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AMENDMENTS TO THE FEDERAL RULES OF CIVIL PROCEDURE

COMMUNICATION

FROM

THE CHIEF JUSTICE, THE SUPREME COURT OF THE UNITED STATES

TRANSMITTING

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

MAY 9, 2005.—Referred to the Committee on the Judiciary and ordered to be printed

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LETTER OF SUBMITTAL

SUPREME COURT OF THE UNITED STATES,
Washington, DC, April 25, 2005.

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

DEAR MR. 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,

WILLIAM H. REHNQUIST,
Chief Justice.

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. That the Federal Rules of Civil Procedure be, and they hereby are, amended by including therein the amendments to Civil Rules 6, 27, and 45, and to Rules B and C of the Supplemental Rules for Certain Admiralty and Maritime Claims.

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

2. That the foregoing amendments to the Federal Rules of Civil Procedure and the Supplemental Rules for Certain Admiralty and Maritime Claims shall take effect on December 1, 2005, 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. Time

* * * * *

(e) Additional Time After Certain Kinds of Service. Whenever a party must or may act within a prescribed period after service and service is made under Rule 5(b)(2)(B), (C), or (D), 3 days are added after the prescribed period would otherwise expire under subdivision (a).

* * * * *

Rule 27. Depositions Before Action or Pending Appeal

(a) Before Action.

* * * * *

(2) Notice and Service. At least 20 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 due 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 by Rule 4 and to cross-examine the deponent if an unserved person is not otherwise represented. Rule 17(c) applies if any expected adverse party is a minor or is incompetent.

* * * * *

Rule 45. Subpoena

(a) Form; Issuance.

* * * * *

(2) A subpoena must issue as follows:

(A) for attendance at a trial or hearing, from the court for the district where the trial or hearing is to be held;

(B) for attendance at a deposition, from the court for the district where the deposition is to be taken, stating the method for recording the testimony; and

(C) for production and inspection, if separate from a subpoena commanding a person's attendance, from the court for the district where the production or inspection is to be made.

* * * * *

SUPPLEMENTAL RULES FOR CERTAIN ADMIRALTY AND MARITIME CLAIMS

Rule B. In Personam Actions: Attachment and Garnishment

(1) When Available; Complaint, Affidavit, Judicial Authorization, and Process. In an in personam action:

(a) If a defendant is not found within the district when a verified complaint praying for attachment and the affidavit required by Rule B(1)(b) are filed, a verified complaint may contain a prayer for process to attach the defendant's tangible or intangible personal property—up to the amount sued for—in the hands of garnishees named in the process.

* * * * *

Rule C. In Rem Actions: Special Provisions

* * * * *

(6) Responsive Pleading; Interrogatories.

* * * * *

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

(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 10 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 20 days after filing the statement of interest or right.

* * * * *

JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

LEONIDAS RALPH MECHAM
Secretary

October 27, 2004

MEMORANDUM TO THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I have the honor to transmit herewith for consideration of the Court proposed amendments to Rules 6, 27, and 45 of the Federal Rules of Civil Procedure, and Rules B and C of the Supplemental Rules for Certain Admiralty and Maritime Claims. The Judicial Conference recommends that these amendments be approved by the Court and transmitted to the Congress pursuant to law.

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

Ralph

Leonidas Ralph Mecham
Secretary

Attachments

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

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

* * * * *

FEDERAL RULES OF CIVIL PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Civil Rules submitted proposed amendments to Rules 6, 27, and 45 and proposed amendments to Supplemental Rules B and C with a recommendation that they be approved and transmitted to the Judicial Conference. The amendments were circulated to the bench and bar for comment in August 2003. The scheduled public hearing on the proposed rules amendments was canceled because no one asked to testify.

The proposed amendment to Rule 6(e) clarifies the method of determining the time to respond when the time is extended after service by mail, by leaving with the clerk of court, by electronic means, or by other means consented to by the party served. It was unclear whether the additional three days provided in the rule were to be added before or after the prescribed period. The amendment makes clear that three days are added after the prescribed period otherwise expires. Intermediate Saturdays, Sundays, and legal holidays are included in counting these added three days.

