vote. The rule and the accompanying Committee Note are at Appendix H.

Recommendation–The Advisory Committee recommends that the proposed amendment to Rule 11 be published for public comment.

2. ACTION ITEM–Rule 32(d)(2)(F), Sentencing and Judgment; Proposed Amendment Regarding Notice to Defendant Under Advisory Sentencing Guidelines.

This amendment adapts the rule governing presentence reports to *United States v. Booker*, 125 S.Ct. 738 (2005), which directs courts to consider not only information relevant to the Sentencing Guidelines, but also information relevant to the statutory factors listed in 18 U.S.C. § 3553(a). In light of the difficulty that the probation office may have in determining the scope of the information that would be relevant to the broad statutory criteria under § 3553(a), the proposed amendment requires that information relevant to the statutory criteria be included when required by the court. The Committee approved the amendment by a vote of 9 to 1. The rule and the accompanying Committee Note are at Appendix I.

Recommendation–The Advisory Committee recommends that the proposed amendment to Rule 32(d)(2)(F) be published for public comment.

3. ACTION ITEM–Rule 32(h), Sentencing and Judgment; Proposed Amendment Regarding Notice to Defendant Under Advisory Sentencing Guidelines.

This amendment conforms Rule 32(h) to the Supreme Court's decision in *United States v. Booker*, 125 S.Ct. 738 (2005). The purpose of Rule 32(h) is to avoid unfair surprise to the parties in the sentencing process. Currently, it requires notice that the court is considering departing from the guidelines on the basis of factors not identified in the presentence report or pleadings. The proposed amendment provides

that the court must provide this notice when it is considering either a departure or a non-guideline sentence based upon the factors in 18 U.S.C. § 3553(a) on the basis of a ground not identified in the presentence report or pleadings. The amendment refers to departures and "non-guidelines" sentences. In the immediate aftermath of *Booker*, the lower courts have used different labels to refer to sentences based on considerations that would not have constituted departures under the mandatory guideline regime, but are now permissible because the guidelines are advisory (including the terms "'non-Guidelines' sentence" and "variance"). As stated in the Committee Note, the amendment is intended to apply to such sentences, regardless of the terminology used by the sentencing court. After considerable discussion regarding the variations in terminology and the desirability of highlighting the distinction between departures and other non-Guidelines sentences, the Committee approved the amendment by a vote of 8 to 2. The rule and the accompanying Committee Note are at Appendix J.

Recommendation–The Advisory Committee recommends that the proposed amendment to Rule 32(h) be published for public comment.

4. ACTION ITEM–Rule 32(k), Sentencing and Judgment; Proposed Amendment Regarding Use of Judgment Form Prescribed by Judicial Conference.

This amendment, which requires the court to enter judgment using the form prescribed by the Judicial Conference, is also a part of the package of rules responding to the Supreme Court's decision in *United States v. Booker*, 125 S.Ct. 738 (2005). The Committee was advised that a proliferation of local forms is impeding the Sentencing Commission's efforts to collect accurate sentencing data and to assist Congress in understanding how the courts are responding to the *Booker* decision. The Judicial Conference Criminal Law Committee is presently developing a new judgment form that will facilitate the collection of useful and accurate sentencing data, and the adoption of this amendment would ensure that all courts use the prescribed form. The Committee approved the amendment by a unanimous vote. The rule and the accompanying Committee Note are at Appendix K.

Recommendation–The Advisory Committee recommends that the proposed amendment to Rule 32(k) be published for public comment.

5. ACTION ITEM–Rule 35, Correcting or Reducing Sentence; Proposed Amendment Regarding Elimination of Reference to Mandatory Sentencing Guidelines.

This amendment conforms Rule 35(b)(1)(B) to the Supreme Court's decision in *United States v. Booker*, 125 S.Ct. 738 (2005), holding that the guidelines are advisory, rather than mandatory. The rule currently states that the court may reduce a sentence if "reducing the sentence accords with the Sentencing Commission's guidelines and policy statements." Although the guidelines do not currently include provisions governing the correction of sentences under Rule 35, the amendment removes the rule's language that seems, on its face, to be inconsistent with the ruling in *Booker*. The Committee approved the amendment by a vote of 9 to 1. The rule and the accompanying Committee Note are at Appendix L.

Recommendation–The Advisory Committee recommends that the proposed amendment to Rule 35 be published for public comment.

6. ACTION ITEM–Rule 45, Computing and Extending Time; Proposed Amendment Regarding Computation of Additional Time for Service.

This amendment has its origins in an amendment to Civil Rule 6 that clarifies the computation of the additional time provided when service is made by mail, leaving with the clerk of court, or electronic means under Civil Rule 5(b)(2)(B), (C), or (D). The amendment of the Civil Rule has been approved by the Judicial Conference and is pending before the Supreme Court. The proposed amendment to Rule 45 tracks the language of the civil rule. The Committee approved the amendment by a unanimous vote. The rule and the accompanying Committee Note are at Appendix M.

Recommendation–The Advisory Committee recommends that the proposed amendment to Rule 45 be published for public comment.

7. ACTION ITEM–Rule 49.1, Privacy Protections for Filings Made with the Court; Proposed Rule to Implement E-Government Act.

