

The amended Rule requires copies of local rules to be sent upon their promulgation to the judicial council and the Administrative Office of the United States Courts rather than to the Supreme Court. The Supreme Court was the appropriate filing place in 1938, when Rule 83 originally was promulgated, but the establishment of the Administrative Office makes it a more logical place to develop a centralized file of local rules. This procedure is consistent with both the Criminal and the Appellate Rules. See Fed.R.Crim.P. 57(a); Fed.R.App.P. 47. The Administrative Office also will be able to provide improved utilization of the file because of its recent development of a Local Rules Index.

The practice pursued by some judges of issuing standing orders has been controversial, particularly among members of the practicing bar. The last sentence in Rule 83 has been amended to make certain that standing orders are not inconsistent with the Federal Rules or any local district court rules. Beyond that, it is hoped that each district will adopt procedures, perhaps by local rule, for promulgating and reviewing single-judge standing orders.

NOTES OF ADVISORY COMMITTEE ON RULES—1995
AMENDMENT

Subdivision (a). This rule is amended to reflect the requirement that local rules be consistent not only with the national rules but also with Acts of Congress. The amendment also states that local rules should not repeat Acts of Congress or national rules.

The amendment also requires that the numbering of local rules conform with any uniform numbering system that may be prescribed by the Judicial Conference. Lack of uniform numbering might create unnecessary traps for counsel and litigants. A uniform numbering system would make it easier for an increasingly national bar and for litigants to locate a local rule that applies to a particular procedural issue.

Paragraph (2) is new. Its aim is to protect against loss of rights in the enforcement of local rules relating to matters of form. For example, a party should not be deprived of a right to a jury trial because its attorney, unaware of—or forgetting—a local rule directing that jury demands be noted in the caption of the case, includes a jury demand only in the body of the pleading. The proscription of paragraph (2) is narrowly drawn—covering only violations attributable to nonwillful failure to comply and only those involving local rules directed to matters of form. It does not limit the court's power to impose substantive penalties upon a party if it or its attorney contumaciously or willfully violates a local rule, even one involving merely a matter of form. Nor does it affect the court's power to enforce local rules that involve more than mere matters of form—for example, a local rule requiring parties to identify evidentiary matters relied upon to support or oppose motions for summary judgment.

Subdivision (b). This rule provides flexibility to the court in regulating practice when there is no controlling law. Specifically, it permits the court to regulate practice in any manner consistent with Acts of Congress, with rules adopted under 28 U.S.C. §§2072 and 2075, and with the district local rules.

This rule recognizes that courts rely on multiple directives to control practice. Some courts regulate practice through the published Federal Rules and the local rules of the court. Some courts also have used internal operating procedures, standing orders, and other internal directives. Although such directives continue to be authorized, they can lead to problems. Counsel or litigants may be unaware of various directives. In addition, the sheer volume of directives may impose an unreasonable barrier. For example, it may be difficult to obtain copies of the directives. Finally, counsel or litigants may be unfairly sanctioned for failing to comply with a directive. For these reasons, the amendment to this rule disapproves imposing any sanction or other disadvantage on a person for noncompliance with such an internal directive, unless the alleged violator has been furnished actual notice of the requirement in a particular case.

There should be no adverse consequence to a party or attorney for violating special requirements relating to practice before a particular court unless the party or attorney has actual notice of those requirements. Furnishing litigants with a copy outlining the judge's practices—or attaching instructions to a notice setting a case for conference or trial—would suffice to give actual notice, as would an order in a case specifically adopting by reference a judge's standing order and indicating how copies can be obtained.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 83 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 84. Forms

The forms in the Appendix suffice under these rules and illustrate the simplicity and brevity that these rules contemplate.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1937

In accordance with the practice found useful in many codes, provision is here made for a limited number of official forms which may serve as guides in pleading. Compare 2 Mass. Gen. Laws (Ter. Ed., 1932) ch. 231, §147, Forms 1–47; English Annual Practice (1937) Appendix A to M, inclusive; Conn. Practice Book (1934) Rules, 47–68, pp. 123–427.

NOTES OF ADVISORY COMMITTEE ON RULES—1946
AMENDMENT

The amendment serves to emphasize that the forms contained in the Appendix of Forms are sufficient to withstand attack under the rules under which they are drawn, and that the practitioner using them may rely on them to that extent. The circuit courts of appeals generally have upheld the use of the forms as promoting desirable simplicity and brevity of statement. *Sierocinski v. E. I. DuPont DeNemours & Co.* (C.C.A. 3d, 1939) 103 F.(2d) 843; *Swift & Co. v. Young* (C.C.A. 4th, 1939) 107 F.(2d) 170; *Sparks v. England* (C.C.A. 8th, 1940) 113 F.(2d) 579; *Ramsouer v. Midland Valley R. Co.* (C.C.A. 8th, 1943) 135 F.(2d) 101. And the forms as a whole have met with widespread approval in the courts. See cases cited in 1 *Moore's Federal Practice* (1938), Cum. Supplement §8.07, under "Page 554"; see also Commentary, *The Official Forms* (1941) 4 Fed. Rules Serv. 954. In Cook, "Facts" and "Statements of Fact" (1937) 4 *U.Chi.L.Rev.* 233, 245–246, it is said with reference to what is now Rule 84: ". . . pleadings in the federal courts are not to be left to guess as to the meaning of [the] language" in Rule 8 (a) regarding the form of the complaint. "All of which is as it should be. In no other way can useless litigation be avoided." *Ibid.* The amended rule will operate to discourage isolated results such as those found in *Washburn v. Moorman Mfg. Co.* (S.D.Cal. 1938) 25 F.Supp. 546; *Employers Mutual Liability Ins. Co. of Wisconsin v. Blue Line Transfer Co.* (W.D.Mo. 1941) 5 Fed. Rules Serv. 12e.235, Case 2.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 84 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 85. Title

These rules may be cited as the Federal Rules of Civil Procedure.

