#### Rule 1. Scope and Purpose

These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July

1, 1966; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007;

Apr. 29, 2015, eff. Dec. 1, 2015.)

#### Rule 2. One Form of Action

There is one form of action—the civil action. (As amended Apr. 30, 2007, eff. Dec. 1, 2007.)

TITLE II. COMMENCING AN ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

#### Rule 3. Commencing an Action

A civil action is commenced by filing a complaint with the court.

(As amended Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 4. Summons

1. 4a CONTENTS; AMENDMENTS.
   1. *4a1 Contents.* A summons must:
      1. 4a1a name the court and the parties;
      2. 4a1b be directed to the defendant;
      3. 4a1c state the name and address of the plaintiff’s attorney or—if unrepresented—of the plaintiff;
      4. 4a1d state the time within which the defendant must appear and defend;
      5. 4a1e notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint;
      6. 4a1f be signed by the clerk; and
      7. 4a1g bear the court’s seal.

1 Title amended December 29, 1948, effective October 20, 1949.

(1)

**Rule 4** FEDERAL RULES OF CIVIL PROCEDURE 2

* 1. *4a2 Amendments.* The court may permit a summons to be amended.

1. 4b ISSUANCE. On or after filing the complaint, the plaintiff may

present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the plaintiff for service on the defendant. A summons—or a copy of a summons that is addressed to multiple defendants—must be issued for each defendant to be served.

1. 4c SERVICE.
   1. *4c1 In General.* A summons must be served with a copy of the complaint. The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service.
   2. *4c2 By Whom.* Any person who is at least 18 years old and not

a party may serve a summons and complaint.

* 1. *4c2 By a Marshal or Someone Specially Appointed.* At the plaintiff’s request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. The court must so order if the plaintiff is authorized to proceed in forma pauperis under 28

U.S.C. § 1915 or as a seaman under 28 U.S.C. § 1916.

1. 4d WAIVING SERVICE.
   1. *4d1 Requesting a Waiver.* An individual, corporation, or association that is subject to service under Rule 4(e), (f), or (h) has a duty to avoid unnecessary expenses of serving the summons. The plaintiff may notify such a defendant that an action has been commenced and request that the defendant waive service of a summons. The notice and request must:
      1. 4d1A be in writing and be addressed:
         1. 4d1Ai to the individual defendant; or
         2. 4d1Aii for a defendant subject to service under Rule 4(h), to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process;
      2. 4d1B name the court where the complaint was filed;
      3. 4d1C be accompanied by a copy of the complaint, 2 copies of the waiver form appended to this Rule 4, and a prepaid means for returning the form;
      4. 4d1D inform the defendant, using the form appended to

this Rule 4, of the consequences of waiving and not waiving service;

* + 1. 4d1E state the date when the request is sent;
    2. 4d1F give the defendant a reasonable time of at least 30 days after the request was sent—or at least 60 days if sent to the defendant outside any judicial district of the United States—to return the waiver; and
    3. 4d1G be sent by first-class mail or other reliable means.
  1. *4d2 Failure to Waive.* If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant:
     1. *4d2A* the expenses later incurred in making service; and
     2. *4d2A* the reasonable expenses, including attorney’s fees, of any motion required to collect those service expenses.

3 FEDERAL RULES OF CIVIL PROCEDURE **Rule 4**

* 1. *4d3 Time to Answer After a Waiver.* A defendant who, before being served with process, timely returns a waiver need not serve an answer to the complaint until 60 days after the request was sent—or until 90 days after it was sent to the defendant outside any judicial district of the United States.
  2. *4d4 Results of Filing a Waiver.* When the plaintiff files a waiver, proof of service is not required and these rules apply as if a summons and complaint had been served at the time of filing the waiver.
  3. *4d5 Jurisdiction and Venue Not Waived.* Waiving service of a

summons does not waive any objection to personal jurisdiction or to venue.

1. 4e SERVING AN INDIVIDUAL WITHIN A JUDICIAL DISTRICT OF THE

UNITED STATES. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in a judicial district of the United States by:

* 1. 4e1 following state law for serving a summons in an action

brought in courts of general jurisdiction in the state where the district court is located or where service is made; or

* 1. 4e2 doing any of the following:
     1. 4e2A delivering a copy of the summons and of the complaint to the individual personally;
     2. 4e2B leaving a copy of each at the individual’s dwelling or

usual place of abode with someone of suitable age and discretion who resides there; or

* + 1. 4e2C delivering a copy of each to an agent authorized by

appointment or by law to receive service of process.

1. 4f SERVING AN INDIVIDUAL IN A FOREIGN COUNTRY. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served at a place not within any judicial district of the United States:
   1. 4f1 by any internationally agreed means of service that is

reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

* 1. 4f2 if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:
     1. 4f2Aas prescribed by the foreign country’s law for service

in that country in an action in its courts of general jurisdiction;

* + 1. 4f2B as the foreign authority directs in response to a letter rogatory or letter of request; or
    2. 4f2C unless prohibited by the foreign country’s law, by:
       1. 4f2Ci delivering a copy of the summons and of the complaint to the individual personally; or
       2. 4f2Cii using any form of mail that the clerk addresses

and sends to the individual and that requires a signed receipt; or

* 1. 4f3 by other means not prohibited by international agree-

ment, as the court orders.

1. 4g SERVING A MINOR OR AN INCOMPETENT PERSON. A minor or an incompetent person in a judicial district of the United States

**Rule 4** FEDERAL RULES OF CIVIL PROCEDURE 4

must be served by following state law for serving a summons or like process on such a defendant in an action brought in the courts of general jurisdiction of the state where service is made. A minor or an incompetent person who is not within any judicial district of the United States must be served in the manner prescribed by Rule 4(f)(2)(A), (f)(2)(B), or (f)(3).

1. 4h SERVING A CORPORATION, PARTNERSHIP, OR ASSOCIATION. Unless federal law provides otherwise or the defendant’s waiver has been filed, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served:
   1. 4h1 in a judicial district of the United States:
      1. 4h1A in the manner prescribed by Rule 4(e)(1) for serving an individual; or
      2. 4h1Bby delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant; or
   2. 4h2 at a place not within any judicial district of the United

States, in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).

1. SERVING THE UNITED STATES AND ITS AGENCIES, CORPORATIONS, OFFICERS, OR EMPLOYEES.
   1. *4h2 1 United States.* To serve the United States, a party must: 4h2 1 (A)(i) deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought—or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk—or

4h2 1A(ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney’s office;

1. 4h2 1B send a copy of each by registered or certified mail to

the Attorney General of the United States at Washington,

D.C.; and

1. 4h2 1C if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.
   1. *4h2 2 Agency; Corporation; Officer or Employee Sued in an Official*

*Capacity.* To serve a United States agency or corporation, or a United States officer or employee sued only in an official capacity, a party must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer, or employee.

* 1. *4h2 3 Officer or Employee Sued Individually.* To serve a United

States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States’ behalf (whether or not the officer or employee is also sued in an official capacity), a party must serve the United States and also serve the officer or employee under Rule 4(e), (f), or (g).

* 1. *4h2 4 Extending Time.* The court must allow a party a reasonable time to cure its failure to:

5 FEDERAL RULES OF CIVIL PROCEDURE **Rule 4**

1. 4h2 4A serve a person required to be served under Rule 4(i)(2), if the party has served either the United States attorney or the Attorney General of the United States; or
2. 4h2 4B serve the United States under Rule 4(i)(3), if the

party has served the United States officer or employee.

1. 4j SERVING A FOREIGN, STATE, OR LOCAL GOVERNMENT.
   1. *4j1 Foreign State.* A foreign state or its political subdivision, agency, or instrumentality must be served in accordance with 28 U.S.C. § 1608.
   2. *4j2 State or Local Government.* A state, a municipal corporation, or any other state-created governmental organization that is subject to suit must be served by:
      1. 4j2A delivering a copy of the summons and of the complaint to its chief executive officer; or
      2. 4j2B serving a copy of each in the manner prescribed by that state’s law for serving a summons or like process on such a defendant.
2. 4k TERRITORIAL LIMITS OF EFFECTIVE SERVICE.
   1. *4k1 In General.* Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant:
      1. 4k1A who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located;
      2. 4k1B who is a party joined under Rule 14 or 19 and is served within a judicial district of the United States and not more than 100 miles from where the summons was issued; or
      3. 4k1C when authorized by a federal statute.
   2. *4k2 Federal Claim Outside State-Court Jurisdiction.* For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if:
      1. 4k2A the defendant is not subject to jurisdiction in any state’s courts of general jurisdiction; and
      2. 4k2B exercising jurisdiction is consistent with the United States Constitution and laws.
3. 4l PROVING SERVICE.
   1. *4l1 Affidavit Required.* Unless service is waived, proof of service must be made to the court. Except for service by a United States marshal or deputy marshal, proof must be by the server’s affidavit.
   2. *4l2 Service Outside the United States.* Service not within any judicial district of the United States must be proved as follows:
      1. 4l2A if made under Rule 4(f)(1), as provided in the applicable treaty or convention; or
      2. 4l2B if made under Rule 4(f)(2) or (f)(3), by a receipt signed by the addressee, or by other evidence satisfying the court that the summons and complaint were delivered to the addressee.
   3. *4l3 Validity of Service; Amending Proof.* Failure to prove service does not affect the validity of service. The court may permit proof of service to be amended.
4. 4m TIME LIMIT FOR SERVICE. If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its

**Rule 4** FEDERAL RULES OF CIVIL PROCEDURE 6

own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).

1. 4n ASSERTING JURISDICTION OVER PROPERTY OR ASSETS.
   1. *4n1 Federal Law.* The court may assert jurisdiction over property if authorized by a federal statute. Notice to claimants of the property must be given as provided in the statute or by serving a summons under this rule.
   2. *4n2 State Law.* On a showing that personal jurisdiction over a defendant cannot be obtained in the district where the action is brought by reasonable efforts to serve a summons under this rule, the court may assert jurisdiction over the defendant’s assets found in the district. Jurisdiction is acquired by seizing the assets under the circumstances and in the manner provided by state law in that district.

(As amended Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July

1, 1966; Apr. 29, 1980, eff. Aug. 1, 1980; Pub. L. 97–462, § 2, Jan. 12,

1983, 96 Stat. 2527, eff. Feb. 26, 1983; Mar. 2, 1987, eff. Aug. 1, 1987;

Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 17, 2000, eff. Dec. 1, 2000; Apr.

30, 2007, eff. Dec. 1, 2007; Apr. 29, 2015, eff. Dec. 1, 2015; Apr. 28, 2016,

eff. Dec. 1, 2016; Apr. 27, 2017, eff. Dec. 1, 2017.)

RULE 4 NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF

SUMMONS.

(Caption)

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 expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, 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).

7 FEDERAL RULES OF CIVIL PROCEDURE **Rule 4**

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below. Date:lllllllllll lllllllllllllllllllllllllll

(Signature of the attorney

or unrepresented party) lllllllllllllllllllllllllll (Printed name) lllllllllllllllllllllllllll (Address) lllllllllllllllllllllllllll (E-mail address) lllllllllllllllllllllllllll (Telephone number)

RULE 4 WAIVER OF THE SERVICE OF SUMMONS.

(Caption)

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 expense 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 lllllllllllllllllllll, 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:lllllllllll lllllllllllllllllllllllllll (Signature of the attorney

or unrepresented party)

lllllllllllllllllllllllllll (Printed name) lllllllllllllllllllllllllll (Address) lllllllllllllllllllllllllll (E-mail address) lllllllllllllllllllllllllll (Telephone number)

**Rule 4.1** FEDERAL RULES OF CIVIL PROCEDURE 8

(Attach the following)

DUTY TO AVOID UNNECESSARY EXPENSES OF SERVING A SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses 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 expenses 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 all 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.

#### Rule 4.1. Serving Other Process

1. 4.1a IN GENERAL. Process—other than a summons under Rule 4 or a subpoena under Rule 45—must be served by a United States marshal or deputy marshal or by a person specially appointed for that purpose. It may be served anywhere within the territorial limits of the state where the district court is located and, if authorized by a federal statute, beyond those limits. Proof of service must be made under Rule 4(*l*).
2. 4.1b ENFORCING ORDERS: COMMITTING FOR CIVIL CONTEMPT. An order committing a person for civil contempt of a decree or injunction issued to enforce federal law may be served and enforced in any district. Any other order in a civil-contempt proceeding may be served only in the state where the issuing court is located or elsewhere in the United States within 100 miles from where the order was issued.

(As added Apr. 22, 1993, eff. Dec. 1, 1993; amended Apr. 30, 2007, eff.

Dec. 1, 2007.)

#### Rule 5. Serving and Filing Pleadings and Other Papers

1. 5a SERVICE: WHEN REQUIRED.
   1. *5a1 In General.* Unless these rules provide otherwise, each of the following papers must be served on every party:
      1. 5a1A an order stating that service is required;
      2. 5a1B a pleading filed after the original complaint, unless the court orders otherwise under Rule 5(c) because there are numerous defendants;
      3. 5a1C a discovery paper required to be served on a party, unless the court orders otherwise;
      4. 5a1D a written motion, except one that may be heard ex parte; and

9 FEDERAL RULES OF CIVIL PROCEDURE **Rule 5**

* + 1. 5a1E a written notice, appearance, demand, or offer of judgment, or any similar paper.
  1. *5a2 If a Party Fails to Appear.* No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.
  2. *5a3 Seizing Property.* If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an appearance, answer, or claim must be made on the person who had custody or possession of the property when it was seized.

1. 5b SERVICE: HOW MADE.
   1. *5b1 Serving an Attorney.* If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.
   2. *5b2 Service in General.* A paper is served under this rule by:
      1. 5b2A handing it to the person;
      2. 5b2B leaving it:
         1. 5b2Bi at the person’s office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or
         2. 5b2Bii if the person has no office or the office is closed, at the person’s dwelling or usual place of abode with someone of suitable age and discretion who resides there;
      3. 5b2C mailing it to the person’s last known address—in which event service is complete upon mailing;
      4. 5b2D leaving it with the court clerk if the person has no known address;
      5. 5b2E sending it to a registered user by filing it with the court’s electronic-filing system or sending it by other electronic means that the person consented to in writing—in either of which events service is complete upon filing or sending, but is not effective if the filer or sender learns that it did not reach the person to be served; or
      6. 5b2F delivering it by any other means that the person consented to in writing—in which event service is complete when the person making service delivers it to the agency designated to make delivery.
   3. *5b3 Using Court Facilities.* [Abrogated (Apr. 26, 2018, eff. Dec. 1, 2018.)]
2. 5c SERVING NUMEROUS DEFENDANTS.
   1. *5c1 1 In General.* If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that:
      1. 5c1A defendants’ pleadings and replies to them need not be served on other defendants;
      2. 5c1B any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and
      3. 5c1C filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.
   2. *5c2 Notifying Parties.* A copy of every such order must be served on the parties as the court directs.

**Rule 5** FEDERAL RULES OF CIVIL PROCEDURE 10

1. 5d FILING.
   1. *5d1 Required Filings; Certificate of Service.*
      1. *5d1A Papers after the Complaint.* Any paper after the complaint that is required to be served must be filed no later than a reasonable time after service. But disclosures under Rule 26(a)(1) or (2) and the following discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing: depositions, interrogatories, requests for documents or tangible things or to permit entry onto land, and requests for admission.
      2. *5d1B Certificate of Service.* No certificate of service is required when a paper is served by filing it with the court’s electronic-filing system. When a paper that is required to be served is served by other means:
         1. *5d1Bi* if the paper is filed, a certificate of service must be filed with it or within a reasonable time after service; and
         2. *5d1Bii* if the paper is not filed, a certificate of service need not be filed unless filing is required by court order or by local rule.
   2. *5d2 Nonelectronic Filing.* A paper not filed electronically is filed by delivering it:
      1. 5d2A to the clerk; or
      2. 5D2B to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.
   3. *5d3 Electronic Filing and Signing.*
      1. *5d3A By a Represented Person—Generally Required; Exceptions.* A person represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.
      2. *5d3B By an Unrepresented Person—When Allowed or Required.* A person not represented by an attorney:
         1. *5d3Bi* may file electronically only if allowed by court order or by local rule; and
         2. *5d3Bii* may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions.
      3. *5d3C Signing.* A filing made through a person’s electronicfiling account and authorized by that person, together with that person’s name on a signature block, constitutes the person’s signature.
      4. *5d3D Same as a Written Paper.* A paper filed electronically is a written paper for purposes of these rules.
   4. *5d4 Acceptance by the Clerk.* The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice.

(As amended Jan. 21, 1963, eff. July 1, 1963; Mar. 30, 1970, eff. July

1, 1970; Apr. 29, 1980, eff. Aug. 1, 1980; Mar. 2, 1987, eff. Aug. 1, 1987;

Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr.

23, 1996, eff. Dec. 1, 1996; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 23, 2001,

eff. Dec. 1, 2001; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec.

1, 2007; Apr. 26, 2018, eff. Dec. 1, 2018.)

11 FEDERAL RULES OF CIVIL PROCEDURE **Rule 5.2**

#### Rule 5.1. Constitutional Challenge to a Statute—Notice, Certification, and Intervention

1. 5.1a NOTICE BY A PARTY. A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a federal or state statute must promptly:
   1. 5.1a1 file a notice of constitutional question stating the question and identifying the paper that raises it, if:
      1. 5.1a1A a federal statute is questioned and the parties do not include the United States, one of its agencies, or one of its officers or employees in an official capacity; or
      2. 5.1a1B a state statute is questioned and the parties do not include the state, one of its agencies, or one of its officers or employees in an official capacity; and
   2. 5.1a2 serve the notice and paper on the Attorney General of the United States if a federal statute is questioned—or on the state attorney general if a state statute is questioned—either by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose.
2. 5.1b CERTIFICATION BY THE COURT. The court must, under 28 U.S.C.

§ 2403, certify to the appropriate attorney general that a statute has been questioned.

1. 5.1c INTERVENTION; FINAL DECISION ON THE MERITS. Unless the court sets a later time, the attorney general may intervene within

60 days after the notice is filed or after the court certifies the challenge, whichever is earlier. Before the time to intervene expires, the court may reject the constitutional challenge, but may not enter a final judgment holding the statute unconstitutional.

1. 5.1d NO FORFEITURE. A party’s failure to file and serve the notice, or the court’s failure to certify, does not forfeit a constitutional claim or defense that is otherwise timely asserted.

(As added Apr. 12, 2006, eff. Dec. 1, 2006; amended Apr. 30, 2007, eff.

Dec. 1, 2007.)

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

1. 5.2a REDACTED FILINGS. Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual’s social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing may include only:
   1. 5.2a1 the last four digits of the social-security number and taxpayer-identification number;
   2. 5.2a2 the year of the individual’s birth;
   3. 5.2a3 the minor’s initials; and
   4. 5.2a4 the last four digits of the financial-account number.
2. 5.2b EXEMPTIONS FROM THE REDACTION REQUIREMENT. The redaction requirement does not apply to the following:
   1. 5.2b1 a financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;
   2. 5.2b2 the record of an administrative or agency proceeding;
   3. 5.2b3 the official record of a state-court proceeding;
   4. 5.2b4 the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;
   5. 5.2b5 a filing covered by Rule 5.2(c) or (d); and

**Rule 6** FEDERAL RULES OF CIVIL PROCEDURE 12

* 1. 5.2b6 a pro se filing in an action brought under 28 U.S.C. §§ 2241, 2254, or 2255.

1. 5.2c LIMITATIONS ON REMOTE ACCESS TO ELECTRONIC FILES; SOCIALSECURITY 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, to relief from removal, or to immigration benefits or detention, access to an electronic file is authorized as follows:
   1. 5.2c1 the parties and their attorneys may have remote electronic access to any part of the case file, including the administrative record;
   2. 5.2c2 any other person may have electronic access to the full record at the courthouse, but may have remote electronic access only to:
      1. 5.2c2A the docket maintained by the court; and
      2. 5.2c2B an opinion, order, judgment, or other disposition of the court, but not any other part of the case file or the administrative record.
2. 5.2d 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.
3. 5.2e PROTECTIVE ORDERS. For good cause, the court may by order in a case:
   1. 5.2e1 require redaction of additional information; or
   2. 5.2e2 limit or prohibit a nonparty’s remote electronic access to a document filed with the court.
4. 5.2f OPTION FOR ADDITIONAL UNREDACTED FILING UNDER SEAL. A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.
5. 5.2g OPTION FOR FILING A REFERENCE LIST. A filing that contains redacted information 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 listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.
6. 5.2h WAIVER OF PROTECTION OF IDENTIFIERS. A person waives the protection of Rule 5.2(a) as to the person’s own information by filing it without redaction and not under seal.

(As added Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 6. Computing and Extending Time; Time for Motion Papers

1. 6a COMPUTING TIME. The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.
   1. *6a1 Period Stated in Days or a Longer Unit.* When the period is stated in days or a longer unit of time:
      1. 6a1A exclude the day of the event that triggers the period;
      2. 6a1B count every day, including intermediate Saturdays, Sundays, and legal holidays; and

13 FEDERAL RULES OF CIVIL PROCEDURE **Rule 6**

* + 1. 6a1C include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.
  1. 6a2 *Period Stated in Hours.* When the period is stated in hours:
     1. 6a2A begin counting immediately on the occurrence of the event that triggers the period;
     2. 6a2B count every hour, including hours during intermedi-

ate Saturdays, Sundays, and legal holidays; and

* + 1. 6a2C if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.
  1. *6a3 Inaccessibility of the Clerk’s Office.* Unless the court orders

otherwise, if the clerk’s office is inaccessible:

* + 1. *6a3A* on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or
    2. *6a3B* during the last hour for filing under Rule 6(a)(2), then

the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

* 1. *6a4 ‘‘Last Day’’ Defined.* Unless a different time is set by a

statute, local rule, or court order, the last day ends:

* + 1. *6a4A* for electronic filing, at midnight in the court’s time zone; and
    2. *6a4B* for filing by other means, when the clerk’s office is

scheduled to close.

* 1. *6a5 ‘‘Next Day’’ Defined.* The ‘‘next day’’ is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.
  2. *6a6 ‘‘Legal Holiday’’ Defined.* ‘‘Legal holiday’’ means:
     1. *6a6A* the day set aside by statute for observing New Year’s Day, Martin Luther King Jr.’s Birthday, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, or Christmas Day;
     2. *6a6B* any day declared a holiday by the President or Congress; and
     3. *6a6C* for periods that are measured after an event, any other day declared a holiday by the state where the district court is located.

1. 6b EXTENDING TIME.
   1. *6b1 In General.* When an act may or must be done within a specified time, the court may, for good cause, extend the time:
      1. 6b1A with or without motion or notice if the court acts,

or if a request is made, before the original time or its extension expires; or

* + 1. 6b1B on motion made after the time has expired if the

party failed to act because of excusable neglect.

* 1. *6b2 Exceptions.* A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b).

1. 6c MOTIONS, NOTICES OF HEARING, AND AFFIDAVITS.
   1. *6c1 In General.* A written motion and notice of the hearing must be served at least 14 days before the time specified for the hearing, with the following exceptions:

**Rule 7** FEDERAL RULES OF CIVIL PROCEDURE 14

* + 1. *6c1A* when the motion may be heard ex parte;
    2. *6c1B* when these rules set a different time; or
    3. *6c1C* when a court order—which a party may, for good cause, apply for ex parte—sets a different time.
  1. *6c2 Supporting Affidavit.* Any affidavit supporting a motion

must be served with the motion. Except as Rule 59(c) provides otherwise, any opposing affidavit must be served at least 7 days before the hearing, unless the court permits service at another time.

1. 6d ADDITIONAL TIME AFTER CERTAIN KINDS OF SERVICE. When a

party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail), (D) (leaving with the clerk), or (F) (other means consented to), 3 days are added after the period would otherwise expire under Rule 6(a).

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July

1, 1963; Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968;

Mar. 1, 1971, eff. July 1, 1971; Apr. 28, 1983, eff. Aug. 1, 1983; Apr. 29,

1985, eff. Aug. 1, 1985; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 26, 1999,

eff. Dec. 1, 1999; Apr. 23, 2001, eff. Dec. 1, 2001; Apr. 25, 2005, eff. Dec.

1, 2005; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009;

Apr. 28, 2016, eff. Dec. 1, 2016.)

TITLE III. PLEADINGS AND MOTIONS

#### Rule 7. Pleadings Allowed; Form of Motions and Other Papers

1. 7a PLEADINGS. Only these pleadings are allowed:
   1. 7a1 a complaint;
   2. 7a2 an answer to a complaint;
   3. 7a3 an answer to a counterclaim designated as a counterclaim;
   4. 7a4 an answer to a crossclaim;
   5. 7a5 a third-party complaint;
   6. 7a6 an answer to a third-party complaint; and
   7. 7a7 if the court orders one, a reply to an answer.
2. 7b MOTIONS AND OTHER PAPERS.
   1. *7b1 In General.* A request for a court order must be made by motion. The motion must:
      1. *7b1A* be in writing unless made during a hearing or trial;
      2. *7b1B* state with particularity the grounds for seeking the order; and
      3. *7b1C* state the relief sought.
   2. *7b2 Form.* The rules governing captions and other matters of form in pleadings apply to motions and other papers.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July

1, 1963; Apr. 28, 1983, eff. Aug. 1, 1983; Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 7.1. Disclosure Statement

1. 7.1a WHO MUST FILE; CONTENTS. A nongovernmental corporate party must file 2 copies of a disclosure statement that:
   1. 7.1a1 identifies any parent corporation and any publicly held

corporation owning 10% or more of its stock; or

* 1. 7.1a2 states that there is no such corporation.

1. 7.1b TIME TO FILE; SUPPLEMENTAL FILING. A party must:
   1. 7.1b1 file the disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court; and

15 FEDERAL RULES OF CIVIL PROCEDURE **Rule 8**

* 1. 7.1b2 promptly file a supplemental statement if any required information changes.

(As added Apr. 29, 2002, eff. Dec. 1, 2002; amended Apr. 30, 2007, eff.

Dec. 1, 2007.)

#### Rule 8. General Rules of Pleading

1. 8a CLAIM FOR RELIEF. A pleading that states a claim for relief must contain:
   1. 8a1 a short and plain statement of the grounds for the court’s jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
   2. 8a2 a short and plain statement of the claim showing that the pleader is entitled to relief; and
   3. 8a3 a demand for the relief sought, which may include relief in the alternative or different types of relief.
2. 8b DEFENSES; ADMISSIONS AND DENIALS.
   1. *8b1 In General.* In responding to a pleading, a party must:
      1. *8b1A* state in short and plain terms its defenses to each claim asserted against it; and
      2. *8b1B* admit or deny the allegations asserted against it by an opposing party.
   2. *8b2 Denials—Responding to the Substance.* A denial must fairly respond to the substance of the allegation.
   3. *8b3 General and Specific Denials.* A party that intends in good faith to deny all the allegations of a pleading—including the jurisdictional grounds—may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.
   4. *8b4 Denying Part of an Allegation.* A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.
   5. *8b5 Lacking Knowledge or Information.* A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.
   6. *8b6 Effect of Failing to Deny.* An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.
3. 8c AFFIRMATIVE DEFENSES.
   1. *8c1 In General.* In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

* accord and satisfaction;
* arbitration and award;
* assumption of risk;
* contributory negligence;
* duress;
* estoppel;
* failure of consideration;
* fraud;
* illegality;

**Rule 9** FEDERAL RULES OF CIVIL PROCEDURE 16

* injury by fellow servant;
* laches;
* license;
* payment;
* release;
* res judicata;
* statute of frauds;
* statute of limitations; and
* waiver.
  1. *8c2 Mistaken Designation.* If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

1. 8d PLEADING TO BE CONCISE AND DIRECT; ALTERNATIVE STATE-

MENTS; INCONSISTENCY.

* 1. 8d*1 In General.* Each allegation must be simple, concise, and direct. No technical form is required.
  2. 8d*2 Alternative Statements of a Claim or Defense.* A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.
  3. 8d*3 Inconsistent Claims or Defenses.* A party may state as many separate claims or defenses as it has, regardless of consistency.

1. 8e CONSTRUING PLEADINGS. Pleadings must be construed so as to do justice.

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug.

1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 28, 2010, eff. Dec. 1, 2010.)

#### Rule 9. Pleading Special Matters

1. 9a CAPACITY OR AUTHORITY TO SUE; LEGAL EXISTENCE.
   1. *9a1 In General.* Except when required to show that the court has jurisdiction, a pleading need not allege:
      1. *9a1A* a party’s capacity to sue or be sued;
      2. *9a1B* a party’s authority to sue or be sued in a representative capacity; or
      3. *9a1C* the legal existence of an organized association of persons that is made a party.
   2. *9a2 Raising Those Issues.* To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party’s knowledge.
2. 9a2 FRAUD OR MISTAKE; CONDITIONS OF MIND. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person’s mind may be alleged generally.
3. 9ac CONDITIONS PRECEDENT. In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.
4. 9ad OFFICIAL DOCUMENT OR ACT. In pleading an official document or official act, it suffices to allege that the document was legally issued or the act legally done.

17 FEDERAL RULES OF CIVIL PROCEDURE **Rule 11**

1. 9ae JUDGMENT. In pleading a judgment or decision of a domestic or foreign court, a judicial or quasi-judicial tribunal, or a board or officer, it suffices to plead the judgment or decision without showing jurisdiction to render it.
2. 9af TIME AND PLACE. An allegation of time or place is material

when testing the sufficiency of a pleading.