This new rule, which is based upon the common template developed by Professor Daniel Capra, implements the E-Government Act. It differs from the common provisions in several respects, including the partial redaction of an individual's home addresses (which reflects the special concerns of witnesses and victims in criminal cases) and an exemption from redaction for certain information needed for forfeitures. Rule 49.1 also deletes the template provisions relating to social security and immigration cases, which are exclusively civil. The proposed rule includes a provision regarding actions under 28 U.S.C. §§ 2254, 2255, and 2241. Although these actions are also technically civil, the Advisory Committee concluded it was appropriate to refer to them in Rule 49.1 because they are governed by procedural rules recently restyled by the Criminal Rules Committee. Rule 49.1 exempts actions under §§ 2254, 2255, and 2241 from the redaction requirements because, as a practical matter, the pro se plaintiffs who file such actions will not generally be aware of the redaction requirements. The Committee approved the new rule by a unanimous vote. The rule and the accompanying Committee Note are at Appendix N.

Recommendation–The Advisory Committee recommends that proposed Rule 49.1 be published for public comment.

* * * * *

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF CRIMINAL PROCEDURE*

Rule 11. Pleas

1 * * * * *

2 **(b) Considering and Accepting a Guilty or Nolo**
3 **Contendere Plea.**

4 **(1)** ***Advising and Questioning the Defendant.*** Before
5 the court accepts a plea of guilty or nolo
6 contendere, the defendant may be placed under
7 oath, and the court must address the defendant
8 personally in open court. During this address, the
9 court must inform the defendant of, and determine
10 that the defendant understands, the following:

11 * * * * *

12 (M) in determining a sentence, the court's
13 obligation to calculate the applicable

*New material is underlined; matter to be omitted is lined through.

14 sentencing guideline range ~~apply the~~

15 ~~Sentencing Guidelines, and the court's~~

16 ~~discretion to depart from those guidelines~~

17 ~~under some circumstances~~ and to consider

18 that range, possible departures under the

19 Sentencing Guidelines, and other sentencing

20 factors under 18 U.S.C. § 3553(a); and

21 * * * * *

COMMITTEE NOTE

Subdivision (b)(1)(M). The amendment conforms Rule 11 to the Supreme Court's decision in *United States v. Booker*, 125 S. Ct. 738 (2005). *Booker* held that the provision of the federal sentencing statute that makes the Guidelines mandatory, 18 U.S.C. § 3553(b)(1) (Supp.2004), violates the Sixth Amendment right to jury trial and the Fifth Amendment requirement of proof beyond a reasonable doubt. With this provision severed and excised, the Court held, the Sentencing Reform Act "makes the Guidelines effectively advisory," and "requires a sentencing court to consider Guidelines ranges, see 18 U.S.C.A. § 3553(a)(4) (Supp.2004), but it permits the court to tailor the sentence in light of other statutory concerns as well, see § 3553(a) (Supp.2004)." *Id.* at 757. Rule 11(b)(M) incorporates this analysis into the information provided to the defendant at the time of a plea of guilty or nolo contendere.

Rule 32. Sentence and Judgment

1 * * * * *

2 **(d) Presentence Report.**

3 **(1)** ***Applying the Sentencing Guidelines.*** The
4 presentence report must:

5 (A) identify all applicable guidelines and policy
6 statements of the Sentencing Commission;

7 (B) calculate the defendant's offense level and
8 criminal history category;

9 (C) state the resulting sentencing range and kinds
10 of sentences available;

11 (D) identify any factor relevant to:

12 (i) the appropriate kind of sentence, or

13 (ii) the appropriate sentence within the
14 applicable sentencing range; and

15 (E) identify any basis for departing from the
16 applicable sentencing range.

17 **(2)** ***Additional Information.*** The presentence report must
18 also contain the following information:
19 (A) the defendant's history and characteristics,
20 including:
21 (i) any prior criminal record;
22 (ii) the defendant's financial condition; and
23 (iii) any circumstances affecting the defendant's
24 behavior that may be helpful in imposing
25 sentence or in correctional treatment;
26 (B) verified information, stated in a
27 nonargumentative style, that assesses the
28 financial, social, psychological, and medical
29 impact on any individual against whom the
30 offense has been committed;
31 (C) when appropriate, the nature and extent of
32 nonprison programs and resources available to
33 the defendant;

34 (D) when the law provides for restitution,
35 information sufficient for a restitution order;
36 (E) if the court orders a study under 18 U.S.C.
37 § 3552(b), any resulting report and
38 recommendation; and
39 (F) any other information that the court requires,
40 including information relevant to the factors
41 under 18 U.S.C. § 3553(a).
42 * * * * *
43 **(h) Notice of ~~Possible Departure From Sentencing~~**
44 **~~Guidelines~~Intent to Consider Other Sentencing Factors.**
45 Before the court may ~~depart from the applicable sentencing~~
46 ~~range~~ rely on a ground not identified ~~for departure~~ either in
47 the presentence report or in a party's prehearing
48 submission, the court must give the parties reasonable
49 notice that it is contemplating either departing from the
50 applicable guideline range or imposing a non-guideline

