And see ''Instructions to United States Attorneys, Marshals, Clerks and Commissioners'' issued by the Attorney General of the United States.

NOTES OF ADVISORY COMMITTEE ON RULES—1946 AMENDMENT

Subdivision (a). The amendment substitutes the Director of the Administrative Office of the United States Courts, acting subject to the approval of the Judicial Conference of Senior Circuit Judges, in the place of the Attorney General as a consequence of and in accordance with the provisions of the act establishing the Administrative Office and transferring functions thereto. Act of August 7, 1939, c. 501, §§1–7, 53 Stat. 1223, 28 U.S.C. §§444–450 [now 601–610].

Subdivision (b). The change in this subdivision does not alter the nature of the judgments and orders to be recorded in permanent form but it does away with the express requirement that they be recorded in a book. This merely gives latitude for the preservation of court records in other than book form, if that shall seem advisable, and permits with the approval of the Judicial Conference the adoption of such modern, space-saving methods as microphotography. See *Proposed Improvements in the Administration of the Offices of Clerks of United States District Courts*, prepared by the Bureau of the Budget (1941) 38–42. See also Rule 55, Federal Rules of Criminal Procedure [following section 687 of Title 18 U.S.C.].

Subdivision (c). The words ''Separate and'' have been deleted as unduly rigid. There is no sufficient reason for requiring that the indices in all cases be separate; on the contrary, the requirement frequently increases the labor of persons searching the records as well as the labor of the clerk's force preparing them. The matter should be left to administrative discretion.

The other changes in the subdivision merely conform with those made in subdivision (b) of the rule.

Subdivision (d). Subdivision (d) is a new provision enabling the Administrative Office, with the approval of the Judicial Conference, to carry out any improvements in clerical procedure with respect to books and records which may be deemed advisable. See report cited in Note to subdivision (b), *supra*.

NOTES OF ADVISORY COMMITTEE ON RULES—1948 AMENDMENT

The change in nomenclature conforms to the official designation in Title 28, U.S.C., §231.

NOTES OF ADVISORY COMMITTEE ON RULES—1963 AMENDMENT

The terminology is clarified without any change of the prescribed practice. See amended Rule 58, and the Advisory Committee's Note thereto.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 79 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 80. Stenographic Transcript as Evidence

If stenographically reported testimony at a hearing or trial is admissible in evidence at a later trial, the testimony may be proved by a transcript certified by the person who reported it.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1937

Note to Subdivision (a). This follows substantially [former] Equity Rule 50 (Stenographer—Appointment—Fees). [This subdivision was abrogated. See amendment note of Advisory Committee below.]

Note to Subdivision (b). See Reports of Conferences of Senior Circuit Judges with the Chief Justice of the United States (1936), 22 A.B.A.J. 818, 819; (1937), 24 A.B.A.J. 75, 77. [This subdivision was abrogated. See amendment note of Advisory Committee below.]

Note to Subdivision (c). Compare Iowa Code (1935) §11353.

NOTES OF ADVISORY COMMITTEE ON RULES—1946 AMENDMENT

Subdivisions (a) and (b) of Rule 80 have been abrogated because of Public Law 222, 78th Cong., c. 3, 2d Sess., approved Jan. 20, 1944, 28 U.S.C. §9a [now 550, 604, 753, 1915, 1920], providing for the appointment of official stenographers for each district court, prescribing their duties, providing for the furnishing of transcripts, the taxation of the fees therefor as costs, and other related matters. This statute has now been implemented by Congressional appropriation available for the fiscal year beginning July 1, 1945.

Subdivision (c) of Rule 80 (Stenographic Report or Transcript as Evidence) has been retained unchanged.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 80 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 XI. GENERAL PROVISIONS

Rule 81. Applicability of the Rules in General; Removed Actions

(a) APPLICABILITY TO PARTICULAR PROCEEDINGS.

(1) *Prize Proceedings*. These rules do not apply to prize proceedings in admiralty governed by 10 U.S.C. §§7651–7681.

(2) *Bankruptcy*. These rules apply to bankruptcy proceedings to the extent provided by the Federal Rules of Bankruptcy Procedure.

(3) *Citizenship*. These rules apply to proceedings for admission to citizenship to the extent that the practice in those proceedings is not specified in federal statutes and has previously conformed to the practice in civil actions. The provisions of 8 U.S.C. §1451 for service by publication and for answer apply in proceedings to cancel citizenship certificates.

(4) *Special Writs*. These rules apply to proceedings for habeas corpus and for quo warranto to the extent that the practice in those proceedings:

(A) is not specified in a federal statute, the Rules Governing Section 2254 Cases, or the Rules Governing Section 2255 Cases; and

(B) has previously conformed to the practice in civil actions.