1. 9ag SPECIAL DAMAGES. If an item of special damage is claimed, it must be specifically stated.
2. 9ah ADMIRALTY OR MARITIME CLAIM.
   1. 9ah*1 How Designated.* If a claim for relief is within the admiralty or maritime jurisdiction and also within the court’s subject-matter jurisdiction on some other ground, the pleading may designate the claim as an admiralty or maritime claim for purposes of Rules 14(c), 38(e), and 82 and the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. A claim cognizable only in the admiralty or maritime jurisdiction is an admiralty or maritime claim for those purposes, whether or not so designated.
   2. 9ah*2 Designation for Appeal.* A case that includes an admiralty

or maritime claim within this subdivision (h) is an admiralty case within 28 U.S.C. § 1292(a)(3).

(As amended Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July

1, 1968; Mar. 30, 1970, eff. July 1, 1970; Mar. 2, 1987, eff. Aug. 1, 1987;

Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 12, 2006, eff. Dec. 1, 2006; Apr.

30, 2007, eff. Dec. 1, 2007.)

#### Rule 10. Form of Pleadings

1. 10a CAPTION; NAMES OF PARTIES. Every pleading must have a caption with the court’s name, a title, a file number, and a Rule 7(a) designation. The title of the complaint must name all the parties; the title of other pleadings, after naming the first party on each side, may refer generally to other parties.
2. 10b PARAGRAPHS; SEPARATE STATEMENTS. A party must state its

claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence—and each defense other than a denial—must be stated in a separate count or defense.

1. 10c ADOPTION BY REFERENCE; EXHIBITS. A statement in a pleading

may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.

(As amended Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

1. 11a SIGNATURE. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney’s name—or by a party personally if the party is unrepresented. The paper must state the signer’s address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission

**Rule 11** FEDERAL RULES OF CIVIL PROCEDURE 18

is promptly corrected after being called to the attorney’s or party’s attention.

1. 11b REPRESENTATIONS TO THE COURT. By presenting to the court

a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

1. 11b1 it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
2. 11b2 the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
3. 11b3 the factual contentions have evidentiary support or, if

specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

1. 11b4 the denials of factual contentions are warranted on the

evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

1. 11c SANCTIONS.
   1. 11c*1 In General.* If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.
   2. 11c*2 Motion for Sanctions.* A motion for sanctions must be

made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney’s fees, incurred for the motion.

* 1. 11c*3 On the Court’s Initiative.* On its own, the court may order

an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

* 1. 11c*4 Nature of a Sanction.* A sanction imposed under this rule

must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney’s fees and other expenses directly resulting from the violation.

* 1. 11c*5 Limitations on Monetary Sanctions.* The court must not im-

pose a monetary sanction:

* + 1. 11c*5A* against a represented party for violating Rule 11(b)(2); or

19 FEDERAL RULES OF CIVIL PROCEDURE **Rule 12**

* + 1. 11c*5B* on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.
  1. *11c6 Requirements for an Order.* An order imposing a sanction

must describe the sanctioned conduct and explain the basis for the sanction.

1. 11d INAPPLICABILITY TO DISCOVERY. This rule does not apply to

disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.

(As amended Apr. 28, 1983, eff. Aug. 1, 1983; Mar. 2, 1987, eff. Aug.

1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions;

**Waiving Defenses; Pretrial Hearing**

1. 12a TIME TO SERVE A RESPONSIVE PLEADING.
   1. *12a1 In General.* Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows:
      1. *12a1A* A defendant must serve an answer:
         1. *12a1Aii* within 21 days after being served with the summons and complaint; or
         2. *12a1Aii* if it has timely waived service under Rule 4(d),

within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States.

* + 1. *12a1B* A party must serve an answer to a counterclaim or

crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

* + 1. *12a1C* A party must serve a reply to an answer within 21

days after being served with an order to reply, unless the order specifies a different time.

* 1. *12a2 United States and Its Agencies, Officers, or Employees Sued*

*in an Official Capacity.* The United States, a United States agency, or a United States officer or employee sued only in an official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the United States attorney.

* 1. *12a3 United States Officers or Employees Sued in an Individual*

*Capacity.* A United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States’ behalf must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the officer or employee or service on the United States attorney, whichever is later.

* 1. *12a4 Effect of a Motion.* Unless the court sets a different time,

serving a motion under this rule alters these periods as follows:

* + 1. *12a4A* if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court’s action; or
    2. *12a4B* if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

**Rule 12** FEDERAL RULES OF CIVIL PROCEDURE 20

1. 12b HOW TO PRESENT DEFENSES. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:
   1. 12b1 lack of subject-matter jurisdiction;
   2. 12b2 lack of personal jurisdiction;
   3. 12b3 improper venue;
   4. 12b4 insufficient process;
   5. 12b5 insufficient service of process;
   6. 12b6 failure to state a claim upon which relief can be granted; and
   7. 12b7 failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

1. 12c MOTION FOR JUDGMENT ON THE PLEADINGS. After the pleadings

are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.

1. 12d RESULT OF PRESENTING MATTERS OUTSIDE THE PLEADINGS. If,

on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

1. 12e MOTION FOR A MORE DEFINITE STATEMENT. A party may move

for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

1. 12f MOTION TO STRIKE. The court may strike from a pleading an

insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

* 1. 12f1 on its own; or
  2. 12f2 on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

1. 12g JOINING MOTIONS.
   1. *12g1 Right to Join.* A motion under this rule may be joined with any other motion allowed by this rule.
   2. *12g2 Limitation on Further Motions.* Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.
2. 12h WAIVING AND PRESERVING CERTAIN DEFENSES.
   1. *12h1 When Some Are Waived.* A party waives any defense listed in Rule 12(b)(2)–(5) by:

21 FEDERAL RULES OF CIVIL PROCEDURE **Rule 13**

1. 12h1a omitting it from a motion in the circumstances described in Rule 12(g)(2); or
2. 12h1b failing to either:
   1. 12h1Bi make it by motion under this rule; or
   2. 12h1Bii include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.
   3. *12h2 When to Raise Others.* Failure to state a claim upon which

relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

* + 1. 12h2A in any pleading allowed or ordered under Rule 7(a);
    2. 12h2B by a motion under Rule 12(c); or
    3. 12h2C at trial.
  1. *12h3 Lack of Subject-Matter Jurisdiction.* If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

1. 12i HEARING BEFORE TRIAL. If a party so moves, any defense list-

ed in Rule 12(b)(1)–(7)—whether made in a pleading or by motion— and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July

1, 1963; Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987;

Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 17, 2000, eff. Dec. 1, 2000; Apr.

30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

#### Rule 13. Counterclaim and Crossclaim

1. 13a COMPULSORY COUNTERCLAIM.
   1. *13a1 In General.* A pleading must state as a counterclaim any claim that—at the time of its service—the pleader has against an opposing party if the claim:
      1. *13a1A* arises out of the transaction or occurrence that is

the subject matter of the opposing party’s claim; and

* + 1. *13a1B* does not require adding another party over whom the court cannot acquire jurisdiction.
  1. *13a2 Exceptions.* The pleader need not state the claim if:
     1. *13a2A* when the action was commenced, the claim was the subject of another pending action; or
     2. *13a2B* the opposing party sued on its claim by attachment

or other process that did not establish personal jurisdiction over the pleader on that claim, and the pleader does not assert any counterclaim under this rule.

1. 13bPERMISSIVE COUNTERCLAIM. A pleading may state as a counterclaim against an opposing party any claim that is not compulsory.
2. 13c RELIEF SOUGHT IN A COUNTERCLAIM. A counterclaim need not

diminish or defeat the recovery sought by the opposing party. It may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party.

1. 12d COUNTERCLAIM AGAINST THE UNITED STATES. These rules do

not expand the right to assert a counterclaim—or to claim a credit—against the United States or a United States officer or agency.

1. 13e COUNTERCLAIM MATURING OR ACQUIRED AFTER PLEADING. The

court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading.

**Rule 14** FEDERAL RULES OF CIVIL PROCEDURE 22

1. 13f [ABROGATED.]
2. 13g CROSSCLAIM AGAINST A COPARTY. A pleading may state as a crossclaim any claim by one party against a coparty if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action. The crossclaim may include a claim that the coparty is or may be liable to the crossclaimant for all or part of a claim asserted in the action against the crossclaimant.
3. 13h JOINING ADDITIONAL PARTIES. Rules 19 and 20 govern the addition of a person as a party to a counterclaim or crossclaim.
4. 13i SEPARATE TRIALS; SEPARATE JUDGMENTS. If the court orders separate trials under Rule 42(b), it may enter judgment on a counterclaim or crossclaim under Rule 54(b) when it has jurisdiction to do so, even if the opposing party’s claims have been dismissed or otherwise resolved.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July

1, 1963; Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987;

Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

#### Rule 14. Third-Party Practice

1. 14a WHEN A DEFENDING PARTY MAY BRING IN A THIRD PARTY.
   1. *14a1 Timing of the Summons and Complaint.* A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must, by motion, obtain the court’s leave if it files the third-party complaint more than 14 days after serving its original answer.
   2. *14a2 Third-Party Defendant’s Claims and Defenses.* The person

served with the summons and third-party complaint—the ‘‘third-party defendant’’:

* + 1. *14a2A* must assert any defense against the third-party

plaintiff’s claim under Rule 12;

* + 1. 14a2B must assert any counterclaim against the third-party plaintiff under Rule 13(a), and may assert any counterclaim against the third-party plaintiff under Rule 13(b) or any crossclaim against another third-party defendant under Rule 13(g);
    2. 14a2C may assert against the plaintiff any defense that the

third-party plaintiff has to the plaintiff’s claim; and

* + 1. 14a2D may also assert against the plaintiff any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff’s claim against the third-party plaintiff.
  1. *14a3 Plaintiff’s Claims Against a Third-Party Defendant.* The

plaintiff may assert against the third-party defendant any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff’s claim against the third-party plaintiff. The third-party defendant must then assert any defense under Rule 12 and any counterclaim under Rule 13(a), and may assert any counterclaim under Rule 13(b) or any crossclaim under Rule 13(g).

* 1. *14a4 Motion to Strike, Sever, or Try Separately.* Any party may

move to strike the third-party claim, to sever it, or to try it separately.

23 FEDERAL RULES OF CIVIL PROCEDURE **Rule 15**

* 1. *14a5 Third-Party Defendant’s Claim Against a Nonparty.* A thirdparty defendant may proceed under this rule against a nonparty who is or may be liable to the third-party defendant for all or part of any claim against it.
  2. *14a6 Third-Party Complaint In Rem.* If it is within the admiralty or maritime jurisdiction, a third-party complaint may be in rem. In that event, a reference in this rule to the ‘‘summons’’ includes the warrant of arrest, and a reference to the defendant or third-party plaintiff includes, when appropriate, a person who asserts a right under Supplemental Rule C(6)(a)(i) in the property arrested.

1. 14b WHEN A PLAINTIFF MAY BRING IN A THIRD PARTY. When a claim is asserted against a plaintiff, the plaintiff may bring in a third party if this rule would allow a defendant to do so.
2. 14c ADMIRALTY OR MARITIME CLAIM.
   1. *14c1 Scope of Impleader.* If a plaintiff asserts an admiralty or maritime claim under Rule 9(h), the defendant or a person who asserts a right under Supplemental Rule C(6)(a)(i) may, as a third-party plaintiff, bring in a third-party defendant who may be wholly or partly liable—either to the plaintiff or to the third-party plaintiff—for remedy over, contribution, or otherwise on account of the same transaction, occurrence, or series of transactions or occurrences.
   2. *14c2 Defending Against a Demand for Judgment for the Plaintiff.* The third-party plaintiff may demand judgment in the plaintiff’s favor against the third-party defendant. In that event, the third-party defendant must defend under Rule 12 against the plaintiff’s claim as well as the third-party plaintiff’s claim; and the action proceeds as if the plaintiff had sued both the third-party defendant and the third-party plaintiff.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July

1, 1963; Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987;

Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 12, 2006, eff. Dec. 1, 2006; Apr.

30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

#### Rule 15. Amended and Supplemental Pleadings

1. 15a AMENDMENTS BEFORE TRIAL.
   1. *15a1 Amending as a Matter of Course.* A party may amend its pleading once as a matter of course within:
      1. 15a1A 21 days after serving it, or
      2. 15a1B if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.
   2. *15a2 Other Amendments.* In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.
   3. *15a3 Time to Respond.* Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

**Rule 15** FEDERAL RULES OF CIVIL PROCEDURE 24

1. 15b AMENDMENTS DURING AND AFTER TRIAL.
   1. *15b1 Based on an Objection at Trial.* If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party’s action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.
   2. *15b2 For Issues Tried by Consent.* When an issue not raised by the pleadings is tried by the parties’ express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move—at any time, even after judgment— to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.
2. 15c RELATION BACK OF AMENDMENTS.
   1. *15c1 When an Amendment Relates Back.* An amendment to a pleading relates back to the date of the original pleading when:
      1. *15c1A* the law that provides the applicable statute of limitations allows relation back;
      2. *15c1B* the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading; or
      3. *15c1C* the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:
         1. *15c1Ci* received such notice of the action that it will not

be prejudiced in defending on the merits; and

* + - 1. *15c1Cii* knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party’s identity.
  1. *15c2 Notice to the United States.* When the United States or a

United States officer or agency is added as a defendant by amendment, the notice requirements of Rule 15(c)(1)(C)(i) and

(ii) are satisfied if, during the stated period, process was delivered or mailed to the United States attorney or the United States attorney’s designee, to the Attorney General of the United States, or to the officer or agency.

1. 15d SUPPLEMENTAL PLEADINGS. On motion and reasonable notice,

the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

(As amended Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July

1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991;

Pub. L. 102–198, § 11(a), Dec. 9, 1991, 105 Stat. 1626; Apr. 22, 1993, eff.

Dec. 1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec.

1, 2009.)

25 FEDERAL RULES OF CIVIL PROCEDURE **Rule 16**

#### Rule 16. Pretrial Conferences; Scheduling; Management

1. 16a PURPOSES OF A PRETRIAL CONFERENCE. In any action, the court may order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as:
   1. 16a1 expediting disposition of the action;
   2. 16a2 establishing early and continuing control so that the case will not be protracted because of lack of management;
   3. 16a3 discouraging wasteful pretrial activities;
   4. 16a4 improving the quality of the trial through more thorough preparation; and
   5. 16a5 facilitating settlement.
2. 16b SCHEDULING.
   1. *16b1 Scheduling Order.* Except in categories of actions exempted by local rule, the district judge—or a magistrate judge when authorized by local rule—must issue a scheduling order:
      1. *16b1A* after receiving the parties’ report under Rule 26(f); or
      2. *16b1B* after consulting with the parties’ attorneys and any unrepresented parties at a scheduling conference.
   2. *16b2 Time to Issue.* The judge must issue the scheduling order as soon as practicable, but unless the judge finds good cause for delay, the judge must issue it within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared.
   3. *16b3 Contents of the Order.*
      1. *16b3A Required Contents.* The scheduling order must limit the time to join other parties, amend the pleadings, complete discovery, and file motions.
      2. *16b3B Permitted Contents.* The scheduling order may:
         1. *16b3Ai* modify the timing of disclosures under Rules 26(a) and 26(e)(1);
         2. *16b3Bii* modify the extent of discovery;
         3. *16b3Biii* provide for disclosure, discovery, or preservation of electronically stored information;
         4. *16b3Biv* include any agreements the parties reach for asserting claims of privilege or of protection as trialpreparation material after information is produced, including agreements reached under Federal Rule of Evidence 502;
         5. *16b3Bv* direct that before moving for an order relating to discovery, the movant must request a conference with the court;
         6. *16b3Bvi* set dates for pretrial conferences and for trial; and
         7. *16b3Bvii*i include other appropriate matters.
   4. *16b4 Modifying a Schedule.* A schedule may be modified only for good cause and with the judge’s consent.
3. 16c ATTENDANCE AND MATTERS FOR CONSIDERATION AT A PRETRIAL CONFERENCE.
   1. *16c1 Attendance.* A represented party must authorize at least one of its attorneys to make stipulations and admissions about all matters that can reasonably be anticipated for discussion at a pretrial conference. If appropriate, the court may require that a party or its representative be present or reasonably available by other means to consider possible settlement.

**Rule 16** FEDERAL RULES OF CIVIL PROCEDURE 26

* 1. *16c2 Matters for Consideration.* At any pretrial conference, the court may consider and take appropriate action on the following matters:
     1. *16c2A* formulating and simplifying the issues, and eliminating frivolous claims or defenses;
     2. *16c2B* amending the pleadings if necessary or desirable;
     3. *16c2C* obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence;
     4. *16c2D* avoiding unnecessary proof and cumulative evidence, and limiting the use of testimony under Federal Rule of Evidence 702;
     5. *16c2E* determining the appropriateness and timing of summary adjudication under Rule 56;
     6. *16c2F* controlling and scheduling discovery, including or ders affecting disclosures and discovery under Rule 26 and Rules 29 through 37;
     7. *16c2G* identifying witnesses and documents, scheduling the filing and exchange of any pretrial briefs, and setting dates for further conferences and for trial;
     8. *16c2H* referring matters to a magistrate judge or a master;
     9. *16c2I* settling the case and using special procedures to assist in resolving the dispute when authorized by statute or local rule;
     10. *16c2J* determining the form and content of the pretrial order;
     11. *16c2K* disposing of pending motions;
     12. *16c2L* adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;
     13. *16c2M* ordering a separate trial under Rule 42(b) of a claim, counterclaim, crossclaim, third-party claim, or particular issue;
     14. *16c2N* ordering the presentation of evidence early in the trial on a manageable issue that might, on the evidence, be the basis for a judgment as a matter of law under Rule 50(a) or a judgment on partial findings under Rule 52(c);
     15. *16c2O* establishing a reasonable limit on the time allowed to present evidence; and
     16. *16c2P* facilitating in other ways the just, speedy, and inexpensive disposition of the action.

1. 16d PRETRIAL ORDERS. After any conference under this rule, the court should issue an order reciting the action taken. This order controls the course of the action unless the court modifies it.
2. 16e FINAL PRETRIAL CONFERENCE AND ORDERS. The court may hold a final pretrial conference to formulate a trial plan, including a plan to facilitate the admission of evidence. The conference must be held as close to the start of trial as is reasonable, and must be attended by at least one attorney who will conduct the trial for each party and by any unrepresented party. The court may modify the order issued after a final pretrial conference only to prevent manifest injustice.

27

1. 16f SANCTIONS.

FEDERAL RULES OF CIVIL PROCEDURE

#### Rule 17

* 1. *16f1 In General.* On motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b)(2)(A)(ii)–(vii), if a party or its attorney:
     1. 16f1A fails to appear at a scheduling or other pretrial conference;
     2. 16f1B is substantially unprepared to participate—or does not participate in good faith—in the conference; or
     3. 16f1C fails to obey a scheduling or other pretrial order.
  2. *16f2 Imposing Fees and Costs.* Instead of or in addition to any other sanction, the court must order the party, its attorney, or both to pay the reasonable expenses—including attorney’s fees—incurred because of any noncompliance with this rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

(As amended Apr. 28, 1983, eff. Aug. 1, 1983; Mar. 2, 1987, eff. Aug.

1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 12, 2006, eff. Dec. 1, 2006;

Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 29, 2015, eff. Dec. 1, 2015.)

TITLE IV. PARTIES

#### Rule 17. Plaintiff and Defendant; Capacity; Public Officers

1. 17a REAL PARTY IN INTEREST.
   1. *17a1 Designation in General.* An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:
      1. *17a1A* an executor;
      2. *17a1B* an administrator;
      3. *17a1C* a guardian;
      4. *17a1D* a bailee;
      5. *17a1E* a trustee of an express trust;
      6. *17a1F* a party with whom or in whose name a contract has been made for another’s benefit; and
      7. *17a1G* a party authorized by statute.
   2. *17a2 Action in the Name of the United States for Another’s Use or Benefit.* When a federal statute so provides, an action for another’s use or benefit must be brought in the name of the United States.
   3. *17a3 Joinder of the Real Party in Interest.* The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.
2. 17b CAPACITY TO SUE OR BE SUED. Capacity to sue or be sued is determined as follows:
   1. 17b1 for an individual who is not acting in a representative capacity, by the law of the individual’s domicile;
   2. 17b2 for a corporation, by the law under which it was organized; and
   3. 17b3 for all other parties, by the law of the state where the court is located, except that:

**Rule 18** FEDERAL RULES OF CIVIL PROCEDURE 28

* + 1. 17b3A a partnership or other unincorporated association with no such capacity under that state’s law may sue or be sued in its common name to enforce a substantive right existing under the United States Constitution or laws; and
    2. 17b3B 28 U.S.C. §§ 754 and 959(a) govern the capacity of a re-

ceiver appointed by a United States court to sue or be sued in a United States court.

1. 17c MINOR OR INCOMPETENT PERSON.
   1. *17c1 With a Representative.* The following representatives may sue or defend on behalf of a minor or an incompetent person:
      1. *17c1A* a general guardian;
      2. *17c1B* a committee;
      3. *17c1C* a conservator; or
      4. *17c1D* a like fiduciary.
   2. *17c2 Without a Representative.* A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action.
2. 17d PUBLIC OFFICER’S TITLE AND NAME. A public officer who sues

or is sued in an official capacity may be designated by official title rather than by name, but the court may order that the officer’s name be added.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct.

20, 1949; Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987;

Apr. 25, 1988, eff. Aug. 1, 1988; Pub. L. 100–690, title VII, § 7049, Nov.

18, 1988, 102 Stat. 4401; Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 18. Joinder of Claims

1. 18a IN GENERAL. A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.
2. 18b JOINDER OF CONTINGENT CLAIMS. A party may join two claims

even though one of them is contingent on the disposition of the other; but the court may grant relief only in accordance with the parties’ relative substantive rights. In particular, a plaintiff may state a claim for money and a claim to set aside a conveyance that is fraudulent as to that plaintiff, without first obtaining a judgment for the money.

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug.

1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 19. Required Joinder of Parties

1. 19a PERSONS REQUIRED TO BE JOINED IF FEASIBLE.
   1. *19a1 Required Party.* A person who is subject to service of process and whose joinder will not deprive the court of subjectmatter jurisdiction must be joined as a party if:
      1. *19a1A* in that person’s absence, the court cannot accord

complete relief among existing parties; or

* + 1. *19a1B* that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person’s absence may:
       1. *19a1B*i as a practical matter impair or impede the per-

son’s ability to protect the interest; or

29 FEDERAL RULES OF CIVIL PROCEDURE **Rule 20**

* + - 1. *19a1B*ii leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.
  1. *19a2 Joinder by Court Order.* If a person has not been joined as

required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

* 1. *19a3 Venue.* If a joined party objects to venue and the joinder

would make venue improper, the court must dismiss that party.

1. 19b WHEN JOINDER IS NOT FEASIBLE. If a person who is required

to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

* 1. 19b1 the extent to which a judgment rendered in the person’s

absence might prejudice that person or the existing parties;

* 1. 19b2 the extent to which any prejudice could be lessened or avoided by:
     1. 19b2A protective provisions in the judgment;
     2. 19b2B shaping the relief; or
     3. 19b2C other measures;
  2. 19b3 whether a judgment rendered in the person’s absence would be adequate; and
  3. 19b4 whether the plaintiff would have an adequate remedy if

the action were dismissed for nonjoinder.

1. 19c PLEADING THE REASONS FOR NONJOINDER. When asserting a claim for relief, a party must state:
   1. 19c1 the name, if known, of any person who is required to be

joined if feasible but is not joined; and

* 1. 19c2 the reasons for not joining that person.

1. 19d EXCEPTION FOR CLASS ACTIONS. This rule is subject to Rule 23.

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug.

1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 20. Permissive Joinder of Parties

1. 20a PERSONS WHO MAY JOIN OR BE JOINED.
   1. *20a1 Plaintiffs.* Persons may join in one action as plaintiffs if:
      1. *20a1A* they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
      2. *20a1B* any question of law or fact common to all plaintiffs

will arise in the action.

* 1. *20a2 Defendants.* Persons—as well as a vessel, cargo, or other property subject to admiralty process in rem—may be joined in one action as defendants if:
     1. *20a2A* any right to relief is asserted against them jointly,

severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

* + 1. *20a2B* any question of law or fact common to all defendants

will arise in the action.

**Rule 21** FEDERAL RULES OF CIVIL PROCEDURE 30

* 1. *20a3 Extent of Relief.* Neither a plaintiff nor a defendant need be interested in obtaining or defending against all the relief demanded. The court may grant judgment to one or more plaintiffs according to their rights, and against one or more defendants according to their liabilities.

1. 20b PROTECTIVE MEASURES. The court may issue orders—includ-

ing an order for separate trials—to protect a party against embarrassment, delay, expense, or other prejudice that arises from including a person against whom the party asserts no claim and who asserts no claim against the party.

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug.

1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 21. Misjoinder and Nonjoinder of Parties

Misjoinder of parties is not a ground for dismissing an action. On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party.

(As amended Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 22. Interpleader

1. 22a GROUNDS.
   1. *22a1 By a Plaintiff.* Persons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead. Joinder for interpleader is proper even though:
      1. *22a1A* the claims of the several claimants, or the titles on

which their claims depend, lack a common origin or are adverse and independent rather than identical; or

* + 1. *22a1B* the plaintiff denies liability in whole or in part to

any or all of the claimants.

* 1. *22a2 By a Defendant.* A defendant exposed to similar liability may seek interpleader through a crossclaim or counterclaim.

1. 22b RELATION TO OTHER RULES AND STATUTES. This rule supple-

ments—and does not limit—the joinder of parties allowed by Rule

1. The remedy this rule provides is in addition to—and does not supersede or limit—the remedy provided by 28 U.S.C. §§ 1335, 1397, and 2361. An action under those statutes must be conducted under these rules.

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Mar. 2, 1987, eff. Aug.

1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 23. Class Actions

* 1. 23a PREREQUISITES. One or more members of a class may sue or be sued as representative parties on behalf of all members only if:
     1. 23a1 the class is so numerous that joinder of all members is

impracticable;

* + 1. 23a2 there are questions of law or fact common to the class;
    2. 23a3 the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
    3. 23a4 the representative parties will fairly and adequately pro-

tect the interests of the class.

* 1. 23b TYPES OF CLASS ACTIONS. A class action may be maintained if Rule 23(a) is satisfied and if:

31 FEDERAL RULES OF CIVIL PROCEDURE **Rule 23**

1. 23b1 prosecuting separate actions by or against individual class members would create a risk of:
   1. 23b1A inconsistent or varying adjudications with respect to

individual class members that would establish incompatible standards of conduct for the party opposing the class; or

* 1. 23b1B adjudications with respect to individual class mem-

bers that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;

1. 23b2 the party opposing the class has acted or refused to act

on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

1. 23b3 the court finds that the questions of law or fact common

to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

* 1. 23b3A the class members’ interests in individually control-

ling the prosecution or defense of separate actions;

* 1. 23b3B the extent and nature of any litigation concerning the controversy already begun by or against class members;
  2. 23b2C the desirability or undesirability of concentrating

the litigation of the claims in the particular forum; and

* 1. 23b2D the likely difficulties in managing a class action.
  2. 23c CERTIFICATION ORDER; NOTICE TO CLASS MEMBERS; JUDGMENT; ISSUES CLASSES; SUBCLASSES.
     1. *23c1 Certification Order.*
        1. *23c1A Time to Issue.* At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.
        2. *23c1B Defining the Class; Appointing Class Counsel.* An order

that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g).

* + - 1. *23c1C Altering or Amending the Order.* An order that grants

or denies class certification may be altered or amended before final judgment.

* + 1. *23c2 Notice.*
       1. *23c2A For (b)(1) or (b)(2) Classes.* For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class.
       2. *23c2B For (b)(3) Classes.* For any class certified under Rule

23(b)(3)—or upon ordering notice under Rule 23(e)(1) to a class proposed to be certified for purposes of settlement under Rule 23(b)(3)—the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice may be by one or more of the following: United States

**Rule 23** FEDERAL RULES OF CIVIL PROCEDURE 32

mail, electronic means, or other appropriate means. The notice must clearly and concisely state in plain, easily understood language:

* + - * 1. *23c2B*i the nature of the action;
        2. *23c2B*ii the definition of the class certified;
        3. *23c2B*iii the class claims, issues, or defenses;
        4. *23c2B*iv that a class member may enter an appearance through an attorney if the member so desires;
        5. *23c2B*v that the court will exclude from the class any

member who requests exclusion;

* + - * 1. *23c2B*vi the time and manner for requesting exclusion; and
        2. *23c2B*vii the binding effect of a class judgment on mem-

bers under Rule 23(c)(3).

* + 1. *23c3 Judgment.* Whether or not favorable to the class, the judgment in a class action must:
       1. *23c3A* for any class certified under Rule 23(b)(1) or (b)(2), in-

clude and describe those whom the court finds to be class members; and

* + - 1. *23c3B* for any class certified under Rule 23(b)(3), include and

specify or describe those to whom the Rule 23(c)(2) notice was directed, who have not requested exclusion, and whom the court finds to be class members.

* + 1. *23c4 Particular Issues.* When appropriate, an action may be

brought or maintained as a class action with respect to particular issues.

* + 1. *23c5 Subclasses.* When appropriate, a class may be divided into

subclasses that are each treated as a class under this rule.

