

AMENDMENTS TO THE FEDERAL RULES OF CIVIL
PROCEDURES

COMMUNICATION

FROM

THE CHIEF JUSTICE, THE SUPREME COURT
OF THE UNITED STATES

TRANSMITTING

AMENDMENTS TO THE FEDERAL RULES OF CIVIL PROCEDURE
THAT HAVE BEEN ADOPTED BY THE COURT, PURSUANT TO 28
U.S.C. 2072



MAY 2, 1995.—Referred to the Committee on the Judiciary and ordered
to be printed

U.S. GOVERNMENT PRINTING OFFICE

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 27, 1995

Dear Mr. Speaker:

By direction of the Supreme Court of the United States, I have the honor to submit to the Congress the amendments to the Federal Rules of Civil Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code. To maintain uniformity between revised and unrevised Rules, the Court has edited the amendments transmitted to the Supreme Court by the Judicial Conference of the United States to use the word "shall" in a consistent manner. In addition, the Court has restored the word "made" to the last sentence of Fed. R. Civ. P. 83(a)(1) to keep that Rule consistent with Fed. R. Crim. P. 57(c).

The rules are accompanied by an excerpt from the report of the Judicial Conference of the United States' Committee on Rules of Practice and Procedure and that Committee's Advisory Committee Notes. In order to minimize confusion, a footnote noting the changes made by the Supreme Court has been added to the marked-up version of the proposed amendments that accompanies the Advisory Committee Notes.

Sincerely,



Honorable Newt Gingrich
Speaker of the House of Representatives
Washington, D.C. 20515

SUPREME COURT OF THE UNITED STATES

Thursday, April 27, 1995

ORDERED:

1. That the Federal Rules of Civil Procedure for the United States District Courts be, and they hereby are, amended by including therein amendments to Civil Rules 50, 52, 59, and 83.

[See infra., pp. _____.]

2. That the foregoing amendments to the Federal Rules of Civil Procedure shall take effect on December 1, 1995, and shall govern all proceedings in civil cases thereafter commenced and, insofar as just and practicable, all proceedings in civil cases then pending.

3. That THE CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Civil Procedure in accordance with the provisions of Section 2072 of Title 28, United States Code.

**PROPOSED AMENDMENTS TO
RULES OF CIVIL PROCEDURE**

**Rule 50. Judgment as a Matter of Law in Jury Trials;
Alternative Motion for New Trial;
Conditional Rulings**

* * * * *

(b) **Renewing Motion for Judgment After Trial; Alternative Motion for New Trial.** If, for any reason, the court does not grant a motion for judgment as a matter of law made at the close of all the evidence, the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law by filing a motion no later than 10 days after entry of judgment — and may alternatively request a new trial or join a motion for a new trial under Rule 59. In ruling on a renewed motion, the court may:

- (1) if a verdict was returned:
 - (A) allow the judgment to stand,
 - (B) order a new trial, or

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 (C) direct entry of judgment as
 a matter of law; or

 (2) if no verdict was returned:

 (A) order a new trial, or

 (B) direct entry of judgment as
 a matter of law.

 (c) **Granting Renewed Motion for Judgment
as a Matter of Law; Conditional Rulings; New Trial
Motion.**

 * * * * *

 (2) Any motion for a new trial under
 Rule 59 by a party against whom judgment as a
 matter of law is rendered shall be filed no later
 than 10 days after entry of the judgment.

 * * * * *

**Rule 52. Findings by the Court; Judgment on Partial
Findings**

 * * * * *

 (b) **Amendment.** On a party's motion filed no

later than 10 days after entry of judgment, the court may amend its findings— or make additional findings— and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59. When findings of fact are made in actions tried without a jury, the sufficiency of the evidence supporting the findings may be later questioned whether or not in the district court the party raising the question objected to the findings, moved to amend them, or moved for partial findings.

* * * * *

Rule 59. New Trials; Amendment of Judgments

* * * * *

(b) **Time for Motion.** Any motion for a new trial shall be filed no later than 10 days after entry of the judgment.

