

to attachment, etc.) Compare Title 34, §365(c) (Medal of Honor Roll; special pension to persons enrolled)

§ 618 [see 5301] (Benefits exempt from seizure under process and taxation; no deductions for indebtedness to United States)

U.S.C., Title 43:

§ 175 (Exemption from execution of homestead land)

U.S.C., Title 48:

§ 1371o (Panama Canal and railroad retirement annuities, exemption from execution and so forth)

NOTES OF ADVISORY COMMITTEE ON RULES—1946
SUPPLEMENTARY NOTE

With respect to the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. [App.] §501 *et seq.*) see Notes to Rules 62 and 64 herein.

NOTES OF ADVISORY COMMITTEE ON RULES—1948
AMENDMENT

The amendment substitutes the present statutory reference.

NOTES OF ADVISORY COMMITTEE ON RULES—1970
AMENDMENT

The amendment assures that, in aid of execution on a judgment, all discovery procedures provided in the rules are available and not just discovery via the taking of a deposition. Under the present language, one court has held that Rule 34 discovery is unavailable to the judgment creditor. *M. Lowenstein & Sons, Inc. v. American Underwear Mfg. Co.*, 11 F.R.D. 172 (E.D.Pa. 1951). Notwithstanding the language, and relying heavily on legislative history referring to Rule 33, the Fifth Circuit has held that a judgment creditor may invoke Rule 33 interrogatories. *United States v. McWhirter*, 376 F.2d 102 (5th Cir. 1967). But the court's reasoning does not extend to discovery except as provided in Rules 26-33. One commentator suggests that the existing language might properly be stretched to all discovery. 7 *Moore's Federal Practice* ¶69.05[1] (2d ed. 1966), but another believes that a rules amendment is needed. 3 *Baron & Holtzoff, Federal Practice and Procedure* 1484 (Wright ed. 1958). Both commentators and the court in *McWhirter* are clear that, as a matter of policy, Rule 69 should authorize the use of all discovery devices provided in the rules.

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 69 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.

Amended Rule 69(b) incorporates directly the provisions of 2 U.S.C. §118 and 28 U.S.C. §2006, deleting the incomplete statement in former Rule 69(b) of the circumstances in which execution does not issue against an officer.

REFERENCES IN TEXT

2 U.S.C. §118, referred to in subd. (b), was editorially reclassified as 2 U.S.C. 5503.

Rule 70. Enforcing a Judgment for a Specific Act

(a) PARTY'S FAILURE TO ACT; ORDERING ANOTHER TO ACT. If a judgment requires a party to convey land, to deliver a deed or other document, or to perform any other specific act and the party fails to comply within the time specified, the court may order the act to be done—at

the disobedient party's expense—by another person appointed by the court. When done, the act has the same effect as if done by the party.

(b) VESTING TITLE. If the real or personal property is within the district, the court—instead of ordering a conveyance—may enter a judgment divesting any party's title and vesting it in others. That judgment has the effect of a legally executed conveyance.

(c) OBTAINING A WRIT OF ATTACHMENT OR SEQUESTRATION. On application by a party entitled to performance of an act, the clerk must issue a writ of attachment or sequestration against the disobedient party's property to compel obedience.

(d) OBTAINING A WRIT OF EXECUTION OR ASSISTANCE. On application by a party who obtains a judgment or order for possession, the clerk must issue a writ of execution or assistance.

(e) HOLDING IN CONTEMPT. The court may also hold the disobedient party in contempt.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1937

Compare [former] Equity Rules 7 (Process, Mesne and Final), 8 (Enforcement of Final Decrees), and 9 (Writ of Assistance). To avoid possible confusion, both old and new denominations for attachment (sequestration) and execution (assistance) are used in this rule. Compare with the provision in this rule that the judgment may itself vest title, 6 *Tenn. Ann. Code* (Williams, 1934), §10594; 2 *Conn. Gen. Stat.* (1930), §5455; *N.M. Stat. Ann.* (Courtright, 1929), §117-117; 2 *Ohio Gen. Code Ann.* (Page, 1926), §11590; and *England, Supreme Court of Judicature Act* (1925), §47.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 70 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 71. Enforcing Relief For or Against a Nonparty

When an order grants relief for a nonparty or may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1937

Compare [former] Equity Rule 11 (Process in Behalf of and Against Persons Not Parties). Compare also *Terrell v. Allison*, 21 *Wall.* 289, 22 *L. Ed.* 634 (U.C., 1875); *Farmers' Loan and Trust Co. v. Chicago and A. Ry. Co.*, 44 *Fed.* 653 (C.C. Ind., 1890); *Robert Findlay Mfg. Co. v. Hygrade Lighting Fixture Corp.*, 288 *Fed.* 80 (E.D.N.Y., 1923); *Thompson v. Smith*, *Fed. Cas. No.* 13,977 (C.C. Minn., 1870).

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 71 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.