AMENDMENTS TO
RULES OF CIVIL PROCEDURE
FOR THE
UNITED STATES DISTRICT COURTS

Effective July 19, 1961

The following amendments to the Rules of Civil Procedure for the United States District Courts were prescribed by the Supreme Court of the United States on April 17, 1961, pursuant to 28 U. S. C. § 2072. They were reported to Congress by THE CHIEF JUSTICE on April 18, 1961, *post*, p. 1011.

They became effective on July 19, 1961, as provided in amended Rule 86 (d), *post*, p. 1016.

For earlier publications of the Rules of Civil Procedure and the amendments thereto, see 308 U. S. 645, 308 U. S. 642, 329 U. S. 839, 335 U. S. 919, 341 U. S. 959.

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LETTER OF TRANSMITTAL

SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C.

APRIL 18, 1961.

To the Senate and House of Representatives of the United States of America in Congress assembled:

By direction of the Supreme Court I have the honor to report to the Congress the attached amendments to the Rules of Civil Procedure for the United States District Courts, which have been adopted by the Supreme Court, pursuant to Title 28, U. S. C., Sec. 2072.

Accompanying these amendments is the Report of the Judicial Conference of the United States, submitted to the Court for its consideration pursuant to Title 28, U. S. C., Sec. 331.

MR. JUSTICE DOUGLAS has filed the attached statement.

I am requested to state that MR. JUSTICE BLACK does not join in approval of the Rules because he believes that it would be better for Congress to act directly by legislation on the matters treated by the Rules.

Respectfully,

(Signed) EARL WARREN,
Chief Justice of the United States.

SUPREME COURT OF THE UNITED STATES

MONDAY, APRIL 17, 1961.

ORDERED:

1. That Rules 25, 54, 62, and 86 of the Rules of Civil Procedure and Forms Nos. 2 and 19, be, and they hereby are, amended as hereinafter set forth.

2. That THE CHIEF JUSTICE be authorized to transmit these amendments to Congress in accordance with the provisions of Title 28, U. S. C., Sec. 2072.

MR. JUSTICE BLACK does not join in approval of the Rules because he believes that it would be better for Congress to act directly by legislation on the matters treated by the Rules.

MR. JUSTICE DOUGLAS filed the following statement:

Most of the proposed changes in the *Rules of Civil Procedure* are picayune and harmless, yet hardly worth making apart from any overall revision of the Rules. The change in Rule 25 of the *Rules of Civil Procedure* is, however, a major one; and it seems to me unwise. The policy that a cabinet officer under one administration pursues is often not the policy of the next administration. I would not make the contrary assumption, as does the proposed change. I think the ends served by *Snyder* v. *Buck*, 340 U. S. 15, are proper ones. The Rule in its present form leaves the burden on the claimant who challenges a particular government policy to re-establish that the controversy he had with a predecessor is a live one as respects the successor. The burden should rest there, not with the newcomer to office.

The critical language in Rule 25 (d) that is changed by the proposed amendment derived from 28 U. S. C. (1946 ed.) § 780 which the Revised Code dropped in 1948 because it had been incorporated in Rule 25 (d). See 28

U. S. C. A., p. XXIX. The history of § 780 is reviewed in *Snyder* v. *Buck, supra,* pp. 18–19.

Congress dealt with the matter beginning with the Act of February 8, 1899, 30 Stat. 822. The care with which it approached the problem is shown in H. R. Rep. No. 960, 55th Cong., 2d Sess., p. 2, where it is said:

> "A mandamus proceeding against an officer is based upon the claim that he is personally refusing to perform some duty which the law requires of him in his official character, and if decided against him he is properly liable, personally, for all cost of the proceeding, but if he vacates the office before a decision, it might seem harsh to compel his successor to become a party to the suit and to the costs already accrued without having been guilty of any personal neglect of the official duty involved in the proceeding; but to provide against this seeming harshness your committee propose to amend the bill so as to give the succeeding official an opportunity to perform the official act involved in the proceeding and thereby prevent the survival of the action against himself, and if he fails to do so, he can not then complain of being mulct in costs accruing against his predecessor."