* 1. 23d CONDUCTING THE ACTION.
     1. *23d1 In General.* In conducting an action under this rule, the court may issue orders that:
        1. *23d1A* determine the course of proceedings or prescribe

measures to prevent undue repetition or complication in presenting evidence or argument;

* + - 1. *23d1B* require—to protect class members and fairly conduct

the action—giving appropriate notice to some or all class members of:

* + - * 1. *23d1B*i any step in the action;
        2. *23d1B*ii the proposed extent of the judgment; or
        3. *23d1B*iii the members’ opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or to otherwise come into the action;
      1. *23d1C* impose conditions on the representative parties or on

intervenors;

* + - 1. *23d1D* require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly; or
      2. *23d1E* deal with similar procedural matters.
    1. *Combining and Amending Orders.* An order under Rule 23(d)(1) may be altered or amended from time to time and may be combined with an order under Rule 16.
  1. 23e SETTLEMENT, VOLUNTARY DISMISSAL, OR COMPROMISE. The

claims, issues, or defenses of a certified class—or a class proposed to be certified for purposes of settlement—may be settled, voluntarily dismissed, or compromised only with the court’s approval.

33 FEDERAL RULES OF CIVIL PROCEDURE **Rule 23**

The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

1. *23e1 Notice to the Class.*
   1. *23e1A Information That Parties Must Provide to the Court.* The parties must provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class.
   2. *23e1B Grounds for a Decision to Give Notice.* The court must

direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties’ showing that the court will likely be able to:

* + 1. *23e1B*i approve the proposal under Rule 23(e)(2); and
    2. *23e1B*ii certify the class for purposes of judgment on the proposal.

1. *23e2 Approval of the Proposal.* If the proposal would bind class

members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:

* 1. *23e2A* the class representatives and class counsel have ade-

quately represented the class;

* 1. *23e2B* the proposal was negotiated at arm’s length;
  2. *23e2C* the relief provided for the class is adequate, taking into account:
     1. *23e2C*i the costs, risks, and delay of trial and appeal;
     2. *23e2C*ii the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
     3. *23e2C*iii the terms of any proposed award of attorney’s

fees, including timing of payment; and

* + 1. *23e2C*iv any agreement required to be identified under Rule 23(e)(3); and
  1. *23e2D* the proposal treats class members equitably relative

to each other.

1. *23e3 Identifying Agreements.* The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.
2. *23e4 New Opportunity to Be Excluded.* If the class action was

previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

1. *23e5 Class-Member Objections.*
   1. *23e5A In General.* Any class member may object to the proposal if it requires court approval under this subdivision (e). The objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection.
   2. *23e5B Court Approval Required for Payment in Connection*

*with an Objection.* Unless approved by the court after a hearing, no payment or other consideration may be provided in connection with:

* + 1. *23e5B*i forgoing or withdrawing an objection, or
    2. *23e5B*ii forgoing, dismissing, or abandoning an appeal from a judgment approving the proposal.

**Rule 23** FEDERAL RULES OF CIVIL PROCEDURE 34

* 1. *23e5C Procedure for Approval After an Appeal.* If approval under Rule 23(e)(5)(B) has not been obtained before an appeal is docketed in the court of appeals, the procedure of Rule 62.1 applies while the appeal remains pending.
  2. 23f APPEALS. A court of appeals may permit an appeal from an

order granting or denying class-action certification under this rule, but not from an order under Rule 23(e)(1). A party must file a petition for permission to appeal with the circuit clerk within 14 days after the order is entered, or within 45 days after the order is entered if any party is the United States, a United States agency, or a United States officer or employee sued for an act or omission occurring in connection with duties performed on the United States’ behalf. An appeal does not stay proceedings in the district court unless the district judge or the court of appeals so orders.

* 1. 23g CLASS COUNSEL.
     1. *23g1 Appointing Class Counsel.* Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. In appointing class counsel, the court:
        1. *23g1A* must consider:
           1. *23g1A*i the work counsel has done in identifying or investigating potential claims in the action;
           2. *23g1A*ii counsel’s experience in handling class actions,

other complex litigation, and the types of claims asserted in the action;

* + - * 1. *23g1A*iii counsel’s knowledge of the applicable law; and
        2. *23g1A*iv the resources that counsel will commit to representing the class;
      1. *23g1B* may consider any other matter pertinent to counsel’s

ability to fairly and adequately represent the interests of the class;

* + - 1. *23g1C* may order potential class counsel to provide informa-

tion on any subject pertinent to the appointment and to propose terms for attorney’s fees and nontaxable costs;

* + - 1. *23g1D* may include in the appointing order provisions about

the award of attorney’s fees or nontaxable costs under Rule 23(h); and

* + - 1. *23g1E* may make further orders in connection with the ap-

pointment.

* + 1. *23g2 Standard for Appointing Class Counsel.* When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.
    2. *23g3 Interim Counsel.* The court may designate interim counsel

to act on behalf of a putative class before determining whether to certify the action as a class action.

* + 1. *23g4 Duty of Class Counsel.* Class counsel must fairly and ade-

quately represent the interests of the class.

* 1. 23h ATTORNEY’S FEES AND NONTAXABLE COSTS. In a certified class action, the court may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement. The following procedures apply:
     1. 23g1 A claim for an award must be made by motion under Rule

54(d)(2), subject to the provisions of this subdivision (h), at a

35 FEDERAL RULES OF CIVIL PROCEDURE **Rule 23.2**

time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

* + 1. 23h2 A class member, or a party from whom payment is sought, may object to the motion.
    2. 23h3 The court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a).
    3. 23h4 The court may refer issues related to the amount of the award to a special master or a magistrate judge, as provided in Rule 54(d)(2)(D).

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug.

1, 1987; Apr. 24, 1998, eff. Dec. 1, 1998; Mar. 27, 2003, eff. Dec. 1, 2003;

Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009; Apr.

26, 2018, eff. Dec. 1, 2018.)

#### Rule 23.1. Derivative Actions

1. 23.1a PREREQUISITES. This rule applies when one or more shareholders or members of a corporation or an unincorporated association bring a derivative action to enforce a right that the corporation or association may properly assert but has failed to enforce. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of shareholders or members who are similarly situated in enforcing the right of the corporation or association.
2. 23.1b PLEADING REQUIREMENTS. The complaint must be verified and must:
   1. 23.1b1 allege that the plaintiff was a shareholder or member at the time of the transaction complained of, or that the plaintiff’s share or membership later devolved on it by operation of law;
   2. 23.1b2 allege that the action is not a collusive one to confer jurisdiction that the court would otherwise lack; and
   3. 23.1b3 state with particularity:
      1. 23.1b3A any effort by the plaintiff to obtain the desired action from the directors or comparable authority and, if necessary, from the shareholders or members; and
      2. 23.1b3B the reasons for not obtaining the action or not making the effort.
3. 23.1c SETTLEMENT, DISMISSAL, AND COMPROMISE. A derivative action may be settled, voluntarily dismissed, or compromised only with the court’s approval. Notice of a proposed settlement, voluntary dismissal, or compromise must be given to shareholders or members in the manner that the court orders.

(As added Feb. 28, 1966, eff. July 1, 1966; amended Mar. 2, 1987, eff.

Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 23.2. Actions Relating to Unincorporated Associations

This rule applies to an action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties. The action may be maintained

**Rule 24** FEDERAL RULES OF CIVIL PROCEDURE 36

only if it appears that those parties will fairly and adequately protect the interests of the association and its members. In conducting the action, the court may issue any appropriate orders corresponding with those in Rule 23(d), and the procedure for settlement, voluntary dismissal, or compromise must correspond with the procedure in Rule 23(e).

(As added Feb. 28, 1966, eff. July 1, 1966; amended Apr. 30, 2007, eff.

Dec. 1, 2007.)

#### Rule 24. Intervention

1. 24a INTERVENTION OF RIGHT. On timely motion, the court must permit anyone to intervene who:
   1. 24a1 is given an unconditional right to intervene by a federal

statute; or

* 1. 24a2 claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.

1. 24b PERMISSIVE INTERVENTION.
   1. *24b1 In General.* On timely motion, the court may permit anyone to intervene who:
      1. *24b1A* is given a conditional right to intervene by a federal

statute; or

* + 1. *24b1B* has a claim or defense that shares with the main action a common question of law or fact.
  1. *24b2 By a Government Officer or Agency.* On timely motion, the

court may permit a federal or state governmental officer or agency to intervene if a party’s claim or defense is based on:

* + 1. *24b2A* a statute or executive order administered by the offi-

cer or agency; or

* + 1. *24b2B* any regulation, order, requirement, or agreement issued or made under the statute or executive order.
  1. *24b3 Delay or Prejudice.* In exercising its discretion, the court

must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.

1. 24c NOTICE AND PLEADING REQUIRED. A motion to intervene must

be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct.

20, 1949; Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966;

Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 12,

2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 25. Substitution of Parties

1. 25a DEATH.
   1. *25a1 Substitution if the Claim Is Not Extinguished.* If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

37 FEDERAL RULES OF CIVIL PROCEDURE **Rule 26**

* 1. *25a2 Continuation Among the Remaining Parties.* After a party’s death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.
  2. *25a3 Service.* A motion to substitute, together with a notice of

hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. Service may be made in any judicial district.

1. 25b INCOMPETENCY. If a party becomes incompetent, the court

may, on motion, permit the action to be continued by or against the party’s representative. The motion must be served as provided in Rule 25(a)(3).

1. 25c TRANSFER OF INTEREST. If an interest is transferred, the ac-

tion may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).

1. 25d PUBLIC OFFICERS; DEATH OR SEPARATION FROM OFFICE. An ac-

tion does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer’s successor is automatically substituted as a party. Later proceedings should be in the substituted party’s name, but any misnomer not affecting the parties’ substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

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

19, 1961; Jan. 21, 1963, eff. July 1, 1963; Mar. 2, 1987, eff. Aug. 1, 1987;

Apr. 30, 2007, eff. Dec. 1, 2007.)

TITLE V. DISCLOSURES AND DISCOVERY

#### Rule 26. Duty to Disclose; General Provisions Governing Discovery

1. 26a REQUIRED DISCLOSURES.
   1. *26a1 Initial Disclosure.*
      1. *26a1A In General.* Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:
         1. *26a1A*i the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;
         2. *26a1A*ii a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;
         3. *26a1A*iii a computation of each category of damages

claimed by the disclosing party—who must also make

**Rule 26** FEDERAL RULES OF CIVIL PROCEDURE 38

available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

* + - 1. *26a1A*iv for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.
    1. *26a1B Proceedings Exempt from Initial Disclosure.* The following proceedings are exempt from initial disclosure:
       1. *26a1B*i an action for review on an administrative record;
       2. *26a1B*ii a forfeiture action in rem arising from a federal statute;
       3. *26a1B*iii a petition for habeas corpus or any other pro-

ceeding to challenge a criminal conviction or sentence;

* + - 1. *26a1B*iv an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;
      2. *26a1B*v an action to enforce or quash an administrative

summons or subpoena;

* + - 1. *26a1B*vi an action by the United States to recover benefit payments;
      2. *26a1B*vii an action by the United States to collect on a

student loan guaranteed by the United States;

* + - 1. *26a1B*viii a proceeding ancillary to a proceeding in another court; and
      2. *26a1B*ix an action to enforce an arbitration award.
    1. *26a1C Time for Initial Disclosures—In General.* A party must make the initial disclosures at or within 14 days after the parties’ Rule 26(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in this action and states the objection in the proposed discovery plan. In ruling on the objection, the court must determine what disclosures, if any, are to be made and must set the time for disclosure.
    2. *26a1D Time for Initial Disclosures—For Parties Served or*

*Joined Later.* A party that is first served or otherwise joined after the Rule 26(f) conference must make the initial disclosures within 30 days after being served or joined, unless a different time is set by stipulation or court order.

* + 1. *26a1E Basis for Initial Disclosure; Unacceptable Excuses.* A

party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party’s disclosures or because another party has not made its disclosures.

* 1. *26a2 Disclosure of Expert Testimony.*
     1. *26a2A In General.* In addition to the disclosures required by Rule 26(a)(1), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705.

39 FEDERAL RULES OF CIVIL PROCEDURE **Rule 26**

* + 1. *26a2B Witnesses Who Must Provide a Written Report.* Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report—prepared and signed by the witness—if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party’s employee regularly involve giving expert testimony. The report must contain:
       1. *26a2B*i a complete statement of all opinions the witness

will express and the basis and reasons for them;

* + - 1. *26a2B*ii the facts or data considered by the witness in forming them;
      2. *26a2B*iii any exhibits that will be used to summarize or

support them;

* + - 1. *26a2B*iv the witness’s qualifications, including a list of all publications authored in the previous 10 years;
      2. *26a2B*v a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and
      3. *26a2B*vi a statement of the compensation to be paid for the study and testimony in the case.
    1. *26a2C Witnesses Who Do Not Provide a Written Report.* Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this disclosure must state:
       1. *26a2C*i the subject matter on which the witness is expected to present evidence under Federal Rule of Evidence 702, 703, or 705; and
       2. *26a2C*ii a summary of the facts and opinions to which the witness is expected to testify.
    2. *26a2D Time to Disclose Expert Testimony.* A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or a court order, the disclosures must be made:
       1. *26a2D*i at least 90 days before the date set for trial or for

the case to be ready for trial; or

* + - 1. *26a2D*ii if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B) or (C), within 30 days after the other party’s disclosure.
    1. *26a2E Supplementing the Disclosure.* The parties must supplement these disclosures when required under Rule 26(e).
  1. *26a3 Pretrial Disclosures.*
     1. *26a3A In General.* In addition to the disclosures required by Rule 26(a)(1) and (2), a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:
        1. *26a3A*i the name and, if not previously provided, the address and telephone number of each witness—separately identifying those the party expects to present and those it may call if the need arises;
        2. *26a3A*ii the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and

**Rule 26** FEDERAL RULES OF CIVIL PROCEDURE 40

* + - 1. *26a3Aiii* an identification of each document or other exhibit, including summaries of other evidence—separately identifying those items the party expects to offer and those it may offer if the need arises.
    1. *26a3B Time for Pretrial Disclosures; Objections.* Unless the

court orders otherwise, these disclosures must be made at least 30 days before trial. Within 14 days after they are made, unless the court sets a different time, a party may serve and promptly file a list of the following objections: any objections to the use under Rule 32(a) of a deposition designated by another party under Rule 26(a)(3)(A)(ii); and any objection, together with the grounds for it, that may be made to the admissibility of materials identified under Rule 26(a)(3)(A)(iii). An objection not so made—except for one under Federal Rule of Evidence 402 or 403—is waived unless excused by the court for good cause.

* 1. *26a4 Form of Disclosures.* Unless the court orders otherwise, all disclosures under Rule 26(a) must be in writing, signed, and served.

1. 26b DISCOVERY SCOPE AND LIMITS.
   1. *26b1 Scope in General.* Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.
   2. *26b2 Limitations on Frequency and Extent.*
      1. *26b2A When Permitted.* By order, the court may alter the limits in these rules on the number of depositions and interrogatories or on the length of depositions under Rule 30. By order or local rule, the court may also limit the number of requests under Rule 36.
      2. *26b2B Specific Limitations on Electronically Stored Information.* A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.
      3. *26b2C When Required.* On motion or on its own, the court

must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:

* + - 1. *26b2C*i the discovery sought is unreasonably cumulative

or duplicative, or can be obtained from some other

41 FEDERAL RULES OF CIVIL PROCEDURE **Rule 26**

source that is more convenient, less burdensome, or less expensive;

* + - 1. *26b2C*ii the party seeking discovery has had ample oppor-

tunity to obtain the information by discovery in the action; or

* + - 1. *26b2C*iii the proposed discovery is outside the scope per-

mitted by Rule 26(b)(1).

* 1. *26b3 Trial Preparation: Materials.*
     1. *26b3A Documents and Tangible Things.* Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party’s attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:
        1. *26b3A*i they are otherwise discoverable under Rule

26(b)(1); and

* + - 1. *26b3A*ii the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.
    1. *26b3B Protection Against Disclosure.* If the court orders dis-

covery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party’s attorney or other representative concerning the litigation.

* + 1. *26b3C Previous Statement.* Any party or other person may,

on request and without the required showing, obtain the person’s own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and Rule 37(a)(5) applies to the award of expenses. A previous statement is either:

* + - 1. *26b3C*i a written statement that the person has signed or

otherwise adopted or approved; or

* + - 1. *26b3C*ii a contemporaneous stenographic, mechanical, electrical, or other recording—or a transcription of it—that recites substantially verbatim the person’s oral statement.
  1. *26b4 Trial Preparation: Experts.*
     1. *26b4A Deposition of an Expert Who May Testify.* A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If Rule 26(a)(2)(B) requires a report from the expert, the deposition may be conducted only after the report is provided.
     2. *26b4B Trial-Preparation Protection for Draft Reports or Disclo-*

*sures.* Rules 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded.

* + 1. *26b4C Trial-Preparation Protection for Communications Be-*

*tween a Party’s Attorney and Expert Witnesses.* Rules 26(b)(3)(A) and (B) protect communications between the party’s attorney and any witness required to provide a report under Rule 26(a)(2)(B), regardless of the form of the communications, except to the extent that the communications:

**Rule 26** FEDERAL RULES OF CIVIL PROCEDURE 42

* + - 1. *26b4Ci* relate to compensation for the expert’s study or testimony;
      2. *26b4Cii* identify facts or data that the party’s attorney

provided and that the expert considered in forming the opinions to be expressed; or

* + - 1. *26b4Ciii* identify assumptions that the party’s attorney

provided and that the expert relied on in forming the opinions to be expressed.

* + 1. *26b4D Expert Employed Only for Trial Preparation.* Ordi-

narily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

* + - 1. *26b4D*i as provided in Rule 35(b); or
      2. *26b4D*ii on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.
    1. *26b4E Payment.* Unless manifest injustice would result, the

court must require that the party seeking discovery:

* + - 1. *26b4E*i pay the expert a reasonable fee for time spent in responding to discovery under Rule 26(b)(4)(A) or (D); and
      2. *26b4E*ii for discovery under (D), also pay the other party

a fair portion of the fees and expenses it reasonably incurred in obtaining the expert’s facts and opinions.

* 1. *26b5 Claiming Privilege or Protecting Trial-Preparation Materials.*
     1. *26b5A Information Withheld.* When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:
        1. *26b5A*i expressly make the claim; and
        2. *26b5A*ii describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.
     2. *26b5B Information Produced.* If information produced in dis-

covery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

1. 26c PROTECTIVE ORDERS.
   1. *26c1 In General.* A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending—or as an alternative on matters relating

43 FEDERAL RULES OF CIVIL PROCEDURE **Rule 26**

to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

1. *26c1A* forbidding the disclosure or discovery;
2. *26c1B* specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery;
3. *26c1C* prescribing a discovery method other than the one selected by the party seeking discovery;
4. *26c1D* forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;
5. *26c1E* designating the persons who may be present while the discovery is conducted;
6. *26c1F* requiring that a deposition be sealed and opened only on court order;
7. *26c1G* requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and
8. *26c1H* requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.
   1. *26c2 Ordering Discovery.* If a motion for a protective order is wholly or partly denied, the court may, on just terms, order that any party or person provide or permit discovery.
   2. *26c3 Awarding Expenses.* Rule 37(a)(5) applies to the award of expenses.
9. 26d TIMING AND SEQUENCE OF DISCOVERY.
   1. *26d1 Timing.* A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order.
   2. *26d2 Early Rule 34 Requests.*
      1. *26d2A Time to Deliver.* More than 21 days after the summons and complaint are served on a party, a request under Rule 34 may be delivered:
         1. *26d2A*i to that party by any other party, and
         2. *26d2A*ii by that party to any plaintiff or to any other party that has been served.
      2. *26d2B When Considered Served.* The request is considered to have been served at the first Rule 26(f) conference.
   3. *26d3 Sequence.* Unless the parties stipulate or the court orders otherwise for the parties’ and witnesses’ convenience and in the interests of justice:
      1. *26d3A* methods of discovery may be used in any sequence; and
      2. *26d3B* discovery by one party does not require any other party to delay its discovery.
10. 26e SUPPLEMENTING DISCLOSURES AND RESPONSES.
    1. *26e1 In General.* A party who has made a disclosure under Rule 26(a)—or who has responded to an interrogatory, request for

**Rule 26** FEDERAL RULES OF CIVIL PROCEDURE 44

production, or request for admission—must supplement or correct its disclosure or response:

* + 1. *26e1A* in a timely manner if the party learns that in some

material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

* + 1. *26e1B* as ordered by the court.
  1. *26e2 Expert Witness.* For an expert whose report must be disclosed under Rule 26(a)(2)(B), the party’s duty to supplement extends both to information included in the report and to information given during the expert’s deposition. Any additions or changes to this information must be disclosed by the time the party’s pretrial disclosures under Rule 26(a)(3) are due.

1. 26f CONFERENCE OF THE PARTIES; PLANNING FOR DISCOVERY.
   1. 26f*1 Conference Timing.* Except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B) or when the court orders otherwise, the parties must confer as soon as practicable—and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16(b).
   2. 26f*2 Conference Content; Parties’ Responsibilities.* In conferring,

the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 26(a)(1); discuss any issues about preserving discoverable information; and develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within

14 days after the conference a written report outlining the plan. The court may order the parties or attorneys to attend the conference in person.

* 1. 26f*3 Discovery Plan.* A discovery plan must state the parties’

views and proposals on:

* + 1. 26f*3A* what changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement of when initial disclosures were made or will be made;
    2. 26f*3B* the subjects on which discovery may be needed, when

discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

* + 1. 26f*3C* any issues about disclosure, discovery, or preserva-

tion of electronically stored information, including the form or forms in which it should be produced;

* + 1. 26f*3D* any issues about claims of privilege or of protection

as trial-preparation materials, including—if the parties agree on a procedure to assert these claims after production—whether to ask the court to include their agreement in an order under Federal Rule of Evidence 502;

* + 1. 26f*3E* what changes should be made in the limitations on

discovery imposed under these rules or by local rule, and what other limitations should be imposed; and

45 FEDERAL RULES OF CIVIL PROCEDURE **Rule 26**

* + 1. 26f*3F* any other orders that the court should issue under Rule 26(c) or under Rule 16(b) and (c).
  1. *26f4 Expedited Schedule.* If necessary to comply with its expe-

dited schedule for Rule 16(b) conferences, a court may by local rule:

* + 1. *26f4A* require the parties’ conference to occur less than 21

days before the scheduling conference is held or a scheduling order is due under Rule 16(b); and

* + 1. *26f4B* require the written report outlining the discovery

plan to be filed less than 14 days after the parties’ conference, or excuse the parties from submitting a written report and permit them to report orally on their discovery plan at the Rule 16(b) conference.

1. 26g SIGNING DISCLOSURES AND DISCOVERY REQUESTS, RESPONSES,

AND OBJECTIONS.

* 1. *26g1 Signature Required; Effect of Signature.* Every disclosure under Rule 26(a)(1) or (a)(3) and every discovery request, response, or objection must be signed by at least one attorney of record in the attorney’s own name—or by the party personally, if unrepresented—and must state the signer’s address, email address, and telephone number. By signing, an attorney or party certifies that to the best of the person’s knowledge, information, and belief formed after a reasonable inquiry:
     1. *26g1A* with respect to a disclosure, it is complete and cor-

rect as of the time it is made; and

* + 1. *26g1B* with respect to a discovery request, response, or objection, it is:
       1. *26g1B*i consistent with these rules and warranted by ex-

isting law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;

* + - 1. *26g1B*ii not interposed for any improper purpose, such as

to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

* + - 1. *26g1B*iii neither unreasonable nor unduly burdensome or

expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action.

* 1. *26g2 Failure to Sign.* Other parties have no duty to act on an

unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney’s or party’s attention.

* 1. *26g3 Sanction for Improper Certification.* If a certification vio-

lates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney’s fees, caused by the violation.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July

1, 1963; Feb. 28, 1966, eff. July 1, 1966; Mar. 30, 1970, eff. July 1, 1970;

Apr. 29, 1980, eff. Aug. 1, 1980; Apr. 28, 1983, eff. Aug. 1, 1983; Mar.

2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 17, 2000,

eff. Dec. 1, 2000; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec.

1, 2007; Apr. 28, 2010, eff. Dec. 1, 2010; Apr. 29, 2015, eff. Dec. 1, 2015.)

**Rule 27** FEDERAL RULES OF CIVIL PROCEDURE 46

#### Rule 27. Depositions to Perpetuate Testimony

1. 27a BEFORE AN ACTION IS FILED.
   1. *27a1 Petition.* A person who wants to perpetuate testimony about any matter cognizable in a United States court may file a verified petition in the district court for the district where any expected adverse party resides. The petition must ask for an order authorizing the petitioner to depose the named persons in order to perpetuate their testimony. The petition must be titled in the petitioner’s name and must show:
      1. *27a1A* that the petitioner expects to be a party to an action

cognizable in a United States court but cannot presently bring it or cause it to be brought;

* + 1. *27a1B* the subject matter of the expected action and the pe-

titioner’s interest;

* + 1. *27a1C* the facts that the petitioner wants to establish by the proposed testimony and the reasons to perpetuate it;
    2. *27a1D* the names or a description of the persons whom the

petitioner expects to be adverse parties and their addresses, so far as known; and

* + 1. *27a1E* the name, address, and expected substance of the tes-

timony of each deponent.

* 1. *27a2 Notice and Service.* At least 21 days before the hearing date, the petitioner must serve each expected adverse party with a copy of the petition and a notice stating the time and place of the hearing. The notice may be served either inside or outside the district or state in the manner provided in Rule 4. If that service cannot be made with reasonable diligence on an expected adverse party, the court may order service by publication or otherwise. The court must appoint an attorney to represent persons not served in the manner provided in Rule 4 and to cross-examine the deponent if an unserved person is not otherwise represented. If any expected adverse party is a minor or is incompetent, Rule 17(c) applies.
  2. *27a3 Order and Examination.* If satisfied that perpetuating the

testimony may prevent a failure or delay of justice, the court must issue an order that designates or describes the persons whose depositions may be taken, specifies the subject matter of the examinations, and states whether the depositions will be taken orally or by written interrogatories. The depositions may then be taken under these rules, and the court may issue orders like those authorized by Rules 34 and 35. A reference in these rules to the court where an action is pending means, for purposes of this rule, the court where the petition for the deposition was filed.

* 1. *27a4 Using the Deposition.* A deposition to perpetuate testi-

mony may be used under Rule 32(a) in any later-filed districtcourt action involving the same subject matter if the deposition either was taken under these rules or, although not so taken, would be admissible in evidence in the courts of the state where it was taken.

1. 27b PENDING APPEAL.
   1. *27b1 In General.* The court where a judgment has been rendered may, if an appeal has been taken or may still be taken, permit a party to depose witnesses to perpetuate their testimony for use in the event of further proceedings in that court.

47 FEDERAL RULES OF CIVIL PROCEDURE **Rule 28**

* 1. *27b2 Motion.* The party who wants to perpetuate testimony may move for leave to take the depositions, on the same notice and service as if the action were pending in the district court. The motion must show:
     1. *27b2A* the name, address, and expected substance of the testimony of each deponent; and
     2. *27b2B* the reasons for perpetuating the testimony.
  2. *27b3 Court Order.* If the court finds that perpetuating the testimony may prevent a failure or delay of justice, the court may permit the depositions to be taken and may issue orders like those authorized by Rules 34 and 35. The depositions may be taken and used as any other deposition taken in a pending district-court action.

1. 27c PERPETUATION BY AN ACTION. This rule does not limit a court’s power to entertain an action to perpetuate testimony.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct.

20, 1949; Mar. 1, 1971, eff. July 1, 1971; Mar. 2, 1987, eff. Aug. 1, 1987;

Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 30, 2007, eff. Dec. 1, 2007; Mar.

26, 2009, eff. Dec. 1, 2009.)

#### Rule 28. Persons Before Whom Depositions May Be Taken

1. 28a WITHIN THE UNITED STATES.
   1. *28a1 In General.* Within the United States or a territory or insular possession subject to United States jurisdiction, a deposition must be taken before:
      1. *28a1A* an officer authorized to administer oaths either by federal law or by the law in the place of examination; or
      2. *28a1B* a person appointed by the court where the action is pending to administer oaths and take testimony.
   2. *28a2 Definition of ‘‘Officer.’’* The term ‘‘officer’’ in Rules 30, 31, and 32 includes a person appointed by the court under this rule or designated by the parties under Rule 29(a).
2. 28b IN A FOREIGN COUNTRY.
   1. *28b1 In General.* A deposition may be taken in a foreign country:
      1. *28b1A* under an applicable treaty or convention;
      2. *28b1B* under a letter of request, whether or not captioned a ‘‘letter rogatory’’;
      3. *28b1C* on notice, before a person authorized to administer oaths either by federal law or by the law in the place of examination; or
      4. *28b1D* before a person commissioned by the court to administer any necessary oath and take testimony.
   2. *28b2 Issuing a Letter of Request or a Commission.* A letter of request, a commission, or both may be issued:
      1. *28b2A* on appropriate terms after an application and notice of it; and
      2. *28b2B* without a showing that taking the deposition in another manner is impracticable or inconvenient.
   3. *28b3 Form of a Request, Notice, or Commission.* When a letter of request or any other device is used according to a treaty or convention, it must be captioned in the form prescribed by that treaty or convention. A letter of request may be addressed ‘‘To the Appropriate Authority in [name of country].’’

**Rule 29** FEDERAL RULES OF CIVIL PROCEDURE 48

A deposition notice or a commission must designate by name or descriptive title the person before whom the deposition is to be taken.

* 1. *28b4 Letter of Request—Admitting Evidence.* Evidence obtained

in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States.

1. 28c DISQUALIFICATION. A deposition must not be taken before a

person who is any party’s relative, employee, or attorney; who is related to or employed by any party’s attorney; or who is financially interested in the action.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July

1, 1963; Apr. 29, 1980, eff. Aug. 1, 1980; Mar. 2, 1987, eff. Aug. 1, 1987;

Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 1, 2007, eff. Dec. 1, 2007.)

