Before formally making an order, report, or recommendations, a master may find it helpful to circulate a draft to the parties for review and comment. The usefulness of this practice depends on the nature of the master's proposed action.

Subdivision (g). The provisions of subdivision (g)(1), describing the court's powers to afford a hearing, take evidence, and act on a master's order, report, or recommendations are drawn from present Rule 53(e)(2), but are not limited, as present Rule 53(e)(2) is limited, to the report of a trial master in a nonjury action. The requirement that the court must afford an opportunity to be heard can be satisfied by taking written submissions when the court acts on the report without taking live testimony.

The subdivision (g)(2) time limits for objecting to—or seeking adoption or modification of—a master's order, report, or recommendations, are important. They are not jurisdictional. Although a court may properly refuse to entertain untimely review proceedings, the court may excuse the failure to seek timely review. The basic time period is lengthened to 20 days because the present 10-day period may be too short to permit thorough study and response to a complex report dealing with complex litigation. If no party asks the court to act on a master's report, the court is free to adopt the master's action or to disregard it at any relevant point in the proceedings.

Subdivision (g)(3) establishes the standards of review for a master's findings of fact or recommended findings of fact. The court must decide de novo all objections to findings of fact made or recommended by the master unless the parties stipulate, with the court's consent, that the findings will be reviewed for clear error or—with respect to a master appointed on the parties' consent or appointed to address pretrial or post-trial matters—that the findings will be final. Clear-error review is more likely to be appropriate with respect to findings that do not go to the merits of the underlying claims or defenses, such as findings of fact bearing on a privilege objection to a discovery request. Even if no objection is made, the court is free to decide the facts de novo; to review for clear error if an earlier approved stipulation provided clear-error review; or to withdraw its consent to a stipulation for clear-error review or finality, and then to decide de novo. If the court withdraws its consent to a stipulation for finality or clear-error review, it may reopen the opportunity to object.

Under Rule 53(g)(4), the court must decide de novo all objections to conclusions of law made or recommended by a master. As with findings of fact, the court also may decide conclusions of law de novo when no objection is made.

Apart from factual and legal questions, masters often make determinations that, when made by a trial court, would be treated as matters of procedural discretion. The court may set a standard for review of such matters in the order of appointment, and may amend the order to establish the standard. If no standard is set by the original or amended order appointing the master, review of procedural matters is for abuse of discretion. The subordinate role of the master means that the trial court's review for abuse of discretion may be more searching than the review that an appellate court makes of a trial court.

If a master makes a recommendation on any matter that does not fall within Rule 53(g)(3), (4), or (5), the court may act on the recommendation under Rule 53(g)(1).

Subdivision (h). The need to pay compensation is a substantial reason for care in appointing private persons as masters.

Payment of the master's fees must be allocated among the parties and any property or subject-matter within the court's control. The amount in controversy and the means of the parties may provide some guidance in making the allocation. The nature of the dispute also may be important—parties pursuing matters of public interest, for example, may deserve special protection. A party whose unreasonable behavior has occasioned the need to appoint a master, on the other hand, may properly be charged all or a major portion of the master's fees. It may be proper to revise an interim allocation after decision on the merits. The revision need not await a decision that is final for purposes of appeal, but may be made to reflect disposition of a substantial portion of the case.

The basis and terms for fixing compensation should be stated in the order of appointment. The court retains power to alter the initial basis and terms, after notice and an opportunity to be heard, but should protect the parties against unfair surprise.

The provision of former Rule 53(a) that the ''provision for compensation shall not apply when a United States Magistrate Judge is designated to serve as a master'' is deleted as unnecessary. Other provisions of law preclude compensation.

Subdivision (i). Rule 53(i) carries forward unchanged former Rule 53(f).

Changes Made After Publication and Comment. Subdivision (a)(3), barring appearance by a master as attorney before the appointing judge during the period of the appointment, is deleted. Subdivision (a)(4) is renumbered as (a)(3).