51 sentence ~~such a departure~~. The notice must specify any
52 ground not earlier identified on which the court is
53 contemplating a departure or a non-guideline sentence.
54 * * * * *
55 **(k) Judgment.**
56 **(1)** ***In General.*** The court must use the judgment form
57 prescribed by the Judicial Conference of the United
58 States. In ~~the~~ a judgment of conviction, the court must
59 set forth the plea, the jury verdict or the court's
60 findings, the adjudication, and the sentence, including
61 the statement of reasons required by 18 U.S.C.
62 § 3553(c). If the defendant is found not guilty or is
63 otherwise entitled to be discharged, the court must so
64 order. The judge must sign the judgment, and the
65 clerk must enter it.
66 * * * * *

COMMITTEE NOTE

Subdivision (d). The amendment conforms Rule 32(d) to the Supreme Court's decision in *United States v. Booker*, 125 S. Ct. 738 (2005). *Booker* held that the provision of the federal sentencing statute that makes the Guidelines mandatory, 18 U.S.C. § 3553(b)(1) (Supp.2004), violates the Sixth Amendment right to jury trial and the Fifth Amendment requirement of proof beyond a reasonable doubt. With this provision severed and excised, the Court held, the Sentencing Reform Act "makes the Guidelines effectively advisory," and "requires a sentencing court to consider Guidelines ranges, see 18 U.S.C.A. § 3553(a)(4) (Supp.2004), but it permits the court to tailor the sentence in light of other statutory concerns as well, see § 3553(a) (Supp.2004)." *Id.* at 757. Amended subsection (d)(2)(F) makes clear that the court can instruct the probation office to gather and include in the presentence report any information relevant to the factors articulated in § 3553(a). The rule contemplates that a request can be made either by the court as a whole requiring information affecting all cases or a class of cases, or by an individual judge in a particular case.

Subdivision (h). The amendment conforms Rule 32(h) to the Supreme Court's decision in *United States v. Booker*, 125 S. Ct. 738 (2005). In *Booker* the Court held that the provision of the federal sentencing statute that makes the Guidelines mandatory, 18 U.S.C. § 3553(b)(1) (Supp.2004), violates the Sixth Amendment right to jury trial and the Fifth Amendment requirement of proof beyond a reasonable doubt. With this provision severed and excised, the Court held, the Sentencing Reform Act "makes the Guidelines effectively advisory," and "requires a sentencing court to consider Guidelines ranges, see 18 U.S.C.A. § 3553(a)(4) (Supp.2004), but it permits the court to tailor the sentence in light of other statutory concerns as well,

see § 3553(a) (Supp.2004)." *Id.* at 757. The purpose of Rule 32(h) is to avoid unfair surprise to the parties in the sentencing process. Accordingly, the required notice that the court is considering factors not identified in the presentence report or in the submission of the parties that could yield a sentence outside the guideline range should identify factors that might lead to either a guideline departure or a sentence based on factors under 18 U.S.C. § 3553(a).

The amendment refers to a "non-guideline" sentence to designate a sentence not based exclusively on the guidelines. In the immediate aftermath of *Booker*, the lower courts have used different labels to refer to sentences based on considerations that would not have warranted departures under the mandatory guideline regime, but are now permissible because the guidelines are advisory. *Compare United States v. Crosby*, 397 F.3d 103, 111 n. 9 (2d Cir. 2005) (referring to "non-Guidelines" sentence), *with United States v. Wilson*, 350 F. Supp.2d 910, 911 (D. Utah 2005) (suggesting the term "variance"). This amendment is intended to apply to such sentences, regardless of the terminology used by the sentencing court.

Subdivision (k). The amendment is intended to standardize the collection of data on federal sentences by requiring all courts to enter their judgments, including the statement of reasons, on the forms prescribed by the Judicial Conference of the United States. The collection of standardized data will assist the United States Sentencing Commission and Congress in their evaluation of sentencing patterns following the Supreme Court's decision in *United States v. Booker*, 125 S. Ct. 738 (2005). In *Booker* the Court held that the provision of the federal sentencing statute that makes the Guidelines mandatory, 18 U.S.C. § 3553(b)(1) (Supp.2004), violates the Sixth Amendment right to jury trial and the Fifth Amendment requirement of proof beyond a reasonable doubt. With this provision severed and excised, the Court held, the Sentencing Reform Act

"makes the Guidelines effectively advisory," and "requires a sentencing court to consider Guidelines ranges, see 18 U.S.C.A. § 3553(a)(4) (Supp.2004), but it permits the court to tailor the sentence in light of other statutory concerns as well, see § 3553(a) (Supp.2004)." *Id.* at 757. The *Booker* opinion cast no doubt on the continuing validity of 18 U.S.C. § 3553(c), which requires the sentencing court to provide "the court's statement of reasons, together with the order of judgment and commitment" to the Sentencing Commission.

Rule 35. Correcting or Reducing a Sentence

1 * * * * *

2 **(b) Reducing a Sentence for Substantial Assistance.**

3 **(1)** ***In General.*** Upon the government's motion

4 made within one year of sentencing, the court

5 may reduce a sentence if: the defendant, after

6 sentencing, provided substantial assistance in

7 investigating or prosecuting another person.

