

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.

TITLE IX. SPECIAL PROCEEDINGS

Rule 71.1. Condemning Real or Personal Property

(a) **APPLICABILITY OF OTHER RULES.** These rules govern proceedings to condemn real and personal property by eminent domain, except as this rule provides otherwise.

(b) **JOINDER OF PROPERTIES.** The plaintiff may join separate pieces of property in a single action, no matter whether they are owned by the same persons or sought for the same use.

(c) **COMPLAINT.**

(1) *Caption.* The complaint must contain a caption as provided in Rule 10(a). The plaintiff must, however, name as defendants both the property—designated generally by kind, quantity, and location—and at least one owner of some part of or interest in the property.

(2) *Contents.* The complaint must contain a short and plain statement of the following:

- (A) the authority for the taking;
- (B) the uses for which the property is to be taken;
- (C) a description sufficient to identify the property;
- (D) the interests to be acquired; and
- (E) for each piece of property, a designation of each defendant who has been joined as an owner or owner of an interest in it.

(3) *Parties.* When the action commences, the plaintiff need join as defendants only those persons who have or claim an interest in the property and whose names are then known. But before any hearing on compensation, the plaintiff must add as defendants all those persons who have or claim an interest and whose names have become known or can be found by a reasonably diligent search of the records, considering both the property's character and value and the interests to be acquired. All others may be made defendants under the designation "Unknown Owners."

(4) *Procedure.* Notice must be served on all defendants as provided in Rule 71.1(d), whether they were named as defendants when the action commenced or were added later. A defendant may answer as provided in Rule 71.1(e). The court, meanwhile, may order any distribution of a deposit that the facts warrant.

(5) *Filing; Additional Copies.* In addition to filing the complaint, the plaintiff must give the clerk at least one copy for the defendants' use and additional copies at the request of the clerk or a defendant.

(d) **PROCESS.**

(1) *Delivering Notice to the Clerk.* On filing a complaint, the plaintiff must promptly deliver to the clerk joint or several notices directed to the named defendants. When adding defendants, the plaintiff must deliver to the clerk additional notices directed to the new defendants.

(2) *Contents of the Notice.*

(A) *Main Contents.* Each notice must name the court, the title of the action, and the defendant to whom it is directed. It must describe the property sufficiently to identify it, but need not describe any property other than that to be taken from the named defendant. The notice must also state:

- (i) that the action is to condemn property;
- (ii) the interest to be taken;
- (iii) the authority for the taking;
- (iv) the uses for which the property is to be taken;
- (v) that the defendant may serve an answer on the plaintiff's attorney within 21 days after being served with the notice;
- (vi) that the failure to so serve an answer constitutes consent to the taking and to the court's authority to proceed with the action and fix the compensation; and
- (vii) that a defendant who does not serve an answer may file a notice of appearance.

(B) *Conclusion.* The notice must conclude with the name, telephone number, and e-mail address of the plaintiff's attorney and an address within the district in which the action is brought where the attorney may be served.

(3) *Serving the Notice.*

(A) *Personal Service.* When a defendant whose address is known resides within the United States or a territory subject to the administrative or judicial jurisdiction of the United States, personal service of the notice (without a copy of the complaint) must be made in accordance with Rule 4.

(B) *Service by Publication.*

(i) A defendant may be served by publication only when the plaintiff's attorney files a certificate stating that the attorney believes the defendant cannot be personally served, because after diligent inquiry within the state where the complaint is filed, the defendant's place of residence is still unknown or, if known, that it is beyond the territorial limits of personal service. Service is then made by publishing the notice—once a week for at least 3 successive weeks—in a newspaper published in the county where the property is located or, if there is no such newspaper, in a newspaper with general circulation where the property is located. Before the last publication, a copy of the notice must also be mailed to every defendant who cannot be personally served but whose place of residence is then known. Unknown owners may be served by publication in the same manner by a notice addressed to "Unknown Owners."

(ii) Service by publication is complete on the date of the last publication. The plaintiff's attorney must prove publication and mailing by a certificate, attach a printed copy of the published notice, and mark on the copy the newspaper's name and the dates of publication.

(4) *Effect of Delivery and Service.* Delivering the notice to the clerk and serving it have the same effect as serving a summons under Rule 4.

(5) *Amending the Notice; Proof of Service and Amending the Proof.* Rule 4(a)(2) governs amending the notice. Rule 4(l) governs proof of service and amending it.

(e) **APPEARANCE OR ANSWER.**