Subdivision (b)(2) is amended by adding new material to the subparagraph (A), (B,) (C), and (D) specifications of issues that must be addressed in the order appointing a master. (A) now requires a statement of any investigation or enforcement duties. (B) now establishes a presumption that ex parte communications between master and court are limited to administrative matters; the court may, in its discretion, permit ex parte communications on other matters. (C) directs that the order address not only preservation but also filing of the record. (D) requires that the order state the method of filing the record.

Subdivision (b)(3) is changed by requiring an opportunity to be heard on an order amending an appointment order. It also is renumbered as (b)(4).

Subdivision (b)(4), renumbered as (b)(3), is redrafted to express the original meaning more clearly.

Subdivision (c) has a minor style change.

Subdivision (g)(1) is amended to state that in acting on a master's recommendations the court ''must'' afford an opportunity to be heard.

Subdivision (g)(3) is changed to narrow still further the opportunities to depart from de novo determination of objections to a master's findings or recommendations for findings of fact.

Subdivision (g)(4) is changed by deleting the opportunity of the parties to stipulate that a master's conclusions of law will be final.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 53 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.

COMMITTEE NOTES ON RULES—2009 AMENDMENT

The time set in the former rule at 20 days has been revised to 21 days. See the Note to Rule 6.

TITLE VII. JUDGMENT

Rule 54. Judgment; Costs

(a) DEFINITION; FORM. ''Judgment'' as used in these rules includes a decree and any order from which an appeal lies. A judgment should not include recitals of pleadings, a master's report, or a record of prior proceedings.

(b) JUDGMENT ON MULTIPLE CLAIMS OR INVOLVING MULTIPLE PARTIES. When an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved,

the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

(c) DEMAND FOR JUDGMENT; RELIEF TO BE GRANTED. A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

(d) COSTS; ATTORNEY'S FEES.

(1) *Costs Other Than Attorney's Fees.* Unless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney's fees—should be allowed to the prevailing party. But costs against the United States, its officers, and its agencies may be imposed only to the extent allowed by law. The clerk may tax costs on 14 days' notice. On motion served within the next 7 days, the court may review the clerk's action.

(2) *Attorney's Fees.*

(A) *Claim to Be by Motion.* A claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.

(B) *Timing and Contents of the Motion.* Unless a statute or a court order provides otherwise, the motion must:

(i) be filed no later than 14 days after the entry of judgment;

(ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;

(iii) state the amount sought or provide a fair estimate of it; and

(iv) disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.

(C) *Proceedings.* Subject to Rule 23(h), the court must, on a party's request, give an opportunity for adversary submissions on the motion in accordance with Rule 43(c) or 78. The court may decide issues of liability for fees before receiving submissions on the value of services. The court must find the facts and state its conclusions of law as provided in Rule 52(a).

(D) *Special Procedures by Local Rule; Reference to a Master or a Magistrate Judge.* By local rule, the court may establish special procedures to resolve fee-related issues without extensive evidentiary hearings. Also, the court may refer issues concerning the value of services to a special master under Rule 53 without regard to the limitations of Rule 53(a)(1), and may refer a motion for attorney's fees to a magistrate judge under Rule 72(b) as if it were a dispositive pretrial matter.

(E) *Exceptions.* Subparagraphs (A)–(D) do not apply to claims for fees and expenses as sanctions for violating these rules or as sanctions under 28 U.S.C. §1927.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Apr. 17, 1961, eff. July 19, 1961; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 2002, eff. Dec. 1, 2002; Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

Note to Subdivision (a). The second sentence is derived substantially from [former] Equity Rule 71 (Form of Decree).

Note to Subdivision (b). This provides for the separate judgment of equity and code practice. See Wis.Stat. (1935) §270.54; Compare N.Y.C.P.A. (1937) §476.

