111th Congress, 1st Session – – – – – – – – – – – – – – House Document 111–29

AMENDMENTS TO THE FEDERAL RULES OF CIVIL PROCEDURE

COMMUNICATION

FROM

THE CHIEF JUSTICE, THE SUPREME COURT OF THE UNITED STATES

TRANSMITTING

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

APRIL 21, 2009.—Referred to the Committee on the Judiciary and ordered to be printed

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SUPREME COURT OF THE UNITED STATES,
Washington, DC, March 25, 2009.

Hon. NANCY PELOSI,
Speaker of the House of Representatives,
Washington, DC.

DEAR MADAM SPEAKER: I have the honor to submit to the Congress the amendments to the Federal Rules of Civil Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

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

Sincerely,

JOHN G. ROBERTS, JR.,
Chief Justice.

March 26, 2009

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. That the Federal Rules of Civil Procedure be, and they hereby are, amended by including therein amendments to Civil Rules 6, 12, 13, 14, 15, 23, 27, 32, 38, 48, 50, 52, 53, 54, 55, 56, 59, 62, 65, 68, 71.1, 72, and 81, and new Rule 62.1, and Supplemental Rules B, C, and G, and Illustrative Civil Forms 3, 4, and 60.

[See infra., pp. ___ ___ ___.]

2. That the foregoing amendments to the Federal Rules of Civil Procedure shall take effect on December 1, 2009, and shall govern in all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

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

AMENDMENTS TO THE FEDERAL RULES OF CIVIL PROCEDURE

Rule 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.

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(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.

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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.

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(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.

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(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.

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Rule 13. Counterclaim and Crossclaim

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(f) [Abrogated]

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Rule 14. Third-Party Practice

(a) When a Defending Party May Bring in a Third Party.

(1) ***Timing of the Summons and Complaint.*** A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must, by motion, obtain the court's leave if it files the third-party complaint more than 14 days after serving its original answer.

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Rule 15. Amended and Supplemental Pleadings

(a) Amendments Before Trial.

(1) ***Amending as a Matter of Course.*** A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) ***Other Amendments.*** In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(3) ***Time to Respond.*** Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

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Rule 23. Class Actions

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(f) **Appeals.** A court of appeals may permit an appeal from an order granting or denying class-action certification under this rule if a petition for permission to appeal is filed with the circuit clerk within 14 days after the order is entered. An appeal does not stay proceedings in the district court unless the district judge or the court of appeals so orders.

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Rule 27. Depositions to Perpetuate Testimony

(a) Before an Action Is Filed.

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(2) ***Notice and Service.*** At least 21 days before the hearing date, the petitioner must serve each expected adverse party with a copy of the petition and a notice stating the time and place of the hearing. The notice may be served either inside or outside the district or state in the manner provided in Rule 4. If that service cannot be made with reasonable diligence on an expected adverse party, the court may order service by publication or otherwise. The court must appoint an attorney to represent persons not served in the manner provided in Rule 4 and to cross-examine the deponent if an unserved person is not otherwise represented. If any

expected adverse party is a minor or is incompetent, Rule 17(c) applies.

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Rule 32. Using Depositions in Court Proceedings

(a) Using Depositions.

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(5) ***Limitations on Use.***

(A) *Deposition Taken on Short Notice.* A deposition must not be used against a party who, having received less than 14 days' notice of the deposition, promptly moved for a protective order under Rule 26(c)(1)(B) requesting that it not be taken or be taken at a different time or place — and this motion was still pending when the deposition was taken.

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(d) Waiver of Objections.

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(3) ***To the Taking of the Deposition.***

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(C) *Objection to a Written Question.* An objection to the form of a written question under Rule 31 is waived if not served in writing on the party submitting the question within the time for serving responsive questions or, if the question is a recross-question, within 7 days after being served with it.

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Rule 38. Right to a Jury Trial; Demand

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(b) Demand. On any issue triable of right by a jury, a party may demand a jury trial by:

(1) serving the other parties with a written demand — which may be included in a pleading — no later than 14 days after the last pleading directed to the issue is served; and

(2) filing the demand in accordance with Rule 5(d).

(c) **Specifying Issues.** In its demand, a party may specify the issues that it wishes to have tried by a jury; otherwise, it is considered to have demanded a jury trial on all the issues so triable. If the party has demanded a jury trial on only some issues, any other party may — within 14 days after being served with the demand or within a shorter time ordered by the court — serve a demand for a jury trial on any other or all factual issues triable by jury.

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Rule 48. Number of Jurors; Verdict; Polling

(a) Number of Jurors. A jury must begin with at least 6 and no more than 12 members, and each juror must participate in the verdict unless excused under Rule 47(c).

(b) Verdict. Unless the parties stipulate otherwise, the verdict must be unanimous and must be returned by a jury of at least 6 members.

(c) Polling. After a verdict is returned but before the jury is discharged, the court must on a party's request, or may on its own, poll the jurors individually. If the poll reveals a lack of unanimity or lack of assent by the number of jurors that the parties stipulated to, the court may direct the jury to deliberate further or may order a new trial.

Rule 50. Judgment as a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling

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(b) Renewing the Motion After Trial; Alternative Motion for a New Trial. If the court does not grant a motion for judgment as a matter of law made under Rule 50(a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. No later than 28 days after the entry of judgment — or if the motion addresses a jury issue not decided by a verdict, no later than 28 days after the jury was discharged — the movant may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59. In ruling on the renewed motion, the court may:

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(d) Time for a Losing Party's New-Trial Motion. Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered must be filed no later than 28 days after the entry of the judgment.

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

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(b) Amended or Additional Findings. On a party's motion filed no later than 28 days after the entry of judgment, the court may amend its findings — or make additional findings — and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59.

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Rule 53. Masters

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(f) Action on the Master's Order, Report, or Recommendations.

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(2) ***Time to Object or Move to Adopt or Modify.*** A party may file objections to — or a motion to adopt or modify — the master's order, report, or recommendations no later than 21 days after a copy is served, unless the court sets a different time.

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Rule 54. Judgment; Costs

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(d) Costs; Attorney's Fees.

(1) ***Costs Other Than Attorney's Fees.*** Unless a federal statute, these rules, or a court order provides otherwise, costs — other than

attorney's fees — should be allowed to the prevailing party. But costs against the United States, its officers, and its agencies may be imposed only to the extent allowed by law. The clerk may tax costs on 14 days' notice. On motion served within the next 7 days, the court may review the clerk's action.

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Rule 55. Default; Default Judgment

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(b) Entering a Default Judgment.

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(2) ***By the Court.*** In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like

fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals — preserving any federal statutory right to a jury trial — when, to enter or effectuate judgment, it needs to:

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Rule 56. Summary Judgment

(a) **By a Claiming Party.** A party claiming relief may move, with or without supporting affidavits, for summary judgment on all or part of the claim.

(b) **By a Defending Party.** A party against whom relief is sought may move, with or without supporting

affidavits, for summary judgment on all or part of the claim.

(c) Time for a Motion, Response, and Reply; Proceedings.

(1) These times apply unless a different time is set by local rule or the court orders otherwise:

(A) a party may move for summary judgment at any time until 30 days after the close of all discovery;

(B) a party opposing the motion must file a response within 21 days after the motion is served or a responsive pleading is due, whichever is later; and

(C) the movant may file a reply within 14 days after the response is served.

(2) The judgment sought should be rendered if the pleadings, the discovery and disclosure materials

on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.

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Rule 59. New Trial; Altering or Amending a Judgment

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(b) **Time to File a Motion for a New Trial.** A motion for a new trial must be filed no later than 28 days after the entry of judgment.

(c) **Time to Serve Affidavits.** When a motion for a new trial is based on affidavits, they must be filed with the motion. The opposing party has 14 days after being served to file opposing affidavits. The court may permit reply affidavits.

(d) **New Trial on the Court's Initiative or for Reasons Not in the Motion.** No later than 28 days

after the entry of judgment, the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

(e) **Motion to Alter or Amend a Judgment.** A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

Rule 62. Stay of Proceedings to Enforce a Judgment

(a) **Automatic Stay; Exceptions for Injunctions, Receiverships, and Patent Accountings.** Except as stated in this rule, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 14 days have passed after its entry. But unless

the court orders otherwise, the following are not stayed after being entered, even if an appeal is taken:

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Rule 62.1. Indicative Ruling on a Motion for Relief That is Barred by a Pending Appeal

(a) Relief Pending Appeal. If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:

(1) defer considering the motion;

(2) deny the motion; or

(3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.

(b) Notice to the Court of Appeals. The movant must promptly notify the circuit clerk under Federal Rule of Appellate Procedure 12.1 if the district court states

that it would grant the motion or that the motion raises a substantial issue.

(c) Remand. The district court may decide the motion if the court of appeals remands for that purpose.

Rule 65. Injunctions and Restraining Orders

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(b) Temporary Restraining Order.

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(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.

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Rule 68. Offer of Judgment

(a) **Making an Offer; Judgment on an Accepted Offer.** At least 14 days before the date set for trial, a party defending against a claim may serve on an opposing party an offer to allow judgment on specified terms, with the costs then accrued. If, within 14 days after being served, the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. The clerk must then enter judgment.

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(c) Offer After Liability is Determined. When one party's liability to another has been determined but the extent of liability remains to be determined by further proceedings, the party held liable may make an offer of judgment. It must be served within a reasonable time — but at least 14 days — before the date set for a hearing to determine the extent of liability.