The proposed amendment to Rule 27 corrects outdated references to former Rule 4(d). The amendment makes clear that all methods of service authorized under Rule 4 can be used to serve a petition to perpetuate testimony.

Under the proposed amendment to Rule 45, a deposition subpoena must state the method for recording the testimony. The amendment ensures that a nonparty deponent has notice of the

recording method, providing the deponent an opportunity to raise objections in a timely and efficient manner.

The proposed amendment to Supplemental Rule B fixes the time for determining whether a defendant is "found" in the district at the time when the verified complaint and the accompanying affidavit are filed. The amendment is intended to prevent a defendant from defeating attachment and evading a security device by waiting until a complaint is filed before appointing an agent to receive service of process.

The proposed amendments to Supplemental Rule C are technical in nature and correct an oversight contained in amendments made in 2000.

The Committee concurred with the advisory committee's recommendations.

Recommendation: That the Judicial Conference approve the proposed amendments to Civil Rules 6, 27, and 45, and proposed amendments to Supplemental Rules B and C 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 proposed amendments to the Federal Rules of Civil Procedure are in Appendix C with an excerpt from the advisory committee report.

* * * * *

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

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JERRY E. SMITH
EVIDENCE RULES

To: **Honorable David F. Levi, Chair, Standing Committee on Rules of Practice and Procedure**

From: **Honorable Lee H. Rosenthal, Chair, Advisory Committee on Federal Rules of Civil Procedure**

Date: **May 17, 2004**

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

Introduction

* * * * *

Part I of this report presents action items. Part I A recommends transmission for approval of amendments to Civil Rules 6(e), 27, and 45, as well as Supplemental Rules B and C. These proposals were published for comment in August 2003. A new Rule 5.1 and conforming amendments to Rule 24(c) also were published last August, but the Advisory Committee has tabled discussion of these proposals for further work.

* * * * *

I Action Items

A. Rules for Adoption: 6(e), 27, 45; Supplemental Rules B, C

Rule 6(e)

The Advisory Committee recommends approval for adoption of amended Rule 6(e) as follows on the next page:

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF CIVIL PROCEDURE*

Rule 6. Time

1 * * * * *

2 **(e) Additional Time After Certain Kinds of Service**

3 ~~**Under Rule 5(b)(2)(B), (C), or (D).**~~ Whenever a party ~~has~~

4 ~~the right or is required to do some act or take some~~

5 ~~proceedings~~ must or may act within a prescribed period after

6 ~~the service of a notice or other paper upon the party and the~~

7 ~~notice or paper is served upon the party~~ service and service is

8 made under Rule 5(b)(2)(B), (C), or (D), 3 days ~~shall be~~ are

9 added ~~to~~ after the prescribed period would otherwise expire

10 under subdivision (a).

Committee Note

Rule 6(e) is amended to remove any doubt as to the method for extending the time to respond after service by mail, leaving with the clerk of court, electronic means, or other means consented to by the party served. Three days are added after the prescribed period otherwise expires under Rule 6(a). Intermediate Saturdays, Sundays, and legal holidays are included in counting these added three days.

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

If the third day is a Saturday, Sunday, or legal holiday, the last day to act is the next day that is not a Saturday, Sunday, or legal holiday. The effect of invoking the day when the prescribed period would otherwise expire under Rule 6(a) can be illustrated by assuming that the thirtieth day of a thirty-day period is a Saturday. Under Rule 6(a) the period expires on the next day that is not a Sunday or legal holiday. If the following Monday is a legal holiday, under Rule 6(a) the period expires on Tuesday. Three days are then added — Wednesday, Thursday, and Friday as the third and final day to act. If the period prescribed expires on a Friday, the three added days are Saturday, Sunday, and Monday, which is the third and final day to act unless it is a legal holiday. If Monday is a legal holiday, the next day that is not a legal holiday is the third and final day to act.