(c) **Time for Serving Affidavits.** When a motion for new trial is based on affidavits, they shall be filed with the motion. The opposing party has 10 days

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after service to file opposing affidavits, but that period may be extended for up to 20 days, either by the court for good cause or by the parties' written stipulation. The court may permit reply affidavits.

(d) On Court's Initiative; Notice; Specifying Grounds. No later than 10 days after entry of judgment the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. When granting a new trial on its own initiative or for a reason not stated in a motion, the court shall specify the grounds in its order.

(e) Motion to Alter or Amend Judgment. Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.

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

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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.

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

L. RALPH MECHAN
DIRECTOR

CLARENCE A. LEE, JR.
ASSOCIATE DIRECTOR

WASHINGTON, D.C. 20544

November 2, 1994

MEMORANDUM TO THE CHIEF JUSTICE OF THE UNITED STATES
AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I have the honor to transmit herewith for the consideration of the Court proposed amendments to Rules 50, 52, 59, and 83 of the Federal Rules of Civil Procedure. The Judicial Conference recommends that these amendments be approved by the Court and transmitted to the Congress pursuant to law.

For your assistance in considering these proposed amendments, I am also transmitting an excerpt from the Report of the Committee on Rules of Practice and Procedure to the Judicial Conference and the Report of the Advisory Committee on the Federal Rules of Civil Procedure.


L. Ralph Mechan

Enclosures

**EXCERPT FROM THE
REPORT OF THE JUDICIAL CONFERENCE
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
SEPTEMBER 1994**

TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES:

III. Amendments to the Federal Rules of Civil Procedure.

A. Rules Recommended for Approval and Transmission

The Advisory Committee on Civil Rules submitted to your committee proposed amendments to Civil Rules 50, 52, 59, and 83. The proposed amendments were circulated to bench and bar in October 1993, and a public hearing was held immediately before the committee's meeting in April 1994.

The changes to Rules 50, 52, and 59 would establish a uniform period for posttrial motions authorized by those rules. The rules had been inconsistent with respect to whether the different posttrial motions had to be filed, made, or served during the prescribed period. The inconsistent time periods caused problems, particularly when several postjudgment motions were submitted at the same time. These problems affected provisions of the Appellate Rules and the Bankruptcy Rules tied to these Civil Rules.

The proposed amendments set a uniform deadline no later than 10 days after entry of judgment for filing motions under Rule 50 (Judgment as a Matter of Law in Actions Tried by a Jury; Alternative Motion for New Trial; Conditional Rulings), Rule 52 (Findings by the Court; Judgment on Partial Findings), and Rule 59 (New Trials; Amendment of Judgments).

Rule 83 (Rules By District Courts) would be amended as part of a series of changes common to the other sets of rules regarding the uniform numbering of local court rules and orders regulating matters not covered by national or local rules. The amendments would provide that a local rule imposing a requirement of form could not be enforced in a manner that would cause a party to lose rights because of a nonwillful failure to comply. And no sanction or other disadvantage could be imposed for failure to comply with any procedural requirement not in federal law, federal rules, or local district rules unless actual notice of the requirement had been furnished in the particular case.

At the request of your committee, the advisory committee also published for public comment proposed amendments to Rule 84 dealing with technical amendments. But the advisory committee recommended that authorizing the Judicial Conference to make technical amendments to the rules directly should be more appropriately sought

by legislation rather than through the rulemaking process. Your committee decided not to approve any amendment to Rule 84.

The proposed amendments to the Federal Rules of Civil Procedure, as recommended by your committee, are in *Appendix C* together with an excerpt from the advisory committee report.

Recommendation: That the Judicial Conference approve proposed amendments to Civil Rules 50, 52, 59, and 83 and transmit them to the Supreme Court for its consideration with the recommendation that they be adopted by the court and transmitted to Congress in accordance with the law.

**Report to Standing Rules Committee
Advisory Committee on Civil Rules**

May 25, 1994

Introduction

The draft minutes of the April 1994 meeting of the Civil Rules Advisory Committee are attached. The draft was prepared by the Committee Reporter, Edward H. Cooper, and reviewed by me. These minutes supply a detailed account of the matters summarized in this Report.