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Rule 71.1. Condemning Real or Personal Property

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(d) Process.

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(2) ***Contents of the Notice.***

(A) *Main Contents.* Each notice must name the court, the title of the action, and the defendant to whom it is directed. It must

describe the property sufficiently to identify it, but need not describe any property other than that to be taken from the named defendant. The notice must also state:

(i) that the action is to condemn property;

(ii) the interest to be taken;

(iii) the authority for the taking;

(iv) the uses for which the property is to be taken;

(v) that the defendant may serve an answer on the plaintiff's attorney within 21 days after being served with the notice;

(vi) that the failure to so serve an answer constitutes consent to the taking and to the court's authority to proceed with the action and fix the compensation; and

(vii) that a defendant who does not serve an answer may file a notice of appearance.

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(e) Appearance or Answer.

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(2) ***Answer.*** A defendant that has an objection or defense to the taking must serve an answer within 21 days after being served with the notice. The answer must:

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Rule 72. Magistrate Judges: Pretrial Order

(a) Nondispositive Matters. When a pretrial matter not dispositive of a party's claim or defense is referred to a magistrate judge to hear and decide, the magistrate judge must promptly conduct the required proceedings and, when appropriate, issue a written order stating the decision. A party may serve and file

objections to the order within 14 days after being served with a copy. A party may not assign as error a defect in the order not timely objected to. The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.

(b) Dispositive Motions and Prisoner Petitions.

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(2) ***Objections.*** Within 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. A party may respond to another party's objections within 14 days after being served with a copy. Unless the district judge orders otherwise, the objecting party must promptly arrange for transcribing the record, or

whatever portions of it the parties agree to or the magistrate judge considers sufficient.

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

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(c) Removed Actions.

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(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.***

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(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.

SUPPLEMENTAL RULES FOR ADMIRALTY OR MARITIME CLAIMS AND ASSET FORFEITURE ACTIONS

Rule B. In Personam Actions: Attachment and Garnishment

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(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.

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Rule C. In Rem Actions: Special Provisions

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(4) **Notice.** No notice other than execution of process is required when the property that is the subject of the action has been released under Rule E(5). If the property is not released within 14 days after execution, the plaintiff must promptly — or within the time that the court allows — give public notice of the action and arrest in a newspaper designated by court order and having general circulation in the

district, but publication may be terminated if the property is released before publication is completed. The notice must specify the time under Rule C(6) to file a statement of interest in or right against the seized property and to answer. This rule does not affect the notice requirements in an action to foreclose a preferred ship mortgage under 46 U.S.C. §§ 31301 et seq., as amended.

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(6) Responsive Pleading; Interrogatories.

(a) Statement of Interest; Answer. In an action in rem:

(i) a person who asserts a right of possession or any ownership interest in the property that is the subject of the action must file a verified statement of right or interest:

(A) within 14 days after the execution of process, or

(B) within the time that the court allows;

(ii) the statement of right or interest must describe the interest in the property that supports the person's demand for its restitution or right to defend the action;

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

(iv) a person who asserts a right of possession or any ownership interest must serve an answer within 21 days after filing the statement of interest or right.

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Rule G. Forfeiture Actions In Rem

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(4) Notice.

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(b) Notice to Known Potential Claimants.

(i) Direct Notice Required. The government must send notice of the action and a copy of the complaint to any person who reasonably appears to be a potential claimant on the facts known to the government before the end of the time for filing a claim under Rule G(5)(a)(ii)(B).

(ii) Content of the Notice. The notice must state:

(A) the date when the notice is sent;

(B) a deadline for filing a claim, at least 35 days after the notice is sent;

(C) that an answer or a motion under Rule 12 must be filed no later than 21 days after filing the claim; and

(D) the name of the government attorney to be served with the claim and answer.

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(5) Responsive Pleadings.

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(b) Answer. A claimant must serve and file an answer to the complaint or a motion under Rule 12 within 21 days after filing the claim. A claimant waives an objection to in rem jurisdiction or to venue if the objection is not made by motion or stated in the answer.

(6) Special Interrogatories.

(a) Time and Scope. The government may serve special interrogatories limited to the claimant's

identity and relationship to the defendant property without the court's leave at any time after the claim is filed and before discovery is closed. But if the claimant serves a motion to dismiss the action, the government must serve the interrogatories within 21 days after the motion is served.

(b) Answers or Objections. Answers or objections to these interrogatories must be served within 21 days after the interrogatories are served.

(c) Government's Response Deferred. The government need not respond to a claimant's motion to dismiss the action under Rule G(8)(b) until 21 days after the claimant has answered these interrogatories.

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JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

November 26, 2008

MEMORANDUM

To: The Chief Justice of the United States and the Associate Justices of the Supreme Court

From: James C. Duff

RE: TRANSMITTAL OF PROPOSED AMENDMENT TO THE FEDERAL RULES OF CIVIL PROCEDURE

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I transmit herewith for consideration of the Court proposed amendments to Rules 6, 12, 13, 14, 15, 23, 27, 32, 38, 48, 50, 52, 53, 54, 55, 56, 59, 62, 65, 68, 71.1, 72, and 81, and new Rule 62.1 of the Federal Rules of Civil Procedure; Rules B, C, and G of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions; and Illustrative Civil Forms 3, 4, and 60, which were approved by the Judicial Conference at its September 2008 session. The Judicial Conference recommends that the amendments and new rule be approved by the Court and transmitted to the Congress pursuant to law.

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

Attachments

EXCERPT FROM THE
REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

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

* * * * *

TIME-COMPUTATION PROJECT

In consultation with the Committee's Time-Computation Subcommittee, the Appellate, Bankruptcy, Civil, and Criminal Rules Advisory Committees proposed amendments to Appellate Rule 26, Bankruptcy Rule 9006, Civil Rule 6, and Criminal Rule 45 to make the method of computing time consistent, simpler, and clearer. In tandem with this work, each advisory rules committee also reviewed and proposed changes to the time periods in all the rules to ensure that every deadline is reasonable and that changing the time-computation method did not have the effect of shortening existing time periods.

The time-computation project was launched in response to frequent complaints about the time, energy, and anxiety expended in calculating time periods, the potential for error, and the anomalous results of the current computation provisions.

Proposed Rules Changes

The principal simplifying change in the amended time-computation rules is the adoption of a "days-are-days" approach to computing all time periods. Under some of the current rules, intermediate weekends and holidays are omitted when computing short periods but included when computing longer periods. By contrast, under the proposed rules amendments, intermediate weekends and holidays are counted regardless of the length of the specified period.

Other changes in the amended time-computation rules clarify how to count forward when the period measured is after an event (for example, 21 days after service of a motion) and the

deadline falls on a weekend or holiday; and how to count backward when the period measured is before an event (for example, 14 days before a scheduled hearing) and the deadline falls on a weekend or holiday. The proposed amendments also provide for computing hourly time periods, to address recent legislation affecting court proceedings in which deadlines are expressed in hours (for example, 72 hours for action).

The amended time-computation rules also fill a gap in the present rules by addressing the special timing considerations that accompany electronic filing. Under the proposed amendments, unless a statute, local rule, or court order provides otherwise, the last day of a period for an electronic filing ends at midnight in the court's time zone, while the last day for a paper filing ends when the clerk's office is scheduled to close. (Additional refinements to these principles are made in proposed Appellate Rule 26(a)(4) for reasons specific to appellate practice.) Filing deadlines are extended if the clerk's office is inaccessible. The proposed amendments provide a court with flexibility to define when a deadline should be adjusted or a failure to comply with a deadline should be excused because the clerk's office was "inaccessible." The proposed amendments and the Committee Notes do not specify the meaning of "inaccessibility," which can vary depending on whether a filing is electronic or paper, leaving the definition to local rules and case law development.

The advisory committees also reviewed every rule to ensure that all time periods would be reasonable taking into account the effect of changing the time-computation method. The advisory committees concluded that virtually all short time deadlines should be extended to adjust for the effect of including intermediate weekends and holidays in calculating deadlines. To further simplify time-counting, the advisory committees proposed changing most periods of less than 30 days to multiples of 7 days. The advisory committees adopted 7, 14, 21, and 28-day periods when possible, so that deadlines will usually fall on weekdays. The advisory

committees' comprehensive review of time-computation rules and the rules containing time periods resulted in proposed amendments to a total of 91 rules.

In August 2007, proposed amendments to each set of rules were published for comment from the bench and bar. Scheduled public hearings on the amendments were canceled because no one asked to testify. The specific proposed amendments are discussed later in this report in the respective sections describing the advisory committees' recommendations.

* * * * *

FEDERAL RULES OF CIVIL PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Civil Rules submitted proposed amendments to Rules 13(f), 15(a), 48(c), and 81(d), and proposed new Rule 62.1 with a recommendation that they be approved and transmitted to the Judicial Conference. The proposed amendments and new rule were circulated to the bench and bar for comment in August 2007. The scheduled public hearings on the proposed changes were canceled because no one asked to testify. The proposed amendment to Rule 8(c), which deletes the reference to a "discharge in bankruptcy" from the rule's list of affirmative defenses, was withdrawn for further consideration in light of concerns expressed by the Department of Justice.

