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RULES OF CIVIL PROCEDURE FOR THE UNITED STATES DISTRICT COURTS[1]

TITLE I. SCOPE OF RULES; FORM OF ACTION

Rule 1. Scope and Purpose

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

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

1. Rule 81 states certain limitations in the application of these rules to enumerated special proceedings.

2. The expression ''district courts of the United States'' appearing in the statute authorizing the Supreme Court of the United States to promulgate rules of civil procedure does not include the district courts held in the Territories and insular possessions. See *Mookini et al. v. United States*, 303 U.S. 201, 58 S.Ct. 543, 82 L.Ed. 748 (1938).

3. These rules are drawn under the authority of the act of June 19, 1934, U.S.C., Title 28, §723b [see 2072] (Rules in actions at law; Supreme Court authorized to make), and §723c [see 2072] (Union of equity and action at law rules; power of Supreme Court) and also other grants of rule making power to the Court. See Clark and Moore, *A New Federal Civil Procedure—I. The Background*, 44 Yale L.J. 387, 391 (1935). Under §723b after the rules have taken effect all laws in conflict therewith are of no further force or effect. In accordance with §723c the Court has united the general rules prescribed for cases in equity with those in actions at law so as to secure one form of civil action and procedure for both. See Rule 2 (One Form of Action). For the former practice in equity and at law see U.S.C., Title 28, §§723 and 730 [see 2071 et seq.] (conferring power on the Supreme Court to make rules of practice in equity) and the [former] Equity Rules promulgated thereunder; U.S.C., Title 28, [former] §724 (Conformity act): [former] Equity Rule 22 (Action at Law Erroneously Begun as Suit in Equity—Transfer); [former] Equity Rule 23 (Matters Ordinarily Determinable at Law When Arising in Suit in Equity to be Disposed of Therein); U.S.C., Title 28, [former] §§397 (Amendments to pleadings when case brought to wrong side of court), and 398 (Equitable defenses and equitable relief in actions at law).

4. With the second sentence compare U.S.C., Title 28, [former] §§777 (Defects of form; amendments), 767 (Amendment of process); [former] Equity Rule 19 (Amendments Generally).

NOTES OF ADVISORY COMMITTEE ON RULES—1948 AMENDMENT

The change in nomenclature conforms to the official designation of district courts in Title 28, U.S.C., §132(a).

NOTES OF ADVISORY COMMITTEE ON RULES—1966 AMENDMENT

This is the fundamental change necessary to effect unification of the civil and admiralty procedure. Just as the 1938 rules abolished the distinction between actions at law and suits in equity, this change would abolish the distinction between civil actions and suits in admiralty. See also Rule 81.

NOTES OF ADVISORY COMMITTEE ON RULES—1993 AMENDMENT

The purpose of this revision, adding the words ''and administered'' to the second sentence, is to recognize the affirmative duty of the court to exercise the authority conferred by these rules to ensure that civil litigation is resolved not only fairly, but also without undue cost or delay. As officers of the court, attorneys share this responsibility with the judge to whom the case is assigned.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

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 ''civil actions and proceedings.'' This change does not affect such questions as 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).

The Style Project

The Civil Rules are the third set of the rules to be restyled. The restyled Rules of Appellate Procedure took effect in 1998. The restyled Rules of Criminal Procedure took effect in 2002. The restyled Rules of Civil Procedure apply the same general drafting guidelines and principles used in restyling the Appellate and Criminal Rules.

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

1. General Guidelines. Guidance in drafting, usage, and style was provided by Bryan Garner, *Guidelines for Drafting and Editing Court Rules*, Administrative Office of the United States Courts (1996) and Bryan Garner, *Dictionary of Modern Legal Usage* (2d ed. 1995). *See also* Joseph Kimble, *Guiding Principles for Restyling the Civil Rules*, in *Preliminary Draft of Proposed Style Revision of the Federal Rules of Civil Procedure*, at x [sic] (Feb. 2005) (available at http://www.uscourts.gov/rules/Prelim—draft—proposed—ptl.pdf).

2. Formatting Changes. Many of the changes in the restyled Civil Rules result from using format to achieve clearer presentation. The rules are broken down into constituent parts, using progressively indented subparagraphs with headings and substituting vertical for horizontal lists. ''Hanging indents'' are used throughout. These formatting changes make the structure of the rules graphic and make the restyled rules easier to read and understand even when the words are not changed. Rule 14(a) illustrates the benefits of formatting changes.

3. Changes to Reduce Inconsistent, Ambiguous, Redundant, Repetitive, or Archaic Words. The restyled rules reduce the use of inconsistent terms that say the same thing in different ways. Because different words are presumed to have different meanings, such inconsistencies can result in confusion. The restyled rules reduce inconsistencies by using the same words to express the same meaning. For example, consistent expression is achieved without affecting meaning by the changes from ''infant'' in many rules to ''minor'' in all rules; from ''upon motion or on its own initiative'' in Rule 4(m) and variations in many other rules to ''on motion or on its own''; and from ''deemed'' to ''considered'' in Rules 5(c), 12(e), and elsewhere. Some variations of expression have been carried forward when the context made that appropriate. As an example, ''stipulate,'' ''agree,'' and ''consent'' appear throughout the rules, and ''written'' qualifies these words in some places but not others. The number of variations has been reduced, but at times the former words were carried forward. None of the changes, when made, alters the rule's meaning.