(5) *Proceedings Involving a Subpoena*. These rules apply to proceedings to compel testimony or the production of documents through a subpoena issued by a United States officer or agency under a federal statute, except as otherwise provided by statute, by local rule, or by court order in the proceedings.

(6) *Other Proceedings*. These rules, to the extent applicable, govern proceedings under the following laws, except as these laws provide other procedures:

(A) 7 U.S.C. §§292, 499g(c), for reviewing an order of the Secretary of Agriculture;

(B) 9 U.S.C., relating to arbitration;

(C) 15 U.S.C. §522, for reviewing an order of the Secretary of the Interior;

(D) 15 U.S.C. §715d(c), for reviewing an order denying a certificate of clearance;

(E) 29 U.S.C. §§159, 160, for enforcing an order of the National Labor Relations Board;

(F) 33 U.S.C. §§918, 921, for enforcing or reviewing a compensation order under the Longshore and Harbor Workers' Compensation Act; and

(G) 45 U.S.C. §159, for reviewing an arbitration award in a railway-labor dispute.

(b) SCIRE FACIAS AND MANDAMUS. The writs of scire facias and mandamus are abolished. Relief previously available through them may be obtained by appropriate action or motion under these rules.

(c) REMOVED ACTIONS.

(1) *Applicability*. These rules apply to a civil action after it is removed from a state court.

(2) *Further Pleading*. After removal, repleading is unnecessary unless the court orders it. A defendant who did not answer before removal must answer or present other defenses or objections under these rules within the longest of these periods:

(A) 21 days after receiving—through service or otherwise—a copy of the initial pleading stating the claim for relief;

(B) 21 days after being served with the summons for an initial pleading on file at the time of service; or

(C) 7 days after the notice of removal is filed.

(3) *Demand for a Jury Trial*.

(A) *As Affected by State Law*. A party who, before removal, expressly demanded a jury trial in accordance with state law need not renew the demand after removal. If the state law did not require an express demand for a jury trial, a party need not make one after removal unless the court orders the parties to do so within a specified time. The court must so order at a party's request and may so order on its own. A party who fails to make a demand when so ordered waives a jury trial.

(B) *Under Rule 38*. If all necessary pleadings have been served at the time of removal, a party entitled to a jury trial under Rule 38 must be given one if the party serves a demand within 14 days after:

(i) it files a notice of removal; or

(ii) it is served with a notice of removal filed by another party.

(d) LAW APPLICABLE.

(1) *''State Law'' Defined*. When these rules refer to state law, the term ''law'' includes the state's statutes and the state's judicial decisions.

(2) *''State'' Defined*. The term ''state'' includes, where appropriate, the District of Columbia and any United States commonwealth or territory.

(3) *''Federal Statute'' Defined in the District of Columbia*. In the United States District Court for the District of Columbia, the term ''federal statute'' includes any Act of Congress that applies locally to the District.

(As amended Dec. 28, 1939, eff. Apr. 3, 1941; Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 30, 1951, eff. Aug. 1, 1951; Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Mar. 1, 1971, eff. July 1, 1971; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 23, 2001, eff. Dec. 1, 2001; Apr. 29, 2002, eff. Dec. 1, 2002; 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). Paragraph (1): Compare the enabling act, 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). For the application of these rules in bankruptcy and copyright proceedings, see Orders xxxvi and xxxvii in Bankruptcy and Rule 1 of Rules of Practice and Procedure under §25 of the copyright act, act of March 4, 1909, U.S.C., Title 17, §25 [see 412, 501 to 504] (Infringement and rules of procedure).

For examples of statutes which are preserved by paragraph (2) see: U.S.C., Title 8, ch. 9 [former] (Naturalization); Title 28, ch. 14 [now 153] (Habeas corpus); Title 28, §§377a–377c (Quo warranto); and such forfeiture statutes as U.S.C., Title 7, §116 (Misbranded seeds, confiscation), and Title 21, §14 [see 334(b)] (Pure Food and Drug Act—condemnation of adulterated or misbranded food; procedure). See also *443 Cans of Frozen Eggs Product v. U.S.*, 226 U.S. 172, 33 S.Ct. 50 (1912).

For examples of statutes which under paragraph (7) will continue to govern procedure in condemnation cases, see U.S.C., [former] Title 40, §258 (Condemnation of realty for sites for public building, etc., procedure); U.S.C., Title 16, §831x (Condemnation by Tennessee Valley Authority); U.S.C., [former] Title 40, §120 (Acquisition of lands for public use in District of Columbia); [former] Title 40, ch. 7 (Acquisition of lands in District of Columbia for use of United States; condemnation).