Note to Subdivision (c). For the limitation on default contained in the first sentence, see 2 N.D.Comp.Laws Ann. (1913) §7680; N.Y.C.P.A. (1937) §479. Compare *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 13, r.r. 3–12. The remainder is a usual code provision. It makes clear that a judgment should give the relief to which a party is entitled, regardless of whether it is legal or equitable or both. This necessarily includes the deficiency judgment in foreclosure cases formerly provided for by Equity Rule 10 (Decree for Deficiency in Foreclosures, Etc.).

Note to Subdivision (d). For the present rule in common law actions, see *Ex parte Peterson*, 253 U.S. 300, 40 S.Ct. 543, 64 L.Ed. 919 (1920); Payne, *Costs in Common Law Actions in the Federal Courts* (1935), 21 Va.L.Rev. 397.

The provisions as to costs in actions in *forma pauperis* contained in U.S.C., Title 28, §§832–836 [now 1915] are unaffected by this rule. Other sections of U.S.C., Title 28, which are unaffected by this rule are: §§815 [former] (Costs; plaintiff not entitled to, when), 821 [now 1928] (Costs; infringement of patent; disclaimer), 825 (Costs; several actions), 829 [now 1927] (Costs; attorney liable for, when), and 830 [now 1920] (Costs; bill of; taxation).

The provisions of the following and similar statutes as to costs against the United States and its officers and agencies are specifically continued:

U.S.C., Title 15, §§77v(a), 78aa, 79y (Securities and Exchange Commission)
U.S.C., Title 16, §825p (Federal Power Commission)
U.S.C., Title 26, [former] §§1569(d) and 1645(d) (Internal revenue actions)
U.S.C., Title 26, [former] §1670(b)(2) (Reimbursement of costs of recovery against revenue officers)
U.S.C., Title 28, [former] §817 (Internal revenue actions)
U.S.C., Title 28, §836 [now 1915] (United States—actions in *forma pauperis)*
U.S.C., Title 28, §842 [now 2006] (Actions against revenue officers)
U.S.C., Title 28, §870 [now 2408] (United States—in certain cases)
U.S.C., Title 28, [former] §906 (United States—foreclosure actions)
U.S.C., Title 47, §401 (Communications Commission)

The provisions of the following and similar statutes as to costs are unaffected:

U.S.C., Title 7, §210(f) (Actions for damages based on an order of the Secretary of Agriculture under Stockyards Act)
U.S.C., Title 7, §499g(c) (Appeals from reparations orders of Secretary of Agriculture under Perishable Commodities Act)
U.S.C., Title 8, [former] §45 (Action against district attorneys in certain cases)
U.S.C., Title 15, §15 (Actions for injuries due to violation of antitrust laws)
U.S.C., Title 15, §72 (Actions for violation of law forbidding importation or sale of articles at less than market value or wholesale prices)
U.S.C., Title 15, §77k (Actions by persons acquiring securities registered with untrue statements under Securities Act of 1933)

U.S.C., Title 15, §78i(e) (Certain actions under the Securities Exchange Act of 1934)
U.S.C., Title 15, §78r (Similar to 78i(e))
U.S.C., Title 15, §96 (Infringement of trade-mark—damages)
U.S.C., Title 15, §99 (Infringement of trade-mark—injunctions)
U.S.C., Title 15, §124 (Infringement of trade-mark—damages)
U.S.C., Title 19, §274 (Certain actions under customs law)
U.S.C., Title 30, §32 (Action to determine right to possession of mineral lands in certain cases)
U.S.C., Title 31, §§232 [now 3730] and [former] 234 (Action for making false claims upon United States)
U.S.C., Title 33, §926 (Actions under Harbor Workers' Compensation Act)
U.S.C., Title 35, §67 [now 281, 284] (Infringement of patent—damages)
U.S.C., Title 35, §69 [now 282] (Infringement of patent—pleading and proof)
U.S.C., Title 35, §71 [now 288] (Infringement of patent—when specification too broad)
U.S.C., Title 45, §153p (Actions for non-compliance with an order of National R. R. Adjustment Board for payment of money)
U.S.C., Title 46, [former] §38 (Action for penalty for failure to register vessel)
U.S.C., Title 46, [former] §829 (Action based on noncompliance with an order of Maritime Commission for payment of money)
U.S.C., Title 46, §941 [now 31304] (Certain actions under Ship Mortgage Act)
U.S.C., Title 46 [App.], §1227 (Actions for damages for violation of certain provisions of the Merchant Marine Act, 1936)
U.S.C., Title 47, §206 (Actions for certain violations of Communications Act of 1934)
U.S.C., Title 49, §16(2) [see 11704, 15904] (Action based on non-compliance with an order of I. C. C. for payment of money)