Application of Rule 6(e) to a period that is less than eleven days can be illustrated by a paper that is served by mailing on a Friday. If ten days are allowed to respond, intermediate Saturdays, Sundays, and legal holidays are excluded in determining when the period expires under Rule 6(a). If there is no legal holiday, the period expires on the Friday two weeks after the paper was mailed. The three added Rule 6(e) days are Saturday, Sunday, and Monday, which is the third and final day to act unless it is a legal holiday. If Monday is a legal holiday, the next day that is not a legal holiday is the final day to act.

Rule 6(e) as Published

This recommendation modifies the version of Rule 6(e) that was published for comment as follows:

(e) Additional Time After Certain Kinds of Service ~~Under Rule 5(b)(2)(B), (C), or (D).~~ Whenever a party ~~has the right or is required to do some act or take some proceedings~~ must or may

act within a prescribed period after ~~the service of a notice or other paper upon the party and the notice or paper is served upon the party~~ service and service is made under Rule 5(b)(2)(B), (C), or (D), 3 days ~~shall be~~ are added ~~to~~ after the ~~prescribed~~ period.

The changes from the published version eliminate ambiguities that were detected in the published version. Since the primary purpose of the amendment is to eliminate ambiguities, recognizing that the actual number of days allowed is a secondary concern, the changes do not require republication.

Discussion

Publication of any day-counting amendment inevitably attracts suggestions that all the time periods in the rules should be reconsidered. Improvements are urged both in expression and in function. The most satisfactory approach to this large task is likely to involve all the sets of procedural rules, establishing uniform methods that can be relied upon in all federal-court settings. The Standing Committee has recognized these pleas; the long-range agenda includes a joint project to reconsider the time rules. Until that project matures, room remains for smaller-scale improvements in individual sets of rules. The Appellate Rules Committee is considering changes to Appellate Rule 26(c) to parallel the proposed Rule 6(e) changes — indeed, it was the Appellate Rules Committee that referred these questions to the Civil Rules Committee for consideration. The proposal made here reflects helpful advice and comments made by the Appellate Rules Committee and its Reporter, Professor Schiltz. Both Professor Schiltz and the Reporter to the Bankruptcy Rules Committee, Professor Morris, are in agreement with the approach the Civil Rules Committee is taking.

Cases and commentary have recognized four possible means of calculating the three days added by present Rule 6(e). Practicing

attorneys report that much time is devoted to nervous counting and recounting the days. Achieving a clear answer is the first concern. In the abstract, there is much to be said for counting the three added days before the prescribed period is counted — the underlying theory is that a paper served by mail or the other means incorporated in Rule 6(e) may take up to three days to arrive. But an informal survey of practicing attorneys revealed that almost all add the three days at the end. Transition to a clear new rule will work best if the new rule conforms closely to what most attorneys have been doing anyway.

The premise that three days should be added at the end of the prescribed period could be implemented in different ways. The shortest extension would be provided by adding three days after counting the days in the original period without regard to any Saturday, Sunday, or legal holiday. If the last prescribed day is a Saturday, for example, day 1 would be Sunday, day 2 would be Monday even if Monday is a legal holiday, and day 3 would be Tuesday. The act would be due on Tuesday; in this illustration, the 3 added days would not extend the time to act. An intermediate extension could be provided by looking to the last day to act under Rule 6(a) before counting the three added days. In the example just given the original period would expire on Tuesday, the first day that is not a Saturday, Sunday, or legal holiday. Wednesday, Thursday, and Friday would be the three added days.

In determining how to express in the rule the method of calculating the addition of three days, the Civil Rules Committee has attempted to be clear, resolving the ambiguities that the public comment had pointed out; consistent with proposed Appellate Rule 26(c) and with the corresponding Bankruptcy Rules; and to provide the maximum time to act that meets these goals. The method of calculation that achieves all these objectives is to count to the end of the prescribed period under Rule 6(a), using all the time-counting rules except the three-day extension, and then add three days. The

rule language set out above is clear and consistent with the Appellate Rules. After the end of the prescribed period is identified, three days are added. The Notes provide explicit direction on how to treat intermediate Saturdays, Sundays, and legal holidays. The last day to act is the third day, unless the third day is a Saturday, Sunday, or legal holiday. The last day to act in that case is the next day that is not a Saturday, Sunday, or legal holiday.[1]

This formulation is consistent with the Appellate Rule calculation and as generous as that consistency allows. Application is illustrated in the Committee Note. One way to explain the result is that no Saturday, Sunday, or legal holiday is to be counted against more than one exclusion. Adoption of this recommendation reflects the view that such an extension will not often interfere with the real-world pace of litigation.