Action Items

**Proposed Amendments Submitted for Approval To Transmit
to the Judicial Conference**

Summary of Amendments

The Committee recommends transmission to the Judicial Conference of proposed amendments to Civil Rules 50, 52, 59, and 83. The proposals were published for comment on October 15, 1993. Each of these amendments parallels amendments being proposed by other advisory committees. The Committee does not recommend transmission to the Judicial Conference of proposed amendments to Rules 26(c), 43(a), and 84 that were published at the same time. Rule 84 is discussed in this section; Rules 26(c) and 43(a) are discussed in the next section.

The amendments to Rules 50, 52, and 59 establish a uniform period for the post-trial motions authorized by those rules. A post-trial motion under any of these rules must be filed no later than ten days after entry of the judgment. Until now, these rules have variously required that within the ten-day period the motion be served and filed, or be "made," or be served. Stylistic changes also have been made to conform to the new style conventions.

The discussion of Rules 50, 52, and 59 is set out at pages 8 to 9 of the draft minutes.

The amendments to Rule 83 deal with local rules and with orders regulating matters not covered by national or local rules. In keeping with the language of 28 U.S.C. § 2071, the requirement of conformity with national statutes and rules would be expressed by requiring that they "be consistent," in place of the present "be not inconsistent." Local rules would be required to conform to any uniform numbering system prescribed by the Judicial Conference of the United States. A local rule imposing a requirement of form could not be enforced in a manner that would cause a party to lose

rights because of a nonwillful failure to comply. And no sanction or other disadvantage could be imposed for failure to comply with any procedural requirement not in federal law, federal rules, or local district rules unless actual notice of the requirement has been furnished in the particular case. Style changes also would be made.

The discussion of Rule 83 is set out at page 9 of the draft minutes.

The amendments to Rule 84 are described here, although the Committee recommends that they not be transmitted to the Judicial Conference. Instead, the Committee recommends that the Judicial Conference be asked to support legislation that would embody the principles of these amendments. These amendments would authorize the Judicial Conference to add to, revise, or delete the forms that illustrate the operation of the rules. The Judicial Conference also would be authorized to amend the rules to correct errors in spelling, cross-references, or typography, or to make technical changes needed to conform the rules to statutory changes. Modest style changes also would be made. On reexamination, the Committee believes that these proposals would violate the procedure established by the Rules Enabling Act, 28 U.S.C. § 2072. The underlying principle, however, is sound. Legislation should be proposed authorizing the Judicial Conference to make the described changes through the Standing Committee and advisory committees structure.

The discussion of proposed Rule 84 is set out at pages 9 to 10 of the draft minutes.

Text of Amendments

GAP Report

Few changes were made in response to public comments.

The Note to Rule 59 was changed at the request of the Bankruptcy Rules Advisory Committee by adding a new sentence that refers to the difference between the Bankruptcy Rules and the Civil Rules in calculating the period actually covered by a nominal ten-day time limit.

The text of Rule 83(a)(2) was changed - again at the request of the Bankruptcy Rules Advisory Committee - by substituting "nonwillful" failure to comply for "negligent" failure. The Bankruptcy Committee was concerned that limiting the rule to negligent failures to comply with local rule requirements of form might permit sanctions for entirely innocent failures, such as those caused by circumstances beyond the lawyer's control. A parallel change was made in the Committee Note.

Summary of Comments

Rules 50, 52, and 59. There were few comments on the Rule 50, 52, and 59 proposals. One lengthy comment was premised on the erroneous belief that Rule 6(a) now permits a motion under any of these rules to be "filed" by mailing within ten days, without regard to the time of actual delivery to the court. (The requirement of delivery to the court to establish filing is illustrated by *Cavaliere v. Allstate Ins. Co.*, 11th Cir.1993, 996 F.2d 1111.) Another comment addressed the failure to clarify the question whether Rule 50(b) requires renewal of a motion for judgment as a matter of law "where the court simply fails to rule on the motion made at the close of the evidence rather than denies it." This part of Rule 50(b) was extensively amended in 1991, and the Committee decided not to revisit the issue for the present.

