

and, if the parties so stipulate, the court may vacate any judgment that has been entered.

(3) **By Order of the Court.** At any time before compensation for a piece of property has been determined and paid and after motion and hearing, the court may dismiss the action as to that property, except that it shall not dismiss the action as to any part of the property of which the plaintiff has taken possession or in which the plaintiff has taken title or a lesser interest, but shall award just compensation for the possession, title or lesser interest so taken. The court at any time may drop a defendant unnecessarily or improperly joined.

(4) **Effect.** Except as otherwise provided in the notice, or stipulation of dismissal, or order of the court, any dismissal is without prejudice.

(j) **Deposit and Its Distribution.** The plaintiff shall deposit with the court any money required by law as a condition to the exercise of the power of eminent domain; and, although not so required, may make a deposit when permitted by statute. In such cases the court and attorneys shall expedite the proceedings for the distribution of the money so deposited and for the ascertainment and payment of just compensation. If the compensation finally awarded to any defendant exceeds the amount which has been paid to the defendant on distribution of the deposit, the court shall enter judgment against the plaintiff and in favor of that defendant for the deficiency. If the compensation finally awarded to any defendant is less than the amount which has been paid to that defendant, the court shall enter judgment against that defendant and in favor of the plaintiff for the overpayment.

(k) **Condemnation Under a State's Power of Eminent Domain.** The practice as herein prescribed governs in actions involving the exercise of the power of eminent domain under the law of a state, provided that if the state law makes provision for trial of any issue by jury, or for trial of the issue of compensation by jury or commission or both, that provision shall be followed.

(l) **Costs.** Costs are not subject to Rule 54(d).

Added Apr. 30, 1951, eff. Aug. 1, 1951; amended Jan. 21, 1963, eff. July 1, 1963; Apr. 29, 1985, eff. Aug. 1, 1985; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 25, 1988, eff. Aug. 1, 1988; Nov. 18, 1988, Pub. L. 100-690, Title VII, §7050, 102 Stat. 4401; Apr. 22, 1993, eff. Dec. 1, 1993; Mar. 27, 2003, eff. Dec. 1, 2003.

IX. Special Proceedings

Rule 72. Magistrate Judges; Pretrial Orders

(a) **Nondispositive Matters.** A magistrate judge to whom a pretrial matter not dispositive of a claim or defense of a party is referred to hear and determine

shall promptly conduct such proceedings as are required and when appropriate enter into the record a written order setting forth the disposition of the matter. Within 10 days after being served with a copy of the magistrate judge's order, a party may serve and file objections to the order; a party may not thereafter assign as error a defect in the magistrate judge's order to which objection was not timely made. The district judge to whom the case is assigned shall consider such objections and shall modify or set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law.

(b) Dispositive Motions and Prisoner Petitions. A magistrate judge assigned without consent of the parties to hear a pretrial matter dispositive of a claim or defense of a party or a prisoner petition challenging the conditions of confinement shall promptly conduct such proceedings as are required. A record shall be made of all evidentiary proceedings before the magistrate judge, and a record may be made of such other proceedings as the magistrate judge deems necessary. The magistrate judge shall enter into the record a recommendation for disposition of the matter, including proposed findings of fact when appropriate. The clerk shall forthwith mail copies to all parties.

A party objecting to the recommended disposition of the matter shall promptly arrange for the transcription of the record, or portions of it as all parties may agree upon or the magistrate judge deems sufficient, unless the district judge otherwise directs. Within 10 days after being served with a copy of the recommended disposition, a party may serve and file specific, written objections to the proposed findings and recommendations. A party may respond to another party's objections within 10 days after being served with a copy thereof. The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

Added Apr. 28, 1983, eff. Aug. 1, 1983; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993.

ADVISORY COMMITTEE NOTES, 1983 ADDITION

Subdivision (a). This subdivision addresses court-ordered referrals of nondispositive matters under 28 U.S.C. §636(b)(1)(A). The rule calls for a written order of the magistrate's disposition to preserve the record and facilitate review. An oral order read into the record by the magistrate will satisfy this requirement.

No specific procedures or timetables for raising objections to the magistrate's rulings on nondispositive matters are set forth in the Magistrates Act. The rule fixes a 10-day period in order to avoid uncertainty and provide uniformity that will eliminate the confusion that might arise if different periods were prescribed by local

rule in different districts. It also contemplated that a party who is successful before the magistrate will be afforded an opportunity to respond to objections raised to the magistrate's ruling.

The last sentence of subdivision (a) specifies that reconsideration of a magistrate's order, as provided for in the Magistrates Act, shall be by the district judge to whom the case is assigned. This rule does not restrict experimentation by the district courts under 28 U.S.C. §636(b)(3) involving references of matters other than pretrial matters, such as appointment of counsel, taking of default judgments, and acceptance of jury verdicts when the judge is unavailable.

Subdivision (b). This subdivision governs court-ordered referrals of dispositive pretrial matters and prisoner petitions challenging conditions of confinement, pursuant to statutory authorization in 28 U.S.C. §636(b)(1)(B). This rule does not extend to habeas corpus petitions, which are covered by the specific rules relating to proceedings under Sections 2254 and 2255 of Title 28.

This rule implements the statutory procedures for making objections to the magistrate's proposed findings and recommendations. The 10-day period, as specified in the statute, is subject to Rule 6(e) which provides for an additional 3-day period when service is made by mail. Although no specific provision appears in the Magistrates Act, the rule specifies a 10-day period for a party to respond to objections to the magistrate's recommendation.

Implementing the statutory requirements, the rule requires the district judge to whom the case is assigned to make a *de novo* determination of those portions of the report, findings, or recommendations to which timely objection is made. The term "de novo" signifies that the magistrate's findings are not protected by the clearly erroneous doctrine, but does not indicate that a second evidentiary hearing is required. See *United States v. Raddatz*, 417 U.S. 667 (1980). See also Silberman, *Masters and Magistrates Part II: The American Analogue*, 50 N.Y.U. L. Rev. 1297, 1367 (1975). When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. See *Campbell v. United States Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974), cert. denied, 419 U.S. 879, quoted in House Report No. 94-1609, 94th Cong. 2d Sess. (1976) at 3. Compare *Park Motor Mart, Inc. v. Ford Motor Co.*, 616 F.2d 603 (1st Cir. 1980). Failure to make timely objection to the magistrate's report prior to its adoption by the district judge may constitute a waiver of appellate review of the district judge's order. See *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

Rule 73. Magistrate Judges; Trial by Consent and Appeal Options

(a) Powers; Procedure. When specially designated to exercise such jurisdiction by local rule or order of the district court and when all parties consent thereto, a magistrate judge may exercise the authority provided by Title 28, U.S.C. §636(c) and may conduct any or all proceedings, including a jury or non-jury trial, in a civil case. A record of the proceedings shall be made in accordance with the requirements of Title 28, U.S.C. §636(c)(5).

(b) **Consent.** When a magistrate judge has been designated to exercise civil trial jurisdiction, the clerk shall give written notice to the parties of their opportunity to consent to the exercise by a magistrate judge of civil jurisdiction over the case, as authorized by Title 28, U.S.C. §636(c). If, within the period specified by local rule, the parties agree to a magistrate judge's exercise of such authority, they shall execute and file a joint form of consent or separate forms of consent setting forth such election.

A district judge, magistrate judge, or other court official may again advise the parties of the availability of the magistrate judge, but, in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. A district judge or magistrate judge shall not be informed of a party's response to the clerk's notification, unless all parties have consented to the referral of the matter to a magistrate judge.

The district judge, for good cause shown on the judge's own initiative, or under extraordinary circumstances shown by a party, may vacate a reference of a civil matter to a magistrate judge under this subdivision.

(c) **Appeal.** In accordance with Title 28, U.S.C. §636(c)(3), appeal from a judgment entered upon direction of a magistrate judge in proceedings under this rule will lie to the court of appeals as it would from a judgment of the district court.

Added Apr. 28, 1983, eff. Aug. 1, 1983; amended Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 11, 1997, eff. Dec. 1, 1997.

ADVISORY COMMITTEE NOTES, 1983 ADDITION

Subdivision (a). This subdivision implements the broad authority of the 1979 amendments to the Magistrates Act, 28 U.S.C. §636(c), which permit a magistrate to sit in lieu of a district judge and exercise civil jurisdiction over a case, when the parties consent. See McCabe, *The Federal Magistrate Act of 1979*, 16 Harv. J. Legis. 343, 364-379 (1979). In order to exercise this jurisdiction, a magistrate must be specially designated under 28 U.S.C. §636(c)(1) by the district court or courts he serves. The only exception to a magistrate's exercise of civil jurisdiction, which includes the power to conduct jury and nonjury trials and decide dispositive motions, is the contempt power. A hearing on contempt is to be conducted by the district judge upon certification of the facts and an order to show cause by the magistrate. See 28 U.S.C. §639(e). In view of 28 U.S.C. §636(c)(1) and this rule, it is unnecessary to amend Rule 58 to provide that the decision of a magistrate is a "decision by the court" for the purposes of that rule and a "final decision of the district court" for purposes of 28 U.S.C. §1291 governing appeals.

Subdivision (b). This subdivision implements the blind consent provision of 28 U.S.C. §636(c)(2) and is designed to ensure that neither the judge nor the magistrate attempts to induce a party to consent to reference of a civil matter under this rule to a magistrate. See House Rep. No. 96-444, 96th Cong. 1st Sess. 8 (1979).

The rule opts for a uniform approach in implementing the consent provision by directing the clerk to notify the parties of their opportunity to elect to proceed before a magistrate and by requiring the execution and filing of a consent form or forms

setting forth the election. However, flexibility at the local level is preserved in that local rules will determine how notice shall be communicated to the parties, and local rules will specify the time period within which an election must be made.