#### Rule 29. Stipulations About Discovery Procedure

Unless the court orders otherwise, the parties may stipulate that:

1. 29a a deposition may be taken before any person, at any time or place, on any notice, and in the manner specified—in which event it may be used in the same way as any other deposition; and
2. 29b other procedures governing or limiting discovery be modified—but a stipulation extending the time for any form of discovery must have court approval if it would interfere with the time set for completing discovery, for hearing a motion, or for trial.

(As amended Mar. 30, 1970, eff. July 1, 1970; Apr. 22, 1993, eff. Dec.

1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 30. Depositions by Oral Examination

1. 30a WHEN A DEPOSITION MAY BE TAKEN.
   1. *30a1 Without Leave.* A party may, by oral questions, depose any person, including a party, without leave of court except as provided in Rule 30(a)(2). The deponent’s attendance may be compelled by subpoena under Rule 45.
   2. *30a2 With Leave.* A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2):
      1. *30a2A* if the parties have not stipulated to the deposition and:
         1. *30a2A*i the deposition would result in more than 10 depo-

sitions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by the third-party defendants;

* + - 1. *30a2A*ii the deponent has already been deposed in the case; or
      2. *30a2A*iii the party seeks to take the deposition before the time specified in Rule 26(d), unless the party certifies in the notice, with supporting facts, that the deponent is expected to leave the United States and be unavailable for examination in this country after that time; or
    1. *30a2B* if the deponent is confined in prison.

49 FEDERAL RULES OF CIVIL PROCEDURE **Rule 30**

1. 30b NOTICE OF THE DEPOSITION; OTHER FORMAL REQUIREMENTS.
   1. *30b1 Notice in General.* A party who wants to depose a person by oral questions must give reasonable written notice to every other party. The notice must state the time and place of the deposition and, if known, the deponent’s name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.
   2. *30b2 Producing Documents.* If a subpoena duces tecum is to be

served on the deponent, the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment. The notice to a party deponent may be accompanied by a request under Rule 34 to produce documents and tangible things at the deposition.

* 1. *30b3 Method of Recording.*
     1. *30b3A Method Stated in the Notice.* The party who notices the deposition must state in the notice the method for recording the testimony. Unless the court orders otherwise, testimony may be recorded by audio, audiovisual, or stenographic means. The noticing party bears the recording costs. Any party may arrange to transcribe a deposition.
     2. *30b3B Additional Method.* With prior notice to the deponent

and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice. That party bears the expense of the additional record or transcript unless the court orders otherwise.

* 1. *30b4 By Remote Means.* The parties may stipulate—or the court

may on motion order—that a deposition be taken by telephone or other remote means. For the purpose of this rule and Rules 28(a), 37(a)(2), and 37(b)(1), the deposition takes place where the deponent answers the questions.

* 1. *30b5 Officer’s Duties.*
     1. *30b5A Before the Deposition.* Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under Rule 28. The officer must begin the deposition with an on-the-record statement that includes:
        1. *30b5A*i the officer’s name and business address;
        2. *30b5A*ii the date, time, and place of the deposition;
        3. *30b5A*iii the deponent’s name;
        4. *30b5A*iv the officer’s administration of the oath or affirmation to the deponent; and
        5. *30b5A*v the identity of all persons present.
     2. *30b5B Conducting the Deposition; Avoiding Distortion.* If the deposition is recorded nonstenographically, the officer must repeat the items in Rule 30(b)(5)(A)(i)–(iii) at the beginning of each unit of the recording medium. The deponent’s and attorneys’ appearance or demeanor must not be distorted through recording techniques.
     3. *30b5C After the Deposition.* At the end of a deposition, the of-

ficer must state on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.

**Rule 30** FEDERAL RULES OF CIVIL PROCEDURE 50

* 1. *30b6 Notice or Subpoena Directed to an Organization.* In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

1. 30c EXAMINATION AND CROSS-EXAMINATION; RECORD OF THE EXAM-

INATION; OBJECTIONS; WRITTEN QUESTIONS.

* 1. 30c*1 Examination and Cross-Examination.* The examination and cross-examination of a deponent proceed as they would at trial under the Federal Rules of Evidence, except Rules 103 and 615. After putting the deponent under oath or affirmation, the officer must record the testimony by the method designated under Rule 30(b)(3)(A). The testimony must be recorded by the officer personally or by a person acting in the presence and under the direction of the officer.
  2. 30c*2 Objections.* An objection at the time of the examination— whether to evidence, to a party’s conduct, to the officer’s qualifications, to the manner of taking the deposition, or to any other aspect of the deposition—must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection. An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).
  3. 30c*3 Participating Through Written Questions.* Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party noticing the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

1. 30d DURATION; SANCTION; MOTION TO TERMINATE OR LIMIT.
   1. 30d*1 Duration.* Unless otherwise stipulated or ordered by the court, a deposition is limited to one day of 7 hours. The court must allow additional time consistent with Rule 26(b)(1) and (2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.
2. 30d*2 Sanction.* The court may impose an appropriate sanction—including the reasonable expenses and attorney’s fees incurred by any party—on a person who impedes, delays, or frustrates the fair examination of the deponent.
3. 30d*3 Motion to Terminate or Limit.*
   1. 30d*3A Grounds.* At any time during a deposition, the deponent or a party may move to terminate or limit it on the

51 FEDERAL RULES OF CIVIL PROCEDURE **Rule 30**

ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. The motion may be filed in the court where the action is pending or the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

* 1. 30d*3B Order.* The court may order that the deposition be terminated or may limit its scope and manner as provided in Rule 26(c). If terminated, the deposition may be resumed only by order of the court where the action is pending.
  2. 30d*3C Award of Expenses.* Rule 37(a)(5) applies to the award of expenses.

1. 30e REVIEW BY THE WITNESS; CHANGES.
   1. *30e1 Review; Statement of Changes.* On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:
      1. *30e1A* to review the transcript or recording; and
      2. *30e1B* if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.
   2. *30e2 Changes Indicated in the Officer’s Certificate.* The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.
2. 30f CERTIFICATION AND DELIVERY; EXHIBITS; COPIES OF THE TRAN-

SCRIPT OR RECORDING; FILING.

* 1. 30f 1 *Certification and Delivery.* The officer must certify in writing that the witness was duly sworn and that the deposition accurately records the witness’s testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked ‘‘Deposition of [witness’s name]’’ and must promptly send it to the attorney who arranged for the transcript or recording. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.
  2. 30f2 *Documents and Tangible Things.*
     1. 30f2A *Originals and Copies.* Documents and tangible things produced for inspection during a deposition must, on a party’s request, be marked for identification and attached to the deposition. Any party may inspect and copy them. But if the person who produced them wants to keep the originals, the person may:
        1. 30f2Ai offer copies to be marked, attached to the deposition, and then used as originals—after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or
        2. 30f2Aii give all parties a fair opportunity to inspect and copy the originals after they are marked—in which event the originals may be used as if attached to the deposition.

**Rule 31** FEDERAL RULES OF CIVIL PROCEDURE 52

* + 1. 30f2B *Order Regarding the Originals.* Any party may move for an order that the originals be attached to the deposition pending final disposition of the case.
  1. 30f3 *Copies of the Transcript or Recording.* Unless otherwise stipulated or ordered by the court, the officer must retain the stenographic notes of a deposition taken stenographically or a copy of the recording of a deposition taken by another method. When paid reasonable charges, the officer must furnish a copy of the transcript or recording to any party or the deponent.
  2. 30f4 *Notice of Filing.* A party who files the deposition must promptly notify all other parties of the filing.

1. 30g FAILURE TO ATTEND A DEPOSITION OR SERVE A SUBPOENA; EXPENSES. A party who, expecting a deposition to be taken, attends in person or by an attorney may recover reasonable expenses for attending, including attorney’s fees, if the noticing party failed to:
   1. 30g1 attend and proceed with the deposition; or
   2. 30g2 serve a subpoena on a nonparty deponent, who consequently did not attend.

(As amended Jan. 21, 1963, eff. July 1, 1963; Mar. 30, 1970, eff. July

1, 1970; Mar. 1, 1971, eff. July 1, 1971; Nov. 20, 1972, eff. July 1, 1975;

Apr. 29, 1980, eff. Aug. 1, 1980; Mar. 2, 1987, eff. Aug. 1, 1987; Apr.

22, 1993, eff. Dec. 1, 1993; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 30, 2007,

eff. Dec. 1, 2007; Apr. 29, 2015, eff. Dec. 1, 2015.)

#### Rule 31. Depositions by Written Questions

1. 31a WHEN A DEPOSITION MAY BE TAKEN.
   1. *31a1 Without Leave.* A party may, by written questions, depose any person, including a party, without leave of court except as provided in Rule 31(a)(2). The deponent’s attendance may be compelled by subpoena under Rule 45.
   2. *31a2 With Leave.* A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2):
      1. *31a2A* if the parties have not stipulated to the deposition and:
         1. *31a2A*i the deposition would result in more than 10 depo-

sitions being taken under this rule or Rule 30 by the plaintiffs, or by the defendants, or by the third-party defendants;

* + - 1. *31a2A*ii the deponent has already been deposed in the case; or
      2. *31a2A* iii the party seeks to take a deposition before the time specified in Rule 26(d); or
    1. *31a2B* if the deponent is confined in prison.
  1. *31a3 Service; Required Notice.* A party who wants to depose a person by written questions must serve them on every other party, with a notice stating, if known, the deponent’s name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs. The notice must also state the name or descriptive title and the address of the officer before whom the deposition will be taken.

53 FEDERAL RULES OF CIVIL PROCEDURE **Rule 32**

* 1. *31a4 Questions Directed to an Organization.* A public or private corporation, a partnership, an association, or a governmental agency may be deposed by written questions in accordance with Rule 30(b)(6).
  2. *31a5 Questions from Other Parties.* Any questions to the depo-

nent from other parties must be served on all parties as follows: cross-questions, within 14 days after being served with the notice and direct questions; redirect questions, within 7 days after being served with cross-questions; and recross-questions, within 7 days after being served with redirect questions. The court may, for good cause, extend or shorten these times.

1. 31b DELIVERY TO THE OFFICER; OFFICER’S DUTIES. The party who

noticed the deposition must deliver to the officer a copy of all the questions served and of the notice. The officer must promptly proceed in the manner provided in Rule 30(c), (e), and (f) to:

* 1. 31b1 take the deponent’s testimony in response to the ques-

tions;

* 1. 31b2 prepare and certify the deposition; and
  2. 31b3 send it to the party, attaching a copy of the questions and of the notice.

1. 31c NOTICE OF COMPLETION OR FILING.
   1. 31c*1 Completion.* The party who noticed the deposition must notify all other parties when it is completed.
   2. 31c*2 Filing.* A party who files the deposition must promptly

notify all other parties of the filing.

(As amended Mar. 30, 1970, eff. July 1, 1970; Mar. 2, 1987, eff. Aug.

1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007;

Apr. 29, 2015, eff. Dec. 1, 2015.)

#### Rule 32. Using Depositions in Court Proceedings

1. 32a USING DEPOSITIONS.
   1. *32a1 In General.* At a hearing or trial, all or part of a deposition may be used against a party on these conditions:
      1. *32a1A* the party was present or represented at the taking of

the deposition or had reasonable notice of it;

* + 1. *32a1B* it is used to the extent it would be admissible under the Federal Rules of Evidence if the deponent were present and testifying; and
    2. *32a1C* the use is allowed by Rule 32(a)(2) through (8).
  1. *32a2 Impeachment and Other Uses.* Any party may use a deposition to contradict or impeach the testimony given by the deponent as a witness, or for any other purpose allowed by the Federal Rules of Evidence.
  2. *32a3 Deposition of Party, Agent, or Designee.* An adverse party

may use for any purpose the deposition of a party or anyone who, when deposed, was the party’s officer, director, managing agent, or designee under Rule 30(b)(6) or 31(a)(4).

* 1. *32a4 Unavailable Witness.* A party may use for any purpose the

deposition of a witness, whether or not a party, if the court finds:

* + 1. *32a4A* that the witness is dead;
    2. *32a4B* that the witness is more than 100 miles from the place of hearing or trial or is outside the United States, unless it appears that the witness’s absence was procured by the party offering the deposition;

**Rule 32** FEDERAL RULES OF CIVIL PROCEDURE 54

* + 1. *32a4C* that the witness cannot attend or testify because of age, illness, infirmity, or imprisonment;
    2. *32a4D* that the party offering the deposition could not pro-

cure the witness’s attendance by subpoena; or

* + 1. *32a4E* on motion and notice, that exceptional circumstances make it desirable—in the interest of justice and with due regard to the importance of live testimony in open court—to permit the deposition to be used.
  1. *32a5 Limitations on Use.*
     1. *32a5A Deposition Taken on Short Notice.* A deposition must not be used against a party who, having received less than

14 days’ notice of the deposition, promptly moved for a protective order under Rule 26(c)(1)(B) requesting that it not be taken or be taken at a different time or place—and this motion was still pending when the deposition was taken.

* + 1. *32a5B Unavailable Deponent; Party Could Not Obtain an At-*

*torney.* A deposition taken without leave of court under the unavailability provision of Rule 30(a)(2)(A)(iii) must not be used against a party who shows that, when served with the notice, it could not, despite diligent efforts, obtain an attorney to represent it at the deposition.

* 1. *32a6 Using Part of a Deposition.* If a party offers in evidence

only part of a deposition, an adverse party may require the offeror to introduce other parts that in fairness should be considered with the part introduced, and any party may itself introduce any other parts.

* 1. *32a7 Substituting a Party.* Substituting a party under Rule 25

does not affect the right to use a deposition previously taken.

* 1. *32a8 Deposition Taken in an Earlier Action.* A deposition lawfully taken and, if required, filed in any federalor state-court action may be used in a later action involving the same subject matter between the same parties, or their representatives or successors in interest, to the same extent as if taken in the later action. A deposition previously taken may also be used as allowed by the Federal Rules of Evidence.

1. 32b OBJECTIONS TO ADMISSIBILITY. Subject to Rules 28(b) and

32(d)(3), an objection may be made at a hearing or trial to the admission of any deposition testimony that would be inadmissible if the witness were present and testifying.

1. 32c FORM OF PRESENTATION. Unless the court orders otherwise, a

party must provide a transcript of any deposition testimony the party offers, but may provide the court with the testimony in nontranscript form as well. On any party’s request, deposition testimony offered in a jury trial for any purpose other than impeachment must be presented in nontranscript form, if available, unless the court for good cause orders otherwise.

1. 32d WAIVER OF OBJECTIONS.
   1. *32d1 To the Notice.* An objection to an error or irregularity in a deposition notice is waived unless promptly served in writing on the party giving the notice.
   2. *32d2 To the Officer’s Qualification.* An objection based on dis-

qualification of the officer before whom a deposition is to be taken is waived if not made:

* + 1. *32d2A* before the deposition begins; or

55 FEDERAL RULES OF CIVIL PROCEDURE **Rule 33**

* + 1. *32d2B* promptly after the basis for disqualification becomes known or, with reasonable diligence, could have been known.
  1. *32d3 To the Taking of the Deposition.*
     1. *32d3A Objection to Competence, Relevance, or Materiality.* An objection to a deponent’s competence—or to the competence, relevance, or materiality of testimony—is not waived by a failure to make the objection before or during the deposition, unless the ground for it might have been corrected at that time.
     2. *32d3B Objection to an Error or Irregularity.* An objection to an error or irregularity at an oral examination is waived if:
        1. *32d3B*i it relates to the manner of taking the deposition,

the form of a question or answer, the oath or affirmation, a party’s conduct, or other matters that might have been corrected at that time; and

* + - 1. *32d3B*ii it is not timely made during the deposition.
    1. *32d3C Objection to a Written Question.* An objection to the form of a written question under Rule 31 is waived if not served in writing on the party submitting the question within the time for serving responsive questions or, if the question is a recross-question, within 7 days after being served with it.
  1. *32d4 To Completing and Returning the Deposition.* An objection to how the officer transcribed the testimony—or prepared, signed, certified, sealed, endorsed, sent, or otherwise dealt with the deposition—is waived unless a motion to suppress is made promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.

(As amended Mar. 30, 1970, eff. July 1, 1970; Nov. 20, 1972, eff. July

1, 1975; Apr. 29, 1980, eff. Aug. 1, 1980; Mar. 2, 1987, eff. Aug. 1, 1987;

Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007; Mar.

26, 2009, eff. Dec. 1, 2009.)

#### Rule 33. Interrogatories to Parties

1. 33a IN GENERAL.
   1. *33a1 Number.* Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(1) and (2).
   2. *33a2 Scope.* An interrogatory may relate to any matter that may be inquired into under Rule 26(b). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.
2. 33b ANSWERS AND OBJECTIONS.
   1. *33b1 Responding Party.* The interrogatories must be answered:
      1. *33b1A* by the party to whom they are directed; or
      2. *33b1B* if that party is a public or private corporation, a partnership, an association, or a governmental agency, by

**Rule 34** FEDERAL RULES OF CIVIL PROCEDURE 56

any officer or agent, who must furnish the information available to the party.

* 1. *33b2 Time to Respond.* The responding party must serve its answers and any objections within 30 days after being served with the interrogatories. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.
  2. *33b3 Answering Each Interrogatory.* Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.
  3. *33b4 Objections.* The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.
  4. *33b5 Signature.* The person who makes the answers must sign them, and the attorney who objects must sign any objections.

1. 33c USE. An answer to an interrogatory may be used to the extent allowed by the Federal Rules of Evidence.
2. 33d OPTION TO PRODUCE BUSINESS RECORDS. If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party’s business records (including electronically stored information), and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:
   1. 33d1 specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and
   2. 33d2 giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Mar. 30, 1970, eff. July

1, 1970; Apr. 29, 1980, eff. Aug. 1, 1980; Apr. 22, 1993, eff. Dec. 1, 1993;

Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007; Apr.

29, 2015, eff. Dec. 1, 2015.)

#### Rule 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes

1. 34a IN GENERAL. A party may serve on any other party a request within the scope of Rule 26(b):
   1. 34a1 to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party’s possession, custody, or control:
      1. 34a1A any designated documents or electronically stored

information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reason ably usable form; or

* + 1. 34a1B any designated tangible things; or
  1. 34a2 to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph,

57 FEDERAL RULES OF CIVIL PROCEDURE **Rule 34**

test, or sample the property or any designated object or operation on it.

1. 34b PROCEDURE.
   1. *34b1 Contents of the Request.* The request:
      1. 34b1A must describe with reasonable particularity each item or category of items to be inspected;
      2. 34b1B must specify a reasonable time, place, and manner

for the inspection and for performing the related acts; and

* + 1. 34b1C may specify the form or forms in which electronically stored information is to be produced.
  1. *34b2 Responses and Objections.*
     1. *34b2A Time to Respond.* The party to whom the request is directed must respond in writing within 30 days after being served or—if the request was delivered under Rule 26(d)(2)—within 30 days after the parties’ first Rule 26(f) conference. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.
     2. *34b2B Responding to Each Item.* For each item or category,

the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons. The responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection. The production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response.

* + 1. *34b2C Objections.* An objection must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest.
    2. *34b2D Responding to a Request for Production of Electronically*

*Stored Information.* The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form—or if no form was specified in the request—the party must state the form or forms it intends to use.

* + 1. *34b2E Producing the Documents or Electronically Stored Information.* Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:
       1. *34b2E*i A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;
       2. *34b2E*ii If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and
       3. *34b2E*iii A party need not produce the same electronically stored information in more than one form.

1. 34c NONPARTIES. As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to permit an inspection.

**Rule 35** FEDERAL RULES OF CIVIL PROCEDURE 58

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Mar. 30, 1970, eff. July

1, 1970; Apr. 29, 1980, eff. Aug. 1, 1980; Mar. 2, 1987, eff. Aug. 1, 1987;

Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr.

12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 29, 2015,

eff. Dec. 1, 2015.)

#### Rule 35. Physical and Mental Examinations

1. 35a ORDER FOR AN EXAMINATION.
   1. *35a1 In General.* The court where the action is pending may order a party whose mental or physical condition—including blood group—is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.
   2. *35a2 Motion and Notice; Contents of the Order.* The order:
      1. *35a2A* may be made only on motion for good cause and on notice to all parties and the person to be examined; and
      2. *35a2B* must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it.
2. 35b EXAMINER’S REPORT.
   1. *35b1 Request by the Party or Person Examined.* The party who moved for the examination must, on request, deliver to the requester a copy of the examiner’s report, together with like reports of all earlier examinations of the same condition. The request may be made by the party against whom the examination order was issued or by the person examined.
   2. *35b2 Contents.* The examiner’s report must be in writing and must set out in detail the examiner’s findings, including diagnoses, conclusions, and the results of any tests.
   3. *35b3 Request by the Moving Party.* After delivering the reports, the party who moved for the examination may request—and is entitled to receive—from the party against whom the examination order was issued like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.
   4. *35b4 Waiver of Privilege.* By requesting and obtaining the examiner’s report, or by deposing the examiner, the party examined waives any privilege it may have—in that action or any other action involving the same controversy—concerning testimony about all examinations of the same condition.
   5. *35b5 Failure to Deliver a Report.* The court on motion may order—on just terms—that a party deliver the report of an examination. If the report is not provided, the court may exclude the examiner’s testimony at trial.
   6. *35b6 Scope.* This subdivision (b) applies also to an examination made by the parties’ agreement, unless the agreement states otherwise. This subdivision does not preclude obtaining an examiner’s report or deposing an examiner under other rules.

(As amended Mar. 30, 1970, eff. July 1, 1970; Mar. 2, 1987, eff. Aug.

1, 1987; Pub. L. 100–690, title VII, § 7047(b), Nov. 18, 1988, 102 Stat.

4401; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 30, 2007, eff. Dec. 1, 2007.)

59 FEDERAL RULES OF CIVIL PROCEDURE **Rule 36**

#### Rule 36. Requests for Admission

1. 36a SCOPE AND PROCEDURE.
   1. *36a1 Scope.* A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b)(1) relating to:
      1. *36a1A* facts, the application of law to fact, or opinions about either; and
      2. *36a1B* the genuineness of any described documents.
   2. *36a2 Form; Copy of a Document.* Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying.
   3. *36a3 Time to Respond; Effect of Not Responding.* A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. A shorter or longer time for responding may be stipulated to under Rule 29 or be ordered by the court.
   4. *36a4 Answer.* If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.
   5. *36a5 Objections.* The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request presents a genuine issue for trial.
   6. *36a6 Motion Regarding the Sufficiency of an Answer or Objection.* The requesting party may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer be served. On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served. The court may defer its final decision until a pretrial conference or a specified time before trial. Rule 37(a)(5) applies to an award of expenses.
2. 36b EFFECT OF AN ADMISSION; WITHDRAWING OR AMENDING IT. A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. Subject to Rule 16(e), the court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding.

**Rule 37** FEDERAL RULES OF CIVIL PROCEDURE 60

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Mar. 30, 1970, eff. July

1, 1970; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993;

Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 37. Failure to Make Disclosures or to Cooperate in Discovery;

#### Sanctions

1. 37a MOTION FOR AN ORDER COMPELLING DISCLOSURE OR DISCOVERY.
   1. 37a*1 In General.* On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.
   2. 37a*2 Appropriate Court.* A motion for an order to a party must

be made in the court where the action is pending. A motion for an order to a nonparty must be made in the court where the discovery is or will be taken.

* 1. 37a*3 Specific Motions.*
     1. 37a*3A To Compel Disclosure.* If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions.
     2. 37a*3B To Compel a Discovery Response.* A party seeking dis-

covery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

* + - 1. 37a*3i* a deponent fails to answer a question asked under

Rule 30 or 31;

* + - 1. 37a*3i*i a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a)(4);
      2. 37a*3i*ii a party fails to answer an interrogatory submit-

ted under Rule 33; or

* + - 1. 37a*3i*v a party fails to produce documents or fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 34.
    1. 37a*3C Related to a Deposition.* When taking an oral deposi-

tion, the party asking a question may complete or adjourn the examination before moving for an order.

* 1. *37a4 Evasive or Incomplete Disclosure, Answer, or Response.* For

purposes of this subdivision (a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.

* 1. *37a5 Payment of Expenses; Protective Orders.*
     1. *37a5A If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing).* If the motion is granted—or if the disclosure or requested discovery is provided after the motion was filed—the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant’s reasonable expenses incurred in making the motion, including attorney’s fees. But the court must not order this payment if:
        1. *37a5A*i the movant filed the motion before attempting in

good faith to obtain the disclosure or discovery without court action;

* + - 1. *37a5A*ii the opposing party’s nondisclosure, response, or

objection was substantially justified; or

61 FEDERAL RULES OF CIVIL PROCEDURE **Rule 37**

* + - 1. *37a5A*iii other circumstances make an award of expenses unjust.
    1. *37a5B If the Motion Is Denied.* If the motion is denied, the

court may issue any protective order authorized under Rule 26(c) and must, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney’s fees. But the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

* + 1. *37a5C If the Motion Is Granted in Part and Denied in Part.* If

the motion is granted in part and denied in part, the court may issue any protective order authorized under Rule 26(c) and may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.

1. 37b FAILURE TO COMPLY WITH A COURT ORDER.
   1. *37b1 Sanctions Sought in the District Where the Deposition Is Taken.* If the court where the discovery is taken orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of court. If a deposition-related motion is transferred to the court where the action is pending, and that court orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of either the court where the discovery is taken or the court where the action is pending.
   2. *37b2 Sanctions Sought in the District Where the Action Is Pending.*
      1. *37b2A For Not Obeying a Discovery Order.* If a party or a party’s officer, director, or managing agent—or a witness designated under Rule 30(b)(6) or 31(a)(4)—fails to obey an order to provide or permit discovery, including an order under Rule 26(f), 35, or 37(a), the court where the action is pending may issue further just orders. They may include the following:
         1. *37b2A*i directing that the matters embraced in the order

or other designated facts be taken as established for purposes of the action, as the prevailing party claims;

* + - 1. *37b2A*ii prohibiting the disobedient party from support-

ing or opposing designated claims or defenses, or from introducing designated matters in evidence;

* + - 1. *37b2A*iii striking pleadings in whole or in part;
      2. staying further proceedings until the order is obeyed;
      3. *37b2A*v dismissing the action or proceeding in whole or in

part;

* + - 1. *37b2A*vi rendering a default judgment against the disobedient party; or
      2. *37b2A*vii treating as contempt of court the failure to

obey any order except an order to submit to a physical or mental examination.

* + 1. *37b2B For Not Producing a Person for Examination.* If a party

fails to comply with an order under Rule 35(a) requiring it to produce another person for examination, the court may

**Rule 37** FEDERAL RULES OF CIVIL PROCEDURE 62

issue any of the orders listed in Rule 37(b)(2)(A)(i)–(vi), unless the disobedient party shows that it cannot produce the other person.

* + 1. *37b2B Payment of Expenses.* Instead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney’s fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

1. 37c FAILURE TO DISCLOSE, TO SUPPLEMENT AN EARLIER RESPONSE,

OR TO ADMIT.

* 1. *37c1 Failure to Disclose or Supplement.* If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:
     1. *37c1A* may order payment of the reasonable expenses, including attorney’s fees, caused by the failure;
     2. *37c1B* may inform the jury of the party’s failure; and
     3. may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)–(vi).
  2. *37c2 Failure to Admit.* If a party fails to admit what is requested under Rule 36 and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney’s fees, incurred in making that proof. The court must so order unless:
     1. *37c2A* the request was held objectionable under Rule 36(a);
     2. *37c2B* the admission sought was of no substantial importance;
     3. *37c2C* the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or
     4. *37c2D* there was other good reason for the failure to admit.

1. 37d PARTY’S FAILURE TO ATTEND ITS OWN DEPOSITION, SERVE ANSWERS TO INTERROGATORIES, OR RESPOND TO A REQUEST FOR INSPECTION.
   1. *37d1 In General.*
      1. *37d1A Motion; Grounds for Sanctions.* The court where the action is pending may, on motion, order sanctions if:
         1. *37d1A*i a party or a party’s officer, director, or managing agent—or a person designated under Rule 30(b)(6) or 31(a)(4)—fails, after being served with proper notice, to appear for that person’s deposition; or
         2. *37d1A*ii a party, after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve its answers, objections, or written response.
      2. *37d1B Certification.* A motion for sanctions for failing to answer or respond must include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action.

63 FEDERAL RULES OF CIVIL PROCEDURE **Rule 38**

* 1. *37d2 Unacceptable Excuse for Failing to Act.* A failure described in Rule 37(d)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 26(c).
  2. *37d3 Types of Sanctions.* Sanctions may include any of the orders listed in Rule 37(b)(2)(A)(i)–(vi). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including attorney’s fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

1. 37e FAILURE TO PRESERVE ELECTRONICALLY STORED INFORMATION. If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:
   1. 37e1 upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or
   2. 37e2 only upon finding that the party acted with the intent to deprive another party of the information’s use in the litigation may:
      1. 37e2A presume that the lost information was unfavorable to the party;
      2. 37e2B instruct the jury that it may or must presume the information was unfavorable to the party; or
      3. 37e2C dismiss the action or enter a default judgment.
2. 37f FAILURE TO PARTICIPATE IN FRAMING A DISCOVERY PLAN. If a party or its attorney fails to participate in good faith in developing and submitting a proposed discovery plan as required by Rule 26(f), the court may, after giving an opportunity to be heard, require that party or attorney to pay to any other party the reasonable expenses, including attorney’s fees, caused by the failure.

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Mar. 30, 1970, eff. July

1, 1970; Apr. 29, 1980, eff. Aug. 1, 1980; Pub. L. 96–481, § 205(a), Oct.

