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

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To: **Honorable Anthony J. Scirica, Chair, Standing Committee on Rules of Practice and Procedure**

From: **David F. Levi, Chair, Advisory Committee on the Federal Rules of Civil Procedure**

Date: **May 21, 2003**

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

Introduction

The Civil Rules Advisory Committee met on May 1 and 2 at the Administrative Office of the United States Courts in Washington, D.C. Its Style Subcommittee B met there on April 30, while Style Subcommittee A met on May 2 following the conclusion of the Advisory Committee meeting. Subcommittees A and B also met in Scottsdale, Arizona, on January 25 and 26. Draft Minutes of the Advisory Committee meeting are attached.

Part I of this report describes recommendations to publish for comment in two parts. Part IA recommends four proposals for immediate publication along with the amendments to Admiralty Rules B and C approved for publication at the January meeting. Part IB recommends Style Rules 1-15 for publication at a later time.

Part II of this report is an informational summary of matters described more fully in the draft Minutes.

I ACTION ITEMS: NEW RULE 5.1 AND AMENDED RULES 6(e), 27(a), AND 45(a) FOR PUBLICATION; STYLE RULES 1-15 FOR DEFERRED PUBLICATION

Part IA recommends immediate publication for comment of a new Rule 5.1 and amended Rules 6(e), 27(a), and 45(a). Part IB recommends approval for later publication of Style Rules 1-15.

A. Rules For Immediate Publication

The Advisory Committee recommends publication for comment of new Civil Rule 5.1 and amendments to Rules 6(e), 27(a), and 45(a).

Rule 5.1

The project that led to development of proposed Rule 5.1 arose from a suggestion stimulated by the publication of Appellate Rule 44(b) for comment. Rule 44(b) expanded Rule 44 to address the procedure for notifying a court of appeals that a party questions the constitutionality of a state statute. Judge Barbara B. Crabb responded to publication of the proposed amendment by suggesting

that the Civil Rules should emulate Appellate Rule 44, implying that the provisions in present Civil Rule 24(c) are inadequate. The Department of Justice has taken up the proposal.

Appellate Rule 44 and present Civil Rule 24(c) implement the provisions of 28 U.S.C.A. § 2403:

> (a) In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, @and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. * * *
>
> (b) In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible, and for argument on the question of constitutionality. * * *

Appellate Rule 44, including a new subdivision (b) that took effect on December 1, 2002, provides:

> **(a) Constitutional Challenge to Federal Statute.** If a party questions the constitutionality of an Act of Congress in a proceeding to which the United States or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the Attorney General.
>
> **(b) Constitutional Challenge to State Statute.** If a party questions the constitutionality of a statute of a State in a proceeding in which that State or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the attorney general of the State.

Civil Rule 24(c), describing the procedure for intervention, includes these three sentences, the final two of which were added in 1991:

> **(c) Procedure.** * * * When the constitutionality of an Act of Congress affecting the public interest is drawn in question in any action in which the United States or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the United States as provided in Title 28, U.S.C., § 2403. When the constitutionality of any statute of a State affecting the public interest is drawn in question in any action in which that State or any agency, officer, or employee thereof is not a party, the court shall notify the attorney general of the State as provided in Title 28, U.S.C. § 2403. A party challenging the constitutionality of legislation should call the attention of the court to its consequential duty, but failure to do so is not a waiver of any constitutional right otherwise timely asserted.

It seems likely that these provisions were attached to Rule 24 because the purpose of notice is to support the right to intervene. This location, however, is not calculated to catch the attention of any but the most devoted students of procedure. Rule 24 is likely to be consulted by a party who knows of a lawsuit and wants to join it, but may not be consulted by a party who has joined an action

and may not remember the duty to call the court's attention to a constitutional question and § 2403. Relocation as a new Rule 5.1, sandwiched between rules that deal with service and notice, may make the rule more effective.

Apart from the question of location, the Department of Justice reports that too often it fails to receive notice that the constitutionality of an Act of Congress has been drawn in question in a district-court action. It believes that it is particularly important to have notice while the action is in the district court, because that is where the record is made, and to have notice as soon as the constitutional question is drawn. For this reason, it believes that just as Appellate Rule 44 was drafted in terms quite different from Civil Rule 24(c), a new Civil Rule 5.1 should do more than Appellate Rule 44 to assure notice to the Attorney General.

The relationship between proposed Rule 5.1 and Appellate Rule 44 is important. Cognate provisions and the Civil and Appellate Rules should differ only when the differences are justified by the need to respond to the distinctive needs of trial-court procedure and appellate procedure. The relationship between the rules and the statute they implement, § 2403, also is important. The description of proposed Rule 5.1 thus begins by describing the ways in which it departs from § 2403 and then carries on to describe the ways in which it departs from Appellate Rule 44.

Both the Rule 5.1 draft and Appellate Rule 44 depart from § 2403 in at least three ways.

First, each imposes an obligation a party, while § 2403 imposes an obligation only on the court.

Second, § 2403 applies only to a statute "affecting the public interest." Both draft Rule 5.1 and Appellate Rule 44 delete this restriction, requiring notice when a challenge addresses any Act of Congress or state statute. Rule 5.1(b) also requires certification, going beyond Appellate Rule 44. This expansion of the statutory certification requirement flows from the belief that the Attorney General should be the first to determine whether an act affects the public interest and to argue for intervention on that view. The court retains control at the stage of determining whether § 2403 establishes a right to intervene.

Third, § 2403 does not require notice to the Attorney General if a United States officer or employee is a party. Both Appellate Rule 44 and draft Rule 5.1 require notice when an officer or employee is a party, but is not sued in an official capacity. With respect to an Act of Congress, the United States Attorney General often will have notice under Civil Rule 4(i) of an action against a United States officer or employee in an individual capacity, but not always.

Draft Rule 5.1 departs from Appellate Rule 44 in six ways, one of them drawing from the provisions of Civil Rule 24(c).

First, Appellate Rule 44 addresses a party who "questions" the constitutionality of an Act of Congress or a state statute. Draft Rule 5.1, drawing directly from § 2403, applies to a party who "draws in question" the constitutionality of an Act of Congress or state statute. This direct incorporation of statutory language avoids any dispute whether an argument that a challenged interpretation should be rejected to avoid a constitutional question "questions" the constitutionality of the statute.

Second, draft Rule 5.1 provides greater detail than Rule 44 in addressing the notice that a party must file. The notice must state the question and identify the pleading, written motion, or other paper that raises the question.

Third, draft Rule 5.1 goes beyond the Rule 44 requirement that the notice be filed with the court. It also requires that the notice be served promptly on the Attorney General. Service would be accomplished in the manner provided by Civil Rule 4(i)(1)(B), which calls for certified or registered mail. The draft does not substitute this requirement for the court's § 2403 duty to certify the fact of the challenge to the Attorney General, but adds to it. The Attorney General thus may get notice twice, once from the party who raises the question and once from the court. This dual-notice requirement was drafted because the Department of Justice wishes to make quite sure that notice comes to its attention in timely fashion. The dual notice is less burdensome than might appear on first blush. The party must file a notice with the court; it is little additional burden to serve the notice by mail on the Attorney General. Similarly, the court must set a time for intervention by the Attorney General; it is little additional effort to include a certification. The major benefit of the dual notice may be that the party notice will be served early in the litigation, often well before any activity by the court concerning the action.

Fourth, adhering to the statute, draft Rule 5.1 provides that the court certifies the question to the Attorney General. Appellate Rule 44 transfers the certification duty to the clerk. (It may be that on appeal it is easier to substitute the clerk for the court because Rule 44, in common with draft Rule 5.1, dispenses with the need under to determine whether the challenged statute affects the public interest. The substitution may be complicated, however, by the need under Rule 44 to determine whether a United States officer or employee who is a party has been made a party in an official capacity.)

Fifth, draft Rule 5.1 includes a specific provision for setting a time to intervene. Appellate Rule 44 has no similar provision. This difference reflects the great variability of time to disposition in a trial-court as compared to the more predictable schedule on appeal.

Finally, draft Rule 5.1, adapting a provision in Civil Rule 24(c), provides that a party's failure to file the required notice, or a court's failure to make a required certification, "does not forfeit a constitutional right otherwise timely asserted." Appellate Rule 44 has no similar provision.

Rule 6(e)

Moved by comments on the Appellate Rules amendments that conformed appellate time-counting conventions to the Civil Rules conventions, the Appellate Rules Committee referred to the Civil Rules Committee a nice question arising from the relationship between Civil Rules 6(a) and 6(e). Rule 6(e), set out below, adds 3 days to some prescribed time periods. Unfortunately, it does not do so in a way that is as clear as time-counting rules should be. The proposed amendment aims to increase clarity in a way that will support, not disrupt, the general present understanding.

As recently amended, Rule 6(e) says:

> Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party under Rule 5(b)(2)(B), (C), or (D), 3 days shall be added to the prescribed period.

(Rule 5(b)(2)(B) governs service by mail. (C) governs service by leaving a copy with the court clerk. (D) governs service by "any other means, including electronic means, consented to in writing.")

Rule 6(a) says that intervening Saturdays, Sundays, and legal holidays are excluded when computing a prescribed or allowed "period of time" that is "less than 11 days."

Four possible methods of integrating Rules 6(a) and 6(e) have been recognized. Two can be rejected without regret. One would "add" the 3 days "to the prescribed period" directly — a 10-day period becomes a 13-day period, Rule 6(a) is ousted because the period is no longer less than 11 days, and the time to respond is shorter than it would be if Rule 6(e) did not exist. That is not the intent. The other would treat the three Rule 6(e) days as an independent time period, so that intervening Saturdays, Sundays, and legal holidays are excluded, often lengthening the time to respond by many more than three days.

The two plausible alternatives are to "add" the three Rule 6(e) days before beginning to count the ten days or after completing the ten-day count. Perhaps surprisingly, the choice makes a difference. It is easier to illustrate the difference than to articulate the explanation.

One illustration: The paper is mailed on Wednesday. If we count Thursday, Friday, and Saturday as the three days added by Rule 6(e), Monday is day 1 of the 10-day period; the tenth day is Friday, sixteen days after mailing. If we count Thursday and Friday as days 1 and 2 of the 10-day period, day 10 is a Wednesday; the third day added under Rule 6(e) is Saturday, and the response is due on Monday, 19 days after mailing.

The reason for this difference is that adding three days at the beginning of the period means that if service is made on a Wednesday, Thursday, or Friday, the first Saturday and often Sunday are double-counted. Saturday is omitted both because it is one of three added days and also because it is Saturday. (An intervening legal holiday may trigger the same phenomenon.) If the three days are added at the end, there is no opportunity for double counting. The extension may be greater.

So there is a difference. How should it be resolved? In the abstract, there is much to be said for adding the three days before beginning to count the ten-day period. Using mail service as an illustration, the three additional days are provided to allow for the time that may be required to deliver the mail. That happens at the beginning. Apart from the abstract, this approach would move things along a bit quicker than if the three days are added at the end.

Adding three days at the end has proved more attractive despite these arguments. Perhaps it is desirable to allow more time. However that may be, informal surveys of practicing lawyers show two things. One is substantial uncertainty and a strong desire to achieve greater clarity. The second is an overwhelmingly common practice. Lawyers add the three days at the end, perhaps because it may allow more time, perhaps because that is the natural reading of the present language.