The last paragraph of subdivision (b) reiterates the provision in 28 U.S.C. §636(c)(6) for vacating a reference to the magistrate.

Subdivision (c). Under 28 U.S.C. §636(c)(3), the normal route of appeal from the judgment of a magistrate — the only route that will be available unless the parties otherwise agree in advance — is an appeal by the aggrieved party “directly to the appropriate United States court of appeals from the judgment of the magistrate in the same manner as an appeal from any other judgment of a district court.” The quoted statutory language indicates Congress’ intent that the same procedures and standards of appealability that govern appeals from district court judgments govern appeals from magistrates’ judgments.

Rule 74. Method of Appeal from Magistrate Judge to District Judge Under Title 28, U.S.C. §636(c)(4) and Rule 73(d)
[Abrogated]

Rule 75. Proceedings on Appeal from Magistrate to District Judge Under Rule 73(d) *[Abrogated]*

Rule 76. Judgment of the District Judge on the Appeal Under Rule 73(d) and Costs *[Abrogated]*

X. District Courts and Clerks

Rule 77. District Courts and Clerks

(a) District Courts Always Open. The district courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

(b) Trials and Hearings; Orders in Chambers. All trials upon the merits shall be conducted in open court and so far as convenient in a regular court room. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or other court officials and at any place either within or without the district; but no hearing, other than one *ex parte*, shall be conducted outside the district without the consent of all parties affected thereby.

(c) **Clerk's Office and Orders by Clerk.** The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but a district court may provide by local rule or order that its clerk's office shall be open for specified hours on Saturdays or particular legal holidays other than New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but the clerk's action may be suspended or altered or rescinded by the court upon cause shown.

(d) **Notice of Orders or Judgments.** Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry in the manner provided for in Rule 5(b) upon each party who is not in default for failure to appear, and shall make a note in the docket of the service. Any party may in addition serve a notice of such entry in the manner provided in Rule 5(b) for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 4(a) of the Federal Rules of Appellate Procedure.

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.

Rule 78. Motion Day

Unless local conditions make it impracticable, each district court shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the judge at any time or place and on such notice, if any, as the judge considers reasonable may make orders for the advancement, conduct, and hearing of actions.

To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

As amended Mar. 2, 1987, eff. Aug. 1, 1987.

Rule 79. Books and Records Kept by the Clerk and Entries Therein

(a) **Civil Docket.** The clerk shall keep a book known as "civil docket" of such form and style as may be prescribed by the Director of the Administrative

Office of the United States Courts with the approval of the Judicial Conference of the United States, and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be entered chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. When in an action trial by jury has been properly demanded or ordered the clerk shall enter the word “jury” on the folio assigned to that action.

(b) **Civil Judgments and Orders.** The clerk shall keep, in such form and manner as the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States may prescribe, a correct copy of every final judgment or appealable order, or order affecting title to or lien upon real or personal property, and any other order which the court may direct to be kept.

(c) **Indices; Calendars.** Suitable indices of the civil docket and of every civil judgment and order referred to in subdivision (b) of this rule shall be kept by the clerk under the direction of the court. There shall be prepared under the direction of the court calendars of all actions ready for trial, which shall distinguish “jury actions” from “court actions.”

(d) **Other Books and Records of the Clerk.** The clerk shall also keep such other books and records as may be required from time to time by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States.

As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Jan. 21, 1963, eff. July 1, 1963.

Rule 80. Stenographer; Stenographic Report or Transcript as Evidence

(a) **Stenographer.** [*Abrogated*]

(b) **Official Stenographer.** [*Abrogated*]

(c) **Stenographic Report or Transcript as Evidence.** Whenever the testimony of a witness at a trial or hearing which was stenographically reported is

admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported the testimony.

As amended Dec. 27, 1946, eff. Mar. 19, 1948.

XI. General Provisions

Rule 81. Applicability in General

(a) Proceedings to Which the Rules Apply.

(1) These rules do not apply to prize proceedings in admiralty governed by Title 10, U.S.C. §§7651-7681. They do apply to proceedings in bankruptcy to the extent provided by the Federal Rules of Bankruptcy Procedure.

(2) These rules are applicable to proceedings for admission to citizenship, habeas corpus, and quo warranto, to the extent that the practice in such proceedings is not set forth in statutes of the United States, the Rule Governing Section 2254 Cases, or the Rule Governing Section 2255 Proceedings, and has heretofore conformed to the practice in civil actions.

(3) In proceedings under Title 9, U.S.C., relating to arbitration, or under the Act of May 20, 1926, ch. 347, §9 (44 Stat. 585), U.S.C., Title 45, §159, relating to boards of arbitration of railway labor disputes, these rules apply only to the extent that matters of procedure are not provided for in those statutes. These rules apply to proceedings to compel the giving of testimony or production of documents in accordance with a subpoena issued by an officer or agency of the United States under any statute of the United States except as otherwise provided by statute or by rules of the district court or by order of the court in the proceedings.

(4) These rules do not alter the method prescribed by the Act of February 18, 1922, c. 57, §2 (42 Stat. 388), U.S.C., Title 7, §292; or by the Act of June 10, 1930, c. 436, §7 (46 Stat. 534), as amended, U.S.C., Title 7, §499g(c), for instituting proceedings in the United States district courts to review orders of the Secretary of Agriculture; or prescribed by the Act of June 25, 1934, c. 742, §2 (48 Stat. 1214), U.S.C., Title 15, §522, for instituting proceedings to review orders of the Secretary of the Interior; or prescribed by the Act of February 22, 1935, c. 18, §5 (49 Stat. 31), U.S.C., Title 15, §715d(c), as extended, for instituting proceedings to review orders of petroleum control boards; but the conduct of such proceedings in the district courts shall be made to conform to these rules as far as applicable.

(5) These rules do not alter the practice in the United States district courts prescribed in the Act of July 5, 1935, c. 372, §§9 and 10 (49 Stat. 453), as amended, U.S.C., Title 29, §§159 and 160, for beginning and conducting proceedings to enforce orders of the National Labor Relations Board; and in respects

not covered by those statutes, the practice in the district courts shall conform to these rules so far as applicable.

(6) These rules apply to proceedings for enforcement or review of compensation orders under the Longshoremen's and Harbor Workers' Compensation Act, Act of March 4, 1927, c. 509, §§18, 21 (44 Stat. 1434, 1436), as amended, U.S.C., Title 33, §§918, 921, except to the extent that matters of procedure are provided for in that Act. The provisions for service by publication and for answer in proceedings to cancel certificates of citizenship under the Act of June 27, 1952, c. 477, Title III, c. 2, §340 (66 Stat. 260), U.S.C., Title 8, §1451, remain in effect.

(7) [*Abrogated.*]

(b) **Scire Facias and Mandamus.** The writs of scire facias and mandamus are abolished. Relief heretofore available by mandamus or scire facias may be obtained by appropriate action or by appropriate motion under the practice prescribed in these rules.

(c) **Removed Actions.** These rules apply to civil actions removed to the United States district courts from the state courts and govern procedure after removal. Repleading is not necessary unless the court so orders. In a removed action in which the defendant has not answered, the defendant shall answer or present the other defenses or objections available under these rules within 20 days after the receipt through service or otherwise of a copy of the initial pleading setting forth the claim for relief upon which the action or proceeding is based, or within 20 days after the service of summons upon such initial pleading, then filed, or within 5 days after the filing of the petition for removal, whichever period is longest. If at the time of removal all necessary pleadings have been served, a party entitled to trial by jury under Rule 38 shall be accorded it, if the party's demand therefor is served within 10 days after the petition for removal is filed if the party is the petitioner, or if not the petitioner within 10 days after service on the party of the notice of filing the petition. A party who, prior to removal, has made an express demand for trial by jury in accordance with state law, need not make a demand after removal. If state law applicable in the court from which the case is removed does not require the parties to make express demands in order to claim trial by jury, they need not make demands after removal unless the court directs that they do so within a specified time if they desire to claim trial by jury. The court may make this direction on its own motion and shall do so as a matter of course at the request of any party. The failure of a party to make demand as directed constitutes a waiver by that party of trial by jury.

(d) **District of Columbia; Courts and Judges.** [*Abrogated*]

(e) **Law Applicable.** Whenever in these rules the law of the state in which the district court is held is made applicable, the law applied in the District of

Columbia governs proceedings in the United States District Court for the District of Columbia. When the word “state” is used, it includes, if appropriate, the District of Columbia. When the term “statute of the United States” is used, it includes, so far as concerns proceedings in the United States District Court for the District of Columbia, any Act of Congress locally applicable to and in force in the District of Columbia. When the law of a state is referred to, the word “law” includes the statutes of that state and the state judicial decisions construing them.

(f) References to Officer of the United States. Under any rule in which reference is made to an officer or agency of the United States, the term “officer” includes a district director of internal revenue, a former district director or collector of internal revenue, or the personal representative of a deceased district director or collector of internal revenue.

As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 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. 23, 2001, eff. Dec. 1, 2001; Apr. 29, 2002, eff. Dec. 1, 2002.

Rule 82. Jurisdiction and Venue Unaffected

These rules shall not be construed to extend or limit the jurisdiction of the United States district courts or the venue of actions therein. An admiralty or maritime claim within the meaning of Rule 9(h) shall not be treated as a civil action for the purposes of Title 28, U.S.C. §§1391-93.

As amended Dec. 29, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966.

Rule 83. Rules by District Courts; Judge’s Directives

(a) Local Rules.