21, 1980, 94 Stat. 2330, eff. Oct. 1, 1981; Mar. 2, 1987, eff. Aug. 1, 1987;

Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 17, 2000, eff. Dec. 1, 2000; Apr.

12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 16, 2013,

eff. Dec. 1, 2013; Apr. 29, 2015, eff. Dec. 1, 2015.)

TITLE VI. TRIALS

#### Rule 38. Right to a Jury Trial; Demand

1. 38a RIGHT PRESERVED. The right of trial by jury as declared by the Seventh Amendment to the Constitution—or as provided by a federal statute—is preserved to the parties inviolate.
2. 38b DEMAND. On any issue triable of right by a jury, a party may demand a jury trial by:
   1. 38b1 serving the other parties with a written demand—which may be included in a pleading—no later than 14 days after the last pleading directed to the issue is served; and
   2. 38b2 filing the demand in accordance with Rule 5(d).

**Rule 39** FEDERAL RULES OF CIVIL PROCEDURE 64

1. 38c SPECIFYING ISSUES. In its demand, a party may specify the issues that it wishes to have tried by a jury; otherwise, it is considered to have demanded a jury trial on all the issues so triable. If the party has demanded a jury trial on only some issues, any other party may—within 14 days after being served with the demand or within a shorter time ordered by the court—serve a demand for a jury trial on any other or all factual issues triable by jury.
2. 38d WAIVER; WITHDRAWAL. A party waives a jury trial unless its

demand is properly served and filed. A proper demand may be withdrawn only if the parties consent.

1. 38e ADMIRALTY AND MARITIME CLAIMS. These rules do not create

a right to a jury trial on issues in a claim that is an admiralty or maritime claim under Rule 9(h).

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug.

1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007;

Mar. 26, 2009, eff. Dec. 1, 2009.)

#### Rule 39. Trial by Jury or by the Court

1. 39a WHEN A DEMAND IS MADE. When a jury trial has been demanded under Rule 38, the action must be designated on the docket as a jury action. The trial on all issues so demanded must be by jury unless:
   1. 39a1 the parties or their attorneys file a stipulation to a

nonjury trial or so stipulate on the record; or

* 1. 39a2 the court, on motion or on its own, finds that on some or all of those issues there is no federal right to a jury trial.

1. 39b WHEN NO DEMAND IS MADE. Issues on which a jury trial is not

properly demanded are to be tried by the court. But the court may, on motion, order a jury trial on any issue for which a jury might have been demanded.

(c) 39c ADVISORY JURY; JURY TRIAL BY CONSENT. In an action not tri-

able of right by a jury, the court, on motion or on its own:

* 1. 39c1 may try any issue with an advisory jury; or
  2. 39c2 may, with the parties’ consent, try any issue by a jury whose verdict has the same effect as if a jury trial had been a matter of right, unless the action is against the United States and a federal statute provides for a nonjury trial.

(As amended Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 40. Scheduling Cases for Trial

Each court must provide by rule for scheduling trials. The court must give priority to actions entitled to priority by a federal statute.

(As amended Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 41. Dismissal of Actions

1. 41a VOLUNTARY DISMISSAL.
   1. *41a1 By the Plaintiff.*
      1. *41a1A Without a Court Order.* Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:
         1. *41a1A*i a notice of dismissal before the opposing party

serves either an answer or a motion for summary judgment; or

65 FEDERAL RULES OF CIVIL PROCEDURE **Rule 42**

* + - 1. *41a1A*ii a stipulation of dismissal signed by all parties who have appeared.
    1. *41a1B Effect.* Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.
  1. *41a2 By Court Order; Effect.* Except as provided in Rule 41(a)(1),

an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff’s motion to dismiss, the action may be dismissed over the defendant’s objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

1. 41b INVOLUNTARY DISMISSAL; EFFECT. If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.
2. 41c DISMISSING A COUNTERCLAIM, CROSSCLAIM, OR THIRD-PARTY

CLAIM. This rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant’s voluntary dismissal under Rule 41(a)(1)(A)(i) must be made:

* 1. 41c1 before a responsive pleading is served; or
  2. 41c2 if there is no responsive pleading, before evidence is introduced at a hearing or trial.

1. 41d COSTS OF A PREVIOUSLY DISMISSED ACTION. If a plaintiff who

previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court:

* 1. 41d1 may order the plaintiff to pay all or part of the costs of

that previous action; and

* 1. 41d2 may stay the proceedings until the plaintiff has complied.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July

1, 1963; Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968;

Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 30,

2007, eff. Dec. 1, 2007.)

#### Rule 42. Consolidation; Separate Trials

1. 42a CONSOLIDATION. If actions before the court involve a common question of law or fact, the court may:
   1. 42a1 join for hearing or trial any or all matters at issue in the

actions;

* 1. 42a2 consolidate the actions; or
  2. 42a3 issue any other orders to avoid unnecessary cost or delay.

1. 42b SEPARATE TRIALS. For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims. When ordering a separate trial, the court must preserve any federal right to a jury trial.

**Rule 43** FEDERAL RULES OF CIVIL PROCEDURE 66

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 30, 2007, eff. Dec.

1, 2007.)

#### Rule 43. Taking Testimony

1. 43a IN OPEN COURT. At trial, the witnesses’ testimony must be taken in open court unless a federal statute, the Federal Rules of Evidence, these rules, or other rules adopted by the Supreme Court provide otherwise. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.
2. 43b AFFIRMATION INSTEAD OF AN OATH. When these rules require an oath, a solemn affirmation suffices.
3. 43c EVIDENCE ON A MOTION. When a motion relies on facts outside the record, the court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.
4. 43dINTERPRETER. The court may appoint an interpreter of its choosing; fix reasonable compensation to be paid from funds provided by law or by one or more parties; and tax the compensation as costs.

(As amended Feb. 28, 1966, eff. July 1, 1966; Nov. 20, 1972, and Dec.

18, 1972, eff. July 1, 1975; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 23, 1996,

eff. Dec. 1, 1996; Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 44. Proving an Official Record

1. 44a MEANS OF PROVING.
   1. *44a1 Domestic Record.* Each of the following evidences an official record—or an entry in it—that is otherwise admissible and is kept within the United States, any state, district, or commonwealth, or any territory subject to the administrative or judicial jurisdiction of the United States:
      1. *44a1A* an official publication of the record; or
      2. *44a1B* a copy attested by the officer with legal custody of the record—or by the officer’s deputy—and accompanied by a certificate that the officer has custody. The certificate must be made under seal:
         1. *44a1B*i by a judge of a court of record in the district or political subdivision where the record is kept; or
         2. *44a1B*ii by any public officer with a seal of office and with official duties in the district or political subdivision where the record is kept.
   2. *44a2 Foreign Record.*
      1. *44a2A In General.* Each of the following evidences a foreign official record—or an entry in it—that is otherwise admissible:
         1. *44a2A*i an official publication of the record; or
         2. *44a2A*ii the record—or a copy—that is attested by an authorized person and is accompanied either by a final certification of genuineness or by a certification under a treaty or convention to which the United States and the country where the record is located are parties.
      2. *44a2B Final Certification of Genuineness.* A final certification must certify the genuineness of the signature and official position of the attester or of any foreign official whose

67 FEDERAL RULES OF CIVIL PROCEDURE **Rule 45**

certificate of genuineness relates to the attestation or is in a chain of certificates of genuineness relating to the attestation. A final certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States.

* + 1. *44a2C Other Means of Proof.* If all parties have had a reason-

able opportunity to investigate a foreign record’s authenticity and accuracy, the court may, for good cause, either:

* + - 1. *44a2C*i admit an attested copy without final certification; or
      2. *44a2C*ii permit the record to be evidenced by an attested summary with or without a final certification.

1. 44b LACK OF A RECORD. A written statement that a diligent search of designated records revealed no record or entry of a specified tenor is admissible as evidence that the records contain no such record or entry. For domestic records, the statement must be authenticated under Rule 44(a)(1). For foreign records, the statement must comply with (a)(2)(C)(ii).
2. 44c OTHER PROOF. A party may prove an official record—or an

entry or lack of an entry in it—by any other method authorized by law.

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug.

1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 44.1. Determining Foreign Law

A party who intends to raise an issue about a foreign country’s law must give notice by a pleading or other writing. In determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court’s determination must be treated as a ruling on a question of law.

(As added Feb. 28, 1966, eff. July 1, 1966; amended Nov. 20, 1972, eff.

July 1, 1975; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1,

2007.)

#### Rule 45. Subpoena

1. 45a IN GENERAL.
   1. *45a1 Form and Contents.*
      1. *45a1A Requirements—In General.* Every subpoena must:
         1. *45a1A*i state the court from which it issued;
         2. *45a1A*ii state the title of the action and its civil-action number;
         3. *45a1A*iii command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person’s possession, custody, or control; or permit the inspection of premises; and
         4. *45a1A*iv set out the text of Rule 45(d) and (e).
      2. *45a1B Command to Attend a Deposition—Notice of the Recording Method.* A subpoena commanding attendance at a deposition must state the method for recording the testimony.

**Rule 45** FEDERAL RULES OF CIVIL PROCEDURE 68

* + 1. *45a1C Combining or Separating a Command to Produce or to Permit Inspection; Specifying the Form for Electronically Stored Information.* A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.
    2. *45a1C Command to Produce; Included Obligations.* A com-

mand in a subpoena to produce documents, electronically stored information, or tangible things requires the responding person to permit inspection, copying, testing, or sampling of the materials.

* 1. *45a2 Issuing Court.* A subpoena must issue from the court

where the action is pending.

* 1. *45a3 Issued by Whom.* The clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service. An attorney also may issue and sign a subpoena if the attorney is authorized to practice in the issuing court.
  2. *45a4 Notice to Other Parties Before Service.* If the subpoena com-

mands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served on each party.

1. 45b SERVICE.
   1. *45b1 By Whom and How; Tendering Fees.* Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person’s attendance, tendering the fees for 1 day’s attendance and the mileage allowed by law. Fees and mileage need not be tendered when the subpoena issues on behalf of the United States or any of its officers or agencies.
   2. *45b2 Service in the United States*. A subpoena may be served at

any place within the United States.

* 1. *45b3 Service in a Foreign Country.* 28 U.S.C. § 1783 governs issuing and serving a subpoena directed to a United States national or resident who is in a foreign country.
  2. *45b4 Proof of Service.* Proving service, when necessary, requires

filing with the issuing court a statement showing the date and manner of service and the names of the persons served. The statement must be certified by the server.

1. 45c PLACE OF COMPLIANCE.
   1. 45c*1 For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
      1. 45c*1A* within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
      2. 45c*1B* within the state where the person resides, is employed, or regularly transacts business in person, if the person
         1. 45c*1B*i is a party or a party’s officer; or

69 FEDERAL RULES OF CIVIL PROCEDURE **Rule 45**

* + - 1. 45c*1B*ii is commanded to attend a trial and would not incur substantial expense.
  1. 45c*2 For Other Discovery.* A subpoena may command:
     1. 45c*2A* production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
     2. 45c*2B* inspection of premises at the premises to be inspected.

1. 45d PROTECTING A PERSON SUBJECT TO A SUBPOENA; ENFORCEMENT.
   1. 45d*1 Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney’s fees—on a party or attorney who fails to comply.
   2. 45d*2 Command to Produce Materials or Permit Inspection.*
      1. 45d*2A Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
      2. 45d*2B Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or

14 days after the subpoena is served. If an objection is made, the following rules apply:

1. 45d*2B*i At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
2. 45d*2B*ii These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.
   1. 45d*3 Quashing or Modifying a Subpoena.*
      1. 45d*3A When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
         1. 45d*3A*i fails to allow a reasonable time to comply;
         2. 45d*3A*ii requires a person to comply beyond the geographical limits specified in Rule 45(c);
         3. 45d*3A*iii requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
         4. 45d*3A*iv subjects a person to undue burden.

**Rule 45** FEDERAL RULES OF CIVIL PROCEDURE 70

* + 1. 45d*3B When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
       1. 45d*3B*i disclosing a trade secret or other confidential research, development, or commercial information; or
       2. 45d*3B*ii disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party.
    2. 45d*3C Specifying Conditions as an Alternative.* In the circum-

stances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

* + - 1. 45d*3C*i shows a substantial need for the testimony or ma-

terial that cannot be otherwise met without undue hardship; and

* + - 1. 45d*3C*ii ensures that the subpoenaed person will be rea-

sonably compensated.

1. 45e DUTIES IN RESPONDING TO A SUBPOENA.
   1. 45e*1 Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:
      1. 45e*1A Documents.* A person responding to a subpoena to

produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

* + 1. 45e*1B Form for Producing Electronically Stored Information*

*Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

* + 1. 45e*1C Electronically Stored Information Produced in Only One*

*Form.* The person responding need not produce the same electronically stored information in more than one form.

* + 1. 45e*1D Inaccessible Electronically Stored Information.* The per-

son responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

* 1. 45e*2 Claiming Privilege or Protection.*
     1. 45e*2A Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
        1. 45e*2A*i expressly make the claim; and
        2. 45e*2A*ii describe the nature of the withheld documents, communications, or tangible things in a manner that,

71 FEDERAL RULES OF CIVIL PROCEDURE **Rule 47**

without revealing information itself privileged or protected, will enable the parties to assess the claim.

* + 1. 45e*2B Information Produced.* If information produced in re-

sponse to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

1. 45f TRANSFERRING A SUBPOENA-RELATED MOTION. When the court

where compliance is required did not issue the subpoena, it may transfer a motion under this rule to the issuing court if the person subject to the subpoena consents or if the court finds exceptional circumstances. Then, if the attorney for a person subject to a subpoena is authorized to practice in the court where the motion was made, the attorney may file papers and appear on the motion as an officer of the issuing court. To enforce its order, the issuing court may transfer the order to the court where the motion was made.

1. 45g CONTEMPT. The court for the district where compliance is re-

quired—and also, after a motion is transferred, the issuing court— may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct.

20, 1949; Mar. 30, 1970, eff. July 1, 1970; Apr. 29, 1980, eff. Aug. 1, 1980;

Apr. 29, 1985, eff. Aug. 1, 1985; Mar. 2, 1987, eff. Aug. 1, 1987; Apr.

30, 1991, eff. Dec. 1, 1991; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 12, 2006,

eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 16, 2013, eff. Dec.

1, 2013.)

#### Rule 46. Objecting to a Ruling or Order

A formal exception to a ruling or order is unnecessary. When the ruling or order is requested or made, a party need only state the action that it wants the court to take or objects to, along with the grounds for the request or objection. Failing to object does not prejudice a party who had no opportunity to do so when the ruling or order was made.

(As amended Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec.

1, 2007.)

#### Rule 47. Selecting Jurors

1. 47a EXAMINING JURORS. The court may permit the parties or their attorneys to examine prospective jurors or may itself do so. If the court examines the jurors, it must permit the parties or their attorneys to make any further inquiry it considers proper,

**Rule 48** FEDERAL RULES OF CIVIL PROCEDURE 72

or must itself ask any of their additional questions it considers proper.

1. 47b PEREMPTORY CHALLENGES. The court must allow the number

of peremptory challenges provided by 28 U.S.C. § 1870.

1. 47c EXCUSING A JUROR. During trial or deliberation, the court may excuse a juror for good cause.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 30, 1991, eff. Dec.

1, 1991; Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 48. Number of Jurors; Verdict; Polling

1. 48a NUMBER OF JURORS. A jury must begin with at least 6 and no more than 12 members, and each juror must participate in the verdict unless excused under Rule 47(c).
2. 48b VERDICT. Unless the parties stipulate otherwise, the verdict

must be unanimous and must be returned by a jury of at least 6 members.

1. 48c POLLING. After a verdict is returned but before the jury is

discharged, the court must on a party’s request, or may on its own, poll the jurors individually. If the poll reveals a lack of unanimity or lack of assent by the number of jurors that the parties stipulated to, the court may direct the jury to deliberate further or may order a new trial.

(As amended Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 30, 2007, eff. Dec.

1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

#### Rule 49. Special Verdict; General Verdict and Questions

1. 49a SPECIAL VERDICT.
   1. *49a1 In General.* The court may require a jury to return only a special verdict in the form of a special written finding on each issue of fact. The court may do so by:
      1. *49a1A* submitting written questions susceptible of a cat-

egorical or other brief answer;

* + 1. *49a1B* submitting written forms of the special findings that might properly be made under the pleadings and evidence; or
    2. *49a1C* using any other method that the court considers ap-

propriate.

* 1. *49a2 Instructions.* The court must give the instructions and explanations necessary to enable the jury to make its findings on each submitted issue.
  2. *49a3 Issues Not Submitted.* A party waives the right to a jury

trial on any issue of fact raised by the pleadings or evidence but not submitted to the jury unless, before the jury retires, the party demands its submission to the jury. If the party does not demand submission, the court may make a finding on the issue. If the court makes no finding, it is considered to have made a finding consistent with its judgment on the special verdict.

1. 49b GENERAL VERDICT WITH ANSWERS TO WRITTEN QUESTIONS.
   1. *49b1 In General.* The court may submit to the jury forms for a general verdict, together with written questions on one or more issues of fact that the jury must decide. The court must give the instructions and explanations necessary to enable the jury to render a general verdict and answer the questions in writing, and must direct the jury to do both.

73 FEDERAL RULES OF CIVIL PROCEDURE **Rule 50**

* 1. *49b2 Verdict and Answers Consistent.* When the general verdict and the answers are consistent, the court must approve, for entry under Rule 58, an appropriate judgment on the verdict and answers.
  2. *49b3 Answers Inconsistent with the Verdict.* When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may:
     1. *49b3A* approve, for entry under Rule 58, an appropriate judgment according to the answers, notwithstanding the general verdict;
     2. *49b3B* direct the jury to further consider its answers and verdict; or
     3. *49b3C* order a new trial.
  3. *49b4 Answers Inconsistent with Each Other and the Verdict.* When the answers are inconsistent with each other and one or more is also inconsistent with the general verdict, judgment must not be entered; instead, the court must direct the jury to further consider its answers and verdict, or must order a new trial.

(As amended Jan. 21, 1963, eff. July 1, 1963; Mar. 2, 1987, eff. Aug.

1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 50. Judgment as a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling

1. 50a JUDGMENT AS A MATTER OF LAW.
   1. *50a1 In General.* If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:
      1. *50a1A* resolve the issue against the party; and
      2. *50a1B* grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.
   2. *50a2 Motion.* A motion for judgment as a matter of law may be made at any time before the case is submitted to the jury. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.
2. 50b RENEWING THE MOTION AFTER TRIAL; ALTERNATIVE MOTION FOR A NEW TRIAL. If the court does not grant a motion for judgment as a matter of law made under Rule 50(a), the court is considered to have submitted the action to the jury subject to the court’s later deciding the legal questions raised by the motion. No later than 28 days after the entry of judgment—or if the motion addresses a jury issue not decided by a verdict, no later than 28 days after the jury was discharged—the movant may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59. In ruling on the renewed motion, the court may:
   1. 50b1 allow judgment on the verdict, if the jury returned a verdict;
   2. 50b2 order a new trial; or
   3. 50b3 direct the entry of judgment as a matter of law.

**Rule 51** FEDERAL RULES OF CIVIL PROCEDURE 74

1. 50c GRANTING THE RENEWED MOTION; CONDITIONAL RULING ON A

MOTION FOR A NEW TRIAL.

* 1. *50c1 In General.* If the court grants a renewed motion for judgment as a matter of law, it must also conditionally rule on any motion for a new trial by determining whether a new trial should be granted if the judgment is later vacated or reversed. The court must state the grounds for conditionally granting or denying the motion for a new trial.
  2. *50c2 Effect of a Conditional Ruling.* Conditionally granting the

motion for a new trial does not affect the judgment’s finality; if the judgment is reversed, the new trial must proceed unless the appellate court orders otherwise. If the motion for a new trial is conditionally denied, the appellee may assert error in that denial; if the judgment is reversed, the case must proceed as the appellate court orders.

1. 50d TIME FOR A LOSING PARTY’S NEW-TRIAL MOTION. Any motion

for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered must be filed no later than 28 days after the entry of the judgment.

1. 50e DENYING THE MOTION FOR JUDGMENT AS A MATTER OF LAW;

REVERSAL ON APPEAL. If the court denies the motion for judgment as a matter of law, the prevailing party may, as appellee, assert grounds entitling it to a new trial should the appellate court conclude that the trial court erred in denying the motion. If the appellate court reverses the judgment, it may order a new trial, direct the trial court to determine whether a new trial should be granted, or direct the entry of judgment.

(As amended Jan. 21, 1963, eff. July 1, 1963; Mar. 2, 1987, eff. Aug.

1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993;

Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 12, 2006, eff. Dec. 1, 2006; Apr.

30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

#### Rule 51. Instructions to the Jury; Objections; Preserving a Claim of Error

1. 51a REQUESTS.
   1. *51a1 Before or at the Close of the Evidence.* At the close of the evidence or at any earlier reasonable time that the court orders, a party may file and furnish to every other party written requests for the jury instructions it wants the court to give.
   2. *51a2 After the Close of the Evidence.* After the close of the evi-

dence, a party may:

* + 1. *51a2A* file requests for instructions on issues that could not reasonably have been anticipated by an earlier time that the court set for requests; and
    2. *51a2B* with the court’s permission, file untimely requests

for instructions on any issue.

1. 51b INSTRUCTIONS. The court:
   1. 51b1 must inform the parties of its proposed instructions and proposed action on the requests before instructing the jury and before final jury arguments;
   2. 51b2 must give the parties an opportunity to object on the

record and out of the jury’s hearing before the instructions and arguments are delivered; and

* 1. 51b3 may instruct the jury at any time before the jury is dis-

charged.

75 FEDERAL RULES OF CIVIL PROCEDURE **Rule 52**

1. 51c OBJECTIONS.
   1. 51c*1 How to Make.* A party who objects to an instruction or the failure to give an instruction must do so on the record, stating distinctly the matter objected to and the grounds for the objection.
   2. 51c*2 When to Make.* An objection is timely if:
      1. 51c*2A* a party objects at the opportunity provided under Rule 51(b)(2); or
      2. 51c*2B* a party was not informed of an instruction or action

on a request before that opportunity to object, and the party objects promptly after learning that the instruction or request will be, or has been, given or refused.

1. 51d ASSIGNING ERROR; PLAIN ERROR.
   1. 51d1 *Assigning Error.* A party may assign as error:
      1. 51d1A an error in an instruction actually given, if that party properly objected; or
      2. 51d1B a failure to give an instruction, if that party properly

requested it and—unless the court rejected the request in a definitive ruling on the record—also properly objected.

* 1. 51d2 *Plain Error.* A court may consider a plain error in the in-

structions that has not been preserved as required by Rule 51(d)(1) if the error affects substantial rights.

(As amended Mar. 2, 1987, eff. Aug. 1, 1987; Mar. 27, 2003, eff. Dec.

1, 2003; Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 52. Findings and Conclusions by the Court; Judgment on Partial Findings

1. 52a FINDINGS AND CONCLUSIONS.
   1. *52a1 In General.* In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58.
   2. *52a2 For an Interlocutory Injunction.* In granting or refusing an

interlocutory injunction, the court must similarly state the findings and conclusions that support its action.

* 1. *52a3 For a Motion.* The court is not required to state findings

or conclusions when ruling on a motion under Rule 12 or 56 or, unless these rules provide otherwise, on any other motion.

* 1. *52a4 Effect of a Master’s Findings.* A master’s findings, to the

extent adopted by the court, must be considered the court’s findings.

* 1. *52a5 Questioning the Evidentiary Support.* A party may later

question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

* 1. *52a6 Setting Aside the Findings.* Findings of fact, whether based

on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court’s opportunity to judge the witnesses’ credibility.

1. 52b AMENDED OR ADDITIONAL FINDINGS. On a party’s motion filed

no later than 28 days after the entry of judgment, the court may

**Rule 53** FEDERAL RULES OF CIVIL PROCEDURE 76

amend its findings—or make additional findings—and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59.

1. 52c JUDGMENT ON PARTIAL FINDINGS. If a party has been fully

heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law as required by Rule 52(a).

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July

1, 1963; Apr. 28, 1983, eff. Aug. 1, 1983; Apr. 29, 1985, eff. Aug. 1, 1985;

Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr.

27, 1995, eff. Dec. 1, 1995; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009,

eff. Dec. 1, 2009.)

#### Rule 53. Masters

1. 53a APPOINTMENT.
   1. *53a1 Scope.* Unless a statute provides otherwise, a court may appoint a master only to:
      1. *53a1A* perform duties consented to by the parties;
      2. *53a1B* hold trial proceedings and make or recommend findings of fact on issues to be decided without a jury if appointment is warranted by:
         1. *53a1B*i some exceptional condition; or
         2. *53a1B*ii the need to perform an accounting or resolve a difficult computation of damages; or
      3. *53a1C* address pretrial and posttrial matters that cannot be

effectively and timely addressed by an available district judge or magistrate judge of the district.

* 1. *53a2 Disqualification.* A master must not have a relationship to

the parties, attorneys, action, or court that would require disqualification of a judge under 28 U.S.C. § 455, unless the parties, with the court’s approval, consent to the appointment after the master discloses any potential grounds for disqualification.

* 1. *53a3 Possible Expense or Delay.* In appointing a master, the

court must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay.

1. 53b ORDER APPOINTING A MASTER.
   1. *53b1 Notice.* Before appointing a master, the court must give the parties notice and an opportunity to be heard. Any party may suggest candidates for appointment.
   2. *53b2 Contents.* The appointing order must direct the master to

proceed with all reasonable diligence and must state:

* + 1. *53b2A* the master’s duties, including any investigation or enforcement duties, and any limits on the master’s authority under Rule 53(c);
    2. *53b2B* the circumstances, if any, in which the master may

communicate ex parte with the court or a party;

* + 1. *53b2C* the nature of the materials to be preserved and filed as the record of the master’s activities;

77 FEDERAL RULES OF CIVIL PROCEDURE **Rule 53**

* + 1. *53b2D* the time limits, method of filing the record, other procedures, and standards for reviewing the master’s orders, findings, and recommendations; and
    2. *53b2E* the basis, terms, and procedure for fixing the mas-

ter’s compensation under Rule 53(g).

* 1. *53b3 Issuing.* The court may issue the order only after:
     1. *53b3A* the master files an affidavit disclosing whether there is any ground for disqualification under 28 U.S.C. § 455; and
     2. *53b3B* if a ground is disclosed, the parties, with the court’s

approval, waive the disqualification.

* 1. *53b4 Amending.* The order may be amended at any time after notice to the parties and an opportunity to be heard.

1. 53c MASTER’S AUTHORITY.
   1. *53c1 In General.* Unless the appointing order directs otherwise, a master may:
      1. *53c1A* regulate all proceedings;
      2. *53c1B* take all appropriate measures to perform the assigned duties fairly and efficiently; and
      3. *53c1C* if conducting an evidentiary hearing, exercise the ap-

pointing court’s power to compel, take, and record evidence.

* 1. *53c2 Sanctions.* The master may by order impose on a party

any noncontempt sanction provided by Rule 37 or 45, and may recommend a contempt sanction against a party and sanctions against a nonparty.

1. 53d MASTER’S ORDERS. A master who issues an order must file it

and promptly serve a copy on each party. The clerk must enter the order on the docket.

1. 53e MASTER’S REPORTS. A master must report to the court as re-

quired by the appointing order. The master must file the report and promptly serve a copy on each party, unless the court orders otherwise.

1. 53f ACTION ON THE MASTER’S ORDER, REPORT, OR RECOMMENDA-

TIONS.

* 1. 53f*1 Opportunity for a Hearing; Action in General.* In acting on a master’s order, report, or recommendations, the court must give the parties notice and an opportunity to be heard; may receive evidence; and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions.
  2. 53f*2 Time to Object or Move to Adopt or Modify.* A party may file

objections to—or a motion to adopt or modify—the master’s order, report, or recommendations no later than 21 days after a copy is served, unless the court sets a different time.

* 1. 53f*3 Reviewing Factual Findings.* The court must decide de

novo all objections to findings of fact made or recommended by a master, unless the parties, with the court’s approval, stipulate that:

* + 1. 53fA the findings will be reviewed for clear error; or
    2. 53f B the findings of a master appointed under Rule 53(a)(1)(A) or (C) will be final.
  1. 53f*4 Reviewing Legal Conclusions.* The court must decide de

novo all objections to conclusions of law made or recommended by a master.

* 1. 53f*5 Reviewing Procedural Matters.* Unless the appointing order

establishes a different standard of review, the court may set

**Rule 54** FEDERAL RULES OF CIVIL PROCEDURE 78

aside a master’s ruling on a procedural matter only for an abuse of discretion.

1. 53g COMPENSATION.
   1. 53g*1 Fixing Compensation.* Before or after judgment, the court must fix the master’s compensation on the basis and terms stated in the appointing order, but the court may set a new basis and terms after giving notice and an opportunity to be heard.
   2. 53g*2 Payment.* The compensation must be paid either:
      1. 53g*2A* by a party or parties; or
      2. 53g*2B* from a fund or subject matter of the action within the court’s control.
   3. 53g*3 Allocating Payment.* The court must allocate payment among the parties after considering the nature and amount of the controversy, the parties’ means, and the extent to which any party is more responsible than other parties for the reference to a master. An interim allocation may be amended to reflect a decision on the merits.
2. 53h APPOINTING A MAGISTRATE JUDGE. A magistrate judge is subject to this rule only when the order referring a matter to the magistrate judge states that the reference is made under this rule.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 28, 1983, eff. Aug.

1, 1983; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991;

Apr. 22, 1993, eff. Dec. 1, 1993; Mar. 27, 2003, eff. Dec. 1, 2003; Apr.