If clarity is the overriding goal, smooth implementation also is important. Conforming to general present practice will mean that the clarified rule does not trap many lawyers during the learning period that follows any rule change. Indeed no lawyer should be trapped, since the time never will be shorter than if the three days were added at the beginning.

The proposal recommended for publication adds three days after the prescribed period. It is based on the Style version of Rule 6(e) that is presented below for approval for publication at a later time. If publication of Rule 6(e) is approved now, it may become appropriate in the cycle of the Style Project to substitute amended Rule 6(e) for the present Style version.

One final note. Every discussion of this proposal has prompted the anguished protest made during every other discussion of time-counting rules. It is said that the rules are too complicated, and by more than half. Instead of excluding intervening days, we should set realistic time periods and adhere to them without further complication. The only rules needed would address the problems that would arise if a time period terminates on a Saturday, Sunday, legal holiday, or day when the clerk's office is inaccessible. (These problems arise also when an order sets a time measured by an

interval before another event — a brief must be filed ten days before trial. If ten days before trial is a Sunday, must the brief be filed on Friday, or will Monday do?)

The Advisory Committee suggested that when competing demands allow, it may be desirable to establish an ad hoc committee cutting across all the advisory committees to consider a general approach to counting short time periods.

Rule 27(a)(2)

Rule 27(a) sets the procedure for a petition to perpetuate testimony before an action is filed. Paragraph (a)(2) provides for notice to expected adverse parties and directs that the notice be served "in the manner provided in Rule 4(d)." This cross-reference to Rule 4(d) has been outdated since the 1993 Rule 4 amendments. Rule 4(d) now governs waiver of service. The cross-reference must be fixed.

Fixing the cross-reference is not entirely easy. The service provisions of former Rule 4(d) have been dispersed among present Rules 4(e), (g), (h), (i), and (j)(2). Even as to these provisions, new methods of service have been added to those provided by former Rule 4(d). Former Rule 4(d), moreover, did not provide for service on an individual in a foreign country — that matter was covered by former Rule 4(i), now found in Rule 4(f). And present Rule 4(j)(1) provides for service on a foreign state or political subdivision. Recreation of the precise circumstances of former Rule 4(d) would be difficult.

It is not only that recreation of former Rule 4(d) would be difficult. More importantly, recreation would be pointless. The purpose of Rule 27(a)(2) is to provide a reliable means of notice to expected adverse parties so that the pre-action discovery will function as well as can be. Duplication later would be wasteful, and — given the very purpose of allowing discovery before an action is filed — often would be impossible. The sensible approach is to invoke Rule 4 methods of service as to all categories of expected adverse parties. Although service may seem a cumbersome means of notice to parties in foreign countries, notice by other means may be offensive to foreign law.

The substantive change in Rule 27(a)(2), then, is to correct the superseded cross-reference to former Rule 4(d) by cross-referring to all means of Rule 4 service. The proposal is presented in the Style version of Rule 27(a)(2) that is under consideration by the Style Subcommittee. If publication of Rule 27(a)(2) is approved now, it may become appropriate in the cycle of the Style Project to substitute amended Rule 27(a)(2) for the present Style version.

Rule 45(a)(2)

Rules 30 and 45 interplay in a way that may not notify a deponent of the means of recording a deposition. Rule 30(b)(2) directs that a notice of deposition state the manner for recording the testimony, but the notice need not be served on the deponent. The deponent will get notice of the first-designated recording medium only if the deponent is a party or is informed by a party. Rule 30(b)(3) provides that any party may designate another method to record "[w]ith prior notice to the deponent and other parties." If two or more methods of recording are used, the deponent does have notice of the recording media. The proposed amendment completes the circle by directing that the subpoena served on the deponent state the method for recording the testimony.

Notice of the method for recording may be important to the deponent simply for psychological reasons — video recording may work better if the deponent anticipates it in advance

in matters as simple as dressing for the occasion. Notice also may be important for other reasons. A deponent may have valid reasons to object to the means of recording, or — perhaps more commonly — to seek a protective order to guard against misuse of the recording. Raising these issues after the deponent has appeared for the deposition can be disruptive and inefficient. Advance notice will ensure an orderly opportunity to raise these issues and, if need be, to seek a protective order.

As with Rules 6(e) and 27(a)(2), the proposal is presented in the Style version of Rule 45(a)(2) that is under consideration by the Style Subcommittee. If publication of Rule 45(a)(2) is approved now, it may become appropriate in the cycle of the Style Project to substitute amended Rule 45(a)(2) for the present Style version.

B. Style Rules 1-15 For Deferred Publication

The Advisory Committee has completed the pre-publication phase of the Style Project for Rules 1 through 15. The drafts prepared by the Style Subcommittee were reviewed in January by Subcommittee A (Rules 1 to 7.1) and Subcommittee B (Rules 8 to 15). The Style Subcommittee prepared revised drafts that were reviewed by the Advisory Committee in May. The Style Subcommittee then prepared the draft set out below.

Style Rules 1-15 are presented for review now to amortize the burden of approving them for publication. It also will be useful to discuss the schedule for publication. The Advisory Committee has no firm recommendation as to the schedule. If all goes well, it would be possible to publish Style Rules 1-37 and 45 in August 2004. Although fewer than half of the rules by number, these rules use more than half of the rules words and pages. They also include the most sensitive topics that regularly appear on the agenda, including pleading, pretrial practice, party joinder, and discovery. It may be desirable to publish them together as the first package, saving the remainder of the rules for a second package. The alternative of publishing smaller packages more frequently has some attraction. The individuals and committees that will be a vitally important part of this process would have more sharply defined targets and could focus greater energy on each rule. But multiple publications might also diffuse attention — it is a familiar phenomenon that the first topics proposed for discussion draw great attention, while later topics draw gradually less attention.

Without purporting to resolve the time for publication, then, Style Rules 1-15 are presented with a recommendation that they be approved for publication at a time to be finally set at a later meeting.

The scope of the Civil Rules Style Project was more sharply defined at the time of the Subcommittee A and Subcommittee B meetings. It was determined that no substantive changes should be made in the Style package. Minor departures from this principle will be allowed only when necessary, defining necessity in very narrow terms. It may happen that the literal meaning of a present rule makes no sense, or does not conform to established interpretations. Two examples illustrate the nature of these exceptions. Present Rule 4(c)(2) says that the court may direct that service be made by a marshal, a deputy marshal, "or other person or officer specially appointed by the court for that purpose. Such an appointment must be made when the plaintiff" is proceeding in forma pauperis or is a seaman. It is not the "appointment" that must be made for a forma pauperis or seaman plaintiff, but the "direction" for service by any of these people. Style Rule 4(c)(3) makes the correction. Present Rule 5(b)(2)(D) seems to say that a court may by local rule authorize use of the court's transmission facilities for service by non-electronic means agreed to by the parties. It was intended to refer only to service by electronic means. Style Rule 5(b)(3) makes the correction. Apart from such narrow matters, substantive changes are avoided even when that requires deliberate continuation of an identified ambiguity.

The decision not to make substantive changes in the Style Project is important to help focus public comment and to ease the way for acceptance of the project. Style change will engender resistance enough. Even if the project is presented as an attempt to achieve clearer statement of present meaning — or continuation of present ambiguity — there will be great fear and suspicion that hidden substantive changes will result. The Project should not be asked to bear the added confusion and divisiveness that would flow from substantive changes. It is neither cynical nor a mark of frustration to observe that many a proposed change cannot be made because it would improve the present rule.

Although the Style Project is itself a full-time job for the Advisory Committee, substantive rules changes cannot all be suspended for the uncertain — but certainly lengthy — duration of the Style Project. Urgent needs to act may arise. Even apart from urgent need, an accumulation of small and large proposals could overwhelm all actors in the Enabling Act process after the Style Project is finished. Some smaller projects can be launched and even concluded while the Style Project is pursued. All of the four proposals for publication presented in part IA are of this nature. Some larger projects also may be undertaken. One current example is the Department of Justice proposal to adopt a new Admiralty Rule G to govern civil forfeiture procedure. Another is the continuing project to study discovery of computer-based information. Substantive matters such as these will be pursued, as capacity permits, in the ordinary manner.

The Style Project itself inevitably stimulates other proposals for substantive change. The intense scrutiny of each rule, word-by-word, undertaken by more than a score of people, reaps a remarkable harvest of shortcomings. Many topics are proposed for an amorphous "reform agenda." Some of these topics are likely to drop by the way for simple lack of capacity, just as other worthy reform proposals have been put aside over the years. Others are likely to be postponed for an intermediate or rather remote future. Still others will be placed promptly on the substantive agenda. An Advisory Committee consultant has, for example, found many problems in Rule 12. A thoroughly revised draft Rule 12 may be ready for Advisory Committee consideration this year.

Special Style Project questions arise as substantive rules amendments progress to publication for comment. The Part IA proposals to publish new Rule 5.1 and amended Rules 6(e), 27(a)(2) and 45(a)(2) all adopt Style Project conventions. If approved for publication in this form, a means must be found to integrate the ongoing amendments into the Style Project publications. The best means may depend on the circumstances. If Style Rule 6(d) [present Rule 6(e) is redesignated as 6(d)] is published for comment in August 2004, for example, it may be possible to substitute the amended version in the Style Rule box. In other circumstances it may be better to rely on a footnote that calls attention to a pending substantive proposal, leaving the present rule and the no-substantive-change Style proposal as they appear.

Framing discussion of Style Rules 1 through 15 is not easy. The most important issues are described in the brief Committee Notes that have been prepared for some of the rules. Other issues do not deserve separate explanation in a Committee Note, but may deserve scrutiny by the Standing Committee. Some of these issues may test the line between style and substantive change. Others may present general style questions that will benefit from Standing Committee consideration. One example may illustrate both categories. It is possible to maintain that a simple statement that a court "may" do an act suffices to capture all appropriate shades of discretion and to imply the authority to impose conditions. This is a general question that arches across many variations in many rules. Rule 8(c) in the current Style package illustrates the point. Present Rule 8(c) states that when a counterclaim or affirmative defense is mistakenly designated, "the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation." Style Rule 8(c)(2) worked its way around to saying: "the court may treat the pleading as if the party had used the correct designation." "May" is used to substitute for "shall," and to include both "on terms" and "if justice

so requires." Following Advisory Committee discussion, this was changed to: "the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so." Continued discussion may well conclude that such elaborate variations must be carried forward for fear that substantive changes will flow from a simple "may." Few such issues should be brought to the Standing Committee, but some may deserve a place on the agenda.

II INFORMATION ITEMS

A. Local Rules Project

The Local Rules Project Report that was presented to the Standing Committee in January was discussed in general terms that did not focus on any of the problems that might be posed by specific local rules. Attention focused primarily on two general issues. Inconsistency with a national rule may present subtle and difficult questions, as with an argument that a local rule is inconsistent with the "spirit" of a national rule. Even clear inconsistency may deserve toleration — a local rule may improve on the national rule and stimulate the lengthy amendment process, or a local rule may provide valuable experience to test whether a change would be an improvement. Duplication is a second general issue. A local rule may be clearly bad if it copies most but not all of a national rule, or if it inaccurately mimics a national rule. But brief duplications may be desirable reminders of the national rule that operates in the vicinity of the local rule and guides its meaning. Model local rules also were noted briefly, with a suggestion that they should be created sparingly and only for subjects that are not likely to be addressed by a national rule in the foreseeable future.