Note to Subdivision (b). Some statutes which will be affected by this subdivision are:

U.S.C., Title 7:

§222 (Federal Trade Commission powers adopted for enforcement of Stockyards Act) (By reference to Title 15, §49)

U.S.C., Title 15:

§49 (Enforcement of Federal Trade Commission orders and antitrust laws)

§77t(c) (Enforcement of Securities and Exchange Commission orders and Securities Act of 1933)

§78u(f) (Same; Securities Exchange Act of 1934)

§79r(g) (Same; Public Utility Holding Company Act of 1935)

U.S.C., Title 16:

§820 (Proceedings in equity for revocation or to prevent violations of license of Federal Power Commission licensee)

§825m(b) (Mandamus to compel compliance with Federal Water Power Act, etc.)

U.S.C., Title 19:

§1333(c) (Mandamus to compel compliance with orders of Tariff Commission, etc.)

U.S.C., Title 28:

§377 [now 1651] (Power to issue writs)

§572 [now 1923] (Fees, attorneys, solicitors and proctors)

§778 [former] (Death of parties; substitution of executor or administrator). Compare Rule 25(a) (Substitution of parties; death), and the note thereto.

U.S.C., Title 33:

§495 (Removal of bridges over navigable waters)

U.S.C., Title 45:

§88 (Mandamus against Union Pacific Railroad Company)

§153(p) (Mandamus to enforce orders of Adjustment Board under Railway Labor Act)
§185 (Same; National Air Transport Adjustment Board) (By reference to §153)

U.S.C., Title 47:

§11 (Powers of Federal Communications Commission)
§401(a) (Enforcement of Federal Communications Act and orders of Commission)
§406 (Same; compelling furnishing of facilities; mandamus)

U.S.C., Title 49:

§19a(*l*) [see 11703(a), 14703, 15903(a)] (Mandamus to compel compliance with Interstate Commerce Act)
§20(9) [see 11703(a), 14703, 15903(a)] (Jurisdiction to compel compliance with interstate commerce laws by mandamus)

For comparable provisions in state practice see Ill. Rev. Stat. (1937), ch. 110, §179; Calif. Code Civ. Proc. (Deering, 1937) §802.

Note to Subdivision (c). Such statutes as the following dealing with the removal of actions are substantially continued and made subject to these rules:

U.S.C., Title 28:

§71 [now 1441, 1445, 1447] (Removal of suits from state courts)
§72 [now 1446, 1447] (Same; procedure)
§73 [former] (Same; suits under grants of land from different states)
§74 [now 1443, 1446, 1447] (Same; causes against persons denied civil rights)
§75 [now 1446] (Same; petitioner in actual custody of state court)
§76 [now 1442, 1446, 1447] (Same; suits and prosecutions against revenue officers)
§77 [now 1442] (Same; suits by aliens)
§78 [now 1449] (Same; copies of records refused by clerk of state court)
§79 [now 1450] (Same; previous attachment bonds or orders)
§80 [now 1359, 1447, 1919] (Same; dismissal or remand)
§81 [now 1447] (Same; proceedings in suits removed)
§82 [former] (Same; record; filing and return)
§83 [now 1447, 1448] (Service of process after removal)

U.S.C., Title 28, §72 [now 1446, 1447], *supra*, however, is modified by shortening the time for pleading in removed actions.

Note to Subdivision (e). The last sentence of this subdivision modifies U.S.C., Title 28, §725 [now 1652] (Laws of States as rules of decision) in so far as that statute has been construed to govern matters of procedure and to exclude state judicial decisions relative thereto.

NOTES OF ADVISORY COMMITTEE ON RULES—1946 AMENDMENT

Subdivision (a). Despite certain dicta to the contrary [*Lynn v. United States* (C.C.A.5th, 1940) 110 F.(2d) 586; *Mount Tivy Winery, Inc. v. Lewis* (N.D.Cal. 1942) 42 F.Supp. 636], it is manifest that the rules apply to actions against the United States under the Tucker Act [28 U.S.C., §§41(20), 250, 251, 254, 257, 258, 287, 289, 292, 761–765 [now 791, 1346, 1401, 1402, 1491, 1493, 1496, 1501, 1503, 2071, 2072, 2411, 2412, 2501, 2506, 2509, 2510]]. See *United States to use of Foster Wheeler Corp. v. American Surety Co. of New York* (E.D.N.Y. 1939) 25 F.Supp. 700; *Boerner v. United States* (E.D.N.Y. 1939) 26 F.Supp. 769; *United States v. Gallagher* (C.C.A.9th, 1945) 151 F.(2d) 556. Rules 1 and 81 provide that the rules shall apply to all suits of a civil nature, whether cognizable as cases at law or in equity, except those specifically excepted; and the character of the various proceedings excepted by express statement in Rule 81, as well as the language of the rules generally, shows that the term ''civil action'' [Rule 2] includes actions against the United States. Moreover, the rules in many places expressly make provision for the situation wherein the United States is a party as either plaintiff or defendant. See Rules 4(d)(4), 12(a), 13(d), 25(d), 37(f), 39(c), 45(c), 54(d), 55(e), 62(e), and 65(c). In *United States v. Sherwood* (1941) 312 U.S. 584, the Solicitor General expressly conceded in his brief for the United States that the rules apply to Tucker Act cases. The Solicitor General stated: ''The Government, of course, recognizes that the Federal Rules of Civil Procedure apply to cases brought under the Tucker Act.'' (Brief for the United States, p. 31). Regarding *Lynn v. United States, supra*, the Solicitor General said: ''In *Lynn v. United States* . . . the Circuit Court of Appeals for the Fifth Circuit went beyond the Government's contention there, and held that an action under the Tucker Act is neither an action at law nor a suit in equity and, seemingly, that the Federal Rules of Civil Procedure are, therefore, inapplicable. We think the suggestion is erroneous. Rules 4(d), 12(a), 39(c), and 55(e) expressly contemplate suits against the United States, and nothing in the enabling Act (48 Stat. 1064) [see 28 U.S.C. 2072] suggests that the Rules are inapplicable to Tucker Act proceedings, which in terms are to accord with court rules and their subsequent modifications (Sec. 4, Act of March 3, 1887, 24 Stat. 505) [see 28 U.S.C. 2071, 2072].'' (Brief for the United States, p. 31, n. 17.)