NOTES OF ADVISORY COMMITTEE ON RULES—1946 AMENDMENT

The historic rule in the federal courts has always prohibited piecemeal disposal of litigation and permitted appeals only from final judgments except in those special instances covered by statute. *Hohorst v. Hamburg-American Packet Co.* (1893) 148 U.S. 262; *Rexford v. Brunswick-Balke-Collender Co.* (1913) 228 U.S. 339; *Collins v. Miller* (1920) 252 U.S. 364. Rule 54(b) was originally adopted in view of the wide scope and possible content of the newly created ''civil action'' in order to avoid the possible injustice of a delay in judgment of a distinctly separate claim to await adjudication of the entire case. It was not designed to overturn the settled federal rule stated above, which, indeed, has more recently been reiterated in *Catlin v. United States* (1945) 324 U.S. 229. See also *United States v. Florian* (1941) 312 U.S. 656, rev'g (and restoring the first opinion in) *Florian v. United States* (C.C.A.7th, 1940) 114 F.(2d) 990; *Reeves v. Beardall* (1942) 316 U.S. 283.

Unfortunately, this was not always understood, and some confusion ensued. Hence situations arose where district courts made a piecemeal disposition of an action and entered what the parties thought amounted to a judgment, although a trial remained to be had on other claims similar or identical with those disposed of. In the interim the parties did not know their ultimate rights, and accordingly took an appeal, thus putting the finality of the partial judgment in question. While most appellate courts have reached a result generally in accord with the intent of the rule, yet there have been divergent precedents and division of views which have served to render the issues more clouded to the parties appellant. It hardly seems a case where multiplicity of precedents will tend to remove the problem from debate. The problem is presented and discussed in the following cases: *Atwater v. North American Coal Corp.* (C.C.A.2d, 1940) 111 F.(2d) 125; *Rosenblum v. Dingfelder* (C.C.A.2d, 1940) 111 F.(2d) 406; *Audi-Vision, Inc. v. RCA Mfg. Co., Inc.* (C.C.A.2d, 1943) 136 F.(2d) 621; *Zalkind v. Scheinman* (C.C.A.2d, 1943) 139 F.(2d) 895; *Oppenheimer v. F. J. Young & Co., Inc.* (C.C.A.2d, 1944) 144 F.(2d) 387; *Libbey-Owens-Ford Glass Co. v. Sylvania Industrial Corp.* (C.C.A.2d, 1946) 154 F.(2d) 814, cert. den. (1946) 66 S.Ct. 1353; *Zarati Steamship Co. v. Park Bridge Corp.* (C.C.A.2d, 1946) 154 F.(2d) 377; *Baltimore and Ohio R. Co. v. United Fuel Gas Co.* (C.C.A.4th, 1946) 154 F.(2d) 545; *Jefferson Electric Co. v. Sola Electric Co.* (C.C.A.7th, 1941) 122 F.(2d) 124; *Leonard v. Socony-Vacuum Oil Co.* (C.C.A.7th, 1942) 130 F.(2d) 535; *Markham v. Kasper* (C.C.A.7th, 1945) 152 F.(2d) 270; *Hanney v. Franklin Fire Ins. Co. of Philadelphia* (C.C.A.9th, 1944) 142 F.(2d) 864; *Toomey v. Toomey* (App.D.C. 1945) 149 F.(2d) 19.

