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AMENDMENTS TO  
RULES OF PRACTICE IN  
ADMIRALTY AND MARITIME CASES

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Effective July 19, 1961

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The following amendments to the Rules of Practice in Admiralty and Maritime Cases were prescribed by the Supreme Court of the United States on April 17, 1961, pursuant to 28 U. S. C. § 2073, which provides, in part, that "Such rules shall not take effect until they have been reported to Congress by the Chief Justice at or after the beginning of a regular session thereof but not later than the first of May, and until the expiration of ninety days after they have been thus reported." They were reported to Congress by THE CHIEF JUSTICE on April 18, 1961, *post*, p. 1020, and they became effective on July 19, 1961.

For earlier publications of the Rules of Practice in Admiralty and Maritime Cases and the amendments thereto, see 3 How. iii, 10 How. v, 13 How. vi, 17 How. vi, 21 How. iv, 1 Black 6, 7 Wall. v, 13 Wall. xii, 103 U. S. xiii, 112 U. S. 743, 130 U. S. 705, 160 U. S. 693, 210 U. S. 544, 254 U. S. 671, 281 U. S. 773, 286 U. S. 572, 307 U. S. 653, 316 U. S. 716, 316 U. S. 717, 328 U. S. 882, 334 U. S. 864.

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## LETTER OF TRANSMITTAL

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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 Practice in Admiralty and Maritime Cases for the Courts of the United States which have been adopted by the Supreme Court, pursuant to Title 28, U. S. C., Sec. 2073.

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 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 the Rules of Practice in Admiralty and Maritime Cases be, and they hereby are, amended by including therein Rules 30A, 30B, 30C, 30D, 30E, 30F, 30G, 32D, 58, 59, and 60, and amendments to Rules 32, 32B, and 32C (e), 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. 2073.

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 has filed the following statement:

I concur in the amendments proposed to the *Rules of Practice in Admiralty and Maritime Cases*. These amendments reflect a continuing need for discovery which the Court in *Miner v. Atlass*, 363 U. S. 641, found absent from existing admiralty procedures. The Rules, as proposed, seem to me to be admirably suited for the purposes stated.

AMENDMENTS TO  
RULES OF PRACTICE IN  
ADMIRALTY AND MARITIME CASES

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AMENDMENTS TO  
RULES OF PRACTICE IN  
ADMIRALTY AND MARITIME CASES

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Rule 30A

DEPOSITIONS PENDING ACTION

(a) **WHEN DEPOSITIONS MAY BE TAKEN.** Any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the action or for both purposes. After commencement of the action the deposition may be taken without leave of court, except that leave, granted with or without notice, must be obtained if notice of the taking is served by the plaintiff within 20 days after commencement of the action. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 32D. Depositions shall be taken only in accordance with these rules, except that depositions may also be taken under and used in accordance with sections 863, 864, and 865 of the Revised Statutes (see note preceding 28 U. S. C. § 1781). The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) **SCOPE OF EXAMINATION.** Unless otherwise ordered by the court as provided by Rule 30E (b) or (d), the deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the examining party or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any

books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts. It is not ground for objection that the testimony will be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) **EXAMINATION AND CROSS-EXAMINATION.** Examination and cross-examination of deponents may proceed as permitted at the trial under the provisions of Rule 46A.

(d) **USE OF DEPOSITIONS.** At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent of a public or private corporation, partnership, or association which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: 1, that the witness is dead; or 2, that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or 3, that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or 4, that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or 5, upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.

Substitution of parties does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

(e) OBJECTIONS TO ADMISSIBILITY. Subject to the provisions of Rule 30G (c), objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(f) EFFECT OF TAKING OR USING DEPOSITIONS. A party shall not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition as described in paragraph (2) of subdivision (d) of this rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

#### Rule 30B

#### DEPOSITIONS BEFORE ACTION OR PENDING APPEAL

(a) BEFORE ACTION.

(1) PETITION. A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in any court of the United

States may file a verified petition in the United States district court in the district of the residence of any expected adverse party.

The petition shall be entitled in the name of the petitioner and shall show: 1, that the petitioner expects to be a party to an action cognizable in a court of the United States but is presently unable to bring it or cause it to be brought, 2, the subject matter of the expected action and his interest therein, 3, the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it, 4, the names or a description of the persons he expects will be adverse parties and their addresses so far as known, and 5, the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) NOTICE AND SERVICE. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served either within or without the district or state in the manner provided in Rule 4 (d) of the Federal Rules of Civil Procedure for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4 (d) of the Federal Rules of Civil Procedure, an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Rule 17 (c) of the Federal Rules of Civil Procedure apply.