B. Ongoing Rules Projects

A number of ongoing rules projects are in various stages of consideration. They are described here in a sequence that approximates Civil Rules numbers, recognizing that it is difficult to guess where to lodge any rule on filing sealed settlement agreements.

Rule 12(f): Striking in the electronic filing era. The Committee on Court Administration and Case Management has asked that the Advisory Committee consider the means of implementing a Civil Rule 12(f) order that material be stricken from a pleading. The question was prompted by concern whether the action taken with respect to paper records is easily duplicated with respect to electronic records. Often enough a striking order means only that the parties should pursue the litigation without further reference to the stricken matters. If the material is "scandalous," however, the court may wish both to preserve the record for possible appellate review and at the same time deny access to it. This topic will be considered as part of a broader consideration of Rule 12.

Rule 15: Relation back and general issues. Prompted by a Third Circuit opinion, consideration of Rule 15 began with a very specific question framed by the relation-back provisions of Rule 15(c)(3). As many courts of appeals read Rule 15(c)(3), relation back is more readily available if the plaintiff has made a mistake in identifying an intended defendant than if the plaintiff begins the action knowing that an intended defendant cannot be identified. This result seems curious. But experience with "Doe Defendant" pleading practices suggests that the "unknown-named" defendant problem should be approached with caution. Caution is further warranted by the uneasy case for using the Rules Enabling Act to defeat a limitations bar that state law would erect against a state-created claim. Consideration of this specific issue, moreover, has identified other causes for dissatisfaction with current Rule 15(c)(3). The Style Project, finally, has generated several other Rule 15 questions that supplement still different Rule 15 questions that have lingered for some years on the Advisory Committee agenda. There does not seem to be an urgent need for prompt action. Further work on these questions will be paced to fit with competing agenda demands.

Rule 23: Class Actions. The Rule 23 amendments recommended to the Judicial Conference by the Standing Committee in June 2002 have been transmitted without change to Congress by the Supreme Court. That package of amendments did not address settlement classes, a topic that the Advisory Committee and the Rule 23 Subcommittee have studied for many years. Deliberation on these questions was suspended to assess the effects of the *Amchem* and *Ortiz* decisions. To assist further deliberation, the Federal Judicial Center has undertaken a study designed to test the effects these decisions have had on settling class actions, and also to explore the common assertion that one effect has been to encourage some class-action lawyers to move from federal courts to state courts. The study will soon be completed, providing a foundation for further work by the Rule 23 Subcommittee.

Discovery of computer-based information. The Discovery Subcommittee has been studying discovery of computer-based information for some years. Mini-conferences have been held to gather information from judges and practicing lawyers, and representatives have been sent to bar groups for further discussion. The Federal Judicial Center is studying these questions, gathering information about state practices and local district rules, and tracking continuing legal education programs (the prominence of these problems is indicated by the pace of about 100 CLE programs a year). The Special Reporter for the Discovery Subcommittee, Professor Marcus, sent an inquiring letter to a long list of recipients; although the responses have been modest in number, they reflect careful thought, often by large groups of people.

The results of this work increasingly suggest that rules amendments should be considered. To be sure, present discovery rules may provide all the tools and all the flexibility needed to adapt to the myriad opportunities and risks that arise from computer-based information storage. The problems that were identified in earlier years, however, do not appear to have been resolved by these means. If anything, more voices are asking for change.

As with everything else touched by computers, the pace of change in technological capabilities and technological conundrums has suggested caution. It is clear that information technology will develop rapidly and unpredictably during the period required to deliberate and adopt any rules amendments. It is not clear that any amendments that finally emerge will be usefully addressed to the situation existing at the moment of adoption, much less for a reasonable future period. Specific rules would be so risky that they may not be attempted. More general rules, however, may usefully frame general approaches that can be adapted better than present rules to the continual evolution of computer data storage.

The Discovery Subcommittee has identified seven topics that will provide the initial focus of drafting efforts over the summer. These seven include: (1) Amending Rules 26(f) and 16(b), and perhaps Form 35, to focus attention on the need to discuss computer-based discovery at the Rule 26(f) conference and the scheduling conference. (2) Expanding Rule 26(a)(1) initial disclosures to provide information about each party's information systems. (3) Revising the Rule 34 definition of a "document." (4) Addressing the form of production — whether in print-out or electronic form, and perhaps what sort of electronic form. (5) Considering the extent to which "heroic efforts" should be required to retrieve data that are not retrievable "in the ordinary course of business." (6) Reviving a long-simmering and more general project to consider protection against inadvertent privilege waiver — the risks of inadvertent waiver may be multiplied by some forms of computer-based discovery. (7) Adopting a "safe harbor" for preserving computer-based information.

This list of initial topics is not a commitment to recommend amendments that address all of them. It does not exclude other possible topics. It does not promise recommendations for publication on any firm time table. But the next steps are being taken.

Rule 50(b). The Committee on Federal Procedure of the Commercial and Federal Litigation Section of the New York State Bar Association has urged that Rule 50(b) be amended to modify the requirement that a post-verdict motion for judgment as a matter of law be supported by a motion made at the close of all the evidence. The argument is that 65 years of fictionalizing the Seventh Amendment rationalization that first permitted judgment notwithstanding the verdict is enough. What we need now is a rule that preserves the functional values served by the present requirement without imposing an easily overlooked procedure that sacrifices the right to a warranted judgment as a matter of law. The draft submitted for consideration would allow a post-verdict motion to be supported by any motion made at trial under Rule 50(a), on the theory that what counts is notice of the evidentiary insufficiency during trial so that there is an opportunity to correct the deficiency. Preliminary discussion, reflecting the frequent appellate explorations of this topic, suggested that even lawyers who are keenly aware of the close-of-the-evidence requirement may inadvertently fail at trial's end to make a motion that simply repeats a motion earlier made. This topic will continue on the active agenda.

Rule "62.1." The Appellate Rules Committee has referred to the Civil Rules Committee a suggestion by the Solicitor General that a rule should be adopted to address relief from a judgment that is pending on appeal. Most of the courts of appeals have converged on a common rule with respect to Rule 60(b) motions to vacate. A district court has jurisdiction to deny a motion to vacate a judgment that is pending on appeal. The district court does not have jurisdiction to grant the motion, but can indicate that it would grant the motion if the court of appeals were to remand. The Solicitor General urges three reasons for embodying this "indicative ruling" practice in a court rule. Some variations remain among the courts of appeals, and it is desirable to have a uniform national practice. Frequent appellate litigators are aware of the problem and the general answer, but many other lawyers and even some district courts find the matter unfamiliar and occasionally confusing. And the decade-old rule that a court of appeals is not required to vacate a district-court judgment when an appeal is mooted by settlement means that the opportunity to settle on appeal will be enhanced if it can be supported by advice from the district court that it is prepared to vacate the judgment if the parties settle. If a rule is to be adopted, it will be appropriate to consider situations outside Rule 60(b) relief from a traditionally final judgment. Modification of an order pending on collateral-order appeal is one example — a court that has denied a motion for summary judgment on official-immunity grounds, for example, may be prepared to grant a renewed motion. So too, authority to vacate a preliminary injunction pending appeal is not clearly resolved by Rule 62(c). This topic is likely to continue on the active agenda.

Sealing Filed Settlement Agreements. The media have attracted public attention to the question whether public welfare may be threatened by orders sealing settlement agreements filed with the court. The subjects of recent concern have been product-defect and sexual abuse cases. This general attention has been focused for lawyers by the adoption of a local rule in the District of South Carolina that purports to prohibit sealing of a settlement agreement filed with the court (the seeming prohibition apparently can be avoided by invoking another local rule that allows departure from any local rule for good cause). Three questions have framed the initial approach to this question: Why are settlement agreements filed with the court? How often are settlement agreements filed with the court under seal? Do other case file materials typically provide access to any information that might be important to the public welfare? These empirical questions are being addressed by a Federal Judicial Center study undertaken at the Advisory Committee's request. The Federal Judicial Center also has compiled a complete list of state statutes and local district rules that bear on the general question. Preliminary results suggest that settlement agreements are rarely filed under seal, and that ordinarily other file materials are not sealed and reveal any information that may be important to protect public health and safety. The topic is important, however, and work will continue under the direction of a subcommittee charged with this topic as one of its two major responsibilities.

Civil Forfeiture Procedure: Proposed Admiralty Rule G. Many forfeiture statutes direct that the procedure for civil forfeiture be the procedure for in rem admiralty proceedings. Recent Admiralty Rules amendments have undertaken to establish some distinctions to account for the needs that distinguish good forfeiture procedure from good admiralty procedure. The Department of Justice believes that the time has come to strip forfeiture procedure from the present Admiralty Rules and to consolidate it in a new comprehensive Admiralty Rule G. This treatment will reduce the risk of cross-pollution through which the needs of forfeiture procedure dilute good admiralty procedure, and vice versa. The Maritime Law Association shares the belief that separation is a good idea, so long as the "real" admiralty procedures are not affected. The new rule, further, can address many forfeiture topics that are not now addressed anywhere in the Admiralty Rules, including such matters as individual notice to potential claimants. Some of these new topics have emerged from statutory amendments, most notably the Civil Asset Forfeiture Reform Act of 2000. Others have emerged from decisional law, such as the rule that the Excessive Fines Clause imposes proportionality limits on civil forfeiture.

It should not be surprising that some of these forfeiture procedures generate significant controversy. The National Association of Criminal Defense Lawyers has responded to requests for comments on early drafts with lengthy, detailed, and forceful criticisms. Perhaps the most controversial issues surround standing to make a claim. The Civil Asset Forfeiture Reform Act revised former procedure, so that now anyone who has standing to claim can force the United States to prove forfeitability by a preponderance of the evidence. That makes standing to claim more important than under the earlier practice, which required that the United States only establish probable cause, shifting the burden to the claimant to show nonforfeitability.

Initial Rule G drafts have been revised substantially. The subcommittee that is considering sealed settlement agreements also is working on Rule G. This topic is on the front of the active agenda, and may soon justify a recommendation to publish.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF CIVIL PROCEDURE *

Rule 5.1. Constitutional Challenge to Statute — Notice and Certification

(a) *Notice.* A party that files a pleading, written motion, or other paper that draws in question the constitutionality of an Act of Congress or a state statute must promptly:

(1) if the question addresses an Act of Congress and no party [to the action] is the United States, a United States agency, or an officer or employee of the United States sued in an official capacity:

(A) file a Notice of Constitutional Question, stating the question and identifying the pleading, written motion, or other paper that raises the question, and

(B) serve the Notice and the pleading, written motion, or other paper that raises the question on the Attorney General of the United States in the manner

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

provided by Rule 4(i)(1)(B);

(2) if the question addresses a state statute and no party [to the action] is the state or a state officer, agency, or employee sued in an official capacity:

(A) file a Notice of Constitutional Question, stating the question and identifying the pleading, written motion, or other paper that raises the question, and

(B) serve the Notice and the pleading, written motion, or other paper that raises the question on the State Attorney General.

(b) ***Certification.*** When the constitutionality of an Act of Congress or a state statute is drawn in question the court must certify that fact to the Attorney General of the United States or to the State Attorney General under 28 U.S.C. § 2403.

(c) ***Intervention.*** The court must set a time not less than 60 days from the Rule 5.1(b) certification for intervention by the Attorney General or State Attorney General.