The proposed amendment to Rule 13 deletes subdivision (f), which sets out standards for amending pleadings to add a counterclaim. The subdivision is redundant of Rule 15, which sets out standards for amending pleadings in general. The proposed change codifies courts' practice of applying uniform standards to the amendment of pleadings.

The proposed amendment to Rule 15(a) limits the time when a party may amend a pleading to which a responsive pleading is required once as a matter of course. The proposal eliminates the distinction drawn by present Rule 15(a), under which a responsive pleading

immediately cuts off the right to amend, while a Rule 12 motion does not cut off the right and prolongs the time to amend a pleading until the motion is resolved. Significant problems can arise when a party files an amended pleading as a matter of right on the eve of a court's ruling on a dispositive Rule 12 motion. Under the proposed amendment, a party may file an amended pleading without leave of court within 21 days after service of a responsive pleading or 21 days after service of a Rule 12 motion, whichever is earlier. After that, a party may file an amended pleading only with leave of court.

The proposed amendment to Rule 48 adds a provision similar to that in corresponding Criminal Rule 31 that allows a court to poll the jury individually on its own and requires a poll at a party's request.

Proposed new Rule 62.1 is integrated with the parallel proposed new Appellate Rule 12.1. Proposed Rule 62.1 codifies and makes consistent practices followed in almost all circuits when a motion is made regarding a matter that the district court is in a better position to determine than the court of appeals, but the district court judge cannot rule on the motion because an appeal has been filed and jurisdiction invested in the court of appeals. The district court may defer ruling, deny the motion, or either indicate that it would be inclined to grant the motion if the case were remanded (the so-called indicative ruling) or state that the motion raises a substantial issue. Requests for indicative rulings typically arise when a party files a Rule 60(b) motion after an appeal has been filed. The procedure facilitates cooperation between the district court and the court of appeals, enabling them to determine whether it is better to decide the appeal before deciding the motion. A party must notify the court of appeals if the district court states that it would grant the postjudgment motion or that the motion raises a substantial issue.

The proposed amendment to Rule 81 clarifies the definition of "state" to include not only the District of Columbia but also any United States commonwealth or territory.

The Committee concurred with the advisory committee's recommendations.

Recommendation: That the Judicial Conference —

Approve the proposed amendments to Civil Rules 13(f), 15(a), 48(c), and 81(d), and new Rule 62.1 and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

* * * * *

The advisory committee also proposed amendments to Rules 6, 12, 14, 15, 23, 27, 32, 38, 50, 52, 53, 54, 55, 56, 59, 62, 65, 68, 71.1, 72, 81, Supplemental Rules B, C, and G, and Illustrative Forms 3, 4, and 60 as part of the time-computation project with a recommendation that they be approved and transmitted to the Judicial Conference. The proposed amendment to Rule 6 simplifies and clarifies the general time-computation method. The proposed amendments to the other rules adjust time periods consistent with the change to the time-computation method.

The proposed adjustments to the time periods in the rules are minor — accounting for the inclusion of holidays and weekends in the time-computation method and the preference for expressing periods in multiples of seven days — with some exceptions noted below. The following adjustments are proposed:

- The one-day period in Rule 6(c)(2) becomes seven days. The adjustment would extend the time for a party to serve any affidavit opposing a motion to seven days before a hearing.
- The one-day period in Rule 54(d) becomes 14 days. The increased time period corrects an unrealistic short time period for the clerk to give notice before taxing costs.
- The three-day period in Rule 55 becomes seven days.
- Five-day periods in Rules 32, 54, and 81 become seven days.

• The five-day period in Rule 6(c)(1) becomes 14 days. The adjustment extends the time for a party to serve a written motion and notice of hearing before the scheduled hearing date.

• Ten-day periods in Rules 12, 14, 15, 23, 38, 59(c), 62, 65, 68, 72, 81, and Supplemental Rule C become 14 days.

• Ten-day periods in Rules 50, 52, and 59(b), (d), and (e) become 28-day periods. The adjustment extends the present inadequate time allowed to prepare and file postjudgment motions. To prevent unfair results from these unrealistic short time periods, courts have avoided the rule by delaying entry of judgment or permitting timely filing of a barebones motion but permitting the brief to expand the stated grounds.

• The less-than-11-day period in Rule 32 becomes less than 14 days.

• Twenty-day periods in Rules 12, 15, 27, 53, 71.1, 81, Forms 3, 4, and 60, and Supplemental Rules B, C and G become 21 days.

• Rule 6(b)'s reference to provisions for extending the times set by enumerated provisions in Rules 50, 52, 59, and 60, and Rule 59(c)'s reference to a 20-day extension are eliminated.

• The timing provisions in Rules 56(a) and (c) are replaced by new provisions that recognize authority to set deadlines for summary-judgment motions by local rule or by court order and, in default of a local rule or court order, that allow a motion to be made at any time until 30 days after the close of all discovery. The new provisions also establish default times for response and reply.

The Committee concurred with the advisory committee's recommendations.

Recommendation: That the Judicial Conference —

Approve the proposed amendments to Civil Rules 6, 12, 14, 15, 23, 27, 32, 38, 50, 52, 53, 54, 55, 56, 59, 62, 65, 68, 71.1, 72, 81, Supplemental Rules B, C, and G, and Illustrative Forms 3, 4, and 60 as part of the project to improve the time-computation rules and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

* * * * *

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

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EVIDENCE RULES

To: **Honorable Lee H. Rosenthal, Chair, Standing Committee on Rules of Practice and Procedure**

From: **Honorable Mark R. Kravitz, Chair, Advisory Committee on Federal Rules of Civil Procedure**

Date: **May 9, 2008 (Revised June 17, 2008)**

Re: **Report of the Civil Rules Advisory Committee**

Introduction

The Civil Rules Advisory Committee met in Half Moon Bay, California, on April 7 and 8, 2008.

* * * * *

Several Civil Rules amendments were published for comment in August 2007, including the Civil Rules part of the Time-Computation Project. The comments were useful but not numerous. All of the proposals, except for Rule 8(c), are recommended for adoption with a few modest revisions. The Time-Computation Project proposals will be separated from the other proposals to facilitate discussion in conjunction with the Time-Computation Project proposals for other sets of rules.

Parts I and II of this Report present the action items. Part I.A presents the Time-Computation Project proposals for adoption. Part I.B presents for adoption the other proposals published in August 2007, except for Rule 8(c).

* * * * *

I ACTION ITEMS

A. Time-Computation Project

(1) "Template" — Civil Rule 6(a) — Civil Rule 6(a) was chosen as the vehicle for the "template" provisions that are adopted in as nearly uniform terms as possible by each of the different sets of rules that have time-computation provisions. The Civil Rules Committee recommends Rule 6(a) for adoption as set out below.

PROPOSED AMENDMENT TO THE FEDERAL RULES OF CIVIL PROCEDURE[1]

Rule 6. Computing and Extending Time; Time for Motion Papers[2]

1 ~~(a) **Computing Time.** The following rules apply in~~
2 ~~computing any time period specified in these rules or in~~
3 ~~any local rule, court order, or statute:~~
4 ~~(1) ***Day of the Event Excluded.*** Exclude the day of the~~
5 ~~act, event, or default that begins the period.~~
6 ~~(2) ***Exclusions from Brief Periods.*** Exclude~~
7 ~~intermediate Saturdays, Sundays, and legal~~
8 ~~holidays when the period is less than 11 days.~~
9 ~~(3) ***Last Day.*** Include the last day of the period unless~~
10 ~~it is a Saturday, Sunday, legal holiday, or — if the~~
11 ~~act to be done is filing a paper in court — a day on~~
12 ~~which weather or other conditions make the clerk's~~
13 ~~office inaccessible. When the last day is excluded,~~
14 ~~the period runs until the end of the next day that is~~
15 ~~not a Saturday, Sunday, legal holiday, or day when~~
16 ~~the clerk's office is inaccessible.~~

---

[1]New material is underlined; matter to be omitted is lined through.

[2]Additional proposed amendments to Rule 6(b) and (c) are on page 12.

17 ~~(4) *"Legal Holiday" Defined.* As used in these rules,~~
18 ~~"legal holiday" means:~~
19 ~~(A) the day set aside by statute for observing New~~
20 ~~Year's Day, Martin Luther King Jr.'s~~
21 ~~Birthday, Washington's Birthday, Memorial~~
22 ~~Day, Independence Day, Labor Day,~~
23 ~~Columbus Day, Veterans' Day, Thanksgiving~~
24 ~~Day, or Christmas Day; and~~
25 ~~(B) any other day declared a holiday by the~~
26 ~~President, Congress, or the state where the~~
27 ~~district court is located.~~
28 (a) **Computing Time.** The following rules apply in
29 computing any time period specified in these rules, in
30 any local rule or court order, or in any statute that does
31 not specify a method of computing time.
32 (1) ***Period Stated in Days or a Longer Unit.*** When
33 the period is stated in days or a longer unit of time:
34 (A) exclude the day of the event that triggers the
35 period;

36 (B) count every day, including intermediate
37 Saturdays, Sundays, and legal holidays; and
38 (C) include the last day of the period, but if the
39 last day is a Saturday, Sunday, or legal
40 holiday, the period continues to run until the
41 end of the next day that is not a Saturday,
42 Sunday, or legal holiday.
43 (2) ***Period Stated in Hours.*** When the period is stated
44 in hours:
45 (A) begin counting immediately on the
46 occurrence of the event that triggers the
47 period;
48 (B) count every hour, including hours during
49 intermediate Saturdays, Sundays, and legal
50 holidays; and
51 (C) if the period would end on a Saturday,
52 Sunday, or legal holiday, the period continues
53 to run until the same time on the next day that
54 is not a Saturday, Sunday, or legal holiday.

