

NOTES OF ADVISORY COMMITTEE ON RULES—1966  
AMENDMENT

Rule 14 was modeled on Admiralty Rule 56. An important feature of Admiralty Rule 56 was that it allowed impleader not only of a person who might be liable to the defendant by way of remedy over, but also of any person who might be liable to the plaintiff. The importance of this provision was that the defendant was entitled to insist that the plaintiff proceed to judgment against the third-party defendant. In certain cases this was a valuable implementation of a substantive right. For example, in a case of ship collision where a finding of mutual fault is possible, one ship-owner, if sued alone, faces the prospect of an absolute judgment for the full amount of the damage suffered by an innocent third party; but if he can implead the owner of the other vessel, and if mutual fault is found, the judgment against the original defendant will be in the first instance only for a moiety of the damages; liability for the remainder will be conditioned on the plaintiff's inability to collect from the third-party defendant.

This feature was originally incorporated in Rule 14, but was eliminated by the amendment of 1946, so that under the amended rule a third party could not be impleaded on the basis that he might be liable to the plaintiff. One of the reasons for the amendment was that the Civil Rule, unlike the Admiralty Rule, did not require the plaintiff to go to judgment against the third-party defendant. Another reason was that where jurisdiction depended on diversity of citizenship the impleader of an adversary having the same citizenship as the plaintiff was not considered possible.

Retention of the admiralty practice in those cases that will be counterparts of a suit in admiralty is clearly desirable.

NOTES OF ADVISORY COMMITTEE ON RULES—1987  
AMENDMENT

The amendments are technical. No substantive change is intended.

## COMMITTEE NOTES ON RULES—2000 AMENDMENT

Subdivisions (a) and (c) are amended to reflect revisions in Supplemental Rule C(6).

*GAP Report.* Rule B(1)(a) was modified by moving “in an in personam action” out of paragraph (a) and into the first line of subdivision (1). This change makes it clear that all paragraphs of subdivision (1) apply when attachment is sought in an in personam action. Rule B(1)(d) was modified by changing the requirement that the clerk deliver the summons and process to the person or organization authorized to serve it. The new form requires only that the summons and process be delivered, not that the clerk effect the delivery. This change conforms to present practice in some districts and will facilitate rapid service. It matches the spirit of Civil Rule 4(b), which directs the clerk to issue the summons “to the plaintiff for service on the defendant.” A parallel change is made in Rule C(3)(b).

## COMMITTEE NOTES ON RULES—2006 AMENDMENT

Rule 14 is amended to conform to changes in designating the paragraphs of Supplemental Rule C(6).

## COMMITTEE NOTES ON RULES—2007 AMENDMENT

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.

A plaintiff should be on equal footing with the defendant in making third-party claims, whether the claim against the plaintiff is asserted as a counterclaim or as another form of claim. The limit imposed by the former reference to “counterclaim” is deleted.

## COMMITTEE NOTES ON RULES—2009 AMENDMENT

The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 6.

**Rule 15. Amended and Supplemental Pleadings**

## (a) AMENDMENTS BEFORE TRIAL.

(1) *Amending as a Matter of Course.* A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) *Other Amendments.* In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(3) *Time to Respond.* Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

## (b) AMENDMENTS DURING AND AFTER TRIAL.

(1) *Based on an Objection at Trial.* If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) *For Issues Tried by Consent.* When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move—at any time, even after judgment—to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

## (c) RELATION BACK OF AMENDMENTS.

(1) *When an Amendment Relates 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 allows relation back;

(B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading; or

(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 com-

plaint, 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 the action would have been brought against it, but for a mistake concerning the proper party's identity.

(2) *Notice to the United States.* When the United States or a United States officer or agency is added as a defendant by amendment, the notice requirements of Rule 15(c)(1)(C)(i) and (ii) are satisfied if, during the stated period, process was delivered or mailed to the United States attorney or the United States attorney's designee, to the Attorney General of the United States, or to the officer or agency.

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

(As amended Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Pub. L. 102-198, §11(a), Dec. 9, 1991, 105 Stat. 1626; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

#### NOTES OF ADVISORY COMMITTEE ON RULES—1937

See generally for the present federal practice, [former] Equity Rules 19 (Amendments Generally), 28 (Amendment of Bill as of Course), 32 (Answer to Amended Bill), 34 (Supplemental Pleading), and 35 (Bills of Revivor and Supplemental Bills—Form); U.S.C., Title 28, §§399 [now 1653] (Amendments to show diverse citizenship) and [former] 777 (Defects of Form; amendments). See *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 28, r.r. 1-13; O. 20, r. 4; O. 24, r.r. 1-3.

