

AMENDMENTS TO THE FEDERAL RULES
OF CIVIL PROCEDURE

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 3, 2002.—Referred to the Committee on the Judiciary and ordered
to be printed

U.S. GOVERNMENT PRINTING OFFICE

SUPREME COURT OF THE UNITED STATES,
Washington, DC, April 29, 2002.

Hon. J. DENNIS HASTERT,
Speaker of the House of Representatives,
Washington, DC.

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.

Accompanying these rules are excerpts from the report of the Judicial Conference of the United States containing the Committee Notes submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code.

Sincerely,

WILLIAM H. REHNQUIST.

APR 29 2002

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. That the Federal Rules of Civil Procedure be, and they hereby are, amended by including therein amendments to Civil Rules 54, 58, and 81, and a new Rule 7.1, and Rule C of Supplemental Rules for Certain Admiralty and Maritime Claims.

[See *infra.*, pp. — — —.]

2. That the foregoing amendments to the Federal Rules of Civil Procedure shall take effect on December 1, 2002, and shall govern in all proceedings in civil cases thereafter commenced and, insofar as just and practicable, all proceedings 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.

**AMENDMENTS TO THE FEDERAL RULES
OF CIVIL PROCEDURE**

Rule 7.1. Disclosure Statement

(a) Who Must File: Nongovernmental Corporate

Party. A nongovernmental corporate party to an action or proceeding in a district court must file two copies of a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation.

(b) Time for Filing; Supplemental Filing. A party must:

(1) file the Rule 7.1(a) statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court, and

(2) promptly file a supplemental statement upon any change in the information that the statement requires.

Rule 54. Judgments; Costs

* * * * *

(d) Costs; Attorneys' Fees.

* * * * *

(2) Attorneys' Fees.

(A) Claims for attorneys' fees and related nontaxable expenses shall be made by motion unless the substantive law governing the action provides for the recovery of such fees as an element of damages to be proved at trial.

(B) Unless otherwise provided by statute or order of the court, the motion must be filed no later than 14 days after entry of judgment; must specify the judgment and the statute, rule, or other grounds entitling the moving party to the award; and must state the amount or provide a

fair estimate of the amount sought. If directed by the court, the motion shall also disclose the terms of any agreement with respect to fees to be paid for the services for which claim is made.

(C) On request of a party or class member, the court shall afford an opportunity for adversary submissions with respect to the motion in accordance with Rule 43(e) or Rule 78. The court may determine issues of liability for fees before receiving submissions bearing on issues of evaluation of services for which liability is imposed by the court. The court shall find the facts and state its conclusions of law as provided in Rule 52(a).

* * * * *

Rule 58. Entry of Judgment**(a) Separate Document.**

(1) Every judgment and amended judgment must be set forth on a separate document, but a separate document is not required for an order disposing of a motion:

(A) for judgment under Rule 50(b);

(B) to amend or make additional findings of fact under Rule 52(b);

(C) for attorney fees under Rule 54;

(D) for a new trial, or to alter or amend the judgment, under Rule 59; or

(E) for relief under Rule 60.

(2) Subject to Rule 54(b):

(A) unless the court orders otherwise, the clerk must, without awaiting the court's direction,

promptly prepare, sign, and enter the judgment when:

- (i) the jury returns a general verdict,
- (ii) the court awards only costs or a sum certain, or
- (iii) the court denies all relief;

(B) the court must promptly approve the form of the judgment, which the clerk must promptly enter, when:

- (i) the jury returns a special verdict or a general verdict accompanied by interrogatories, or
- (ii) the court grants other relief not described in Rule 58(a)(2).

(b) Time of Entry. Judgment is entered for purposes of these rules:

FEDERAL RULES OF CIVIL PROCEDURE

(1) if Rule 58(a)(1) does not require a separate document, when it is entered in the civil docket under Rule 79(a), and

(2) if Rule 58(a)(1) requires a separate document, when it is entered in the civil docket under Rule 79(a) and when the earlier of these events occurs:

(A) when it is set forth on a separate document,
or

(B) when 150 days have run from entry in the civil docket under Rule 79(a).