55 (3) ***Inaccessibility of the Clerk's Office.*** Unless the
56 court orders otherwise, if the clerk's office is
57 inaccessible:
58 (A) on the last day for filing under Rule 6(a)(1),
59 then the time for filing is extended to the first
60 accessible day that is not a Saturday, Sunday,
61 or legal holiday; or
62 (B) during the last hour for filing under Rule
63 6(a)(2), then the time for filing is extended to
64 the same time on the first accessible day that
65 is not a Saturday, Sunday, or legal holiday.
66 (4) ***"Last Day" Defined.*** Unless a different time is set
67 by a statute, local rule, or court order, the last day
68 ends:
69 (A) for electronic filing, at midnight in the court's
70 time zone; and
71 (B) for filing by other means, when the clerk's
72 office is scheduled to close.
73 (5) ***"Next Day" Defined.*** The "next day" is
74 determined by continuing to count forward when

75 the period is measured after an event and backward
76 when measured before an event.
77 (6) ***"Legal Holiday" Defined.*** "Legal holiday" means:
78 (A) the day set aside by statute for observing New
79 Year's Day, Martin Luther King Jr.'s
80 Birthday, Washington's Birthday, Memorial
81 Day, Independence Day, Labor Day,
82 Columbus Day, Veterans' Day, Thanksgiving
83 Day, or Christmas Day;
84 (B) any day declared a holiday by the President or
85 Congress; and
86 (C) for periods that are measured after an event,
87 any other day declared a holiday by the state
88 where the district court is located.
89 * * * * *

Committee Note

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.

(2) Civil Rules Time Provisions

Many Civil Rules containing specific time periods shorter than 11 days were published for comment on amendments extending the time periods to account for the impact of changing to a computation method that includes every day, abandoning the former practice of excluding intermediate Saturdays, Sundays, and legal holidays. As set out below, it is recommended that all of the proposals be adopted as published except for Rules 50, 52, and 59. The proposals to extend the time for motions under Rules 50, 52, and 59 from 10 days to 30 days have been scaled back to a 28-day period. The 28-day period was chosen in coordination with the Appellate Rules Committee to recognize the inconveniences that would arise from adopting the same 30-day period as the deadline for filing notices of appeal in most civil actions.

Rule 6. Computing and Extending Time; Time for Motion Papers[3]

1 * * * * *

2 **(b) Extending Time.**

3 * * * * *

4 **(2)** ***Exceptions.*** A court must not extend the time to act
5 under Rules 50(b) and (d), 52(b), 59(b), (d), and (e),
6 and 60(b)~~, except as those rules allow~~.

7 **(c) Motions, Notices of Hearing, and Affidavits.**

8 **(1)** ***In General.*** A written motion and notice of the
9 hearing must be served at least ~~5~~ 14 days before the
10 time specified for the hearing, with the following
11 exceptions:

12 **(A)** when the motion may be heard ex parte;

13 **(B)** when these rules set a different time; or

14 **(C)** when a court order — which a party may, for
15 good cause, apply for ex parte — sets a
16 different time.

---

[3]Additional proposed amendments to Rule 6(a) are on page 1.

17 **(2)** ***Supporting Affidavit.*** Any affidavit supporting a
18 motion must be served with the motion. Except as
19 Rule 59(c) provides otherwise, any opposing
20 affidavit must be served at least ~~1~~ 7 days before the
21 hearing, unless the court permits service at another
22 time.
23 * * * * *

Committee Note

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.

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

1 **(a) Time to Serve a Responsive Pleading.**
2 **(1)** ***In General.*** Unless another time is specified by this
3 rule or a federal statute, the time for serving a
4 responsive pleading is as follows:
5 **(A)** A defendant must serve an answer:

6 **(i)** within ~~20~~ 21 days after being served with
7 the summons and complaint; or
8 **(ii)** if it has timely waived service under Rule
9 4(d), within 60 days after the request for
10 a waiver was sent, or within 90 days after
11 it was sent to the defendant outside any
12 judicial district of the United States.
13 **(B)** A party must serve an answer to a counterclaim
14 or crossclaim within ~~20~~ 21 days after being
15 served with the pleading that states the
16 counterclaim or crossclaim.
17 **(C)** A party must serve a reply to an answer within
18 ~~20~~ 21 days after being served with an order to
19 reply, unless the order specifies a different
20 time.
21 * * * * *
22 **(4)** ***Effect of a Motion.*** Unless the court sets a different
23 time, serving a motion under this rule alters these
24 periods as follows:

25 **(A)** if the court denies the motion or postpones its
26 disposition until trial, the responsive pleading
27 must be served within ~~10~~ 14 days after notice
28 of the court's action; or
29 **(B)** if the court grants a motion for a more definite
30 statement, the responsive pleading must be
31 served within ~~10~~ 14 days after the more
32 definite statement is served.
33 * * * * *
34 **(e) Motion for a More Definite Statement.** A party may
35 move for a more definite statement of a pleading to which
36 a responsive pleading is allowed but which is so vague or
37 ambiguous that the party cannot reasonably prepare a
38 response. The motion must be made before filing a
39 responsive pleading and must point out the defects
40 complained of and the details desired. If the court orders
41 a more definite statement and the order is not obeyed
42 within ~~10~~ 14 days after notice of the order or within the
43 time the court sets, the court may strike the pleading or
44 issue any other appropriate order.

45 **(f) Motion to Strike.** The court may strike from a pleading
46 an insufficient defense or any redundant, immaterial,
47 impertinent, or scandalous matter. The court may act:
48 **(1)** on its own; or
49 **(2)** on motion made by a party either before responding
50 to the pleading or, if a response is not allowed,
51 within ~~20~~ 21 days after being served with the
52 pleading.
53 * * * * *

Committee Note

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 14. Third-Party Practice

1 **(a) When a Defending Party May Bring in a Third Party.**
2 **(1)** ***Timing of the Summons and Complaint.*** A
3 defending party may, as third-party plaintiff, serve a
4 summons and complaint on a nonparty who is or
5 may be liable to it for all or part of the claim against
6 it. But the third-party plaintiff must, by motion,
7 obtain the court's leave if it files the third-party

8 complaint more than ~~10~~ 14 days after serving its
9 original answer.
10 * * * * *

Committee Note

The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 6.

Rule 15. Amended and Supplemental Pleadings[4]

1 **(a) Amendments Before Trial.**
2 **(1)** ***Amending as a Matter of Course.*** A party may
3 amend its pleading once as a matter of course:
4 **(A)** before being served with a responsive
5 pleading; or
6 **(B)** within ~~20~~ 21 days after serving the pleading if
7 a responsive pleading is not allowed and the
8 action is not yet on the trial calendar.
9 **(2)** ***Other Amendments.*** In all other cases, a party may
10 amend its pleading only with the opposing party's

[4]The proposed amendment to Rule 15(a)(1), which modifies the time period, is incorporated with other changes to Rule 15(a)(1) on page 53.

11 written consent or the court's leave. The court
12 should freely give leave when justice so requires.
13 **(3)** ***Time to Respond.*** Unless the court orders
14 otherwise, any required response to an amended
15 pleading must be made within the time remaining to
16 respond to the original pleading or within ~~10~~ 14
17 days after service of the amended pleading,
18 whichever is later.
19 * * * * *

Committee Note

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 23. Class Actions

1 * * * * *
2 **(f) Appeals.** A court of appeals may permit an appeal from
3 an order granting or denying class-action certification
4 under this rule if a petition for permission to appeal is
5 filed with the circuit clerk within ~~10~~ 14 days after the
6 order is entered. An appeal does not stay proceedings in

7 the district court unless the district judge or the court of
8 appeals so orders.
9 * * * * *

Committee Note

The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 6.

Rule 27. Depositions to Perpetuate Testimony

1 **(a) Before an Action Is Filed.**
2 * * * * *
3 **(2)** ***Notice and Service.*** At least ~~20~~ 21 days before the
4 hearing date, the petitioner must serve each
5 expected adverse party with a copy of the petition
6 and a notice stating the time and place of the
7 hearing. The notice may be served either inside or
8 outside the district or state in the manner provided
9 in Rule 4. If that service cannot be made with
10 reasonable diligence on an expected adverse party,
11 the court may order service by publication or
12 otherwise. The court must appoint an attorney to

13 represent persons not served in the manner
14 provided in Rule 4 and to cross-examine the
15 deponent if an unserved person is not otherwise
16 represented. If any expected adverse party is a
17 minor or is incompetent, Rule 17(c) applies.
18 * * * * *

Committee Note

The time set in the former rule at 20 days has been revised to 21 days. See the Note to Rule 6.