*Note to Subdivision (a).* The right to serve an amended pleading once as of course is common. 4 Mont.Rev.Codes Ann. (1935) §9186; 1 Ore.Code Ann. (1930) §1-904; 1 S.C.Code (Michie, 1932) §493; *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 28, r. 2. Provision for amendment of pleading before trial, by leave of court, is in almost every code. If there is no statute the power of the court to grant leave is said to be inherent. Clark, *Code Pleading*, (1928) pp. 498, 509.

*Note to Subdivision (b).* Compare [former] Equity Rule 19 (Amendments Generally) and code provisions which allow an amendment "at any time in furtherance of justice," (e. g., Ark.Civ.Code (Crawford, 1934) §155) and which allow an amendment of pleadings to conform to the evidence, where the adverse party has not been misled and prejudiced (e.g., N.M.Stat. Ann. (Courtright, 1929) §§105-601, 105-602).

*Note to Subdivision (c).* "Relation back" is a well recognized doctrine of recent and now more frequent application. Compare Ala.Code Ann. (Michie, 1928) §9513; Ill.Rev.Stat. (1937) ch. 110, §170(2); 2 Wash.Rev.Stat. Ann. (Remington, 1932) §308-3(4). See U.S.C., Title 28, §399 [now 1653] (Amendments to show diverse citizenship) for a provision for "relation back."

*Note to Subdivision (d).* This is an adaptation of Equity Rule 34 (Supplemental Pleading).

#### NOTES OF ADVISORY COMMITTEE ON RULES—1963 AMENDMENT

Rule 15(d) is intended to give the court broad discretion in allowing a supplemental pleading. However, some cases, opposed by other cases and criticized by the commentators, have taken the rigid and formalistic view that where the original complaint fails to state a claim upon which relief can be granted, leave to serve a supplemental complaint must be denied. See *Bonner v. Elizabeth Arden, Inc.*, 177 F.2d 703 (2d Cir. 1949); *Bowles v. Senderowitz*, 65 F.Supp. 548 (E.D.Pa.), rev'd on other grounds, 158 F.2d 435 (3d Cir. 1946), cert. denied, *Senderowitz v. Fleming*, 330 U.S. 848, 67 S.Ct. 1091, 91 L.Ed. 1292 (1947); cf. *LaSalle Nat. Bank v. 222 East Chestnut St. Corp.*, 267 F.2d 247 (7th Cir.), cert. denied, 361 U.S. 836, 80 S.Ct. 88, 4 L.Ed.2d 77 (1959). But see *Camilla Cotton Oil Co. v. Spencer Kellogg & Sons*, 257 F.2d 162 (5th Cir. 1958); *Genuth v. National Biscuit Co.*, 81 F.Supp. 213 (S.D.N.Y. 1948), app. dismissed, 177 F.2d 962 (2d Cir. 1949); 3 *Moore's Federal Practice* ¶15.01 [5] (Supp. 1960); 1A *Baron & Holtzoff, Federal Practice & Procedure* 820-21 (Wright ed. 1960). Thus plaintiffs have sometimes been needlessly remitted to the difficulties of commencing a new action even though events occurring after the commencement of the original action have made clear the right to relief.

Under the amendment the court has discretion to permit a supplemental pleading despite the fact that the original pleading is defective. As in other situations where a supplemental pleading is offered, the court is to determine in the light of the particular circumstances whether filing should be permitted, and if so, upon what terms. The amendment does not attempt to deal with such questions as the relation of the statute of limitations to supplemental pleadings, the operation of the doctrine of laches, or the availability of other defenses. All these questions are for decision in accordance with the principles applicable to supplemental pleadings generally. Cf. *Blau v. Lamb*, 191 F.Supp. 906 (S.D.N.Y. 1961); *Lendonsol Amusement Corp. v. B. & Q. Assoc., Inc.*, 23 F.R.Serv. 15d. 3, Case 1 (D.Mass. 1957).

#### NOTES OF ADVISORY COMMITTEE ON RULES—1966 AMENDMENT

Rule 15(c) is amplified to state more clearly when an amendment of a pleading changing the party against whom a claim is asserted (including an amendment to correct a misnomer or misdescription of a defendant) shall "relate back" to the date of the original pleading.