(1) Each district court, acting by a majority of its district judges, may after giving appropriate public notice and an opportunity for comment, make and amend rules governing its practice. A local rule shall be consistent with — but not duplicative of — Acts of Congress and rules adopted under 28 U.S.C. §§2072 and 2075, and shall conform to any uniform numbering system prescribed by the Judicial Conference of the United States. A local rule takes effect on the date specified by the district court and remains in effect unless amended by the court or abrogated by the judicial council of the circuit. Copies of rules and amendments shall, upon their promulgation, be furnished to the judicial council and the Administrative Office of the United States Courts and be made available to the public.

(2) A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.

(b) **Procedures When There Is No Controlling Law.** A judge may regulate practice in any manner consistent with federal law, rules adopted under 28 U.S.C. §§2072 and 2075, and local rules of the district. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local district rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

As amended Apr. 29, 1985, eff. Aug. 1, 1985; Apr. 27, 1995, eff. Dec. 1, 1995.

ADVISORY COMMITTEE NOTES, 1985 AND 1995 AMENDMENTS

1985 AMENDMENT

Rule 83, which has not been amended since the Federal Rules were promulgated in 1938, permits each district to adopt local rules not inconsistent with the Federal Rules by a majority of the judges. . . .

The amended Rule attempts, without impairing the procedural validity of existing local rules, to enhance the local rulemaking process by requiring appropriate public notice of proposed rules and an opportunity to comment on them. Although some district courts apparently consult the local bar before promulgating rules, many do not, which has led to criticism of a process that has district judges consulting only with each other. See 12 C. Wright & A. Miller, *supra*, §3152, at 217; Blair, *The New Local Rules for Federal Practice in Iowa*, 23 Drake L. Rev. 517 (1974). The new language subjects local rulemaking to scrutiny similar to that accompanying the Federal Rules, administrative rulemaking, and legislation. It attempts to assure that the expert advice of practitioners and scholars is made available to the district court before local rules are promulgated. See Weinstein, *Reform of Court Rule-Making Procedures* 84-87, 127-137, 151 (1977).

. . . The expectation is that the judicial council will examine all local rules, including those currently in effect, with an eye toward determining whether they are valid and consistent with the Federal Rules, promote inter-district uniformity and efficiency, and do not undermine the basic objectives of the Federal Rules. . . .

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.

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 local 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. . . .

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.

Rule 84. Forms

The forms contained in the Appendix of Forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.

As amended Dec. 27, 1946, eff. Mar. 19, 1948.

Rule 85. Title

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

Rule 86. Effective Date

(a) [**Effective Date of Original Rules.**] These rules will take effect on the day which is 3 months subsequent to the adjournment of the second regular session of the 75th Congress, but if that day is prior to September 1, 1938, then these rules will take effect on September 1, 1938. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

(b) **Effective Date of Amendments.** The amendments adopted by the Supreme Court on December 27, 1946, and transmitted to the Attorney General on January 2, 1947, shall take effect on the day which is three months subsequent to the adjournment of the first regular session of the 80th Congress, but, if that day is prior to September 1, 1947, then these amendments shall take effect on September 1, 1947. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

Added Dec. 27, 1946, eff. Mar. 19, 1948.

(c) **Effective Date of Amendments.** The amendments adopted by the Supreme Court on December 29, 1948, and transmitted to the Attorney General on December 31, 1948, shall take effect on the day following the adjournment of the first regular session of the 81st Congress.

Added Dec. 29, 1948, eff. Oct. 20, 1949.

(d) **Effective Date of Amendments.** The amendments adopted by the Supreme Court on April 17, 1961, and transmitted to the Congress on April 18, 1961, shall take effect on July 19, 1961. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

Added Apr. 17, 1961, eff. July 19, 1961.

(e) **Effective Date of Amendments.** The amendments adopted by the Supreme Court on January 21, 1963, and transmitted to the Congress on January 21, 1963 shall take effect on July 1, 1963. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in

a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

Added Jan. 21, 1963, eff. July 1, 1963.

[The practice of amending Rule 86 to show effective times of amendments was discontinued after the 1963 amendments. Adoption and effective dates of subsequent amendments are shown after the relevant change in the rule.]

APPENDIX OF FORMS

(See Rule 84)

TABLE OF FORMS

Form

1. Summons
- 1-A. Notice of Lawsuit and Request for Waiver of Service of Summons
- 1-B. Waiver of Service of Summons
2. Allegation of Jurisdiction
3. Complaint on a Promissory Note
4. Complaint on an Account
5. Complaint for Goods Sold and Delivered
6. Complaint for Money Lent
7. Complaint for Money Paid by Mistake
8. Complaint for Money Had and Received
9. Complaint for Negligence
10. Complaint for Negligence Where Plaintiff Is Unable to Determine Definitely Whether the Person Responsible Is C. D. or E. F. or Whether Both Are Responsible and Where His Evidence May Justify a Finding of Wilfulness or of Recklessness or of Negligence
11. Complaint for Conversion
12. Complaint for Specific Performance of Contract to Convey Land
13. Complaint on Claim for Debt and to Set Aside Fraudulent Conveyance Under Rule 18(b)
14. Complaint for Negligence Under Federal Employers' Liability Act
15. Complaint for Damages Under Merchant Marine Act
16. Complaint for Infringement of Patent
17. Complaint for Infringement of Copyright and Unfair Competition
18. Complaint for Interpleader and Declaratory Relief
- 18-A. Notice and Acknowledgment for Service by Mail [*Abrogated*]
19. Motion to Dismiss, Presenting Defenses of Failure to State a Claim, of Lack of Service of Process, of Improper Venue, and of Lack of Jurisdiction Under Rule 12(b)
20. Answer Presenting Defenses Under Rule 12(b)
21. Answer to Complaint Set Forth in Form 8, with Counterclaim for Interpleader
- 22-A. Summons and Complaint Against Third-Party Defendant
- 22-B. Motion to Bring In Third-Party Defendant
23. Motion to Intervene as a Defendant Under Rule 24
24. Request for Production of Documents, etc., Under Rule 34
25. Request for Admission Under Rule 36

26. Allegation of Reason for Omitting Party
27. Notice of Appeal to Court of Appeals Under Rule 73(b)
28. Notice: Condemnation
29. Complaint: Condemnation
30. Suggestion of Death upon the Record Under Rule 25(a)(1)
31. Judgment on Jury Verdict
32. Judgment on Decision by the Court
33. Notice of Availability of a Magistrate Judge to Exercise Jurisdiction
34. Consent to Exercise of Jurisdiction by a United States Magistrate Judge
- 34-A. Order of Reference
35. Report of Parties' Planning Meeting

Introductory Statement

1. The following forms are intended for illustration only. They are limited in number. No attempt is made to furnish a manual of forms. Each form assumes the action to be brought in the Southern District of New York. If the district in which an action is brought has divisions, the division should be indicated in the caption.

2. Except where otherwise indicated each pleading, motion, and other paper should have a caption similar to that of the summons, with the designation of the particular paper substituted for the word "Summons." In the caption of the summons and in the caption of the complaint all parties must be named but in other pleadings and papers, it is sufficient to state the name of the first party on either side, with an appropriate indication of other parties. See Rules 4(b), 7(b) (2), and 10(a).

3. In Form 3 and the forms following, the words, "Allegation of jurisdiction," are used to indicate the appropriate allegation in Form 2.

4. Each pleading, motion, and other paper is to be signed in his individual name by at least one attorney of record (Rule 11). The attorney's name is to be followed by his address as indicated in Form 3. In forms following Form 3 the signature and address are not indicated.

5. If a party is not represented by an attorney, the signature and address of the party are required in place of those of the attorney.

Form 1. Summons

United States District Court for the Southern District of New York

Civil Action, File Number _____

A. B., Plaintiff

v.

SUMMONS

C. D., Defendant

To the above-named Defendant:

You are hereby summoned and required to serve upon _____, plaintiff's attorney, whose address is _____, an answer to the complaint which is herewith served upon you, within 20¹ days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Clerk of Court

[Seal of the U.S. District Court]

Dated _____

As amended Dec. 29, 1948, eff. Oct. 20, 1949.

(This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.)

Form 1-A. Notice of Lawsuit and Request for Waiver of Service of Summons

To: _____ (name of individual defendant or agent) [as _____ (title) of _____ (corporation)]

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the _____ (district) and has been assigned docket number _____.

1. If the United States or an officer or agency thereof is a defendant, the time to be inserted as to it is 60 days.

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within 30 days¹ after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from the date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the reverse side (or at the foot) of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this ___ day of _____, _____.

*Signature of Plaintiff's Attorney or
 Unrepresented Plaintiff*

Added Apr. 22, 1993, eff. Dec. 1, 1993.

Form 1-B. Waiver of Service of Summons

To: _____ (name of plaintiff's attorney or unrepresented plaintiff)

I acknowledge receipt of your request that I waive service of a summons in the action of _____ (caption of action) _____ which is case _____ (docket number) _____ in the United States District Court for the _____ (district) _____. I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

1. Addressee must be given at least 30 days (60 days if located in foreign country) in which to return waiver.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after _____ (date request was sent), or within 90 days after that date if the request was sent outside the United States.

Date

Signature

Printed/typed name: _____

[as _____]

[of _____]

To be printed on reverse side of the waiver form or set forth at the foot of the form:

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

Added Apr. 22, 1993, eff. Dec. 1, 1993.

Form 2. Allegation of Jurisdiction

(a) Jurisdiction founded on diversity of citizenship and amount.

Plaintiff is a [citizen of the State of Connecticut]¹ [corporation incorporated under the laws of the State of Connecticut having its principal place of business in the State of Connecticut] and defendant is a corporation incorporated under the laws of the State of New York having its principal place of business in a State other than the State of Connecticut. The matter in controversy exceeds, exclusive of interest and costs, the sum specified by 28 U.S.C. §1332.

(b) Jurisdiction founded on the existence of a Federal question.