Rule 6(a) states that the last of the counted days is included in calculating time limits unless, among other things, the required act is filing a paper in court and the day is one on which weather or other conditions have made the clerk's office inaccessible. There is no

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[1] In April 2004, the Civil Rules Committee agreed on language that would have excluded intermediate Saturdays, Sundays, and legal holidays in the calculation of the three days following the expiration of the prescribed period.

The full Committee has agreed unanimously to revise that language. The revision resulted from the recognition that the Committee mistakenly believed its approach was consistent with the approach of proposed Appellate Rule 26. The Appellate Rule approach is simply to count the prescribed period, making use of all of the timecounting rules save the three-day extension. After the end of the prescribed period is identified, three "real" (i.e., calendar) days are added. The effect of the language the Civil Rules Committee first adopted in April 2004 excluded intermediate Saturdays, Sundays, or holidays in calculating the three days, which was inconsistent with the Appellate Rules approach.

apparent reason to address this circumstance in Rule 6(e). If the clerk's office is inaccessible on the last day counted under Rule 6(e), the time to act is extended by Rule 6(a). Inaccessibility during the period before the last day counted under Rule 6(e) does not warrant any additional extension.

Changes Made After Publication and Comment

Changes were made to clarify further the method of counting the three days added after service under Rule 5(b)(2)(B), (C), or (D).

* * * * *

Rule 27(a)(2)

The Advisory Committee recommends approval for adoption of amended Rule 27(a)(2) as follows:

Rule 27. Depositions Before Action or Pending Appeal

1 **(a) Before Action.**

2 * * * * *

3 ~~**(2) Notice and Service.** The petitioner shall thereafter~~

4 ~~serve a notice upon each person named in the petition as~~

5 ~~an expected adverse party, together with a copy of the~~

6 ~~petition, stating that the petitioner will apply to the court,~~

7 ~~at a time and place named therein, for the order described~~

8 ~~in the petition. At least 20 days before the date of~~
9 ~~hearing the notice shall be served either within or without~~
10 ~~the district or state in the manner provided in Rule 4(d)~~
11 ~~for service of summons; but if such service cannot with~~
12 ~~due diligence be made upon any expected adverse party~~
13 ~~named in the petition, the court may make such order as~~
14 ~~is just for service by publication or otherwise, and shall~~
15 ~~appoint, for persons not served in the manner provided in~~
16 ~~Rule 4(d), an attorney who shall represent them, and, in~~
17 ~~case they are not otherwise represented, shall cross-~~
18 ~~examine the deponent. If any expected adverse party is~~
19 ~~a minor or incompetent the provisions of Rule 17(c)~~
20 ~~apply.~~
21 **(2) Notice and Service.** At least 20 days before the
22 hearing date, the petitioner must serve each expected
23 adverse party with a copy of the petition and a notice
24 stating the time and place of the hearing. The notice may

25 be served either inside or outside the district or state in
26 the manner provided in Rule 4. If that service cannot be
27 made with due diligence on an expected adverse party,
28 the court may order service by publication or otherwise.
29 The court must appoint an attorney to represent persons
30 not served in the manner provided by Rule 4 and to cross-
31 examine the deponent if an unserved person is not
32 otherwise represented. Rule 17(c) applies if any expected
33 adverse party is a minor or is incompetent.
34 * * * * *

Committee Note

The outdated cross-reference to former Rule 4(d) is corrected to incorporate all Rule 4 methods of service. Former Rule 4(d) has been allocated to many different subdivisions of Rule 4. Former Rule 4(d) did not cover all categories of defendants or modes of service, and present Rule 4 reaches further than all of former Rule 4. But there is no reason to distinguish between the different categories of defendants and modes of service encompassed by Rule 4. Rule 4 service provides effective notice. Notice by such means should be provided to any expected adverse party that comes within Rule 4.