Rule 81. The Federal Magistrate Judges Association opposed the Rule 81 proposal. They urged that there is no compelling reason to establish national uniformity in local rule numbers, that the Rule 81(a)(2) restriction on enforcing local rules is vague, and that the Rule 81(b) requirement of actual notice would forbid enforcement of widely accepted norms that are not codified in any form of order. Another comment was that while all of the proposed changes are desirable, still greater efforts should be made to control the variable, confusing, and often unwise requirements adopted by local rules and standing orders. Perhaps the authority of the Judicial Councils of the Circuits under 28 U.S.C. §§ 332(d)(4) and 2071 should be clarified, or perhaps some other system of effective review should be established.

* * * * *

Patrick E. Higginbotham
Chair, Advisory Committee on Civil Rules
May 26, 1994

MINUTES

ADVISORY COMMITTEE ON CIVIL RULES

APRIL 28 AND 29, 1994

* * * * *

Rules 50, 52, and 59

Discussion of the proposed amendments to Rules 50, 52, and 59 focused in part on the history of the proposal. Each rule now sets 10 days as the period for these post-trial motions, but the period is allowed variously to "serve" the motion, to "file and serve" the motion, or to "make" the motion. The Bankruptcy Rules Committee suggested that the rules be changed so that each allows 10 days from entry of judgment to file the motion. This suggestion drew from the desire to further integrate bankruptcy practice with practice under the Civil Rules. A parallel change has been proposed for Appellate Rule 4. Filing was chosen as the requirement because ordinarily it is an objective phenomenon that can be easily verified at the clerk's office. Some concern was expressed with the difficulty of accomplishing timely filing by lawyers located in remote areas.

It was urged on behalf of the Bankruptcy Rules Committee that the Note to Rule 59 should be revised by adding the information that Bankruptcy Rule 9006(a) treats "intervening Saturdays, Sundays, and legal holidays" differently than Civil Rule 6(a). This request was adopted.

A motion to send Rules 50, 52, and 59 to the Standing Committee for approval, with the addition to the Rule 59 note, was adopted.

Rule 83

The Bankruptcy Rules Committee recommended that the proposed Rule 83(a)(2) reference to "negligent" failure to comply with a local rule requirement of form be changed to "nonwillful." The change reflects the prospect that read literally, the proposal would not reach an unavoidable failure to comply. The Committee accepted this recommendation without dissent.

The discussion of proposed Rule 83(b) focused on the question whether it might be possible to do something more effective to restrict or eliminate standing orders. Several Committee members thought it would be desirable to reduce drastically the use of standing orders. It was noted, however, that past efforts to reduce even the use of local rules have proved difficult; efforts to reduce the use of individual judge standing orders seem all the more likely to prove difficult.

A motion to send Rule 83 to the Standing Committee for approval was adopted.

* * * * *

Respectfully submitted,

Edward H. Cooper, Reporter

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motion not later than 10 days after entry of judgment.

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~~A — and may alternatively request a new trial or join a~~

15

~~motion for a new trial under Rule 59 may be joined with~~

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~~a renewal of the motion for judgment as a matter of law,~~

17

~~or a new trial may be requested in the alternative. If a~~

18

~~verdict was returned, In ruling on a renewed motion, the~~

19

~~court may, in disposing of the renewed motion,~~

20

(1) if a verdict was returned:

21

(A) allow the judgment to stand, ~~or~~

22

~~may reopen the judgment and either~~

23

(B) order a new trial, or

24

(C) direct the entry of judgment as a

25

~~matter of law, or~~

26

(2) If no verdict was returned, ~~the court~~

27

~~may, in disposing of the renewed motion,~~

28

(A) order a new trial, or

29

(B) direct the entry of judgment as a

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30 matter of law or may order a new trial.

31 (c) ~~Same: Conditional Rulings on Grant of~~
 32 Granting Renewed Motion for Judgment as a Matter of
 33 Law; Conditional Rulings; New Trial Motion.