The restyled rules minimize the use of inherently ambiguous words. For example, the word ''shall'' can mean ''must,'' ''may,'' or something else, depending on context. The potential for confusion is exacerbated by the fact that ''shall'' is no longer generally used in spoken or clearly written English. The restyled rules replace ''shall'' with ''must,'' ''may,'' or ''should,'' depending on which one the context and established interpretation make correct in each rule.

The restyled rules minimize the use of redundant ''intensifiers.'' These are expressions that attempt to add emphasis, but instead state the obvious and create negative implications for other rules. ''The court in its discretion may'' becomes ''the court may''; ''unless the order expressly directs otherwise'' becomes ''unless the court orders otherwise.'' The absence of intensifiers in the restyled rules does not change their substantive meaning. For example, the absence of the word ''reasonable'' to describe the written notice of foreign law required in Rule 44.1 does not mean that ''unreasonable'' notice is permitted.

The restyled rules also remove words and concepts that are outdated or redundant. The reference to ''at law or in equity'' in Rule 1 has become redundant with the merger of law and equity. Outdated words and concepts include the reference to ''demurrers, pleas, and exceptions'' in Rule 7(c); the reference to ''mesne'' process in Rule 77(c); and the reference in Rule 81(f) to a now-abolished official position.

The restyled rules remove a number of redundant cross-references. For example, Rule 8(b) states that a general denial is subject to the obligations of Rule 11, but all pleadings are subject to Rule 11. Removing such cross-references does not defeat application of the formerly cross-referenced rule.

4. Rule Numbers. The restyled rules keep the same rule numbers to minimize the effect on research. Subdivisions have been rearranged within some rules to achieve greater clarity and simplicity. The only change that moves one part of a rule to another is the transfer of former Rule 25(d)(2) to Rule 17(d). The restyled rules include a comparison chart to make it easy to identify transfers of provisions between subdivisions and redesignations of some subdivisions.

5. Other Changes. The style changes to the rules are intended to make no changes in substantive meaning. A very small number of minor technical amendments that arguably do change meaning were approved separately from the restyled rules, but become effective at the same time. An example is adding ''e-mail address'' to the information that must be included in pleadings[.] These minor changes occur in Rules 4(k), 9(h), 11(a), 14(b), 16(c)(1), 26(g)(1), 30(b), 31, 40, 71.1, and 78.

Changes Made After Publication and Comment.

Style Rules 1–86

Most of the changes in Styles Rule [sic] 1–86 reflect style improvements made in response to public comments and continuing work by consultants, reporters, Subcommittees A and B, the Standing Committee Style Subcommittee, and the Advisory Committee. They are marked above [omitted] as changes made after publication. An explanation of each would be both burdensome and unnecessary. Many are self-explanatory. Some are set out in the introduction to the Style Project materials. Others are explained in the minutes of the May 2006 Civil Rules Committee meeting. A few changes—and decisions against change—deserve individual mention here as well.

Present Rule 1 says that the Rules govern ''in all suits of a civil nature.'' Style Rule 1 as published changed this to ''all civil actions and proceedings.'' Comments suggested that the addition of ''proceedings'' might inadvertently expand the domain governed by the Civil Rules. The Standing Committee Style Subcommittee was persuaded that ''and proceedings'' should be removed. Subcommittee A accepted this recommendation. Further consideration, however, persuaded the Advisory Committee that ''and proceedings'' should be retained. The reasons for concluding that the term ''civil actions'' does not express all of the events properly governed by the Rules are described in the draft Minutes for the May meeting. As noted in the introduction, the Committee Note to Rule 1 is expanded to include a general description of the Style Project.

Present Rule 25(a)(1) is a classic illustration of the ''shall'' trap. It says that ''the action shall be dismissed as to'' a deceased party unless a motion to substitute is made within 90 days after death is suggested on the record. Style Rule 25(a)(1) translated ''shall'' as ''may,'' providing that the action ''may be dismissed.'' This choice was bolstered by considering the effects of the Rule 6(b) authority to extend the 90-day period even after it expires. To say that the court ''must'' dismiss might distract attention from the alternative authority to extend the time and grant a motion to substitute. Comments suggested that ''may'' effects a substantive change. The comments took pains to express no view on the desirability of substantive change. The Committee concluded that it is better to replace ''may'' with ''must,'' and to delete the Committee Note explanation of the Rule 6(b) reasons for concluding that ''may'' does not work a substantive change.

A syntactic ambiguity in Rule 65(d) was corrected in response to comments and further research demonstrating that the ambiguity resulted from inadvertent omission of a comma when the Rule was adopted to carry forward former 28 U.S.C. §363. As revised, Rule 65(d) clearly provides that an injunction binds a party only after actual notice. It also clearly provides that after actual notice of an injunction, the injunction binds a person in active concert or participation with a party's officers, agents, servants, employees, and attorneys. The change is explained further in the new paragraph added to the Rule 65 Committee Note.

