

with a party's officer, agent, servant, employee, or attorney.

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

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 65.1. Proceedings Against a Surety

Whenever these rules (including the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions) require or allow a party to give security, and security is given through a bond or other undertaking with one or more sureties, each surety submits to the court's jurisdiction and irrevocably appoints the court clerk as its agent for receiving service of any papers that affect its liability on the bond or undertaking. The surety's liability may be enforced on motion without an independent action. The motion and any notice that the court orders may be served on the court clerk, who must promptly mail a copy of each to every surety whose address is known.

(As added Feb. 28, 1966, eff. July 1, 1966; amended Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007.)

NOTES OF ADVISORY COMMITTEE ON RULES—1966

See Note to Rule 65.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

The amendments are technical. No substantive change is intended.

COMMITTEE NOTES ON RULES—2006 AMENDMENT

Rule 65.1 is amended to conform to the changed title of the Supplemental Rules.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 65.1 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 66. Receivers

These rules govern an action in which the appointment of a receiver is sought or a receiver sues or is sued. But the practice in administering an estate by a receiver or a similar court-appointed officer must accord with the historical practice in federal courts or with a local rule. An action in which a receiver has been appointed may be dismissed only by court order.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 30, 2007, eff. Dec. 1, 2007.)

NOTES OF ADVISORY COMMITTEE ON RULES—1946
AMENDMENT

The title of Rule 66 has been expanded to make clear the subject of the rule, *i.e.*, federal equity receivers.

The first sentence added to Rule 66 prevents a dismissal by any party, after a federal equity receiver has been appointed, except upon leave of court. A party should not be permitted to oust the court and its officer without the consent of that court. See Civil Rule 31(e), Eastern District of Washington.

The second sentence added at the beginning of the rule deals with suits by or against a federal equity re-

ceiver. The first clause thereof eliminates the formal ceremony of an ancillary appointment before suit can be brought by a receiver, and is in accord with the more modern state practice, and with more expeditious and less expensive judicial administration. 2 *Moore's Federal Practice* (1938) 2088–2091. For the rule necessitating ancillary appointment, see *Sterrett v. Second Nat. Bank* (1918) 248 U.S. 73; *Kelley v. Queeney* (W.D.N.Y. 1941) 41 F.Supp. 1015; see also *McCandless v. Furlaud* (1934) 293 U.S. 67. This rule has been extensively criticized. First, *Extraterritorial Powers of Receivers* (1932) 27 Ill.L.Rev. 271; Rose, *Extraterritorial Actions by Receivers* (1933) 17 Minn.L.Rev. 704; Laughlin, *The Extraterritorial Powers of Receivers* (1932) 45 Harv.L.Rev. 429; Clark and Moore, *A New Federal Civil Procedure—II, Pleadings and Parties* (1935) 44 Yale L.J. 1291, 1312–1315; Note (1932) 30 Mich.L.Rev. 1322. See also comment in *Bicknell v. Lloyd-Smith* (C.C.A.2d, 1940) 109 F.(2d) 527, cert. den. (1940) 311 U.S. 650. The second clause of the sentence merely incorporates the well-known and general rule that, absent statutory authorization, a federal receiver cannot be sued without leave of the court which appointed him, applied in the federal courts since *Barton v. Barbour* (1881) 104 U.S. 126. See also 1 *Clark on Receivers* (2d ed.) §549. Under 28 U.S.C. §125, leave of court is unnecessary when a receiver is sued “in respect of any act or transaction of his in carrying on the business” connected with the receivership property, but such suit is subject to the general equity jurisdiction of the court in which the receiver was appointed, so far as justice necessitates.

Capacity of a state court receiver to sue or be sued in federal court is governed by Rule 17(b).

The last sentence added to Rule 66 assures the application of the rules in all matters except actual administration of the receivership estate itself. Since this implicitly carries with it the applicability of those rules relating to appellate procedure, the express reference thereto contained in Rule 66 has been stricken as superfluous. Under Rule 81(a)(1) the rules do not apply to bankruptcy proceedings except as they may be made applicable by order of the Supreme Court. Rule 66 is applicable to what is commonly known as a federal “chancery” or “equity” receiver, or similar type of court officer. It is not designed to regulate or affect receivers in bankruptcy, which are governed by the Bankruptcy Act and the General Orders. Since the Federal Rules are applicable in bankruptcy by virtue of General Orders in Bankruptcy 36 and 37 [following section 53 of Title 11, U.S.C.] only to the extent that they are not inconsistent with the Bankruptcy Act or the General Orders, Rule 66 is not applicable to bankruptcy receivers. See 1 *Collier on Bankruptcy* (14th ed. by Moore and Oglebay) ¶¶2.23–2.36.

NOTES OF ADVISORY COMMITTEE ON RULES—1948
AMENDMENT

Title 28, U.S.C., §§754 and 959(a), state the capacity of a federal receiver to sue or be sued in a federal court, and a repetitive statement of the statute in Rule 66 is confusing and undesirable. See also Note to Rule 17(b), *supra*.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 66 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 67. Deposit into Court

(a) DEPOSITING PROPERTY. If any part of the relief sought is a money judgment or the disposition of a sum of money or some other deliverable thing, a party—on notice to every other party and by leave of court—may deposit with the court all or part of the money or thing, whether or not that party claims any of it. The