(c) Cost or Fee Awards.

(1) Entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees, except as provided in Rule 58(c)(2).

(2) When a timely motion for attorney fees is made under Rule 54(d)(2), the court may act before a notice

of appeal has been filed and has become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4(a)(4) as a timely motion under Rule 59.

(d) Request for Entry. A party may request that judgment be set forth on a separate document as required by Rule 58(a)(1).

Rule 81. Applicability in General

(a) To What Proceedings Applicable.

* * * * *

(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 Rules Governing Section 2254 Cases, or the Rules Governing Section 2255 Proceedings, and

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has heretofore conformed to the practice in civil actions.

* * * * *

SUPPLEMENTAL RULES FOR CERTAIN ADMIRALTY
AND MARITIME CLAIMS

Rule C. In Rem Actions: Special Provisions

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(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.

* * * * *

(6) Responsive Pleading; Interrogatories.

(a) Civil Forfeiture. In an in rem forfeiture action for violation of a federal statute:

(i) a person who asserts an interest in or right against the property that is the subject of the action must file a verified statement identifying the interest or right:

(A) within 30 days after the earlier of (1) the date of service of the Government's complaint or (2) completed publication of notice under Rule C(4), or

(B) within the time that the court allows.

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FEDERAL RULES OF CIVIL PROCEDURE

(ii) an agent, bailee, or attorney must state the authority to file a statement of interest in or right against the property on behalf of another; and

(iii) a person who files a statement of interest in or right against the property must serve and file an answer within 20 days after filing the statement.

(b) Maritime Arrests and Other Proceedings.

In an in rem action not governed by Rule C(6)(a):

* * * * *

(iv) a person who asserts a right of possession or any ownership interest must serve an answer within 20 days after filing the statement of interest or right.

* * * * *



LEONIDAS RALPH MECHAM
Director

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

CLARENCE A. LEE, JR.
Associate Director

WASHINGTON, D.C. 20544

November 19, 2001

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 consideration of the Court proposed amendments to Rules 54, 58, and 81, and a new Rule 7.1 of the Federal Rules of Civil Procedure, and Rule C of Supplemental Rules for Certain Admiralty and Maritime Claims. 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 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.

A handwritten signature in cursive script, appearing to read "Ralph", written in black ink.

Leonidas Ralph Mecham
Secretary

Attachments

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

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

* * * * *

**AMENDMENTS TO THE
FEDERAL RULES OF CIVIL PROCEDURE**

Rules Recommended for Approval and Transmission

The Advisory Committee on Civil Rules submitted proposed amendments to Rules 54, 58, 81, and new Rule 7.1, and proposed amendments to Admiralty Rule C with a recommendation that they be approved and transmitted to the Judicial Conference. The amendments to the Civil Rules were published for comment by the bench and bar in August 2000, and the proposed amendments to Admiralty Rule C were published in January 2001. The scheduled public hearings were canceled because no request to testify was submitted.

Proposed new **Rule 7.1 (Disclosure Statement)** would require a nongovernmental corporate party to disclose any parent corporation and any publicly held corporation that owns 10 percent of its stock, or state that no such corporation exists. The proposed new rule is similar to proposed changes to the Appellate, Bankruptcy, and Criminal Rules.

The proposed amendments to **Rule 54 (Judgments; Costs)** and **Rule 58 (Entry of Judgment)** are intended to address problems caused when a judgment or order is not entered on a separate document, and as a result the time for appeal never begins to run under the Appellate Rules. Under the proposed amendments to Rules 54 and 58, orders disposing of certain post-judgment motions no longer have to be entered on a separate document. In addition, the amended rules, in conjunction with proposed changes to Appellate Rule 4(a)(7), provide that when a separate document is required, judgment is considered entered upon the occurrence of the

earlier of either of two events: when the judgment is entered in the civil docket and set forth on a separate document, or when 150 days have run from entry of the judgment in the civil docket.

Rule 81(a)(2) (Applicability in General) would be amended to delete the specific time deadline for a return of a habeas corpus writ, which is inconsistent with the time limit set out in the Rules Governing Section 2254 Cases or the Rules Governing Section 2255 Proceedings.