30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

TITLE VII. JUDGMENT

#### Rule 54. Judgment; Costs

1. 54a DEFINITION; FORM. ‘‘Judgment’’ as used in these rules includes a decree and any order from which an appeal lies. A judgment should not include recitals of pleadings, a master’s report, or a record of prior proceedings.
2. 54b JUDGMENT ON MULTIPLE CLAIMS OR INVOLVING MULTIPLE PARTIES. When an action presents more than one claim for relief— whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities.
3. 54c DEMAND FOR JUDGMENT; RELIEF TO BE GRANTED. A default

judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

1. 54d COSTS; ATTORNEY’S FEES.
   1. 54d*1 Costs Other Than Attorney’s Fees.* Unless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney’s fees—should be allowed to the prevailing

79 FEDERAL RULES OF CIVIL PROCEDURE **Rule 55**

party. But costs against the United States, its officers, and its agencies may be imposed only to the extent allowed by law. The clerk may tax costs on 14 days’ notice. On motion served within the next 7 days, the court may review the clerk’s action.

* 1. 54d*2 Attorney’s Fees.*
     1. 54d*2A Claim to Be by Motion.* A claim for attorney’s fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.
     2. 54d*2B Timing and Contents of the Motion.* Unless a statute or a court order provides otherwise, the motion must:
        1. 54d*2B*i be filed no later than 14 days after the entry of judgment;
        2. 54d*2B*ii specify the judgment and the statute, rule, or other grounds entitling the movant to the award;
        3. 54d*2B*iii state the amount sought or provide a fair estimate of it; and
        4. 54d*2B*iv disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.
     3. 54d*2C Proceedings.* Subject to Rule 23(h), the court must, on a party’s request, give an opportunity for adversary submissions on the motion in accordance with Rule 43(c) or 78. The court may decide issues of liability for fees before receiving submissions on the value of services. The court must find the facts and state its conclusions of law as provided in Rule 52(a).
     4. 54d*2D Special Procedures by Local Rule; Reference to a Master or a Magistrate Judge.* By local rule, the court may establish special procedures to resolve fee-related issues without extensive evidentiary hearings. Also, the court may refer issues concerning the value of services to a special master under Rule 53 without regard to the limitations of Rule 53(a)(1), and may refer a motion for attorney’s fees to a magistrate judge under Rule 72(b) as if it were a dispositive pretrial matter.
     5. 54d*2E Exceptions.* Subparagraphs (A)–(D) do not apply to claims for fees and expenses as sanctions for violating these rules or as sanctions under 28 U.S.C. § 1927.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Apr. 17, 1961, eff. July

19, 1961; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993;

Apr. 29, 2002, eff. Dec. 1, 2002; Mar. 27, 2003, eff. Dec. 1, 2003; Apr.

30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

#### Rule 55. Default; Default Judgment

1. 55a ENTERING A DEFAULT. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.
2. 55b ENTERING A DEFAULT JUDGMENT.
   1. *55b1 By the Clerk.* If the plaintiff’s claim is for a sum certain or a sum that can be made certain by computation, the clerk— on the plaintiff’s request, with an affidavit showing the

**Rule 56** FEDERAL RULES OF CIVIL PROCEDURE 80

amount due—must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.

* 1. *55b2 By the Court.* In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals— preserving any federal statutory right to a jury trial—when, to enter or effectuate judgment, it needs to:
     1. *55b2A* conduct an accounting;
     2. *55b2B* determine the amount of damages;
     3. *55b2C* establish the truth of any allegation by evidence; or
     4. *55b2D* investigate any other matter.

1. 55c SETTING ASIDE A DEFAULT OR A DEFAULT JUDGMENT. The court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b).
2. 55d JUDGMENT AGAINST THE UNITED STATES. A default judgment may be entered against the United States, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.

(As amended Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec.

1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 29, 2015, eff. Dec. 1, 2015.)

#### Rule 56. Summary Judgment

1. 56a MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.
2. 56b TIME TO FILE A MOTION. Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.
3. 56c PROCEDURES.
   1. *56c1 Supporting Factual Positions.* A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
      1. *56c1A* citing to particular parts of materials in the record,

including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

* + 1. *56c1B* showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

81 FEDERAL RULES OF CIVIL PROCEDURE **Rule 56**

* 1. *56c2 Objection That a Fact Is Not Supported by Admissible Evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.
  2. *56c3 Materials Not Cited.* The court need consider only the cited materials, but it may consider other materials in the record.
  3. *56c4 Affidavits or Declarations.* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

1. 56d WHEN FACTS ARE UNAVAILABLE TO THE NONMOVANT. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:
   1. 56d1 defer considering the motion or deny it;
   2. 56d2 allow time to obtain affidavits or declarations or to take discovery; or
   3. 56d3 issue any other appropriate order.
2. 56e FAILING TO PROPERLY SUPPORT OR ADDRESS A FACT. If a party fails to properly support an assertion of fact or fails to properly address another party’s assertion of fact as required by Rule 56(c), the court may:
   1. 56e1 give an opportunity to properly support or address the fact;
   2. 56e2 consider the fact undisputed for purposes of the motion;
   3. 56e3 grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or
   4. 56e4 issue any other appropriate order.
3. 56f JUDGMENT INDEPENDENT OF THE MOTION. After giving notice and a reasonable time to respond, the court may:
   1. 56f1 grant summary judgment for a nonmovant;
   2. 56f2 grant the motion on grounds not raised by a party; or
   3. 56f3 consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.
4. 56g FAILING TO GRANT ALL THE REQUESTED RELIEF. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.
5. 56h AFFIDAVIT OR DECLARATION SUBMITTED IN BAD FAITH. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney’s fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July

1, 1963; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007;

Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 28, 2010, eff. Dec. 1, 2010.)

**Rule 57** FEDERAL RULES OF CIVIL PROCEDURE 82

#### Rule 57. Declaratory Judgment

These rules govern the procedure for obtaining a declaratory judgment under 28 U.S.C. § 2201. Rules 38 and 39 govern a demand for a jury trial. The existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate. The court may order a speedy hearing of a declaratoryjudgment action.

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 30, 2007, eff. Dec.

1, 2007.)

#### Rule 58. Entering Judgment

1. 58a SEPARATE DOCUMENT. Every judgment and amended judgment must be set out in a separate document, but a separate document is not required for an order disposing of a motion:
   1. 58a1 for judgment under Rule 50(b);
   2. 58a2 to amend or make additional findings under Rule 52(b);
   3. 58a3 for attorney’s fees under Rule 54;
   4. 58a4 for a new trial, or to alter or amend the judgment, under Rule 59; or
   5. 58a5 for relief under Rule 60.
2. 58b ENTERING JUDGMENT.
   1. *58b1 Without the Court’s Direction.* Subject to Rule 54(b) and unless the court orders otherwise, the clerk must, without awaiting the court’s direction, promptly prepare, sign, and enter the judgment when:
      1. *58b1A* the jury returns a general verdict;
      2. *58b1B* the court awards only costs or a sum certain; or
      3. *58b1C* the court denies all relief.
   2. *58b2 Court’s Approval Required.* Subject to Rule 54(b), the court must promptly approve the form of the judgment, which the clerk must promptly enter, when:
      1. *58b2A* the jury returns a special verdict or a general verdict with answers to written questions; or
      2. *58b2B* the court grants other relief not described in this subdivision (b).
3. 58c TIME OF ENTRY. For purposes of these rules, judgment is entered at the following times:
   1. 58c1 if a separate document is not required, when the judgment is entered in the civil docket under Rule 79(a); or
   2. 58c2 if a separate document is required, when the judgment is entered in the civil docket under Rule 79(a) and the earlier of these events occurs:
      1. 58c2A it is set out in a separate document; or
      2. 58c2B 150 days have run from the entry in the civil docket.
4. 58d REQUEST FOR ENTRY. A party may request that judgment be set out in a separate document as required by Rule 58(a).
5. 58e COST OR FEE AWARDS. Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney’s fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4(a)(4) as a timely motion under Rule 59.

83 FEDERAL RULES OF CIVIL PROCEDURE **Rule 60**

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July

1, 1963; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 2002, eff. Dec. 1, 2002;

Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 59. New Trial; Altering or Amending a Judgment

1. 59a IN GENERAL.
   1. *59a1 Grounds for New Trial.* The court may, on motion, grant a new trial on all or some of the issues—and to any party—as follows:
      1. *59a1A* after a jury trial, for any reason for which a new

trial has heretofore been granted in an action at law in federal court; or

* + 1. *59a1B* after a nonjury trial, for any reason for which a re-

hearing has heretofore been granted in a suit in equity in federal court.

* 1. *59a2 Further Action After a Nonjury Trial.* After a nonjury trial,

the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

1. 59b TIME TO FILE A MOTION FOR A NEW TRIAL. A motion for a new

trial must be filed no later than 28 days after the entry of judgment.

1. 59c TIME TO SERVE AFFIDAVITS. When a motion for a new trial is

based on affidavits, they must be filed with the motion. The opposing party has 14 days after being served to file opposing affidavits. The court may permit reply affidavits.

1. 59d NEW TRIAL ON THE COURT’S INITIATIVE OR FOR REASONS NOT

IN THE MOTION. No later than 28 days after the entry of judgment, the court, on its own, may order a new trial for any reason that would justify granting one on a party’s motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

1. 59e MOTION TO ALTER OR AMEND A JUDGMENT. A motion to alter

or amend a judgment must be filed no later than 28 days after the entry of the judgment.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Feb. 28, 1966, eff. July

1, 1966; Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 30, 2007, eff. Dec. 1, 2007;

Mar. 26, 2009, eff. Dec. 1, 2009.)

#### Rule 60. Relief from a Judgment or Order

1. 60a CORRECTIONS BASED ON CLERICAL MISTAKES; OVERSIGHTS AND OMISSIONS. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court’s leave.
2. 60b GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR

PROCEEDING. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

**Rule 61** FEDERAL RULES OF CIVIL PROCEDURE 84

* 1. 60b1 mistake, inadvertence, surprise, or excusable neglect;
  2. 60b2 newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
  3. 60b3 fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
  4. 60b4 the judgment is void;
  5. 60b5 the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
  6. 60b6 any other reason that justifies relief.

1. 60c TIMING AND EFFECT OF THE MOTION.
   1. *60c1 Timing.* A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.
   2. *60c2 Effect on Finality.* The motion does not affect the judgment’s finality or suspend its operation.
2. 60d OTHER POWERS TO GRANT RELIEF. This rule does not limit a court’s power to:
   1. 60d1 entertain an independent action to relieve a party from a judgment, order, or proceeding;
   2. 60d2 grant relief under 28 U.S.C. § 1655 to a defendant who was not personally notified of the action; or
   3. 60d3 set aside a judgment for fraud on the court.
3. 60e BILLS AND WRITS ABOLISHED. The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct.

20, 1949; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 61. Harmless Error

Unless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the court or a party—is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party’s substantial rights.

(As amended Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 62. Stay of Proceedings to Enforce a Judgment

1. 62a AUTOMATIC STAY. Except as provided in Rule 62(c) and (d), execution on a judgment and proceedings to enforce it are stayed for 30 days after its entry, unless the court orders otherwise.
2. 62b STAY BY BOND OR OTHER SECURITY. At any time after judgment is entered, a party may obtain a stay by providing a bond or other security. The stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security.
3. 62c STAY OF AN INJUNCTION, RECEIVERSHIP, OR PATENT ACCOUNTING ORDER. Unless the court orders otherwise, the following are not stayed after being entered, even if an appeal is taken:
   1. 62c1 an interlocutory or final judgment in an action for an injunction or receivership; or

85 FEDERAL RULES OF CIVIL PROCEDURE **Rule 62.1**

* 1. 62c2 a judgment or order that directs an accounting in an action for patent infringement.

1. 62d INJUNCTION PENDING AN APPEAL. While an appeal is pending

from an interlocutory order or final judgment that grants, continues, modifies, refuses, dissolves, or refuses to dissolve or modify an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party’s rights. If the judgment appealed from is rendered by a statutory three-judge district court, the order must be made either:

* 1. 62d1 by that court sitting in open session; or
  2. 62d2 by the assent of all its judges, as evidenced by their signatures.

1. 62e STAY WITHOUT BOND ON AN APPEAL BY THE UNITED STATES,

ITS OFFICERS, OR ITS AGENCIES. The court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal by the United States, its officers, or its agencies or on an appeal directed by a department of the federal government.

1. 62f STAY IN FAVOR OF A JUDGMENT DEBTOR UNDER STATE LAW. If

a judgment is a lien on the judgment debtor’s property under the law of the state where the court is located, the judgment debtor is entitled to the same stay of execution the state court would give.

1. 62g APPELLATE COURT’S POWER NOT LIMITED. This rule does not

limit the power of the appellate court or one of its judges or justices:

* 1. 62g1 to stay proceedings—or suspend, modify, restore, or grant

an injunction—while an appeal is pending; or

* 1. 62g2 to issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

1. 62h STAY WITH MULTIPLE CLAIMS OR PARTIES. A court may stay

the enforcement of a final judgment entered under Rule 54(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct.

20, 1949; Apr. 17, 1961, eff. July 19, 1961; Mar. 2, 1987, eff. Aug. 1, 1987;

Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009; Apr.

26, 2018, eff. Dec. 1, 2018.)

#### Rule 62.1. Indicative Ruling on a Motion for Relief That is Barred by a Pending Appeal

1. 62.1a RELIEF PENDING APPEAL. If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:
   1. 62.1a1 defer considering the motion;
   2. 62.1a2 deny the motion; or
   3. 62.1a3 state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.
2. 62.1b NOTICE TO THE COURT OF APPEALS. The movant must prompt-

ly notify the circuit clerk under Federal Rule of Appellate Procedure 12.1 if the district court states that it would grant the motion or that the motion raises a substantial issue.

**Rule 63** FEDERAL RULES OF CIVIL PROCEDURE 86

1. 62.1c REMAND. The district court may decide the motion if the court of appeals remands for that purpose.

(As added Mar. 26, 2009, eff. Dec. 1, 2009.)

#### Rule 63. Judge’s Inability to Proceed

If a judge conducting a hearing or trial is unable to proceed, any other judge may proceed upon certifying familiarity with the record and determining that the case may be completed without prejudice to the parties. In a hearing or a nonjury trial, the successor judge must, at a party’s request, recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

(As amended Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec.

1, 1991; Apr. 30, 2007, eff. Dec. 1, 2007.)

TITLE VIII. PROVISIONAL AND FINAL REMEDIES

#### Rule 64. Seizing a Person or Property

1. 64a REMEDIES UNDER STATE LAW—IN GENERAL. At the commencement of and throughout an action, every remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment. But a federal statute governs to the extent it applies.
2. 64b SPECIFIC KINDS OF REMEDIES. The remedies available under this rule include the following—however designated and regardless of whether state procedure requires an independent action:
   * arrest;
   * attachment;
   * garnishment;
   * replevin;
   * sequestration; and
   * other corresponding or equivalent remedies. (As amended Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 65. Injunctions and Restraining Orders

1. 65a PRELIMINARY INJUNCTION.
   1. 65a*1 Notice.* The court may issue a preliminary injunction only on notice to the adverse party.
   2. 65a*2 Consolidating the Hearing with the Trial on the Merits.* Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party’s right to a jury trial.
2. 65b TEMPORARY RESTRAINING ORDER.
   1. 65b*1 Issuing Without Notice.* The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:
      1. 65b*1A* specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss,

87 FEDERAL RULES OF CIVIL PROCEDURE **Rule 65**

or damage will result to the movant before the adverse party can be heard in opposition; and

* + 1. 65b*1B* the movant’s attorney certifies in writing any efforts

made to give notice and the reasons why it should not be required.

* 1. 65b*2 Contents; Expiration.* Every temporary restraining order

issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk’s office and entered in the record. The order expires at the time after entry—not to exceed 14 days—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

* 1. 65b*3 Expediting the Preliminary-Injunction Hearing.* If the order

is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.

* 1. 65b*4 Motion to Dissolve.* On 2 days’ notice to the party who ob-

tained the order without notice—or on shorter notice set by the court—the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

1. 65c SECURITY. The court may issue a preliminary injunction or

a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. The United States, its officers, and its agencies are not required to give security.

1. 65d CONTENTS AND SCOPE OF EVERY INJUNCTION AND RESTRAINING

ORDER.

* 1. *65d1 Contents.* Every order granting an injunction and every restraining order must:
     1. *65d1A* state the reasons why it issued;
     2. *65d1B* state its terms specifically; and
     3. *65d1C* describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.
  2. *65d2 Persons Bound.* The order binds only the following who re-

ceive actual notice of it by personal service or otherwise:

* + 1. *65d2A* the parties;
    2. *65d2B* the parties’ officers, agents, servants, employees, and attorneys; and
    3. *65d2C* other persons who are in active concert or participa-

tion with anyone described in Rule 65(d)(2)(A) or (B).

1. 65e OTHER LAWS NOT MODIFIED. These rules do not modify the following:
   1. 65e1 any federal statute relating to temporary restraining or-

ders or preliminary injunctions in actions affecting employer and employee;

* 1. 65e2 28 U.S.C. § 2361, which relates to preliminary injunctions

in actions of interpleader or in the nature of interpleader; or

**Rule 65.1** FEDERAL RULES OF CIVIL PROCEDURE 88

* 1. 65e3 28 U.S.C. § 2284, which relates to actions that must be heard and decided by a three-judge district court.

1. 65f COPYRIGHT IMPOUNDMENT. This rule applies to copyright-im-

poundment proceedings.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct.

20, 1949; Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987;

Apr. 23, 2001, eff. Dec. 1, 2001; Apr. 30, 2007, eff. Dec. 1, 2007; Mar.

26, 2009, eff. Dec. 1, 2009.)

#### Rule 65.1. Proceedings Against a Security Provider

Whenever these rules (including the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions) require or allow a party to give security, and security is given with one or more security providers, each provider submits to the court’s jurisdiction and irrevocably appoints the court clerk as its agent for receiving service of any papers that affect its liability on the security. The security provider’s liability may be enforced on motion without an independent action. The motion and any notice that the court orders may be served on the court clerk, who must promptly send a copy of each to every security provider whose address is known.

(As added Feb. 28, 1966, eff. July 1, 1966; amended Mar. 2, 1987, eff.

Aug. 1, 1987; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec.

1, 2007; Apr. 26, 2018, eff. Dec. 1, 2018.)

#### Rule 66. Receivers

These rules govern an action in which the appointment of a receiver is sought or a receiver sues or is sued. But the practice in administering an estate by a receiver or a similar court-appointed officer must accord with the historical practice in federal courts or with a local rule. An action in which a receiver has been appointed may be dismissed only by court order.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct.

20, 1949; Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 67. Deposit into Court

1. 67a DEPOSITING PROPERTY. If any part of the relief sought is a money judgment or the disposition of a sum of money or some other deliverable thing, a party—on notice to every other party and by leave of court—may deposit with the court all or part of the money or thing, whether or not that party claims any of it. The depositing party must deliver to the clerk a copy of the order permitting deposit.
2. 67b INVESTING AND WITHDRAWING FUNDS. Money paid into court

under this rule must be deposited and withdrawn in accordance with 28 U.S.C. §§ 2041 and 2042 and any like statute. The money must be deposited in an interest-bearing account or invested in a court-approved, interest-bearing instrument.

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 28, 1983, eff. Aug.

1, 1983; Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 68. Offer of Judgment

1. 68a MAKING AN OFFER; JUDGMENT ON AN ACCEPTED OFFER. At least 14 days before the date set for trial, a party defending

89 FEDERAL RULES OF CIVIL PROCEDURE **Rule 70**

against a claim may serve on an opposing party an offer to allow judgment on specified terms, with the costs then accrued. If, within 14 days after being served, the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. The clerk must then enter judgment.

1. 68b UNACCEPTED OFFER. An unaccepted offer is considered with-

drawn, but it does not preclude a later offer. Evidence of an unaccepted offer is not admissible except in a proceeding to determine costs.

1. 68c OFFER AFTER LIABILITY IS DETERMINED. When one party’s li-

ability to another has been determined but the extent of liability remains to be determined by further proceedings, the party held liable may make an offer of judgment. It must be served within a reasonable time—but at least 14 days—before the date set for a hearing to determine the extent of liability.

1. 68d PAYING COSTS AFTER AN UNACCEPTED OFFER. If the judgment

that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Feb. 28, 1966, eff. July

1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007;

Mar. 26, 2009, eff. Dec. 1, 2009.)

#### Rule 69. Execution

1. 69a IN GENERAL.
   1. *69a1 Money Judgment; Applicable Procedure.* A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.
   2. 69a2 *Obtaining Discovery.* In aid of the judgment or execution,

the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person—including the judgment debtor—as provided in these rules or by the procedure of the state where the court is located.

1. 69b AGAINST CERTAIN PUBLIC OFFICERS. When a judgment has

been entered against a revenue officer in the circumstances stated in 28 U.S.C. § 2006, or against an officer of Congress in the circumstances stated in 2 U.S.C. § 118,1 the judgment must be satisfied as those statutes provide.

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Mar. 30, 1970, eff. July

1, 1970; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 70. Enforcing a Judgment for a Specific Act

1. 70a PARTY’S FAILURE TO ACT; ORDERING ANOTHER TO ACT. If a judgment requires a party to convey land, to deliver a deed or other document, or to perform any other specific act and the party fails to comply within the time specified, the court may order the act to be done—at the disobedient party’s expense—by another person appointed by the court. When done, the act has the same effect as if done by the party.

1 Now editorially reclassified 2 U.S.C. 5503.

**Rule 71** FEDERAL RULES OF CIVIL PROCEDURE 90

1. 70b VESTING TITLE. If the real or personal property is within the district, the court—instead of ordering a conveyance—may enter a judgment divesting any party’s title and vesting it in others. That judgment has the effect of a legally executed conveyance.
2. 70c OBTAINING A WRIT OF ATTACHMENT OR SEQUESTRATION. On application by a party entitled to performance of an act, the clerk must issue a writ of attachment or sequestration against the disobedient party’s property to compel obedience.
3. 70d OBTAINING A WRIT OF EXECUTION OR ASSISTANCE. On application by a party who obtains a judgment or order for possession, the clerk must issue a writ of execution or assistance.
4. 70e HOLDING IN CONTEMPT. The court may also hold the disobedient party in contempt.

(As amended Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 71. Enforcing Relief For or Against a Nonparty

When an order grants relief for a nonparty or may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party.

(As amended Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec.

1, 2007.)

TITLE IX. SPECIAL PROCEEDINGS

#### Rule 71.1. Condemning Real or Personal Property

1. 71.1a APPLICABILITY OF OTHER RULES. These rules govern proceedings to condemn real and personal property by eminent domain, except as this rule provides otherwise.
2. 71.1b JOINDER OF PROPERTIES. The plaintiff may join separate pieces of property in a single action, no matter whether they are owned by the same persons or sought for the same use.
3. 71.1c COMPLAINT.
   1. 71.1c1 *Caption.* The complaint must contain a caption as provided in Rule 10(a). The plaintiff must, however, name as defendants both the property—designated generally by kind, quantity, and location—and at least one owner of some part of or interest in the property.
   2. 71.1c2 *Contents.* The complaint must contain a short and plain statement of the following:
      1. 71.1c2A the authority for the taking;
      2. 71.1c2B the uses for which the property is to be taken;
      3. 71.1c2C a description sufficient to identify the property;
      4. 71.1c2D the interests to be acquired; and
      5. 71.1c2E for each piece of property, a designation of each defendant who has been joined as an owner or owner of an interest in it.
   3. 71.1c3 *Parties.* When the action commences, the plaintiff need join as defendants only those persons who have or claim an interest in the property and whose names are then known. But before any hearing on compensation, the plaintiff must add as defendants all those persons who have or claim an interest and whose names have become known or can be found by a reasonably diligent search of the records, considering both the property’s character and value and the interests to be acquired. All

91 FEDERAL RULES OF CIVIL PROCEDURE **Rule 71.1**

others may be made defendants under the designation ‘‘Unknown Owners.’’

* 1. 71.1c4 *Procedure.* Notice must be served on all defendants as pro-

vided in Rule 71.1(d), whether they were named as defendants when the action commenced or were added later. A defendant may answer as provided in Rule 71.1(e). The court, meanwhile, may order any distribution of a deposit that the facts warrant.

* 1. 71.1c5 *Filing; Additional Copies.* In addition to filing the com-

plaint, the plaintiff must give the clerk at least one copy for the defendants’ use and additional copies at the request of the clerk or a defendant.

1. 71.1d PROCESS.
   1. 71.1d1 *Delivering Notice to the Clerk.* On filing a complaint, the plaintiff must promptly deliver to the clerk joint or several notices directed to the named defendants. When adding defendants, the plaintiff must deliver to the clerk additional notices directed to the new defendants.
   2. 71.1d2 *Contents of the Notice.*
      1. 71.1d2A *Main Contents.* Each notice must name the court, the title of the action, and the defendant to whom it is directed. It must describe the property sufficiently to identify it, but need not describe any property other than that to be taken from the named defendant. The notice must also state:
         1. 71.1d2Ai that the action is to condemn property;
         2. 71.1d2Aii the interest to be taken;
         3. 71.1d2Aiii the authority for the taking;
         4. 71.1d2Aiv the uses for which the property is to be taken;
         5. 71.1d2Av that the defendant may serve an answer on the plaintiff’s attorney within 21 days after being served with the notice;
         6. 71.1d2Avi that the failure to so serve an answer constitutes

consent to the taking and to the court’s authority to proceed with the action and fix the compensation; and

* + - 1. 71.1d2Avii that a defendant who does not serve an answer

may file a notice of appearance.

* + 1. 71.1d2B *Conclusion.* The notice must conclude with the name, telephone number, and e-mail address of the plaintiff’s attorney and an address within the district in which the action is brought where the attorney may be served.
  1. 71.1d3 *Serving the Notice.*
     1. 71.1d3A *Personal Service.* When a defendant whose address is known resides within the United States or a territory subject to the administrative or judicial jurisdiction of the United States, personal service of the notice (without a copy of the complaint) must be made in accordance with Rule 4.
     2. 71.1d3B *Service by Publication.*
        1. 71.1d3Bi A defendant may be served by publication only when the plaintiff’s attorney files a certificate stating that the attorney believes the defendant cannot be personally served, because after diligent inquiry within the state where the complaint is filed, the defendant’s place of residence is still unknown or, if known, that it is beyond the territorial limits of personal service.

**Rule 71.1** FEDERAL RULES OF CIVIL PROCEDURE 92

Service is then made by publishing the notice—once a week for at least 3 successive weeks—in a newspaper published in the county where the property is located or, if there is no such newspaper, in a newspaper with general circulation where the property is located. Before the last publication, a copy of the notice must also be mailed to every defendant who cannot be personally served but whose place of residence is then known. Unknown owners may be served by publication in the same manner by a notice addressed to ‘‘Unknown Owners.’’

* + - 1. 71.1d3Bii Service by publication is complete on the date of the last publication. The plaintiff’s attorney must prove publication and mailing by a certificate, attach a printed copy of the published notice, and mark on the copy the newspaper’s name and the dates of publication.
  1. 71.1d4 *Effect of Delivery and Service.* Delivering the notice to the

clerk and serving it have the same effect as serving a summons under Rule 4.

* 1. 71.1d5 *Amending the Notice; Proof of Service and Amending the*

*Proof.* Rule 4(a)(2) governs amending the notice. Rule 4(*l*) governs proof of service and amending it.

1. 71.1e APPEARANCE OR ANSWER.
   1. 71.1e1 *Notice of Appearance.* A defendant that has no objection or defense to the taking of its property may serve a notice of appearance designating the property in which it claims an interest. The defendant must then be given notice of all later proceedings affecting the defendant.
   2. 71.1e2 *Answer.* A defendant that has an objection or defense to

the taking must serve an answer within 21 days after being served with the notice. The answer must:

* + 1. 71.1e2A identify the property in which the defendant claims

an interest;

* + 1. 71.1e2B state the nature and extent of the interest; and
    2. 71.1e2C state all the defendant’s objections and defenses to the taking.
  1. 71.1e3 *Waiver of Other Objections and Defenses; Evidence on Com-*

*pensation.* A defendant waives all objections and defenses not stated in its answer. No other pleading or motion asserting an additional objection or defense is allowed. But at the trial on compensation, a defendant—whether or not it has previously appeared or answered—may present evidence on the amount of compensation to be paid and may share in the award.

1. 71.1f AMENDING PLEADINGS. Without leave of court, the plaintiff

may—as often as it wants—amend the complaint at any time before the trial on compensation. But no amendment may be made if it would result in a dismissal inconsistent with Rule 71.1(i)(1) or (2). The plaintiff need not serve a copy of an amendment, but must serve notice of the filing, as provided in Rule 5(b), on every affected party who has appeared and, as provided in Rule 71.1(d), on every affected party who has not appeared. In addition, the plaintiff must give the clerk at least one copy of each amendment for the defendants’ use, and additional copies at the request of the clerk or a defendant. A defendant may appear or answer in the

93 FEDERAL RULES OF CIVIL PROCEDURE **Rule 71.1**

time and manner and with the same effect as provided in Rule 71.1(e).

1. 71.1g SUBSTITUTING PARTIES. If a defendant dies, becomes incom-

petent, or transfers an interest after being joined, the court may, on motion and notice of hearing, order that the proper party be substituted. Service of the motion and notice on a nonparty must be made as provided in Rule 71.1(d)(3).