8 ~~(A) the defendant, after sentencing,~~

9 ~~provided substantial assistance in~~

10 ~~investigating or prosecuting another~~

11 ~~person; and~~

12 ~~(B) reducing the sentence accords with the~~

13 ~~Sentencing Commission's guidelines and~~

14 ~~policy statements.~~

15 * * * * *

COMMITTEE NOTE

Subdivision (b)(1). The amendment conforms Rule 35(b)(1) to the Supreme Court's decision in *United States v. Booker*, 125 S. Ct. 738 (2005). In *Booker* the Court held that the provision of the federal sentencing statute that makes the Guidelines mandatory, 18 U.S.C. § 3553(b)(1) (Supp.2004), violates the Sixth Amendment right to jury trial and the Fifth Amendment requirement of proof beyond a reasonable doubt. With this provision severed and excised, the Court held, the Sentencing Reform Act "makes the Guidelines effectively advisory," and "requires a sentencing court to consider Guidelines ranges, see 18 U.S.C.A. § 3553(a)(4) (Supp.2004), but it permits the court to tailor the sentence in light of other statutory concerns as well, see § 3553(a) (Supp.2004)." *Id.* at 757. Subsection (b)(1)(B) has been deleted because it treats the guidelines as mandatory.

Rule 45. Computing and Extending Time

1 * * * * *

2 **(c) Additional Time After Certain Kinds of Service.**

3 ~~When these rules permit or require~~ Whenever a party

4 must or may ~~to~~ act within a specified period after ~~a~~

5 ~~notice or a paper has been served on that party~~ service

6 and service is made in the manner provided under

7 Federal Rule of Civil Procedure 5(b)(2)(B), (C), or

8 (D), 3 days are added after ~~to~~ the period would

9 otherwise expire under subdivision (a) ~~if service~~

10 ~~occurs in the manner provided under Federal Rule of~~

11 ~~Civil Procedure 5(b)(2)(B), (C), or (D)~~.

COMMITTEE NOTE

Subdivision (c). Rule 45(c) is amended to remove any doubt as to the method for extending the time to respond after service by mail, leaving with the clerk of court, electronic means, or other means consented to by the party served. This amendment parallels the change in Federal Rule of Civil Procedure 6(e). Three days are added after the prescribed period otherwise expires under Rule 45(a). Intermediate Saturdays, Sundays, and legal holidays are included in counting these added three days. If the third day is a Saturday, Sunday, or legal holiday, the last day to act is the next day that is not a Saturday, Sunday, or legal holiday. The effect of invoking the day that the rule would otherwise expire under Rule 45(a) can be

illustrated by assuming that the thirtieth day of a thirty-day period is a Saturday. Under Rule 45(a) the period expires on the next day that is not a Sunday or legal holiday. If the following Monday is a legal holiday, under Rule 45(a) the period expires on Tuesday. Three days are then added — Wednesday, Thursday, and Friday as the third and final day to act unless that is a legal holiday. If the prescribed period ends on a Friday, the three added days are Saturday, Sunday, and Monday, which is the third and final day to act unless it is a legal holiday. If Monday is a legal holiday, the next day that is not a legal holiday is the third and final day to act.

Application of Rule 45(c) to a period that is less than eleven days can be illustrated by a paper that is served by mailing on a Friday. If ten days are allowed to respond, intermediate Saturdays, Sundays, and legal holidays are excluded in determining when the period expires under Rule 45(a). If there is no legal holiday, the period expires on the Friday two weeks after the paper was mailed. The three added Rule 45(c) days are Saturday, Sunday, and Monday, which is the third and final day to act unless it is a legal holiday. If Monday is a legal holiday, the next day that is not a legal holiday is the final day to act.

Rule 49.1. Privacy Protection For Filings Made with the Court[**]

1 **(a)** **Redacted Filings.** Unless the court orders otherwise, an

2 electronic or paper filing made with the court that

[**] Amendments proposed to the Bankruptcy, Civil, and Criminal Rules implementing the E-Government Act and the Judicial Conference privacy policy are included in a side-by-side comparison chart on page 158.

3 includes a social security number or an individual's tax
4 identification number, a name of a person known to be
5 a minor, a person's birth date, a financial account
6 number or the home address of a person may include
7 only:
8 **(1)** the last four digits of the social security number
9 and tax identification number;
10 **(2)** the minor's initials;
11 **(3)** the year of birth;
12 **(4)** the last four digits of the financial account
13 number; and
14 **(5)** the city and state of the home address.
15 **(b)** **Exemptions from the Redaction Requirement.** The
16 redaction requirement of Rule 49.1 (a) does not apply to
17 the following:

18 **(1)** in a forfeiture proceeding, a financial account
19 number or real property address that identifies the
20 property alleged to be subject to forfeiture;
21 **(2)** the record of an administrative or agency
22 proceeding;
23 **(3)** the official record of a state-court proceeding;
24 **(4)** the record of a court or tribunal whose decision is
25 being reviewed, if that record was not subject to (a)
26 when originally filed;
27 **(5)** a filing covered by (c) of this rule;
28 **(6)** a filing made in an action brought under 28 U.S.C.
29 § 2254 or 2255;
30 **(7)** a filing made in an action brought under 28 U.S.C.
31 § 2241 that does not relate to the petitioner's
32 immigration rights;
33 **(8)** a filing in any court in relation to a criminal matter
34 or investigation that is prepared before the filing of