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* * * * *

35 (2) ~~The Any motion for a new trial under~~
 36 Rule 59 by a party against whom judgment as a
 37 matter of law has been is rendered may serve must
 38 be filed a motion for a new trial pursuant to Rule
 39 59 not later than 10 days after entry of the
 40 judgment.

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* * * * *

COMMITTEE NOTE

The only change, other than stylistic, intended by this revision is to prescribe a uniform explicit time for filing of post-judgment motions under this rule — no later than 10 days after entry of the judgment. Previously, there was an inconsistency in the wording of Rules 50, 52, and 59 with respect to whether certain post-judgment motions had to be filed, or merely

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served, during that period. This inconsistency caused special problems when motions for a new trial were joined with other post-judgment motions. These motions affect the finality of the judgment, a matter often of importance to third persons as well as the parties and the court. The Committee believes that each of these rules should be revised to require filing before end of the 10-day period. Filing is an event that can be determined with certainty from court records. The phrase "no later than" is used — rather than "within" — to include post-judgment motions that sometimes are filed before actual entry of the judgment by the clerk. It should be noted that under Rule 6(a) Saturdays, Sundays, and legal holidays are excluded in measuring the 10-day period, and that under Rule 5 the motions when filed are to contain a certificate of service on other parties.

Rule 52. Findings by the Court; Judgment on Partial Findings

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* * * * *

2 (b) Amendment. ~~Upon~~ On a party's motion of a
 3 ~~party made filed~~ not later than 10 days after entry of
 4 judgment, the court may amend its findings — or make
 5 additional findings — and may amend the judgment
 6 accordingly. The motion may be made with accompany
 7 a motion for a new trial pursuant to under Rule 59.
 8 When findings of fact are made in actions tried by the

9 ~~court without a jury, the question of the sufficiency of~~
10 ~~the evidence to support~~ supporting ~~the findings may~~
11 ~~thereafter be~~ later questioned ~~raised whether or not in~~
12 ~~the district court~~ the party raising the question has made
13 ~~in the district court an objection to such~~ objected to the
14 ~~findings, moved~~ or has made a motion to amend them
15 ~~or a motion for judgment, or moved for partial findings.~~

16 * * * * *

COMMITTEE NOTE

The only change, other than stylistic, intended by this revision is to require that any motion to amend or add findings after a nonjury trial must be filed no later than 10 days after entry of the judgment. Previously, there was an inconsistency in the wording of Rules 50, 52, and 59 with respect to whether certain post-judgment motions had to be filed, or merely served, during that period. This inconsistency caused special problems when motions for a new trial were joined with other post-judgment motions. These motions affect the finality of the judgment, a matter often of importance to third persons as well as the parties and the court. The Committee believes that each of these rules should be revised to require filing before end of the 10-day period. Filing is an event that can be determined with certainty from court records. The phrase "no later than"

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is used — rather than "within" — to include post-judgment motions that sometimes are filed before actual entry of the judgment by the clerk. It should be noted that under Rule 6(a) Saturdays, Sundays, and legal holidays are excluded in measuring the 10-day period, and that under Rule 5 the motions when filed are to contain a certificate of service on other parties.

Rule 59. New Trials; Amendment of Judgments

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2 (b) Time for Motion. Any motion for a new
3 trial ~~shall~~ must be served ~~filed~~ not later than 10 days
4 after ~~the~~ entry of the judgment.

5 (c) Time for Serving Affidavits. When a
6 motion for new trial is based upon affidavits, they shall
7 must be served ~~filed~~ with the motion. The opposing
8 party has 10 days after ~~such~~ service ~~within which to serve~~
9 file opposing affidavits, ~~which but that~~ period may be
10 extended for an ~~additional period not exceeding up to~~ 20
11 days, either by the court for good cause ~~shown~~ or by the
12 parties' ~~by~~ written stipulation. The court may permit

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13 reply affidavits.