Other changes are made to conform Rule 27(a)(2) to current style conventions.

Rule 27(a)(2) as Published

Only style changes are made to the version of Rule 27(a)(2) that was published for comment in August 2003. The changes are indicated on the published version by overstriking words deleted and double-underlining words added:

Rule 27. Depositions Before Action or Pending Appeal

(a) Before Action.

* * * * *

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

(2) Notice and Service. At least 20 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 ~~on the petition~~. 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 due 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 ~~on behalf of persons not served and~~ if an unserved person is not otherwise represented. Rule 17(c) applies if any expected adverse party is a minor or is incompetent.

Discussion

Only style changes are recommended in the published draft. The few public comments all support the proposal as published.

Changes Made After Publication and Comment

Only style changes are recommended in the published draft.

* * * * *

Rule 45(a)(2)

The Advisory Committee recommends approval for adoption of amended Rule 45(a)(2) as follows:

Rule 45. Subpoena

1 **(a) Form; Issuance.**

2 * * * * *

3 ~~(2) A subpoena commanding attendance at a trial or~~

4 ~~hearing shall issue from the court for the district in which~~

5 ~~the hearing or trial is to be held. A subpoena for~~

6 ~~attendance at a deposition shall issue from the court for~~
7 ~~the district designated by the notice of deposition as the~~
8 ~~district in which the deposition is to be taken. If separate~~
9 ~~from a subpoena commanding the attendance of a person,~~
10 ~~a subpoena for production or inspection shall issue from~~
11 ~~the court for the district in which the production or~~
12 ~~inspection is to be made.~~
13 **(2)** A subpoena must issue as follows:
14 **(A)** for attendance at a trial or hearing, from the court
15 for the district where the trial or hearing is to be held;
16 **(B)** for attendance at a deposition, from the court for
17 the district where the deposition is to be taken, stating
18 the method for recording the testimony; and
19 **(C)** for production and inspection, if separate from a
20 subpoena commanding a person's attendance, from
21 the court for the district where the production or
22 inspection is to be made.

23 * * * * *

Committee Note

This amendment closes a small gap in regard to notifying witnesses of the manner for recording a deposition. A deposition subpoena must state the method for recording the testimony.

Rule 30(b)(2) directs that the party noticing a deposition state in the notice the manner for recording the testimony, but the notice need not be served on the deponent. The deponent learns of the recording method only if the deponent is a party or is informed by a party. Rule 30(b)(3) permits another party to designate an additional method of recording with prior notice to the deponent and the other parties. The deponent thus has notice of the recording method when an additional method is designated. This amendment completes the notice provisions to ensure that a nonparty deponent has notice of the recording method when the recording method is described only in the deposition notice.

A subpoenaed witness does not have a right to refuse to proceed with a deposition due to objections to the manner of recording. But under rare circumstances, a nonparty witness might have a ground for seeking a protective order under Rule 26(c) with regard to the manner of recording or the use of the deposition if recorded in a certain manner. Should such a witness not learn of the manner of recording until the deposition begins, undesirable delay or complication might result. Advance notice of the recording method affords an opportunity to raise such protective issues.

Other changes are made to conform Rule 45(a)(2) to current style conventions.

Rule 45(a)(2) as Published

A single style change has been made in each of subparagraphs (A), (B), and (C) to reflect Style Subcommittee decisions made after publication in August 2003. The change is shown in the proposal as published by overstriking words deleted and double-underlining words added:

Rule 45. Subpoena

(a) Form; Issuance.

* * * * *

~~(2) A subpoena commanding attendance at a trial or hearing shall issue from the court for the district in which the hearing or trial is to be held. A subpoena for attendance at a deposition shall issue from the court for the district designated by the notice of deposition as the district in which the deposition is to be taken. If separate from a subpoena commanding the attendance of a person, a subpoena for production or inspection shall issue from the court for the district in which the production or inspection is to be made.~~

(2) A subpoena must issue as follows:

(A) for attendance at a trial or hearing, ~~in the name of~~ from the court for the district where the trial or hearing is to be held;

(B) for attendance at a deposition, ~~in the name of~~ from the court for the district where the deposition is to be taken, stating the method for recording the testimony; and

(C) for production and inspection, if separate from a subpoena commanding a person's attendance, ~~in the name of~~ from the court for the district where the production or inspection is to be made.