(3) ORDER AND EXAMINATION. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules, and the court may make orders of the character provided for by Rules 32 and 32A. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) USE OF DEPOSITION. If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in a United States district court, in accordance with the provisions of Rule 30A (d).

(b) PENDING APPEAL. If an appeal has been taken from a judgment of a district court or before the taking of an appeal if the time therefor has not expired, the district court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the district court. In such case the party who desires to perpetuate the testimony may make a motion in the district court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the district court. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each; (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may

make orders of the character provided for by Rules 32 and 32A, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the district court.

(c) **PERPETUATION BY ACTION.** This rule does not limit the power of a court to entertain an action to perpetuate testimony.

### Rule 30C

#### PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN

(a) **WITHIN THE UNITED STATES.** Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.

(b) **IN FOREIGN COUNTRIES.** In a foreign state or country depositions shall be taken (1) on notice before a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or (2) before such person or officer as may be appointed by commission or under letters rogatory. A commission or letters rogatory shall be issued only when necessary or convenient, on application and notice, and on such terms and with such directions as are just and appropriate. Officers may be designated in notices or commissions either by name or descriptive title and letters rogatory may be addressed "To the Appropriate Judicial Authority in [here name the country]".

(c) **DISQUALIFICATION FOR INTEREST.** No deposition shall be taken before a person who is a relative or employee

or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

#### Rule 30D

### STIPULATIONS REGARDING THE TAKING OF DEPOSITIONS

If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions.

#### Rule 30E

### DEPOSITIONS UPON ORAL EXAMINATION

(a) NOTICE OF EXAMINATION: TIME AND PLACE. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of any party upon whom the notice is served, the court may for cause shown enlarge or shorten the time.

(b) ORDERS FOR THE PROTECTION OF PARTIES AND DEponents. After notice is served for taking a deposition by oral examination, upon motion seasonably made by any party or by the person to be examined and upon notice and for good cause shown, the court in which the action is pending may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the

scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the court, or that secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court; or the court may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression.

(c) RECORD OF EXAMINATION; OATH; OBJECTIONS. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by some one acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed unless the parties agree otherwise. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim.

(d) MOTION TO TERMINATE OR LIMIT EXAMINATION. At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the dep-

osition as provided in subdivision (b). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. In granting or refusing such order the court may impose upon either party or upon the witness the requirement to pay such costs or expenses as the court may deem reasonable.

(e) **SUBMISSION TO WITNESS; CHANGES; SIGNING.** When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress under Rule 30G (d) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) **CERTIFICATION AND FILING BY OFFICER; COPIES; NOTICE OF FILING.**

(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly

file it with the court in which the action is pending or send it by registered mail to the clerk thereof for filing.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(g) FAILURE TO ATTEND OR TO SERVE SUBPOENA; EXPENSES.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.

#### Rule 30F

### DEPOSITIONS OF WITNESSES UPON WRITTEN INTERROGATORIES

(a) SERVING INTERROGATORIES; NOTICE. A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within 10 days thereafter a party so served may serve cross interrogatories upon the party proposing to take the deposition. Within 5 days thereafter the

latter may serve redirect interrogatories upon a party who has served cross interrogatories. Within 3 days after being served with redirect interrogatories, a party may serve recross interrogatories upon the party proposing to take the deposition.

(b) OFFICER TO TAKE RESPONSES AND PREPARE RECORD. A copy of the notice and copies of all interrogatories served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30E (c), (e), and (f), to take the testimony of the witness in response to the interrogatories and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the interrogatories received by him.

(c) NOTICE OF FILING. When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

(d) ORDERS FOR THE PROTECTION OF PARTIES AND DEPONENTS. After the service of interrogatories and prior to the taking of the testimony of the deponent, the court in which the action is pending, on motion promptly made by a party or a deponent, upon notice and good cause shown, may make any order specified in Rule 30E which is appropriate and just or an order that the deposition shall not be taken before the officer designated in the notice or that it shall not be taken except upon oral examination.

#### Rule 30G

#### EFFECT OF ERRORS AND IRREGULARITIES IN DEPOSITIONS

(a) AS TO NOTICE. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(b) AS TO DISQUALIFICATION OF OFFICER. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the depositions begins or as soon

thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) AS TO TAKING OF DEPOSITION.

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(3) Objections to the form of written interrogatories submitted under Rule 30F are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other interrogatories and within 3 days after service of the last interrogatories authorized.