This action arises under [the Constitution of the United States, Article _____, Section _____]; [the _____ Amendment to the Constitution of the United States, Section _____]; [the Act of _____, _____ Stat. _____; U.S.C., Title _____, §____]; [the Treaty of the United States (here describe the treaty)],² as hereinafter more fully appears.

(c) Jurisdiction founded on the existence of a question arising under particular statutes.

The action arises under the Act of _____, _____ Stat. _____; U.S.C., Title _____, § _____, as hereinafter more fully appears.

(d) Jurisdiction founded on the admiralty or maritime character of the claim.

This is a case of admiralty and maritime jurisdiction, as hereinafter more fully appears. [If the pleader wishes to invoke the distinctively maritime procedures referred to in Rule 9(h), add the following or its substantial equivalent: This is an admiralty or maritime claim within the meaning of Rule 9(h).]

As amended Apr. 17, 1961, eff. July 19, 1961; Feb. 28, 1966, eff. July 1, 1966; Apr. 22, 1993, eff. Dec. 1, 1993; April 29, 1999, eff. Dec. 1, 1999.

Form 3. Complaint on a Promissory Note

1. Allegation of jurisdiction.

2. Defendant on or about June 1, 1935, executed and delivered to plaintiff a promissory note [in the following words and figures: (here set out the note verbatim)]; [a copy of which is hereto annexed as Exhibit A]; [whereby defendant promised to pay to plaintiff or order on June 1, 1936 the sum of _____ dollars with interest thereon at the rate of six percent. per annum].

3. Defendant owes to plaintiff the amount of said note and interest.

1. Form for natural person.

2. Use the appropriate phrase or phrases. The general allegation of the existence of a Federal question is ineffective unless the matters constituting the claim for relief as set forth in the complaint raise a federal question.

Wherefore plaintiff demands judgment against defendant for the sum of _____ dollars, interest, and costs.

Signed: _____
Attorney for Plaintiff
Address: _____

As amended Jan. 21, 1963, eff. July 1, 1963.

Form 4. Complaint on an Account

1. Allegation of jurisdiction.
2. Defendant owes plaintiff _____ dollars according to the account hereto annexed as Exhibit A.
Wherefore (etc. as in Form 3).

As amended Jan. 21, 1963, eff. July 1, 1963.

Form 5. Complaint for Goods Sold and Delivered

1. Allegation of jurisdiction.
2. Defendant owes plaintiff _____ dollars for goods sold and delivered by plaintiff to defendant between June 1, 1936 and December 1, 1936.
Wherefore (etc. as in Form 3).

As amended Jan. 21, 1963, eff. July 1, 1963.

Form 6. Complaint for Money Lent

1. Allegation of jurisdiction.
2. Defendant owes plaintiff _____ dollars for money lent by plaintiff to defendant on June 1, 1936.
Wherefore (etc. as in Form 3).

As amended Jan. 21, 1963, eff. July 1, 1963.

Form 7. Complaint for Money Paid by Mistake

1. Allegation of jurisdiction.
2. Defendant owes plaintiff _____ dollars for money paid by plaintiff to

defendant by mistake on June 1, 1936, under the following circumstances: [here state the circumstances with particularity — see Rule 9(b)].

Wherefore (etc. as in Form 3).

As amended Jan. 21, 1963, eff. July 1, 1963.

Form 8. Complaint for Money Had and Received

1. Allegation of jurisdiction.

2. Defendant owes plaintiff _____ dollars for money had and received from one G. H. on June 1, 1936, to be paid by defendant to plaintiff.

Wherefore (etc. as in Form 3).

As amended Jan. 21, 1963, eff. July 1, 1963.

Form 9. Complaint for Negligence

1. Allegation of jurisdiction.

2. On June 1, 1936, in a public highway called Boylston Street in Boston, Massachusetts, defendant negligently drove a motor vehicle against plaintiff who was then crossing said highway.

3. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars and costs.

As amended Jan. 21, 1963, eff. July 1, 1963.

Form 10. Complaint for Negligence Where Plaintiff Is Unable to Determine Definitely Whether the Person Responsible Is C. D. or E. F. or Whether Both Are Responsible Where His Evidence May Justify a Finding of Wilfulness or of Recklessness or of Negligence

A. B., Plaintiff

v.

C. D. and E. F., Defendants

COMPLAINT

1. Allegation of jurisdiction.

2. On June 1, 1936, in a public highway called Boylston Street in Boston,

Massachusetts, defendant C. D. or defendant E. F., or both defendants C. D. and E. F. wilfully or recklessly or negligently drove or caused to be driven a motor vehicle against plaintiff who was then crossing said highway.

3. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against C. D. or against E. F. or against both in the sum of _____ dollars and costs.

As amended Jan. 21, 1963, eff. July 1, 1963.

Form 11. Complaint for Conversion

1. Allegation of jurisdiction.

2. On or about December 1, 1936, defendant converted to his own use ten bonds of the _____ Company (here insert brief identification as by number and issue) of the value of _____ dollars, the property of plaintiff.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest, and costs.

As amended Jan. 21, 1963, eff. July 1, 1963.

Form 12. Complaint for Specific Performance of Contract to Convey Land

1. Allegation of jurisdiction.

2. On or about December 1, 1936, plaintiff and defendant entered into an agreement in writing a copy of which is hereto annexed as Exhibit A.

3. In accord with the provisions of said agreement plaintiff tendered to defendant the purchase price and requested a conveyance of the land, but defendant refused to accept the tender and refused to make the conveyance.

4. Plaintiff now offers to pay the purchase price.

Wherefore plaintiff demands (1) that defendant be required specifically to perform said agreement, (2) damages in the sum of one thousand dollars, and (3) that if specific performance is not granted plaintiff have judgment against defendant in the sum of _____ dollars.

As amended Jan. 21, 1963, eff. July 1, 1963.

**Form 13. Complaint on Claim for Debt and to Set Aside
Fraudulent Conveyance Under Rule 18(b)**

A. B., Plaintiff

v.

COMPLAINT

C. D. and E. F., Defendants

1. Allegation of jurisdiction.
2. Defendant C. D. on or about _____ executed and delivered to plaintiff a promissory note [in the following words and figures: (here set out the note verbatim)]; [a copy of which is hereto annexed as Exhibit A]; [whereby defendant C. D. promised to pay to plaintiff or order on _____ the sum of five thousand dollars with interest thereon at the rate of _____ percent. per annum].
3. Defendant C. D. owes to plaintiff the amount of said note and interest.
4. Defendant C. D. on or about _____ conveyed all his property, real and personal [or specify and describe] to defendant E. F. for the purpose of defrauding plaintiff and hindering and delaying the collection of the indebtedness evidenced by the note above referred to.

Wherefore plaintiff demands:

- (1) That plaintiff have judgment against defendant C. D. for _____ dollars and interest;
- (2) that the aforesaid conveyance to defendant E. F. be declared void and the judgment herein be declared a lien on said property;
- (3) that plaintiff have judgment against the defendants for costs.

As amended Jan. 21, 1963, eff. July 1, 1963.

**Form 14. Complaint for Negligence Under Federal
Employers' Liability Act**

1. Allegation of jurisdiction.
2. During all the times herein mentioned defendant owned and operated in interstate commerce a railroad which passed through a tunnel located at _____ and known as Tunnel No. _____.
3. On or about June 1, 1936, defendant was repairing and enlarging the tunnel in order to protect interstate trains and passengers and freight from injury and in order to make the tunnel more conveniently usable for interstate commerce.
4. In the course of thus repairing and enlarging the tunnel on said day defendant employed plaintiff as one of its workmen, and negligently put plaintiff

to work in a portion of the tunnel which defendant had left unprotected and unsupported.

5. By reason of defendant's negligence in thus putting plaintiff to work in that portion of the tunnel, plaintiff was, while so working pursuant to defendant's orders, struck and crushed by a rock, which fell from the unsupported portion of the tunnel, and was (here describe plaintiff's injuries).

6. Prior to these injuries, plaintiff was a strong, able-bodied man, capable of earning and actually earning _____ dollars per day. By these injuries he has been made incapable of any gainful activity, has suffered great physical and mental pain, and has incurred expense in the amount of _____ dollars for medicine, medical attendance, and hospitalization.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars and costs.

Form 15. Complaint for Damages Under Merchant Marine Act

1. Allegation of jurisdiction. [If the pleader wishes to invoke the distinctively maritime procedures referred to in Rule 9(h), add the following or its substantial equivalent: This is an admiralty or maritime claim within the meaning of Rule 9(h).]

2. During all the times herein mentioned defendant was the owner of the steamship _____ and used it in the transportation of freight for hire by water in interstate and foreign commerce.

3. During the first part of (month and year) at _____ plaintiff entered the employ of defendant as an able seaman on said steamship under seamen's articles of customary form for a voyage from _____ ports to the Orient and return at a wage of _____ dollars per month and found, which is equal to a wage of _____ dollars per month as a shore worker.

4. On June 1, 1936, said steamship was about _____ days out of the port of _____ and was being navigated by the master and crew on the return voyage of _____ ports. (Here describe weather conditions and the condition of the ship and state as in an ordinary complaint for personal injuries the negligent conduct of defendant.)

5. By reason of defendant's negligence in thus (brief statement of defendant's negligent conduct) and the unseaworthiness of said steamship, plaintiff was (here describe plaintiff's injuries).

6. Prior to these injuries, plaintiff was a strong, able-bodied man, capable of earning and actually earning _____ dollars per day. By these injuries he has been made incapable of any gainful activity; has suffered great physical and mental pain, and has incurred expense in the amount of _____ dollars for medicine, medical attendance, and hospitalization.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars and costs.

As amended Feb. 28, 1966, eff. July 1, 1966.