Rule C of the Supplemental Rules for Certain Admiralty and Maritime Claims (In Rem Actions: Special Provisions) would be amended to conform to the Civil Asset Forfeiture Reform Act of 2000 (Pub. L. 106-185, 106th Congress). The legislation was enacted one week after the Supreme Court had prescribed and transmitted to Congress amendments to Rule C that took effect in December 2000. The legislation contains a deadline of 30 days in which a person may assert an interest or right against the property subject to forfeiture, which is different from the rule's 20-day deadline. The proposed amendment to Rule C increases the relevant time deadline from 20 days to 30 days consistent with the new legislation. It also makes other changes as well to conform to the new legislation.

The Committee concurred with the advisory committee's recommendations. The proposed amendments to the Federal Rules of Civil Procedure and the Supplemental Rules for Certain Admiralty and Maritime Claims are in Appendix C together with an excerpt from the advisory committee report.

Recommendation: That the Judicial Conference approve the proposed amendments to Civil Rules 54, 58, and 81, and a new Rule 7.1, and Rule C of Supplemental Rules for Certain Admiralty and Maritime Claims and transmit these changes 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.

* * * * *

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

ANTHONY J. SCIRICA
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CRIMINAL RULES

MILTON I. SHADUR
EVIDENCE RULES

**To: Honorable Anthony J. Scirica, Chair
Standing Committee on Rules of Practice and Procedure**

**From: David F. Levi, Chair, Advisory Committee on
the Federal Rules of Civil Procedure**

Date: May 14, 2001

Re: Report of the Civil Rules Advisory Committee

Introduction

The Civil Rules Advisory Committee met on March 12, 2001, and April 23 and 24, 2001, at the Administrative Office of the United States Courts in Washington, D.C. It voted to recommend adoption of a new rule and rules amendments that were published for comment in August 2000 and January 2001, with modifications in response to the public comments. Part I of this report details these recommendations in four parts. The first relates to new Civil Rule 7.1, governing corporate disclosure; this proposal parallels published proposals to amend Appellate Rule 26.1 and to adopt a new Criminal Rule 12.4, and may be affected by the proposal to publish a Bankruptcy Rule that would depart from these other proposals in significant ways. The second relates to amendments of Civil Rule 58 aimed at the "separate document" requirement, including a conforming amendment of Civil Rule 54; these proposals are integrated with proposals to amend Appellate Rule 4(a)(7), and indeed began with the Appellate Rules Committee. The third relates to Civil Rule 81, which would be amended to integrate better with the separate rules governing § 2254 and § 2255 proceedings; it began in conjunction

Report of the Civil Rules Advisory Committee
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with review of those rules, but can be separated from them as the Criminal Rules Committee continues its work on them. The fourth and final part is a set of technical amendments to conform forfeiture provisions of the Supplemental Admiralty Rules to legislative changes that occurred too late to be recognized in the Admiralty Rules amendments that took effect on December 1, 2000.

* * * * *

I Action Items: Rules Published For Comment

A. RULES PUBLISHED FOR COMMENT IN AUGUST 2000

Three sets of rules proposals were published for comment in August 2000. The hearing scheduled for January 29, 2001 was cancelled because no one wished to testify. Summaries of the written comments are provided with the discussion of each proposal. Almost all of the comments were devoted to issues that were discussed thoroughly before the proposals were published. Although the debates are familiar, the views of experienced practitioners and widely representative bar groups lend added support to some of the competing positions.

Discussion of each of these proposals is complicated by the fact that none of them is the sole responsibility of the Civil Rules Advisory Committee among the advisory committees. Indeed, it is fair to say that none of them originated with the Civil Rules Committee. It was possible to coordinate discussion in the Civil Rules Committee with actions taken at the earlier meetings of the Appellate Rules and Bankruptcy Rules Advisory Committees. As to the Criminal Rules Committee, consultation between the reporters was all that was possible.