(d) AS TO COMPLETION AND RETURN OF DEPOSITION. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30E and 30F are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

Rule 32

DISCOVERY AND PRODUCTION OF DOCUMENTS  
AND THINGS FOR INSPECTION, COPYING,  
OR PHOTOGRAPHING

Upon motion of any party showing good cause therefor and upon notice to all other parties, and subject to the

provisions of Rule 30E (b), the court in which an action is pending may (1) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 30A (b) and which are in his possession, custody, or control; or (2) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon within the scope of the examination permitted by Rule 30A (b). The order shall specify the time, place, and manner of making the inspection and taking the copies and photographs and may prescribe such terms and conditions as are just.

#### Rule 32B

### ADMISSION OF FACTS AND OF GENUINENESS OF DOCUMENTS

(a) REQUEST FOR ADMISSION. After commencement of an action a party may serve upon any other party a written request for the admission by the latter of the genuineness of any relevant documents described in and exhibited with the request or of the truth of any relevant matters of fact set forth in the request. If a plaintiff desires to serve a request within 10 days after commencement of the action leave of court, granted with or without notice, must be obtained. Copies of the documents shall be served with the request unless copies have already been furnished. Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, not less than 10 days after service thereof or within such shorter or longer time as the court may allow on motion and notice, the party to whom the request is directed serves upon the party requesting

the admission either (1) a sworn statement denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters or (2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part, together with a notice of hearing the objections at the earliest practicable time. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party deny only a part or a qualification of a matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder.

(b) **EFFECT OF ADMISSION.** Any admission made by a party pursuant to such request is for the purpose of the pending action only and neither constitutes an admission by him for any other purpose nor may be used against him in any other proceeding.

#### Rule 32C

### REFUSAL TO MAKE DISCOVERY: CONSEQUENCES

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(e) **FAILURE TO RESPOND TO LETTERS ROGATORY.** A subpoena may be issued as provided in Title 28 U. S. C., § 1783, under the circumstances and conditions therein stated.

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#### Rule 32D

### SUBPOENA

(a) **FOR ATTENDANCE OF WITNESSES; FORM; ISSUANCE.** Every subpoena shall be issued by the clerk under the seal of the court, shall state the name of the court and the title

of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

(b) FOR PRODUCTION OF DOCUMENTARY EVIDENCE. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(c) SERVICE. A subpoena may be served by the marshal, by his deputy, or by any other person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the United States or an officer or agency thereof, fees and mileage need not be tendered.

(d) SUBPOENA FOR TAKING DEPOSITIONS; PLACE OF EXAMINATION.

(1) Proof of service of a notice to take a deposition as provided in Rules 30E (a) and 30F (a) constitutes a sufficient authorization for the issuance by the clerk of the district court for the district in which the deposition is to be taken of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce designated books, papers, documents, or tangible things which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 30A (b), but in that

event the subpoena will be subject to the provisions of subdivision (b) of Rule 30E and subdivision (b) of this Rule 32D.

(2) A resident of the district in which the deposition is to be taken may be required to attend an examination only in the county wherein he resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of court. A nonresident of the district may be required to attend only in the county wherein he is served with a subpoena, or within 40 miles from the place of service, or at such other convenient place as is fixed by an order of court.

(e) SUBPOENA FOR A HEARING OR TRIAL.

(1) At the request of any party subpoenas for attendance at a hearing or trial shall be issued by the clerk of the district court for the district in which the hearing or trial is held. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the district, or at any place without the district that is within 100 miles of the place of the hearing or trial specified in the subpoena; and, when a statute of the United States provides therefor, the court upon proper application and cause shown may authorize the service of a subpoena at any other place.

(2) A subpoena directed to a witness in a foreign country shall issue under the circumstances and in the manner and be served as provided in Title 28, U. S. C., § 1783.

(f) CONTEMPT. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued.

Rule 58

SUMMARY JUDGMENT

(a) FOR CLAIMANT. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of

20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) **FOR DEFENDING PARTY.** A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) **MOTION AND PROCEEDINGS THEREON.** The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) **CASE NOT FULLY ADJUDICATED ON MOTION.** If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) **FORM OF AFFIDAVITS; FURTHER TESTIMONY.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits.

(f) **WHEN AFFIDAVITS ARE UNAVAILABLE.** Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) **AFFIDAVITS MADE IN BAD FAITH.** Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

### Rule 59

## DECLARATORY JUDGMENTS

The procedure for obtaining a declaratory judgment pursuant to Title 28 U. S. C., § 2201, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39 of the Federal Rules of Civil Procedure. The existence of another adequate remedy

does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

### Rule 60

#### EFFECTIVE DATE OF AMENDMENTS

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

(b) Depositions taken prior to July 20, 1960, which would have been authorized if Rules 30A through 30G had been in force at the time such depositions were taken, and any depositions heretofore taken by consent of the parties, may be used for any of the purposes specified in Rule 30A (d).

