SUUNEL XI ALMERU REPUBLIC

Suunel University

Nationality and Trust Study Guide I

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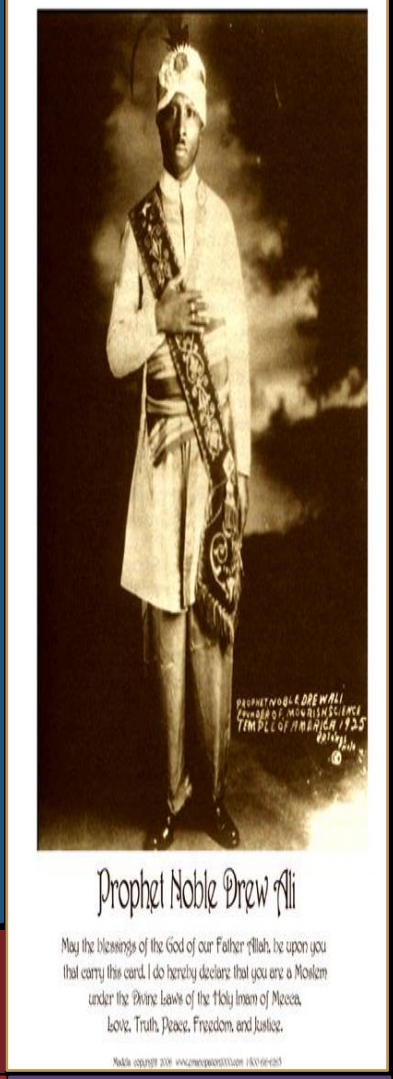

E.I.N. – Employer Identification Number	Exodus 20:12 Honour thy father and thy mother: that thy days may be long upon the land which the LORD thy God giveth thee	Moorish Science Temple of America - Filing# 10105905 Hudson's Revised Statutes

Black or African American: **A person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" can be used in addition to "Black or African American".**

Trust - **1. Legal entity created by a party (the trustor) through which a second party (the trustee) holds the right to manage the trustor's assets or property for the benefit of a third party (the beneficiary). The four main types of trusts are: (1) Living: trust created by the trustor while he or she is alive. (2) Testamentary: trust established through a will and which comes into effect (is created) when the trustor dies. (3) Revocable: trust that can be modified or terminated by the trustor after its creation. (4) Irrevocable: trust that cannot be modified or terminated by the trustor after its creation.**

18 U.S. Code § 1091 – Genocide

American Constitution 1791 Article 6 – Treaties

Zodiac Constitution Article 3 – Military and Tax Exempt

Treaty of Peace and Friendship 1786-1816

American Constitution Article 4 Sec 2 clause 1

Race and Ethnicity Classifications

Standards for reporting data about race and ethnicity provide consistent and comparable data for an array of statistical and administrative programs.

Authority

Race and ethnicity standards are determined by the U.S. Office of Management and Budget (OMB). The current standards were published in 1997.

Standards

The current standards have:

- Five minimum categories for data on race
- Two categories for data on ethnicity.

Respondents to federal data collections are permitted to report more than one race, and are asked to report both race and ethnicity.

Race Categories

American Indian or Alaska Native: A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

Asian: A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

Black or African American: A person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" can be used in addition to "Black or African American".

Native Hawaiian or Other Pacific Islander: A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

White: A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Ethnicity Categories

Hispanic or Latino: A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term, "Spanish origin", can be used in addition to "Hispanic or Latino".

Not Hispanic or Latino

Time Line of the United States from the beginning

1774: First meeting of the Continental Congress: delegates of the 13 colonies

1776: Revolution begins; Declaration of Independence in July

1776: Articles of Confederation adopted by Continental Congress; sent to 13 states for ratification

February 6, 1778, France officially recognized the United States of America; 83 days after the Continental Congress had certified the Articles of Confederation for the ratification process.

1781: ratified by 13 states, but followed by Continental Congress before that

March 1, 1781 – The Constitution (also called the Articles of Confederation) was ratified, and this was the official beginning of the United States of America. Article 1 of that Constitution sates: The Stile of this Confederacy shall be, "The United States of America".

April 19, 1782 – Netherlands recognized the United States of America.

June 20, 1782 – Congress adopted the Great Seal of the United States of America.

1783–1787: so-called Critical Period

1783 - Treaty of Paris; peace treaty and independence from Britain

February 3, 1783 – Spain followed by Sweden, Denmark and Russia all recognized the United States of America.

September 3, 1783 – The Paris Peace Treaty was signed among the king of England, George III, and the United States, and independence was granted to each of the 13 states therein.

1786–1787: Shays' Rebellion in Massachusetts

May 1787: delegates of states meet in Philadelphia to draft new Constitution

Sept 1788: U.S. Constitution ratified by 9 states; rest follow later

March 1789: new government begins; meeting of the First Congress; George Washington as president

1789: First Congress adopts Bill of Rights (amendments 1 to 10 of Constitution)

On April 30, 1789, President George Washington officially enacted the amended constitution of 1781(amended Articles of Confederation) and Article VI specifically lists a savings clause that goes further than the language appears, to wit: All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the [original Articles of] Confederation. In the face of all of this evidence, it becomes impossible to not recognize that the United States of America had been created and internationally recognized between 8 and 11 years prior to the Federalists amended Constitution of 1789 and the inauguration of President George Washington.

Dec. 1791: Amendments ratified by states; become part of the US Constitution

Definitions

Adam – is word #120 in The Strong's Exhaustive Concordance of the Bible

Word #120 is defined as "ruddy" i.e. a human being; an individual, or the species mankind, a low man, a mean person, of low degree! It is from word #119 in the same book. Word #119 says that the word ***Adam*** means to show blood in the face, to get flush, or turn rosy red, to be made red, or ruddy! When I read this it becomes very clear to me that melanated and copper colored people are NOT human beings, because **the phrase** "**human being" means ruddy**! Copper colored races of people do NOT get flush, or turn rosy, because we are NOT ruddy! Therefore, ***we CANNOT possibly be from Adam, human beings, nor the species mankind***. Adam is a species of persons that is totally different from us. Also know that, **Adam IS Edom**! (see Jacob)

***African** – It is true that among the Founding Fathers, the word, **"African" was a synonym for slave**, and "Indian," or "Red Indian" NEARLY synonymous with "savage." (Hidden Cities by Roger G. Kennedy, 1994.) Let me also point out that anything considered Africa, or African, is that which used to be Ancient Carthage and any of her holdings. Remember, the Carthaginian Commander, Hannibal Barca Bey, was a military genius. Barca (also spelled Barqa, Baraq, Barak, etc.) means lightning. It should be stated that Mr. Kennedy previously worked at the Smithsonian Institute, but had a change of heart. For those of you that do not know, the Smithsonian Institute (along with the Vatican) is one of the many entities responsible for keeping the truth about so-called African Americans' (along with other so-called Black peoples of Earth) and their true identity/history buried away from them and the rest of the world. (see Savage)

American – The aboriginals, or **COPPER COLORED RACES** found here by the Europeans. "1849, 1854, 1859, editions of Noah Webster's Dictionary"

I reduced the word into components and defined it further as follows: **Am** + **Eric** + **an** – ***Am*** means "be"; "be" is the same as the word "essence"; the word "essence" is from the root word "ess(e)" which means "to be". The word "***Eric*(a)**" is the same as the word "ericaceous" which means the woods, forest, and heath. This is one reason why the Europeans called our people heathens. The suffix, "***an***" is found in the dictionary with a hyphen in front of it like this "**-an**" and it means adhering to, belonging to, and connected with. The word **Eric(a)** is defined in name books to mean ruler, always ruler, and ruler forever. These are the same name books that people use to find names to name their children.

***__Angel__ – Literally a messenger, one EMPLOYED to communicate news or information from one PERSON TO ANOTHER at a distance. Christ the mediator and head of the Church. In the style of love, a very beautiful person. (Webster's American Dictionary of the English Language, 1828 edition) {As far as beauty goes, keep in mind that back in the day, *most images of angels were of little naked pale boys*. So, that tells you their idea of a "very beautiful person." Moreover, "**Angel**" *is a position of EMPLOYMENT*. Its root word "**Ange**" is a Saxon word that means vexed, sad, or anxious. It is the same as Latin "**Ango**" which means to choke, strangle, and vex. The primary sense is to press, squeeze, and make narrow. Now, you WON'T find this breakdown at "**angel**". You have to look below it at "anger." In case you don't know about letters, "**L**" and "**R**" is technically the same letter. Thus, ange**L** is ange**R**. You will see the tie, if you know the word "English" means Anglish, Inglish, Angelish, Angerish, and Angorish. The same dictionary says, "*English is Saxon Englisc, from Engles, Angles, a tribe of GERMANS who settled in Britain, and gave it the name of England*." He says, "it means strait, narrow, and plain, is Latin "**ango**" from the sense of pressing, depression, laying, which gives the sense of level." He adds that the English are the descendants of Ingaevones of Tacitus, De Mor. Germ.2.}

Autochthon – an aboriginal inhabitant; of the land itself. It is the word "**auto**" + "**chthon**". The word "***auto***" means same, primary, and self. The word "***chthon***" means land, ground, Earth. Although it doesn't say it in the dictionary for this word, the word "chthon" also means country. You don't see that until you look up heterochthonous.

Autochthonous – pertaining to autochthons; aboriginal, indigenous (opposed to **heterochthonous**). Native to a place, or thing. Also autochthonal, autochthonic, autochthonism, autochthony, autochthonously.

Bad – hermaphrodite, womanish man, badde, baeddel, baedling. In case you don't know, I should tell the website traveler that this was/is supposed to be Victoria's Secret. Apparently, she was a womanish man.

Bishop** – Latin *episcopus*; Greek over + to view, or inspect; whence to visit or inspect; also to view. This Greek and Latin word accompanied the introduction of christianity into the west and north of Europe, and has been corrupted into Saxon *biscop*, *bisceop*, Swedish and Danish *bishop*, Dutch *bisschop*, German *bischof* and Spanish *obispo*. This title the Athenians gave to those whom they sent into the provinces subject to them, to *inspect* the state of affairs; and the Romans gave the title to those who were *inspectors* of provisions. **An overseer**; a spiritual superintendent, **ruler** or **director**; *applied to Christ*. (Webster's American Dictionary of the English Language, 1828 edition) [All the italics are as they appear in the dictionary. The bolding (as in most cases) is mine. Don't overseers watch slaves/servants on plantations? **The Pope of Rome is the head bishop**. Despite that fact, all bishops are his peers. Remember, an overseer is also a watcher! More interesting than ***OVERSEER, is the term **DIRECTOR**. Don't priests (bishops are high ranking priests) claim to be working with **souls**? Well, according to my dictionary, **souls are specific to people with Melanin**. So, if bishops are the directors of souls, (see **soul**) then they are functioning as *PSYCHOPOMPOUS aka Mercury/Hermes* (the ***SOUL* DIRECTOR**)! This is

NOT GOOD, because <u>the soul director aka **psychopompous**</u>, is much like the pied piper that has come to send, or lead, ALL the children/souls, over a cliff and into an abyss to their death. He is a trickster and the Greek God of THIEVES. (**see the letter "T"**) Hermes stole his own brother's cattle. Well, a bishop overlooks a bishopric. **A bishopric is ANY LARGE FREEHOLD ESTATE**, even when held by a commoner. **A bishopric is also called a BARONY**! It is the realm and domain of a baron. In other words, a bishop is a BARON! This means the land is held in tenure for life, by the so-called lord to be enjoyed by someone else. What lord? The Pope, King, Queen, or whatever sovereign took it from your ankhesstors and gave it to someone else for services rendered. This explains the term "ROBBER BARON!" That means the lands have been usurped under feudalism. For the USA, the Pope of Rome selects one person from a list of names submitted to him by the chapter to become the bishop/baron that oversees this bishopric/barony also called a diocese. I'm not sure, but there may only be one, or two, in the U.S. I'm not clear if he is a **Patriarchate**, a **Military Ordinariate**, or what. History, names, and religion are NOT my thing. I do words and clarity. If you know what's up, then post it to me in the FAQ. That will instantly send it to me by e-mail. The Guest Book, on the other hand, just sits out there until I check it.]

<u>Black</u> – blac, and blaec, pale, wan, blacian, blaecan, to become pale; to turn white; to bleach; also to lighten; bleak. (These all came from the 1849, 1854, and 1859 editions of the "***<u>Noah Webster's Dictionary</u>***".) With regard to the word "black" this dictionary goes on to say the following: "It is remarkable that ***<u>black, bleak, and bleach</u>*** are all radically one word. The primary sense seems to be pale, wan, or sallow, from which has proceeded the present variety of significations." This statement is quoted exactly as it is written in Webster's including the italics. I added the bold and the underline. After this statement, the dictionary begins to give a list of the "present variety of significations" – such as "the color of night," etcetera. One spelling variation that the dictionary does not give for the words

"black, bleak, and bleach, is the word BLAKE. Blake also means black, bleach, bleak, and pale!

Bless – to CONSECRATE, originally WITH BLOOD; to CONDEMN, OR CURSE. (SEE CONSECRATE) I added all the capitalization, but the rest is as written.

Boy – a servant; knave. Again, I'll save you the time you'd spend looking up knave, because knave is the same as boy. Actually, knave is akin to boy and "akin to" means the same as. Knave, and BOY, both mean an unprincipled, or dishonest person; a servant. (When my son was a child, I thought he was a boy. Now, I see that he NEVER WAS a boy.)

***Brown** – of a dark or dusky color, inclining to redness. (Webster's American English Dictionary of the English Language, 1828 edition) [The redness they refer to here, is a coppery color likened onto a U.S. Indian head penny from the 1860's. It is NOT a ruddy red likened onto flushness in the cheeks of a pale complexioned face. So, be clear on that.]

Calif** – written also caliph and kalif from Arabic "calafa, ***to succeed. Hence a calif is a successor, a title given to the successors of Mohammed. A successor, or vicar; a representative of Mohammed, bearing the same relation to him **as the Pope PRETENDS to bear to St. Peter**. Among the Saracens, or Mohammedans, a Calif is one who is vested with supreme dignity and power in all matters relating to religion and civil policy. This title is borne by the Grand Signior in Turkey, and by the Sophi of Persia. (Webster's American Dictionary of the English Language, 1828 edition) The bold, underline, and capitalization is mine. The italic is as found in the dictionary. The end is near and the end is dear **for ST. PETER**, so **PLEASE go see Iscariot, Judas, Simon, Peter, AND the letter "T." You're gonna LOVE IT!**

**__Care__ – worry, anxiety, distress, lament, to chatter (I need to add that chatter means idle, or foolish talk)! It seems to me that I ALWAYS hear people telling other people to be careFUL, or full of care. That is why I tell my people to be carefree, because I don't want them to be full of anxiety and distress.

__catholic__ – pertaining to the WHOLE Christian body, or church. Now, I suggest that the website traveler see CHURCH and CHRISTIAN. The dictionary suggests that you see CATA + HOLO + ikos – ic. I'll make it easy for you. Cata means down, against, through, and "mis -". To me, that is not good, because I see that the word holo means whole, entire. So, catholic means "down the whole," "against the entire," and "against the whole." It is about bringing down the whole, entire church and body of Christian believers. My guess is down to the level of a cretin. (I tell you what, See Roman Catholic Church)

__Christian__ – SEE CRETIN! No dictionary that I have EVER seen gives the true definition of Christian when you look for the definition under the word itself; therefore, I tell EVERYONE to look up Cretin if they want to see the true definition of Christian.

__Church__ – the WHOLE body of CHRISTIAN BELIEVERS! As always, I added the capitalization and exclamation for emphasis.

__Consecrate__ – dedicate to the service of the DEITY! I'm going to take you on a ride, so KEEP UP! Look below at the definition of DEITY, because the pilgrims came to America to BLESS and dedicate melanated people to the service of the DEITY!

__Consecration__ – the act of consecrating! Dedication to the service and worship of GOD! I'm still taking you down the rabbit hole, so don't quit now. Look above at the definition of CONSECRATE! (Defining PILGRIM brought me here from the word DEVOTION.)

Cretin – a stupid, obtuse, mentally defective person; from the French word ***crestin*** which LITERALLY means **CHRISTIAN** i.e., a human being though an IDIOT! [I must remind the website traveler that when you see the two (2) letters "i.e.," they mean "by that we mean."; therefore, when they say Christian i.e., a human being though an idiot, what that translates to is, "by Christian we mean, a human being though an IDIOT!"] Hey don't shoot me. I'm just the messenger. It is in YOUR dictionary! Go get it and see for yourself! So, for the record, **the word Christian literally means a stupid, obtuse, mentally defective person that is a human being though an IDIOT!**

***Crime** – to separate, to judge, to decree, to CONDEMN. It is a contraction of the Norman word "*crisme*" a sieve, to secrete, separate. To CUT OFF, hence to condemn [for the record let me add that condemn means to DOOM, DEVOTE, FORFEIT]; a crime denotes a violation of the commands of God, and the offenses against the laws made to preserve the PUBLIC RIGHTS. (Webster's American Dictionary of the English Language, 1828 edition) So, when you are "charged" (charge means to load or burden; to throw on or impose that which OPPRESSES; to place on the debit side of the account) with a crime, you are separated and cursed to be oppressed as a debtor whose heritage is forfeited and confiscated on the debit side by some feudal lord that cuts you off. (See Devote and Devotion)

***Damn** – to declare something to be bad, invalid, or illegal; to bring condemnation upon; ruin. (Random House College Dictionary, 1976 edition) {Check out the following definition from my Webster's 1828 edition} The Portugese word is rendered to hurt, to damnify {By the way, damnify means to cause loss or damage; TO HURT IN ESTATE OR INTEREST.} TO CORRUPT or spoil, to UNDO OR RUIN, corrupt, to bend, to crook, to make mad. The latter sense would seem to be from the Latin demens, and damnum is by

Varro referred to demendo, demo, which is supposed to be a compound of de and emo. But qu., for damno and condemno coincide with the English doom. (For the record, doom means JUDGE, discrimination, ruin. Did you know that damn had anything to do with Estates? I didn't.)

Deity – a god, or goddess; **the estate**, or RANK OF god; a PERSON, OR THING revered as a god, or goddess. Okay, enough of these crappy definitions. I'm going straight to the definitions in the brackets for this word. [dei, **deus**, god] BINGO! That is the word I've been trying to get you to see – DEUS! These HATEFUL pilgrims came to America to DEVOTE and CONSECRATE our people to DOOM AND DESTRUCTION by forcing us into the service of DEUS! DEUS MEANS GOD! When you see the definition of DEUS, then you will know what the Christian religion FORCED MY PEOPLE INTO! They came to America to DESTROY US! See DEUS BELOW!

***Demon** – to fall suddenly, to rush, to overwhelm, to obscure, to BLACKEN; whence misfortune, black, blackness, evil, a monster. (Webster's American Dictionary of the English Language, 1828 edition) I must caution the website traveler to look at the definition of "black" again, so you do not get confused as to what blackness and a demon really is, because there is a distinct difference between a demon and a devil.

Deny – I put this word here to aid the reader with the meaning of PETER'S betrayal! **Deny** – Greek word *#720* in the Strong's Exhaustive Concordance is **arneomai**: perhaps from (as a negative participle) and the middle of Greek word *#4483*; to contradict i.e. disavow, reject, abnegate: – deny refuse. {Well, that doesn't look like much until I define the words used to define this word, but first, let me say that Greek word *#4483*, is **rheo** – and means to flow, utter, or pour forth and speak out as water. Now, let's proceed with clarifying these words in the order they were given. First, Contradict means to OPPOSE by words. Disavow means TO REJECT! To reject means to throw away; REFUSE TO ACCEPT; REFUSE

TO RECEIVE. Abnegate means to renounce; DECLINE TO FOLLOW SUIT! Deny means to contradict; to disown; REFUSE TO ACKNOWLEDGE. Finally, refuse means to RE-ACCUSE; to repel; TO NOT COMPLY; to LEAVE AS UNWORTHY OF RECEPTION. These are from regular dictionaries. Who would have thought that, this is what so-called St. Peter aka Simon did when he DENIED so-called Christ? (See Peter, Judas, Iscariot, Simon, Pharisee)

Deuce – DEVIL! (I was shocked to learn that deus means god and means deuce which is the devil! My people have been DEUCED into the worship [war-ship and whore-ship] of DEUS/GOD! Look below at DEUCED! This is what the Christian Crusades were ALL about! Remember, the cry of the crusaders was "Deus Vult," which is a GERMAN cry that means "God wills it!" Now, our people believe in God! God is Deus! Deus is Deuce! Deuce is the Devil! Do you realize now that we should NOT be praying to God! God, like Adam, is NOT who, nor what, you initially thought!

Deuced – Damned; confounded. (In case you don't know, the word confounded means confused, perplexed, damned, defeated, and OVERTHROWN!) The pilgrims came to America to destroy, damn, and OVERTHROW our people! You may wonder what they came to overthrow us from. Well, that is an Article that I have to put together and blow your mind even further with.

Deus – God, Zeus, Deva. (You need to know that when I look up a word, I always start in the brackets. I also look at the brackets and definitions of EVERY SINGLE WORD ABOVE AND BELOW THE WORD, IF THOSE WORDS LOOK, OR SOUND, EVEN REMOTELY LIKE THE INITIAL WORD I start out defining! So, I looked above DEUS at the word DEUCE, because they sound the same. Well there it was in the brackets! DEUS IS EXACTLY THE SAME AS DEUCE! See DEUCE ABOVE!)

***<u>**Devil**</u> – to calumniate. {FYI, **calumniate** means to accuse, or charge one falsely and knowingly with some crime; to slander or injure the reputation of another}; one without light; dia (deity) and bhal (air) [god of the air]. (<u>Webster's American Dictionary of the English Language</u>, 1828 edition) Of course, there are the usual concepts of the Devil e.g. fallen angel, etc. (see angel, deuced, & demon)

<u>**Devote**</u> – set apart, or dedicate by a solemn, or formal act; CONSECRATE; TO COMMIT TO EVIL, OR DESTRUCTION; DOOM! I figured out that this is what the pilgrims really came to America to do to the dark skinned remnant seed of the Noble race that walked the Earth during the Golden Age of Heroes that walked the Earth long before the pale religions of civilization infected humanity. Melanated people are humanity (human-not-I). I suggest that you SEE CONSECRATE!

<u>**Devotion**</u> – profound dedication; CONSECRATION; earnest ATTACHMENT to a cause, or person. SEE DEVOTE and CONSECRATION!

<u>**Education**</u> – <u>**develop**ping the POWERS</u> and faculties of a PERSON. (I have to break this down simply so you can see what an education really is without getting lost.) ***<u>"Developing the powers"</u>*** means desvelopping, or disvelopping the powers, which means **to negate, or have a privative, or reversing force on the POWERS**! <u>*Develop*</u> also means to wrap up and **envelope**. <u>*Envelope*</u> means to **involve**. <u>*Involve*</u> means **to get someone bound up with something from which it is difficult for him to extricate himself**; to cause to roll up on itself; to raise to a GIVEN *POWER*! So, an education reverses and negates the force of the power you exited your mom's womb with, by involving you in something you find difficult to extricate yourself from, because you are ONLY raised to a **GIVEN *power*** that causes you to roll up on yourself, your family, and your people! As a matter of fact, you are probably clueless to the fact that you need to extricate yourself from anything at all. (see SCHOOL)

Employee – servant. (Black's Law Dictionary 5th edition) [see employer and supervisor]

Employer – master. (Black's Law Dictionary 5th edition) [see employee and supervisor]

Entertainment – maintain in SERVICE, or HOLD IN THE MIND! I added this word to clarify the word "Xenodochium," which is the LEGAL WORD for HOSPITAL! (see Xenodochium)

Europe** – *white face*, the land of white people, as distinguished from the **Ethiop**ians, black-faced people, or tawny inhabitants of Asia and Africa. (Webster's American Dictionary of the English Language, 1828 edition) [It is crucial that the website traveler know that the term "op***" **means face**. So, ***Eur*** (pale) ***op***[e] (face) and ***Eth*** (dark) ***op*** (face) explain it all. Also, keep in mind that whenever you see "***Eth***" it means dark and signifies melanin, or dark color. For example, the terms ethics, ethnic, and ethereal all pertain to people whose complexions are dark. Although they use the word "black" to define Ethiopian, that is a misnomer, because this same dictionary says that *black* means pale, wan, bleached, and white in color.] (See Greek, Black, and Gray)

Fiat money – paper currency NOT backed by gold, or silver. (Black's Law Dictionary 5th edition)

***God** – gud, gott, guth, **goth**. (I put the bold. To know God, you MUST see the definition of goth!)

*__Goth__ – One of an ancient and distinguished tribe or nation, which inhabited Scandinavia, now Sweden, and Norway, whose language is now retained in those countries, and a large portion of it is found in England. One rude or uncivilized; a barbarian. (American Dictionary of the English Language, 1828 edition) [Remember rude is another word for ruddy and/or crude. For those that are geographically challenged (like me), check out this crystal clear BOMBSHELL of a definition from the Random House College Dictionary, 1976 edition.] **Goth** – a member of a ***TEUTONIC*** people who, in the 3rd to 5th centuries, invaded and settled in parts of the Roman Empire. A rude person, a barbarian; Goth-people. [If you still don't get it, then let me slap you upside your head with the definition of Teutonic.] **Teutonic means GERMAN**; noting or pertaining to the Northern European stock that includes the German, Scandinavian, British, and related peoples. [If that definition didn't do it for you, then here is Teutonic from Webster's American Dictionary of the English Language, 1828.] **Teutonic** means pertaining to a people of Germany, or their language; as a noun, the language of the Teutons, the parent of the German, Dutch, and Anglo Saxon or Native English. [If you are at this website, then you probably already knew that **the word God means German**; however, there is nothing like seeing it in writing. In God we Trust, means in Germans we Trust. Do you trust Nazis? So, prayers to God, go to Germans. Moreover, prayers to the Father, go to their father, the Pope of Rome, because he is their head **Pharisee**. (see Pharisee)]

***__Gray__ – This is probably Graecus, Greek, Graii, the **name given to the *Greeks*, on account of their FAIR COMPLEXION** compared with the Asiatics and Africans. [**See Europe**] (Webster's American Dictionary of the English Language, 1828 edition) [Be advised that the dictionary italicized the word Greek, but DID NOT capitalize the words "fair complexion", nor bold the passage. I did that to make sure you actually see it. Bolding, capitalizing, and underlining is something I add often.] This definition puts a WHOLE new spin on the ET terms "the Grays and the Reptilians." (**See Greek, Greek Love, Hellenize, Iscariot, Jacob, and Reptile**)

***<u>**Greek**</u> – Pertaining to Greece. [**See Gray**] (<u>Webster's American Dictionary of the English Language</u>, 1828 edition) Now this gets REALLY deep when you **look above and see the definition of** "**gray**." Here is the definition of Greek from a different dictionary. <u>**Greek**</u> – A CHEATER [archaic]. (<u>Random House Dictionary</u>, 1987 second edition Unabridged); Here still is a third dictionary definition. <u>**Greek**</u> – ANYTHING UNINTELLIGIBLE, as in speech, writing, etc. (<u>Random House College Dictionary</u>, 1976 edition) I added all the capitalization. Don't forget to **look at the above definition of GRAY**!

*<u>**Greek Love**</u> – slang for ANAL INTERCOURSE, or Greek Way. (<u>Random House Dictionary</u>, 1987 Second edition Unabridged) Now, I'm going to say that grown folks should do what grown folks want to do, but this, AIN'T YOUR SH*T! This is the WAY of the GRAY! So-called Black people are NOT Black, NOT pale (for the most part), and definitely NOT GRAY aka Greek (see Gray)! This is NOT your stuff, nor is it your way. I added the capitalization.

***<u>**Gymnasium**</u> – naked. (<u>Webster's American Dictionary of the English Language</u>, 1828 edition) A place where **Greek** youths met for exercise and discussion; **to train naked**; (in continental Europe, esp. Germany) a classical school preparatory to the universities. (<u>Random House College Dictionary, 1976 edition</u>) I only added the bold. [Website travelers should be aware that the gymnasium is where elder male Greek pederasts gathered naked, to pursue young boys (also naked) and vie for their affections. Once they set their sights on a boy, then they had to woo the boy's parents with gifts and money to prove that out of all their son's male suitors, they were the most financially stable lover, teacher, and mentor for the youth. Once the boy became a certain age (I've forgotten what the age was), then he could begin dating women and seeking a wife. That is, if he still wanted to deal with women by then. Like I said before, this IS, and always has been, their culture. This is one of the reasons they were cursed. Of course, our brothas, being accomplished athletes, began to emulate these pale conquering invaders by attending their naked, all male events. I seriously doubt that they had

full awareness of what the gymnasium was really all about (**see Greek Love**). There are some things they don't want us to know about, when it comes to them. So, they enforce "restrictions," because "restrictions" show the appearance of something "**better than**" by giving an air of superiority. This is why **Europeans STILL have many RESTRICTED organizations and clubs, that are exclusively for so-called Whites only. To this day, we are NOT ALLOWED**! They are very Venusian (oriented to beds and/or sex) by nature. *When brothas first started to attend gymnasiums, the European males would stand around, point at their phallus', and laugh at them to make them feel insecure about their anatomy*. They claim it was due to the lack of circumcision, but it was probably more a reaction from being embarrassed about the large size of the brotha man's anatomy, when compared to their own. In other words, if mine is too small and insignificant, then I can make myself feel better by making you feel self-conscious about the appearance of yours. **It is too bad that brothas didn't honor the segregation and simply stay away, because now, our men have become hell(enized) and sexually confused too**. Due to the misogynistic nature of these Greek (Nazi German Judeo-Christian) men, there were never any women allowed at these events. That is still the case with many of their "**Old Boy**" network clubs. When it comes to them, the same game is going on all the time. We just don't see it, because we don't comprehend what the game really is.]

***Hell(as)** – ancient Greek name of Greece.

***Hellenize** – to make Greek in character; *to adopt Greek ideas, or customs*; **to imitate the Greeks**. (See Greek, Greek Love, Gray, Iscariot, demon, black, and Jacob)

Heterochthonous – not indigenous; foreign (opposed to autochthonous). [hetero – different, other + chthon – the earth, land, country] See AUTOCHTHONOUS – which is the opposite of Heterochthonous.

*__Hue__ – color, **form**, **image**, beauty; **to form**, to __feign__, to __simulate__. This may be contracted, for in Swedish *hyckla*, Danish *hykler*, is to play the hypocrite. (Webster's American Dictionary of the English Language, 1828 edition) I added the bold and underlined the words – the dictionary did not. ***I told everyone in 2001, at my very first lecture, that "Hue" meant imitation (which is the same thing as feign (fake, invented) and simulate (counterfeit, pretended)***. I hope this puts the issue to rest FOREVER! We are NOT Hue-man! (see human below)

*__Human__ – German menschlich (**manlike**); belonging to **man, or mankind**; **RELATING TO** the race of man; having the QUALITIES of a man; PROFANE, NOT SACRED OR DIVINE. (Webster's American Dictionary of the English Language, 1828 edition) I added the bold, capitals, and underline. [So, it seems **you're NOT human either**! They make it very clear that there is a difference between man, or man*kind* aka man-genus. Furthermore, **relating to** the race of man, does not **make** you "BE" the race of man.] Now the dictionary goes one step further and advises the reader to SEE MAN. So, go see what they said about MAN, because they try to trick and confuse you with it.

__India__ – 1604 **originally Applied to America, or some parts of it. (Oxford's Universal Dictionary on Historical Principles, 1933 edition) I guess Christopher Columbus aka Christobal Colon WAS indeed looking for America after all. It appears that the primary reason he was considered lost, is because he landed on Haiti, one of America's islands, and didn't actually make it to his primary destination – the actual Continental Mainland. The place we call India today, was actually called Bharat, NOT India. I added the bold, but I THINK the capitals were there. I'm can't recall for sure.

*__Iscariot__ – Greek word #2469, inhabitant of Kerioth; Iscariotes i.e., Keriothite; **an epithet of Judas the TRAITOR**! [Epithet means a word or phrase used invectively as a term of abuse, or contempt, to express hostility, or the like. By the way, I added the bold.] It is probably Hebrew word #377 "ish", a male person; mankind, and #7149 "city". (Strong's Exhaustive Concordance of the Holy Bible) So, Judas Iscariot is the traitor from a male city of mankind. Remember, under European domination, a place was only called a "city" if it was under the jurisdiction of a Romansh Catholic Bishop. Aren't the bishops always being brought up on charges for pressing children, especially boys, into Greek Love? Isn't that what those sickos at NAMBLA promote. This is one method used to perpetuate the Greek Way into becoming so prevalent. It was spread and promoted to children through their church. This IS their culture. The misruling faction of those that are uncouth and crude (rude/ruddy) were (and may still be) determined to destroy the coutheans – also spelled cutheans, because **Judas was so jealous and filled with envy** toward the remnant of selectively anointed ones. Cutheans are those that are cuth/couth (known, acquainted with. Cuth/couth means to know and is the same word as can or ken). These Kirioth aka Iscariot Jews were cursed for their behaviors. They practice incest to such an extreme that they have lost their melanin as well as their sanity. Some of this is discussed in 1 Corinthians 5:1. They pervert the administration of justice for money. They enrich themselves by impoverishing and stealing the possessions of others. They abuse the elderly, children, women, the weak, the poor, and those with melanin. It is Judas [see Jew] that broke their covenant with their god, because they despised the Lord and his laws. It wasn't us. Our violations were against other people, not against Nature, nor our Creator. We stuck around to carry Judas through, like a cart and carriage. That is what Cart[hage] is about. We have the strength to bear, carry, and sustain them, but they keep trying to destroy us. We transmute and transform the frequency on the land. Trees do it for the air. Dolphins and certain whales do it for the oceans. Ants, bees, and butterflies do it through roots reaching beneath the soil. Unfortunately, these fools don't get it. We are all here trying to SHOW them the way out, but they are killing their saviors i.e., trees, air, underwater

mammals, us, insects, and Earth herself. If they kill us, then they kill themselves. It has nothing to do with material possessions labeled wealth. Judas, Esau, Edom, and Adam are all one in the same when it comes to their curse. They are Europe's, misguided grays i.e., Graeco-Romans. ***They prayed to their god to take the curse off of them and put it onto another people and onto another land. When this didn't occur, they resorted to vile forms of ritual sorcery***, **and personally hand delivered their curse to other lands and other people by force**. Rather than feeling regret for the rope they put around their own necks, which resulted in them being banished, they only felt revenge. So, they went around the world, wrongfully coveting, which means desiring, their neighbors' possessions. They killed them off, stole their identities, and ultimately traded places with them. Instead of evolving through introspection, their stance is that, "**If we go down, then we're going to Hellenize EVERYONE and take them all to hell with us!**" They are being watched and they are being judged, because they refuse to unify with the frequency of the cosmos. They are running out of the time that the anointed remnant extended for THEIR salvation, not for ours! Unfortunately, some of the anointed have become so Hellenistic that their survival is now in question too. [See Hell(as), Hell(enize), and Greek Love above]

***Jacob** – heel catcher i.e., a **SUPPLANTER**. (This is word #3290 in the Strong's Exhaustive Concordance in the Hebrew Dictionary portion of the book). [I added the bold and capital.] So – called Black folks MUST KNOW THIS, if they don't know spit else! So pay attention and keep up! This word is from word #6117 in the same book. It means to **SEIZE** by the heel; to CIRCUMVENT; also to RESTRAIN.) **SEE SUPPLANTER** and **REPTILE**! [If you have melanin, then the reason you MUST KNOW THIS, is because you have been bum-rushed and replaced all over the Earth – especially in America! Like SeaStar (sister) Lady Alice says, "There are GI folks claiming our Sovereign identity all over the world." The term "**GI**" means "**government issued**". [Alice is my ex – Los

Angeles County Sheriff Deputy buddy.] Look at some of the Earth's power points. In America, Hawaii, Khemet (Egypt), India, Canada, and South Africa (to name just a few), pale skinned, light-eyed, people claim to be the tawny, brown, sable, olive, and/or copper-colored Aboriginal Indigenous Autochthonous people that they have seized (**see seize**), conquered, supplanted, and replaced. Talk about the crime of identity fraud and identity theft. They are the masters of it. (Remember to **look up seize, supplanter, and reptile**.)

***Jew** – A contraction of **"JUDAS**" or Judah. A Hebrew, or Israelite. (Webster's American Dictionary of the English Language, 1828 edition) This doesn't appear to be much, but it is AN AMAZING FIND! Prior to acquiring this dictionary, I had only seen that Jew was a contraction for Judah. Imagine my excitement when I saw for the FIRST TIME EVER that the term "**Jew**" i**s a contraction for** "**Judas**." (That is why I put it in bold quotes.) To comprehend the significance of the word Jew, as Judas, one must **see the definition for "JUDAS" below**.

***Judas** – a person TREACHEROUS ENOUGH TO BETRAY A FRIEND; traitor; (of an animal) used as a decoy TO LEAD OTHER ANIMALS TO SLAUGHTER. (Random House College Dictionary, 1976 edition) [The Strong's Exhaustive Concordance expands the word Judas even further.] It is Greek word #2455 and leads you to Hebrew word #3063 "**celebrated**," which goes to Hebrew word #3034 and literally means "**to use**". It goes from there to #3027, which means hand, pain, sore, custody, debt, ordinances, and force. The Concordance also indicates that Judas also means to throw a stone/arrow at; to cast out; to make confess. [These are only a few meanings amongst contradictory others.] Judas meaning "**celebrated**," which in the Concordance's Hebrew Dictionary, as word #7673, means **to fail**; to repose; to desist; cause, or make to cease; suffer to be lacking; put down; rid; take away. [It boils down to "interrupting and causing to

set".] Word #2287 means to move in a circle; keep, hold; **reel to and fro**. [Isn't Satan (adversary) moving to and fro the Earth?] Word #1984 means to be clear originally of sound, but USUALLY OF COLOR; [**Clear-colored people are NOT you**!] To be foolish; be feign self. [Personally, I have NEVER seen such foul definitions of the word "**celebrated**," – which is what Judas and Judah mean.] Judas/Jew also mean Jude. According to the Christian Bible, Book of Jude chapter 1, "**Jude" was supposed to be the SERVANT of Jesus Christ**. Not the ruler! **Judas' surname was Iscariot**. (See Iscariot)

***__Love__ – lewdness (Webster's American Dictionary of the English Language, 1828 edition) We found this tidbit looking for whoreship. (See whoredom and whore)

__Black's Law Dictionary 2nd Edition__

__Bankruptcy__ - The state or condition of one who is a bankrupt; amenability to the bankrupt laws; the condition of one who has committed an act of bankruptcy, and is liable to be proceeded against by his creditors therefor, or of one whose circumstances are such that he is entitled, on his voluntary application, to take the benefit of the bankrupt laws. The term is used in a looser sense as synonymous with "insolvency,"

__Citizen__ - In general, A member of a free city or jural society, (civitas.) possessing all the rights and privileges which can be enjoyed by any person under its constitution and government, and subject to the corresponding duties.

__Resident__ - One who has his residence in a place. "Resident" and "inhabitant" are distinguishable in meaning. The word "inhabitant" implies a more fixed and permanent abode than does "resident;" and a resident may not be entitled to all the privileges or subject to all the duties of an inhabitant. Frost v. Brisbin, 19 Wend. (N. Y.) 11, 32 Am. Dec. 423. Also a tenant, who was obliged to reside on his lord's land, and not to depart from the same; called, also, "homme levant et couch- ant," and in Normandy, "resscant du fief."

Reside - To live somewhere such as a town or state.

Residence - Living or dwelling in a certain place permanently or for a considerable length of time. The place where a man makes his home, or where he dwells permanently or for an extended period of time. The difference between a residence and a domicile may not be capable of easy definition; but everyone can see at least this distinction: A person domiciled in one state may, for temporary reasons, such as health, reside for one or more years in some other place deemed more favorable. He does not, by so doing, forfeit his domicile in the first state, or, in any proper sense, become a non-resident of it, unless some intention, manifested by some act, of abandoning his residence in the first state is shown. Walker's Estate v. Walker, 1 Mo. App. 404. "Residence" means a fixed and permanent abode or dwelling-place for the time being, as contradistinguished from a mere temporary locality of existence. So does "inhabitancy ;" and the two are distinguishable in this respect from "domicile." In re Wrigley, 8 Wend. (N. Y.) 134. As they are used in the New York Code of Procedure, the terms "residence" and "resident" mean legal residence; and legal residence is the place of a man's fixed habitation, where his political rights are to be exercised, and where he is liable to taxation. Houghton v. Ault, 10 How. Prac. (N. Y.) 77. A distinction is recognized between legal and actual residence. A person may be a legal resident of one place and an actual resident of another. He may abide in one state or country without surrendering his legal residence in another, if he so intends. Ilis legal residence may be merely ideal, but his actual residence must be substantial. He may not actually abide at his legal residence at all, but his actual residence must be his abiding place. Tipton v. Tipton. 87 Ky. 243. 8 S. W. 440; Hinds v. Hinds. 1 Iowa, 30; Fitzgerald v. Arel, 03 Iowa, 101. 18 N. W. 713, 50 Am. Rep. 733; Ludlow v. Szold, 00 Iowa, 175, 57 N. W. 070.

Federal - In constitutional law. A term commonly used to express a league or compact between two or more states. In American law. Belonging to the general government or union of the states. Founded on or organized under the constitution or laws of the United States. The United States has been generally styled, in American political and judicial writings, a "federal government." The term has not been imposed by any specific constitutional authority. but only expresses the general sense and opinion upon the nature of the form of government. In recent years, there is observable a disposition to employ the term "national" in speaking of the government of the Union. Neither word settles anything as to the nature or powers of the government. "Federal" is somewhat more appropriate if the government is considered a union of the states; "national" is preferable if the view is adopted that the state governments and the Union are two distinct systems, each established by the people directly, one for local and the other for national purposes. See United States v. Cruikshank, 92 U. S. 542, 23 L Ed. 588; Abbott.

Inhabitant - One who resides actually and permanently In a given place, and has his domicile there. Ex parte Shaw, 145 U. S. 444, 12 Sup. Ct. 935, 36 L. Ed. 768; The Pizarro, 2 Wheat. 245, 4 L. Ed. 226. "The words 'inhabitant,' 'citizen,' and 'resident,' as employed in different constitutions to define the qualifications of electors, mean substantially the same thing; and one is an inhabitant. resident, or citizen at the place where he has his domicile or home." Cooley, Const. Dim. *600. But the terms "resident" and "inhabitant" have also been held not synonymous, the latter implying a more fixed and permanent abode than the former, and importing privileges and duties to which a mere resident would not be subject. Tazewell County v. Davenport, 40 111. 197.

Insolvency - The condition of a person who is insolvent; inability to pay one's debts; lack of means to pay one's debts. Such a relative condition of a man's assets and liabilities that the former, if all made immediately available, would not be sufficient to discharge the latter. Or the condition of a person who is unable to pay his debts as they fall due, or in the usual course of trade and business. See Dewey v. St. Albans Trust Co., 56 Vt. 475. 48 Am. Rep. 803; Toof v. Martin, 13 Wall. 47, 20 L. Ed. 4S1; Miller v. Southern Land & Lumber Co., 53 S. C. 304, 31 S. E. 2S1 ; Leitch v. Ilollis- ter, 4 N. Y. 215; Silver Valley Mining Co. v. North Carolina Smelting Co., 119 N. C. 417, 25 S. E. 954; French v. Andrews, 81 Ilun. 272, 30 N. Y. Supp. 796; Appeal of Eowersox, 100 Pa. 438, 45 Am. Rep. 387; Van Riper v. Poppenhausen. 43 N. Y. 75; Phipps v. Harding, 70 Fed. 470, 17 C. C. A 203. 30 L. R. A. 513; Shone v. Lucas, 3 Dowl. & R. 218; Herrick v. Rorst, 4 Hill (N. Y.) 652; Atwater v. American Exch. Nat. Bank, 152 111. 605, 38 N. E. 1017; Rug- gles v. Cannedy, 127 Cal. 290, 53 Pac. 916, 46 L. R. A. 371. As to the distinction between bankruptcy and insolvency, see BANKRUPTCY.

Legislature - The department, assembly, or body of men that makes laws for a state or nation; a legislative body.

Statute - An act of the legislature; a particular law enacted and established by the will of the legislative department of government, expressed with the requisite for- malities. In foreign and civil law. Any particular municipal law or usage, though resting for its authority on judicial decisions, or the practice of nations. 2 Kent, Comm. 450. The whole municipal law of a particular state, from whatever source arising. Story, Confl. Laws.

Treaty - In international law. An agreement between two or more independent states. Brande. An agreement, league, or contract between two or more nations or sovereigns, formally signed by commissioners properly authorized, and solemnly ratified by the several sovereigns or the

supreme power of each state. Webster; Cherokee Nation v. Georgia, 5 Pet. 00, 8 L. Ed. 25; Edye v. Robertson, 112 U. S. 5S0, 5 Sup. Ct. 247, 28 L. Ed. 798; Holmes v. Jennison. 14 Pet. 571, 10 L. Ed. 579; U. S. v. Rauscher, 119 U. S. 407, 7 Sup. Ct. 234, 30 L. Ed. 425; Ex parte Ortiz (C. C.) 100 Fed. 902. In private law, "treaty" signifies the discussion of terms which immediately precedes the conclusion of a contract or other transaction. A warranty on the sale of goods, to be valid, must be made during the "treaty" preceding the sale. Chit. Cont. 419; Sweet.

Constitution - In public law, the organic and fundamental law of a nation or state, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign powers. In a more general sense, any fundamental or important law or edict; as the Novel Constitutions of Justinian; the Constitutions of Clarendon.

Government - 1 The regulation, restraint, supervision, or control which is exercised upon the individual members of an organized jural society by those invested with the supreme political authority, for the good and welfare of the body politic; or the act of exercising supreme political power or control.2. The system of polity in a state; that form of fundamental rules and principles by which a nation or state is governed, or by which individual members of a body politic to regulate their social actions; a constitution, either written or unwritten, by which the rights and duties of citizens and public officers are prescribed and defined, as a monarchical government, a republican government, etc. Webster.3. An empire, kingdom, state or independent political community; as in the phrase, "Compacts between independent governments."4. The sovereign or supreme power in a state or nation.5. The machinery by which the sovereign power in a state expresses its will and exercises its functions; or the framework of political institutions, departments, and offices, by means of which the executive, judicial, legislative, and administrative business of the state Is carried on.6. The whole class or body of office-holders or functionaries considered in the aggregate, upon whom devolves the executive, judicial, legislative, and administrative business of the state.7. In a colloquial sense, the United States or its representatives, considered as the prosecutor in a criminal action; as in the phrase, "the government objects to the witness."

"Governments are corporations", in as much as every government is an artificial person, an abstraction, a creature of the mind only, a government can deal only with artificial persons. The

imaginary, having no reality or substance cannot create or attain parity with the real. **Penhallow V. Doane's**,

Commerce - Intercourse by way of trade and traffic between different peoples or states and the citizens or inhabitants thereof, including not only the purchase, sale, and exchange of commodities, but also the instrumentalities and agencies by which it is promoted and the means and appliances by which it is carried on, and the transportation of persons as well as of goods, both by land and by sea. Brennan v. Titusville, 153 U. S. 289, 14 Sup. Ct. 829, 38 L. Ed. 719; Railroad Co. v. Fuller, 17 Wall. 5GS, 21 L. Ed. 710; Winder v. Caldwell, 14 How. 444, 14 L. Ed. 487; Cooley v. Board of Wardens, COMMERCE 221 COMMERCIAL 12 How. 299, 13 L. Ed. 996;Trade-Mark Cases. 100 U. S. 90, 25 L. Ed. 550; Gibbons v. Ogden, 9 Wheat. 1, 6 L. Ed. 23; Brown v. Maryland, 12 Wheat 448, 6 L. Ed. 67S; Bowman v. Railroad, 125 U. S. 465, 8 Sup. Ct. 6S9, 31 L. Ed. 700; Leisy v. Hardin, 135 U. S. 100. 10 Sup. Ct. 681, 34 L. Ed. 128; Mobile County v. Kimball, 102 U. S. 691, 26 L. Ed. 238; Corfield v. Coryell, 6 Fed. Cas. 510; Fuller v. Railroad Co., 31 Iowa, 207; Passenger Cases, 7 How. 401, 12 L. Ed. 702; Robbins v. Shelby County Taxing Dist., 120 U. S. 4S9, 7 Sup. Ct. 592, 30 L. Ed. 094; Arnold v. Yanders, 50 Ohio St. 417, 47 N. E. 50, 60 Am. St. Rep. 753; Fry v. State, 63 Ind. 502, 30 Am. Rep. 23S; Webb v. Dunn, 18 Fla. 724; Oilman v. Philadelphia, 3 Wall. 724, 18 L. Ed. 96. Commerce is a term of the largest import. It comprehends intercourse for the purposes of trade in any and all its forms, including the transportation, purchase, sale, and exchange of commodities between the citizens of our country and the citizens or subjects of other countries, and between the citizens of different states. The power to regulate it embraces all the instruments by which such commerce may be conducted. Welton v. Missouri, 91 U. S. 275. 23 L. Ed. 347. Commerce is not limited to an exchange of commodities only, but includes, as well, intercourse with foreign nations and between the states; and includes the transportation of passengers. Steamboat Co. v. Livingston, 3 Cow. (N. Y.) 713; People v. Raymond, 34 Cal. 492. The words "commerce" and "trade" are synonymous, but not identical. They are often used interchangeably; but, strictly speaking, commerce relates to intercourse or dealings with foreign nations, states, or political communities, while trade denotes business intercourse or mutual traffic within the limits of a state or nation, or the buying, selling, and exchanging of articles between members of the same community. See Hooker v. Vandewater, 4 Denio (N. Y.) 353, 47 Am. Dec. 258; Jacob; Wharton.

In Propria Persona - In one's own proper person.In quo quis delinquit, in eo de jure est puniendus. In whatever thing one offends, in that is he rightfully to be punished. Co. Litt. 2336; Wing. Max. 204, max. 58. The punishment shall have relation to the nature of the offense.

Pro Se - For himself; in his own behalf; in person.

Civiliter Mortuus - Civilly dead ; dead in the view of the law. The condition of one who has lost his civil rights and capacities, and is accounted dead in law.

Instrument - A written document; a formal or legal document in writing, such as a contract, deed, will, bond, or lease. State v. Phillips, 157 Ind. 4S1, 62 N. E. 12; Cardenas v. Miller, 108 Cal. 250, 39 Pac. 783, 49 Am. St Rep. 84; Benson v. McMahon, 127 U. S. 457, 8 Sup. Ct 1240, 32 L. Ed. 234; Abbott T. Campbell, 60 Neb. 371, 95 N. W. 592. In the law of evidence. Anything which may be presented as evidence to the senses of the adjudicating tribunal. The term "instruments of evidence" includes not merely documents, but witnesses and living things which may be presented for inspection. 1 Whart Ev.

Good Faith - Sometimes legally binding due diligence around the effort made, information given, or transaction done, honestly, objectively, with no deliberate intent to defraud the other party. Yet, this does not cover a sin of omission, something done or not done in negligence. Known also as bona fides, implied by law into commercial contracts.

Obligation - An obligation is a legal duty, by which a person is bound to do or not to do a certain thing. Civ. Code Cal.

Performance - The fulfillment or accomplishment of a promise, contract, or other obligation according to its terms.

Bond - A contract by specialty to pay a certain sum of money; being a deed or instrument under seal, by which the maker or obligor promises, and thereto binds himself, his heirs, executors, and administrators, to pay a designated sum of money to another; usually with a clause to the effect that upon performance of a certain condition (as to pay another and smaller sum) the obligation shall be void. U. S. v. Rundle. 100 Fed. 403, 40 C. C. A. 450; Turck v. Mining Co.. 8 Colo. 113. 5 Pac. 838; Boyd v. Boyd. 2 Nott & McC. (S. C.) 126. The word "bond" shall embrace every written undertaking for the payment of money or acknowledgment of being bound for money, conditioned to be void on the performance of any duty, or the occurrence of anything therein expressed, and subscribed and delivered by the party making it, to take effect as his obligation, whether it be sealed or unsealed; and, when a bond is required by law, an undertaking in writing without seal shall be sufficient. Rev. Code Miss. 1880,

Bank - 1. A bench or seat; the bench or tribunal occupied by the judges; the seat of judgment; a court. The full bench, or full court; the assembly of all the judges of a court A "sitting in bank" is a meeting of all the judges of a court usually for the purpose of hearing arguments on demurrers, points reserved, motions for new trial, etc., as distingished from the sitting of a single judge at the assises or at nisi prius and from trials at bar. But, in this sense, banc is the more usual form of the word. 2. An institution, of great value in the commercial world, empowered to receive deposits of money, to make loans, aud to issue its promissory notes, (designed to circulate as money, and commonly called "bank-notes" or "bank-bills,") or to perform any one or more of these functions. The term "bank" is usually restricted in its application to an incorporated body ; while a private individual making it his business to conduct banking operations is denominated a "banker." Hobbs v. Bank, 101 Fed. 75, 41 C. C. A. 205; Kiggins v. Munday, 19 Wash. 233, 52 Pac. 85G; Rominger v. Keyes, 73 Ind. 377; Oulton v. Loan Soc., 17 Wall. 117, 21 L. Ed. 018; Hamilton Nat. Bank v. American L. & T. Co.. 00 Neb. 67, 92 N. W. 190; Wells, Fargo & Co. v. Northern Pac. R- Co. (C. C.) 23 Fed. 469. Also the house or place where such business is carried on. Banks in the commercial sense are of three kinds, to-wit: (1) Of deposit; (2) of discount ; (3) of circulation. Strictly speaking, the term "bank" implies a place for the de- (K)sit of money, as that is the most obvious purpose of such an institution. Originally the business of banking consisted only in receiving deposits, such as bullion, plate, and the like, for safe-keeping until the depositor should see fit to draw it out for use, but the business, in the progress of events, was extended, and bankers assumed to discount bills and notes, and to loan money upon mortgage, pawn, or other security, and, at a still later period, to issue notes of their own, Intended as a circulating currency and a medium of exchange, instead of gold and silver. Modern bankers frequently exercise any two or even all three of those functions, but it is still true that an institution prohibited from exercising any more than one of those functions is a bank, in the strictest commercial sense. Oulton v. German Sav. & L. Soc., 17 Wall. 118, 21 L. Ed. 618; Rev. St U. S.

Money - A general, indefinite term for the measure and representative of value; currency; the circulating medium ; cash. “Money” is a generic term, and embraces every description of coin or bank-notes recognized by common consent as a representative of value in effecting exchanges of property or payment of debts. Hopson v. Fountain. 5 Humph. (Tenn.) 140. Money is used in a specific and also in a general and more comprehensive sense. In its specific sense, it means what is coined or stamped by public authority, and has its determinate value fixed by governments. In its more comprehensive and general sense, it means wealth.

Trust - 1. An equitable or beneficial right or title to land or other property, held for the beneficiary by another person, in whom resides the legal title or ownership, recognized and enforced by courts of chancery. See Goodwin v. McMinn, 193 Pa. 046, 44 Atl. 1094, 74 Am. St. Rep. 703; Beers v. Lyon, 21 Conn. 613; Seymour v. Freer, 8 Wall. 202, 19 L. Ed. 300. An obligation arising out of a confidence reposed in the trustee or representative, who has the legal title to property conveyed to him, that he will faithfully apply the property according to the confidence reposed, or, in other words, according to the wishes of the grantor of the trust. 4 Kent Comm. 304; Willis, Trustees, 2; Beers v. Lyon, 21 Conn. 613; Thornburg v. Buck, 13 Ind. App. 446, 41 N. E. 85. An equitable obligation, either express or Implied, resting upon a person by reason of a confidence reposed in him, to apply or deal with the property for the benefit of some other person, or for the benefit of himself and another or others, according to such confidence. McCreary v. Gewinner, 103 Ga. 528, 29 S. E. 9G0. A holding of property subject to a duty of employing it or applying its proceeds ac- cording to directions given by the person from whom it was derived. Munroe v. Crouse. 59 Hun. 248, 12 N. Y. Supp. 815.

Grantor/Trustor/Creator/ - A word occasionally, though rarely, used as a designation of the creator, donor, or founder of a trust

Trustee - The person appointed, or required by law, to execute a trust; one in whom an estate, interest, or power is vested, under an express or implied agreement to administer or exercise it for the benefit or to the use of another. "Trustee" is also used in a wide and perhaps inaccurate sense, to denote that a per- son has the duty of carrying out a transaction, in which lie and another person are in- terested, in such manner as will be most for the benefit of the latter, and not in such a way that he himself might be tempted, for the sake of his personal advantage, to neg- lect the interests of the other. In this sense, directors of companies are said to be "trus- tees for the shareholders." Sweet

Beneficiary - One for whose benefit a trust is created; a cestui que trust. 1 Story, Eq. Jur.

Lien - A qualified right of property which a creditor has in or over specific property of his debtor, as security for the debt or charge or for performance of some act. In every ease in which property, either real or personal, is charged with the payment of a debt or duty, every such charge may be denominated a lien on the property. Whitak. Liens, p. 1. A lien is a charge imposed upon specific property, by which it is made security for the performance of an act Code Civil Proc. Cal.

Note - 1. A written statement by an individual to pay a sum of money to another individual, or the bearer of the note at a specified period in time. It is a compromise between two individuals. 2. A bond that matures in five years or less. 3. A bill of exchange issued by the notary public that is addressed to the payer in the event of nonpayment or nonacceptance. If the event occurs again, the notary public reserves the right to take legal action on the payer. 4. A small notification that will come of assistance at a later time.

Public - Pertaining to a state, nation, or whole community; proceeding from, re- lating to, or affecting the whole body of people or an entire community. Open to all; notorious. Common to all or many; general ; open to common use. Morgan v. Cree, 46 Vt. 786, 14 Am. Rep. 640; Crane v. Waters (C. C.) 10 Fed. 621; Austin v. Soule, 36 Vt. 650; Appeal of Eliot, 74 Coun. 586, 51 Atl. 558; 0'IIara v. Miller, 1 Kulp (Pa.) 295. A distinction has been made between the terms "public" aud "general." They are sometimes used as synonymous. The former term is applied strictly to that which concerns all the citizens aud every member of the state; while the latter includes a lesser, though still a large, portion of the community. 1 Greenl. Ev.

Private - Affecting or belonging to private individuals, as distinct from the public generally. Not official.

Foreign Creditor - One who resides in a state or country foreign to that where the debtor has his domicile or his property.

Abandonment - the voluntary relinquishment of all rights, title, or claim to property that rightfully belongs to the owner of the property. Stocks, bonds or mutual funds held in a brokerage account where the owner can't be located or contacted is an example of abandonment. The laws of escheat may cause the property to be taken control by the state.

Acquaintance - Having the knowledge of or being familiar with a person or thing.

Acquittance - The final premium payment and discharge of a fully paid loan documented by a receipt from the mortgagee.

Claim - 1. A legal assertion; a legal demand; Taken by a person wanting compensation, payment, or reimbursement for a loss under a contract, or an injury due to negligence. 2. Amount a claimant demands.