Discussion

There were few comments on this proposal. A recommendation for adoption seems warranted for the reasons described in the Committee Note.

Changes Made After Publication and Comment

Only a small style change has been made in the proposal as published.

* * * * *

SUPPLEMENTAL RULES FOR CERTAIN ADMIRALTY AND MARITIME CLAIMS

The Advisory Committee recommends approval for adoption of amended Supplemental Rule B(1)(a) as follows:

Rule B. In Personam Actions: Attachment and Garnishment

1 **(1) When Available; Complaint, Affidavit, Judicial**

2 **Authorization, and Process.** In an in personam action:

3 **(a)** If a defendant is not found within the district when a

4 verified complaint praying for attachment and the

5 affidavit required by Rule B(1)(b) are filed, a verified
6 complaint may contain a prayer for process to attach the
7 defendant's tangible or intangible personal property — up
8 to the amount sued for — in the hands of garnishees
9 named in the process.

10 * * * * *

Committee Note

Rule B(1) is amended to incorporate the decisions in *Heidmar, Inc. v. Anomina Ravennate Di Armamento Sp.A. of Ravenna*, 132 F.3d 264, 267-268 (5th Cir. 1998), and *Navieros InterAmericanos, S.A. v. M/V Vasilia Express*, 120 F.3d 304, 314-315 (1st Cir. 1997). The time for determining whether a defendant is "found" in the district is set at the time of filing the verified complaint that prays for attachment and the affidavit required by Rule B(1)(b). As provided by Rule B(1)(b), the affidavit must be filed with the complaint. A defendant cannot defeat the security purpose of attachment by appointing an agent for service of process after the complaint and affidavit are filed. The complaint praying for attachment need not be the initial complaint. So long as the defendant is not found in the district, the prayer for attachment may be made in an amended complaint; the affidavit that the defendant cannot be found must be filed with the amended complaint.

Rule B(1)(a) as Published

No change has been made in Rule B(1)(a) as published:

Discussion

The only comment supported adoption of the proposed amendment.

Changes Made After Publication and Comment

No changes have been made since publication.

* * * * *

Supplemental Rule C

The Advisory Committee recommends approval for adoption of amended Supplemental Rule C(6)(b) as follows:

C. In Rem Actions: Special Provisions

1 * * * * *

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

3 * * * * *

4 **(b) Maritime Arrests and Other Proceedings.** In an in

5 rem action not governed by Rule C(6)(a):

6 **(i)** a person who asserts a right of possession or any

7 ownership interest in the property that is the subject

8 of the action must file a verified statement of right or
9 interest:
10 **(A)** within 10 days after ~~the earlier of (1)~~ the
11 execution of process, ~~or (2) completed publication~~
12 ~~of notice under Rule C(4),~~ or
13 **(B)** within the time that the court allows;
14 **(ii)** the statement of right or interest must describe the
15 interest in the property that supports the person's
16 demand for its restitution or right to defend the action;
17 **(iii)** an agent, bailee, or attorney must state the
18 authority to file a statement of right or interest on
19 behalf of another; and
20 **(iv)** a person who asserts a right of possession or any
21 ownership interest must serve an answer within 20
22 days after filing the statement of interest or right.
23 * * * * *

Committee Note

Rule C(6)(b)(i)(A) is amended to delete the reference to a time 10 days after completed publication under Rule C(4). This change corrects an oversight in the amendments made in 2000. Rule C(4) requires publication of notice only if the property that is the subject of the action is not released within 10 days after execution of process. Execution of process will always be earlier than publication.

Rule C(6)(b) as Published

No change has been made in Rule C(6)(b) as published.

Discussion

The only comment supported adoption of the proposed amendment.

Changes Made After Publication and Comment

No changes have been made since publication.

* * * * *