35 a criminal charge or that is not filed as part of any
36 docketed criminal case;
37 **(9)** an arrest or search warrant; and
38 **(10)** a charging document and an affidavit filed in
39 support of any charging document.
40 **(c)** **Filings Made Under Seal.** The court may order that a
41 filing be made under seal without redaction. The court
42 may later unseal the filing or order the person who made
43 the filing to file a redacted version for the public record.
44 **(d)** **Protective Orders.** If necessary to protect private or
45 sensitive information that is not otherwise protected
46 under (a), a court may by order in a case:
47 (1) require redaction of additional information; or
48 (2) limit or prohibit remote electronic access by a
49 nonparty to a document filed with the court.
50 **(e)** **Option for Additional Unredacted Filing Under Seal.**
51 A party making a redacted filing under (a) may also file

52 an unredacted copy under seal. The court must retain the
53 unredacted copy as part of the record.
54 **(f) Option for Filing a Reference List.** A filing that
55 contains information redacted under (a) may be filed
56 together with a reference list that identifies each item of
57 redacted information and specifies an appropriate
58 identifier that uniquely corresponds to each item of
59 redacted information listed. The reference list must be
60 filed under seal and may be amended as of right. Any
61 reference in the case to an identifier in the reference list
62 will be construed to refer to the corresponding item of
63 information.
64 **(g) Waiver of Protection of Identifiers.** A party waives the
65 protection of (a) as to the party's own information to the
66 extent that the party files such information not under
67 seal and without redaction.

COMMITTEE NOTE

The rule is adopted in compliance with section 205(c)(3) of the E-Government Act of 2002, Public Law No. 107-347. Section 205(c)(3) requires the Supreme Court to prescribe rules "to protect privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically." The rule goes further than the E-Government Act in regulating paper filings even when they are not converted to electronic form. But the number of filings that remain in paper form is certain to diminish over time. Most districts scan paper filings into the electronic case file, where they become available to the public in the same way as documents initially filed in electronic form. It is electronic availability, not the form of the initial filing, that raises the privacy and security concerns addressed in the E-Government Act.

The rule is derived from and implements the policy adopted by the Judicial Conference in September 2001 to address the privacy concerns resulting from public access to electronic case files. *See* http://www.privacy.uscourts.gov/Policy.htm. The Judicial Conference policy is that documents in case files generally should be made available electronically to the same extent they are available at the courthouse, provided that certain "personal data identifiers" are not included in the public file.

While providing for the public filing of some information, such as the last four digits of an account number, the rule does not intend to establish a presumption that this information never could or should be protected. For example, it may well be necessary in individual cases to prevent remote access by nonparties to any part of an account number or social security number. It may also be necessary to protect information not covered by the redaction requirement — such as driver's license numbers and alien registration

numbers — in a particular case. In such cases, the party may seek protection under subdivision (d) or (e). Moreover, the Rule does not affect the protection available under other rules, such as Criminal Rule 16(d) and Civil Rules 16 and 26(c), or under other sources of protective authority.

Parties must remember that any personal information not otherwise protected by sealing or redaction will be made available over the internet. Counsel should notify clients of this fact so that an informed decision may be made on what information is to be included in a document filed with the court.

The clerk is not required to review documents filed with the court for compliance with this rule. The responsibility to redact filings rests with counsel and the parties.

Subdivision (e) provides that the court can order in a particular case require more extensive redaction than otherwise required by the Rule, where necessary to protect against disclosure to non-parties of sensitive or private information. Nothing in this subdivision is intended to affect the limitations on sealing that are otherwise applicable to the court.

Subdivision (f) allows a party who makes a redacted filing to file an unredacted document under seal. This provision is derived from section 205(c)(3)(iv) of the E-Government Act. Subdivision (g) allows parties to file a register of redacted information. This provision is derived from section 205(c)(3)(v) of the E-Government Act, as amended in 2004.

In accordance with the E-Government Act, subdivision (g) of the rule refers to "redacted" information. The term "redacted" is intended to govern a filing that is prepared with abbreviated

identifiers in the first instance, as well as a filing in which a personal identifier is edited after its preparation.

Subdivision (h) allows a party to waive the protections of the rule as to its own personal information by filing it unsealed and in unredacted form. A party may wish to waive the protection if it determines that the costs of redaction outweigh the benefits to privacy. If a party files an unredacted identifier by mistake, it may seek relief from the court.

Trial exhibits are subject to the redaction requirements of Rule 49.1 to the extent they are filed with the court. Trial exhibits that are not initially filed with the court must be redacted in accordance with the rule if and when they are filed as part of an appeal or for other reasons.

The Judicial Conference Committee on Court Administration and Case Management has issued "Guidance for Implementation of the Judicial Conference Policy on Privacy and Public Access to Electronic Criminal Case Files" (March 2004). This document sets out limitations on remote electronic access to certain sensitive materials in criminal cases. It provides in part as follows:

The following documents shall not be included in the public case file and should not be made available to the public at the courthouse or via remote electronic access:

- unexecuted summonses or warrants of any kind (*e.g.*, search warrants, arrest warrants);
- pretrial bail or presentence investigation reports;
- statements of reasons in the judgment of conviction;
- juvenile records;

- documents containing identifying information about jurors or potential jurors;
- financial affidavits filed in seeking representation pursuant to the Criminal Justice Act;
- ex parte requests for authorization of investigative, expert or other services pursuant to the Criminal Justice Act; and
- sealed documents (*e.g.*, motions for downward departure for substantial assistance, plea agreements indicating cooperation).