Interest - In property. The most general term that can be employed to denote a property in lands or chattels. In its application to lands or things real, it is frequently used in connection with the terms "estate." "right," and "title," and, according to Lord Coke, it properly includes them all. Co. Litt. 345 ft. See Ragsdale v. Mays. 65 Tex. 257; Hurst v. Hurst, 7 W. Va. 297; New York v. Stone, 20 Wend. (N. Y.) 142; State v. Mc- Kellop, 40 Mo. 185; Loventlial v. Home Ins. Co., 112 Ala. 110. 20 South. 419, 33 L. R. A. 258, 57 Am. St. Rep. 17. More particularly it means a right to have the advantage accruing from anything; any right in the nature of property, but less than title; a partial or undivided right; a title to a share. The terms "interest" and "title" are not synonymous. A mortgagor in possession, and a purchaser holding under a deed defectively executed, have, both of them, absolute as well as insurable interests in the property, though neither of them has the legal title. Hough v. City F. Ins. Co., 29 Conn. 20, 76 Am. Dec. 581.

Security - Protection; assurance; Indemnification. The term is usually applied to an obligation, pledge, mortgage, deposit, lien, etc., given by a debtor in order to make sure the payment or performance of his debt, by furnishing the creditor with a resource to be used in case of failure in the principal obligation. The name is also sometimes given to one who becomes surety or guarantor for another. See First Nat. Bank v. Hollingsworth, 78 Iowa, 575, 43 N. W. 536, 6 L. B. A. 92; Storm v. Waddell. 2 Sandf. Ch. (N. Y.) 507; Goggins v. Jones, 115 Ga. 596, 41 S. E. 995; Jennings v. Davis, 31 Conn. 139; Mace v. Buchanan (Tenn. Ch.) 52 S. W. 507.

Charge - To impose a burden, obligation, or lien; to create a claim against property; to claim, to demand; to accuse; to instruct a jury on matters of law. In the first sense above given, a jury in a criminal case is "charged" with the duty of trying the prisoner (or, as otherwise expressed, with his fate or his "deliverance") as soon as they are impaneled and sworn, and at this moment the prisoner's legal "jeopardy" begins. This is altogether a different matter from "charging" the jury in the sense of giving them instructions on matters of law, which is a function of the court. Tomasson v. State, 112 Tenn. 590, 79 S. W. 803.

Record - A written account of some act, transaction, or instrument, drawn up, under authority of law, by a proper officer, and designed to remain as a memorial or permanent evidence of the matters to which It relates. There are three kinds of records, viz.: (1) judicial, as an attainder; (2) ministerial, on oath, being an office or inquisition found; (3) by way of conveyance, as a deed enrolled. Wharton. In practice. A written memorial of all the acts and proceedings in an action or suit in a court of record. The record is the official and authentic history of the cause, consisting in entries of each successive step in the proceedings, chronicling the various acts of the parties and of the court, couched in the formal language established by usage, terminating with the judgment

rendered in the cause, and intended to remain as a per- petual and unimpeachable memorial of the proceedings and judgment. At common law, "record" signifies a roll of parchment upon which the proceedings and transactions of a court are entered or drawn up by its officers, and which is then deposited in its treasury in perpetuam rei memoriam. 3 Steph. Comm. 583 ; 3 Bl. Comm. 24. A court of record is that where the acts and judicial proceedings are enrolled in parchment for a perpetual memorial and testimony, which rolls are called the "records of the court," and are of such high and supereminent authority that their truth is not to be called in question. Hahn v. Kelly, .34 Cal. 422, 94 Am. Dec. 742. And see O'Connell v. Hotchkiss, 44 Conn. 53; Murrah v. State, 51 Miss. 656; Bellas v. Mc- Carty, 10 Watts (Pa.) 24; U. S. v. Taylor, 147 U. S. 695, 13 Sup. Ct. 479, 37 L Ed. 335; State v. Godwin, 27 N. C. 403, 44 Am. Dec. 42; Vail v. Iglehart. 69 111. 334; State v. Anders, 64 Kan. 742. 68 Pac. 668: Wilkinson v. Railway Co. (C. C.) 23 Fed. 502; In re Chris- tern, 43 N. Y. Super. Ct. 531. In the practice of appellate tribunals, the word "record" is generally understood to mean the history of the proceedings on the trial of the action below, (with the pleadings, offers, objections to evidence, rulings of the court, exceptions, charge, etc.,) in so far as the same appears in the record furnished to the appellate court in the paper-books or other transcripts. Hence, derivatively, It means the aggregate of the various judicial steps taken on the trial below, in so far as they were taken, presented, or allowed in the formal and proper manner necessary to put them upon the record of the court This is the meaning in such phrases as "no error in the record," "contents of the record," "outside the record," etc.

Discharge - The opposite of charge; hence to release ; liberate; annul; unburden; disencumber In the law of contracts. To cancel or unloose the obligation of a contract; to make an agreement or contract null and inoperative. As a noun, the word means the act or instrument by which the binding force

Debtor - One who owes a debt; he who may be compelled to pay a claim or demand.

Creditor - A person to whom a debt Is owing by another person, called the “debtor.” Mohr v. Elevator Co., 40 Minn. 343, 41 N. W. 1074; Woolverton v. Taylor Co., 43 111. App. 424; Insurance Co. v. Meeker, 37 N. J. Law, 300; Walsh v. Miller, 51 Ohio St 462, 38 N. E. 381. The foregoing is the strict legal sense of the term; but in a wider sense it means one who has a legal right to demand and recover from another a sum of money on any account whatever, and hence may include the owner of any right of action against another, whether arising on contract or for a tort, a penalty, or a forfeiture. Keith v. Hiner, 63 Ark. 244, 38 S. W. 13; Bongard v. Block, 81

111. 1S6, 25 Am. Rep. 276; Chalmers v. Sheehy, 132 Cal. 459, 64 Pac. 709, 84 Am. St Rep. 62; Pierstorff v. Jorges, 86 Wis. 128, 56 N. W 735, 39 Am. St Rep. 881. Classification. A creditor is called a "simple contract creditor," a "specialty creditor," a "bond creditor," or otherwise, according to the nature of the obligation giving rise to the debt. Other compound and descriptive terms.

De jure - Of right; legitimate; lawful ; by right and just title. In this sense it is the contrary of de facto, (which see.) It may also be contrasted with de gratia, in which case it means "as a matter of right," as de gratia means "by grace or favor." Again it may be contrasted with de wqui- tate; here meaning "by law," as the latter means "by equity." See GOVERNMENT.
De jure decimarum, originem ducens de jure patronatus, tunc cognitio spec- tat at legem civilem, 1. e., communem.
Godb. 63. With regard to the right of tithes, deducing its origin from the right of the patron, then the cognizance of them belongs to the civil law; that is, the common law.

De facto - In fact, in deed, actually. This phrase is used to characterize an officer, a government, a past action, or a state of affairs which exists actually and must be accepted for all practical purposes, but which is illegal or illegitimate. In this sense it is the contrary of de jure, which means rightful. legitimate, just, or constitutional. Thus, an officer, king, or government de facto is one who is in actual possession of the office or supreme power, but by usurpation, or v.-ifi I respect to lawful title; while an officer, king, or governor de jure is one who has just claim and rightful title to the office or power, but who has never had plenary possession of the same, or is not now in actual possession. 4 Bl. Comm. 77, 78. So a wife de facto is one whose marriage is voidable by decree, as distinguished from a wife de jure, or lawful wife. 4 Kent, Comm. 30. But the term is also frequently used independently of any distinction from de jure; thus a blockade de facto is a blockade which is actually maintained, as distinguished from a mere paper blockade. As to de facto "Corporation," "Court," "Domicile," "Government," and "Officer," see those titles. In old English law. De facto means respecting or concerning the principal act of a murder, which was technically denominated factum. See Fleta, lib. 1, c. 27,

Status - The status of a person is his legal position or condition. Thus, when we say that the status of a woman after a decree nisi for the dissolution of her marriage with her husband has been made, but before it has been made absolute, is that of a married woman, we mean that she has the same legal rights, liabilities, and disabilities as an ordinary married woman. The term is chiefly applied to persons under disability, or per- sons who have some peculiar condition which

prevents the general law from applying to them in the same way as it does to ordinary persons. Sweet. See Barney v. Tourtellotte, 138 Mass. 108; De la Montanya v. De la Montanya, 112 Cal. 115. 44 Pac. 345, 32 L. R. A. 82, 53 Am. St. Rep. 105; Dunham v. Dunham, 57 111. App. 407. There are certain rights and duties, with cer- tain capacities and incapacities to take rights and incur duties, by which persons, as subjects of law, are variously determined to certain classes. The rights, duties, capacities, or incapacities which determine a given person to any of these classes, constitute a condition or status with which the person is invested. Aust. Jur.

General Law - a law that is unrestricted as to time, is applicable throughout the entire territory subject to the power of the legislature that enacted it, and applies to all persons in the same class —called also general act, general statute.

Special Law - a law that applies to a particular place or especially to a particular member or members of a class of persons or things in the same situation but not to the entire class and that is unconstitutional if the classification made is arbitrary or without a reasonable or legitimate justification or basis —called also local law, special legislation — compare general law

Natural Person - The term "natural person" refers to a living human being, with certain rights and responsibilities under the law. By contrast, a "legal person," or an "artificial person," is a group of people that is considered by law to be acting as a single individual. Both natural and legal persons are entitled to sue other parties and sign contracts. They can also both be on the receiving end of a lawsuit. To explore this concept, consider the following natural person definition.

(*Miriam Webster 1828*) A human being as distinguished from a person (as a corporation) created by operation of law — compare juridical person, legal person

Publication - n. 1) anything made public by print (as in a newspaper, magazine, pamphlet, letter, telegram, computer modem or program, poster, brochure or pamphlet), orally, or by broadcast (radio, television). 2) placing a legal notice in an approved newspaper of general publication in the county or district in which the law requires such notice to be published. 3) in the law of defamation (libel and slander) publication of an untruth about another only requires giving the information to a single person. Thus one letter can be the basis of a suit for libel, and telling one person is sufficient to show publication of slander. (See: notice, defamation, libel, slander)

Naturalization - The act of adopting an alien into a nation, and clothing him with all the rights possessed by a natural- born citizen. Boyd v. Nebraska, 143 U. S. 135, 12 Sup. Ct. 375, 36 L. Ed. 103. Collective naturalization takes place where a government, by treaty or cession, ac- quires the whole or part of the territory of a foreign nation and takes to itself the inhabitants thereof, clothing them with the rights of citizenship either by the terms of the treaty or by subsequent legislation. State v. Boyd; 31 Neb. 682, 48 N. W. 739; Feople v. Board of Inspectors. 32 Misc. Rep. 584, 67 N. Y. Supp. 230; Opinion of Justices, 68 Me. 589.

Jus Sanguinis - A person's citizenship is by 'blood', that of the parents. This rule is followed in most countries of the world. Canada and US use Jus Solis (where born) instead.

Jus Soli – Law of the Soil.

Nationalization - A government takes over a privately owned corporation, industry, and resource, often without compensation, but sometimes with. (1) Preventing unfair exploitation and large-scale labor layoffs, (2) Distributing income from national resources fairly, and (3) retaining the ability to generate wealth in public control are all typical reasons for nationalization.

Nationality - That quality or character which arises from the fact of a person's belonging to a nation or state. Nationality determines the political status of the individual, especially with reference to allegiance; while domicile determines his civil status. Nationality arises either by birth or by naturalization. According to Savigny, "nationality" is also used as opposed to "territoriality," for the purpose of distinguishing the case of a nation having no national territory; e. g., the Jews. 8 Sav. Syst.

Person - An individual, agency, association, branch, corporation, estate, group, partnership, or other entity or organization having legal rights and responsibilities separate from those of other entities and/or of its owners or members. See also juridical person.

People - A state; as the people of the state of New York. A **nation** in its collective and political capacity. Nesbitt v. Lushington, 4 Term R. 783; U. S. v. Quincy, 0 Pet. 407, 8 L. Ed. 458; U. S. v. Trumbull (D. C.) 48 Fed. 99. In a more restricted sense, and as generally used In constitutional law, the entire body of those citizens of a state or nation who are invested with political power for political purposes, that is, the qualified voters or electors. See Keller v. Hill, 00 Iowa, 543, 15 N. W. 009; Dred Scott v. Sandford, 19 How. 404, 15 L. Ed. 091; Boyd v. Nebraska, 143 U. S. 135, 12 Sun. Ct. 375, 30 L. Ed. 103; Rogers v. Jacob, 88 Ky. 502, 11 S. W. 513; People v.

Counts, 89 Cal. 15, 20 Pac. 012; Blair v. RIdgely, 41 Mo. 03, 97 Am. Dec. 248; Beverly v. Sabin, 20 111. 357; In re Incurring of State Debts, 19 R. I. 010, 37 Atl. 14. The word "people" may have various significations according to the connection in which it is used. When we speak of the rights of the people, or of the government of the people by law, or of the people as a non-political aggregate, we mean all the inhabitants of the state or nation, without distinction as to sex, age, or otherwise. But when reference is made to the people as the repository of sovereignty, or as the source of governmental power, or to popular government. we are in fact speaking of that selected and limited class of citizens to whom the constitution accords the elective franchise and the right of participation in the offices of government. Black, Const. Law (3d Ed.) p. 30.

Nation - A people, or aggregation of men, existing in the form of an organized jural society, inhabiting a distinct portion of the earth, speaking the same language, using the same customs, possessing historic continuity, and distinguished from other like groups by their racial origin and characteristics, and generally, but not necessarily, living under the same government and sovereignty. See Montoya v. U. S., 180 U. S. 201, 21 Sup. Ct 358, 45 L. Ed. 521; Worcester v. Georgia, 6 Pet. 539, 8 L. Ed. 483; Republic of Honduras v. Soto, 112 N. Y. 310, 19 N. E. 845, 2 L. R. A. 042, 8 Am. St. Rep. 744. Besides the element of autonomy or self-government, that is, the independence of the community as a whole from the interference of any foreign power in its affairs or any subjection to such power, it is further necessary to the constitution of a nation that it should be an organized jural society, that is, both governing its own members by regular laws, and defining and protecting their rights, and respecting the rights and duties which attach to it as a constituent member of the family of nations. Such a society, says Vattel, has her affairs and her interests ; she deliberates and takes resolutions in common; thus becoming a moral person, who possesses an understanding and will peculiar to herself, and is susceptible of obligations and rights. Vattel.

Color - An appearance, semblance, or simulacrum, as distinguished from that which Is real. A prima facie or apparent right. Hence, a deceptive appearance; a plausible, assumed exterior, concealing a lack of reality ; a disguise or pretext. Railroad Co. v. Allfree, 64 Iowa, 500, 20 N. W. 779; Berks County v. Railroad Co., 107 Pa. 102, 31 Atl. 474; Broughton v. Haywood, 01 N. C. 383. In pleading. Ground of action admitted to subsist in the opposite party by the pleading of one of the parties to an action, which Is so set out as to be apparently valid, but which is in reality legally insufficient. This was a term of the ancient rhetori cians, and early adopted into the language of pleading. It was an apparent or prima facie right; and the meaning of the rule that pleadings in confession and avoidance should give color was that they should confess the matter adversely alleged, to such an extent, at least, as to admit some apparent right in the opposite

party, which required to be encountered and avoided by the allegation of new matter. Color was either express, i. c., inserted in the pleading, or implied, which was naturally inherent in the structure of the pleading. Steph. PI. 233; Merten v. Bank, 5 Old. 5S5, 49 Pac. 913. The word also means the dark color of the skin showing the presence of negro blood; and hence it is equivalent to African descent or parentage.

Colored - By common usage in America, this term, in such phrases as "colored persons," "the colored race," "colored men," and the like, is used to designate negroes or persons of the African race, including all persons of mixed blood descended from negro ancestry. Van Camp v. Board of Education, 9 Ohio St. 411; U. S. v. La Coste, 20 Fed. Cas. S29; Jones v. Com., 80 Va. 542; Heirn v. Bridault, 37 Miss. 222; State v. Chavers, 50 N. C. 15; Johnson v. Norwich, 29 Conn. 407.

Country - The portion of the earth's surface occupied by an independent nation or people; or the inhabitants of such territory. In its primary meaning "country" signifies "place;" and. in a larger sense, the territory or dominions occupied by a community ; or even waste and unpeopled sections or regions of the earth. But its metaphorical meaning is no less definite and well understood; and in common parlance, in historical and geographical writings, in diplomacy, legislation, treaties, and international codes, the word is employed to denote the population, the nation, the state, or the government, having possession and dominion over a territory. Stairs v. Peaslee. 18 How. 521, 15 L. Ed. 474; U. S. v. Recorder, 1 Blatchf. 218. 225, 5 N. Y. Leg. Obs. 280, Fed. Cas. No. 16,129. In pleading and practice. The inhabitants of a district from which a jury is to be summoned ; pais ; a jury. 3 Bl. Comm. 349; Steph. PL 73, 78, 230.

Certificate - A written assurance, or official representation, that some act has or has not been done, or some event occurred, or some legal formality been complied with. Particularly, such written assurance made or issuing from some court, and designed as a notice of things done therein, or as a warrant or authority, to some other court, judge, or officer. People v. Foster, 27 Misc. Rep. 576, 58 N. Y. Supp. 574; U. S. v. Ambrose, 108 U. S. 336, 2 Sup. Ct. 6S2, 27 L. Ed. 746; Ti- conic Bank v. Stackpole, 41 Me. 305. A document in use in the English custom house. No goods can be exported by certificate, except foreign goods formerly imported, on which the whole or a part of the customs paid on importation is to be drawn back. Wharton

Affidavit - A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer such oath. Cox v. Stern, 170 111. 442, 48 N. E 900, 62 Am. St Rep. 3S5;

Hays r. Loomis, S4 111. 18. An affidavit is a written declaration under oath, made without notice to the adverse party. Code Civ. Proc. Cal**.**

Affirm - To ratify, make firm, confirm, establish, reassert. To ratify or confirm a former law or judgment. Cowell. In the practice of appellate courts, to affirm a judgment, decree, or order, is to declare that it is valid and right, and must stand as rendered below; to ratify and reassert it; to I concur in its correctness and confirm its efficacy. In pleading. To allege or aver a matter of fact; to state it affirmatively; the opposite of deny or traverse. . In practice. To make an affirmation; to make a solemn and formal declaration or asseveration that an affidavit is true, that the witness will tell the truth, etc.. this being substituted for an oath in certain cases. Also, to give testimony on affirmation. In the law of contracts. A party is said to affirm a contract the same being voidable at his election, when he ratifies and accepts it, waives his right to annul it, and proceeds under it as if it had been valid originally.

Estate - 1. The interest which any one has in lands, or in any other subject ofproperty. 1 Brest. Est. 20. And see Van Itensselaer v. Boucher, 5 Denio (N. Y.) 40; Beallv. Holmes, 6 liar. & J. (Md.) 208; Mul- ford v. Le Franc. 26 Cal. 103; Robertson v.VanCleave, 120 Ind. 217. 22 N. E. 809. 29 N. E 781. 15 L. R. A. 68; Ball v. Chadwick,46 111. 31; Cutts v. Com., 2 Mass. 289; Jackson v. Parker, 9 Cow. (N. Y.) 81. An estate in lands, tenements, and hereditaments signifies such interest as the tenant has therein.2 Bl. Comm. 103. The condition or circumstance in which the owner stands with regard to his property. 2 Crabb, Real Prop, p. 2,

Fact - A thing done; an action performed or an Incident transpiring; an event or circumstance; an actual occurrence. In the earlier days of the law "fact" was used almost exclusively in the sense of "action"or "deed;" but, although this usage survives, in some such phrases as "accessary before the fact," it lias now acquired the broader meaning given above.A fact is either a state of things, that is, an existence, or a motion, that is, an event.1 Benth. Jud. Ev. 48.In the law of evidence. A circumstance, event or occurrence as it actually takes or took place; a physical object or appearance, as it actually exists or existed. An actual and absolute reality, as distinguished from mere supposition or opinion; a truth, as distinguished from fiction or error. Burrill, Circ. Ev. 218."Fact" is very frequently used in opposition or contrast to "law." Thus, questions of fact are for the jury; questions of law for the court. So an attorney at laic is an officer of the courts of justice; an attorney in fact is appointed by the written authorization of a principal to manage business affairs usually not professional. Fraud in fact consists in an actual intention to defraud, carried into effect; while fraud imputed by law arises from the man's conduct in its necessary relations and consequences. The word is much used in phrases which

contrast it with law. Law is a principle; fact is an event Law is conceived; fact is actual. Law is a rule of duty; fact is that which has been according to or in contravention of the rule. The distinction is well illustrated in the rule that the existence of foreign laws is matter of fact. Within the territory of its jurisdiction, law operates as an obligatory rule which judges must recognize and enforce; but, in a tribunal outside that jurisdiction, it loses its obligatory force and its claim to judicial notice. The fact that it exists, if important to the rights of parties, must be alleged and proved the same as the actual existence of any other institution. Abbott. The terms "fact" and "truth" are often used in common parlance as synonymous, but as employed in reference to pleading, they are widely different. A fact in pleading is a circumstance, act, event, or incident; a truth Is the legal principle which declares or governs the facts and their operative effect. Admitting the facts stated in a complaint the truth may be that the plaintiff is not entitled, upon the face of his complaint to what the claims. The mode in which a defendant sets up that truth for his protection is a demurrer. Drake v. Cockroft, 4 E. D. Smith (N. Y.) 37.

Municipal - A public corporation, created by government for political purposes, and having subordinate and local powers of legislation; c. g., a coun- ty, town, city, etc. 2 Kent, Comm. 275. An incorporation of persons, inhabitants of a particular place, or connected with a particular district, enabling them to conduct its local civil government. Glov. Mun. Corp. 1. In English law. A body of persons in a town having the powers of acting as one person, of holding and transmitting property, and of regulating the government of the town. Such corporations existed in the chief towns of England (as of other countries) from very early times, deriving their authority from "incorporating" charters granted by the crown. Wharton.

Identification - Proof of identity; the proving that a person, subject, or article before the court is the very same that he or it is alleged, charged, or reputed to be; as where a witness recognizes the prisoner at the bar as the same person whom he saw committing the crime; or where handwriting, stolen goods, counterfeit coin, etc., are recognized as the same which once passed under the observation of the person identifying them. Identitas vera colligitur ex multitu- dine signorum. True identity is collected from a multitude of signs. Bac. Max.

Jurisdiction - The power and authority constitutionally conferred upon (or constitutionally recognized as existing in) a court or judge to pronounce the sentence of the law, or to award the remedies provided by law, upon a state of facts, proved or ad- mitted, referred to the tribunal for decision, and authorized by law to be the subject of investigation or action by that tribunal, and in favor of or against persons (or a res) who present themselves, or who are brought, before the court in some manner sanctioned by law as proper and sufficient. 1 Black, Judge.

Warrant - A writ or precept from a competent authority in pursuance of law, directing the doing of an act, and addressed to an officer or person competent to do the act, and affording him protection from damage, if he does it. People v. Wood, 71 N. Y. 376. 2. Particularly, a writ or precept issued by a magistrate, justice, or other competent authority, addressed to a sheriff, constable, or other officer, requiring him to arrest the body of a person therein named, and bring him before the magistrate or court, to answer, or to be examined, touching some offense which he is charged with having com- mitted. See, also, BENCII-WARRANT; SEARCH-WARRANT. 3. A warrant is an order by which the drawer authorizes one person to pay a particular sum of money. Shawnee County v. Carter, 2 Kan. 130. 4. An authority issued to a collector of taxes, empowering him to collect the taxes extended on the assessment roll, and to make distress and sale of goods or land iu default of payment. 5. An order issued by the proper authorities of a municipal corporation, authorizing the payee or holder to receive a certain sum out of the municipal treasury.

Civil - In its original sense, this word means pertaining or appropriate to a member of a civitas or free political community; natural or proper to a citizen. Also, relating to the community, or to the policy and government of the citizens and subjects of a state. In the language of the law, It has various significations. In contradistinction to barbarous or savage, it indicates a state of society reduced to order and regular government; thus, we speak of civil life, civil society, civil government, and civil liberty. In contradistinction to criminal, it indicates the private rights and remedies of men, as members of the community, in contrast to those which are public and relate to the government ; thus, we speak of civil process and criminal process, civil jurisdiction and criminal jurisdiction. It is also used in contradistinction to military or ecclesiastical, to natural or foreign; thus, we speak of a civil station, as opposed to a military or an ecclesiastical station; a civil death, as opposed to a natural death ; a civil war, as opposed to a foreign war. Story, Const, i 791.

Crime - A crime is an act committed or omitted, in violation of a public law, either forbidding or commanding it; a breach or violation of some public right or duty due to a whole community, considered as a community. In its social aggregate capacity, as distinguished from a civil injury. Wilkins v. U. S

Transportation - The removal of goods or persons from one place to another, by a carrier. See Railroad Co. v. Pratt, 22 Wall. 133, 22 L. Ed. 827; Interstate Commerce Coin'n v. Brimson, 154 U. S. 4 17. 14 Sup. Ct. 1125, 38 L. Ed. .1047; Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 100, 5 Sup. Ct. S26, 29 L. Ed. 158. In criminal law. A species of punishment consisting in

removing the criminal from his own country to another, (usually a penal colony.) there to remain in exile for a prescribed period. Fong Yue Ting v. U. S., 149 U. S. 698, 13 Sup. Ct. 1016, 37 L. Ed. 005

Interstate - Between two or more states; between places or persons In different states; concerning or affecting two or more states politically or territorially.

Proclaim - To promulgate; to announce, to publish, by governmental authority, intelligence of public acts or transactions or other matters important to be **known by the people**. To give wide publicity to; to disclose.

Proclamation - The act of proclaming or publishing; a formal declaration. (Thus ,the printing or publshing of something you have already declared makes what you have declared a 'formal declaration', a Proclamation, because declaring does not necessarily have anything to do with publishing, however, proclaiming in fact has all to do with publishing, thus something written, a written document made public for the public record. A Proclamation is also the act of causing some state matters to be published or made generally known. A written or printed document in which are contained such matters, issued by proper authority.

Declare - To make known, manifest, or (make) clear. To signify, to show in any manner either by words or acts. Thus Declaring does not necessarily mean to publish, as its foremost meaning is for one to be clear about something themselves. It can include to publish, it is also to utter, to annnounce clearly some opinion or resoluton.

English Oxford Dictionary(Online)

Person of Color - A person who is not white or of European parentage.

'Usage of the Word' - The term person of color is first recorded at the end of the 18th century. It was revived in the 1990s as the recommended term to use in some official contexts, especially in US English, to refer to a person who is not white. The term has become increasingly common in

the US, but it still may not be familiar to all audiences; terms such as nonwhite may be used as an alternative. See also black, colored, and nonwhite

U.S.C CODES

4 U.S. Code Chapter 1 - THE FLAG

4 U.S. Code § 4 - Pledge of allegiance to the flag; manner of delivery

The Pledge of Allegiance to the Flag: "I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all." should be rendered by standing at attention facing the flag with the right hand over the heart. When not in uniform men should remove any non-religious headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Persons in uniform should remain silent, face the flag, and render the military salute. Members of the Armed Forces not in uniform and veterans may render the military salute in the manner provided for persons in uniform.

U.S. Code: Title 8 - ALIENS AND NATIONALITY

8 U.S. Code § 1101 – Definitions

(10) The term "crewman" means a person serving in any capacity on board a vessel or aircraft.
(11) The term "diplomatic visa" means a nonimmigrant visa bearing that title and issued to a nonimmigrant in accordance with such regulations as the Secretary of State may prescribe.
(12) The term "doctrine" includes, but is not limited to, policies, practices, purposes, aims, or procedures.
(13)
(A) The terms "admission" and "admitted" mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.
(C) An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the alien—
(i) Has abandoned or relinquished that status,
(ii) Has been absent from the United States for a continuous period in excess of 180 days,

(iii) Has engaged in illegal activity after having departed the United States,
(iv) Has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this chapter and extradition proceedings,
(v) has committed an offense identified in section 1182(a)(2) of this title, unless since such offense the alien has been granted relief under section 1182(h) or 1229b(a) of this title, or
(vi) Is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.
(14) The term "foreign state" includes outlying possessions of a foreign state, but self-governing dominions or territories under mandate or trusteeship shall be regarded as separate foreign states.
(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—
(A)
(i) an ambassador, public minister, or career diplomatic or consular officer who has been accredited by a foreign government, recognized de jure by the United States and who is accepted by the President or by the Secretary of State, and the members of the alien's immediate family;
(ii) upon a basis of reciprocity, other officials and employees who have been accredited by a foreign government recognized de jure by the United States, who are accepted by the Secretary of State, and the members of their immediate families; and
(iii) Upon a basis of reciprocity, attendants, servants, personal employees, and members of their immediate families, of the officials and employees who have a nonimmigrant status under (i) and (ii) above;
(17) The term "immigration laws" includes this chapter and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, expulsion, or removal of aliens.
(18) The term "immigration officer" means any employee or class of employees of the Service or of the United States designated by the Attorney General, individually or by regulation, to perform the functions of an immigration officer specified by this chapter or any section of this title.
(19) The term "ineligible to citizenship," when used in reference to any individual, means, notwithstanding the provisions of any treaty relating to military service, an individual who is, or was at any time permanently debarred from becoming a citizen of the United States under section 3(a) of the Selective Training and Service Act of 1940, as amended (54 Stat. 885; 55 Stat. 844), or under section 4(a) of the Selective Service Act of 1948, as amended (62 Stat. 605; 65

Stat. 76) [50 U.S.C. 3803(a)], or under any section of this chapter, or any other Act, or under any law amendatory of, supplementary to, or in substitution for, any of such sections or Acts.
(20) The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.
(21) The term "national" means a person owing permanent allegiance to a state.
(22) The term "national of the United States" means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.
(23) The term "naturalization" means the conferring of nationality of a state upon a person after birth, by any means whatsoever.
(28) The term "organization" means, but is not limited to, an organization, corporation, company, partnership, association, trust, foundation or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together with joint action on any subject or subjects.
(29) The term "outlying possessions of the United States" means American Samoa and Swains Island.
(30) The term "passport" means any travel document issued by competent authority showing the bearer's origin, identity, and nationality if any, which is valid for the admission of the bearer into a foreign country.
(31) The term "permanent" means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law.
(32) The term "profession" shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.
(33) The term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.
(34) The term "Service" means the Immigration and Naturalization Service of the Department of Justice.
(36) The term "State" includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.
(37) The term "totalitarian party" means an organization which advocates the establishment in the United States of a totalitarian dictatorship or totalitarianism. The terms "totalitarian dictatorship" and "totalitarianism" mean and refer to systems of government not representative in fact, characterized by (A) the existence of a single political party, organized on a dictatorial

basis, with so close an identity between such party and its policies and the governmental policies of the country in which it exists, that the party and the government constitute an indistinguishable unit, and (B) the forcible suppression of opposition to such party.

(38) The term "United States", except as otherwise specifically herein provided, when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

(40) The term "world communism" means a revolutionary movement, the purpose of which is to establish eventually a Communist totalitarian dictatorship in any or all the countries of the world through the medium of an internationally coordinated Communist political movement.

(42) The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such special circumstances as the President after appropriate consultation (as defined in section 1157(e) of this title) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this chapter, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

(43) The term "aggravated felony" means—

(A) murder, rape, or sexual abuse of a minor;

(B) illicit trafficking in a controlled substance (as defined in section 802 of title 21), including a drug trafficking crime (as defined in section 924(c) of title 18);

(C) illicit trafficking in firearms or destructive devices (as defined in section 921 of title 18) or in explosive materials (as defined in section 841(c) of that title);

(D) an offense described in section 1956 of title 18 (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded $10,000;
(E) an offense described in—
(i) section 842(h) or (i) of title 18, or section 844(d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);
(ii) section 922(g)(1), (2), (3), (4), or (5), (j), (n), (*o*), (p), or (r) or 924(b) or (h) of title 18 (relating to firearms offenses); or
(iii) section 5861 of title 26 (relating to firearms offenses);
(F) a crime of violence (as defined in section 16 of title 18, but not including a purely political offense) for which the term of imprisonment at [5] least one year;
(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at [5] least one year;
(H) an offense described in section 875, 876, 877, or 1202 of title 18(relating to the demand for or receipt of ransom);
(I) an offense described in section 2251, 2251A, or 2252 of title 18(relating to child pornography);
(J) an offense described in section 1962 of title 18 (relating to racketeer influenced corrupt organizations), or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed;
(K) an offense that—
(i) relates to the owning, controlling, managing, or supervising of a prostitution business;
(ii) is described in section 2421, 2422, or 2423 of title 18(relating to transportation for the purpose of prostitution) if committed for commercial advantage; or
(iii) is described in any of sections 1581–1585 or 1588–1591 of title 18 (relating to peonage, slavery, involuntary servitude, and trafficking in persons);
(L) an offense described in—
(i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of title 18;
(ii) section 3121 of title 50 (relating to protecting the identity of undercover intelligence agents); or
(iii) section 3121 of title 50 (relating to protecting the identity of undercover agents);
(M) an offense that—
(i) involves fraud or deceit in which the loss to the victim or victims exceeds $10,000; or

(ii) is described in section 7201 of title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds $10,000;
(N) an offense described in paragraph (1)(A) or (2) of section 1324(a) of this title (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter [6]
(O) an offense described in section 1325(a) or 1326 of this title committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;
(P) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18 or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter;
(Q) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;
(R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;
(S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;
(T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and
(U) an attempt or conspiracy to commit an offense described in this paragraph.
The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after September 30, 1996.
(45) The term "substantial" means, for purposes of paragraph (15)(E) with reference to trade or capital, such an amount of trade or capital as is established by the Secretary of State, after consultation with appropriate agencies of Government.
(46) The term "extraordinary ability" means, for purposes of subsection (a)(15)(O)(i), in the case of the arts, distinction.

(47)
(A) The term "order of deportation" means the order of the special inquiry officer, or other such administrative officer to whom the Attorney General has delegated the responsibility for determining whether an alien is deportable, concluding that the alien is deportable or ordering deportation.
(B) The order described under subparagraph (A) shall become final upon the earlier of—
(i) a determination by the Board of Immigration Appeals affirming such order; or
(ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals.
(48) (A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—
(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.
(1) The term "child" means an unmarried person under twenty-one years of age who is—
(A) a child born in wedlock;
(B) a step child, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred;
(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;
(D) a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person;
(E)
(i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years or if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household: *Provided,* That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or
(ii) subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (F)(i); (II) was adopted by the adoptive parent or parents

of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years;
(F)
(i) a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 1151(b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen who is at least 25 years of age, at least 1 of whom personally saw and observed the child before or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence; *Provided*, That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States: *Provided further*, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or
(ii) subject to the same provisos as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (E)(i); (II) has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 1151(b) of this title; or
(G)
(i) a child, younger than 16 years of age at the time a petition is filed on the child's behalf to accord a classification as an immediate relative under section 1151(b) of this title, who has been adopted in a foreign state that is a party to the Convention on Protection of Children and Co-operation in Respect of Inter country Adoption, done at The Hague on May 29, 1993, or who is emigrating from such a foreign state to be adopted in the United States by a United States citizen and spouse jointly or by an unmarried United States citizen who is at least 25 years of age, Provided, That—
(I) the Secretary of Homeland Security is satisfied that proper care will be furnished the child if admitted to the United States;
(II) the child's natural parents (or parent, in the case of a child who has one sole or surviving parent because of the death or disappearance of, abandonment or desertion by, the other parent), or other persons or institutions that retain legal custody of the child, have freely given their

written irrevocable consent to the termination of their legal relationship with the child, and to the child's emigration and adoption;
(III) in the case of a child having two living natural parents, the natural parents are incapable of providing proper care for the child;
(IV) the Secretary of Homeland Security is satisfied that the purpose of the adoption is to form a bona fide parent-child relationship, and the parent-child relationship of the child and the natural parents has been terminated (and in carrying out both obligations under this subclause the Secretary of Homeland Security may consider whether there is a petition pending to confer immigrant status on one or both of such natural parents); and
(V) in the case of a child who has not been adopted—
(aa) the competent authority of the foreign state has approved the child's emigration to the United States for the purpose of adoption by the prospective adoptive parent or parents; and
(bb) the prospective adoptive parent or parents has or have complied with any pre-adoption requirements of the child's proposed residence; and
(ii) except that no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or
(iii) subject to the same provisos as in clauses (i) and (ii), a child who—
(I) is a natural sibling of a child described in clause (i), subparagraph (E)(i), or subparagraph (F)(i);
(II) was adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in clause (i), subparagraph (E)(i), or subparagraph (F)(i); and
(III) is otherwise described in clause (i), except that the child is younger than 18 years of age at the time a petition is filed on his or her behalf for classification as an immediate relative under section 1151(b) of this title.
(2) The terms "parent", "father", or "mother" mean a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in subdivision (1) of this subsection, except that, for purposes of paragraph (1)(F) (other than the second proviso therein) and paragraph (1)(G)(i) in the case of a child born out of wedlock described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term "parent" does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.
(3) The term "person" means an individual or an organization.
(4) The term "immigration judge" means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 1229a of this title. An

immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service.
(5) The term "adjacent islands" includes Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.
(c) As used in subchapter III—
(1) The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided in sections 1431 and 1432 [7] of this title, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.
(2) The terms "parent", "father", and "mother" include in the case of a posthumous child a deceased parent, father, and mother.
(d) Repealed. Pub. L. 100–525, § 9(a)(3), Oct. 24, 1988, 102 Stat. 2619.
(e) For the purposes of this chapter—
(1) The giving, loaning, or promising of support or of money or any other thing of value to be used for advocating any doctrine shall constitute the advocating of such doctrine; but nothing in this paragraph shall be construed as an exclusive definition of advocating.
(2) The giving, loaning, or promising of support or of money or any other thing of value for any purpose to any organization shall be presumed to constitute affiliation therewith; but nothing in this paragraph shall be construed as an exclusive definition of affiliation.
(3) Advocating the economic, international, and governmental doctrines of world communism means advocating the establishment of a totalitarian Communist dictatorship in any or all of the countries of the world through the medium of an internationally coordinated Communist movement.
(f) For the purposes of this chapter—No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established is, or was—
(1) a habitual drunkard;
(2) Repealed. Pub. L. 97–116, § 2(c)(1), Dec. 29, 1981, 95 Stat. 1611.

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D), (6)(E), and (10)(A) of section 1182(a) of this title; or subparagraphs (A) and (B) of section 1182(a)(2) of this title and subparagraph (C) thereof of such section [8] (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana), if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;
(4) one whose income is derived principally from illegal gambling activities;
(5) one who has been convicted of two or more gambling offenses committed during such period;
(6) one who has given false testimony for the purpose of obtaining any benefits under this chapter;
(7) one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period;
(8) one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43)); or
(9) one who at any time has engaged in conduct described in section 1182(a)(3)(E) of this title (relating to assistance in Nazi persecution, participation in genocide, or commission of acts of torture or extrajudicial killings) or 1182(a)(2)(G) of this title (relating to severe violations of religious freedom).
The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character. In the case of an alien who makes a false statement or claim of citizenship, or who registers to vote or votes in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of such registration or voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such statement, claim, or violation that he or she was a citizen, no finding that the alien is, or was, not of good moral character may be made based on it.
(g) For the purposes of this chapter any alien ordered deported or removed (whether before or after the enactment of this chapter) who has left the United States, shall be considered to have been deported or removed in pursuance of law, irrespective of the source from which the expenses of his transportation were defrayed or of the place to which he departed.

(h) For purposes of section 1182(a)(2)(E) of this title, the term "serious criminal offense" means—
(1) any felony;
(2) any crime of violence, as defined in section 16 of title 18; or
(3) any crime of reckless driving or of driving while intoxicated or under the influence of alcohol or of prohibited substances if such crime involves personal injury to another.
(i) With respect to each nonimmigrant alien described in subsection (a)(15)(T)(i)—
(1) the Secretary of Homeland Security, the Attorney General, and other Government officials, where appropriate, shall provide the alien with a referral to a nongovernmental organization that would advise the alien regarding the alien's options while in the United States and the resources available to the alien; and
(2) the Secretary of Homeland Security shall, during the period the alien is in lawful temporary resident status under that subsection, grant the alien authorization to engage in employment in the United States and provide the alien with an "employment authorized" endorsement or other appropriate work permit.

8 U.S. Code § 1481 - Loss of nationality by native-born or naturalized citizen; voluntary action; burden of proof; presumptions

(a) A person who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality—
(1) obtaining naturalization in a foreign state upon his own application or upon an application filed by a duly authorized agent, after having attained the age of eighteen years; or
(2) Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof, after having attained the age of eighteen years; or
(3) entering, or serving in, the armed forces of a foreign state if (A) such armed forces are engaged in hostilities against the United States, or (B) such persons serve as a commissioned or non-commissioned officer; or
(4)
(A) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, after attaining the age of eighteen years if he has or acquires the nationality of such foreign state; or (B) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state

or a political subdivision thereof, after attaining the age of eighteen years for which office, post, or employment an oath, affirmation, or declaration of allegiance is required; or
(5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; or
(6) making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense; or
(7) committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the United States, violating or conspiring to violate any of the provisions of section 2383 of title 18, or willfully performing any act in violation of section 2385 of title 18, or violating section 2384 of title 18 by engaging in a conspiracy to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, if and when he is convicted thereof by a court martial or by a court of competent jurisdiction.
(b) Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after September 26, 1961 under, or by virtue of, the provisions of this chapter or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence. Any person who commits or performs, or who has committed or performed, any act of expatriation under the provisions of this chapter or any other Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

12 USC 411, 95a(2) – (Hjr 192 Codified)

The Full-Discharge-Instrument folder contains documentation that explains how lawful money can be demanded by people by choice of the option provided in HJR-192 and as codified in 12 USC 411 , and to demand a full discharge of the related obligations when said lawful money as United States Notes in the form of Federal Reserve Notes are presented as payment for same, to wit:

On April 5, 1933, the **physical possession** and **legal title** to **lawful money** (gold) was taken from the people. But the people had to retain the **equitable title** to this lawful money or else it would have amounted to theft, and Congressman Louis Thomas McFadden's charges of theft and treason on May 23, 1933 lodged with the Judiciary would have required prosecution. These charges were mitigated by the passing of HJR 192 on June 5, 1933 which provided for the

possibility of "discharge upon payment" of all obligations. This remedy was subtly effected by two United States Codes: 1) **12 USC 411** which provides access to this lawful money "**upon demand**", and 2) **12 USC 95a(2)** which assures "**full discharge**" of all obligations upon assignment or transfer of payments to the United States. Later, the State provided people a Certificate of Live Birth (COLB) as evidence of the people's **equitable title** to their labor taken by the State at birth (to mitigate similar charges of theft and involuntary servitude).

This COLB creates a PERSON identified by the NAME of an **INFANT** that is presumed abandoned by the mother/informant at a birth event and, after seven years of non-appearance/activity, is also **presumed dead**, enabling the State to become the Executor of the INFANT's "estate" in probate. However, this presumption of death always has the possibility of being rebutted by a subsequent "appearance" of the INFANT as being "alive". Therefore, this **equitable title** exists in the form of a "**reversionary interest**" in this INFANT's property/labor "estate". Once **Proof of Life*** for INFANT is established, said "**reversionary interest**" in the decedent's estate re-vests in the INFANT as the "living beneficiary" of same. Said INFANT must thereafter, in order to honorably perform the terms of the 1933 constructive trust to discharge obligations incurred by said INFANT, **assign** or **transfer** (partially or wholly) said "**reversionary interest**", in the form of lawful money demanded (**12 USC 411**), to the United States who, in turn, as trustee thereof, must then apply said lawful money interest **payment** as **full discharge** of the obligation to the extent thereof by operation of law (**12 USC 95a(2)**).

An indorsed bill is an instrument that performs said **assignment** or **transfer** by said **INFANT.**

Notice that the amount on the original presentment is a **positive** number – representing the **CREDIT** of the NATION extended by the people in the form of labor expended to produce all of the products and services in the nation. The **INFANT** holds the **equitable title** to this **CREDIT**, and is liable to release this credit to the United States as payment. The presentment just needs the INFANT's authorization/instruction added to it to properly transfer this equitable title to the United States. Then both the **legal** and **equitable** titles of **both** the **credit** and the **obligation** amounts are now **vested in** that **one piece of paper**, and when that signed instrument is returned to the party that sent it, then that party is now the **Holder in due course** of the **legal** and **equitable titles** to both the **asset** and **liability** amounts for that account and must then present that **Lawful Money Full Discharge Instrument** to the United States as **payment,** or else, by refusal to present payment to the United States or to provide in return evidence of dishonor of same by the Unites States for acceptance for honor supra protest, the debt is discharged by operation of law (UCC 3-603, as enacted in State general statutes and codes) for

the INFANT, and the person now holding that instrument becomes liable for that payment as the **Holder in Due Course** thereof.

Therefore, with said instrument being tendered in good faith and in reliance on 12 USC 95a(2) and 12 USC 411, it is required by law that the recipient of a Lawful Money Full Discharge Instrument make presentment thereof to the United States Treasury as lawful payment and full discharge to reduce our national debt and thereby improve our national security, and in the event of dishonor of same by the United States Treasury, to return said instrument with cause for dishonor to allow for acceptance for honor supra protest of same.

Misappropriation of such an instrument constitutes probable cause for reporting embezzlement of public money to the authorities in compliance with 18 USC 4 and 641. Note that certain federal and state accounting procedures and regulations require timely ledgering of such payments, usually within two business days.

U.S. Code: Title 12 - BANKS AND BANKING

12 USC 95a. Regulation of transactions in foreign exchange of gold and silver; property transfers; vested interests, enforcement and penalties

(1) During the time of war, the President may, through any agency that he may designate, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this section or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this section, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this subdivision the term "United States" means the United States and any place subject to the jurisdiction thereof; *Provided, however*, That the foregoing shall not be construed as a limitation upon the power of the President, which is hereby conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision. As used in this subdivision the term "person" means an individual, partnership, association, or corporation.

(4) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly, the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission,

of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds. The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under section 2404 of title 50, Appendix, or under section 2405 of title 50, Appendix to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, or with respect to which acts are prohibited by chapter 37 of title 18.

12 U.S. Code § 411 - Issuance to reserve banks; nature of obligation; redemption

Federal Reserve notes, to be issued at the discretion of the Board of Governors of the Federal Reserve System for the purpose of making advances to Federal Reserve banks through the Federal Reserve agents as hereinafter set forth and for no other purpose, are authorized. The said notes shall be obligations of the United States and shall be receivable by all national and member banks and Federal Reserve banks and for all taxes, customs, and other public dues. They shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or at any Federal Reserve Bank.

15 U.S. Code § 1312 - Civil investigative demands

(e) Service upon legal entities and natural persons
(1) Service of any such demand or of any petition filed under section 1314 of this title may be made upon a partnership, corporation, association, or other legal entity by—
(A) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;
(B) delivering a duly executed copy thereof to the principal office or place of business of the partnership, corporation, association, or entity to be served; or
(C) depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or entity at its principal office or place of business.
(2) Service of any such demand or of any petition filed under section 1314 of this title may be made upon any natural person by—
(A) delivering a duly executed copy thereof to the person to be served; or

(B) depositing such copy in the United States mails by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

(f) Proof of service

A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(g) Sworn certificates

The production of documentary material in response to a demand served pursuant to this section shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(h) Interrogatories

Each interrogatory in a demand served pursuant to this section shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by a person or persons responsible for answering each interrogatory, to the effect that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted.

U.S. Code: Title 18 - CRIMES AND CRIMINAL PROCEDURE

Title 18 U.S.C. § 4

Misprision of felony. Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

Title 18 U.S.C. § 11 – Foreign Government Defined

The term "foreign government", as used in this title except in sections 112, 878, 970, 1116, and 1201, includes any government, faction, or body of insurgents within a country with which the United States is at peace, irrespective of recognition by the United States.

(June 25, 1948, ch. 645, 62 Stat. 686; Pub. L. 94–467, § 11, Oct. 8, 1976, 90 Stat. 2001.)

18 U.S. Code § 247 - Damage to religious property; obstruction of persons in the free exercise of religious beliefs

(a) Whoever, in any of the circumstances referred to in subsection (b) of this section—
(1) intentionally defaces, damages, or destroys any religious real property, because of the religious character of that property, or attempts to do so; or
(2) intentionally obstructs, by force or threat of force, any person in the enjoyment of that person's free exercise of religious beliefs, or attempts to do so;

shall be punished as provided in subsection (d).
(b) The circumstances referred to in subsection (a) are that the offense is in or affects interstate or foreign commerce.
(c) Whoever intentionally defaces, damages, or destroys any religious real property because of the race, color, or ethnic characteristics of any individual associated with that religious property, or attempts to do so, shall be punished as provided in subsection (d).
(d) The punishment for a violation of subsection (a) of this section shall be—
(1) if death results from acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, a fine in accordance with this title and imprisonment for any term of years or for life, or both, or may be sentenced to death;
(2) if bodily injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this section, and the violation is by means of fire or an explosive, a fine under this title or imprisonment for not more than 40 years, or both;
(3) if bodily injury to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this section, results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, a fine in accordance with this title and imprisonment for not more than 20 years, or both; and
(4) in any other case, a fine in accordance with this title and imprisonment for not more than one year, or both.
(e) No prosecution of any offense described in this section shall be undertaken by the United States except upon the certification in writing of the Attorney General or his designee that in his judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice.
(f) As used in this section, the term "religious real property" means any church, synagogue, mosque, religious cemetery, or other religious real property, including fixtures or religious objects contained within a place of religious worship.
(g) No person shall be prosecuted, tried, or punished for any noncapital offense under this section unless the indictment is found or the information is instituted not later than 7 years after the date on which the offense was committed.

18 U.S. Code § 241 - Conspiracy against rights

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any

right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

18 U.S. Code § 242 - Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

18 U.S. Code § 1091 – Genocide

(a)Basic Offense.—Whoever, whether in time of peace or in time of war and with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group as such—

(1) kills members of that group;

(2) causes serious bodily injury to members of that group;

(3) causes the permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques;

(4) subjects the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part;

(5) imposes measures intended to prevent births within the group; or

(6) transfers by force children of the group to another group;

shall be punished as provided in subsection (b).

(b)Punishment for Basic Offense.—The punishment for an offense under subsection (a) is—

(1) in the case of an offense under subsection (a)(1), where death results, by death or imprisonment for life and a fine of not more than $1,000,000, or both; and

(2) a fine of not more than $1,000,000 or imprisonment for not more than twenty years, or both, in any other case.

(c)Incitement Offense.—

Whoever directly and publicly incites another to violate subsection (a) shall be fined not more than $500,000 or imprisoned not more than five years, or both.

(d)Attempt and Conspiracy.—

Any person who attempts or conspires to commit an offense under this section shall be punished in the same manner as a person who completes the offense.

(e)Jurisdiction.—There is jurisdiction over the offenses described in subsections (a), (c), and (d) if—

(1) the offense is committed in whole or in part within the United States; or

(2) regardless of where the offense is committed, the alleged offender is—

(A) a national of the United States (as that term is defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101));

(B) an alien lawfully admitted for permanent residence in the United States (as that term is defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101));

(C) a stateless person whose habitual residence is in the United States; or

(D) present in the United States.

(f)Non applicability of Certain Limitations.—

Notwithstanding section 3282, in the case of an offense under this section, an indictment may be found, or information instituted, at any time without limitation.

18 U.S. Code § 1203 - Hostage taking

(a) Except as provided in subsection (b) of this section, whoever, whether inside or outside the United States, seizes or detains and threatens to kill, to injure, or to continue to detain another person in order to compel a third person or a governmental organization to do or abstain from doing any act as an explicit or implicit condition for the release of the person detained, or attempts or conspires to do so, shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment.
(b) (1) it is not an offense under this section if the conduct required for the offense occurred outside the United States unless—
(A) The offender or the person seized or detained is a national of the United States;
(B) The offender is found in the United States; or
(C) The governmental organization sought to be compelled is the Government of the United States.
(2) It is not an offense under this section if the conduct required for the offense occurred inside the United States, each alleged offender and each person seized or detained are nationals of the United States, and each alleged offender is found in the United States, unless the governmental organization sought to be compelled is the Government of the United States.
(c) As used in this section, the term "national of the United States" has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

18 U.S. Code § 2332a - Use of weapons of mass destruction

(a)Offense against a National of the United States or Within the United States.—A person who, without lawful authority, uses, threatens, or attempts or conspires to use, a weapon of mass destruction—
(1) Against a national of the United States while such national is outside of the United States;
(2) Against any person or property within the United States, and
(A) The mail or any facility of interstate or foreign commerce is used in furtherance of the offense;
(B) Such property is used in interstate or foreign commerce or in an activity that affects interstate or foreign commerce;
(C) Any perpetrator travels in or causes another to travel in interstate or foreign commerce in furtherance of the offense; or
(D) The offense, or the results of the offense, affects interstate or foreign commerce, or, in the case of a threat, attempt, or conspiracy, would have affected interstate or foreign commerce;
(3) against any property that is owned, leased or used by the United States or by any department or agency of the United States, whether the property is within or outside of the United States; or
(4) Against any property within the United States that is owned, leased, or used by a foreign government, shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life.
(b)Offense by National of the United States Outside of the United States.—
Any national of the United States who, without lawful authority, uses, or threatens, attempts, or conspires to use, a weapon of mass destruction outside of the United States shall be imprisoned for any term of years or for life, and if death results, shall be punished by death, or by imprisonment for any term of years or for life.
(c)Definitions.—for purposes of this section—
(1) The term "national of the United States" has the meaning given in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));
(2) The term "weapon of mass destruction" means—
(A) Any destructive device as defined in section 921 of this title;
(B) Any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;
(C) Any weapon involving a biological agent, toxin, or vector (as those terms are defined in section 178 of this title); or

(D) Any weapon that is designed to release radiation or radioactivity at a level dangerous to human life; and
(3) The term "property" includes all real and personal property.

18 U.S. Code § 2340 - Definitions

U.S. Code: Title 22 - FOREIGN RELATIONS AND INTERCOURSE

22 U.S.C. Section 254 – Diplomatic Relations Act

§254a. Definitions

As used in this Act—

(1) the term "members of a mission" means—

(A) the head of a mission and those members of a mission who are members of the diplomatic staff or who, pursuant to law, are granted equivalent privileges and immunities,

(B) members of the administrative and technical staff of a mission, and

(C) members of the service staff of a mission,

as such terms are defined in Article 1 of the Vienna Convention;

(2) the term "family" means—

(A) the members of the family of a member of a mission described in paragraph (1)(A) who form part of his or her household if they are not nationals of the United States, and

(B) the members of the family of a member of a mission described in paragraph (1)(B) who form part of his or her household if they are not nationals or permanent residents of the United States,

within the meaning of Article 37 of the Vienna Convention;

(3) the term "mission" includes missions within the meaning of the Vienna Convention and any missions representing foreign governments, individually or collectively, which are extended the same privileges and immunities, pursuant to law, as are enjoyed by missions under the Vienna Convention; and

(4) the term "Vienna Convention" means the Vienna Convention on Diplomatic Relations of April 18, 1961 (T.I.A.S. numbered 7502; 23 U.S.T. 3227), entered into force with respect to the United States on December 13, 1972.

(Pub. L. 95–393, §2, Sept. 30, 1978, 92 Stat. 808; Pub. L. 97–241, title II, §203(b)(1), Aug. 24, 1982, 96 Stat. 290.)

References in Text

This Act, referred to in text, means Pub. L. 95–393, Sept. 30, 1978, 92 Stat. 808, as amended, known as the Diplomatic Relations Act. For complete classification of this Act to the Code, see Short Title note below and Tables.

Amendments

1982—Par. (1)(A). Pub. L. 97–241 substituted "those members of a mission who are members of the diplomatic staff or who, pursuant to law, are granted equivalent privileges and immunities" for "members of the diplomatic staff of a mission".

Effective Date of 1982 Amendment

Amendment by Pub. L. 97–241 effective Oct. 1, 1982, see section 204 of Pub. L. 97–241, set out as an Effective Date note under section 4301 of this title.

Effective Date

Pub. L. 95–393, §9, Sept. 30, 1978, 92 Stat. 810, provided that: "This Act [see Short Title note below] shall take effect at the end of the ninety-day period beginning on the date of its enactment [Sept. 30, 1978]".

Short Title

Pub. L. 95–393, §1, Sept. 30, 1978, 92 Stat. 808, provided that: "This Act [enacting this section, sections 254b to 254e of this title, and section 1364 of Title 28, Judiciary and Judicial Procedure, amending sections 1251 and 1351 of Title 28, repealing sections 252 to 254 of this title, and enacting provisions set out as a note under this section] may be cited as the 'Diplomatic Relations Act'."

§254b. Privileges and immunities of mission of nonparty to Vienna Convention

With respect to a nonparty to the Vienna Convention, the mission, the members of the mission, their families, and diplomatic couriers shall enjoy the privileges and immunities specified in the Vienna Convention.

(Pub. L. 95–393, §3(b), Sept. 30, 1978, 92 Stat. 808; Pub. L. 97–241, title II, §203(b)(2), Aug. 24, 1982, 96 Stat. 291.)

Amendments

1982—Pub. L. 97–241 substituted "With respect to a nonparty to the Vienna Convention, the mission, the members of the mission, their families, and diplomatic couriers" for "Members of the mission of a sending state which has not ratified the Vienna Convention, their families, and the diplomatic couriers of such state,".

Effective Date of 1982 Amendment

Amendment by Pub. L. 97–241 effective Oct. 1, 1982, see section 204 of Pub. L. 97–241, set out as an Effective Date note under section 4301 of this title.

Effective Date

Section effective at end of ninety-day period beginning on Sept. 30, 1978, see section 9 of Pub. L. 95–393, set out as a note under section 254a of this title.

§254c. Extension of more favorable or less favorable treatment than provided under Vienna Convention; authority of President

The President may, on the basis of reciprocity and under such terms and conditions as he may determine, specify privileges and immunities for the mission, the members of the mission, their families, and the diplomatic couriers which result in more favorable treatment or less favorable treatment than is provided under the Vienna Convention.

(Pub. L. 95–393, §4, Sept. 30, 1978, 92 Stat. 809; Pub. L. 97–241, title II, §203(b)(3), Aug. 24, 1982, 96 Stat. 291.)

Amendments

1982—Pub. L. 97–241 substituted "immunities for the mission, the members" for "immunities for members" and "diplomatic couriers which" for "diplomatic couriers of any sending state which".

Effective Date of 1982 Amendment

Amendment by Pub. L. 97–241 effective Oct. 1, 1982, see section 204 of Pub. L. 97–241, set out as an Effective Date note under section 4301 of this title.

Effective Date

Section effective at end of ninety-day period beginning on Sept. 30, 1978, see section 9 of Pub. L. 95–393, set out as a note under section 254a of this title.