Report of the Civil Rules Advisory Committee
Page 3

Each proposal is presented in the form recommended for adoption. Changes from the published versions are described after the summary of comments for each rule.

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF CIVIL PROCEDURE***

Rule 7.1. Disclosure Statement

1 **(a) Who Must File: Nongovernmental Corporate Party.**

2 A nongovernmental corporate party to an action or
3 proceeding in a district court must file two copies of a
4 statement that identifies any parent corporation and any
5 publicly held corporation that owns 10% or more of its
6 stock or states that there is no such corporation.

7 **(b) Time for Filing; Supplemental Filing.** A party must:

8 (1) file the Rule 7.1(a) statement with its first
9 appearance, pleading, petition, motion, response, or
10 other request addressed to the court, and

11 (2) promptly file a supplemental statement upon any
12 change in the information that the statement requires.

*New material is underlined; matter to be omitted is lined through.

Committee Note

Rule 7.1 is drawn from Rule 26.1 of the Federal Rules of Appellate Procedure, with changes to adapt to the circumstances of district courts that dictate different provisions for the time of filing, number of copies, and the like. The information required by Rule 7.1(a) reflects the "financial interest" standard of Canon 3C(1)(c) of the Code of Conduct for United States Judges. This information will support properly informed disqualification decisions in situations that call for automatic disqualification under Canon 3C(1)(c). It does not cover all of the circumstances that may call for disqualification under the financial interest standard, and does not deal at all with other circumstances that may call for disqualification.

Although the disclosures required by Rule 7.1(a) may seem limited, they are calculated to reach a majority of the circumstances that are likely to call for disqualification on the basis of financial information that a judge may not know or recollect. Framing a rule that calls for more detailed disclosure will be difficult. Unnecessary disclosure requirements place a burden on the parties and on courts. Unnecessary disclosure of volumes of information may create a risk that a judge will overlook the one bit of information that might require disqualification, and also may create a risk that unnecessary disqualifications will be made rather than attempt to unravel a potentially difficult question. It has not been feasible to dictate more detailed disclosure requirements in Rule 7.1(a).

Rule 7.1 does not prohibit local rules that require disclosures in addition to those required by Rule 7.1. Developing experience with local disclosure practices and advances in electronic technology may provide a foundation for adopting more detailed disclosure requirements by future amendments of Rule 7.1.

Changes Made After Publication and Comment

The provisions that would require disclosure of additional information that may be required by the Judicial Conference have been deleted.

Rule 54. Judgments; Costs

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(d) Costs; Attorneys' Fees.

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(2) Attorneys' Fees.

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(A) Claims for attorneys' fees and related

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nontaxable expenses shall be made by motion

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unless the substantive law governing the action

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provides for the recovery of such fees as an

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element of damages to be proved at trial.

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(B) Unless otherwise provided by statute or order

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of the court, the motion must be filed ~~and served~~

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no later than 14 days after entry of judgment; must

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specify the judgment and the statute, rule, or other

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14 grounds entitling the moving party to the award;
15 and must state the amount or provide a fair
16 estimate of the amount sought. If directed by the
17 court, the motion shall also disclose the terms of
18 any agreement with respect to fees to be paid for
19 the services for which claim is made.

20 (C) On request of a party or class member, the
21 court shall afford an opportunity for adversary
22 submissions with respect to the motion in
23 accordance with Rule 43(e) or Rule 78. The court
24 may determine issues of liability for fees before
25 receiving submissions bearing on issues of
26 evaluation of services for which liability is imposed
27 by the court. The court shall find the facts and
28 state its conclusions of law as provided in Rule
29 52(a), ~~and a judgment shall be set forth in a~~
30 ~~separate document as provided in Rule 58.~~

Committee Note

Subdivision (d)(2)(C) is amended to delete the requirement that judgment on a motion for attorney fees be set forth in a separate document. This change complements the amendment of Rule 58(a)(1), which deletes the separate document requirement for an order disposing of a motion for attorney fees under Rule 54. These changes are made to support amendment of Rule 4 of the Federal Rules of Appellate Procedure. It continues to be important that a district court make clear its meaning when it intends an order to be the final disposition of a motion for attorney fees.