1. 71.1h TRIAL OF THE ISSUES.
   1. 71.1h1 *Issues Other Than Compensation; Compensation.* In an action involving eminent domain under federal law, the court tries all issues, including compensation, except when compensation must be determined:
      1. 71.1h1A by any tribunal specially constituted by a federal

statute to determine compensation; or

* + 1. 71.1h1B if there is no such tribunal, by a jury when a party demands one within the time to answer or within any additional time the court sets, unless the court appoints a commission.
  1. 71.1h2 *Appointing a Commission; Commission’s Powers and Report.*
     1. 71.1h2A *Reasons for Appointing.* If a party has demanded a jury, the court may instead appoint a three-person commission to determine compensation because of the character, location, or quantity of the property to be condemned or for other just reasons.
     2. 71.1h2B *Alternate Commissioners.* The court may appoint up to

two additional persons to serve as alternate commissioners to hear the case and replace commissioners who, before a decision is filed, the court finds unable or disqualified to perform their duties. Once the commission renders its final decision, the court must discharge any alternate who has not replaced a commissioner.

* + 1. 71.1h2C *Examining the Prospective Commissioners.* Before mak-

ing its appointments, the court must advise the parties of the identity and qualifications of each prospective commissioner and alternate, and may permit the parties to examine them. The parties may not suggest appointees, but for good cause may object to a prospective commissioner or alternate.

* + 1. 71.1h2D *Commission’s Powers and Report.* A commission has

the powers of a master under Rule 53(c). Its action and report are determined by a majority. Rule 53(d), (e), and (f) apply to its action and report.

1. 71.1i DISMISSAL OF THE ACTION OR A DEFENDANT.
   1. 71.1i1 *Dismissing the Action.*
      1. 71.1i1A *By the Plaintiff.* If no compensation hearing on a piece of property has begun, and if the plaintiff has not acquired title or a lesser interest or taken possession, the plaintiff may, without a court order, dismiss the action as to that property by filing a notice of dismissal briefly describing the property.
      2. 71.1i1B *By Stipulation.* Before a judgment is entered vesting

the plaintiff with title or a lesser interest in or possession of property, the plaintiff and affected defendants may, without a court order, dismiss the action in whole or in part by filing a stipulation of dismissal. And if the parties

**Rule 72** FEDERAL RULES OF CIVIL PROCEDURE 94

so stipulate, the court may vacate a judgment already entered.

* + 1. 71.1i1C *By Court Order.* At any time before compensation has been determined and paid, the court may, after a motion and hearing, dismiss the action as to a piece of property. But if the plaintiff has already taken title, a lesser inter est, or possession as to any part of it, the court must award compensation for the title, lesser interest, or possession taken.
  1. 71.1i2 *Dismissing a Defendant.* The court may at any time dis-

miss a defendant who was unnecessarily or improperly joined.

* 1. 71.1i3 *Effect.* A dismissal is without prejudice unless otherwise stated in the notice, stipulation, or court order.

1. 71.1j DEPOSIT AND ITS DISTRIBUTION.
   1. 71.1j1 *Deposit.* The plaintiff must deposit with the court any money required by law as a condition to the exercise of eminent domain and may make a deposit when allowed by statute.
   2. 71.1j2 *Distribution; Adjusting Distribution.* After a deposit, the court and attorneys must expedite the proceedings so as to distribute the deposit and to determine and pay compensation. If the compensation finally awarded to a defendant exceeds the amount distributed to that defendant, the court must enter judgment against the plaintiff for the deficiency. If the compensation awarded to a defendant is less than the amount distributed to that defendant, the court must enter judgment against that defendant for the overpayment.
2. 71.1k CONDEMNATION UNDER A STATE’S POWER OF EMINENT DOMAIN. This rule governs an action involving eminent domain under state law. But if state law provides for trying an issue by jury—or for trying the issue of compensation by jury or commission or both— that law governs.
3. 71.1jl COSTS. Costs are not subject to Rule 54(d).

(As added Apr. 30, 1951, eff. Aug. 1, 1951; amended Jan. 21, 1963, eff.

July 1, 1963; Apr. 29, 1985, eff. Aug. 1, 1985; Mar. 2, 1987, eff. Aug.

1, 1987; Apr. 25, 1988, eff. Aug. 1, 1988; Pub. L. 100–690, title VII,

§ 7050, Nov. 18, 1988, 102 Stat. 4401; Apr. 22, 1993, eff. Dec. 1, 1993;

Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 30, 2007, eff. Dec. 1, 2007; Mar.

26, 2009, eff. Dec. 1, 2009.)

#### Rule 72. Magistrate Judges: Pretrial Order

1. 72a NONDISPOSITIVE MATTERS. When a pretrial matter not dispositive of a party’s claim or defense is referred to a magistrate judge to hear and decide, the magistrate judge must promptly conduct the required proceedings and, when appropriate, issue a written order stating the decision. A party may serve and file objections to the order within 14 days after being served with a copy. A party may not assign as error a defect in the order not timely objected to. The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.
2. 72b DISPOSITIVE MOTIONS AND PRISONER PETITIONS.
   1. *72b1 Findings and Recommendations.* A magistrate judge must promptly conduct the required proceedings when assigned,

95 FEDERAL RULES OF CIVIL PROCEDURE **Rule 73**

without the parties’ consent, to hear a pretrial matter dispositive of a claim or defense or a prisoner petition challenging the conditions of confinement. A record must be made of all evidentiary proceedings and may, at the magistrate judge’s discretion, be made of any other proceedings. The magistrate judge must enter a recommended disposition, including, if appropriate, proposed findings of fact. The clerk must promptly mail a copy to each party.

* 1. *72b2 Objections.* Within 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. A party may respond to another party’s objections within 14 days after being served with a copy. Unless the district judge orders otherwise, the objecting party must promptly arrange for transcribing the record, or whatever portions of it the parties agree to or the magistrate judge considers sufficient.
  2. *72b3 Resolving Objections.* The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

(As added Apr. 28, 1983, eff. Aug. 1, 1983; amended Apr. 30, 1991, eff.

Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 30, 2007, eff. Dec.

1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

#### Rule 73. Magistrate Judges: Trial by Consent; Appeal

1. 73a TRIAL BY CONSENT. When authorized under 28 U.S.C. § 636(c), a magistrate judge may, if all parties consent, conduct a civil action or proceeding, including a jury or nonjury trial. A record must be made in accordance with 28 U.S.C. § 636(c)(5).
2. 73b CONSENT PROCEDURE.
   1. 73b*1 In General.* When a magistrate judge has been designated to conduct civil actions or proceedings, the clerk must give the parties written notice of their opportunity to consent under 28 U.S.C. § 636(c). To signify their consent, the parties must jointly or separately file a statement consenting to the referral. A district judge or magistrate judge may be informed of a party’s response to the clerk’s notice only if all parties have consented to the referral.
   2. 73b*2 Reminding the Parties About Consenting.* A district judge, magistrate judge, or other court official may remind the parties of the magistrate judge’s availability, but must also advise them that they are free to withhold consent without adverse substantive consequences.
   3. 73b*3 Vacating a Referral.* On its own for good cause—or when a party shows extraordinary circumstances—the district judge may vacate a referral to a magistrate judge under this rule.
3. 73c APPEALING A JUDGMENT. In accordance with 28 U.S.C.

§ 636(c)(3), an appeal from a judgment entered at a magistrate judge’s direction may be taken to the court of appeals as would any other appeal from a district-court judgment.

**Rule 74** FEDERAL RULES OF CIVIL PROCEDURE 96

(As added Apr. 28, 1983, eff. Aug. 1, 1983; amended Mar. 2, 1987, eff.

Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 11, 1997, eff. Dec.

1, 1997; Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 74. [Abrogated (Apr. 11, 1997, eff. Dec. 1, 1997).]

**Rule 75. [Abrogated (Apr. 11, 1997, eff. Dec. 1, 1997).]**

**Rule 76. [Abrogated (Apr. 11, 1997, eff. Dec. 1, 1997).]**

TITLE X. DISTRICT COURTS AND CLERKS: CONDUCTING BUSINESS; ISSUING ORDERS

#### Rule 77. Conducting Business; Clerk’s Authority; Notice of an Order or Judgment

1. 77a WHEN COURT IS OPEN. Every district court is considered always open for filing any paper, issuing and returning process, making a motion, or entering an order.
2. 77b PLACE FOR TRIAL AND OTHER PROCEEDINGS. Every trial on the

merits must be conducted in open court and, so far as convenient, in a regular courtroom. Any other act or proceeding may be done or conducted by a judge in chambers, without the attendance of the clerk or other court official, and anywhere inside or outside the district. But no hearing—other than one ex parte—may be conducted outside the district unless all the affected parties consent.

1. 77c CLERK’S OFFICE HOURS; CLERK’S ORDERS.
   1. *77c1 Hours.* The clerk’s office—with a clerk or deputy on duty—must be open during business hours every day except Saturdays, Sundays, and legal holidays. But a court may, by local rule or order, require that the office be open for specified hours on Saturday or a particular legal holiday other than one listed in Rule 6(a)(6)(A).
   2. *77c2 Orders.* Subject to the court’s power to suspend, alter, or

rescind the clerk’s action for good cause, the clerk may:

* + 1. *77c2A* issue process;
    2. *77c2B* enter a default;
    3. *77c2C* enter a default judgment under Rule 55(b)(1); and
    4. *77c2D* act on any other matter that does not require the court’s action.

1. 77d SERVING NOTICE OF AN ORDER OR JUDGMENT.
   1. *77d1 Service.* Immediately after entering an order or judgment, the clerk must serve notice of the entry, as provided in Rule 5(b), on each party who is not in default for failing to appear. The clerk must record the service on the docket. A party also may serve notice of the entry as provided in Rule 5(b).
   2. *77d2 Time to Appeal Not Affected by Lack of Notice.* Lack of no-

tice of the entry does not affect the time for appeal or relieve—or authorize the court to relieve—a party for failing to appeal within the time allowed, except as allowed by Federal Rule of Appellate Procedure (4)(a).

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July

1, 1963; Dec. 4, 1967, eff. July 1, 1968; Mar. 1, 1971, eff. July 1, 1971;

97 FEDERAL RULES OF CIVIL PROCEDURE **Rule 79**

Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 23,

2001, eff. Dec. 1, 2001; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 25, 2014,

eff. Dec. 1, 2014.)

#### Rule 78. Hearing Motions; Submission on Briefs

1. 78a PROVIDING A REGULAR SCHEDULE FOR ORAL HEARINGS. A court may establish regular times and places for oral hearings on motions.
2. 78b PROVIDING FOR SUBMISSION ON BRIEFS. By rule or order, the court may provide for submitting and determining motions on briefs, without oral hearings.

(As amended Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec.

1, 2007.)

#### Rule 79. Records Kept by the Clerk

1. 79a CIVIL DOCKET.
   1. *79a1 In General.* The clerk must keep a record known as the ‘‘civil docket’’ in the form and manner prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States. The clerk must enter each civil action in the docket. Actions must be assigned consecutive file numbers, which must be noted in the docket where the first entry of the action is made.
   2. *79a2 Items to be Entered.* The following items must be marked with the file number and entered chronologically in the docket:
      1. *79a2A* papers filed with the clerk;
      2. *79a2B* process issued, and proofs of service or other returns showing execution; and
      3. *79a2C* appearances, orders, verdicts, and judgments.
   3. *79a3 Contents of Entries; Jury Trial Demanded.* Each entry must briefly show the nature of the paper filed or writ issued, the substance of each proof of service or other return, and the substance and date of entry of each order and judgment. When a jury trial has been properly demanded or ordered, the clerk must enter the word ‘‘jury’’ in the docket.
2. 79b CIVIL JUDGMENTS AND ORDERS. The clerk must keep a copy of every final judgment and appealable order; of every order affecting title to or a lien on real or personal property; and of any other order that the court directs to be kept. The clerk must keep these in the form and manner prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States.
3. 79c INDEXES; CALENDARS. Under the court’s direction, the clerk must:
   1. 79c1 keep indexes of the docket and of the judgments and orders described in Rule 79(b); and
   2. 79c2 prepare calendars of all actions ready for trial, distinguishing jury trials from nonjury trials.
4. 79d OTHER RECORDS. The clerk must keep any other records required by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States.

**Rule 80** FEDERAL RULES OF CIVIL PROCEDURE 98

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct.

20, 1949; Jan. 21, 1963, eff. July 1, 1963; Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 80. Stenographic Transcript as Evidence

If stenographically reported testimony at a hearing or trial is admissible in evidence at a later trial, the testimony may be proved by a transcript certified by the person who reported it.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Apr. 30, 2007, eff. Dec.

1, 2007.)

TITLE XI. GENERAL PROVISIONS

#### Rule 81. Applicability of the Rules in General; Removed Actions

1. 81a APPLICABILITY TO PARTICULAR PROCEEDINGS.
   1. 81a*1 Prize Proceedings.* These rules do not apply to prize proceedings in admiralty governed by 10 U.S.C. §§ 7651–7681.
   2. 81a*2 Bankruptcy.* These rules apply to bankruptcy proceedings

to the extent provided by the Federal Rules of Bankruptcy Procedure.

* 1. 81a*3 Citizenship.* These rules apply to proceedings for admis-

sion to citizenship to the extent that the practice in those proceedings is not specified in federal statutes and has previously conformed to the practice in civil actions. The provisions of 8

U.S.C. § 1451 for service by publication and for answer apply in proceedings to cancel citizenship certificates.

* 1. 81a*4 Special Writs.* These rules apply to proceedings for habeas

corpus and for quo warranto to the extent that the practice in those proceedings:

* + 1. 81a*4A* is not specified in a federal statute, the Rules Gov-

erning Section 2254 Cases, or the Rules Governing Section 2255 Cases; and

* + 1. 81a*4B* has previously conformed to the practice in civil ac-

tions.

* 1. 81a*5 Proceedings Involving a Subpoena.* These rules apply to proceedings to compel testimony or the production of documents through a subpoena issued by a United States officer or agency under a federal statute, except as otherwise provided by statute, by local rule, or by court order in the proceedings.
  2. 81a*6 Other Proceedings.* These rules, to the extent applicable,

govern proceedings under the following laws, except as these laws provide other procedures:

* + 1. 81a*6A* 7 U.S.C. §§ 292, 499g(c), for reviewing an order of the

Secretary of Agriculture;

* + 1. 81a*6B* 9 U.S.C., relating to arbitration;
    2. 81a*6C* 15 U.S.C. § 522, for reviewing an order of the Secretary of the Interior;
    3. 81a*6D* 15 U.S.C. § 715d(c), for reviewing an order denying a

certificate of clearance;

* + 1. 81a*6E* 29 U.S.C. §§ 159, 160, for enforcing an order of the National Labor Relations Board;
    2. 81a*6F* 33 U.S.C. §§ 918, 921, for enforcing or reviewing a com-

pensation order under the Longshore and Harbor Workers’

Compensation Act; and

* + 1. 81a*6G* 45 U.S.C. § 159, for reviewing an arbitration award in a railway-labor dispute.

99 FEDERAL RULES OF CIVIL PROCEDURE **Rule 81**

1. 81b SCIRE FACIAS AND MANDAMUS. The writs of scire facias and mandamus are abolished. Relief previously available through them may be obtained by appropriate action or motion under these rules.
2. 81c REMOVED ACTIONS.
   1. *81c1 Applicability.* These rules apply to a civil action after it is removed from a state court.
   2. *81c2 Further Pleading.* After removal, repleading is unnecessary unless the court orders it. A defendant who did not answer before removal must answer or present other defenses or objections under these rules within the longest of these periods:
      1. *81c2A* 21 days after receiving—through service or otherwise—a copy of the initial pleading stating the claim for relief;
      2. *81c2B* 21 days after being served with the summons for an initial pleading on file at the time of service; or
      3. *81c2C* 7 days after the notice of removal is filed.
   3. *81c3 Demand for a Jury Trial.*
      1. *81c3A As Affected by State Law.* A party who, before removal, expressly demanded a jury trial in accordance with state law need not renew the demand after removal. If the state law did not require an express demand for a jury trial, a party need not make one after removal unless the court orders the parties to do so within a specified time. The court must so order at a party’s request and may so order on its own. A party who fails to make a demand when so ordered waives a jury trial.
      2. *81c3B Under Rule 38.* If all necessary pleadings have been served at the time of removal, a party entitled to a jury trial under Rule 38 must be given one if the party serves a demand within 14 days after:
         1. *81c3B*i it files a notice of removal; or
         2. *81c3B*ii it is served with a notice of removal filed by another party.
3. 81d LAW APPLICABLE.
   1. 81d1 *‘‘State Law’’ Defined.* When these rules refer to state law, the term ‘‘law’’ includes the state’s statutes and the state’s judicial decisions.
   2. 81d2 *‘‘State’’ Defined.* The term ‘‘state’’ includes, where appropriate, the District of Columbia and any United States commonwealth or territory.
   3. 81d 3 *‘‘Federal Statute’’ Defined in the District of Columbia.* In the United States District Court for the District of Columbia, the term ‘‘federal statute’’ includes any Act of Congress that applies locally to the District.

(As amended Dec. 28, 1939, eff. Apr. 3, 1941; Dec. 27, 1946, eff. Mar.

19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 30, 1951, eff. Aug. 1, 1951;

Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Dec.

4, 1967, eff. July 1, 1968; Mar. 1, 1971, eff. July 1, 1971; Mar. 2, 1987,

eff. Aug. 1, 1987; Apr. 23, 2001, eff. Dec. 1, 2001; Apr. 29, 2002, eff. Dec.

1, 2002; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

**Rule 82** FEDERAL RULES OF CIVIL PROCEDURE

#### Rule 82. Jurisdiction and Venue Unaffected

100

These rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts. An admiralty or maritime claim under Rule 9(h) is governed by 28 U.S.C. § 1390.

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July

1, 1966; Apr. 23, 2001, eff. Dec. 1, 2001; Apr. 30, 2007, eff. Dec. 1, 2007;

Apr. 28, 2016, eff. Dec. 1, 2016.)

#### Rule 83. Rules by District Courts; Judge’s Directives

1. 83a LOCAL RULES.
   1. *83a1 In General.* After giving public notice and an opportunity for comment, a district court, acting by a majority of its district judges, may adopt and amend rules governing its practice. A local rule must be consistent with—but not duplicate— federal statutes and rules adopted under 28 U.S.C. §§ 2072 and 2075, and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. A local rule takes effect on the date specified by the district court and remains in effect unless amended by the court or abrogated by the judicial council of the circuit. Copies of rules and amendments must, on their adoption, be furnished to the judicial council and the Administrative Office of the United States Courts and be made available to the public.
   2. *83a2 Requirement of Form.* A local rule imposing a requirement

of form must not be enforced in a way that causes a party to lose any right because of a nonwillful failure to comply.

1. 83b PROCEDURE WHEN THERE IS NO CONTROLLING LAW. A judge may regulate practice in any manner consistent with federal law, rules adopted under 28 U.S.C. §§ 2072 and 2075, and the district’s local rules. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

(As amended Apr. 29, 1985, eff. Aug. 1, 1985; Apr. 27, 1995, eff. Dec.

1, 1995; Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 84. [Abrogated (Apr. 29, 2015, eff. Dec. 1, 2015).]

**Rule 85. Title**

These rules may be cited as the Federal Rules of Civil Procedure.

(As amended Apr. 30, 2007, eff. Dec. 1, 2007.)

#### Rule 86. Effective Dates

1. 86a IN GENERAL. These rules and any amendments take effect at the time specified by the Supreme Court, subject to 28 U.S.C.

§ 2074. They govern:

* 1. 86a1 proceedings in an action commenced after their effective date; and
  2. 86a2 proceedings after that date in an action then pending unless:
     1. 86a2A the Supreme Court specifies otherwise; or

### 101

FEDERAL RULES OF CIVIL PROCEDURE

#### Rule 86

(B) 86a2B the court determines that applying them in a particular action would be infeasible or work an injustice.

1. 86b DECEMBER 1, 2007 AMENDMENTS. If any provision in Rules 1–5.1, 6–73, or 77–86 conflicts with another law, priority in time for the purpose of 28 U.S.C. § 2072(b) is not affected by the amendments taking effect on December 1, 2007.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct.

20, 1949; Apr. 17, 1961, eff. July 19, 1961; Jan. 21 and Mar. 18, 1963,

eff. July 1, 1963; Apr. 30, 2007, eff. Dec. 1, 2007.)

## APPENDIX OF FORMS

[Abrogated (Apr. 29, 2015, eff. Dec. 1, 2015).]

(103)

**Rule A** FEDERAL RULES OF CIVIL PROCEDURE 104

SUPPLEMENTAL RULES FOR ADMIRALTY OR MARITIME CLAIMS AND ASSET FORFEITURE ACTIONS 1

#### Rule A. Scope of Rules

1. A 1These Supplemental Rules apply to:
   1. A1A the procedure in admiralty and maritime claims within the meaning of Rule 9(h) with respect to the following remedies:
      1. (A)1Ai maritime attachment and garnishment,
      2. (A)1Aii actions in rem,
      3. (A)1Aiii possessory, petitory, and partition actions, and
      4. (A)1Aiv actions for exoneration from or limitation of liability;
   2. (A)1B forfeiture actions in rem arising from a federal statute; and
   3. (A)1B the procedure in statutory condemnation proceedings analogous to maritime actions in rem, whether within the admiralty and maritime jurisdiction or not. Except as otherwise provided, references in these Supplemental Rules to actions in rem include such analogous statutory condemnation proceedings.
2. (A)2 The Federal Rules of Civil Procedure also apply to the foregoing proceedings except to the extent that they are inconsistent with these Supplemental Rules.

(As added Feb. 28, 1966, eff. July 1, 1966; amended Apr. 12, 2006, eff.

Dec. 1, 2006.)

#### Rule B. In Personam Actions: Attachment and Garnishment

1. B1 WHEN AVAILABLE; COMPLAINT, AFFIDAVIT, JUDICIAL AUTHOR-

IZATION, AND PROCESS. In an in personam action:

* 1. B1a If a defendant is not found within the district when a verified complaint praying for attachment and the affidavit required by Rule B(1)(b) are filed, a verified complaint may contain a prayer for process to attach the defendant’s tangible or intangible personal property—up to the amount sued for— in the hands of garnishees named in the process.
  2. B1b The plaintiff or the plaintiff’s attorney must sign and file with the complaint an affidavit stating that, to the affiant’s knowledge, or on information and belief, the defendant cannot be found within the district. The court must review the complaint and affidavit and, if the conditions of this Rule B appear to exist, enter an order so stating and authorizing process of attachment and garnishment. The clerk may issue supplemental process enforcing the court’s order upon application without further court order.
  3. B1c If the plaintiff or the plaintiff’s attorney certifies that exigent circumstances make court review impracticable, the clerk must issue the summons and process of attachment and garnishment. The plaintiff has the burden in any post-attachment hearing under Rule E(4)(f) to show that exigent circumstances existed.

1 Title amended April 12, 2006, effective December 1, 2006.

105

FEDERAL RULES OF CIVIL PROCEDURE

#### Rule C

(d)(i) If the property is a vessel or tangible property on board a vessel, the summons, process, and any supplemental process must be delivered to the marshal for service.

(ii) If the property is other tangible or intangible property,

the summons, process, and any supplemental process must be delivered to a person or organization authorized to serve it, who may be (A) a marshal; (B) someone under contract with the United States; (C) someone specially appointed by the court for that purpose; or, (D) in an action brought by the United States, any officer or employee of the United States.

(e) The plaintiff may invoke state-law remedies under Rule

64 for seizure of person or property for the purpose of securing satisfaction of the judgment.

1. B2 NOTICE TO DEFENDANT. No default judgment may be entered

except upon proof—which may be by affidavit—that:

* 1. B2a the complaint, summons, and process of attachment or garnishment have been served on the defendant in a manner authorized by Rule 4;
  2. B2b the plaintiff or the garnishee has mailed to the defendant

the complaint, summons, and process of attachment or garnishment, using any form of mail requiring a return receipt; or

* 1. B2c the plaintiff or the garnishee has tried diligently to give

notice of the action to the defendant but could not do so.

1. B3 ANSWER.
   1. B3a *By Garnishee.* The garnishee shall serve an answer, together with answers to any interrogatories served with the complaint, within 21 days after service of process upon the garnishee. Interrogatories to the garnishee may be served with the complaint without leave of court. If the garnishee refuses or neglects to answer on oath as to the debts, credits, or effects of the defendant in the garnishee’s hands, or any interrogatories concerning such debts, credits, and effects that may be propounded by the plaintiff, the court may award compulsory process against the garnishee. If the garnishee admits any debts, credits, or effects, they shall be held in the garnishee’s hands or paid into the registry of the court, and shall be held in either case subject to the further order of the court.
   2. B2b *By Defendant*. The defendant shall serve an answer within

30 days after process has been executed, whether by attachment of property or service on the garnishee.

(As added Feb. 28, 1966, eff. July 1, 1966; amended Apr. 29, 1985, eff.

Aug. 1, 1985; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 17, 2000, eff. Dec.

1, 2000; Apr. 25, 2005, eff. Dec. 1, 2005; Mar. 26, 2009, eff. Dec. 1, 2009.)

#### Rule C. In Rem Actions: Special Provisions

1. C1 WHEN AVAILABLE. An action in rem may be brought:
   1. C1a To enforce any maritime lien;
   2. C1b Whenever a statute of the United States provides for a maritime action in rem or a proceeding analogous thereto.

Except as otherwise provided by law a party who may proceed

in rem may also, or in the alternative, proceed in personam against any person who may be liable.

Statutory provisions exempting vessels or other property owned

or possessed by or operated by or for the United States from arrest

**Rule C** FEDERAL RULES OF CIVIL PROCEDURE 106

or seizure are not affected by this rule. When a statute so provides, an action against the United States or an instrumentality thereof may proceed on in rem principles.

1. C2 COMPLAINT. In an action in rem the complaint must:
   1. C2a be verified;
   2. C2b describe with reasonable particularity the property that is the subject of the action; and
   3. C2c state that the property is within the district or will be

within the district while the action is pending.

1. C3 JUDICIAL AUTHORIZATION AND PROCESS.
   1. C3a *Arrest Warrant.*
      1. C3ai The court must review the complaint and any supporting papers. If the conditions for an in rem action appear to exist, the court must issue an order directing the clerk to issue a warrant for the arrest of the vessel or other property that is the subject of the action.
      2. C3aii If the plaintiff or the plaintiff’s attorney certifies

that exigent circumstances make court review impracticable, the clerk must promptly issue a summons and a warrant for the arrest of the vessel or other property that is the subject of the action. The plaintiff has the burden in any post-arrest hearing under Rule E(4)(f) to show that exigent circumstances existed.

* 1. C3b *Service.*
     1. C3bi If the property that is the subject of the action is a vessel or tangible property on board a vessel, the warrant and any supplemental process must be delivered to the marshal for service.
     2. C3bii If the property that is the subject of the action is

other property, tangible or intangible, the warrant and any supplemental process must be delivered to a person or organization authorized to enforce it, who may be: (A) a marshal; (B) someone under contract with the United States; (C) someone specially appointed by the court for that purpose; or, (D) in an action brought by the United States, any officer or employee of the United States.

* 1. *C3c Deposit in Court*. If the property that is the subject of the

action consists in whole or in part of freight, the proceeds of property sold, or other intangible property, the clerk must issue—in addition to the warrant—a summons directing any person controlling the property to show cause why it should not be deposited in court to abide the judgment.

* 1. C3d *Supplemental Process*. The clerk may upon application

issue supplemental process to enforce the court’s order without further court order.

1. C4 NOTICE. No notice other than execution of process is required

when the property that is the subject of the action has been released under Rule E(5). If the property is not released within 14 days after execution, the plaintiff must promptly—or within the time that the court allows—give public notice of the action and arrest in a newspaper designated by court order and having general circulation in the district, but publication may be terminated if the property is released before publication is completed. The notice must specify the time under Rule C(6) to file a statement of interest in or right against the seized property and to answer.

### 107

FEDERAL RULES OF CIVIL PROCEDURE

#### Rule D

This rule does not affect the notice requirements in an action to foreclose a preferred ship mortgage under 46 U.S.C. §§ 31301 et seq., as amended.

1. C5 ANCILLARY PROCESS. In any action in rem in which process

has been served as provided by this rule, if any part of the property that is the subject of the action has not been brought within the control of the court because it has been removed or sold, or because it is intangible property in the hands of a person who has not been served with process, the court may, on motion, order any person having possession or control of such property or its proceeds to show cause why it should not be delivered into the custody of the marshal or other person or organization having a warrant for the arrest of the property, or paid into court to abide the judgment; and, after hearing, the court may enter such judgment as law and justice may require.

1. C6 RESPONSIVE PLEADING; INTERROGATORIES.
   1. C6a *Statement of Interest; Answer.* In an action in rem:
      1. C6ai a person who asserts a right of possession or any ownership interest in the property that is the subject of the action must file a verified statement of right or interest:
         1. C6aiA within 14 days after the execution of process, or
         2. C6aiB within the time that the court allows;
      2. C6aii the statement of right or interest must describe the interest in the property that supports the person’s demand for its restitution or right to defend the action;
      3. C6aiii an agent, bailee, or attorney must state the author-

ity to file a statement of right or interest on behalf of another; and

* + 1. C6aiv a person who asserts a right of possession or any

ownership interest must serve an answer within 21 days after filing the statement of interest or right.

* 1. C6b *Interrogatories*. Interrogatories may be served with the

complaint in an in rem action without leave of court. Answers to the interrogatories must be served with the answer to the complaint.

(As added Feb. 28, 1966, eff. July 1, 1966; amended Apr. 29, 1985, eff.

Aug. 1, 1985; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec.

1, 1991; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 29, 2002, eff. Dec. 1, 2002;

Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 12, 2006, eff. Dec. 1, 2006; Apr.