Form 16. Complaint for Infringement of Patent

1. Allegation of jurisdiction.

2. On May 16, 1934, United States Letters Patent No. _____ were duly and legally issued to plaintiff for an invention in an electric motor; and since that date plaintiff has been and still is the owner of those Letters Patent.

3. Defendant has for a long time past been and still is infringing those Letters Patent by making, selling, and using electric motors embodying the patented invention, and will continue to do so unless enjoined by this court.

4. Plaintiff has placed the required statutory notice on all electric motors manufactured and sold by him under said Letters Patent, and has given written notice to defendant of his said infringement.

Wherefore plaintiff demands a preliminary and final injunction against continued infringement, an accounting for damages, and an assessment of interest and costs against defendant.

As amended Jan. 21, 1963, eff. July 1, 1963.

Form 17. Complaint for Infringement of Copyright and Unfair Competition

1. Allegation of jurisdiction.

2. Prior to March, 1936, plaintiff, who then was and ever since has been a citizen of the United States, created and wrote an original book, entitled _____.

3. This book contains a large amount of material wholly original with plaintiff and is copyrightable subject matter under the laws of the United States.

4. Between March 2, 1936, and March 10, 1936, plaintiff complied in all respects with the Act of (give citation) and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said book, and received from the Register of Copyrights a certificate of registration, dated and identified as follows: "March 10, 1936, Class _____, No. _____."

5. Since March 10, 1936, said book has been published by plaintiff and all copies of it made by plaintiff or under his authority or license have been printed, bound, and published in strict conformity with the provisions of the Act of _____ and all other laws governing copyright.

6. Since March 10, 1936, plaintiff has been and still is the sole proprietor of all rights, title, and interest in and to the copyright in said book.

7. After March 10, 1936, defendant infringed said copyright by publishing and placing upon the market a book entitled _____, which was copied largely from plaintiff's copyrighted book, entitled _____.

8. A copy of plaintiff's copyrighted book is hereto attached as "Exhibit 1"; and a copy of defendant's infringing book is hereto attached as "Exhibit 2."

9. Plaintiff has notified defendant that defendant has infringed the copyright of plaintiff, and defendant has continued to infringe the copyright.

10. After March 10, 1936, and continuously since about _____, defendant has been publishing, selling and otherwise marketing the book entitled _____, and has thereby been engaging in unfair trade practices and unfair competition against plaintiff to plaintiff's irreparable damage.

Wherefore plaintiff demands:

(1) That defendant, his agents, and servants be enjoined during the pendency of this action and permanently from infringing said copyright of said plaintiff in any manner, and from publishing, selling, marketing or otherwise disposing of any copies of the book entitled _____.

(2) That defendant be required to pay to plaintiff such damages as plaintiff has sustained in consequence of defendant's infringement of said copyright and said unfair trade practices and unfair competition and to account for

(a) all gains, profits and advantages derived by defendant by said trade practices and unfair competition and

(b) all gains, profits, and advantages derived by defendant by his infringement of plaintiff's copyright or such damages as to the court shall appear proper within the provisions of the copyright statutes, but not less than two hundred and fifty dollars.

(3) That defendant be required to deliver up to be impounded during the pendency of this action all copies of said book entitled _____ in his possession or under his control and to deliver up for destruction all infringing copies and all plates, molds, and other matter for making such infringing copies.

(4) That defendant pay to plaintiff the costs of this action and reasonable attorney's fees to be allowed to the plaintiff by the court.

(5) That plaintiff have such other and further relief as is just.

As amended Dec. 27, 1946, eff. Mar. 19, 1948.

Form 18. Complaint for Interpleader and Declaratory Relief

1. Allegation of jurisdiction.

2. On or about June 1, 1935, plaintiff issued to G. H. a policy of life insurance whereby plaintiff promised to pay to K. L. as beneficiary the sum of _____ dollars upon the death of G. H. The policy required the payment by G. H. of a stipulated premium on June 1, 1936, and annually thereafter as a condition precedent to its continuance in force.

3. No part of the premium due June 1, 1936, was ever paid and the policy ceased to have any force or effect on July 1, 1936.

4. Thereafter, on September 1, 1936, G. H. and K. L. died as the result of a collision between a locomotive and the automobile in which G. H. and K. L. were riding.

5. Defendant C. D. is the duly appointed and acting executor of the will of G. H.; defendant E. F. is the duly appointed and acting executor of the will of K. L.; defendant X. Y. claims to have been duly designated as beneficiary of said policy in place of K. L.

6. Each of defendants, C. D., E. F., and X. Y., is claiming that the above-mentioned policy was in full force and effect at the time of the death of G. H.; each of them is claiming to be the only person entitled to receive payment of the amount of the policy and has made demand for payment thereof.

7. By reason of these conflicting claims of the defendants, plaintiff is in great doubt as to which defendant is entitled to be paid the amount of the policy, if it was in force at the death of G. H.

Wherefore plaintiff demands that the court adjudge:

(1) That none of the defendants is entitled to recover from plaintiff the amount of said policy or any part thereof.

(2) That each of the defendants be restrained from instituting any action against plaintiff for the recovery of the amount of said policy or any part thereof.

(3) That, if the court shall determine that said policy was in force at the death of G. H., the defendants be required to interplead and settle between themselves their rights to the money due under said policy, and that plaintiff be discharged from all liability in the premises except to the person whom the court shall adjudge entitled to the amount of said policy.

(4) That plaintiff recover its costs.

As amended Jan. 21, 1963, eff. July 1, 1963.

Form 18-A. Notice and Acknowledgment for Service by Mail
[*Abrogated*]

Form 19. Motion to Dismiss, Presenting Defenses of Failure to State a Claim, of Lack of Service of Process, of Improper Venue, and of Lack of Jurisdiction Under Rule 12(b)

The defendant moves the court as follows:

1. To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.

2. To dismiss the action or in lieu thereof to quash the return of service of summons on the grounds (a) that the defendant is a corporation organized under

the laws of Delaware and was not and is not subject to service of process within the Southern District of New York, and (b) that the defendant has not been properly served with process in this action, all of which more clearly appears in the affidavits of M. N. and X. Y. hereto annexed as Exhibit A and Exhibit B respectively.

3. To dismiss the action on the ground that it is in the wrong district because (a) the jurisdiction of this court is invoked solely on the ground that the action arises under the Constitution and laws of the United States and (b) the defendant is a corporation incorporated under the laws of the State of Delaware and is not licensed to do or doing business in the Southern District of New York, all of which more clearly appears in the affidavits of K. L. and V. W. hereto annexed as Exhibit C and D respectively.

4. To dismiss the action on the ground that the court lacks jurisdiction because the amount actually in controversy is less than ten thousand dollars exclusive of interest and costs.

Signed: _____
Attorney for Defendant

Address: _____

Notice of Motion

To: _____
Attorney for Plaintiff

Please take notice, that the undersigned will bring the above motion on for hearing before this Court at Room _____, United States Court House, Foley Square, City of New York, on the _____ day of _____, 20 _____, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

Signed: _____
Attorney for Defendant

Address: _____

As amended Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 17, 1961, eff. July 19, 1961; Mar. 27, eff. Dec. 1, 2003.

Form 20. Answer Presenting Defenses Under Rule 12(b)

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

If defendant is indebted to plaintiffs for the goods mentioned in the complaint, he is indebted to them jointly with G. H. G. H. is alive; is a citizen of the State of New York and a resident of this district, is subject to the jurisdiction of this court, as to both service of process and venue; can be made a party without depriving this court of jurisdiction of the present parties, and has not been made a party.

Third Defense

Defendant admits the allegation contained in paragraphs 1 and 4 of the complaint; alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the complaint; and denies each and every other allegation contained in the complaint.

Fourth Defense

The right of action set forth in the complaint did not accrue within six years next before the commencement of this action.

Counterclaim

(Here set forth any claim as a counterclaim in the manner in which a claim is pleaded in a complaint. No statement of the grounds on which the court's jurisdiction depends need be made unless the counterclaim requires independent grounds of jurisdiction.)

Cross-Claim Against Defendant M. N.

(Here set forth the claim constituting a cross-claim against defendant M. N. in the manner in which a claim is pleaded in a complaint. The statement of grounds upon which the court's jurisdiction depends need not be made unless the cross-claim requires independent grounds of jurisdiction.)

Form 21. Answer to Complaint Set Forth in Form 8, with Counterclaim for Interpleader

Defense

Defendant admits the allegations stated in paragraph 1 of the complaint; and denies the allegations stated in paragraph 2 to the extent set forth in the counterclaim herein.

Counterclaim for Interpleader

1. Defendant received the sum of _____ dollars as a deposit from E. F.
2. Plaintiff has demanded the payment of such deposit to him by virtue of an assignment of it which he claims to have received from E. F.

3. E.F. has notified the defendant that he claims such deposit, that the purported assignment is not valid, and that he holds the defendant responsible for the deposit.

Wherefore defendant demands:

(1) That the court order E. F. to be made a party defendant to respond to the complaint and to this counterclaim.¹

(2) That the court order the plaintiff and E. F. to interplead their respective claims.

(3) That the court adjudge whether the plaintiff or E. F. is entitled to the sum of money.

(4) That the court discharge defendant from all liability in the premises except to the person it shall adjudge entitled to the sum of money.

(5) That the court award to the defendant its costs and attorney's fees.

As amended Jan. 21, 1963, eff. July 1, 1963.

Form 22-A. Summons and Complaint Against Third-Party Defendant

**United States District Court for the
Southern District of New York**

Civil Action, File Number _____

A. B., Plaintiff

v.

C. D., Defendant and
Third-Party Plaintiff

SUMMONS

v.

