

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF CIVIL PROCEDURE***

Rule 7.1. Disclosure Statement

1 **(a) Who Must File: Nongovernmental Corporate Party.**

2 A nongovernmental corporate party to an action or
3 proceeding in a district court must file two copies of a
4 statement that identifies any parent corporation and any
5 publicly held corporation that owns 10% or more of its
6 stock or states that there is no such corporation.

7 **(b) Time for Filing; Supplemental Filing.** A party must:

8 (1) file the Rule 7.1(a) statement with its first
9 appearance, pleading, petition, motion, response, or
10 other request addressed to the court, and

11 (2) promptly file a supplemental statement upon any
12 change in the information that the statement requires.

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

Committee Note

Rule 7.1 is drawn from Rule 26.1 of the Federal Rules of Appellate Procedure, with changes to adapt to the circumstances of district courts that dictate different provisions for the time of filing, number of copies, and the like. The information required by Rule 7.1(a) reflects the "financial interest" standard of Canon 3C(1)(c) of the Code of Conduct for United States Judges. This information will support properly informed disqualification decisions in situations that call for automatic disqualification under Canon 3C(1)(c). It does not cover all of the circumstances that may call for disqualification under the financial interest standard, and does not deal at all with other circumstances that may call for disqualification.

Although the disclosures required by Rule 7.1(a) may seem limited, they are calculated to reach a majority of the circumstances that are likely to call for disqualification on the basis of financial information that a judge may not know or recollect. Framing a rule that calls for more detailed disclosure will be difficult. Unnecessary disclosure requirements place a burden on the parties and on courts. Unnecessary disclosure of volumes of information may create a risk that a judge will overlook the one bit of information that might require disqualification, and also may create a risk that unnecessary disqualifications will be made rather than attempt to unravel a potentially difficult question. It has not been feasible to dictate more detailed disclosure requirements in Rule 7.1(a).

Rule 7.1 does not prohibit local rules that require disclosures in addition to those required by Rule 7.1. Developing experience with local disclosure practices and advances in electronic technology may provide a foundation for adopting more detailed disclosure requirements by future amendments of Rule 7.1.

Changes Made After Publication and Comment

The provisions that would require disclosure of additional information that may be required by the Judicial Conference have been deleted.

Rule 54. Judgments; Costs

1 * * * * *

2 **(d) Costs; Attorneys' Fees.**

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4 **(2) Attorneys' Fees.**

5 **(A)** Claims for attorneys' fees and related
6 nontaxable expenses shall be made by motion
7 unless the substantive law governing the action
8 provides for the recovery of such fees as an
9 element of damages to be proved at trial.

10 **(B)** Unless otherwise provided by statute or order
11 of the court, the motion must be filed ~~and served~~
12 no later than 14 days after entry of judgment; must
13 specify the judgment and the statute, rule, or other

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14 grounds entitling the moving party to the award;
15 and must state the amount or provide a fair
16 estimate of the amount sought. If directed by the
17 court, the motion shall also disclose the terms of
18 any agreement with respect to fees to be paid for
19 the services for which claim is made.

20 (C) On request of a party or class member, the
21 court shall afford an opportunity for adversary
22 submissions with respect to the motion in
23 accordance with Rule 43(e) or Rule 78. The court
24 may determine issues of liability for fees before
25 receiving submissions bearing on issues of
26 evaluation of services for which liability is
27 imposed by the court. The court shall find the
28 facts and state its conclusions of law as provided in
29 Rule 52(a), ~~and a judgment shall be set forth in a~~
30 ~~separate document as provided in Rule 58.~~

Committee Note

Subdivision (d)(2)(C) is amended to delete the requirement that judgment on a motion for attorney fees be set forth in a separate document. This change complements the amendment of Rule 58(a)(1), which deletes the separate document requirement for an order disposing of a motion for attorney fees under Rule 54. These changes are made to support amendment of Rule 4 of the Federal Rules of Appellate Procedure. It continues to be important that a district court make clear its meaning when it intends an order to be the final disposition of a motion for attorney fees.

The requirement in subdivision (d)(2)(B) that a motion for attorney fees be not only filed but also served no later than 14 days after entry of judgment is changed to require filing only, to establish a parallel with Rules 50, 52, and 59. Service continues to be required under Rule 5(a).