United States v. Sherwood, supra, emphasizes, however, that the application of the rules in Tucker Act cases affects only matters of procedure and does not operate to extend jurisdiction. See also Rule 82. In the *Sherwood* case, the New York Supreme Court, acting under §795 of the New York Civil Practice Act, made an order authorizing Sherwood, as a judgment creditor, to maintain a suit under the Tucker Act to recover damages from the United States for breach of its contract with the judgment debtor, Kaiser, for construction of a post office building. Sherwood brought suit against the United States and Kaiser in the District Court for the Eastern District of New York. The question before the United States Supreme Court was whether a United States District Court had jurisdiction to entertain a suit against the United States wherein private parties were joined as parties defendant. It was contended that either the Federal Rules of Civil Procedure or the Tucker Act, or both, embodied the consent of the United States to be sued in litigations in which issues between the plaintiff and third persons were to be adjudicated. Regarding the effect of the Federal Rules, the Court declared that nothing in the rules, so far as they may be applicable in Tucker Act cases, authorized the maintenance of any suit against the United States to which it had not otherwise consented. The matter involved was not one of procedure but of jurisdiction, the limits of which were marked by the consent of the United States to be sued. The jurisdiction thus limited is unaffected by the Federal Rules of Civil Procedure.

Subdivision (a)(2). The added sentence makes it clear that the rules have not superseded the requirements of U.S.C., Title 28, §466 [now 2253]. *Schenk v. Plummer* (C.C.A. 9th, 1940) 113 F.(2d) 726.

For correct application of the rules in proceedings for forfeiture of property for violation of a statute of the United States, such as under U.S.C., Title 22, §405 (seizure of war materials intended for unlawful export) or U.S.C., Title 21, §334(b) (Federal Food, Drug, and Cosmetic Act; formerly Title 21, §14, Pure Food and Drug Act), see *Reynal v. United States* (C.C.A. 5th, 1945) 153 F.(2d) 929; *United States v. 108 Boxes of Cheddar Cheese* (S.D.Iowa 1943) 3 F.R.D. 40.

Subdivision (a)(3). The added sentence makes it clear that the rules apply to appeals from proceedings to enforce administrative subpoenas. See *Perkins v. Endicott Johnson Corp.* (C.C.A. 2d 1942) 128 F.(2d) 208, aff'd on other grounds (1943) 317 U.S. 501; *Walling v. News Printing, Inc.* (C.C.A. 3d, 1945) 148 F.(2d) 57; *McCrone v. United States* (1939) 307 U.S. 61. And, although the provision allows full recognition of the fact that the rigid application of the rules in the proceedings themselves may conflict with the summary determination desired [*Goodyear Tire & Rubber Co. v. National Labor Relations Board* (C.C.A. 6th, 1941) 122 F.(2d) 450; *Cudahy Packing Co. v. National Labor Relations Board* (C.C.A. 10th, 1941)

117 F.(2d) 692], it is drawn so as to permit application of any of the rules in the proceedings whenever the district court deems them helpful. See, *e.g.*, *Peoples Natural Gas Co. v. Federal Power Commission* (App. D.C. 1942) 127 F.(2d) 153, cert. den. (1942) 316 U.S. 700; *Martin v. Chandis Securities Co.* (C.C.A. 9th, 1942) 128 F.(2d) 731. Compare the application of the rules in summary proceedings in bankruptcy under General Order 37. See 1 *Collier on Bankruptcy* (14th ed. by Moore and Oglebay) 326–327; 2 *Collier*, *op. cit. supra*, 1401–1402; 3 *Collier*, *op. cit. supra*, 228–231; 4 *Collier*, *op. cit. supra*, 1199–1202.