The privacy and law enforcement concerns implicated by the above documents in criminal cases can be accommodated under the rule through the sealing provision of subdivision (d).

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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EVIDENCE RULES

MEMORANDUM TO: **Honorable David F. Levi, Chair, Standing Committee on Rules of Practice and Procedure**

FROM: **Honorable Sidney A. Fitzwater, Chair, Standing Committee Subcommittee on Technology**

RE: **Proposed Amendment to Appellate Rule 25(a)(5) and Proposed New Bankruptcy Rule 9037, Civil Rule 5.2, and Criminal Rule 49.1**

DATE: **June 21, 2005**

Introductory statement for E-Government Rules to be released for public comment

These rules are intended to implement the requirements of the E-Government Act and also the established Judicial Conference policy concerning privacy protection for court filings. But no rule can adequately foresee developments in technology and rights of access to information, especially given the difficult policy choices that have to be made among 1) protection of privacy interests, 2) individual rights to notice and opportunity to be heard, and 3) public access to court filings. This rule only intends to provide flexibility. It necessarily relies on the responsibility of courts to determine, on a case-by-case basis, whether to dispense with privacy protections or instead to provide greater protection for private information, as the circumstances require.

The proposed rules amendments are included in the attached comparison chart and the individual Advisory Rules Committees' reports.

E-GOVERNMENT RULES COMPARISON CHART

CIVIL	CRIMINAL	BANKRUPTCY
Rule 5.2. Privacy Protection For Filings Made with the Court **(a) Redacted Filings.** Unless the court orders otherwise, an electronic or paper filing made with the court that includes a social security number or an individual's tax identification number, a name of a person known to be a minor, a person's birth date, or a financial account number may include only: **(1)** the last four digits of the social security number and tax identification number; **(2)** the minor's initials; **(3)** the year of birth; and **(4)** the last four digits of the financial account number.	**Rule 49.1 Privacy Protection For Filings Made with the Court** **(a) Redacted Filings.** Unless the court orders otherwise, an electronic or paper filing made with the court that includes a social security number or an individual's tax identification number, a name of a person known to be a minor, a person's birth date, a financial account number or the home address of a person may include only: **(1)** the last four digits of the social security number and tax identification number; **(2)** the minor's initials; **(3)** the year of birth; **(4)** the last four digits of the financial account number; and **(5)** the city and state of the home address.	**Rule 9037. Privacy Protection For Filings Made with the Court** **(a) REDACTED FILINGS.** Unless the court orders otherwise, an electronic or paper filing made with the court that includes a social security number or tax identification number; a name of a person, other than the debtor, known to be and identified as a minor; a person's birth date; or a financial account number may include only: **(1)** the last four digits of the social security number and tax identification number; **(2)** the minor's initials; **(3)** the year of birth; and **(4)** the last four digits of the financial account number.

CIVIL	CRIMINAL	BANKRUPTCY
(b) Exemptions from the Redaction Requirement. The redaction requirement of Rule 5.2(a) does not apply to the following: **(1)** in a forfeiture proceeding, a financial account number that identifies the property alleged to be subject to forfeiture; **(2)** the record of an administrative or agency proceeding; **(3)** the official record of a state-court proceeding; **(4)** the record of a court or tribunal whose decision is being reviewed, if that record was not subject to Rule 5.2(a) when originally filed; **(5)** a filing covered by Rule 5.2(c) or (d); and **(6)** a filing made in an action brought under 28 U.S.C. § 2241, 2254, or 2255.	**(b) Exemptions from the Redaction Requirement.** The redaction requirement of Rule 49.1(a) does not apply to the following: **(1)** in a forfeiture proceeding, a financial account number or real property address that identifies the property alleged to be subject to forfeiture; **(2)** the record of an administrative or agency proceeding; **(3)** the official record of a state-court proceeding; **(4)** the record of a court or tribunal whose decision is being reviewed, if that record was not subject to (a) when originally filed; **(5)** a filing covered by (c) of this rule; **(6)** a filing made in an action brought under 28 U.S.C. § 2254 or 2255; **(7)** a filing made in an action brought under 28 U.S.C. § 2241 that does not relate to the petitioner's immigration rights; **(8)** a filing in any court in relation to a criminal matter or investigation that is prepared before the filing of a criminal charge or that is not filed as part of any docketed criminal case; **(9)** an arrest or search warrant; and **(10)** a charging document and an affidavit filed in support of any charging document.	**(b) EXEMPTIONS FROM THE REDACTION REQUIREMENT.** The redaction requirement of subdivision (a) does not apply to the following: **(1)** the record of an administrative or agency proceeding unless filed with a proof of claim; **(2)** the record of a court or tribunal whose decision is being reviewed, if that record was not subject to subdivision (a) when originally filed; **(3)** filings covered by subdivision (c) of this rule; and **(4)** filings that are subject to § 110 of the Code.

CIVIL	CRIMINAL	BANKRUPTCY
(c) Limitations on Remote Access to Electronic Files; Social Security Appeals and Immigration Cases. Unless the court orders otherwise, in an action for benefits under the Social Security Act, and in an action or proceeding relating to an order of removal, relief from removal, or immigration benefits or detention, access to an electronic file is authorized as follows: **(1)** the parties and their attorneys may have remote electronic access to any part of the case file, including the administrative record; **(2)** any other person may have electronic access to the full record at the courthouse, but may have remote electronic access only to: **(A)** the docket maintained by the court; and **(B)** an opinion, order, judgment, or other disposition of the court, but not any other part of the case file or the administrative record.		