Rule 58. Entry of Judgment

1 ~~Subject to the provisions of Rule 54(b): (1) upon a~~
2 ~~general verdict of a jury, or upon a decision by the court that~~
3 ~~a party shall recover only a sum certain or costs or that all~~
4 ~~relief shall be denied, the clerk, unless the court otherwise~~
5 ~~orders, shall forthwith prepare, sign, and enter the judgment~~
6 ~~without awaiting any direction by the court; (2) upon a~~

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7 ~~decision by the court granting other relief, or upon a special~~
8 ~~verdict or a general verdict accompanied by answers to~~
9 ~~interrogatories, the court shall promptly approve the form of~~
10 ~~the judgment, and the clerk shall thereupon enter it. Every~~
11 ~~judgment shall be set forth on a separate document. A~~
12 ~~judgment is effective only when so set forth and when entered~~
13 ~~as provided in Rule 79(a). Entry of the judgment shall not be~~
14 ~~delayed, nor the time for appeal extended, in order to tax costs~~
15 ~~or award fees, except that, when a timely motion for~~
16 ~~attorneys' fees is made under Rule 54(d)(2), the court, before~~
17 ~~a notice of appeal has been filed and has become effective,~~
18 ~~may order that the motion have the same effect under Rule~~
19 ~~4(a)(4) of the Federal Rules of Appellate Procedure as a~~
20 ~~timely motion under Rule 59. Attorneys shall not submit~~
21 ~~forms of judgment except upon direction of the court, and~~
22 ~~these directions shall not be given as a matter of course.~~

23 **(a) Separate Document.**

24 **(1) Every judgment and amended judgment must be set**
25 **forth on a separate document, but a separate document**
26 **is not required for an order disposing of a motion:**

27 **(A) for judgment under Rule 50(b);**

28 **(B) to amend or make additional findings of fact**
29 **under Rule 52(b);**

30 **(C) for attorney fees under Rule 54;**

31 **(D) for a new trial, or to alter or amend the**
32 **judgment, under Rule 59; or**

33 **(E) for relief under Rule 60.**

34 **(2) Subject to Rule 54(b):**

35 **(A) unless the court orders otherwise, the clerk**
36 **must, without awaiting the court's direction,**
37 **promptly prepare, sign, and enter the judgment**
38 **when:**

- 39 (i) the jury returns a general verdict,
- 40 (ii) the court awards only costs or a sum
- 41 certain, or
- 42 (iii) the court denies all relief;
- 43 (B) the court must promptly approve the form of
- 44 the judgment, which the clerk must promptly enter,
- 45 when:
- 46 (i) the jury returns a special verdict or a
- 47 general verdict accompanied by
- 48 interrogatories, or
- 49 (ii) the court grants other relief not described
- 50 in Rule 58(a)(2).
- 51 **(b) Time of Entry.** Judgment is entered for purposes of
- 52 these rules:
- 53 (1) if Rule 58(a)(1) does not require a separate
- 54 document, when it is entered in the civil docket under
- 55 Rule 79(a), and

56 (2) if Rule 58(a)(1) requires a separate document, when
57 it is entered in the civil docket under Rule 79(a) and
58 when the earlier of these events occurs:

59 (A) when it is set forth on a separate document, or

60 (B) when 150 days have run from entry in the civil
61 docket under Rule 79(a).

62 **(c) Cost or Fee Awards.**

63 (1) Entry of judgment may not be delayed, nor the time
64 for appeal extended, in order to tax costs or award fees,
65 except as provided in Rule 58(c)(2).

66 (2) When a timely motion for attorney fees is made
67 under Rule 54(d)(2), the court may act before a notice of
68 appeal has been filed and has become effective to order
69 that the motion have the same effect under Federal Rule
70 of Appellate Procedure 4(a)(4) as a timely motion under
71 Rule 59.

72 **(d) Request for Entry.** A party may request that judgment
73 be set forth on a separate document as required by Rule
74 58(a)(1).

Committee Note

Rule 58 has provided that a judgment is effective only when set forth on a separate document and entered as provided in Rule 79(a). This simple separate document requirement has been ignored in many cases. The result of failure to enter judgment on a separate document is that the time for making motions under Rules 50, 52, 54(d)(2)(B), 59, and some motions under Rule 60, never begins to run. The time to appeal under Appellate Rule 4(a) also does not begin to run. There have been few visible problems with respect to Rule 50, 52, 54(d)(2)(B), 59, or 60 motions, but there have been many and horridly confused problems under Appellate Rule 4(a). These amendments are designed to work in conjunction with Appellate Rule 4(a) to ensure that appeal time does not linger on indefinitely, and to maintain the integration of the time periods set for Rules 50, 52, 54(d)(2)(B), 59, and 60 with Appellate Rule 4(a).

Rule 58(a) preserves the core of the present separate document requirement, both for the initial judgment and for any amended judgment. No attempt is made to sort through the confusion that some courts have found in addressing the elements of a separate document. It is easy to prepare a separate document that recites the terms of the judgment without offering additional explanation or citation of authority. Forms 31 and 32 provide examples.