23, 2008, eff. Dec. 1, 2008; Mar. 26, 2009, eff. Dec. 1, 2009.)

#### Rule D. Possessory, Petitory, and Partition Actions

In all actions for possession, partition, and to try title maintainable according to the course of the admiralty practice with respect to a vessel, in all actions so maintainable with respect to the possession of cargo or other maritime property, and in all actions by one or more part owners against the others to obtain security for the return of the vessel from any voyage undertaken without their consent, or by one or more part owners against the others to obtain possession of the vessel for any voyage on giving security for its safe return, the process shall be by a warrant of arrest of the vessel, cargo, or other property, and by notice in the manner provided by Rule B(2) to the adverse party or parties.

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

**Rule E** FEDERAL RULES OF CIVIL PROCEDURE

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

108

1. E1 APPLICABILITY. Except as otherwise provided, this rule applies to actions in personam with process of maritime attachment and garnishment, actions in rem, and petitory, possessory, and partition actions, supplementing Rules B, C, and D.
2. E2 COMPLAINT; SECURITY.
   1. E2a *Complaint*. In actions to which this rule is applicable the complaint shall state the circumstances from which the claim arises with such particularity that the defendant or claimant will be able, without moving for a more definite statement, to commence an investigation of the facts and to frame a responsive pleading.
   2. E2b *Security for Costs*. Subject to the provisions of Rule 54(d) and of relevant statutes, the court may, on the filing of the complaint or on the appearance of any defendant, claimant, or any other party, or at any later time, require the plaintiff, defendant, claimant, or other party to give security, or additional security, in such sum as the court shall direct to pay all costs and expenses that shall be awarded against the party by any interlocutory order or by the final judgment, or on appeal by any appellate court.
3. E3 PROCESS.
   1. E3a In admiralty and maritime proceedings process in rem or of maritime attachment and garnishment may be served only within the district.
   2. E3b *Issuance and Delivery*. Issuance and delivery of process in rem, or of maritime attachment and garnishment, shall be held in abeyance if the plaintiff so requests.
4. E4 EXECUTION OF PROCESS; MARSHAL’S RETURN; CUSTODY OF

PROPERTY; PROCEDURES FOR RELEASE.

* 1. E4a *In General*. Upon issuance and delivery of the process, or, in the case of summons with process of attachment and garnishment, when it appears that the defendant cannot be found within the district, the marshal or other person or organization having a warrant shall forthwith execute the process in accordance with this subdivision (4), making due and prompt return.
  2. E4b *Tangible Property*. If tangible property is to be attached or arrested, the marshal or other person or organization having the warrant shall take it into the marshal’s possession for safe custody. If the character or situation of the property is such that the taking of actual possession is impracticable, the marshal or other person executing the process shall affix a copy thereof to the property in a conspicuous place and leave a copy of the complaint and process with the person having possession or the person’s agent. In furtherance of the marshal’s custody of any vessel the marshal is authorized to make a written request to the collector of customs not to grant clearance to such vessel until notified by the marshal or deputy marshal or by the clerk that the vessel has been released in accordance with these rules.
  3. E4c *Intangible Property*. If intangible property is to be at-

tached or arrested the marshal or other person or organization having the warrant shall execute the process by leaving with

### 109

FEDERAL RULES OF CIVIL PROCEDURE

#### Rule E

the garnishee or other obligor a copy of the complaint and process requiring the garnishee or other obligor to answer as provided in Rules B(3)(a) and C(6); or the marshal may accept for payment into the registry of the court the amount owed to the extent of the amount claimed by the plaintiff with interest and costs, in which event the garnishee or other obligor shall not be required to answer unless alias process shall be served.

1. E4d *Directions With Respect to Property in Custody*. The mar-

shal or other person or organization having the warrant may at any time apply to the court for directions with respect to property that has been attached or arrested, and shall give notice of such application to any or all of the parties as the court may direct.

1. E4e *Expenses of Seizing and Keeping Property; Deposit*. These

rules do not alter the provisions of Title 28, U.S.C., § 1921, as amended, relative to the expenses of seizing and keeping property attached or arrested and to the requirement of deposits to cover such expenses.

1. E4f *Procedure for Release From Arrest or Attachment*. Whenever

property is arrested or attached, any person claiming an interest in it shall be entitled to a prompt hearing at which the plaintiff shall be required to show why the arrest or attachment should not be vacated or other relief granted consistent with these rules. This subdivision shall have no application to suits for seamen’s wages when process is issued upon a certification of sufficient cause filed pursuant to Title 46, U.S.C.

§§ 603 and 604 2 or to actions by the United States for forfeitures for violation of any statute of the United States.

1. E5 RELEASE OF PROPERTY.
   1. *E5a Special Bond*. Whenever process of maritime attachment and garnishment or process in rem is issued the execution of such process shall be stayed, or the property released, on the giving of security, to be approved by the court or clerk, or by stipulation of the parties, conditioned to answer the judgment of the court or of any appellate court. The parties may stipulate the amount and nature of such security. In the event of the inability or refusal of the parties so to stipulate the court shall fix the principal sum of the bond or stipulation at an amount sufficient to cover the amount of the plaintiff’s claim fairly stated with accrued interest and costs; but the principal sum shall in no event exceed (i) twice the amount of the plaintiff’s claim or (ii) the value of the property on due appraisement, whichever is smaller. The bond or stipulation shall be conditioned for the payment of the principal sum and interest thereon at 6 per cent per annum.
   2. *E5b General Bond*. The owner of any vessel may file a general

bond or stipulation, with sufficient surety, to be approved by the court, conditioned to answer the judgment of such court in all or any actions that may be brought thereafter in such court in which the vessel is attached or arrested. Thereupon the execution of all such process against such vessel shall be

2 Repealed by Pub. L. 98–89, § 4(b), Aug. 26, 1983, 97 Stat. 600, section 1 of which enacted Title 46, Shipping.

**Rule E** FEDERAL RULES OF CIVIL PROCEDURE 110

stayed so long as the amount secured by such bond or stipulation is at least double the aggregate amount claimed by plaintiffs in all actions begun and pending in which such vessel has been attached or arrested. Judgments and remedies may be had on such bond or stipulation as if a special bond or stipulation had been filed in each of such actions. The district court may make necessary orders to carry this rule into effect, particularly as to the giving of proper notice of any action against or attachment of a vessel for which a general bond has been filed. Such bond or stipulation shall be indorsed by the clerk with a minute of the actions wherein process is so stayed. Further security may be required by the court at any time.

If a special bond or stipulation is given in a particular case, the liability on the general bond or stipulation shall cease as to that case.

* 1. *E5c Release by Consent or Stipulation; Order of Court or Clerk; Costs*. Any vessel, cargo, or other property in the custody of the marshal or other person or organization having the warrant may be released forthwith upon the marshal’s acceptance and approval of a stipulation, bond, or other security, signed by the party on whose behalf the property is detained or the party’s attorney and expressly authorizing such release, if all costs and charges of the court and its officers shall have first been paid. Otherwise no property in the custody of the marshal, other person or organization having the warrant, or other officer of the court shall be released without an order of the court; but such order may be entered as of course by the clerk, upon the giving of approved security as provided by law and these rules, or upon the dismissal or discontinuance of the action; but the marshal or other person or organization having the warrant shall not deliver any property so released until the costs and charges of the officers of the court shall first have been paid.
  2. *E5d Possessory, Petitory, and Partition Actions*. The foregoing provisions of this subdivision (5) do not apply to petitory, possessory, and partition actions. In such cases the property arrested shall be released only by order of the court, on such terms and conditions and on the giving of such security as the court may require.

1. E6 REDUCTION OR IMPAIRMENT OF SECURITY. Whenever security is taken the court may, on motion and hearing, for good cause shown, reduce the amount of security given; and if the surety shall be or become insufficient, new or additional sureties may be required on motion and hearing.
2. E7 SECURITY ON COUNTERCLAIM.
   1. E7a When a person who has given security for damages in the original action asserts a counterclaim that arises from the transaction or occurrence that is the subject of the original action, a plaintiff for whose benefit the security has been given must give security for damages demanded in the counterclaim unless the court, for cause shown, directs otherwise. Proceedings on the original claim must be stayed until this security is given, unless the court directs otherwise.

### 111

FEDERAL RULES OF CIVIL PROCEDURE

#### Rule F

(b) E7b The plaintiff is required to give security under Rule E(7)(a) when the United States or its corporate instrumentality counterclaims and would have been required to give security to respond in damages if a private party but is relieved by law from giving security.

1. E8 RESTRICTED APPEARANCE. An appearance to defend against an admiralty and maritime claim with respect to which there has issued process in rem, or process of attachment and garnishment, may be expressly restricted to the defense of such claim, and in that event is not an appearance for the purposes of any other claim with respect to which such process is not available or has not been served.
2. E9 DISPOSITION OF PROPERTY; SALES.
   1. *E9a Interlocutory Sales; Delivery.*
      1. *E9a*i On application of a party, the marshal, or other person having custody of the property, the court may order all or part of the property sold—with the sales proceeds, or as much of them as will satisfy the judgment, paid into court to await further orders of the court—if:
         1. *E9a*iA the attached or arrested property is perishable, or liable to deterioration, decay, or injury by being detained in custody pending the action;
         2. *E9a*iB the expense of keeping the property is excessive or disproportionate; or
         3. *E9a*iC there is an unreasonable delay in securing release of the property.
      2. *E9a*ii In the circumstances described in Rule E(9)(a)(i), the court, on motion by a defendant or a person filing a statement of interest or right under Rule C(6), may order that the property, rather than being sold, be delivered to the movant upon giving security under these rules.
   2. *E9b Sales, Proceeds*. All sales of property shall be made by the marshal or a deputy marshal, or by other person or organization having the warrant, or by any other person assigned by the court where the marshal or other person or organization having the warrant is a party in interest; and the proceeds of sale shall be forthwith paid into the registry of the court to be disposed of according to law.
3. E10 PRESERVATION OF PROPERTY. When the owner or another person remains in possession of property attached or arrested under the provisions of Rule E(4)(b) that permit execution of process without taking actual possession, the court, on a party’s motion or on its own, may enter any order necessary to preserve the property and to prevent its removal.

(As added Feb. 28, 1966, eff. July 1, 1966; amended Apr. 29, 1985, eff.

Aug. 1, 1985; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec.

1, 1991; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 12, 2006, eff. Dec. 1, 2006.)

#### Rule F. Limitation of Liability

1. F1 TIME FOR FILING COMPLAINT; SECURITY. Not later than six months after receipt of a claim in writing, any vessel owner may file a complaint in the appropriate district court, as provided in subdivision (9) of this rule, for limitation of liability pursuant to statute. The owner (a) shall deposit with the court, for the benefit

**Rule F** FEDERAL RULES OF CIVIL PROCEDURE 112

of claimants, a sum equal to the amount or value of the owner’s interest in the vessel and pending freight, or approved security therefor, and in addition such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of the statutes as amended; or (b) at the owner’s option shall transfer to a trustee to be appointed by the court, for the benefit of claimants, the owner’s interest in the vessel and pending freight, together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of the statutes as amended. The plaintiff shall also give security for costs and, if the plaintiff elects to give security, for interest at the rate of 6 percent per annum from the date of the security.

1. F2 COMPLAINT. The complaint shall set forth the facts on the

basis of which the right to limit liability is asserted and all facts necessary to enable the court to determine the amount to which the owner’s liability shall be limited. The complaint may demand exoneration from as well as limitation of liability. It shall state the voyage if any, on which the demands sought to be limited arose, with the date and place of its termination; the amount of all demands including all unsatisfied liens or claims of lien, in contract or in tort or otherwise, arising on that voyage, so far as known to the plaintiff, and what actions and proceedings, if any, are pending thereon; whether the vessel was damaged, lost, or abandoned, and, if so, when and where; the value of the vessel at the close of the voyage or, in case of wreck, the value of her wreckage, strippings, or proceeds, if any, and where and in whose possession they are; and the amount of any pending freight recovered or recoverable. If the plaintiff elects to transfer the plaintiff’s interest in the vessel to a trustee, the complaint must further show any prior paramount liens thereon, and what voyages or trips, if any, she has made since the voyage or trip on which the claims sought to be limited arose, and any existing liens arising upon any such subsequent voyage or trip, with the amounts and causes thereof, and the names and addresses of the lienors, so far as known; and whether the vessel sustained any injury upon or by reason of such subsequent voyage or trip.

1. F3 CLAIMS AGAINST OWNER; INJUNCTION. Upon compliance by the

owner with the requirements of subdivision (1) of this rule all claims and proceedings against the owner or the owner’s property with respect to the matter in question shall cease. On application of the plaintiff the court shall enjoin the further prosecution of any action or proceeding against the plaintiff or the plaintiff’s property with respect to any claim subject to limitation in the action.

1. F4 NOTICE TO CLAIMANTS. Upon the owner’s compliance with sub-

division (1) of this rule the court shall issue a notice to all persons asserting claims with respect to which the complaint seeks limitation, admonishing them to file their respective claims with the clerk of the court and to serve on the attorneys for the plaintiff a copy thereof on or before a date to be named in the notice. The date so fixed shall not be less than 30 days after issuance of the notice. For cause shown, the court may enlarge the time within which claims may be filed. The notice shall be published in such newspaper or newspapers as the court may direct once a week for

### 113

FEDERAL RULES OF CIVIL PROCEDURE

#### Rule F

four successive weeks prior to the date fixed for the filing of claims. The plaintiff not later than the day of second publication shall also mail a copy of the notice to every person known to have made any claim against the vessel or the plaintiff arising out of the voyage or trip on which the claims sought to be limited arose. In cases involving death a copy of such notice shall be mailed to the decedent at the decedent’s last known address, and also to any person who shall be known to have made any claim on account of such death.

(5) F5 CLAIMS AND ANSWER. Claims shall be filed and served on or

before the date specified in the notice provided for in subdivision

1. of this rule. Each claim shall specify the facts upon which the claimant relies in support of the claim, the items thereof, and the dates on which the same accrued. If a claimant desires to contest either the right to exoneration from or the right to limitation of liability the claimant shall file and serve an answer to the complaint unless the claim has included an answer.
   1. F6 INFORMATION TO BE GIVEN CLAIMANTS. Within 30 days after

the date specified in the notice for filing claims, or within such time as the court thereafter may allow, the plaintiff shall mail to the attorney for each claimant (or if the claimant has no attorney to the claimant) a list setting forth (a) the name of each claimant,

(b) the name and address of the claimant’s attorney (if the claimant is known to have one), (c) the nature of the claim, i.e., whether property loss, property damage, death, personal injury etc., and

(d) the amount thereof.

* 1. F7 INSUFFICIENCY OF FUND OR SECURITY. Any claimant may by motion demand that the funds deposited in court or the security given by the plaintiff be increased on the ground that they are less than the value of the plaintiff’s interest in the vessel and pending freight. Thereupon the court shall cause due appraisement to be made of the value of the plaintiff’s interest in the vessel and pending freight; and if the court finds that the deposit or security is either insufficient or excessive it shall order its increase or reduction. In like manner any claimant may demand that the deposit or security be increased on the ground that it is insufficient to carry out the provisions of the statutes relating to claims in respect of loss of life or bodily injury; and, after notice and hearing, the court may similarly order that the deposit or security be increased or reduced.
  2. F8 OBJECTIONS TO CLAIMS: DISTRIBUTION OF FUND. Any interested

party may question or controvert any claim without filing an objection thereto. Upon determination of liability the fund deposited or secured, or the proceeds of the vessel and pending freight, shall be divided pro rata, subject to all relevant provisions of law, among the several claimants in proportion to the amounts of their respective claims, duly proved, saving, however, to all parties any priority to which they may be legally entitled.

* 1. F9 VENUE; TRANSFER. The complaint shall be filed in any dis-

trict in which the vessel has been attached or arrested to answer for any claim with respect to which the plaintiff seeks to limit liability; or, if the vessel has not been attached or arrested, then in any district in which the owner has been sued with respect to any such claim. When the vessel has not been attached or arrested to answer the matters aforesaid, and suit has not been commenced

**Rule G** FEDERAL RULES OF CIVIL PROCEDURE 114

against the owner, the proceedings may be had in the district in which the vessel may be, but if the vessel is not within any district and no suit has been commenced in any district, then the complaint may be filed in any district. For the convenience of parties and witnesses, in the interest of justice, the court may transfer the action to any district; if venue is wrongly laid the court shall dismiss or, if it be in the interest of justice, transfer the action to any district in which it could have been brought. If the vessel shall have been sold, the proceeds shall represent the vessel for the purposes of these rules.

(As added Feb. 28, 1966, eff. July 1, 1966; amended Mar. 2, 1987, eff.

Aug. 1, 1987.)

#### Rule G. Forfeiture Actions In Rem

1. G1 SCOPE. This rule governs a forfeiture action in rem arising from a federal statute. To the extent that this rule does not address an issue, Supplemental Rules C and E and the Federal Rules of Civil Procedure also apply.
2. G2 COMPLAINT. The complaint must:
   1. G2a be verified;
   2. G2b state the grounds for subject-matter jurisdiction, in rem jurisdiction over the defendant property, and venue;
   3. G2c describe the property with reasonable particularity;
   4. G2d if the property is tangible, state its location when any seizure occurred and—if different—its location when the action is filed;
   5. G2e identify the statute under which the forfeiture action is brought; and
   6. G2f state sufficiently detailed facts to support a reasonable belief that the government will be able to meet its burden of proof at trial.
3. G3 JUDICIAL AUTHORIZATION AND PROCESS.
   1. *G3a Real Property*. If the defendant is real property, the government must proceed under 18 U.S.C. § 985.
   2. *G3b Other Property; Arrest Warrant*. If the defendant is not real property:
      1. *G3b*i the clerk must issue a warrant to arrest the property if it is in the government’s possession, custody, or control;
      2. *G3b*ii the court—on finding probable cause—must issue a warrant to arrest the property if it is not in the government’s possession, custody, or control and is not subject to a judicial restraining order; and
      3. *G3b*iii a warrant is not necessary if the property is subject to a judicial restraining order.
   3. *G3c Execution of Process.*
      1. *G3ci* The warrant and any supplemental process must be delivered to a person or organization authorized to execute it, who may be: (A) a marshal or any other United States officer or employee; (B) someone under contact with the United States; or (C) someone specially appointed by the court for that purpose.
      2. *G3cii* The authorized person or organization must execute the warrant and any supplemental process on property in the United States as soon as practicable unless:

### 115

FEDERAL RULES OF CIVIL PROCEDURE

#### Rule G

1. *G3cii*A the property is in the government’s possession, custody, or control; or
2. *G3cii*B the court orders a different time when the complaint is under seal, the action is stayed before the warrant and supplemental process are executed, or the court finds other good cause.
   * 1. *G3cii*i The warrant and any supplemental process may be executed within the district or, when authorized by statute, outside the district.
     2. *G3civ* If executing a warrant on property outside the United States is required, the warrant may be transmitted to an appropriate authority for serving process where the property is located.
3. G4 NOTICE.
   1. G4a *Notice by Publication.*
      1. G4ai When Publication Is Required. A judgment of forfeiture may be entered only if the government has published notice of the action within a reasonable time after filing the complaint or at a time the court orders. But notice need not be published if:
         1. G4aiA the defendant property is worth less than $1,000 and direct notice is sent under Rule G(4)(b) to every person the government can reasonably identify as a potential claimant; or
         2. G4aiiB the court finds that the cost of publication exceeds the property’s value and that other means of notice would satisfy due process.
      2. G4aii Content of the Notice. Unless the court orders otherwise, the notice must:
         1. G4aiiA describe the property with reasonable particularity;
         2. G4aiiB state the times under Rule G(5) to file a claim and to answer; and
         3. G4aiiC name the government attorney to be served with the claim and answer.
      3. G4aiii Frequency of Publication. Published notice must appear:
         1. G4aiiiA once a week for three consecutive weeks; or
         2. G4aiiiB only once if, before the action was filed, notice of nonjudicial forfeiture of the same property was published on an official internet government forfeiture site for at least 30 consecutive days, or in a newspaper of general circulation for three consecutive weeks in a district where publication is authorized under Rule G(4)(a)(iv).
      4. G4aiv Means of Publication. The government should select from the following options a means of publication reasonably calculated to notify potential claimants of the action:
         1. G4aivA if the property is in the United States, publication in a newspaper generally circulated in the district where the action is filed, where the property was seized, or where property that was not seized is located;

**Rule G** FEDERAL RULES OF CIVIL PROCEDURE 116

* + - 1. G4aivB if the property is outside the United States, publication in a newspaper generally circulated in a district where the action is filed, in a newspaper generally circulated in the country where the property is located, or in legal notices published and generally circulated in the country where the property is located; or
      2. G4aivC instead of (A) or (B), posting a notice on an offi-

cial internet government forfeiture site for at least 30 consecutive days.

* 1. G4b *Notice to Known Potential Claimants.*
     1. G4bi Direct Notice Required. The government must send notice of the action and a copy of the complaint to any person who reasonably appears to be a potential claimant on the facts known to the government before the end of the time for filing a claim under Rule G(5)(a)(ii)(B).
     2. G4bii Content of the Notice. The notice must state:
        1. G4biiA the date when the notice is sent;
        2. G4biiB a deadline for filing a claim, at least 35 days after the notice is sent;
        3. G4biiC that an answer or a motion under Rule 12 must

be filed no later than 21 days after filing the claim; and

* + - 1. G4biiD the name of the government attorney to be served with the claim and answer.
    1. G4biii Sending Notice.
       1. G4biiiA The notice must be sent by means reasonably calculated to reach the potential claimant.
       2. G4biiiB Notice may be sent to the potential claimant or

to the attorney representing the potential claimant with respect to the seizure of the property or in a related investigation, administrative forfeiture proceeding, or criminal case.

* + - 1. G4biiiC Notice sent to a potential claimant who is incar-

cerated must be sent to the place of incarceration.

* + - 1. G4biiiD Notice to a person arrested in connection with an offense giving rise to the forfeiture who is not incarcerated when notice is sent may be sent to the address that person last gave to the agency that arrested or released the person.
      2. G4biiiE Notice to a person from whom the property was

seized who is not incarcerated when notice is sent may be sent to the last address that person gave to the agency that seized the property.

* + 1. G4biv When Notice Is Sent. Notice by the following means is sent on the date when it is placed in the mail, delivered to a commercial carrier, or sent by electronic mail.
    2. G4bv Actual Notice. A potential claimant who had actual notice of a forfeiture action may not oppose or seek relief from forfeiture because of the government’s failure to send the required notice.

1. G5 RESPONSIVE PLEADINGS.
   1. *G5a Filing a Claim.*
      1. *G5a*i A person who asserts an interest in the defendant property may contest the forfeiture by filing a claim in the court where the action is pending. The claim must:

### 117

FEDERAL RULES OF CIVIL PROCEDURE

1. *G5a*iA identify the specific property claimed;

#### Rule G

1. *G5a*iB identify the claimant and state the claimant’s interest in the property;
2. *G5a*iC be signed by the claimant under penalty of perjury; and
3. *G5a*iD be served on the government attorney designated under Rule G(4)(a)(ii)(C) or (b)(ii)(D).
   * 1. *G5a*ii Unless the court for good cause sets a different time, the claim must be filed:
        1. *G5a*iiA by the time stated in a direct notice sent under Rule G(4)(b);
        2. *G5a*iiB if notice was published but direct notice was not sent to the claimant or the claimant’s attorney, no later than 30 days after final publication of newspaper notice or legal notice under Rule G(4)(a) or no later than 60 days after the first day of publication on an official internet government forfeiture site; or
        3. *G5a*iiC if notice was not published and direct notice was not sent to the claimant or the claimant’s attorney:
           1. *G5a*iiC1 if the property was in the government’s possession, custody, or control when the complaint was filed, no later than 60 days after the filing, not counting any time when the complaint was under seal or when the action was stayed before execution of a warrant issued under Rule G(3)(b); or
           2. *G5a*iiC2 if the property was not in the government’s possession, custody, or control when the complaint was filed, no later than 60 days after the government complied with 18 U.S.C. § 985(c) as to real property, or 60 days after process was executed on the property under Rule G(3).
     2. *G5a*iii A claim filed by a person asserting an interest as a bailee must identify the bailor, and if filed on the bailor’s behalf must state the authority to do so.
   1. *G5b Answer.* A claimant must serve and file an answer to the complaint or a motion under Rule 12 within 21 days after filing the claim. A claimant waives an objection to in rem jurisdiction or to venue if the objection is not made by motion or stated in the answer.
4. G6 SPECIAL INTERROGATORIES.
   1. *G6a Time and Scope.* The government may serve special interrogatories limited to the claimant’s identity and relationship to the defendant property without the court’s leave at any time after the claim is filed and before discovery is closed. But if the claimant serves a motion to dismiss the action, the government must serve the interrogatories within 21 days after the motion is served.
   2. *G6b Answers or Objections.* Answers or objections to these interrogatories must be served within 21 days after the interrogatories are served.
   3. *G6c Government’s Response Deferred.* The government need not respond to a claimant’s motion to dismiss the action under Rule G(8)(b) until 21 days after the claimant has answered these interrogatories.

**Rule G** FEDERAL RULES OF CIVIL PROCEDURE 118

1. G7 PRESERVING, PREVENTING CRIMINAL USE, AND DISPOSING OF

PROPERTY; SALES.

* 1. *G7a Preserving and Preventing Criminal Use of Property*. When the government does not have actual possession of the defendant property the court, on motion or on its own, may enter any order necessary to preserve the property, to prevent its removal or encumbrance, or to prevent its use in a criminal offense.
  2. *G7b Interlocutory Sale or Delivery.*
     1. *G7b*i Order to Sell. On motion by a party or a person having custody of the property, the court may order all or part of the property sold if:
        1. *G7b*iA the property is perishable or at risk of deteriora-

tion, decay, or injury by being detained in custody pending the action;

* + - 1. *G7b*iB the expense of keeping the property is excessive

or is disproportionate to its fair market value;

* + - 1. *G7b*iC the property is subject to a mortgage or to taxes on which the owner is in default; or
      2. *G7b*iD the court finds other good cause.
    1. *G7b*ii Who Makes the Sale. A sale must be made by a United States agency that has authority to sell the property, by the agency’s contractor, or by any person the court designates.
    2. *G7b*iii Sale Procedures. The sale is governed by 28 U.S.C.

§§ 2001, 2002, and 2004, unless all parties, with the court’s approval, agree to the sale, aspects of the sale, or different procedures.

* + 1. *G7b*iv Sale Proceeds. Sale proceeds are a substitute res

subject to forfeiture in place of the property that was sold. The proceeds must be held in an interest-bearing account maintained by the United States pending the conclusion of the forfeiture action.

* + 1. *G7b*v Delivery on a Claimant’s Motion. The court may

order that the property be delivered to the claimant pending the conclusion of the action if the claimant shows circumstances that would permit sale under Rule G(7)(b)(i) and gives security under these rules.

* 1. *G7c Disposing of Forfeited Property*. Upon entry of a forfeiture

judgment, the property or proceeds from selling the property must be disposed of as provided by law.

1. G8 MOTIONS.
   1. *G8a Motion To Suppress Use of the Property as Evidence*. If the defendant property was seized, a party with standing to contest the lawfulness of the seizure may move to suppress use of the property as evidence. Suppression does not affect forfeiture of the property based on independently derived evidence.
   2. *G8b Motion To Dismiss the Action.*
      1. G8bi A claimant who establishes standing to contest forfeiture may move to dismiss the action under Rule 12(b).
      2. G8bii In an action governed by 18 U.S.C. § 983(a)(3)(D) the

complaint may not be dismissed on the ground that the government did not have adequate evidence at the time the complaint was filed to establish the forfeitability of the property. The sufficiency of the complaint is governed by Rule G(2).

### 119

FEDERAL RULES OF CIVIL PROCEDURE

* 1. *8c Motion To Strike a Claim or Answer.*

#### Rule G

* + 1. G8ci At any time before trial, the government may move to strike a claim or answer:
       1. G8ciA for failing to comply with Rule G(5) or (6), or
       2. G8ciB because the claimant lacks standing.
    2. G8cii The motion:
       1. G8ciiA must be decided before any motion by the claimant to dismiss the action; and
       2. G8ciiB may be presented as a motion for judgment on the pleadings or as a motion to determine after a hearing or by summary judgment whether the claimant can carry the burden of establishing standing by a preponderance of the evidence.
  1. *G8d Petition To Release Property.*
     1. G8di If a United States agency or an agency’s contractor holds property for judicial or nonjudicial forfeiture under a statute governed by 18 U.S.C. § 983(f), a person who has filed a claim to the property may petition for its release under § 983(f).
     2. G8dii If a petition for release is filed before a judicial forfeiture action is filed against the property, the petition may be filed either in the district where the property was seized or in the district where a warrant to seize the property issued. If a judicial forfeiture action against the property is later filed in another district—or if the government shows that the action will be filed in another district—the petition may be transferred to that district under 28 U.S.C.

§ 1404.

* 1. *G8e Excessive Fines*. A claimant may seek to mitigate a forfeiture under the Excessive Fines Clause of the Eighth Amendment by motion for summary judgment or by motion made after entry of a forfeiture judgment if:
     1. G8ei the claimant has pleaded the defense under Rule 8; and
     2. G8eii the parties have had the opportunity to conduct civil discovery on the defense.

1. G9 TRIAL. Trial is to the court unless any party demands trial by jury under Rule 38.

(As added Apr. 12, 2006, eff. Dec. 1, 2006; amended Mar. 26, 2009, eff.

Dec. 1, 2009.)

3891041412bh8bc12c15acff26b26f26b1 2 1633342635364529372630b25647otc514958

# Æ