Rule 32. Using Depositions in Court Proceedings

1 **(a) Using Depositions.**
2 * * * * *
3 **(5)** ***Limitations on Use.***
4 **(A)** *Deposition Taken on Short Notice.* A
5 deposition must not be used against a party
6 who, having received less than ~~11~~ 14 days'
7 notice of the deposition, promptly moved for
8 a protective order under Rule 26(c)(1)(B)
9 requesting that it not be taken or be taken at

10 a different time or place — and this motion
11 was still pending when the deposition was
12 taken.
13 * * * * *
14 **(d) Waiver of Objections.**
15 * * * * *
16 **(3)** ***To the Taking of the Deposition.***
17 * * * * *
18 **(C)** *Objection to a Written Question.* An
19 objection to the form of a written question
20 under Rule 31 is waived if not served in
21 writing on the party submitting the question
22 within the time for serving responsive
23 questions or, if the question is a
24 recross-question, within ~~5~~ 7 days after being
25 served with it.
26 * * * * *

Committee Note

The times set in the former rule at less than 11 days and within 5 days have been revised to 14 days and 7 days. See the Note to Rule 6.

Rule 38. Right to a Jury Trial; Demand

1 * * * * *

2 **(b) Demand.** On any issue triable of right by a jury, a party
3 may demand a jury trial by:
4 **(1)** serving the other parties with a written demand —
5 which may be included in a pleading — no later
6 than ~~10~~ 14 days after the last pleading directed to
7 the issue is served; and
8 **(2)** filing the demand in accordance with Rule 5(d).
9 **(c) Specifying Issues.** In its demand, a party may specify
10 the issues that it wishes to have tried by a jury;
11 otherwise, it is considered to have demanded a jury trial
12 on all the issues so triable. If the party has demanded a
13 jury trial on only some issues, any other party may —
14 within ~~10~~ 14 days after being served with the demand or
15 within a shorter time ordered by the court — serve a

16 demand for a jury trial on any other or all factual issues
17 triable by jury.
18 * * * * *

Committee Note

The times set in the former rule at 10 days have been revised to 14 days. See the Note to Rule 6.

Rule 50. Judgment as a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling

1 * * * * *
2 **(b) Renewing the Motion After Trial; Alternative**
3 **Motion for a New Trial.** If the court does not grant a
4 motion for judgment as a matter of law made under Rule
5 50(a), the court is considered to have submitted the
6 action to the jury subject to the court's later deciding the
7 legal questions raised by the motion. No later than ~~10~~
8 28 days after the entry of judgment — or if the motion
9 addresses a jury issue not decided by a verdict, no later
10 than ~~10~~ 28 days after the jury was discharged — the
11 movant may file a renewed motion for judgment as a

12 matter of law and may include an alternative or joint
13 request for a new trial under Rule 59. In ruling on the
14 renewed motion, the court may:
15 * * * * *
16 **(d) Time for a Losing Party's New-Trial Motion.** Any
17 motion for a new trial under Rule 59 by a party against
18 whom judgment as a matter of law is rendered must be
19 filed no later than ~~10~~ 28 days after the entry of the
20 judgment.
21 * * * * *

Committee Note

Former Rules 50, 52, and 59 adopted 10-day periods for their respective post-judgment motions. Rule 6(b) prohibits any expansion of those periods. Experience has proved that in many cases it is not possible to prepare a satisfactory post-judgment motion in 10 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays. These time periods are particularly sensitive because Appellate Rule 4 integrates the time to appeal with a timely motion under these rules. Rather than introduce the prospect of uncertainty in appeal time by amending Rule 6(b) to permit additional time, the former 10-day periods are expanded to 28 days. Rule 6(b) continues to prohibit expansion of the 28-day period.

Changes Made after Publication and Comment

The 30-day period proposed in the August 2007 publication is shortened to 28 days.

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

1 * * * * *

2 **(b) Amended or Additional Findings.** On a party's

3 motion filed no later than ~~10~~ 28 days after the entry of

4 judgment, the court may amend its findings — or make

5 additional findings — and may amend the judgment

6 accordingly. The motion may accompany a motion for

7 a new trial under Rule 59.

8 * * * * *

Committee Note

Former Rules 50, 52, and 59 adopted 10-day periods for their respective post-judgment motions. Rule 6(b) prohibits any expansion of those periods. Experience has proved that in many cases it is not possible to prepare a satisfactory post-judgment motion in 10 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays. These time periods are particularly sensitive because Appellate Rule 4 integrates the time to appeal with a timely motion under these rules. Rather than introduce the prospect of uncertainty in appeal time by amending Rule 6(b) to permit

additional time, the former 10-day periods are expanded to 28 days. Rule 6(b) continues to prohibit expansion of the 28-day period.

Changes Made after Publication and Comment

The 30-day period proposed in the August 2007 publication is shortened to 28 days.

Rule 53. Masters

1 * * * * *

2 **(f) Action on the Master's Order, Report, or**

3 **Recommendations.**

4 * * * * *

5 (2) ***Time to Object or Move to Adopt or Modify.*** A

6 party may file objections to — or a motion to adopt

7 or modify — the master's order, report, or

8 recommendations no later than ~~20~~ 21 days after a

9 copy is served, unless the court sets a different

10 time.

11 * * * * *

Committee Note

The time set in the former rule at 20 days has been revised to 21 days. See the Note to Rule 6.

Rule 54. Judgment; Costs

1 * * * * *

2 **(d) Costs; Attorney's Fees.**

3 **(1)** ***Costs Other Than Attorney's Fees.*** Unless a
4 federal statute, these rules, or a court order
5 provides otherwise, costs — other than attorney's
6 fees — should be allowed to the prevailing party.
7 But costs against the United States, its officers, and
8 its agencies may be imposed only to the extent
9 allowed by law. The clerk may tax costs on ~~1~~
10 ~~day's~~ 14 days' notice. On motion served within
11 the next ~~5~~ 7 days, the court may review the clerk's
12 action.

13 * * * * *

Committee Note

Former Rule 54(d)(1) provided that the clerk may tax costs on 1 day's notice. That period was unrealistically short. The new 14-day period provides a better opportunity to prepare and present a response. The former 5-day period to serve a motion to review the clerk's action is extended to 7 days to reflect the change in the Rule 6(a) method for computing periods of less than 11 days.

Rule 55. Default; Default Judgment

1 * * * * *

2 **(b) Entering a Default Judgment.**

3 * * * * *

4 **(2)** ***By the Court.*** In all other cases, the party must
5 apply to the court for a default judgment. A
6 default judgment may be entered against a minor
7 or incompetent person only if represented by a
8 general guardian, conservator, or other like
9 fiduciary who has appeared. If the party against
10 whom a default judgment is sought has appeared
11 personally or by a representative, that party or its
12 representative must be served with written notice
13 of the application at least ~~3~~ 7 days before the
14 hearing. The court may conduct hearings or make
15 referrals — preserving any federal statutory right to
16 a jury trial — when, to enter or effectuate
17 judgment, it needs to:

18 * * * * *

Committee Note

The time set in the former rule at 3 days has been revised to 7 days. See the Note to Rule 6.

Rule 56. Summary Judgment

1 **(a) By a Claiming Party.** A party claiming relief may move,
2 with or without supporting affidavits, for summary
3 judgment on all or part of the claim. ~~The motion may be~~
4 ~~filed at any time after:~~
5 ~~(1) 20 days have passed from commencement of the~~
6 ~~action; or~~
7 ~~(2) the opposing party serves a motion for summary~~
8 ~~judgment.~~
9 **(b) By a Defending Party.** A party against whom relief is
10 sought may move ~~at any time~~, with or without supporting
11 affidavits, for summary judgment on all or part of the
12 claim.
13 **(c) ~~Serving the~~ Time for a Motion, Response, and Reply;**
14 **Proceedings.** ~~The motion must be served at least 10~~
15 ~~days before the day set for the hearing. An opposing~~

16 ~~party may serve opposing affidavits before the hearing~~
17 ~~day.~~
18 (1) These times apply unless a different time is set by
19 local rule or the court orders otherwise:
20 (A) a party may move for summary judgment at
21 any time until 30 days after the close of all
22 discovery;
23 (B) a party opposing the motion must file a
24 response within 21 days after the motion is
25 served or a responsive pleading is due,
26 whichever is later; and
27 (C) the movant may file a reply within 14 days
28 after the response is served.
29 (2) The judgment sought should be rendered if the
30 pleadings, the discovery and disclosure materials on
31 file, and any affidavits show that there is no genuine
32 issue as to any material fact and that the movant is
33 entitled to judgment as a matter of law.
34 * * * * *

Committee Note

The timing provisions for summary judgment are outmoded. They are consolidated and substantially revised in new subdivision (c)(1). The new rule allows a party to move for summary judgment at any time, even as early as the commencement of the action. If the motion seems premature both subdivision (c)(1) and Rule 6(b) allow the court to extend the time to respond. The rule does set a presumptive deadline at 30 days after the close of all discovery.

The presumptive timing rules are default provisions that may be altered by an order in the case or by local rule. Scheduling orders are likely to supersede the rule provisions in most cases, deferring summary-judgment motions until a stated time or establishing different deadlines. Scheduling orders tailored to the needs of the specific case, perhaps adjusted as it progresses, are likely to work better than default rules. A scheduling order may be adjusted to adopt the parties' agreement on timing, or may require that discovery and motions occur in stages — including separation of expert-witness discovery from other discovery.

Local rules may prove useful when local docket conditions or practices are incompatible with the general Rule 56 timing provisions.

If a motion for summary judgment is filed before a responsive pleading is due from a party affected by the motion, the time for responding to the motion is 21 days after the responsive pleading is due.

Rule 59. New Trial; Altering or Amending a Judgment

1 * * * * *

2 **(b) Time to File a Motion for a New Trial.** A motion for
3 a new trial must be filed no later than ~~10~~ 28 days after
4 the entry of judgment.