(d) ***No forfeiture.*** A party's failure to file and serve a Rule 5.1(a) notice, or a court's failure to make a Rule 5.1(b)

certification, does not forfeit a constitutional right otherwise timely asserted.

Committee Note

Rule 5.1 implements 28 U.S.C. § 2403, replacing the final three sentences of Rule 24(c). New Rule 5.1 requires a party who files a pleading, written motion, or other paper that draws in question the constitutionality of an Act of Congress or a state statute to file a Notice of Constitutional Challenge and serve it on the United States Attorney General or State Attorney General. The notice must be promptly filed and served. This notice requirement supplements the court's duty to certify a constitutional challenge to the United States Attorney General or the State Attorney General. The notice will ensure that the Attorney General is notified of constitutional challenges and has an opportunity to exercise the statutory right to intervene at the earliest possible point in the litigation. The court's § 2403 certification obligation remains, and is the only notice when the constitutionality of an Act of Congress or state statute is drawn in question by means other than a party's pleading, written motion, or other paper.

Moving the notice and certification provisions from Rule 24(c) to a new rule is designed to attract the parties' attention to these provisions by locating them in the vicinity of the rules that require notice by service and pleading.

Rule 5.1 goes beyond the requirements of § 2403 and the former Rule 24(c) provisions by requiring notice and certification of a constitutional challenge to any Act of Congress or state statute, not only those "affecting the public interest." It is better to assure, through notice, that the Attorney General is able to determine whether to seek intervention on the ground that the Act or statute affects a public interest.

The 60-day period for intervention mirrors the time to answer set by Rule 12(a)(3)(A). Pretrial activities may continue without

interruption during this period, and the court retains authority to grant any appropriate interlocutory relief. But to make this period effective, the court should not make a final determination sustaining a challenge before the Attorney General has responded or the period has expired without response. The court may, on the other hand, reject a challenge at any time. This rule does not displace any of the statutory or rule procedures that permit dismissal of all or part of an action — including a constitutional challenge — at any time, even before service of process.

Rule 6. Time

* * * * *

(e) Additional Time After Certain Kinds of Service ~~Under Rule 5(b)(2)(B), (C), or (D)~~. Whenever a party ~~has the right or is required to do some act or take some proceedings~~ must or may act within a prescribed period after ~~the service of a notice or other paper upon the party and the notice or paper is served upon the party~~ service and service is made under Rule 5(b)(2)(B), (C), or (D), 3 days ~~shall be~~ are added ~~to~~ after the prescribed period.

Committee Note

Rule 6(e) is amended to remove any doubt as to the method for extending the time to respond after service by mail, leaving with the clerk of court, electronic means, or other means consented to by the

party served. Three days are added after the prescribed period expires. All the other time-counting rules apply unchanged.

One example illustrates the operation of Rule 6(e). A paper is mailed on Wednesday. The prescribed time to respond is 10 days. Assuming there are no intervening legal holidays, the prescribed period ends on Wednesday two weeks later. Three days are added, expiring on the following Saturday. Because the last day is a Saturday, the time to act extends to the next day that is not a legal holiday, ordinarily Monday.

Other changes are made to conform Rule 6(e) to current style conventions.

Rule 27. Depositions Before Action or Pending Appeal

(a) Before Action.

* * * * *

~~**(2) Notice and Service.** The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served either within or without the district or state in the manner provided in Rule 4(d) for service of summons; but if such service~~

~~cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4(d), an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Rule 17(c) apply.~~

(2) **Notice and Service.** At least 20 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 on the petition. The notice may be served either inside or outside the district or state in the manner provided in Rule 4. If service cannot be made with due 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 by Rule 4 and to cross-examine the deponent on behalf of persons not served and not otherwise represented. Rule 17(c) applies if any expected adverse party is a minor or is incompetent.

Committee Note

The outdated cross-reference to former Rule 4(d) is corrected to incorporate all Rule 4 methods of service. Former Rule 4(d) has been allocated to many different subdivisions of Rule 4. Former Rule 4(d) did not cover all categories of defendants or modes of service, and present Rule 4 reaches further than all of former Rule 4. But there is no reason to distinguish between the different categories of defendants and modes of service encompassed by Rule 4. Rule 4 service provides effective notice. Notice by such means should be provided to any expected adverse party that comes within Rule 4.

Other changes are made to conform Rule 27(a)(2) to current style conventions.

Rule 45. Subpoena

(a) ***Form; Issuance.***

* * * * *

~~(2) A subpoena commanding attendance at a trial or hearing shall issue from the court for the district in which the hearing or trial is to be held. A subpoena for attendance at a deposition shall issue from the court for~~

~~the district designated by the notice of deposition as the district in which the deposition is to be taken. If separate from a subpoena commanding the attendance of a person, a subpoena for production or inspection shall issue from the court for the district in which the production or inspection is to be made.~~

(2) A subpoena must issue as follows:

(A) for attendance at a trial or hearing, in the name of the court [for the district where the trial or hearing is to be held]{that will hold the trial or hearing};

(B) for attendance at a deposition, in the name of the court for the district where the deposition is to be taken, stating the method for recording the testimony; and

(C) for production and inspection, if separate from a subpoena commanding a person's attendance, in the name of the court for the district where the production or inspection is to be made.

Committee Note

This amendment closes a small gap in regard to notifying witnesses of the manner for recording a deposition. A deposition subpoena must state the method for recording the testimony.

Rule 30(b)(2) directs that the party noticing a deposition state in the notice the manner for recording the testimony, but the notice need not be served on the deponent. The deponent learns of the recording method only if the deponent is a party or is informed by a party. Rule 30(b)(3) permits another party to designate an additional method of recording with prior notice to the deponent and the other parties. The deponent thus has notice of the recording method when an additional method is designated. This amendment completes the notice provisions to ensure that a nonparty deponent has notice of the recording method when the recording method is described only in the deposition notice.

A subpoenaed witness does not have a right to refuse to proceed with a deposition due to objections to the manner of recording. But under rare circumstances, a nonparty witness might have a ground for seeking a protective order under Rule 26(c) with regard to the manner of recording or the use of the deposition if recorded in a certain manner. Should such a witness not learn of the manner of recording until the deposition begins, undesirable delay or complication might result. Advance notice of the recording method affords an opportunity to raise such protective issues.

Other changes are made to conform Rule 45(a)(2) to current style conventions.

STYLE 277

Proposed Amendments to the Federal Rules of Civil Procedure

Restyled Rules 1 through 15

May 23, 2003

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF CIVIL PROCEDURE

Current wording	Potential Stylistic Revision
I. SCOPE OF RULES — ONE FORM OF ACTION Rule 1. Scope and Purpose of Rules	TITLE I. SCOPE OF RULES; FORM OF ACTION Rule 1. Scope and Purpose
These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty, with the exceptions stated in Rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.	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 and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.

COMMITTEE NOTE

The language of Rule 1 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

The merger of law, equity, and admiralty practice is complete. There is no need to carry forward the phrases that initially accomplished the merger.

[The former reference to "suits of a civil nature" is changed to the more modern "actions and proceedings." This change does not affect the question whether the Civil Rules apply to summary proceedings created by statute. See *SEC v. McCarthy*, 322 F.3d 650 (9th Cir. 2003); see also *New Hampshire Fire Ins. Co. v. Scanlon*, 362 U.S. 404 (1960).]

Rule 2. One Form of Action	Rule 2. One Form of Action
There shall be one form of action to be known as "civil action".	There is one form of action — the "civil action."

COMMITTEE NOTE

The language of Rule 2 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS Rule 3. Commencement of Action	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.	A civil action is commenced by filing a complaint with the court.

COMMITTEE NOTE

The caption of Rule 3 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 4. Summons	Rule 4. Summons
(a) Form. The summons shall be signed by the clerk, bear the seal of the court, identify the court and the parties, be directed to the defendant, and state the name and address of the plaintiff's attorney or, if unrepresented, of the plaintiff. It shall also state the time within which the defendant must appear and defend, and notify the defendant that failure to do so will result in a judgment by default against the defendant for the relief demanded in the complaint. The court may allow a summons to be amended.	**(a) Contents; Amendments.** **(1)** ***Contents.*** The summons must: **(A)** name the court and the parties; **(B)** be directed to the defendant; **(C)** state the name and address of the plaintiff's attorney or — if unrepresented — of the plaintiff; **(D)** state the time within which the defendant must appear and defend; **(E)** 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; **(F)** be signed by the clerk; and **(G)** bear the court's seal. **(2)** ***Amendments.*** The court may allow a summons to be amended.
(b) Issuance. Upon or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is in proper form, the clerk shall sign, seal, and issue it to the plaintiff for service on the defendant. A summons, or a copy of the summons if addressed to multiple defendants, shall be issued for each defendant to be served.	**(b) Issuance.** Upon 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.
(c) Service with Complaint; by Whom Made. **(1)** A summons shall be served together with a copy of the complaint. The plaintiff is responsible for service of a summons and complaint within the time allowed under subdivision (m) and shall furnish the person effecting service with the necessary copies of the summons and complaint. **(2)** Service may be effected by any person who is not a party and who is at least 18 years of age. At the request of the plaintiff, however, the court may direct that service be effected by a United States marshal, deputy United States marshal, or other person or officer specially appointed by the court for that purpose. Such an appointment must be made when the plaintiff is authorized to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 or is authorized to proceed as a seaman under 28 U.S.C. § 1916.	**(c) Service.** **(1)** ***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)** ***By Whom.*** Any person who is at least 18 years old and not a party may serve a summons and complaint. **(3)** ***By a Marshal or Someone Specially Appointed.*** At the plaintiff's request, the court may direct 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 direct 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.

(d) Waiver of Service; Duty to Save Costs of Service; Request to Waive.

(1) A defendant who waives service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of the defendant.

(2) An individual, corporation, or association that is subject to service under subdivision (e), (f), or (h) and that receives notice of an action in the manner provided in this paragraph has a duty to avoid unnecessary costs of serving the summons. To avoid costs, the plaintiff may notify such a defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request

(A) shall be in writing and shall be addressed directly to the defendant, if an individual, or else to an officer or managing or general agent (or other agent authorized by appointment or law to receive service of process) of a defendant subject to service under subdivision (h);

(B) shall be dispatched through first-class mail or other reliable means;

(C) shall be accompanied by a copy of the complaint and shall identify the court in which it has been filed;

(D) shall inform the defendant, by means of a text prescribed in an official form promulgated pursuant to Rule 84, of the consequences of compliance and of a failure to comply with the request;

(E) shall set forth the date on which the request is sent;

(F) shall allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent, or 60 days from that date if the defendant is addressed outside any judicial district of the United States; and

(G) shall provide the defendant with an extra copy of the notice and request, as well as a prepaid means of compliance in writing.

If a defendant located within the United States fails to comply with a request for waiver made by a plaintiff located within the United States, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure be shown.

(d) Waiving Service.

(1) ***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 costs of serving the summons. To avoid costs, 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:

(A) be in writing and be addressed:

(i) to the individual defendant; or

(ii) 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;

(B) name the court where the complaint has been filed and be accompanied by a copy of the complaint, two copies of a waiver form, and a prepaid means for returning the form;

(C) inform the defendant, using text prescribed in an official form promulgated under Rule 84, of the consequences of waiving and not waiving service;

(D) state the date when the request is sent;

(E) give the defendant a reasonable time of at least 30 days after the request was sent — or at least 60 days if the defendant is addressed outside any judicial district of the United States[1] — to return the waiver; and

(F) be sent by first-class mail or other reliable means.