Subdivision (a)(6). Section 405 of U.S.C., Title 8 originally referred to in the last sentence of paragraph (6), has been repealed and §738 [see 1451], U.S.C., Title 8, has been enacted in its stead. The last sentence of paragraph (6) has, therefore, been amended in accordance with this change. The sentence has also been amended so as to refer directly to the statute regarding the provision of time for answer, thus avoiding any confusion attendant upon a change in the statute.

That portion of subdivision (a)(6) making the rules applicable to proceedings for enforcement or review of compensation orders under the Longshoremen's and Harbor Workers' Compensation Act [33 U.S.C. §901 et seq.] was added by an amendment made pursuant to order of the Court, December 28, 1939, effective three months subsequent to the adjournment of the 76th Congress, January 3, 1941.

Subdivision (c). The change in subdivision (c) effects more speedy trials in removed actions. In some states many of the courts have only two terms a year. A case, if filed 20 days before a term, is returnable to that term, but if filed less than 20 days before a term, is returnable to the following term, which convenes six months later. Hence, under the original wording of Rule 81(c), where a case is filed less than 20 days before the term and is removed within a few days but before answer, it is possible for the defendant to delay interposing his answer or presenting his defenses by motion for six months or more. The rule as amended prevents this result.

Subdivision (f). The use of the phrase ''the United States or an officer or agency thereof'' in the rules (as *e.g.*, in Rule 12(a) and amended Rule 73(a)) could raise the question of whether ''officer'' includes a collector of internal revenue, a former collector, or the personal representative of a deceased collector, against whom suits for tax refunds are frequently instituted. Difficulty might ensue for the reason that a suit against a collector or his representative has been held to be a personal action. *Sage v. United States* (1919) 250 U.S. 33; *Smietanka v. Indiana Steel Co.* (1921) 257 U.S. 1; *United States v. Nunnally Investment Co.* (1942) 316 U.S. 258. The addition of subdivision (f) to Rule 81 dispels any doubts on the matter and avoids further litigation.

NOTES OF ADVISORY COMMITTEE ON RULES—1948 AMENDMENT

Subdivision (a)—Paragraph (1).—The Copyright Act of March 4, 1909, as amended, was repealed and Title 17, U.S.C., enacted into positive law by the Act of July 30, 1947, c. 391, §§1, 2, 61 Stat. 652. The first amendment, therefore, reflects this change. The second amendment involves a matter of nomenclature and reflects the official designation of the United States District Court for the District of Columbia in Title 28, U.S.C. §§88, 132.

Paragraph (2).—The amendment substitutes the present statutory reference.

Paragraph (3).—The Arbitration Act of February 12, 1925, was repealed and Title 9, U.S.C., enacted into positive law by the Act of July 30, 1947, c. 392, §§1, 2, 61 Stat. 669, and the amendment reflects this change. The Act of May 20, 1926, c. 347, §9 (44 Stat. 585), U.S.C., Title 45, §159, deals with the review by the district court of an award of a board of arbitration under the Railway Labor Act, and provides, *inter alia*, for an appeal within 10 days from a final judgment of the district court to the court of appeals. It is not clear whether Title 28, U.S.C., repealed this time period and substituted the time periods provided for in Title 28, U.S.C., §2107, normally a minimum of 30 days. If there has been no repeal, then the 10-day time period of 45 U.S.C., §159, applies by virtue of the ''unless'' clause in Rule 73(a); if there has been a repeal, then the other time periods stated in Rule 73(a), normally a minimum of 30 days, apply. For discussion, see Note to Rule 73 (§), *supra*.

Paragraph (4).—The nomenclature of the district courts is changed to conform to the official designation in Title 28, U.S.C., §132(a).

Paragraph (5).—The nomenclature of the district courts is changed to conform to the official designation in Title 28, U.S.C., §132(a). The Act of July 5, 1935, c. 372, §§9 and 10, was amended by Act of June 23, 1947, c. 120, 61 Stat. 143, 146, and will probably be amended from time to time. Insertion in Rule 81(a)(5) of the words ''as amended'', and deletion of the subsection reference ''(e), (g), and (i)'' of U.S.C., Title 29, §160, make correcting references and are sufficiently general to include future statutory amendment.

Paragraph (6).—The Chinese Exclusion Acts were repealed by the Act of December 17, 1943, c. 344, §1, 57 Stat. 600, and hence the reference to the Act of September 13, 1888, as amended, is deleted. The Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, was amended by Act of June 25, 1936, c. 804, 49 Stat. 1921, and hence the words ''as amended'' have been added to reflect this change and, as they are sufficiently general, to include future statutory amendment. The Nationality Act of October 14, 1940, c. 876, 54 Stat. 1137, 1172, repealed and replaced the Act of June 29, 1906, as amended, and correcting statutory references are, therefore, made.