The problem has arisen most acutely in certain actions by private parties against officers or agencies of the United States. Thus an individual denied social security benefits by the Secretary of Health, Education, and Welfare may secure review of the decision by bringing a civil action against that officer within sixty days. 42 U.S.C. §405(g) (Supp. III, 1962). In several recent cases the claimants instituted timely action but mistakenly named as defendant the United States, the Department of HEW, the "Federal Security Administration" (a non-existent agency), and a Secretary who had retired from the office nineteen days before. Discovering their mistakes, the claimants moved to amend their complaints to name the proper defendant; by this time the statutory sixty-day period had expired. The motions were denied on the ground that the amendment "would amount to the commencement of a new proceeding and would not relate back in time so as to avoid the statutory provision \* \* \* that suit be brought within sixty days \* \* \*" *Cohn v. Federal Security Adm.*, 199 F.Supp. 884, 885 (W.D.N.Y. 1961); see also *Cunningham v. United States*, 199 F.Supp. 541 (W.D.Mo. 1958); *Hall v. Department of HEW*, 199 F.Supp. 833 (S.D.Tex. 1960); *Sandridge v. Folsom, Secretary of HEW*, 200 F.Supp. 25 (M.D.Tenn. 1959). [The Secretary of Health, Education, and Welfare has approved certain ameliorative regulations under 42 U.S.C. §405(g). See 29 Fed.Reg. 8209 (June 30, 1964); Jacoby, *The Effect of Recent Changes in the Law of "Nonstatutory" Judicial Review*, 53 Geo.L.J. 19, 42-43

(1964); see also *Simmons v. United States Dept. HEW*, 328 F.2d 86 (3d Cir. 1964).]

Analysis in terms of “new proceeding” is traceable to *Davis v. L. L. Cohen & Co.*, 268 U.S. 638 (1925), and *Mellon v. Arkansas Land & Lumber Co.*, 275 U.S. 460 (1928), but those cases antedate the adoption of the Rules which import different criteria for determining when an amendment is to “relate back”. As lower courts have continued to rely on the *Davis* and *Mellon* cases despite the contrary intent of the Rules, clarification of Rule 15(c) is considered advisable.

Relation back is intimately connected with the policy of the statute of limitations. The policy of the statute limiting the time for suit against the Secretary of HEW would not have been offended by allowing relation back in the situations described above. For the government was put on notice of the claim within the stated period—in the particular instances, by means of the initial delivery of process to a responsible government official (see Rule 4(d)(4) and (5)). In these circumstances, characterization of the amendment as a new proceeding is not responsive to the reality, but is merely question-begging; and to deny relation back is to defeat unjustly the claimant’s opportunity to prove his case. See the full discussion by Byse, *Suing the “Wrong” Defendant in Judicial Review of Federal Administrative Action: Proposals for Reform*, 77 Harv.L.Rev. 40 (1963); see also Ill.Civ.P.Act §46(4).

Much the same question arises in other types of actions against the government (see *Byse*, supra, at 45 n. 15). In actions between private parties, the problem of relation back of amendments changing defendants has generally been better handled by the courts, but incorrect criteria have sometimes been applied, leading sporadically to doubtful results. See 1A Barron & Holtzoff, *Federal Practice & Procedure* §451 (Wright ed. 1960); 1 id. §186 (1960); 2 id. §543 (1961); 3 *Moore’s Federal Practice*, par. 15.15 (Cum.Supp. 1962); Annot., *Change in Party After Statute of Limitations Has Run*, 8 A.L.R.2d 6 (1949). Rule 15(c) has been amplified to provide a general solution. An amendment changing the party against whom a claim is asserted relates back if the amendment satisfies the usual condition of Rule 15(c) of “arising out of the conduct \* \* \* set forth \* \* \* in the original pleading,” and if, within the applicable limitations period, the party brought in by amendment, first, received such notice of the institution of the action—the notice need not be formal—that he would not be prejudiced in defending the action, and, second, knew or should have known that the action would have been brought against him initially had there not been a mistake concerning the identity of the proper party. Revised Rule 15(c) goes on to provide specifically in the government cases that the first and second requirements are satisfied when the government has been notified in the manner there described (see Rule 4(d)(4) and (5)). As applied to the government cases, revised Rule 15(c) further advances the objectives of the 1961 amendment of Rule 25(d) (substitution of public officers).

The relation back of amendments changing plaintiffs is not expressly treated in revised Rule 15(c) since the problem is generally easier. Again the chief consideration of policy is that of the statute of limitations, and the attitude taken in revised Rule 15(c) toward change of defendants extends by analogy to amendments changing plaintiffs. Also relevant is the amendment of Rule 17(a) (real party in interest). To avoid forfeitures of just claims, revised Rule 17(a) would provide that no action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed for correction of the defect in the manner there stated.