(2) ***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 the costs later incurred in making service, together with the costs, including a reasonable attorney's fee, of any motion required to collect these service costs.

1. The Style Subcommittee would prefer to say "or at least 60 days if sent to the defendant outside any judicial district of the United States."

(3) A defendant that, before being served with process, timely returns a waiver so requested is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent, or 90 days after that date if the defendant was addressed outside any judicial district of the United States. (4) When the plaintiff files a waiver of service with the court, the action shall proceed, except as provided in paragraph (3), as if a summons and complaint had been served at the time of filing the waiver, and no proof of service shall be required. (5) The costs to be imposed on a defendant under paragraph (2) for failure to comply with a request to waive service of a summons shall include the costs subsequently incurred in effecting service under subdivision (e), (f), or (h), together with the costs, including a reasonable attorney's fee, of any motion required to collect the costs of service.	(3) ***Time To Answer After a Waiver.*** A defendant that, before being served with process, timely returns a waiver need not serve an answer to the complaint until 60 days after the date when the request was sent — or until 90 days after it was sent if the defendant was addressed outside any judicial district of the United States.[2/] (4) ***Results of Filing a Waiver.*** When the plaintiff files a waiver, proof of service is not required and, except as provided in Rule 4(d)(3), these rules apply as if a summons and complaint had been served at the time of filing the waiver. (5) ***Jurisdiction and Venue Not Waived.*** Waiving service of a summons does not waive any objection to personal jurisdiction or to venue.
(e) Service Upon Individuals Within a Judicial District of the United States. Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in any judicial district of the United States: (1) pursuant to the law of the state in which the district court is located, or in which service is effected, for the service of a summons upon the defendant in an action brought in the courts of general jurisdiction of the State; or (2) by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.	**(e) 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 of service has been filed — may be served in a judicial district of the United States by: (1) following state law for serving a summons in an action brought in courts of general jurisdiction of the state where the district court is located or where service is made; or (2) doing any of the following: (A) delivering a copy of the summons and of the complaint to the individual personally; (B) 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 (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

2. The Style Subcommittee would prefer to say "until 90 days after it was sent to the defendant outside any judicial district of the United States."

(f) Service Upon Individuals in a Foreign Country. Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in a place not within any judicial district of the United States: **(1)** by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or **(2)** if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice: **(A)** in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or **(B)** as directed by the foreign authority in response to a letter rogatory or letter of request; or **(C)** unless prohibited by the law of the foreign country, by **(i)** delivery to the individual personally of a copy of the summons and the complaint; or **(ii)** any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or **(3)** by other means not prohibited by international agreement as may be directed by the court.	**(f) 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 of service has been filed — may be served at a place not within any judicial district of the United States: **(1)** 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; **(2)** if there is no internationally agreed means of service or if an international agreement allows other means of service, by a method that is reasonably calculated to give notice: **(A)** as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction; **(B)** as the foreign authority directs in response to a letter rogatory or letter of request; or **(C)** unless prohibited by the foreign country's law, by: **(i)** delivering a copy of the summons and of the complaint to the individual personally; or **(ii)** using any form of mail requiring a signed receipt, addressed and sent by the clerk to the individual; or **(3)** by other means not prohibited by international agreement, as the court directs.
(g) Service Upon Infants and Incompetent Persons. Service upon an infant or an incompetent person in a judicial district of the United States shall be effected in the manner prescribed by the law of the state in which the service is made for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state. Service upon an infant or an incompetent person in a place not within any judicial district of the United States shall be effected in the manner prescribed by paragraph (2)(A) or (2)(B) of subdivision (f) or by such means as the court may direct.	**(g) Serving a Minor or an Incompetent Person.** A minor or an incompetent person in a judicial district of the United States must be served by following state law for service of 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 in a place 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).

(h) Service Upon Corporations and Associations. Unless otherwise provided by federal law, service upon a domestic or foreign corporation or upon a partnership or other unincorporated association that is subject to suit under a common name, and from which a waiver of service has not been obtained and filed, shall be effected: **(1)** in a judicial district of the United States in the manner prescribed for individuals by subdivision (e)(1), or by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant, or **(2)** in a place not within any judicial district of the United States in any manner prescribed for individuals by subdivision (f) except personal delivery as provided in paragraph (2)(C)(i) thereof.	**(h) Serving a Corporation, Partnership, or Association.** Unless federal law provides otherwise or the defendant's waiver of service 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)** in a judicial district of the United States: **(A)** in the manner prescribed by Rule 4(e)(1) for serving an individual; or **(B)** by 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)** 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 Rule 4(f)(2)(C)(i).

(i) Serving the United States, Its Agencies, Corporations, Officers, or Employees.

(1) Service upon the United States shall be effected

(A) by delivering a copy of the summons and of the complaint to the United States attorney for the district in which the action is brought or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the court or by sending a copy of the summons and of the complaint by registered or certified mail addressed to the civil process clerk at the office of the United States attorney and

(B) by also sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and

(C) in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to the officer or agency.

(2) (A) Service on an agency or corporation of the United States, or an officer or employee of the United States sued only in an official capacity, is effected by serving the United States in the manner prescribed by Rule 4(i)(1) and by also sending a copy of the summons and complaint by registered or certified mail to the officer, employee, agency, or corporation.

(B) Service on an officer or employee of the United States sued in an individual capacity for acts or omissions occurring in connection with the performance of duties on behalf of the United States — whether or not the officer or employee is sued also in an official capacity — is effected by serving the United States in the manner prescribed by Rule 4(i)(1) and by serving the officer or employee in the manner prescribed by Rule 4(e), (f), or (g).

(3) The court shall allow a reasonable time to serve process under Rule 4(i) for the purpose of curing the failure to serve:

(A) all persons required to be served in an action governed by Rule 4(i)(2)(A), if the plaintiff has served either the United States attorney or the Attorney General of the United States, or

(B) the United States in an action governed by Rule 4(i)(2)(B), if the plaintiff has served an officer or employee of the United States sued in an individual capacity.

(i) Serving the United States and Its Agencies, Corporations, Officers, or Employees.

(1) ***United States.*** To serve the United States, a party must:

(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

(ii) send a copy of the summons and of the complaint by registered or certified mail to the civil-process clerk at the United States attorney's office;

(B) send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and

(C) 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.

(2) ***Agency; Corporation; Officer or Employee Sued in an Official Capacity.*** To serve an agency or corporation of the United States, or an officer or employee of the United States 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.

(3) ***Officer or Employee Sued Individually.*** To serve an officer or employee of the United States sued in an individual capacity for acts or omissions occurring in connection with duties performed on behalf of the United States (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).

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

(A) 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

(B) serve the United States under Rule 4(i)(3), if the party has served an officer or employee of the United States sued in an individual capacity.

(j) Service Upon Foreign, State, or Local Governments. **(1)** Service upon a foreign state or a political subdivision, agency, or instrumentality thereof shall be effected pursuant to 28 U.S.C. § 1608. **(2)** Service upon a state, municipal corporation, or other governmental organization subject to suit shall be effected by delivering a copy of the summons and of the complaint to its chief executive officer or by serving the summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant.	**(j) Serving a Foreign, State, or Local Government.** **(1)** ***Foreign State.*** A foreign state or its political subdivision, agency, or instrumentality must be served in accordance with 28 U.S.C. § 1608. **(2)** ***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: **(A)** delivering a copy of the summons and of the complaint to its chief executive officer; or **(B)** 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.
(k) Territorial Limits of Effective Service. **(1)** Service of a summons or filing a waiver of service is effective to establish jurisdiction over the person of a defendant **(A)** who could be subjected to the jurisdiction of a court of general jurisdiction in the state in which the district court is located, or **(B)** who is a party joined under Rule 14 or Rule 19 and is served at a place within a judicial district of the United States and not more than 100 miles from the place from which the summons issues, or **(C)** who is subject to the federal interpleader jurisdiction under 28 U.S.C. § 1335, or **(D)** when authorized by a statute of the United States. **(2)** If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons or filing a waiver of service is also effective, with respect to claims arising under federal law, to establish personal jurisdiction over the person of any defendant who is not subject to the jurisdiction of the courts of general jurisdiction of any state.	**(k) Territorial Limits of Effective Service.** **(1)** ***In General.*** Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant: **(A)** who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located; **(B)** who is a party joined under Rule 14 or Rule 19 and is served at a place within a judicial district of the United States and not more than 100 miles from the place where the summons was issued; **(C)** who is subject to federal interpleader jurisdiction under 28 U.S.C. § 1335; or **(D)** when authorized by a United States statute. **(2)** ***Federal Claim Outside State-Court Personal Jurisdiction.*** With respect to a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if: **(A)** the defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and **(B)** exercising jurisdiction is consistent with the United States Constitution and laws.

(l) **Proof of Service.** If service is not waived, the person effecting service shall make proof thereof to the court. If service is made by a person other than a United States marshal or deputy United States marshal, the person shall make affidavit thereof. Proof of service in a place not within any judicial district of the United States shall, if effected under paragraph (1) of subdivision (f), be made pursuant to the applicable treaty or convention, and shall, if effected under paragraph (2) or (3) thereof, include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court. Failure to make proof of service does not affect the validity of the service. The court may allow proof of service to be amended.	(l) **Proving Service.** (1) ***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) ***Service Outside the United States.*** Service not within any judicial district of the United States must be proved as follows: (A) if made under Rule 4(f)(1), as provided in the applicable treaty or convention; or (B) 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) ***Validity of Service.*** Failure to prove service does not affect the validity of service. The court may allow proof of service to be amended.
(m) **Time Limit for Service.** If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. This subdivision does not apply to service in a foreign country pursuant to subdivision (f) or (j)(1).	(m) **Time Limit for Service.** If a defendant is not served within 120 days after the complaint is filed, the court — on motion or on its own after notice to the plaintiff — must dismiss the action without prejudice against that defendant or direct 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 does not apply to service in a foreign country under Rule 4(f) or 4(j)(1).
(n) **Seizure of Property; Service of Summons Not Feasible.** (1) If a statute of the United States so provides, the court may assert jurisdiction over property. Notice to claimants of the property shall then be sent in the manner provided by the statute or by service of a summons under this rule. (2) Upon a showing that personal jurisdiction over a defendant cannot, in the district where the action is brought, be obtained with reasonable efforts by service of summons in any manner authorized by this rule, the court may assert jurisdiction over any of the defendant's assets found within the district by seizing the assets under the circumstances and in the manner provided by the law of the state in which the district court is located.	(n) **Asserting Jurisdiction over Property or Assets.** (1) ***Federal Law.*** The court may assert jurisdiction over property if authorized by a United States statute. Notice to claimants of the property must be given in the manner specified by the statute or by serving a summons under this rule. (2) ***State Law.*** Upon a showing that personal jurisdiction over a defendant cannot, in the district where the action is brought, be obtained with reasonable efforts by serving a summons under this rule, the court may assert jurisdiction over the defendant's assets found within the district. Jurisdiction is acquired by seizing the assets under the circumstances and in the manner provided by state law in that district.

COMMITTEE NOTE

The language of Rule 4 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 4(d)(1)(B) corrects an inadvertent error in former Rule 4(d)(2)(G). The defendant needs two copies of the waiver form, not an extra copy of the notice and request.

