

Note to Subdivision (l). Since the condemnor will normally be the prevailing party and since he should not recover his costs against the property owner, Rule 54(d), which provides generally that costs shall go to the prevailing party, is made inapplicable. Without attempting to state what the rule on costs is, the effect of subdivision (1) is that costs shall be awarded in accordance with the law that has developed in condemnation cases. This has been summarized as follows: "Costs of condemnation proceedings are not assessable against the condemnee, unless by stipulation he agrees to assume some or all of them. Such normal expenses of the proceeding as bills for publication of notice, commissioners' fees, the cost of transporting commissioners and jurors to take a view, fees for attorneys to represent defendants who have failed to answer, and witness' fees, are properly charged to the government, though not taxed as costs. Similarly, if it is necessary that a conveyance be executed by a commissioner, the United States pay his fees and those for recording the deed. However, the distribution of the award is a matter in which the United States has no legal interest. Expenses incurred in ascertaining the identity of distributees and deciding between conflicting claimants are properly chargeable against the award, not against the United States, although United States attorneys are expected to aid the court in such matters as *amici curiae*." Lands Division Manual 861. For other discussion and citation, see *Grand River Dam Authority v. Jarvis*, C.C.A.10th, 1942, 124 F.2d 914. Costs may not be taxed against the United States except to the extent permitted by law. *United States v. 125.71 Acres of Land in Loyallhanna Tp., Westmoreland County, Pa.*, D.C.Pa. 1944, 54 F.Supp. 193; Lands Division Manual 859. Even if it were thought desirable to allow the property owner's costs to be taxed against the United States, this is a matter for legislation and not court rule.

NOTES OF ADVISORY COMMITTEE ON RULES—1963
AMENDMENT

This amendment conforms to the amendment of Rule 4(f).

NOTES OF ADVISORY COMMITTEE ON RULES—1985
AMENDMENT

Rule 71A(h) provides that except when Congress has provided otherwise, the issue of just compensation in a condemnation case may be tried by a jury if one of the parties so demands, unless the court in its discretion orders the issue determined by a commission of three persons. In 1980, the Comptroller General of the United States in a Report to Congress recommended that use of the commission procedure should be encouraged in order to improve and expedite the trial of condemnation cases. The Report noted that long delays were being caused in many districts by such factors as crowded dockets, the precedence given criminal cases, the low priority accorded condemnation matters, and the high turnover of Assistant United States Attorneys. The Report concluded that revising Rule 71A to make the use of the commission procedure more attractive might alleviate the situation.

Accordingly, Rule 71A(h) is being amended in a number of respects designed to assure the quality and utility of a Rule 71A commission. First, the amended Rule will give the court discretion to appoint, in addition to the three members of a commission, up to two additional persons as alternate commissioners who would hear the case and be available, at any time up to the filing of the decision by the three-member commission, to replace any commissioner who becomes unable or disqualified to continue. The discretion to appoint alternate commissioners can be particularly useful in protracted cases, avoiding expensive retrials that have been required in some cases because of the death or disability of a commissioner. Prior to replacing a commissioner an alternate would not be present at, or participate in, the commission's deliberations.

Second, the amended Rule requires the court, before appointment, to advise the parties of the identity and

qualifications of each prospective commissioner and alternate. The court then may authorize the examination of prospective appointees by the parties and each party has the right to challenge for cause. The objective is to insure that unbiased and competent commissioners are appointed.

The amended Rule does not prescribe a qualification standard for appointment to a commission, although it is understood that only persons possessing background and ability to appraise real estate valuation testimony and to award fair and just compensation on the basis thereof would be appointed. In most situations the chairperson should be a lawyer and all members should have some background qualifying them to weigh proof of value in the real estate field and, when possible, in the particular real estate market embracing the land in question.

The amended Rule should give litigants greater confidence in the commission procedure by affording them certain rights to participate in the appointment of commission members that are roughly comparable to the practice with regard to jury selection. This is accomplished by giving the court permission to allow the parties to examine prospective commissioners and by recognizing the right of each party to object to the appointment of any person for cause.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

The amendments are technical. No substantive change is intended.

NOTES OF ADVISORY COMMITTEE ON RULES—1988
AMENDMENT

The amendment is technical. No substantive change is intended.

NOTES OF ADVISORY COMMITTEE ON RULES—1993
AMENDMENT

The references to the subdivisions of Rule 4 are deleted in light of the revision of that rule.

COMMITTEE NOTES ON RULES—2003 AMENDMENT

The references to specific subdivisions of Rule 53 are deleted or revised to reflect amendments of Rule 53.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 71A 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.

Former Rule 71A has been redesignated as Rule 71.1 to conform to the designations used for all other rules added within the original numbering system.

Rule 71.1(e) allows a defendant to appear without answering. Former form 28 (now form 60) includes information about this right in the Rule 71.1(d)(2) notice. It is useful to confirm this practice in the rule.

The information that identifies the attorney is changed to include telephone number and electronic-mail address, in line with similar amendments to Rules 11(a) and 26(g)(1).

COMMITTEE NOTES ON RULES—2009 AMENDMENT

The times set in the former rule at 20 days have been revised to 21 days. See the Note to Rule 6.

AMENDMENT BY PUBLIC LAW

1988—Subd. (e). Pub. L. 100-690, which directed amendment of subd. (e) by striking "taking of the defendants property" and inserting "taking of the defendant's property", could not be executed because of the intervening amendment by the Court by order dated Apr. 25, 1988, eff. Aug. 1, 1988.

[Rule 71A. Renumbered Rule 71.1]

Rule 72. Magistrate Judges: Pretrial Order

(a) NONDISPOSITIVE MATTERS. When a pretrial matter not dispositive of a party's claim or de-