5 **(c) Time to Serve Affidavits.** When a motion for a new
6 trial is based on affidavits, they must be filed with the
7 motion. The opposing party has ~~10~~ 14 days after being
8 served to file opposing affidavits~~; but that period may be~~
9 ~~extended for up to 20 days, either by the court for good~~
10 ~~cause or by the parties' stipulation~~. The court may
11 permit reply affidavits.

12 **(d) New Trial on the Court's Initiative or for Reasons**
13 **Not in the Motion.** No later than ~~10~~ 28 days after the
14 entry of judgment, the court, on its own, may order a
15 new trial for any reason that would justify granting one
16 on a party's motion. After giving the parties notice and
17 an opportunity to be heard, the court may grant a timely
18 motion for a new trial for a reason not stated in the

19 motion. In either event, the court must specify the

20 reasons in its order.

21 (e) **Motion to Alter or Amend a Judgment.** A motion to

22 alter or amend a judgment must be filed no later than ~~10~~

23 28 days after the entry of the judgment.

Committee Note

Former Rules 50, 52, and 59 adopted 10-day periods for their respective post-judgment motions. Rule 6(b) prohibits any expansion of those periods. Experience has proved that in many cases it is not possible to prepare a satisfactory post-judgment motion in 10 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays. These time periods are particularly sensitive because Appellate Rule 4 integrates the time to appeal with a timely motion under these rules. Rather than introduce the prospect of uncertainty in appeal time by amending Rule 6(b) to permit additional time, the former 10-day periods are expanded to 28 days. Rule 6(b) continues to prohibit expansion of the 28-day period.

Former Rule 59(c) set a 10-day period after being served with a motion for new trial to file opposing affidavits. It also provided that the period could be extended for up to 20 days for good cause or by stipulation. The apparent 20-day limit on extending the time to file opposing affidavits seemed to conflict with the Rule 6(b) authority to extend time without any specific limit. This tension between the two rules may have been inadvertent. It is resolved by deleting the former Rule 59(c) limit. Rule 6(b) governs. The underlying 10-day period was extended to 14 days to reflect the change in the Rule 6(a) method for computing periods of less than 11 days.

Changes Made after Publication and Comment

The 30-day period proposed in the August 2007 publication is shortened to 28 days.

Rule 62. Stay of Proceedings to Enforce a Judgment

1 **(a) Automatic Stay; Exceptions for Injunctions,**
2 **Receiverships, and Patent Accountings.** Except as
3 stated in this rule, no execution may issue on a
4 judgment, nor may proceedings be taken to enforce it,
5 until ~~10~~ 14 days have passed after its entry. But unless
6 the court orders otherwise, the following are not stayed
7 after being entered, even if an appeal is taken:
8 * * * * *

Committee Note

The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 6.

Rule 65. Injunctions and Restraining Orders

1 * * * * *
2 **(b) Temporary Restraining Order.**
3 * * * * *

4 **(2) Contents; Expiration.** Every temporary
5 restraining order issued without notice must state
6 the date and hour it was issued; describe the injury
7 and state why it is irreparable; state why the order
8 was issued without notice; and be promptly filed in
9 the clerk's office and entered in the record. The
10 order expires at the time after entry — not to
11 exceed ~~10~~ 14 days — that the court sets, unless
12 before that time the court, for good cause, extends
13 it for a like period or the adverse party consents to
14 a longer extension. The reasons for an extension
15 must be entered in the record.
16 * * * * *

Committee Note

The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 6.

Rule 68. Offer of Judgment

1 **(a) Making an Offer; Judgment on an Accepted Offer.**
2 ~~More than 10~~ At least 14 days before the date set for

3 trial ~~begins~~, a party defending against a claim may serve
4 on an opposing party an offer to allow judgment on
5 specified terms, with the costs then accrued. If, within
6 ~~10~~ 14 days after being served, the opposing party serves
7 written notice accepting the offer, either party may then
8 file the offer and notice of acceptance, plus proof of
9 service. The clerk must then enter judgment.

10 * * * * *

11 (c) **Offer After Liability is Determined.** When one
12 party's liability to another has been determined but the
13 extent of liability remains to be determined by further
14 proceedings, the party held liable may make an offer of
15 judgment. It must be served within a reasonable time —
16 but at least ~~10~~ 14 days — before the date set for a
17 hearing to determine the extent of liability.

18 * * * * *

Committee Note

Former Rule 68 allowed service of an offer of judgment more than 10 days before the trial begins, or — if liability has been determined — at least 10 days before a hearing to determine the extent of liability. It may be difficult to know in advance when trial

will begin or when a hearing will be held. The time is now measured from the date set for trial or hearing; resetting the date establishes a new time for serving the offer.

The former 10-day periods are extended to 14 days to reflect the change in the Rule 6(a) method for computing periods less than 11 days.

* * * * *

Rule 71.1. Condemning Real or Personal Property

1 * * * * *

2 **(d) Process.**

3 * * * * *

4 **(2)** ***Contents of the Notice.***

5 **(A)** *Main Contents.* Each notice must name the
6 court, the title of the action, and the
7 defendant to whom it is directed. It must
8 describe the property sufficiently to identify
9 it, but need not describe any property other
10 than that to be taken from the named
11 defendant. The notice must also state:
12 **(i)** that the action is to condemn property;
13 **(ii)** the interest to be taken;
14 **(iii)** the authority for the taking;

15 **(iv)** the uses for which the property is to be
16 taken;
17 **(v)** that the defendant may serve an answer
18 on the plaintiff's attorney within ~~20~~ 21
19 days after being served with the notice;
20 **(vi)** that the failure to so serve an answer
21 constitutes consent to the taking and to
22 the court's authority to proceed with the
23 action and fix the compensation; and
24 **(vii)** that a defendant who does not serve an
25 answer may file a notice of appearance.
26 * * * * *
27 **(e) Appearance or Answer.**
28 * * * * *
29 **(2)** ***Answer.*** A defendant that has an objection or
30 defense to the taking must serve an answer within
31 ~~20~~ 21 days after being served with the notice. The
32 answer must:
33 * * * * *

Committee Note

The times set in the former rule at 20 days have been revised to 21 days. See the Note to Rule 6.

Rule 72. Magistrate Judges: Pretrial Order

1 **(a) Nondispositive Matters.** When a pretrial matter not
2 dispositive of a party's claim or defense is referred to
3 a magistrate judge to hear and decide, the magistrate
4 judge must promptly conduct the required proceedings
5 and, when appropriate, issue a written order stating the
6 decision. A party may serve and file objections to the
7 order within ~~10~~ 14 days after being served with a copy.
8 A party may not assign as error a defect in the order not
9 timely objected to. The district judge in the case must
10 consider timely objections and modify or set aside any
11 part of the order that is clearly erroneous or is contrary
12 to law.
13 **(b) Dispositive Motions and Prisoner Petitions.**
14 * * * * *
15 (2) ***Objections.*** Within ~~10~~ 14 days after being served
16 with a copy of the recommended disposition, a

17 party may serve and file specific written
18 objections to the proposed findings and
19 recommendations. A party may respond to
20 another party's objections within ~~10~~ 14 days after
21 being served with a copy. Unless the district
22 judge orders otherwise, the objecting party must
23 promptly arrange for transcribing the record, or
24 whatever portions of it the parties agree to or the
25 magistrate judge considers sufficient.
26 * * * * *

Committee Note

The times set in the former rule at 10 days have been revised to 14 days. See the Note to Rule 6.

* * * * *

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

1 * * * * *
2 **(c) Removed Actions.**
3 * * * * *

4 (2) ***Further Pleading.*** After removal, repleading is
5 unnecessary unless the court orders it. A defendant
6 who did not answer before removal must answer or
7 present other defenses or objections under these
8 rules within the longest of these periods:
9 **(A)** ~~20~~ 21 days after receiving — through service
10 or otherwise — a copy of the initial pleading
11 stating the claim for relief;
12 **(B)** ~~20~~ 21 days after being served with the
13 summons for an initial pleading on file at the
14 time of service; or
15 **(C)** ~~5~~ 7 days after the notice of removal is filed.
16 **(3)** ***Demand for a Jury Trial.***
17 * * * * *
18 **(B)** *Under Rule 38.* If all necessary pleadings
19 have been served at the time of removal, a
20 party entitled to a jury trial under Rule 38
21 must be given one if the party serves a
22 demand within ~~10~~ 14 days after:
23 **(i)** it files a notice of removal; or

24 **(ii)** it is served with a notice of removal

25 filed by another party.

26 * * * * *

Committee Note

The times set in the former rule at 5, 10, and 20 days have been revised to 7, 14, and 21 days, respectively. See the Note to Rule 6.

SUPPLEMENTAL RULES FOR ADMIRALTY OR MARITIME CLAIMS AND ASSET FORFEITURE ACTIONS

Rule B. In Personam Actions: Attachment and Garnishment

1 * * * * *

2 **(3) Answer.**

3 **(a) By Garnishee.** The garnishee shall serve an answer,
4 together with answers to any interrogatories served
5 with the complaint, within ~~20~~ 21 days after service of
6 process upon the garnishee. Interrogatories to the
7 garnishee may be served with the complaint without
8 leave of court. If the garnishee refuses or neglects to
9 answer on oath as to the debts, credits, or effects of
10 the defendant in the garnishee's hands, or any
11 interrogatories concerning such debts, credits, and
12 effects that may be propounded by the plaintiff, the
13 court may award compulsory process against the
14 garnishee. If the garnishee admits any debts, credits,
15 or effects, they shall be held in the garnishee's hands
16 or paid into the registry of the court, and shall be held
17 in either case subject to the further order of the court.