In view of the difficulty thus disclosed, the Advisory Committee in its two preliminary drafts of proposed amendments attempted to redefine the original rule with particular stress upon the interlocutory nature of partial judgments which did not adjudicate all claims arising out of a single transaction or occurrence. This attempt appeared to meet with almost universal approval from those of the profession commenting upon it, although there were, of course, helpful suggestions for additional changes in language or clarification of detail. But *cf.* Circuit Judge Frank's dissenting opinion in *Libbey-Owens-Ford Glass Co. v. Sylvania Industrial Corp., supra*, n. 21 of the dissenting opinion. The Committee, however, became convinced on careful study of its own proposals that the seeds of ambiguity still remained, and that it had not completely solved the problem of piecemeal appeals. After extended consideration, it concluded that a retention of the older federal rule was desirable, and that this rule needed only the exercise of a discretionary power to afford a remedy in the infrequent harsh case to provide a simple, definite, workable rule. This is afforded by amended Rule 54(b). It re-establishes an ancient policy with clarity and precision. For the possibility of staying execution where not all claims are disposed of under Rule 54(b), see amended Rule 62(h).

NOTES OF ADVISORY COMMITTEE ON RULES—1961 AMENDMENT

This rule permitting appeal, upon the trial court's determination of ''no just reason for delay,'' from a judgment upon one or more but fewer than all the claims in an action, has generally been given a sympathetic construction by the courts and its validity is settled. *Reeves v. Beardall*, 316 U.S. 283 (1942); *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427 (1956); *Cold Metal Process Co. v. United Engineering & Foundry Co.*, 351 U.S. 445 (1956).

A serious difficulty has, however, arisen because the rule speaks of claims but nowhere mentions parties. A line of cases has developed in the circuits consistently holding the rule to be inapplicable to the dismissal, even with the requisite trial court determination, of one or more but fewer than all defendants jointly charged in an action, *i.e.* charged with various forms of concerted or related wrongdoing or related liability. See *Mull v. Ackerman*, 279 F.2d 25 (2d Cir. 1960); *Richards v. Smith*, 276 F.2d 652 (5th Cir. 1960); *Hardy v. Bankers Life & Cas. Co.*, 222 F.2d 827 (7th Cir. 1955); *Steiner v. 20th Century-Fox Film Corp.*, 220 F.2d 105 (9th Cir. 1955). For purposes of Rule 54(b) it was arguable that there were as many ''claims'' as there were parties defendant and that the rule in its present text applied where less than all of the parties were dismissed, *cf. United Artists Corp. v. Masterpiece Productions, Inc.*, 221 F.2d 213, 215 (2d Cir. 1955); *Bowling Machines, Inc. v. First Nat. Bank*, 283 F.2d 39 (1st Cir. 1960); but the Courts of Appeals are now committed to an opposite view.

The danger of hardship through delay of appeal until the whole action is concluded may be at least as serious in the multiple-parties situations as in multiple-claims cases, see *Pabellon v. Grace Line, Inc.*, 191 F.2d 169, 179 (2d Cir. 1951), *cert. denied*, 342 U.S. 893 (1951), and courts and commentators have urged that Rule 54(b) be changed to take in the former. See *Reagan v. Traders &*

General Ins. Co., 255 F.2d 845 (5th Cir. 1958); *Meadows v. Greyhound Corp.*, 235 F.2d 233 (5th Cir. 1956); *Steiner v. 20th Century-Fox Film Corp.*, *supra*; 6 *Moore's Federal Practice* ¶54.34[2] (2d ed. 1953); 3 Barron & Holtzoff, *Federal Practice & Procedure* §1193.2 (Wright ed. 1958); *Developments in the Law—Multiparty Litigation*, 71 Harv.L.Rev. 874, 981 (1958); Note, 62 Yale L.J. 263, 271 (1953); Ill.Ann.Stat. ch. 110, §50(2) (Smith-Hurd 1956). The amendment accomplishes this purpose by referring explicitly to parties.