CIVIL	CRIMINAL	BANKRUPTCY
(d) Filings Made Under Seal. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record. **(e) Protective Orders.** If necessary to protect private or sensitive information that is not otherwise protected under Rule 5.2(a), a court may by order in a case: **(1)** require redaction of additional information; or **(2)** limit or prohibit remote electronic access by a nonparty to a document filed with the court. **(f) Option for Additional Unredacted Filing Under Seal.** A party making a redacted filing under Rule 5.2(a) may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.	**(c) Filings Made Under Seal.** The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record. **(d) Protective Orders.** If necessary to protect private or sensitive information that is not otherwise protected under Rule 49.1(a), a court may by order in a case: **(1)** require redaction of additional information; or **(2)** limit or prohibit remote electronic access by a nonparty to a document filed with the court. **(e) Option for Additional Unredacted Filing Under Seal.** A party making a redacted filing under Rule 49.1(a) may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.	**(c) FILINGS MADE UNDER SEAL.** The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record. **(d) PROTECTIVE ORDERS.** If necessary to protect private or sensitive information that is not otherwise protected by subdivision (a), a court may by order in a case under the Code: **(1)** require redaction of additional information; or **(2)** limit or prohibit remote electronic access by a nonparty to a document filed with the court. **(e) OPTION FOR ADDITIONAL UNREDACTED FILING UNDER SEAL.** A party making a redacted filing under subdivision (a) may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(g) **Option for Filing a Reference List.** A filing that contains information redacted under Rule 5.2(a) may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item of redacted information listed. The reference list must be filed under seal and may be amended as of right. Any reference in the case to an identifier in the reference list will be construed to refer to the corresponding item of information. (h) **Waiver of Protection of Identifiers.** A party waives the protection of Rule 5.2(a) as to the party's own information to the extent that the party files such information not under seal and without redaction.	(f) **Option for Filing a Reference List.** A filing that contains information redacted under Rule 49.1(a) may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item of redacted information listed. The reference list must be filed under seal and may be amended as of right. Any reference in the case to an identifier in the reference list will be construed to refer to the corresponding item of information. (g) **Waiver of Protection of Identifiers.** A party waives the protection of (a) as to the party's own information to the extent that the party files such information not under seal and without redaction.	(f) **OPTION FOR FILING A REFERENCE LIST.** A filing that contains information redacted under subdivision (a) may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item of redacted information listed. The reference list must be filed under seal and may be amended as of right. Any references in the case to an identifier in the reference list will be construed to refer to the corresponding item of information. (g) **WAIVER OF PROTECTION OF IDENTIFIERS.** A party waives the protection of subdivision (a) as to the party's own information to the extent that the party files such information is filed not under seal and without redaction.

PROCEDURES FOR THE CONDUCT OF BUSINESS BY THE JUDICIAL CONFERENCE COMMITTEES ON RULES OF PRACTICE AND PROCEDURE

Scope

These procedures govern the operations of the Judicial Conference Committee on Rules of Practice, Procedure, and Evidence (Standing Committee) and the various Judicial Conference Advisory Committees on Rules of Practice and Procedure in drafting and recommending new rules of practice, procedure, and evidence and amendments to existing rules.

Part I - Advisory Committees

1. Functions

   Each Advisory Committee shall carry on "a continuous study of the operation and effect of the general rules of practice and procedure now or hereafter in use" in its particular field, taking into consideration suggestions and recommendations received from any source, new statutes and court decisions affecting the rules, and legal commentary.

2. Suggestions and Recommendations

   Suggestions and recommendations with respect to the rules should be sent to the Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, D.C. 20544, who shall, to the extent feasible, acknowledge in writing every written suggestion or recommendation so received and shall refer all suggestions and

recommendations to the appropriate Advisory Committee. To the extent feasible, the Secretary, in consultation with the Chairman of the Advisory Committee, shall advise the person making a recommendation or suggestion of the action taken thereon by the Advisory Committee.

3. Drafting Rules Changes

   a. An Advisory Committee shall meet at such times and places as the Chairman may authorize. All Advisory Committee meetings shall be open to the public, except when the committee so meeting, in open session and with a majority present, determines that it is in the public interest that all or part of the remainder of the meeting on that day shall be closed to the public and states the reason for closing the meeting. Each meeting shall be preceded by notice of the time and place of the meeting, including publication in the Federal Register, sufficient to permit interested persons to attend.

   b. The reporter assigned to each Advisory Committee shall, under the direction of the Committee or its Chairman, prepare initial draft rules changes, "Committee Notes" explaining their purpose and intent, copies or summaries of all written recommendations and suggestions received by the Advisory Committee, and shall forward them to the Advisory Committee.

   c. The Advisory Committee shall then meet to consider the draft proposed new rules and rules amendments, together with Committee Notes, make revisions therein, and submit them for approval of publication to the Standing Committee, or its Chairman, with a written report explaining the Committee's action, including any minority or other separate views.