18 * * * * *

Committee Note

The time set in the former rule at 20 days has been revised to 21 days. See the Note to Rule 6.

Rule C. In Rem Actions: Special Provisions

1 * * * * *

2 **(4) Notice.** No notice other than execution of process is
3 required when the property that is the subject of the action
4 has been released under Rule E(5). If the property is not
5 released within ~~10~~ 14 days after execution, the plaintiff must
6 promptly — or within the time that the court allows — give
7 public notice of the action and arrest in a newspaper
8 designated by court order and having general circulation in
9 the district, but publication may be terminated if the
10 property is released before publication is completed. The
11 notice must specify the time under Rule C(6) to file a
12 statement of interest in or right against the seized property
13 and to answer. This rule does not affect the notice
14 requirements in an action to foreclose a preferred ship
15 mortgage under 46 U.S.C. §§ 31301 et seq., as amended.

16 * * * * *

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

18 **(a) Statement of Interest; Answer.** In an action in rem:[5]

19 **(i)** a person who asserts a right of possession or any
20 ownership interest in the property that is the
21 subject of the action must file a verified
22 statement of right or interest:

23 **(A)** within ~~10~~ 14 days after the execution of
24 process, or

25 **(B)** within the time that the court allows;

26 **(ii)** the statement of right or interest must describe
27 the interest in the property that supports the
28 person's demand for its restitution or right to
29 defend the action;

30 **(iii)** an agent, bailee, or attorney must state the
31 authority to file a statement of right or interest on
32 behalf of another; and

[5]Incorporates technical revision of Supplemental Rule C(6)(a) that will take effect on December 1, 2008, unless Congress takes action otherwise. The revision has no effect on the proposal to amend subparagraph (A) to extend the time to file from 10 days to 14 days.

33 **(iv)** a person who asserts a right of possession or any
34 ownership interest must serve an answer within
35 ~~20~~ 21 days after filing the statement of interest or
36 right.
37 * * * * *

Committee Note

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 G. Forfeiture Actions In Rem

1 * * * * *
2 **(4) Notice.**
3 * * * * *
4 **(b) Notice to Known Potential Claimants.**
5 **(i) Direct Notice Required.** The government must
6 send notice of the action and a copy of the
7 complaint to any person who reasonably appears
8 to be a potential claimant on the facts known to
9 the government before the end of the time for
10 filing a claim under Rule G(5)(a)(ii)(B).

11 **(ii) Content of the Notice.** The notice must state:

12 **(A)** the date when the notice is sent;

13 **(B)** a deadline for filing a claim, at least 35

14 days after the notice is sent;

15 **(C)** that an answer or a motion under Rule 12

16 must be filed no later than ~~20~~ 21 days after

17 filing the claim; and

18 **(D)** the name of the government attorney to be

19 served with the claim and answer.

20 * * * * *

21 **(5) Responsive Pleadings.**

22 * * * * *

23 **(b) Answer.** A claimant must serve and file an answer to

24 the complaint or a motion under Rule 12 within ~~20~~ 21

25 days after filing the claim. A claimant waives an

26 objection to in rem jurisdiction or to venue if the

27 objection is not made by motion or stated in the

28 answer.

29 **(6) Special Interrogatories.**

30 **(a) Time and Scope.** The government may serve special
31 interrogatories limited to the claimant's identity and
32 relationship to the defendant property without the
33 court's leave at any time after the claim is filed and
34 before discovery is closed. But if the claimant serves
35 a motion to dismiss the action, the government must
36 serve the interrogatories within ~~20~~ 21 days after the
37 motion is served.
38 **(b) Answers or Objections.** Answers or objections to
39 these interrogatories must be served within ~~20~~ 21 days
40 after the interrogatories are served.
41 **(c) Government's Response Deferred.** The government
42 need not respond to a claimant's motion to dismiss
43 the action under Rule G(8)(b) until ~~20~~ 21 days after
44 the claimant has answered these interrogatories.
45 * * * * *

Committee Note

The times set in the former rule at 20 days have been revised to 21 days. See the Note to Rule 6.

Form 3. Summons.

(Caption — See Form 1.)

To *name the defendant*:

A lawsuit has been filed against you.

Within ~~20~~ 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure.

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* * * * *

Form 4. Summons on a Third-Party Complaint.

(Caption — See Form 1.)

To *name the third-party defendant*:

A lawsuit has been filed against defendant _____, who as third-party plaintiff is making this claim against you to pay part or all of what [he] may owe to the plaintiff _____.

Within ~~20~~ 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff and on the defendant an answer to the attached third-party complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure.

* * * * *

Form 60. Notice of Condemnation.

(Caption — See Form 1.)

* * * * *

4. If you want to object or present any defense to the taking you must serve an answer on the plaintiff's attorney within ~~20~~ 21 days [after being served with this notice][from (insert the date of the last publication of notice)]. Send your answer to this address: _____.

* * * * *

B. Amended Rules Published in August 2007

Proposed amendments to Rule 8(c), 13(f), 15(a), 48(c), and 81(d) were published for comment in August 2007. All but Rule 8(c) are recommended for adoption as published, apart from deleting references to "possession" from Rule 81(d)(2) and its Committee Note. Rule 8(c) will be held for further study in the Advisory Committee. Bankruptcy Judges have repeatedly advised that deleting "discharge in bankruptcy" from the Rule 8(c) list of affirmative defenses is both appropriate and long overdue. The Department of Justice has expressed reservations that require further attention.

AUGUST 2007 PUBLISHED PROPOSALS TO AMEND RULES . . . 13(F), 15(A), 48(C), 81(D)

Proposals to amend Rules . . . 13(f), 15(a), 48(c), and 81(d) were published for comment in August 2007. Comments were received on all but Rule 48(c). The proposals, summaries of comments, and recommendations are set out separately for each rule.

* * * * *

Rule 13. Counterclaim and Crossclaim

1 * * * * *

2 (f) ~~**Omitted Counterclaim.** The court may permit a party to~~

3 ~~amend a pleading to add a counterclaim if it was omitted~~

4 ~~through oversight, inadvertence, or excusable neglect or~~

5 ~~if justice so requires.~~ [Abrogated.]

6 * * * * *

Committee Note

Rule 13(f) is deleted as largely redundant and potentially misleading. An amendment to add a counterclaim will be governed by Rule 15. Rule 15(a)(1) permits some amendments to be made as a matter of course or with the opposing party's written consent. When the court's leave is required, the reasons described in Rule 13(f) for permitting amendment of a pleading to add an omitted counterclaim sound different from the general amendment standard in Rule 15(a)(2), but seem to be administered — as they should be — according to the same standard directing that leave should be freely given when justice so requires. The independent existence of Rule 13(f) has, however, created some uncertainty as to the availability of relation back of the amendment under Rule 15(c). *See 6 C. Wright, A. Miller & M. Kane, Federal Practice & Procedure: Civil 2d, § 1430 (1990).* Deletion of Rule 13(f) ensures that relation back is governed by the tests that apply to all other pleading amendments.

* * * * *

Rule 15. Amended and Supplemental Pleadings[6]

1 **(a) Amendments Before Trial.**

2 **(1)** ***Amending as a Matter of Course.*** A party may

3 amend its pleading once as a matter of course

4 within:

5 **(A)** ~~before being served with a responsive~~

6 ~~pleading;~~ 21 days after serving it, or

[6]Proposed amendments modifying the time period in Rule 15(a)(1) on pages 17-18 are incorporated in and superseded by these amendments, if approved by the Judicial Conference.

7 **(B)** ~~within 20 days after serving the pleading if a~~
8 ~~responsive pleading is not allowed and the~~
9 ~~action is not yet on the trial calendar~~ if the
10 pleading is one to which a responsive pleading
11 is required, 21 days after service of a
12 responsive pleading or 21 days after service of
13 a motion under Rule 12(b), (e), or (f),
14 whichever is earlier.
15 * * * * *

Committee Note

Rule 15(a)(1) is amended to make three changes in the time allowed to make one amendment as a matter of course.

Former Rule 15(a) addressed amendment of a pleading to which a responsive pleading is required by distinguishing between the means used to challenge the pleading. Serving a responsive pleading terminated the right to amend. Serving a motion attacking the pleading did not terminate the right to amend, because a motion is not a "pleading" as defined in Rule 7. The right to amend survived beyond decision of the motion unless the decision expressly cut off the right to amend.

The distinction drawn in former Rule 15(a) is changed in two ways. First, the right to amend once as a matter of course terminates 21 days after service of a motion under Rule 12(b), (e), or (f). This provision will force the pleader to consider carefully and promptly the wisdom of amending to meet the arguments in the motion. A

responsive amendment may avoid the need to decide the motion or reduce the number of issues to be decided, and will expedite determination of issues that otherwise might be raised seriatim. It also should advance other pretrial proceedings.