The requirement in subdivision (d)(2)(B) that a motion for attorney fees be not only filed but also served no later than 14 days after entry of judgment is changed to require filing only, to establish a parallel with Rules 50, 52, and 59. Service continues to be required under Rule 5(a).

Rule 58. Entry of Judgment

1 ~~Subject to the provisions of Rule 54(b), (1) upon a~~
2 ~~general verdict of a jury, or upon a decision by the court that~~
3 ~~a party shall recover only a sum certain or costs or that all~~
4 ~~relief shall be denied, the clerk, unless the court otherwise~~
5 ~~orders, shall forthwith prepare, sign, and enter the judgment~~
6 ~~without awaiting any direction by the court; (2) upon a~~

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7 ~~decision by the court granting other relief, or upon a special~~
8 ~~verdict or a general verdict accompanied by answers to~~
9 ~~interrogatories, the court shall promptly approve the form of~~
10 ~~the judgment, and the clerk shall thereupon enter it. Every~~
11 ~~judgment shall be set forth on a separate document. A~~
12 ~~judgment is effective only when so set forth and when entered~~
13 ~~as provided in Rule 79(a). Entry of the judgment shall not be~~
14 ~~delayed, nor the time for appeal extended, in order to tax costs~~
15 ~~or award fees, except that, when a timely motion for~~
16 ~~attorneys' fees is made under Rule 54(d)(2), the court, before~~
17 ~~a notice of appeal has been filed and has become effective,~~
18 ~~may order that the motion have the same effect under Rule~~
19 ~~4(a)(4) of the Federal Rules of Appellate Procedure as a~~
20 ~~timely motion under Rule 59. Attorneys shall not submit~~
21 ~~forms of judgment except upon direction of the court, and~~
22 ~~these directions shall not be given as a matter of course.~~

- 23 **(a) Separate Document.**
- 24 **(1) Every judgment and amended judgment must be set**
- 25 **forth on a separate document, but a separate document**
- 26 **is not required for an order disposing of a motion:**
- 27 **(A) for judgment under Rule 50(b);**
- 28 **(B) to amend or make additional findings of fact**
- 29 **under Rule 52(b);**
- 30 **(C) for attorney fees under Rule 54;**
- 31 **(D) for a new trial, or to alter or amend the**
- 32 **judgment, under Rule 59; or**
- 33 **(E) for relief under Rule 60.**
- 34 **(2) Subject to Rule 54(b):**
- 35 **(A) unless the court orders otherwise, the clerk**
- 36 **must, without awaiting the court's direction,**
- 37 **promptly prepare, sign, and enter the judgment**
- 38 **when:**

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- 39 (i) the jury returns a general verdict,
40 (ii) the court awards only costs or a sum
41 certain, or
42 (iii) the court denies all relief.
- 43 (B) the court must promptly approve the form of
44 the judgment, which the clerk must promptly enter,
45 when:
- 46 (i) the jury returns a special verdict or a
47 general verdict accompanied by
48 interrogatories, or
49 (ii) the court grants other relief not described
50 in Rule 58(a)(2).
- 51 (b) Time of Entry. Judgment is entered for purposes of
52 these rules:
- 53 (1) if Rule 58(a)(1) does not require a separate
54 document, when it is entered in the civil docket under
55 Rule 79(a), and

56 (2) if Rule 58(a)(1) requires a separate document, when
57 it is entered in the civil docket under Rule 79(a) and
58 when the earlier of these events occurs:

59 (A) when it is set forth on a separate document, or

60 (B) when 150 days have run from entry in the civil
61 docket under Rule 79(a).

62 **(c) Cost or Fee Awards.**

63 (1) Entry of judgment may not be delayed, nor the time
64 for appeal extended, in order to tax costs or award fees,
65 except as provided in Rule 58(c)(2).

66 (2) When a timely motion for attorney fees is made
67 under Rule 54(d)(2), the court may act before a notice of
68 appeal has been filed and has become effective to order
69 that the motion have the same effect under Federal Rule
70 of Appellate Procedure 4(a)(4) as a timely motion under
71 Rule 59.