4. Publication and Public Hearings

a. When publication is approved by the Standing Committee, the Secretary shall arrange for the printing and circulation of the proposed rules changes to the bench and bar, and to the public generally. Publication shall be as wide as practicable. Notice of the proposed rule shall be published in the Federal Register and copies provided to appropriate legal publishing firms with a request that they be timely included in their publications. The Secretary shall also provide copies to the chief justice of the highest court of each state and, insofar as is practicable, to all individuals and organizations that request them.

b. In order to provide full notice and opportunity for comment on proposed rule changes, a period of at least six months from the time of publication of notice in the Federal Register shall be permitted, unless a shorter period is approved under the provisions of subparagraph d of this paragraph.

c. An Advisory Committee shall conduct public hearings on all proposed rules changes unless elimination of such hearings is approved under the provisions of subparagraph d of this paragraph. The hearings shall be held at such times and places as determined by the chairman of the Advisory Committee and shall be preceded by adequate notice, including publication in the Federal Register. Proceedings shall be recorded and a transcript prepared. Subject to the provisions of paragraph six, such transcript shall be available for public inspection.

d. Exceptions to the time period for public comment and the public hearing requirement may be granted by the Standing Committee or its chairman when the Standing Committee or its chairman determines that the administration of justice requires that a proposed rule change should be expedited and that appropriate public notice and comment may be achieved by a shortened comment period, without public hearings, or both. The Standing Committee may eliminate the public notice and comment requirement if, in the case of a technical or conforming amendment, it determines that notice and comment are not appropriate or necessary. Whenever such an exception is made, the Standing Committee shall advise the Judicial Conference of the exception and the reasons for the exception.

5. Subsequent Procedures

a. At the conclusion of the comment period the reporter shall prepare a summary of the written comments received and the testimony presented at public hearings. The Advisory Committee shall review the proposed rules changes in the light of the comments and testimony. If the Advisory Committee makes any substantial change, an additional period for public notice and comment may be provided.

b. The Advisory Committee shall submit proposed rules changes and Committee Notes, as finally agreed upon, to the Standing Committee. Each submission shall be accompanied by a separate report of the comments received and shall explain any changes made subsequent to the original publication. The submission shall also include minority views of Advisory Committee members who wish to have separate views recorded.

6. Records

a. The Chairman of the Advisory Committee shall arrange for the preparation of minutes of all Advisory Committee meetings.

b. The records of an Advisory Committee shall consist of the written suggestions received from the public; the written comments received on drafts of proposed rules, responses thereto, transcripts of public hearings, and summaries prepared by the reporter; all correspondence relating to proposed rules changes; minutes of Advisory Committee meetings; approved drafts of rules changes; and reports to the Standing Committee. The records shall be maintained at the Administrative Office of the United States Courts for a minimum of two years and shall be available for public inspection during reasonable office hours. Thereafter the records may be transferred to a Government Records Center in accordance with applicable Government retention and disposition schedules.

c. Any portion of minutes, relating to a closed meeting and made available to the public, may contain such deletions as may be necessary to avoid frustrating the purposes of closing the meeting as provided in subparagraph 3a.

d. Copies of records shall be furnished to any person upon payment of a reasonable fee for the cost of reproduction.

Part II - Standing Committee

7. Functions

The Standing Committee shall coordinate the work of the several Advisory Committees, make suggestions of proposals to be studied by them, consider proposals recommended by the Advisory Committees, and transmit such proposals with its recommendation to the Judicial Conference, or recommit them to the appropriate Advisory Committee for further study and consideration.

8. Procedures

a. The Standing Committee shall meet at such times and places as the Chairman may authorize. All Committee meetings shall be open to the public, except when the committee so meeting, in open session and with a majority present, determines that it is in the public interest that all or part of the remainder of the meeting on that day shall be closed to the public and states the reason for closing the meeting. Each meeting shall be preceded by notice of the time and place of the meeting, including publication in the Federal Register, sufficient to permit interested persons to attend.

b. When an Advisory Committee's final recommendations for rules changes have been submitted, the Chairman and Reporter of the Advisory Committee shall attend the Standing Committee meeting to present the proposed rules changes and Committee Notes.

c. The Standing Committee may accept, reject, or modify a proposal. If a modification effects a substantial change,

the proposal will be returned to the Advisory Committee with appropriate instructions.

d. The Standing Committee shall transmit to the Judicial Conference the proposed rules changes and Committee Notes approved by it, together with the Advisory Committee report. The Standing Committee's report to the Judicial Conference shall include its recommendations and explain any changes it has made.

9. Records

a. The Secretary shall prepare minutes of all Standing Committee meetings.

b. The records of the Standing Committee shall consist of the minutes of Standing and Advisory Committee meetings, reports to the Judicial Conference, and correspondence concerning rules changes including correspondence with Advisory Committee Chairmen. The records shall be maintained at the Administrative Office of the United States Courts for a minimum of two years and shall be available for public inspection during reasonable office hours. Thereafter the records may be transferred to a Government Records Center in accordance with applicable Government retention and disposition schedules.

c. Copies of records shall be furnished to any person upon payment of a reasonable fee for the cost of reproduction.

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*Judge John G. Roberts, Jr. replaces Judge Samuel A. Alito, Jr. as chair, effective October 1, 2005.

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United States Department of Justice

Professor David A. Schlueter, Reporter*

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* Professor Sara Sun Beale replaces Professor David A. Schlueter as reporter, effective October 1, 2005.

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