There has been some recent indication that interlocutory appeal under the provisions of 28 U.S.C. §1292(b), added in 1958, may now be available for the multiple-parties cases here considered. See *Jaftex Corp. v. Randolph Mills, Inc.*, 282 F.2d 508 (2d Cir. 1960). The Rule 54(b) procedure seems preferable for those cases, and §1292(b) should be held inapplicable to them when the rule is enlarged as here proposed. See *Luckenbach Steamship Co., Inc., v. H. Muehlstein & Co., Inc.*, 280 F.2d 755, 757 (2d Cir. 1960); 1 Barron & Holtzoff, *supra*, §58.1, p. 321 (Wright ed. 1960).

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The amendment is technical. No substantive change is intended.

NOTES OF ADVISORY COMMITTEE ON RULES—1993 AMENDMENT

Subdivision (d). This revision adds paragraph (2) to this subdivision to provide for a frequently recurring form of litigation not initially contemplated by the rules—disputes over the amount of attorneys' fees to be awarded in the large number of actions in which prevailing parties may be entitled to such awards or in which the court must determine the fees to be paid from a common fund. This revision seeks to harmonize and clarify procedures that have been developed through case law and local rules.

Paragraph (1). Former subdivision (d), providing for taxation of costs by the clerk, is renumbered as paragraph (1) and revised to exclude applications for attorneys' fees.

Paragraph (2). This new paragraph establishes a procedure for presenting claims for attorneys' fees, whether or not denominated as ''costs.'' It applies also to requests for reimbursement of expenses, not taxable as costs, when recoverable under governing law incident to the award of fees. *Cf. West Virginia Univ. Hosp. v. Casey*, ___ U.S. ___ (1991), holding, prior to the Civil Rights Act of 1991, that expert witness fees were not recoverable under 42 U.S.C. §1988. As noted in subparagraph (A), it does not, however, apply to fees recoverable as an element of damages, as when sought under the terms of a contract; such damages typically are to be claimed in a pleading and may involve issues to be resolved by a jury. Nor, as provided in subparagraph (E), does it apply to awards of fees as sanctions authorized or mandated under these rules or under 28 U.S.C. §1927.

Subparagraph (B) provides a deadline for motions for attorneys' fees—14 days after final judgment unless the court or a statute specifies some other time. One purpose of this provision is to assure that the opposing party is informed of the claim before the time for appeal has elapsed. Prior law did not prescribe any specific time limit on claims for attorneys' fees. *White v. New Hampshire Dep't of Employment Sec.*, 455 U.S. 445 (1982). In many nonjury cases the court will want to consider attorneys' fee issues immediately after rendering its judgment on the merits of the case. Note that the time for making claims is specifically stated in some legislation, such as the Equal Access to Justice Act, 28 U.S.C. §2412(d)(1)(B) (30-day filing period).

Prompt filing affords an opportunity for the court to resolve fee disputes shortly after trial, while the services performed are freshly in mind. It also enables the court in appropriate circumstances to make its ruling on a fee request in time for any appellate review of a dispute over fees to proceed at the same time as review on the merits of the case.

Filing a motion for fees under this subdivision does not affect the finality or the appealability of a judgment, though revised Rule 58 provides a mechanism by which prior to appeal the court can suspend the finality to resolve a motion for fees. If an appeal on the merits of the case is taken, the court may rule on the claim for fees, may defer its ruling on the motion, or may deny the motion without prejudice, directing under subdivision (d)(2)(B) a new period for filing after the appeal has been resolved. A notice of appeal does not extend the time for filing a fee claim based on the initial judgment, but the court under subdivision (d)(2)(B) may effectively extend the period by permitting claims to be filed after resolution of the appeal. A new period for filing will automatically begin if a new judgment is entered following a reversal or remand by the appellate court or the granting of a motion under Rule 59.