Rule 4(g) changes "infant" to "minor." "Infant" in the present rule means "minor." Modern word usage suggests that "minor" will better maintain the intended meaning. The same change from "infant" to "minor" is made throughout the rules. In addition, subdivision (f)(3) is added to the description of methods of service that the court may order; the addition ensures the evident intent that the court not order service by means prohibited by international agreement.

Rule 4(i)(4) corrects a misleading reference to "the plaintiff" in former Rule 4(i)(3). A party other than a plaintiff may need a reasonable time to effect service. Rule 4(i)(4) properly covers any party.

Former Rule 4(j)(2) refers to service upon an "other governmental organization subject to suit." This is changed to "any other state-created governmental organization that is subject to suit." The change entrenches the meaning indicated by the caption ("Serving a Foreign, State, or Local Government"), and the invocation of state law. It excludes any risk that this rule might be read to govern service on a federal agency, or other entities not created by state law.

Rule 4.1. Service of Other Process	Rule 4.1. Serving Other Process
(a) Generally. Process other than a summons as provided in Rule 4 or subpoena as provided in Rule 45 shall be served by a United States marshal, a deputy United States marshal, or a person specially appointed for that purpose, who shall make proof of service as provided in Rule 4(l). The process may be served anywhere within the territorial limits of the state in which the district court is located, and, when authorized by a statute of the United States, beyond the territorial limits of that state.	**(a) 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 United States statute, beyond those limits. Proof of service must be made under Rule 4(l).
(b) Enforcement of Orders: Commitment for Civil Contempt. An order of civil commitment of a person held to be in contempt of a decree or injunction issued to enforce the laws of the United States may be served and enforced in any district. Other orders in civil contempt proceedings shall be served in the state in which the court issuing the order to be enforced is located or elsewhere within the United States if not more than 100 miles from the place at which the order to be enforced was issued.	**(b) Enforcing Orders: Committing for Civil Contempt.** An order committing a person for civil contempt of a decree or injunction issued to enforce United States 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 at a location within 100 miles from the place where the order was issued.

COMMITTEE NOTE

The language of Rule 4.1 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 5. Serving and Filing Pleadings and Other Papers	Rule 5. Serving and Filing Pleadings and Other Papers
(a) Service: When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4. In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.	**(a) Service: When Required.** **(1)** ***In General.*** Except as these rules provide otherwise, each of the following papers must be served on every party: **(A)** an order stating that service is required; **(B)** a pleading filed after the original complaint, unless the court orders otherwise under Rule 5(c) because there are numerous defendants; **(C)** a discovery paper required to be served on a party, unless the court orders otherwise; **(D)** a written motion, except one that may be heard ex parte; and **(E)** a written notice, appearance, demand, or offer of judgment, or any similar paper. **(2)** ***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. **(3)** ***Seizing Property.*** If an action is begun by seizing property and no person is or need be named as a defendant, service — if required before the filing of an answer, claim, or appearance — must be made on the person who had custody or possession of the property at the time of seizure.

(b) Making Service. **(1)** Service under Rules 5(a) and 77(d) on a party represented by an attorney is made on the attorney unless the court orders service on the party. **(2)** Service under Rule 5(a) is made by: **(A)** Delivering a copy to the person served by: **(i)** handing it to the person; **(ii)** leaving it at the person's office with a clerk or other person in charge, or if no one is in charge leaving it in a conspicuous place in the office; or **(iii)** if the person has no office or the office is closed, leaving it at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there. **(B)** Mailing a copy to the last known address of the person served. Service by mail is complete on mailing. **(C)** If the person served has no known address, leaving a copy with the clerk of the court. **(D)** Delivering a copy by any other means, including electronic means, consented to in writing by the person served. Service by electronic means is complete on transmission; service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery. If authorized by local rule, a party may make service under this subparagraph (D) through the court's transmission facilities. **(3)** Service by electronic means under Rule 5(b)(2)(D) is not effective if the party making service learns that the attempted service did not reach the person to be served.	**(b) Service: How Made.** **(1)** ***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)** ***Service in General.*** A paper is served under this rule by: **(A)** handing it to the person; **(B)** leaving it: **(i)** 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 **(ii)** 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; **(C)** mailing it to the person's last known address — in which event service is complete upon mailing; **(D)** leaving it with the court clerk if the person's address is unknown; **(E)** sending it by electronic means if the person consented in writing — in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served; or **(F)** 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)** ***Using Court Facilities.*** If a local rule so authorizes, a party may use the court's transmission facilities to make service under Rule 5(b)(2)(E).

(c) Same: Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.	**(c) Serving Numerous Defendants.** **(1)** ***In General.*** If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that: **(A)** defendants' pleadings and replies to them need not be served on other defendants; **(B)** 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 **(C)** the filing of any such pleading and service on the plaintiff or plaintiffs constitutes due notice of the pleading to all parties. **(2)** ***Notifying Parties.*** A copy of every such order must be served on the parties as the court directs.
(d) Filing; Certificate of Service. All papers after the complaint required to be served upon a party, together with a certificate of service, must be filed with the court within 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: (i) depositions, (ii) interrogatories, (iii) requests for documents or to permit entry upon land, and (iv) requests for admission. **(e) Filing With the Court Defined.** The filing of papers with the court as required by these rules shall be made by filing them with the clerk of court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. A court may by local rule permit papers to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. A paper filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these rules. The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices.	**(d) Filing.** **(1)** ***Required Filings; Certificate of Service.*** A party must, within a reasonable time after service, file any paper after the complaint that is required to be served, and must include a certificate of 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 to permit entry onto land, and requests for admission. **(2)** ***How Made—In General.*** A paper is filed by delivering it: **(A)** to the court[1] clerk; or **(B)** 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)** ***Electronic Filing, Signing, or Verification.*** A court may, by local rule, permit papers to be filed, signed, or verified by electronic means that are consistent with any technical standards established by the Judicial Conference of the United States. A paper filed by electronic means in compliance with a local rule is a written paper for purposes of these rules. **(4)** ***Acceptance by Clerk.*** The clerk must not refuse to accept a paper presented for filing solely because it is not in the form prescribed by these rules or by a local rule or practice.

1. The Style Subcommittee does not believe that "court" is needed to clarify the meaning of "clerk" in this context.

COMMITTEE NOTE

The language of Rule 5 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 5(a)(1)(E) omits the former reference to a designation of record on appeal. Appellate Rule 10 is a self-contained provision for the record on appeal, and provides for service.

Former Rule 5(b)(2)(D) literally provided that a local rule may authorize use of the court's transmission facilities to make service by non-electronic means agreed to by the parties. That was not intended. Rule 5(b)(3) restores the intended meaning — court transmission facilities can be used only for service by electronic means.

Rule 5(d)(2)(B) provides that "a" judge may accept a paper for filing, replacing the reference in former Rule 5(e) to "the" judge. Some courts do not assign a designated judge to each case, and it may be important to have another judge accept a paper for filing even when a case is on the individual docket of a particular judge. The ministerial acts of accepting the paper, noting the time, and transmitting the paper to the court clerk do not interfere with the assigned judge's authority over the action.

Rule 6. Time	Rule 6. Computing and Extending Time
(a) Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the district court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule and in Rule 77(c), "legal holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the state in which the district court is held.	**(a) Computing Time.** The following rules apply in computing any time period specified in these rules or in any local rule, court order, or statute: **(1)** ***Day of the Event Excluded.*** Exclude the day of the act, event, or default that begins the period. **(2)** ***Exclusion from Brief Periods.*** Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days. **(3)** ***Last Day.*** Include the last day of the period unless it is a Saturday, Sunday, legal holiday, or — if the act to be done is filing a paper in court — a day on which weather or other conditions make the clerk's office inaccessible. When the last day is excluded, the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or day when the clerk's office is inaccessible. **(4)** ***"Legal Holiday" Defined.*** As used in these rules, "legal holiday" means: **(A)** 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; and **(B)** any other day declared a holiday by the President, Congress, or the state where the district court is located.
(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b) and (c)(2), 52(b), 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in them.	**(b) Extending Time.** **(1)** ***In General.*** When an act may or must be done within a specified time, the court in its discretion may for good cause extend the time: **(A)** 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 **(B)** on motion made after the time has expired if the party failed to act because of excusable neglect. **(2)** ***Exceptions.*** A court may not extend the time for acting under Rules 50(b) and (c)(2), 52(b), 59(b), (d), and (e), and 60(b), except as those rules permit.
(c) [Rescinded].	

(d) For Motions—Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.	**(c) Motions, Notices of Hearing, and Affidavits.** **(1)** ***In General.*** A written motion and notice of the hearing must be served at least 5 days before the time specified for the hearing, with the following exceptions: **(A)** when the motion may be heard ex parte; **(B)** when these rules set a different period; or **(C)** when a court order — which a party may, for good cause, apply for ex parte — sets a different period. **(2)** ***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 1 day before the hearing, unless the court permits service at another time.
(e) Additional Time After Service Under Rule 5(b)(2)(B), (C), or (D). Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party under Rule 5(b)(2)(B), (C), or (D), 3 days shall be added to the prescribed period.	**(d) Additional Time After Certain Kinds of Service.** Whenever a party must or may act within a prescribed period after service and service is made under Rule 5(b)(2)(C), (D), (E), or (F), 3 days are added to the period.[1/]

COMMITTEE NOTE

The language of Rule 6 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

1. The Advisory Committee report to the Standing Committee includes a recommendation to publish a substantive revision of the current Rule 6(e). If the Standing Committee decides to publish the Rule 6(e) proposal, a decision on whether to include the substantive revision in restyled Rule 6(d) should be made at the time when restyled Rules 1-15 are to be published.

III. PLEADINGS AND MOTIONS Rule 7. Pleadings Allowed; Form of Motions	TITLE III. PLEADINGS AND MOTIONS Rule 7. Pleadings Allowed; Form of Motions and Other Papers
(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.	**(a) Pleadings.** Only these pleadings are allowed: **(1)** a complaint; **(2)** an answer to a complaint; **(3)** an answer to a counterclaim designated as a counterclaim; **(4)** an answer to a crossclaim; **(5)** a third-party complaint[1]; **(6)** an answer to a third-party complaint; and **(7)** if the court orders, a reply to an answer or a third-party answer.
(b) Motions and Other Papers. **(1)** An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. **(2)** The rules applicable to captions and other matters of form of pleadings apply to all motions and other papers provided for by these rules. **(3)** All motions shall be signed in accordance with Rule 11.	**(b) Motions and Other Papers.** **(1)** ***In General.*** A request for a court order must be made by motion. The motion must: **(A)** be in writing unless made during a hearing or trial; **(B)** state with particularity the grounds for seeking the order; and **(C)** state the relief sought. **(2)** ***Form.*** The rules governing captions and other matters of form in pleadings apply to motions and other papers.
(c) Demurrers, Pleas, Etc., Abolished. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.	

1. The Style Subcommittee omitted as redundant the qualifying phrase "if a person not an original party is brought in under Rule 14."

COMMITTEE NOTE

The language of Rule 7 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Former Rule 7(a) stated that "there shall be * * * an answer to a cross-claim, if the answer contains a cross-claim * * *." Former Rule 12(a)(2) provided more generally that "[a] party served with a pleading stating a cross-claim against that party shall serve an answer thereto * * *." New Rule 7(a) corrects this inconsistency by providing for an answer to a crossclaim.