Ex. Ord. No. 12101. Delegation of Functions to Secretary of State Respecting Privileges and Immunities for Diplomatic Missions and Personnel

Ex. Ord. No. 12101, Nov. 17, 1978, 43 F.R. 54195, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By the authority vested in me as President of the United States of America by the Diplomatic Relations Act (Public Law 95–393, 92 Stat. 808; 22 U.S.C. 254a et seq.) and Section 301 of Title 3 of the United States Code, in order to implement the liability insurance and other requirements relating to diplomatic personnel, I hereby designate and empower the Secretary of State to perform, without the approval, ratification, or other action of the President, the functions vested or to be vested in the President by Section 4 of Diplomatic Relations Act (92 Stat. 809; 22 U.S.C. 254c).

§254c–1. Policy toward certain agents of foreign governments

(a) It is the sense of the Congress that the numbers, status, privileges and immunities, travel, accommodations, and facilities within the United States of official representatives to the United States of any foreign government that engages in intelligence activities within the United States harmful to the national security of the United States should not exceed the respective numbers, status, privileges and immunities, travel accommodations, and facilities within such country of official representatives of the United States to such country.

(b) Omitted.

(Pub. L. 98–618, title VI, §601(a), (b), Nov. 8, 1984, 98 Stat. 3303.)

Codification

Subsec. (b) of this section, which required the President to prepare and transmit to the Committee on Foreign Relations and Select Committee on Intelligence of the Senate and the Committee on Foreign Affairs and Permanent Select Committee on Intelligence of the House of Representatives a report on the numbers, status, privileges and immunities, travel, accommodations, and facilities within the United States of official representatives to the United States of any foreign government that engages in intelligence activities within the United States

harmful to the national security of the United States and the respective numbers, status, privileges and immunities, travel, accommodations, and facilities within such country of official representatives of the United States to such country, and any action which may have been taken with respect thereto, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 33 of House Document No. 103–7.

§254c–2. Repealed. Pub. L. 103–199, title V, §501(c), Dec. 17, 1993, 107 Stat. 2325

Section, Pub. L. 100–178, title V, §501, Dec. 2, 1987, 101 Stat. 1014, related to annual report of Attorney General to congressional committees regarding admissions to United States over objections of the Federal Bureau of Investigation of Soviet nationals employed by or assigned to foreign mission or international organization in United States.

§254d. Dismissal on motion of action against individual entitled to immunity

Any action or proceeding brought against an individual who is entitled to immunity with respect to such action or proceeding under the Vienna Convention on Diplomatic Relations, under section 254b or 254c of this title, or under any other laws extending diplomatic privileges and immunities, shall be dismissed. Such immunity may be established upon motion or suggestion by or on behalf of the individual, or as otherwise permitted by law or applicable rules of procedure.

(Pub. L. 95–393, §5, Sept. 30, 1978, 92 Stat. 809.)

Effective Date

Section effective at end of ninety-day period beginning on Sept. 30, 1978, see section 9 of Pub. L. 95–393, set out as a note under section 254a of this title.

§254e. Liability insurance for members of mission

(a) Compliance with regulations

Each mission, members of the mission and their families, and individuals described in section 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946,

shall comply with any requirement imposed by the regulations promulgated by the Director of the Office of Foreign Missions in the Department of State pursuant to subsection (b) of this section.

(b) Establishment by regulation of liability insurance requirements

The Director of the Office of Foreign Missions shall, by regulation, establish liability insurance requirements which can reasonably be expected to afford adequate compensation to victims and which are to be met by each mission, members of the mission and their families, and individuals described in section 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946, relating to risks arising from the operation in the United States of any motor vehicle, vessel, or aircraft.

(c) Enforcement of liability insurance requirements

The Director of the Office of Foreign Missions shall take such steps as he may deem necessary to insure that each mission, members of the mission and their families, and individuals described in section 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946, who operate motor vehicles, vessels, or aircraft in the United States comply with the requirements established pursuant to subsection (b) of this section.

(Pub. L. 95–393, §6, Sept. 30, 1978, 92 Stat. 809; Pub. L. 98–164, title VI, §602, Nov. 22, 1983, 97 Stat. 1042.)

Amendments

1983—Subsec. (a). Pub. L. 98–164, §602(1), substituted "Director of the Office of Foreign Missions in the Department of State" for "President".

Subsec. (b). Pub. L. 98–164, §602(2), inserted provision respecting adequate compensation to victims, and substituted reference to Director for reference to President.

Subsec. (c). Pub. L. 98–164, §602(3), substituted reference to Director for reference to President.

Effective Date

Section effective at end of ninety-day period beginning on Sept. 30, 1978, see section 9 of Pub. L. 95–393, set out as a note under section 254a of this title.

Authority of Secretary of State

Except as otherwise provided, Secretary of State to have and exercise any authority vested by law in any official or office of Department of State and references to such officials or offices deemed to refer to Secretary of State or Department of State, as appropriate, see section 2651a of this title and section 161(d) of Pub. L. 103–236, set out as a note under section 2651a of this title.

22 U.S. Code § 288 - "International organization" defined; authority of President

For the purposes of this subchapter, the term "international organization" means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities provided in this subchapter. The President shall be authorized, in the light of the functions performed by any such international organization, by appropriate Executive order to withhold or withdraw from any such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this subchapter (including the amendments made by this subchapter) or to condition or limit the enjoyment by any such organization or its officers or employees of any such privilege, exemption, or immunity. The President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities provided in this subchapter or for any other reason, at any time to revoke the designation of any international organization under this section, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this subchapter.

22 U.S. Code § 4301 - Congressional declaration of findings and policy

(a) Findings

The Congress finds that the operation in the United States of foreign missions and public international organizations and the official missions to such organizations, including the permissible scope of their activities and the location and size of their facilities, is a proper subject for the exercise of Federal jurisdiction.

(b) Policy

The Congress declares that it is the policy of the United States to support the secure and efficient operation of United States missions abroad, to facilitate the secure and efficient operation in the United States of foreign missions and public international organizations and the official missions to such organizations, and to assist in obtaining appropriate benefits, privileges, and immunities for those missions and organizations and to require their observance of corresponding obligations in accordance with international law.

(c) Treatment of foreign missions in United States

The treatment to be accorded to a foreign mission in the United States shall be determined by the Secretary after due consideration of the benefits, privileges, and immunities provided to missions of the United States in the country or territory represented by that foreign mission, as well as matters relating to the protection of the interests of the United States.

U.S. Code: Title 26 - INTERNAL REVENUE CODE

26 U.S. Code § 3121 – Definitions

e) State, United States, and citizen
For purposes of this chapter—

(1) State
The term ‘‘State’’ includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) United States
The term ‘‘United States’’ when used in a geographical sense includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa. An individual who is a citizen of the Common Wealth of Puerto Rico (but not otherwise a Citi- Zen of the United States) shall be considered, for Purposes of this section, as a citizen of the
United States.

26 U.S. Code § 508 - Special rules with respect to section 501(c)(3) organizations

(a) New organizations must notify Secretary that they are applying for recognition of section 501(c)(3) status Except as provided in subsection (c), an organization organized after October 9, 1969, shall not be treated as an organization described in section 501(c)(3)—
(1) unless it has given notice to the Secretary in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of such status, or
(2) For any period before the giving of such notice, if such notice is given after the time prescribed by the Secretary by regulations for giving notice under this subsection.
(b) Presumption that organizations are private foundations

Except as provided in subsection (c), any organization (including an organization in existence on October 9, 1969) which is described in section 501(c) (3) and which does not notify the Secretary, at such time and in such manner as the Secretary may by regulations prescribe, that it is not a private foundation shall be presumed to be a private foundation.

(c) Exceptions
(1) Mandatory exceptions Subsections (a) and (b) shall not apply to—
(A) Churches, their integrated auxiliaries, and conventions or associations of churches, or
(B) any organization which is not a private foundation (as defined in section 509(a)) and the gross receipts of which in each taxable year are normally not more than $5,000.

26 U.S. Code § 7502 - Timely mailing treated as timely filing and paying

(a) General rule
(1) Date of delivery

If any return, claim, statement, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of the internal revenue laws is, after such period or such date, delivered by United States mail to the agency, officer, or office with which such return, claim, statement, or other document is required to be filed, or to which such payment is required to be made, the date of the United States postmark stamped on the cover in which such return, claim, statement, or other document, or payment, is mailed shall be deemed to be the date of delivery or the date of payment, as the case may be.
(2) Mailing requirements This subsection shall apply only if—
(A) the postmark date falls within the prescribed period or on or before the prescribed date—
(i) for the filing (including any extension granted for such filing) of the return, claim, statement, or other document, or
(ii) for making the payment (including any extension granted for making such payment), and
(B) the return, claim, statement, or other document, or payment was, within the time prescribed in subparagraph (A), deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the agency, officer, or office with which the return, claim, statement, or other document is required to be filed, or to which such payment is required to be made.

(b) Postmarks
This section shall apply in the case of postmarks not made by the United States Postal Service only if and to the extent provided by regulations prescribed by the Secretary.
(c) Registered and certified mailing; electronic filing
(1) Registered mail For purposes of this section, if any return, claim, statement, or other document, or payment, is sent by United States registered mail—
(A) such registration shall be prima facie evidence that the return, claim, statement, or other document was delivered to the agency, officer, or office to which addressed; and
(B) the date of registration shall be deemed the postmark date.

(2) Certified mail; electronic filing
The Secretary is authorized to provide by regulations the extent to which the provisions of paragraph (1) with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail and electronic filing.
(d) Exceptions This section shall not apply with respect to—
(1) the filing of a document in, or the making of a payment to, any court other than the Tax Court,

(2) currency or other medium of payment unless actually received and accounted for, or
(3) returns, claims, statements, or other documents, or payments, which are required under any provision of the internal revenue laws or the regulations thereunder to be delivered by any method other than by mailing.

(e) Mailing of deposits
(1) Date of deposit
If any deposit required to be made (pursuant to regulations prescribed by the Secretary under section 6302(c)) on or before a prescribed date is, after such date, delivered by the United States mail to the bank, trust company, domestic building and loan association, or credit union authorized to receive such deposit, such deposit shall be deemed received by such bank, trust company, domestic building and loan association, or credit union on the date the deposit was mailed.
(2) Mailing requirements Paragraph (1) shall apply only if the person required to make the deposit establishes that—
(A) the date of mailing falls on or before the second day before the prescribed date for making the deposit (including any extension of time granted for making such deposit), and
(B) the deposit was, on or before such second day, mailed in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the bank, trust company, domestic building and loan association, or credit union authorized to receive such deposit.
In applying subsection (c) for purposes of this subsection, the term "payment" includes "deposit", and the reference to the postmark date refers to the date of mailing.

(3) No application to certain deposits
Paragraph (1) shall not apply with respect to any deposit of $20,000 or more by any person who is required to deposit any tax more than once a month.
(f) Treatment of private delivery services
(1) In general

Any reference in this section to the United States mail shall be treated as including a reference to any designated delivery service, and any reference in this section to a postmark by the United States Postal Service shall be treated as including a reference to any date recorded or marked as described in paragraph (2)(C) by any designated delivery service.
(2) Designated delivery service For purposes of this subsection, the term "designated delivery service" means any delivery service provided by a trade or business if such service is designated

by the Secretary for purposes of this section. The Secretary may designate a delivery service under the preceding sentence only if the Secretary determines that such service—
(A) is available to the general public,
(B) is at least as timely and reliable on a regular basis as the United States mail,
(C) records electronically to its data base, kept in the regular course of its business, or marks on the cover in which any item referred to in this section is to be delivered, the date on which such item was given to such trade or business for delivery, and
(D) meets such other criteria as the Secretary may prescribe.
(3) Equivalents of registered and certified mail

The Secretary may provide a rule similar to the rule of paragraph (1) with respect to any service provided by a designated delivery service which is substantially equivalent to United States registered or certified mail.

U.S. Code: Title 28 - JUDICIARY AND JUDICIAL PROCEDURE

28 U.S. Code § 1361 - Action to compel an officer of the United States to perform his duty

The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

Another Federal Statute for Forcing A Federal Officer To Perform a Mandatory Duty

Another federal statute exists for reporting high-level corruption in government:
Title 28 U.S.C. § 1361. Action to compel an officer of the United States to perform his duty. The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.
This federal statute permits any citizen to file a lawsuit in the federal courts to obtain a court order requiring a federal official to perform a mandatory duty and to halt unlawful acts. This statute is Title 28 U.S.C. § 1361.

These two statutes are among the most powerful tools in the hands of the people, even a single person, to report corrupt and criminal activities by federal officials−including federal judges−and to circumvent the blocks by those in key positions in the three branches of government. That statute was also repeatedly blocked by federal judges and Justices of the U.S. Supreme Court.

28 U.S. Code § 1746 - Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

28 U.S. Code § 3002 – Definitions

As used in this chapter:
(1) "Counsel for the United States" means—

(A) a United States attorney, an assistant United States attorney designated to act on behalf of the United States attorney, or an attorney with the United States Department of Justice or with a Federal agency who has litigation authority; and
(B) Any private attorney authorized by contract made in accordance with section 3718 of title 31 to conduct litigation for collection of debts on behalf of the United States.
(2) "Court" means any court created by the Congress of the United States, excluding the United States Tax Court.
(3) "Debt" means—
(A) an amount that is owing to the United States on account of a direct loan, or loan insured or guaranteed, by the United States; or
(B) an amount that is owing to the United States on account of a fee, duty, lease, rent, service, sale of real or personal property, overpayment, fine, assessment, penalty, restitution, damages, interest, tax, bail bond forfeiture, reimbursement, recovery of a cost incurred by the United States, or other source of indebtedness to the United States, but that is not owing under the terms of a contract originally entered into by only persons other than the United States;
and includes any amount owing to the United States for the benefit of an Indian tribe or individual Indian, but excludes any amount to which the United States is entitled under section 3011(a).
(4) "Debtor" means a person who is liable for a debt or against whom there is a claim for a debt.
(5) "Disposable earnings" means that part of earnings remaining after all deductions required by law have been withheld.
(6) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.
(7) "Garnishee" means a person (other than the debtor) who has, or is reasonably thought to have, possession, custody, or control of any property in which the debtor has a substantial nonexempt interest, including any obligation due the debtor or to become due the debtor, and against whom a garnishment under section 3104 or 3205 is issued by a court.
(8) "Judgment" means a judgment, order, or decree entered in favor of the United States in a court and arising from a civil or criminal proceeding regarding a debt.
(9) "Nonexempt disposable earnings" means 25 percent of disposable earnings, subject to section 303 of the Consumer Credit Protection Act.
(10) "Person" includes a natural person (including an individual Indian), a corporation, a partnership, an unincorporated association, a trust, or an estate, or any other public or private entity, including a State or local government or an Indian tribe.

(11) "Prejudgment remedy" means the remedy of attachment, receivership, garnishment, or sequestration authorized by this chapter to be granted before judgment on the merits of a claim for a debt.
(12) "Property" includes any present or future interest, whether legal or equitable, in real, personal (including choses in action), or mixed property, tangible or intangible, vested or contingent, wherever located and however held (including community property and property held in trust (including spendthrift and pension trusts)), but excludes—
(A) Property held in trust by the United States for the benefit of an Indian tribe or individual Indian; and
(B) Indian lands subject to restrictions against alienation imposed by the United States.
(13) "Security agreement" means an agreement that creates or provides for a lien.
(14) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, or any territory or possession of the United States.
(15) "United States" means—
(A) A Federal corporation;
(B) An agency, department, commission, board, or other entity of the United States; or
(C) An instrumentality of the United States.
(16) "United States marshal" means a United States marshal, a deputy marshal, or an official of the United States Marshals Service designated under section 564.

28 U.S. Code § 453 - Oaths of justices and judges

Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, ___ ___, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as ___ under the Constitution and laws of the United States. So help me God."

31 U.S. Code § 3113 – Accepting Gifts

(a) To provide the people of the United States with an opportunity to make gifts to the United States Government to be used to reduce the public debt—

(1) the Secretary of the Treasury may accept for the Government a gift of—

(A) money made only on the condition that it be used to reduce the public debt;

(B) an obligation of the Government included in the public debt made only on the condition that the obligation be canceled and retired and not reissued; and

(C) other intangible personal property made only on the condition that the property is sold and the proceeds from the sale used to reduce the public debt; and

(2) the Administrator of General Services may accept for the Government a gift of tangible property made only on the condition that it be sold and the proceeds from the sale be used to reduce the public debt.

(b) The Secretary and the Administrator each may reject a gift under this section when the rejection is in the interest of the Government.

(c) The Secretary and the Administrator shall convert a gift either of them accepts under subsection (a)(1)(C) or (2) of this section to money on the best terms available. If a gift accepted under subsection (a) of this section is subject to a gift or inheritance tax, the Secretary or the Administrator may pay the tax out of the proceeds of the gift or the proceeds of the redemption or sale of the gift.

(d) The Treasury has an account into which money received as gifts and proceeds from the sale or redemption of gifts under this section shall be deposited. The Secretary shall use the money in the account to pay at maturity, or to redeem or buy before maturity, an obligation of the Government included in the public debt. An obligation of the Government that is paid, redeemed, or bought with money from the account shall be canceled and retired and may not be reissued. Money deposited in the account is appropriated and may be expended to carry out this section.

(e)

(1) The Secretary shall redeem a direct obligation of the Government bearing interest or sold on a discount basis on receiving it when the obligation—

(A) is given to the Government;

(B) becomes the property of the Government under the conditions of a trust; or

(C) is payable on the death of the owner to the Government (or to an officer of the Government in the officer's official capacity).

(2) If the gift or transfer to the Government is subject to a gift or inheritance tax, the Secretary shall pay the tax out of the proceeds of redemption.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 943.)

District of Columbia Organic Act of 1871 Forty First Congress. Session III. Chapter 62 1871

Sec. 17 – And be it further enacted, That the legislative assembly shall not pass special laws in any of the following cases; regulating the practice in courts of justice; regulating the jurisdiction or duties of justices of the peace, police magistrate, or constables; providing for changes of venue in civil or criminal cases, or swearing and impaneling jurors; remitting fines, penalties, or forfeitures; the sale or mortgage of real estate belonging to minors or others under disability; changing the law of descent; increasing or decreasing the fees of public officers during the term for which said officers are elected or appointed; granting to any corporation, association, or individual, any special or exclusive privilege, immunity, or franchise whatsoever. The legislative assembly shall have no power to release or extinguish, in whole or in part, the indebtedness, liability, or obligation of any corporation or individual to the District or to any municipal corporation therein, nor shall the legislative assembly have power to establish any bank of circulation, nor to authorize any company or individual to issue notes for circulation as money or currency. ***Sec. 20*** – And be it further enacted, That the said legislative assembly shall not have power to pass any ex post facto law, nor law impairing the obligation of contracts, nor to tax the property of the United States, nor to tax the lands or other property of non-residents higher than the lands or other property of residents; nor shall lands or other property in said district be liable to a higher tax, in any one year, for all general objects, territorial and municipal, than two dollars on every hundred dollars of the cash value thereof; but special taxes may be levied in particular sections, wards, or districts for their particular local improvements; nor shall said territorial government have power to borrow money or issue stock or bonds for any object whatever, unless specially authorized by an act of the legislative assembly, passed by a vote of two thirds of the entire number of the members of each branch thereof, but said debt in no case to exceed five per centum of the assessed value of the property of said District, unless authorized by a vote of the people, as hereinafter [hereinbefore] provided.

U.S. Bankrupt since 1933/martial law has been since then

THE BANKRUPTCY OF THE UNITED STATES

People see more inclined to research and investigate root causes and actual conditions in hard times, so I am posting this information once more, in the hope some of my countrymen who do not UNderstand what is presently happening will become aware that they are UNaware, and in awakening, awaken others to the end game. I really was a railway switchman once, before I enlisted in the Army, and I hear a night train coming, and am pretty sure the engineer is asleep or dead...

If you don't mind, this isn't a thread about the merits of metals, but about recent history, and worse things we can expect if we don't wake up and demand some accountability from our alleged servants in government.

The fact of the matter is, the United States did go "Bankrupt" in 1933 and was declared so by President Roosevelt by Executive Orders 6073, 6102, 6111 and by Executive Order 6260 on March 9, 1933, under the "Trading With The Enemy Act" of October 6, 1917, AS AMENDED by the Emergency Banking Relief Act, 48 Stat 1, Public Law No. 1, which is presently codified at 12 USCA 95a and confirmed at 95b. You can confirm this for yourself by reading it on FindLaw. Thereafter, Congress confirmed the bankruptcy on June 5, 1933, and thereupon impaired the obligations and considerations of contracts through the "Joint Resolution To Suspend The Gold Standard And Abrogate The Gold clause, June 5, 1933" (See: HJR-192, 73rd Congress, 1st Session). When the Courts were called upon to rule on various of the provisions designed to implement and compliment FDR's Emergency BANKING Relief Act of March 9, 1933, they were all found unconstitutional, so what FDR did was simply stack the "Court's" with HIS chosen obsequious members of the bench/bar and then sent many of the cases back through and REVERSED the rulings.

House Joint Resolution 192 (HJR-192), 48 Stat. 112, was passed by Congress on June 5, 1933. The 'Act' impaired the obligations and considerations of contacts and declared that the notes of the Federal Reserve banks were "legal tender" for the payment of both public and private debts, and that payment in gold Coin was against "public policy". (In effect, FDR and Congress, under executive orders and legislative fiat, nationalized the people's money, i.e., their gold Coin. Nationalization is a violation of the Law of Nations and existing public policy of Congress. See: Hilton vs. Guyot, 159 U.S. 113 (1895). The gold Coin that was confiscated (nationalized) was

later used to purchase voting stockholder shares in The Bank and The Fund at $35 per ounce.) At this point in time, "Fair Market Value", i.e., a willing seller and buyer, without compulsion, lost any substantial meaning.

Moreover, all of the Governor's of the several States of the Union, who were summoned to and were in Washington, D.C. during the several days of this pre-planned economic "Emergency" (the first phase of which was to nationalize and expropriate the people's Money, i.e., their gold Coin on deposit in the banks), pledged the full faith and credit thereof to the aid of the National Government, and formed various socialist committees, such as the "Council of State Governments", "Social Security Administration", etc., to purportedly deal with the economic "Emergency." The Council of State Governments has been absorbed into such things as the National Conference Of Commissioners On Uniform State Laws, whose headquarters is located in Chicago, Illinois, and "all" being "members of the Bar", and operating under a different "Constitution and By-Laws", far distant from the depositories of the public records, and it is this organization that has promulgated, lobbied for, passed, adjudicated and ordered the implementation and execution of their purported "Uniform" and "Model" Acts and pretended statutory provisions, in order to "help implement international treaties of the United States or where world uniformity would be desirable." (1990/91 Reference Book, NCCUSL). These organizations operate under the "Declaration of INTERdependence" of January 22, 1937, and published some of their activities in "The Book Of The States." The 1937 Edition openly declares that the people engaged in such activities as the Farming/Husbandry Industry had been reduced to mere feudal "Tenants" on the Land they supposedly owned.

On April 25, 1938, the Supreme Court overturned the standing precedents of the prior 150 years concerning "common law," in the federal government.

"THERE IS NO FEDERAL COMMON LAW, and CONGRESS HAS NO POWER TO DECLARE SUBSTANTIVE RULES OF COMMON LAW applicable IN A STATE, WHETHER they be LOCAL or GENERAL in their nature, be they COMMERCIAL LAW OR a part of the LAW OF TORTS." -- Erie Railroad Co. vs. Tompkins, 304 U.S. 64, 82 L.Ed. 1188.

You must realize that the Common Law is the fountain source of Substantive and Remedial Rights, if not our very Liberties.

The members and association of the Bar thereafter formed committees, granted themselves special privileges, immunities and franchises, and held meetings concerning the Judicial

procedures, and further, amended laws so as "to conform to a trend of judicial decisions or to accomplish similar objectives", including hodepodging the jurisdictions of Law and Equity together, which is known today as "One Form Of Action." This was not by accident, but by a carefully conceived plan.

The enumerated, specified and distinct Jurisdictions established by the ordained Constitution (1787), Article III, Section 2, and under the Bill of Rights (1791), Amendment VII, were further hodgepodged and fundamentally changes in 1982 to include Admiralty jurisdiction, which was once again brought inland.

"This is the FUNDAMENTAL CHANGE necessary to effect unification of Civil and ADMIRALTY PROCEDURE. Just as the 1938 Rules ABOLISHED THE DISTINCTION between actions At Law and suits in Equity, this CHANGE WOULD ABOLISH THE DISTINCTION between CIVIL actions and suits in ADMIRALTY." (See: Federal Rules Of Civil Procedure, 1982 Ed., pg.17; also see, Federalist Papers No. 83; Declaration Of Resolves Of The First Continental Congress, October 14, 1774; Declaration Of Cause And Necessity Of Taking Up Arms, July 6, 1775; Declaration Of Independence, July 4, 1776; and, Bennet vs. Butterworth, 52 U.S. 669)

The United States thereafter entered the second World War during which time the "League of Nations" was reinstituted under PRETENSE of the "United Nations" (22 USCA 287, et seq.), and the "Bank For International Settlements" was reinstituted under PRETENSE of the "Bretton Woods Agreement" (22 USCA 286 et seq.) as the "International Monetary Fund" (The Fund) and the "International Bank For Reconstruction And Development" (The Bank or World Bank).

The United States as a corporate body politic (artificial), came out of World War II in worse economic condition that when it entered, and in 1950 declared Bankruptcy and "Reorganization." The Reorganization is located in Title 5 of the United States Codes Annotated. The "Explanation" at the beginning of 5 U.S.C.A. is MOST informative reading. The "Secretary of Treasury" was appointed as the "Receiver" in Bankruptcy. (See: Reorganization Plan No. 26, 5 U.S.C.A. 903; Public Law 94-564, Legislative History, pg. 5967)

The United States went down the road and periodically filed for further Reorganizations. Things and situations worsened, having done what they were Commanded NOT to do (See: Madison's Notes, Constitutional Convention, August 16, 1787; Federalist Papers No. 44), and in 1965 crowned their continuous fraudulent acitivities with passage of the "Coinage Act of 1965"

completely debasing the Constitutional Coin (gold & silver, i.e., "Dollar"). (See: 18 USCA 331 & 332; U.S. vs. Marigold, 50 U.S. 560, 13 L.Ed 257) At the signing of the Coinage Act on July 23, 1965, Lyndon B. Johnson stated in his press release that:

"When I have signed this bill before me, we will have made the first fundamental change in our coinage in 173 years. The Coinage Act of 1965 supersedes the Act of 1792. And that Act had the title: An Act Establishing a Mint and Regulating the Coinage of the United States...."

"Now I will sign this bill to make the first change in our coinage system since the 18th Century. To those members of Congress, who are here on this historic occasion, I want to assure you that in making this change from the 18th Century we have no idea of returning to it."

It is important to take cognizance of the fact that NO Constitutional Amendment was EVER obtained to FUNDAMENTALLY CHANGE, amend, abridge or abolish the Constitutional mandates, provisions or prohibitions, but due to internal and external diversions surrounding the Viet Nam War, etc., the USURPATION and BREACH went unchallenged and unnoticed by the general public at large, who had become "a wealthy man's cannon fodder or cheap source of slave labor". (See: Silent Weapons For Quiet Wars, pgs. 6, 7, 8, 9, 12, 13 & 56) Congress was clearly delegated the Power and Authority to regulate and maintain the true and inherent "value" of the Coin within the scope and purview of Article I, Section 8, Clauses 5 & 6 and Article I, Section 10, Clause I, of the ordained Constitution (1787), and further, a corresponding DUTY and OBLIGATION to maintain said gold and silver Coin and Foreign Coin at and within the necessary and proper "equal weights and measures" clause. (See also: Bible, Deuteronomy, Chapter 25, verses 13 thru 16; Proverbs, Chapter 16, Verse 11; Public Law 97-289)

Those exercising the Offices of the several States, in equal measure, knew that such "De Facto Transitions" were unlawful and unauthorized, but sanctioned, implemented and enforced the complete debauchment and the resulting "governmental, social, industrial economic change" in the De Jure States and in the United States of America, and were and are now under the delusion that they can do both directly and indirectly what they were absolutely prohibited from doing. (See: Craig vs. Missouri, 4 Peters 903).

You can confirm the whole affair by taking a look at 12 USC 95a and 95b. In addition, the various Reorganization Acts listed in Title 5 of the United States Code. There are your legal public record and historic proofs. Now we are going to hear from a former Congressman who (surprise!) ended up indicted and in federal prison, while more brazen felons continued to run the

Congress:

United States Congressional Record, March 17, 1993 Vol. 33, page H-1303

Speaker-Rep. James Traficant, Jr. (Ohio) addressing the House:

"Mr. Speaker, we are here now in chapter 11. Members of Congress are official trustees presiding over the greatest reorganization of any Bankrupt entity in world history, the U.S. Government. We are setting forth hopefully, a blueprint for our future. There are some who say it is a coroner's report that will lead to our demise.

It is an established fact that the United States Federal Government has been dissolved by the Emergency Banking Act, March 9, 1933, 48 Stat. 1, Public Law 89-719; declared by President Roosevelt, being bankrupt and insolvent. H.J.R. 192, 73rd Congress m session June 5, 1933 - Joint Resolution to Suspend the Gold Standard and Abrogate the Gold Clause dissolved the Sovereign Authority of the United States and the official capacities of all United States Governmental Offices, Officers, and Departments and is further evidence that the United States Federal Government exists today in name only.

The receivers of the United States Bankruptcy are the International Bankers, via the United Nations, the World Bank and the International Monetary Fund. All United States Offices, Officials, and Departments are now operating within a de facto status in name only under Emergency War Powers. With the Constitutional Republican form of Government now dissolved, the receivers of the Bankruptcy have adopted a new form of government for the United States. This new form of government is known as a Democracy, being an established Socialist/Communist order under a new governor for America. This act was instituted and established by transferring and/or placing the Office of the Secretary of Treasury to that of the Governor of the International Monetary Fund. Public Law 94-564, page 8, Section H.R. 13955 reads in part: "The U.S. Secretary of Treasury receives no compensation for representing the United States?'

Gold and silver were such powerful money during the founding of the United States of America that the founding fathers declared that only gold or silver coins can be "money" in America. Since gold and silver coinage were heavy and inconvenient for a lot of transactions, they were stored in banks and a claim check was issued as a money substitute. People traded their coupons

as money, or "currency." Currency is not money, but a money substitute. Redeemable currency must promise to pay a dollar equivalent in gold or silver money. Federal Reserve Notes (FRNs) make no such promises, and are not "money." A Federal Reserve Note is a debt obligation of the federal United States government, not "money?' The federal United States government and the U.S. Congress were not and have never been authorized by the Constitution for the united states of America to issue currency of any kind, but only lawful money, -gold and silver coin.

It is essential that we comprehend the distinction between real money and paper money substitute. One cannot get rich by accumulating money substitutes; one can only get deeper into debt. We the People no longer have any "money." Most Americans have not been paid any "money" for a very long time, perhaps not in their entire life. Now do you comprehend why you feel broke? Now, do you understand why you are "bankrupt," along with the rest of the country?

Federal Reserve Notes (FRNs) are unsigned checks written on a closed account. FRNs are an inflatable paper system designed to create debt through inflation (devaluation of currency). when ever there is an increase of the supply of a money substitute in the economy without a corresponding increase in the gold and silver backing, inflation occurs.

Inflation is an invisible form of taxation that irresponsible governments inflict on their citizens. The Federal Reserve Bank who controls the supply and movement of FRNs has everybody fooled. They have access to an unlimited supply of FRNs, paying only for the printing costs of what they need. FRNs are nothing more than promissory notes for U.S. Treasury securities (T-Bills) - a promise to pay the debt to the Federal Reserve Bank.

There is a fundamental difference between "paying" and "discharging" a debt. To pay a debt, you must pay with value or substance (i.e. gold, silver, barter or a commodity). With FRNs, you can only discharge a debt. You cannot pay a debt with a debt currency system. You cannot service a debt with a currency that has no backing in value or substance. No contract in Common law is valid unless it involves an exchange of "good & valuable consideration." Unpayable debt transfers power and control to the sovereign power structure that has no interest in money, law, equity or justice because they have so much wealth already.

Their lust is for power and control. Since the inception of central banking, they have controlled the fates of nations.

The Federal Reserve System is based on the Canon law and the principles of sovereignty

protected in the Constitution and the Bill of Rights. In fact, the international bankers used a "Canon Law Trust" as their model, adding stock and naming it a "Joint Stock Trust." The U.S. Congress had passed a law making it illegal for any legal "person" to duplicate a "Joint Stock Trust" in 1873. The Federal Reserve Act was legislated post-facto (to 1870), although post-facto laws are strictly forbidden by the Constitution. [1:9:3]

The Federal Reserve System is a sovereign power structure separate and distinct from the federal United States government. The Federal Reserve is a maritime lender, and/or maritime insurance underwriter to the federal United States operating exclusively under Admiralty/Maritime law. The lender or underwriter bears the risks, and the Maritime law compelling specific performance in paying the interest, or premiums are the same.

Assets of the debtor can also be hypothecated (to pledge something as a security without taking possession of it.) as security by the lender or underwriter. The Federal Reserve Act stipulated that the interest on the debt was to be paid in gold. There was no stipulation in the Federal Reserve Act for ever paying the principle.

Prior to 1913, most Americans owned clear, allodial title to property, free and clear of any liens or mortgages until the Federal Reserve Act (1913)

"Hypothecated" all property within the federal United States to the Board of Governors of the Federal Reserve, -in which the Trustees (stockholders) held legal title. The U.S. citizen (tenant, franchisee) was registered as a "beneficiary" of the trust via his/her birth certificate. In 1933, the federal United States hypothecated all of the present and future properties, assets and labor of their "subjects," the 14th Amendment U.S. citizen, to the Federal Reserve System.

In return, the Federal Reserve System agreed to extend the federal United States corporation all the credit "money substitute" it needed. Like any other debtor, the federal United States government had to assign collateral and security to their creditors as a condition of the loan. Since the federal United States didn't have any assets, they assigned the private property of their "economic slaves", the U.S. citizens as collateral against the unpayable federal debt. They also pledged the unincorporated federal territories, national parks forests, birth certificates, and nonprofit organizations, as collateral against the federal debt. All has already been transferred as payment to the international bankers.

Unwittingly, America has returned to its pre-American Revolution, feudal roots whereby all land

is held by a sovereign and the common people had no rights to hold allodial title to property. Once again, We the People are the tenants and sharecroppers renting our own property from a Sovereign in the guise of the Federal Reserve Bank. We the people have exchanged one master for another.

This has been going on for over eighty years without the "informed knowledge" of the American people, without a voice protesting loud enough. Now it's easy to grasp why America is fundamentally bankrupt.

Why don't more people own their properties outright?

Why 90% of Americans are mortgaged to the hilt and have little or no assets after all debts and liabilities have been paid? Why does it feel like you are working harder and harder and getting less and less?

We are reaping what has been sown, and the result of our harvest is a painful bankruptcy, and a foreclosure on American property, precious liberties, and a way of life. Few of our elected representatives in Washington, D.C. have dared to tell the truth. The federal United States is bankrupt. Our children will inherit this unpayable debt, and the tyranny to enforce paying it.

America has become completely bankrupt in world leadership, financial credit and its reputation for courage, vision and human rights. This is an undeclared economic war, bankruptcy, and economic slavery of the most corrupt order! Wake up America! Take back your Country."

So there it is. No wild-eyed "conspiracy theories", just the facts, witnessed and recorded. If you are here to defend the status quo, please don't bother, but please do answer whether or not you believe any citizen would be liable to criminal prosecution if we modeled our lives or financial affairs after the conduct of what passes for "our" government. If you care what happens to US next, tell ten people to tell ten more. The hour is late. Conspiracy is not "a theory", it is a federal felony.

Unknown author

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Franklin D. Roosevelt 32nd President of the United States: 1933-1945
13- Executive Order 6073 – Reopening Banks – March 10, 1933

By Virtue of the authority vested in me by Section 5 (b) of the Act of October 6, 1917 (40 Stat. L., 411), as amended by the Act of March 9, 1933, and by Section 4 of the said Act of March 9, 1933, and by virtue of all other authority vested in me, I hereby issue the following executive order.

The Secretary of the Treasury is authorized and empowered under such regulations as he may prescribe to permit any member bank of the Federal Reserve System and any other banking institution organized under the laws of the United States, to perform any or all of their usual banking functions, except as otherwise prohibited.

The appropriate authority having immediate supervision of banking institutions in each State or any place subject to the jurisdiction of the United States is authorized and empowered under such regulations as such authority may prescribe to permit any banking institution in such State or place, other than banking institutions covered by the foregoing paragraph, to perform any or all of their usual banking functions, except as otherwise prohibited.

All banks which are members of the Federal Reserve System, desiring to reopen for the performance of all usual and normal banking functions, except as otherwise prohibited, shall apply for a license therefor to the Secretary of the Treasury. Such application shall be filed immediately through the Federal Reserve Banks. The Federal Reserve Bank shall then transmit such applications to the Secretary of the Treasury. Licenses will be issued by the Federal Reserve Bank upon approval of the Secretary of the Treasury. The Federal Reserve Banks are hereby designated as agents of the Secretary of the Treasury for the receiving of application and the issuance of licenses in his behalf and upon his instructions.

Until further order, no individual, partnership, association, or corporation, including any banking institution, shall export or otherwise remove or permit to be withdrawn from the United States or any place subject to the jurisdiction thereof any gold coin, gold bullion, or gold certificates, except in accordance with regulations prescribed by or under license issued by the Secretary of the Treasury.

No permission to any banking institution to perform any banking functions shall authorize such institution to pay out any gold coin, gold bullion or gold certificates except as authorized by the Secretary of the Treasury, nor to allow withdrawal of any currency for hoarding, nor to engage in any transaction in foreign exchange except such as may be undertaken for legitimate and normal business requirements, for reasonable traveling and other personal requirements, and for the fulfillment of contracts entered into prior to March 6, 1933.

Every Federal Reserve Bank is authorized and instructed to keep itself currently informed as to transactions in foreign exchange entered into or consummated within its district and shall report to the Secretary of the Treasury all transactions in foreign exchange which are prohibited.

Franklin D. Roosevelt 32nd President of the United States: 1933-1945
43- Executive Order 6111 – Transactions in Foreign Exchange – April 20, 1933

By virtue of the authority vested in me by Section 5 (b) of the Act of October 6, 1917, as amended by Section 2 of the Act of March 9, 1933, entitled "An Act to provide relief in the existing national emergency in banking, and for other purposes," in which amendatory Act Congress declared that a serious emergency exists, I, Franklin D. Roosevelt, President of the United States of America, do declare that said national emergency still continues to exist and pursuant to said section and by virtue of all other authority vested in me, do hereby issue the following executive order:

1. Until further order, the earmarking for foreign account and the export of gold coin, gold bullion or gold certificates from the United States or any place subject to the jurisdiction thereof 'are hereby prohibited, except that the Secretary of the Treasury, in his discretion and subject to such regulations as he may prescribe, may issue licenses authorizing the export of gold coin and bullion (a) earmarked or held in trust for a recognized foreign government or foreign central bank or the Bank for International Settlements, (b) imported for re-export or gold in reasonable amounts for usual trade requirements of refiners importing gold bearing materials under agreement to export gold, (c) actually required for the fulfillment of any contract entered into prior to the date of this order, by an applicant who in obedience to the Executive Order of April 5, 1933, has delivered gold coin, gold bullion or gold certificates, and (d) with the approval of the President, for transactions which he may deem necessary to promote the public interest.

2. Until further order, the Secretary of the Treasury is authorized, through any agency that he may designate, to investigate, regulate, or prohibit, under such rules and regulations as he may

prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit from any banking institution within the United States or any place subject to the jurisdiction thereof to any foreign branch or office of such banking institution or to any foreign bank or banker, and the export or withdrawal of currency from the United States or any place subject to the jurisdiction of the United States, by any individual, partnership, association, or corporation within the United States or any place subject to the jurisdiction thereof; and the Secretary of the Treasury may require any individual, partnership, association, or corporation engaged in any transaction referred to herein to furnish under oath, complete information relative thereto, including the production of any books of account, contracts, letters or other papers, in connection therewith in the custody or control of such individual, partnership, association, or corporation either before or after such transaction is completed.

3. The provisions relating to foreign exchange transactions contained in the Executive Order of March 10, 1933, shall remain in full force and effect except as amended or supplemented by this order and by regulations issued hereunder.

4. Applicants who have gold coin, gold bullion or gold certificates in their possession, or who in obedience to the Executive Order of April 5, 1933, have delivered gold coin, gold bullion or gold certificates shall be entitled to licenses as provided in Section 8 of said Executive Order for amounts not exceeding the equivalent of such coin, bullion or certificates held or delivered. The Secretary may in his discretion issue or decline to issue any other licenses under said Executive Order, which shall in all other respects remain in full force and effect.

5. Whoever willfully violates any provision of this Executive Order or of any rule, regulation or license issued thereunder may be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in any such violation may be punished by a like fine, imprisonment, or both.

This order may be modified or revoked at any time.

Franklin D. Roosevelt 32nd President of the United States: 1933-1945
34- Executive Order 6102 – Requiring Gold Coin, Gold Bullion and Gold Certificates to Be Delivered to the Government– April 5, 1933

By virtue of the authority vested in me by Section 5 (b) of the Act of October 6, 1917, as amended by Section 2 of the Act of March 9, 1933, entitled "An Act to provide relief in the existing national emergency in banking, and for other purposes," in which amendatory Act Congress declared that a serious emergency exists, I, Franklin D. Roosevelt, President of the United States of America, do declare that said national emergency still continues to exist and pursuant to said section do hereby prohibit the hoarding of gold coin, gold bullion, and gold certificates within the continental United States by individuals, partnerships, associations and corporations and hereby prescribe the following regulations for carrying out the purposes of this order:

Section 1. For the purposes of this regulation, the term "hoarding" means the withdrawal and withholding of gold coin, gold bullion or gold certificates from the recognized and customary channels of trade. The term "person" means any individual, partnership, association or corporation.

Section 2. All persons are hereby required to deliver on or before May 1, 1933, to a Federal Reserve Bank or a branch or agency thereof or to any member bank of the Federal Reserve System all gold coin, gold bullion and gold certificates now owned by them or coming into their ownership on or before April 28, 1933, except the following:

(a) Such amount of gold as may be required for legitimate and customary use in industry, profession or art within a reasonable time, including gold prior to refining and stocks of gold in reasonable amounts for the usual trade requirements of owners mining and refining such gold.

(b) Gold coin and gold certificates in an amount not exceeding in the aggregate $100 belonging to any one person; and gold coins having a recognized special value to collectors of rare and unusual coins.

(c) Gold coin and bullion earmarked or held in trust for a recognized foreign Government or foreign central bank or the Bank for International Settlements.

(d) Gold coin and bullion licensed for other proper transactions (not involving hoarding) including gold coin and bullion imported for re-export or held pending action on applications for export licenses.

Section 3. Until otherwise ordered any person becoming the owner of any gold coin, gold bullion, or gold certificates after April 28, 1933, shall, within three days after receipt thereof, deliver the same in the manner prescribed in Section 2; unless such gold coin, gold bullion or gold certificates are held for any of the purposes specified in paragraphs (a), (b), or (c) of Section 2; or unless such gold coin or gold bullion is held for purposes specified in paragraph (d) of Section 2 and the person holding it is, with respect to such gold coin or bullion, a licensee or applicant for license pending action thereon.

Section 4. Upon receipt of gold coin, gold bullion or gold certificates delivered to it in accordance with Sections 2 or 3, the Federal Reserve Bank or member bank will pay therefor an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States.

Section 5. Member banks shall deliver all gold coin, gold bullion and gold certificates owned or received by them (other than as exempted under the provisions of Section 2) to the Federal Reserve Banks of their respective districts and receive credit or payment therefor.

Section 6. The Secretary of the Treasury, out of the sum made available to the President by Section 501 of the Act of March 9, 1933, will in all proper cases pay the reasonable costs of transportation of gold coin, gold bullion or gold certificates delivered to a member bank or Federal Reserve Bank in accordance with Section 2, 3, or 5 hereof, including the cost of insurance, protection, and such other incidental costs as may be necessary, upon production of satisfactory evidence of such costs. Voucher forms for this purpose may be procured from Federal Reserve Banks.

Section 7. In cases where the delivery of gold coin, gold bullion or gold certificates by the owners thereof within the time set forth above will involve extraordinary hardship or difficulty, the Secretary of the Treasury may, in his discretion, extend the time within which such delivery must be made. Applications for such extensions must be made in writing under oath, addressed to the Secretary of the Treasury and filed with a Federal Reserve Bank. Each application must state the date to which the extension is desired, the amount and location of the gold coin, gold

bullion and gold certificates in respect of which such application is made and the facts showing extension to be necessary to avoid extraordinary hardship or difficulty.

Section 8. The Secretary of the Treasury is hereby authorized and empowered to issue such further regulations as he may deem necessary to carry out the purposes of this order and to issue licenses thereunder, through such officers or agencies as he may designate, including licenses permitting the Federal Reserve Banks and member banks of the Federal Reserve System, in return for an equivalent amount of other coin, currency or credit, to deliver, earmark or hold in trust gold coin and bullion to or for persons showing the need for the same for any of the purposes specified in paragraphs (a), (c) and (d) of Section 2 of these regulations.

Section 9. Whoever willfully violates any provision of this Executive Order or of these regulations or of any rule, regulation or license issued thereunder may be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in any such violation may be punished by a like fine, imprisonment, or both.

This order and these regulations may be modified or revoked at any time.

Legislative Journal – House – Page 5759 – Resolution No. 75 – Printer's No. 1034
May 4th, 1933

Mr. WITKIN, Mr. Speaker, I desire at this time to call up Resolution No. 75, Printer's No. 1034. The Resolution was read by the Clerk as follows: In the House of Representatives, April 17, 1933. Many sons and daughters of that proud and handsome race which inspired the architecture of Northern Africa and carried into Spain the influence of its artistic temperaments have become citizens of this Nation. In the City of Philadelphia there exists a Moorish-American Society made up of Moors who have found here the end of their quest for a home and of the children of those who journeyed here from the plains of Morocco. This Society has done much to bring about a thorough absorption by these people of those principles which are necessary to make them good American citizens. These Moorish-Americans have since being here missed the use of the titles and name annexations that were so familiar at home and which are used in accordance with the doctrines of the religious faith to which they are adherents therefore be it, Resolved That this House commends the Moorish-American Society of Philadelphia for the efficient service it has rendered the Nation in bringing about a speedy and thorough Americanization of these former Moors and that in accordance with the fullest right of religious independence guaranteed every

citizen we recognize also the right of these people to use the name affixes El or Ali or Bey or any other prefix or suffix to which they have heretofore been accustomed to use or which they may hereafter acquire the right to use.

98 CITIZENSHIP OF THE UNITED STATES, EXPATRIATION, ETC.

Section III. Requirements for naturalization.

A. WHO MAY BE NATURALIZED.

The earliest statutes provided for the naturalization of free white persons, and this was substantially the law until the adoption of the fourteenth amendment and the passage of legislation connected with it, when it was by express terms made to include the negroes. A number of questions have arisen, however, as to the meaning of the statute, and under the rights of citizenship of individuals the following races have been determined:

(a) **Indians—Early status**.—Our earliest naturalization law provided that an alien to be naturalized must be a **free white person**, and this was substantially the requirement until after the civil war. The fourteenth amendment did not in terms include Indians, and the **act of 1866** expressly excluded them when not taxed. Thus by early statutes Indians may not become citizens. **A recent decision in Alaska' (In re Burton, 1900, 1 Alaska, 111) confirmed this by deciding (what is, indeed, obvious) that an Indian is not a " free white person or an alien of African nativity or African descent," and that, therefore, unless there were some special legislation oil the matter, an Indian could not be naturalized as a citizen of the United States, the Indian in this case being a native of British Columbia who had**

emigrated into the United States.
Citizenship has, however, in many cases been conferred on Indians by treaty entered into with the tribe itself or by a foreign government—e. g., treaty of Guadalupe-Hidalgo. For reference to such treaties see Part I, Chapter I, section 1, A. Moreover, as there indicated, Congress has at different times passed statutes which provide that **upon an individual Indian's forsaking his tribal relationships, habits, and customs, and adopting civilized methods of life he shall be considered a citizen.** See (in addition to references given above) act of May, 1890, section 43 (26 Stat. L.) ; act of February, 1887,

secton 3 (24 Stat. L.) ; act of August, 1888 (25 Stat. L.). The fact is, Congress exercises complete control over Indians and Indian affairs, and so may legislate in accordance with or opposition to the generally accepted laws on the matter of citizenship."
(b) Africans.—JSfo question can be raised under the early laws as to the right of foreign-born Africans to become citizens. The act of 1790 provided that to be naturalized the alien must be " a free white person." The repealing act of 1795 had the same provision as did the acts of 1802, 1804, 1824, and 1828. The act of 1870 extended naturalization " to aliens of African nativity and to persons of African descent." Section 2169, Eevised Statutes, provides
— The provisions of this title shall apply to aliens (being free white persons, and to aliens) of African nativity and to persons of African descent.
This was not repealed by designation in the recent statute of 1906^ and inasmuch as it is not inconsistent with the general provisions of that statute it would seem that the general repealing clause as to

matters inconsistent would not affect it. Therefore, by statute, negroes may to-day be naturalized. Moreover, the fourteenth amendment declared, section 1 — All persons bom or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they1 reside.* Thus by legislation and constitutional amendment the African stands, with reference to naturalization, on the same footing as " aliens, being free white persons."

(c) Chinese.—The statutory provisions already given, providing that for naturalization, with the one exception of Africans, the alien must be a free white person, has been held to exclude Chinese from naturalization. The earliest case in which the question arose was in In re Ah Yup, 1878. 5 Sawy., 155, 159, where the court went into a discussion of the meaning of white person, as used in the naturalization laws, and decided that it could not be used in so comprehensive a way as to include the Mongolian race. In reaching this conclusion he examined, not only scientific works on ethnology, but the debates in Congress concerning the naturalization act. He thus concludes this examination: Thus, whatever latitudinarian construction may otherwise have been given to the term "white person," it is entirely clear that Congress intended by this Legislation to exclude Mongolians from the right of iiatunilijyiti tm. I am therefore of the opinion that a native of China, of the Mongolian race, is not a white person within the meaning of the act of Congress.

In the year following the result seems to have been reached in a case decided by Choate, J., in the United States circuit court for

As to the nature of the so-called naturalization laws passed by Congress with reference to the Indians, it is of interest to me that in United States v. Rhodes, I860, 1 Abb. U. S., 45, the court remarked : " To make one of domestic birth a citizen is not naturalization." 6 The courts have repeatedly declared that the fourteenth amendment conferred citizenship upon emancipated negroes. See Strouder

v. West Virginia, 1879, 100 U. S., 303; Virginia v. Rives, id.. 313: Ex parte Virginia, id.. 33!); "Matter of Turner, 1867, 1 Abb. U. S., 84 ; United States v. Canter. 1870. 2 Bond., 389; United States v. Petersburg (—). 1 Hughes, 493; Hall v. Decuir, 1877. 95 U. S., 485. 508; Anthony v. Halderman, 1871, 7 Kans., 50; Barney v. State, 1872, 48 Ala., 195.

160 citizenship of the United States, expatriation, etc.

Chapter 2.

Expatriation.

Section 1.

— Right of expatriation.

The question of the right of a citizen to expatriate himself from the American Union has been the subject of considerable discussion by the courts. One of the earliest expressions on the question is to be found in Jansen v. Brigantine, 1794, Bee, 11, 23, where the court, Commenting upon the alleged expatriation of one of the parties to the action said: I have perused, with attention, the cases cited on both sides as to the right of expatriation and emigration, in the general manner there laid down, where no legal prohibition exists and no prejudice is done thereby. The act of naturalization of Congress and the constitution of this State concur to sanction this doctrine, and we should with an ill grace refuse to our own citizens what we thus hold out to others. One year later the question presented itself before the Supreme

Court in Talbot v. Jansen, 1795, 3 Dall., 133, 162, and the court discussed the matter at considerable length. In the course of his opinion he said: That a man ought not to be a slave ; that he should not be confined against his will to a particular spot because he happened to draw his first breath upon it; that he should not be compelled to continue in a society to which he is accidently attached when he can better his situation elsewhere, much less when he must starve in one country and may live comfortably in another, are positions which I hold as strongly as any man, and they are such as most nations in the world appear clearly to recognize. The only difference of opinion is as to the proper manner of Executing this right. Some hold that it is a natural, inalienable right in each individual; that it is a right upon which no act of legislation can lawfully be exercised, inasmuch as a legislature might impose dangerous restraints upon it, and, of course, it must be left to every man's will and pleasure to go off when and in what manner he pleases. This opinion is deserving of more deference, because it appears to have the sanction of the constitution of this State, if not of some other States in the Union. I must, however, presume to differ from it, tor the following reasons:

1. It is not the exercise of a natural right, in which the individual is to be considered as a lone concern. As every man is entitled to claim rights in society,

which it is the duty of the society to protect, he, in his turn, is under a solemn obligation to discharge all those duties faithfully which he owes, as a citizen, to the society of which he is a member, and as a man to the several members of the society individually with whom he is associated.

Section 2. What may amount to expatriation?

It has been said “that a man could not throw off his natural allegiance, except in assuming some new citizenship," Baird v. Byrne, 1845, 3 Wall. jr., 1, 12 ; and, as already suggested above, other courts have held that it must be with the sanction of the government being forsaken. See also Shearer v. Clay, 1822, 1 Litt. (Ky.), 260.

A. EXPATRIATION BY TAKING OATH OF ALLEGIANCE TO A FOREIGN GOVERNMENT One of the earliest cases in which the question was presented as to the effect upon American citizenship of the taking of an oath of allegiance to a foreign power was presented in Talbot v. Jansen, 1795,

UNIFORM COMMERCIAL CODE

§ 8-102. DEFINITIONS.

(a) In this Article:

(1) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(2) "Bearer form," as applied to a <u>certificated security (Birth Certificate)</u>, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(3) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(4) "Certificated security" means a security that is represented by a certificate.

(5) "Clearing corporation" means:

(i) a person that is registered as a "clearing agency" under the federal securities laws;

(ii) a federal reserve bank; or

(iii) any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

(6) "Communicate" means to:

(i) send a signed writing; or

(ii) transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(7) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of Section 8-501(b)(2) or (3), that person is the entitlement holder.

(8) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(9) "Financial asset," except as otherwise provided in Section 8-103, means:

(i) a security;

(ii) an obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(iii) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Article.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(10) [reserved]

(11) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(12) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(13) "Registered form," as applied to a certificated security, means a form in which:

(i) the security certificate specifies a person entitled to the security; and

(ii) a transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(14) "Securities intermediary" means:

(i) a clearing corporation; or

(ii) a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(15) "Security," except as otherwise provided in Section 8-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(i) which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) which:

(A) is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) is a medium for investment and by its terms expressly provides that it is a security governed by this Article.

(16) "Security certificate" means a certificate representing a security.

(17) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5.

(18) "Uncertificated security" means a security that is not represented by a certificate.

(b) Other definitions applying to this Article and the sections in which they appear are:

Appropriate person Section 8-107

Control Section 8-106

Delivery Section 8-301

Investment company security Section 8-103

Issuer Section 8-201

Overissue Section 8-210

Protected purchaser Section 8-303

Securities account Section 8-501

(c) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

(d) The characterization of a person, business, or transaction for purposes of this Article does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

Uniform Commercial Code › U.C.C. - ARTICLE 9 - SECURED TRANSACTIONS
(2010) › Part 3. Perfection and Priority ›

§ 9-311. PERFECTION OF SECURITY INTERESTS IN PROPERTY SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND TREATIES.

(a) [Security interest subject to other law.]

Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt Section 9-310(a);

(2) [list any statute covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, which provides for a security interest to be indicated on a certificate of title as a condition or result of perfection, and any non-Uniform Commercial Code central filing statute]; or

(3) a statute of another jurisdiction which provides for a security interest to be indicated on a certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) [Compliance with other law.]

Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (d) and Sections 9-313 and 9-316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) [Duration and renewal of perfection.]

Except as otherwise provided in subsection (d) and Section 9-316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this article.

(d) [Inapplicability to certain inventory.]

During any period in which collateral subject to a statute specified in subsection (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

§ 9-312. PERFECTION OF SECURITY INTERESTS IN CHATTEL PAPER, DEPOSIT ACCOUNTS, DOCUMENTS, GOODS COVERED BY DOCUMENTS, INSTRUMENTS, INVESTMENT PROPERTY, LETTER-OF-CREDIT RIGHTS, AND MONEY; PERFECTION BY PERMISSIVE FILING; TEMPORARY PERFECTION WIT

(a) [Perfection by filing permitted.]

A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) [Control or possession of certain collateral.]

Except as otherwise provided in Section 9-315(c) and (d) for proceeds:

(1) a security interest in a deposit account may be perfected only by control under Section 9-314;

(2) and except as otherwise provided in Section 9-308(d), a security interest in a letter-of-credit right may be perfected only by control under Section 9-314; and

(3) a security interest in money may be perfected only by the secured party's taking possession under Section 9-313.

(c) [Goods covered by negotiable document.]

While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) [Goods covered by nonnegotiable document.]

While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) issuance of a document in the name of the secured party;

(2) the bailee's receipt of notification of the secured party's interest; or

(3) filing as to the goods.

(e) [Temporary perfection: new value.]

A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) [Temporary perfection: goods or documents made available to debtor.]

A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) ultimate sale or exchange; or

(2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) [Temporary perfection: delivery of security certificate or instrument to debtor.]

A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) ultimate sale or exchange; or

(2) presentation, collection, enforcement, renewal, or registration of transfer.

(h) [Expiration of temporary perfection.]

After the 20-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this article.

§ 9-313. WHEN POSSESSION BY OR DELIVERY TO SECURED PARTY PERFECTS SECURITY INTEREST WITHOUT FILING.

(a) [Perfection by possession or delivery.]

Except as otherwise provided in subsection (b), a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 8-301.

(b) [Goods covered by certificate of title.]

With respect to goods covered by a certificate of title issued by this State, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in Section 9-316(d).

Section 9-316(d) - [Goods covered by certificate of title from this state.]

Except as otherwise provided in subsection (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this State remains perfected until the

security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(c) [Collateral in possession of person other than debtor.]

With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) the person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) [Time of perfection by possession; continuation of perfection.]

If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) [Time of perfection by delivery; continuation of perfection.]

A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under Section 8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) [Acknowledgment not required.]

A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) [Effectiveness of acknowledgment; no duties or confirmation.]

If a person acknowledges that it holds possession for the secured party's benefit:

(1) the acknowledgment is effective under subsection (c) or Section 8-301(a), even if the acknowledgment violates the rights of a debtor; and

(2) unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) [Secured party's delivery to person other than debtor.]

A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) to hold possession of the collateral for the secured party's benefit; or

(2) to redeliver the collateral to the secured party.

(i) [Effect of delivery under subsection (h); no duties or confirmation.]

A secured party does not relinquish possession, even if a delivery under subsection (h) violates the rights of a debtor. A person to which collateral is delivered under subsection (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this article otherwise provides.