Subdivision (c).—In the first sentence the change in nomenclature conforms to the official designation of district courts in Title 28, U.S.C., §132(a); and the word ''all'' is deleted as superfluous. The need for revision of the third sentence is occasioned by the procedure for removal set forth in revised Title 28, U.S.C., §1446. Under the prior removal procedure governing civil actions, 28 U.S.C., §72 (1946), the petition for removal had to be first presented to and filed with the state court, except in the case of removal on the basis of prejudice or local influence, within the time allowed ''to answer or plead to the declaration or complaint of the plaintiff''; and the defendant had to file a transcript of the record in the federal court within thirty days from the date of filing his removal petition. Under §1446(a) removal is effected by a defendant filing with the proper United States district court ''a verified petition containing a short and plain statement of the facts which entitled him or them to removal together with a copy of all process, pleadings, and orders served upon him or them in such action.'' And §1446(b) provides: ''The petition for removal of a civil action or proceeding may be filed within twenty days after commencement of the action or service of process, whichever is later.'' This subsection (b) gives trouble in states where an action may be both commenced and service of process made without serving or otherwise giving the defendant a copy of the complaint or other initial pleading. To cure this statutory defect, the Judge's Committee appointed pursuant to action of the Judicial Conference and headed by Judge Albert B. Maris is proposing an amendment to §1446(b) to read substantially as follows: ''The petition for removal of a civil action or proceedings shall be filed within 20 days after the receipt through service or otherwise by the defendant of a copy of the initial pleading setting forth the claim for relief upon which the action or proceeding is based.'' The revised third sentence of Rule 81(c) is geared to this proposed statutory amendment; and it gives the defendant at least 5 days after removal within which to present his defenses.*

*NOTE.—The Supreme Court made these changes in the committee's proposed amendment to Rule 81(c): The phrase, ''or within 20 days after the service of summons upon such initial pleading, then filed,'' was inserted following the phrase, ''within 20 days after the receipt through service or otherwise of a copy of the initial pleading setting forth the claim for relief upon

The change in the last sentence of subdivision (c) reflects the fact that a transcript of the record is no longer required under §1446, and safeguards the right to demand a jury trial, where the right has not already been waived and where the parties are at issue—''all necessary pleadings have been served.'' Only, rarely will the last sentence of Rule 81(c) have any applicability, since removal will normally occur before the pleadings are closed, and in this usual situation Rule 38(b) applies and safeguards the right to jury trial. See Moore's Federal practice (1st ed.) 3020.

Subdivision (d).—This subdivision is abrogated because it is obsolete and unnecessary under Title 28, U.S.C. Sections 88, 132, and 133 provide that the District of Columbia constitutes a judicial district, the district court of that district is the United States District Court for the District of Columbia, and the personnel of that court are district judges. Sections 41, 43, and 44 provide that the District of Columbia is a judicial circuit, the court of appeals of that circuit is the United States Court of Appeals for the District of Columbia, and the personnel of that court are circuit judges.

Subdivision (e).—The change in nomenclature conforms to the official designation of the United States District Court for the District of Columbia in Title 28, U.S.C., §§132(a), 88.

NOTES OF ADVISORY COMMITTEE ON RULES—1963 AMENDMENT

Subdivision (a)(4). This change reflects the transfer of functions from the Secretary of Commerce to the Secretary of the Interior made by 1939 Reorganization Plan No. II, §4(e), 53 Stat. 1433.

Subdivision (a)(6). The proper current reference is to the 1952 statute superseding the 1940 statute.

Subdivision (c). Most of the cases have held that a party who has made a proper express demand for jury trial in the State court is not required to renew the demand after removal of the action. *Zakoscielny v. Waterman Steamship Corp.*, 16 F.R.D. 314 (D.Md. 1954); *Talley v. American Bakeries Co.*, 15 F.R.D. 391 (E.D.Tenn. 1954); *Rehrer v. Service Trucking Co.*, 15 F.R.D. 113 (D.Del. 1953); 5 *Moore's Federal Practice* ¶38.39[3] (2d ed. 1951); 1 Barron & Holtzoff, *Federal Practice and Procedure* §132 (Wright ed. 1960). But there is some authority to the contrary. *Petsel v. Chicago, B. & Q.R. Co.*, 101 F.Supp. 1006 (S.D.Iowa 1951) *Nelson v. American Nat. Bank & Trust Co.*, 9 F.R.D. 680 (E.D.Tenn. 1950). The amendment adopts the preponderant view.