For the first time, Rule 7(a)(7) expressly authorizes the court to order a reply to a counterclaim answer. A reply may be as useful in this setting as a reply to an answer, a third-party answer, or a crossclaim answer.

Former Rule 7(b)(1) stated that the writing requirement is fulfilled if the motion is stated in a written notice of hearing. This statement was deleted as redundant because a single written document can satisfy the writing requirements both for a motion and for a Rule 6(c)(1) notice.

The cross-reference to Rule 11 in former Rule 7(b)(3) is deleted as redundant. Rule 11 applies by its own terms. The force and application of Rule 11 are not diminished by the deletion.

Former Rule 7(c) is deleted because it has done its work. If a motion or pleading is described as a demurrer, plea, or exception for insufficiency the court will treat the paper as if properly captioned.

Rule 7.1. Disclosure Statement	Rule 7.1. Disclosure Statement
(a) Who Must File: Nongovernmental Corporate Party. A nongovernmental corporate party to an action or proceeding in a district court must file two copies of a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation.	**(a) Who Must File.** A nongovernmental corporate party must file two copies of a disclosure statement that:[1] **(1)** identifies any parent corporation and any publicly held corporation owning 10% or more of its stock; or **(2)** states that there is no such corporation.
(b) Time for Filing; Supplemental Filing. A party must: **(1)** file the Rule 7.1(a) statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court, and **(2)** promptly file a supplemental statement upon any change in the information that the statement requires.	**(b) Time for Filing; Supplemental Filing.** A party must: **(1)** file the disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court; and **(2)** promptly file a supplemental statement upon any change in the required information.

COMMITTEE NOTE

The language of Rule 7.1 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

1. In endorsing this change, the Style Subcommittee notes that deleting "in a district court" is inconsistent stylistically (though not substantively) with the disclosure statement provisions of the Appellate Rules and Criminal Rules, which specify the court. The subcommittee, however, believes that this kind of inconsistency should be permitted to assure the internal consistency of the Civil Rules (which otherwise assume that the forum is a district court).

Rule 8. General Rules of Pleading	Rule 8. General Rules of Pleading
(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.	**(a) Claims for Relief.** A pleading that states a claim for relief — whether an original claim, a counterclaim, a crossclaim, or a third-party claim — must contain: **(1)** 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)** a short and plain statement of the claim showing that the pleader is entitled to relief; and **(3)** a demand for the relief sought, which may include relief in the alternative or different types of relief.
(b) Defenses; Form of Denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Rule 11.	**(b) Defenses and Denials.** **(1)** ***In General.*** In responding to a pleading, a party must: **(A)** state in short and plain terms its defenses to each claim asserted against it; and **(B)** admit or deny the averments[1/] asserted against it by an opposing party. **(2)** ***Denials — Responding to the Substance.*** A denial must fairly respond to the substance of the averment denied. **(3)** ***General and Specific Denials.*** A party that intends in good faith to deny all the averments of a pleading — including the jurisdictional grounds — may do so by a general denial. A party that does not intend to deny all the averments must either specifically deny designated averments or generally deny all except those specifically admitted. **(4)** ***Denying Part of an Averment.*** A party that intends in good faith to deny only part of an averment must admit the part that is true and deny the rest. **(5)** ***Lacking Knowledge or Information.*** A party that lacks knowledge or information sufficient to form a belief about the truth of an averment must so state, and the statement has the effect of a denial. **(6)** ***Effect of Failing to Deny.*** An averment — other than one relating to the amount of damages — is admitted if a responsive pleading is required and the averment is not denied. If a responsive pleading is not required, an averment is considered denied or avoided.

1. As a global comment, the Style Subcommittee would prefer to use "allegation" or "allege," rather than "averment" or "aver," wherever the latter appear in the current rules.

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.	**(c) Affirmative Defenses.** **(1)** ***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; • discharge in bankruptcy; • duress; • estoppel; • failure of consideration; • fraud; • illegality; • injury by fellow servant; • laches; • license; • payment; • release; • res judicata; • statute of frauds; • statute of limitations; and • waiver. **(2)** ***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.
(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.	
(e) Pleading to Be Concise and Direct; Consistency. **(1)** Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required. **(2)** A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal, equitable, or maritime grounds. All statements shall be made subject to the obligations set forth in Rule 11.	**(d) Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.** **(1)** ***In General.*** Each averment must be simple, concise, and direct. No technical form is required. **(2)** ***Alternative Statements of a Claim or Defense.*** A party may include two 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)** ***Inconsistent Claims or Defenses.*** A party may state as many separate claims or defenses as it has, regardless of consistency.

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.	**(e) Construing Pleadings.** Pleadings must be construed so as to do substantial justice.

COMMITTEE NOTE

The language of Rule 8 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

The former Rule 8(b) and 8(e) cross-references to Rule 11 are deleted as redundant. Rule 11 applies by its own terms. The force and application of Rule 11 are not diminished by the deletion.

Former Rule 8(b) required a pleader denying part of an averment to "specify so much of it as is true and material and * * * deny only the remainder." "[A]nd material" is deleted to avoid the implication that it is proper to deny something that the pleader believes to be true but not material.

Deletion of former Rule 8(e)(2)'s "whether based on legal, equitable, or maritime grounds" reflects the parallel deletions in Rule 1 and elsewhere. Merger is now successfully accomplished.

Rule 9. Pleading Special Matters	Rule 9. Pleading Special Matters
(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.	**(a) Capacity or Authority to Sue; Legal Existence.** **(1)** ***In General.*** Except when required to show that the court has jurisdiction, a pleading need not aver: **(A)** a party's capacity to sue or be sued; **(B)** a party's authority to sue or be sued in a representative capacity; or **(C)** the legal existence of an organized association of persons that is made a party. **(2)** ***Raising Those Issues.*** To raise any of those issues, a party must do so by a specific negative averment,[1] which must state any supporting facts that are peculiarly within the party's knowledge.
(b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.	**(b) Fraud, Mistake; Conditions of Mind.** In averring fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of mind of a person may be averred generally.
(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.	**(c) Conditions Precedent.** In pleading conditions precedent, it suffices to aver 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.
(d) Official Document or Act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.	**(d) Official Document or Act.** In pleading an official document or official act, it suffices to aver that the document was legally issued or the act legally done.
(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.	**(e) 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.
(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.	**(f) Time and Place.** An averment of time or place is material when testing the sufficiency of a pleading.
(g) Special Damage. When items of special damage are claimed, they shall be specifically stated.	**(g) Special Damages.** If an item of special damage is claimed, it must be specifically stated.

1. The Style Subcommittee would prefer to say "a specific denial."

(h) Admiralty and Maritime Claims. A pleading or count setting forth a claim for relief within the admiralty and maritime jurisdiction that is also within the jurisdiction of the district court on some other ground may contain a statement identifying the claim as an admiralty or maritime claim for the purposes of Rules 14(c), 38(e), 82, and the Supplemental Rules for Certain Admiralty and Maritime Claims. If the claim is cognizable only in admiralty, it is an admiralty or maritime claim for those purposes whether so identified or not. The amendment of a pleading to add or withdraw an identifying statement is governed by the principles of Rule 15. A case that includes an admiralty or maritime claim within this subdivision is an admiralty case within 28 U.S.C. § 1292(a)(3).	**(h) Admiralty or Maritime Claim.** **(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 Certain Admiralty and Maritime Claims. 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)** ***Amending a Designation.*** Amending a pleading to add or withdraw a designation is governed by Rule 15. **(3)** ***Designation for Appeal.*** A case that includes an admiralty or maritime claim within this subdivision is an admiralty case within 28 U.S.C. § 1292(a)(3).

COMMITTEE NOTE

The language of Rule 9 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 10. Form of Pleadings	Rule 10. Form of Pleadings
(a) Caption; Names of Parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.	**(a) Caption; Names of Parties.** Every pleading must have a caption with the court's name, the title of the action, the file number, and a Rule 7(a) designation. In the complaint, the title of the action must include the names of all parties; in other pleadings, the title may name the first party on each side and refer generally to other parties.
(b) Paragraphs; Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.	**(b) 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 it 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.
(c) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.	**(c) 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 attached to a pleading is a part of the pleading for all purposes.

COMMITTEE NOTE

The language of Rule 10 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 11. Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions	Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions
(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.	**(a) 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 not represented by an attorney. The paper must state the signer's address and telephone number, if any. 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 is promptly corrected after being called to the attorney's or party's attention.
(b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, — **(1)** it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; **(2)** the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; **(3)** the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and **(4)** the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.	**(b) 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)** it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or expense; **(2)** 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)** the factual contentions have evidentiary support or, if specifically so identified, likely will have evidentiary support after a reasonable opportunity for further investigation or discovery; and **(4)** the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of Sanction; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, 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 some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(c) Sanctions.

(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 (subject to the conditions below) 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) ***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 may not be filed with or presented to the court if the challenged paper, claim, defense, contention, allegation, 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 party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion.

(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).

(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.

(5) ***Limitations on Monetary Sanctions.*** The court must not impose monetary sanctions:

(A) against a represented party for violating Rule 11(b)(2); or

(B) 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.

(6) ***Requirements for an Order.*** An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(d) Inapplicability to Discovery. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.	**(d) Inapplicability to Discovery.** This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.

COMMITTEE NOTE

The language of Rule 11 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 12. Defenses and Objections — When and How Presented — By Pleading or Motion — Motion for Judgment on the Pleadings	Rule 12. Defenses and Objections: When and How Presented — By Pleading or Motion; Motion for Judgment on the Pleadings; Pretrial Hearing; Consolidating and Waiving Defenses
(a) When Presented. **(1)** Unless a different time is prescribed in a statute of the United States, a defendant shall serve an answer **(A)** within 20 days after being served with the summons and complaint, or **(B)** if service of the summons has been timely waived on request under Rule 4(d), within 60 days after the date when the request for waiver was sent, or within 90 days after that date if the defendant was addressed outside any judicial district of the United States. **(2)** A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after being served. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer, or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. **(3) (A)** The United States, an agency of the United States, or an officer or employee of the United States sued in an official capacity, shall serve an answer to the complaint or cross-claim — or a reply to a counterclaim — within 60 days after the United States attorney is served with the pleading asserting the claim. **(B)** An officer or employee of the United States sued in an individual capacity for acts or omissions occurring in connection with the performance of duties on behalf of the United States shall serve an answer to the complaint or cross-claim — or a reply to a counterclaim — within 60 days after service on the officer or employee, or service on the United States attorney, whichever is later.	**(a) Time to Present a Responsive Pleading.** **(1)** ***In General.*** Except when another time is prescribed by this rule or a United States statute, the time for filing a responsive pleading is as follows: **(A)** A defendant must serve an answer: **(i)** within 20 days after being served with the summons and complaint; or **(ii)** 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 if the defendant was addressed outside any judicial district of the United States.[1] **(B)** A party must serve an answer to a counterclaim within 20 days after being served with the pleading that states the counterclaim. **(C)** A party must serve an answer to a crossclaim within 20 days after being served with the pleading that states the crossclaim. **(D)** A party must serve a reply to an answer within 20 days after being served with an order to reply unless the order specifies a different time. **(2)** ***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 or crossclaim — or an answer to a counterclaim — within 60 days after service on the United States attorney. **(3)** ***United States Officers or Employees Sued in an Individual Capacity.*** A United States officer or employee sued in an individual capacity for acts or omissions occurring in connection with duties performed on behalf of the United States must serve an answer to a complaint or crossclaim — or an answer to a counterclaim — within 60 days after service on the officer or employee or service on the United States attorney, whichever is later.