NOTES OF ADVISORY COMMITTEE ON RULES—1987  
AMENDMENT

The amendments are technical. No substantive change is intended.

NOTES OF ADVISORY COMMITTEE ON RULES—1991  
AMENDMENT

The rule has been revised to prevent parties against whom claims are made from taking unjust advantage of otherwise inconsequential pleading errors to sustain a limitations defense.

*Paragraph (c)(1)*. This provision is new. It is intended to make it clear that the rule does not apply to preclude any relation back that may be permitted under the applicable limitations law. Generally, the applicable limitations law will be state law. If federal jurisdiction is based on the citizenship of the parties, the primary reference is the law of the state in which the district court sits. *Walker v. Armco Steel Corp.*, 446 U.S. 740 (1980). If federal jurisdiction is based on a federal question, the reference may be to the law of the state governing relations between the parties. *E.g.*, *Board of Regents v. Tomanio*, 446 U.S. 478 (1980). In some circumstances, the controlling limitations law may be federal law. *E.g.*, *West v. Conrail, Inc.*, 107 S.Ct. 1538 (1987). *Cf. Burlington Northern R. Co. v. Woods*, 480 U.S. 1 (1987); *Stewart Organization v. Ricoh*, 108 S.Ct. 2239 (1988). Whatever may be the controlling body of limitations law, if that law affords a more forgiving principle of relation back than the one provided in this rule, it should be available to save the claim. *Accord, Marshall v. Mulrenin*, 508 F.2d 39 (1st cir. 1974). If *Schiavone v. Fortune*, 106 S.Ct. 2379 (1986) implies the contrary, this paragraph is intended to make a material change in the rule.

*Paragraph (c)(3)*. This paragraph has been revised to change the result in *Schiavone v. Fortune*, supra, with respect to the problem of a misnamed defendant. An intended defendant who is notified of an action within the period allowed by Rule 4(m) for service of a summons and complaint may not under the revised rule defeat the action on account of a defect in the pleading with respect to the defendant’s name, provided that the requirements of clauses (A) and (B) have been met. If the notice requirement is met within the Rule 4(m) period, a complaint may be amended at any time to correct a formal defect such as a misnomer or misidentification. On the basis of the text of the former rule, the Court reached a result in *Schiavone v. Fortune* that was inconsistent with the liberal pleading practices secured by Rule 8. See Bauer, *Schiavone: An Un-Fortunate Illustration of the Supreme Court’s Role as Interpreter of the Federal Rules of Civil Procedure*, 63 NOTRE DAME L. REV. 720 (1988); Brussack, *Outrageous Fortune: The Case for Amending Rule 15(c) Again*, 61 S. CAL. L. REV. 671 (1988); Lewis, *The Excessive History of Federal Rule 15(c) and Its Lessons for Civil Rules Revision*, 86 MICH. L. REV. 1507 (1987).

In allowing a name-correcting amendment within the time allowed by Rule 4(m), this rule allows not only the 120 days specified in that rule, but also any additional time resulting from any extension ordered by the court pursuant to that rule, as may be granted, for example, if the defendant is a fugitive from service of the summons.

This revision, together with the revision of Rule 4(i) with respect to the failure of a plaintiff in an action against the United States to effect timely service on all the appropriate officials, is intended to produce results contrary to those reached in *Gardner v. Gartman*, 880 F.2d 797 (4th cir. 1989), *Rys v. U.S. Postal Service*, 886 F.2d 443 (1st cir. 1989), *Martin’s Food & Liquor, Inc. v. U.S. Dept. of Agriculture*, 14 F.R.S.3d 86 (N.D. Ill. 1988). *But cf. Montgomery v. United States Postal Service*, 867 F.2d 900 (5th cir. 1989), *Warren v. Department of the Army*, 867 F.2d 1156 (8th cir. 1989); *Miles v. Department of the Army*, 881 F.2d 777 (9th cir. 1989), *Barsten v. Department of the Interior*, 896 F.2d 422 (9th cir. 1990); *Brown v. Georgia Dept. of Revenue*, 881 F.2d 1018 (11th cir. 1989).

CONGRESSIONAL MODIFICATION OF PROPOSED 1991  
AMENDMENT

Section 11(a) of Pub. L. 102-198 [set out as a note under section 2074 of this title] provided that Rule

15(c)(3) of the Federal Rules of Civil Procedure as transmitted to Congress by the Supreme Court to become effective on Dec. 1, 1991, is amended. See 1991 Amendment note below.