Rule 58 is amended, however, to address a problem that arises under Appellate Rule 4(a). Some courts treat such orders as those

that deny a motion for new trial as a "judgment," so that appeal time does not start to run until the order is entered on a separate document. Without attempting to address the question whether such orders are appealable, and thus judgments as defined by Rule 54(a), the amendment provides that entry on a separate document is not required for an order disposing of the motions listed in Appellate Rule 4(a). The enumeration of motions drawn from the Appellate Rule 4(a) list is generalized by omitting details that are important for appeal time purposes but that would unnecessarily complicate the separate document requirement. As one example, it is not required that any of the enumerated motions be timely. Many of the enumerated motions are frequently made before judgment is entered. The exemption of the order disposing of the motion does not excuse the obligation to set forth the judgment itself on a separate document. And if disposition of the motion results in an amended judgment, the amended judgment must be set forth on a separate document.

Rule 58(b) discards the attempt to define the time when a judgment becomes "effective." Taken in conjunction with the Rule 54(a) definition of a judgment to include "any order from which an appeal lies," the former Rule 58 definition of effectiveness could cause strange difficulties in implementing pretrial orders that are appealable under interlocutory appeal provisions or under expansive theories of finality. Rule 58(b) replaces the definition of effectiveness with a new provision that defines the time when judgment is entered. If judgment is promptly set forth on a separate document, as should be done when required by Rule 58(a)(1), the new provision will not change the effect of Rule 58. But in the cases in which court and clerk fail to comply with this simple requirement, the motion time periods set by Rules 50, 52, 54, 59, and 60 begin to run after expiration of 150 days from entry of the judgment in the civil docket as required by Rule 79(a).

A companion amendment of Appellate Rule 4(a)(7) integrates these changes with the time to appeal.

The new all-purpose definition of the entry of judgment must be applied with common sense to other questions that may turn on the time when judgment is entered. If the 150-day provision in Rule 58(b)(2)(B) — designed to integrate the time for post-judgment motions with appeal time — serves no purpose, or would defeat the purpose of another rule, it should be disregarded. In theory, for example, the separate document requirement continues to apply to an interlocutory order that is appealable as a final decision under collateral-order doctrine. Appealability under collateral-order doctrine should not be complicated by failure to enter the order as a judgment on a separate document — there is little reason to force trial judges to speculate about the potential appealability of every order, and there is no means to ensure that the trial judge will always reach the same conclusion as the court of appeals. Appeal time should start to run when the collateral order is entered without regard to creation of a separate document and without awaiting expiration of the 150 days provided by Rule 58(b)(2). Drastic surgery on Rules 54(a) and 58 would be required to address this and related issues, however, and it is better to leave this conundrum to the pragmatic disregard that seems its present fate. The present amendments do not seem to make matters worse, apart from one false appearance. If a pretrial order is set forth on a separate document that meets the requirements of Rule 58(b), the time to move for reconsideration seems to begin to run, perhaps years before final judgment. And even if there is no separate document, the time to move for reconsideration seems to begin 150 days after entry in the civil docket. This apparent problem is resolved by Rule 54(b), which expressly permits revision of all orders not made final under Rule 54(b) "at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties."

New Rule 58(d) replaces the provision that attorneys shall not submit forms of judgment except on direction of the court. This provision was added to Rule 58 to avoid the delays that were frequently encountered by the former practice of directing the attorneys for the prevailing party to prepare a form of judgment, and also to avoid the occasionally inept drafting that resulted from attorney-prepared judgments. See *11 Wright, Miller & Kane, Federal Practice & Procedure: Civil 2d*, § 2786. The express direction in Rule 58(a)(2) for prompt action by the clerk, and by the court if court action is required, addresses this concern. The new provision allowing any party to move for entry of judgment on a separate document will protect all needs for prompt commencement of the periods for motions, appeals, and execution or other enforcement.

Changes Made After Publication and Comment

Minor style changes were made. The definition of the time of entering judgment in Rule 58(b) was extended to reach all Civil Rules, not only the Rules described in the published version — Rules 50, 52, 54(d)(2)(B), 59, 60, and 62. And the time of entry was extended from 60 days to 150 days after entry in the civil docket without a required separate document.

Rule 81(a): Rules Governing Habeas Corpus

Rule 81. Applicability in General

1 **(a) To What Proceedings Applicable.**

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(2) These rules are applicable to proceedings for

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admission to citizenship, habeas corpus, and quo

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warranto, to the extent that the practice in such

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proceedings is not set forth in statutes of the United

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States, the Rules Governing Section 2254 Cases, or the

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Rules Governing Section 2255 Proceedings, and has

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heretofore conformed to the practice in civil actions.