1. The Style Subcommittee would prefer to say "within 90 days after it was sent to the defendant outside any judicial district of the United States."

(4) Unless a different time is fixed by court order, the service of a motion permitted under this rule alters these periods of time as follows: (A) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; or (B) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.	(4) *Effect of a Motion.* Unless the court sets a different time, serving a motion under this rule alters these periods as follows: (A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 10 days after notice of the court's action; or (B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 10 days after the more definite statement is served.
(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.	(b) **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) lack of subject-matter jurisdiction; (2) lack of personal jurisdiction; (3) improper venue; (4) insufficient process; (5) insufficient service of process; (6) failure to state a claim upon which relief can be granted; and (7) 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 permitted. 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. If a pleading sets forth a claim for relief that does not require a responsive pleading, an adverse party may assert at trial any defense to that claim.
(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.	(c) **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.
	(d) **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.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.	*[Present Rule 12(d) has become restyled Rule 12(i).]*
(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.	**(e) Motion for a More Definite Statement.** A party may move for a more definite statement of a pleading to which a responsive pleading is permitted but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion 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 10 days after notice of the order or within the time the court sets, the court may strike the pleading or make any other order that it considers appropriate.
(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.	**(f) Motion to Strike.** The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may take this action on its own or on a motion made by a party either before responding to the pleading or, if not permitted to respond, within 20 days after being served with the pleading.
(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.	**(g) Consolidating Defenses in a Motion.** **(1)** ***Consolidating Defenses.*** A motion under this rule may include any other motion allowed under this rule. **(2)** ***Limitation on Further Motions.*** Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule may not make another motion under this rule raising a defense or objection that was available to the party at the time of its earlier motion.

(h) Waiver or Preservation of Certain Defenses. **(1)** A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course. **(2)** A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits. **(3)** Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.	**(h) Waiving and Preserving Certain Defenses.** **(1)** ***When Waived.*** A party waives any defense under Rule 12(b)(2)-(5) by: **(A)** omitting the defense from a motion in the circumstances described in Rule 12(g)(2); or **(B)** neither making the defense by motion under this rule nor including it in a responsive pleading or in an amendment permitted by Rule 15(a)(1) as a matter of course. **(2)** ***When to Raise Certain Defenses.*** Failure to state a claim upon which relief can be granted, to join an indispensable party under Rule 19, or to state a legal defense to a claim may be raised: **(A)** in any pleading permitted or ordered under Rule 7(a); **(B)** by any motion under Rule 12(c); or **(C)** at trial. **(3)** ***Lack of Subject-Matter Jurisdiction.*** If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.
	(i) Hearing Before Trial. If a party so moves, any defense listed 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 determined before trial unless the court orders a deferral until trial.

COMMITTEE NOTE

The language of Rule 12 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Former Rule 12(a)(4) referred to an order that postpones disposition of a motion "until the trial on the merits." Rule 12(a)(4) now refers to postponing disposition "until trial." The new expression avoids the ambiguity that inheres in "trial on the merits," which may become confusing when there is a separate trial of a single issue or another event different from a single all-encompassing trial.

Rule 13. Counterclaim and Cross-Claim	Rule 13. Counterclaim and Crossclaim
(a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.	**(a) Compulsory Counterclaim.** **(1)** ***In General.*** A pleading must state as a counterclaim any claim that — at the time of service — the pleader has against an opposing party if the claim: **(A)** arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and **(B)** does not require adding another party of whom[1] the court cannot acquire jurisdiction. **(2)** ***Exceptions.*** The pleader need not state the claim if: **(A)** when the action was commenced, the claim was the subject of another pending action; or **(B)** the opposing party sued on its claim by attachment or other process by which the court did not acquire personal jurisdiction over the pleader on that claim, and the pleader does not assert any counterclaim under this rule.
(b) Permissive Counterclaims. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.	**(b) Permissive Counterclaim.** A pleading may state as a counterclaim any claim against an opposing party.
(c) Counterclaim Exceeding Opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.	**(c) Relief Sought in a Counterclaim.** A counterclaim need not diminish or defeat the recovery sought by the opposing party. It may request relief exceeding in amount or differing in kind from that sought by the opposing party.
(d) Counterclaim Against the United States. These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the United States or an officer or agency thereof.	**(d) 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.
(e) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after serving a pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.	**(e) 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.
(f) Omitted Counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.	**(f) Omitted Counterclaim.** The court may permit a party to amend a pleading to add a counterclaim if it was omitted through oversight, inadvertence, or excusable neglect or if justice so requires.

1. The Style Subcommittee would prefer, on style grounds, to use "over whom" rather than "of whom." The subcommittee cannot conceive of a substantive difference between the two phrases.

(g) Cross-Claim Against Co-party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.	(g) **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.
(h) Joinder of Additional Parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.	(h) **Joining Additional Parties.** Rules 19 and 20 govern the addition of a person as a party to a counterclaim or crossclaim.
(i) Separate Trials; Separate Judgments. If the court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b) when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.	(i) **Separate Trials; Separate Judgments.** If it orders separate trials under Rule 42(b), a court may render judgment on a counterclaim or crossclaim under Rule 54(b) when the court has jurisdiction to do so, even if the opposing party's claims have been dismissed or otherwise resolved.

COMMITTEE NOTE

The language of Rule 13 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

The meaning of former Rule 13(b) is better expressed by deleting "not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim." Both as a matter of intended meaning and current practice, a party may state as a permissive counterclaim a claim that does grow out of the same transaction or occurrence as an opposing party's claim even though one of the exceptions in Rule 13(a) means the claim is not a compulsory counterclaim.

Rule 14. Third–Party Practice	Rule 14. Third-Party Practice
(a) When Defendant May Bring in Third Party. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than 10 days after serving the original answer. Otherwise the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12 and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant. The	**(a) When a Defending Party May Bring in a Third Party.** **(1)** ***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 10 days after serving its original answer. **(2)** ***Third-Party Defendant's Claims and Defenses.*** The person served with the summons and third-party complaint — the "third-party defendant": **(A)** must assert any defense against the third-party plaintiff's claim under Rule 12; **(B)** 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); **(C)** may assert against the plaintiff any defense that the third-party plaintiff has to the plaintiff's claim; and **(D)** 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. **(3)** ***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; and the third-party defendant must 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). **(4)** ***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. **(5)** ***Third-Party Defendant's Claim Against a Nonparty.*** A third-party 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.

third-party complaint, if within the admiralty and maritime jurisdiction, may be in rem against a vessel, cargo, or other property subject to admiralty or maritime process in rem, in which case references in this rule to the summons include the warrant of arrest, and references to the third-party plaintiff or defendant include, where appropriate, a person who asserts a right under Supplemental Rule C(6)(b)(i) in the property arrested.	(6) ***Third-Party Complaint In Rem.*** If 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, where appropriate, a person who asserts a right under Supplemental Rule C(6)(b)(i) in the property arrested.
(b) When Plaintiff May Bring in Third Party. When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.	**(b) When a Plaintiff May Bring in a Third Party.** When a counterclaim is asserted against a plaintiff, the plaintiff may bring in a third party if this rule would allow a defendant to do so.
(c) Admiralty and Maritime Claims. When a plaintiff asserts an admiralty or maritime claim within the meaning of Rule 9(h), the defendant or person who asserts a right under Supplemental Rule C(6)(b)(i), as a third-party plaintiff, may bring in a third-party defendant who may be wholly or partly liable, either to the plaintiff or to the third-party plaintiff, by way of remedy over, contribution, or otherwise on account of the same transaction, occurrence, or series of transactions or occurrences. In such a case the third-party plaintiff may also demand judgment against the third-party defendant in favor of the plaintiff, in which event the third-party defendant shall make any defenses to the claim of the plaintiff as well as to that of the third-party plaintiff in the manner provided in Rule 12 and the action shall proceed as if the plaintiff had commenced it against the third-party defendant as well as the third-party plaintiff.	**(c) Admiralty or Maritime Claim.** (1) ***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)(b)(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) ***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.

COMMITTEE NOTE

The language of Rule 14 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Former Rule 14 twice refers to counterclaims under Rule 13. In each case, the operation of Rule 13(a) depends on the state of the action at the time the pleading is filed. If plaintiff and third-party defendant have become opposing parties because one has made a claim for relief against the other, Rule 13(a) requires assertion of any counterclaim that grows out of the transaction or occurrence that is the subject matter of that claim. Rules 14(a)(2)(B) and (a)(3) reflect the distinction between compulsory and permissive counterclaims.

Rule 15. Amended and Supplemental Pleadings	Rule 15. Amended and Supplemental Pleadings
(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.	**(a) Amendments Before Trial.** **(1)** ***Amending as a Matter of Course.*** A party may amend its pleading once as a matter of course: **(A)** before being served with a responsive pleading; or **(B)** within 20 days after serving the pleading if a responsive pleading is not permitted and the action is not yet on the trial calendar. **(2)** ***Other Amendments.*** Except as allowed in Rule 15(a)(1), a party may amend its pleading only with the adverse party's written consent or by leave of court. The court should freely give leave when justice so requires. **(3)** ***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 10 days after service of the amended pleading, whichever is later.
(b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.	**(b) Amendments During and After Trial.** **(1)** ***During Trial.*** If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may allow the pleadings to be amended. The court should freely allow an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that admitting 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)** ***After Trial.*** When issues not raised by the pleadings are tried by the parties' express or implied consent, they 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 the unpleaded issues. But failure to amend does not affect the result of the trial of these issues.

(c) Relation Back of Amendments. An amendment of a pleading relates back to the date of the original pleading when (1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or (2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or (3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (2) is satisfied and, within the period provided by Rule 4(m) for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party. The delivery or mailing of process to the United States Attorney, or United States Attorney's designee, or the Attorney General of the United States, or an agency or officer who would have been a proper defendant if named, satisfies the requirement of subparagraphs (A) and (B) of this paragraph (3) with respect to the United States or any agency or officer thereof to be brought into the action as a defendant.	**(c) Relation Back of Amendments.** (1) ***When an Amendment May Relate Back.*** An amendment to a pleading relates back to the date of the original pleading when: (A) the law that provides the applicable statute of limitations permits relation back; (B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set forth — or attempted to be set forth — in the original pleading; or (C) 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: (i) received such notice of the action that it will not be prejudiced in defending on the merits; and (ii) knew or should have known that, but for a mistake concerning[1] the proper party's identity, the action would have been brought against it. (2) ***Notice to the United States.*** When the United States or a United States agency or officer 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.
(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.	**(d) Supplemental Pleadings.** On motion and reasonable notice, the court may, upon just terms, permit a party to serve a supplemental pleading setting forth 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. And if the court considers it advisable, the court may order that the adverse party plead to the supplemental pleading by a specified time.

1. The Style Subcommittee would prefer to use "about" rather than "concerning."

COMMITTEE NOTE

The language of Rule 15 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Former Rule 15(c)(3)(A) called for notice of the "institution" of the action. Rule 15(c)(1)(C)(i) omits the reference to "institution" as potentially confusing. What counts is that the party to be brought in have notice of the existence of the action, whether or not the notice includes details as to its "institution."