In order still further to avoid unintended waivers of jury trial, the amendment provides that where by State law applicable in the court from which the case is removed a party is entitled to jury trial without making an express demand, he need not make a demand after removal. However, the district court for calendar or other purposes may on its own motion direct the parties to state whether they demand a jury, and the court must make such a direction upon the request of any party. Under the amendment a district court may find it convenient to establish a routine practice of giving these directions to the parties in appropriate cases.

Subdivision (f). The amendment recognizes the change of nomenclature made by Treasury Dept. Order 150–26(2), 18 Fed. Reg. 3499 (1953).

As to a special problem arising under Rule 25 (Substitution of parties) in actions for refund of taxes, see the Advisory Committee's Note to the amendment of Rule 25(d), effective July 19, 1961; and 4 *Moore's Federal Practice* §25.09 at 531 (2d ed. 1950).

NOTES OF ADVISORY COMMITTEE ON RULES—1966 AMENDMENT

See Note to Rule 1, supra.

Statutory proceedings to forfeit property for violation of the laws of the United States, formerly governed by the admiralty rules, will be governed by the unified and supplemental rules. See Supplemental Rule A.

Upon the recommendation of the judges of the United States District Court for the District of Columbia, the Federal Rules of Civil Procedure are made applicable to probate proceedings in that court. The exception with regard to adoption proceedings is removed because the court no longer has jurisdiction of those matters; and the words ''mental health'' are substituted for ''lunacy'' to conform to the current characterization in the District.

The purpose of the amendment to paragraph (3) is to permit the deletion from Rule 73(a) of the clause ''unless a shorter time is provided by law.'' The 10 day period fixed for an appeal under 45 U.S.C. §159 is the only instance of a shorter time provided for appeals in civil cases. Apart from the unsettling effect of the clause, it is eliminated because its retention would preserve the 15 day period heretofore allowed by 28 U.S.C. §2107 for appeals from interlocutory decrees in admiralty, it being one of the purposes of the amendment to make the time for appeals in civil and admiralty cases uniform under the unified rules. See Advisory Committee's Note to subdivision (a) of Rule 73.

NOTES OF ADVISORY COMMITTEE ON RULES—1968 AMENDMENT

The amendments eliminate inappropriate references to appellate procedure.

NOTES OF ADVISORY COMMITTEE ON RULES—1971 AMENDMENT

Title 28, U.S.C., §2243 now requires that the custodian of a person detained must respond to an application for a writ of habeas corpus ''within three days unless for good cause additional time, not exceeding twenty days, is allowed.'' The amendment increases to forty days the additional time that the district court may allow in habeas corpus proceedings involving persons in custody pursuant to a judgment of a state court. The substantial increase in the number of such proceedings in recent years has placed a considerable burden on state authorities. Twenty days has proved in practice too short a time in which to prepare and file the return in many such cases. Allowance of additional time should, of course, be granted only for good cause.

While the time allowed in such a case for the return of the writ may not exceed forty days, this does not mean that the state must necessarily be limited to that period of time to provide for the federal court the transcript of the proceedings of a state trial or plenary hearing if the transcript must be prepared after the habeas corpus proceeding has begun in the federal court.

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The amendments are technical. No substantive change is intended.

COMMITTEE NOTES ON RULES—2001 AMENDMENT

Former Copyright Rule 1 made the Civil Rules applicable to copyright proceedings except to the extent the Civil Rules were inconsistent with Copyright Rules. Abrogation of the Copyright Rules leaves the Civil Rules fully applicable to copyright proceedings. Rule 81(a)(1) is amended to reflect this change.

The District of Columbia Court Reform and Criminal Procedure Act of 1970, Pub.L. 91–358, 84 Stat. 473, trans-

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which the action or proceeding is based'', because in several states suit is commenced by service of summons upon the defendant, notifying him that the plaintiff's pleading has been filed with the clerk of court. Thus, he may never receive a copy of the initial pleading. The added phrase is intended to give the defendant 20 days after the service of such summons in which to answer in a removed action, or 5 days after the filing of the petition for removal, whichever is longer. In these states, the 20-day period does not begin to run until such pleading is actually filed. The last word of the third sentence was changed from ''longer'' to ''longest'' because of the added phrase.

The phrase, ''and who has not already waived his right to such trial,'' which previously appeared in the fourth sentence of subsection (c) of Rule 81, was deleted in order to afford a party who has waived his right to trial by jury in a state court an opportunity to assert that right upon removal to a federal court.

ferred mental health proceedings formerly held in the United States District Court for the District of Columbia to local District of Columbia courts. The provision that the Civil Rules do not apply to these proceedings is deleted as superfluous.

The reference to incorporation of the Civil Rules in the Federal Rules of Bankruptcy Procedure has been restyled.

Changes Made After Publication and Comments The Committee Note was amended to correct the inadvertent omission of a negative. As revised, it correctly reflects the language that is stricken from the rule.