E. F., Third-Party
Defendant

To the above-named Third-Party Defendant:

You are hereby summoned and required to serve upon _____, plaintiff's attorney whose address is _____, and upon _____, who is attorney for C. D., defendant and third-party plaintiff, and whose address is _____, an answer to the third-party complaint which is herewith served upon you within 20 days after the service of this summons upon you exclusive of the day of service.

1. Rule 13(h) provides for the court ordering parties to a counterclaim, but who are not parties to the original action, to be brought in as defendants.

If you fail to do so, judgment by default will be taken against you for the relief demanded in the third-party complaint. There is also served upon you herewith a copy of the complaint of the plaintiff which you may but are not required to answer.

Clerk of Court

[Seal of District Court]

Dated _____

**United States District Court for the
Southern District of New York**

Civil Action, File Number _____

A.B., Plaintiff

v.

C. D., Defendant and
Third-Party Plaintiff **THIRD-PARTY COMPLAINT**

v.

E. F., Third-Party
Defendant

1. Plaintiff A. B. has filed against defendant C. D. a complaint, a copy of which is hereto attached as "Exhibit A."

2. (Here state the grounds upon which C. D. is entitled to recover from E. F., all or part of what A. B. may recover from C. D. The statement should be framed as in an original complaint.)

Wherefore C. D. demands judgment against third-party defendant E. F. for all sums¹ that may be adjudged against defendant C. D. in favor of plaintiff A. B.

Signed: _____

*Attorney for C. D.,
Third-Party Plaintiff*

Address: _____

Added Jan. 21, 1963, eff. July 1, 1963.

1. Make appropriate change where C. D. is entitled to only partial recovery-over against E. F.

Form 22-B. Motion to Bring In Third-Party Defendant

Defendant moves for leave, as third-party plaintiff, to cause to be served upon E. F. a summons and third-party complaint, copies of which are hereto attached as Exhibit X.

Signed: _____
Attorney for Defendant C. D.

Address: _____

Notice of Motion

(Contents the same as in Form 19. The notice should be addressed to all parties to the action.)

EXHIBIT X

(Contents the same as in Form 22-A.)

Added Jan. 21, 1963, eff. July 1, 1963.

Form 23. Motion to Intervene as a Defendant Under Rule 24

(Based upon the complaint, Form 16)

**United States District Court for the Southern District
of New York**

Civil Action, File Number _____

A.B., Plaintiff

v.

**MOTION TO INTERVENE AS
A DEFENDANT**

C. D., Defendant

E. F., Applicant for Intervention

E. F. moves for leave to intervene as a defendant in this action, in order to assert the defenses set forth in his proposed answer, of which a copy is hereto attached, on the ground that he is the manufacturer and vendor to the defendant, as well as to others, of the articles alleged in the complaint to be an infringement

of plaintiff's patent, and as such has a defense to plaintiff's claim presenting both questions of law and of fact which are common to the main action.¹

Signed: _____

*Attorney for E. F.
Applicant for Intervention*

Address: _____

Notice of Motion

(Contents the same as in Form 19)

**United States District Court for the Southern District
of New York**

Civil Action, File Number _____

A.B., Plaintiff

v

INTERVENER'S ANSWER

C. D., Defendant

E. F., Intervener

First Defense

Intervener admits the allegations stated in paragraphs 1 and 4 of the complaint; denies the allegations in paragraph 3, and denies the allegations in paragraph 2 in so far as they assert the legality of the issuance of the Letters Patent to plaintiff.

Second Defense

Plaintiff is not the first inventor of the articles covered by the Letters Patent specified in his complaint, since articles substantially identical in character were previously patented in Letters Patent granted to intervener on January 5, 1920.

Signed: _____

*Attorney for E. F.,
Intervener*

Address: _____

As amended Dec. 29, 1948, eff. Oct. 20, 1949.

1. For other grounds of intervention, either of right or in the discretion of the court, see Rule 24(a) and (b).

Form 24. Request for Production of Documents, etc., Under Rule 34

Plaintiff A. B. requests defendant C. D. to respond within _____ days to the following requests:

(1) That defendant produce and permit plaintiff to inspect and to copy each of the following documents:

(Here list the documents either individually or by category and describe each of them.)

(Here state the time, place, and manner of making the inspection and performance of any related acts.)

(2) That defendant produce and permit plaintiff to inspect and to copy, test, or sample each of the following objects:

(Here list the objects either individually or by category and describe each of them.)

(Here state the time, place, and manner of making the inspection and performance of any related acts.)

(3) That defendant permit plaintiff to enter (here describe property to be entered) and to inspect and to photograph, test or sample (here describe the portion of the real property and the objects to be inspected).

(Here state the time, place, and manner of making the inspection and performance of any related acts.)

Signed: _____
Attorney for Plaintiff

Address: _____

As amended Mar. 30, 1970, eff. July 1, 1970.

Form 25. Request for Admission Under Rule 36

Plaintiff A. B. requests defendant C. D. within _____ days after service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, exhibited with this request, is genuine.

(Here list the documents and describe each document.)

2. That each of the following statements is true.
(Here list the statements.)

Signed: _____
Attorney for Plaintiff

Address: _____

As amended Dec. 27, 1946, eff. Mar. 19, 1948.

Form 26. Allegation of Reason for Omitting Party

When it is necessary, under Rule 19(c), for the pleader to set forth in his pleading the names of persons who ought to be made parties, but who are not so made, there should be an allegation such as the one set out below:

John Doe named in this complaint is not made a party to this action [because he is not subject to the jurisdiction of this court]; [because he cannot be made a party to this action without depriving this court of jurisdiction].

Form 27. Notice of Appeal to Court of Appeals Under Rule 73(b)

Abrogated Dec. 4, 1967, eff. July 1, 1968.

Form 28. Notice: Condemnation

**United States District Court for the Southern District
of New York**

Civil Action, File Number _____

United States of America, Plaintiff

v.

1,000 Acres of Land in [here insert
a general location as "City of _____"
" or "County of _____"],
John Doe, et al., and Unknown
Owners, Defendants

NOTICE

To (here insert the names of the defendants to whom the notice is directed):

You are hereby notified that a complaint in condemnation has heretofore been filed in the office of the clerk of the United States District Court for the

Southern District of New York, in the United States Court House in New York City, New York, for the taking (here state the interest to be acquired, as "an estate in fee simple") for use (here state briefly the use, "as a site for a post-office building") of the following described property in which you have or claim an interest.

(Here insert brief description of the property in which the defendants to whom the notice is directed, have or claim an interest.)

The authority for the taking is (here state briefly, as "the Act of _____, _____ Stat._____, U.S.C.A., Title_____, §_____").¹

You are further notified that if you desire to present any objection or defense to the taking of your property you are required to serve your answer on the plaintiff's attorney at the address herein designated within twenty days after _____.²

Your answer shall identify the property in which you claim to have an interest, state the nature and extent of the interest you claim, and state all of your objections and defenses to the taking of your property. All defenses and objections not so presented are waived. And in case of your failure so to answer the complaint, judgment of condemnation of that part of the above-described property in which you have or claim an interest will be rendered.

But without answering, you may serve on the plaintiff's attorney a notice of appearance designating the property in which you claim to be interested. Thereafter you will receive notice of all proceedings affecting it. At the trial of the issue of just compensation, whether or not you have previously appeared or answered, you may present evidence as to the amount of the compensation to be paid for your property, and you may share in the distribution of the award.

United States Attorney

Address: _____

(Here state an address within the district where the United States Attorney may be served, as "United States Court House, New York, N.Y.")

Dated _____

Added May 1, 1951, eff. Aug. 1, 1951.

1. And where appropriate add a citation to any applicable Executive Order.

2. Here insert the words "personal service of this notice upon you," if personal service is to be made pursuant to subdivision (d)(3)(i) of this rule [Rule 71A]; or, insert the date of the last publication of notice, if service by publication is to be made pursuant to subdivision (d)(3)(ii) of this rule.

Form 29. Complaint: Condemnation**United States District Court for the Southern District of
New York**

Civil Action, File Number _____

United States of America, Plaintiff

v.

1,000 Acres of Land in [here insert a
general location as "City of _____
_____"] or "County of _____"],

COMPLAINT

John Doe, et al., and Unknown
Owners, Defendants

1. This is an action of a civil nature brought by the United States of America for the taking of property under the power of eminent domain and for the ascertainment and award of just compensation to the owners and parties in interest.¹

2. The authority for the taking is (here state briefly, as "the Act of _____, ____ Stat. _____, U.S.C.A., Title _____, § _____").²

3. The use for which the property is to be taken is (here state briefly the use, "as a site for a post-office building").

4. The interest to be acquired in the property is (here state the interest as "an estate in fee simple").

5. The property so to be taken is (here set forth a description of the property sufficient for its identification) or (described in Exhibit A hereto attached and made a part hereof).

6. The persons known to the plaintiff to have or claim an interest in the property³ are:

1. If the plaintiff is not the United States, but is, for example, a corporation invoking the power of eminent domain delegated to it by the state, then this paragraph 1 of the complaint should be appropriately modified and should be preceded by a paragraph appropriately alleging federal jurisdiction for the action, such as diversity, See Form 2.

2. And where appropriate add a citation to any applicable Executive Order.

3. At the commencement of the action the plaintiff need name as defendants only the persons having or claiming an interest in the property whose names are then known, but prior to any hearing involving the compensation to be paid for a particular piece of property the plaintiff must add as defendants all persons having or claiming an interest in that property whose names can be ascertained by an appropriate search of the records and also those whose names have otherwise been learned. See Rule 71A(c)(2).

(Here set forth the names of such persons and the interests claimed.)⁴

7. In addition to the persons named, there are or may be others who have or may claim some interest in the property to be taken, whose names are unknown to the plaintiff and on diligent inquiry have not been ascertained. They are made parties to the action under the designation "Unknown Owners."