10 FEDERAL RULES OF CIVIL PROCEDURE

72 **(d) Request for Entry.** A party may request that judgment
73 be set forth on a separate document as required by Rule
74 58(a)(1).

Committee Note

Rule 58 has provided that a judgment is effective only when set forth on a separate document and entered as provided in Rule 79(a). This simple separate document requirement has been ignored in many cases. The result of failure to enter judgment on a separate document is that the time for making motions under Rules 50, 52, 54(d)(2)(B), 59, and some motions under Rule 60, never begins to run. The time to appeal under Appellate Rule 4(a) also does not begin to run. There have been few visible problems with respect to Rule 50, 52, 54(d)(2)(B), 59, or 60 motions, but there have been many and horridly confused problems under Appellate Rule 4(a). These amendments are designed to work in conjunction with Appellate Rule 4(a) to ensure that appeal time does not linger on indefinitely, and to maintain the integration of the time periods set for Rules 50, 52, 54(d)(2)(B), 59, and 60 with Appellate Rule 4(a).

Rule 58(a) preserves the core of the present separate document requirement, both for the initial judgment and for any amended judgment. No attempt is made to sort through the confusion that some courts have found in addressing the elements of a separate document. It is easy to prepare a separate document that recites the terms of the judgment without offering additional explanation or citation of authority. Forms 31 and 32 provide examples.

Rule 58 is amended, however, to address a problem that arises under Appellate Rule 4(a). Some courts treat such orders as those

that deny a motion for new trial as a "judgment," so that appeal time does not start to run until the order is entered on a separate document. Without attempting to address the question whether such orders are appealable, and thus judgments as defined by Rule 54(a), the amendment provides that entry on a separate document is not required for an order disposing of the motions listed in Appellate Rule 4(a). The enumeration of motions drawn from the Appellate Rule 4(a) list is generalized by omitting details that are important for appeal time purposes but that would unnecessarily complicate the separate document requirement. As one example, it is not required that any of the enumerated motions be timely. Many of the enumerated motions are frequently made before judgment is entered. The exemption of the order disposing of the motion does not excuse the obligation to set forth the judgment itself on a separate document. And if disposition of the motion results in an amended judgment, the amended judgment must be set forth on a separate document.

Rule 58(b) discards the attempt to define the time when a judgment becomes "effective." Taken in conjunction with the Rule 54(a) definition of a judgment to include "any order from which an appeal lies," the former Rule 58 definition of effectiveness could cause strange difficulties in implementing pretrial orders that are appealable under interlocutory appeal provisions or under expansive theories of finality. Rule 58(b) replaces the definition of effectiveness with a new provision that defines the time when judgment is entered. If judgment is promptly set forth on a separate document, as should be done when required by Rule 58(a)(1), the new provision will not change the effect of Rule 58. But in the cases in which court and clerk fail to comply with this simple requirement, the motion time periods set by Rules 50, 52, 54, 59, and 60 begin to run after expiration of 150 days from entry of the judgment in the civil docket as required by Rule 79(a).

A companion amendment of Appellate Rule 4(a)(7) integrates these changes with the time to appeal.

The new all-purpose definition of the entry of judgment must be applied with common sense to other questions that may turn on the time when judgment is entered. If the 150-day provision in Rule 58(b)(2)(B) — designed to integrate the time for post-judgment motions with appeal time — serves no purpose, or would defeat the purpose of another rule, it should be disregarded. In theory, for example, the separate document requirement continues to apply to an interlocutory order that is appealable as a final decision under collateral-order doctrine. Appealability under collateral-order doctrine should not be complicated by failure to enter the order as a judgment on a separate document — there is little reason to force trial judges to speculate about the potential appealability of every order, and there is no means to ensure that the trial judge will always reach the same conclusion as the court of appeals. Appeal time should start to run when the collateral order is entered without regard to creation of a separate document and without awaiting expiration of the 150 days provided by Rule 58(b)(2). Drastic surgery on Rules 54(a) and 58 would be required to address this and related issues, however, and it is better to leave this conundrum to the pragmatic disregard that seems its present fate. The present amendments do not seem to make matters worse, apart from one false appearance. If a pretrial order is set forth on a separate document that meets the requirements of Rule 58(b), the time to move for reconsideration seems to begin to run, perhaps years before final judgment. And even if there is no separate document, the time to move for reconsideration seems to begin 150 days after entry in the civil docket. This apparent problem is resolved by Rule 54(b), which expressly permits revision of all orders not made final under Rule 54(b) "at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties."

