

14(a) which in certain cases eliminates the requirement of obtaining leave to bring in a third-party defendant.

NOTES OF ADVISORY COMMITTEE ON RULES—1983
AMENDMENT

One of the reasons sanctions against improper motion practice have been employed infrequently is the lack of clarity of Rule 7. That rule has stated only generally that the pleading requirements relating to captions, signing, and other matters of form also apply to motions and other papers. The addition of Rule 7(b)(3) makes explicit the applicability of the signing requirement and the sanctions of Rule 11, which have been amplified.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

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

(a) WHO MUST FILE; CONTENTS. A nongovernmental corporate party must file 2 copies of a disclosure statement that:

- (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 TO FILE; 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 if any required information changes.

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

COMMITTEE NOTES ON RULES—2002

Rule 7.1 is drawn from Rule 26.1 of the Federal Rules of Appellate Procedure, with changes to adapt to the circumstances of district courts that dictate different provisions for the time of filing, number of copies, and the like. The information required by Rule 7.1(a) reflects the “financial interest” standard of Canon 3C(1)(c) of the Code of Conduct for United States Judges. This information will support properly in-

formed disqualification decisions in situations that call for automatic disqualification under Canon 3C(1)(c). It does not cover all of the circumstances that may call for disqualification under the financial interest standard, and does not deal at all with other circumstances that may call for disqualification.

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

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

Changes Made After Publication and Comments. The provisions that would require disclosure of additional information that may be required by the Judicial Conference have been deleted.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

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.

Rule 8. General Rules of Pleading

(a) CLAIM FOR RELIEF. A pleading that states a claim for relief 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; ADMISSIONS 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 allegations asserted against it by an opposing party.

(2) *Denials—Responding to the Substance.* A denial must fairly respond to the substance of the allegation.

(3) *General and Specific Denials.* A party that intends in good faith to deny all the allegations of a pleading—including the jurisdictional grounds—may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) *Denying Part of an Allegation.* A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) *Lacking Knowledge or Information.* A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) *Effect of Failing to Deny.* An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(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;
- 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) PLEADING TO BE CONCISE AND DIRECT; ALTERNATIVE STATEMENTS; INCONSISTENCY.

(1) *In General.* Each allegation must be simple, concise, and direct. No technical form is required.

(2) *Alternative Statements of a Claim or Defense.* A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) *Inconsistent Claims or Defenses.* A party may state as many separate claims or defenses as it has, regardless of consistency.

(e) CONSTRUING PLEADINGS. Pleadings must be construed so as to do justice.

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 28, 2010, eff. Dec. 1, 2010.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

Note to Subdivision (a). See [former] Equity Rules 25 (Bill of Complaint—Contents), and 30 (Answer—Contents—Counterclaim). Compare 2 Ind.Stat. Ann. (Burns, 1933) §§2-1004, 2-1015; 2 Ohio Gen.Code Ann. (Page, 1926) §§11305, 11314; Utah Rev.Stat. Ann. (1933), §§104-7-2, 104-9-1.

See Rule 19(c) for the requirement of a statement in a claim for relief of the names of persons who ought to be parties and the reason for their omission.

See Rule 23(b) for particular requirements as to the complaint in a secondary action by shareholders.

Note to Subdivision (b). 1. This rule supersedes the methods of pleading prescribed in U.S.C., Title 19, §508 (Persons making seizures pleading general issue and providing special matter); U.S.C., Title 35, [former] §§40d (Providing under general issue, upon notice, that a statement in application for an extended patent is not true), 69 [now 282] (Pleading and proof in actions for infringement) and similar statutes.

2. This rule is, in part, [former] Equity Rule 30 (Answer—Contents—Counterclaim), with the matter on denials largely from the Connecticut practice. See Conn.Practice Book (1934) §§107, 108, and 122; Conn.Gen.Stat. (1930) §§5508-5514. Compare the English practice, *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 19, r.r. 17-20.

Note to Subdivision (c). This follows substantially English Rules Under the Judicature Act (The Annual Practice, 1937) O. 19, r. 15 and N.Y.C.P.A. (1937) §242, with “surprise” omitted in this rule.

Note to Subdivision (d). The first sentence is similar to [former] Equity Rule 30 (Answer—Contents—Counterclaim). For the second sentence see [former] Equity Rule 31 (Reply—When Required—When Cause at Issue). This is similar to English Rules Under the Judicature Act (The Annual Practice, 1937) O. 19, r.r. 13, 18; and to the practice in the States.

Note to Subdivision (e). This rule is an elaboration upon [former] Equity Rule 30 (Answer—Contents—Counterclaim), plus a statement of the actual practice under some codes. Compare also [former] Equity Rule 18 (Pleadings—Technical Forms Abrogated). See Clark, *Code Pleading* (1928), pp. 171-4, 432-5; Hankin, *Alternative and Hypothetical Pleading* (1924), 33 Yale L.J. 365.

Note to Subdivision (f). A provision of like import is of frequent occurrence in the codes. Ill.Rev.Stat. (1937) ch. 110, §157(3); 2 Minn.Stat. (Mason, 1927) §9266; N.Y.C.P.A. (1937) §275; 2 N.D.Comp.Laws Ann. (1913) §7458.