The rule does not require that the motion be supported at the time of filing with the evidentiary material bearing on the fees. This material must of course be submitted in due course, according to such schedule as the court may direct in light of the circumstances of the case. What is required is the filing of a motion sufficient to alert the adversary and the court that there is a claim for fees and the amount of such fees (or a fair estimate).

If directed by the court, the moving party is also required to disclose any fee agreement, including those between attorney and client, between attorneys sharing a fee to be awarded, and between adversaries made in partial settlement of a dispute where the settlement must be implemented by court action as may be required by Rules 23(e) and 23.1 or other like provisions. With respect to the fee arrangements requiring court approval, the court may also by local rule require disclosure immediately after such arrangements are agreed to. *E.g.*, Rule 5 of United States District Court for the Eastern District of New York; *cf. In re ''Agent Orange'' Product Liability Litigation (MDL 381)*, 611 F. Supp. 1452, 1464 (E.D.N.Y. 1985).

In the settlement of class actions resulting in a common fund from which fees will be sought, courts frequently have required that claims for fees be presented in advance of hearings to consider approval of the proposed settlement. The rule does not affect this practice, as it permits the court to require submissions of fee claims in advance of entry of judgment.

Subparagraph (C) assures the parties of an opportunity to make an appropriate presentation with respect to issues involving the evaluation of legal services. In some cases, an evidentiary hearing may be needed, but this is not required in every case. The amount of time to be allowed for the preparation of submissions both in support of and in opposition to awards should be tailored to the particular case.

The court is explicitly authorized to make a determination of the liability for fees before receiving submissions by the parties bearing on the amount of an award. This option may be appropriate in actions in which the liability issue is doubtful and the evaluation issues are numerous and complex.

The court may order disclosure of additional information, such as that bearing on prevailing local rates or on the appropriateness of particular services for which compensation is sought.

On rare occasion, the court may determine that discovery under Rules 26–37 would be useful to the parties. *Compare* Rules Governing Section 2254 Cases in the U.S. District Courts, Rule 6. *See* Note, *Determining the Reasonableness of Attorneys' Fees—the Discoverability of Billing Records*, 64 *B.U.L. Rev.* 241 (1984). In complex fee disputes, the court may use case management techniques to limit the scope of the dispute or to facilitate the settlement of fee award disputes.

Fee awards should be made in the form of a separate judgment under Rule 58 since such awards are subject to review in the court of appeals. To facilitate review, the paragraph provides that the court set forth its find-

ings and conclusions as under Rule 52(a), though in most cases this explanation could be quite brief.

Subparagraph (D) explicitly authorizes the court to establish procedures facilitating the efficient and fair resolution of fee claims. A local rule, for example, might call for matters to be presented through affidavits, or might provide for issuance of proposed findings by the court, which would be treated as accepted by the parties unless objected to within a specified time. A court might also consider establishing a schedule reflecting customary fees or factors affecting fees within the community, as implicitly suggested by Justice O'Connor in *Pennsylvania v. Delaware Valley Citizens' Council*, 483 U.S. 711, 733 (1987) (O'Connor, J., concurring) (how particular markets compensate for contingency). *Cf. Thompson v. Kennickell*, 710 F. Supp. 1 (D.D.C. 1989) (use of findings in other cases to promote consistency). The parties, of course, should be permitted to show that in the circumstances of the case such a schedule should not be applied or that different hourly rates would be appropriate.