Federal Rules of Civil Procedure

RULES OF CIVIL PROCEDURE FOR THE UNITED STATES DISTRICT COURTS

Rule 1. Scope and Purpose

These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

Rule 81. Applicability of the Rules in General; Removed Actions

(a) Applicability to Particular Proceedings.

(1) *Prize Proceedings.* These rules do not apply to prize proceedings in admiralty governed by 10 U.S.C. §§7651–7681.

(2) *Bankruptcy.* These rules apply to bankruptcy proceedings to the extent provided by the Federal Rules of Bankruptcy Procedure.

(3) *Citizenship.* These rules apply to proceedings for admission to citizenship to the extent that the practice in those proceedings is not specified in federal statutes and has previously conformed to the practice in civil actions. The provisions of 8 U.S.C. §1451 for service by publication and for answer apply in proceedings to cancel citizenship certificates.

(4) *Special Writs.* These rules apply to proceedings for habeas corpus and for quo warranto to the extent that the practice in those proceedings:

(A) is not specified in a federal statute, the Rules Governing Section 2254 Cases, or the Rules Governing Section 2255 Cases; and

(B) has previously conformed to the practice in civil actions.

(5) *Proceedings Involving a Subpoena.* These rules apply to proceedings to compel testimony or the production of documents through a subpoena issued by a United States officer or agency under a federal statute, except as otherwise provided by statute, by local rule, or by court order in the proceedings.

(6) *Other Proceedings.* These rules, to the extent applicable, govern proceedings under the following laws, except as these laws provide other procedures:

(A) 7 U.S.C. §§292, 499g(c), for reviewing an order of the Secretary of Agriculture;

(B) 9 U.S.C., relating to arbitration;

(C) 15 U.S.C. §522, for reviewing an order of the Secretary of the Interior;

(D) 15 U.S.C. §715d(c), for reviewing an order denying a certificate of clearance;

(E) 29 U.S.C. §§159, 160, for enforcing an order of the National Labor Relations Board;

(F) 33 U.S.C. §§918, 921, for enforcing or reviewing a compensation order under the Longshore and Harbor Workers' Compensation Act; and

(G) 45 U.S.C. §159, for reviewing an arbitration award in a railway-labor dispute.

(b) Scire Facias and Mandamus. The writs of scire facias and mandamus are abolished. Relief previously available through them may be obtained by appropriate action or motion under these rules.

(c) Removed Actions.

(1) *Applicability.* These rules apply to a civil action after it is removed from a state court.

(2) *Further Pleading.* After removal, repleading is unnecessary unless the court orders it. A defendant who did not answer before removal must answer or present other defenses or objections under these rules within the longest of these periods:

(A) 21 days after receiving—through service or otherwise—a copy of the initial pleading stating the claim for relief;

(B) 21 days after being served with the summons for an initial pleading on file at the time of service; or

(C) 7 days after the notice of removal is filed.

(3) *Demand for a Jury Trial.*

(A) *As Affected by State Law.* A party who, before removal, expressly demanded a jury trial in accordance with state law need not renew the demand after removal. If the state law did not require an express demand for a jury trial, a party need not make one after removal unless the court orders the parties to do so within a specified time. The court must so order at a party's request and may so order on its own. A party who fails to make a demand when so ordered waives a jury trial.

(B) *Under Rule 38.* If all necessary pleadings have been served at the time of removal, a party entitled to a jury trial under Rule 38 must be given one if the party serves a demand within 14 days after:

(i) it files a notice of removal; or

(ii) it is served with a notice of removal filed by another party.

(d) Law Applicable.

(1) *"State Law" Defined.* When these rules refer to state law, the term "law" includes the state's statutes and the state's judicial decisions.

(2) *"State" Defined.* The term "state" includes, where appropriate, the District of Columbia and any United States commonwealth or territory.

(3) *"Federal Statute" Defined in the District of Columbia.* In the United States District Court for the District of Columbia, the term "federal statute" includes any Act of Congress that applies locally to the District.

Rule 2. One Form of Action

There is one form of action—the civil action.

Notes

(As amended Apr. 30, 2007, eff. Dec. 1, 2007.)

Notes of Advisory Committee on Rules—1937

1. This rule modifies U.S.C., Title 28, [former] §384 (Suits in equity, when not sustainable). U.S.C., Title 28, §§723 and 730 [see 2071 et seq.] (conferring power on the Supreme Court to make rules of practice in equity), are unaffected insofar as they relate to the rule making power in admiralty. These sections, together with §723b [see 2072] (Rules in actions at law; Supreme Court authorized to make) are continued insofar as they are not inconsistent with §723c [see 2072] (Union of equity and action at law rules; power of Supreme Court). See Note 3 to Rule 1. U.S.C., Title 28, [former] §§724 (Conformity act), 397 (Amendments to pleadings when case brought to wrong side of court) and 398 (Equitable defenses and equitable relief in actions at law) are superseded.

2. Reference to actions at law or suits in equity in all statutes should now be treated as referring to the civil action prescribed in these rules.

3. This rule follows in substance the usual introductory statements to code practices which provide for a single action and mode of procedure, with abolition of forms of action and procedural distinctions. Representative statutes are N.Y. Code 1848 (Laws 1848, ch. 379) §62; N.Y.C.P.A. (1937) §8; Calif.Code Civ.Proc. (Deering, 1937) §307; 2 Minn.Stat. (Mason, 1927) §9164; 2 Wash.Rev.Stat.Ann. (Remington, 1932) §§153, 255.

TITLE II. COMMENCING AN ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

Rule 3. Commencing an Action

A civil action is commenced by filing a complaint with the court.

Notes

(As amended Apr. 30, 2007, eff. Dec. 1, 2007.)

Notes of Advisory Committee on Rules—1937

1. Rule 5(e) defines what constitutes filing with the court.

2. This rule governs the commencement of all actions, including those brought by or against the United States or an officer or agency thereof, regardless of whether service is to be made personally pursuant to Rule 4(d), or otherwise pursuant to Rule 4(e).

3. With this rule compare [former] Equity Rule 12 (Issue of Subpoena—Time for Answer) and the following statutes (and other similar statutes) which provide a similar method for commencing an action:

U.S.C., Title 28:

§45 [former] (District courts; practice and procedure in certain cases under interstate commerce laws).

§762 [see 1402] (Petition in suit against United States).

§766 [see 2409] (Partition suits where United States is tenant in common or joint tenant).

4. This rule provides that the first step in an action is the filing of the complaint. Under Rule 4(a) this is to be followed forthwith by issuance of a summons and its delivery to an officer for service. Other rules providing for dismissal for failure to prosecute suggest a method available to attack unreasonable delay in prosecuting an action after it has been commenced. When a Federal or State statute of limitations is pleaded as a defense, a question may arise under this rule whether the mere filing of the complaint stops the running of the statute, or whether any further step is required, such as, service of the summons and complaint or their delivery to the marshal for service. The answer to this question may depend on whether it is competent for the Supreme Court, exercising the power to make rules of procedure without affecting substantive rights, to vary the operation of statutes of limitations. The requirement of Rule 4(a) that the clerk shall

forthwith issue the summons and deliver it to the marshal for service will reduce the chances of such a question arising.

Committee Notes on Rules—2007 Amendment

The caption of Rule 3 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 4. Summons

(a) Contents; Amendments.

(1) *Contents.* A summons must:

(A) name the court and the parties;

(B) be directed to the defendant;

(C) state the name and address of the plaintiff's attorney or—if unrepresented—of the plaintiff;

(D) state the time within which the defendant must appear and defend;

(E) notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint;

(F) be signed by the clerk; and

(G) bear the court's seal.

(2) *Amendments.* The court may permit a summons to be amended.

(b) Issuance. On or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue

it to the plaintiff for service on the defendant. A summons—or a copy of a summons that is addressed to multiple defendants—must be issued for each defendant to be served.

(c) Service.

(1) *In General.* A summons must be served with a copy of the complaint. The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service.

(2) *By Whom.* Any person who is at least 18 years old and not a party may serve a summons and complaint.

(3) *By a Marshal or Someone Specially Appointed.* At the plaintiff's request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. The court must so order if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. §1915 or as a seaman under 28 U.S.C. §1916.

(d) Waiving Service.

(1) *Requesting a Waiver.* An individual, corporation, or association that is subject to service under Rule 4(e), (f), or (h) has a duty to avoid unnecessary expenses of serving the summons. The plaintiff may notify such a defendant that an action has been commenced and request that the defendant waive service of a summons. The notice and request must:

(A) be in writing and be addressed:

(i) to the individual defendant; or

(ii) for a defendant subject to service under Rule 4(h), to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process;

(B) name the court where the complaint was filed;

(C) be accompanied by a copy of the complaint, 2 copies of the waiver form appended to this Rule 4, and a prepaid means for returning the form;

(D) inform the defendant, using the form appended to this Rule 4, of the consequences of waiving and not waiving service;

(E) state the date when the request is sent;

(F) give the defendant a reasonable time of at least 30 days after the request was sent—or at least 60 days if sent to the defendant outside any judicial district of the United States—to return the waiver; and

(G) be sent by first-class mail or other reliable means.

(2) *Failure to Waive.* If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant:

(A) the expenses later incurred in making service; and

(B) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

(3) *Time to Answer After a Waiver.* A defendant who, before being served with process, timely returns a waiver need not serve an answer to the complaint until 60 days after the request was sent—or until 90 days after it was sent to the defendant outside any judicial district of the United States.

(4) *Results of Filing a Waiver.* When the plaintiff files a waiver, proof of service is not required and these rules apply as if a summons and complaint had been served at the time of filing the waiver.

(5) *Jurisdiction and Venue Not Waived.* Waiving service of a summons does not waive any objection to personal jurisdiction or to venue.

(e) Serving an Individual Within a Judicial District of the United States. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in a judicial district of the United States by:

(1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or

(2) doing any of the following:

(A) delivering a copy of the summons and of the complaint to the individual personally;

(B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

(f) Serving an Individual in a Foreign Country. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served at a place not within any judicial district of the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:

(i) delivering a copy of the summons and of the complaint to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

(g) Serving a Minor or an Incompetent Person. A minor or an incompetent person in a judicial district of the United States must be served by following state law for serving a summons or like process on such a defendant in an action brought in the courts of general jurisdiction of the state where service is made. A minor or an incompetent person who is not within any judicial district of the United States must be served in the manner prescribed by Rule 4(f)(2)(A), (f)(2)(B), or (f)(3).

(h) Serving a Corporation, Partnership, or Association. Unless federal law provides otherwise or the defendant's waiver has been filed, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served:

(1) in a judicial district of the United States:

(A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or

(B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant; or

(2) at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).

(i) Serving the United States and Its Agencies, Corporations, Officers, or Employees.

(1) *United States.* To serve the United States, a party must:

(A)(i) deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought—or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk—or

(ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney's office;

(B) send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and

(C) if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

(2) *Agency; Corporation; Officer or Employee Sued in an Official Capacity.* To serve a United States agency or corporation, or a United States officer or employee sued only in an official capacity, a party must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer, or employee.

(3) *Officer or Employee Sued Individually.* To serve a United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf (whether or not the officer or employee is also sued in an official capacity), a party must serve the United States and also serve the officer or employee under Rule 4(e), (f), or (g).

(4) *Extending Time.* The court must allow a party a reasonable time to cure its failure to:

(A) serve a person required to be served under Rule 4(i)(2), if the party has served either the United States attorney or the Attorney General of the United States; or

(B) serve the United States under Rule 4(i)(3), if the party has served the United States officer or employee.

(j) Serving a Foreign, State, or Local Government.

(1) *Foreign State.* A foreign state or its political subdivision, agency, or instrumentality must be served in accordance with 28 U.S.C. §1608.

(2) *State or Local Government.* A state, a municipal corporation, or any other state-created governmental organization that is subject to suit must be served by:

(A) delivering a copy of the summons and of the complaint to its chief executive officer; or

(B) serving a copy of each in the manner prescribed by that state's law for serving a summons or like process on such a defendant.

(k) Territorial Limits of Effective Service.

(1) *In General.* Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant:

(A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located;

(B) who is a party joined under Rule 14 or 19 and is served within a judicial district of the United States and not more than 100 miles from where the summons was issued; or

(C) when authorized by a federal statute.

(2) *Federal Claim Outside State-Court Jurisdiction.* For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if:

(A) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and

(B) exercising jurisdiction is consistent with the United States Constitution and laws.

(*l*) Proving Service.

(1) *Affidavit Required.* Unless service is waived, proof of service must be made to the court. Except for service by a United States marshal or deputy marshal, proof must be by the server's affidavit.

(2) *Service Outside the United States.* Service not within any judicial district of the United States must be proved as follows:

(A) if made under Rule 4(f)(1), as provided in the applicable treaty or convention; or

(B) if made under Rule 4(f)(2) or (f)(3), by a receipt signed by the addressee, or by other evidence satisfying the court that the summons and complaint were delivered to the addressee.

(3) *Validity of Service; Amending Proof.* Failure to prove service does not affect the validity of service. The court may permit proof of service to be amended.

(m) Time Limit for Service. If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1).

(n) Asserting Jurisdiction over Property or Assets.

(1) *Federal Law.* The court may assert jurisdiction over property if authorized by a federal statute. Notice to claimants of the property must be given as provided in the statute or by serving a summons under this rule.

(2) *State Law.* On a showing that personal jurisdiction over a defendant cannot be obtained in the district where the action is brought by reasonable efforts to serve a summons under this rule, the court may assert jurisdiction over the defendant's assets found in the district. Jurisdiction is acquired by seizing the assets under the circumstances and in the manner provided by state law in that district.

Rule 4 Notice of a Lawsuit and Request to Waive Service of Summons.

(Caption)

To (name the defendant or — if the defendant is a corporation, partnership, or association — name an officer or agent authorized to receive service):

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within (give at least 30 days or at least 60 days if the defendant is outside any judicial district of the United States) from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: _____ _____

(Signature of the attorney or unrepresented party)

_____

(Printed name)

_____

(Address)

_____

(E-mail address)

_____

(Telephone number)

Rule 4 Waiver of the Service of Summons.

(Caption)

To (name the plaintiff's attorney or the unrepresented plaintiff):

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from _____, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

_____

(Signature of the attorney or unrepresented party)

_____

(Printed name)

_____

(Address)

_____

(E-mail address)

_____

(Telephone number)

(Attach the following)

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

Notes

(As amended Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Apr. 29, 1980, eff. Aug. 1, 1980; Pub. L. 97–462, §2, Jan. 12, 1983, 96 Stat. 2527; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 29, 2015, eff. Dec. 1, 2015; Apr. 28, 2016, eff. Dec 1, 2016.)

Notes of Advisory Committee on Rules—1937

Note to Subdivision (a). With the provision permitting additional summons upon request of the plaintiff compare [former] Equity Rule 14 (Alias Subpoena) and the last sentence of [former] Equity Rule 12 (Issue of Subpoena—Time for Answer).

Note to Subdivision (b). This rule prescribes a form of summons which follows substantially the requirements stated in [former] Equity Rules 12 (Issue of Subpoena—Time for Answer) and 7 (Process, Mesne and Final).

U.S.C., Title 28, §721 [now 1691] (Sealing and testing of writs) is substantially continued insofar as it applies to a summons, but its requirements as to teste of process are superseded. U.S.C., Title 28, [former] §722 (Teste of process, day of), is superseded.

See Rule 12(a) for a statement of the time within which the defendant is required to appear and defend.

Note to Subdivision (c). This rule does not affect U.S.C., Title 28, §503 [see 566], as amended June 15, 1935 (Marshals; duties) and such statutes as the following insofar as they provide for service of process by a marshal, but modifies them insofar as they may imply service by a marshal only:

U.S.C., Title 15:

§5 (Bringing in additional parties) (Sherman Act)

§10 (Bringing in additional parties)

§25 (Restraining violations; procedure)

U.S.C., Title 28:

§45 [former] (Practice and procedure in certain cases under the interstate commerce laws)

Compare [former] Equity Rule 15 (Process, by Whom Served).

Note to Subdivision (d). Under this rule the complaint must always be served with the summons.

Paragraph (1). For an example of a statute providing for service upon an agent of an individual see U.S.C., Title 28, §109 [now 1400, 1694] (Patent cases).

Paragraph (3). This enumerates the officers and agents of a corporation or of a partnership or other unincorporated association upon whom service of process may be made, and permits service of process only upon the officers, managing or general agents, or agents authorized by appointment or by law, of the corporation, partnership or unincorporated association against which the action is brought. See *Christian v. International Ass'n of Machinists*, 7 F.(2d) 481 (D.C.Ky., 1925) and *Singleton v. Order of Railway Conductors of America*, 9 F.Supp. 417 (D.C.Ill., 1935). Compare *Operative Plasterers' and Cement Finishers' International Ass'n of the United States and Canada v. Case*, 93 F.(2d) 56 (App.D.C., 1937).

For a statute authorizing service upon a specified agent and requiring mailing to the defendant, see U.S.C., Title 6, §7 [now Title 31, §9306] (Surety companies as sureties; appointment of agents; service of process).

Paragraphs (4) and (5) provide a uniform and comprehensive method of service for all actions against the United States or an officer or agency thereof. For statutes providing for such service, see U.S.C., Title 7, §§217 (Proceedings for suspension of orders), 499k (Injunctions; application of injunction laws governing orders of Interstate Commerce Commission), 608c(15)(B) (Court review of ruling of Secretary of Agriculture), and 855 (making §608c(15)(B) applicable to orders of the Secretary of Agriculture as to handlers of anti-hog-cholera serum and hog-cholera virus); U.S.C., Title 26, [former] §1569 (Bill in chancery to clear title to realty on which the United States has a lien for taxes); U.S.C., Title 28, [former] §§45 (District Courts; practice and procedure in certain cases under the interstate commerce laws), [former] 763 (Petition in suit against the United States; service; appearance by district attorney), 766 [now 2409] (Partition suits where United States is tenant in common or joint tenant), 902 [now 2410] (Foreclosure of mortgages or other liens on property in which the United States has an interest). These and similar statutes are modified insofar as they prescribe a different method of service or dispense with the service of a summons.

For the [former] Equity Rule on service, see [former] Equity Rule 13 (Manner of Serving Subpoena).

Note to Subdivision (e). The provisions for the service of a summons or of notice or of an order in lieu of summons contained in U.S.C., Title 8, §405 [see 1451] (Cancellation of certificates of citizenship fraudulently or illegally procured) (service by publication in accordance with State law); U.S.C., Title 28, §118 [now 1655] (Absent defendants in suits to enforce liens); U.S.C., Title 35, §72a [now 146, 291] (Jurisdiction of District Court of United States for the District of Columbia in certain equity suits where adverse parties reside elsewhere) (service by publication against parties residing in foreign countries); U.S.C., Title 38, §445 [now 1984] (Action against the United States on a veteran's contract of insurance) (parties not inhabitants of or not found within the District may be served with an order of the court, personally or by publication) and similar statutes are continued by this rule. Title 24, §378 [now Title 13, §336] of the Code of the District of Columbia (Publication against nonresident; those absent for six months; unknown heirs or devisees; for divorce or in rem; actual service beyond District) is continued by this rule.

Note to Subdivision (f). This rule enlarges to some extent the present rule as to where service may be made. It does not, however, enlarge the jurisdiction of the district courts.

U.S.C., Title 28, §§113 [now 1392] (Suits in States containing more than one district) (where there are two or more defendants residing in different districts), [former] 115 (Suits of a local

nature), 116 [now 1392] (Property in different districts in same State), [former] 838 (Executions run in all districts of State); U.S.C., Title 47, §13 (Action for damages against a railroad or telegraph company whose officer or agent in control of a telegraph line refuses or fails to operate such line in a certain manner—"upon any agent of the company found in such state"); U.S.C., Title 49, §321(c) [see 13304(a)] (Requiring designation of a process agent by interstate motor carriers and in case of failure so to do, service may be made upon any agent in the State) and similar statutes, allowing the running of process throughout a State, are substantially continued.

U.S.C., Title 15, §§5 (Bringing in additional parties) (Sherman Act), 25 (Restraining violations; procedure); U.S.C., Title 28, §§44 [now 2321] (Procedure in certain cases under interstate commerce laws; service of processes of court), 117 [now 754, 1692] (Property in different States in same circuit; jurisdiction of receiver), 839 [now 2413] (Executions; run in every State and Territory) and similar statutes, providing for the running of process beyond the territorial limits of a State, are expressly continued.

Note to Subdivision (g). With the second sentence compare [former] Equity Rule 15 (Process, by Whom Served).

Note to Subdivision (h). This rule substantially continues U.S.C., Title 28, [former] §767 (Amendment of process).

Notes of Advisory Committee on Rules—1963 Amendment

Subdivision (b). Under amended subdivision (e) of this rule, an action may be commenced against a nonresident of the State in which the district court is held by complying with State procedures. Frequently the form of the summons or notice required in these cases by State law differs from the Federal form of summons described in present subdivision (b) and exemplified in Form 1. To avoid confusion, the amendment of subdivision (b) states that a form of summons or notice, corresponding "as nearly as may be" to the State form, shall be employed. See also a corresponding amendment of Rule 12(a) with regard to the time to answer.

Subdivision (d)(4). This paragraph, governing service upon the United States, is amended to allow the use of certified mail as an alternative to registered mail for sending copies of the papers to the Attorney General or to a United States officer or agency. Cf. N.J. Rule 4:5–2. See also the amendment of Rule 30(f)(1).

Subdivision (d)(7). Formerly a question was raised whether this paragraph, in the context of the rule as a whole, authorized service in original Federal actions pursuant to State statutes permitting service on a State official as a means of bringing a nonresident motorist defendant into court. It was argued in *McCoy v. Siler*, 205 F.2d 498, 501–2 (3d Cir.) (concurring opinion), *cert. denied*, 346 U.S. 872, 74 S.Ct. 120, 98 L.Ed. 380 (1953), that the effective service in those cases occurred not when the State official was served but when notice was given to the defendant outside the State, and that subdivision (f) (Territorial limits of effective service), as then worded, did not authorize out-of-State service. This contention found little support. A considerable number of cases held the service to be good, either by fixing upon the service on the official within the State as the effective service, thus satisfying the wording of subdivision (f) as it then stood, see *Holbrook v. Cafiero*, 18 F.R.D. 218 (D.Md. 1955); *Pasternack v. Dalo*, 17 F.R.D. 420; (W.D.Pa. 1955); cf. *Super Prods. Corp. v. Parkin*, 20 F.R.D. 377 (S.D.N.Y. 1957), or by reading paragraph (7) as not limited by subdivision (f). See *Griffin v. Ensign*, 234 F.2d 307 (3d Cir. 1956); 2 *Moore's Federal Practice*, 4.19 (2d ed. 1948); 1 Barron & Holtzoff, *Federal Practice & Procedure* §182.1 (Wright ed. 1960); Comment, 27 U. of Chi.L.Rev. 751 (1960). See also *Olberding v. Illinois Central R.R.*, 201 F.2d 582 (6th Cir.), *rev'd on other grounds*, 346 U.S. 338, 74 S.Ct. 83, 98 L.Ed. 39 (1953); *Feinsinger v. Bard*, 195 F.2d 45 (7th Cir. 1952).

An important and growing class of State statutes base personal jurisdiction over nonresidents on the doing of acts or on other contacts within the State, and permit notice to be given the defendant outside the State without any requirement of service on a local State official. See, e.g., Ill.Ann.Stat. ch. 110, §§16, 17 (Smith-Hurd 1956); Wis.Stat. §262.06 (1959). This service, employed in original Federal actions pursuant to paragraph (7), has also been held proper. See *Farr & Co. v. Cia. Intercontinental de Nav. de Cuba*, 243 F.2d 342 (2d Cir. 1957); *Kappus v. Western Hills Oil, Inc.*, 24 F.R.D. 123 (E.D.Wis. 1959); *Star v. Rogalny*, 162 F.Supp. 181 (E.D.Ill. 1957). It has also been held that the clause of paragraph (7) which permits service "in the manner prescribed by the law of the state," etc., is not limited by subdivision (c) requiring that service of all process be made by certain designated persons. See *Farr & Co. v. Cia. Intercontinental de Nav. de Cuba, supra. But cf. Sappia v. Lauro Lines*, 130 F.Supp. 810 (S.D.N.Y. 1955).

The salutary results of these cases are intended to be preserved. See paragraph (7), with a clarified reference to State law, and amended subdivisions (e) and (f).

Subdivision (e). For the general relation between subdivisions (d) and (e), see 2 Moore, *supra*, 4.32.The amendment of the first sentence inserting the word "thereunder" supports the original

intention that the "order of court" must be authorized by a specific United States statute. See 1 Barron & Holtzoff, supra, at 731. The clause added at the end of the first sentence expressly adopts the view taken by commentators that, if no manner of service is prescribed in the statute or order, the service may be made in a manner stated in Rule 4. See 2 Moore, *supra,* 4.32, at 1004; Smit, *International Aspects of Federal Civil Procedure*, 61 Colum.L.Rev. 1031, 1036–39 (1961). *But see* Commentary, 5 Fed. Rules Serv. 791 (1942).

Examples of the statutes to which the first sentence relates are 28 U.S.C. §2361 (Interpleader; process and procedure); 28 U.S.C. §1655 (Lien enforcement; absent defendants).

The second sentence, added by amendment, expressly allows resort in original Federal actions to the procedures provided by State law for effecting service on nonresident parties (as well as on domiciliaries not found within the State). See, as illustrative, the discussion under amended subdivision (d)(7) of service pursuant to State nonresident motorist statutes and other comparable State statutes. Of particular interest is the change brought about by the reference in this sentence to State procedures for commencing actions against nonresidents by attachment and the like, accompanied by notice. Although an action commenced in a State court by attachment may be removed to the Federal court if ordinary conditions for removal are satisfied, see 28 U.S.C. §1450; *Rorick v. Devon Syndicate, Ltd*., 307 U.S. 299, 59 S.Ct. 877, 83 L.Ed. 1303 (1939); *Clark v. Wells*, 203 U.S. 164, 27 S.Ct. 43, 51 L.Ed. 138 (1906), there has heretofore been no provision recognized by the courts for commencing an original Federal civil action by attachment. See Currie, *Attachment and Garnishment in the Federal Courts*, 59 Mich.L.Rev. 337 (1961), arguing that this result came about through historical anomaly. Rule 64, which refers to attachment, garnishment, and similar procedures under State law, furnishes only provisional remedies in actions otherwise validly commenced. See *Big Vein Coal Co. v. Read*, 229 U.S. 31, 33 S.Ct. 694, 57 L.Ed. 1953 (1913); *Davis v. Ensign-Bickford Co*., 139 F.2d 624 (8th Cir. 1944); 7 *Moore's Federal Practice* 64.05 (2d ed. 1954); 3 Barron & Holtzoff, *Federal Practice & Procedure* §1423 (Wright ed. 1958); but cf. Note, 13 So.Calif.L.Rev. 361 (1940). The amendment will now permit the institution of original Federal actions against nonresidents through the use of familiar State procedures by which property of these defendants is brought within the custody of the court and some appropriate service is made up them.

The necessity of satisfying subject-matter jurisdictional requirements and requirements of venue will limit the practical utilization of these methods of effecting service. Within those limits, however, there appears to be no reason for denying plaintiffs means of commencing actions in Federal courts which are generally available in the State courts. See 1 Barron & Holtzoff, *supra,*

at 374–80; Nordbye, *Comments on Proposed Amendments to Rules of Civil Procedure for the United States District Courts*, 18 F.R.D. 105, 106 (1956); Note, 34 Corn.L.Q. 103 (1948); Note, 13 So.Calif.L.Rev. 361 (1940).

If the circumstances of a particular case satisfy the applicable Federal law (first sentence of Rule 4(e), as amended) and the applicable State law (second sentence), the party seeking to make the service may proceed under the Federal or the State law, at his option.

See also amended Rule 13(a), and the Advisory Committee's Note thereto.

Subdivision (f). The first sentence is amended to assure the effectiveness of service outside the territorial limits of the State in all the cases in which any of the rules authorize service beyond those boundaries. Besides the preceding provisions of Rule 4, see Rule 71A(d)(3). In addition, the new second sentence of the subdivision permits effective service within a limited area outside the State in certain special situations, namely, to bring in additional parties to a counterclaim or cross-claim (Rule 13(h)), impleaded parties (Rule 14), and indispensable or conditionally necessary parties to a pending action (Rule 19); and to secure compliance with an order of commitment for civil contempt. In those situations effective service can be made at points not more than 100 miles distant from the courthouse in which the action is commenced, or to which it is assigned or transferred for trial.

The bringing in of parties under the 100-mile provision in the limited situations enumerated is designed to promote the objective of enabling the court to determine entire controversies. In the light of present-day facilities for communication and travel, the territorial range of the service allowed, analogous to that which applies to the service of a subpoena under Rule 45(e)(1), can hardly work hardship on the parties summoned. The provision will be especially useful in metropolitan areas spanning more than one State. Any requirements of subject-matter jurisdiction and venue will still have to be satisfied as to the parties brought in, although these requirements will be eased in some instances when the parties can be regarded as "ancillary." See *Pennsylvania R.R. v. Erie Avenue Warehouse Co.*, 5 F.R.Serv.2d 14a.62, Case 2 (3d Cir. 1962); *Dery v. Wyer*, 265 F.2d 804 (2d Cir. 1959); *United Artists Corp. v. Masterpiece Productions, Inc.*, 221 F.2d 213 (2d Cir. 1955); *Lesnik v. Public Industrials Corp.*, 144 F.2d 968 (2d Cir. 1944); *Vaughn v. Terminal Transp. Co.*, 162 F.Supp. 647 (E.D.Tenn. 1957); and compare the fifth paragraph of the Advisory Committee's Note to Rule 4(e), as amended. The amendment is but a moderate extension of the territorial reach of Federal process and has ample practical justification. See 2 Moore, *supra*. §4.01[13] (Supp. 1960); 1 Barron & Holtzoff, supra,

§184; Note, 51 Nw.U.L.Rev. 354 (1956). *But cf.* Nordbye, *Comments on Proposed Amendments to Rules of Civil Procedure for the United States District Courts,* 18 F.R.D. 105, 106 (1956).

As to the need for enlarging the territorial area in which orders of commitment for civil contempt may be served, see *Graber v. Graber,* 93 F.Supp. 281 (D.D.C. 1950); *Teele Soap Mfg. Co. v. Pine Tree Products Co., Inc*., 8 F.Supp. 546 (D.N.H. 1934); *Mitchell v. Dexter,* 244 Fed. 926 (1st Cir. 1917); *in re Graves,* 29 Fed. 60 (N.D. Iowa 1886).

As to the Court's power to amend subdivisions (e) and (f) as here set forth, see *Mississippi Pub. Corp. v. Murphree*, 326 U.S. 438, 66 S.Ct. 242, 90 L.Ed. 185 (1946).

Subdivision (i). The continual increase of civil litigation having international elements makes it advisable to consolidate, amplify, and clarify the provisions governing service upon parties in foreign countries. See generally Jones, *International Judicial Assistance: Procedural Chaos and a Program for Reform,* 62 Yale L.J. 515 (1953); Longley, *Serving Process, Subpoenas and Other Documents in Foreign Territory*, Proc. A.B.A., Sec. Int'l & Comp. L. 34 (1959); Smit, *International Aspects of Federal Civil Procedure,* 61 Colum.L.Rev. 1031 (1961).

As indicated in the opening lines of new subdivision (i), referring to the provisions of subdivision (e), the authority for effecting foreign service must be found in a statute of the United States or a statute or rule of court of the State in which the district court is held providing in terms or upon proper interpretation for service abroad upon persons not inhabitants of or found within the State. See the Advisory Committee's Note to amended Rule 4(d)(7) and Rule 4(e). For examples of Federal and State statutes expressly authorizing such service, see 8 U.S.C. §1451(b); 35 U.S.C. §§146, 293; Me.Rev.Stat., ch. 22, §70 (Supp. 1961); Minn.Stat.Ann. §303.13 (1947); N.Y.Veh. & Tfc.Law §253. Several decisions have construed statutes to permit service in foreign countries, although the matter is not expressly mentioned in the statutes. See, e.g., *Chapman v. Superior Court*, 162 Cal.App.2d 421, 328 P.2d 23 (Dist.Ct.App. 1958); *Sperry v. Fliegers*, 194 Misc. 438, 86 N.Y.S.2d 830 (Sup.Ct. 1949); *Ewing v. Thompson*, 233 N.C. 564, 65 S.E.2d 17 (1951); *Rushing v. Bush*, 260 S.W.2d 900 (Tex.Ct.Civ.App. 1953). Federal and State statutes authorizing service on nonresidents in such terms as to warrant the interpretation that service abroad is permissible include 15 U.S.C. §§77v(a), 78aa, 79y; 28 U.S.C. §1655; 38 U.S.C. §784(a); Ill.Ann.Stat. ch. 110, §§16, 17 (Smith-Hurd 1956); Wis.Stat. §262.06 (1959).

Under subdivisions (e) and (i), when authority to make foreign service is found in a Federal statute or statute or rule of court of a State, it is always sufficient to carry out the service in the

manner indicated therein. Subdivision (i) introduces considerable further flexibility by permitting the foreign service and return thereof to be carried out in any of a number of other alternative ways that are also declared to be sufficient. Other aspects of foreign service continue to be governed by the other provisions of Rule 4. Thus, for example, subdivision (i) effects no change in the form of the summons, or the issuance of separate or additional summons, or the amendment of service.

Service of process beyond the territorial limits of the United States may involve difficulties not encountered in the case of domestic service. Service abroad may be considered by a foreign country to require the performance of judicial, and therefore "sovereign," acts within its territory, which that country may conceive to be offensive to its policy or contrary to its law. See Jones, *supra*, at 537. For example, a person not qualified to serve process according to the law of the foreign country may find himself subject to sanctions if he attempts service therein. See Inter-American Judicial Committee, *Report on Uniformity of Legislation on International Cooperation in Judicial Procedures* 20 (1952). The enforcement of a judgment in the foreign country in which the service was made may be embarrassed or prevented if the service did not comport with the law of that country. See *ibid.*

One of the purposes of subdivision (i) is to allow accommodation to the policies and procedures of the foreign country. It is emphasized, however, that the attitudes of foreign countries vary considerably and that the question of recognition of United States judgments abroad is complex. Accordingly, if enforcement is to be sought in the country of service, the foreign law should be examined before a choice is made among the methods of service allowed by subdivision (i).

Subdivision (i)(1). Subparagraph (a) of paragraph (1), permitting service by the method prescribed by the law of the foreign country for service on a person in that country in a civil action in any of its courts of general jurisdiction, provides an alternative that is likely to create least objection in the place of service and also is likely to enhance the possibilities of securing ultimate enforcement of the judgment abroad. See *Report on Uniformity of Legislation on International Cooperation in Judicial Procedures, supra.*

In certain foreign countries service in aid of litigation pending in other countries can lawfully be accomplished only upon request to the foreign court, which in turn directs the service to be made. In many countries this has long been a customary way of accomplishing the service. See *In re Letters Rogatory out of First Civil Court of City of Mexico*, 261 Fed. 652 (S.D.N.Y. 1919); *Jones, supra,* at 543; Comment, 44 Colum.L.Rev. 72 (1944); Note, 58 Yale L.J. 1193 (1949).

Subparagraph (B) of paragraph (1), referring to a letter rogatory, validates this method. A proviso, applicable to this subparagraph and the preceding one, requires, as a safeguard, that the service made shall be reasonably calculated to give actual notice of the proceedings to the party. See *Milliken v. Meyer*, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278 (1940).

Subparagraph (C) of paragraph (1), permitting foreign service by personal delivery on individuals and corporations, partnerships, and associations, provides for a manner of service that is not only traditionally preferred, but also is most likely to lead to actual notice. Explicit provision for this manner of service was thought desirable because a number of Federal and State statutes permitting foreign service do not specifically provide for service by personal delivery abroad, see e.g., 35 U.S.C. §§146, 293; 46 [App.] U.S.C. §1292; Calif.Ins.Code §1612; N.Y.Veh. & Tfc.Law §253, and it also may be unavailable under the law of the country in which the service is made.

Subparagraph (D) of paragraph (1), permitting service by certain types of mail, affords a manner of service that is inexpensive and expeditious, and requires a minimum of activity within the foreign country. Several statutes specifically provide for service in a foreign country by mail, e.g., Hawaii Rev.Laws §§230–31, 230–32 (1955); Minn.Stat.Ann. §303.13 (1947); N.Y.Civ.Prac.Act, §229–b; N.Y.Veh. & Tfc.Law §253, and it has been sanctioned by the courts even in the absence of statutory provision specifying that form of service. *Zurini v. United States*, 189 F.2d 722 (8th Cir. 1951); *United States v. Cardillo*, 135 F.Supp. 798 (W.D.Pa. 1955); *Autogiro Co. v. Kay Gyroplanes, Ltd*., 55 F.Supp. 919 (D.D.C. 1944). Since the reliability of postal service may vary from country to country, service by mail is proper only when it is addressed to the party to be served and a form of mail requiring a signed receipt is used. An additional safeguard is provided by the requirement that the mailing be attended to be the clerk of the court. See also the provisions of paragraph (2) of this subdivision (i) regarding proof of service by mail.

Under the applicable law it may be necessary, when the defendant is an infant or incompetent person, to deliver the summons and complaint to a guardian, committee, or similar fiduciary. In such a case it would be advisable to make service under subparagraph (A), (B), or (E).

Subparagraph (E) of paragraph (1) adds flexibility by permitting the court by order to tailor the manner of service to fit the necessities of a particular case or the peculiar requirements of the law of the country in which the service is to be made. A similar provision appears in a number of statutes, e.g., 35 U.S.C. §§146, 293; 38 U.S.C. §784(a); 46 [App.] U.S.C. §1292.

The next-to-last sentence of paragraph (1) permits service under (C) and (E) to be made by any person who is not a party and is not less than 18 years of age or who is designated by court order or by the foreign court. Cf. Rule 45(c); N.Y.Civ.Prac.Act §§233, 235. This alternative increases the possibility that the plaintiff will be able to find a process server who can proceed unimpeded in the foreign country; it also may improve the chances of enforcing the judgment in the country of service. Especially is the alternative valuable when authority for the foreign service is found in a statute or rule of court that limits the group of eligible process servers to designated officials or special appointees who, because directly connected with another "sovereign," may be particularly offensive to the foreign country. See generally Smit, *supra*, at 1040–41. When recourse is had to subparagraph (A) or (B) the identity of the process server always will be determined by the law of the foreign country in which the service is made.

The last sentence of paragraph (1) sets forth an alternative manner for the issuance and transmission of the summons for service. After obtaining the summons from the clerk, the plaintiff must ascertain the best manner of delivering the summons and complaint to the person, court, or officer who will make the service. Thus the clerk is not burdened with the task of determining who is permitted to serve process under the law of a particular country or the appropriate governmental or nongovernmental channel for forwarding a letter rogatory. Under (D), however, the papers must always be posted by the clerk.

Subdivision (i)(2). When service is made in a foreign country, paragraph (2) permits methods for proof of service in addition to those prescribed by subdivision (g). Proof of service in accordance with the law of the foreign country is permitted because foreign process servers, unaccustomed to the form or the requirement of return of service prevalent in the United States, have on occasion been unwilling to execute the affidavit required by Rule 4(g). See Jones, *supra*, at 537; Longley, *supra*, at 35. As a corollary of the alternate manner of service in subdivision (i)(1)(E), proof of service as directed by order of the court is permitted. The special provision for proof of service by mail is intended as an additional safeguard when that method is used. On the type of evidence of delivery that may be satisfactory to a court in lieu of a signed receipt, see *Aero Associates, Inc. v. La Metropolitana*, 183 F.Supp. 357 (S.D.N.Y. 1960).

Notes of Advisory Committee on Rules—1966 Amendment

The wording of Rule 4(f) is changed to accord with the amendment of Rule 13(h) referring to Rule 19 as amended.

Notes of Advisory Committee on Rules—1980 Amendment

Subdivision (a). This is a technical amendment to conform this subdivision with the amendment of subdivision (c).

Subdivision (c). The purpose of this amendment is to authorize service of process to be made by any person who is authorized to make service in actions in the courts of general jurisdiction of the state in which the district court is held or in which service is made.

There is a troublesome ambiguity in Rule 4. Rule 4(c) directs that all process is to be served by the marshal, by his deputy, or by a person specially appointed by the court. But Rule 4(d)(7) authorizes service in certain cases "in the manner prescribed by the law of the state in which the district court is held. . . ." And Rule 4(e), which authorizes service beyond the state and service in *quasi in rem* cases when state law permits such service, directs that "service may be made . . . under the circumstances and in the manner prescribed in the [state] statute or rule." State statutes and rules of the kind referred to in Rule 4(d)(7) and Rule 4(e) commonly designate the persons who are to make the service provided for, *e.g.*, a sheriff or a plaintiff. When that is so, may the persons so designated by state law make service, or is service in all cases to be made by a marshal or by one specially appointed under present Rule 4(c)? The commentators have noted the ambiguity and have suggested the desirability of an amendment. See 2 *Moore's Federal Practice* 4.08 (1974); Wright & Miller, *Federal Practice and Procedure: Civil* §1092 (1969). And the ambiguity has given rise to unfortunate results. See *United States for the use of Tanos v. St. Paul Mercury Ins. Co.*, 361 F. 2d 838 (5th Cir. 1966); *Veeck v. Commodity Enterprises, Inc.*, 487 F. 2d 423 (9th Cir. 1973).

The ambiguity can be resolved by specific amendments to Rules 4(d)(7) and 4(e), but the Committee is of the view that there is no reason why Rule 4(c) should not generally authorize service of process in all cases by anyone authorized to make service in the courts of general jurisdiction of the state in which the district court is held or in which service is made. The marshal continues to be the obvious, always effective officer for service of process.

Legislative Statement—1983 Amendment

128 Congressional Record H9848, Dec. 15, 1982

Mr. EDWARDS of California. Mr. Speaker, in July Mr. McClory and I brought before the House a bill to delay the effective date of proposed changes in rule 4 of the Federal Rules of Civil Procedure, dealing with service of process. The Congress enacted that legislation and delayed the effective date so that we could cure certain problems in the proposed amendments to rule 4.

Since that time, Mr. McClory and I introduced a bill, H.R. 7154, that cures those problems. It was drafted in consultation with representatives of the Department of Justice, the Judicial Conference of the United States, and others.

The Department of Justice and the Judicial Conference have endorsed the bill and have urged its prompt enactment. Indeed, the Department of Justice has indicated that the changes occasioned by the bill will facilitate its collection of debts owned to the Government.

I have a letter from the Office of Legislative Affairs of the Department of Justice supporting the bill that I will submit for the Record. Also, I am submitting for the Record a section-by-section analysis of the bill.

H.R. 7154 makes much needed changes in rule 4 of the Federal Rules of Civil Procedure and is supported by all interested parties. I urge my colleagues to support it.

U.S. Department of Justice.

Office of Legislative Affairs,

Washington, D.C., December 10, 1982.

Hon. Peter W. Rodino, Jr.,

Chairman, Committee on the Judiciary, House of Representatives, Washington, D.C.

Dear Mr. Chairman: This is to proffer the views of the Department of Justice on H.R. 7154, the proposed Federal Rules of Civil Procedure Amendments Act of 1982. While the agenda is extremely tight and we appreciate that fact, we do reiterate that this Department strongly endorses the enactment of H.R. 7154. We would greatly appreciate your watching for any possible way to enact this legislation expeditiously.

H.R. 7154 would amend Rule 4 of the Federal Rules of Civil Procedure to relieve effectively the United States Marshals Service of the duty of routinely serving summonses and complaints for private parties in civil actions and would thus achieve a goal this Department has long sought. Experience has shown that the Marshals Service's increasing workload and limited budget require such major relief from the burdens imposed by its role as process-server in all civil actions.

The bill would also amend Rule 4 to permit certain classes of defendants to be served by first class mail with a notice and acknowledgment of receipt form enclosed. We have previously expressed a preference for the service-by-mail provisions of the proposed amendments to Rule 4 which the Supreme Court transmitted to Congress on April 28, 1982.

The amendments proposed by the Supreme Court would permit service by registered or certified mail, return receipt requested. We had regarded the Supreme Court proposal as the more efficient because it would not require and affirmative act of signing and mailing on the part of a defendant. Moreover, the Supreme Court proposal would permit the entry of a default judgment if the record contained a returned receipt showing acceptance by the defendant or a returned envelope showing refusal of the process by the defendant and subsequent service and notice by first class mail. However, critics of that system of mail service have argued that certified mail is not an effective method of providing actual notice to defendants of claims against them because signatures may be illegible or may not match the name of the defendant, or because it may be difficult to determine whether mail has been “unclaimed” or “refused,” the latter providing the sole basis for a default judgment.

As you know, in light of these criticisms the Congress enacted Public Law 97–227 (H.R. 6663) postponing the effective date of the proposed amendments to Rule 4 until October 1, 1983, so as to facilitate further review of the problem. This Department opposed the delay in the effective date, primarily because the Supreme Court's proposed amendments also contained urgently needed provisions designed to relieve the United States Marshals of the burden of serving summonses and complaints in private civil actions. In our view, these necessary relief provisions are readily separable from the issues of service by certified mail and the propriety of default judgment after service by certified mail which the Congress felt warranted additional review.

During the floor consideration of H.R. 6663 Congressman Edwards and other proponents of the delayed effective date pledged to expedite the review of the proposed amendments to Rule 4, given the need to provide prompt relief for the Marshals Service in the service of process area. In

this spirit Judiciary Committee staff consulted with representatives of this Department, the Judicial Conference, and others who had voiced concern about the proposed amendments.

H.R. 7154 is the product of those consultations and accommodated the concerns of the Department in a very workable and acceptable manner.

Accordingly, we are satisfied that the provisions of H.R. 7154 merit the support of all three branches of the Federal Government and everyone else who has a stake in the fair and efficient service of process in civil actions. We urge prompt consideration of H.R. 7154 by the Committee. [1]

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Robert A. McConnell,

Assistant Attorney General.

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[1] In addition to amending Rule 4, we have previously recommended: (a) amendments to 28 U.S.C. §569(b) redefining the Marshals traditional role by eliminating the statutory requirement that they serve subpoenas, as well as summonses and complaints, and; (b) amendments to 28 U.S.C. §1921 changing the manner and level in which marshal fees are charged for serving private civil process. These legislative changes are embodied in Section 10 of S. 2567 and the Department's proposed fiscal year 1983 Appropriations Authorization bill. If, in the Committee's judgment, efforts to incorporate these suggested amendments in H.R. 7154 would in any way impede consideration of the bill during the few remaining legislative days in the 97th Congress, we would urge that they be separately considered early in the 98th Congress.

H.R. 7154— Federal Rules of Civil Procedure Amendments Act of 1982

background

The Federal Rules of Civil Procedure set forth the procedures to be followed in civil actions and proceedings in United States district courts. These rules are usually amended by a process established by 28 U.S.C. 2072, often referred to as the "Rules Enabling Act". The Rules Enabling Act provides that the Supreme Court can propose new rules of "practice and procedure" and amendments to existing rules by transmitting them to Congress after the start of a regular session but not later than May 1. The rules and amendments so proposed take effect 90 days after transmittal unless legislation to the contrary is enacted. [1]

On April 28, 1982, the Supreme Court transmitted to Congress several proposed amendments to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure (which govern criminal cases and proceedings in Federal courts), and the Rules and Forms Governing Proceedings in the United States District Courts under sections 2254 and 2255 of Title 28, United States Code (which govern habeas corpus proceedings). These amendments were to have taken effect on August 1, 1982.

The amendments to Rule 4 of the Federal Rules of Civil Procedure were intended primarily to relieve United States marshals of the burden of serving summonses and complaints in private civil actions. Appendix II, at 7 (Report of the Committee on Rules of Practice and Procedure), 16 (Advisory Committee Note). The Committee received numerous complaints that the changes not only failed to achieve that goal, but that in the process the changes saddled litigators with flawed mail service, deprived litigants of the use of effective local procedures for service, and created a time limit for service replete with ambiguities that could only be resolved by costly litigation. See House Report No. 97–662, at 2–4 (1982).

In order to consider these criticisms, Congress enacted Public Law 97–227, postponing the effective date of the proposed amendments to Rule 4 until October 1, 1983. [2] Accordingly, in order to help shape the policy behind, and the form of, the proposed amendments, Congress must enact legislation before October 1, 1983. [3]

With that deadline and purpose in mind, consultations were held with representatives of the Judicial Conference, the Department of Justice, and others who had voiced concern about the proposed amendments. H.R. 7154 is the product of those consultations. The bill seeks to effectuate the policy of relieving the Marshals Service of the duty of routinely serving summonses and complaints. It provides a system of service by mail modeled upon a system found to be effective in California, and finally, it makes appropriate stylistic, grammatical, and other changes in Rule 4.

need for the legislation

1. Current Rule 4

Rule 4 of the Federal Rules of Civil Procedure relates to the issuance and service of process. Subsection (c) authorizes service of process by personnel of the Marshals Service, by a person specially appointed by the Court, or "by a person authorized to serve process in an action brought in the courts of general jurisdiction of the state in which the district court is held or in which service is made." Subsection (d) describes how a summons and complaint must be served and designates those persons who must be served in cases involving specified categories of defendants. Mail service is not directly authorized. Subsection (d)(7), however, authorizes service under the law of the state in which the district court sits upon defendants described in subsections (d)(1) (certain individuals) and (d)(3) (organizations). Thus, if state law authorizes service by mail of a summons and complaint upon an individual or organization described in subsections (d)(1) or (3), then subsection (d)(7) authorizes service by mail for United States district courts in that state. [4]

2. Reducing the role of marshals

The Supreme Court's proposed modifications of Rule 4 were designed to alleviate the burden on the Marshals Service of serving summonses and complaints in private civil actions. Appendix II, at 7 (Report of the Committee on Rules of Practice and Procedure), 16 (Advisory Committee Note). While the Committee received no complaints about the goal of reducing the role of the Marshals Service, the Court's proposals simply failed to achieve that goal. See House Report No. 97–662, at 2–3 (1982).

The Court's proposed Rule 4(c)(2)(B) required the Marshals Service to serve summonses and complaints "pursuant to any statutory provision expressly providing for service by a United States Marshal or his deputy." [5] One such statutory provision is 28 U.S.C. 569(b), which compels marshals to "execute *all* lawful writs, process and orders issued under authority of the United States, *including those of the courts* * * *." (emphasis added). Thus, any party could have invoked 28 U.S.C. 569(b) to utilize a marshal for service of a summons and complaint, thereby thwarting the intent of the new subsection to limit the use of marshals. The Justice Department acknowledges that the proposed subsection did not accomplish its objectives. [6]

Had 28 U.S.C. 569(b) been inconsistent with proposed Rule 4(c)(2)(B), the latter would have nullified the former under 28 U.S.C. 2072, which provides that "All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect." Since proposed Rule 4(c)(2)(B) specifically referred to statutes such as 28 U.S.C. 569(b), however, the new subsection did not conflict with 28 U.S.C. 569(b) and did not, therefore, supersede it.

H.R. 7154 cures this problem and achieves the desired reduction in the role of the Marshals Service by authorizing marshals to serve summonses and complaints "on behalf of the United States". By so doing, H.R. 7154 eliminates the loophole in the Court's proposed language and still provides for service by marshals on behalf of the Government. [7]

3. Mail service

The Supreme Court's proposed subsection (d)(7) and (8) authorized, as an alternative to personal service, mail service of summonses and complaints on individuals and organizations described in subsection (d)(1) and (3), but only through registered or certified mail, restricted delivery. Critics of that system of mail service argued that registered and certified mail were not necessarily effective methods of providing actual notice to defendants of claims against them. This was so, they argued, because signatures may be illegible or may not match the name of the defendant, or because it may be difficult to determine whether mail has been "unclaimed" or "refused", the latter apparently providing the sole basis for a default judgment. [8]

H.R. 7154 provides for a system of service by mail similar to the system now used in California. See Cal. Civ. Pro. §415.30 (West 1973). Service would be by ordinary mail with a notice and acknowledgment of receipt form enclosed. If the defendant returns the acknowledgment form to the sender within 20 days of mailing, the sender files the return and service is complete. If the acknowledgment is not returned within 20 days of mailing, then service must be effected through some other means provided for in the Rules.

This system of mail service avoids the notice problems created by the registered and certified mail procedures proposed by the Supreme Court. If the proper person receives the notice and returns the acknowledgment, service is complete. If the proper person does not receive the mailed form, or if the proper person receives the notice but fails to return the acknowledgment form, another method of service authorized by law is required. [9] In either instance, however, the defendant will receive actual notice of the claim. In order to encourage defendants to return the

acknowledgment form, the court can order a defendant who does not return it to pay the costs of service unless the defendant can show good cause for the failure to return it.

4. The local option

The Court's proposed amendments to Rule 4 deleted the provision in current subsection (d)(7) that authorizes service of a summons and complaint upon individuals and organizations "in the manner prescribed by the law of the state in which the district court is held for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state." The Committee received a variety of complaints about the deletion of this provision. Those in favor of preserving the local option saw no reason to forego systems of service that had been successful in achieving effective notice. [10]

H.R. 7154 carries forward the policy of the current rule and permits a party to serve a summons and complaint upon individuals and organizations described in Rule 4(d)(1) and (3) in accordance with the law of the state in which the district court sits. Thus, the bill authorizes four methods of serving a summons and complaint on such defendants: (1) service by a nonparty adult (Rule 4(c)(2)(A)); (2) service by personnel of the Marshals Service, if the party qualifies, such as because the party is proceeding in forma pauperis (Rule 4(c)(2)(B)); (3) service in any manner authorized by the law of the state in which the district court is held (Rule 4(c)(2)(C)(i)); or (4) service by regular mail with a notice and acknowledgment of receipt form enclosed (Rule 4(c)(2)(C)(ii)). [11]

5. Time limits

Rule 4 does not currently provide a time limit within which service must be completed. Primarily because United States marshals currently effect service of process, no time restriction has been deemed necessary. Appendix II, at 18 (Advisory Committee Note). Along with the proposed changes to subdivisions (c) and (d) to reduce the role of the Marshals Service, however, came new subdivision (j), requiring that service of a summons and complaint be made within 120 days of the filing of the complaint. If service were not accomplished within that time, proposed subdivision (j) required that the action "be dismissed as to that defendant without prejudice upon motion or upon the court's own initiative". Service by mail was deemed made for purposes of subdivision (j) "as of the date on which the process was accepted, refused, or returned as unclaimed". [12]

H.R. 7154 adopts a policy of limiting the time to effect service. It provides that if a summons and complaint have not been served within 120 days of the filing of the complaint and the plaintiff fails to show "good cause" for not completing service within that time, then the court must dismiss the action as to the unserved defendant. H.R. 7154 ensures that a plaintiff will be notified of an attempt to dismiss the action. If dismissal for failure to serve is raised by the court upon its own motion, the legislation requires that the court provide notice to the plaintiff. If dismissal is sought by someone else, Rule 5(a) of the Federal Rules of Civil Procedure requires that the motion be served upon the plaintiff.

Like proposed subsection (j), H.R. 7154 provides that a dismissal for failure to serve within 120 days shall be "without prejudice". Proposed subsection (j) was criticized by some for ambiguity because, it was argued, neither the text of subsection (j) nor the Advisory Committee Note indicated whether a dismissal without prejudice would toll a statute of limitation. *See* House Report 97–662, at 3–4 (1982). The problem would arise when a plaintiff files the complaint within the applicable statute of limitation period but does not effect service within 120 days. If the statute of limitation period expires during that period, and if the plaintiff's action is dismissed "without prejudice", can the plaintiff refile the complaint and maintain the action? The answer depends upon how the statute of limitation is tolled. [13]

If the law provides that the statute of limitation is tolled by filing and service of the complaint, then a dismissal under H.R. 7154 for failure to serve within the 120 days would, by the terms of the law controlling the tolling, bar the plaintiff from later maintaining the cause of action. [14] If the law provides that the statute of limitation is tolled by filing alone, then the status of the plaintiff's cause of action turns upon the plaintiff's diligence. If the plaintiff has not been diligent, the court will dismiss the complaint for failure to serve within 120 days, and the plaintiff will be barred from later maintaining the cause of action because the statute of limitation has run. A dismissal without prejudice does not confer upon the plaintiff any rights that the plaintiff does not otherwise possess and leaves a plaintiff whose action has been dismissed in the same position as if the action had never been filed. [15] If, on the other hand, the plaintiff has made reasonable efforts to effect service, then the plaintiff can move under Rule 6(b) to enlarge the time within which to serve or can oppose dismissal for failure to serve. A court would undoubtedly permit such a plaintiff additional time within which to effect service. Thus, a diligent plaintiff can preserve the cause of action. This result is consistent with the policy behind the time limit for service and with statutes of limitation, both of which are designed to encourage prompt movement of civil actions in the federal courts.

6. Conforming and clarifying subsections (d)(4) and (5)

Current subsections (d)(4) and (5) prescribe which persons must be served in cases where an action is brought against the United States or an officer or agency of the United States. Under subsection (d)(4), where the United States is the named defendant, service must be made as follows: (1) personal service upon the United States attorney, an assistant United States attorney, or a designated clerical employee of the United States attorney in the district in which the action is brought; (2) registered or certified mail service to the Attorney General of the United States in Washington, D.C.; and (3) registered or certified mail service to the appropriate officer or agency if the action attacks an order of that officer or agency but does not name the officer or agency as a defendant. Under subsection (d)(5), where an officer or agency of the United States is named as a defendant, service must be made as in subsection (d)(4), except that personal service upon the officer or agency involved is required. [16]

The time limit for effecting service in H.R. 7154 would present significant difficulty to a plaintiff who has to arrange for personal service upon an officer or agency that may be thousands of miles away. There is little reason to require different types of service when the officer or agency is named as a party, and H.R. 7154 therefore conforms the manner of service under subsection (d)(5) to the manner of service under subsection (d)(4).

Section-by-Section Analysis

section 1

Section 1 provides that the short title of the bill is the " Federal Rules of Civil Procedure Amendments Act of 1982".

section 2

Section 2 of the bill consists of 7 numbered paragraphs, each amending a different part of Rule 4 of the Federal Rules of Civil Procedure.

Paragraph (1) deletes the requirement in present Rule 4(a) that a summons be delivered for service to the marshal or other person authorized to serve it. As amended by the legislation, Rule 4(a) provides that the summons be delivered to "the plaintiff or the plaintiff's attorney, who shall

be responsible for prompt service of the summons and complaint". This change effectuates the policy proposed by the Supreme Court. See Appendix II, at — (Advisory Committee Note).

Paragraph (2) amends current Rule 4(c), which deals with the service of process. New Rule 4(c)(1) requires that all process, other than a subpoena or a summons and complaint, be served by the Marshals Service or by a person especially appointed for that purpose. Thus, the Marshals Service or persons specially appointed will continue to serve all process other than subpoenas and summonses and complaints, a policy identical to that proposed by the Supreme Court. See Appendix II, at 8 (Report of the Judicial Conference Committee on Rules of Practice and Procedure). The service of subpoenas is governed by Rule 45, [17] and the service of summonses and complaints is governed by new Rule 4(c)(2).