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~~The writ of habeas corpus, or order to show cause, shall~~

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~~be directed to the person having custody of the person~~

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~~detained. It shall be returned within 3 days unless for~~

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~~good cause shown additional time is allowed which in~~

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~~cases brought under 28 U.S.C. § 2254 shall not exceed~~

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~~40 days, and in all other cases shall not exceed 20 days.~~

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Committee Note

This amendment brings Rule 81(a)(2) into accord with the Rules Governing § 2254 and § 2255 proceedings. In its present form, Rule 81(a)(2) includes return-time provisions that are inconsistent with the

provisions in the Rules Governing §§ 2254 and 2255. The inconsistency should be eliminated, and it is better that the time provisions continue to be set out in the other rules without duplication in Rule 81. Rule 81 also directs that the writ be directed to the person having custody of the person detained. Similar directions exist in the § 2254 and § 2255 rules, providing additional detail for applicants subject to future custody. There is no need for partial duplication in Rule 81.

The provision that the civil rules apply to the extent that practice is not set forth in the § 2254 and § 2255 rules dovetails with the provisions in Rule 11 of the § 2254 rules and Rule 12 of the § 2255 rules.

Changes Made After Publication and Comment

The only change since publication is deletion of an inadvertent reference to § 2241 proceedings.

**ADMIRALTY RULES PUBLISHED FOR COMMENT IN
JANUARY 2001**

Rule C. In Rem Actions: Special Provisions

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(3) Judicial Authorization and Process.

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(a) Arrest Warrant.

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4 (i) When the United States files a complaint
5 demanding a forfeiture for violation of a federal
6 statute, the clerk must promptly issue a summons
7 and a warrant for the arrest of the vessel or other
8 property without requiring a certification of
9 exigent circumstances, but if the property is real
10 property the United States must proceed under
11 applicable statutory procedures.

12 * * * * *

13 **(6) Responsive Pleading; Interrogatories.**

14 **(a) Civil Forfeiture.** In an in rem forfeiture action for
15 violation of a federal statute:

16 (i) a person who asserts an interest in or right
17 against the property that is the subject of the action
18 must file a verified statement identifying the
19 interest or right:

20 (A) within ~~20~~ 30 days after the earlier of (1)
21 ~~receiving actual notice of execution of~~
22 ~~process~~ the date of service of the
23 Government's complaint or (2) completed
24 publication of notice under Rule C(4), or

25 (B) within the time that the court allows.

26 (ii) an agent, bailee, or attorney must state the
27 authority to file a statement of interest in or right
28 against the property on behalf of another; and

29 (iii) a person who files a statement of interest in or
30 right against the property must serve and file an
31 answer within 20 days after filing the statement.

32 (b) **Maritime Arrests and Other Proceedings.** In an
33 in rem action not governed by Rule C(6)(a):

34 * * * * *

35 (iv) a person who asserts a right of possession or
36 any ownership interest must ~~file~~ serve an answer

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within 20 days after filing the statement of interest

38

or right.

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Committee Note

Rule C(3) is amended to reflect the provisions of 18 U.S.C. § 985, enacted by the Civil Asset Forfeiture Reform Act of 2000, 114 Stat. 202, 214-215. Section 985 provides, subject to enumerated exceptions, that real property that is the subject of a civil forfeiture action is not to be seized until an order of forfeiture is entered. A civil forfeiture action is initiated by filing a complaint, posting notice, and serving notice on the property owner. The summons and arrest procedure is no longer appropriate.

Rule C(6)(a)(i)(A) is amended to adopt the provision enacted by 18 U.S.C. § 983(a)(4)(A), shortly before Rule C(6)(a)(i)(A) took effect, that sets the time for filing a verified statement as 30 days rather than 20 days, and that sets the first alternative event for measuring the 30 days as the date of service of the Government's complaint.

Rule C(6)(a)(iii) is amended to give notice of the provision enacted by 18 U.S.C. § 983(a)(4)(B) that requires that the answer in a forfeiture proceeding be filed within 20 days. Without this notice, unwary litigants might rely on the provision of Rule 5(d) that allows a reasonable time for filing after service.

Rule C(6)(b)(iv) is amended to change the requirement that an answer be filed within 20 days to a requirement that it be served

within 20 days. Service is the ordinary requirement, as in Rule 12(a). Rule 5(d) requires filing within a reasonable time after service.

Changes Made After Publication and Comment

No changes have been made since publication.