NOTES OF ADVISORY COMMITTEE ON RULES—1966
AMENDMENT

The change here is consistent with the broad purposes of unification.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

The amendments are technical. No substantive change is intended.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

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.

Changes Made After Publication and Comment. See Note to Rule 1, *supra*.

COMMITTEE NOTES ON RULES—2010 AMENDMENT

Subdivision (c)(1). “[D]ischarge in bankruptcy” is deleted from the list of affirmative defenses. Under 11 U.S.C. §524(a)(1) and (2) a discharge voids a judgment to the extent that it determines a personal liability of the debtor with respect to a discharged debt. The discharge

also operates as an injunction against commencement or continuation of an action to collect, recover, or offset a discharged debt. For these reasons it is confusing to describe discharge as an affirmative defense. But §524(a) applies only to a claim that was actually discharged. Several categories of debt set out in 11 U.S.C. §523(a) are excepted from discharge. The issue whether a claim was excepted from discharge may be determined either in the court that entered the discharge or—in most instances—in another court with jurisdiction over the creditor's claim.

Changes Made After Publication and Comment. No changes were made in the rule text.

The Committee Note was revised to delete statements that were over-simplified. New material was added to provide a reminder of the means to determine whether a debt was in fact discharged.

Rule 9. Pleading Special Matters

(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 allege:

- (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 denial, which must state any supporting facts that are peculiarly within the party's knowledge.

(b) FRAUD OR MISTAKE; CONDITIONS OF MIND. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

(c) CONDITIONS PRECEDENT. In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.

(d) OFFICIAL DOCUMENT OR ACT. In pleading an official document or official act, it suffices to allege that the document was legally issued or the act legally done.

(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. An allegation of time or place is material when testing the sufficiency of a pleading.

(g) SPECIAL DAMAGES. If an item of special damage is claimed, it must be specifically stated.

(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 Admiralty or Maritime Claims and Asset Forfeiture Actions. A claim cognizable only in the admiralty or maritime jurisdiction is an admiralty or maritime claim for those purposes, whether or not so designated.

(2) *Designation for Appeal.* A case that includes an admiralty or maritime claim within this subdivision (h) is an admiralty case within 28 U.S.C. §1292(a)(3).

(As amended Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Mar. 30, 1970, eff. July 1, 1970; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

Note to Subdivision (a). Compare [former] Equity Rule 25 (Bill of Complaint—Contents) requiring disability to be stated; Utah Rev.Stat. Ann. (1933) §104-13-15, enumerating a number of situations where a general averment of capacity is sufficient. For provisions governing averment of incorporation, see 2 Minn.Stat. (Mason, 1927) §9271; N.Y.R.C.P. (1937) Rule 93; 2 N.D.Comp.Laws Ann. (1913) §7981 et seq.

Note to Subdivision (b). See *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 19, r. 22.

Note to Subdivision (c). The codes generally have this or a similar provision. See *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 19, r. 14; 2 Minn.Stat. (Mason, 1927) §9273; N.Y.R.C.P. (1937) Rule 92; 2 N.D.Comp.Laws Ann. (1913) §7461; 2 Wash.Rev.Stat. Ann. (Remington, 1932) §288.

Note to Subdivision (e). The rule expands the usual code provisions on pleading a judgment by including judgments or decisions of administrative tribunals and foreign courts. Compare Ark.Civ.Code (Crawford, 1934) §141; 2 Minn.Stat. (Mason, 1927) §9269; N.Y.R.C.P. (1937) Rule 95; 2 Wash.Rev.Stat. Ann. (Remington, 1932) §287.

NOTES OF ADVISORY COMMITTEE ON RULES—1966 AMENDMENT

Certain distinctive features of the admiralty practice must be preserved for what are now suits in admiralty. This raises the question: After unification, when a single form of action is established, how will the counterpart of the present suit in admiralty be identifiable? In part the question is easily answered. Some claims for relief can only be suits in admiralty, either because the admiralty jurisdiction is exclusive or because no non-maritime ground of federal jurisdiction exists. Many claims, however, are cognizable by the district courts whether asserted in admiralty or in a civil action, assuming the existence of a nonmaritime ground of jurisdiction. Thus at present the pleader has power to determine procedural consequences by the way in which he exercises the classic privilege given by the saving-tosuitors clause (28 U.S.C. §1333) or by equivalent statutory provisions. For example, a longshoreman's claim for personal injuries suffered by reason of the unseaworthiness of a vessel may be asserted in a suit in admiralty or, if diversity of citizenship exists, in a civil action. One of the important procedural consequences is that in the civil action either party may demand a jury trial, while in the suit in admiralty there is no right to jury trial except as provided by statute.

It is no part of the purpose of unification to inject a right to jury trial into those admiralty cases in which that right is not provided by statute. Similarly as will be more specifically noted below, there is no disposition to change the present law as to interlocutory appeals in admiralty, or as to the venue of suits in admiralty; and, of course, there is no disposition to inject into the civil practice as it now is the distinctively maritime remedies (maritime attachment and garnishment, actions in rem, possessory, petitory and partition actions and limitation of liability). The unified rules must therefore provide some device for preserving the present power of the pleader to determine whether these historically maritime procedures shall be applicable to his claim or not; the pleader must be afforded some means of designating his claim as the counterpart of the present suit in admiralty, where its character as such is not clear.