Wherefore the plaintiff demands judgment that the property be condemned and that just compensation for the taking be ascertained and awarded and for such other relief as may be lawful and proper.

United States Attorney

Address: _____

(Here state an address within the district where the United States Attorney may be served, as "United States Court House, New York, N.Y.")

Added May 1, 1951, eff. Aug. 1, 1951.

Form 30. Suggestion of Death upon the Record Under Rule 25(a)(1)

A.B. [describe as a party, or as executor, administrator, or other representative or successor of C. D., the deceased party] suggests upon the record, pursuant to Rule 25(a)(1), the death of C. D. [describe as party] during the pendency of this action.

Added Jan. 21, 1963, eff. July 1, 1963.

4. The plaintiff should designate, as to each separate piece of property, the defendants who have been joined as owners thereof or of some interest therein. See Rules 71A(c)(2).

Form 31. Judgment on Jury Verdict**United States District Court for the
Southern District of New York**

Civil Action, File Number _____

B., Plaintiff

v.

JUDGMENTC. D., Defendant

This action came on for trial before the Court and a jury, Honorable John Marshall, District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged

[that the plaintiff A. B. recover of the defendant C. D. the sum of _____, with interest thereon at the rate of _____ per cent as provided by law, and his costs of action.]

[that the plaintiff take nothing, that the action be dismissed on the merits, and that the defendant C. D. recover of the plaintiff A. B. his costs of action.]

Dated at New York, New York, this _____ day of _____, 20____.

Clerk of Court

Added Jan. 21, 1963, eff. July 1, 1963, Mar. 27, 2003, eff. Dec. 1, 2003.

Form 32. Judgment on Decision by the Court**United States District Court for the
Southern District of New York**

Civil Action, File Number _____

B., Plaintiff

v.

JUDGMENTC. D., Defendant

This action came on for [trial] [hearing] before the Court, Honorable John Marshall, District Judge, presiding, and the issues having been duly [tried] [heard] and a decision having been duly rendered,

It is Ordered and Adjudged

[that the plaintiff A. B. recover of the defendant C. D. the sum of _____, with interest thereon at the rate of _____ per cent as provided by law, and his costs of action.]

[that the plaintiff take nothing, that the action be dismissed on the merits, and that the defendant C. D. recover of the plaintiff A. B. his costs of action.]

Dated at New York, New York, this _____ day of _____, 20_____.

Clerk of Court

Added Jan. 21, 1963, eff. July 1, 1963; amended Mar. 27, 2003, eff. Dec. 1, 2003.

Form 33. Notice of Availability of a Magistrate Judge to Exercise Jurisdiction

In accordance with the provisions of Title 28, U.S.C. §636(c), you are hereby notified that a United States magistrate judge of this district court is available to exercise the court's jurisdiction and to conduct any or all proceedings in this case including a jury or nonjury trial, and entry of a final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

An appeal from a judgment entered by a magistrate judge may be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of a district court.

Copies of the Form for the "Consent to Jurisdiction by a United States Magistrate Judge" are available from the clerk of the court.

Added Apr. 28, 1983, eff. Aug. 1, 1983; amended Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 11, 1997, eff. Dec. 1, 1997.

Form 34. Consent to Exercise of Jurisdiction by a United States Magistrate Judge

United States District Court
 _____ District of _____

Plaintiff		Docket No. _____
v.		
Defendant		

**CONSENT TO JURISDICTION BY A UNITED STATES
 MAGISTRATE JUDGE**

In accordance with the provisions of Title 28, U.S.C. §636(c), the undersigned party or parties to the above-captioned civil matter hereby voluntarily consent to have a United States magistrate judge conduct any and all further proceedings in the case, including trial, and order the entry of a final judgment.

 Date

 Signature

Note: Return this form to the Clerk of the Court if you consent to jurisdiction by a magistrate judge. Do not send a copy of this form to any district judge or magistrate judge.

Added Apr. 28, 1983, eff. Aug. 1, 1983; amended Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 11, 1997, eff. Dec. 1, 1997.

Form 34-A. Order of Reference

United States District Court
 _____ District of _____

Plaintiff		Docket No. _____
v.		
Defendant		

Order of Reference

IT IS HEREBY ORDERED that the above-captioned matter be referred to United States Magistrate Judge _____ for all further proceedings

and entry of judgment in accordance with Title 28, U.S.C. §636(c) and the consent of the parties.

U.S. District Judge

Added Apr. 22, 1993, eff. Dec. 1, 1993.

Form 35. Report of Parties' Planning Meeting

[Caption and Names of Parties]

1. Pursuant to Fed. R. Civ. P. 26(f), a meeting was held on _____ (date)
at _____ (place) and was attended by:

_____ for plaintiff(s)
_____ for defendant(s) _____ (party name)
_____ for defendant(s) _____ (party name)

2. Pre-Discovery Disclosures. The parties [have exchanged] [will exchange] by _____ (date) the information required by [Fed. R. Civ. P. 26(a)(1)] [local rule].

3. Discovery Plan. The parties jointly propose to the court the following discovery plan: [Use separate paragraphs or subparagraphs as necessary if parties disagree.]

Discovery will be needed on the following subjects:

_____ (brief description of subjects on which discovery will be needed)

All discovery commenced in time to be completed by _____ (date).

[Discovery on _____ (issue for early discovery) to be completed by _____ (date).]

Maximum of _____ interrogatories by each party to any other party.

[Responses due _____ days after service.]

Maximum of _____ requests for admission by each party to any other party.

[Responses due _____ days after service.]

Maximum of _____ depositions by plaintiff(s) and _____ by defendant(s).

Each deposition [other than of _____] limited to maximum of _____ hours unless extended by agreement of parties.

Reports from retained experts under Rule 26(a)(2) due:

from plaintiff(s) by _____ (date)

from defendant(s) by _____ (date)

Supplementations under Rule 26(e) due _____ (time(s) or interval(s)).

4. Other Items. [Use separate paragraphs or subparagraphs as necessary if parties disagree.]

The parties [request] [do not request] a conference with the court before entry of the scheduling order.

The parties request a pretrial conference in ____ (month and year) ____ . Plaintiff(s) should be allowed until ____ (date) ____ to join additional parties and until ____ (date) ____ to amend the pleadings.

Defendant(s) should be allowed until ____ (date) ____ to join additional parties and until ____ (date) ____ to amend the pleadings.

All potentially dispositive motions should be filed by ____ (date) ____ .

Settlement [is likely] [is unlikely] [cannot be evaluated prior to ____ (date) ____] [may be enhanced by use of the following alternative dispute resolution procedure: [_____]].

Final lists of witnesses and exhibits under Rule 26(a)(3) should be due from plaintiff(s) ____ (date) ____ .

from defendant(s) by ____ (date) ____ .

Parties should have days after service of final lists of witnesses and exhibits to list objections under Rule 26(a)(3).

The case should be ready for trial by ____ (date) ____ [and at this time is expected to take approximately ____ (length of time) ____.]

[Other matters.]

Date: _____

Added Apr. 22, 1993, eff. Dec. 1, 1993.

SUPPLEMENTAL RULES FOR CERTAIN ADMIRALTY AND MARITIME CLAIMS

Adopted February 28, 1966, eff. July 1, 1966; as amended April 29, 1985, eff. August 1, 1985; March 2, 1987, eff. August 1, 1987; April 30, 1991, eff. December 1, 1991; April 17, 2000, eff. Dec. 1, 2000; April 29, 2002, eff. December 1, 2002.

TABLE OF RULES

Rule

- A. Scope of Rules
- B. In Personam Actions: Attachment and Garnishment
 - (1) When Available; Complaint, Affidavit, Judicial Authorization, and Process
 - (2) Notice to Defendant
 - (3) Answer
 - (a) By Garnishee
 - (b) By Defendant
- C. In Rem Actions: Special Provisions
 - (1) When Available
 - (2) Complaint
 - (3) Judicial Authorization and Process
 - (4) Notice
 - (5) Ancillary Process
 - (6) Responsive Pleading; Interrogatories
- D. Possessory, Petitory, and Partition Actions
- E. Actions in Rem and Quasi in Rem: General Provisions
 - (1) Applicability
 - (2) Complaint; Security
 - (a) Complaint
 - (b) Security for Costs
 - (3) Process
 - (a) [Territorial Limits of Effective Service: Maritime]
 - (b) [Territorial Limits of Effective Service: Forfeiture]
 - (c) Issuance and Delivery

- (4) Execution of Process; Marshal's Return; Custody of Property; Procedures for Release
 - (a) In General
 - (b) Tangible Property
 - (c) Intangible Property
 - (d) Directions with Respect to Property in Custody
 - (e) Expenses of Seizing and Keeping Property; Deposit
 - (f) Procedure for Release from Arrest or Attachment
- (5) Release of Property
 - (a) Special Bond
 - (b) General Bond
 - (c) Release by Consent or Stipulation; Order of Court or Clerk; Costs
 - (d) Possessory, Petitory, and Partition Actions
- (6) Reduction or Impairment of Security
- (7) Security on Counterclaim
- (8) Restricted Appearance
- (9) Disposition of Property; Sales
 - (a) Actions for Forfeitures
 - (b) Interlocutory Sales; Delivery
 - (c) Sales; Proceeds
- (10) Preservation of Property
- F. Limitation of Liability
 - (1) Time for Filing Complaint; Security
 - (2) Complaint
 - (3) Claims Against Owner; Injunction
 - (4) Notice to Claimants
 - (5) Claims and Answer
 - (6) Information to Be Given Claimants
 - (7) Insufficiency of Fund or Security
 - (8) Objections to Claims: Distribution of Fund
 - (9) Venue; Transfer

ADVISORY COMMITTEE'S EXPLANATORY STATEMENT TO 1985 AMENDMENTS

Since their promulgation in 1966, the Supplemental Rules for Certain Admiralty and Maritime Claims have preserved the special procedures of arrest and attachment unique to admiralty law. In recent years, however, these Rules have been challenged as violating the principles of procedural due process enunciated in the United States Supreme Court's decision in *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969), and later developed in *Fuentes v. Shevin*, 407 U.S. 67 (1972), *Mitchell v. W. T. Grant Co.*, 416 U.S. 600 (1974), and *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 (1975). These Supreme Court decisions provide five basic criteria for a constitutional seizure of property: (1) effective notice to persons having interests in the property seized, (2) judicial review prior to attachment, (3) avoidance of conclusory allegations in the complaint, (4) security posted by the plaintiff to protect the owner of the property under attachment, and (5) a meaningful and timely hearing after attachment. . . .

