

Rule 36 would have been amended to make clear the rule that an admission adopted at a final pretrial conference can be withdrawn or amended only on satisfying the “manifest injustice” standard of Style Rule 16(e). Revisions of Style Rule 16(e) make this clear, avoiding the need to further amend Rule 36.

“E-Discovery” Style Amendments: Rules 16, 26, 33, 34, 37, and 45

As noted above [omitted], the Style revisions to the “e-discovery” amendments published for comment in 2004, before the Style Project was published for comment in 2005, are all “changes made after publication.” All involve pure style. They can be evaluated by reading the overstrike-underline version set out above [omitted].

COMMITTEE NOTES ON RULES—2015 AMENDMENT

Rule 1 is amended to emphasize that just as the court should construe and administer these rules to secure the just, speedy, and inexpensive determination of every action, so the parties share the responsibility to employ the rules in the same way. Most lawyers and parties cooperate to achieve these ends. But discussions of ways to improve the administration of civil justice regularly include pleas to discourage over-use, misuse, and abuse of procedural tools that increase cost and result in delay. Effective advocacy is consistent with—and indeed depends upon—cooperative and proportional use of procedure.

This amendment does not create a new or independent source of sanctions. Neither does it abridge the scope of any other of these rules.

Rule 2. One Form of Action

There is one form of action—the civil action.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1937

1. This rule modifies U.S.C., Title 28, [former] § 384 (Suits in equity, when not sustainable). U.S.C., Title 28, §§ 723 and 730 [see 2071 et seq.] (conferring power on the Supreme Court to make rules of practice in equity), are unaffected insofar as they relate to the rule making power in admiralty. These sections, together with § 723b [see 2072] (Rules in actions at law; Supreme Court authorized to make) are continued insofar as they are not inconsistent with § 723c [see 2072] (Union of equity and action at law rules; power of Supreme Court). See Note 3 to Rule 1. U.S.C., Title 28, [former] §§ 724 (Conformity act), 397 (Amendments to pleadings when case brought to wrong side of court) and 398 (Equitable defenses and equitable relief in actions at law) are superseded.

2. Reference to actions at law or suits in equity in all statutes should now be treated as referring to the civil action prescribed in these rules.

3. This rule follows in substance the usual introductory statements to code practices which provide for a single action and mode of procedure, with abolition of forms of action and procedural distinctions. Representative statutes are N.Y. Code 1848 (Laws 1848, ch. 379) § 62; N.Y.C.P.A. (1937) § 8; Calif.Code Civ.Proc. (Deering, 1937) § 307; 2 Minn.Stat. (Mason, 1927) § 9164; 2 Wash.Rev.Stat. Ann. (Remington, 1932) §§ 153, 255.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 2 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 II. COMMENCING AN ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

Rule 3. Commencing an Action

A civil action is commenced by filing a complaint with the court.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1937

1. Rule 5(e) defines what constitutes filing with the court.

2. This rule governs the commencement of all actions, including those brought by or against the United States or an officer or agency thereof, regardless of whether service is to be made personally pursuant to Rule 4(d), or otherwise pursuant to Rule 4(e).

3. With this rule compare [former] Equity Rule 12 (Issue of Subpoena—Time for Answer) and the following statutes (and other similar statutes) which provide a similar method for commencing an action:

U.S.C., Title 28:

§ 45 [former] (District courts; practice and procedure in certain cases under interstate commerce laws).

§ 762 [see 1402] (Petition in suit against United States).

§ 766 [see 2409] (Partition suits where United States is tenant in common or joint tenant).

4. This rule provides that the first step in an action is the filing of the complaint. Under Rule 4(a) this is to be followed forthwith by issuance of a summons and its delivery to an officer for service. Other rules providing for dismissal for failure to prosecute suggest a method available to attack unreasonable delay in prosecuting an action after it has been commenced. When a Federal or State statute of limitations is pleaded as a defense, a question may arise under this rule whether the mere filing of the complaint stops the running of the statute, or whether any further step is required, such as, service of the summons and complaint or their delivery to the marshal for service. The answer to this question may depend on whether it is competent for the Supreme Court, exercising the power to make rules of procedure without affecting substantive rights, to vary the operation of statutes of limitations. The requirement of Rule 4(a) that the clerk shall forthwith issue the summons and deliver it to the marshal for service will reduce the chances of such a question arising.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The caption of Rule 3 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 4. Summons

(a) CONTENTS; AMENDMENTS.

(1) *Contents*. A summons must:

(A) name the court and the parties;

(B) be directed to the defendant;

(C) state the name and address of the plaintiff's attorney or—if unrepresented—of the plaintiff;

(D) state the time within which the defendant must appear and defend;

(E) notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint;

(F) be signed by the clerk; and

(G) bear the court's seal.

(2) *Amendments*. The court may permit a summons to be amended.

(b) *ISSUANCE*. On or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the plaintiff for service on the defendant. A summons—or a copy of a summons