COMMITTEE NOTES ON RULES—2002 AMENDMENT

This amendment brings Rule 81(a)(2) into accord with the Rules Governing §2254 and §2255 proceedings. In its present form, Rule 81(a)(2) includes return-time provisions that are inconsistent with the provisions in the Rules Governing §§2254 and 2255. The inconsistency should be eliminated, and it is better that the time provisions continue to be set out in the other rules without duplication in Rule 81. Rule 81 also directs that the writ be directed to the person having custody of the person detained. Similar directions exist in the §2254 and §2255 rules, providing additional detail for applicants subject to future custody. There is no need for partial duplication in Rule 81.

The provision that the civil rules apply to the extent that practice is not set forth in the §2254 and §2255 rules dovetails with the provisions in Rule 11 of the §2254 rules and Rule 12 of the §2255 rules.

Changes Made After Publication and Comment. The only change since publication is deletion of an inadvertent reference to §2241 proceedings.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 81 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 81(c) has been revised to reflect the amendment of 28 U.S.C. §1446(a) that changed the procedure for removal from a petition for removal to a notice of removal.

Former Rule 81(e), drafted before the decision in *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938), defined state law to include ''the statutes of that state and the state judicial decisions construing them.'' The *Erie* decision reinterpreted the Rules of Decision Act, now 28 U.S.C. §1652, recognizing that the ''laws'' of the states include the common law established by judicial decisions. Long-established practice reflects this understanding, looking to state common law as well as statutes and court rules when a Civil Rule directs use of state law. Amended Rule 81(d)(1) adheres to this practice, including all state judicial decisions, not only those that construe state statutes.

Former Rule 81(f) is deleted. The office of district director of internal revenue was abolished by restructuring under the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, July 22, 1998, 26 U.S.C. §1 Note.

COMMITTEE NOTES ON RULES—2009 AMENDMENT

The times set in the former rule at 5, 10, and 20 days have been revised to 7, 14, and 21 days, respectively. See the Note to Rule 6.

Several Rules incorporate local state practice. Rule 81(d) now provides that ''the term 'state' includes, where appropriate, the District of Columbia.'' The definition is expanded to include any commonwealth or territory of the United States. As before, these entities are included only ''where appropriate.'' They are included for the reasons that counsel incorporation of state practice. For example, state holidays are recognized in computing time under Rule 6(a). Other, quite different, examples are Rules 64(a), invoking state law for prejudgment remedies, and 69(a)(1), relying on state law for the procedure on execution. Including commonwealths and territories in these and other rules avoids the gaps that otherwise would result when the federal rule relies on local practice rather than provide a uniform federal approach. Including them also establishes uniformity between federal courts and local courts in areas that may involve strong local interests, little need for uniformity among federal courts, or difficulty in defining a uniform federal practice that integrates effectively with local practice.

Adherence to a local practice may be refused as not ''appropriate'' when the local practice would impair a significant federal interest.

Changes Made after Publication and Comment. The reference to a ''possession'' was deleted in deference to the concerns expressed by the Department of Justice.

REFERENCES IN TEXT

The Federal Rules of Bankruptcy Procedure, referred to in subd. (a)(2), are set out in the Appendix to Title 11, Bankruptcy.

The Rules Governing Section 2254 Cases and the Rules Governing Section 2255 Cases, referred to in subd. (a)(4)(A), are set out in notes under the respective sections in Title 28, Judiciary and Judicial Procedure.

The Longshore and Harbor Workers' Compensation Act, referred to in subd. (a)(6)(F), is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, which is classified generally to chapter 18 (§901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

EFFECTIVE DATE OF ABROGATION

Abrogation of par. (7) of subdivision (a) of this rule as effective August 1, 1951, see Effective Date note under Rule 71A.

Rule 82. Jurisdiction and Venue Unaffected

These rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts. An admiralty or maritime claim under Rule 9(h) is not a civil action for purposes of 28 U.S.C. §§1391–1392.

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966; Apr. 23, 2001, eff. Dec. 1, 2001; Apr. 30, 2007, eff. Dec. 1, 2007.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

These rules grant extensive power of joining claims and counterclaims in one action, but, as this rule states, such grant does not extend federal jurisdiction. The rule is declaratory of existing practice under the [former] Federal Equity Rules with regard to such provisions as [former] Equity Rule 26 on Joinder of Causes of Action and [former] Equity Rule 30 on Counterclaims. Compare Shulman and Jaegerman, *Some Jurisdictional Limitations on Federal Procedure*, 45 Yale L.J. 393 (1936).

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

Title 28, U.S.C. §1391(b) provides: ''A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, except as otherwise provided by law.'' This provision cannot appropriately be applied to what were formerly suits in admiralty. The rationale of decisions holding it inapplicable rests largely on the use of the term ''civil action''; i.e., a suit in admiralty is not a ''civil action'' within the statute.