Second, the right to amend once as a matter of course is no longer terminated by service of a responsive pleading. The responsive pleading may point out issues that the original pleader had not considered and persuade the pleader that amendment is wise. Just as amendment was permitted by former Rule 15(a) in response to a motion, so the amended rule permits one amendment as a matter of course in response to a responsive pleading. The right is subject to the same 21-day limit as the right to amend in response to a motion.

The 21-day periods to amend once as a matter of course after service of a responsive pleading or after service of a designated motion are not cumulative. If a responsive pleading is served after one of the designated motions is served, for example, there is no new 21-day period.

Finally, amended Rule 15(a)(1) extends from 20 to 21 days the period to amend a pleading to which no responsive pleading is allowed and omits the provision that cuts off the right if the action is on the trial calendar. Rule 40 no longer refers to a trial calendar, and many courts have abandoned formal trial calendars. It is more effective to rely on scheduling orders or other pretrial directions to establish time limits for amendment in the few situations that otherwise might allow one amendment as a matter of course at a time that would disrupt trial preparations. Leave to amend still can be sought under Rule 15(a)(2), or at and after trial under Rule 15(b).[7]

Abrogation of Rule 13(f) establishes Rule 15 as the sole rule governing amendment of a pleading to add a counterclaim.

* * * * *

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[7]If the proposed amendment to Rule 15(a)(3) on pages 17-18 changing the time period is approved by the Judicial Conference, the following additional sentence will be added to the Committee Note: "Amended Rule 15(a)(3) extends from 10 to 14 days the period to respond to an amended pleading."

Rule 48. Number of Jurors; Verdict; Polling

1 **(a) Number of Jurors.** A jury must ~~initially have~~ begin
2 with at least 6 and no more than 12 members, and each
3 juror must participate in the verdict unless excused under
4 Rule 47(c).
5 **(b) Verdict.** Unless the parties stipulate otherwise, the
6 verdict must be unanimous and must be returned by a
7 jury of at least 6 members.
8 **(c) Polling.** After a verdict is returned but before the jury is
9 discharged, the court must on a party's request, or may
10 on its own, poll the jurors individually. If the poll
11 reveals a lack of unanimity or lack of assent by the
12 number of jurors that the parties stipulated to, the court
13 may direct the jury to deliberate further or may order a
14 new trial.

Committee Note

Jury polling is added as new subdivision (c), which is drawn from Criminal Rule 31(d) with minor revisions to reflect Civil Rules Style and the parties' opportunity to stipulate to a nonunanimous verdict.

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

1 * * * * *

2 **(d) Law Applicable.**

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

6 **(2)** ~~***District of Columbia***~~ ***"State" Defined.*** The term
7 "state" includes, where appropriate, the District of
8 Columbia and any United States commonwealth;
9 or territory. ~~When these rules provide for state law~~
10 ~~to apply, in the District Court for the District of~~
11 ~~Columbia:~~

12 ~~(A) the law applied in the District governs; and~~

13 **(3)** ***"Federal Statute" Defined in the District of***
14 ***Columbia.*** ~~(B)~~ In the United States District Court
15 for the District of Columbia, the term "federal

16 statute" includes any Act of Congress that applies

17 locally to the District.

Committee Note

Several Rules incorporate local state practice. Rule 81(d) now provides that "the term 'state' includes, where appropriate, the District of Columbia." The definition is expanded to include any commonwealth or territory of the United States. As before, these entities are included only "where appropriate." They are included for the reasons that counsel incorporation of state practice. For example, state holidays are recognized in computing time under Rule 6(a). Other, quite different, examples are Rules 64(a), invoking state law for prejudgment remedies, and 69(a)(1), relying on state law for the procedure on execution. Including commonwealths and territories in these and other rules avoids the gaps that otherwise would result when the federal rule relies on local practice rather than provide a uniform federal approach. Including them also establishes uniformity between federal courts and local courts in areas that may involve strong local interests, little need for uniformity among federal courts, or difficulty in defining a uniform federal practice that integrates effectively with local practice.

Adherence to a local practice may be refused as not "appropriate" when the local practice would impair a significant federal interest.

Changes Made after Publication and Comment

The reference to a "possession" was deleted in deference to the concerns expressed by the Department of Justice.

C. New Rule 62.1 Published in August 2007

The "indicative rulings" provisions of new Civil Rule 62.1 and new Appellate Rule 12.1 were worked out over a period of several years, culminating in parallel proposals published for comment in August 2007. It is recommended that Rule 62.1 be approved for adoption with modest wording changes.

Rule text: Rule 62.1 is recommended for adoption as published with one change. An accidental slip in transmission resulted in publication without a change in subdivision (c) that was submitted to the Standing Committee and approved for publication. As published, subdivision (c) refers to remand "for further proceedings." The version approved for publication refers to remand "for that purpose." This version is better for at least two reasons. It tracks the language of subdivision (a)(3). And it clearly limits (c) to a remand to act on the motion pending in the district court. The published reference to a remand for further proceedings could include remand after the court of appeals has decided not to remand for proceedings on the pending motion and has decided the appeal on grounds that both moot the motion and require further proceedings on other issues.

This recommendation is compatible with proposed Appellate Rule 12.1(b), which refers to remand "for further proceedings." The focus of Rule 12.1(b) and its Committee Note is on the scope of the remand, a question that concerns the court of appeals in the first instance.

Committee Note: The Committee Note should be revised to more accurately reflect the language of Rule 62.1(a)(3) and the distinction between limited and full remand. Rather than refer to remand of the "case" or "action," the Note should refer to remand "for that purpose." As shown below, the third sentence of the first paragraph would read: "But it can entertain the motion and deny it, defer consideration, or state that it would grant the motion if the ~~action is remanded~~ court of appeals remands for that purpose or state that the motion raises a substantial issue." The first sentence of the fourth paragraph would read: "Often it will be wise for the district court to

determine whether it in fact would grant the motion if the ~~case is remanded~~ court of appeals remands for that purpose."

Other changes are made in the Committee Note to conform to the Committee Note for proposed Appellate Rule 12.1. The lengthiest change is the addition of two new sentences in parentheses at the end of the first paragraph. These new sentences address a fine-point aspect of Appellate Rule 4: filing a notice of appeal does not establish a "pending" appeal if a timely post-judgment motion suspends the effect of the notice.

New Rule 62.1 is recommended for adoption:

Rule 62.1. Indicative Ruling on a Motion for Relief That is Barred by a Pending Appeal

1 **(a) Relief Pending Appeal.** If a timely motion is made for
2 relief that the court lacks authority to grant because of an
3 appeal that has been docketed and is pending, the court
4 may:
5 (1) defer considering the motion;
6 (2) deny the motion; or
7 (3) state either that it would grant the motion if the
8 court of appeals remands for that purpose or that
9 the motion raises a substantial issue.
10 **(b) Notice to the Court of Appeals.** The movant must
11 promptly notify the circuit clerk under Federal Rule of

12 Appellate Procedure 12.1 if the district court states that

13 it would grant the motion or that the motion raises a

14 substantial issue.

15 (c) **Remand.** The district court may decide the motion if

16 the court of appeals remands for that purpose.

Committee Note

This new rule adopts for any motion that the district court cannot grant because of a pending appeal the practice that most courts follow when a party makes a Rule 60(b) motion to vacate a judgment that is pending on appeal. After an appeal has been docketed and while it remains pending, the district court cannot grant a Rule 60(b) motion without a remand. But it can entertain the motion and deny it, defer consideration, or state that it would grant the motion if the the court of appeals remands for that purpose or state that the motion raises a substantial issue. Experienced lawyers often refer to the suggestion for remand as an "indicative ruling." (Appellate Rule 4(a)(4) lists six motions that, if filed within the relevant time limit, suspend the effect of a notice of appeal filed before or after the motion is filed until the last such motion is disposed of. The district court has authority to grant the motion without resorting to the indicative ruling procedure.)

This clear procedure is helpful whenever relief is sought from an order that the court cannot reconsider because the order is the subject of a pending appeal. Rule 62.1 does not attempt to define the circumstances in which an appeal limits or defeats the district court's authority to act in the face of a pending appeal. The rules that govern the relationship between trial courts and appellate courts may be complex, depending in part on the nature of the order and the source of appeal jurisdiction. Rule 62.1 applies only when those rules deprive the district court of authority to grant relief without appellate permission. If the district court concludes that it has authority to

grant relief without appellate permission, it can act without falling back on the indicative ruling procedure.

To ensure proper coordination of proceedings in the district court and in the appellate court, the movant must notify the circuit clerk under Federal Rule of Appellate Procedure 12.1 if the district court states that it would grant the motion or that the motion raises a substantial issue. Remand is in the court of appeals' discretion under Appellate Rule 12.1.

Often it will be wise for the district court to determine whether it in fact would grant the motion if the court of appeals remands for that purpose. But a motion may present complex issues that require extensive litigation and that may either be mooted or be presented in a different context by decision of the issues raised on appeal. In such circumstances the district court may prefer to state that the motion raises a substantial issue, and to state the reasons why it prefers to decide only if the court of appeals agrees that it would be useful to decide the motion before decision of the pending appeal. The district court is not bound to grant the motion after stating that the motion raises a substantial issue; further proceedings on remand may show that the motion ought not be granted.

Changes Made After Publication and Comment

The rule text is changed by substituting "for that purpose" for "further proceedings"; the reason is discussed above.

Minor changes are made in the Committee Note to make it conform to the Committee Note for proposed Appellate Rule 12.1.

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