New Rule 4(c)(2)(A) sets forth the general rule that summonses and complaints shall be served by someone who is at least 18 years old and not a party to the action or proceeding. This is consistent with the Court's proposal. Appendix II, at 16 (Advisory Committee Note). Subparagraphs (B) and (C) of new Rule 4(c)(2) set forth exceptions to this general rule.

Subparagraph (B) sets forth 3 exceptions to the general rule. First, subparagraph (B)(i) requires the Marshals Service (or someone specially appointed by the court) to serve summonses and complaints on behalf of a party proceeding in forma pauperis or a seaman authorized to proceed under 28 U.S.C. 1916. This is identical to the Supreme Court's proposal. *See* Appendix II, at 3 (text of proposed rule), 16 (Advisory Committee Note). Second, subparagraph (B)(ii) requires the Marshals Service (or someone specially appointed by the court) to serve a summons and complaint when the court orders the marshals to do so in order properly to effect service in that particular action. [18] This, except for nonsubstantive changes in phrasing, is identical to the Supreme Court's proposal. See Appendix II, at 3 (text of proposed rule), 16 (Advisory Committee Note).

Subparagraph (C) of new Rule 4(c)(2) provides 2 exceptions to the general rule of service by a nonparty adult. These exceptions apply only when the summons and complaint is to be served upon persons described in Rule 4(d)(1) (certain individuals) or Rule 4(d)(3) (organizations). [19] First, subparagraph (C)(i) permits service of a summons and complaint in a manner authorized by the law of the state in which the court sits. This restates the option to follow local law currently found in Rule 4(d)(7) and would authorize service by mail if the state law so allowed. The method of mail service in that instance would, of course, be the method permitted by state law.

Second, subparagraph (C)(ii) permits service of a summons and complaint by regular mail. The sender must send to the defendant, by first-class mail, postage prepaid, a copy of the summons and complaint, together with 2 copies of a notice and acknowledgment of receipt of summons and complaint form and a postage prepaid return envelope addressed to the sender. If a copy of the notice and acknowledgment form is not received by the sender within 20 days after the date of mailing, then service must be made under Rule 4(c)(2)(A) or (B) (i.e., by a nonparty adult or, if the person qualifies, [20] by personnel of the Marshals Service or a person specially appointed by the court) in the manner prescribed by Rule 4(d)(1) or (3) (i.e., personal or substituted service).

New Rule 4(c)(2)(D) permits a court to penalize a person who avoids service by mail. It authorizes the court to order a person who does not return the notice and acknowledgment form within 20 days after mailing to pay the costs of service, unless that person can show good cause for failing to return the form. The purpose of this provision is to encourage the prompt return of the form so that the action can move forward without unnecessary delay. Fairness requires that a person who causes another additional and unnecessary expense in effecting service ought to reimburse the party who was forced to bear the additional expense.

Subparagraph (E) of rule 4(c)(2) requires that the notice and acknowledgment form described in new Rule 4(c)(2)(C)(ii) be executed under oath or affirmation. This provision tracks the language of 28 U.S.C. 1746, which permits the use of unsworn declarations under penalty of perjury whenever an oath or affirmation is required. Statements made under penalty of perjury are subject to 18 U.S,C. 1621(2), which provides felony penalties for someone who "willfully subscribes as true any material matter which he does not believe to be true". The requirement that the form be executed under oath or affirmation is intended to encourage truthful submissions to the court, as the information contained in the form is important to the parties. [21]

New Rule 4(c)(3) authorizes the court freely to make special appointments to serve summonses and complaints under Rule 4(c)(2)(B) and all other process under Rule 4(c)(1). This carries forward the policy of present Rule 4(c).

Paragraph (3) of section 2 of the bill makes a non-substantive change in the caption of Rule 4(d) in order to reflect more accurately the provisions of Rule 4(d). Paragraph (3) also deletes a provision on service of a summons and complaint pursuant to state law. This provision is redundant in view of new Rule 4(c)(2)(C)(i).

Paragraph (4) of section 2 of the bill conforms Rule 4(d)(5) to present Rule 4(d)(4). Rule 4(d)(5) is amended to provide that service upon a named defendant agency or officer of the United States shall be made by "sending" a copy of the summons and complaint "by registered or certified mail" to the defendant. [22] Rule 4(d)(5) currently provides for service by "delivering" the copies to the defendant, but 28 U.S.C. 1391(e) authorizes delivery upon a defendant agency or officer outside of the district in which the action is brought by means of certified mail. Hence, the change is not a marked departure from current practice.

Paragraph (5) of section 2 of the bill amends the caption of Rule 4(e) in order to describe subdivision (e) more accurately.

Paragraph (6) of section 2 of the bill amends Rule 4(g), which deals with return of service. Present rule 4(g) is not changed except to provide that, if service is made pursuant to the new system of mail service (Rule 4(c)(2)(C)(ii)), the plaintiff or the plaintiff's attorney must file with the court the signed acknowledgment form returned by the person served.

Paragraph (7) of section 2 of the bill adds new subsection (j) to provide a time limitation for the service of a summons and complaint. New Rule 4(j) retains the Supreme Court's requirement that a summons and complaint be served within 120 days of the filing of the complaint. See Appendix II, at 18 (Advisory Committee Note). [23] The plaintiff must be notified of an effort or intention to dismiss the action. This notification is mandated by subsection (j) if the dismissal is being raised on the court's own initiative and will be provided pursuant to Rule 5 (which requires service of motions upon the adverse party) if the dismissal is sought by someone else. [24] The plaintiff may move under Rule 6(b) to enlarge the time period. See Appendix II, at 1d. (Advisory Committee Note). If service is not made within the time period or enlarged time period, however, and if the plaintiff fails to show "good cause" for not completing service, then the court must dismiss the action as to the unserved defendant. The dismissal is "without prejudice". The term "without prejudice" means that the dismissal does not constitute an adjudication of the merits of the complaint. A dismissal "without prejudice" leaves a plaintiff whose action has been dismissed in the position in which that person would have been if the action had never been filed.

section 3

Section 3 of the bill amends the Appendix of Forms at the end of the Federal Rules of Civil Procedure by adding a new form 18A, "Notice and Acknowledgment for Service by Mail". This

new form is required by new Rule 4(c)(2)(C)(ii), which requires that the notice and acknowledgment form used with service by regular mail conform substantially to Form 18A.

Form 18A as set forth in section 3 of the bill is modeled upon a form used in California. [25] It contains 2 parts. The first part is a notice to the person being served that tells that person that the enclosed summons and complaint is being served pursuant to Rule 4(c)(2)(C)(ii); advises that person to sign and date the acknowledgment form and indicate the authority to receive service if the person served is not the party to the action (e.g., the person served is an officer of the organization being served); and warns that failure to return the form to the sender within 20 days may result in the court ordering the party being served to pay the expenses involved in effecting service. The notice also warns that if the complaint is not responded to within 20 days, a default judgment can be entered against the party being served. The notice is dated under penalty of perjury by the plaintiff or the plaintiff's attorney. [26]

The second part of the form contains the acknowledgment of receipt of the summons and complaint. The person served must declare on this part of the form, under penalty of perjury, the date and place of service and the person's authority to receive service.

section 4

Section 4 of the bill provides that the changes in Rule 4 made by H.R. 7154 will take effect 45 days after enactment, thereby giving the bench and bar, as well as other interested persons and organizations (such as the Marshals Service), an opportunity to prepare to implement the changes made by the legislation. The delayed effective date means that service of process issued before the effective date will be made in accordance with current Rule 4. Accordingly, all process in the hands of the Marshals Service prior to the effective date will be served by the Marshals Service under the present rule.

section 5

Section 5 of the bill provides that the amendments to Rule 4 proposed by the Supreme Court (whose effective date was postponed by Public Law 97–227) shall not take effect. This is necessary because under Public Law 97–227 the proposed amendments will take effect on October 1, 1983.

[1] The drafting of the rules and amendments is actually done by a committee of the Judicial Conference of the United States. In the case of the Federal Rules of Civil Procedure, the initial draft is prepared by the Advisory Committee on Civil Rules. The Advisory Committee's draft is then reviewed by the Committee on Rules of Practice and Procedure, which must give its approval to the draft. Any draft approved by that committee is forwarded to the Judicial Conference. If the Judicial Conference approves the draft, it forwards the draft to the Supreme Court. The Judicial Conference's role in the rule-making process is defined by 28 U.S.C. 331.

For background information about how the Judicial Conference committees operate, see Wright, "Procedural Reform: Its Limitation and Its Future," 1 Ga.L.Rev. 563, 565–66 (1967) (civil rules); statement of United States District Judge Roszel C. Thomsen, Hearings on Proposed Amendments to the Federal Rules of Criminal Procedure Before the Subcommittee on Criminal Justice of the House Committee on the Judiciary, 93d Cong., 2d Sess. at 25 (1974) (criminal rules); statement of United States Circuit Judge J. Edward Lumbard, id. at 203 (criminal rules); J. Weinstein, Reform of Federal Court Rulemaking Procedure (1977); Weinstein, "Reform of Federal Rulemaking Procedures," 76 Colum.L.Rev. 905 (1976).

[2] All of the other amendments, including all of the proposed amendments to the Federal Rules of Criminal Procedure and the Rules and Forms Governing Proceedings in the United States District Courts under sections 2254 and 2255 of Title 28, United States Code, took effect on August 1, 1982, as scheduled.

[3] The President has urged Congress to act promptly. See President's Statement on Signing H.R. 6663 into Law, 18 Weekly Comp. of Pres. Doc. 982 (August 2, 1982).

[4] Where service of a summons is to be made upon a party who is neither an inhabitant of, nor found within, the state where the district court sits, subsection (e) authorizes service under a state statute or rule of court that provides for service upon such a party. This would authorize mail service if the state statute or rule of court provided for service by mail.

[5] The Court's proposal authorized service by the Marshals Service in other situations. This authority, however, was not seen as thwarting the underlying policy of limiting the use of marshals. *See* Appendix II, at 16, 17 (Advisory Committee Note).

[6] Appendix I, at 2 (letter of Assistant Attorney General Robert A. McConnell).

[7] The provisions of H.R. 7154 conflict with 28 U.S.C. 569(b) because the latter is a broader command to marshals to serve all federal court process. As a later statutory enactment, however, H.R. 7154 supersedes 28 U.S.C. 569(b), thereby achieving the goal of reducing the role of marshals.

[8] Proposed Rule 4(d)(8) provided that "Service . . . shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a returned envelope showing refusal of the process by the defendant." This provision reflects a desire to preclude default judgments on unclaimed mail. See Appendix II, at 7 (Report of the Committee on Rules of Practice and Procedure).

The interpretation of Rule 4(d)(8) to require a refusal of delivery in order to have a basis for a default judgment, while undoubtedly the interpretation intended and the interpretation that reaches the fairest result, may not be the only possible interpretation. Since a default judgment can be entered for defendant's failure to respond to the complaint once defendant has been served and the time to answer the complaint has run, it can be argued that a default judgment can be obtained where the mail was unclaimed because proposed subsection (j), which authorized dismissal of a complaint not served within 120 days, provided that mail service would be deemed made "on the date on which the process was accepted, refused, or *returned as unclaimed* " (emphasis added).

[9] See p. 15 infra.

[10] Proponents of the California system of mail service, in particular, saw no reason to supplant California's proven method of mail service with a certified mail service that they believed likely to result in default judgments without actual notice to defendants. See House Report No. 97–662, at 3 (1982).

[11] The parties may, of course, stipulate to service, as is frequently done now.

[12] While return of the letter as unclaimed was deemed service for the purpose of determining whether the plaintiff's action could be dismissed, return of the letter as unclaimed was not service for the purpose of entry of a default judgment against the defendant. See note 8 supra.

[13] The law governing the tolling of a statute of limitation depends upon the type of civil action involved. In adversity action, state law governs tolling. *Walker v. Armco Steel Corp.*, 446 U.S.

740 (1980). In *Walker*, plaintiff had filed his complaint and thereby commenced the action under Rule 3 of the Federal Rules of Civil Procedure within the statutory period. He did not, however, serve the summons and complaint until after the statutory period had run. The Court held that state law (which required both filing and service within the statutory period) governed, barring plaintiff's action.

In the federal question action, the courts of appeals have generally held that Rule 3 governs, so that the filing of the complaint tolls a statute of limitation. *United States v. Wahl*, 538 F.2d 285 (6th Cir. 1978); *Windbrooke Dev. Co. v. Environmental Enterprises Inc. of Fla*., 524 F.2d 461 (5th Cir. 1975); *Metropolitan Paving Co. v. International Union of Operating Engineers*, 439 F.2d 300 (10th Cir. 1971); *Moore Co. v. Sid Richardson Carbon & Gasoline Co*., 347 F.2d 921 (8th Cir.), cert. denied, 383 U.S. 925, reh. denied, 384 U.S. 914 (1965); *Hoffman v. Halden*, 268 F.2d 280 (9th Cir. 1959). The continued validity of this line of cases, however, must be questioned in light of the *Walker* case, even though the Court in that case expressly reserved judgment about federal question actions, *see Walker v. Armco Steel Corp*., 446 U.S. 741, 751 n.11 (1980).

[14] The same result obtains even if service occurs within the 120 day period, if the service occurs after the statute of limitation has run.

[15] See p. 19 infra.

[16] See p. 17 infra.

[17] Rule 45(c) provides that "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."

[18] Some litigators have voiced concern that there may be situations in which personal service by someone other than a member of the Marshals Service may present a risk of injury to the person attempting to make the service. For example, a hostile defendant may have a history of injuring persons attempting to serve process. Federal judges undoubtedly will consider the risk of harm to private persons who would be making personal service when deciding whether to order the Marshals Service to make service under Rule 4(c)(2)(B)(iii).

[19] The methods of service authorized by Rule 4(c)(2)(C) may be invoked by any person seeking to effect service. Thus, a nonparty adult who receives the summons and complaint for service

under Rule 4(c)(1) may serve them personally or by mail in the manner authorized by Rule 4(c)(2)(C)(ii). Similarly, the Marshals Service may utilize the mail service authorized by Rule 4(c)(2)(C)(ii) when serving a summons and complaint under Rule 4(c)(2)(B)(i)(iii). When serving a summons and complaint under Rule 4(c)(2)(B)(ii), however, the Marshals Service must serve in the manner set forth in the court's order. If no particular manner of service is specified, then the Marshals Service may utilize Rule 4(c)(2)(C)(ii). It would not seem to be appropriate, however, for the Marshals Service to utilize Rule 4(c)(2)(C)(ii) in a situation where a previous attempt to serve by mail failed. Thus, it would not seem to be appropriate for the Marshals Service to attempt service by regular mail when serving a summons and complaint on behalf of a plaintiff who is proceeding in forma pauperis if that plaintiff previously attempted unsuccessfully to serve the defendant by mail.

[20] To obtain service by personnel of the Marshals Service or someone specially appointed by the court, a plaintiff who has unsuccessfully attempted mail service under Rule 4(c)(2)(C)(ii) must meet the conditions of Rule 4(c)(2)(B)—for example, the plaintiff must be proceeding *in forma pauperis.*

[21] For example, the sender must state the date of mailing on the form. If the form is not returned to the sender within 20 days of that date, then the plaintiff must serve the defendant in another manner and the defendant may be liable for the costs of such service. Thus, a defendant would suffer the consequences of a misstatement about the date of mailing.

[22] See p. 12 supra.

[23] The 120 day period begins to run upon the filing of each complaint. Thus, where a defendant files a cross-claim against the plaintiff, the 120 day period begins to run upon the filing of the cross-complaint, not upon the filing of the plaintiff's complaint initiating the action.

[24] The person who may move to dismiss can be the putative defendant (i.e., the person named as defendant in the complaint filed with the court) or, in multi-party actions, another party to the action. (If the putative defendant moves to dismiss and the failure to effect service is due to that person's evasion of service, a court should not dismiss because the plaintiff has “good cause” for not completing service.)

[25] See Cal. Civ. Pro. §415.30 (West 1973).

[26] See p. 16 supra.

Notes of Advisory Committee on Rules—1987 Amendment

The amendments are technical. No substantive change is intended.

Notes of Advisory Committee on Rules—1993 Amendment

Purposes of Revision. The general purpose of this revision is to facilitate the service of the summons and complaint. The revised rule explicitly authorizes a means for service of the summons and complaint on any defendant. While the methods of service so authorized always provide appropriate notice to persons against whom claims are made, effective service under this rule does not assure that personal jurisdiction has been established over the defendant served.

First, the revised rule authorizes the use of any means of service provided by the law not only of the forum state, but also of the state in which a defendant is served, unless the defendant is a minor or incompetent.

Second, the revised rule clarifies and enhances the cost-saving practice of securing the assent of the defendant to dispense with actual service of the summons and complaint. This practice was introduced to the rule in 1983 by an act of Congress authorizing "service-by-mail," a procedure that effects economic service with cooperation of the defendant. Defendants that magnify costs of service by requiring expensive service not necessary to achieve full notice of an action brought against them are required to bear the wasteful costs. This provision is made available in actions against defendants who cannot be served in the districts in which the actions are brought.

Third, the revision reduces the hazard of commencing an action against the United States or its officers, agencies, and corporations. A party failing to effect service on all the offices of the United States as required by the rule is assured adequate time to cure defects in service.

Fourth, the revision calls attention to the important effect of the Hague Convention and other treaties bearing on service of documents in foreign countries and favors the use of internationally agreed means of service. In some respects, these treaties have facilitated service in foreign countries but are not fully known to the bar.

Finally, the revised rule extends the reach of federal courts to impose jurisdiction over the person of all defendants against whom federal law claims are made and who can be constitutionally subjected to the jurisdiction of the courts of the United States. The present territorial limits on the effectiveness of service to subject a defendant to the jurisdiction of the court over the defendant's person are retained for all actions in which there is a state in which personal jurisdiction can be asserted consistently with state law and the Fourteenth Amendment. A new provision enables district courts to exercise jurisdiction, if permissible under the Constitution and not precluded by statute, when a federal claim is made against a defendant not subject to the jurisdiction of any single state.

The revised rule is reorganized to make its provisions more accessible to those not familiar with all of them. Additional subdivisions in this rule allow for more captions; several overlaps among subdivisions are eliminated; and several disconnected provisions are removed, to be relocated in a new Rule 4.1.

The Caption of the Rule. Prior to this revision, Rule 4 was entitled "Process" and applied to the service of not only the summons but also other process as well, although these are not covered by the revised rule. Service of process in eminent domain proceedings is governed by Rule 71A. Service of a subpoena is governed by Rule 45, and service of papers such as orders, motions, notices, pleadings, and other documents is governed by Rule 5.

The revised rule is entitled "Summons" and applies only to that form of legal process. Unless service of the summons is waived, a summons must be served whenever a person is joined as a party against whom a claim is made. Those few provisions of the former rule which relate specifically to service of process other than a summons are relocated in Rule 4.1 in order to simplify the text of this rule.

Subdivision (a). Revised subdivision (a) contains most of the language of the former subdivision (b). The second sentence of the former subdivision (b) has been stricken, so that the federal court summons will be the same in all cases. Few states now employ distinctive requirements of form for a summons and the applicability of such a requirement in federal court can only serve as a trap for an unwary party or attorney. A sentence is added to this subdivision authorizing an amendment of a summons. This sentence replaces the rarely used former subdivision 4(h). *See* 4A Wright & Miller, *Federal Practice and Procedure* §1131 (2d ed. 1987).

Subdivision (b). Revised subdivision (b) replaces the former subdivision (a). The revised text makes clear that the responsibility for filling in the summons falls on the plaintiff, not the clerk of the court. If there are multiple defendants, the plaintiff may secure issuance of a summons for each defendant, or may serve copies of a single original bearing the names of multiple defendants if the addressee of the summons is effectively identified.

Subdivision (c). Paragraph (1) of revised subdivision (c) retains language from the former subdivision (d)(1). Paragraph (2) retains language from the former subdivision (a), and adds an appropriate caution regarding the time limit for service set forth in subdivision (m).

The 1983 revision of Rule 4 relieved the marshals' offices of much of the burden of serving the summons. Subdivision (c) eliminates the requirement for service by the marshal's office in actions in which the party seeking service is the United States. The United States, like other civil litigants, is now permitted to designate any person who is 18 years of age and not a party to serve its summons.

The court remains obligated to appoint a marshal, a deputy, or some other person to effect service of a summons in two classes of cases specified by statute: actions brought *in forma pauperis* or by a seaman. 28 U.S.C. §§1915, 1916. The court also retains discretion to appoint a process server on motion of a party. If a law enforcement presence appears to be necessary or advisable to keep the peace, the court should appoint a marshal or deputy or other official person to make the service. The Department of Justice may also call upon the Marshals Service to perform services in actions brought by the United States. 28 U.S.C. §651.

Subdivision (d). This text is new, but is substantially derived from the former subdivisions (c)(2)(C) and (D), added to the rule by Congress in 1983. The aims of the provision are to eliminate the costs of service of a summons on many parties and to foster cooperation among adversaries and counsel. The rule operates to impose upon the defendant those costs that could have been avoided if the defendant had cooperated reasonably in the manner prescribed. This device is useful in dealing with defendants who are furtive, who reside in places not easily reached by process servers, or who are outside the United States and can be served only at substantial and unnecessary expense. Illustratively, there is no useful purpose achieved by requiring a plaintiff to comply with all the formalities of service in a foreign country, including costs of translation, when suing a defendant manufacturer, fluent in English, whose products are widely distributed in the United States. *See Bankston v. Toyota Motor Corp*., 889 F.2d 172 (8th Cir. 1989).

The former text described this process as service-by-mail. This language misled some plaintiffs into thinking that service could be effected by mail without the affirmative cooperation of the defendant. *E.g., Gulley v. Mayo Foundation*, 886 F.2d 161 (8th Cir. 1989). It is more accurate to describe the communication sent to the defendant as a request for a waiver of formal service.

The request for waiver of service may be sent only to defendants subject to service under subdivision (e), (f), or (h). The United States is not expected to waive service for the reason that its mail receiving facilities are inadequate to assure that the notice is actually received by the correct person in the Department of Justice. The same principle is applied to agencies, corporations, and officers of the United States and to other governments and entities subject to service under subdivision (j). Moreover, there are policy reasons why governmental entities should not be confronted with the potential for bearing costs of service in cases in which they ultimately prevail. Infants or incompetent persons likewise are not called upon to waive service because, due to their presumed inability to understand the request and its consequences, they must generally be served through fiduciaries.

It was unclear whether the former rule authorized mailing of a request for "acknowledgement of service" to defendants outside the forum state. *See* 1 R. Casad, *Jurisdiction in Civil Actions* (2d Ed.) 5–29, 30 (1991) and cases cited. But, as Professor Casad observed, there was no reason not to employ this device in an effort to obtain service outside the state, and there are many instances in which it was in fact so used, with respect both to defendants within the United States and to defendants in other countries.

The opportunity for waiver has distinct advantages to a foreign defendant. By waiving service, the defendant can reduce the costs that may ultimately be taxed against it if unsuccessful in the lawsuit, including the sometimes substantial expense of translation that may be wholly unnecessary for defendants fluent in English. Moreover, a foreign defendant that waives service is afforded substantially more time to defend against the action than if it had been formally served: under Rule 12, a defendant ordinarily has only 20 days after service in which to file its answer or raise objections by motion, but by signing a waiver it is allowed 90 days after the date the request for waiver was mailed in which to submit its defenses. Because of the additional time needed for mailing and the unreliability of some foreign mail services, a period of 60 days (rather than the 30 days required for domestic transmissions) is provided for a return of a waiver sent to a foreign country.

It is hoped that, since transmission of the notice and waiver forms is a private nonjudicial act, does not purport to effect service, and is not accompanied by any summons or directive from a court, use of the procedure will not offend foreign sovereignties, even those that have withheld their assent to formal service by mail or have objected to the "service-by-mail" provisions of the former rule. Unless the addressee consents, receipt of the request under the revised rule does not give rise to any obligation to answer the lawsuit, does not provide a basis for default judgment, and does not suspend the statute of limitations in those states where the period continues to run until service. Nor are there any adverse consequences to a foreign defendant, since the provisions for shifting the expense of service to a defendant that declines to waive service apply only if the plaintiff and defendant are both located in the United States.

With respect to a defendant located in a foreign country like the United Kingdom, which accepts documents in English, whose Central Authority acts promptly in effecting service, and whose policies discourage its residents from waiving formal service, there will be little reason for a plaintiff to send the notice and request under subdivision (d) rather than use convention methods. On the other hand, the procedure offers significant potential benefits to a plaintiff when suing a defendant that, though fluent in English, is located in a country where, as a condition to formal service under a convention, documents must be translated into another language or where formal service will be otherwise costly or time-consuming.

Paragraph (1) is explicit that a timely waiver of service of a summons does not prejudice the right of a defendant to object by means of a motion authorized by Rule 12(b)(2) to the absence of jurisdiction over the defendant's person, or to assert other defenses that may be available. The only issues eliminated are those involving the sufficiency of the summons or the sufficiency of the method by which it is served.

Paragraph (2) states what the present rule implies: the defendant has a duty to avoid costs associated with the service of a summons not needed to inform the defendant regarding the commencement of an action. The text of the rule also sets forth the requirements for a Notice and Request for Waiver sufficient to put the cost-shifting provision in place. These requirements are illustrated in Forms 1A and 1B, which replace the former Form 18–A.

Paragraph (2)(A) is explicit that a request for waiver of service by a corporate defendant must be addressed to a person qualified to receive service. The general mail rooms of large organizations cannot be required to identify the appropriate individual recipient for an institutional summons.

Paragraph (2)(B) permits the use of alternatives to the United States mails in sending the Notice and Request. While private messenger services or electronic communications may be more expensive than the mail, they may be equally reliable and on occasion more convenient to the parties. Especially with respect to transmissions to foreign countries, alternative means may be desirable, for in some countries facsimile transmission is the most efficient and economical means of communication. If electronic means such as facsimile transmission are employed, the sender should maintain a record of the transmission to assure proof of transmission if receipt is denied, but a party receiving such a transmission has a duty to cooperate and cannot avoid liability for the resulting cost of formal service if the transmission is prevented at the point of receipt.

A defendant failing to comply with a request for waiver shall be given an opportunity to show good cause for the failure, but sufficient cause should be rare. It is not a good cause for failure to waive service that the claim is unjust or that the court lacks jurisdiction. Sufficient cause not to shift the cost of service would exist, however, if the defendant did not receive the request or was insufficiently literate in English to understand it. It should be noted that the provisions for shifting the cost of service apply only if the plaintiff and the defendant are both located in the United States, and accordingly a foreign defendant need not show "good cause" for its failure to waive service.

Paragraph (3) extends the time for answer if, before being served with process, the defendant waives formal service. The extension is intended to serve as an inducement to waive service and to assure that a defendant will not gain any delay by declining to waive service and thereby causing the additional time needed to effect service. By waiving service, a defendant is not called upon to respond to the complaint until 60 days from the date the notice was sent to it—90 days if the notice was sent to a foreign country—rather than within the 20 day period from date of service specified in Rule 12.

Paragraph (4) clarifies the effective date of service when service is waived; the provision is needed to resolve an issue arising when applicable law requires service of process to toll the statute of limitations. *E.g.*, *Morse v. Elmira Country Club*, 752 F.2d 35 (2d Cir. 1984). *Cf. Walker v. Armco Steel Corp*., 446 U.S. 740 (1980).

The provisions in former subdivision (c)(2)(C)(ii) of this rule may have been misleading to some parties. Some plaintiffs, not reading the rule carefully, supposed that receipt by the defendant of the mailed complaint had the effect both of establishing the jurisdiction of the court over the

defendant's person and of tolling the statute of limitations in actions in which service of the summons is required to toll the limitations period. The revised rule is clear that, if the waiver is not returned and filed, the limitations period under such a law is not tolled and the action will not otherwise proceed until formal service of process is effected.

Some state limitations laws may toll an otherwise applicable statute at the time when the defendant receives notice of the action. Nevertheless, the device of requested waiver of service is not suitable if a limitations period which is about to expire is not tolled by filing the action. Unless there is ample time, the plaintiff should proceed directly to the formal methods for service identified in subdivisions (e), (f), or (h).

The procedure of requesting waiver of service should also not be used if the time for service under subdivision (m) will expire before the date on which the waiver must be returned. While a plaintiff has been allowed additional time for service in that situation, *e.g., Prather v. Raymond Constr. Co*., 570 F. Supp. 278 (N.D. Ga. 1983), the court could refuse a request for additional time unless the defendant appears to have evaded service pursuant to subdivision (e) or (h). It may be noted that the presumptive time limit for service under subdivision (m) does not apply to service in a foreign country.

Paragraph (5) is a cost-shifting provision retained from the former rule. The costs that may be imposed on the defendant could include, for example, the cost of the time of a process server required to make contact with a defendant residing in a guarded apartment house or residential development. The paragraph is explicit that the costs of enforcing the cost-shifting provision are themselves recoverable from a defendant who fails to return the waiver. In the absence of such a provision, the purpose of the rule would be frustrated by the cost of its enforcement, which is likely to be high in relation to the small benefit secured by the plaintiff.

Some plaintiffs may send a notice and request for waiver and, without waiting for return of the waiver, also proceed with efforts to effect formal service on the defendant. To discourage this practice, the cost-shifting provisions in paragraphs (2) and (5) are limited to costs of effecting service incurred after the time expires for the defendant to return the waiver. Moreover, by returning the waiver within the time allowed and before being served with process, a defendant receives the benefit of the longer period for responding to the complaint afforded for waivers under paragraph (3).

Subdivision (e). This subdivision replaces former subdivisions (c)(2)(C)(i) and (d)(1). It provides a means for service of summons on individuals within a judicial district of the United States. Together with subdivision (f), it provides for service on persons anywhere, subject to constitutional and statutory constraints.

Service of the summons under this subdivision does not conclusively establish the jurisdiction of the court over the person of the defendant. A defendant may assert the territorial limits of the court's reach set forth in subdivision (k), including the constitutional limitations that may be imposed by the Due Process Clause of the Fifth Amendment.

Paragraph (1) authorizes service in any judicial district in conformity with state law. This paragraph sets forth the language of former subdivision (c)(2)(C)(i), which authorized the use of the law of the state in which the district court sits, but adds as an alternative the use of the law of the state in which the service is effected.

Paragraph (2) retains the text of the former subdivision (d)(1) and authorizes the use of the familiar methods of personal or abode service or service on an authorized agent in any judicial district.

To conform to these provisions, the former subdivision (e) bearing on proceedings against parties not found within the state is stricken. Likewise stricken is the first sentence of the former subdivision (f), which had restricted the authority of the federal process server to the state in which the district court sits.

Subdivision (f). This subdivision provides for service on individuals who are in a foreign country, replacing the former subdivision (i) that was added to Rule 4 in 1963. Reflecting the pattern of Rule 4 in incorporating state law limitations on the exercise of jurisdiction over persons, the former subdivision (i) limited service outside the United States to cases in which extraterritorial service was authorized by state or federal law. The new rule eliminates the requirement of explicit authorization. On occasion, service in a foreign country was held to be improper for lack of statutory authority. *E.g.*, *Martens v. Winder*, 341 F.2d 197 (9th Cir.), *cert. denied*, 382 U.S. 937 (1965). This authority, however, was found to exist by implication. *E.g.*, *SEC v. VTR, Inc.*, 39 F.R.D. 19 (S.D.N.Y. 1966). Given the substantial increase in the number of international transactions and events that are the subject of litigation in federal courts, it is appropriate to infer a general legislative authority to effect service on defendants in a foreign country.

A secondary effect of this provision for foreign service of a federal summons is to facilitate the use of federal long-arm law in actions brought to enforce the federal law against defendants who cannot be served under any state law but who can be constitutionally subjected to the jurisdiction of the federal court. Such a provision is set forth in paragraph (2) of subdivision (k) of this rule, applicable only to persons not subject to the territorial jurisdiction of any particular state.

Paragraph (1) gives effect to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, which entered into force for the United States on February 10, 1969. See 28 U.S.C.A., Fed.R.Civ.P. 4 (Supp. 1986). This Convention is an important means of dealing with problems of service in a foreign country. *See generally* 1 B. Ristau, *International Judicial Assistance* §§4–1–1 to 4–5–2 (1990). Use of the Convention procedures, when available, is mandatory if documents must be transmitted abroad to effect service. *See Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694 (1988) (noting that voluntary use of these procedures may be desirable even when service could constitutionally be effected in another manner); J. Weis, *The Federal Rules and the Hague Conventions: Concerns of Conformity and Comity*, 50 *U. Pitt. L. Rev*. 903 (1989). Therefore, this paragraph provides that, when service is to be effected outside a judicial district of the United States, the methods of service appropriate under an applicable treaty shall be employed if available and if the treaty so requires.

The Hague Convention furnishes safeguards against the abridgment of rights of parties through inadequate notice. Article 15 provides for verification of actual notice or a demonstration that process was served by a method prescribed by the internal laws of the foreign state before a default judgment may be entered. Article 16 of the Convention also enables the judge to extend the time for appeal after judgment if the defendant shows a lack of adequate notice either to defend or to appeal the judgment, or has disclosed a prima facie case on the merits.

The Hague Convention does not specify a time within which a foreign country's Central Authority must effect service, but Article 15 does provide that alternate methods may be used if a Central Authority does not respond within six months. Generally, a Central Authority can be expected to respond much more quickly than that limit might permit, but there have been occasions when the signatory state was dilatory or refused to cooperate for substantive reasons. In such cases, resort may be had to the provision set forth in subdivision (f)(3).

Two minor changes in the text reflect the Hague Convention. First, the term “letter of request” has been added. Although these words are synonymous with “letter rogatory,” “letter of request”

is preferred in modern usage. The provision should not be interpreted to authorize use of a letter of request when there is in fact no treaty obligation on the receiving country to honor such a request from this country or when the United States does not extend diplomatic recognition to the foreign nation. Second, the passage formerly found in subdivision (i)(1)(B), "when service in either case is reasonably calculated to give actual notice," has been relocated.

Paragraph (2) provides alternative methods for use when internationally agreed methods are not intended to be exclusive, or where there is no international agreement applicable. It contains most of the language formerly set forth in subdivision (i) of the rule. Service by methods that would violate foreign law is not generally authorized. Subparagraphs (A) and (B) prescribe the more appropriate methods for conforming to local practice or using a local authority. Subparagraph (C) prescribes other methods authorized by the former rule.

Paragraph (3) authorizes the court to approve other methods of service not prohibited by international agreements. The Hague Convention, for example, authorizes special forms of service in cases of urgency if convention methods will not permit service within the time required by the circumstances. Other circumstances that might justify the use of additional methods include the failure of the foreign country's Central Authority to effect service within the six-month period provided by the Convention, or the refusal of the Central Authority to serve a complaint seeking punitive damages or to enforce the antitrust laws of the United States. In such cases, the court may direct a special method of service not explicitly authorized by international agreement if not prohibited by the agreement. Inasmuch as our Constitution requires that reasonable notice be given, an earnest effort should be made to devise a method of communication that is consistent with due process and minimizes offense to foreign law. A court may in some instances specially authorize use of ordinary mail. *Cf. Levin v. Ruby Trading Corp*., 248 F. Supp. 537 (S.D.N.Y. 1965).

Subdivision (g). This subdivision retains the text of former subdivision (d)(2). Provision is made for service upon an infant or incompetent person in a foreign country.

Subdivision (h). This subdivision retains the text of former subdivision (d)(3), with changes reflecting those made in subdivision (e). It also contains the provisions for service on a corporation or association in a foreign country, as formerly found in subdivision (i).

Frequent use should be made of the Notice and Request procedure set forth in subdivision (d) in actions against corporations. Care must be taken, however, to address the request to an individual

officer or authorized agent of the corporation. It is not effective use of the Notice and Request procedure if the mail is sent undirected to the mail room of the organization.

Subdivision (i). This subdivision retains much of the text of former subdivisions (d)(4) and (d)(5). Paragraph (1) provides for service of a summons on the United States; it amends former subdivision (d)(4) to permit the United States attorney to be served by registered or certified mail. The rule does not authorize the use of the Notice and Request procedure of revised subdivision (d) when the United States is the defendant. To assure proper handling of mail in the United States attorney's office, the authorized mail service must be specifically addressed to the civil process clerk of the office of the United States attorney.

Paragraph (2) replaces former subdivision (d)(5). Paragraph (3) saves the plaintiff from the hazard of losing a substantive right because of failure to comply with the complex requirements of multiple service under this subdivision. That risk has proved to be more than nominal. *E.g., Whale v. United States,* 792 F.2d 951 (9th Cir. 1986). This provision should be read in connection with the provisions of subdivision (c) of Rule 15 to preclude the loss of substantive rights against the United States or its agencies, corporations, or officers resulting from a plaintiff's failure to correctly identify and serve all the persons who should be named or served.

Subdivision (j). This subdivision retains the text of former subdivision (d)(6) without material change. The waiver-of-service provision is also inapplicable to actions against governments subject to service pursuant to this subdivision.

The revision adds a new paragraph (1) referring to the statute governing service of a summons on a foreign state and its political subdivisions, agencies, and instrumentalities, the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §1608. The caption of the subdivision reflects that change.

Subdivision (k). This subdivision replaces the former subdivision (f), with no change in the title. Paragraph (1) retains the substance of the former rule in explicitly authorizing the exercise of personal jurisdiction over persons who can be reached under state long-arm law, the "100-mile bulge" provision added in 1963, or the federal interpleader act. Paragraph (1)(D) is new, but merely calls attention to federal legislation that may provide for nationwide or even world-wide service of process in cases arising under particular federal laws. Congress has provided for nationwide service of process and full exercise of territorial jurisdiction by all district courts with

respect to specified federal actions. *See* 1 R. Casad, *Jurisdiction in Civil Actions* (2d Ed.) chap. 5 (1991).

Paragraph (2) is new. It authorizes the exercise of territorial jurisdiction over the person of any defendant against whom is made a claim arising under any federal law if that person is subject to personal jurisdiction in no state. This addition is a companion to the amendments made in revised subdivisions (e) and (f).

This paragraph corrects a gap in the enforcement of federal law. Under the former rule, a problem was presented when the defendant was a non-resident of the United States having contacts with the United States sufficient to justify the application of United States law and to satisfy federal standards of forum selection, but having insufficient contact with any single state to support jurisdiction under state long-arm legislation or meet the requirements of the Fourteenth Amendment limitation on state court territorial jurisdiction. In such cases, the defendant was shielded from the enforcement of federal law by the fortuity of a favorable limitation on the power of state courts, which was incorporated into the federal practice by the former rule. In this respect, the revision responds to the suggestion of the Supreme Court made in *Omni Capital Int'l v. Rudolf Wolff & Co., Ltd*., 484 U.S. 97, 111 (1987).

There remain constitutional limitations on the exercise of territorial jurisdiction by federal courts over persons outside the United States. These restrictions arise from the Fifth Amendment rather than from the Fourteenth Amendment, which limits state-court reach and which was incorporated into federal practice by the reference to state law in the text of the former subdivision (e) that is deleted by this revision. The Fifth Amendment requires that any defendant have affiliating contacts with the United States sufficient to justify the exercise of personal jurisdiction over that party. *Cf. Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 418 (9th Cir. 1977). There also may be a further Fifth Amendment constraint in that a plaintiff's forum selection might be so inconvenient to a defendant that it would be a denial of "fair play and substantial justice" required by the due process clause, even though the defendant had significant affiliating contacts with the United States. *See DeJames v. Magnificent Carriers*, 654 F.2d 280, 286 n.3 (3rd Cir.), *cert. denied*, 454 U.S. 1085 (1981). *Compare World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 –294 (1980); *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 –03 (1982); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 –78 (1985); *Asahi Metal Indus. v. Superior Court of Cal., Solano County*, 480 U.S. 102, 108 –13 (1987). *See generally* R. Lusardi, *Nationwide Service of Process: Due Process Limitations on the Power of the Sovereign*, 33 *Vill. L. Rev*. 1 (1988).

This provision does not affect the operation of federal venue legislation. *See generally* 28 U.S.C. §1391. Nor does it affect the operation of federal law providing for the change of venue. 28 U.S.C. §§1404, 1406. The availability of transfer for fairness and convenience under §1404 should preclude most conflicts between the full exercise of territorial jurisdiction permitted by this rule and the Fifth Amendment requirement of "fair play and substantial justice."

The district court should be especially scrupulous to protect aliens who reside in a foreign country from forum selections so onerous that injustice could result. "[G]reat care and reserve should be exercised when extending our notions of personal jurisdiction into the international field." *Asahi Metal Indus. v. Superior Court of Cal., Solano County*, 480 U.S. 102, 115 (1987), quoting *United States v. First Nat'l City Bank*, 379 U.S. 378, 404 (1965) (Harlan, J., dissenting).

This narrow extension of the federal reach applies only if a claim is made against the defendant under federal law. It does not establish personal jurisdiction if the only claims are those arising under state law or the law of another country, even though there might be diversity or alienage subject matter jurisdiction as to such claims. If, however, personal jurisdiction is established under this paragraph with respect to a federal claim, then 28 U.S.C. §1367(a) provides supplemental jurisdiction over related claims against that defendant, subject to the court's discretion to decline exercise of that jurisdiction under 28 U.S.C. §1367(c).

Subdivision (l). This subdivision assembles in one place all the provisions of the present rule bearing on proof of service. No material change in the rule is effected. The provision that proof of service can be amended by leave of court is retained from the former subdivision (h). *See generally* 4A Wright & Miller, *Federal Practice and Procedure* §1132 (2d ed. 1987).

Subdivision (m). This subdivision retains much of the language of the present subdivision (j).

The new subdivision explicitly provides that the court shall allow additional time if there is good cause for the plaintiff's failure to effect service in the prescribed 120 days, and authorizes the court to relieve a plaintiff of the consequences of an application of this subdivision even if there is no good cause shown. Such relief formerly was afforded in some cases, partly in reliance on Rule 6(b). Relief may be justified, for example, if the applicable statute of limitations would bar the refiled action, or if the defendant is evading service or conceals a defect in attempted service. *E.g., Ditkof v. Owens-Illinois, Inc.*, 114 F.R.D. 104 (E.D. Mich. 1987). A specific instance of good cause is set forth in paragraph (3) of this rule, which provides for extensions if necessary to correct oversights in compliance with the requirements of multiple service in actions against the

United States or its officers, agencies, and corporations. The district court should also take care to protect *pro se* plaintiffs from consequences of confusion or delay attending the resolution of an *in forma pauperis* petition. *Robinson v. America's Best Contacts & Eyeglasses*, 876 F.2d 596 (7th Cir. 1989).

The 1983 revision of this subdivision referred to the "party on whose behalf such service was required," rather than to the "plaintiff," a term used generically elsewhere in this rule to refer to any party initiating a claim against a person who is not a party to the action. To simplify the text, the revision returns to the usual practice in the rule of referring simply to the plaintiff even though its principles apply with equal force to defendants who may assert claims against non-parties under Rules 13(h), 14, 19, 20, or 21.

Subdivision (n). This subdivision provides for in rem and quasi-in-rem jurisdiction. Paragraph (1) incorporates any requirements of 28 U.S.C. §1655 or similar provisions bearing on seizures or liens.

Paragraph (2) provides for other uses of quasi-in-rem jurisdiction but limits its use to exigent circumstances. Provisional remedies may be employed as a means to secure jurisdiction over the property of a defendant whose person is not within reach of the court, but occasions for the use of this provision should be rare, as where the defendant is a fugitive or assets are in imminent danger of disappearing. Until 1963, it was not possible under Rule 4 to assert jurisdiction in a federal court over the property of a defendant not personally served. The 1963 amendment to subdivision (e) authorized the use of state law procedures authorizing seizures of assets as a basis for jurisdiction. Given the liberal availability of long-arm jurisdiction, the exercise of power quasi-in-rem has become almost an anachronism. Circumstances too spare to affiliate the defendant to the forum state sufficiently to support long-arm jurisdiction over the defendant's person are also inadequate to support seizure of the defendant's assets fortuitously found within the state. *Shaffer v. Heitner*, 433 U.S. 186 (1977).

Committee Notes on Rules—2000 Amendment

Paragraph (2)(B) is added to Rule 4(i) to require service on the United States when a United States officer or employee is sued in an individual capacity for acts or omissions occurring in connection with duties performed on behalf of the United States. Decided cases provide uncertain guidance on the question whether the United States must be served in such actions. *See Vaccaro v. Dobre*, 81 F.3d 854, 856–857 (9th Cir. 1996); *Armstrong v. Sears*, 33 F.3d 182, 185–

187 (2d Cir. 1994); *Ecclesiastical Order of the Ism of Am v. Chasin*, 845 F.2d 113, 116 (6th Cir. 1988); *Light v. Wolf*, 816 F.2d 746 (D.C. Cir. 1987); *see also Simpkins v. District of Columbia*, 108 F.3d 366, 368–369 (D.C. Cir. 1997). Service on the United States will help to protect the interest of the individual defendant in securing representation by the United States, and will expedite the process of determining whether the United States will provide representation. It has been understood that the individual defendant must be served as an individual defendant, a requirement that is made explicit. Invocation of the individual service provisions of subdivisions (e), (f), and (g) invokes also the waiver-of-service provisions of subdivision (d).

Paragraph 2(B) reaches service when an officer or employee of the United States is sued in an individual capacity "for acts or omissions occurring in connection with the performance of duties on behalf of the United States." This phrase has been chosen as a functional phrase that can be applied without the occasionally distracting associations of such phrases as "scope of employment," "color of office," or "arising out of the employment." Many actions are brought against individual federal officers or employees of the United States for acts or omissions that have no connection whatever to their governmental roles. There is no reason to require service on the United States in these actions. The connection to federal employment that requires service on the United States must be determined as a practical matter, considering whether the individual defendant has reasonable grounds to look to the United States for assistance and whether the United States has reasonable grounds for demanding formal notice of the action.

An action against a former officer or employee of the United States is covered by paragraph (2)(B) in the same way as an action against a present officer or employee. Termination of the relationship between the individual defendant and the United States does not reduce the need to serve the United States.

Paragraph (3) is amended to ensure that failure to serve the United States in an action governed by paragraph 2(B) does not defeat an action. This protection is adopted because there will be cases in which the plaintiff reasonably fails to appreciate the need to serve the United States. There is no requirement, however, that the plaintiff show that the failure to serve the United States was reasonable. A reasonable time to effect service on the United States must be allowed after the failure is pointed out. An additional change ensures that if the United States or United States attorney is served in an action governed by paragraph 2(A), additional time is to be allowed even though no officer, employee, agency, or corporation of the United States was served.

GAP Report. The most important changes were made to ensure that no one would read the seemingly independent provisions of paragraphs 2(A) and 2(B) to mean that service must be made twice both on the United States and on the United States employee when the employee is sued in both official and individual capacities. The word "only" was added in subparagraph (A) and the new phrase "whether or not the officer or employee is sued also in an individual capacity" was inserted in subparagraph (B).

Minor changes were made to include "Employees" in the catchline for subdivision (i), and to add "or employee" in paragraph 2(A). Although it may seem awkward to think of suit against an employee in an official capacity, there is no clear definition that separates "officers" from "employees" for this purpose. The published proposal to amend Rule 12(a)(3) referred to actions against an employee sued in an official capacity, and it seemed better to make the rules parallel by adding "employee" to Rule 4(i)(2)(A) than by deleting it from Rule 12(a)(3)(A).

Committee Notes on Rules—2007 Amendment

The language of Rule 4 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 4(d)(1)(C) corrects an inadvertent error in former Rule 4(d)(2)(G). The defendant needs two copies of the waiver form, not an extra copy of the notice and request.

Rule 4(g) changes "infant" to "minor." "Infant" in the present rule means "minor." Modern word usage suggests that "minor" will better maintain the intended meaning. The same change from "infant" to "minor" is made throughout the rules. In addition, subdivision (f)(3) is added to the description of methods of service that the court may order; the addition ensures the evident intent that the court not order service by means prohibited by international agreement.

Rule 4(i)(4) corrects a misleading reference to "the plaintiff" in former Rule 4(i)(3). A party other than a plaintiff may need a reasonable time to effect service. Rule 4(i)(4) properly covers any party.

Former Rule 4(j)(2) refers to service upon an "other governmental organization subject to suit." This is changed to "any other state-created governmental organization that is subject to suit." The change entrenches the meaning indicated by the caption ("Serving a Foreign, State, or Local

Government"), and the invocation of state law. It excludes any risk that this rule might be read to govern service on a federal agency, or other entities not created by state law.

The former provision describing service on interpleader claimants [former subd. (k)(1)(C)] is deleted as redundant in light of the general provision in (k)(1)(C) recognizing personal jurisdiction authorized by a federal statute.

Amendment by Public Law

1983 —Subd. (a). Pub. L. 97–462, §2(1), substituted "deliver the summons to the plaintiff or the plaintiff's attorney, who shall be responsible for prompt service of the summons and a copy of the complaint" for "deliver it for service to the marshal or to any other person authorized by Rule 4(c) to serve it".

Subd. (c). Pub. L. 97–462, §2(2), substituted provision with subd. heading "Service" for provision with subd. heading "By Whom Served" which read: "Service of process shall be made by a United States marshal, by his deputy, or by some person specially appointed by the court for that purpose, except that a subpoena may be served as provided in Rule 45. Special appointments to serve process shall be made freely. Service of process may also be made by a person authorized to serve process in an action brought in the courts of general jurisdiction of the state in which the district court is held or in which service is made."

Subd. (d). Pub. L. 97–462, §2(3), (4), substituted "Summons and Complaint: Person to be Served" for "Summons: Personal Service" in subd. heading.

Subd. (d)(5). Pub. L. 97–462, §2(4), substituted "sending a copy of the summons and of the complaint by registered or certified mail" for "delivering a copy of the summons and of the complaint".

Subd. (d)(7). Pub. L. 97–462, §2(3)(B), struck out par. (7) which read: "Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if the summons and complaint are served in the manner prescribed by any statute of the United States or in the manner prescribed by the law of the state in which the district court is held for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state.". See subd. (c)(2)(C) of this rule.

Subd. (e). Pub. L. 97–462, §2(5), substituted "Summons" for "Same" as subd. heading.

Subd. (g). Pub. L. 97–462, §2(6), substituted in second sentence "deputy United States marshal" and "such person" for "his deputy" and "he" and inserted third sentence "If service is made under subdivision (c)(2)(C)(ii) of this rule, return shall be made by the sender's filing with the court the acknowledgment received pursuant to such subdivision.".

Subd. (j). Pub. L. 97–462, §2(7), added subd. (j).

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–462 effective 45 days after Jan. 12, 1983, see section 4 of Pub. L. 97–462, set out as a note under section 2071 of this title.

Committee Notes on Rules—2015 Amendment

Subdivision (d). Abrogation of Rule 84 and the other official forms requires that former Forms 5 and 6 be directly incorporated into Rule 4.

Subdivision (m). The presumptive time for serving a defendant is reduced from 120 days to 90 days. This change, together with the shortened times for issuing a scheduling order set by amended Rule 16(b)(2), will reduce delay at the beginning of litigation.

Shortening the presumptive time for service will increase the frequency of occasions to extend the time. More time may be needed, for example, when a request to waive service fails, a defendant is difficult to serve, or a marshal is to make service in an in forma pauperis action.

The final sentence is amended to make it clear that the reference to Rule 4 in Rule 71.1(d)(3)(A) does not include Rule 4(m). Dismissal under Rule 4(m) for failure to make timely service would be inconsistent with the limits on dismissal established by Rule 71.1(i)(1)(C).

Shortening the time to serve under Rule 4(m) means that the time of the notice required by Rule 15(c)(1)(C) for relation back is also shortened.

Committee Notes on Rules—2016 Amendment

Rule 4(m) is amended to correct a possible ambiguity that appears to have generated some confusion in practice . Service in a foreign country often is accomplished by means that require more than the time set by Rule 4(m). This problem is recognized by the two clear exceptions for service on an individual in a foreign country under Rule 4(f) and for service on a foreign state under Rule 4(j)(1) . The potential ambiguity arises from the lack of any explicit reference to service on a corporation, partnership, or other unincorporated association. Rule 4(h)(2) provides for service on such defendants at a place outside any judicial district of the United States "in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i)." Invoking service "in the manner prescribed by Rule 4(f)" could easily be read to mean that service under Rule 4(h)(2) is also service "under" Rule 4(f) . That interpretation is in keeping with the purpose to recognize the delays that often occur in effecting service in a foreign country . But it also is possible to read the words for what t hey seem to say — service is under Rule 4(h)(2), albeit in a manner borrowed from almost all, but not quite all, of Rule 4(f).

Rule 4.1. Serving Other Process

(a) In General. Process—other than a summons under Rule 4 or a subpoena under Rule 45—must be served by a United States marshal or deputy marshal or by a person specially appointed for that purpose. It may be served anywhere within the territorial limits of the state where the district court is located and, if authorized by a federal statute, beyond those limits. Proof of service must be made under Rule 4(*l*).

(b) Enforcing Orders: Committing for Civil Contempt. An order committing a person for civil contempt of a decree or injunction issued to enforce federal law may be served and enforced in any district. Any other order in a civil-contempt proceeding may be served only in the state where the issuing court is located or elsewhere in the United States within 100 miles from where the order was issued.

Notes

(As added Apr. 22, 1993, eff. Dec. 1, 1993; amended Apr. 30, 2007, eff. Dec. 1, 2007.)

Notes of Advisory Committee on Rules—1993

This is a new rule. Its purpose is to separate those few provisions of the former Rule 4 bearing on matters other than service of a summons to allow greater textual clarity in Rule 4. Subdivision (a) contains no new language.

Subdivision (b) replaces the final clause of the penultimate sentence of the former subdivision 4(f), a clause added to the rule in 1963. The new rule provides for nationwide service of orders of civil commitment enforcing decrees of injunctions issued to compel compliance with federal law. The rule makes no change in the practice with respect to the enforcement of injunctions or decrees not involving the enforcement of federally-created rights.

Service of process is not required to notify a party of a decree or injunction, or of an order that the party show cause why that party should not be held in contempt of such an order. With respect to a party who has once been served with a summons, the service of the decree or injunction itself or of an order to show cause can be made pursuant to Rule 5. Thus, for example, an injunction may be served on a party through that person's attorney. *Chagas v. United States*, 369 F.2d 643 (5th Cir. 1966). The same is true for service of an order to show cause. *Waffenschmidt v. Mackay*, 763 F.2d 711 (5th Cir. 1985).

The new rule does not affect the reach of the court to impose criminal contempt sanctions. Nationwide enforcement of federal decrees and injunctions is already available with respect to criminal contempt: a federal court may effect the arrest of a criminal contemnor anywhere in the United States, 28 U.S.C. §3041, and a contemnor when arrested may be subject to removal to the district in which punishment may be imposed. Fed. R. Crim. P. 40. Thus, the present law permits criminal contempt enforcement against a contemnor wherever that person may be found.

The effect of the revision is to provide a choice of civil or criminal contempt sanctions in those situations to which it applies. Contempt proceedings, whether civil or criminal, must be brought in the court that was allegedly defied by a contumacious act. *Ex parte Bradley*, 74 U.S. 366 (1869). This is so even if the offensive conduct or inaction occurred outside the district of the court in which the enforcement proceeding must be conducted. *E.g., McCourtney v. United States*, 291 Fed. 497 (8th Cir.), *cert. denied*, 263 U.S. 714 (1923). For this purpose, the rule as before does not distinguish between parties and other persons subject to contempt sanctions by reason of their relation or connection to parties.

Committee Notes on Rules—2007 Amendment

The language of Rule 4.1 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 5. Serving and Filing Pleadings and Other Papers

(a) Service: When Required.

(1) *In General.* Unless these rules provide otherwise, each of the following papers must be served on every party:

(A) an order stating that service is required;

(B) a pleading filed after the original complaint, unless the court orders otherwise under Rule 5(c) because there are numerous defendants;

(C) a discovery paper required to be served on a party, unless the court orders otherwise;

(D) a written motion, except one that may be heard ex parte; and

(E) a written notice, appearance, demand, or offer of judgment, or any similar paper.

(2) *If a Party Fails to Appear.* No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.

(3) *Seizing Property.* If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an appearance, answer, or claim must be made on the person who had custody or possession of the property when it was seized.

(b) Service: How Made.

(1) *Serving an Attorney.* If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) *Service in General.* A paper is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address—in which event service is complete upon mailing;

(D) leaving it with the court clerk if the person has no known address;

(E) sending it by electronic means if the person consented in writing—in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served; or

(F) delivering it by any other means that the person consented to in writing—in which event service is complete when the person making service delivers it to the agency designated to make delivery.

(3) *Using Court Facilities.* If a local rule so authorizes, a party may use the court's transmission facilities to make service under Rule 5(b)(2)(E).

(c) Serving Numerous Defendants.

(1) *In General.* If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that:

(A) defendants' pleadings and replies to them need not be served on other defendants;

(B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and

(C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.

(2) *Notifying Parties.* A copy of every such order must be served on the parties as the court directs.

(d) Filing.

(1) *Required Filings; Certificate of Service.* Any paper after the complaint that is required to be served—together with a certificate of service—must be filed within a reasonable time after service. But disclosures under Rule 26(a)(1) or (2) and the following discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing: depositions, interrogatories, requests for documents or tangible things or to permit entry onto land, and requests for admission.

(2) *How Filing Is Made—In General.* A paper is filed by delivering it:

(A) to the clerk; or

(B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.

(3) *Electronic Filing, Signing, or Verification.* A court may, by local rule, allow papers to be filed, signed, or verified by electronic means that are consistent with any technical standards established by the Judicial Conference of the United States. A local rule may require electronic filing only if reasonable exceptions are allowed. A paper filed electronically in compliance with a local rule is a written paper for purposes of these rules.

(4) *Acceptance by the Clerk.* The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice.

Notes

(As amended Jan. 21, 1963, eff. July 1, 1963; Mar. 30, 1970, eff. July 1, 1970; Apr. 29, 1980, eff. Aug. 1, 1980; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 23, 2001, eff. Dec. 1, 2001; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007.)

Notes of Advisory Committee on Rules—1937

Note to Subdivisions (a) and (b). Compare 2 Minn.Stat. (Mason, 1927) §§9240, 9241, 9242; N.Y.C.P.A. (1937) §§163, 164, and N.Y.R.C.P. (1937) Rules 20, 21; 2 Wash.Rev.Stat.Ann. (Remington, 1932) §§244–249.

Note to Subdivision (d). Compare the present practice under [former] Equity Rule 12 (Issue of Subpoena—Time for Answer).

Notes of Advisory Committee on Rules—1963 Amendment

The words "affected thereby," stricken out by the amendment, introduced a problem of interpretation. See 1 Barron & Holtzoff, *Federal Practice & Procedure* 760–61 (Wright ed. 1960). The amendment eliminates this difficulty and promotes full exchange of information among the parties by requiring service of papers on all the parties to the action, except as otherwise provided in the rules. See also subdivision (c) of Rule 5. So, for example, a third-party defendant is required to serve his answer to the third-party complaint not only upon the defendant but also upon the plaintiff. See amended Form 22–A and the Advisory Committee's Note thereto.

