

nology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 74. [Abrogated (Apr. 11, 1997, eff. Dec. 1, 1997).]

NOTES OF ADVISORY COMMITTEE ON RULES—1997
AMENDMENT

Rule 74 is abrogated for the reasons described in the Note to Rule 73.

COMMITTEE NOTES ON RULES—2007

Rule 74 was abrogated in 1997 to reflect repeal of the statute providing for appeal from a magistrate judge's judgment to the district court. The rule number is reserved for possible future use.

Rule 75. [Abrogated (Apr. 11, 1997, eff. Dec. 1, 1997).]

NOTES OF ADVISORY COMMITTEE ON RULES—1997
AMENDMENT

Rule 75 is abrogated for the reasons described in the Note to Rule 73.

COMMITTEE NOTES ON RULES—2007

Rule 75 was abrogated in 1997 to reflect repeal of the statute providing for appeal from a magistrate judge's judgment to the district court. The rule number is reserved for possible future use.

Rule 76. [Abrogated (Apr. 11, 1997, eff. Dec. 1, 1997).]

NOTES OF ADVISORY COMMITTEE ON RULES—1997
AMENDMENT

Rule 76 is abrogated for the reasons described in the Note to Rule 73.

COMMITTEE NOTES ON RULES—2007

Rule 76 was abrogated in 1997 to reflect repeal of the statute providing for appeal from a magistrate judge's judgment to the district court. The rule number is reserved for possible future use.

**TITLE X. DISTRICT COURTS AND CLERKS:
CONDUCTING BUSINESS; ISSUING ORDERS**

**Rule 77. Conducting Business; Clerk's Authority;
Notice of an Order or Judgment**

(a) **WHEN COURT IS OPEN.** Every district court is considered always open for filing any paper, issuing and returning process, making a motion, or entering an order.

(b) **PLACE FOR TRIAL AND OTHER PROCEEDINGS.** Every trial on the merits must be conducted in open court and, so far as convenient, in a regular courtroom. Any other act or proceeding may be done or conducted by a judge in chambers, without the attendance of the clerk or other court official, and anywhere inside or outside the district. But no hearing—other than one ex parte—may be conducted outside the district unless all the affected parties consent.

(c) **CLERK'S OFFICE HOURS; CLERK'S ORDERS.**

(1) *Hours.* The clerk's office—with a clerk or deputy on duty—must be open during business hours every day except Saturdays, Sundays, and legal holidays. But a court may, by local rule or order, require that the office be open for specified hours on Saturday or a particular legal holiday other than one listed in Rule 6(a)(6)(A).

(2) *Orders.* Subject to the court's power to suspend, alter, or rescind the clerk's action for good cause, the clerk may:

- (A) issue process;
- (B) enter a default;
- (C) enter a default judgment under Rule 55(b)(1); and
- (D) act on any other matter that does not require the court's action.

(d) **SERVING NOTICE OF AN ORDER OR JUDGMENT.**

(1) *Service.* Immediately after entering an order or judgment, the clerk must serve notice of the entry, as provided in Rule 5(b), on each party who is not in default for failing to appear. The clerk must record the service on the docket. A party also may serve notice of the entry as provided in Rule 5(b).

(2) *Time to Appeal Not Affected by Lack of Notice.* Lack of notice of the entry does not affect the time for appeal or relieve—or authorize the court to relieve—a party for failing to appeal within the time allowed, except as allowed by Federal Rule of Appellate Procedure 4(a).

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Dec. 4, 1967, eff. July 1, 1968; Mar. 1, 1971, eff. July 1, 1971; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 23, 2001, eff. Dec. 1, 2001; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 25, 2014, eff. Dec. 1, 2014.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

This rule states the substance of U.S.C., Title 28, §13 [now 452] (Courts open as courts of admiralty and equity). Compare [former] Equity Rules 1 (District Court Always Open For Certain Purposes—Orders at Chambers), 2 (Clerk's Office Always Open, Except, Etc.), 4 (Notice of Orders), and 5 (Motions Grantable of Course by Clerk).

NOTES OF ADVISORY COMMITTEE ON RULES—1946
AMENDMENT

Rule 77(d) has been amended to avoid such situations as the one arising in *Hill v. Hawes* (1944) 320 U.S. 520. In that case, an action instituted in the District Court for the District of Columbia, the clerk failed to give notice of the entry of a judgment for defendant as required by Rule 77(d). The time for taking an appeal then was 20 days under Rule 10 of the Court of Appeals (later enlarged by amendment to thirty days), and due to lack of notice of the entry of judgment the plaintiff failed to file his notice of appeal within the prescribed time. On this basis the trial court vacated the original judgment and then reentered it, whereupon notice of appeal was filed. The Court of Appeals dismissed the appeal as taken too late. The Supreme Court, however, held that although Rule 77(d) did not purport to attach any consequence to the clerk's failure to give notice as specified, the terms of the rule were such that the appellant was entitled to rely on it, and the trial court in such a case, in the exercise of a sound discretion, could vacate the former judgment and enter a new one, so that the appeal would be within the allowed time.

Because of Rule 6(c), which abolished the old rule that the expiration of the term ends a court's power over its judgment, the effect of the decision in *Hill v. Hawes* is to give the district court power, in its discretion and without time limit, and long after the term may have expired, to vacate a judgment and reenter it for the purpose of reviving the right of appeal. This seriously affects the finality of judgments. See also proposed Rule 6(c) and Note; proposed Rule 60(b) and Note; and proposed Rule 73(a) and Note.

Rule 77(d) as amended makes it clear that notification by the clerk of the entry of a judgment has nothing to do with the starting of the time for appeal; that time starts to run from the date of entry of judgment and not from the date of notice of the entry. Notifica-