NOTES OF ADVISORY COMMITTEE ON RULES—1993  
AMENDMENT

The amendment conforms the cross reference to Rule 4 to the revision of that rule.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

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.”

COMMITTEE NOTES ON RULES—2009 AMENDMENT

Rule 15(a)(1) is amended to make three changes in the time allowed to make one amendment as a matter of course.

Former Rule 15(a) addressed amendment of a pleading to which a responsive pleading is required by distinguishing between the means used to challenge the pleading. Serving a responsive pleading terminated the right to amend. Serving a motion attacking the pleading did not terminate the right to amend, because a motion is not a “pleading” as defined in Rule 7. The right to amend survived beyond decision of the motion unless the decision expressly cut off the right to amend.

The distinction drawn in former Rule 15(a) is changed in two ways. First, the right to amend once as a matter of course terminates 21 days after service of a motion under Rule 12(b), (e), or (f). This provision will force the pleader to consider carefully and promptly the wisdom of amending to meet the arguments in the motion. A responsive amendment may avoid the need to decide the motion or reduce the number of issues to be decided, and will expedite determination of issues that otherwise might be raised seriatim. It also should advance other pretrial proceedings.

Second, the right to amend once as a matter of course is no longer terminated by service of a responsive pleading. The responsive pleading may point out issues that the original pleader had not considered and persuade the pleader that amendment is wise. Just as amendment was permitted by former Rule 15(a) in response to a motion, so the amended rule permits one amendment as a matter of course in response to a responsive pleading. The right is subject to the same 21-day limit as the right to amend in response to a motion.

The 21-day periods to amend once as a matter of course after service of a responsive pleading or after service of a designated motion are not cumulative. If a responsive pleading is served after one of the designated motions is served, for example, there is no new 21-day period.

Finally, amended Rule 15(a)(1) extends from 20 to 21 days the period to amend a pleading to which no responsive pleading is allowed and omits the provision that cuts off the right if the action is on the trial calendar. Rule 40 no longer refers to a trial calendar, and many courts have abandoned formal trial calendars. It is more effective to rely on scheduling orders or other pretrial directions to establish time limits for amendment in the few situations that otherwise might allow one amendment as a matter of course at a time that would disrupt trial preparations. Leave to amend still can be sought under Rule 15(a)(2), or at and after trial under Rule 15(b).

Abrogation of Rule 13(f) establishes Rule 15 as the sole rule governing amendment of a pleading to add a counterclaim.

Amended Rule 15(a)(3) extends from 10 to 14 days the period to respond to an amended pleading.

AMENDMENT BY PUBLIC LAW

1991—Subd. (c)(3). Pub. L. 102-198 substituted “Rule 4(j)” for “Rule 4(m)”.

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

(a) **PURPOSES OF A PRETRIAL CONFERENCE.** In any action, the court may order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as:

- (1) expediting disposition of the action;
- (2) establishing early and continuing control so that the case will not be protracted because of lack of management;
- (3) discouraging wasteful pretrial activities;
- (4) improving the quality of the trial through more thorough preparation; and
- (5) facilitating settlement.

(b) **SCHEDULING.**

(1) *Scheduling Order.* Except in categories of actions exempted by local rule, the district judge—or a magistrate judge when authorized by local rule—must issue a scheduling order:

- (A) after receiving the parties’ report under Rule 26(f); or
- (B) after consulting with the parties’ attorneys and any unrepresented parties at a scheduling conference or by telephone, mail, or other means.

(2) *Time to Issue.* The judge must issue the scheduling order as soon as practicable, but in any event within the earlier of 120 days after any defendant has been served with the complaint or 90 days after any defendant has appeared.

(3) *Contents of the Order.*

(A) *Required Contents.* The scheduling order must limit the time to join other parties, amend the pleadings, complete discovery, and file motions.

(B) *Permitted Contents.* The scheduling order may:

- (i) modify the timing of disclosures under Rules 26(a) and 26(e)(1);
- (ii) modify the extent of discovery;
- (iii) provide for disclosure or discovery of electronically stored information;
- (iv) include any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced;
- (v) set dates for pretrial conferences and for trial; and
- (vi) include other appropriate matters.

(4) *Modifying a Schedule.* A schedule may be modified only for good cause and with the judge’s consent.

(c) **ATTENDANCE AND MATTERS FOR CONSIDERATION AT A PRETRIAL CONFERENCE.**

(1) *Attendance.* A represented party must authorize at least one of its attorneys to make stipulations and admissions about all matters that can reasonably be anticipated for discussion at a pretrial conference. If appropriate, the court may require that a party or its rep-