Finally, the Committee decided not to change the approach taken to identifying shifts of material among subdivisions. The Bankruptcy Rules Committee urged that the Committee Notes should identify decisions to rearrange material among subdivisions of the same rule to improve clarity and simplicity. In Rule 12, for example, subdivision (c) was divided between Style Rule 12(c) and (d), while former subdivision (d) became Style Rule 12(i). The purpose of expanding the Committee Notes would be to alert future researchers—particularly those who rely on tightly focused electronic searches—to define search terms that will reach back before the Style Amendments took effect. The approach taken in the published Style Rules was to identify in Committee Notes only the one instance in which material was shifted between Rules—from Rule 25 to Rule 17. Forty-four shifts among subdivisions of the same rule were charted in Appendix B, ''Current and Restyled Rules Comparison Chart'' The chart is set out below [omitted]. The Committee decided again that this approach is better than the alternative of adding length to many of the Committee Notes. It can be expected that many rules publications will draw attention to the changes identified in the chart.

Style-Substance Track

Two rules published on the Style-Substance Track were abandoned.

Rule 8 would have been revised to call for ''a demand for the relief sought, which may include alternative forms or different types of relief.'' Comments showed that the old-fashioned ''relief in the alternative'' better describes circumstances in which the pleader is uncertain as to the available forms of relief, or prefers a form of relief that may not be available.

Rule 36 would have been amended to make clear the rule that an admission adopted at a final pretrial conference can be withdrawn or amended only on satisfying the ''manifest injustice'' standard of Style Rule 16(e). Revisions of Style Rule 16(e) make this clear, avoiding the need to further amend Rule 36.

''E-Discovery'' Style Amendments: Rules 16, 26, 33, 34, 37, and 45

As noted above [omitted], the Style revisions to the ''e-discovery'' amendments published for comment in 2004, before the Style Project was published for comment in 2005, are all ''changes made after publication.'' All involve pure style. They can be evaluated by reading the overstrike-underline version set out above [omitted].

Rule 2. One Form of Action

There is one form of action—the civil action.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1937

1. This rule modifies U.S.C., Title 28, [former] §384 (Suits in equity, when not sustainable). U.S.C., Title 28, §§723 and 730 [see 2071 et seq.] (conferring power on the Supreme Court to make rules of practice in equity), are unaffected insofar as they relate to the rule making power in admiralty. These sections, together with §723b [see 2072] (Rules in actions at law; Supreme Court authorized to make) are continued insofar as they are not inconsistent with §723c [see 2072] (Union of equity and action at law rules; power of Supreme Court). See Note 3 to Rule 1. U.S.C., Title 28, [former] §§724 (Conformity act), 397 (Amendments to pleadings when case brought to wrong side of court) and 398 (Equitable defenses and equitable relief in actions at law) are superseded.

2. Reference to actions at law or suits in equity in all statutes should now be treated as referring to the civil action prescribed in these rules.

3. This rule follows in substance the usual introductory statements to code practices which provide for a single action and mode of procedure, with abolition of forms of action and procedural distinctions. Representative statutes are N.Y. Code 1848 (Laws 1848, ch. 379) §62; N.Y.C.P.A. (1937) §8; Calif.Code Civ.Proc. (Deering, 1937) §307; 2 Minn.Stat. (Mason, 1927) §9164; 2 Wash.Rev.Stat.Ann. (Remington, 1932) §§153, 255.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

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.

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

Rule 3. Commencing an Action

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

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

NOTES OF ADVISORY COMMITTEE ON RULES—1937

1. Rule 5(e) defines what constitutes filing with the court.

2. This rule governs the commencement of all actions, including those brought by or against the United States or an officer or agency thereof, regardless of whether service is to be made personally pursuant to Rule 4(d), or otherwise pursuant to Rule 4(e).

3. With this rule compare [former] Equity Rule 12 (Issue of Subpoena—Time for Answer) and the following statutes (and other similar statutes) which provide a similar method for commencing an action:

U.S.C., Title 28:

§45 [former] (District courts; practice and procedure in certain cases under interstate commerce laws).

§762 [see 1402] (Petition in suit against United States).

§766 [see 2409] (Partition suits where United States is tenant in common or joint tenant).

4. This rule provides that the first step in an action is the filing of the complaint. Under Rule 4(a) this is to be followed forthwith by issuance of a summons and its delivery to an officer for service. Other rules providing for dismissal for failure to prosecute suggest a method available to attack unreasonable delay in prosecuting an action after it has been commenced. When a Federal or State statute of limitations is pleaded as a defense, a question may arise under this rule whether the mere filing of the complaint stops the running of the statute, or whether any further step is required, such as, service of the summons and complaint or their delivery to the marshal for service. The answer to this question may depend on whether it is competent for the Supreme Court, exercising the power to make rules of procedure without affecting substantive rights, to vary the operation of statutes of limitations. The requirement of Rule 4(a) that the clerk shall forthwith issue the summons and deliver it to the marshal for service will reduce the chances of such a question arising.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

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

(a) CONTENTS; AMENDMENTS.

(1) *Contents.* A 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;