The provision of § 780 that the action might be continued against the successor in office on the requisite showing within the stated period was added by § 11 of the Judiciary Act of 1925. 43 Stat. 936, 941. The last word Congress spoke on the matter reflected the views in a Report submitted by Chief Justice Taft dated March 11, 1922, which explained § 11 in the following words:

> "It will be noted . . . that the provision for substitution is not mandatory, but leaves it to the sound discretion of the court to determine whether there is a substantial need for continuing the cause and obtaining an adjudication of the questions involved. This will tend to restrict the exercise of the right to cases which have a sound basis."

This language was repeated in the Senate Committee Print, 68th Cong., 1st Sess., of an analysis of S. 2060, to Amend the Judicial Code, etc., p. 16. The language so carefully tailored by Congress is now rejected by the professional group who constitute our advisors in these matters. I do not think we should allow a known and established congressional policy to be so readily abrogated.

We said in *Snyder* v. *Buck, supra,* p. 20, that if Rule 25 (d) is to be amended in the manner then urged and now adopted "the amending process is available." Where we have a matter so heavily encrusted with legislative policy, I think any change should be left to Congress.

I, therefore, dissent from the submission to Congress of the proposed amendments to Rule 25 of the *Rules of Civil Procedure* under 28 U. S. C. § 2072. For under that Act the Rules submitted become effective at the expiration of a 90-day period, unless Congress takes contrary action. This machinery seems therefore inappropriate to me for effecting such a basic change in congressional policy as the proposed Rule 25 (d) achieves.

AMENDMENTS TO RULES OF CIVIL PROCEDURE

FOR THE

UNITED STATES DISTRICT COURTS

Rule 25. Substitution of Parties.

(d) Public Officers; Death or Separation from Office.

(1) When a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer sues or is sued in his official capacity, he may be described as a party by his official title rather than by name; but the court may require his name to be added.

Rule 54. Judgments; Costs.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such

determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

RULE 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT.

(h) STAY OF JUDGMENT AS TO MULTIPLE CLAIMS OR MULTIPLE PARTIES. When a court has ordered a final judgment under the conditions stated in Rule 54 (b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

RULE 86. EFFECTIVE DATE.

(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.

FORM 2. ALLEGATION OF JURISDICTION.

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

Plaintiff is a [citizen of the State of Connecticut] [2] [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 of ten thousand dollars.

(b) Jurisdiction founded on the existence of a Federal question and amount in controversy.

The 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)],[3] as hereinafter more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

(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.

EXPLANATORY NOTES

1. *Diversity of Citizenship.* U. S. C., Title 28, § 1332 (Diversity of citizenship; amount in controversy; costs), as amended by P. L. 85–554, 72 Stat. 415, July 25, 1958, states in subsection (c) that "For the purposes of this section and section 1441 of this title [removable actions], a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business." Thus if the defendant corporation in Form 2 (a) had its principal place of business in Connecticut, diversity of citizenship would not exist. An allegation regarding the principal place of business of each corporate party must be made in addition to an allegation regarding its place of incorporation.

2. *Jurisdictional Amount.* U. S. C., Title 28, § 1331 (Federal question; amount in controversy; costs) and § 1332 (Diversity of citizenship; amount in controversy; costs), as amended by P. L. 85–554, 72 Stat. 415, July 25, 1958, require that the amount in controversy,

[2] Form for natural person.

[3] 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.

exclusive of interest and costs, be in excess of $10,000. The allegation as to the amount in controversy may be omitted in any case where by law no jurisdictional amount is required. See, for example, U. S. C., Title 28, § 1338 (Patents, copyrights, trade-marks, and unfair competition), § 1343 (Civil rights and elective franchise).

3. *Pleading Venue.* Since improper venue is a matter of defense, it is not necessary for plaintiff to include allegations showing the venue to be proper. See 1 Moore's Federal Practice, par. 0.140 [1.—4] (2d ed. 1959).

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).

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 Exhibits 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.

EXPLANATORY NOTES

1. The above motion and notice of motion may be combined and denominated Notice of Motion. See Rule 7 (b).

2. As to paragraph 3, see U. S. C., Title 28, § 1391 (Venue generally), subsections (b) and (c).

3. As to paragraph 4, see U. S. C., Title 28, § 1331 (Federal question; amount in controversy; costs), as amended by P. L. 85–554, 72 Stat. 415, July 25, 1958, requiring that the amount in controversy, exclusive of interest and costs, be in excess of $10,000.