ADVISORY COMMITTEE'S EXPLANATORY STATEMENT TO 2000 AMENDMENTS

The Admiralty Rules proposals published in August 1998 were prompted by two primary goals. The first was to reflect the growing use of Admiralty procedure in civil forfeiture proceedings; the most important change in this area appears in Rule C(6), which for the first time establishes separate provisions for civil forfeiture proceedings. The second goal was to adjust for the 1993 amendments of Civil Rule 4. Civil Rule 14 is changed only to reflect the change of nomenclature in Admiralty Rule C(6).

Rule A. Scope of Rules

These Supplemental Rules apply to the procedure in admiralty and maritime claims within the meaning of Rule 9(h) with respect to the following remedies:

- (1) Maritime attachment and garnishment;
- (2) Actions in rem;
- (3) Possessory, petitory, and partition actions;
- (4) Actions for exoneration from or limitation of liability.

These rules also apply to the procedure in statutory condemnation proceedings analogous to maritime actions in rem, whether within the admiralty and maritime jurisdiction or not. Except as otherwise provided, references in these Supplemental Rules to actions in rem include such analogous statutory condemnation proceedings.

The general Rules of Civil Procedure for the United States District Courts are also applicable to the foregoing proceedings except to the extent that they are inconsistent with these Supplemental Rules.

Rule B. In Personam Actions: Attachment and Garnishment

(1) When Available; Complaint, Affidavit, Judicial Authorization, and Process. In an in personam action:

(a) If a defendant is not found within the district when a verified complaint praying for attachment and the affidavit required by Rule B(1)(b) are filed, a verified complaint may contain a prayer for process to attach the defendant's tangible or intangible personal property — up to the amount sued for — in the hands of garnishees named in the process.

(b) The plaintiff or the plaintiff's attorney must sign and file with the complaint an affidavit stating that, to the affiant's knowledge, or on information and belief, the defendant cannot be found within the district. The court must review the complaint and affidavit and, if the conditions of this Rule B appear to exist, enter an order so stating and authorizing process of attachment and garnishment. The clerk may issue supplemental process enforcing the court's order upon application without further court order.

(c) If the plaintiff or the plaintiff's attorney certifies that exigent circumstances make court review impracticable, the clerk must issue the summons and process of attachment and garnishment. The plaintiff has the burden in any post-attachment hearing under Rule E(4)(f) to show that exigent circumstances existed.

(d)(i) If the property is a vessel or tangible property on board a vessel, the summons, process, and any supplemental process must be delivered to the marshal for service.

(ii) If the property is other tangible or intangible property, the summons, process, and any supplemental process must be delivered to a person or organization authorized to serve it, who may be (A) a marshal; (B) someone under contract with the United States; (C) someone specially appointed by the court for that purpose; or, (D) in an action brought by the United States, any officer or employee of the United States.

(e) The plaintiff may invoke state-law remedies under Rule 64 for seizure of person or property for the purpose of securing satisfaction of the judgment.

(2) **Notice to Defendant.** No default judgment may be entered except upon proof — which may be by affidavit — that:

(a) the complaint, summons, and process of attachment or garnishment have been served on the defendant in a manner authorized by Rule 4;

(b) the plaintiff or the garnishee has mailed to the defendant the complaint, summons, and process of attachment or garnishment, using any form of mail requiring a return receipt; or

(c) the plaintiff or the garnishee has tried diligently to give notice of the action to the defendant but could not do so.

(3) **Answer.**

(a) **By Garnishee.** The garnishee shall serve an answer, together with answers to any interrogatories served with the complaint, within 20 days after service of process upon the garnishee. Interrogatories to the garnishee may be served with the complaint without leave of court. If the garnishee refuses or neglects to answer on oath as to the debts, credits, or effects of the defendant in the garnishee's hands, or any interrogatories concerning such debts, credits, and effects that may be propounded by the plaintiff, the court may award compulsory process against the garnishee. If the garnishee admits any debts, credits, or effects, they shall be held in the garnishee's hands or paid into the registry of the court, and shall be held in either case subject to the further order of the court.

(b) **By Defendant.** The defendant shall serve an answer within 30 days after process has been executed, whether by attachment of property or service on the garnishee.

As amended Apr. 29, 1985, eff. Aug. 1, 1985; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 17, 2000, eff. Dec. 1, 2000.

ADVISORY COMMITTEE NOTES TO 1985 AMENDMENT

Rule B(1) has been amended to provide for judicial scrutiny before the issuance of any attachment or garnishment process. Its purpose is to eliminate doubts as to whether the rule is consistent with the principles of procedural due process enunciated by the Supreme Court in *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969), and later developed in *Fuentes v. Shevin*, 407 U.S. 67 (1972), *Mitchell v. W. T. Grant Co.*, 416 U.S. 600 (1974), and *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 (1975). . . .

The rule envisions that the order will issue when the plaintiff makes a prima facie showing that he has a maritime claim against the defendant in the amount sued for and the defendant is not present in the district. A simple order with conclusory findings is contemplated. The reference to review by the “court” is broad enough to embrace review by a magistrate as well as by a district judge.

The new provision recognizes that in some situations, such as when the judge is unavailable and the ship is about to depart from the jurisdiction, it will be impracticable, if not impossible, to secure the judicial review contemplated by Rule B(1). When “exigent circumstances” exist, the rule enables the plaintiff to secure the issuance of the summons and process of attachment and garnishment, subject to a later showing that the necessary circumstances actually existed. This provision is intended to provide a safety valve without undermining the requirement of preattachment scrutiny. Thus, every effort to secure judicial review, including conducting a hearing by telephone, should be pursued before resorting to the exigent circumstances procedure.

ADVISORY COMMITTEE NOTES, 2000 AMENDMENTS

Rule B(1) is amended in two ways, and style changes have been made. The service provisions of Rule C(3) are adopted in paragraph (d), providing alternatives to service by a marshal if the property to be seized is not a vessel or tangible property on board a vessel. The provision that allows the plaintiff to invoke state attachment and garnishment remedies is amended to reflect the 1993 amendments of Civil Rule 4. Former Civil Rule 4(e), incorporated in Rule B(1), allowed general use of state quasi-in-rem jurisdiction if the defendant was not an inhabitant of, or found within, the state. Rule 4(e) was replaced in 1993 by Rule 4(n)(2), which permits use of state law to seize a defendant’s assets only if personal jurisdiction over the defendant cannot be obtained in the district where the action is brought.

Little purpose would be served by incorporating Rule 4(n)(2) in Rule B, since maritime attachment and garnishment are available whenever the defendant is not found within the district, a concept that allows attachment or garnishment even in some circumstances in which personal jurisdiction also can be asserted. In order to protect against any possibility that elimination of the reference to state quasi-in-rem jurisdiction remedies might seem to defeat continued use of state security devices, paragraph (e) expressly incorporates Civil Rule 64. Because Rule 64 looks only to security, not jurisdiction, the former reference to Rule E(8) is deleted as no longer relevant. . . .

Rule C. In Rem Actions: Special Provisions

(1) When Available. An action in rem may be brought:

- (a) To enforce any maritime lien;
- (b) Whenever a statute of the United States provides for a maritime action in rem or a proceeding analogous thereto.

Except as otherwise provided by law a party who may proceed in rem may also, or in the alternative, proceed in personam against any person who may be liable.

Statutory provisions exempting vessels or other property owned or possessed by or operated by or for the United States from arrest or seizure are not affected by this rule. When a statute so provides, an action against the United States or an instrumentality thereof may proceed on in rem principles.

(2) Complaint. In an action in rem the complaint must:

- (a) be verified;
- (b) describe with reasonable particularity the property that is the subject of the action;
- (c) in an admiralty and maritime proceeding, state that the property is within the district or will be within the district while the action is pending;
- (d) in a forfeiture proceeding for violation of a federal statute, state:
 - (i) the place of seizure and whether it was on land or on navigable waters;
 - (ii) whether the property is within the district, and if the property is not within the district the statutory basis for the court's exercise of jurisdiction over the property; and
 - (iii) all allegations required by the statute under which the action is brought.

(3) Judicial Authorization and Process.

(a) Arrest Warrant.

(i) When the United States files a complaint demanding a forfeiture for violation of a federal statute, the clerk must promptly issue a summons and a warrant for the arrest of the vessel or other property without requiring a certification of exigent circumstances, but if the property is real property the United States must proceed under applicable statutory procedures.

(ii)(A) In other actions, the court must review the complaint and any supporting papers. If the conditions for an in rem action appear to exist, the court must issue an order directing the clerk to issue a warrant for the arrest of the vessel or other property that is the subject of the action.

(B) If the plaintiff or the plaintiff's attorney certifies that exigent circumstances make court review impracticable, the clerk must promptly issue a summons and a warrant for the arrest of the vessel or other property that is the subject of the action. The plaintiff has the burden in any post-arrest hearing under Rule E(4)(f) to show that exigent circumstances existed.