The rule also explicitly permits, without need for a local rule, the court to refer issues regarding the amount of a fee award in a particular case to a master under Rule 53. The district judge may designate a magistrate judge to act as a master for this purpose or may refer a motion for attorneys' fees to a magistrate judge for proposed findings and recommendations under Rule 72(b). This authorization eliminates any controversy as to whether such references are permitted under Rule 53(b) as ''matters of account and of difficult computation of damages'' and whether motions for attorneys' fees can be treated as the equivalent of a dispositive pretrial matter that can be referred to a magistrate judge. For consistency and efficiency, all such matters might be referred to the same magistrate judge.

Subparagraph (E) excludes from this rule the award of fees as sanctions under these rules or under 28 U.S.C. §1927.

COMMITTEE NOTES ON RULES—2002 AMENDMENT

Subdivision (d)(2)(C) is amended to delete the requirement that judgment on a motion for attorney fees be set forth in a separate document. This change complements the amendment of Rule 58(a)(1), which deletes the separate document requirement for an order disposing of a motion for attorney fees under Rule 54. These changes are made to support amendment of Rule 4 of the Federal Rules of Appellate Procedure. It continues to be important that a district court make clear its meaning when it intends an order to be the final disposition of a motion for attorney fees.

The requirement in subdivision (d)(2)(B) that a motion for attorney fees be not only filed but also served no later than 14 days after entry of judgment is changed to require filing only, to establish a parallel with Rules 50, 52, and 59. Service continues to be required under Rule 5(a).

COMMITTEE NOTES ON RULES—2003 AMENDMENT

Rule 54(d)(2)(D) is revised to reflect amendments to Rule 53.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 54 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 words ''or class member'' have been removed from Rule 54(d)(2)(C) because Rule 23(h)(2) now addresses objections by class members to attorney-fee motions. Rule 54(d)(2)(C) is amended to recognize that Rule 23(h) now controls those aspects of attorney-fee motions in class actions to which it is addressed.

COMMITTEE NOTES ON RULES—2009 AMENDMENT

Former Rule 54(d)(1) provided that the clerk may tax costs on 1 day's notice. That period was unrealistically short. The new 14-day period provides a better opportunity to prepare and present a response. The former 5-day period to serve a motion to review the clerk's action is extended to 7 days to reflect the change in the Rule 6(a) method for computing periods of less than 11 days.

Rule 55. Default; Default Judgment

(a) ENTERING A DEFAULT. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

(b) ENTERING A DEFAULT JUDGMENT.

(1) *By the Clerk.* If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk—on the plaintiff's request, with an affidavit showing the amount due—must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.

(2) *By the Court.* In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals—preserving any federal statutory right to a jury trial—when, to enter or effectuate judgment, it needs to:

(A) conduct an accounting;

(B) determine the amount of damages;

(C) establish the truth of any allegation by evidence; or

(D) investigate any other matter.

(c) SETTING ASIDE A DEFAULT OR A DEFAULT JUDGMENT. The court may set aside an entry of default for good cause, and it may set aside a default judgment under Rule 60(b).

(d) JUDGMENT AGAINST THE UNITED STATES. A default judgment may be entered against the United States, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.

(As amended Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

This represents the joining of the equity decree *pro confesso* ([former] Equity Rules 12 (Issue of Subpoena—Time for Answer), 16 (Defendant to Answer—Default—Decree *Pro Confesso*), 17 (Decree *Pro Confesso* to be Followed by Final Decree—Setting Aside Default), 29 (Defenses—How Presented), 31 (Reply—When Required—When Cause at Issue)) and the judgment by default now governed by U.S.C., Title 28, [former] §724 (Conformity act). For dismissal of an action for failure to comply with these rules or any order of the court, see rule 41(b).

Note to Subdivision (a). The provision for the entry of default comes from the Massachusetts practice, 2 Mass.Gen.Laws (Ter.Ed., 1932) ch. 231, §57. For affidavit of default, see 2 Minn.Stat. (Mason, 1927) §9256.

Note to Subdivision (b). The provision in paragraph (1) for the entry of judgment by the clerk when plaintiff