As to the method of serving papers upon a party whose address is unknown, see Rule 5(b).

Notes of Advisory Committee on Rules—1970 Amendment

The amendment makes clear that all papers relating to discovery which are required to be served on any party must be served on all parties, unless the court orders otherwise. The present language expressly includes notices and demands, but it is not explicit as to answers or responses as provided in Rules 33, 34, and 36. Discovery papers may be voluminous or the parties

numerous, and the court is empowered to vary the requirement if in a given case it proves needlessly onerous.

In actions begun by seizure of property, service will at times have to be made before the absent owner of the property has filed an appearance. For example, a prompt deposition may be needed in a maritime action in rem. See Rules 30(a) and 30(b)(2) and the related notes. A provision is added authorizing service on the person having custody or possession of the property at the time of its seizure.

Notes of Advisory Committee on Rules—1980 Amendment

Subdivision (d). By the terms of this rule and Rule 30(f)(1) discovery materials must be promptly filed, although it often happens that no use is made of the materials after they are filed. Because the copies required for filing are an added expense and the large volume of discovery filings presents serious problems of storage in some districts, the Committee in 1978 first proposed that discovery materials not be filed unless on order of the court or for use in the proceedings. But such materials are sometimes of interest to those who may have no access to them except by a requirement of filing, such as members of a class, litigants similarly situated, or the public generally. Accordingly, this amendment and a change in Rule 30(f)(1) continue the requirement of filing but make it subject to an order of the court that discovery materials not be filed unless filing is requested by the court or is effected by parties who wish to use the materials in the proceeding.

Notes of Advisory Committee on Rules—1987 Amendment

The amendments are technical. No substantive change is intended.

Notes of Advisory Committee on Rules—1991 Amendment

Subdivision (d). This subdivision is amended to require that the person making service under the rule certify that service has been effected. Such a requirement has generally been imposed by local rule.

Having such information on file may be useful for many purposes, including proof of service if an issue arises concerning the effectiveness of the service. The certificate will generally specify the date as well as the manner of service, but parties employing private delivery services may

sometimes be unable to specify the date of delivery. In the latter circumstance, a specification of the date of transmission of the paper to the delivery service may be sufficient for the purposes of this rule.

Subdivision (e). The words *"pleading and other"* are stricken as unnecessary. Pleadings are papers within the meaning of the rule. The revision also accommodates the development of the use of facsimile transmission for filing.

Several local district rules have directed the office of the clerk to refuse to accept for filing papers not conforming to certain requirements of form imposed by local rules or practice. This is not a suitable role for the office of the clerk, and the practice exposes litigants to the hazards of time bars; for these reasons, such rules are proscribed by this revision. The enforcement of these rules and of the local rules is a role for a judicial officer. A clerk may of course advise a party or counsel that a particular instrument is not in proper form, and may be directed to so inform the court.

Notes of Advisory Committee on Rules—1993 Amendment

This is a technical amendment, using the broader language of Rule 25 of the Federal Rules of Appellate Procedure. The district court—and the bankruptcy court by virtue of a cross-reference in Bankruptcy Rule 7005—can, by local rule, permit filing not only by facsimile transmissions but also by other electronic means, subject to standards approved by the Judicial Conference.

Notes of Advisory Committee on Rules—1996 Amendment

The present Rule 5(e) has authorized filing by facsimile or other electronic means on two conditions. The filing must be authorized by local rule. Use of this means of filing must be authorized by the Judicial Conference of the United States and must be consistent with standards established by the Judicial Conference. Attempts to develop Judicial Conference standards have demonstrated the value of several adjustments in the rule.

The most significant change discards the requirement that the Judicial Conference authorize local electronic filing rules. As before, each district may decide for itself whether it has the equipment and personnel required to establish electronic filing, but a district that wishes to establish electronic filing need no longer await Judicial Conference action.

The role of the Judicial Conference standards is clarified by specifying that the standards are to govern technical matters. Technical standards can provide nationwide uniformity, enabling ready use of electronic filing without pausing to adjust for the otherwise inevitable variations among local rules. Judicial Conference adoption of technical standards should prove superior to specification in these rules. Electronic technology has advanced with great speed. The process of adopting Judicial Conference standards should prove speedier and more flexible in determining the time for the first uniform standards, in adjusting standards at appropriate intervals, and in sparing the Supreme Court and Congress the need to consider technological details. Until Judicial Conference standards are adopted, however, uniformity will occur only to the extent that local rules deliberately seek to copy other local rules.

It is anticipated that Judicial Conference standards will govern such technical specifications as data formatting, speed of transmission, means to transmit copies of supporting documents, and security of communication. Perhaps more important, standards must be established to assure proper maintenance and integrity of the record and to provide appropriate access and retrieval mechanisms. Local rules must address these issues until Judicial Conference standards are adopted.

The amended rule also makes clear the equality of filing by electronic means with written filings. An electronic filing that complies with the local rule satisfies all requirements for filing on paper, signature, or verification. An electronic filing that otherwise satisfies the requirements of 28 U.S.C. §1746 need not be separately made in writing. Public access to electronic filings is governed by the same rules as govern written filings.

The separate reference to filing by facsimile transmission is deleted. Facsimile transmission continues to be included as an electronic means.

Committee Notes on Rules—2000 Amendment

Subdivision (d). Rule 5(d) is amended to provide that disclosures under Rule 26(a)(1) and (2), and discovery requests and responses under Rules 30, 31, 33, 34, and 36 must not be filed until they are used in the action. "Discovery requests" includes deposition notices and "discovery responses" includes objections. The rule supersedes and invalidates local rules that forbid, permit, or require filing of these materials before they are used in the action. The former Rule 26(a)(4) requirement that disclosures under Rule 26(a)(1) and (2) be filed has been removed. Disclosures under Rule 26(a)(3), however, must be promptly filed as provided in Rule 26(a)(3).

Filings in connection with Rule 35 examinations, which involve a motion proceeding when the parties do not agree, are unaffected by these amendments.

Recognizing the costs imposed on parties and courts by required filing of discovery materials that are never used in an action, Rule 5(d) was amended in 1980 to authorize court orders that excuse filing. Since then, many districts have adopted local rules that excuse or forbid filing. In 1989 the Judicial Conference Local Rules Project concluded that these local rules were inconsistent with Rule 5(d), but urged the Advisory Committee to consider amending the rule. *Local Rules Project* at 92 (1989). The Judicial Conference of the Ninth Circuit gave the Committee similar advice in 1997. The reality of nonfiling reflected in these local rules has even been assumed in drafting the national rules. In 1993, Rule 30(f)(1) was amended to direct that the officer presiding at a deposition file it with the court or send it to the attorney who arranged for the transcript or recording. The Committee Note explained that this alternative to filing was designed for "courts which direct that depositions not be automatically filed." Rule 30(f)(1) has been amended to conform to this change in Rule 5(d).

Although this amendment is based on widespread experience with local rules, and confirms the results directed by these local rules, it is designed to supersede and invalidate local rules. There is no apparent reason to have different filing rules in different districts. Even if districts vary in present capacities to store filed materials that are not used in an action, there is little reason to continue expending court resources for this purpose. These costs and burdens would likely change as parties make increased use of audio- and videotaped depositions. Equipment to facilitate review and reproduction of such discovery materials may prove costly to acquire, maintain, and operate.

The amended rule provides that discovery materials and disclosures under Rule 26(a)(1) and (a)(2) must not be filed until they are "used in the proceeding." This phrase is meant to refer to proceedings in court. This filing requirement is not triggered by "use" of discovery materials in other discovery activities, such as depositions. In connection with proceedings in court, however, the rule is to be interpreted broadly; any use of discovery materials in court in connection with a motion, a pretrial conference under Rule 16, or otherwise, should be interpreted as use in the proceeding.

Once discovery or disclosure materials are used in the proceeding, the filing requirements of Rule 5(d) should apply to them. But because the filing requirement applies only with regard to materials that are used, only those parts of voluminous materials that are actually used need be

filed. Any party would be free to file other pertinent portions of materials that are so used. *See* Fed. R. Evid. 106; *cf*. Rule 32(a)(4). If the parties are unduly sparing in their submissions, the court may order further filings. By local rule, a court could provide appropriate direction regarding the filing of discovery materials, such as depositions, that are used in proceedings.

"Shall" is replaced by "must" under the program to conform amended rules to current style conventions when there is no ambiguity.

GAP Report. The Advisory Committee recommends no changes to either the amendments to Rule 5(d) or the Committee Note as published.

Committee Notes On Rules—2001 Amendment

Rule 5(b) is restyled.

Rule 5(b)(1) makes it clear that the provision for service on a party's attorney applies only to service made under Rules 5(a) and 77(d). Service under Rules 4, 4.1, 45(b), and 71A(d)(3)—as well as rules that invoke those rules—must be made as provided in those rules.

Subparagraphs (A), (B), and (C) of Rule 5(b)(2) carry forward the method-of-service provisions of former Rule 5(b).

Subparagraph (D) of Rule 5(b)(2) is new. It authorizes service by electronic means or any other means, but only if consent is obtained from the person served. The consent must be express, and cannot be implied from conduct. Early experience with electronic filing as authorized by Rule 5(d) is positive, supporting service by electronic means as well. Consent is required, however, because it is not yet possible to assume universal entry into the world of electronic communication. Subparagraph (D) also authorizes service by nonelectronic means. The Rule 5(b)(2)(B) provision making mail service complete on mailing is extended in subparagraph (D) to make service by electronic means complete on transmission; transmission is effected when the sender does the last act that must be performed by the sender. Service by other agencies is complete on delivery to the designated agency.

Finally, subparagraph (D) authorizes adoption of local rules providing for service through the court. Electronic case filing systems will come to include the capacity to make service by using the court's facilities to transmit all documents filed in the case. It may prove most efficient to

establish an environment in which a party can file with the court, making use of the court's transmission facilities to serve the filed paper on all other parties. Transmission might be by such means as direct transmission of the paper, or by transmission of a notice of filing that includes an electronic link for direct access to the paper. Because service is under subparagraph (D), consent must be obtained from the persons served.

Consent to service under Rule 5(b)(2)(D) must be in writing, which can be provided by electronic means. Parties are encouraged to specify the scope and duration of the consent. The specification should include at least the persons to whom service should be made, the appropriate address or location for such service—such as the e-mail address or facsimile machine number, and the format to be used for attachments. A district court may establish a registry or other facility that allows advance consent to service by specified means for future actions.

Rule 6(e) is amended to allow additional time to respond when service is made under Rule 5(b)(2)(D). The additional time does not relieve a party who consents to service under Rule 5(b)(2)(D) of the responsibilities to monitor the facility designated for receiving service and to provide prompt notice of any address change.

Paragraph (3) addresses a question that may arise from a literal reading of the provision that service by electronic means is complete on transmission. Electronic communication is rapidly improving, but lawyers report continuing failures of transmission, particularly with respect to attachments. Ordinarily the risk of non-receipt falls on the person being served, who has consented to this form of service. But the risk should not extend to situations in which the person attempting service learns that the attempted service in fact did not reach the person to be served. Given actual knowledge that the attempt failed, service is not effected. The person attempting service must either try again or show circumstances that justify dispensing with service.

Paragraph (3) does not address the similar questions that may arise when a person attempting service learns that service by means other than electronic means in fact did not reach the person to be served. Case law provides few illustrations of circumstances in which a person attempting service actually knows that the attempt failed but seeks to act as if service had been made. This negative history suggests there is no need to address these problems in Rule 5(b)(3). This silence does not imply any view on these issues, nor on the circumstances that justify various forms of judicial action even though service has not been made.

Changes Made After Publication and Comments Rule 5(b)(2)(D) was changed to require that consent be "in writing."

Rule 5(b)(3) is new. The published proposal did not address the question of failed service in the text of the rule. Instead, the Committee Note included this statement: "As with other modes of service, however, actual notice that the transmission was not received defeats the presumption of receipt that arises from the provision that service is complete on transmission. The sender must take additional steps to effect service. Service by other agencies is complete on delivery to the designated agency." The addition of paragraph (3) was prompted by consideration of the draft Appellate Rule 25(c) that was prepared for the meeting of the Appellate Rules Advisory Committee. This draft provided: "Service by electronic means is complete on transmission, unless the party making service is notified that the paper was not received." Although Appellate Rule 25(c) is being prepared for publication and comment, while Civil Rule 5(b) has been published and otherwise is ready to recommend for adoption, it seemed desirable to achieve some parallel between the two rules.

The draft Rule 5(b)(3) submitted for consideration by the Advisory Committee covered all means of service except for leaving a copy with the clerk of the court when the person to be served has no known address. It was not limited to electronic service for fear that a provision limited to electronic service might generate unintended negative implications as to service by other means, particularly mail. This concern was strengthened by a small number of opinions that say that service by mail is effective, because complete on mailing, even when the person making service has prompt actual notice that the mail was not delivered. The Advisory Committee voted to limit Rule 5(b)(3) to service by electronic means because this means of service is relatively new, and seems likely to miscarry more frequently than service by post. It was suggested during the Advisory Committee meeting that the question of negative implication could be addressed in the Committee Note. There was little discussion of this possibility. The Committee Note submitted above includes a "no negative implications" paragraph prepared by the Reporter for consideration by the Standing Committee.

The Advisory Committee did not consider at all a question that was framed during the later meeting of the Appellate Rules Advisory Committee. As approved by the Advisory Committee, Rule 5(b)(3) defeats service by electronic means "if the party making service learns that the attempted service did not reach the person to be served." It says nothing about the time relevant to learning of the failure. The omission may seem glaring. Curing the omission, however, requires selection of a time. As revised, proposed Appellate Rule 25(c) requires that the party

making service learn of the failure within three calendar days. The Appellate Rules Advisory Committee will have the luxury of public comment and another year to consider the desirability of this short period. If Civil Rule 5(b) is to be recommended for adoption now, no such luxury is available. This issue deserves careful consideration by the Standing Committee.

Several changes are made in the Committee Note. (1) It requires that consent "be express, and cannot be implied from conduct." This addition reflects a more general concern stimulated by a reported ruling that an e-mail address on a firm's letterhead implied consent to email service. (2) The paragraph discussing service through the court's facilities is expanded by describing alternative methods, including an "electronic link." (3) There is a new paragraph that states that the requirement of written consent can be satisfied by electronic means, and that suggests matters that should be addressed by the consent. (4) A paragraph is added to note the additional response time provided by amended Rule 6(e). (5) The final two paragraphs address newly added Rule 5(b)(3). The first explains the rule that electronic service is not effective if the person making service learns that it did not reach the person to be served. The second paragraph seeks to defeat any negative implications that might arise from limiting Rule 5(b)(3) to electronic service, not mail, not other means consented to such as commercial express service, and not service on another person on behalf of the person to be served.

Rule 6(e)

The Advisory Committee recommended that no change be made in Civil Rule 6(e) to reflect the provisions of Civil Rule 5(b)(2)(D) that, with the consent of the person to be served, would allow service by electronic or other means. Absent change, service by these means would not affect the time for acting in response to the paper served. Comment was requested, however, on the alternative that would allow an additional 3 days to respond. The alternative Rule 6(e) amendments are cast in a form that permits ready incorporation in the Bankruptcy Rules. Several of the comments suggest that the added three days should be provided. Electronic transmission is not always instantaneous, and may fail for any of a number of reasons. It may take three days to arrange for transmission in readable form. Providing added time to respond will not discourage people from asking for consent to electronic transmission, and may encourage people to give consent. The more who consent, the quicker will come the improvements that will make electronic service ever more attractive. Consistency with the Bankruptcy Rules will be a good thing, and the Bankruptcy Rules Advisory Committee believes the additional three days should be allowed.

Committee Notes on Rules—2006 Amendment

Amended Rule 5(e) acknowledges that many courts have required electronic filing by means of a standing order, procedures manual, or local rule. These local practices reflect the advantages that courts and most litigants realize from electronic filing. Courts that mandate electronic filing recognize the need to make exceptions when requiring electronic filing imposes a hardship on a party. Under amended Rule 5(e), a local rule that requires electronic filing must include reasonable exceptions, but Rule 5(e) does not define the scope of those exceptions. Experience with the local rules that have been adopted and that will emerge will aid in drafting new local rules and will facilitate gradual convergence on uniform exceptions, whether in local rules or in an amended Rule 5(e).

Changes Made after Publication and Comment. This recommendation is of a modified version of the proposal as published. The changes from the published version limit local rule authority to implement a caution stated in the published Committee Note. A local rule that requires electronic filing must include reasonable exceptions. This change was accomplished by a separate sentence stating that a "local rule may require filing by electronic means only if reasonable exceptions are allowed." Corresponding changes were made in the Committee Note, in collaboration with the Appellate Rules Committee. The changes from the published proposal are shown below. [Omitted]

Committee Notes on Rules—2007 Amendment

The language of Rule 5 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 5(a)(1)(E) omits the former reference to a designation of record on appeal. Appellate Rule 10 is a self-contained provision for the record on appeal, and provides for service.

Former Rule 5(b)(2)(D) literally provided that a local rule may authorize use of the court's transmission facilities to make service by non-electronic means agreed to by the parties. That was not intended. Rule 5(b)(3) restores the intended meaning—court transmission facilities can be used only for service by electronic means.

Rule 5(d)(2)(B) provides that "a" judge may accept a paper for filing, replacing the reference in former Rule 5(e) to "the" judge. Some courts do not assign a designated judge to each case, and it may be important to have another judge accept a paper for filing even when a case is on the individual docket of a particular judge. The ministerial acts of accepting the paper, noting the time, and transmitting the paper to the court clerk do not interfere with the assigned judge's authority over the action.

Rule 5.1. Constitutional Challenge to a Statute

(a) Notice by a Party. A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a federal or state statute must promptly:

(1) file a notice of constitutional question stating the question and identifying the paper that raises it, if:

(A) a federal statute is questioned and the parties do not include the United States, one of its agencies, or one of its officers or employees in an official capacity; or

(B) a state statute is questioned and the parties do not include the state, one of its agencies, or one of its officers or employees in an official capacity; and

(2) serve the notice and paper on the Attorney General of the United States if a federal statute is questioned—or on the state attorney general if a state statute is questioned—either by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose.

(b) Certification by the Court. The court must, under 28 U.S.C. §2403, certify to the appropriate attorney general that a statute has been questioned.

(c) Intervention; Final Decision on the Merits. Unless the court sets a later time, the attorney general may intervene within 60 days after the notice is filed or after the court certifies the challenge, whichever is earlier. Before the time to intervene expires, the court may reject the constitutional challenge, but may not enter a final judgment holding the statute unconstitutional.

(d) No Forfeiture. A party's failure to file and serve the notice, or the court's failure to certify, does not forfeit a constitutional claim or defense that is otherwise timely asserted.

Notes

(As added Apr. 12, 2006, eff. Dec. 1, 2006; amended Apr. 30, 2007, eff. Dec. 1, 2007.)

Committee Notes on Rules—2006

Rule 5.1 implements 28 U.S.C. §2403, replacing the final three sentences of Rule 24(c). New Rule 5.1 requires a party that files a pleading, written motion, or other paper drawing in question the constitutionality of a federal or state statute to file a notice of constitutional question and serve it on the United States Attorney General or state attorney general. The party must promptly file and serve the notice of constitutional question. This notice requirement supplements the court's duty to certify a constitutional challenge to the United States Attorney General or state attorney general. The notice of constitutional question will ensure that the attorney general is notified of constitutional challenges and has an opportunity to exercise the statutory right to intervene at the earliest possible point in the litigation. The court's certification obligation remains, and is the only notice when the constitutionality of a federal or state statute is drawn in question by means other than a party's pleading, written motion, or other paper.

Moving the notice and certification provisions from Rule 24(c) to a new rule is designed to attract the parties' attention to these provisions by locating them in the vicinity of the rules that require notice by service and pleading.

Rule 5.1 goes beyond the requirements of §2403 and the former Rule 24(c) provisions by requiring notice and certification of a constitutional challenge to any federal or state statute, not only those "affecting the public interest." It is better to assure, through notice, that the attorney general is able to determine whether to seek intervention on the ground that the act or statute affects a public interest. Rule 5.1 refers to a "federal statute," rather than the §2403 reference to an "Act of Congress," to maintain consistency in the Civil Rules vocabulary. In Rule 5.1 "statute" means any congressional enactment that would qualify as an "Act of Congress."

Unless the court sets a later time, the 60-day period for intervention runs from the time a party files a notice of constitutional question or from the time the court certifies a constitutional challenge, whichever is earlier. Rule 5.1(a) directs that a party promptly serve the notice of

constitutional question. The court may extend the 60-[day] period on its own or on motion. One occasion for extension may arise if the court certifies a challenge under §2403 after a party files a notice of constitutional question. Pretrial activities may continue without interruption during the intervention period, and the court retains authority to grant interlocutory relief. The court may reject a constitutional challenge to a statute at any time. But the court may not enter a final judgment holding a statute unconstitutional before the attorney general has responded or the intervention period has expired without response. This rule does not displace any of the statutory or rule procedures that permit dismissal of all or part of an action—including a constitutional challenge—at any time, even before service of process.

Changes Made After Publication and Comment. Rule 5.1 as proposed for adoption incorporates several changes from the published draft. The changes were made in response to public comments and Advisory Committee discussion.

The Advisory Committee debated at length the question whether the party who files a notice of constitutional question should be required to serve the notice on the appropriate attorney general. The service requirement was retained, but the time for intervention was set to run from the earlier of the notice filing or the court's certification. The definition of the time to intervene was changed in tandem with this change. The published rule directed the court to set an intervention time not less than 60 days from the court's certification. This was changed to set a 60-day period in the rule "[u]nless the court sets a later time." The Committee Note points out that the court may extend the 60-day period on its own or on motion, and recognizes that an occasion for extension may arise if the 60-day period begins with the filing of the notice of constitutional question.

The method of serving the notice of constitutional question set by the published rule called for serving the United States Attorney General under Civil Rule 4, and for serving a state attorney general by certified or registered mail. This proposal has been changed to provide service in all cases either by certified or registered mail or by sending the Notice to an electronic address designated by the attorney general for this purpose.

The rule proposed for adoption brings into subdivision (c) matters that were stated in the published Committee Note but not in the rule text. The court may reject a constitutional challenge at any time, but may not enter a final judgment holding a statute unconstitutional before the time set to intervene expires.

The published rule would have required notice and certification when an officer of the United States or a state brings suit in an official capacity. There is no need for notice in such circumstances. The words "is sued" were deleted to correct this oversight.

Several style changes were made at the Style Subcommittee's suggestion. One change that straddles the line between substance and style appears in Rule 5.1(d). The published version adopted the language of present Rule 24(c): failure to comply with the Notice or certification requirements does not forfeit a constitutional "right." This expression is changed to "claim or defense" from concern that reference to a "right" may invite confusion of the no-forfeiture provision with the merits of the claim or defense that is not forfeited.

Committee Notes on Rules—2007 Amendment

The language of Rule 5.1 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 5.2. Privacy Protection For Filings Made with the Court

(a) Redacted Filings. Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing may include only:

(1) the last four digits of the social-security number and taxpayer-identification number;

(2) the year of the individual's birth;

(3) the minor's initials; and

(4) the last four digits of the financial-account number.

(b) Exemptions from the Redaction Requirement. The redaction requirement does not apply to the following:

(1) a financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;

(2) the record of an administrative or agency proceeding;

(3) the official record of a state-court proceeding;

(4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;

(5) a filing covered by Rule 5.2(c) or (d); and

(6) a pro se filing in an action brought under 28 U.S.C. §§2241, 2254, or 2255.

(c) Limitations on Remote Access to Electronic Files; Social-Security Appeals and Immigration Cases. Unless the court orders otherwise, in an action for benefits under the Social Security Act, and in an action or proceeding relating to an order of removal, to relief from removal, or to immigration benefits or detention, access to an electronic file is authorized as follows:

(1) the parties and their attorneys may have remote electronic access to any part of the case file, including the administrative record;

(2) any other person may have electronic access to the full record at the courthouse, but may have remote electronic access only to:

(A) the docket maintained by the court; and

(B) an opinion, order, judgment, or other disposition of the court, but not any other part of the case file or the administrative record.

(d) Filings Made Under Seal. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(e) Protective Orders. For good cause, the court may by order in a case:

(1) require redaction of additional information; or

(2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(f) Option for Additional Unredacted Filing Under Seal. A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(g) Option for Filing a Reference List. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(h) Waiver of Protection of Identifiers. A person waives the protection of Rule 5.2(a) as to the person's own information by filing it without redaction and not under seal.

Notes

(As added Apr. 30, 2007, eff. Dec. 1, 2007.)

Committee Notes on Rules—2007

The rule is adopted in compliance with section 205(c)(3) of the E-Government Act of 2002, Public Law 107–347. Section 205(c)(3) requires the Supreme Court to prescribe rules "to protect privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically." The rule goes further than the E-Government Act in regulating paper filings even when they are not converted to electronic form. But the number of filings that remain in paper form is certain to diminish over time. Most districts scan paper filings into the electronic case file, where they become available to the public in the same way as documents initially filed in electronic form. It is electronic availability, not the form of the initial filing, that raises the privacy and security concerns addressed in the E-Government Act.

The rule is derived from and implements the policy adopted by the Judicial Conference in September 2001 to address the privacy concerns resulting from public access to electronic case files. *See* http://www.privacy.uscourts.gov/Policy.htm. The Judicial Conference policy is that documents in case files generally should be made available electronically to the same extent they are available at the courthouse, provided that certain "personal data identifiers" are not included in the public file.

While providing for the public filing of some information, such as the last four digits of an account number, the rule does not intend to establish a presumption that this information never could or should be protected. For example, it may well be necessary in individual cases to prevent remote access by nonparties to any part of an account number or social security number. It may also be necessary to protect information not covered by the redaction requirement—such as driver's license numbers and alien registration numbers—in a particular case. In such cases, protection may be sought under subdivision (d) or (e). Moreover, the Rule does not affect the protection available under other rules, such as Civil Rules 16 and 26(c), or under other sources of protective authority.

Parties must remember that any personal information not otherwise protected by sealing or redaction will be made available over the internet. Counsel should notify clients of this fact so that an informed decision may be made on what information is to be included in a document filed with the court.

The clerk is not required to review documents filed with the court for compliance with this rule. The responsibility to redact filings rests with counsel and the party or nonparty making the filing.

Subdivision (c) provides for limited public access in Social Security cases and immigration cases. Those actions are entitled to special treatment due to the prevalence of sensitive information and the volume of filings. Remote electronic access by nonparties is limited to the docket and the written dispositions of the court unless the court orders otherwise. The rule contemplates, however, that nonparties can obtain full access to the case file at the courthouse, including access through the court's public computer terminal.

Subdivision (d) reflects the interplay between redaction and filing under seal. It does not limit or expand the judicially developed rules that govern sealing. But it does reflect the possibility that redaction may provide an alternative to sealing.

Subdivision (e) provides that the court can by order in a particular case for good cause require more extensive redaction than otherwise required by the Rule. Nothing in this subdivision is intended to affect the limitations on sealing that are otherwise applicable to the court.

Subdivision (f) allows a person who makes a redacted filing to file an unredacted document under seal. This provision is derived from section 205(c)(3)(iv) of the E-Government Act.

Subdivision (g) allows the option to file a register of redacted information. This provision is derived from section 205(c)(3)(v) of the E-Government Act, as amended in 2004. In accordance with the E-Government Act, subdivision (g) refers to "redacted" information. The term "redacted" is intended to govern a filing that is prepared with abbreviated identifiers in the first instance, as well as a filing in which a personal identifier is edited after its preparation.

Subdivision (h) allows a person to waive the protections of the rule as to that person's own personal information by filing it unsealed and in unredacted form. One may wish to waive the protection if it is determined that the costs of redaction outweigh the benefits to privacy. If a person files an unredacted identifier by mistake, that person may seek relief from the court.

Trial exhibits are subject to the redaction requirements of Rule 5.2 to the extent they are filed with the court. Trial exhibits that are not initially filed with the court must be redacted in accordance with the rule if and when they are filed as part of an appeal or for other reasons.

Changes Made After Publication and Comment. The changes made after publication were made in conjunction with the E-Government Act Subcommittee and the other Advisory Committees.

Subdivision (a) was amended to incorporate a suggestion from the Federal Magistrate Judges Association that the rule text state that the responsibility to redact filings rests on the filer, not the court clerk.

As published, subdivision (b)(6) exempted from redaction all filings in habeas corpus proceedings under 28 U.S.C. §§2241, 2254, or 2255. The exemption is revised to apply only to pro se filings. A petitioner represented by counsel, and respondents represented by counsel, must redact under Rule 5.2(a).

Subdivision (e) was published with a standard for protective orders, referring to a need to protect private or sensitive information not otherwise protected by Rule 5.2(a). This standard has been replaced by a general reference to "good cause."

Rule 6. Computing and Extending Time; Time for Motion Papers

(a) Computing Time. The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) *Period Stated in Days or a Longer Unit.* When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Period Stated in Hours.* When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) *Inaccessibility of the Clerk's Office.* Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 6(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) *"Last Day" Defined.* Unless a different time is set by a statute, local rule, or court order, the last day ends:

(A) for electronic filing, at midnight in the court's time zone; and

(B) for filing by other means, when the clerk's office is scheduled to close.

(5) *"Next Day" Defined.* The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) *"Legal Holiday" Defined.* "Legal holiday" means:

(A) the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day;

(B) any day declared a holiday by the President or Congress; and

(C) for periods that are measured after an event, any other day declared a holiday by the state where the district court is located.

(b) Extending Time.

(1) *In General.* When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) *Exceptions.* A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b).

(c) Motions, Notices of Hearing, and Affidavits.

(1) *In General.* A written motion and notice of the hearing must be served at least 14 days before the time specified for the hearing, with the following exceptions:

(A) when the motion may be heard ex parte;

(B) when these rules set a different time; or

(C) when a court order—which a party may, for good cause, apply for ex parte—sets a different time.

(2) *Supporting Affidavit.* Any affidavit supporting a motion must be served with the motion. Except as Rule 59(c) provides otherwise, any opposing affidavit must be served at least 7 days before the hearing, unless the court permits service at another time.

(d) Additional Time After Certain Kinds of Service. When a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail), (D) (leaving with the clerk), or (F) (other means consented to), 3 days are added after the period would otherwise expire under Rule 6(a).

Notes

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Mar. 1, 1971, eff. July 1, 1971; Apr. 28, 1983, eff. Aug. 1, 1983; Apr. 29, 1985, eff. Aug. 1, 1985; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 26, 1999, eff. Dec. 1, 1999; Apr. 23, 2001, eff. Dec. 1, 2001; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 28, 2016, eff. Dec 1, 2016.)

Notes of Advisory Committee on Rules—1937

Note to Subdivisions (a) and (b). These are amplifications along lines common in state practices, of [former] Equity Rule 80 (Computation of Time—Sundays and Holidays) and of the provisions for enlargement of time found in [former] Equity Rules 8 (Enforcement of Final Decrees) and 16 (Defendant to Answer—Default—Decree Pro Confesso). See also Rule XIII, Rules and Forms in Criminal Cases, 292 U.S. 661, 666 (1934). Compare Ala.Code Ann. (Michie, 1928) §13 and former Law Rule 8 of the Rules of the Supreme Court of the District of Columbia (1924), superseded in 1929 by Law Rule 8, Rules of the District Court of the United States for the District of Columbia (1937).

Note to Subdivision (c). This eliminates the difficulties caused by the expiration of terms of court. Such statutes as U.S.C. Title 28, [former] §12 (Trials not discontinued by new term) are not affected. Compare *Rules of the United States District Court of Minnesota,* Rule 25 (Minn.Stat. (Mason, Supp. 1936), p. 1089).

Note to Subdivision (d). Compare 2 Minn.Stat. (Mason, 1927) §9246; N.Y.R.C.P. (1937) Rules 60 and 64.

Notes of Advisory Committee on Rules—1946 Amendment

Subdivision (b). The purpose of the amendment is to clarify the finality of judgments. Prior to the advent of the Federal Rules of Civil Procedure, the general rule that a court loses jurisdiction to disturb its judgments, upon the expiration of the term at which they were entered, had long been the classic device which (together with the statutory limits on the time for appeal) gave finality to judgments. See Note to Rule 73(a). Rule 6(c) abrogates that limit on judicial power. That limit was open to many objections, one of them being inequality of operation because, under it, the time for vacating a judgment rendered early in a term was much longer than for a judgment rendered near the end of the term.

The question to be met under Rule 6(b) is: how far should the desire to allow correction of judgments be allowed to postpone their finality? The rules contain a number of provisions permitting the vacation or modification of judgments on various grounds. Each of these rules contains express time limits on the motions for granting of relief. Rule 6(b) is a rule of general application giving wide discretion to the court to enlarge these time limits or revive them after they have expired, the only exceptions stated in the original rule being a prohibition against

enlarging the time specified in Rule 59(b) and (d) for making motions for or granting new trials, and a prohibition against enlarging the time fixed by law for taking an appeal. It should also be noted that Rule 6(b) itself contains no limitation of time within which the court may exercise its discretion, and since the expiration of the term does not end its power, there is now no time limit on the exercise of its discretion under Rule 6(b).

Decisions of lower federal courts suggest that some of the rules containing time limits which may be set aside under Rule 6(b) are Rules 25, 50(b), 52(b), 60(b), and 73(g).

In a number of cases the effect of Rule 6(b) on the time limitations of these rules has been considered. Certainly the rule is susceptible of the interpretation that the court is given the power in its discretion to relieve a party from failure to act within the times specified in any of these other rules, with only the exceptions stated in Rule 6(b), and in some cases the rule has been so construed.

With regard to Rule 25(a) for substitution, it was held in *Anderson v. Brady* (E.D.Ky. 1941) 4 Fed.Rules Service 25a.1, Case 1, and in *Anderson v. Yungkau* (C.C.A. 6th, 1946) 153 F.(2d) 685, cert. granted (1946) 66 S.Ct. 1025, that under Rule 6(b) the court had no authority to allow substitution of parties after the expiration of the limit fixed in Rule 25(a).

As to Rules 50(b) for judgments notwithstanding the verdict and 52(b) for amendment of findings and vacation of judgment, it was recognized in *Leishman v. Associated Wholesale Electric Co.* (1943) 318 U.S. 203, that Rule 6(b) allowed the district court to enlarge the time to make a motion for amended findings and judgment beyond the limit expressly fixed in Rule 52(b). See *Coca-Cola v. Busch* (E.D.Pa. 1943) 7 Fed.Rules Service 59b.2, Case 4. Obviously, if the time limit in Rule 52(b) could be set aside under Rule 6(b), the time limit in Rule 50(b) for granting judgment notwithstanding the verdict (and thus vacating the judgment entered "forthwith" on the verdict) likewise could be set aside.

As to Rule 59 on motions for a new trial, it has been settled that the time limits in Rule 59(b) and (d) for making motions for or granting new trial could not be set aside under Rule 6(b), because Rule 6(b) expressly refers to Rule 59, and forbids it. See *Safeway Stores, Inc. v. Coe* (App.D.C. 1943) 136 F.(2d) 771; *Jusino v. Morales & Tio* (C.C.A. 1st, 1944) 139 F.(2d) 946; *Coca-Cola Co. v. Busch* (E.D.Pa. 1943) 7 Fed.Rules Service 59b.2, Case 4; *Peterson v. Chicago Great Western Ry. Co.* (D.Neb. 1943) 7 Fed.Rules Service 59b.2, Case 1; *Leishman v. Associated Wholesale Electric Co.* (1943) 318 U.S. 203.

As to Rule 60(b) for relief from a judgment, it was held in *Schram v. O'Connor* (E.D.Mich. 1941) 5 Fed.Rules Serv. 6b.31, Case 1, 2 F.R.D. 192, s. c. 5 Fed.Rules Serv. 6b.31, Case 2, F.R.D. 192, that the six-months time limit in original Rule 60(b) for making a motion for relief from a judgment for surprise, mistake, or excusable neglect could be set aside under Rule 6(b). The contrary result was reached in *Wallace v. United States* (C.C.A.2d, 1944) 142 F.(2d) 240, cert. den. (1944) 323 U.S. 712; *Reed v. South Atlantic Steamship Co. of Del*. (D.Del. 1942) 6 Fed.Rules Serv. 60b.31, Case 1.

As to Rule 73(g), fixing the time for docketing an appeal, it was held in *Ainsworth v. Gill Glass & Fixture Co*. (C.C.A.3d, 1939) 104 F.(2d) 83, that under Rule 6(b) the district court, upon motion made after the expiration of the forty-day period, stated in Rule 73(g), but before the expiration of the ninety-day period therein specified, could permit the docketing of the appeal on a showing of excusable neglect. The contrary was held in *Mutual Benefit Health & Accident Ass'n v. Snyder* (C.C.A. 6th, 1940) 109 F.(2d) 469 and in *Burke v. Canfield* (App.D.C. 1940) 111 F.(2d) 526.

The amendment of Rule 6(b) now proposed is based on the view that there should be a definite point where it can be said a judgment is final; that the right method of dealing with the problem is to list in Rule 6(b) the various other rules whose time limits may not be set aside, and then, if the time limit in any of those other rules is too short, to amend that other rule to give a longer time. The further argument is that Rule 6(c) abolished the long standing device to produce finality in judgments through expiration of the term, and since that limitation on the jurisdiction of courts to set aside their own judgments has been removed by Rule 6(c), some other limitation must be substituted or judgments never can be said to be final.

In this connection reference is made to the established rule that if a motion for new trial is seasonably made, the mere making or pendency of the motion destroys the finality of the judgment, and even though the motion is ultimately denied, the full time for appeal starts anew from the date of denial. Also, a motion to amend the findings under Rule 52(b) has the same effect on the time for appeal. *Leishman v. Associated Wholesale Electric Co*. (1943) 318 U.S. 203. By the same reasoning a motion for judgment under Rule 50(b), involving as it does the vacation of a judgment entered "forthwith" on the verdict (Rule 58), operates to postpone, until an order is made, the running of the time for appeal. The Committee believes that the abolition by Rule 6(c) of the old rule that a court's power over its judgments ends with the term, requires a substitute limitation, and that unless Rule 6(b) is amended to prevent enlargement of the times specified in Rules 50(b), 52(b) and 60(b), and the limitation as to Rule 59(b) and (d) is retained,

no one can say when a judgment is final. This is also true with regard to proposed Rule 59(e), which authorizes a motion to alter or amend a judgment, hence that rule is also included in the enumeration in amended Rule 6(b). In consideration of the amendment, however, it should be noted that Rule 60(b) is also to be amended so as to lengthen the six-months period originally prescribed in that rule to one year.

As to Rule 25 on substitution, while finality is not involved, the limit there fixed should be controlling. That rule, as amended, gives the court power, upon showing of a reasonable excuse, to permit substitution after the expiration of the two-year period.

As to Rule 73(g), it is believed that the conflict in decisions should be resolved and not left to further litigation, and that the rule should be listed as one whose limitation may not be set aside under Rule 6(b).

As to Rule 59(c), fixing the time for serving affidavits on motion for new trial, it is believed that the court should have authority under Rule 6(b) to enlarge the time, because, once the motion for new trial is made, the judgment no longer has finality, and the extension of time for affidavits thus does not of itself disturb finality.

Other changes proposed in Rule 6(b) are merely clarifying and conforming. Thus "request" is substituted for "application" in clause (1) because an application is defined as a motion under Rule 7(b). The phrase "extend the time" is substituted for "enlarge the period" because the former is a more suitable expression and relates more clearly to both clauses (1) and (2). The final phrase in Rule 6(b), "or the period for taking an appeal as provided by law", is deleted and a reference to Rule 73(a) inserted, since it is proposed to state in that rule the time for appeal to a circuit court of appeals, which is the only appeal governed by the Federal Rules, and allows an extension of time. See Rule 72.

Subdivision (c). The purpose of this amendment is to prevent reliance upon the continued existence of a term as a source of power to disturb the finality of a judgment upon grounds other than those stated in these rules. See *Hill v. Hawes* (1944) 320 U.S. 520; *Boaz v. Mutual Life Ins. Co. of New York* (C.C.A. 8th, 1944) 146 F.(2d) 321; *Bucy v. Nevada Construction Co*. (C.C.A. 9th, 1942) 125 F.(2d) 213.

Notes of Advisory Committee on Rules—1963 Amendment

Subdivision (a). This amendment is related to the amendment of Rule 77(c) changing the regulation of the days on which the clerk's office shall be open.

The wording of the first sentence of Rule 6(a) is clarified and the subdivision is made expressly applicable to computing periods of time set forth in local rules.

Saturday is to be treated in the same way as Sunday or a "legal holiday" in that it is not to be included when it falls on the last day of a computed period, nor counted as an intermediate day when the period is less than 7 days. "Legal holiday" is defined for purposes of this subdivision and amended Rule 77(c). Compare the definition of "holiday" in 11 U.S.C. §1 (18); also 5 U.S.C. §86a; Executive Order No. 10358, "Observance of Holidays," June 9, 1952, 17 Fed.Reg. 5269. In the light of these changes the last sentence of the present subdivision, dealing with half holidays, is eliminated.

With Saturdays and State holidays made "dies non" in certain cases by the amended subdivision, computation of the usual 5–day notice of motion or the 2–day notice to dissolve or modify a temporary restraining order may work out so as to cause embarrassing delay in urgent cases. The delay can be obviated by applying to the court to shorten the time, see Rules 6(d) and 65(b).

Subdivision (b). The prohibition against extending the time for taking action under Rule 25 (Substitution of parties) is eliminated. The only limitation of time provided for in amended Rule 25 is the 90–day period following a suggestion upon the record of the death of a party within which to make a motion to substitute the proper parties for the deceased party. See Rule 25(a)(1), as amended, and the Advisory Committee's Note thereto. It is intended that the court shall have discretion to enlarge that period.

Notes of Advisory Committee on Rules—1968 Amendment

The amendment eliminates the references to Rule 73, which is to be abrogated.

P. L. 88–139, §1, 77 Stat. 248, approved on October 16, 1963, amended 28 U.S.C. §138 to read as follows: "The district court shall not hold formal terms." Thus Rule 6(c) is rendered unnecessary, and it is rescinded.

Notes of Advisory Committee on Rules—1971 Amendment

The amendment adds Columbus Day to the list of legal holidays to conform the subdivision to the Act of June 28, 1968, 82 Stat. 250, which constituted Columbus Day a legal holiday effective after January 1, 1971.

The Act, which amended Title 5, U.S.C., §6103(a), changes the day on which certain holidays are to be observed. Washington's Birthday, Memorial Day and Veterans Day are to be observed on the third Monday in February, the last Monday in May and the fourth Monday in October, respectively, rather than, as heretofore, on February 22, May 30, and November 11, respectively. Columbus Day is to be observed on the second Monday in October. New Year's Day, Independence Day, Thanksgiving Day and Christmas continue to be observed on the traditional days.

Notes of Advisory Committee on Rules—1983 Amendment

Subdivision (b). The amendment confers finality upon the judgments of magistrates by foreclosing enlargement of the time for appeal except as provided in new Rule 74(a) (20 day period for demonstration of excusable neglect).

Notes of Advisory Committee on Rules—1985 Amendment

Rule 6(a) is amended to acknowledge that weather conditions or other events may render the clerk's office inaccessible one or more days. Parties who are obliged to file something with the court during that period should not be penalized if they cannot do so. The amendment conforms to changes made in Federal Rule of Criminal Procedure 45 (a), effective August 1, 1982.

The Rule also is amended to extend the exclusion of intermediate Saturdays, Sundays, and legal holidays to the computation of time periods less than 11 days. Under the current version of the Rule, parties bringing motions under rules with 10-day periods could have as few as 5 working days to prepare their motions. This hardship would be especially acute in the case of Rules 50(b) and (c)(2), 52(b), and 59(b), (d), and (e), which may not be enlarged at the discretion of the court. See Rule 6(b). If the exclusion of Saturdays, Sundays, and legal holidays will operate to cause excessive delay in urgent cases, the delay can be obviated by applying to the court to shorten the time, See Rule 6(b).

The Birthday of Martin Luther King, Jr., which becomes a legal holiday effective in 1986, has been added to the list of legal holidays enumerated in the Rule.

Notes of Advisory Committee on Rules—1987 Amendment

The amendments are technical. No substantive change is intended.

Committee Notes on Rules—1999 Amendment

The reference to Rule 74(a) is stricken from the catalogue of time periods that cannot be extended by the district court. The change reflects the 1997 abrogation of Rule 74(a).

Committee Notes on Rules—2001 Amendment

The additional three days provided by Rule 6(e) is extended to the means of service authorized by the new paragraph (D) added to Rule 5(b), including—with the consent of the person served—service by electronic or other means. The three-day addition is provided as well for service on a person with no known address by leaving a copy with the clerk of the court.

Changes Made After Publication and Comments. Proposed Rule 6(e) is the same as the "alternative proposal" that was published in August 1999.

Committee Notes on Rules—2005 Amendment

Rule 6(e) is amended to remove any doubt as to the method for extending the time to respond after service by mail, leaving with the clerk of court, electronic means, or other means consented to by the party served. Three days are added after the prescribed period otherwise expires under Rule 6(a). Intermediate Saturdays, Sundays, and legal holidays are included in counting these added three days. If the third day is a Saturday, Sunday, or legal holiday, the last day to act is the next day that is not a Saturday, Sunday, or legal holiday. The effect of invoking the day when the prescribed period would otherwise expire under Rule 6(a) can be illustrated by assuming that the thirtieth day of a thirty-day period is a Saturday. Under Rule 6(a) the period expires on the next day that is not a Sunday or legal holiday. If the following Monday is a legal holiday, under Rule 6(a) the period expires on Tuesday. Three days are then added—Wednesday, Thursday, and Friday as the third and final day to act. If the period prescribed expires on a Friday, the three added days are Saturday, Sunday, and Monday, which is the third and final day to act unless it is a legal holiday. If Monday is a legal holiday, the next day that is not a legal holiday is the third and final day to act.

Application of Rule 6(e) to a period that is less than eleven days can be illustrated by a paper that is served by mailing on a Friday. If ten days are allowed to respond, intermediate Saturdays, Sundays, and legal holidays are excluded in determining when the period expires under Rule 6(a). If there is no legal holiday, the period expires on the Friday two weeks after the paper was mailed. The three added Rule 6(e) days are Saturday, Sunday, and Monday, which is the third and final day to act unless it is a legal holiday. If Monday is a legal holiday, the next day that is not a legal holiday is the final day to act.

Changes Made After Publication and Comment. Changes were made to clarify further the method of counting the three days added after service under Rule 5(b)(2)(B), (C), or (D).

Committee Notes on Rules—2007 Amendment

The language of Rule 6 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Committee Notes on Rules—2009 Amendment

Subdivision (a). Subdivision (a) has been amended to simplify and clarify the provisions that describe how deadlines are computed. Subdivision (a) governs the computation of any time period found in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time. In accordance with Rule 83(a)(1), a local rule may not direct that a deadline be computed in a manner inconsistent with subdivision (a).

The time-computation provisions of subdivision (a) apply only when a time period must be computed. They do not apply when a fixed time to act is set. The amendments thus carry forward the approach taken in *Violette v. P.A. Days, Inc.*, 427 F.3d 1015, 1016 (6th Cir. 2005) (holding that Civil Rule 6(a) "does not apply to situations where the court has established a specific calendar day as a deadline"), and reject the contrary holding of *In re American Healthcare Management, Inc.*, 900 F.2d 827, 832 (5th Cir. 1990) (holding that Bankruptcy Rule 9006(a) governs treatment of date-certain deadline set by court order). If, for example, the date for filing is "no later than November 1, 2007," subdivision (a) does not govern. But if a filing is required to be made "within 10 days" or "within 72 hours," subdivision (a) describes how that deadline is computed.

Subdivision (a) does not apply when computing a time period set by a statute if the statute specifies a method of computing time. *See, e.g.*, 2 U.S.C. §394 (specifying method for computing time periods prescribed by certain statutory provisions relating to contested elections to the House of Representatives).

Subdivision (a)(1). New subdivision (a)(1) addresses the computation of time periods that are stated in days. It also applies to time periods that are stated in weeks, months, or years. *See, e.g.*, Rule 60(c)(1). Subdivision (a)(1)(B)'s directive to "count every day" is relevant only if the period is stated in days (not weeks, months or years).

Under former Rule 6(a), a period of 11 days or more was computed differently than a period of less than 11 days. Intermediate Saturdays, Sundays, and legal holidays were included in computing the longer periods, but excluded in computing the shorter periods. Former Rule 6(a) thus made computing deadlines unnecessarily complicated and led to counterintuitive results. For example, a 10-day period and a 14-day period that started on the same day usually ended on the same day—and the 10-day period not infrequently ended later than the 14-day period. *See Miltimore Sales, Inc. v. Int'l Rectifier, Inc.*, 412 F.3d 685, 686 (6th Cir. 2005).

Under new subdivision (a)(1), all deadlines stated in days (no matter the length) are computed in the same way. The day of the event that triggers the deadline is not counted. All other days—including intermediate Saturdays, Sundays, and legal holidays—are counted, with only one exception: If the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. An illustration is provided below in the discussion of subdivision (a)(5). Subdivision (a)(3) addresses filing deadlines that expire on a day when the clerk's office is inaccessible.

Where subdivision (a) formerly referred to the "act, event, or default" that triggers the deadline, new subdivision (a) refers simply to the "event" that triggers the deadline; this change in terminology is adopted for brevity and simplicity, and is not intended to change meaning.

Periods previously expressed as less than 11 days will be shortened as a practical matter by the decision to count intermediate Saturdays, Sundays, and legal holidays in computing all periods. Many of those periods have been lengthened to compensate for the change. *See, e.g.*, Rule 14(a)(1).

Most of the 10-day periods were adjusted to meet the change in computation method by setting 14 days as the new period. A 14-day period corresponds to the most frequent result of a 10-day period under the former computation method—two Saturdays and two Sundays were excluded, giving 14 days in all. A 14-day period has an additional advantage. The final day falls on the same day of the week as the event that triggered the period—the 14th day after a Monday, for example, is a Monday. This advantage of using week-long periods led to adopting 7-day periods to replace some of the periods set at less than 10 days, and 21-day periods to replace 20-day periods. Thirty-day and longer periods, however, were generally retained without change.

Subdivision (a)(2). New subdivision (a)(2) addresses the computation of time periods that are stated in hours. No such deadline currently appears in the Federal Rules of Civil Procedure. But some statutes contain deadlines stated in hours, as do some court orders issued in expedited proceedings.

Under subdivision (a)(2), a deadline stated in hours starts to run immediately on the occurrence of the event that triggers the deadline. The deadline generally ends when the time expires. If, however, the time period expires at a specific time (say, 2:17 p.m.) on a Saturday, Sunday, or legal holiday, then the deadline is extended to the same time (2:17 p.m.) on the next day that is not a Saturday, Sunday, or legal holiday. Periods stated in hours are not to be "rounded up" to the next whole hour. Subdivision (a)(3) addresses situations when the clerk's office is inaccessible during the last hour before a filing deadline expires.

Subdivision (a)(2)(B) directs that every hour be counted. Thus, for example, a 72-hour period that commences at 10:23 a.m. on Friday, November 2, 2007, will run until 9:23 a.m. on Monday, November 5; the discrepancy in start and end times in this example results from the intervening shift from daylight saving time to standard time.

Subdivision (a)(3). When determining the last day of a filing period stated in days or a longer unit of time, a day on which the clerk's office is not accessible because of the weather or another reason is treated like a Saturday, Sunday, or legal holiday. When determining the end of a filing period stated in hours, if the clerk's office is inaccessible during the last hour of the filing period computed under subdivision (a)(2) then the period is extended to the same time on the next day that is not a weekend, holiday, or day when the clerk's office is inaccessible.

Subdivision (a)(3)'s extensions apply "[u]nless the court orders otherwise." In some circumstances, the court might not wish a period of inaccessibility to trigger a full 24-hour extension; in those instances, the court can specify a briefer extension.

The text of the rule no longer refers to "weather or other conditions" as the reason for the inaccessibility of the clerk's office. The reference to "weather" was deleted from the text to underscore that inaccessibility can occur for reasons unrelated to weather, such as an outage of the electronic filing system. Weather can still be a reason for inaccessibility of the clerk's office. The rule does not attempt to define inaccessibility. Rather, the concept will continue to develop through caselaw, *see, e.g.*, William G. Phelps, *When Is Office of Clerk of Court Inaccessible Due to Weather or Other Conditions for Purpose of Computing Time Period for Filing Papers under Rule 6(a) of Federal Rules of Civil Procedure* , 135 A.L.R. Fed. 259 (1996) (collecting cases). In addition, many local provisions address inaccessibility for purposes of electronic filing, *see, e.g.*, D. Kan. Rule 5.4.11 ("A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.").

Subdivision (a)(4). New subdivision (a)(4) defines the end of the last day of a period for purposes of subdivision (a)(1). Subdivision (a)(4) does not apply in computing periods stated in hours under subdivision (a)(2), and does not apply if a different time is set by a statute, local rule, or order in the case. A local rule may, for example, address the problems that might arise if a single district has clerk's offices in different time zones, or provide that papers filed in a drop box after the normal hours of the clerk's office are filed as of the day that is date-stamped on the papers by a device in the drop box.

28 U.S.C. §452 provides that "[a]ll courts of the United States shall be deemed always open for the purpose of filing proper papers, issuing and returning process, and making motions and orders." A corresponding provision exists in Rule 77(a). Some courts have held that these provisions permit an after-hours filing by handing the papers to an appropriate official. *See, e.g., Casalduc v. Diaz,* 117 F.2d 915, 917 (1st Cir. 1941). Subdivision (a)(4) does not address the effect of the statute on the question of after-hours filing; instead, the rule is designed to deal with filings in the ordinary course without regard to Section 452.

Subdivision (a)(5). New subdivision (a)(5) defines the "next" day for purposes of subdivisions (a)(1)(C) and (a)(2)(C). The Federal Rules of Civil Procedure contain both forward-looking time periods and backward-looking time periods. A forward-looking time period requires something to be done within a period of time *after* an event. *See, e.g.*, Rule 59(b) (motion for new trial

"must be filed no later than 28 days after entry of the judgment"). A backward-looking time period requires something to be done within a period of time *before* an event. *See, e.g.*, Rule 26(f) (parties must hold Rule 26(f) conference "as soon as practicable and in any event at least 21 days before a scheduling conference is held or a scheduling order is due under Rule 16(b)"). In determining what is the "next" day for purposes of subdivisions (a)(1)(C) and (a)(2)(C), one should continue counting in the same direction—that is, forward when computing a forward-looking period and backward when computing a backward-looking period. If, for example, a filing is due within 30 days *after* an event, and the thirtieth day falls on Saturday, September 1, 2007, then the filing is due on Tuesday, September 4, 2007 (Monday, September 3, is Labor Day). But if a filing is due 21 days *before* an event, and the twenty-first day falls on Saturday, September 1, then the filing is due on Friday, August 31. If the clerk's office is inaccessible on August 31, then subdivision (a)(3) extends the filing deadline forward to the next accessible day that is not a Saturday, Sunday, or legal holiday—no later than Tuesday, September 4.

Subdivision (a)(6). New subdivision (a)(6) defines "legal holiday" for purposes of the Federal Rules of Civil Procedure, including the time-computation provisions of subdivision (a). Subdivision (a)(6) continues to include within the definition of "legal holiday" days that are declared a holiday by the President or Congress.

For forward-counted periods— *i.e.*, periods that are measured after an event—subdivision (a)(6)(C) includes certain state holidays within the definition of legal holidays. However, state legal holidays are not recognized in computing backward-counted periods. For both forward- and backward-counted periods, the rule thus protects those who may be unsure of the effect of state holidays. For forward-counted deadlines, treating state holidays the same as federal holidays extends the deadline. Thus, someone who thought that the federal courts might be closed on a state holiday would be safeguarded against an inadvertent late filing. In contrast, for backward-counted deadlines, not giving state holidays the treatment of federal holidays allows filing on the state holiday itself rather than the day before. Take, for example, Monday, April 21, 2008 (Patriot's Day, a legal holiday in the relevant state). If a filing is due 14 days after an event, and the fourteenth day is April 21, then the filing is due on Tuesday, April 22 because Monday, April 21 counts as a legal holiday. But if a filing is due 14 days before an event, and the fourteenth day is April 21, the filing is due on Monday, April 21; the fact that April 21 is a state holiday does not make April 21 a legal holiday for purposes of computing this backward-counted deadline. But note that if the clerk's office is inaccessible on Monday, April 21, then subdivision (a)(3) extends the April 21 filing deadline forward to the next accessible day that is not a Saturday, Sunday or legal holiday—no earlier than Tuesday, April 22.

Changes Made after Publication and Comment. The Standing Committee changed Rule 6(a)(6) to exclude state holidays from the definition of "legal holiday" for purposes of computing backward-counted periods; conforming changes were made to the Committee Note.

[*Subdivisions (b) and (c).*] The times set in the former rule at 1 or 5 days have been revised to 7 or 14 days. See the Note to Rule 6 [above].

Committee Notes on Rules—2016 Amendment

Rule 6(d) is amended to remove service by electronic means under Rule 5(b)(2)(E) from the modes of service that allow 3 added days to act after being served.

Rule 5(b)(2) was amended in 2001 to provide for service by electronic means. Although electronic transmission seemed virtually instantaneous even then, electronic service was included in the modes of service that allow 3 added days to act after being served. There were concerns that the transmission might be delayed for some time, and particular concerns that incompatible systems might make it difficult or impossible to open attachments. Those concerns have been substantially alleviated by advances in technology and in widespread skill in using electronic transmission.

A parallel reason for allowing the 3 added days was that electronic service was authorized only with the consent of the person to be served. Concerns about the reliability of electronic transmission might have led to refusals of consent; the 3 added days were calculated to alleviate these concerns.

Diminution of the concerns that prompted the decision to allow the 3 added days for electronic transmission is not the only reason for discarding this indulgence. Many rules have been changed to ease the task of computing time by adopting 7- , 14 -, 21 -, and 28- day periods that allow "day - of-the -week" counting. Adding 3 days at the end complicated the counting, and increased the occasions for further complication by invoking the provisions that apply when the last day is a Saturday, Sunday, or legal holiday.

Electronic service after business hours, or just before or during a weekend or holiday, may result in a practical reduction in the time available to respond. Extensions of time may be warranted to prevent prejudice.

Eliminating Rule 5(b) subparagraph (2)(E) from the modes of service that allow 3 added days means that the 3 added days cannot be retained by consenting to service by electronic means. Consent to electronic service in registering for electronic case filing, for example, does not count as consent to service "by any other means" of delivery under subparagraph (F).