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

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 85 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 86. Effective Dates

(a) IN GENERAL. These rules and any amendments take effect at the time specified by the Supreme Court, subject to 28 U.S.C. §2074. They govern:

(1) proceedings in an action commenced after their effective date; and

(2) proceedings after that date in an action then pending unless:

(A) the Supreme Court specifies otherwise; or

(B) the court determines that applying them in a particular action would be infeasible or work an injustice.

(b) DECEMBER 1, 2007 AMENDMENTS. If any provision in Rules 1–5.1, 6–73, or 77–86 conflicts with another law, priority in time for the purpose of 28 U.S.C. §2072(b) is not affected by the amendments taking effect on December 1, 2007.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 17, 1961, eff. July 19, 1961; Jan. 21 and Mar. 18, 1963, eff. July 1, 1963; Apr. 30, 2007, eff. Dec. 1, 2007.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

See [former] Equity Rule 81 (These Rules Effective February 1, 1913—Old Rules Abrogated).

NOTES OF ADVISORY COMMITTEE ON RULES—1948
AMENDMENT

By making the general amendments effective on the day following the adjournment of the first regular session of Congress to which they are transmitted, subdivision (c), *supra*, departs slightly from the prior practice of making amendments effective on the day which is three months subsequent to the adjournment of Congress or on September 1 of that year, whichever day is later. The reason for this departure is that no added period of time is needed for the Bench and Bar to acquaint themselves with the general amendments, which effect a change in nomenclature to conform to revised Title 28, substitute present statutory references to this Title and cure the omission or defect occasioned by the statutory revision in relation to the substitution of public officers, to a cost bond on appeal, and to procedure after removal (see Rules 25(d), 73(c), 81(c)).

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 86 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 subdivisions that provided a list of the effective dates of the original Civil Rules and amendments made up to 1963 are deleted as no longer useful.

Rule 86(b) is added to clarify the relationship of amendments taking effect on December 1, 2007, to other laws for the purpose of applying the “supersession” clause in 28 U.S.C. §2072(b). Section 2072(b) provides that a law in conflict with an Enabling Act Rule “shall be of no further force or effect after such rule[] ha[s] taken effect.” The amendments that take effect on December 1, 2007, result from the general restyling of the Civil Rules and from a small number of technical revisions adopted on a parallel track. None of these amendments is intended to affect resolution of any conflict

that might arise between a rule and another law. Rule 86(b) makes this intent explicit. Any conflict that arises should be resolved by looking to the date the specific conflicting rule provision first became effective.

EFFECTIVE DATE OF 1966 AMENDMENT; TRANSMISSION
TO CONGRESS; RESCISSION

Sections 2–4 of the Order of the Supreme Court, dated Feb. 28, 1966, 383 U.S. 1031, provided:

“2. That the foregoing amendments and additions to the Rules of Civil Procedure shall take effect on July 1, 1966, and shall govern all proceedings in actions brought thereafter and also in all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action then pending would not be feasible or would work injustice, in which event the former procedure applies.

“3. That the Chief Justice be, and he hereby is, authorized to transmit to the Congress the foregoing amendments and additions to the Rules of Civil Procedure in accordance with the provisions of Title 28, U.S.C., §§2072 and 2073.

“4. That: (a) subdivision (c) of Rule 6 of the Rules of Civil Procedure for the United States District Courts promulgated by this court on December 20, 1937, effective September 16, 1938; (b) Rule 2 of the Rules for Practice and Procedure under section 25 of An Act To amend and consolidate the Acts respecting copyright, approved March 4, 1909, promulgated by this court on June 1, 1909, effective July 1, 1909; and (c) the Rules of Practice in Admiralty and Maritime Cases, promulgated by this court on December 6, 1920, effective March 7, 1921, as revised, amended and supplemented be, and they hereby are, rescinded, effective July 1, 1966.”

APPENDIX OF FORMS

(As added April 30, 2007, effective December 1, 2007.)

(See Rule 84.)

EXCERPTS FROM THE REPORT OF THE JUDICIAL CONFERENCE—COMMITTEE ON RULES OF PRACTICE AND PROCEDURE—SEPTEMBER 2006

The Illustrative Forms

The advisory committee submitted proposed revisions to Illustrative Forms 1 through 35 (to become Forms 1 through 82) contained in the Appendix of Forms to the Federal Rules of Civil Procedure with a recommendation that they be approved and transmitted to the Judicial Conference. * * *

The Illustrative Forms have not been revised or updated in many years. The advisory committee applied the same style conventions and principles to the forms as was used with the restyled rules. It declined to make changes to the substance of the forms, consistent with its style-project policy, even though some of the forms represent approaches to pleading and other submissions that may not be consistent with current practices. For example, the “complaint” forms call for allegations that are far briefer than are commonly found in cases filed in the district courts. Similarly, the advisory committee did not change the choice of examples in the forms; the “negligence complaint” form continues to use the example of an automobile striking a pedestrian.

The forms have been reorganized and grouped by subject area. The revised forms place “special” forms as Forms 1–9; “complaint” forms as Forms 10–21, [.] “answer” forms as Forms 31–31 [sic]; “motions” forms as Forms 40–42; “discovery” forms as Forms 50–52; “condemnation” forms as Forms 60–61; “judgment” forms as Forms 70–71; and forms for “assignment to magistrate judges” as Forms 80–82.

The pleading dates in the forms were eliminated and a uniform blank date was substituted. Explanatory Notes were also eliminated, because the forms are intended to stand on their own as simple and brief illustrations.