14 (d) ~~On Court's Initiative of Court; Notice;~~
15 Specifying Grounds. Not later than 10 days after entry
16 of judgment the court, ~~on~~ ~~of its own, initiative~~ may
17 order a new trial for any reason ~~for which it might have~~
18 ~~granted a new trial on that would justify granting one on~~
19 ~~a party's motion of a party.~~ After giving the parties
20 notice and an opportunity to be heard ~~on the matter,~~ the
21 court may grant a timely motion for a new trial, ~~timely~~
22 ~~served,~~ for a reason not stated in the motion. ~~In either~~
23 ~~case,~~ When granting a new trial on its own initiative or
24 for a reason not stated in a motion, the court shall must
25 specify in the order the grounds in its order therefor.

26 (e) ~~Motion to Alter or Amend a Judgment.~~ Any
27 motion to alter or amend ~~the a judgment shall must~~ be
28 ~~served filed~~ not later than 10 days after entry of the
29 judgment.

COMMITTEE NOTE

The only change, other than stylistic, intended by this revision is to add explicit time limits for filing motions for a new trial, motions to alter or amend a judgment, and affidavits opposing a new trial motion. Previously, there was an inconsistency in the wording of Rules 50, 52, and 59 with respect to whether certain post-judgment motions had to be filed, or merely served, during the prescribed period. This inconsistency caused special problems when motions for a new trial were joined with other post-judgment motions. These motions affect the finality of the judgment, a matter often of importance to third persons as well as the parties and the court. The Committee believes that each of these rules should be revised to require filing before end of the 10-day period. Filing is an event that can be determined with certainty from court records. The phrase "no later than" is used — rather than "within" — to include post-judgment motions that sometimes are filed before actual entry of the judgment by the clerk. It should be noted that under Rule 5 the motions when filed are to contain a certificate of service on other parties. It also should be noted that under Rule 6(a) Saturdays, Sundays, and legal holidays are excluded in measuring the 10-day period, but that Bankruptcy Rule 9006(a) excludes intermediate Saturdays, Sundays, and legal holidays only in computing periods less than 8 days.

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

- 1 (a) Local Rules.
- 2 (1) Each district court by action of acting

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3 ~~by a majority of the its district judges thereof,~~ may
4 ~~from time to time,~~ after giving appropriate public
5 notice and an opportunity ~~to~~ for comment, make
6 and amend rules governing its practice. A local
7 rule must be not inconsistent with — but not
8 duplicative of — Acts of Congress and these rules
9 adopted under 28 U.S.C. §§ 2072 and 2075, and
10 must conform to any uniform numbering system
11 prescribed by the Judicial Conference of the
12 United States. A local rule ~~so adopted shall take~~
13 effect upon the date specified by the district court
14 and ~~shall remain~~ in effect unless amended by the
15 ~~district court~~ or abrogated by the judicial council
16 of the circuit ~~in which the district is located.~~
17 Copies of rules and amendments ~~so made by any~~
18 ~~district court shall~~ must, upon their promulgation,
19 be furnished to the judicial council and the

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20 **Administrative Office of the United States Courts**
21 **and be made available to the public.**

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

26 **(b) Procedure When There Is No Controlling**
27 **Law. In all cases not provided for by rule, the A district**
28 **judges and magistrates may regulate their practice in any**
29 **manner not inconsistent with these federal law rules**
30 **adopted under 28 U.S.C. §§ 2072 and 2075, or and local**
31 **rules these of the district in which they act. No sanction**
32 **or other disadvantage may be imposed for**
33 **noncompliance with any requirement not in federal law,**
34 **federal rules, or the local district rules unless the alleged**
35 **violator has been furnished in the particular case with**
36 **actual notice of the requirement.**

COMMITTEE NOTE

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. The proscription of paragraph (2) is narrowly drawn - covering only violations attributable to nonwillful failure to comply and only those involving local rules directed to matters of form. It does not limit the court's power to impose substantive penalties upon a party if it or its attorney contumaciously or willfully violates a local rule, even one involving merely a matter of form. Nor does it affect the court's power to enforce local rules that involve more than mere matters of form - for example, a local rule requiring parties to identify evidentiary matters relied upon to support or

oppose motions for summary judgment.

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

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

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

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adopting by reference a judge's standing order and indicating how copies can be obtained.