What is now Rule 6(d) was amended in 2005 "to remove any doubt as to the method for calculating the time to respond after service by mail, leaving with the clerk of court, electronic means, or by other means consented to by the party served." A potential ambiguity was created by substituting "after service" for the earlier ref erences to acting after service "upon the party" if a paper or notice "is served upon the party" by the specified means. "[A]fter service" could be read to refer not only to a party that has been served but also to a party that has made service. That reading would mean that a party who is allowed a specified time to act after making service can extend the time by choosing one of the means of service specified in the rule, something that was never intended by the original rule or the amendment. Rules sett ing a time to act after making service include Rules 14(a)(1), 15(a)(1)(A), and 38(b)(1). "[A]fter being served" is substituted for "after service" to dispel any possible misreading.

TITLE III. PLEADINGS AND MOTIONS

Rule 7. Pleadings Allowed; Form of Motions and Other Papers

(a) Pleadings. Only these pleadings are allowed:

(1) a complaint;

(2) an answer to a complaint;

(3) an answer to a counterclaim designated as a counterclaim;

(4) an answer to a crossclaim;

(5) a third-party complaint;

(6) an answer to a third-party complaint; and

(7) if the court orders one, a reply to an answer.

(b) Motions and Other Papers.

(1) *In General.* A request for a court order must be made by motion. The motion must:

(A) be in writing unless made during a hearing or trial;

(B) state with particularity the grounds for seeking the order; and

(C) state the relief sought.

(2) *Form.* The rules governing captions and other matters of form in pleadings apply to motions and other papers.

Notes

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Apr. 28, 1983, eff. Aug. 1, 1983; Apr. 30, 2007, eff. Dec. 1, 2007.)

Notes of Advisory Committee on Rules—1937

1. A provision designating pleadings and defining a motion is common in the State practice acts. See Ill.Rev.Stat. (1937), ch. 110, §156 (Designation and order of pleadings); 2 Minn.Stat. (Mason, 1927) §9246 (Definition of motion); and N.Y.C.P.A. (1937) §113 (Definition of motion). Former Equity Rules 18 (Pleadings—Technical Forms Abrogated), 29 (Defenses—How Presented), and 33 (Testing Sufficiency of Defense) abolished technical forms of pleading, demurrers, and pleas, and exceptions for insufficiency of an answer.

2. *Note to Subdivision (a).* This preserves the substance of [former] Equity Rule 31 (Reply—When Required—When Cause at Issue). Compare the English practice, English Rules Under the Judicature Act (The Annual Practice, 1937) O. 23, r.r. 1, 2 (Reply to counterclaim; amended, 1933, to be subject to the rules applicable to defenses, O. 21). See O. 21, r.r. 1–14; O. 27, r. 13 (When pleadings deemed denied and put in issue). Under the codes the pleadings are generally limited. A reply is sometimes required to an affirmative defense in the answer. 1 Colo.Stat.Ann.

(1935) §66; Ore.Code Ann. (1930) §§1–614, 1–616. In other jurisdictions no reply is necessary to an affirmative defense in the answer, but a reply may be ordered by the court. N.C.Code Ann. (1935) §525; 1 S.D.Comp.Laws (1929) §2357. A reply to a counterclaim is usually required. Ark.Civ.Code (Crawford, 1934) §§123–125; Wis.Stat. (1935) §§263.20, 263.21. U.S.C., Title 28, [former] §45 (District courts; practice and procedure in certain cases) is modified insofar as it may dispense with a reply to a counterclaim.

For amendment of pleadings, see Rule 15 dealing with amended and supplemental pleadings.

3. All statutes which use the words "petition", "bill of complaint", "plea", "demurrer", and other such terminology are modified in form by this rule.

Notes of Advisory Committee on Rules—1946 Amendment

This amendment [to subdivision (a)] eliminates any question as to whether the compulsory reply, where a counterclaim is pleaded, is a reply only to the counterclaim or is a general reply to the answer containing the counterclaim. See Commentary, *Scope of Reply Where Defendant Has Pleaded Counterclaim* (1939) 1 Fed.Rules Serv. 672; *Fort Chartres and Ivy Landing Drainage and Levee District No. Five v. Thompson* (E.D.Ill. 1945) 8 Fed.Rules Serv. 13.32, Case 1.

Notes of Advisory Committee on Rules—1963 Amendment

Certain redundant words are eliminated and the subdivision is modified to reflect the amendment of Rule 14(a) which in certain cases eliminates the requirement of obtaining leave to bring in a third-party defendant.

Notes of Advisory Committee on Rules—1983 Amendment

One of the reasons sanctions against improper motion practice have been employed infrequently is the lack of clarity of Rule 7. That rule has stated only generally that the pleading requirements relating to captions, signing, and other matters of form also apply to motions and other papers. The addition of Rule 7(b)(3) makes explicit the applicability of the signing requirement and the sanctions of Rule 11, which have been amplified.

Committee Notes on Rules—2007 Amendment

The language of Rule 7 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Former Rule 7(a) stated that "there shall be * * * an answer to a cross-claim, if the answer contains a cross-claim * * *." Former Rule 12(a)(2) provided more generally that "[a] party served with a pleading stating a cross-claim against that party shall serve an answer thereto * * *." New Rule 7(a) corrects this inconsistency by providing for an answer to a crossclaim.

For the first time, Rule 7(a)(7) expressly authorizes the court to order a reply to a counterclaim answer. A reply may be as useful in this setting as a reply to an answer, a third-party answer, or a crossclaim answer.

Former Rule 7(b)(1) stated that the writing requirement is fulfilled if the motion is stated in a written notice of hearing. This statement was deleted as redundant because a single written document can satisfy the writing requirements both for a motion and for a Rule 6(c)(1) notice.

The cross-reference to Rule 11 in former Rule 7(b)(3) is deleted as redundant. Rule 11 applies by its own terms. The force and application of Rule 11 are not diminished by the deletion.

Former Rule 7(c) is deleted because it has done its work. If a motion or pleading is described as a demurrer, plea, or exception for insufficiency, the court will treat the paper as if properly captioned.

Rule 8. General Rules of Pleading

(a) Claim for Relief. A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(b) Defenses; Admissions and Denials.

(1) *In General.* In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(2) *Denials—Responding to the Substance.* A denial must fairly respond to the substance of the allegation.

(3) *General and Specific Denials.* A party that intends in good faith to deny all the allegations of a pleading—including the jurisdictional grounds—may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) *Denying Part of an Allegation.* A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) *Lacking Knowledge or Information.* A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) *Effect of Failing to Deny.* An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(c) Affirmative Defenses.

(1) *In General.* In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

• accord and satisfaction;

• arbitration and award;

• assumption of risk;

• contributory negligence;

• duress;

• estoppel;

• failure of consideration;

• fraud;

• illegality;

• injury by fellow servant;

• laches;

• license;

• payment;

• release;

• res judicata;

• statute of frauds;

• statute of limitations; and

• waiver.

(2) *Mistaken Designation.* If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(d) Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.

(1) *In General.* Each allegation must be simple, concise, and direct. No technical form is required.

(2) *Alternative Statements of a Claim or Defense.* A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) *Inconsistent Claims or Defenses.* A party may state as many separate claims or defenses as it has, regardless of consistency.

(e) Construing Pleadings. Pleadings must be construed so as to do justice.

Notes

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 28, 2010, eff. Dec. 1, 2010.)

Notes of Advisory Committee on Rules—1937

Note to Subdivision (a). See [former] Equity Rules 25 (Bill of Complaint—Contents), and 30 (Answer—Contents—Counterclaim). Compare 2 Ind.Stat.Ann. (Burns, 1933) §§2–1004, 2–1015; 2 Ohio Gen.Code Ann. (Page, 1926) §§11305, 11314; Utah Rev.Stat.Ann. (1933), §§104–7–2, 104–9–1.

See Rule 19(c) for the requirement of a statement in a claim for relief of the names of persons who ought to be parties and the reason for their omission.

See Rule 23(b) for particular requirements as to the complaint in a secondary action by shareholders.

Note to Subdivision (b). 1. This rule supersedes the methods of pleading prescribed in U.S.C., Title 19, §508 (Persons making seizures pleading general issue and providing special matter);

U.S.C., Title 35, [former] §§40d (Providing under general issue, upon notice, that a statement in application for an extended patent is not true), 69 [now 282] (Pleading and proof in actions for infringement) and similar statutes.

2. This rule is, in part, [former] Equity Rule 30 (Answer—Contents—Counterclaim), with the matter on denials largely from the Connecticut practice. See Conn.Practice Book (1934) §§107, 108, and 122; Conn.Gen.Stat. (1930) §§5508–5514. Compare the English practice, *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 19, r.r. 17–20.

Note to Subdivision (c). This follows substantially English Rules Under the Judicature Act (The Annual Practice, 1937) O. 19, r. 15 and N.Y.C.P.A. (1937) §242, with "surprise" omitted in this rule.

Note to Subdivision (d). The first sentence is similar to [former] Equity Rule 30 (Answer—Contents—Counterclaim). For the second sentence see [former] Equity Rule 31 (Reply—When Required—When Cause at Issue). This is similar to English Rules Under the Judicature Act (The Annual Practice, 1937) O. 19, r.r. 13, 18; and to the practice in the States.

Note to Subdivision (e). This rule is an elaboration upon [former] Equity Rule 30 (Answer—Contents—Counterclaim), plus a statement of the actual practice under some codes. Compare also [former] Equity Rule 18 (Pleadings—Technical Forms Abrogated). See Clark, Code Pleading (1928), pp. 171–4, 432–5; Hankin, *Alternative and Hypothetical Pleading* (1924), 33 Yale L.J. 365.

Note to Subdivision (f). A provision of like import is of frequent occurrence in the codes. Ill.Rev.Stat. (1937) ch. 110, §157(3); 2 Minn.Stat. (Mason, 1927) §9266; N.Y.C.P.A. (1937) §275; 2 N.D.Comp.Laws Ann. (1913) §7458.

Notes of Advisory Committee on Rules—1966 Amendment

The change here is consistent with the broad purposes of unification.

Notes of Advisory Committee on Rules—1987 Amendment

The amendments are technical. No substantive change is intended.

Committee Notes on Rules—2007 Amendment

The language of Rule 8 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

The former Rule 8(b) and 8(e) cross-references to Rule 11 are deleted as redundant. Rule 11 applies by its own terms. The force and application of Rule 11 are not diminished by the deletion.

Former Rule 8(b) required a pleader denying part of an averment to "specify so much of it as is true and material and * * * deny only the remainder." "[A]nd material" is deleted to avoid the implication that it is proper to deny something that the pleader believes to be true but not material.

Deletion of former Rule 8(e)(2)'s "whether based on legal, equitable, or maritime grounds" reflects the parallel deletions in Rule 1 and elsewhere. Merger is now successfully accomplished.

Changes Made After Publication and Comment. See Note to Rule 1, supra.

Committee Notes on Rules—2010 Amendment

Subdivision (c)(1). "[D]ischarge in bankruptcy" is deleted from the list of affirmative defenses. Under 11 U.S.C. § 524(a)(1) and (2) a discharge voids a judgment to the extent that it determines a personal liability of the debtor with respect to a discharged debt. The discharge also operates as an injunction against commencement or continuation of an action to collect, recover, or offset a discharged debt. For these reasons it is confusing to describe discharge as an affirmative defense. But § 524(a) applies only to a claim that was actually discharged. Several categories of debt set out in 11 U.S.C. § 523(a) are excepted from discharge. The issue whether a claim was excepted from discharge may be determined either in the court that entered the discharge or — in most instances — in another court with jurisdiction over the creditor's claim.

Changes Made After Publication and Comment.

No changes were made in the rule text.

The Committee Note was revised to delete statements that were over-simplified. New material was added to provide a reminder of the means to determine whether a debt was in fact discharged.

Rule 9. Pleading Special Matters

(a) Capacity or Authority to Sue; Legal Existence.

(1) *In General.* Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) a party's capacity to sue or be sued;

(B) a party's authority to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.

(2) *Raising Those Issues.* To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.

(b) Fraud or Mistake; Conditions of Mind. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

(c) Conditions Precedent. In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.

(d) Official Document or Act. In pleading an official document or official act, it suffices to allege that the document was legally issued or the act legally done.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, a judicial or quasi-judicial tribunal, or a board or officer, it suffices to plead the judgment or decision without showing jurisdiction to render it.

(f) Time and Place. An allegation of time or place is material when testing the sufficiency of a pleading.

(g) Special Damages. If an item of special damage is claimed, it must be specifically stated.

(h) Admiralty or Maritime Claim.

(1) *How Designated.* If a claim for relief is within the admiralty or maritime jurisdiction and also within the court's subject-matter jurisdiction on some other ground, the pleading may designate the claim as an admiralty or maritime claim for purposes of Rules 14(c), 38(e), and 82 and the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. A claim cognizable only in the admiralty or maritime jurisdiction is an admiralty or maritime claim for those purposes, whether or not so designated.

(2) *Designation for Appeal.* A case that includes an admiralty or maritime claim within this subdivision (h) is an admiralty case within 28 U.S.C. §1292(a)(3).

Notes

(As amended Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Mar. 30, 1970, eff. July 1, 1970; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007.)

Notes of Advisory Committee on Rules—1937

Note to Subdivision (a). Compare [former] Equity Rule 25 (Bill of Complaint—Contents) requiring disability to be stated; Utah Rev.Stat.Ann. (1933) §104–13–15, enumerating a number of situations where a general averment of capacity is sufficient. For provisions governing averment of incorporation, see 2 Minn.Stat. (Mason, 1927) §9271; N.Y.R.C.P. (1937) Rule 93; 2 N.D.Comp.Laws Ann. (1913) §7981 et seq.

Note to Subdivision (b). See *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 19, r. 22.

Note to Subdivision (c). The codes generally have this or a similar provision. See English Rules Under the Judicature Act (The Annual Practice, 1937) O. 19, r. 14; 2 Minn.Stat. (Mason, 1927) §9273; N.Y.R.C.P. (1937) Rule 92; 2 N.D.Comp.Laws Ann. (1913) §7461; 2 Wash.Rev.Stat.Ann. (Remington, 1932) §288.

Note to Subdivision (e). The rule expands the usual code provisions on pleading a judgment by including judgments or decisions of administrative tribunals and foreign courts. Compare Ark.Civ.Code (Crawford, 1934) §141; 2 Minn.Stat. (Mason, 1927) §9269; N.Y.R.C.P. (1937) Rule 95; 2 Wash.Rev.Stat.Ann. (Remington, 1932) §287.

Notes of Advisory Committee on Rules—1966 Amendment

Certain distinctive features of the admiralty practice must be preserved for what are now suits in admiralty. This raises the question: After unification, when a single form of action is established, how will the counterpart of the present suit in admiralty be identifiable? In part the question is easily answered. Some claims for relief can only be suits in admiralty, either because the admiralty jurisdiction is exclusive or because no nonmaritime ground of federal jurisdiction exists. Many claims, however, are cognizable by the district courts whether asserted in admiralty or in a civil action, assuming the existence of a nonmaritime ground of jurisdiction. Thus at present the pleader has power to determine procedural consequences by the way in which he exercises the classic privilege given by the saving-to-suitors clause (28 U.S.C. §1333) or by equivalent statutory provisions. For example, a longshoreman's claim for personal injuries suffered by reason of the unseaworthiness of a vessel may be asserted in a suit in admiralty or, if diversity of citizenship exists, in a civil action. One of the important procedural consequences is that in the civil action either party may demand a jury trial, while in the suit in admiralty there is no right to jury trial except as provided by statute.

It is no part of the purpose of unification to inject a right to jury trial into those admiralty cases in which that right is not provided by statute. Similarly as will be more specifically noted below, there is no disposition to change the present law as to interlocutory appeals in admiralty, or as to the venue of suits in admiralty; and, of course, there is no disposition to inject into the civil practice as it now is the distinctively maritime remedies (maritime attachment and garnishment, actions in rem, possessory, petitory and partition actions and limitation of liability). The unified rules must therefore provide some device for preserving the present power of the pleader to determine whether these historically maritime procedures shall be applicable to his claim or not;

the pleader must be afforded some means of designating his claim as the counterpart of the present suit in admiralty, where its character as such is not clear.

The problem is different from the similar one concerning the identification of claims that were formerly suits in equity. While that problem is not free from complexities, it is broadly true that the modern counterpart of the suit in equity is distinguishable from the former action at law by the character of the relief sought. This mode of identification is possible in only a limited category of admiralty cases. In large numbers of cases the relief sought in admiralty is simple money damages, indistinguishable from the remedy afforded by the common law. This is true, for example, in the case of the longshoreman's action for personal injuries stated above. After unification has abolished the distinction between civil actions and suits in admiralty, the complaint in such an action would be almost completely ambiguous as to the pleader's intentions regarding the procedure invoked. The allegation of diversity of citizenship might be regarded as a clue indicating an intention to proceed as at present under the saving-to-suitors clause; but this, too, would be ambiguous if there were also reference to the admiralty jurisdiction, and the pleader ought not be required to forego mention of all available jurisdictional grounds.

Other methods of solving the problem were carefully explored, but the Advisory Committee concluded that the preferable solution is to allow the pleader who now has power to determine procedural consequences by filing a suit in admiralty to exercise that power under unification, for the limited instances in which procedural differences will remain, by a simple statement in his pleading to the effect that the claim is an admiralty or maritime claim.

The choice made by the pleader in identifying or in failing to identify his claim as an admiralty or maritime claim is not an irrevocable election. The rule provides that the amendment of a pleading to add or withdraw an identifying statement is subject to the principles of Rule 15.

Notes of Advisory Committee on Rules—1968 Amendment

The amendment eliminates the reference to Rule 73 which is to be abrogated and transfers to Rule 9(h) the substance of Subsection (h) of Rule 73 which preserved the right to an interlocutory appeal in admiralty cases which is provided by 28 U.S.C. §1292(a)(3).

Notes of Advisory Committee on Rules—1970 Amendment

The reference to Rule 26(a) is deleted, in light of the transfer of that subdivision to Rule 30(a) and the elimination of the de bene esse procedure therefrom. See the Advisory Committee's note to Rule 30(a).

Notes of Advisory Committee on Rules—1987 Amendment

The amendment is technical. No substantive change is intended.

Notes of Advisory Committee on Rules—1997 Amendment

Section 1292(a)(3) of the Judicial Code provides for appeal from "[i]nterlocutory decrees of * * * district courts * * * determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed."

Rule 9(h) was added in 1966 with the unification of civil and admiralty procedure. Civil Rule 73(h) was amended at the same time to provide that the §1292(a)(3) reference "to admiralty cases shall be construed to mean admiralty and maritime claims within the meaning of Rule 9(h)." This provision was transferred to Rule 9(h) when the Appellate Rules were adopted.

A single case can include both admiralty or maritime claims and nonadmiralty claims or parties. This combination reveals an ambiguity in the statement in present Rule 9(h) that an admiralty "claim" is an admiralty "case." An order "determining the rights and liabilities of the parties" within the meaning of §1292(a)(3) may resolve only a nonadmiralty claim, or may simultaneously resolve interdependent admiralty and nonadmiralty claims. Can appeal be taken as to the nonadmiralty matter, because it is part of a case that includes an admiralty claim, or is appeal limited to the admiralty claim?

The courts of appeals have not achieved full uniformity in applying the §1292(a)(3) requirement that an order "determin[e] the rights and liabilities of the parties." It is common to assert that the statute should be construed narrowly, under the general policy that exceptions to the final judgment rule should be construed narrowly. This policy would suggest that the ambiguity should be resolved by limiting the interlocutory appeal right to orders that determine the rights and liabilities of the parties to an admiralty claim.

A broader view is chosen by this amendment for two reasons. The statute applies to admiralty "cases," and may itself provide for appeal from an order that disposes of a nonadmiralty claim

that is joined in a single case with an admiralty claim. Although a rule of court may help to clarify and implement a statutory grant of jurisdiction, the line is not always clear between permissible implementation and impermissible withdrawal of jurisdiction. In addition, so long as an order truly disposes of the rights and liabilities of the parties within the meaning of §1292(a)(3), it may prove important to permit appeal as to the nonadmiralty claim. Disposition of the nonadmiralty claim, for example, may make it unnecessary to consider the admiralty claim and have the same effect on the case and parties as disposition of the admiralty claim. Or the admiralty and nonadmiralty claims may be interdependent. An illustration is provided by *Roco Carriers, Ltd. v. M/V Nurnberg Express*, 899 F.2d 1292 (2d Cir. 1990). Claims for losses of ocean shipments were made against two defendants, one subject to admiralty jurisdiction and the other not. Summary judgment was granted in favor of the admiralty defendant and against the nonadmiralty defendant. The nonadmiralty defendant's appeal was accepted, with the explanation that the determination of its liability was "integrally linked with the determination of non-liability" of the admiralty defendant, and that "section 1292(a)(3) is not limited to admiralty *claims*; instead, it refers to admiralty *cases*." 899 F.2d at 1297. The advantages of permitting appeal by the nonadmiralty defendant would be particularly clear if the plaintiff had appealed the summary judgment in favor of the admiralty defendant.

It must be emphasized that this amendment does not rest on any particular assumptions as to the meaning of the §1292(a)(3) provision that limits interlocutory appeal to orders that determine the rights and liabilities of the parties. It simply reflects the conclusion that so long as the case involves an admiralty claim and an order otherwise meets statutory requirements, the opportunity to appeal should not turn on the circumstance that the order does—or does not—dispose of an admiralty claim. No attempt is made to invoke the authority conferred by 28 U.S.C. §1292(e) to provide by rule for appeal of an interlocutory decision that is not otherwise provided for by other subsections of §1292.

GAP Report on Rule 9(h). No changes have been made in the published proposal.

Committee Notes on Rules—2006 Amendment

Rule 9(h) is amended to conform to the changed title of the Supplemental Rules.

Committee Notes on Rules—2007 Amendment

The language of Rule 9 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 15 governs pleading amendments of its own force. The former redundant statement that Rule 15 governs an amendment that adds or withdraws a Rule 9(h) designation as an admiralty or maritime claim is deleted. The elimination of paragraph (2) means that "(3)" will be redesignated as "(2)" in Style Rule 9(h).

Rule 10. Form of Pleadings

(a) Caption; Names of Parties. Every pleading must have a caption with the court's name, a title, a file number, and a Rule 7(a) designation. The title of the complaint must name all the parties; the title of other pleadings, after naming the first party on each side, may refer generally to other parties.

(b) Paragraphs; Separate Statements. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence—and each defense other than a denial—must be stated in a separate count or defense.

(c) Adoption by Reference; Exhibits. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.

Notes

(As amended Apr. 30, 2007, eff. Dec. 1, 2007.)

Notes of Advisory Committee on Rules—1937

The first sentence is derived in part from the opening statement of [former] Equity Rule 25 (Bill of Complaint—Contents). The remainder of the rule is an expansion in conformity with usual state provisions. For numbered paragraphs and separate statements, see Conn.Gen.Stat. (1930)

§5513; Ill.Rev.Stat. (1937) ch. 110, §157 (2); N.Y.R.C.P. (1937) Rule 90. For incorporation by reference, see N.Y.R.C.P. (1937) Rule 90. For written instruments as exhibits, see Ill.Rev.Stat. (1937) ch. 110, §160.

Committee Notes on Rules—2007 Amendment

The language of Rule 10 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

(a) Signature. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) Sanctions.

(1) *In General.* If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) *Motion for Sanctions.* A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) *On the Court's Initiative.* On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) *Nature of a Sanction.* A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(5) *Limitations on Monetary Sanctions.* The court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) *Requirements for an Order*. An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(d) Inapplicability to Discovery. This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.

Notes

(As amended Apr. 28, 1983, eff. Aug. 1, 1983; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007.)

Notes of Advisory Committee on Rules—1937

This is substantially the content of [former] Equity Rules 24 (Signature of Counsel) and 21 (Scandal and Impertinence) consolidated and unified. Compare [former] Equity Rule 36 (Officers Before Whom Pleadings Verified). Compare to similar purposes, *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 19, r. 4, and *Great Australian Gold Mining Co. v. Martin, L. R.*, 5 Ch.Div. 1, 10 (1877). Subscription of pleadings is required in many codes. 2 Minn.Stat. (Mason, 1927) §9265; N.Y.R.C.P. (1937) Rule 91; 2 N.D.Comp.Laws Ann. (1913) §7455.

This rule expressly continues any statute which requires a pleading to be verified or accompanied by an affidavit, such as:

U.S.C., Title 28:

§381 [former] (Preliminary injunctions and temporary restraining orders)

§762 [now 1402] (Suit against the United States).

U.S.C., Title 28, §829 [now 1927] (Costs; attorney liable for, when) is unaffected by this rule.

For complaints which must be verified under these rules, see Rules 23(b) (Secondary Action by Shareholders) and 65 (Injunctions).

For abolition of the rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances, see Pa.Stat.Ann. (Purdon, 1931) see 12 P.S.Pa., §1222; for the rule in equity itself, see *Greenfield v. Blumenthal*, 69 F.2d 294 (C.C.A. 3d, 1934).

Notes of Advisory Committee on Rules—1983 Amendment

Since its original promulgation, Rule 11 has provided for the striking of pleadings and the imposition of disciplinary sanctions to check abuses in the signing of pleadings. Its provisions have always applied to motions and other papers by virtue of incorporation by reference in Rule 7(b)(2). The amendment and the addition of Rule 7(b)(3) expressly confirms this applicability.

Experience shows that in practice Rule 11 has not been effective in deterring abuses. See 6 Wright & Miller, *Federal Practice and Procedure: Civil* §1334 (1971). There has been considerable confusion as to (1) the circumstances that should trigger striking a pleading or motion or taking disciplinary action, (2) the standard of conduct expected of attorneys who sign pleadings and motions, and (3) the range of available and appropriate sanctions. See Rodes, Ripple & Mooney, *Sanctions Imposable for Violations of the Federal Rules of Civil Procedure* 64–65, Federal Judicial Center (1981). The new language is intended to reduce the reluctance of courts to impose sanctions, see Moore, *Federal Practice* 7.05, at 1547, by emphasizing the responsibilities of the attorney and reenforcing those obligations by the imposition of sanctions.

The amended rule attempts to deal with the problem by building upon and expanding the equitable doctrine permitting the court to award expenses, including attorney's fees, to a litigant whose opponent acts in bad faith in instituting or conducting litigation. See, *e.g., Roadway Express, Inc. v. Piper*, 447 U.S. 752, (1980); *Hall v. Cole*, 412 U.S. 1, 5 (1973). Greater attention by the district courts to pleading and motion abuses and the imposition of sanctions when appropriate, should discourage dilatory or abusive tactics and help to streamline the litigation process by lessening frivolous claims or defenses.

The expanded nature of the lawyer's certification in the fifth sentence of amended Rule 11 recognizes that the litigation process may be abused for purposes other than delay. See, *e.g., Browning Debenture Holders' Committee v. DASA Corp*., 560 F.2d 1078 (2d Cir. 1977).

The words "good ground to support" the pleading in the original rule were interpreted to have both factual and legal elements. See, *e.g., Heart Disease Research Foundation v. General*

Motors Corp., 15 Fed.R.Serv. 2d 1517, 1519 (S.D.N.Y. 1972). They have been replaced by a standard of conduct that is more focused.

The new language stresses the need for some prefiling inquiry into both the facts and the law to satisfy the affirmative duty imposed by the rule. The standard is one of reasonableness under the circumstances. See *Kinee v. Abraham Lincoln Fed. Sav. & Loan Ass'n*, 365 F.Supp. 975 (E.D.Pa. 1973). This standard is more stringent than the original good-faith formula and thus it is expected that a greater range of circumstances will trigger its violation. See *Nemeroff v. Abelson*, 620 F.2d 339 (2d Cir. 1980).

The rule is not intended to chill an attorney's enthusiasm or creativity in pursuing factual or legal theories. The court is expected to avoid using the wisdom of hindsight and should test the signer's conduct by inquiring what was reasonable to believe at the time the pleading, motion, or other paper was submitted. Thus, what constitutes a reasonable inquiry may depend on such factors as how much time for investigation was available to the signer; whether he had to rely on a client for information as to the facts underlying the pleading, motion, or other paper; whether the pleading, motion, or other paper was based on a plausible view of the law; or whether he depended on forwarding counsel or another member of the bar.

The rule does not require a party or an attorney to disclose privileged communications or work product in order to show that the signing of the pleading, motion, or other paper is substantially justified. The provisions of Rule 26(c), including appropriate orders after *in camera* inspection by the court, remain available to protect a party claiming privilege or work product protection.

Amended Rule 11 continues to apply to anyone who signs a pleading, motion, or other paper. Although the standard is the same for unrepresented parties, who are obliged themselves to sign the pleadings, the court has sufficient discretion to take account of the special circumstances that often arise in *pro se* situations. See *Haines v. Kerner* 404 U.S. 519 (1972).

The provision in the original rule for striking pleadings and motions as sham and false has been deleted. The passage has rarely been utilized, and decisions thereunder have tended to confuse the issue of attorney honesty with the merits of the action. See generally Risinger, *Honesty in Pleading and its Enforcement: Some "Striking" Problems with Fed. R. Civ. P. 11* , 61 Minn.L.Rev. 1 (1976). Motions under this provision generally present issues better dealt with under Rules 8, 12, or 56. See *Murchison v. Kirby*, 27 F.R.D. 14 (S.D.N.Y. 1961); 5 Wright & Miller, *Federal Practice and Procedure: Civil* §1334 (1969).

The former reference to the inclusion of scandalous or indecent matter, which is itself strong indication that an improper purpose underlies the pleading, motion, or other paper, also has been deleted as unnecessary. Such matter may be stricken under Rule 12(f) as well as dealt with under the more general language of amended Rule 11.

The text of the amended rule seeks to dispel apprehensions that efforts to obtain enforcement will be fruitless by insuring that the rule will be applied when properly invoked. The word "sanctions" in the caption, for example, stresses a deterrent orientation in dealing with improper pleadings, motions or other papers. This corresponds to the approach in imposing sanctions for discovery abuses. See *National Hockey League v. Metropolitan Hockey Club*, 427 U.S. 639 (1976) (per curiam). And the words "shall impose" in the last sentence focus the court's attention on the need to impose sanctions for pleading and motion abuses. The court, however, retains the necessary flexibility to deal appropriately with violations of the rule. It has discretion to tailor sanctions to the particular facts of the case, with which it should be well acquainted.

The reference in the former text to wilfullness as a prerequisite to disciplinary action has been deleted. However, in considering the nature and severity of the sanctions to be imposed, the court should take account of the state of the attorney's or party's actual or presumed knowledge when the pleading or other paper was signed. Thus, for example, when a party is not represented by counsel, the absence of legal advice is an appropriate factor to be considered.

Courts currently appear to believe they may impose sanctions on their own motion. See *North American Trading Corp. v. Zale Corp*., 73 F.R.D. 293 (S.D.N.Y. 1979). Authority to do so has been made explicit in order to overcome the traditional reluctance of courts to intervene unless requested by one of the parties. The detection and punishment of a violation of the signing requirement, encouraged by the amended rule, is part of the court's responsibility for securing the system's effective operation.

If the duty imposed by the rule is violated, the court should have the discretion to impose sanctions on either the attorney, the party the signing attorney represents, or both, or on an unrepresented party who signed the pleading, and the new rule so provides. Although Rule 11 has been silent on the point, courts have claimed the power to impose sanctions on an attorney personally, either by imposing costs or employing the contempt technique. See 5 Wright & Miller, *Federal Practice and Procedure: Civil* §1334 (1969); 2A Moore, *Federal Practice*

11.02, at 2104 n.8. This power has been used infrequently. The amended rule should eliminate any doubt as to the propriety of assessing sanctions against the attorney.

Even though it is the attorney whose signature violates the rule, it may be appropriate under the circumstances of the case to impose a sanction on the client. See *Browning Debenture Holders' Committee v. DASA Corp.*, *supra*. This modification brings Rule 11 in line with practice under Rule 37, which allows sanctions for abuses during discovery to be imposed upon the party, the attorney, or both.

A party seeking sanctions should give notice to the court and the offending party promptly upon discovering a basis for doing so. The time when sanctions are to be imposed rests in the discretion of the trial judge. However, it is anticipated that in the case of pleadings the sanctions issue under Rule 11 normally will be determined at the end of the litigation, and in the case of motions at the time when the motion is decided or shortly thereafter. The procedure obviously must comport with due process requirements. The particular format to be followed should depend on the circumstances of the situation and the severity of the sanction under consideration. In many situations the judge's participation in the proceedings provides him with full knowledge of the relevant facts and little further inquiry will be necessary.

To assure that the efficiencies achieved through more effective operation of the pleading regimen will not be offset by the cost of satellite litigation over the imposition of sanctions, the court must to the extent possible limit the scope of sanction proceedings to the record. Thus, discovery should be conducted only by leave of the court, and then only in extraordinary circumstances.

Although the encompassing reference to "other papers" in new Rule 11 literally includes discovery papers, the certification requirement in that context is governed by proposed new Rule 26(g). Discovery motions, however, fall within the ambit of Rule 11.

Notes of Advisory Committee on Rules—1987 Amendment

The amendments are technical. No substantive change is intended.

Notes of Advisory Committee on Rules—1993 Amendment

Purpose of revision. This revision is intended to remedy problems that have arisen in the interpretation and application of the 1983 revision of the rule. For empirical examination of

experience under the 1983 rule, see, *e.g.*, New York State Bar Committee on Federal Courts, *Sanctions and Attorneys' Fees* (1987); T. Willging, *The Rule 11 Sanctioning Process* (1989); American Judicature Society, *Report of the Third Circuit Task Force on Federal Rule of Civil Procedure 11* (S. Burbank ed., 1989); E. Wiggins, T. Willging, and D. Stienstra, *Report on Rule 11* (Federal Judicial Center 1991). For book-length analyses of the case law, see G. Joseph, *Sanctions: The Federal Law of Litigation Abuse* (1989); J. Solovy, *The Federal Law of Sanctions* (1991); G. Vairo, *Rule 11 Sanctions: Case Law Perspectives and Preventive Measures* (1991).

The rule retains the principle that attorneys and pro se litigants have an obligation to the court to refrain from conduct that frustrates the aims of Rule 1. The revision broadens the scope of this obligation, but places greater constraints on the imposition of sanctions and should reduce the number of motions for sanctions presented to the court. New subdivision (d) removes from the ambit of this rule all discovery requests, responses, objections, and motions subject to the provisions of Rule 26 through 37.

Subdivision (a). Retained in this subdivision are the provisions requiring signatures on pleadings, written motions, and other papers. Unsigned papers are to be received by the Clerk, but then are to be stricken if the omission of the signature is not corrected promptly after being called to the attention of the attorney or pro se litigant. Correction can be made by signing the paper on file or by submitting a duplicate that contains the signature. A court may require by local rule that papers contain additional identifying information regarding the parties or attorneys, such as telephone numbers to facilitate facsimile transmissions, though, as for omission of a signature, the paper should not be rejected for failure to provide such information.

The sentence in the former rule relating to the effect of answers under oath is no longer needed and has been eliminated. The provision in the former rule that signing a paper constitutes a certificate that it has been read by the signer also has been eliminated as unnecessary. The obligations imposed under subdivision (b) obviously require that a pleading, written motion, or other paper be read before it is filed or submitted to the court.

Subdivisions (b) and (c). These subdivisions restate the provisions requiring attorneys and pro se litigants to conduct a reasonable inquiry into the law and facts before signing pleadings, written motions, and other documents, and prescribing sanctions for violation of these obligations. The revision in part expands the responsibilities of litigants to the court, while providing greater constraints and flexibility in dealing with infractions of the rule. The rule continues to require litigants to "stop-and-think" before initially making legal or factual contentions. It also, however,

emphasizes the duty of candor by subjecting litigants to potential sanctions for insisting upon a position after it is no longer tenable and by generally providing protection against sanctions if they withdraw or correct contentions after a potential violation is called to their attention.

The rule applies only to assertions contained in papers filed with or submitted to the court. It does not cover matters arising for the first time during oral presentations to the court, when counsel may make statements that would not have been made if there had been more time for study and reflection. However, a litigant's obligations with respect to the contents of these papers are not measured solely as of the time they are filed with or submitted to the court, but include reaffirming to the court and advocating positions contained in those pleadings and motions after learning that they cease to have any merit. For example, an attorney who during a pretrial conference insists on a claim or defense should be viewed as "presenting to the court" that contention and would be subject to the obligations of subdivision (b) measured as of that time. Similarly, if after a notice of removal is filed, a party urges in federal court the allegations of a pleading filed in state court (whether as claims, defenses, or in disputes regarding removal or remand), it would be viewed as "presenting"—and hence certifying to the district court under Rule 11—those allegations.

The certification with respect to allegations and other factual contentions is revised in recognition that sometimes a litigant may have good reason to believe that a fact is true or false but may need discovery, formal or informal, from opposing parties or third persons to gather and confirm the evidentiary basis for the allegation. Tolerance of factual contentions in initial pleadings by plaintiffs or defendants when specifically identified as made on information and belief does not relieve litigants from the obligation to conduct an appropriate investigation into the facts that is reasonable under the circumstances; it is not a license to join parties, make claims, or present defenses without any factual basis or justification. Moreover, if evidentiary support is not obtained after a reasonable opportunity for further investigation or discovery, the party has a duty under the rule not to persist with that contention. Subdivision (b) does not require a formal amendment to pleadings for which evidentiary support is not obtained, but rather calls upon a litigant not thereafter to advocate such claims or defenses.

The certification is that there is (or likely will be) "evidentiary support" for the allegation, not that the party will prevail with respect to its contention regarding the fact. That summary judgment is rendered against a party does not necessarily mean, for purposes of this certification, that it had no evidentiary support for its position. On the other hand, if a party has evidence with

respect to a contention that would suffice to defeat a motion for summary judgment based thereon, it would have sufficient "evidentiary support" for purposes of Rule 11.

Denials of factual contentions involve somewhat different considerations. Often, of course, a denial is premised upon the existence of evidence contradicting the alleged fact. At other times a denial is permissible because, after an appropriate investigation, a party has no information concerning the matter or, indeed, has a reasonable basis for doubting the credibility of the only evidence relevant to the matter. A party should not deny an allegation it knows to be true; but it is not required, simply because it lacks contradictory evidence, to admit an allegation that it believes is not true.

The changes in subdivisions (b)(3) and (b)(4) will serve to equalize the burden of the rule upon plaintiffs and defendants, who under Rule 8(b) are in effect allowed to deny allegations by stating that from their initial investigation they lack sufficient information to form a belief as to the truth of the allegation. If, after further investigation or discovery, a denial is no longer warranted, the defendant should not continue to insist on that denial. While sometimes helpful, formal amendment of the pleadings to withdraw an allegation or denial is not required by subdivision (b).

Arguments for extensions, modifications, or reversals of existing law or for creation of new law do not violate subdivision (b)(2) provided they are "nonfrivolous." This establishes an objective standard, intended to eliminate any "empty-head pure-heart" justification for patently frivolous arguments. However, the extent to which a litigant has researched the issues and found some support for its theories even in minority opinions, in law review articles, or through consultation with other attorneys should certainly be taken into account in determining whether paragraph (2) has been violated. Although arguments for a change of law are not required to be specifically so identified, a contention that is so identified should be viewed with greater tolerance under the rule.

The court has available a variety of possible sanctions to impose for violations, such as striking the offending paper; issuing an admonition, reprimand, or censure; requiring participation in seminars or other educational programs; ordering a fine payable to the court; referring the matter to disciplinary authorities (or, in the case of government attorneys, to the Attorney General, Inspector General, or agency head), etc. *See Manual for Complex Litigation, Second*, §42.3. The rule does not attempt to enumerate the factors a court should consider in deciding whether to impose a sanction or what sanctions would be appropriate in the circumstances; but, for

emphasis, it does specifically note that a sanction may be nonmonetary as well as monetary. Whether the improper conduct was willful, or negligent; whether it was part of a pattern of activity, or an isolated event; whether it infected the entire pleading, or only one particular count or defense; whether the person has engaged in similar conduct in other litigation; whether it was intended to injure; what effect it had on the litigation process in time or expense; whether the responsible person is trained in the law; what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case; what amount is needed to deter similar activity by other litigants: all of these may in a particular case be proper considerations. The court has significant discretion in determining what sanctions, if any, should be imposed for a violation, subject to the principle that the sanctions should not be more severe than reasonably necessary to deter repetition of the conduct by the offending person or comparable conduct by similarly situated persons.

Since the purpose of Rule 11 sanctions is to deter rather than to compensate, the rule provides that, if a monetary sanction is imposed, it should ordinarily be paid into court as a penalty. However, under unusual circumstances, particularly for [subdivision] (b)(1) violations, deterrence may be ineffective unless the sanction not only requires the person violating the rule to make a monetary payment, but also directs that some or all of this payment be made to those injured by the violation. Accordingly, the rule authorizes the court, if requested in a motion and if so warranted, to award attorney's fees to another party. Any such award to another party, however, should not exceed the expenses and attorneys' fees for the services directly and unavoidably caused by the violation of the certification requirement. If, for example, a wholly unsupportable count were included in a multi-count complaint or counterclaim for the purpose of needlessly increasing the cost of litigation to an impecunious adversary, any award of expenses should be limited to those directly caused by inclusion of the improper count, and not those resulting from the filing of the complaint or answer itself. The award should not provide compensation for services that could have been avoided by an earlier disclosure of evidence or an earlier challenge to the groundless claims or defenses. Moreover, partial reimbursement of fees may constitute a sufficient deterrent with respect to violations by persons having modest financial resources. In cases brought under statutes providing for fees to be awarded to prevailing parties, the court should not employ cost-shifting under this rule in a manner that would be inconsistent with the standards that govern the statutory award of fees, such as stated in *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412 (1978).

The sanction should be imposed on the persons—whether attorneys, law firms, or parties—who have violated the rule or who may be determined to be responsible for the violation. The person

signing, filing, submitting, or advocating a document has a nondelegable responsibility to the court, and in most situations is the person to be sanctioned for a violation. Absent exceptional circumstances, a law firm is to be held also responsible when, as a result of a motion under subdivision (c)(1)(A), one of its partners, associates, or employees is determined to have violated the rule. Since such a motion may be filed only if the offending paper is not withdrawn or corrected within 21 days after service of the motion, it is appropriate that the law firm ordinarily be viewed as jointly responsible under established principles of agency. This provision is designed to remove the restrictions of the former rule. *Cf. Pavelic & LeFlore v. Marvel Entertainment Group*, 493 U.S. 120 (1989) (1983 version of Rule 11 does not permit sanctions against law firm of attorney signing groundless complaint).

The revision permits the court to consider whether other attorneys in the firm, co-counsel, other law firms, or the party itself should be held accountable for their part in causing a violation. When appropriate, the court can make an additional inquiry in order to determine whether the sanction should be imposed on such persons, firms, or parties either in addition to or, in unusual circumstances, instead of the person actually making the presentation to the court. For example, such an inquiry may be appropriate in cases involving governmental agencies or other institutional parties that frequently impose substantial restrictions on the discretion of individual attorneys employed by it.

Sanctions that involve monetary awards (such as a fine or an award of attorney's fees) may not be imposed on a represented party for causing a violation of subdivision (b)(2), involving frivolous contentions of law. Monetary responsibility for such violations is more properly placed solely on the party's attorneys. With this limitation, the rule should not be subject to attack under the Rules Enabling Act. *See Willy v. Coastal Corp*., ____ U.S. ____ (1992); *Business Guides, Inc. v. Chromatic Communications Enter. Inc*., ____ U.S. ____ (1991). This restriction does not limit the court's power to impose sanctions or remedial orders that may have collateral financial consequences upon a party, such as dismissal of a claim, preclusion of a defense, or preparation of amended pleadings.

Explicit provision is made for litigants to be provided notice of the alleged violation and an opportunity to respond before sanctions are imposed. Whether the matter should be decided solely on the basis of written submissions or should be scheduled for oral argument (or, indeed, for evidentiary presentation) will depend on the circumstances. If the court imposes a sanction, it must, unless waived, indicate its reasons in a written order or on the record; the court should not ordinarily have to explain its denial of a motion for sanctions. Whether a violation has occurred

and what sanctions, if any, to impose for a violation are matters committed to the discretion of the trial court; accordingly, as under current law, the standard for appellate review of these decisions will be for abuse of discretion. *See Cooter & Gell v. Hartmarx Corp*., 496 U.S. 384 (1990) (noting, however, that an abuse would be established if the court based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence).

The revision leaves for resolution on a case-by-case basis, considering the particular circumstances involved, the question as to when a motion for violation of Rule 11 should be served and when, if filed, it should be decided. Ordinarily the motion should be served promptly after the inappropriate paper is filed, and, if delayed too long, may be viewed as untimely. In other circumstances, it should not be served until the other party has had a reasonable opportunity for discovery. Given the "safe harbor" provisions discussed below, a party cannot delay serving its Rule 11 motion until conclusion of the case (or judicial rejection of the offending contention).

Rule 11 motions should not be made or threatened for minor, inconsequential violations of the standards prescribed by subdivision (b). They should not be employed as a discovery device or to test the legal sufficiency or efficacy of allegations in the pleadings; other motions are available for those purposes. Nor should Rule 11 motions be prepared to emphasize the merits of a party's position, to exact an unjust settlement, to intimidate an adversary into withdrawing contentions that are fairly debatable, to increase the costs of litigation, to create a conflict of interest between attorney and client, or to seek disclosure of matters otherwise protected by the attorney-client privilege or the work-product doctrine. As under the prior rule, the court may defer its ruling (or its decision as to the identity of the persons to be sanctioned) until final resolution of the case in order to avoid immediate conflicts of interest and to reduce the disruption created if a disclosure of attorney-client communications is needed to determine whether a violation occurred or to identify the person responsible for the violation.

The rule provides that requests for sanctions must be made as a separate motion, *i.e*., not simply included as an additional prayer for relief contained in another motion. The motion for sanctions is not, however, to be filed until at least 21 days (or such other period as the court may set) after being served. If, during this period, the alleged violation is corrected, as by withdrawing (whether formally or informally) some allegation or contention, the motion should not be filed with the court. These provisions are intended to provide a type of "safe harbor" against motions under Rule 11 in that a party will not be subject to sanctions on the basis of another party's motion unless, after receiving the motion, it refuses to withdraw that position or to acknowledge

candidly that it does not currently have evidence to support a specified allegation. Under the former rule, parties were sometimes reluctant to abandon a questionable contention lest that be viewed as evidence of a violation of Rule 11; under the revision, the timely withdrawal of a contention will protect a party against a motion for sanctions.

To stress the seriousness of a motion for sanctions and to define precisely the conduct claimed to violate the rule, the revision provides that the "safe harbor" period begins to run only upon service of the motion. In most cases, however, counsel should be expected to give informal notice to the other party, whether in person or by a telephone call or letter, of a potential violation before proceeding to prepare and serve a Rule 11 motion.

As under former Rule 11, the filing of a motion for sanctions is itself subject to the requirements of the rule and can lead to sanctions. However, service of a cross motion under Rule 11 should rarely be needed since under the revision the court may award to the person who prevails on a motion under Rule 11—whether the movant or the target of the motion—reasonable expenses, including attorney's fees, incurred in presenting or opposing the motion.

The power of the court to act on its own initiative is retained, but with the condition that this be done through a show cause order. This procedure provides the person with notice and an opportunity to respond. The revision provides that a monetary sanction imposed after a court-initiated show cause order be limited to a penalty payable to the court and that it be imposed only if the show cause order is issued before any voluntary dismissal or an agreement of the parties to settle the claims made by or against the litigant. Parties settling a case should not be subsequently faced with an unexpected order from the court leading to monetary sanctions that might have affected their willingness to settle or voluntarily dismiss a case. Since show cause orders will ordinarily be issued only in situations that are akin to a contempt of court, the rule does not provide a "safe harbor" to a litigant for withdrawing a claim, defense, etc., after a show cause order has been issued on the court's own initiative. Such corrective action, however, should be taken into account in deciding what—if any—sanction to impose if, after consideration of the litigant's response, the court concludes that a violation has occurred.

Subdivision (d). Rules 26(g) and 37 establish certification standards and sanctions that apply to discovery disclosures, requests, responses, objections, and motions. It is appropriate that Rules 26 through 37, which are specially designed for the discovery process, govern such documents and conduct rather than the more general provisions of Rule 11. Subdivision (d) has been added to accomplish this result.

Rule 11 is not the exclusive source for control of improper presentations of claims, defenses, or contentions. It does not supplant statutes permitting awards of attorney's fees to prevailing parties or alter the principles governing such awards. It does not inhibit the court in punishing for contempt, in exercising its inherent powers, or in imposing sanctions, awarding expenses, or directing remedial action authorized under other rules or under 28 U.S.C. §1927. *See Chambers v. NASCO*, ____ U.S. ____ (1991). *Chambers* cautions, however, against reliance upon inherent powers if appropriate sanctions can be imposed under provisions such as Rule 11, and the procedures specified in Rule 11—notice, opportunity to respond, and findings—should ordinarily be employed when imposing a sanction under the court's inherent powers. Finally, it should be noted that Rule 11 does not preclude a party from initiating an independent action for malicious prosecution or abuse of process.

Committee Notes on Rules—2007 Amendment

The language of Rule 11 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Providing an e-mail address is useful, but does not of itself signify consent to filing or service by e-mail.

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

(a) Time to Serve a Responsive Pleading.

(1) *In General.* Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer:

(i) within 21 days after being served with the summons and complaint; or

(ii) if it has timely waived service under Rule 4(d), within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States.

(B) A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

(2) *United States and Its Agencies, Officers, or Employees Sued in an Official Capacity.* The United States, a United States agency, or a United States officer or employee sued only in an official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the United States attorney.

(3) *United States Officers or Employees Sued in an Individual Capacity.* A United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the officer or employee or service on the United States attorney, whichever is later.

(4) *Effect of a Motion.* Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) improper venue;

(4) insufficient process;

(5) insufficient service of process;

(6) failure to state a claim upon which relief can be granted; and

(7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.

(d) Result of Presenting Matters Outside the Pleadings. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) Motion for a More Definite Statement. A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) Motion to Strike. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

(g) Joining Motions.

(1) *Right to Join.* A motion under this rule may be joined with any other motion allowed by this rule.

(2) *Limitation on Further Motions.* Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) Waiving and Preserving Certain Defenses.

(1) *When Some Are Waived.* A party waives any defense listed in Rule 12(b)(2)–(5) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) *When to Raise Others.* Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) *Lack of Subject-Matter Jurisdiction.* If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(i) Hearing Before Trial. If a party so moves, any defense listed in Rule 12(b)(1)–(7)—whether made in a pleading or by motion—and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

Notes

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

Notes of Advisory Committee on Rules—1937

Note to Subdivision (a). 1. Compare [former] Equity Rules 12 (Issue of Subpoena—Time for Answer) and 31 (Reply—When Required—When Cause at Issue); 4 Mont.Rev.Codes Ann. (1935) §§9107, 9158; N.Y.C.P.A. (1937) §263; N.Y.R.C.P. (1937) Rules 109–111.

2. U.S.C., Title 28, §763 [now 547] (Petition in action against United States; service; appearance by district attorney) provides that the United States as a defendant shall have 60 days within which to answer or otherwise defend. This and other statutes which provide 60 days for the United States or an officer or agency thereof to answer or otherwise defend are continued by this rule. Insofar as any statutes not excepted in Rule 81 provide a different time for a defendant to defend, such statutes are modified. See U.S.C., Title 28, [former] §45 (District courts; practice and procedure in certain cases under the interstate commerce laws) (30 days).

3. Compare the last sentence of [former] Equity Rule 29 (Defenses—How Presented) and N.Y.C.P.A. (1937) §283. See Rule 15(a) for time within which to plead to an amended pleading.

Note to Subdivisions (b) and (d). 1. See generally [former] Equity Rules 29 (Defenses—How Presented), 33 (Testing Sufficiency of Defense), 43 (Defect of Parties—Resisting Objection), and 44 (Defect of Parties—Tardy Objection); N.Y.C.P.A. (1937) §§277–280; N.Y.R.C.P. (1937) Rules 106–112; *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 25, r.r. 1–4; Clark, *Code Pleading* (1928) pp. 371–381.

2. For provisions authorizing defenses to be made in the answer or reply see *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 25, r.r. 1–4; 1 Miss.Code Ann. (1930) §§378, 379. Compare [former] Equity Rule 29 (Defenses—How Presented); U.S.C., Title 28, [former] §45 (District Courts; practice and procedure in certain cases under the interstate commerce laws). U.S.C., Title 28, [former] §45, substantially continued by this rule, provides: "No replication need be filed to the answer, and objections to the sufficiency of the petition or answer as not setting forth a cause of action or defense must be taken at the final hearing or by motion to dismiss the petition based on said grounds, which motion may be made at any time before answer is filed." Compare Calif.Code Civ.Proc. (Deering, 1937) §433; 4 Nev.Comp.Laws (Hillyer, 1929) §8600. For provisions that the defendant may demur and answer at the same time, see Calif.Code Civ.Proc. (Deering, 1937) §431; 4 Nev.Comp.Laws (Hillyer, 1929) §8598.

3. [Former] Equity Rule 29 (Defenses—How Presented) abolished demurrers and provided that defenses in point of law arising on the face of the bill should be made by motion to dismiss or in the answer, with further provision that every such point of law going to the whole or material part of the cause or causes stated might be called up and disposed of before final hearing "at the discretion of the court." Likewise many state practices have abolished the demurrer, or retain it only to attack substantial and not formal defects. See 6 Tenn.Code Ann. (Williams, 1934) §8784; Ala.Code Ann. (Michie, 1928) §9479; 2 Mass.Gen.Laws (Ter.Ed., 1932) ch. 231, §§15–18; Kansas Gen.Stat.Ann. (1935) §§60–705, 60–706.

Note to Subdivision (c). Compare [former] Equity Rule 33 (Testing Sufficiency of Defense); N.Y.R.C.P. (1937) Rules 111 and 112.

Note to Subdivisions (e) and (f). Compare [former] Equity Rules 20 (Further and Particular Statement in Pleading May Be Required) and 21 (Scandal and Impertinence); *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 19, r.r. 7, 7a, 7b, 8; 4 Mont.Rev.Codes Ann. (1935) §§9166, 9167; N.Y.C.P.A. (1937) §247; N.Y.R.C.P. (1937) Rules 103, 115, 116, 117; Wyo.Rev.Stat.Ann. (Courtright, 1931) §§89–1033, 89–1034.

Note to Subdivision (g). Compare Rules of the District Court of the United States for the District of Columbia (1937), Equity Rule 11; N.M. Rules of Pleading, Practice and Procedure, 38 N.M.Rep. vii [105–408] (1934); Wash.Gen.Rules of the Superior Courts, 1 Wash.Rev.Stat.Ann. (Remington, 1932) p. 160, Rule VI (e) and (f).

Note to Subdivision (h). Compare Calif.Code Civ.Proc. (Deering, 1937) §434; 2 Minn.Stat. (Mason, 1927) §9252; N.Y.C.P.A. (1937) §§278 and 279; Wash.Gen.Rules of the Superior Courts, 1 Wash.Rev.Stat.Ann. (Remington, 1932) p. 160, Rule VI (e). This rule continues U.S.C., Title 28, §80 [now 1359, 1447, 1919] (Dismissal or remand) (of action over which district court lacks jurisdiction), while U.S.C., Title 28, §399 [now 1653] (Amendments to show diverse citizenship) is continued by Rule 15.

Notes of Advisory Committee on Rules—1946 Amendment

Subdivision (a). Various minor alterations in language have been made to improve the statement of the rule. All references to bills of particulars have been stricken in accordance with changes made in subdivision (e).

Subdivision (b). The addition of defense (7), "failure to join an indispensable party", cures an omission in the rules, which are silent as to the mode of raising such failure. See Commentary, *Manner of Raising Objection of Non-Joinder of Indispensable Party* (1940) 2 Fed.Rules Serv. 658 and (1942) 5 Fed.Rules Serv. 820. In one case, *United States v. Metropolitan Life Ins. Co*. (E.D.Pa. 1941) 36 F.Supp. 399, the failure to join an indispensable party was raised under Rule 12(c).

Rule 12(b)(6), permitting a motion to dismiss for failure of the complaint to state a claim on which relief can be granted, is substantially the same as the old demurrer for failure of a pleading to state a cause of action. Some courts have held that as the rule by its terms refers to statements in the complaint, extraneous matter on affidavits, depositions or otherwise, may not be introduced in support of the motion, or to resist it. On the other hand, in many cases the district courts have permitted the introduction of such material. When these cases have reached circuit courts of appeals in situations where the extraneous material so received shows that there is no genuine issue as to any material question of fact and that on the undisputed facts as disclosed by the affidavits or depositions, one party or the other is entitled to judgment as a matter of law, the circuit courts, properly enough, have been reluctant to dispose of the case merely on the face of the pleading, and in the interest of prompt disposition of the action have made a final disposition of it. In dealing with such situations the Second Circuit has made the sound suggestion that whatever its label or original basis, the motion may be treated as a motion for summary judgment and disposed of as such. *Samara v. United States* (C.C.A.2d, 1942) 129 F.(2d) 594, cert. den. (1942) 317 U.S. 686; *Boro Hall Corp. v. General Motors Corp*. (C.C.A.2d, 1942) 124 F.(2d)

822, cert. den. (1943) 317 U.S. 695. See also *Kithcart v. Metropolitan Life Ins. Co*. (C.C.A.8th, 1945) 150 F.(2d) 997, aff'g 62 F.Supp. 93.

It has also been suggested that this practice could be justified on the ground that the federal rules permit "speaking" motions. The Committee entertains the view that on motion under Rule 12(b)(6) to dismiss for failure of the complaint to state a good claim, the trial court should have authority to permit the introduction of extraneous matter, such as may be offered on a motion for summary judgment, and if it does not exclude such matter the motion should then be treated as a motion for summary judgment and disposed of in the manner and on the conditions stated in Rule 56 relating to summary judgments, and, of course, in such a situation, when the case reaches the circuit court of appeals, that court should treat the motion in the same way. The Committee believes that such practice, however, should be tied to the summary judgment rule. The term "speaking motion" is not mentioned in the rules, and if there is such a thing its limitations are undefined. Where extraneous matter is received, by tying further proceedings to the summary judgment rule the courts have a definite basis in the rules for disposing of the motion.

The Committee emphasizes particularly the fact that the summary judgment rule does not permit a case to be disposed of by judgment on the merits on affidavits, which disclose a conflict on a material issue of fact, and unless this practice is tied to the summary judgment rule, the extent to which a court, on the introduction of such extraneous matter, may resolve questions of fact on conflicting proof would be left uncertain.

The decisions dealing with this general situation may be generally grouped as follows: (1) cases dealing with the use of affidavits and other extraneous material on motions; (2) cases reversing judgments to prevent final determination on mere pleading allegations alone.