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3 (2) These rules are applicable to proceedings for
4 admission to citizenship, habeas corpus, and quo
5 warranto, to the extent that the practice in such
6 proceedings is not set forth in statutes of the United
7 States, the Rules Governing Section 2254 Cases, or the
8 Rules Governing Section 2255 Proceedings, and has
9 heretofore conformed to the practice in civil actions.
10 ~~The writ of habeas corpus, or order to show cause, shall~~
11 ~~be directed to the person having custody of the person~~
12 ~~detained. It shall be returned within 3 days unless for~~
13 ~~good cause shown additional time is allowed which in~~
14 ~~cases brought under 28 U.S.C. § 2254 shall not exceed~~
15 ~~40 days, and in all other cases shall not exceed 20 days.~~

16 * * * * *

Committee Note

This amendment brings Rule 81(a)(2) into accord with the Rules Governing § 2254 and § 2255 proceedings. In its present form, Rule 81(a)(2) includes return-time provisions that are inconsistent with the

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

12 * * * * *

13 **(6) Responsive Pleading; Interrogatories.**

14 **(a) Civil Forfeiture.** In an in rem forfeiture action for
15 violation of a federal statute:

16 (i) a person who asserts an interest in or right
17 against the property that is the subject of the action
18 must file a verified statement identifying the interest
19 or right:

20 (A) within ~~20~~ 30 days after the earlier of (1)
21 ~~receiving actual notice of execution of~~
22 ~~process~~ the date of service of the
23 Government's complaint or (2) completed
24 publication of notice under Rule C(4), or
25 (B) within the time that the court allows.

26 (ii) an agent, bailee, or attorney must state the
27 authority to file a statement of interest in or right
28 against the property on behalf of another; and

29 (iii) a person who files a statement of interest in or
30 right against the property must serve and file an
31 answer within 20 days after filing the statement.

32 (b) **Maritime Arrests and Other Proceedings.** In an
33 in rem action not governed by Rule C(6)(a):

34 * * * * *

35 (iv) a person who asserts a right of possession or
36 any ownership interest must ~~file~~ serve an answer

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37 within 20 days after filing the statement of interest
38 or right.

39 * * * * *

Committee Note

Rule C(3) is amended to reflect the provisions of 18 U.S.C. § 985, enacted by the Civil Asset Forfeiture Reform Act of 2000, 114 Stat. 202, 214-215. Section 985 provides, subject to enumerated exceptions, that real property that is the subject of a civil forfeiture action is not to be seized until an order of forfeiture is entered. A civil forfeiture action is initiated by filing a complaint, posting notice, and serving notice on the property owner. The summons and arrest procedure is no longer appropriate.

Rule C(6)(a)(i)(A) is amended to adopt the provision enacted by 18 U.S.C. § 983(a)(4)(A), shortly before Rule C(6)(a)(i)(A) took effect, that sets the time for filing a verified statement as 30 days rather than 20 days, and that sets the first alternative event for measuring the 30 days as the date of service of the Government's complaint.

Rule C(6)(a)(iii) is amended to give notice of the provision enacted by 18 U.S.C. § 983(a)(4)(B) that requires that the answer in a forfeiture proceeding be filed within 20 days. Without this notice, unwary litigants might rely on the provision of Rule 5(d) that allows a reasonable time for filing after service.

Rule C(6)(b)(iv) is amended to change the requirement that an answer be filed within 20 days to a requirement that it be served

within 20 days. Service is the ordinary requirement, as in Rule 12(a). Rule 5(d) requires filing within a reasonable time after service.

Changes Made After Publication and Comment

No changes have been made since publication.

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