Under group (1) are: *Boro Hall Corp. v. General Motors Corp*. (C.C.A.2d, 1942) 124 F.(2d) 822, cert. den. (1943) 317 U.S. 695; *Gallup v. Caldwell* (C.C.A.3d, 1941) 120 F.(2d) 90; *Central Mexico Light & Power Co. v. Munch* (C.C.A.2d, 1940) 116 F.(2d) 85; *National Labor Relations Board v. Montgomery Ward & Co*. (App.D.C. 1944) 144 F.(2d) 528, cert. den. (1944) 65 S.Ct. 134; *Urquhart v. American-La France Foamite Corp*. (App.D.C. 1944) 144 F.(2d) 542; *Samara v. United States* (C.C.A.2d, 1942) 129 F.(2d) 594; *Cohen v. American Window Glass Co*. (C.C.A.2d, 1942) 126 F.(2d) 111; *Sperry Products Inc. v. Association of American Railroads* (C.C.A.2d, 1942) 132 F.(2d) 408; *Joint Council Dining Car Employees Local 370 v. Delaware, Lackawanna and Western R. Co*. (C.C.A.2d, 1946) 157 F.(2d) 417; *Weeks v. Bareco Oil Co*.

(C.C.A.7th, 1941) 125 F.(2d) 84; *Carroll v. Morrison Hotel Corp*. (C.C.A.7th, 1945) 149 F.(2d) 404; *Victory v. Manning* (C.C.A.3rd, 1942) 128 F.(2d) 415; *Locals No. 1470, No. 1469, and 1512 of International Longshoremen's Association v. Southern Pacific Co*. (C.C.A.5th, 1942) 131 F.(2d) 605; *Lucking v. Delano* (C.C.A.6th, 1942) 129 F.(2d) 283; *San Francisco Lodge No. 68 of International Association of Machinists v. Forrestal* (N.D.Cal. 1944) 58 F.Supp. 466; *Benson v. Export Equipment Corp*. (N. Mex. 1945) 164 P.2d 380 (construing New Mexico rule identical with Rule 12(b)(6); *F. E. Myers & Bros. Co. v. Gould Pumps, Inc*. (W.D.N.Y. 1946) 9 Fed.Rules Serv. 12b.33, Case 2, 5 F.R.D. 132. Cf. *Kohler v. Jacobs* (C.C.A.5th, 1943) 138 F.(2d) 440; *Cohen v. United States* (C.C.A.8th, 1942) 129 F.(2d) 733.

Under group (2) are: *Sparks v. England* (C.C.A.8th, 1940) 113 F.(2d) 579; *Continental Collieries, Inc. v. Shober* (C.C.A.3d, 1942) 130 F.(2d) 631; *Downey v. Palmer* (C.C.A.2d 1940) 114 F.(2d) 116; *DeLoach v. Crowley's Inc*. (C.C.A.5th, 1942) 128 F.(2d) 378; *Leimer v. State Mutual Life Assurance Co. of Worcester, Mass*. (C.C.A.8th, 1940) 108 F.(2d) 302; *Rossiter v. Vogel* (C.C.A.2d, 1943) 134 F.(2d) 908, compare s. c. (C.C.A.2d, 1945) 148 F.(2d) 292; *Karl Kiefer Machine Co. v. United States Bottlers Machinery Co*. (C.C.A.7th, 1940) 113 F.(2d) 356; *Chicago Metallic Mfg. Co. v. Edward Katzinger Co*. (C.C.A.7th, 1941) 123 F.(2d) 518; *Louisiana Farmers' Protective Union, Inc. v. Great Atlantic & Pacific Tea Co. of America, Inc*. (C.C.A.8th, 1942) 131 F.(2d) 419; *Publicity Bldg. Realty Corp. v. Hannegan* (C.C.A.8th, 1943) 139 F.(2d) 583; *Dioguardi v. Durning* (C.C.A.2d, 1944) 139 F.(2d) 774; *Package Closure Corp. v. Sealright Co., Inc*. (C.C.A.2d, 1944) 141 F.(2d) 972; *Tahir Erk v. Glenn L. Martin Co*. (C.C.A.4th, 1941) 116 F.(2d) 865; *Bell v. Preferred Life Assurance Society of Montgomery, Ala*. (1943) 320 U.S. 238.

The addition at the end of subdivision (b) makes it clear that on a motion under Rule 12(b)(6) extraneous material may not be considered if the court excludes it, but that if the court does not exclude such material the motion shall be treated as a motion for summary judgment and disposed of as provided in Rule 56. It will also be observed that if a motion under Rule 12(b)(6) is thus converted into a summary judgment motion, the amendment insures that both parties shall be given a reasonable opportunity to submit affidavits and extraneous proofs to avoid taking a party by surprise through the conversion of the motion into a motion for summary judgment. In this manner and to this extent the amendment regularizes the practice above described. As the courts are already dealing with cases in this way, the effect of this amendment is really only to define the practice carefully and apply the requirements of the summary judgment rule in the disposition of the motion.

Subdivision (c). The sentence appended to subdivision (c) performs the same function and is grounded on the same reasons as the corresponding sentence added in subdivision (b).

Subdivision (d). The change here was made necessary because of the addition of defense (7) in subdivision (b).

Subdivision (e). References in this subdivision to a bill of particulars have been deleted, and the motion provided for is confined to one for a more definite statement, to be obtained only in cases where the movant cannot reasonably be required to frame an answer or other responsive pleading to the pleading in question. With respect to preparations for trial, the party is properly relegated to the various methods of examination and discovery provided in the rules for that purpose. *Slusher v. Jones* (E.D.Ky. 1943) 7 Fed.Rules Serv. 12e.231, Case 5, 3 F.R.D. 168; *Best Foods, Inc. v. General Mills, Inc*. (D.Del. 1943) 7 Fed.Rules Serv. 12e.231, Case 7, 3 F.R.D. 275; *Braden v. Callaway* (E.D.Tenn. 1943) 8 Fed.Rules Serv. 12e.231, Case 1 (". . . most courts . . . conclude that the definiteness required is only such as will be sufficient for the party to prepare responsive pleadings"). Accordingly, the reference to the 20 day time limit has also been eliminated, since the purpose of this present provision is to state a time period where the motion for a bill is made for the purpose of preparing for trial.

Rule 12(e) as originally drawn has been the subject of more judicial rulings than any other part of the rules, and has been much criticized by commentators, judges and members of the bar. See general discussion and cases cited in 1 *Moore's Federal Practice* (1938), Cum.Supplement §12.07, under "Page 657"; also, Holtzoff, *New Federal Procedure and the Courts* (1940) 35–41. And compare vote of Second Circuit Conference of Circuit and District Judges (June 1940) recommending the abolition of the bill of particulars; *Sun Valley Mfg. Co. v. Mylish* (E.D.Pa. 1944) 8 Fed.Rules Serv. 12e.231, Case 6 ("Our experience . . . has demonstrated not only that 'the office of the bill of particulars is fast becoming obsolete' . . . but that in view of the adequate discovery procedure available under the Rules, motions for bills of particulars should be abolished altogether."); *Walling v. American Steamship Co.* (W.D.N.Y. 1945) 4 F.R.D. 355, 8 Fed.Rules Serv. 12e.244, Case 8 (". . . the adoption of the rule was ill advised. It has led to confusion, duplication and delay.") The tendency of some courts freely to grant extended bills of particulars has served to neutralize any helpful benefits derived from Rule 8, and has overlooked the intended use of the rules on depositions and discovery. The words "or to prepare for trial"—eliminated by the proposed amendment—have sometimes been seized upon as grounds for compulsory statement in the opposing pleading of all the details which the movant would have to meet at the trial. On the other hand, many courts have in effect read these words out of the rule.

See *Walling v. Alabama Pipe Co*. (W.D.Mo. 1942) 6 Fed.Rules Serv. 12e.244, Case 7; *Fleming v. Mason & Dixon Lines, Inc*. (E.D.Tenn. 1941) 42 F.Supp. 230; *Kellogg Co. v. National Biscuit Co*. (D.N.J. 1941) 38 F.Supp. 643; *Brown v. H. L. Green Co*. (S.D.N.Y. 1943) 7 Fed.Rules Serv. 12e.231, Case 6; *Pedersen v. Standard Accident Ins. Co*. (W.D.Mo. 1945) 8 Fed.Rules Serv. 12e.231, Case 8; *Bowles v. Ohse* (D.Neb. 1945) 4 F.R.D. 403, 9 Fed.Rules Serv. 12e.231, Case 1; *Klages v. Cohen* (E.D.N.Y. 1945) 9 Fed.Rules Serv. 8a.25, Case 4; *Bowles v. Lawrence* (D.Mass. 1945) 8 Fed.Rules Serv. 12e.231, Case 19; *McKinney Tool & Mfg. Co. v. Hoyt* (N.D.Ohio 1945) 9 Fed.Rules Serv. 12e.235, Case 1; *Bowles v. Jack* (D.Minn. 1945) 5 F.R.D. 1, 9 Fed.Rules Serv. 12e.244, Case 9. And it has been urged from the bench that the phrase be stricken. *Poole v. White* (N.D.W.Va. 1941). 5 Fed.Rules Serv. 12e.231, Case 4, 2 F.R.D. 40. See also *Bowles v. Gabel* (W.D.Mo. 1946) 9 Fed.Rules Serv. 12e.244, Case 10 ("The courts have never favored that portion of the rules which undertook to justify a motion of this kind for the purpose of aiding counsel in preparing his case for trial.").

Subdivision (f). This amendment affords a specific method of raising the insufficiency of a defense, a matter which has troubled some courts, although attack has been permitted in one way or another. See *Dysart v. Remington-Rand, Inc*. (D.Conn. 1939) 31 F.Supp. 296; *Eastman Kodak Co. v. McAuley* (S.D.N.Y. 1941) 4 Fed.Rules Serv. 12f.21, Case 8, 2 F.R.D. 21; *Schenley Distillers Corp. v. Renken* (E.D.S.C. 1940) 34 F.Supp. 678; *Yale Transport Corp. v. Yellow Truck & Coach Mfg. Co*. (S.D.N.Y. 1944) 3 F.R.D. 440; *United States v. Turner Milk Co*. (N.D.Ill. 1941) 4 Fed.Rules Serv. 12b.51, Case 3, 1 F.R.D. 643; *Teiger v. Stephan Oderwald, Inc*. (S.D.N.Y. 1940) 31 F.Supp. 626; *Teplitsky v. Pennsylvania R. Co*. (N.D.Ill. 1941) 38 F.Supp. 535; *Gallagher v. Carroll* (E.D.N.Y. 1939) 27 F.Supp. 568; *United States v. Palmer* (S.D.N.Y. 1939) 28 F.Supp. 936. And see *Indemnity Ins. Co. of North America v. Pan American Airways, Inc*. (S.D.N.Y. 1944) 58 F.Supp. 338; Commentary, *Modes of Attacking Insufficient Defenses in the Answer* (1939) 1 Fed.Rules Serv. 669 (1940) 2 Fed.Rules Serv. 640.

Subdivision (g). The change in title conforms with the companion provision in subdivision (h).

The alteration of the "except" clause requires that other than provided in subdivision (h) a party who resorts to a motion to raise defenses specified in the rule, must include in one motion all that are then available to him. Under the original rule defenses which could be raised by motion were divided into two groups which could be the subjects of two successive motions.

Subdivision (h). The addition of the phrase relating to indispensable parties is one of necessity.

Notes of Advisory Committee on Rules—1963 Amendment

This amendment conforms to the amendment of Rule 4(e). See also the Advisory Committee's Note to amended Rule 4(b).

Notes of Advisory Committee on Rules—1966 Amendment

Subdivision (b)(7). The terminology of this subdivision is changed to accord with the amendment of Rule 19. See the Advisory Committee's Note to Rule 19, as amended, especially the third paragraph therein before the caption "Subdivision (c)."

Subdivision (g). Subdivision (g) has forbidden a defendant who makes a preanswer motion under this rule from making a further motion presenting any defense or objection which was available to him at the time he made the first motion and which he could have included, but did not in fact include therein. Thus if the defendant moves before answer to dismiss the complaint for failure to state a claim, he is barred from making a further motion presenting the defense of improper venue, if that defense was available to him when he made his original motion. Amended subdivision (g) is to the same effect. This required consolidation of defenses and objections in a Rule 12 motion is salutary in that it works against piecemeal consideration of a case. For exceptions to the requirement of consolidation, see the last clause of subdivision (g), referring to new subdivision (h)(2).

Subdivision (h). The question has arisen whether an omitted defense which cannot be made the basis of a second motion may nevertheless be pleaded in the answer. Subdivision (h) called for waiver of "* * * defenses and objections which he [defendant] does not present * * * by motion * * * or, if he has made no motion, in his answer * * *." If the clause "if he has made no motion," was read literally, it seemed that the omitted defense was waived and could not be pleaded in the answer. On the other hand, the clause might be read as adding nothing of substance to the preceding words; in that event it appeared that a defense was not waived by reason of being omitted from the motion and might be set up in the answer. The decisions were divided. Favoring waiver, see *Keefe v. Derounian,* 6 F.R.D. 11 (N.D.Ill. 1946); *Elbinger v. Precision Metal Workers Corp*., 18 F.R.D. 467 (E.D.Wis. 1956); see also *Rensing v. Turner Aviation Corp*., 166 F.Supp. 790 (N.D.Ill. 1958); *P. Beiersdorf & Co. v. Duke Laboratories, Inc*., 10 F.R.D. 282 (S.D.N.Y. 1950); *Neset v. Christensen,* 92 F.Supp. 78 (E.D.N.Y. 1950). Opposing waiver, see *Phillips v. Baker*, 121 F.2d 752 (9th Cir. 1941); *Crum v. Graham*, 32 F.R.D. 173 (D.Mont. 1963) (regretfully following the Phillips case); see also *Birnbaum v. Birrell*, 9 F.R.D.

72 (S.D.N.Y. 1948); *Johnson v. Joseph Schlitz Brewing Co*., 33 F.Supp. 176 (E.D.Tenn. 1940); cf. *Carter v. American Bus Lines, Inc*., 22 F.R.D. 323 (D.Neb. 1958).

Amended subdivision (h)(1)(A) eliminates the ambiguity and states that certain specified defenses which were available to a party when he made a preanswer motion, but which he omitted from the motion, are waived. The specified defenses are lack of jurisdiction over the person, improper venue, insufficiency of process, and insufficiency of service of process (see Rule 12(b)(2)–(5)). A party who by motion invites the court to pass upon a threshold defense should bring forward all the specified defenses he then has and thus allow the court to do a reasonably complete job. The waiver reinforces the policy of subdivision (g) forbidding successive motions.

By amended subdivision (h)(1)(B), the specified defenses, even if not waived by the operation of (A), are waived by the failure to raise them by a motion under Rule 12 or in the responsive pleading or any amendment thereof to which the party is entitled as a matter of course. The specified defenses are of such a character that they should not be delayed and brought up for the first time by means of an application to the court to amend the responsive pleading.

Since the language of the subdivisions is made clear, the party is put on fair notice of the effect of his actions and omissions and can guard himself against unintended waiver. It is to be noted that while the defenses specified in subdivision (h)(1) are subject to waiver as there provided, the more substantial defenses of failure to state a claim upon which relief can be granted, failure to join a party indispensable under Rule 19, and failure to state a legal defense to a claim (see Rule 12(b)(6), (7), (f)), as well as the defense of lack of jurisdiction over the subject matter (see Rule 12(b)(1)), are expressly preserved against waiver by amended subdivision (h)(2) and (3).

Notes of Advisory Committee on Rules—1987 Amendment

The amendments are technical. No substantive change is intended.

Notes of Advisory Committee on Rules—1993 Amendment

Subdivision (a) is divided into paragraphs for greater clarity, and paragraph (1)(B) is added to reflect amendments to Rule 4. Consistent with Rule 4(d)(3), a defendant that timely waives service is allowed 60 days from the date the request was mailed in which to respond to the complaint, with an additional 30 days afforded if the request was sent out of the country. Service

is timely waived if the waiver is returned within the time specified in the request (30 days after the request was mailed, or 60 days if mailed out of the country) and before being formally served with process. Sometimes a plaintiff may attempt to serve a defendant with process while also sending the defendant a request for waiver of service; if the defendant executes the waiver of service within the time specified and before being served with process, it should have the longer time to respond afforded by waiving service.

The date of sending the request is to be inserted by the plaintiff on the face of the request for waiver and on the waiver itself. This date is used to measure the return day for the waiver form, so that the plaintiff can know on a day certain whether formal service of process will be necessary; it is also a useful date to measure the time for answer when service is waived. The defendant who returns the waiver is given additional time for answer in order to assure that it loses nothing by waiving service of process.

Committee Notes on Rules—2000 Amendment

Rule 12(a)(3)(B) is added to complement the addition of Rule 4(i)(2)(B). The purposes that underlie the requirement that service be made on the United States in an action that asserts individual liability of a United States officer or employee for acts occurring in connection with the performance of duties on behalf of the United States also require that the time to answer be extended to 60 days. Time is needed for the United States to determine whether to provide representation to the defendant officer or employee. If the United States provides representation, the need for an extended answer period is the same as in actions against the United States, a United States agency, or a United States officer sued in an official capacity.

An action against a former officer or employee of the United States is covered by subparagraph (3)(B) in the same way as an action against a present officer or employee. Termination of the relationship between the individual defendant and the United States does not reduce the need for additional time to answer.

GAP Report. No changes are recommended for Rule 12 as published.

Committee Notes on Rules—2007 Amendment

The language of Rule 12 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Former Rule 12(a)(4)(A) referred to an order that postpones disposition of a motion "until the trial on the merits." Rule 12(a)(4) now refers to postponing disposition "until trial." The new expression avoids the ambiguity that inheres in "trial on the merits," which may become confusing when there is a separate trial of a single issue or another event different from a single all-encompassing trial.

Changes Made After Publication and Comment. See Note to Rule 1, supra.

Committee Notes on Rules—2009 Amendment

The times set in the former rule at 10 or 20 days have been revised to 14 or 21 days. See the Note to Rule 6.

Rule 17. Plaintiff and Defendant; Capacity; Public Officers

(a) Real Party in Interest.

(1) *Designation in General.* An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

(A) an executor;

(B) an administrator;

(C) a guardian;

(D) a bailee;

(E) a trustee of an express trust;

(F) a party with whom or in whose name a contract has been made for another's benefit; and

(G) a party authorized by statute.

(2) *Action in the Name of the United States for Another's Use or Benefit.* When a federal statute so provides, an action for another's use or benefit must be brought in the name of the United States.

(3) *Joinder of the Real Party in Interest.* The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

(b) Capacity to Sue or Be Sued. Capacity to sue or be sued is determined as follows:

(1) for an individual who is not acting in a representative capacity, by the law of the individual's domicile;

(2) for a corporation, by the law under which it was organized; and

(3) for all other parties, by the law of the state where the court is located, except that:

(A) a partnership or other unincorporated association with no such capacity under that state's law may sue or be sued in its common name to enforce a substantive right existing under the United States Constitution or laws; and

(B) 28 U.S.C. §§754 and 959(a) govern the capacity of a receiver appointed by a United States court to sue or be sued in a United States court.

(c) Minor or Incompetent Person.

(1) *With a Representative.* The following representatives may sue or defend on behalf of a minor or an incompetent person:

(A) a general guardian;

(B) a committee;

(C) a conservator; or

(D) a like fiduciary.

(2) *Without a Representative.* A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action.

(d) Public Officer's Title and Name. A public officer who sues or is sued in an official capacity may be designated by official title rather than by name, but the court may order that the officer's name be added.

Notes

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 25, 1988, eff. Aug. 1, 1988; Pub. L. 100–690, title VII, §7049, Nov. 18, 1988, 102 Stat. 4401; Apr. 30, 2007, eff. Dec. 1, 2007.)

Notes of Advisory Committee on Rules—1937

Note to Subdivision (a). The real party in interest provision, except for the last clause which is new, is taken verbatim from [former] Equity Rule 37 (Parties Generally—Intervention), except that the word "expressly" has been omitted. For similar provisions see N.Y.C.P.A. (1937) §210; Wyo.Rev.Stat.Ann. (1931) §§89–501, 89–502, 89–503; *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 16, r. 8. See also Equity Rule 41 (Suit to Execute Trusts of Will—Heir as Party). For examples of statutes of the United States providing particularly for an action for the use or benefit of another in the name of the United States, see U.S.C., [former] Title 40, §270b (Suit by persons furnishing labor and material for work on public building contracts * * * may sue on a payment bond, "in the name of the United States for the use of the person suing") [now 40 U.S.C. §3133(b), (c)]; and U.S.C., Title 25, §201 (Penalties under laws relating to Indians—how recovered). Compare U.S.C., Title 26, [former] §1645(c) (Suits for

penalties, fines, and forfeitures, under this title, where not otherwise provided for, to be in name of United States).

Note to Subdivision (b). For capacity see generally Clark and Moore, *A New Federal Civil Procedure—II. Pleadings and Parties*, 44 Yale L.J. 1291, 1312–1317 (1935) and specifically *Coppedge v. Clinton*, 72 F.(2d) 531 (C.C.A.10th, 1934) (natural person); *David Lupton's Sons Co. v. Automobile Club of America*, 225 U.S. 489 (1912) (corporation); *Puerto Rico v. Russell & Co.*, 288 U.S. 476 (1933) (unincorporated ass'n.); *United Mine Workers of America v. Coronado Coal Co.*, 259 U.S. 344 (1922) (federal substantive right enforced against unincorporated association by suit against the association in its common name without naming all its members as parties). This rule follows the existing law as to such associations, as declared in the case last cited above. Compare *Moffat Tunnel League v. United States*, 289 U.S. 113 (1933). See note to Rule 23, clause (1).

Note to Subdivision (c). The provision for infants and incompetent persons is substantially [former] Equity Rule 70 (Suits by or Against Incompetents) with slight additions. Compare the more detailed English provisions, *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 16, r.r. 16–21.

Notes of Advisory Committee on Rules—1946 Amendment

The new matter [in subdivision (b)] makes clear the controlling character of Rule 66 regarding suits by or against a federal receiver in a federal court.

Notes of Advisory Committee on Rules—1948 Amendment

Since the statute states the capacity of a federal receiver to sue or be sued, a repetitive statement in the rule is confusing and undesirable.

Notes of Advisory Committee on Rules—1966 Amendment

The minor change in the text of the rule is designed to make it clear that the specific instances enumerated are not exceptions to, but illustrations of, the rule. These illustrations, of course, carry no negative implication to the effect that there are not other instances of recognition as the real party in interest of one whose standing as such may be in doubt. The enumeration is simply of cases in which there might be substantial doubt as to the issue but for the specific

enumeration. There are other potentially arguable cases that are not excluded by the enumeration. For example, the enumeration states that the promisee in a contract for the benefit of a third party may sue as real party in interest; it does not say, because it is obvious, that the third-party beneficiary may sue (when the applicable law gives him that right.)

The rule adds to the illustrative list of real parties in interest a bailee—meaning, of course, a bailee suing on behalf of the bailor with respect to the property bailed. (When the possessor of property other than the owner sues for an invasion of the possessory interest he is the real party in interest.) The word "bailee" is added primarily to preserve the admiralty practice whereby the owner of a vessel as bailee of the cargo, or the master of the vessel as bailee of both vessel and cargo, sues for damage to either property interest or both. But there is no reason to limit such a provision to maritime situations. The owner of a warehouse in which household furniture is stored is equally entitled to sue on behalf of the numerous owners of the furniture stored. Cf. *Gulf Oil Corp. v. Gilbert,* 330 U.S. 501 (1947).

The provision that no action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after the objection has been raised, for ratification, substitution, etc., is added simply in the interests of justice. In its origin the rule concerning the real party in interest was permissive in purpose: it was designed to allow an assignee to sue in his own name. That having been accomplished, the modern function of the rule in its negative aspect is simply to protect the defendant against a subsequent action by the party actually entitled to recover, and to insure generally that the judgment will have its proper effect as res judicata.

This provision keeps pace with the law as it is actually developing. Modern decisions are inclined to be lenient when an honest mistake has been made in choosing the party in whose name the action is to be filed—in both maritime and nonmaritime cases. See *Levinson v. Deupree,* 345 U.S. 648 (1953); *Link Aviation, Inc. v. Downs*, 325 F.2d 613 (D.C.Cir. 1963). The provision should not be misunderstood or distorted. It is intended to prevent forfeiture when determination of the proper party to sue is difficult or when an understandable mistake has been made. It does not mean, for example, that, following an airplane crash in which all aboard were killed, an action may be filed in the name of John Doe (a fictitious person), as personal representative of Richard Roe (another fictitious person), in the hope that at a later time the attorney filing the action may substitute the real name of the real personal representative of a real victim, and have the benefit of suspension of the limitation period. It does not even mean, when an action is filed by the personal representative of John Smith, of Buffalo, in the good faith belief

that he was aboard the flight, that upon discovery that Smith is alive and well, having missed the fatal flight, the representative of James Brown, of San Francisco, an actual victim, can be substituted to take advantage of the suspension of the limitation period. It is, in cases of this sort, intended to insure against forfeiture and injustice—in short, to codify in broad terms the salutary principle of *Levinson v. Deupree*, 345 U.S. 648 (1953), and *Link Aviation, Inc. v. Downs*, 325 F.2d 613 (D.C.Cir. 1963).

Notes of Advisory Committee on Rules—1987 Amendment

The amendments are technical. No substantive change is intended.

Notes of Advisory Committee on Rules—1988 Amendment

The amendment is technical. No substantive change is intended.

Committee Notes on Rules—2007 Amendment

The language of Rule 17 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 17(d) incorporates the provisions of former Rule 25(d)(2), which fit better with Rule 17.

Amendment by Public Law

1988 —Subd. (a). Pub. L. 100–690, which directed amendment of subd. (a) by striking "with him", could not be executed because of the intervening amendment by the Court by order dated Apr. 25, 1988, eff. Aug. 1, 1988.

Rule 33. Interrogatories to Parties

(a) In General.

(1) *Number*. Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(1) and (2).

(2) *Scope*. An interrogatory may relate to any matter that may be inquired into under Rule 26(b). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.

(b) Answers and Objections.

(1) *Responding Party*. The interrogatories must be answered:

(A) by the party to whom they are directed; or

(B) if that party is a public or private corporation, a partnership, an association, or a governmental agency, by any officer or agent, who must furnish the information available to the party.

(2) *Time to Respond*. The responding party must serve its answers and any objections within 30 days after being served with the interrogatories. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

(3) *Answering Each Interrogatory*. Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.

(4) *Objections*. The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.

(5) *Signature.* The person who makes the answers must sign them, and the attorney who objects must sign any objections.

(c) Use. An answer to an interrogatory may be used to the extent allowed by the Federal Rules of Evidence.

(d) Option to Produce Business Records. If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:

(1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

(2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

Notes

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Mar. 30, 1970, eff. July 1, 1970; Apr. 29, 1980, eff. Aug. 1, 1980; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 29, 2015, eff. Dec. 1, 2015.)

Notes of Advisory Committee on Rules—1937

This rule restates the substance of [former] Equity Rule 58 (Discovery—Interrogatories—Inspection and Production of Documents—Admission of Execution or Genuineness), with modifications to conform to these rules.

Notes of Advisory Committee on Rules—1946 Amendment

The added second sentence in the first paragraph of Rule 33 conforms with a similar change in Rule 26(a) and will avoid litigation as to when the interrogatories may be served. Original Rule 33 does not state the times at which parties may serve written interrogatories upon each other. It has been the accepted view, however, that the times were the same in Rule 33 as those stated in

Rule 26(a). *United States v. American Solvents & Chemical Corp. of California* (D.Del. 1939) 30 F.Supp. 107; *Sheldon v. Great Lakes Transit Corp*. (W.D.N.Y. 1942) 5 Fed.Rules Serv. 33.11, Case 3; *Musher Foundation, Inc*. v. *Alba Trading Co*. (S.D.N.Y. 1941) 42 F.Supp. 281; 2 *Moore's Federal Practice*, (1938) 2621. The time within which leave of court must be secured by a plaintiff has been fixed at 10 days, in view of the fact that a defendant has 10 days within which to make objections in any case, which should give him ample time to engage counsel and prepare.

Further in the first paragraph of Rule 33, the word "service" is substituted for "delivery" in conformance with the use of the word "serve" elsewhere in the rule and generally throughout the rules. See also Note to Rule 13(a) herein. The portion of the rule dealing with practice on objections has been revised so as to afford a clearer statement of the procedure. The addition of the words "to interrogatories to which objection is made" insures that only the answers to the objectionable interrogatories may be deferred, and that the answers to interrogatories not objectionable shall be forthcoming within the time prescribed in the rule. Under the original wording, answers to all interrogatories may be withheld until objections, sometimes to but a few interrogatories, are determined. The amendment expedites the procedure of the rule and serves to eliminate the strike value of objections to minor interrogatories. The elimination of the last sentence of the original rule is in line with the policy stated subsequently in this note.

The added second paragraph in Rule 33 contributes clarity and specificity as to the use and scope of interrogatories to the parties. The field of inquiry will be as broad as the scope of examination under Rule 26(b). There is no reason why interrogatories should be more limited than depositions, particularly when the former represent an inexpensive means of securing useful information. See *Hoffman v. Wilson Line, Inc*. (E.D.Pa. 1946) 9 Fed.Rules Serv. 33.514, Case 2; *Brewster v. Technicolor, Inc*. (S.D.N.Y. 1941) 5 Fed.Rules Serv. 33.319, Case 3; *Kingsway Press, Inc. v. Farrell Publishing Corp*. (S.D.N.Y. 1939) 30 F.Supp. 775. Under present Rule 33 some courts have unnecessarily restricted the breadth of inquiry on various grounds. See *Auer v. Hershey Creamery Co*. (D.N.J. 1939) 2 Fed.Rules Serv. 33.31, Case 2, 1 F.R.D. 14; *Tudor v. Leslie* (D.Mass. 1940) 4 Fed.Rules Serv. 33.324, Case 1. Other courts have read into the rule the requirement that interrogation should be directed only towards "important facts", and have tended to fix a more or less arbitrary limit as to the number of interrogatories which could be asked in any case. See *Knox v. Alter* (W.D.Pa. 1942) 6 Fed.Rules Serv. 33.352, Case 1; *Byers Theaters, Inc. v. Murphy* (W.D.Va. 1940) 3 Fed.Rules Serv. 33.31, Case 3, 1 F.R.D. 286; *Coca-Cola Co. v. Dixi-Cola Laboratories, Inc*. (D.Md. 1939) 30 F.Supp. 275. See also comment on these restrictions in Holtzoff, *Instruments of Discovery Under Federal Rules of Civil Procedure*

(1942) 41 Mich.L.Rev. 205, 216–217. Under amended Rule 33, the party interrogated is given the right to invoke such protective orders under Rule 30(b) as are appropriate to the situation. At the same time, it is provided that the number of or number of sets of interrogatories to be served may not be limited arbitrarily or as a general policy to any particular number, but that a limit may be fixed only as justice requires to avoid annoyance, expense, embarrassment or oppression in individual cases. The party interrogated, therefore, must show the necessity for limitation on that basis. It will be noted that in accord with this change the last sentence of the present rule, restricting the sets of interrogatories to be served, has been stricken. In *J. Schoeneman, Inc. v. Brauer* (W.D.Mo. 1940) 3 Fed.Rules Serv. 33.31, Case 2, the court said: "Rule 33 . . . has been interpreted . . . as being just as broad in its implications as in the case of depositions . . . It makes no difference therefore, how many interrogatories are propounded. If the inquiries are pertinent the opposing party cannot complain." To the same effect, see *Canuso v. City of Niagara Falls* (W.D.N.Y. 1945) 8 Fed.Rules Serv. 33.352, Case 1; *Hoffman v. Wilson Line, Inc., supra.*

By virtue of express language in the added second paragraph of Rule 33, as amended, any uncertainty as to the use of the answers to interrogatories is removed. The omission of a provision on this score in the original rule has caused some difficulty. See, *e.g.*, *Bailey v. New England Mutual Life Ins. Co*. (S.D.Cal. 1940) 4 Fed.Rules Serv. 33.46, Case 1.

The second sentence of the second paragraph in Rule 33, as amended, concerns the situation where a party wishes to serve interrogatories on a party after having taken his deposition, or vice versa. It has been held that an oral examination of a party, after the submission to him and answer of interrogatories, would be permitted. *Howard v. State Marine Corp*. (S.D.N.Y. 1940) 4 Fed.Rules Serv. 33.62, Case 1, 1 F.R.D. 499; *Stevens v. Minder Construction Co*. (S.D.N.Y. 1943) 7 Fed.Rules Serv. 30b.31, Case 2. But objections have been sustained to interrogatories served after the oral deposition of a party had been taken. *McNally v. Simons* (S.D.N.Y. 1940) 3 Fed.Rules Serv. 33.61, Case 1, 1 F.R.D. 254; *Currier v. Currier* (S.D.N.Y. 1942) 6 Fed.Rules Serv. 33.61, Case 1. Rule 33, as amended, permits either interrogatories after a deposition or a deposition after interrogatories. It may be quite desirable or necessary to elicit additional information by the inexpensive method of interrogatories where a deposition has already been taken. The party to be interrogated, however, may seek a protective order from the court under Rule 30(b) where the additional deposition or interrogation works a hardship or injustice on the party from whom it is sought.

Notes of Advisory Committee on Rules—1970 Amendment

Subdivision (a). The mechanics of the operation of Rule 33 are substantially revised by the proposed amendment, with a view to reducing court intervention. There is general agreement that interrogatories spawn a greater percentage of objections and motions than any other discovery device. The Columbia Survey shows that, although half of the litigants resorted to depositions and about one-third used interrogatories, about 65 percent of the objections were made with respect to interrogatories and 26 percent related to depositions. See also Speck, *The Use of Discovery in United States District Courts*, 60 Yale L.J. 1132, 1144, 1151 (1951); Note, 36 Minn.L.Rev. 364, 379 (1952).

The procedures now provided in Rule 33 seem calculated to encourage objections and court motions. The time periods now allowed for responding to interrogatories—15 days for answers and 10 days for objections—are too short. The Columbia Survey shows that tardy response to interrogatories is common, virtually expected. The same was reported in Speck, *supra*, 60 Yale L.J. 1132, 1144. The time pressures tend to encourage objections as a means of gaining time to answer.

The time for objections is even shorter than for answers, and the party runs the risk that if he fails to object in time he may have waived his objections. *E.g., Cleminshaw v. Beech Aircraft Corp*., 21 F.R.D. 300 (D.Del. 1957); see 4 *Moore's Federal Practice*, 33.27 (2d ed. 1966); 2A Barron & Holtzoff, *Federal Practice and Procedure* 372–373 (Wright ed. 1961). It often seems easier to object than to seek an extension of time. Unlike Rules 30(d) and 37(a), Rule 33 imposes no sanction of expenses on a party whose objections are clearly unjustified.

Rule 33 assures that the objections will lead directly to court, through its requirement that they be served with a notice of hearing. Although this procedure does preclude an out-of-court resolution of the dispute, the procedure tends to discourage informal negotiations. If answers are served and they are thought inadequate, the interrogating party may move under Rule 37(a) for an order compelling adequate answers. There is no assurance that the hearing on objections and that on inadequate answers will be heard together.

The amendment improves the procedure of Rule 33 in the following respects:

(1) The time allowed for response is increased to 30 days and this time period applies to both answers and objections, but a defendant need not respond in less than 45 days after service of the summons and complaint upon him. As is true under existing law, the responding party who believes that some parts or all of the interrogatories are objectionable may choose to seek a

protective order under new Rule 26(c) or may serve objections under this rule. Unless he applies for a protective order, he is required to serve answers or objections in response to the interrogatories, subject to the sanctions provided in Rule 37(d). Answers and objections are served together, so that a response to each interrogatory is encouraged, and any failure to respond is easily noted.

(2) In view of the enlarged time permitted for response, it is no longer necessary to require leave of court for service of interrogatories. The purpose of this requirement—that defendant have time to obtain counsel before a response must be made—is adequately fulfilled by the requirement that interrogatories be served upon a party with or after service of the summons and complaint upon him.

Some would urge that the plaintiff nevertheless not be permitted to serve interrogatories with the complaint. They fear that a routine practice might be invited, whereby form interrogatories would accompany most complaints. More fundamentally, they feel that, since very general complaints are permitted in present-day pleading, it is fair that the defendant have a right to take the lead in serving interrogatories. (These views apply also to Rule 36.) The amendment of Rule 33 rejects these views, in favor of allowing both parties to go forward with discovery, each free to obtain the information he needs respecting the case.

(3) If objections are made, the burden is on the interrogating party to move under Rule 37(a) for a court order compelling answers, in the course of which the court will pass on the objections. The change in the burden of going forward does not alter the existing obligation of an objecting party to justify his objections. *E.g., Pressley v. Boehlke*, 33 F.R.D. 316 (W.D.N.C. 1963). If the discovering party asserts than an answer is incomplete or evasive, again he may look to Rule 37(a) for relief, and he should add this assertion to his motion to overrule objections. There is no requirement that the parties consult informally concerning their differences, but the new procedure should encourage consultation, and the court may by local rule require it.

The proposed changes are similar in approach to those adopted by California in 1961. See Calif.Code Civ.Proc. §2030(a). The experience of the Los Angeles Superior Court is informally reported as showing that the California amendment resulted in a significant reduction in court motions concerning interrogatories. Rhode Island takes a similar approach. See R. 33, *R.I.R.Civ.Proc. Official Draft*, p. 74 (Boston Law Book Co.).

A change is made in subdivision (a) which is not related to the sequence of procedures. The restriction to "adverse" parties is eliminated. The courts have generally construed this restriction as precluding interrogatories unless an issue between the parties is disclosed by the pleadings—even though the parties may have conflicting interests. *E.g.*, *Mozeika v. Kaufman Construction Co*., 25 F.R.D. 233 (E.D.Pa. 1960) (plaintiff and third-party defendant); *Biddle v. Hutchinson*, 24 F.R.D. 256 (M.D.Pa. 1959) (codefendants). The resulting distinctions have often been highly technical. In *Schlagenhauf v. Holder*, 379 U.S. 104 (1964), the Supreme Court rejected a contention that examination under Rule 35 could be had only against an "opposing" party, as not in keeping "with the aims of a liberal, nontechnical application of the Federal Rules." 379 U.S. at 116. Eliminating the requirement of "adverse" parties from Rule 33 brings it into line with all other discovery rules.

A second change in subdivision (a) is the addition of the term "governmental agency" to the listing of organizations whose answers are to be made by any officer or agent of the organization. This does not involve any change in existing law. Compare the similar listing in Rule 30(b)(6).

The duty of a party to supplement his answers to interrogatories is governed by a new provision in Rule 26(e).

Subdivision (b). There are numerous and conflicting decisions on the question whether and to what extent interrogatories are limited to matters "of fact," or may elicit opinions, contentions, and legal conclusions. Compare, *e.g.*, *Payer, Hewitt & Co. v. Bellanca Corp*., 26 F.R.D. 219 (D.Del. 1960) (opinions bad); *Zinsky v. New York Central R.R.*, 36 F.R.D. 680 (N.D.Ohio 1964) (factual opinion or contention good, but legal theory bad); *United States v. Carter Products, Inc*., 28 F.R.D. 373 (S.D.N.Y.1961) (factual contentions and legal theories bad) with *Taylor v. Sound Steamship Lines, Inc*., 100 F.Supp. 388 (D.Conn. 1951) (opinions good), *Bynum v. United States*, 36 F.R.D. 14 (E.D.La. 1964) (contentions as to facts constituting negligence good). For lists of the many conflicting authorities, see 4 *Moore's Federal Practice* 33.17 (2d ed. 1966); 2A Barron & Holtzoff, *Federal Practice and Procedure* §768 (Wright ed. 1961).

Rule 33 is amended to provide that an interrogatory is not objectionable merely because it calls for an opinion or contention that relates to fact or the application of law to fact. Efforts to draw sharp lines between facts and opinions have invariably been unsuccessful, and the clear trend of the cases is to permit "factual" opinions. As to requests for opinions or contentions that call for the application of law to fact, they can be most useful in narrowing and sharpening the issues,

which is a major purpose of discovery. See *Diversified Products Corp. v. Sports Center Co.*, 42 F.R.D. 3 (D.Md. 1967); Moore, *supra;* Field & McKusick, *Maine Civil Practice* §26.18 (1959). On the other hand, under the new language interrogatories may not extend to issues of "pure law," *i.e.*, legal issues unrelated to the facts of the case. *Cf. United States v. Maryland & Va. Milk Producers Assn., Inc.*, 22 F.R.D. 300 (D.D.C. 1958).

Since interrogatories involving mixed questions of law and fact may create disputes between the parties which are best resolved after much or all of the other discovery has been completed, the court is expressly authorized to defer an answer. Likewise, the court may delay determination until pretrial conference, if it believes that the dispute is best resolved in the presence of the judge.

The principal question raised with respect to the cases permitting such interrogatories is whether they reintroduce undesirable aspects of the prior pleading practice, whereby parties were chained to misconceived contentions or theories, and ultimate determination on the merits was frustrated. See James, *The Revival of Bills of Particulars under the Federal Rules*, 71 Harv.L.Rev. 1473 (1958). But there are few if any instances in the recorded cases demonstrating that such frustration has occurred. The general rule governing the use of answers to interrogatories is that under ordinary circumstances they do not limit proof. See *e.g., McElroy v. United Air Lines, Inc.*, 21 F.R.D. 100 (W.D.Mo. 1967); *Pressley v. Boehlke*, 33 F.R.D. 316, 317 (W.D.N.C. 1963). Although in exceptional circumstances reliance on an answer may cause such prejudice that the court will hold the answering party bound to his answer, *e.g., Zielinski v. Philadelphia Piers, Inc.*, 139 F.Supp. 408 (E.D.Pa. 1956), the interrogating party will ordinarily not be entitled to rely on the unchanging character of the answers he receives and cannot base prejudice on such reliance. The rule does not affect the power of a court to permit withdrawal or amendment of answers to interrogatories.

The use of answers to interrogatories at trial is made subject to the rules of evidence. The provisions governing use of depositions, to which Rule 33 presently refers, are not entirely apposite to answers to interrogatories, since deposition practice contemplates that all parties will ordinarily participate through cross-examination. See 4 *Moore's Federal Practice* 33.29[1] (2 ed. 1966).

Certain provisions are deleted from subdivision (b) because they are fully covered by new Rule 26(c) providing for protective orders and Rules 26(a) and 26(d). The language of the subdivision is thus simplified without any change of substance.

Subdivision (c). This is a new subdivision, adopted from Calif.Code Civ.Proc. §2030(c), relating especially to interrogatories which require a party to engage in burdensome or expensive research into his own business records in order to give an answer. The subdivision gives the party an option to make the records available and place the burden of research on the party who seeks the information. "This provision, without undermining the liberal scope of interrogatory discovery, places the burden of discovery upon its potential benefitee," Louisell, *Modern California Discovery*, 124–125 (1963), and alleviates a problem which in the past has troubled Federal courts. See Speck, *The Use of Discovery in United States District Courts*, 60 Yale L.J. 1132, 1142–1144 (1951). The interrogating party is protected against abusive use of this provision through the requirement that the burden of ascertaining the answer be substantially the same for both sides. A respondent may not impose on an interrogating party a mass of records as to which research is feasible only for one familiar with the records. At the same time, the respondent unable to invoke this subdivision does not on that account lose the protection available to him under new Rule 26(c) against oppressive or unduly burdensome or expensive interrogatories. And even when the respondent successfully invokes the subdivision, the court is not deprived of its usual power, in appropriate cases, to require that the interrogating party reimburse the respondent for the expense of assembling his records and making them intelligible.

Notes of Advisory Committee on Rules—1980 Amendment

Subdivision (c). The Committee is advised that parties upon whom interrogatories are served have occasionally responded by directing the interrogating party to a mass of business records or by offering to make all of their records available, justifying the response by the option provided by this subdivision. Such practices are an abuse of the option. A party who is permitted by the terms of this subdivision to offer records for inspection in lieu of answering an interrogatory should offer them in a manner that permits the same direct and economical access that is available to the party. If the information sought exists in the form of compilations, abstracts or summaries then available to the responding party, those should be made available to the interrogating party. The final sentence is added to make it clear that a responding party has the duty to specify, by category and location, the records from which answers to interrogatories can be derived.

Notes of Advisory Committee on Rules—1993 Amendment

Purpose of Revision. The purpose of this revision is to reduce the frequency and increase the efficiency of interrogatory practice. The revision is based on experience with local rules. For

ease of reference, subdivision (a) is divided into two subdivisions and the remaining subdivisions renumbered.

Subdivision (a). Revision of this subdivision limits interrogatory practice. Because Rule 26(a)(1)–(3) requires disclosure of much of the information previously obtained by this form of discovery, there should be less occasion to use it. Experience in over half of the district courts has confirmed that limitations on the number of interrogatories are useful and manageable. Moreover, because the device can be costly and may be used as a means of harassment, it is desirable to subject its use to the control of the court consistent with the principles stated in Rule 26(b)(2), particularly in multi-party cases where it has not been unusual for the same interrogatory to be propounded to a party by more than one of its adversaries.

Each party is allowed to serve 25 interrogatories upon any other party, but must secure leave of court (or a stipulation from the opposing party) to serve a larger number. Parties cannot evade this presumptive limitation through the device of joining as "subparts" questions that seek information about discrete separate subjects. However, a question asking about communications of a particular type should be treated as a single interrogatory even though it requests that the time, place, persons present, and contents be stated separately for each such communication.

As with the number of depositions authorized by Rule 30, leave to serve additional interrogatories is to be allowed when consistent with Rule 26(b)(2). The aim is not to prevent needed discovery, but to provide judicial scrutiny before parties make potentially excessive use of this discovery device. In many cases it will be appropriate for the court to permit a larger number of interrogatories in the scheduling order entered under Rule 16(b).

Unless leave of court is obtained, interrogatories may not be served prior to the meeting of the parties under Rule 26(f).

When a case with outstanding interrogatories exceeding the number permitted by this rule is removed to federal court, the interrogating party must seek leave allowing the additional interrogatories, specify which twenty-five are to be answered, or resubmit interrogatories that comply with the rule. Moreover, under Rule 26(d), the time for response would be measured from the date of the parties' meeting under Rule 26(f). See Rule 81(c), providing that these rules govern procedures after removal.

Subdivision (b). A separate subdivision is made of the former second paragraph of subdivision (a). Language is added to paragraph (1) of this subdivision to emphasize the duty of the responding party to provide full answers to the extent not objectionable. If, for example, an interrogatory seeking information about numerous facilities or products is deemed objectionable, but an interrogatory seeking information about a lesser number of facilities or products would not have been objectionable, the interrogatory should be answered with respect to the latter even though an objection is raised as to the balance of the facilities or products. Similarly, the fact that additional time may be needed to respond to some questions (or to some aspects of questions) should not justify a delay in responding to those questions (or other aspects of questions) that can be answered within the prescribed time.

Paragraph (4) is added to make clear that objections must be specifically justified, and that unstated or untimely grounds for objection ordinarily are waived. Note also the provisions of revised Rule 26(b)(5), which require a responding party to indicate when it is withholding information under a claim of privilege or as trial preparation materials.

These provisions should be read in light of Rule 26(g), authorizing the court to impose sanctions on a party and attorney making an unfounded objection to an interrogatory.

Subdivisions (c) and (d). The provisions of former subdivisions (b) and (c) are renumbered.

Committee Notes on Rules—2006 Amendment

Rule 33(d) is amended to parallel Rule 34(a) by recognizing the importance of electronically stored information. The term "electronically stored information" has the same broad meaning in Rule 33(d) as in Rule 34(a). Much business information is stored only in electronic form; the Rule 33(d) option should be available with respect to such records as well.

Special difficulties may arise in using electronically stored information, either due to its form or because it is dependent on a particular computer system. Rule 33(d) allows a responding party to substitute access to documents or electronically stored information for an answer only if the burden of deriving the answer will be substantially the same for either party. Rule 33(d) states that a party electing to respond to an interrogatory by providing electronically stored information must ensure that the interrogating party can locate and identify it "as readily as can the party served," and that the responding party must give the interrogating party a "reasonable opportunity to examine, audit, or inspect" the information. Depending on the circumstances,

satisfying these provisions with regard to electronically stored information may require the responding party to provide some combination of technical support, information on application software, or other assistance. The key question is whether such support enables the interrogating party to derive or ascertain the answer from the electronically stored information as readily as the responding party. A party that wishes to invoke Rule 33(d) by specifying electronically stored information may be required to provide direct access to its electronic information system, but only if that is necessary to afford the requesting party an adequate opportunity to derive or ascertain the answer to the interrogatory. In that situation, the responding party's need to protect sensitive interests of confidentiality or privacy may mean that it must derive or ascertain and provide the answer itself rather than invoke Rule 33(d).

Changes Made after Publication and Comment. No changes are made to the rule text. The Committee Note is changed to reflect the sensitivities that limit direct access by a requesting party to a responding party's information system. If direct access to the responding party's system is the only way to enable a requesting party to locate and identify the records from which the answer may be ascertained, the responding party may choose to derive or ascertain the answer itself.

Committee Notes on Rules—2007 Amendment

The language of Rule 33 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

The final sentence of former Rule 33(a) was a redundant cross-reference to the discovery moratorium provisions of Rule 26(d). Rule 26(d) is now familiar, obviating any need to carry forward the redundant cross-reference.

Former Rule 33(b)(5) was a redundant reminder of Rule 37(a) procedure and is omitted as no longer useful.

Former Rule 33(c) stated that an interrogatory "is not necessarily objectionable merely because an answer * * * involves an opinion or contention * * *." "[I]s not necessarily" seemed to imply that the interrogatory might be objectionable merely for this reason. This implication has been ignored in practice. Opinion and contention interrogatories are used routinely. Amended Rule 33(a)(2) embodies the current meaning of Rule 33 by omitting "necessarily."

Changes Made After Publication and Comment. See Note to Rule 1, supra.

References in Text

The Federal Rules of Evidence, referred to in subd. (c), are set out in this Appendix.

Committee Notes on Rules—2015 Amendment

Rule 33 is amended in parallel with Rules 30 and 31 to reflect the recognition of proportionality in Rule 26(b)(1).

Rule 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes

(a) In General. A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(A) any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(B) any designated tangible things; or

(2) to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

(b) Procedure.

(1) *Contents of the Request.* The request:

(A) must describe with reasonable particularity each item or category of items to be inspected;

(B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(C) may specify the form or forms in which electronically stored information is to be produced.

(2) *Responses and Objections.*

(A) *Time to Respond.* The party to whom the request is directed must respond in writing within 30 days after being served or — if the request was delivered under Rule 26(d)(2) — within 30 days after the parties' first Rule 26(f) conference. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

(B) *Responding to Each Item.* For each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons. The responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection. The production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response.

(C) *Objections.* An objection must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest.

(D) *Responding to a Request for Production of Electronically Stored Information.* The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form—or if no form was specified in the request—the party must state the form or forms it intends to use.

(E) *Producing the Documents or Electronically Stored Information.* Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(iii) A party need not produce the same electronically stored information in more than one form.

(c) Nonparties. As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to permit an inspection.

Rule 44. Proving an Official Record

(a) Means of Proving.

(1) *Domestic Record.* Each of the following evidences an official record—or an entry in it—that is otherwise admissible and is kept within the United States, any state, district, or commonwealth, or any territory subject to the administrative or judicial jurisdiction of the United States:

(A) an official publication of the record; or

(B) a copy attested by the officer with legal custody of the record—or by the officer's deputy—and accompanied by a certificate that the officer has custody. The certificate must be made under seal:

(i) by a judge of a court of record in the district or political subdivision where the record is kept; or

(ii) by any public officer with a seal of office and with official duties in the district or political subdivision where the record is kept.

(2) *Foreign Record.*

(A) *In General.* Each of the following evidences a foreign official record—or an entry in it—that is otherwise admissible:

(i) an official publication of the record; or

(ii) the record—or a copy—that is attested by an authorized person and is accompanied either by a final certification of genuineness or by a certification under a treaty or convention to which the United States and the country where the record is located are parties.

(B) *Final Certification of Genuineness.* A final certification must certify the genuineness of the signature and official position of the attester or of any foreign official whose certificate of genuineness relates to the attestation or is in a chain of certificates of genuineness relating to the attestation. A final certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States.

(C) *Other Means of Proof.* If all parties have had a reasonable opportunity to investigate a foreign record's authenticity and accuracy, the court may, for good cause, either:

(i) admit an attested copy without final certification; or

(ii) permit the record to be evidenced by an attested summary with or without a final certification.

(b) Lack of a Record. A written statement that a diligent search of designated records revealed no record or entry of a specified tenor is admissible as evidence that the records contain no such record or entry. For domestic records, the statement must be authenticated under Rule 44(a)(1). For foreign records, the statement must comply with (a)(2)(C)(ii).

(c) Other Proof. A party may prove an official record—or an entry or lack of an entry in it—by any other method authorized by law.

Rule 44.1. Determining Foreign Law

A party who intends to raise an issue about a foreign country's law must give notice by a pleading or other writing. In determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination must be treated as a ruling on a question of law.

Rule 64. Seizing a Person or Property

(a) Remedies Under State Law—In General. At the commencement of and throughout an action, every remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment. But a federal statute governs to the extent it applies.

(b) Specific Kinds of Remedies. The remedies available under this rule include the following—however designated and regardless of whether state procedure requires an independent action:

• arrest;

• attachment;

• garnishment;

• replevin;

• sequestration; and

• other corresponding or equivalent remedies.

Rule 65. Injunctions and Restraining Orders

(a) Preliminary Injunction.

(1) *Notice.* The court may issue a preliminary injunction only on notice to the adverse party.

(2) *Consolidating the Hearing with the Trial on the Merits.* Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial.

(b) Temporary Restraining Order.

(1) *Issuing Without Notice.* The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

(2) *Contents; Expiration.* Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry—not to exceed 14 days—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(3) *Expediting the Preliminary-Injunction Hearing.* If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the

hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.

(4) *Motion to Dissolve.* On 2 days' notice to the party who obtained the order without notice—or on shorter notice set by the court—the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

(c) Security. The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. The United States, its officers, and its agencies are not required to give security.

(d) Contents and Scope of Every Injunction and Restraining Order.

(1) *Contents.* Every order granting an injunction and every restraining order must:

(A) state the reasons why it issued;

(B) state its terms specifically; and

(C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.

(2) *Persons Bound.* The order binds only the following who receive actual notice of it by personal service or otherwise:

(A) the parties;

(B) the parties' officers, agents, servants, employees, and attorneys; and

(C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).

(e) Other Laws Not Modified. These rules do not modify the following:

(1) any federal statute relating to temporary restraining orders or preliminary injunctions in actions affecting employer and employee;

(2) 28 U.S.C. §2361, which relates to preliminary injunctions in actions of interpleader or in the nature of interpleader; or

(3) 28 U.S.C. §2284, which relates to actions that must be heard and decided by a three-judge district court.

(f) Copyright Impoundment. This rule applies to copyright-impoundment proceedings.

Rule 81. Applicability of the Rules in General; Removed Actions

(a) Applicability to Particular Proceedings.

(1) *Prize Proceedings.* These rules do not apply to prize proceedings in admiralty governed by 10 U.S.C. §§7651–7681.

(2) *Bankruptcy.* These rules apply to bankruptcy proceedings to the extent provided by the Federal Rules of Bankruptcy Procedure.

(3) *Citizenship.* These rules apply to proceedings for admission to citizenship to the extent that the practice in those proceedings is not specified in federal statutes and has previously conformed to the practice in civil actions. The provisions of 8 U.S.C. §1451 for service by publication and for answer apply in proceedings to cancel citizenship certificates.

(4) *Special Writs.* These rules apply to proceedings for habeas corpus and for quo warranto to the extent that the practice in those proceedings:

(A) is not specified in a federal statute, the Rules Governing Section 2254 Cases, or the Rules Governing Section 2255 Cases; and

(B) has previously conformed to the practice in civil actions.

(5) *Proceedings Involving a Subpoena.* These rules apply to proceedings to compel testimony or the production of documents through a subpoena issued by a United States officer or agency under a federal statute, except as otherwise provided by statute, by local rule, or by court order in the proceedings.

(6) *Other Proceedings.* These rules, to the extent applicable, govern proceedings under the following laws, except as these laws provide other procedures:

(A) 7 U.S.C. §§292, 499g(c), for reviewing an order of the Secretary of Agriculture;

(B) 9 U.S.C., relating to arbitration;

(C) 15 U.S.C. §522, for reviewing an order of the Secretary of the Interior;

(D) 15 U.S.C. §715d(c), for reviewing an order denying a certificate of clearance;

(E) 29 U.S.C. §§159, 160, for enforcing an order of the National Labor Relations Board;

(F) 33 U.S.C. §§918, 921, for enforcing or reviewing a compensation order under the Longshore and Harbor Workers' Compensation Act; and

(G) 45 U.S.C. §159, for reviewing an arbitration award in a railway-labor dispute.

(b) Scire Facias and Mandamus. The writs of scire facias and mandamus are abolished. Relief previously available through them may be obtained by appropriate action or motion under these rules.

(c) Removed Actions.

(1) *Applicability.* These rules apply to a civil action after it is removed from a state court.

(2) *Further Pleading.* After removal, repleading is unnecessary unless the court orders it. A defendant who did not answer before removal must answer or present other defenses or objections under these rules within the longest of these periods:

(A) 21 days after receiving—through service or otherwise—a copy of the initial pleading stating the claim for relief;

(B) 21 days after being served with the summons for an initial pleading on file at the time of service; or

(C) 7 days after the notice of removal is filed.

(3) *Demand for a Jury Trial.*

(A) *As Affected by State Law.* A party who, before removal, expressly demanded a jury trial in accordance with state law need not renew the demand after removal. If the state law did not require an express demand for a jury trial, a party need not make one after removal unless the court orders the parties to do so within a specified time. The court must so order at a party's request and may so order on its own. A party who fails to make a demand when so ordered waives a jury trial.

(B) *Under Rule 38.* If all necessary pleadings have been served at the time of removal, a party entitled to a jury trial under Rule 38 must be given one if the party serves a demand within 14 days after:

(i) it files a notice of removal; or

(ii) it is served with a notice of removal filed by another party.

(d) Law Applicable.

(1) *"State Law" Defined.* When these rules refer to state law, the term "law" includes the state's statutes and the state's judicial decisions.

(2) *"State" Defined.* The term "state" includes, where appropriate, the District of Columbia and any United States commonwealth or territory.

(3) *"Federal Statute" Defined in the District of Columbia.* In the United States District Court for the District of Columbia, the term "federal statute" includes any Act of Congress that applies locally to the District.

Rule B. In Personam Actions: Attachment and Garnishment

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

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

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

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

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

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

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

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

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

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

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

(3) Answer.

(a) *By Garnishee.* The garnishee shall serve an answer, together with answers to any interrogatories served with the complaint, within 21 days after service of process upon the garnishee. Interrogatories to the garnishee may be served with the complaint without leave of court. If the garnishee refuses or neglects to answer on oath as to the debts, credits, or effects of the defendant in the garnishee's hands, or any interrogatories concerning such debts, credits, and effects that may be propounded by the plaintiff, the court may award compulsory process against the garnishee. If the garnishee admits any debts, credits, or effects, they shall be held in the garnishee's hands or paid into the registry of the court, and shall be held in either case subject to the further order of the court.

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

Spirit is Law, Law is Nature, Nature is Family, and Family is Government